BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2019-20/4550-4556]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND SECTION 23- I (2) OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 4(1) OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of –

1. **Mr. Ramprasad Reddy** [PAN:AENPP3110M] having address at Plot No. 2, Maithrivihar, Behind Maithri Vanam, Ameerpet, Hyderabad- 500038
2. **Mrs. P. Suneela Rani** [PAN:AENPP3112K] having address at 8-3-169/46, Siddartha Nagar, Vengala Rao Nagar, Hyderabad- 500038
3. **Mr. Kambam P Reddy** [PAN:AIDPK8303P] having address at Plot No. 11, 8/2-269/N/11, Navodaya Colony Road No. 2, Banjarahills, Hyderabad- 500034
4. **Trident Chemphar Ltd.** [PAN:AAEFT8416H] having address at Sy No. 66 (part) & 67(part) Miyapur Serilingampally Mandal, Hyderabad- 500049
5. **Veritaz Health Care Ltd.** [PAN:AACCV3220A] having address at 8-2-228 to 231, Pent House Mirra Trade Centre Panjagutta 'X' Road, Hyderabad – 500082
6. **Top Class Capital Markets Pvt. Ltd.** [PAN:AACCT5800G] having address at C-303, Vintage, CHS, I C Colony, Borivali (W), Mumbai- 400103
7. **Aurobindo Pharma Ltd.** [PAN:AABCA7366H] having address at Plot No. 2, Maithrivihar, Behind Maithri Vanam, Ameerpet, Hyderabad- 500038

In the matter of *Aurobindo Pharma Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the trading in the scrip of Aurobindo Pharma Ltd. ("**APL**" or "**Noticee No. 7**") during the period from July 22, 2008 to March 20, 2009 ("**the investigation period" or "IP").**

2. Investigation revealed that Pfizer Inc. ("**Pfizer**") issued a Press Release dated March 2, 3009 ("**Pfizer Press Release**") and APL issued a Press Release dated March 3, 2009 ("**APL Press Release**") regarding certain Licensing and Supply Agreements entered into between them on July 22, 2008, November 30, 2008 and December 29, 2008 (hereinafter collectively referred to as "**the Licensing and Supply Agreements**"). The said Press Releases were followed by an increase in price of the scrip of APL. The period during which the Licensing and Supply Agreements had been entered into but not published or disclosed to the stock exchange between July 22, 2008 and March 3, 2009 is hereinafter referred to as the "**UPSI Period"**.

3. Mr. Ramprasad Reddy (the Chairman as well as promoter of APL, hereinafter referred to as "**Noticee No.1**"), Mrs. P. Suneela Rani (wife of Mr. P.V. Ramprasad Reddy and hereinafter referred to as "**Noticee No.2**"), Mr. Kambam P. Reddy (promoter and brother of the MD of APL, hereinafter referred to as "**Noticee No.3**"), (4) Trident Chemphar Ltd. (a company belonging to the promoter group of APL and hereinafter referred to as "**Noticee No. 4**"), (5) Veritaz Health Care Ltd.(connected to APL/ through common address, e-mail id., acquisition of brands connected to APL, sourcing of supplies from APL and fund transfers from Noticee No. 1, and hereinafter referred to as "**Noticee No. 5**"), (6) Top Class Capital Markets Pvt. Ltd.(connected to Noticee No. 5 through fund transfers proximate to trades executed in the scrip of APL, and hereinafter referred to as "**Noticee No.6**"), were found to have traded in the scrip of APL prior to the information about the Licensing and Supply Agreements becoming public through the Press Release dated March 3, 2009.

4. Due to their connection with APL, Noticee Nos. 1 to 6, were alleged to be insiders in terms of Regulation 2 (e) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations')** and since they bought shares of APL during the UPSI Period, they were alleged to have traded in APL shares in violation of Regulation 3 and 4 of the PIT Regulations. Noticee No. 7 was alleged to have failed to disclose the price sensitive information regarding the Licensing and Supply Agreements to the stock exchange in violation of Clause 36 of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") and Clause 2.1 of the Code of Corporate Disclosure Practices in Schedule II of PIT Regulations read with Regulation 12 (2) of the PIT Regulations. Noticee No. 7 was also alleged to have failed to close the trading window of the company for trading by employees/directors of the APL in violation of Clause 3.2.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Part A of Schedule I of the PIT Regulations read with regulation 12(1) of the PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI initiated adjudication proceedings and appointed Shri Suresh Gupta as Adjudicating Officer (hereinafter referred to as "**AO**") under section 15-I of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and Section 23-I of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "**SEBI Adjudication Rules**") and Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as the "**SCRA Adjudication Rules**") vide order dated April 3, 2017 to inquire into, and adjudge under Section 15G of the SEBI Act for Noticee Nos. 1 to 6, and Sections 15 HB of the SEBI Act and Section 23E of the SCRA with respect to Noticee No. 7, for the aforesaid alleged violations.

6. Subsequently, owing to superannuation of Shri Suresh Gupta on April 30, 2018, vide order dated April 26, 2018 the undersigned was appointed as Adjudicating Officer in the matter. The appointment of the AO was communicated vide order dated May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Show Cause Notice No. E&AO/MC/JP/17588/2018 dated June 20, 2018 (hereinafter referred to as "**SCN**"), was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15I(1) and (2) of the SEBI Act and Rule 4(1) of the SCRA Adjudication Rules read with section 23 I (1) & (2) of the SCRA, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticees in terms of Section 15G and 15 HB of the SEBI Act and Section 23E of the SCRA, for alleged violation of –

    i. Regulations 3 and 4 of the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015, by Noticee Nos. 1 to 6, and
    ii. Regulation 12 (1) read with Clause 3.2.1 of Schedule I of the PIT Regulations, 1992 read with regulation 12 (2) of the PIT Regulations, 2015; (ii) Regulation 12 (2) read with Clause 2.1 of Schedule II of the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015; and (iii) Clause 36 of the Equity Listing Agreement read with Section 21 of the SCRA, by Noticee No 7.

8. The allegations levelled against the Noticees in the SCN are as follows:-

    i. It was observed from the website of Pfizer that on March 02, 2009, at 5:00 pm EST, Pfizer issued a Press Release about a series of agreements that it had entered into with APL, as "*an expansion of portfolio of generic medicines in the U.S. and Europe…to commercialise medicines that are no longer patent protected*" and stating that these agreements "*would dramatically change Pfizer's Established Products portfolio to an engine of positive growth*."

ii. In various Indian and U.S. media reports dated March 3-4, 2009, it was reported that the Licensing and Supply Agreements with APL constituted Pfizer's first in-licensing deal with any generic pharma company in the world whereby Pfizer would take on license products from APL, and APL could access Pfizer's newly formed Established Product Business Unit to exploit the sales potential for these products through Pfizer's global commercial presence. It was also reported that the Licensing and Supply Agreements were expected to boost revenue by $200mn by 2014, and that 8 of APL's US approved FDA facilities which were lying underutilised for some time now would get utilised, while it would also gain from upfront payments and royalties.

iii. Subsequently, on March 03,2009, after market hours, APL issued a Press Release, stating *inter alia* that " *...APL is pleased to announce it has expanded its partnership further by executing licensing and supply agreements for several Solid Dosage and Sterile Products with Pfizer Inc ..... ".* Further, the said Press Release quoted Shri PV Ramprasad Reddy's (Chairman & Promoter of APL) on the said alliance to state that *"It is an exciting opportunity for Aurobindo and provides for stability towards company's earnings and accelerate its growth plans* .... ".

iv. The impact of the said Press Release/announcements etc. on the share price of APL as observed during investigation is summarized in the following table:-

Particulars	March 03, 2009						March 04, 2009						March 05, 2009					
	Open	High	Low	Close	Intr-day high %	% of Close to previous days close	Open	High	Low	Close	Intr-day high %	% of Close to previous days close	Open	High	Low	close	Intr-day high %	% of Close to previous days close
APL : BSE	145.05	163.45	144.05	156.05	13%	7%	161.9	164.9	157.2	160.5	2%	3%	162	163.4	156	158.8	1%	-1%
APL: NSE	146.5	163.4	141.7	156.4	12%	6%	159.8	164.7	155.2	160.4	3%	3%	161	163.4	157	159.15	1%	-1%
Sensex	8,583.10	8,635.20	8,390.21	8,427.29	1%	-2%	8,473.20	8,501.50	8,373.20	8,446.50	0%	0%	8,535.03	8,535.03	8,166.97	8,197.92	0%	-3%
Nifty	2672.15	2688.5	2611.55	2622.4	1%	-2%	2611.9	2655.7	2611.95	2645.2	2%	1%	2645.9	2663.9	2564.1	2576.7	1%	-3%
Peer companies: Dr. Reddy's	395	401.6	394	397.2	2%	1%	398.95	399	381.1	389.45	0%	-2%	394.5	394.5	357	376.7	0%	-3%
Lupin Labs	636	642.5	620.05	627.5	1%	-1%	635	636	622.2	625.15	0%	0%	640	645	582	590	1%	-6%

v. It was observed that the price of the scrip of APL on March 03, 2009 had touched an intra-day high of 13% when compared to the opening price, and closed at 7% higher compared to previous day's close. As against this, the benchmark indices Sensex and Nifty had closed down 2% each on that day from the previous day's close.

vi. The abovesaid corporate announcements, press release, media reports, market movements etc., indicated that the said events/agreements were Price Sensitive Information ("hereinafter referred to as "**PSI**") in terms of Regulation 2(ha) of the PIT Regulations, 1992, which when published is "*likely to materially affect the price of securities*" of APL and *inter alia*, includes - "*any major expansion plans or execution of new projects",* and *"significant changes in policies, plans or operation of the company"*.

vii. As per APL's letter to SEBI dated January 20, 2011, the chronology of events on execution of agreements between Pfizer and APL was as follows:-

a. Discussions for the agreements started in May 2008.
b. Supply Agreement signed on July 22, 2008 for 5 Solid Oral Dosage ("SOD") products for USA.
c. License & Supply Agreements signed on November 30, 2008 for 44 SOD products for USA and for 31 SOD products for France.
d. License & Supply Agreements signed on December 29, 2008 for 20 SOD products for Pan European Countries (excluding France) and for 12 Sterile lnj. products for USA and for 12 sterile Inj Products for Pan Europe (including France).

viii. In view of the above chronology of events, PSI came into existence on July 22, 2008 and such PSI became public only on issuance of the Press Release by APL, i.e., March 03, 2009 (after market hours). Hence, the aforesaid information was Unpublished Price Sensitive Information ("hereinafter referred to as "**UPSI**") from July 22, 2008 (date of the first

Supply Agreement with Pfizer) to March 03, 2009 (when the Licensing and Supply Agreements were disseminated by APL to the Stock Exchanges through a Press Release).

ix. Vide its letter dated January 20, 2011 Noticee No. 7 had submitted that the following persons knew about the UPSI related to said Licensing and Supply Agreements with Pfizer before it became public:-

a) Shri PV Ramprasad Reddy, Promoter and Executive Chairman, APL
b) Shri GP Prasad, Associate Vice President - Global Finance and Operations Department, APL
c) Shri V Muralidharan, Associate Vice President – Europe Operations
d) Shri G Ranjit Kumar, Deputy Manager (International - Legal).

x. Noticee No. 1 was the Promoter and Executive Chairman, APL, and was aware of the UPSI before it was published, as per the submissions in APL's letter dated January 20, 2011. Thus, Noticee No. 1 was a connected person in terms of Regulation 2 (c) (i) and (ii) of PIT Regulations who had access to UPSI, and hence was an insider in terms of Regulation 2 (e) (i) of the PIT Regulations. Noticee No. 1 purchased 530000 shares of APL on December 3 and 4, 2008 at an average price of Rs. 111.54 per share, while in possession of UPSI.

xi. Noticee No. 2 is the wife of Noticee No. 1. Therefore, as relative of a connected person, she is deemed to be a connected person in terms of Regulation 2 (h) (viii) of the PIT Regulations, 1992, and is an insider reasonably expected to access to UPSI in terms of Regulation 2 (e) (i) of the PIT Regulations, 1992. Noticee No. 2 bought 200050 shares of APL on November 20, 21, 24 to 26, 28, December 01, 02, 03 and 10, 2008 at an average price of Rs. 112.69 per share while in possession of UPSI.

xii. Noticee No. 3, (a Promoter) being the brother of Mr. Nithyananda Reddy – Managing Director of APL, was deemed to be a connected person in

terms of Regulation 2 (h) (viii) of PIT Regulations, 1992. As a relative of Mr. Nithyananda Reddy - MD of APL, he was reasonably expected to have access to the UPSI and hence was alleged to be an insider in terms of Regulation 2 (e) (i) of PIT Regulations. Noticee No. 3 had bought 22900 shares of APL at an average price of Rs. 150.34 while in possession of UPSI.

xiii. Noticee No. 4 is a Promoter Group company of APL and as per its Memorandum of Association, 99.98% of its shareholding was held by Shri P. Sarath Chandra Reddy who is the son of Noticee No. 1. Hence, Noticee No. 4 is deemed to be a connected person in terms of Regulation 2 (h) (i) of the PIT Regulations, and reasonably expected to have access to the UPSI, thus alleged to be an insider in terms of Regulation 2 (e)(i) of the PIT Regulations. Noticee No. 4 had bought 636000 shares of APL at an average price of Rs. 113.88 while in possession of UPSI.

xiv. Noticee No. 5 is in the manufacture of bulk drugs industry like APL, and shares the same address as that of Noticee No. 4. The email address of Noticee No. 5 given on the MCA website is *cs@aurobindo.com* which is also the email ID of the General Manager (Legal) & Company Secretary of APL. Further, it was observed from the Balance Sheet of Noticee No. 5 for the Financial Year 2007-08 that personal guarantee had been given by Noticee No. 1 for a loan taken by Noticee No. 5 from Axis Bank Ltd. As per media reports, all the major products of Noticee No. 5 were manufactured by APL and Noticee No. 5 had acquired all the brands of Citadel Aurobindo Biotech Ltd. - which is a joint venture between Citadel Fine Pharmaceutical P. Ltd and APL - in the years 2007-2008. Noticee No. 5 had also acquired 60000 shares held by Citadel Fine Pharmaceutical P. Ltd. and APL in Citadel Aurobindo Biotech Ltd. From the Bank account of Noticee No. 1 and Bank account statement of Noticee No. 5, it was observed that there was a transfer of

Rs. 50,00,000 to Noticee No. 5 on January 20, 2009. From the Bank account of Noticee No. 2 it was observed that several transfers of funds took place between Noticee No. 1 and Shri Iqbal Singh Sardar - Managing Director of Noticee No. 5, during the UPSI Period. Noticee No. 5 traded on many occasions in the shares of APL during the UPSI period, particularly during September-November 2008 when two of the agreements got executed. Apart from its trades in APL, Noticee No. 5 has executed only one trade for one quantity share of *Sagar Cements* during the entire period from January 01, 2008 to April 02, 2009. In view of the aforesaid connections between Noticee No. 5 and Noticee No. 1 who is an insider, as well as the trades executed by Noticee No. 5 in the shares of APL proximate to the Licensing and Supply Agreements (and no other trades during the IP, barring a single exception), it was alleged that Noticee No. 5 was connected to APL and reasonably expected to have had access to UPSI. Noticee No. 5 bought 787026 shares of APL at an average price of Rs.173.37 while in possession of UPSI.

xv. Noticee No. 6 is connected to Noticee No. 5 through fund transfers in February, March and April 2009 just before and soon after APL's Press Release dated March 3, 2009 regarding the Licensing and Supply Agreements with Pfizer. It was also observed from bank account statements of Noticee No. 5 that Noticee No. 6 executed corresponding trades in the scrip of APL upon receipt of funds from Noticee No. 5. For example, transfer of Rs. 10 Cr. was made by Noticee No. 5 to Noticee No. 6 on February 09, 2009, before publication of information regarding the UPSI. Upon receipt of the said funds from Noticee No. 5, Noticee No. 6 transferred the same to its trading member's bank account on February 11, 2009. Immediately upon transfer of the Rs. 10 Cr into the trading member's bank account, buy trades for APL shares were executed on behalf of Noticee No. 6 on February 11 and 12 of 2009. It was noted from the Bank account of Noticee No.5 that Rs. 13.38 Cr. was transferred back by Top Class to Noticee No. 5 on June 10, 2009 (the

last day of its selling the entire holding in APL). It was observed that no other trades were executed by Noticee No. 6 in its trading account in any scrip during April 01, 2008 to June 10, 2009 except the trades in APL. Also, apart from funds received from Noticee No. 5 and two other entities, Business Match Services and Centrum Infra Reality, which were used for trades in shares of APL, no other funds were received by Noticee No. 6 from any other sources. Thus, it was observed that the Noticee No. 6 was acting on behalf of Noticee No. 5 for trading in the shares of APL and did not have any business operations/revenue of its own.

xvi. In view of aforesaid connections between Noticee No. 6 and Noticee 5 who is alleged to be an insider, and the fact that there were no other trades executed by Notice No. 6 between April 01, 2008 to June 10, 2009, it was alleged that Noticee No. 6 was reasonably expected to have received or had access to such UPSI which was in possession of Noticee 5. Hence Noticee No. 6 was an insider in terms of Regulation 2 (e) (ii) of the PIT Regulations. Being an 'insider' of APL as per PIT Regulations, it had traded in the shares of APL during UPSI Period. Noticee No. 6 bought 1852405 shares of APL at an average price of Rs. 140 during the UPSI period.

xvii. It was observed that the Noticees while trading when they were in possession of UPSI also made gains out of such trading. Noticee No. 1, 2 and 4 purchased the shares of APL at the lowest price during the Investigation Period. Noticee No. 1 and 2 did not offload their shares during the IP. Noticee No. 3 and 4 purchased additional shares shortly after the Press Release dated March 3, 2009 but none thereafter, when the price of the scrip of APL continued to increase. Noticee No. 5 sold most of the shares on different dates after the Press Release dated March 3, 2009. Noticee No. 6 sold a small part of the shares after the Press Release dated March 3, 2009. To calculate the notional profits

made by the Noticees as a result of purchases made while in possession of UPSI, the closing price on March 04, 2009 (trading day after the announcement) was taken as the reference price for calculating the sale value of shares. Noticee Nos. 1 to 6 made a gross notional profit of Rs. 10,30,46,341/- by trading in shares of APL during the UPSI period.

xviii. Therefore, it was alleged that by dealing in shares of APL while in possession of UPSI, the Noticee Nos. 1-6 violated Regulations 3 and 4 of the PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

xix. Noticee No. 7 i.e. APL failed to disclose immediately and continuously to the stock exchange PSI pertaining to the Licensing and Supply Agreements as soon as they were entered into with Pfizer. In terms of Clause 36 of the Equity Listing Agreement, every listed company was required to immediately inform the stock exchange of "*all the events which will have bearing on performance/operations of the company as well as price sensitive information*", including information regarding material events such "*change in the general character or nature of its business…brought about by the company entering into…any arrangement for technical, manufacturing, marketing or financial tie-up*". The PSI related to the Licensing and Supply Agreements with Pfizer were widely expected to enlarge the business operations of APL and have a bearing on its operation/performance, for which immediate disclosure to the stock exchange was required However, Noticee No. 7 disclosed the said PSI through the Press Release dated March 3, 2009 with a delay of 70 days from the date of execution of the last of the Licensing and Supply Agreement with Pfizer on December 29, 2008. In view of the Noticee No. 7's failure to make the stipulated disclosures to the stock exchange immediately as mandated, Noticee No. 7 was alleged to have violated Clause 36 of the Equity Listing Agreement read

with section 21 of the SCRA, and Clause 2.1 of Code of Conduct in Schedule-II read with Regulation 12(2) of PIT Regulations.

xx. Further, Noticee No. 7 failed to close the trading window of APL during the period when the PSI related to the Licensing and Supply Agreements with Pfizer was unpublished (i.e. the UPSI period) between July 22, 2008 and March 3, 2009. As the said UPSI involved "*major expansion plans or execution of new projects*" in terms of the Clause 3.2.3 of the Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies prescribed in Part A, Schedule I to the PIT Regulations, 1992, the trading window for trading in company' securities was required to be closed during the UPSI period involving major expansion plans or execution of new projects, in terms of Clause 3.2.1 read with Clause 3.2.3 of the abovementioned Model Code of Conduct. Thus, Noticee No. 7 was alleged to have violated Clause 3.2.3 of the Model Code of Conduct specified in Schedule I read with regulation 12(1) of the PIT Regulations, 1992.

9. A time period of 14 days was granted to the Noticee to present its reply to the SCN.

10. Vide letter dated July 4, 2018, the Authorized Representatives of Noticee Nos. 1-5 and 7 sought inspection of all records and documents in the matter. Accordingly, vide letter dated July 12, 2018, an opportunity to undertake inspection of relevant documents pertaining to the present adjudication proceedings was granted to the Noticee Nos. 1-5 and 7 on a date before August 3, 2018. On August 3, 2018 the Authorized Representatives of Noticee Nos. 1-5 and 7, namely, Mr. Abhilash Chandran, Advocate, and Mr. Robin Shah, Advocate, inspected the file containing all relevant documents relied upon by SEBI for issuing the SCN. However, vide e-mail dated August 6, 2018, inspection of all records was sought once again by the Noticee Nos. 1 to 5 and 7. Consequently, an inspection of documents was granted once again to the

Authorized Representatives of Noticee Nos. 1-5 and 7 on October 23, 2018 at SEBI premises.

11. Further, vide Hearing Notice No. EAD/EAD5/MC/CB/34908/2018 dated December 21, 2018, the Noticee Nos. 1-5 and 7 were advised to file their reply to the SCN by January 7, 2019, and were also provided an opportunity of personal hearing on January 11, 2019 at 3:00 p.m.

12. Following a request by Noticee Nos. 1-5 and 7 to grant extension of time to file their reply to the SCN and to reschedule the date of hearing, the reply dated January 30, 2019 filed by the Authorized Representative of Noticee Nos. 1-5 and 7 in response to the SCN was taken on record.

13. Vide reply dated March 7, 2019, the Authorized Representatives for Noticee Nos. 1-5 and 7 filed additional written submissions to the SCN, alongwith a case law compendium, and Annexures to the abovementioned additional submissions.

14. The submissions made by Noticee Nos. 1-5 and 7 in their replies dated January 30, 2019 are summarised below:-

    i. The Noticees submitted that the SCN is vitiated by delays and laches and, without prejudice to any other submission made in this reply, the allegations raised in the SCN ought to be dropped on this ground alone. The SCN has been issued on June 20, 2018 regarding events that had taken place in 2008-2009, i.e. after a lapse of approximately 10 years. It is impossible to defend oneself when proceedings are initiated after such a long period of time, therefore, the very purpose of regulatory proceedings stands vitiated and would result in deprivation of natural justice to the Noticees.

    ii. The SCN fails to bring out as to how the Trading Noticees are insiders and how the said Noticees have violated Regulation 3 and 4 of the PIT Regulations, 1992

iii. Execution of the Licensing and Supply Agreements with Pfizer ("Pfizer Agreements") was not price-sensitive information because of the following:-

a. As contracts of the nature of the Pfizer Agreements were executed by APL in the ordinary course of business, and do not automatically become price-sensitive.

b. There is nothing in the material on record to suggest that the Pfizer Agreements were of a material nature and not a natural progression of how the business of Noticee No. 7 would evolve.

c. Further, the actual movement of the share price is no barometer for considering whether any piece of information is likely to 'materially affect the price of securities'. The movement in securities market prices can be impacted by various other factors including sentiment, developments on that day, other macro-economic factors and the like, and the same cannot now be analysed as the SCN has been issued after 10 years.

d. Execution of the Pfizer Agreements did not constitute any "major expansion plan" or "execution of a new project", and certainly did not constitute a "change in policy or operation of the company" as alleged in the SCN. Pfizer was just another addition to APL's clientele and execution of the Pfizer Agreements did not amount to any expansion plan or change of policy/operation.

e. APL is a manufacturer of generics products and undertakes operations in two verticals of the pharmaceutical industry: (a) the manufacturing of bulk drugs (i.e. Active Pharmaceutical Ingredients); and (b) manufacturing of formulations (i.e. finished products such as tablets, capsules, syrups and injections). The Pfizer Agreements pertain to business of Noticee No. 7 relating to (b) (i.e. the manufacturing of formulations). Noticee No.7

executed and continues to execute such agreements with its clients on a regular basis and execution of such agreements is in the ordinary course of business. In fact, Noticee No. 7 has been undertaking the formulations business from as far back as 1995-1996 and year on year thereafter, it has had a substantial number of clients in the formulations vertical.

f. The contribution of the Pfizer Agreements to the consolidated and standalone revenue of Noticee No. 7 also show that the Pfizer Agreements were executed in the ordinary course of business and did not constitute any change in business or expansion. The relevant details in this regard have been set out in Part A of Annexure A to the Noticees' reply. Since the last Pfizer Agreement terminated in July 29, 2013, the Noticees' analysis has been undertaken for the periods from financial year 2008-2009 to financial year 2013-2014.

g. Analyzing the information tabulated in Part A of Annexure A in the context of the sales revenue from the formulations vertical, as set out in Part B of Annexure A, makes it abundantly clear that the revenue from the Pfizer Agreements was, in fact, miniscule vis-a-vis the revenue from the formulations vertical itself. The revenue from the Pfizer Agreements has never crossed even 10% of Noticee No. 7's total standalone or consolidated revenues, with the highest revenue share of the Pfizer Agreements, being for the financial year 2008-2009, at 5.41% (on a standalone basis) and 4.57% (on a consolidated basis).

h. Given the miniscule contribution of the Pfizer Agreements in any given year to the total revenue of Noticee No. 7 (both on a standalone and consolidated basis) as well as to the formulations vertical of Noticee No.7, the Pfizer Agreements were not material to the business of Noticee No.7. Accordingly, the execution of

these agreements was not "price sensitive information". Therefore, in the absence of the Pfizer Agreements being price sensitive in nature, it cannot be held that Noticee Nos. 1 to 5 violated Regulations 3 and 4 of the PIT Regulations.

iv. The Agreements were for manufacturing formulations and were entered into in the ordinary course of business for Noticee No.7. Pfizer was only an additional client for Noticee No. 7 and therefore the Pfizer Agreements were in the ordinary course of business. Accordingly, this was a long existing arm of operations for Noticee No.7 and that entering into an agreement with Pfizer in furtherance of Noticee No. 7's existing business operations (i.e. the formulations vertical) cannot tantamount to 'change in the general character or nature of the business of the company'.

v. In the matter of *Gujarat NRE Mineral Resources Limited v. Securities and Exchange Board of India* (Appeal No. 207 of 2010), which was passed by the Hon'ble Securities Appellate Tribunal on November 18, 2011, it has been held "...*if a manufacturing company were to dispose of the whole or a substantial part of its manufacturing unit, it would be an event which would materially affect the price of its securities and according to the explanation it would be price sensitive requiring the company to make the necessary disclosures at the earliest. On the other hand, if a manufacturing company were to sell its products or buy raw materials it would be a part of its normal business activity which would not be price sensitive and not required to be disclosed.*"

vi. Given that entering into the Pfizer Agreements was neither price sensitive information nor resulted in any change in the general character or nature of the Company's business, and was in fact a business activity conducted in the ordinary course of business by Noticee No. 7 it is clear that there was no obligation on the Noticee to make any disclosure under the Stock Exchange Disclosure Provisions (i.e. Clause 36 of the Equity

Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 and Schedule II under Regulation 12(2) of the 1992 Insider Trading Regulations.

vii. The Noticee No. 7 issued the Press Release dated March 3, 2009 after market hours for the limited purpose of maintaining consistency with the press release issued by Pfizer on March 02, 2009 at 5:00 pm EST and to ensure that there is no asymmetry of information in public domain. Since Pfizer had already made an announcement regarding the Pfizer Agreements, as a matter of prudence, Noticee No. 7 decided to issue a press release as well. However, it is submitted that the mere fact of Noticee No. 7 having issued the press release does not imply that Noticee No. 7 was under a legal obligation to make such disclosure.

viii. On October 30, 2008, pursuant to SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, a second proviso was inserted in Regulation 11(2) of the SEBI Takeover Regulations. Pursuant to this inclusion, persons holding more than 55% but less than 75% of the shares or voting rights in a listed company were permitted to acquire not more than 5% of voting rights in such listed company without attracting the obligation to make an open offer (the "2008 Takeover Amendment"). Such acquisition was necessarily required to be undertaken through an open market purchase.

ix. The 2008 Takeover Amendment was a policy decision taken by SEBI in the wake of the Global Economic Recession of 2008-2009 (the "Global Recession") to enable promoters of listed companies to increase their shareholding in listed companies. This helped to stabilize the downward spiraling in the share prices of such companies.

x. The price of securities of Noticee No. 7's shares also underwent a downward spiral in the wake of the Global Recession. The details of

daily price fluctuation in the Noticee No. 7's shares including details of the volume weighted average price of Noticee No. 7's shares (for each trading day) from January 01, 2008 to March 31, 2009 as traded on the National Stock Exchange of India Limited is enclosed as Annexure B, which clearly evidences that on and from the last week of September 2008 (when the effects of the Global Recession manifested in the Indian securities market), the average price of Noticee No.7's scrip has consistently fallen.

xi. It is a fact that during the Investigation Period, the shareholding of the members of the promoter/promoter group of Noticee No. 7 was more than 55% of the paid-up equity share capital of Noticee No.7.

xii. The trading pattern of the Noticees has not been indicative of insider trading. The Noticees submitted that given that none of Noticees No. 1 to 4 have sold any shares in Noticee No. 7 during the Investigation Period, it is evident that all acquisitions by Noticee Nos. 1 to 4, each a member of the promoter/promoter group of Noticee No. 7, were undertaken solely by them to consolidate their shareholding in Noticee No. 7. In fact, Noticees No. 3 and 4 have acquired more shares in Noticee No. 7 immediately after the Investigation Period as is clearly evidenced in the investigation report (the "Investigation Report") that has been provided to the Noticees.

xiii. Trading by Noticee No. 5 is independent of and not on behalf of the promoters of APL. In paragraph 20(f) of the SCN, SEBI has contended that on January 20, 2009, Noticee No. 1 provided a loan of Rs.50,00,000 to Noticee No. 5, allegedly to trade in the scrip of Noticee No. 7. However, all trades in the scrip of Noticee No. 7 by Noticee No. 5 during the Investigation Period were prior to January 20, 2009 (i.e. from September 25, 2008 to November 7, 2008, the "Veritaz Trading Period"). Accordingly, given that the transfer of the aforesaid sum by Noticee No. 5 to Noticee No. 1 was after the Veritaz Trading Period it is evident that

such sum was not transferred by Noticee No. 1 to Noticee No. 5 to finance the trades made by Noticee No.5 as alleged in the SCN.

xiv. In paragraph 20(d) of the SCN, SEBI has contended that Noticee No. 1 has provided a personal guarantee to Axis Bank Limited for a loan secured by Noticee No. 5. The credit facility for which this personal guarantee was provided was sanctioned on November 25, 2008, i.e. after the Veritaz Trading Period. Accordingly, it is submitted that this credit facility was not utilized by Noticee No. 5 to undertake trading in the shares of Noticee No. 7 as alleged in the SCN. Therefore, every link however remote, cannot be pressed into service to infer and assume a "reasonable expectation" of access to the alleged UPSI.

xv. It was submitted that Noticee No. 1 and Mr. Iqbal Singh, the managing director of Noticee No. 5 during the Investigation Period, shared a personal friendship. All transfer of money to Notice No. 5/Mr. Iqbal Singh was pursuant to this friendship and not to finance any purported illegal trading in the shares of Noticee No. 7. In fact Noticee No. 1 and Mr. Iqbal Singh have been close friends for more than 25 years and have indulged in exchange of funds on several occasions. A list containing details of the exchange of finances between Noticee No. 1 and Mr. Iqbal Singh is enclosed as Annexure C. It is submitted that no adverse inference ought to be drawn on account of the money transferred by Noticee No. 1 to Noticee No. 5 due to the personal relation of Noticee No. 1 and Mr. Iqbal Singh.

xvi. The purpose / objective of Noticee Nos. 1 to 4 was to consolidate their shareholding in Noticee No. 7 on account of the 2008 Takeover Amendment (with respect to Noticee Nos. 1 to 4) and independent trading without being in possession of UPSI (with respect to Noticee No. 5), and was therefore, not to deal in the securities of Noticee No. 7 while in possession of any price sensitive information relating to Noticee No. 7.

xvii. The SCN proceeds on an erroneous assumption that the Noticee Nos. 2 to 5, being connected/deemed to be connected, are reasonably expected to have access to the purported UPSI. It is submitted that the SCN fails to establish how Noticee Nos.2 to 5 are "reasonably expected" to have access to the purported UPSI. The SCN fails to bring out any material on record to show that Noticee Nos. 2 to *5* can be reasonably expected to have access to the purported UPSI. Judicial precedent is clear that, while interpreting the provisions of the PIT Regulations, the expression "reasonably expected" cannot be a mere *ipse dixit* and that there must be material to show that a person can reasonably be expected to have access to unpublished price sensitive information. Other than mere assertion that the Noticee Nos. 2 to 5 are insiders, there is no material to show that Noticee Nos. 2 to 5 were reasonably expected to have access to unpublished price sensitive information. Therefore, on the basis of the material available on record, it is impossible to draw a conclusion that Noticee Nos. 2 to *5* were reasonably expected to have access to the purported UPSI. Accordingly, in the absence of Noticee Nos.2 to *5* being 'insiders', the charge of insider trading cannot be sustained.

xviii. SCN fails to bring out exactly how Noticees 1 to *5* have violated Regulations 3 and 4 of the PIT Regulations. Regulation 3(i) of the PIT Regulations prohibits an 'insider' from dealing in the securities of a company that are listed on a stock exchange, either on his own behalf or on behalf of any other person, only when such an insider is in possession of unpublished price sensitive information. SCN fails to bring out as to when and how the purported insiders were in possession of the unpublished price sensitive information.

xix. For violation of Regulation 3(i) of the PIT Regulations, in the facts of the present matter, it must be proven that: (a) the person is an 'insider'; and (b) such person dealt in the securities of a company when such person

had possession of any unpublished price sensitive information. Assuming without admitting that Noticee Nos. 2 to 5 were reasonably expected to have access to unpublished price sensitive information and were insiders, it is submitted that to prove violation of Regulation 3(i), SEBI is required to show that Noticee Nos. 2 to 5 dealt in securities when they were in actual possession of the unpublished price sensitive information. Unlike the definition of 'insider', where the requirement is to merely show reasonable access to inside information, the burden of proof required to be discharged to establish violation of Regulation 3(i) is far greater and it is to be proven that the insider was in possession of the unpublished price sensitive information. SCN fails to discharge the burden of proof required to establish violation of Regulation 3, consequently, violation of Regulation 4 of PIT Regulation also cannot be established.

xx. Since the SCN does not in any way explain or demonstrate as to how the Pfizer Agreements were in the nature of 'major expansion plans or execution of new projects', it is submitted that the Pfizer Agreements were executed in the ordinary course of business and were normal business transactions.

xxi. Considering the nature of business of Noticee No: 7 and the size of the transactions undertaken by Noticee No. 7 on a regular basis, Noticee No. 7 did not deem the Pfizer Agreements to be substantial in nature and did not consider it to be an event which required closure of the trading window in accordance with Trading Window Closure Provisions. It is further submitted that at the time of execution of the Pfizer Agreements, Noticee No. 7 was only aware of the license fee that was receivable from the Pfizer Agreements. As detailed in Annexure A, the said license fee constituted a minuscule percentage of the total revenue of Noticee No. 7. The license fee for the Financial Year 2008 -2009 was INR. 94.16 crores, which was 3.51% of the standalone revenue and

2.97% of the consolidated revenue of Noticee No. 7. Basis the said figures, the Pfizer Agreements were not considered to be substantial or major and execution of the Pfizer Agreements was merely in continuation of the company's normal business activities and did not amount to 'major expansion plans' which required closure of the trading window.

xxii. Noticee No. 7 has always been into manufacturing of generic products and has two wide areas of operations, manufacturing of formulations and APIs. Noticee No. 7 primarily manufactures formulation products only for international markets and does not supply such products to local markets. This was an established area of business for Noticee No. 7 even prior to the execution of the Pfizer Agreements and Noticee No. 7 had been already operating in such markets and manufacturing formulation products for other clients. Execution of the Pfizer Agreements was a normal business transaction with another client and did not constitute 'execution of new projects'. Even after execution of Pfizer Agreements, Noticee No. 7 continued to operate in the same areas of operation and manufactured the same generic products as it had been doing. Noticee No. 7 did not undertake 'execution of new projects'.

xxiii. Non-closure of the trading window at the time of execution of the Pfizer Agreements was in conformity with the general practices adopted by Noticee No. 7 since Noticee No. 7 never closed its trading windows when agreements of similar nature were entered into by it in the ordinary course of its business. In the course of its regular business, Noticee No. 7 has executed several agreements with several parties and in conformity with the provisions of the PIT Regulations, has not closed its trading window.

xxiv. Considering that the trading window was not closed, Noticees No. 1 to 5 had no reason to believe that they could not trade the securities of

Noticee No. 7. It is submitted that the Noticees have always acted in compliance with the provisions of the PIT Regulations and the Code of Conduct set out therein.

xxv. Penalty cannot be imposed on account of the charging provision being different from the provision which has allegedly been violated. Regulation 3(i) prohibits an 'insider' from dealing in the securities of a company that are listed on a stock exchange, either on his own behalf or on behalf of any other person, only when such an insider is in possession of unpublished price sensitive information. However, Section 15G of the SEBI Act provides for penalty to be imposed when an insider, either on his own behalf or on behalf of any other person, deals in the securities of a listed company on the basis of unpublished price sensitive information.

15. Vide e-mail dated January 31, 2019 the said Noticees were granted an opportunity of personal hearing on February 15, 2019 at 3:30 p.m.

16. During the personal hearing held on February 15, 2019 at 3:30 p.m., the Authorized Representatives of Noticee Nos. 1-5 and 7 reiterated the contentions in the reply filed on January 30, 2019 on behalf of the said Noticees. The Authorized Representatives also sought time till February 28, 2019 to file additional submissions in the matter, which was granted by the AO.

17. Vide letter dated March 7, 2019 the Noticees No. 1-5 and 7 made the following additional submissions:-

i. The SCN is vitiated by delays and laches. SEBI issued the SCN for the first time on June 20, 2018 after a lapse of approximately 10 years from the events which are the subject matter of the SCN. Noticee No. 7 had first provided the first information regarding the UPSI to SEBI on January 20, 2011. Noticees are unable to bring to bear the whole strength of facts and circumstances with sufficient documentary and empirical evidence to support their defence at this distance in time,

which would not have been the case, had the proceedings been timely. In support of this argument, the Noticees place reliance on the cases of - State of Punjab and Ors. V. Chaman Lal Goyal *((1995) 2 Supreme Court Cases 570) (Paragraphs 9 and 11), Abdu l Rehman Antu lay and Ors. v. R.S. Nayak and Another (1992 1 Supreme Court Cases 225) (Paragraphs 77 and 86), HB Stockhold ings Ltd. v. SEBI ((2013) SA T 44: 2013 SCC Online SA T 56) (Paragraphs 20 - 23), Subhkam Securities Private Ltd. v. SEBI, (Appeal No. 73 of 2012) (Paragraph 5), Bhagwandas S. Tolani v. B.C. Aggarwal and Ors. (1982 SCC Online Born 453) (Paragraphs 7 and 8).*

ii. The Noticees submitted that the statement in the SCN that scrip price of APL rose by 7% on the BSE and 6% on the NSE due to disclosures made by Pfizer is incorrect. At any time, there are several factors which affect the price of any scrip - these can be macro-economic factors; factors affecting the industry; factors affecting sentiment of the economy and/or the industry, without specific events on the ground; and indeed scrip-specific factors. The price movement in the scrip of APL was not material or extraordinary.

iii. Para. 11 of the SCN is not correct. The announcement of the Pfizer Agreements was made on March 03, 2009 after market hours i.e the closing price on March 03, 2009 could never be influenced by the announcement. The price closed at Rs.156.05 on that day as compared with the closing price of Rs. 147.15 on the previous trading day, and that price point can be no barometer of impact of the announcement on the price. Further, the intra-day high price of scrip of APL on the day after the announcement can never be the barometer for determining whether the information published is price sensitive. Moreover, it is noteworthy that the price movement of the scrip of Noticee No. 7 on March 04, 2009 and March 05, 2009 i.e. the next two trading days after the Pfizer Announcement, is similar to that of the Sensex and Nifty, as

mentioned in paragraph 11 of the SCN, which negates the thesis that the price movement in the scrip was out of the ordinary. Consequently, the only inference that can be drawn is that going by the actual price movement, it can never be said that the execution of the Pfizer Agreements was price sensitive.

iv. On the NSE, from March 3, 2009 to March 24, 2009, the price of Noticee No.7's scrip closed within a range of Rs. 158.22 to Rs. 170.99, respectively. The scrip closed around the same range in the period from December 24, 2008 (Rs. 154.62) to January 1, 2009 (Rs. 170.26). Further, just two months prior to March 3, 2009, the scrip had closed at Rs. 175.77 (on January 5, 2009). From a close review of the closing pattern of the scrip from October 1, 2008 onwards (i.e. after the effects of the Global Recession were felt in the Indian economy) till March 3, 2009, it is evident that on numerous occasions the scrip closed at around Rs. 158.22 (which was eventually the closing price on March 3, 2009). Thus, the price movement in the scrip cannot be attributed to the disclosure of the Pfizer Agreements.

v. A review of the closing price of the scrip for the month of February 2009 i.e before the Pfizer Agreements were announced, clearly indicates a trend of an upward rise in the closing price of Noticee No. 7's scrip even in the period before March 3, 2009. It is in this context that the distance of time rendering it difficult to provide alternative reasons for the price movement, gains even more significance.

vi. Pfizer Agreements were routine, and in the ordinary course/not material at all. Noticee No. 7 is in the business of manufacturing generic pharmaceutical products. Therefore, Noticee No. 7 routinely engages in two verticals: (a) research, development and manufacturing of bulk drugs (i.e. Active Pharmaceutical Ingredients); and (b) research, development and manufacturing of formulations (i.e. finished products such as tablets, capsules, syrups and injections). The Pfizer

Agreements pertain to business of research, development and manufacturing of formulations. Noticee No. 7 has usually been executing and continues to execute such agreements with such clients on a regular basis in the ordinary course of business. In fact, Noticee No. 7 has been undertaking the formulations business since as far back as 1995-6. Literally every year thereafter, it has executed such agreements with substantial number of clients in the formulations vertical. Between 2006-2007 and 2008-2009, Noticee No. 7 had entered into agreements (similar to the Pfizer Agreements) with numerous other customers in the formulations vertical. Purely in terms of statistics, such agreements were with 191 customers in 2006-2007; 237 customers in 2007-2008; and 272 customers in 2008-2009 (details are set out in Annexure A). Further, the Company had also entered into agreements with a substantial number of these customers and the purpose of these agreements was similar to the Pfizer Agreements - i.e. the licensing of formulations for the clients to manufacture, and also supply of manufactured formulations to the clients. The agreements that the Noticees are able to list out now at this late stage, other than the Pfizer Agreements, have been set out in Annexure B.

vii. The business generated under the Pfizer Agreements and how they turned out to be a minuscule component of the business has already been set out in the Reply. While such data is generated with the benefit of hindsight, it should be noted that the judgement call about whether an agreement being executed would be a material agreement warranting public disclosure under the Listing Agreement, is a professional best judgement, taken at that point in time i.e. at the time of execution of the agreement. In this case, it turned out that the judgement call was right.

viii. Given that the Pfizer Agreements were similar in nature to these other agreements, Noticee No. 7 did not need to make, a disclosure in terms of Clause 36 of the Equity Listing Agreement.

ix. Given the sheer quantum of customers in the formulations vertical, and the fact that most of these customers had entered into agreements that were similar in nature to the Pfizer Agreements, it is submitted that execution of the Pfizer Agreements did not constitute any major expansion plan or execution of a new project, and certainly did not constitute a change in policy or operation of the company, as alleged in para. 12 of the SCN. Pfizer was just another addition to Noticee No. 7's clientele, which was already large given the quantum of the customers in the formulations vertical. Accordingly, the execution of the Pfizer Agreements did not amount to any expansion plan or change of policy/operation but was instead an ordinary course/routine activity of Noticee No. 7 and not information that was price sensitive in nature.

x. Noticee No. 7 would have been advised to announce the Pfizer Agreements formally once Pfizer made an announcement outside India. This would have been aimed at addressing any speculation, rather than to take a stance that the Pfizer Agreements were material. To hold this against the Noticees to level a charge as serious as insider trading is untenable.

xi. The Noticee cited case law in support of the contention that the Pfizer Agreements were not only routine, they were also not in “material”. In *TSC Industries, Inc., et al., v. Northway, Inc.* (426 US 438 (1976) in this regard, where similar legal provisions were being applied. The Supreme Court of the United States of America, while considering what would amount to a "material fact" in the context of proxy rules made by the United States Securities and Exchange Commission under that country's Securities and Exchange Act, 1934, ruled as follows (paragraph 12):

> "*The general standard of materially that we think best comports with the policies of Rule 14a-9 is as follows: An omitted fact is material if there is a substantial likelihood that a reasonable*

*shareholder would consider it important in deciding how to vote. This standard is fully consistent with Mills general description of materiality as a requirement "the defect have a significant propensity to affect the voting process." It does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. What the standard does contemplate is showing a substantial likelihood that under all the circumstances the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of the information made available.***"*** (Emphasis supplied.)

Accordingly, the jurisprudence suggests that the test of materiality of a fact (such as the execution of the Pfizer Agreements) is premised on whether a reasonable investor would view this fact as *significantly* altering the total *mix* of information made available.

xii. Pfizer was one of numerous other customers of Noticee No. 7 in the formulations vertical. Also, the Pfizer Agreements were similar in nature to the agreements that Noticee No. 7 entered then and does enter even now with customers in its formulations vertical. Accordingly, it is submitted that given the sheer quantum of customers that Pfizer catered to in the formulations vertical as well as the nature of the Pfizer Agreements, the execution of the Pfizer Agreement would not alter the total mix of information available with investors in securities of Noticee No. 7. Consequently, in its formulations vertical, or otherwise, there would not have been any "significant impact" on a reasonable investors' perception of the impact of the Pfizer Agreements on the business of Noticee No. 7. Likewise, there would be no impact perceived, on the

share price of Noticee No.7. Accordingly, it is submitted that the execution of the Pfizer Agreement was not a material fact.

xiii. On the aspect of materiality the Noticee also cited the case of *Gujarat NRE Mineral Resources Limited v. Securities and Exchange Board of India (Appeal No. 207 of 2010)* , in which the Hon'ble Securities Appellate Tribunal , in the context of establishing which type of information could be material (and therefore price sensitive) for a manufacturing company, stated :

"...if a manufacturing company were to dispose of the whole or a substantial part of its manufacturing unit, it would be an event which would materially affect the p rice of its securities and according to the explanation it would be price sensitive requiring the company to make the necessary disclosures at the earliest. On the other hand, if a manufacturing company were to sell its products or buy raw materials, it would be a p art of its normal business activity which would not be price sensitive and not required to be disclosed." (Emphasis supplied.)

xiv. The purpose of the Pfizer Agreements was to sell its products (being formulations) - an established part of the business - to customers. It is submitted that entering into agreements such as the Pfizer Agreements (for licensing and supplying formulations) was not an extra-ordinary event for a company such as Noticee No. 7 – in fact these type of agreements are entered into routinely in ordinary course by such company and is therefore a normal business activity that is neither price sensitive nor required to be disclosed. Noticee No. 7 only made the disclosure to prevent asymmetry of information in the public domain since Pfizer had made a disclosure.

xv. Noticee Nos. 2 - 5 are not 'Insiders' and a charge of insider trading cannot be levelled. There is no material on record to establish whether the Noticee Nos. 2 - 5 indeed had access to UPSI at the time that the

trades were undertaken. The Hon'ble Supreme Court of India in *Chintalapati Srinivasa Raju v. SEBI & Ors.* (Civil Appeal No. 16805), while analyzing Regulation 2(e)(i) of the PIT Regulations in context of whether a person can be imputed to also have access to price sensitive information merely because such person is related to a person who admittedly is in possession of price sensitive information, held, in paragraph 11, that:-

"The expression "reasonably expected" cannot be a mere ipse dixit - there must be material to show that such person can reasonably be so expected to have access to unpublished price sensitive information. " (Emphasis supplied.)

xvi. Other than mere suggestions of possibility based on the relationship between the Noticees, there is no material on record to conclude that Noticee Nos. 2 to 5 were reasonably expected to have access to/have been in contact with the purported UPSI. Therefore, it cannot be automatically inferred that Noticee Nos. 2 to 5 had access to the alleged UPSI.

xvii. Further, none of the other Noticees have at any time provided any information pertaining to the Pfizer Agreements to Noticee No. 5 (i.e. Veritaz Healthcare Limited), and, without prejudice to the fact that Noticee No. 5 was never aware of the execution of the Pfizer Agreements during the Trading Period, Noticee No. 5 did not provide any information relating to the Pfizer Agreements to Noticee No. 6 (i.e. Top Class Capital Markets Private Limited).

xviii. The trading by Noticee Nos. 1 to 4 was intended to consolidate their shareholding. On October 30, 2008, pursuant to SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, a second proviso was inserted in Regulation 11(2) of the SEBI Takeover Regulations. Pursuant to this inclusion, persons holding more

than 55% but less than 75% of the shares or voting rights in a listed company were permitted to acquire not more than 5% of voting rights in such listed company without attracting the obligation to make an open offer. Such acquisition was necessarily required to be undertaken through an open market purchase.

xix. All the acquisitions in question by Noticee Nos. 1 to 4, each a member of the promoter/promoter group of Noticee No. 7, were undertaken solely by them to consolidate their shareholding in Noticee No. 7 - this conclusion is bolstered by the fact that none of Noticee Nos. 1 to 4 have sold any shares in Noticee No. 7 during the Investigation Period, and that Noticee Nos. 3 and 4 have continued to acquire even more shares in Noticee No. 7 immediately post the Investigation Period.

18. Vide letter dated February 7, 2019, Noticee No. 6 submitted that they had been able to access the SCN through e-mail, and requested that the complete SCN with Annexures be served upon them at the registered address of the company. Further, Noticee No. 6 sought an opportunity of inspection of all documents and records, including the investigation report, which led to issuance of the SCN. Accordingly, a copy of the SCN and Annexures thereto was served upon Noticee No. 6 on March 8, 2019, and vide letter dated April 12, 2019 an opportunity of hearing was granted to Noticee No. 6 on April 25, 2019 at 3:30 p.m., also permitting the Noticee to make any submissions relating to inspection of documents during the hearing.

19. Vide reply dated April 18, 2019, Noticee No. 6 made the following submissions:-

i. The Notice No. 6 is not an "insider" as understood/defined under the PIT Regulations, 1992, and it has not undertaken any trades “on the basis” of any UPSI

ii. SCN is absolutely vague as to on what basis is the Noticee an "insider" and whether it is a connected or a deemed to be connected person. It is apparent and self-evident that Noticee No. 6 does not fit into either of the

said definitions of "connected" and "deemed to be connected" persons as understood under the PIT Regulations. There is no basis or material in the SCN to show that Noticee No. 6 is connected or deemed to be connected to APL. Since Noticee No. 6 is not a connected or a deemed to be connected person, there is no basis or requirement to identify or determine a "reasonable expectation" of Noticee No. 6 having access to UPSI. It is therefore submitted that Noticee No. 6 is not an "insider" in so far as Regulation 2(e)(i) of the PIT Regulations is concerned. SCN itself states that that *"Noticee No. 6 was an insider in terms of Regulation 2 (e)(ii) of the PIT Regulations."*

iii. It is therefore SEBI's own case that Noticee No. 6 is allegedly an "insider" under Regulation 2(e)(ii) of the PIT Regulations and not under Regulation 2(e)(i) and therefore it is not a connected or a deemed to be connected person. In respect of the second test (i.e. under Regulation 2(e)(ii)), the language of the provision clearly indicates that it is the obligation of SEBI/investigating officer to establish that the UPSI has in fact been received or accessed by the Noticee. The SCN and the references contained therein does not make out such a case. It is because in the second test (unlike the words and the language used in the provision for the first test under subsection (i) of Regulation 2(e)), it is not only a likelihood or a reasonable possibility that has to be established by SEBI but there is a higher threshold prescribed where owing to the facts and circumstances and the material and documents on record it needs to be positively established by SEBI that the information which is unpublished and price sensitive was in fact received or accessed by a person. No such documents and materials are on record neither are there any allegations to this effect where this access has been by SEBI in the show cause notice. Therefore, even the conditions of the second test have not been satisfied.

iv. Para. 26 of the SCN alleges that "*In view of the aforesaid connections between Top Class/Noticee no. 6 with Veritaz I Noticee. No. 5 who is alleged to b*e an insider, and the fact that there were no other trades executed by Top Class between April 01, 2008 to June 10, 2009 it is alleged that Top Class/Noticee 6 was reasonably expected to have received or had access to such UPSI which was in possession of Veritaz/Noticee 5". However, for any entity or person to fall under the category of being an "insider" in terms of Regulation 2(e)(ii) of the PIT Regulations, it is not sufficient to merely allege or presume that such person or entity is reasonably expected to have received UPSI, but it has to be proven by way of a fact with materials and documents on record to show that such person had in fact access to UPSI. The SCN itself proceeds on the basis of reasonable expectation of having received UPSI, and by this allegation in SCN the charge of Noticee No. 6 being an insider in terms of Regulation 2 (e) (ii) must fail.

v. The basis of alleging any person or entity to be an "insider" or having traded on the basis of having access or having received unpublished price sensitive information cannot be a vague, circuitous analysis of certain trades by such person or entity. The consequences of holding a person guilty of insider trading are serious and far reaching and therefore, the threshold to be met to support the allegations of insider trading is higher as compared to other civil proceedings. This threshold has not been met by SEBI in the SCN against Noticee No. 6 as the only basis for alleging violation of PIT Regulations against Noticee No. 6 are the trades done by Noticee No. 6. It is the burden of SEBI to prove all the elements of the person being an "insider" and "having access to the UPSI", which SEBI has not discharged while issuing the SCN and making allegations against Top Class.

vi. In this regard, the Hon'ble SAT had held in <u>*Samir C. Arora v SEBI*</u> (Appeal No. 83 of 2004, decided on 15.10.2004) "*55. We have carefully gone into*

the contentions of the learned Counsel on both sides. We are prima facie in agreement with the learned Senior Counsel for the appellant that SEBI's interpretation of these definitions is indeed wide and it could lead to the unintended consequence of making almost every market player vulnerable to the charge of insider trading even in respect of companies with whom they may have had absolutely no professional or business relationship. However, for the purpose of the present appeal, we are accepting Shri Rafique Dada's interpretation of the terms 'connected person' and 'deemed to be connected person' to see whether even on the basis of these interpretations the appellant can be considered to be an insider….

56. Thus we are left with the clause ...or who has received or has had access to such unpublished price sensitive information" .It is thus seen from a reading of this definition of an insider that in the case of a person connected or deemed to be connected and reasonably expected to have access to such information… there could be a prima facie presumption of being an insider once these two conditions are met with because the conjunction between these conditions used in the regulation is " and". Persons not reasonably expected to have such access who are covered after the conjunction ' or' but who have actually received or have had actual access to such information can be treated as insiders only if they have received price sensitive information or have had in fact had such access to such information. That means that the fact of such connected or deemed to be connected persons having received information will have to be established by evidence satisfying reasonable standard of proof . ...

57. ...However, it cannot be forgotten that even in a civil dispute, there must be legally sustainable evidence before a person is found guilty of violation of Regulations.

vii. There is absolutely no basis or discussion in the SCN as to how the Noticee received UPSI, if any or whether the Noticee is a connected or a deemed to be connected person. The SCN attempts to establish a charge of insider trading by apparently first analysing the trades of the Noticee and then drawing an adverse conclusion. It is respectfully submitted that this approach is unwarranted, erroneous and completely illegal. The SCN states mentions the people who knew about the agreement with Pfizer Inc. before it became public news, but after specifically being aware as to the persons who were in possession of the alleged UPSI, the SCN does not in any manner establish or even indicate how such alleged UPSI flowed from the aforesaid identified persons to the Noticee No. 6.

viii. Noticee No. 6 also submitted that in the order dated May 12, 2016 issued by SEBI in respect of trading by certain entities in the scrip of the company Sabero Organics Gujarat Ltd. ordered re-investigation because SEBI did not find any sufficient documents, information or material on record to conclusively determine whether the entities as alleged in the SCN were involved in insider trading. The observations regarding insufficient material applies to the present proceedings as well. The present SCN also does not suggest how alleged UPSI was accessed by Noticee No. 6 or used for the purpose of its trades.

ix. Hon'ble Securities Appellate Tribunal in *Dilip S. Pendse v SEBI* (Appeal No. 80 of 2009, Date of Decision 19 November 2009) observed that "*It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either* case. *In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion* as *the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree*

depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as *a criminal court, even when it is considering a charge of a criminal nature, but till it does require a degree of probability which is commensurate-with the occasion:*

In the light of the aforesaid principles on degree of proof, we have carefully gone through the impugned order and the material on the record and find that the whole time member has miserably failed to establish the charge of insider trading against the appellant with the required degree of probability necessary to establish such a serious charge. The only ground on which the whole time member holds that the sale transactions of Mrs. Pendse and Nalini were executed in the end of March 2001 is that the delivery of shares was given by the sellers on March 28, 2001 and payment for the shares was received on March 30, 2001. The whole time member has noticed the long delay in settling the trade for which the contract was completed in September, 2000 and has concluded that the sale of the shares took place in March, 2001. We have already dealt with this aspect of the matter earlier in our order and we cannot agree with the findings recorded in this regard. As already observed, the· trades may have -been contrary to the Bye-laws of the Exchange but it cannot be said that the contract was not completed in September, 2000. If the sale did not take place in September, 2000 then what was the Broker reporting to the stock exchange as per its letter dated September 16, 2000. We have already noticed that the Bombay Stock Exchange had acknowledged the receipt of this letter from the Broker in its letter of November 26, 2002. In this view of the matter, the charge must fail. Accordingly, we answer the question posed in the opening part of our order in the negative and hold that the appellants are not guilty of insider trading".

x. It is evident that the Noticee/Top Class has been painted with the same brush with the other Noticees without having any similarity or any connection with the other Noticees.

xi. In paragraphs 22 - 26 of the SCN, it has been alleged on the basis of certain fund transfer from Veritaz Health Care Limited (which fund transfer also took place post the alleged UPSI Period) and on the basis of certain trades undertaken by the Noticee in the shares of APL that the Noticee is an insider, but this approach is fallacious.

xii. Noticee No. 6 submitted that there was no UPSI at all which warranted a disclosure to the stock exchange by APL. This is because the agreements with Pfizer Inc., USA were executed by APL in its ordinary course of business, and the SCN also states that the Company's business is developing, manufacturing and marketing active pharmaceutical ingredients, intermediates and genetic formulations. License and supply agreements were regularly being executed between Pfizer and APL from way back in July 2008. At least 3 license and supply agreements of purportedly similar nature for different geographies were executed between Pfizer and APL prior to execution of the license and supply agreement on March 03, 2009.

xiii. There is no charge or allegation or analysis in the SCN that the agreements which were being regularly executed since July 2008 were falling in the category of "price sensitive information". The disclosure which has been considered in the SCN to trigger the investigation is only with respect to the agreement dated March 03, 2009 and which disclosure itself indicates that such agreements have been executed in the past as well. The SCN does not even make out a case that this information is price sensitive information and therefore no question even arises of defining a UPSI Period or alleging any trading on the basis of UPSI.

xiv. The allegation in the SCN that these licensing and supply contracts are significant for Pfizer Inc. only indicates that in respect of Pfizer Inc. these may have been price sensitive information requiring a disclosure at its end before the relevant authorities in United States of America. However, this would not automatically mean that this is also a price sensitive information in respect of APL especially when APL has been in this very business and the language adopted in the disclosure by APL and in the SCN itself indicates that contracts like those executed with Pfizer Inc. has been executed by APL with other customers as well.

xv. The categorisation of July 22, 2008 to March 03, 2009 as UPSI Period is itself incorrect as no price-sensitive information was generated within such period.

xvi. The SCN fails to indicate as to on what basis or on what materials or evidences has it been alleged that (i) the Noticee is an "insider' and/or (ii) the Noticee had access to the UPSI and/or (iii) the execution of agreements with Pfizer is UPSI. In this regard, the observation of the Hon'ble Supreme Court in in *Gorkha Security Services v. Govt. (NCT of Delhi)*, (2014) 9 SCC 105 and *S.L. Kapoor v. Jagmohan & Ors.* (1980) 4 SCC 379 were cited by Noticee No. 6 to contend that SCN nowhere makes out any specific case against the Noticees and in no manner provides an opportunity or details of any allegations that the Noticees have to meet. The SCN is general and vague in nature and there is no specific case made out against the Noticees, and therefore does not meet the mandatory requirements of a valid show cause notice as laid down by the Hon'ble Supreme Court.

xvii. Analysis of trades and fund transfer from Veritaz reveals Noticee did not immediately sell the shares procured during the alleged UPSI Period immediately upon the end of such alleged UPSI Period to make instant gains, which is what any insider would normally do to take benefit of the immediate price rise, if any, upon the information becoming public.

h The Noticee remained invested in the Company till June 2009 where all shares purchased by the Noticee was sold through the stock exchange mechanism at the prevailing market price. Further, during March, 2009, the Noticee only sold 19,227 shares on March 31, 2009 out of a total of 18,52,405 shares purchased by the Noticee. This shows that the investment was not made only for a short period to exit after any alleged UPSI becomes public information.

xviii. The Noticee proposed to commence its dealings */* trading in the shares as a part of its business sometime in the year 2009. For this purpose, the Noticee was looking for a loan to avail certain funds which it could utilize for purchasing shares. For such purpose Noticee No. 6 through it's then Director Mr. Shailendra Apte approached his acquaintance Mr. G.V. Seshaiah who was a director in a few companies at the relevant time and was a financial advisor. Mr. Sheshaiah informed Mr. Apte that he knew one entity viz. Veritaz Healthcare Ltd. which could provide loans for such purposes to the Noticee. Accordingly, a loan agreement was entered into between the Noticee and Veritaz in 2009, pursuant to which it was agreed that Veritaz Health Care Ltd. would provide a loan of an amount of Rs. 13 crores as loan to the Noticee repayable within six months from the date of disbursement of the first tranche. The agreed rate of interest on such loan was 12%. This amount (to the extent of Rs. 10 crores) was utilised by the Noticee No. 6 to invest in the shares of the Company. In fact, the Noticee continued to borrow from Veritaz Health Care Ltd. even after the alleged UPSI period and this factor would further indicate that there was no intent to use any monies received from Veritaz to trade in the shares of APL on the basis of any alleged UPSI available with Noticee. It can be seen that regular interest was serviced on this loan amount and eventually the loan amount together with interest @ 12% was repaid to Veritaz Health Care Ltd. on 10th June 2009 (**Annexure 1** is a chart showing the computation of the loan received and interest and loan repayment by the Noticee to Veritaz Health Care Ltd.). Similar loans were also availed by the Noticee

No. 6 from other entities (in respect of which there is no allegation in the SCN) for even larger sums as compared to the loans availed from Veritaz Health Care Ltd. For instance, even in the SCN it is identified that the overall purchase of APL shares by the Noticee No. 6 was for an amount of approximately Rs. 25.93 crores which is more than two times the amount availed from Veritaz Health Care Ltd. For buying shares of APL, the Noticee No. 6 also took loans worth Rs. 15.05 crores availed from two separate entities which are not even the subject matter of the present SCN. Therefore, in no manner it can be suggested that the trading by the Noticee in the scrip of the Company was at the behest of Veritaz Health Care Ltd. or on the basis of any UPSI received from Veritaz Health Care Ltd. The Noticee in fact used other sources of funds for his trades in the shares of the Company. Noticee No. 6 thus submitted that solely on the basis of trades executed by the Noticee No. 6 and specifically in light of the above submissions, it cannot be suggested let alone concluded that the Noticee No. 6 is an insider and traded in the shares on the basis of announcement made by APL.

xix. Demat account statement of the Noticee No. 6 also shows that the Noticee No. 6 commenced its trading activities in 2009 and continued the same.

xx. Noticee No. 6 submitted that the computation of "notional profit" in respect of Noticee No. 6 in paragraph 28 of the SCN is completely illegal and erroneous. The SCN itself establishes that no sale of shares were undertaken by Top Class immediately on the alleged UPSI becoming public. In fact only a small quantity of shares were sold by Top Class in March 2009 [as also stated in paragraph 27 of the SCN]. This establishes there was no ill intent to gain out of any trades on the basis of any alleged UPSI. Further, the fact that the Noticee chose to remain invested in the Company even when the price of the shares was falling from the date of announcement on March 03, 2009 also shows that there is no question of any insider trading let alone profits from such insider trading. Additionally,

the details of the profits as calculated in the SCN on a notional basis is completely perverse especially when all trades and the prices at which the trades have taken place are available with SEBI.

xxi. The SCN has been issued to the Noticee on 20th June 2018 for transactions and trades having taken place in 2009. The SCN suffers from significant delays and the proceedings are now sought to be initiated against the Noticee for trades undertaken by it approximately 9 years prior to the issuance of the SCN. From the records available it appears that SEBI had this information since Mach 2009 and commenced an alleged investigation in December 2010. The delay in this case by SEBI in concluding the investigation and issuing the SCN is significant. Further, on account of lapse of significant amount of time, the Noticee is also handicapped from accessing the information and records in order to present to SEBI the facts and circumstances in their proper context. Such delay by SEBI has been severely prejudicial to the Noticee and has effectively taken away its ability to adequately defend itself. On this ground alone the SCN deserves to be quashed and no further proceedings ought to be initiated or continued against the Noticee.

xxii. With respect to the imposition of penalty under Section 15G of the SEBI Act in respect of the alleged violation, Noticee No. 6 submitted that while determining the quantum of penalty under the aforementioned provision, the provision of Section 15J of the SEBI Act must be taken into account. There has been no disproportionate gain or unfair advantage as a result of the alleged trades in the shares of APL. There is no unfair trades or any trades on the basis of any UPSI having been received by Noticee No. 6. The manner of purchase and the timing of sale of shares establish this. It is evident from the SCN itself that due to the trades of Noticee No. 6 no loss has been caused to any of the investors or group of investors and the same has not even been provided or alleged in the SCN.

20. During the hearing conducted on April 25, 2019, the Authorized Representatives of Noticee No. 6 reiterated the submissions made in reply dated April 18, 2019.

21. In the light of the allegations contained in the SCN, the Noticees' submissions made vide replies dated January 30, 2019, March 7, 2019 and April 18, 2019, and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

22. The issues arising for consideration in the instant proceedings before me are:-

I. Whether the Noticee Nos. 1-6 have violated provisions of Regulations 3 and 4 of the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015, and whether Noticee No. 7 has violated the provisions of Regulation 12 (1) of the PIT Regulations, 1992 read with Clause 3.2.1 of Schedule I to the PIT Regulations, 1992 read with regulation 12 (2) of the PIT Regulations, 2015; (ii) Regulation 12 (2) of the PIT Regulations, 1992 read with Clause 2.1 of Schedule II to the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015; and (iii) Clause 36 of the Equity Listing Agreement read with Section 21 of the SCRA.

II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15G, Section 15HB of the SEBI Act and Section 23E of the SCRA?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15 J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

ISSUE I – VIOLATION OF THE PIT REGULATIONS 1992 AND THE LISTING AGREEMENT BY NOTICEE NOS. 1-7

Preliminary issues

23. The Noticees have submitted that the SCN has been vitiated by delays and laches almost 10 years after the alleged violations, affecting the Noticees' ability to defend themselves against the allegations. In this regard, I note that investigation in this case was concluded on March 31, 2017, and adjudication proceedings were initiated vide order dated April 3, 2017. Owing to superannuation of the original AO, Shri Suresh Gupta on April 30, 2018, vide order dated April 26, 2018 the undersigned was appointed as AO in the matter, and the SCN was issued on June 20, 2018.

24. It is an established position of law that neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Further, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws.(*Vaman Madhav Apte and Ors. v. SEBI*, SAT Appeal 449 of 2014 decided on 04.03.2016).

25. All relevant information relied on for crystallising the allegations against the Noticees has been provided to the Noticees. Therefore, it is not open to the Noticees to contend that they have been prejudiced due to delays in initiation of proceedings against the Noticees.

26. In view of the above, I am unable to accept the preliminary submissions made by the Noticees regarding delays and laches in issuance of SCN in the instant proceedings.

Whether the Noticees are insiders as per the PIT Regulations 1992

27. The first issue requiring determination is whether the Noticees No. 1-6 were "insiders" in terms of the PIT Regulations 1992. The SCN has alleged that Noticees No. 1-6 were insiders in terms of Regulation 2(e) read with Regulations 2 (c) and (h) of the PIT Regulations 1992, as applicable..

28. The relevant provisions in this regard are reproduced below for reference:-

Regulation 2 (c) –

""*connected person" means any person who—*

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

Explanation:—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;"

Regulation 2 (e) –

""*insider" means any person who,*

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information ;"

Regulation 2 (h) –

"(h) "person is deemed to be a connected person", if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker,

Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or

(v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body; or

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person; or

(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;"

29. Noticee No. 1 has not contested that being the Chairman and promoter of APL, he was an insider of APL during the relevant period when the Licensing and Supply Agreements were entered into with Pfizer on and after July 22, 2008 and before news related to the said Agreements was published by APL on March 3, 2009. Further, as per APL's submissions, Noticee No. 1 admittedly had access to UPSI during the relevant period. Thus, Noticee No. 1 was an "insider" and a "connected person" in terms of Regulations 2 (e) (ii) of the PIT Regulations.

30. Noticee No. 2 is the wife of Noticee No. 1, a connected person, and is thus a "relative of the connected person" in terms of Regulation 2 (h) (viii) read with Regulation 2 (e) (i) of the PIT Regulations 1992.

31. Noticee No.2's relationship with Noticee No. 1, when seen in conjunction with trading pattern of purchase of AFL shares by Noticee No. 2 on November 20, 21, 24 to 26, 28, and December 01, 02, 03 and 10, 2008, closely preceding the dates of the Licensing and Supply Agreements dated November 30, 2008 and December 29, 2008, at an average price of Rs. 112.69 per share, provides circumstantial evidence in support of reasonable expectation of access to UPSI

by Noticee No. 2. I note that no material has been placed on record by Noticee No. 2 to rebut the presumption that she had access to UPSI, and that as an insider, she did not execute the trades in the scrip of APL while in possession of the said UPSI.

32. In this regard, it is useful to refer to the insider trading case decided on 11.08.2011 by the Hon'ble District Court Southern District of New York in the matter of *United States of America V Raj Rajaratnam* 09 Cr. 1184 (RJH) wherein on the charge of Count One: The Galleon Conspiracy, Rajaratnam argued that "…relying on the calls and trading records without any direct evidence of the content of the calls asks the jury to engage in impermissible speculation." (Tr. 3688.) However, the Court of Appeals has rejected that proposition. (*McDermott*, 245 F.3d 133). In McDermott, the Second Circuit considered the insider trading conviction of McDermott, a corporate executive, for tipping Gannon, with whom he was having an affair. Neither McDermott nor Gannon (nor Pomponio, whom Gannon tipped during the course of another affair) testified. *Rather, [t]he Government built its case against McDermott almost entirely on circumstantial evidence linking records of telephone conversations between McDermott and Gannon with records of Gannon's and Pomponio's trading activities…Although the government was unable to produce direct evidence of the content of any conversation during which McDermott transferred material, non-public information to Gannon, the Second Circuit held "that rational minds could infer such a conclusion from the above evidence…*".

33. Further, in *SEBI v. Kishore R. Ajmera*, (2016) 6 SCC 368 at 383 the Hon'ble Supreme Court highlighted the principle for evaluation of evidence required to be followed in cases involving violation of the SEBI Act or the provisions of the Regulations framed thereunder as "*one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned*".

34. Upon weighing the evidence on record, there is a preponderance of probability and reasonable level of circumstantial proof available that Noticee No. 2 was a connected person reasonably expected to have access to UPSI, and that she traded in shares of APL while in possession of UPSI.

35. Noticee No. 3 was a promoter and brother of Mr. Nithyananda Reddy, the Managing Director of APL at the relevant time of purchase of 22900 shares of APL at an average price of Rs.150.34 per share on January 28, February 20,25,26 and March 02, 20019 before the Press Release dated March 3, 2009. Since the MD of APL is a "connected person" in terms of Regulation 2 (c) (i) read with of the PIT Regulations, Noticee No. 3, as a "relative of the connected person", is deemed to be a connected person in terms of Regulation 2 (h) (viii) of the PIT Regulations 1992. In view of the fact that Noticee No. 3 is deemed to be a person connected with APL, and that Noticee No. 3 carried out purchase of shares of APL in the period immediately preceding the Press Release dated March 3, 2009, based on these circumstances, there is reasonable expectation of access to UPSI by Noticee No. 3. No material has been placed on record by the Noticee No. 3 to rebut the presumption that as a connected person, he could not have been expected to have access to UPSI, or did not actually have access to any UPSI at the time when he executed the trades in the scrip of APL.

36. Noticee No. 4 is a company owned by the son of Noticee No. 1, and Noticee No. 4 itself is a promoter group company of APL. Accordingly Noticee No. 4 is "deemed to be a connected person" as it is a "company under the same management or group" in terms of Regulation 2 (h) (i) of the PIT Regulations, 1992. Further, Noticee No. 4 is reasonably expected to have had access to UPSI regarding the Licensing and Supply Agreements with Pfizer on account of its connection with Noticee No. 1 and APL, and also due to circumstantial evidence related to the purchase of shares of APL on December 03, 04, 05, 08 and 10, 2008 during the UPSI period preceding the Licensing and Supply Agreement dated December 29, 2008, at an average price of Rs. 113.88 per share. No material has been placed on record by the Noticee No. 4 to rebut the

presumption that as an insider, Noticee No. 4 did not actually have access to any UPSI at the time when it executed the trades in the scrip of APL, and that Noticee No. 4 did not purchase shares of APL while in possession of the said UPSI.

37. Noticee No. 5 has been stated to be involved in the manufacture of bulk drugs industry like APL. I also note the other evidence indicating connection between Noticee No. 5 and APL that - (i) Noticee No. 5 has the same address as Noticee No. 4, which was an insider of APL as discussed above (ii) it has the same e-mail id. as the that of APL, (iii) it took a loan which was guaranteed by Noticee No. 1,(iv) it had business relationships with APL involving acquisition of brands related to APL (eg: Citadel Aurobindo Biotech Ltd., a joint venture of APL with another company) and sourcing of supplies from APL, (v) bank account statements of Noticee No. 1 and Noticee No. 5 revealed a transfer of Rs. 50,00,000 to Noticee No. 5 from Noticee No. 1 on January 20, 2009, apart from other instances of fund movement between the bank accounts of Noticee No. 1 and the Chairman and Managing Director of Noticee No. 5 during the UPSI period, and (vi) no other trades (barring one trade for one share of Sagar Cements) were executed by Noticee No. 5 in the scrip of APL between January 2008 and April 2009. The SCN provides information related to 18 instances of buy trades executed by Noticee No. 5 between September 25, 2008 and November 7, 2008, for a total of 787026 shares, proximate to the Licensing and Supply Agreements entered into with Pfizer on November 30, 2008 and December 29, 2008.

38. It has been submitted by Noticee No. 5 that trading by Noticee No. 5 was independent of APL and its promoters, that Noticee No. 5's trades in the scrip of APL were all prior to January 20, 2009 which is when Noticee No. 1 is alleged to have provided a loan of Rs. 50,00,000 to Noticee No. 5 to trade in the shares of APL. Further, it has been contended by Noticee No. 5 that the personal guarantee provided by Noticee No. 1 for a loan secured by Noticee No. 5 from Axis Bank Ltd. was for a credit facility sanctioned on November 25, 2008, after

conclusion of the buy trades of Noticee No. 5 with respect to shares of APL. However, Noticee No. 5's submissions in this regard do not address the evidence on record regarding the evident business relationship observed between Noticee No. 5 and Noticee No.7/APL.

39. The loan of Rs. 50,00,000 taken from Noticee No. 1 as well as the personal guarantee granted by Noticee No. 1 for the loan availed by Noticee No. 5 from Axis bank also needs to be considered in this context. The evidence related to the fund flows between Noticee No. 1 and Noticee No. 5 serves to substantiate the existence of a business relationship of Noticee No. 5 with APL. In order to prove the existence of this relationship, and the consequent allegation of insider trading by Noticee No. 5, it is not required to prove that APL or Noticee No. 1 actually funded the impugned trades of Noticee No. 5.

40. It has also been submitted on behalf of Noticee No. 5 that the MD of Noticee No. 5 Mr. Iqbal Singh has shared a close personal friendship with Noticee No. 1 for more than 25 years, and that the personal guarantee given by Noticee No. 1 for the loan availed by Noticee No. 5 from Axis Bank was based on personal goodwill. This contention is an admission of the close connection between Noticee No. 1 and the MD of Noticee No.5, lending further credence to the allegation that Noticee No. 5 was reasonably expected to have received or had access to UPSI on Licensing and Supply Agreements with Pfizer, and that Noticee No.5 had close connections with APL, and was headed and overseen by a person (viz. Mr. Iqbal Singh) close to APL/Noticee No.1, who had carried out several monetary transactions with Noticee No. 1.

41. Upon consideration of the evidence regarding, *inter alia,* the addresses of Noticee No.5, acquisition of brands and sourcing supplies from APL (as detailed in media reports in Annexure VI to the SCN) and the trading pattern of Noticee No. 5 whereby practically no other trades have been executed Noticee No. 5 other than those in the scrip of APL during the UPSI period, I am of the considered view that there is sufficient circumstantial evidence on record to establish that Noticee No. 5 had access to UPSI regarding the Licensing and

Supply Agreements of APL with Pfizer on account of its relationship with Noticee No.1 and 7 and hence was an insider in terms of Regulation 2 (e) (ii). Thus, there is sufficient evidence to conclude that Noticee No. 5 carried out its trades while in possession of UPSI.

42. Noticee No. 6 is connected to Noticee No. 5 through fund transfers immediately before and soon after the Press Release dated March 3, 2009, with corresponding trades by Noticee No. 6 in the scrip of APL on February 10 and 11, 2009. For instance, on February 9, 2009, Rs. 10 crores were transferred from Noticee No. 5's account to that of Noticee No. 6. The said funds were transferred to the account of Noticee No. 6's broker, Centrum Broking, on February 11, 2009 and trades on behalf of Noticee No. 6 were executed on February 11 and 12, 2009. Further, it was noted from the Bank account of Noticee No.5 that Rs. 13.38 Cr. was transferred back by Noticee No.6 to Noticee No. 5 on June 10, 2009, which was also the last day of its selling the entire holding in APL. No other trades were executed by Noticee No. 6 during the period between April 01, 2008 to June 10, 2009. Further, as per the SCN, no other funds were received by Noticee No. 6 from any sources other than Noticee No. 5 and two other entities viz. Business Match Services and Centrum Infra Reality, which funds were all used for executing trades in the scrip of APL.

43. Noticee No. 6 has not produced any documents to counter the evidence brought on record by the SCN in this regard. Noticee No. 6 has submitted that it was set up in 2009, and shortly afterwards in the same year, a loan agreement was entered into between Noticee No. 6 and Noticee No. 5 stipulating grant of Rs, 13 crores by Noticee No. 5 to Noticee No. 6 as loan for purchase of shares, at 12% interest repayable within 6 months from date of disbursement, which was repaid completely by June 10, 2009. Noticee No. 6 has also contended that similar loans were availed from other entities which are mentioned in the SCN, and that for purchasing shares of APL, Noticee No. 6 took loan of a total of Rs. 15.5 crores from two other entities as well.

44. While considering the Noticee's contention that Noticee No.6 borrowed larger amount of funds from i.e. Rs.15.05 crores from two separate entities, in respect of which there is no allegation in the SCN, which were also used for buying shares of APL, it is important to note that the fund transfers from Noticee No.5 establish a close connection between Noticee No. 5 and 6. It is also reasonably inferred that Noticee No.5 was reasonably expected to have received or had access to UPSI regarding Licensing and Supply Agreements of APL with Pfizer. In order to establish that Noticee No.6 acted on UPSI which was available with Noticee No.5, it is not necessary to prove that all the funds for the said trades were provided to Noticee No.6 by Noticee No.5.

45. Noticee No. 6 has cited the ruling of the Securities Appellate Tribunal dated October 15, 2004 in the matter of *Samir C. Arora v. SEBI*, to contend that the burden of proving a serious allegation such as insider trading is upon the regulator, and that threshold of evidence required to be met in such cases is that legally sustainable evidence satisfying reasonable standard of proof based on preponderance of probabilities must be produced before a person is found guilty. While the principle of "reasonable standard of proof" stated in the cited ruling is applicable to the facts of the instant case, it is noted that the circumstances in the aforesaid case were different from the instant matter. The Hon'ble SAT in para 61 of the ruling made note of a number of valid reasons for the appellant to sell the stock, which were independent of the supposed insider information about an impending merger, which did not materialize. SAT also noted in the same para that the appellant liquidated positions in not only the stock for which he was charged for insider trading, but in also some other stocks on account of nervousness in emerging markets, in conformity with similar action contemporaneously taken by some other prominent mutual funds. Therefore, the ruling of the SAT in the factual context of the cited case was based on adequate rebuttal of evidence on record by the Appellant, tilting the preponderance of probabilities in favour of the Appellant in that case. In the instant matter, Noticee No.6 has provided no reasons for the purchase of APL shares at the time it did, and no explanation for why no other shares were

purchased by it during the entire year. Thus, the precedent cited by Noticee No. 6 cannot be applied in favour of Noticee No. 6 in the facts of the instant case.

46. Noticee No. 6 has also contended that it sold only a small part of its shareholding in APL i.e.19,227 shares out of 18,52,405 shares purchased during the UPSI period. Noticee No. 6 has contended that had it been purchasing and selling APL shares on the basis of the UPSI regarding the Licensing and Supply Agreements in order to make unlawful gains from the same, it would have sold maximum shares at the point when the APL shares were expected to peak upon publication of the positive news regarding the Licensing and Supply Agreements with Pfizer.

47. The contention of Noticee No. 6 that it did not sell the shares of APL immediately after the Press Release dated March 3, 2009 or attempt to make any instant gains as an insider normally would have, and remained invested in APL till June 2009, does not dilute the charge of insider trading levelled against Noticee No. 6. It is not the case that an insider trading charge can only be proved if the shares are sold immediately upon the public declaration of UPSI. An insider can take advantage of UPSI by purchasing a stock at low price, knowing well that he may not again get such an attractive price after the UPSI becomes public.

48. Historical data for the scrip of APL for the period between April to June 2009 reveals that the scrip price continued to rise. Thus, the staggered sale of shares of APL post-publication of UPSI, and the fact of holding onto some shares of APL even after publication of UPSI, appears to have been a conscious decision by Noticee No. 6, as price of the scrip of APL continued to rise. I note that price sensitivity or price impact of UPSI cannot be judged entirely on the basis of price impact immediately upon disclosure, and while UPSI impacts price upon publication/disclosure, the impact may continue to affect prices over a longer period than just the day of publication. As the historical price data in the scrip of APL for 2009 reveals, the price of APL rose steadily through the year to close at Rs. 914 on December 31, 2009. However, as the said period is beyond the

scope of investigation in the instant case, it is not being considered further, except to emphasise that an insider may profit from purchase at a lower price even if the said insider does not choose to capitalise on gains from insider information immediately upon the information becoming public, as in the case of Noticee No. 6.

49. In the above context, the contention of Noticee No. 6 that it chose to "remain invested in the Company even when the price of the shares was falling from the date of announcement on March 3, 2009" is factually incorrect and thus unacceptable.

50. Noticee No. 6 has also contended that its demat account statements show that it commenced its trading activities in 2009 and continued the same afterwards as well. However, the demat statement of account for 01-04-2007 to 31-03-2011 submitted by Noticee No. 6 as Annexure 2 to its reply further supports the allegation that between April 1, 2008 and June 10, 2009 (including the UPSI period) there were no trades by Noticee No. 6 in any scrip other than APL. Thus, there is no material on record to rebut the allegations in the SCN that Noticee No. 6 had been set up in 2009, and traded only in the shares of APL till June 10, 2009, with funds partly received from Noticee No. 5, an insider of APL, and partly from two other entities, namely Business Match Services and Centrum Infra Reality.

51. In view of the above, and after considering all surrounding circumstantial evidence including timing of trades in shares of APL, absence of trades in any other scrip, closely-proximate fund flows and thereby a connection between Noticee No. 6 and Noticee No.5, and lack of any justification for purchase of shares of APL at that particular time, I find that there is sufficient circumstantial evidence on record to establish that Noticee No. 6 had access to UPSI regarding the Licensing and Supply Agreements of APL with Pfizer on account of its relationship with Noticee No.5 and hence was an insider in terms of Regulation 2 (e) (ii). Thus, there is sufficient evidence to conclude that Noticee No. 6 carried out its trades while in possession of UPSI.

52. The Noticee Nos. 1-5 and 7 have also contended that purchase of shares of APL by Noticee Nos. 1-5 was a result of consolidation of promoter shareholding in APL by creeping acquisition of upto 5% voting rights in APL by the Noticee Nos. 1-4 who held more than 55% shares in APL. The Noticees have submitted that this was pursuant to the amendment which, on October 31, 2008, introduced the second proviso to Regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("**Takeover Regulations**"), which read as follows:-

"(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:"

53. The Noticee Nos. 1-4 and 7 have thus sought to argue that on account of the above provision enabling consolidation of promoter shareholding through creeping acquisitions, the acquisition of shares of APL by them in 2008-09 was in compliance with the law, and was therefore not motivated by an intent to make profits from trading while in possession of UPSI. With regard to this contention, I note that whereas the Noticees No.1 to 4 have contended that they were acquiring for the purpose of consolidating their holdings in terms of the aforesaid provision of the Takeover Regulations permitting creeping acquisition, the shareholding of Noticee No.1 as shown in the quarterly

shareholding pattern filed for June 2009 has reduced by 5,00,000 shares, and the overall promoter shareholding after March 31, 2009 has reduced by 4,56,296 shares, as shown by the June 2009 shareholding pattern filed with BSE. It is also noted that the total promoter shareholding after March 2009 actually reduced from 59.85% to 59%. Thus, clear evidence of reduced promoter shareholding in the immediately succeeding quarter after March 2009 when the UPSI was published directly contradicts the Noticees' contention that the purchases of shares of APL during the UPSI period were for the purpose of consolidation of promoter shareholding.

54. I also find that the aforesaid contention of the Noticees regarding purchase of shares of APL during the UPSI period 2008-09 does not stand legal scrutiny. The Takeover Regulations provision cited by the Noticees did not contain a *non obstante* clause overriding the provisions of the PIT Regulations 1992, or exempting promoters of companies from applicability of the PIT Regulations 1992. The amendment introducing the second proviso to Regulation 11 (2) of the Takeover Regulations did not permit promoters to consolidate their shareholding by purchasing shares when they were in possession of UPSI. Thus, the contention of the Noticees in this regard appears to be an attempt to cloak insider trading transactions with the garb of legitimacy in terms of the Takeover Regulations.

55. It is observed that the Licensing and Supply Agreements with Pfizer were entered into on July 22, 2008, November 30, 2008 and December 29, 2008. Noticee No. 1 purchased 530000 shares of APL on December 3 and 4, 2008, Noticee No. 2 purchased 20050 shares of APL between November 20 and December 10, 2008, Noticee No. 3 bought 22900 shares of APL between January 28, 2009 and March 2, 2009, Noticee No. 4 purchased 636000 shares of APL between December 3 and December 10, 2008, Noticee No. 5 purchased 787026 shares of APL during September 25 and November 7, 2008. Noticee No. 6 purchased 1852405 shares of APL on February 11 and 12, 2009.

56. As per the SCN, the Noticee Nos. 1-4 held onto/purchased additional shares of APL after the Press Release dated March 3, 2009 by APL, while Noticee Nos. 5 and 6 sold a part of the shares of APL held by them after March 3, 2009. Noticee Nos. 3 and 4 have contended that they purchased shares of APL even after the Press Release dated March 3, 2009, which they would not have done had they expected prices to increase after publication of information related to the Licensing and Supply Agreements with Pfizer. In this regard, it is seen that Noticee No.3 purchased only 5002 shares on March 12-13, 2009 at an average price of Rs.160, as against 22,900 shares purchased at an average price of Rs.150.34 prior to UPSI becoming public. There are no further purchases by Noticee No.3 after March 13, 2009. Noticee No.4 purchased 203000 shares from Noticee No.5 and the MD of Noticee No.5. This cannot be considered a market purchase as required in terms of Regulation 11 of the Takeover Regulations, as Noticee No.5 and MD of Noticee No.5 were connected entities/ closely related to APL. Hence the contention that the Noticee Nos. 3 and 4 continued to purchase APL shares even after the UPSI became public does not present a complete picture of the trades executed by the Noticees in shares of APL.

57. In view of the above, I note that the hypothesis of consolidation proposed by Noticee Nos. 1-4 for acquisition of shares of APL during the UPSI Period at a time when they, as promoters of APL, had access to UPSI, is directly contradicted by the factual evidence on record, and unsupported by the established legal position. Further, Noticee Nos. 5 and 6, who are not promoters and therefore cannot benefit from the defence argued by Noticee Nos. 1-4 regarding consolidation of promoter shareholding, have not brought on record any alternative explanation for exclusively purchasing shares of APL during the UPSI period. Thus, the Noticees' contentions do not respond satisfactorily to the allegation that as insiders, Noticee Nos. 1-6 traded in shares of APL while in possession of UPSI.

58. At this juncture, it is useful to note that insider trading law in India, as in the case of laws dealing with other statutory civil obligations, relies on the evidentiary principle of preponderance of probabilities. There is no requirement of establishing guilt beyond reasonable doubt. The Supreme Court has held that a reasonable expectation to be in the know of things can be "*based on reasonable inferences drawn from foundational facts*" (*Chintalapati Srinivasa Raju v. SEBI,* Civil Appeal No. 16805 of 2017 dated May 14, 2018). In the context of burden of proof, the SAT had held in the case of *Rajiv B. Gandhi and Others v. SEBI,* Appeal No. 50/2007, vide Order dated May 9, 2008, that "*if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established.* ".

59. Considering the importance of preventing and deterring insider trading and the role of the company and the insiders themselves in such prevention, the PIT Regulations read with the SEBI Act do not require proof of intent to commit insider trading or *mens rea* as a prerequisite for establishing the offence of insider trading. In this context, the landmark ruling of the Supreme Court in the case of *Shriram Mutual Fund and Anr. V. SEBI (Civil Appeal No. 9523-9524 of 2003)* is also useful to note, where the Apex Court stated that "*imputing mens rea into the provisions of Chapter VI A is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations*".

60. I find that the assertions of the Noticee Nos. 1-6 with regard to their not having had access to UPSI, and for not having traded while in possession of UPSI, are unsupported by any alternative explanation or documentary evidence justifying why they could not have accessed the UPSI during the time of the impugned trades in shares of APL during the UPSI Period, and have failed to provide any plausible alternative justification for trading in APL shares during UPSI period.

61. In view of the foregoing, I am reasonably satisfied by evidence on record that Noticees 1-4 were insiders in possession of UPSI in terms of Regulation 2(e)(i) and Noticees 5 and 6 were insiders in terms of 2(e)(ii).

Whether the Licensing and Supply Agreements constituted UPSI during the period between July 22, 2008 and March 3, 2009

62. Since the allegation of "insider trading" levelled in the SCN with respect to Noticees No. 1-6 rests on a finding regarding whether the Licensing and Supply Agreements with Pfizer constituted UPSI at all in terms of the PIT Regulations, the issue is deliberated in the following paragraphs.

63. The SCN has alleged that information regarding the (i) Supply Agreement dated July 22, 2008 for 5 Solid Oral Dosage ("SOD") Products for USA, (ii) the License and Supply Agreement dated November 30, 2008 for 44 SOD Products for USA and France, and (iii) the License and Supply Agreement dated December 29, 2008 for 20 SOD Products for Pan European Countries and 12 Sterile Inj Products for USA and 12 Sterile Inj Products for Pan Europe (excluding France) between APL and Pfizer (together also referred to as "**the Agreements**") was Price Sensitive Information or PSI in terms of Regulation 2 (ha) of the PIT Regulations.

64. The relevant provisions in Regulation 2 (ha) state that "*price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company*" and includes, inter alia, *any major expansion plans or*

execution of new projects and *significant changes in policies, plans or operations of the company*.

65. Noticees No. 1-5 and 7 have contended that the Agreements were not material but in the ordinary course of business and a natural progression of how the business of the Noticee No. 7 would have evolved. The said Noticees submitted that APL has been executing such agreements in the formulations vertical with several clients such as Pfizer since 1995-6, and that in any case the revenue resulting from the Pfizer Agreements was a small percentage of the revenue from the formulations vertical and total business of APL.

66. I am unable to accept these contentions of the Noticees for various reasons.

67. Firstly, Pfizer was amongst the world's largest pharmaceutical companies and a Fortune 500 company, ranked amongst the largest international pharmaceutical companies in terms of revenue. The Press Release of March 3, 2009 itself describes Pfizer as a "*global leader in Pharmaceuticals*" with a "*global commercial presence*". Global sales of its Established Products Business Unit with which APL was to be associated through the impugned Licensing and Supply Agreements was quantified at $10 billion as per Pfizer's Press Release dated March 2, 2009. The Pfizer Press Release states that the global non-exclusive market represents about $270 billion with solid oral dose products representing the largest drug category, and had an estimated growth potential of over $500 billion within the next five years. I note that even a company the size of Pfizer found the agreements material enough to disclose them through a Press Release.

68. In this context, it is important to note that there was significant media coverage of the Licensing and Supply Agreements with Pfizer and the price impact thereof. Reports in The Economic Times and The Business Line for March 3, 2009 mentioned that "*Aurobindo pharma on Wednesday surged as much as five per cent on bourses, a day after the domestic drug maker entered into multiple agreements with US-based Pfizer to sell generic medicines in the US*

and Europe." and "*Aurobindo's capacities, which have been -lying idle for some time will be utilized, while it will also make some good money from upfront payments and royalties*". India Infoline News Service stated on March 3, 2009 that "*Shares of Aurobindo Pharma have rallied by over 10% to Rs161 after Pfizer announced that it tied up with the company to commercialize medicines that are no longer patent protected, and have lost market exclusivity in the United States and Europe, further progressing its Established Products Business Unit strategy*".

69. Secondly, as per the Noticees' own submissions dated January 30, 2009, the percentage contribution of the impugned Licensing and Supply Agreements with Pfizer in 2008-09 was 5.41% of the Total Standalone Revenue of APL. This contribution is quite significant, and in consonance with the expectations from the said Agreements voiced by Noticee No. 1 in Press Release dated March 3, 2009, which stated that "*It is an exciting opportunity for Aurobindo and provides for stability towards company's earnings and accelerate its growth plans*".

70. It is also relevant to note that the Noticees' submission that the revenue contribution was "miniscule" vis-à-vis revenue from its formulations vertical is not supported by the data provided by the Noticees themselves in their reply dated January 30, 2019, from which it is clear that in 2008-09, more than 12.22% of the sales revenue from its formulation vertical resulted from the revenue generated by the Licensing and Supply Agreements entered into with Pfizer.

71. The Noticees No. 1-5 and 7 have stated that the Noticee No.7 had entered into agreements similar to the Pfizer agreements with numerous other customers. Purely in terms of statistics, such agreements were with 191 customers in 2006-2007; 237 customers in 2007-2008; and 272 customers in 2008-2009. While the Noticees have provided revenue contribution figures for the agreements with Pfizer, they have not provided revenue contribution for the other

agreements. While noting the large number of supply agreements entered into by Noticee No.7, which is 272 in 2008-09, for the sake of argument, if it is assumed that all agreements are similar in terms of contribution to company revenue, each agreement on average would have contributed to less than 0.4% of the total revenue. In such a case, an agreement/set of agreements with a single party contributing more than 5% to revenue acquires huge significance. A perusal of the annual results of APL as filed with BSE shows that revenue of APL increased from Rs.2,794.84 Cr in 2008-09 to Rs.3,252.27 Cr in 2009-10, a 16% jump. Similarly, gross profits of APL increased from Rs.239.46 Cr in 2008-09 to Rs.807.81 Cr in 2009-10, which was a jump of 237%.

72. Considering the size of the U.S. and global market which the Agreements with Pfizer was expected to have provided access to APL with, it is fair to state that the expected revenue contribution of the impugned Agreements with Pfizer to the revenue of APL was much more significant than that of such other agreements. As can be seen from the way the market reacted to the Press Releases, the market also considered the Licensing and Supply Agreements with r agreements to be highly positive for APL. It is important to note that market price of shares of a company responds to significant developments which could impact the business of the company, whether in terms of a new project or significant expansion of the existing business.

73. In view of the above, the reliance on the order of the Hon'ble SAT in *Gujarat NRE Mineral Resources Limited v. Securities and Exchange Board of India* (Appeal No. 207 of 2010), by the Noticees is misplaced. The cited case of *Gujarat NRE Mineral Resources Ltd.* involved determination of whether information regarding decision of a company to dispose of its investment in another company constituted UPSI. The SAT observed that the Appellant had already disclosed the fact that it was going to acquire coal mines in Australia, but had omitted to disclose the source of the funds/manner of raising the funds by disposing of investment in another company. While the former fact was held

to be price sensitive, the latter pertaining to source of funds was not considered price sensitive. In the unique factual matrix of that case, therefore, information related to selling an investment to arrange funds for acquisition of coal mines, when the fact of acquisition had already been disclosed to the exchange, was in the ordinary course of business and not price sensitive information.

74. On the other hand, in the instant case, the fact that Noticee No. 7/APL had entered into a series of agreements which added significant and material value to the business of APL, cannot be termed as merely normal business activity which would not be price sensitive. Thus, the case of *Gujarat NRE Mineral Resources Ltd.* needs to be distinguished from the facts of the instant case.

75. Further, the fact that Noticee No.7 did not disclose any of the other Agreements mentioned in their submissions to the stock exchanges also indicates that the Agreements with Pfizer were not treated as a matter of routine, but were significant enough to have required disclosure.

76. The Noticees have also contended that the Press Release dated March 3, 2009 was issued to maintain harmony with the corresponding Press Release dated March 2, 2009 issued by Pfizer and not because APL was of the view that the said information was price sensitive and warranted disclosure in terms of the PIT Regulations or the Listing Agreement. This contention of the Noticees that the Press Release dated March 3, 2009 was issued to avoid information asymmetry in the public domain also reflects their concern that the absence of a corresponding disclosure regarding the Agreements in India pertaining to APL could have affected the market price for the shares of APL as absence of confirmation of the existence of the Agreements by APL would have permitted conjecture about the same in the Indian securities markets, and led to unnecessary speculation in the stock. Thus, it appears to be an admitted position by the Noticees that information about the Agreements was a relevant input in the mix of information about APL considered by shareholders and investors of APL, and thus likely to affect the market price for the shares of APL.

77. I also note that actual impact of the Pfizer Agreement on the market price of APL shares was significant. Pfizer had issued its Press Release on March 02, 2009 at 5:00 pm EST, which would be early morning in India on March 03, 2009. As the market opened on March 03, 2009, information on the Pfizer Press Release was in public domain and the APL stock reacted with an increase of 6% from the closing price on March 02, 2009. This was on a day when the BSE Sensex fell 2%, and other prominent pharma stocks like Lupin, Piramal Enterprises, and Sun Pharma also fell by 1% to 2% along with a broader market fall.

78. Noticee No.7/ APL issued its corresponding Press release after close of trading hours on March 03, 2009. On the following day, i.e. March 04, 2009, the price of APL increased by 3% against a flat movement of the Sensex as well as other pharma stocks which either fell 1% or remained around the same level as the previous day. The price movement of APL on both March 03 and 04, 2009 indicates the significant positive impact of the disclosure of information about the Pfizer agreements, particularly when compared to the negative to neutral sentiment in the broader market as well as pharma stocks on these days, thereby proving that the information was highly price sensitive.

79. Regulation 2 (ha) of the PIT Regulations 1992 states that any information which is '*likely to materially affect price of securities of company*" is to be considered price sensitive. The preceding paragraphs indicate the significance and price impact of the information related to the Licensing and Supply Agreements with Pfizer.

80. Accordingly, the fact that APL had regularly been entering into agreements of this nature with other clients does not take away from the fact that the impugned Agreements were (i) entered into with a global leader of the pharmaceutical industry, (ii) associated with specific and long-term projections of expected revenue contribution of the Agreements on the revenue of APL till 2014 (i.e.

upto $200 million as reported in the media as per the SCN), and overall reflected improved sentiments about growth prospects of APL.

81. Hence, the submissions of the Noticees that the Press Release dated March 3, 2009 was issued after market hours on March 3, 2009 and hence the closing price on March 3, 2009 could not have been influenced by the abovementioned Press Release, or that scrip price movement of APL on March 4 and 5, 2009 after the Press Release on March 3, 2009 was similar to that of Sensex and Nifty, present an incorrect picture of facts regarding availability and impact of the information regarding the Licensing and Supply Agreements on the market price of APL and hence are not acceptable.

82. In the context of the Noticees' submissions regarding having routinely entered into several other agreements of a similar nature with other companies without having considered the same as UPSI, a review of publicly available data pertaining to disclosures of price sensitive information made by APL on stock exchanges reveals that vide Press Release dated September 6, 2010, APL had informed BSE that it had entered into a Licensing and Supply Agreement with AstraZeneca (another leading global pharmaceutical company but smaller/ranked lower than Pfizer in terms of revenues on the Fortune 500 list for 2009 and 2010). The said UPSI was disseminated on the BSE on the morning of September 6, 2010 in compliance with the requirements of Clause 36 of the PIT Regulations 1992.

83. In terms of actual price impact of the Astra Zeneca Agreement, the market price for APL shares reacted positively on September 6, 2010 by closing 1.8% higher than the previous day's closing price. Thus, contrary to submissions by the Noticees that information such as Licensing and Supply Agreements is part of normal business and is not disclosed as it is not price sensitive, information regarding the Agreement entered into with Astra Zeneca had in fact been considered PSI due to its inherent nature and the significance of association with a leading global pharmaceutical company and accordingly disclosed by APL.

84. Noticee No. 6 has contended that there is no charge in the SCN that the Agreements with Pfizer which were being regularly executed since July 2008 were all UPSI. This contention cannot be accepted in the light of clear definition of UPSI in the SCN as price sensitive information which came into existence on July 22, 2008 and was Unpublished Price Sensitive Information (UPSI) from July 22, 2008 to March 03, 2009 when it was disseminated to stock exchanges.

85. Noticee No. 6 has also submitted that while the Agreements may have been price sensitive information requiring disclosure at the end of Pfizer in USA, this does not automatically mean that the Agreements were PSI in respect of APL which entered into such agreements in the ordinary course of business with other companies as well. For the reasons detailed in preceding paragraphs, this contention of Noticee No. 6 too cannot be accepted.

86. In the light of the foregoing, it can be said that information regarding the Pfizer Agreements was significant for the business, operations and growth of the company, and of a nature which was likely to impact a decision to buy or sell the shares of the company, thereby affecting price of the scrip of APL. Thus, the said information was likely to materially affect the price of the securities of APL during the relevant period, and thus qualified as "price sensitive information" which includes, *inter alia*, "*major expansion plans or execution of new projects*" and "*significant changes in policies, plans or operations of the company*" in terms of the Explanation to Regulation 2 (ha) of the PIT Regulations

87. In view of the above, I find that the Licensing and Supply Agreements entered into between APL and Pfizer constituted unpublished price sensitive information or "UPSI" between July 22, 2008 and March 3, 2009, in terms of Regulation 2 (ha) of the PIT Regulations, 1992.

88. The facts of the case also show that as "insiders", Noticee Nos. 1-6 purchased shares while in possession of the UPSI pertaining to APL, and made unlawful gains from having purchased shares of APL at a lower price before publication

of the UPSI on March 3, 2009. Thus, the impugned purchases of shares of APL by Noticee Nos. 1-6 were squarely covered by the prohibition in Regulation 3 of the PIT Regulations 1992.

Whether Noticee Nos. 1-6 violated Regulations 3 and 4 of the PIT Regulations 1992 read with Regulation 12 (2) of the PIT Regulations 2015

89. The provisions of Regulations 3 and 4 of the PIT Regulations 1992 and Regulation 12 (2) of the PIT Regulations 2015 are reproduced below for reference:-

"*Prohibition on dealing, communicating or counselling on matters relating to insider trading.*

3. *No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

Provided *that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law."*

"Violation of provisions relating to insider trading.

4. *Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading*."

90. In view of the fact that it has already been established that the Noticees No. 1-6 were insiders in terms of Regulation 2 (e) of the PIT Regulations, and that

they had traded in shares of APL when in possession of the aforesaid UPSI, I find that the charge of violation of Regulations 3 and 4 by Noticees No. 1-6 also stands established.

Whether Noticee No. 7 violated the PIT Regulations and the Listing Agreement due to failure to close trading window, and delayed disclosure of PSI as well as material development to the Stock Exchange

91. Noticee No. 7 is alleged to have violated -

(1) Clause 36 of the Listing Agreement read with Section 21 of the SCRA,

(2) Clause 3.2.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations

(2) Clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading in Schedule II under Regulation 12 (2) of the PIT Regulations 1992

92. The relevant legal provisions are reproduced below for reference –

Equity Listing Agreement

"36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information.

The material events may be events such as: (1) Change in the general character or nature of business: Without prejudice to the generality of Clause 29 of the Listing Agreement, the Company will promptly notify the Exchange of any material change in the general character or nature of its business where such change is brought about by the Company entering into or proposing to enter into any arrangement for technical, manufacturing, marketing or financial tie-up or by reason of the Company, selling or disposing of or agreeing to sell or dispose of any unit or division or by the Company, enlarging, restricting or closing the operations of any unit or division or proposing to enlarge, restrict or close the operations of any unit or division or otherwise."

PIT Regulations 1992

Schedule I

"*3.2.1 The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished."*

Schedule II

"*2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis."*

93. It has already been established that information pertaining to the Licensing and Supply Agreements with Pfizer was UPSI in terms of the PIT Regulations 1992. Accordingly, Noticee No. 7 was required to have disclosed the said information on a "*continuous and immediate basis*" to the stock exchanges in terms of Clause 2.1 of Schedule II of the PIT Regulations and Clause 36 of the Listing Agreement, which requires events having bearing on performance/operations of the company as well as PSI, such as "*any material change in the general character or nature of its business where such change is brought about by the Company entering into or proposing to enter into any arrangement for technical, manufacturing, marketing or financial tie-up*" to be disclosed *immediately* to the stock exchange by the company.

94. As stated in the SCN, Noticee No. 7 was required to disclose immediately to the stock exchanges the developments/agreements related to Licensing and Supply Agreements with Pfizer entered into on July 22, 2008, November 30, 2008 and December 29, 2008. However, Noticee No. 7 did not disclose the PSI related to the abovesaid Licensing and Supply Agreements with Pfizer until March 3, 2009 i.e. after a delay of 70 days from execution of the last such Agreement on December 29, 2008.

95. In view of the above, I find that Noticee No. 7 failed to make the necessary disclosures to the stock exchange in respect of PSI related to Licensing and Supply Agreements with Pfizer in terms of the requirements of Clause 36 of the Listing Agreement read with Section 21 of the SCRA, and Clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading in Schedule II under Regulation 12 (2) of the PIT Regulations 1992

96. Additionally, in terms of Clause 3.2.1 of Part A of Schedule I to the PIT Regulations 1992 read with Clause 3.2.3 thereof, Noticee No. 7 was required to close the trading window during the UPSI period during which time information related to "*expansion plans*", "*execution of new projects*" or "*change in… operations*" remained unpublished i.e. between July 22, 2008 to March 3, 2009. During the period when the trading window is closed, "*employees/directors shall not trade in the company's securities*", as per Clause 3.2.2 of Schedule I Part A of the PIT Regulations 1992.

97. The Noticees have submitted that the trading window was not closed during the period when they had purchased shares of APL before the Press Release dated March 3, 2009. Further, Noticee No. 7 has submitted that it did not consider the information related to the Licensing and Supply Agreements with Pfizer substantial or an event requiring closure of trading window in accordance with its Trading Window Closure Policy. Noticee No. 7 has also contended that in the case of similar Agreements executed with other parties, trading window was not closed as these Agreements are considered to be in the ordinary course of business by Noticee No. 7. Avoiding repetition of arguments and findings made

earlier in this order regarding UPSI, I note that it has already been concluded that the Licensing and Supply Agreements with Pfizer constituted UPSI in terms of the PIT Regulations 1992. Therefore, at the time when the said information (i.e. UPSI) remained unpublished between July 22, 2008 and March 3, 2009, the trading window was required to be closed for trading by directors/employees of APL.

98. In the light of the uncontroverted facts on record, I find that Noticee No. 7 failed to close the trading window during the UPSI period, thus violating Clause 3.2.1 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations.

99. In view of the discussions and findings in the preceding paragraphs of this order, I am of the considered view that –

    a. Noticee Nos. 1-6 violated Regulations 3 and 4 of the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015, and
    b. Noticee No. 7 violated the provisions of -
        i. of Clause 36 of the Listing Agreement read with Section 21 of the SCRA;
        ii. Regulation 12 (2) read with Clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading in Schedule II of the PIT Regulations 1992 read with Regulation 12 (2) of the PIT Regulations, 2015; and
        iii. Regulation 12 (1) read with Clause 3.2.1 of Schedule I of the PIT Regulations, 1992 read with regulation 12 (2) of the PIT Regulations, 2015;

ISSUE II - Whether the violations, if any, on the part of the Noticees attract monetary penalty under Section 15G and Section 15HB of the SEBI Act, 1992, and Section 23E of the SCRA 1956?

and

ISSUE III - If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15 J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

100. The provisions of Section 15G and Section 15HB of the SEBI Act, and Section 23E of the SCRA are reproduced below for reference –

"Penalty for insider trading.

15G.*If any insider who,—*

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

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

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

"Penalty for contravention where no separate penalty has been provided.

15HB.*Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a*

penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

"Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees."*

101. The Noticees have contended that Section 15G of the SEBI Act stipulates that insiders cannot deal in securities of a company "*on the basis*" of UPSI, which is different from the provisions of Regulation 3 (i) of the PIT Regulations 1992, alleged to have been violated by the Noticees stipulating that insiders cannot deal in securities of the company "*when in possession*" of UPSI. The Noticee Nos. 1-6 have thus submitted that penalty cannot be levied on the basis of contradictory provisions cited in the SCN.

102. In order to resolve the apparent conflict between the provision in Section 15G and Regulation 3 (i) of the PIT Regulations, we need to resort to the principle of purposive construction within the general principles of statutory interpretation. Upon considering legislative history of Regulation 3 (i) of the PIT Regulations it is seen that the words "*when in possession of*" replaced the words "*on the basis of*" with effect from February 20, 2002, through the SEBI (Insider Trading) (Amendment) Regulations, 2002. Subsequently, through SEBI (Amendment Act) 2002, Section 12A was introduced in the SEBI Act with effect from October 29, 2002. In terms of Section 12A (e), "*no person shall directly or indirectly deal in securities <u>while in possession</u> 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".*[emphasis supplied]

103. Thus, legislative history of the replacement of the term "*on the basis of*" with the words "*when in possession of*" in the PIT Regulations and subsequently in the SEBI Act makes it amply clear that legislative intent was to prohibit trading by insiders *while in possession of* material or non-public information. A harmonious interpretation of the prohibiting provisions along with the charging provisions makes it clear that a violation of provisions stated in Section 12A(e), which are parallel to Regulations 3 and 4 of PIT Regulations, shall attract penal provisions under Section 15G of the SEBI Act.

104. Having said this, and without prejudice to the harmonious and purposive interpretation of Section 15G of SEBI Act read with Section 12A(e) with regard to possession of UPSI, I also note that the trading by the Noticee Nos. 1 to 6 was not merely while in possession of UPSI but also on the basis of UPSI as no other argument or reason for purchase of shares of APL during the UPSI Period has been given by the Noticees except by Noticees No.1-4 who have submitted that the trades were on account of creeping acquisition, which appears to be an afterthought to legitimise the trades by taking support of the Takeover Regulations. The promoters took advantage of the creeping acquisition provision to purchase additional shares on the basis of UPSI, while being certain that the UPSI when made public would have a positive impact on the stock price. The promoters subsequently off-loaded a large part of these shares as promoter shareholding declined from 59.85% in March 2009, to 59% in June 2009. Further, creeping acquisition provisions in the Takeover Regulations do not permit or legitimise trading by insiders on the basis of or while in possession of UPSI, which is prohibited by the PIT Regulations and the SEBI Act.

105. As it has been established that Noticee Nos. 1-6 violated Regulations 3 and 4 of the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015, therefore, Noticee Nos. 1-6 are liable for imposition of monetary penalty under Section 15G of the SEBI Act.

106. Further, it has also been established that Noticee No. 7 violated (i) Regulation 12 (1) read with Clause 3.2.1 of Schedule I of the PIT Regulations, 1992 read

with regulation 12 (2) of the PIT Regulations, 2015; (ii) Regulation 12 (2) of the PIT Regulations, 1992 read with Clause 2.1 of Schedule II to the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015; and (iii) Clause 36 of the Equity Listing Agreement read with Section 21 of the SCRA. Therefore, Noticee No. 7 is liable for imposition of monetary penalty under Section 15HB of the SEBI Act for violation of provisions of the PIT Regulations, and also under Section 23E of the SCRA for violation of Clause 36 of the Listing Agreement.

107. While determining the quantum of penalty under Sections 15 G and 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:-

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.

108. The SCN states the notional profits of Noticee Nos. 1-6, who purchased shares of APL when in possession of UPSI, as on March 04, 2009 after the UPSI was made public by APL through a Press release dated March 03, 2009.

109. In this context, I note that notional profits computed with respect to Noticee Nos. 1-4 and 6 are Rs. 2,58,95,800, Rs.95,44,385, Rs. 2,30,374, Rs. 2,95,86,720 and Rs. 3,77,89,062. It is noted that Noticee No. 5 incurred a notional loss of Rs.1,02,07,727 at the closing price on March 4, 2009. I note that the date for notional profit computation is taken based on when the information was made public by Noticee No.7. I further note that the Noticees did not offload the shares immediately after UPSI was made public. Promoter shareholding decreased in subsequent quarters. I also note that the share price of APL continued to rise in succeeding months, indicating higher profits for the Noticees.

110. Recognising that insider trading is a serious violation which vitiates the integrity and undermines confidence of investors in the markets, and promoters and persons closely connected with the company have obtained unfair advantage by trading while in possession of UPSI which was not available with ordinary investors, I find that appropriate penalty in terms of Section 15G of the SEBI Act is required to be levied on Noticee Nos. 1-6.

111. Further, I note that Noticee No. 7 had a significant role in determining the period when the UPSI was in existence and enforcing corresponding trading window restrictions, as well as ensuring that price sensitive information did not remain unpublished for a long duration from July 22, 2008 when it first arose till March 3, 2009, seventy days after the last PSI related to Agreement between APL and Pfizer had arisen. The absence of timely disclosures by Noticee No. 7, apart from being in violation of the stipulations in the Listing Agreement, the Model Code of Corporate Disclosure Practices and the Model Code for Prevention of Insider Trading as prescribed in the PIT Regulations 1992, also gave rise to information asymmetry between PSI available to insiders of Noticee No. 7 and ordinary investors, which was exploited by Noticee Nos. 1-6 to carry out trades in the shares of Noticee No. 7 when in possession of the said PSI.

112. The role of a company in preventing insider trading is crucial, as evidenced by the scheme of provisions of the PIT Regulations and the Schedules thereto, *inter alia* providing for a Code of Internal Procedures, Conduct and Disclosure to be put in place by a listed company. Regulation 12 of the PIT Regulations 1992 recognises the role of the listed companies and organisations associated with the securities market in enforcing the Codes of Conduct provided in the PIT Regulations. Listed companies have also been entrusted with the responsibility of specifying a trading window and keeping it closed during the UPSI period in accordance with the stipulations in the PIT Regulations. It is not in doubt that a listed company needs to comply with the PIT Regulations for effective enforcement of the same, and the company needs be held strictly to its obligations under the PIT Regulations.

113. Accordingly, in terms of Section 15G/ Section 15HB read with Section 15J of the SEBI Act, the following penalties are considered commensurate with the violations committed by the Noticees –

Noticee No.	**Noticee Name**	**Penalty Provision**	**Penalty Amount**
1	Mr. PV Ramprasad Reddy	Section 15G of SEBI Act	Rs. 5 crores
2	Mrs. P. Suneela Rani		Rs. 2 crores
3	Mr. Kambam P Reddy		Rs. 10 lakhs
4	Trident Chemphar Ltd.		Rs. 6 crores
5	Veritaz Health Care Ltd.		Rs. 10 lakhs
6	Top Class Capital Markets Pvt. Ltd.		Rs. 7.50 crores
7	Aurobindo Pharma Ltd.	Section 23E of the SCRA	Rs. 1 crore
		Section 15HB of SEBI Act	Rs. 1 crore

ORDER

114. After taking into consideration all the facts and circumstances of the case, and in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties upon the Noticees:–

Noticee Name	**Penalty Provisions and Violations**	**Penalty Amount**
Mr. PV Ramprasad Reddy	Under Section 15G for violation of Regulations 3 and 4 of PIT Regulations	Rs. 5 crores

Mrs. P. Suneela Rani	Under Section 15G for violation of Regulations 3 and 4 of PIT Regulations	Rs. 2 crores
Mr. Kambam P Reddy	Under Section 15G for violation of Regulations 3 and 4 of PIT Regulations	Rs. 10 lakhs
Trident Chemphar Ltd.	Under Section 15G for violation of Regulations 3 and 4 of PIT Regulations	Rs. 6 crores
Veritaz Health Care Ltd.	Under Section 15G for violation of Regulations 3 and 4 of PIT Regulations	Rs. 10 lakhs
Top Class Capital Markets Pvt. Ltd.	Under Section 15G for violation of Regulations 3 and 4 of PIT Regulations	Rs. 7.50 crores
Aurobindo Pharma Ltd.	Under Section 23 E of SCRA for violation of Clause 36 of the Equity Listing Agreement read with Section 21 of the SCRA, by Noticee No. 7.	Rs. 1 crore
	Under Section 15HB for violation of Regulation 12 (1) read with Clause 3.2.1 of Schedule I of the PIT Regulations, 1992 read with regulation 12 (2) of the PIT Regulations, 2015 and Regulation 12 (2) read with Clause 2.1 of Schedule II of the PIT Regulations, 1992 read with Regulation 12 (2) of the PIT Regulations, 2015.	Rs. 1 crore

115. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

116. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
    c. Name and PAN of the entity (Noticee)
    d. Name of the case / matter
    e. Purpose of Payment – Payment of penalty under AO proceedings
    f. Bank Name and Account Number
    g. Transaction Number

117. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: September 23, 2019 **Maninder Cheema**

Place: Mumbai **(Adjudicating Officer)**