National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/56125	Date: March 24, 2023
Circular Ref. No: 79/2023	

To All NSE Members

Sub: **SEBI Order in the matter of TV Vision Limited**

SEBI vide its order no. WTM/SM/IVD/ID13/24880/2022-23 dated March 24, 2023, has restrained below entities from accessing the securities market and are further prohibited from buying, selling, or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 6 months from the date of this Order.

Entities	Name of the Entity	PAN
1	Mr. Rashesh Purohit	ADQPP1270Q
2	Keynote Enterprises Private Limited	AADCK7471R
3	Inayata Constructions Private Limited	AACCI1353F
4	Ms. Chitra Deshmukh	ADKPD8309C

The said entities are further restrained from buying, selling, or dealing in the securities of TV Vision Limited, directly, or indirectly, in any manner whatsoever, for a period of 1year

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

This Order shall come into force with immediate effect.

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

National Stock Exchange of India

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

Members are advised to take note of the above and ensure compliance.
In case of any further queries, members are requested to contact the following officials:

Mr. Ritik Bhriegu (Extension: 23020), Mr. Sandesh Sawant (Extension: 22383)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in the matter of TV Vision Limited.

WTM/SM/IVD/ID13/24880/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

IN RESPECT OF:

Noticee No.	Name of the Noticee	PAN
1.	Mr. Rashesh Purohit	ADQPP1270Q
2.	Keynote Enterprises Private Limited	AADCK7471R
3.	Inayata Constructions Private Limited	AACCI1353F
4.	Ms. Chitra Deshmukh	ADKPD8309C

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

1. The present proceeding is emanating from a show cause notice dated January 25, 2022 (hereinafter referred to as **"SCN"**) arising out of an investigation conducted by Securities and Exchange Board of India ("**SEBI**") into the trading in the scrip of TV Vision Limited (hereinafter referred to as **"TVVL"** or the **"Company**"), for the period of September 01, 2017 to September 27, 2017 (hereinafter referred to as the "**investigation period**"). The said investigation was undertaken by SEBI so as to ascertain as to whether certain entities have traded in the scrip of the *Company* (TVVL) on the basis of unpublished price sensitive information, in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act, 1992**") and Securities and Exchange Board

of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "**PIT Regulations**").

2. The records indicate that the present case revolves around the following entities:

i. TV Vision Limited/TVVL is the *Company* in whose shares, the alleged insider trading took place.

ii. Mr. Markand Adhikari was the Managing Director of the *Company* at the relevant times.

iii. Mr. Rashesh Purohit /*Noticee no. 1* is a son of brother, of Markand Adhikari's mother.

iv. Keynote Enterprises Private Limited/*Noticee no. 2* is a Company where the *Noticee no. 1* (Mr. Rashesh Purohit) and his wife were the shareholders-Directors.

v. Ms. Chitra Deshmukh (*Noticee no. 4*) was the Director of Inayata Constructions Private Limited (*Noticee no. 3*) at the relevant times.

vi. Mr. Ramchandra Purohit is the brother of Mr. Rashesh Purohit.

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

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

ii. On September 27, 2017, TVVL made an announcement pertaining to the Downgrading of its Long Term Bank facilities- Term Loan of the Company for INR 24.39 Crore from CARE BBB- (SO) to CARE D by the CARE Ratings Ltd (hereinafter referred to as the "**CARE**"). The information was disseminated on September 27, 2017 by the *Company* on NSE at 16:15 hrs and on BSE at 16:09 hrs.

iii. After the aforesaid announcement was made by the *Company,* the price of its scrip decreased by around 4.99%, and it closed at INR 119.85. Further, the scrip witnessed a fall of 65.62% in its price in the next 22 trading days, as it closed at INR 41.20 on October 31, 2017.

iv. Vide SEBI's Circular no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017, issued with respect to Monitoring and Review of Ratings by Credit Rating Agencies, it has been *inter alia* prescribed that a Credit Rating Agency (hereinafter referred to as the "**CRA"**) shall seek a 'No Default Statement (NDS)' from the listed company at the end of each month, which shall be provided to the CRA by the listed company on the first working day of the next month. Such a NDS has to be issued with respect to the servicing of the debt obligation by such listed company.

v. The NDS for the month of July, 2017 in terms of the aforesaid Circular dated June 30, 2017, was submitted to CARE by the *Company* under the signatures of Mr. Markand Adhikari, in the capacity of the Managing Director of the *Company.*

vi. Further, the *Company* was required to submit the NDS for the month of August, 2017, on September 01, 2017, to CARE (the concerned Credit Rating Agency). However, as the *Company* did not furnish the requisite NDS pertaining to the month of August, 2017, CARE started issuing emails from September 01, 2017 to September 19, 2017 to the *Company* seeking the aforesaid NDS.

vii. As the *Company* had taken a Term Loan from Indian Overseas Bank (hereinafter referred to as the "**IOB"**), CARE, on September 20, 2017, conducted due diligence with respect to the Loan account of the *Company* held with IOB, and also sought comments of the *Company* on the information/feedback provided by IOB.

viii. CARE, on September 21, 2017, based on the due diligence held with IOB and the response of the *Company* on the feedback of IOB, reviewed the rating of the 'Long Term

Bank Facilities - Term Loan for INR 24.39 Crore', and revised the ratings from 'CARE BBB- (SO)' to 'CARE D'.

ix. The aforesaid revision of rating was also intimated by CARE to the *Company* vide its email dated September 21, 2017, but the *Company* finally disclosed it to the Stock Exchanges only on September 27, 2017.

4. Based on the aforesaid factual details, the SCN alleges that the information pertaining to the downgrading of the credit rating/revision of credit rating was a price sensitive information in terms of Regulation 2 (1) (n) of the PIT Regulations. The SCN further narrates that the time since when the NDS for the month of August 2017 became due for submission to CARE by the *Company* till the time the revised rating was disclosed by the *Company,* i.e., the period of September 01, 2017 to September 27, 2017, is to be considered as the UPSI period in respect of the said downgrade revision of rating.

5. The SCN further proceeds with narrating the following relationship of entities with the *Company* allegedly suggesting towards possession of the UPSI by such persons:

i. In terms of the statement dated February 12, 2021 given by Mr. Rakesh Gupta to SEBI, though he was an employee with a group company of TV Vision Limited, viz., Shri Adhikari Brothers Television Network Limited, however, he was reporting to Mr. Anand Shroff, the then CFO of TV Vision Limited.

ii. Further, in terms of the aforesaid statement of Mr. Rakesh Gupta and the statement dated February 23, 2021 given by Mr. Anand Shroff (CFO of TV Vision Limited), the provisions of SEBI's Circular dated June 30, 2017 were in the knowledge of Mr. Markand Adhikari (Managing Director of TV Vision Limited). Furthermore, Mr. Markand Adhikari was also briefed by Mr. Rakesh Gupta and Mr. Anand Shroff, about the emails

being issued by CARE seeking the NDS from the *Company* for the month of August 2017.

iii. *Noticee no. 1* (Mr. Rashesh Purohit) and Mr. Markand Adhikari (the Managing Director are relatives and in terms of statement of *Noticee no. 1* recorded on February 24, 2021, both of them share a cordial relationship. Further, *Noticee no. 1* had taken a loan of INR 50 Lakh from Mrs. Kanchan Adhikari (wife of Mr. Markand Adhikari), and the said loan was extended with the consent and knowledge of Mr. Markand Adhikari.

iv. Mr. Markand Adhikari has also stood as a Guarantor for the loan taken by the two companies namely, Density Global Trading Services Pvt. Ltd. and Vinil Trading Pvt. Ltd., which are owned and controlled by the *Noticee no. 1* and his wife, Ms. Sonal Purohit.

v. *Noticee no. 4* (Ms. Chitra Deshmukh), in her statement dated December 09, 2020, has *inter alia* acknowledged that she knows Mr. Markand Adhikari since the year 1988. Further, a company namely Vibrant Content Private Limited (VCPL), where *Noticee no. 4* was one of the Directors, was having financial transactions with the *Company*. Furthermore, Mr. Markand Adhikari has also stood as a Guarantor of the loan taken by VCPL from the Central Bank of India.

vi. Apart from the above, Mr. Ramchandra Purohit, brother of the *Noticee no. 1* has admitted in his statement dated February 15, 2021 that his relationships with his brother are cordial and they speak over the phone occasionally.

6. It is noted that, based on the aforesaid facts, the SCN makes the following allegation against the *Noticees*:

i. The *Noticee nos. 1* and *4* were having access to/in possession of the UPSI, by virtue of the relationship they had with Mr. Markand Adhikari, who (Mr. Markand Adhikari) being the Managing Director of the *Company* as well as being in possession of was an insider of the

Company in terms of Regulation 2 (1) (d) (i) read with Regulation 2 (1) (g) of the PIT Regulations.

ii. The *Noticee nos. 1* and *3* individually, and the *Noticee nos. 2* and *4* being the companies managed and controlled by the *Noticee nos. 1* and *3*, respectively, are insiders in terms of Regulation 2 (1) (g) (ii) of the PIT Regulations.

iii. As the *Noticees* have been alleged to be insiders, the trades executed by the *Noticee nos. 1*, *2* and *3* in the scrip of the *Company* during the UPSI period are alleged to be insider trading. Details of trades executed by the above *Noticees* during the UPSI period in the scrip of the *Company* are as under:

Noticee no. 1- Mr. Rashesh Purohit

Table no. 1

Date	BSE/ NSE	Gross Buy Qty.	Gross Sell Qty.	Net Traded Qty.	Gross buy Value (INR)	Gross Sell Value (INR)
During UPSI period-September 01, 2017 to September 27, 2017						
05/09/2017	NSE	0	35,696	-35,696	0.00	53,54,400
05/09/2017	BSE	0	8,758	-8,758	0.00	13,13,700
18/09/2017	NSE	0	25,000	-25,000	0.00	43,75,000
18/09/2017	BSE	0	20,000	-20,000	0.00	35,00,000
Total		0	89,454	-89,454	0.00	1,45,43,100

Noticee no. 2- Keynote Enterprises Private Limited

Table no. 2

Date	BSE/ NSE	Gross Buy Qty.	Gross Sell Qty.	Net Traded Qty.	Gross buy Value (INR)	Gross Sell Value (INR)
During UPSI period-September 01, 2017 to September 27, 2017						
13/09/2017	BSE	0	10,000	-10,000	0.00	17,49,000
14/09/2017	BSE	0	10,000	-10,000	0.00	18,00,000

18/09/2017	BSE	0	10,000	-10,000	0.00	17,50,005
18/09/2017	NSE	0	40,000	-40,000	0.00	70,00,041
Total		0	70,000	-70,000	0.00	1,22,99,046

Noticee no. 3- Inayata Constructions Private Limited

Table no. 3

Date	BSE/ NSE	Gross Buy Qty.	Gross Sell Qty.	Net Traded Qty.	Gross buy Value (INR)	Gross Sell Value (INR)
During UPSI period-September 01, 2017 to September 27, 2017						
05/09/2017	NSE	0	50,000	-50,000	0	75,000,12
15/09/2017	BSE	6,000	0	6,000	10,53,000	0.00
18/09/2017	NSE	0	5,000	-5,000	0	8,75,001
25/09/2017	BSE	7,000	0	7,000	9,87,700	0.00
25/09/2017	NSE	0	35,000	-35,000	0	49,00,000
26/09/2017	NSE	0	15,000	-15,000	0	21,30,013
Total		13,000	1,05,000	-92,000	20,40,700	1,54,05,026

iv. Further, the *Noticee nos. 1*, *2* and *3* being in possession of UPSI have allegedly taken advantage of the information that was not generally available and have indulged in the acts of insider trading to avoid losses, details of which are presented hereunder:

Noticee no. 1- Rashesh Purohit
Table no. 4

No. of shares sold while in possession of UPSI	Weighted average sale price per share	Total Weighted sale value (INR) (iii) x (iv)	Average of Closing price of the scrip as on 28.09.2017 (the following trading day of publishing UPSI)	Unlawful loss avoided (INR) {(No. of shares sold x weighted average sale price per share) - (no. of shares sold x closing

	(INR) (sale value /sale quantity rounded off to two digits)			price)} {(iii)x(iv)-(iii)xvi)}
(iii)	(iv)	(v)	(vi)	(vii)
89,454	162.58	1,45,43,100	119.88	38,19,801

Noticee 2- Keynote Enterprises Private Limited

Table no. 5

No. of shares sold	**Weighted average sale price per share (INR)** (sale *value /sale quantity rounded off to two digits)*	**Total Weighted sale value (INR)** (iii) x (iv)	**Average of Closing price of the scrip as on 28.09.2017** *(the following trading day of publishing UPSI)*	**Unlawful loss avoided (INR)** {(No. of shares sold x weighted average sale price per share) - (no. of shares sold x closing price)} {(iii)x(iv)-(iii)xvi)}
(iii)	(iv)	(v)	(vi)	(vii)
70,000	**175.7**	**1,22,99,046**	**119.88**	**39,07,796**

Noticee no. 3 Inayata Constructions Private Limited (ICPL)

Table no. 6

No. of shares sold (no of shares sold- no of shares	**Weighted average sale price per share (INR)** **(*sale value /sale***	**Total Weighted sale value (INR)** **(iii) x (iv)**	**Average of Closing price of the scrip as on 28.09.2017** **(*the following trading day of publishing UPSI*)**	**Unlawful loss avoided (INR)** **{(No. of shares sold x weighted average sale price per share) - (no. of shares sold x closing price)}**

bought)	*quantity rounded off to two digits*)			{(iii)x(iv)-(iii)xvi)}
(iii)	(iv)	(v)	(vi)	(vii)
92,000	145.26	1,33,64,326	119.88	23,35,826

v. Apart from the above, Mr. Ram Chandra Purohit (brother of *Noticee no. 1*) has traded during the UPSI period in the scrip of TV Vision Limited on behalf of his company namely Assent Trading Private Limited. Thus, it becomes abundantly evident that the *Noticee no. 1* has communicated the UPSI to his brother Mr. Ram Chandra Purohit.

7. Based on the acts on the parts of the *Noticees*, as stated above, the SCN alleges the following violations on the part of the *Noticees*:

(i) *Noticee nos. 1* and *2*, being insiders have traded in its shares, while in possession of/having access to the UPSI and have violated Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) PIT Regulations;

(ii) *Noticee no. 1* has communicated the UPSI to his brother Mr. Ram Chandra Purohit, and has therefore, acted in violation of Section 12A (e) of the SEBI Act, 1992 read with Regulation 3 (1) of the PIT Regulations; and

(iii) *Noticee no. 4,* being an insider has dealt with/traded in the scrip of the *Company* on behalf of *Noticee no. 3,* while in possession of/having access to UPSI and has thus violated Section 12A (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations.

8. The SCN calls upon the *Noticee nos. 1, 2, 3* and *4* to show cause as to why suitable directions (including disgorgement directions) under Section 11B (1) and 11(4) read with Section

11 (1) of the SEBI Act, 1992 should not be issued against them and penalty under Sections 11(4A), and 11B(2) read with Section 15G of the SEBI Act, 1992 should not be imposed against them for their violations as alleged in the SCN.

9. It is noted from the records that the after completion of the service of SCN upon the *Noticees,* the *Noticees* sought time to file their replies. However, as no reply was received from the *Noticees,* a personal hearing in the matter was scheduled for July 21, 2022 and the same was intimated to the *Noticees* vide email dated April 21, 2022. Further, vide email dated June 23, 2022, the *Noticees* were advised to file their replies to the SCN within a period of seven days. In response thereto, the *Noticees* vide email dated July 02, 2022, sought an inspection of all documents including the investigation report. In view of the said request, an inspection of all the material documents was provided to the *Noticees.*

10. On the date of the personal hearing, two Advocates; one representing *Noticee nos. 1* and *2* and the other Advocate representing *Noticee nos. 3* and *4,* appeared before me and made their respective oral submissions and thereafter sought a time of three weeks to file their written replies. I may also hasten to add here that in the meanwhile, vide emails dated July 21 2022, just before the commencement of the hearing, the *Noticees* had submitted that SEBI should provide cross-examination of Mr. Markand Adhikari in order to enable them to file a detailed reply to the SCN. However, during the personal hearing, the Counsels appearing for the *Noticees*, despite making detailed arguments to defend the *Noticees*, did not press the issue of cross-examination nor did the written replies filed subsequent to the personal hearing express any handicap on the part of the *Noticees* to defend their case without such cross-examination. Accordingly, vide emails dated August 25, 2022, the *Noticees* were informed that the matter shall be proceeded based on the material available on record. As the *Noticees* have neither raised the issue of cross exmaination during the hearing, nor have demanded the same in their written response, considering the fact

that none of them has disputed his/her connection with MD of the *Company*, non availing of the cross examiantion does not prejudice their rights to defend themselves in any manner. Hence in my view their earlier contention pertaining to crss examiantion does not hold ground anymore.

11. It is noted that the *Noticee no. 1,* vide his letter dated August 12, 2022, has filed his reply to the SCN, wherein the following submissions have been made:

i. The present SCN contemplates multiple actions against the *Noticee,* viz., debarment, disgorgement and imposition of monetary penalty. Such contemplation is in gross violation of Article 20 (2) of the Constitution of India.

ii. The investment decision of the *Noticee* was based on the analysis of financial results and market perception about Sri Adhikari Brothers Television Network Limited (hereinafter referred to as "**SABTNL**"), from the information that was available in the public domain.

iii. The *Noticee* was not having any information nor was he communicated by any person having information about the loan default of TVVL prior to an announcement made by TVVL to the Stock Exchanges. The *Noticee* is not covered in the definition of "insider" as per the definition under the PIT Regulations.

iv. It is SEBI's own case that the UPSI regarding loan default came into existence only on September 21, 2017, hence, it is wrong to hold the UPSI period upto September 27, 2017.

v. As of March 31, 2017, the *Noticee* was holding 5,92,780 shares of TVVL. The *Noticee* had received shares of TVVL (wrongly written as SABTNL in the reply) pursuant to the de-merger scheme of SABTNL which was effective from January 15, 2016. Even at the end

of trading hours of September 26, 2017, the *Noticee* was holding 5,03,326 shares of the *Company*.

vi. The UPSI period ought to be from September 20, 2017 to September 21, 2017 and not from September 01, 2017.

vii. During the above period, the *Noticee* had not sold even a single share of TVVL which establishes that the *Noticee* was not having access to the alleged UPSI. The *Noticee* would have sold all of his shares, if he had access to the UPSI.

viii. All the transactions in the scrip of TVVL were done by the *Noticee* independently based on the commercial wisdom, without any *malafide* intent.

ix. The SCN makes vague allegations. On the basis of the professional relationship between the *Noticee* and Mr. Markand Adhikari, the allegation has been made that the *Noticee* was in touch with Mr. Markand. However, no evidence has been produced to establish that Mr. Markand has communicated to the *Noticee* about the loan default of TVVL, rendering the charge made in the SCN baseless. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Balram Garg vs Securities and Exchange Board of India (Civil Appeal No. 7054 of 2021 and Civil Appeal No. 7590 of 2021)*, to buttress the submission that there should be material available to show frequent communication between parties and trading pattern cannot be circumstantial evidence to prove communication between the parties.

x. For the sake of arguments, it is submitted that in case the *Noticee* was having information about the loan default, he would have started selling the shares of TVVL in July, 2017 itself, i.e., prior to the UPSI period and when the share price was also as high as INR

315.84. However, admittedly, the shares have been sold by the *Noticee* in September, 2017, and the said selling was done as an ordinary investor.

xi. The SCN makes vague charges which are devoid of any substance and the charges leveled are contrary to the factual position on record. The SCN does not bring on record any evidence to establish that the *Noticee* was in possession of UPSI when he sold the shares of TVVL.

xii. Out of the 592780 shares of TVVL as held by the *Noticee* pursuant to the demerger of SABTNL, he has sold only 89,454 shares during the period of September 1, 2017 to September 27, 2017, which amounted to only 15.09% of the total shares. The selling of a miniscule number of shares establishes that the selling was done in the normal course, as anyone having possession of the UPSI would have sold his entire holding.

xiii. The investigation report records the "downgrading of credit rating of TVVL" as the UPSI. The said information originated outside TVVL as it got generated at the end of CARE Ratings. The investigation report mentions that the preparation of the credit report which led to a downgrading of the rating began only on September 20, 2017, after the CARE officials got into contact with bankers of TVVL, and on September 21, 2017, the report was published on CARE's website. In view of the same, the UPSI period starts on September 20, 2017 and ends on September 21, 2017 with publication of the rating on CARE's website.

xiv. The publication of the said rating was also done by CARE as mandated under SEBI (Credit Rating Agencies) Regulations, 1999. Further, Circular no. SEBI/ HO/ MIRSD/ MIRSD4/ CIR/ P/ 2017/ 71 dated June 30, 2017 mandates the CRAs to take appropriate rating action in cases where the issuer does not furnish information to it despite repeated reminders.

xv. Thus, the law governing Credit Rating mandates the dissemination of vital information related to listed entities for the general public.

xvi. In the present case, the public at large came to know about the downgrading of the rating on September 21, 2017, therefore UPSI period ended on the said date. The said disclosure on CARE's website makes the information public before disclosure was made by TVVL on September 27, 2017.

xvii. The investigation has not been able to find out the passing of the alleged information based on the information originating from CARE.

xviii. Even if the assumption is considered that the investigation has considered the default by TVVL or non-disclosure of NDS as UPSI along with the downgrading of rating by CARE, the investigation has ignored the fact that CARE vide its letter dated August 22, 2019, has *inter alia* submitted that non-receipt of NDS was disclosed on the CARE website on September 07, 2017 itself. The same indicates that the news of the event was made public on September 07, 2017 itself. The investigation report fails to consider the significant credit event, i.e., non-disclosure of NDS by TVVL.

xix. As the investigation report fails to establish the correct UPSI period, passing on information, and trading on the basis of UPSI, all the charges deserve to be dropped.

xx. No specific allegation against the *Noticee* has been made against the *Noticee* nor any specific role has been pointed out, except for the fact that he was the Director of *Noticee no. 2*.

xxi. No documentary evidence has been adduced in the SCN to establish that the *Noticee* was in constant communication with Shri Adhikari Brothers and in absence of such

documents, no adverse inference can be drawn against the *Noticee*. Reliance has been placed on *Balram Garg (supra)* to support the submission.

xxii. The trades in the scrip of the *Company* have been executed on the basis of the trading analysis and no shares have been sold during the actual UPSI period.

xxiii. There was a relationship of the *Noticee* with Mr. Markand Adhikari and it has been informed by the *Noticee suo motu* that he used to meet Sri Adhikari Brothers as all of them were in creative filed, however, no findings of communicating or counseling UPSI to the *Noticee* have been made for warranting any kind of action.

xxiv. A sum of INR 50 Lakh was borrowed by the *Noticee* from Mrs. Kanchan Adhikari for business purposes and to repay some other loan. The said amount was repaid to Mr. Kanchan Adhikari in tranches, with last installment paid on June 19, 2019.

xxv. The loans taken from Indian Overseas Bank by Density Global Trading Services Pvt. Ltd. and Vinil Trading Pvt. Ltd. were taken for business purposes and the amounts were not used for investing in the scrip of SABTNL. Based on such a loan from Indian Overseas Bank, no adverse inference can be drawn against the *Noticee*. Further, the guarantee extended by Mr. Markand Adhikari does not lead to a conclusion of a first-hand relationship with him.

xxvi. The fact of having 100% concentration in a particular scrip does not amount to a violation of any law. There is no laid down rule specifying the number of scrips for investment.

xxvii. The *Noticee* is a regular investor in SAB group since the year 2011 and the investment in TVVL (post de-merger) was part of a long-term view.

xxviii. SEBI has not been able to prove that the *Noticee* was in possession of UPSI nor has it been able to prove that the *Noticee* had the access to UPSI and therefore, the *Noticee* cannot be termed as an insider.

xxix. The SCN has not brought out the loss incurred by the investors of the securities market due to the announcement made by the *Company*.

xxx. Further, in order to prove a violation of Regulation 3 of the PIT Regulations, the burden of proof is on SEBI to establish any communication of UPSI by placing on record cogent evidence in form of call details, emails, witnesses etc., and clearly, no such evidence has been placed on record.

xxxi. SEBI cannot rely on the trading pattern of the *Noticee* as circumstantial evidence to prove communication of UPSI.

xxxii. The previous results of the *Company* had shown progressively deteriorating performance. If the *Noticee* really was a connected person, in touch with insiders and was having access to UPSI, and had to trade based on the UPSI; he would have sold the shares of the *Company* quite earlier.

xxxiii. The investigation report has referred to the words "reasonably and logically" to conclude the connection and to conclude that the information was indeed passed on by the insider to connected persons, without providing a single shred of evidence. The same shows that serious allegations have been made on the basis of conjectures and surmises. Following judgments have been referred to support the said argument:

a) *L.D. Jaisinghani Vs. Narain das N Punjabi (1976) 1 SCC 354; AIR 1976 SC 373 at P. 376;*
b) *Razikram Vs. J.S. Chauhan - AIR 1975 SC 667: (1975) 4 SCC 769;*
c) *Ambalal Vs. Union of India AIR 1961 SC 264;*
d) *Gulabchand V Kudilal (AIR 1966 SC 1734);*

xxxiv. The *Noticee* may know the insiders but the assumption that they invariably talk about the UPSI is a biased judgment. The investigation report also failed to establish any conclusive trading pattern so as to indicate possession of UPSI and trading on the basis of such UPSI.

xxxv. The *Noticee* cannot be held to be a "connected person" as none of his company is either a "holding company" or "associate company" of TVVL nor Mr. Markand Adhikari has ever been the Director of any of his companies.

xxxvi. There is no direct evidence as to who had disseminated the insider information to the *Noticee* and the SCN has proceeded merely on the preponderance of probability.

xxxvii. Following judgments have been relied upon to buttress the submission that as no action has been taken against the connected entity, no action lies against the *Noticee* also:

- *HB Stockholdings Limited vs. SEBI (Appeal No. 114 of 2012);*
- *Jayesh kumar Narottamdas Gandhi & Ors. v. Securities & Exchange Board of India Appeal No. 225 of 2019 along with Appeal No. 503 of 2019 and Appeal No. 347 of 2019);*
- *Rajesh Jivan Patel vs SEBI (Appeal No. 222 of 2020);*
- *Manish Suresh Joshi Versus SEBI (SAT Order dated 13.01.2020, Appeal No. 2 of 2020)*

xxxviii. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the matter of *Adjudicating Officer, SEBI Vs. Bhavesh Pabari (CIVIL APPEAL Nos. 11311 of 2013)*, to buttress the submission that the alleged default on the part of the *Noticee* does not fall under the nature of repetitive default.

xxxix. As shares of the *Company* have been sold in the normal course of trading, the *Noticee* is not responsible for avoiding a loss of INR 38,19,801, therefore, no directions for disgorgement may be passed. Further, the purpose of disgorgement is restitution and in the present proceedings, the SCN has failed to identify the shareholders who have lost

money warranting disgorgement. Reliance on the following judgments/orders have been placed:

(i) Ram Kishori Gupta & Anr. Vs SEBI (Appeal No. 44 of 2019, Date of decision: August 02, 2019)
(ii) Hon'ble SAT's order in the matter of Karvy Stock Broking Ltd. (date of decision: May 02, 2008, Appeal no. 6 of 2007);
(iii) Hon'ble SAT's order in the matter of National Securities Depository Limited (SAT Order dated November 22, 2007, Appeal no. 147 of 2007);
(iv) SEBI's order dated May 12, 2016 in the matter of Sabero Organics Gujarat Limited;
(v) Hon'ble SAT's order in the matter of Manoj Gaur Vs. SEBI (Appeal no. 64 of 2012);
(vi) Hon'ble SAT's order in the matter of Samir C Arora (Appeal no. 83 of 2004);
(vii) Hon'ble SAT's order in the matter of Mrs. Chandrakala (Appeal no. 209 of 2011);
(viii) Hon'ble SAT's order in the matter of Shruti Vora Vs. SEBI (Appeal no. 308 of 2020)

xl. While imposing penalty, SEBI needs to consider factors even beyond those laid down under Section 15J of the SEBI Act, 1992.

12. *Noticee no. 2* has also filed its written reply to the SCN, wherein legal submissions identical to those made by *Noticee no. 1* have been made, with certain different factual aspects which are enlisted herein below:

(i) Keynote Enterprises Private Limited (*Keynote/Noticee no.2*) was incorporated in the year 2009 and its present Directors are Mr. Rashesh Purohit and Mrs. Sonal Rashesh Purohit, who are holding 50% each.

(ii) The investment decision to buy the shares of Sri Adhikari Brothers Television Network Limited (**SABTNL**) was made based on the analysis of financial results and market perception and the said investment was done due to the availability of funds. The *Noticee* had made some investments in the shares of other companies also.

(iii) As on March 31, 2017, the *Noticee* was holding 2442230 shares of TVVL which came to its credit pursuant to the demerger of SABTNL w.e.f. January 15, 2016.

(iv) The *Noticee* did not sell even a single share during the true UPSI period (the UPSI period as per the *Noticees)* which indicates that the *Noticee* cannot be considered to be a person who can reasonably have access to the alleged UPSI.

(v) The transactions in the scrip of TVVL have been executed by Mr. Rashesh Purohit (*Noticee no. 1*) based on his commercial wisdom without any *malafide* intention.

(vi) The *Noticee* has sold only 70,000 shares of TVVL during the period of September 1, 2017 to September 27, 2017, which is only 2.86% of the total shares held by it as on August 31, 2017. At the end of trading hours of September 26, 2017, the *Noticee* was holding 23,72,230 shares of TVVL.

(vii) If the *Noticee* had prior information pertaining to the delay in servicing of loans by TVVL, it would have started selling the shares in July, 2017 (before UPSI period) itself when the share price was INR 315.84 and admittedly, the shares have been sold in September, 2017. Further, if the *Noticee* had insider information, it would not have sold only a miniscule percentage of its holdings.

(viii) The SCN does not adduce any evidence to show that the Director of *Noticee no. 2* was in constant touch with Mr. Markand Adhikari.

(ix) The *Noticee* was a regular investor in SABTNL group since the year 2011, which shows that it had a long-term view of the group.

(x) It can be seen that most of the trades happened in the period after the alleged "UPSI period". If the allegation of possession of UPSI were true, the *Noticee* would not have waited to sell all shares before the information became public.

(xi) The *Noticee* is neither a "holding company" nor an "associate company" or a "subsidiary company" of TVVL nor Mr. Markand Adhikari has ever been the Director of the *Noticee*.

(xii) The *Noticee* is not responsible for avoiding a loss of INR 39,07,796 as it did not sell shares during the true UPSI period.

13. The records of the present matter indicate that Inayata Constructions Private Limited (*Noticee no. 3*) and Chitra Deshmukh (*Noticee no.4*) vide their letters dated August 12, 2022 and August 19, 2022, have filed their respective replies, wherein the *Noticee no. 4* has adopted the submissions made by the *Noticee no. 3*. It is also noted that the said replies contain mostly those arguments which have already been summarised above in connection with the reply received from the *Noticee no. 1*. However, the submissions that are unique to the *Noticee nos. 3* and *4* are collectively highlighted hereunder:

(i) The *Notice no. 3* was incorporated in the year 2009 and its current Directors are Ms. Chitra Moreshwar (associated since the year 2012) and Mr. Mukeshbhai Jaintilal Bhatt, who are holding 50% shares each of *Noticee no. 3*. *Noticee no. 4,* Mr. Chitra Deshmukh is into media industry for the last 30 years and she has worked with Adhikari Brothers and professionally knows them since the year 1988.

(ii) The shares of SABTNL were purchased in the year 2011 and upon demerger, the shares of TVVL were received by the *Noticee no. 3*. As on September 30, 2016, the *Noticee no. 3* was holding 30,98,264 shares.

(iii) As the investment was made with a long-term view, more shares of TVVL were purchased by the *Noticee no. 3* on regular intervals, and as on March 31, 2017, it was holding 31,20,716 shares of TVVL. The further acquisition of shares was made in the price range of INR 160 per share to INR 265 per share, with the following details:

Table no. 7

Date	Quantity	Rate (in INR)	Value
Opening balance as on 01/04/2017	31,20,716		
24/05/2017	500	231.19	1,15,593
24/05/2017	1,000	230.85	2,30,853
25/05/2017	250	224.52	56,131.06
25/05/2017	242	239.40	57,935
01/06/2017	2,500	253.02	6,32,560
15/06/2017	6,050	250.85	15,17,642
15/06/2017	200	264.44	52,888.34
03/07/2017	2,266	315.84	7,15,690.77
03/07/2017	3,000	181.55	5,44,657
28/07/2017	716	237.11	1,69,774
28/07/2017	1,556	233.91	3,63,963.26
02/08/2017	2,200	233.33	5,13,316.50
08/08/2017	2,500	232.89	5,82,212.76
31/08/2017	9,000	160.30	1442705.79
Total holding as on 31/08/2017	**31,52,696**		

(iv) Out of the total number of 31,52,696 shares of TVVL held as on August 31, 2017, *Noticee no. 3* has sold only 1,05,000 shares during the period of September 01, 2017 to September 27, 2017 which constitutes 3.33% of the total shares held by it as on August 31, 2017.

(v) However, the *Noticee* has also purchased 6000 and 7000 shares of TVVL on September 15, 2017 and September 25, 2017, which is in complete contrast to the allegation of having access to the UPSI and selling of shares based on such UPSI. The same establishes that the shares were sold by the *Noticee* in the ordinary course of trading and not on the basis of UPSI.

(vi) The actual UPSI period ought to be from September 20, 2017 to September 21, 2017 and during such period, the *Noticee* had sold 50,000 shares which is a miniscule percentage (1.58%) of its total shareholding.

(vii) Vibrant Content Private Limited (VCPL), where also Ms. Chitra was one of the Directors, had financial transactions with TVVL and the said transactions happened due to the sale of media rights by VCPL to TVVL.

(viii) The total loan as per the sanction letter dated May 23, 2017 to VCPL was INR 27.66 Crore. The SCN inadvertently records that the guarantee amount for the loan was INR 627.88 Crore, which cannot be the case as the loan itself was INR 27 Crore.

(ix) The guarantee was extended by Mr. Markand on account of an old professional relationship with Ms. Chitra and no adverse inference can be drawn out of the same.

(x) Being one of the Directors of *Noticee no. 3*, Ms. Chitra (*Noticee no. 4*) was authorised to deal in securities on its behalf. All other operations of *Noticee no. 3* were looked after by Mr. Mukesh Bhatt and there was a Chinese wall within the functioning of *Noticee no. 3*.

(xi) Around 60% of the trades were executed after the alleged UPSI period which shows that the trades were *bonafide*.

(xii) The *Noticee* is neither a "holding company" nor an "associate company" or a "subsidiary company" of TVVL nor Mr. Markand Adhikari has ever been the Director of the *Noticee*.

(xiii) The *Noticee no. 3* cannot be held liable for the disgorgement of INR 23,35,826.

(xiv) No evidence has been adduced in the SCN to show frequent communication between the *Noticee no. 4* and Sri Adhikari Brothers.

14. In order to deal with the aforesaid contentions as have been made by the *Noticees* who have been charged with violations of provisions of SEBI Act, 1992 and PIT Regulations, 2015, it would be apposite to refer to the appropriate legal provisions as well other provisions relevant for the present case, which are reproduced herein below for the sake of ready reference and convenience:

SEBI Act, 1992
Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.
12A. No person shall directly or indirectly—

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

PIT Regulations
Regulation 2(1)(d)(i): connected person" means,-
(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.
(ii) Without prejudice to the generality of the foregoing, the persons falling with the following categories shall be deemed to be connected persons unless the contrary is established-
(a) an immediate relative of connected persons specified in clause (i);

Regulation 2(1)(g):
"insider" means any person who is:

i) a connected person; or

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

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

***Regulation 2(1)(l):** trading means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and 'trade' shall be construed accordingly.*
***Note**: Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term 'trading' to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging, etc. when in possession of UPSI.*

***Regulation 2(1)(n)(iii):** 'unpublished price sensitive information' means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:*
(i) financial results;
(ii) dividends;
(iii) change in capital structure;
(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
(v) changes in key managerial personnel.
(vi) material events in accordance with the listing agreement.
NOTE: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information."

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

Regulation 4(1): Trading when in possession of unpublished price sensitive information.

No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information …'

15. Before I move on to evaluate and adjudge the present matter on its merits, I observe that a preliminary contention has been raised before me, that contemplation of multiple actions in the SCN viz., issuance of directions and imposition of penalty are in gross violation of Article 20 (2) of the Constitution of India which lays down protection from double jeopardy. So far as the said contention is concerned, I note that the fundamental rights enshrined under Article 20 (2) of the Constitution of India read as: "*No person shall be prosecuted and punished for the same offence more than once*".

16. A bare reading of the said Article indicates a second "punishment" for the same offence is prohibited by launching any "prosecution" for the said "offence" for a second time. Thus, the proceedings prohibited by virtue of the said provision are of criminal nature. Further, in order to seek protection under Article 20 (2), it is imperative to demonstrate that: (i) there was a previous prosecution; (b) as a result of which the accused was punished; and (c) the punishment was for the same offence for which the present proceedings are going on. Thus, the delinquent has to satisfy the presence of all the above three factors so as to seek protection under Article 20 (2) of the Constitution of India.

17. I note that there is no submission from the *Noticees* to project that the present proceedings before me is in the nature of criminal proceedings. Further, it is a settled law that proceedings under Section 11B of the SEBI Act, 1992 as well as under Chapter VI-A of the SEBI Act, 1992 are civil in nature. In this context, it would be worthwhile to refer to one such judgment which clearly identifies the nature of proceedings under the SEBI Act, 1992:

(i) SEBI Vs. Cabot International Capital Corporation [(2004) to Comp L J]- Hon'ble Bombay High Court has *inter alia* observed as: "*the adjudication for imposition of penalty by Adjudication Officer, after due inquiry, is neither a criminal nor a quasi criminal proceeding. The penalty leviable under this Chapter or under these sections, is penalty in cases of default or failure of statutory obligation or in other words, breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the regulations, there is not element of criminal offence or punishment as contemplated under criminal proceedings*."

18. Therefore, in the light of the above discussion, it clearly emerges that the present proceedings contemplating issuance of directions as well as the imposition of penalty on the *Noticees* for the alleged violations being primarily of civil nature, and are thus not hit by the double jeopardy principle listed by the Noticee. In view of the same, the argument taken by the *Noticees* in the said deserves to be rejected.

19. After deciding the preliminary issue raised by the *Noticee,* I now move on to adjudge the merits of the present case. A careful perusal of the contents of the SCN reveals that the alleged UPSI in the present case has emanated in consequence to default in repayment of the loan and non- submission of NDS by the *Company* that ultimately led to downward Rating of the 'Long Term Bank Facilities-Term Loan for INR 24.39 Crore' revised from CARE BBB- (SO) to CARE D.

20. It is observed that in the present case, the *Noticees* have resorted to myriad arguments in their defense, however, notably, no argument whatsoever has been made to dispute that the alleged information was not an UPSI. The submissions of the *Noticees* are primarily aimed at disputing the UPSI period and further justifying that they had traded in the scrip based on the analysis of financial results and market perception in the scrip of the *Company*. To proceed further in the matter, it is to be first noted that the definition of the term 'unpublished price sensitive information' as laid down in the Regulation 2 (1) (n) of PIT Regulations, as applicable to the relevant period, encapsulates all events that are material, as per the listing agreement as well as the relevant provisions governing the securities market. It is not disputed that the

Company had furnished the said material information about the revised rating by CARE to the Stock Exchanges for dissemination in terms of Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the "**LODR Regulations**") which envisages dissemination of information which are material in the opinion of the Board of Directors of the concerned company. I observe that the same leaves no shred of doubt that the alleged information was indeed a material and also a price sensitive information that was rightly disclosed so by the *Company* to the stock exchanges.

21. Further, it is observed from the record that the price of the scrip of the *Company* witnessed a fall as soon as the said information was disseminated through the stock exchanges. In fact, to put it succinctly, after the disclosure of the said information (regarding rating downgrade) was made, the price of the scrip decreased by around 4.99% and it closed at INR 119.85 on September 28, 2022, and ultimately, the price spiralled down in the next 22 trading sessions to close at INR 41.20 on October 31, 2017 thereby witnessing a fall of 65.62%. I may also add here that the definition of UPSI under the PIT Regulations includes information relating to a company that is likely to materially affect the price of its securities, once it is disclosed. In the present case, as stated above, the price of the scrip did witness a shake immediately after the disclosure, which further corroborated the latency of the materiality carried by the said news. As noted above, in terms of Regulation 2(1) (n), any information that is related to a company or its securities, directly or indirectly and that is not generally available, which upon becoming generally available, is likely to materially affect the price of the securities qualifies to become a UPSI under the PIT Regulations. Under the circumstances, having considered the facts of the matter in the light of the above definition, I am of the firm opinion that the information related to the revised rating by CARE which finds its genesis from the default of the loan by the *Company,* was certainly a price sensitive information.

22. Moving on further, it is noted that the *Noticees* have vehemently contested the UPSI period as alleged in the SCN. Before the said contention is dealt with, I must lay my hands on the background of the whole interaction of CARE with the *Company* which ultimately gave birth to the UPSI in the present matter.

23. As a brief background, I may note that the regulatory ecosystem of specialized agencies termed as Credit Rating Agencies (**CRAs**) has been crafted so as to provide a kind of hand-holding to the investors in making informed decisions. Such agencies, by their acumen, are on a better footing to evaluate financials, risks and other parameters associated with a listed entity and also have the competence to crystallize the said factors for the consumption of the general investing public.

24. In pursuance of the said spirit, vide a circular dated June 30, 2017 issued by SEBI, the surveillance mechanism to be followed by the CRAs for identifying potential defaults by issuer companies was laid down. The said circular *inter alia* stipulates that in order to enable timely recognition of default by the CRAs, the CRAs shall seek a "No Default Statement (NDS)' from the issuer company at the end of each month and the company has to provide such NDS to the CRA on the first working day of the next month. Such NDS has to explicitly confirm to the CRA that the issuer company has not delayed any payment of interest or principal of the loan amount in the previous month.

25. The idea behind mandating such a requirement is self-evident, i.e., to take cognizance of any delay/default by an issuer company in servicing its debt, so as to efficiently track all the important changes that may be noticed in the affairs of a listed entity which may have a bearing on the investment decision into such company.

26. It is noted from the SCN that the *Company* was required to furnish the NDS for the month of August, 2017 on September 01, 2017. As the *Company* did not submit the requisite

NDS, CARE issued various emails to the *Company* during the period of September 01, 2017 to September 19, 2017. The said emails categorically sought the NDS for the month of August, 2017 from the *Company* and also stated that the requisition for such NDS is being made in terms of the SEBI's Circular dated June 30, 2017.

27. I find it relevant to mention here that at the relevant times, the *Company* had availed long term loan facilities from three banks viz., Indian Overseas Bank (INR 9.88 Crore and INR 10.01 Crore); Canara Bank (INR 2.70 Crore) and Central Bank of India (INR 1.80 Crore).

28. It was noticed that even after persistent efforts, CARE was not able to elicit any response in the form of the NDS from the *Company*, hence, it decided to conduct due diligence on September 20, 2017 with one of the lender banks, i.e., Indian Overseas Bank. The said bank informed CARE that the *Company* has delayed in servicing its debt commitments towards the bank. The said comments of the bank were also accepted by the *Company albeit* with a clarification that the said delay is attributable to the slowdown in the overall economy due to the introduction of Goods and Service Tax (GST).

29. Based on the feedback given by the Indian Overseas Bank to CARE as well as the comments offered by the *Company*, the rating of the term loan facilities availed by the *Company* was revised by CARE on September 21, 2017, from "CARE BBB- (SO)" to "CARE D". The said revision in rating was intimated by CARE to the *Company* vide email dated September 21, 2017. Simultaneously, CARE has also disclosed the revised rating on its website. It has been recorded in the preceding part of the order that the information with respect to the revision of the rating by CARE was later on disclosed by the *Company* on the stock exchanges platform, *albeit* on September 27, 2017.

30. I note that based on the unfolding of the afore-narrated critical events as elucidated above, the SCN alleges that the period of September 01, 2017 to September 27, 2017 is the

period of UPSI. The SCN avers that since the day CARE started following up with the *Company* for the requisite NDS (September 01, 2017) till the day the revised rating was disclosed by the *Company* on the stock exchange platform (September 27, 2017), the said price sensitive information remained unpublished.

31. Insofar as the period of UPSI, the *Noticees* have contended that the SCN wrongly calculates the UPSI period. In order to buttress the said submissions, various arguments have been offered such as:

(i) The information with respect to the revision of the rating originated outside the *Company* and the generation of such information was completely in the control of CARE;

(ii) In terms of the facts stated in the SCN, the preparation of the credit report which culminated in downgrading commenced only on September 20, 2017, when the officials of CARE got into contact with the bankers of TVVL; and

(iii) The alleged UPSI got published by CARE on its website on September 21, 2017 in terms of SEBI's rules /circulars governing the functioning of CRAs, therefore the UPSI period ended on the said day.

32. It is an undisputed fact that the *Company* was having a term loan from Indian Overseas Bank and the repayment towards the said loan was delayed by the *Company*. By virtue of the said delay, the *Company* defaulted and could not give a No Default Statement for the month of August, 2017 to CARE on September 1, 2017 and on further due diligence by CARE, the information about default on loan came into its cognizance on September 20, 2017. After taking feedback from the *Company* about the loan default, CARE, ultimately revised it earlier rating on September 21, 2017, disclosed the same to the *Company* as well as uploaded on the website of CARE, as per the extent Circular of SEBI.

33. The *Noticees* have vehemently contested before me that the alleged UPSI emanated from the end of CARE and thus the period for which such information remained unpublished was from September 20, 2017 (date of due diligence by CARE) to September 21, 2017 (date of publication by CARE). After carefully pondering upon the submissions, I find that the *Noticees* have tried to project that the loan default by the *Company* and the revised rating are two different and totally independent events. However, when I confront the said submissions with the regulatory framework and intent of the Circular of SEBI as elucidated in the present order, it clearly emerges that the loan default committed by the *Company* was the event that got finally translated into a revised credit rating of the Term Loan. As discussed earlier, the Circular of SEBI which mandates issuance of NDS by all listed companies was issued so as to bring to the fore, all such facts pertaining to the loan repayments/defaults by the companies. Going by the inherent spirit of the said Circular, the very fact or information about the loan default by the *Company* was a serious price sensitive information that culminated into revised rating subsequently (after due diligence & transfer scrutiny) by virtue of the regulatory mandate entrusted upon CARE. Therefore, the revision of credit rating cannot be treated as an UPSI in isolation or independent of the source information (loan default) that triggered the revision of credit rating and the subsequent rating action by CARE has to be viewed as continuation of the original event/information about the default committed by the *Company* in August 2017 for which NDS was to be furnished to CARE on September 01, 2017.

34. Insofar as the contention of the alleged UPSI being generated outside the *Company* is concerned, I have to reiterate that the event of revision in rating by CRA is a rating action taken by CARE because of credit default noticed on the part of the *Company* i.e. the failure to service its loan on a timely basis which happened within the *Company*, unknown to the public till CARE revised its rating which had been published by the *Company* on September 27, 2017. Since, the

loan was availed by the *Company*, default in repaying the said loan or submission of NDS occurred only on the part of the *Company* a material price sensitive event that was unknown to the public, hence, it is not reasonable to conclude that event has occurred outside the *Company* so as not to qualify to be held as UPSI. The aforesaid events are not independent of the *Company* and the CRA is not free to revise the rating without there being any change in the facts and status attached those loans availed by the *Company*. Therefore, the submission that the UPSI does not qualify to be held as UPSI as the revision of rating originated outside the *Company* and the generation of such information was completely in the control of CARE is not tenable. I observe that the event of revised rating and the act of loan default are not mutually exclusive or independent events as the revised rating, in the present case could not have emerged without the act of loan default and non-submission of NDS by the *Company* on September 1, 2017 as per the regulatory mandate of SEBI. Additionally, in terms of the definition, an UPSI ought to be related directly or indirectly to a company or its securities and it is not material whether the said information was generated inside or outside the company. Under the circumstances, the above contention that the event of default and consequent revision in rating occurred outside the company does not fall in the category of UPSI under regulation 2(1) (n) of the PIT Regulation is not tenable.

35. In this respect, it is noted that in the case of *V.K. Kaul Vs. SEBI (2012 SCC Online SAT 203),* the Hon'ble SAT, while rejecting the contention that the acquisition of shares of Orchid Chemicals and Pharmaceuticals (Orchid) by Solrex Pharmaceuticals Ltd. (Solrex) is equally a UPSI for the entities connected to Solrex as well. It has been held that for information to be termed as UPSI, it need not be generated by the company Orchid and therefore trades in the shares of Solrex sufficiently fell within the mischief of insider trading. Under the circumstances, by no stretch of arguments, it can be said that the information which emerged at the end of

CARE cannot be termed as UPSI as the material events leading to such events undisputedly took place in the *Company* itself and further, the UPSI of the revised credit rating was also directly related to the *Company* and its loan default, thus satisfying the essential ingredients of the definition of UPSI.

36. It may be noted in the present case that the NDS for the month of August, 2017 was due from the *Company* w.e.f September 01, 2017. Had the *Company* conveyed to CARE on September 1, 2017 its inability to issue the NDS as it had already defaulted on the loan in August 2017, the revised downgraded rating by CARE would have come out immediately thereafter. However, the *Company* did not pay any heed to the constant follow ups by CARE till September 19, 2017 and ultimately, compelled CARE to approach the lender bank on September 20, 2017 to verify the status of the loan repayment by the *Company*. After the said bank informed about the loan default already committed by the *Company,* CARE had to take the comments of the *Company* on the said feedback of the bank pursuant to which, the revised rating was issued by CARE on September 21, 2017. I note that in terms of Regulation 30 (6) read with Clause A (3) of the Schedule III of the LODR Regulations, the *Company* was under a bounden obligation to publish the revised rating on the Stock Exchange platform within a period of 24 hours. However, the said information was kept under wraps till a disclosure dated September 27, 2017 was made by the *Company* on the stock exchanges. Thus, the period for which the information with respect to the loan default and the consequent revised rating remained unpublished or unreported by the *Company* was the period of September 01, 2017 (when it failed to submit NDS) to September 27, 2017 (when it disclosed the revised rating based on its loan default). However, I have to acknowledge the fact that CARE, in terms of the regulatory mandate of SEBI had, published the revised rating on its (CARE's) website on September 21, 2017, a fact that deserves to be factored into for the determination of UPSI period.

37. I observe that in the disclosure-based realm of the securities market, the listed entities have been obligated to make disclosures through the stock exchange websites for the consumption of investing public. The adherence to the timelines and compliance with the directives of making true and correct disclosures by the listed entities undoubtedly form the bedrock of the decision making process by any investor. The extant regulatory framework as envisaged under SEBI (LODR) Regulations and other regulations as well, is quite stringent which not only prescribes strict time line for making various disclosures, but have also made provisions for various enforcement actions as deterrence to and to disincentivize delayed disclosure or non-disclosures. In view of a comprehensive disclosure mechanism being in place, it is but natural that the investing public will primarily look forward to the disclosures coming from time to time from the mouth of the *Company* itself and for which, the investors pursue the disclosures made on the stock exchanges. The above observation of mine also takes strength from the fact that the applicable law does not lay down an exemption for a company from making a disclosure on the stock exchange website merely because another entity (Credit Rating Agency) has already published such a piece of information on its website nor it even prescribes that the listed company may just make a cross reference to the disclosure made by another registered Intermediary about the listed *Company* as in this case the Credit Rating Agency published on its website about the revised rating of the *Company* as per separate mandate given to it by SEBI. It is seen that despite mandating the Credit Rating Agencies to upload and publish the ratings on their websites, the *Company* has been given a separate specific format for making the disclosure on the stock exchange website.

38. By virtue of the extant regulatory provisions, more particularly the provisions of LODR Regulations mandating disclosure of revised rating within 24 hours, it is *prima facie*, not correct to state that because that the UPSI in the present case was "published" by CARE on its website on

September 21, 2017 the UPSI period came to an end on September 21, 2017, as admittedly, the *Company* published the said information on the stock exchange platform only on September 27, 2017.

39. Nevertheless, I also note that the information published by CARE and the disclosure made by the *Company* were one and the same. At this stage, my attention gets drawn to another definition in the PIT Regulations, i.e., the term "generally available information", which has been defined as:

"generally available information" means information that is accessible to the public on a non-discriminatory basis.

NOTE: It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.

40. As can be noted from the above quoted definition, any information which is accessible to the general public on a "non-discriminatory basis" shall constitute generally available information. In the present case, it has been noted that the revised rating was published on the website of CARE and there is nothing on record to show that the said website was not freely accessible by the general public without any kind of discriminatory hurdle. Going by the same, I am of the view that the benefit of doubt to the *Noticees* can be extended insofar as the last day of UPSI is concerned and, in the peculiar sequence of facts of the present matter, it can be said that the UPSI period needs to be considered as starting from September 01, 2017 to September 21, 2017.

41. It has also been submitted by the *Noticees* that the UPSI period ought to be considered as September 20, 2017 to September 21, 2017. It has been submitted that the preparation of the credit report by CARE began only on September 20, 2017 as on the said day, officials of CARE had contacted the officials of the Indian Overseas Bank. Insofar as the contention regarding

starting day of the UPSI is concerned, I have already observed earlier that the *Company* was obligated to provide the NDS on September 01, 2017 to CARE and for seeking the same, CARE started sending emails to the *Company* on the even day, and continued to follow up with the *Company* through emails till September 19, 2017. In this regard, while discussing the end date to UPSI period in the preceding paragraphs, I have discussed in detail about the origin of the UPSI, holding that the underlying events leading to the alleged UPSI (revision of rating) actuals commenced on September 01, 2017, when the CRA started following up with the *Company* and upon not finding any concrete and satisfactory response, it decided to undertake the due diligence with the lenders. Consequently, the process that commenced, through verification with Bank reached its logical conclusion with the disclosure of revision of rating by CARE on September 21, 2017. In view of the same, I find that the above argument of the *Noticees* is not convincing enough to be accepted. At this juncture, the narration in the SCN that the MD of the *Company*, was in possession of the UPSI and was closely connected to the *Noticees* and was in touch with them during the relevant period, further provides an impetus to the alleged acts of trading in the scrip of the *Company* to be held as trading done while in possession of the said UPSI. Under the circumstances, given the undeniable fact that the *Noticees* shared a very close connection with the MD of the *Company*, the probability of expected downgrading of rating of the loan and communication thereof from the MD of the *Company* to the other *Noticees* becomes apparent after examination of the peculiar trading pattern followed by these *Noticees* during the relevant period of UPSI. It may be added here that in substance, the event of default in servicing the loan and non-furnishing of the NDS to CARE were the factors that were sufficient in themselves for any insider to anticipate the probable outcome. Under the circumstances, I observe from the pattern of trading (heavy selling of shares) that the same was a clear action to insulate themselves from the adverse outcome, and thus the said acts of the *Noticees* of trading in

the scrip of the *Company* are sufficient to hold them to be influenced by the possession of the UPSI which was indeed negative in nature.

42. I further note that by referring to a letter dated August 22, 2019 addressed by CARE to SEBI, the *Noticees* have made a submission that information pertaining to non-furnishing of NDS was disclosed by CARE on its website on September 07, 2017 itself and therefore, the allegations made in the SCN cannot sustain. After carefully perusing the said submission, I observe that the same deserves rejection on the following broad grounds:

i. The UPSI in the present case is the "revised rating by CARE", and not the "non-submission of NDS". One may appreciate that though both the aforesaid events are intricately connected to each other, however, it cannot be said that the first event, i.e., non-submission of NDS would certainly lead to a downgraded rating. As has already been elucidated earlier, the revised rating was issued by CARE based on the due diligence conducted by it with the lender bank of the *Company* and it was not a direct result of the non-submission of NDS. It may also be stated that the default made by the *Company* was subject to regularisation by repayment of loan by the *Company* and any such possible development would not have resulted in downgraded rating by CARE.

ii. The aforesaid observation of mine is further fortified by the absence of any disclosure made by the *Company* for non-furnishing of the NDS to CARE, which would imply that the *Company* also did not consider this to be a material or price sensitive event.

iii. The information that was purportedly published by CARE on September 07, 2017 was not limited to TVVL alone, but the said notification was a generic notification issued by CARE therein publishing an entire list of companies who had not furnished the NDS to it for the month of August, 2017. This list ipso facto carried no evidence that CARE had decided to revise/downgrade the rating of the *Company* on that day of publication of such

list itself. Thus, the said list of non-submission of NDS that was published by CARE as per the regulatory instructions on September 07, 2017 was not capable of creating the PSI, i.e., a revised/downgraded rating for the *Company,* as on that date, no one was knowing for sure if the *Company* was heading towards default of repayment of its loan and consequentially towards a revised rating by CARE.

iv. It is no one's case that the trades executed by the *Noticees* were emanating from/motivated by the publication of non-submission of NDS. There does not appear to be any major selling of shares on the part of the *Noticees* immediately after the date of disclosure of fact of non-submission of NDS (September 07, 2021). Rather, if the trading pattern of the *Noticee nos. 1, 2* and *3* is carefully examined, it shows a greater tendency to sell the shares of TVVL on September 18, 2017, i.e., just 2 days before the publication of revised rating by CARE on its website (September 21, 2017), (which has been taken to be the last date of the UPSI period). It is noted that the *Noticee no. 1* had sold 45,000 shares; *Noticee no. 2* had sold 50,000 shares and the *Noticee no. 3* had sold 5,000 shares on September 18, 2017, and for the *Noticee no. 1* and *2*, the trades executed on September 18, 2017 contained the highest number of shares during the investigation period, indicating that around the dates of their sale trades, these *Noticees* had come to know that CARE is going to revise the rating of the *Company,* because these *Noticees* were also very well aware that despite the fact that CARE had notified the *Company* in the list of non-submission of NDS, the *Company* had taken no steps either to repay the loan or to submit the NDS till those dates. The trades are self evident of the fact that the *Noticees* indulged into sale of shares of the *Company* only when they were convinced that the rating of the *Company* was bound to be revised/downgraded, for the inaction of the *Company* about which they were very much aware of from the source of Mr. Markand Adhikari.

v. Thus, to put the chronology of facts into context, it can be stated now that the UPSI in this case which is revision/downgrading of rating of the *Company* by CARE, got finally crystallised as well as published in the public domain by CARE on September 21, 2017 and this UPSI first germinated on September 01, 2017 when the *Company* failed to submit its NDS to CARE implying thereby that if the *Company* does not meet its repayment obligations and submits its NDS to CARE, it will be liable for a revision of rating. The fact and wisdom about the future course of action of the *Company* to discharge the aforesaid liability was only known to the entities who were managing the affairs of the *Company*. Therefore, notwithstanding the publication of the list of the companies which had not submitted the NDS, the *Company* had two options left with it- (i) to pay the dues and submit the NDS or (ii) not pay the dues and not submit the NDS, which was not known to the public between September 01, 2017 to September 21, 2017. From the trading pattern of the *Noticees* closer to the revision/downgrading of the rating, one can clearly observe that the trades were undertaken while in possession of a certain fact that the *Company* has chosen the path of not repaying and not submitting the NDS which was bound to lead to revision of rating, which eventually happened on September 21, 2017. The *Noticees* have not brought out specifically any information based on which it could be held that the revision of rating was a foregone conclusion and their trading was motivated by the said generally available information. Under the circumstances, I observe that a disclosure made by CARE on September 07, 2017 will not have any bearing on the actual UPSI as alleged in the SCN as nothing has been crystallised by the time to hold that the UPSI was generally available to the public at large.

43. After arriving at a decision that the information of revised rating was a UPSI, and further arriving at a revised period of UPSI (September 01, 2017 to September 21, 2017), my next

mandate is to adjudge as to whether the *Noticees* are insiders and whether the trading done by them falls in the realm of insider trading.

44. In this regard, I observe that the individual *Noticees* in the present case viz., *Noticee nos. 1 (*Rashesh Purohit*)* and *4* (Chitra Deshmukh*),* have been alleged to be insiders by virtue of their association with Mr. Markand Adhikari, the MD of the *Company* during the relevant time. It has been admitted by *Noticee no.1* in his statement dated February 24, 2021 recorded during the investigation that *Noticee no. 1* and Mr. Markand Adhikari are cousins[1]. Apart from the same, the SCN also records that the *Noticee no. 1* had vide his letter dated September 30, 2019 acknowledged having borrowed a sum of INR 50 Lakh from Mrs. Kanchan Adhikari (wife of Mr. Markand Adhikari) on September 05, 2017 and in terms of the statement of Mr. Markand Adhikari dated February 16, 2021, the said amount was transferred by Mrs. Kanchan Adhikari to *Noticee no. 1* with the consent and knowledge of Mr. Markand. Lastly, Mr. Markand Adhikari has been found to have stood as a personal guarantor for the loan taken by Keynote Enterprises Private Limited (*Noticee no. 2*) where both *Noticee no. 1* and his wife are the Shareholder-Directors.

45. Similarly, *Noticee no. 4* in her statement dated December 09, 2019 has admitted that she professionally knows Adhikari Brothers (Mr. Markand Adhikari and Mr. Gautam Adhikari) since the year 1988 and that she has worked in their Serials also. Besides, one of the companies where *Noticee no. 4* was a Director during the relevant time viz., Vibrant Content Private Limited (VCPL), has been found to have financial transactions with the *Company*. This apart, for a loan taken from the Central Bank of India by Inayata Constructions Pvt. Ltd. *(Noticee no. 3)*, Mr. Markand Adhikari has stood as one of the Guarantors.

46. Insofar as the alleged connection of the *Noticee nos. 1* with Mr. Markand Adhikari is concerned, I note that the *Noticee no. 1* has not denied/disputed the said connection imputed in

[1]*Mother of Mr. Markand Adhikari is sister of the father of Noticee no. 1*

the SCN. It has been submitted that the funds taken from Mrs. Kanchan Adhikari were for business purposes and to repay some other loan, and the said amount was later on repaid to Mrs. Kanchan in instalments, the last one being paid on June 19, 2019. The *Noticee no. 1* has vehemently argued that SEBI ought to have produced material to show frequent communication between the parties and to support his claim has relied on the findings of the Hon'ble Supreme Court in the matter of *Balram Garg Vs. SEBI (supra).*

47. I observe that there is no dispute to the fact that Mr. Markand Adhikari, being Managing Director of the *Company* qualified to be a "connected person" and was also undisputedly in possession of the UPSI and was thus insider to the *Company* in terms of Regulation 2 (1) (d) (i) read with Regulation 2 (1) (g) of the PIT Regulations. Further, it is seen that not only Mr. Markand Adhikari is one of the relatives of *Noticee no. 1,* but also is apparently seen to be having frequent communication which is amplified by the fact that an amount of INR 50 Lakh was transferred from the account of his wife (Mrs. Kanchan Adhikari) to the account of *Noticee no. 1* during the UPSI period only and admittedly, *Noticee no. 1* was well aware of the said transaction and had given his "consent" for the said fund transfer. Further, the guarantee extended by Mr. Markand Adhikari to the loan taken by *Noticee no. 2* further compounds and strengthens the observation that the *Noticee no. 1* was having frequent communication with Mr. Markand Adhikari all throughout, as such personal gestures and financial accommodation such as advancing loan and standing personal guarantees to the loan availed by the *Company* of *Noticee no. 1* cannot be extended without frequent interaction with *Noticee no.1*.

48. I observe that the *Noticee no. 1* has placed heavy reliance on the judgment of Hon'ble Supreme Court in the matter of *Balram Garg (supra)* to contend that there is nothing on record to show frequent/constant communication between Mr. Markand Adhikari and him. In this connection, I observe that the said case is factually distinguishable in contrast to the facts of the

present case. In the said case, the Hon'ble Supreme Court had *inter alia* observed that there was some family partition based on which there was no point of interaction between the two parties. In the present case, however, there is nothing to show any kind of separation between the parties and rather, *Noticee no. 1* has *inter alia* admitted in his statement that his relationship with Mr. Markand was "cordial" and such that *Noticee no.1* could easily get financial assistance from the wife of Mr. Markhand during UPSI period. The fallacy in the aforesaid said argument is writ large on the very fact that on the day when *Noticee no. 1* executed his first trade in the scrip of the *Company (*September 05, 2017*)* during the investigation period, he had received INR 50 Lakh from none other than the wife of MD of the *Company* and admittedly, the said fund transaction was executed with the consent and knowledge of the MD of the *Company*.

49. Thus, multiple documentary evidence in the form of fund transfers, bank guarantees as well as deposition taken on oath, all individually as well as collectively, strongly and preponderantly the presence of frequent indicate communication between the *Noticee no. 1* and Mr. Markand Adhikari but for which the transactions they had between them especially during UPSI period could not have taken place. Therefore, in the absence of any evidence to the contrary to show that the MD of the *Company* was not in possession of the UPSI, or was not interacting/communicating with *Noticee no.1* during UPSI period. I see no reason to hold that the SCN is not successful in bringing home the charge that the *Noticee no. 1* was having access to/was in possession of the UPSI on account of having close and continuous association with the MD of the *Company* and was thus an insider of the *Company* in terms of Regulation 2 (1) (g) (ii) of the PIT Regulations. I further find it relevant to record that the instant proceeding is civil in nature and the standard of proof is preponderance of probability. Here, the test is to examine the evidence both documentary and circumstantial that have been presented to me and after taking cognizance of various undisputed I have facts about the *Noticee no. 1* and his

transactions/connection with the MD of the *Company*, I have to come to a finding as to whether in the eyes of an ordinary person, the happening of an event can be said to have happened or not. In the light of the above settled principle, when one finds that the MD of the *Company* was undeniably in possession of the UPSI and the *Noticee no. 1* besides being his cousin, was in constant touch with the MD of the *Company* for financial transactions or otherwise even during or around the relevant period, moreover, when someone looks at his trades in the scrip of the *Company* during the relevant period, these facts are sufficient enough for him to arrive at a conclusion, that the trades in the scrip of the *Company* were executed while in possession of the UPSI which he was capable of getting access to on account of his close connection and frequent information with the MD of the *Company*. Further, *Noticee no. 2* being an artificial person and being managed and controlled by the *Noticee no. 1,* also becomes an insider in terms of Regulation 2 (1) (g) (ii) of the PIT Regulations.

50. *Noticee no. 4* has also tried to build her fort of defence by relying upon the judgment of *Balram Garg (supra)*, however, as already observed by me above in the case of *Noticee no. 1*, the ominous evidence available in the form of her own statement recorded under oath acknowledging that she knows Adhikari Brothers (including Mr. Markand Adhikari) for the last 30 years; the very fact of fund transactions between VCPL and TVVL; and the guarantee extended by Mr. Markand Adhikari for the loan taken by VCPL from the Central Bank of India, all indicate strongly towards the close connection of *Noticee no.4* with the MD of the *Company* which would leave no doubt about their day to day interactions and communication with each other. I note that *Noticee no. 4* has placed much emphasis on the nature of the relationship with Mr. Markand Adhikari being "professional" in nature. I observe that the law governing insider trading does not lay down any demarcation between a personal or professional relationships and the demand of the law is to simply identify the existence of connection and interaction between

two entities, whatsoever its nature be, by virtue of which information pertaining to a company can be said to have been shared. In the present case, there are multiple factors in evidence of such interaction points and further, the date of sanction of the loan for which Mr. Markand Adhikari stood as guarantor, i.e. May 23, 2017 (a few months before the UPSI period) strengthens the preponderance on probabilities against the *Noticee no. 4* and constrains me to assume that *Noticee no.4* by virtue of the above stated decades old business & personal connection she has with the MD of the *Company* was frequently interacting with the MD of the *Company* Mr. Markand. Incidentally, as the trade details will show, the first trade executed by *Noticee no. 3* (the company controlled by *Noticee no. 4*) coincides with the first trade executed by Noticee no. 1, i.e., on September 05, 2017. Under the circumstances, I reiterate my aforesaid observations recorded for *Noticee no. 1*, and hold that like *Noticee no.1*, *Noticee no. 4* was having similar access to the UPSI through Mr. Markand, MD and was in possession of the said UPSI, and accordingly was an insider of the *Company* under Regulation 2 (1) (g) (ii) of PIT Regulations. Further, *Noticee no. 3* being an artificial entity controlled by *Noticee no. 4,* and the trades executed in the trading account of the *Noticee no. 4* cannot be treated as trades executed in the ordinary course of trading but were executed while having access to and having the possession of the UPSI.

51. It is also observed that when the trades executed by the *Noticee nos.1, 2* and *3* are seen in comparison to the total trading volume of the respective days, the comparison glaringly reflects that their trades constituted large percentage of the total trades executed in the scrip of the *Company* on the respective days. My aforesaid observation is being derived from the information that has been captured in the following table:

Table no. 8 - Trades executed on NSE

Sr. No.	Date	Noticee no. 1	Noticee no. 2	Noticee no. 3	Total day Volume of trading on NSE
I.	05/09/2017	35696	-	50000	237786
II.	18/09/2017	25000	40000	5000	219445
III.	25/09/2017	-	-	35000	141947
IV.	26/09/2017	-	-	15000	165395

Table no. 9 - Trades executed on BSE

Sr. No.	Date	Noticee no. 1	Noticee no. 2	Noticee no. 3	Total day Volume of trading on BSE
I.	05/09/2017	8758	-	-	63482
II.	13/09/2017	-	10000	-	77356
III.	14/09/2017	-	10000	-	56549
IV.	18/09/2017	20000	10000	-	130389

52. As seen from the above table, the sell trades executed by the *Noticees* in the scrip of TVVL on the days specified above, constituted large percentages of the total trades executed on those respective days. For instance, on September 25, 2017, the *Noticee no. 3* had sold 35000 shares of TVVL on NSE which constituted 24.65% of the total volume of the day (141947 shares). Thus, selling a large percentage of shares further demolishes the claim of having executed *bonafide* trades in the scrip of TVVL, and rather vindicates my aforesaid observation that the *Noticees* had started selling the shares of the *Company* under the influence of the UPSI about the impending revision/downgrading of the rating of the *Company*.

53. As noted above that out of the 4 *Noticees* in the present case, *Noticee nos.1, 2* and *3* have executed trades in the scrip of the *Company* during the UPSI period and the details of such trades

have already been captured in Table nos. 1, 2 and 3 of the present order. As a recap, I note that *Noticee no. 1* had sold 89454 shares of TVVL for a value of INR 1,45,43,100; *Noticee no. 2* had sold 70,000 shares for a value of INR 1,22,99,046 and the *Noticee no. 3* had sold 1,05,000 shares and had purchased 13,000 shares, thereby rendering the gross value of sales made by it at INR 1,54,05,026.

54. As can be noted from the aforesaid details, all the three *Noticees* have transacted in the scrip of TVVL during the investigation period in the unilateral direction of selling their shares, except for two purchase transactions of 6,000 and 7,000 shares executed by *Noticee no. 3* on September 15, 2017 and September 25, 2017 respectively. I note from the submissions of *Noticee no. 3* that these two purchase transactions prove that all the trades executed by it in the scrip of TVVL were not influenced by the alleged UPSI, as these purchase transactions are not aligned to the nature of the alleged UPSI.

55. As regards the aforesaid contention of *Noticee no. 3* is concerned, I observe that mere two trades totalling to 13,000 cannot be considered to be a "mitigating factor" leave alone a sole ground to exonerate the *Noticee no. 3,* as ultimately, the gross positions in one direction taken by *Noticee no. 3* can be seen to be in complete alignment with the nature of the UPSI. To illustrate, *Noticee no. 3* has purchased 7,000 shares on September 25, 2017, however, on the same day itself, it sold 35,000 shares and on the next day, another set of 15,000 shares was sold by it. Thus, the sale transactions of a large number of shares of TVVL by *Noticee no. 3* cannot be overshadowed by the two small buy transactions of large number of shares as done by it during the UPSI period, as the sale transactions are clearly aligned with the nature of UPSI. Under the circumstances, the said two buy trades of *Noticee no. 1* do not carry any strength in the present case nor have these two buy trades been explained properly with supporting evidence or analysis to suggest as to why the above buy orders were made and when the *Noticee no.3* itself decided to

buy, whether inadvertently or otherwise, why at the same time a decision to sell 35000 shares of the *Company* was made, leaving thereby much to be answered by the *Noticee*, which it has not been able to do to my satisfaction.

56. Insofar as the conduct of the *Noticees* as exhibited by their trading pattern is concerned, I note the following with respect to the overall trading done by the *Noticee nos. 1, 2* and *3* during the revised UPSI Period and before as well as after the said period*:*

Table no. 10

	Noticee no. 1- Trading details based on value terms							
Period	Other Scrips (Sell)						TVVL (Sell)	
	BSE		NSE			% activity to gross value across mkt	Total Value (INR)	% activity to gross value across mkt
	No. of Scrips	Value (INR)	No. of Scrips	Value (INR)	Total Value (INR)			
Pre UPSI	0	0	2	32,308	32,308	51%	30,808	49%
UPSI Period	0	0	0	0	0	0%	1,45,43,100	100%
Post UPSI	0	0	1	1,35,551	1,35,551	100%	0	0%
	Noticee no. 2 - Trading details based on value terms							
Period	Other Scrips (Sell)						TVVL (Sell)	
	BSE		NSE			% activity to gross value across mkt	Total Value (INR)	% activity to gross value across mkt
	No. of Scrips	Value (INR)	No. of Scrips	Value (INR)	Total Value (INR)			
Pre UPSI	0	0	0	0	0	0	0	0
UPSI	0	0	0	0	0	0	1,22,99,046	100%
Post UPSI	1	7,90,074	1	56,40,000	64,30,074	39%	1,00,30,552	61%
	Noticee no. 3- Trading details based on value terms							
Period	Other Scrips (Sell)						TVVL (Sell)	
	BSE		NSE			% activity to gross value across mkt	Total Value (INR)	% activity to gross value across mkt
	No. of Scrips	Value (INR)	No. of Scrips	Value (INR)	Total Value (INR)			
Pre UPSI	0	0	0	0	0	0	0	0
UPSI	0	0	0	0	0	0	83,75,013	100%

Post UPSI	1	1,90,668	2	16,88,034	18,78,702	19.28%	78,64,645	80.72%

Table no. 11

	Noticee no. 1 -Trading details based on quantity							
Period	Other Scrips				TVVL			
	Gross Buy Qty.	% to total gross buy Qty. of all scrips	Gross Sell Qty.	% to total gross sell Qty. of all scrips	Gross Buy Qty.	% to total gross buy qty. of all scrips	Gross Sell Qty.	% to total gross sell qty. of all scrips
Pre UPSI	0	0	187	56.5%	0	0	144	43.5%
UPSI Period	0	0	0	0	0	0	89,454	100%
Post UPSI	0	0	400	100%	0	0	0	0
Noticee no. 2 - Trading details based on quantity								
Period	Other Scrips				TVVL			
	Gross Buy Qty.	% to tota gross buy Qty. of all scrips	Gross Sell Qty.	% to total gross sel Qty. of all scrips	Gross Buy Qty.	% to total gross buy qty. of all scrips	Gross Sell Qty.	% to total gross sell qty. of all scrips
Pre UPSI	0	0	0	0	0	0	0	0
UPSI	0	0	0	0	0	0	70,000	100%
Post UPSI	0	0	2,13,207	31%	0	0	4,72,230	69%
	Noticee no. 3 - Trading details based on quantity							
Period	Other Scrips				TVVL			
	Gross Buy Qty.	% to tota gross buy Qty. of all scrips	Gross Sell Qty.	% to total gross sel Qty. of all scrips	Gross Buy Qty.	% to total gross buy qty. of all scrips	Gross Sell Qty.	% to total gross sell qty. of all scrips
Pre UPSI	6,600	18.04%	0	0	29,988	81.96%	0	0
UPSI	0	0	0	0	6,000	100%	55,000	100%
Post UPSI	0	0	62,029	38%	7,000	100%	97,274	62%

- *Figures have been revised in the aforesaid tables as per revised UPSI period considered from September 01, 2017-September 21, 2017 and post UPSI period has been considered from September 22, 2017 to December 28, 2017.*

57. It is observed that during the UPSI period all the three *Noticees*, viz:- the *Noticee nos. 1, 2,* and *3* are found to have traded only in the scrip of TVVL and the *Noticee nos. 2* and *3* are seen to have not executed any trade on the securities market platform during the Pre UPSI period, i.e., June 01, 2017 to August 31, 2017; while the trading of *Noticee no. 1* in the scrip of TVVL during the Pre UPSI period is found to be only 49% of his total activity during such period. Moreover, the rest of the 51% of trading activity of *Noticee no. 1* was spread across two different scrips.

58. In the Post UPSI period (September 22, 2017 to December 28, 2017) as narrated in the SCN, *Noticee no.1* has not executed any trade in the scrip of TVVL, whereas the trading concentration of *Noticee nos. 2* and *3* in the scrip of the *Company* was restricted to 61% and 80.72% of their activities across the market.

59. As demonstrated above, the trading concentration of the three *Noticees (Noticee no.* 4 has not traded) has been found to be completely dominated by the trades in the scrip of TVVL Limited during the UPSI period. It is noted that no dispute to the factual position of said trades have been raised before me. I also observe that the shares of TVVL were being held by *Noticee nos. 1, 2* and *3* as a result of demerger of the business of SABTNL. It has also been claimed before me that the investment in the scrip of the *Company* was made based on financial results and market perception and the *Noticees* held a long term view on the shares of SAB group since the year 2011. The selling of shares of TVVL has been claimed to be done as ordinary investors and based on fund requirements.

60. I observe that the assertions made by the *Noticees* with respect to the reasons for making investment in SAB group companies and their long term perspective of such investment do not go hand in hand with their sudden act of selling of shares of TVVL during the UPSI Period. It is observed that the *Noticees* have not presented before me any financial or non-financial information to support the fundamentals of the scrip as may be available in public domain for holding a long term view on the scrip of the *Company* nor have they produced details of any pressing personal reasons which might have compelled them to change their "long term" view abruptly which led them to sell their shares in large quantities during the UPSI period.

61. To further examine the details presented before me, it is noted that *Noticee no. 3* has furnished a list of buy trades executed by it in the shares of TVVL during May 24, 2017 to August 31, 2017. Admittedly, no shares were sold by the *Noticee no. 3* during the said period.

From the said list, I note that shares of TVVL in the range of 200 to 9000 were purchased, the last trade having been executed on August 31, 2017 for 9000 shares at an average price of INR 160.30. It can be easily discerned from the said trades that the *Noticee no. 3* was bullish about the scrip of TVVL. However, a sudden U-turn in said bullish approach was exhibited by the *Noticee no. 3* when it sold 50,000 shares of TVVL on September 05, 2017 and ultimately it sold 1,05,000 shares till September 26, 2017.

62. At this stage, I would to refer to the Explanation to Regulation 4 (1) of the PIT Regulations which casts a rebuttable presumption that if a person trades in securities while in possession of UPSI, it would be presumed that such trades have been motivated by the knowledge and awareness of such UPSI. The proviso to the said Explanation lists out certain circumstances like block deal window trades between two persons who possess the same UPSI. In the present case, no such circumstances have been demonstrated by the *Noticees* to rebut the said presumption and only same vague statements have been made, like the shares were sold for personal fund requirements.

63. I observe that the avowed object of the PIT Regulations is to prohibit trading which is emanating from information asymmetry. To throw further, light I may refer to the order of Hon'ble SAT passed in the matter of *E. Sudhir Reddy vs. SEBI (Appeal no. 138 of 2011 decided on 16/12/2011),* wherein Hon'ble SAT has *inter alia* observed as: *".....However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying*

shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice." (underline supplied)

64. In the present case, there is no dispute to the fact that owing to their respective association/relationship and financial transactions as well, the *Noticee nos. 1* and *4* were having frequent communication/interactions with Mr. Markand Adhikari. It has also been elucidated in the previous paras as to how the information pertaining to default in servicing the loan that led to the revision of Credit Rating by CARE was a price sensitive information, which remained unpublished till September 21, 2017. The *Noticees* have not been able to persuade me by showing as to how their long term investment view in TVVL suddenly got diluted constraining them to go for selling the shares of TVVL in large numbers during the UPSI period. It has been strongly argued that had the *Noticees* been aware of the loan default by the *Company,* they would have started selling the shares earlier or would have sold all their shares instead of selling only a small percentage. However, in the present case one has to note that, the default by the *Company* in servicing the loan, *per se*, was not a Price Sensitive Information (PSI), but the expectation or likelihood of the credit rating of the loan getting downgraded by CARE which was within the knowledge of MD of the *Company*, and which ultimately happened, was the UPSI and this information to which the MD was privy, as outsiders would not know if and when the default will lead to revision of rating. As held by me earlier, the possibility of the said revised rating came into being within the *Company* on September 01, 2017 when persistent efforts were made by CARE, from September 01, 2017 onwards to scrutinize the status of loan repayments by the *Company*. I observe that the SCN alleges the trades executed by the *Noticees* during the period of

September 01, 2017 to September 27, 2017 to be in the nature of insider trading. However, as I have already made a finding that the period of UPSI was actually from September 01, 2017 to September 21, 2017, I hold the trades executed by the *Noticees* during the said period to be in the nature of insider trading. The claim of the *Noticees* having sold only a fraction of shareholding during UPSI period does not hold any water on the face of the facts of the present case, when the *Noticees* are seen to have sold a large number of shares quite in alignment with the adverse nature of the UPSI.

65. It is also noted that a vehement contention has been made before me that the shares sold by the *Noticees* were only the miniscule percentage of their respective shareholdings in TVVL, claiming further that their trading (selling of shares of TVVL) was done in an ordinary course. In this connection, I observe that the said claim of the *Noticee* is a not supported by complete factual details as they have merely provided the number of shares owned by them and the number of shares sold by them. In view of such limited details, I am constrained to lay my hands on the information pertaining to the shareholding of the *Noticees* and such information reveals that the said argument of having sold only limited percentage of their shareholding is not made with clean hands. I say so because the data provided by the Depositories indicate that large percentage of the shareholding of the *Noticees* was pledged at the relevant times, and the percentage of shares sold by them was glaringly high as compared to their total unencumbered shareholding. The said details are captured in the following table:

Table no. 12

Sr. No.	Noticee	Total shareholding	Total shares pledged	Total shares free from encumbrances	Total shares sold	Percentage of shares sold to the unencumbered shares
1.	**Noticee no. 1**	**5,92,780**	**5,00,000**	**92,780**	**89,454**	**96.14%**
2.	**Noticee no. 2**	**24,42,230**	**20,50,000**	**3,92,230**	**70,000**	**17.84%**
3.	**Noticee no 3**	**31,63,561**	**30,33,125**	**1,30,436**	**92,000**	**70.53%**

66. From the above details, I note that the claim of the *Noticees* that only miniscule percentage of their shareholding were sold during the alleged UPSI period, is belied from the above factual data which shows that the *Noticee no. 1* was able to sell around 96% of his unencumbered shareholding; *Noticee no. 2* was able to sell around 18% of its unencumbered shareholding and the *Noticee no. 3* was able to sell 70% of its shares which were unencumbered. Thus, the said facts showing strong inclination towards selling the shares when the *Company* has not been able to service its loan, support the case made in the SCN that the trading by the *Noticee no. 1* were in the nature of insider trading.

67. I may seek further guidance from a recent judgment of the Hon'ble Supreme Court in the matter of *SEBI Vs. Abhijit Rajan (C.A. no. 563 of 2020; date of decision: September 19, 2022*). In the said judgment, the Hon'ble Supreme Court has inter alia held as: "…*Additionally, the activity in which the insider was involved also determines his culpability for violation of* Regulation 3. *For instance, the sale by a person in possession of price sensitive information, at a time when the price is likely to take a plunge, will*

certainly be an attempt at taking advantage of or encashing the information….36. We agree with the contention of Shri Arvind P. Datar, learned senior counsel for the appellant, that the allegation of insider trading cannot be measured in terms of the value of the contracts terminated and the percentage of shares sold and that the theory of proportionality cannot be applied in such cases. The magnitude of what an insider did, in relation to the size of the company, may not have a bearing upon the question whether someone indulged in insider trading or not. But what is sought to be encashed by the insider should be an information which if published is likely to materially affect the price of the securities of the company." (underline supplied)

68. In the present case, the day (September 27, 2017) the *Company* made a disclosure about the revised downgraded rating of its term loan, its stock price started witnessing a downward trajectory. After the disclosure of the said information, the stock price took a hit by around 4.99% as it closed at INR 119.85. Further, it is also noted that from the period of September 20, 2017 to September 27, 2017, the price of the scrip was continuously witnessing a downfall as it was closing on: INR 169.65, INR 158.25. INR 142.45, 142.10, 140.20 and 126.20. Eventually, the price of the shares kept falling further as in the next 22 trading days, the price reached a level of INR 41.20, registering a fall of 65.62%. As I have already demonstrated, the *Noticees*, who have been basking in the glory of their long-term view on TVVL shares, have not been able to show as to what *bonafide* market based research led to such a reversal of their view, just before the publication of the PSI by the *Company*.

69. I may, at this stage also refer to the judgment of *Balram Garg (supra)*, wherein Hon'ble Supreme Court has *inter alia* held as: "*We accept Shri Singh's submission that in cases like the present, a reasonable expectation to be in the know of things can only be based on reasonable inferences drawn from foundational facts.*" In the present matter, there are many undisputable facts to draw a reasonable inference that the trades were executed by the *Noticees* while being in possession of the UPSI, and the same have adequately been discussed in the proceeding paragraphs of the present order. I

observe that the *Noticees* have relied upon many judgements like *Ambalal Vs. Union of India (supra)* so as to argue that the allegations in the present matter are based on conjectures. However, having examined the materials on record, I am of the firm view that sufficient evidence and unassailable facts have been adduced in the SCN, which lead to a reasonable inference against the *Noticee, therefore,* the reliance placed on the said set of judgments is completely misplaced on facts as well as law and is thus rejected. The *Noticees* have also relied upon the judgment of *HB Stockholdings Limited vs. SEBI (Appeal No. 114 of 2012) etc.,* and contended that connected entities have not been proceeded against. I observe that the said judgment is distinguishable from the present case factually and legally. Notwithstanding the same, it is noted from the records that actions have been contemplated against other connected entities, which adequately answers the submission of the *Noticees.* I may add here that the Hon'ble Supreme Court in the matter of *SEBI vs. Kishore R. Ajmera [(2016) 6 SCC 368]*, when confronted with the argument seeking parity in actions, had recognised the prerogative of SEBI to choose different actions against different entities by inter alia observing as: "…*if the primary authority had thought it proper to impose different penalties in different cases involving different set of facts, we do not see how and why interference should be made in present appeals*."

70. Under the circumstances, I have no hesitation to hold that the *Noticees* by their aforesaid trades have indulged in insider trading resulting in violation of Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations by indulging in trades in the scrip of TVVL during the period of September 01, 2017 to September 21, 2017.

71. Apart from the above, it is noted that the *Noticee no. 1* also faces the charge of violating Section 12 A (e) of SEBI Act, 1992 read with Regulation 3 (1) of PIT Regulations, as he allegedly communicated the UPSI to his brother Mr. Ram Purohit, who (Mr. Ram) has been noticed to have executed trades in the scrip of TVVL on behalf of his company Assent Trading Private

Limited. It is noted that to defend the said charge, *Noticee no. 1* has submitted that the burden of proof is on SEBI to establish any communication of UPSI by placing cogent evidence like emails, etc.

72. In this regard, I observe that the SCN refers to and relies upon a statement under oath made by Mr. Ram Purohit wherein it has been stated as: "*Rashesh Purohit is my real brother. My relations with him are cordial. Personally we meet once or twice in a year. We speak over phone occasionally*".

73. Thus, in view of the categorical admission of having occasional telephonic interactions between the two brothers who were having cordial relationships, no other evidence is required to discharge the burden of proof, so as to established that the UPSI was shared by the *Noticee no. 1,* who by virtue of his access to/having possession of the UPSI (from the MD of the *Company*) was an insider of the *Company*. I may also add here that the argument of the *Noticee* that SEBI ought to have furnished documentary evidence is also belittled from the fact that the communication of UPSI is forbidden by law, thus, there would not be any documentary evidence to prove the factum of communication, that too within the private confines of two brothers. Under the circumstances, I observe that on the basis of preponderance of probabilities based on the admission made by Mr. Ram Purohit in his statement, confirming that he enjoyed cordial relationship and was interacting with his brother, *Noticee no.1*, there is sufficient reason to hold that the *Noticee no.* 1 communicated the UPSI to his brother, Mr. Ram Purohit.

74. Having concluded that the *Noticees* have violated the provisions of the SEBI Act, 1992 and PIT Regulations as alleged in the SCN, I need to decide the following issues:

i. Calculation of the loss avoided by taking advantage of the UPSI by the *Noticee nos. 1, 2* and *3* and consequent direction of disgorgement of such amount;

ii. Direction to refrain from accessing the securities market and prohibiting the *Noticees* from buying, selling or otherwise dealing in securities for an appropriate period; and

iii. Imposition of monetary penalty for violation of the provisions as alleged in the SCN.

75. I note that the SCN has imputed the period of UPSI to be from September 01, 2017 to September 27, 2017 and has considered the trades executed during the said period to be insider trading. However, as the period of UPSI stands modified to September 01, 2017 to September 21, 2017, it would be in the interest of justice to consider only those trades which have been executed within the aforesaid modified period of UPSI. Accordingly, the only departure from the SCN will be made in revising the calculations for trades of *Noticee no. 3*, only, since the *Noticee no. 1* and *Noticee no. 2* have in any case not traded after September 21, 2017 (the revised last date of UPSI period). Therefore, the gross number of shares sold (no. of shares sold- no. of shares bought) by the *Noticee no. 3* during the UPSI period now stands as 49,000.

76. I must also record that no dispute to the factual accuracy of the details of the trades as alleged in the SCN has been made by the *Noticee.* Therefore, based on the revised UPSI period, I need to calculate the amounts of loss that have been unlawfully avoided by the *Noticees,* by trading in the shares of TVVL while in possession of and having access to the UPSI. The said calculation needs to be done based on the following formula as recorded in the SCN:

Computation of loss avoided = (No. of shares sold while in possession of UPSI X weighted average sale price) – (No. of shares sold while in possession of UPSI X closing price on the day of UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to Stock exchange)

77. In the present case, the SCN has taken the average of closing price of the scrip of TVVL as on September 28, 2017, i.e., the trading day following the day of publication of the UPSI. However, in view of my findings that has caused revision in the UPSI period, it would be appropriate to revise the said factor and consider the average closing market price of the scrip as

prevailed on September 22, 2017, i.e., INR 141.17 (average of closing price on BSE being INR 142.45 and the closing price on NSE being INR 139.40). I may state here that by revising the closing price from INR 119.88 to INR 141.17, no prejudice whatsoever is being caused to the *Noticees* as ultimately such an approach would reduce the disgorgement amount as contemplated in the SCN.

78. In view of the aforesaid findings, the amount of unlawful loss avoided by the *Noticee nos. 1, 2* and *3* is calculated herein below:

Noticee no. 1- Rashesh Purohit-
Table no. 13

No. of shares sold while in possession of UPSI	Weighted average sale price per share (INR) (sale value /sale quantity rounded off to two digits)	Total Weighted sale value (INR) (iii) x (iv)	Average of Closing price of the scrip as on 22.09.2017 (the following trading day of publishing UPSI)	Unlawful loss avoided (INR) {(No. of shares sold x weighted average sale price per share) - (no. of shares sold x closing price)} {(iii)x(iv)-(iii)xvi)}
(iii)	(iv)	(v)	(vi)	(vii)
89,454	162.58	1,45,43,100	141.17	19,14,879

Noticee 2- Keynote Enterprises Private Limited –
Table no. 14

No. of shares sold	**Weighted average sale price per**	**Total Weighted sale value (INR) (iii) x (iv)**	**Average of Closing price of the scrip as on 22.09.2017 (the**	**Unlawful loss avoided (INR) {(No. of shares sold x weighted average sale price per share) - (no. of shares sold x closing price)}**

	share (INR) (sale value /sale quantity rounded off to two digits)		following trading day of publishing UPSI)	{(iii)x(iv)-(iii)xvi)}
(iii)	(iv)	(v)	(vi)	(vii)
70,000	175.7	1,22,99,046	141.17	24,17,146

Noticee no. 3 Inayata Constructions Private Limited (ICPL) –

Table no. 15

No. of shares sold (no of shares sold- no of shares bought)	Weighted average sale price per share (INR) (sale value /sale quantity rounded off to two digits)	Total Weighted sale value (INR) (iii) x (iv)	Average of Closing price of the scrip as on 22.09.2017 (the following trading day of publishing UPSI)	Unlawful loss avoided (INR) {(No. of shares sold x weighted average sale price per share) - (no. of shares sold x closing price)} {(iii)x(iv)-(iii)xvi)}
(iii)	(iv)	(v)	(vi)	(vii)
49000	149.43	73,22,013	141.17	4,04,683

79. I find it worthwhile to mention here that *Noticee no. 1* has executed trades in his account as well as in the account of *Noticee no. 2 Company;* and *Noticee no. 4* has executed trades in the accounts of *Noticee no. 3 company*. It has also been succinctly brought out in the present order that the said acts of trading in the scrip of TVVL by the aforesaid *Noticees* were indeed in the nature of insider trading.

80. To conclude the present proceedings, I can state that information asymmetry of any degree can certainly cause a dent in the development of a fair and transparent securities market. The *Noticees* have made a frivolous plea that SEBI has not been able to identify the investors who have faced losses due to their alleged acts, however, such an argument clearly evades the fact that the acts of insider trading are detrimental to the securities market *in rem*.

81. In the present case, I find that the indelible facts about the connections of the *Noticees* and the depositions made by the *Noticees* before SEBI that have been brought to my attention, speak themselves volumes about the frequent communication interactions that were existing by virtue of the close association of individual *Noticees* with the insider to the *Company;* and about the trading pattern of the *Noticees* which was not only aligned with the adverse nature of the price sensitive information but also exposed a sudden complete reversal of the long term approach of the *Noticees* towards their investment in TVVL; and all such facts lead to a compelling conclusion that the trades were executed under the influence of and/or possession of the UPSI by virtue of which the *Noticees* were able to avert the possible losses.

82. As the *Noticees* have undeniable averted loss as due to such unlawful activities, as a consequence, the said amount of loss as avoided by them by selling shares during UPSI period need to be disgorged from them. At this stage, I refer to the observations of the Hon'ble SAT passed in the matter of *Reliance Industries Vs. SEBI (Appeal no.120/2017, Date of decision: November 05, 2020)* where the Hon'ble SAT have observed *inter alia* that, disgorgement is an equitable

remedy moreso when the amount is credited to Investor Protection Fund of SEBI for the benefit of small investors. Furthermore, I also seek guidance from the judgment of the Hon'ble Supreme Court passed in the matter of *SEBI Vs. Rakhi Trading P Ltd. [2018 (13) SCC 753]*, wherein the Hon'ble Court has observed *inter alia* as: "*..If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged."* Therefore, the argument that the shareholders who faced loss need to be identified in order to direct disgorgement is not tenable.

83. I further note that the SCN also calls upon the *Noticees* to show cause *inter alia* as to why penalty under Section 15G of the SEBI Act, 1992 should not be imposed for: (i) for alleged acts of insider trading resulting in violation of Section 12A (d) & (e) of the SEBI Act, 1992 and Regulation 4 (1) of the PIT Regulations by all the *Noticees;* and (ii) the alleged violation of 3 (1) of the PIT Regulations by communicating the UPSI to Mr. Ram Purohit. I note that the Section 15G of the SEBI Act, 1992 reads as:

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.

84. Having considered all the material available on record including the submissions made by the *Noticees,* and keeping in view my categorical findings as recorded in the present order, I hold that the charges against the *Noticees* for committing insider trading and against the *Noticee no. 1* for communicating the UPSI to Mr. Ram Purohit, have been adequately established, thereby making them liable for levy of monetary penalty under Section 15G of the SEBI Act, 1992. Further, it is also observed that the *Noticees* have executed trades on multiple occasions and by virtue of such repetitive trades, the *Noticees* gained an unfair advantage which has already been quantified in the present order.

Order

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

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

ii. The *Noticee nos. 1, 2, 3* and *4* are restrained from buying, selling or dealing in the securities of TV Vision Limited, directly or indirectly, in any manner whatsoever, for a period of 1 year;

iii. The *Noticees nos. 1, 2* and *3* shall disgorge the amount of loss avoided by them as mentioned in Table no. 13, 14 and 15, along with simple interest @ 9%per annum from September 21, 2017 till the date of actual payment. The said amounts shall be

remitted to the Investor Protection and Education Fund (IPEF) as referred to in Section 11(5) of the SEBI Act, 1992, within 45 (forty five) days from the date of this order and intimation may be forwarded to "Division Chief, Enforcement Department-1, DRA-4, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051".

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

Name of the Bank	**Branch Name**	**RTGS Code**	**Beneficiary Name**	**Beneficiary Account No.**
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

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

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

v. It is clarified that during the period of restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze in respect of the aforesaid debarred *Noticees*.

vi. The obligation of the aforesaid debarred *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

Entity	Provisions of law violated	Penalty levied under Section	Quantum of penalty payable
Mr. Rashesh Purohit	(i) Section 12 A (d) and (e) of SEBI Act, 1992 read with Regulation 4 (1) of the SEBI (PIT) Regulations, 2015 (ii) Regulation 3 (1)	**Section 15 G of SEBI Act, 1992**	**INR 20 Lakh**

	of the PIT Regulations		
Keynote Enterprises Private Limited	Section 12 A (d) and (e) of SEBI Act, 1992 read with Regulation 4 (1) of the SEBI (PIT) Regulations, 2015	**Section 15 G of SEBI Act, 1992**	**INR 10 Lakh**
Inayata Constructions Private Limited	Section 12 A (d) and (e) of SEBI Act, 1992 read with Regulation 4 (1) of the SEBI (PIT) Regulations, 2015	**Section 15 G of SEBI Act, 1992**	**INR 10 Lakh**
Ms. Chitra Deshmukh	Section 12 A (d) and (e) of SEBI Act, 1992 read with Regulation 4 (1) of the SEBI (PIT) Regulations, 2015	**Section 15 G of SEBI Act, 1992**	**INR 10 Lakh**

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

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

-Sd-

DATE: MARCH 24TH, 2023 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA