

WTM/AB/IVD/ID6/11662/2021-22

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**FINAL ORDER**

**UNDER SECTIONS 11(4), 11(4A), 11B(1) AND 11B(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

**In respect of:**

Noticee no.	Noticee Name	PAN
1	Ms. Shivani Gupta	AHOPG5347H
2	Mr. Sachin Gupta	AAGPG3473P
3	Mr. Amit Garg	AAJPG0015G
4	Quick Developers Private Ltd	AAACQ2182N
5	Mr. Balram Garg	AANPG9208P

*(The aforesaid entities are hereinafter referred to by their respective names / noticee numbers or collectively as “the Noticees”)*

**In the matter of Insider Trading in the scrip of PC Jeweller Ltd.**

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1. Present proceedings have emanated from an *ex-parte* impounding order cum show cause notice dated December 17, 2019 (hereinafter referred to as ‘**Impounding Order**’) and show cause notice dated April 24, 2020 (hereinafter referred to as “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against the aforesaid Noticees for the alleged violations of Section 12A(d) & (e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), and provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”). The Impounding Order and the SCN are hereinafter collectively referred to as “**the SCNs**”. The SCNs came to be issued against the Noticees as SEBI had conducted an investigation into the allegations of insider trading by certain entities in the scrip of PC Jeweller Limited (hereinafter referred

as “the Company” / “PC Jeweller”) for the period from April 2, 2018 to July 31, 2018 (hereinafter referred to as “Investigation Period”).

2. The following directions were issued against the Noticees vide the Impounding Order dated December 17, 2019:

“ .....

29. *In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4)(d) and Section 11B of the SEBI Act read with Regulation 10 of the Insider Trading Regulations, 2015, hereby issue the following directions:*

- A. *A sum of Rs.6,17,60,184.13 shall be impounded jointly and severally, from Shivani Gupta, Sachin Gupta and Amit Garg, being the notional loss avoided on account of trades carried out in the trading accounts of Shivani Gupta, and*
- B. *A sum of Rs.2,13,23,161.64 shall be impounded jointly and severally, from Quick Developers Pvt. Limited and Amit Garg, being the notional loss avoided/gains made on account of trades carried out in the trading account of Quick Developers Pvt. Limited.*

30. *The persons/entities mentioned at paragraphs 29A and 29B are directed to credit the aforesaid amounts to an Escrow Account [“Escrow Account in Compliance with SEBI Order dated December 17, 2019 – A/c (in the name of the respective persons/entities)”] in a Nationalized Bank, by marking a lien over it. Banks are allowed to transfer the amounts available in the bank accounts of the persons mentioned at paragraphs 29A and 29B, to the aforesaid Escrow Account(s), for the purpose of complying with this Order.*

31. *Banks shall not allow debits from the bank accounts of Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Limited, to the extent of the amounts impounded under paragraphs 29A and 29B, until the Escrow Account(s) as stated above are opened by them and the amounts as stated are transferred. Any debit beyond the said limit may be automatically permitted. Credits, if any, into the accounts may be allowed. Depositories are directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held by the aforesaid persons/entities. The Banks and the Depositories are directed to ensure that all the aforementioned directions are strictly enforced.*

32. *Further, the persons/entities mentioned at paragraphs 29A and 29B are directed not to dispose of or alienate any of their assets/properties/securities, till such time the amounts are credited to the Escrow Account(s). Further, they are directed to provide, within 7 days of this Order, a full inventory of all their assets and properties and details*

*of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form and details of companies in which they hold substantial or controlling interest.*

33. *The prima facie observations/findings contained in this Order are made on the basis of the material available on record. In light of the alleged violations of the provisions of Sections 12A(d) and (e) of the SEBI Act and Regulations 4(1) read with 4(2) of the Insider Trading Regulations, 2015, by Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Limited, this Order shall be treated as a Notice under Sections 11(1), 11(4) and 11B(1) of the SEBI Act calling upon them to show cause as to why certain directions shall not be passed against them, as proposed hereunder:*

- 1 Direction to disgorge an amount equivalent to the total gains made/loss avoided on account of insider trading in the scrip of PC Jeweller along with interest;*
- 2 Direction to restrain them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.*

34. *Similarly, in light of the alleged violations of the provisions of Section 12A(e) of the SEBI Act and Regulation 3(1) of the Insider Trading Regulations, 2015 by Balram Garg, this Order shall be treated as a Notice under Sections 11(1), 11(4) and 11B(1) of the SEBI Act calling upon him to show cause as to why direction shall not be passed against him to restrain him from accessing the securities market and prohibiting him from buying, selling or otherwise dealing in securities for an appropriate period.*

.....

35. *As stated at paragraph 17, Padam Chand Gupta had passed away on January 28, 2019. Having regard to the same, no proceedings are initiated against him for the alleged violations of the provisions of Sections 12A(e) of the SEBI Act and Regulation 3(1) of the Insider Trading Regulations, 2015.*

.....

36. *This Order shall come into force with immediate effect and shall be in force till further Orders.*

.....”

3. As noted in the pre-paras, the Impounding Order was also in the nature of a show cause notice which had called upon the Noticees to show cause as to why directions under Sections 11(1), 11(4) and 11B (1) of the SEBI Act, 1992 be not issued against them. Thereafter, on April 24, 2020, the SCN was also issued to the Noticees, in the matter, under Section 11B(2) read with Section 15G of SEBI

Act, 1992 calling upon the Noticees to show cause as to why the penalty under Section 15G of the SEBI Act, 1992 should not be imposed upon them for the violations stated therein.

4. The key findings of the investigation as contained in the SCNs and the allegations levelled therein against the Noticees, in brief, are reproduced hereunder:

a) PC Jeweller made the following major corporate announcements during the period from April 2018 to July 2018:

i. PC Jeweller had on May 10, 2018 after market hours, announced that its Board of Directors at its meeting held on May 10, 2018 had approved buyback of upto 1,21,14,285 fully paid-up equity shares of Rs.10/- each at a price of Rs.350/- per equity share.

ii. On July 13, 2018 after market hours, PC Jeweller, announced the withdrawal of their buyback offer due to non-receipt of the requisite NOC from the Company's Banker viz. State Bank of India.

b) Following is the price movement data for the scrip prior to and after the aforementioned announcements along with date and time of dissemination of the same by BSE/NSE on their websites which indicate that the information pertaining to the approval of buyback and its subsequent withdrawal is price sensitive information:

**Table-III: Price movement data**

Date of Announcement on NSE/BSE	Announcement	Price Movement in the scrip of PC Jeweller (prior to and after announcement)	Impact on Price																														
10/05/2018 @ 20:29:03 hours (BSE)  11/05/2018 @ 08.33 hours (NSE)	Board Meeting on 10.5.2018 approves buyback of equity shares and appointment of IDBI and Corporate Professionals Capital Pvt Ltd as Merchant Bankers.	<div>May 10, 2018</div> <table><tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><th>NSE</th><td>216.00</td><td>222.00</td><td>194.65</td><td>208.95</td></tr><tr><th>BSE</th><td>216.00</td><td>222.00</td><td>195.10</td><td>209.00</td></tr></table> <div>May 11, 2018</div> <table><tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><th>NSE</th><td>229.80</td><td>250.70</td><td>196.40</td><td>200.85</td></tr><tr><th>BSE</th><td>229.90</td><td>247.00</td><td>197.50</td><td>201.15</td></tr></table>		O	H	L	C	NSE	216.00	222.00	194.65	208.95	BSE	216.00	222.00	195.10	209.00		O	H	L	C	NSE	229.80	250.70	196.40	200.85	BSE	229.90	247.00	197.50	201.15	After the announcement, the scrip hit the upper circuit of 10%.
	O	H	L	C																													
NSE	216.00	222.00	194.65	208.95																													
BSE	216.00	222.00	195.10	209.00																													
	O	H	L	C																													
NSE	229.80	250.70	196.40	200.85																													
BSE	229.90	247.00	197.50	201.15																													

13/07/2018 @ 19:33 hours (NSE) 19:28:44 hours (BSE)	Board approves withdrawal of buyback offer and the same was informed to Exchanges.	July 13, 2018				After the announcement, the scrip hit the lower circuit of 20%.
			O	H	L	C
		NSE	121.90	126.35	118.00	119.90
		BSE	121.95	126.30	118.10	119.95
		July 16, 2018				
			O	H	L	C
		NSE	107.95	107.95	83.95	89.20
		BSE	108.00	108.00	86.10	88.90

- c) The SCNs observed that both the aforementioned announcements which related to change in the Company's capital structure were Unpublished Price Sensitive Information ('**UPSI**') in terms of Regulation 2(n) of PIT Regulations, 2015.
- d) As per the SCNs, following is the chronology of events relating to the announcements regarding buyback of shares and withdrawal of the same, by PC Jeweller:

**Table-IV – Chronology of events**

Sl. No.	Details of events	Relevant Date
1.	Preliminary discussion among MD, ED & COO and CFO in relation to the proposal for buyback of fully paid-up equity shares of the Company.	25/04/2018
2.	Preliminary discussion by CFO and Co. Secy. with officials of Corporate Professionals Capital Pvt Ltd.(CPCPL) and Walker Chandiok & Co LLP (Statutory Auditors) relating to the proposal for buyback of fully paid-up equity shares of the Company. MD and ED & COO updated about the discussions.	27/04/2018 & 28/04/2018
3.	Company informed BSE and NSE that Board meeting will be held on May 25, 2018 to <i>inter-alia</i> , consider the proposal for buyback of Company's equity shares	29/04/2018
4.	Preliminary discussion with officials of IDBI Capital Markets and Securities Ltd. for their potential engagement as Merchant Bankers for the proposed buyback issue.	04/05/2018
5.	Company informed BSE and NSE that a separate Board meeting will be held on May 10, 2018 to <i>inter-alia</i> consider the proposal for buyback of Company's equity shares	05/05/2018
6.	Email correspondences between Company and merchant bankers/auditors with regard to buyback assignment. and draft report/ certificate	07/05/2018
7.	Statutory Auditors emailed Draft report/certificate to Co. Secy. Discussions among IDBI Capital Markets and Securities Ltd, Shardul Amarchand Mangaldas & Co and PC Jeweller relating to certain queries on the proposed buyback issue.	09/05/2018 & 10/05/2018
8.	Board in its meeting <i>inter alia</i> approved buyback of upto 1,21,14,285 fully paid-up equity shares of Rs.10/- each at a price of Rs.350/- per equity share. Company informed Exchanges about the outcome of Board meeting which was disseminated by BSE on May 10, 2019 at 20:29:03 and by NSE on May 11, 2019 at 08:33.	10/05/2018
9.	PC Jeweller request for issue of NOC for the proposed buy back offer which was refused by State Bank of India, the lead banker communicated on the same day vide its letter addressed to MD of PC Jeweller.	07/07/2018
10.	Meeting of Independent Director, ED & COO and CFO held to discuss further course of action. No minutes drawn.	10/07/2018

Sl. No.	Details of events	Relevant Date
11.	CFO meeting with SBI official requesting to reconsider the Bank's refusal to accord consent for the buy back again, refused by the Banker communicated vide their letter dated 12.7.2018 addressed to MD. ED & COO and CFO decided to convene the Board Meeting. No minutes drawn. Notice for convening Board Meeting on 13.7.2018 sent by email.	12/07/2018
12.	Board approves withdrawal of buyback offer and the same was informed to Exchanges. Company informed Exchanges about the withdrawal of buyback which was disseminated by BSE and NSE on the same day at 19:28:44 and 19:33 respectively.	13/07/2018

From the aforesaid chronology of events, the SCNs has considered the information pertaining to preliminary discussion in respect of the proposal for buyback of equity shares of the Company which came into existence on April 25, 2018 and became public on May 10, 2018, as “**UPSI-I**”. Accordingly, period from April 25, 2018 to May 10, 2018 has been taken as period of UPSI-I. Further, the information pertaining to withdrawal of the proposed buyback of equity shares of the Company which came into existence on July 7, 2018 and became public on July 13, 2018, is considered as “**UPSI-II**”. Accordingly, period from July 07, 2018 to July 13, 2018 has been taken as period of UPSI-II.

- e) As per investigation, following is the price-volume analysis showing price-variation in the scrip during the Investigation Period:

**Table-VI : Price-volume analysis**

**UPSI-I :**

Investigation Period	Exchange	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	Avg Daily Mkt Vol.
Pre-UPSI Period-I (02/04/2018 to 24/04/2018)	NSE	323.50	328.60	288.10	289.35	49,28,366
		02-Apr-18	02-Apr-18	24-Apr-18	24-Apr-18	
	BSE	323.85	328.75	285.25	289.35	4,94,971
		02-Apr-18	02-Apr-18	20-Apr-18	24-Apr-18	
UPSI Period-I (25/04/2018 to 10/05/2018)	NSE	288.00	290.55	94.55	208.95	11,64,10,614
		25-Apr-18	25-Apr-18	03-May-18	10-May-18	
	BSE	289.25	290.20	95.05	209.00	1,11,47,471
		25-Apr-18	25-Apr-18	03-May-18	10-May-18	
Post-UPSI Period-I (11/05/2018 to 31/05/2018)	NSE	229.80	250.70	154.30	165.80	3,08,14,601
		11-May-18	11-May-18	15-May-18	31-May-18	
	BSE	229.90	247.00	156.70	165.90	35,57,047
		11-May-18	11-May-18	15-May-18	31-May-18	

(April 01, 2018 trading holiday)

**UPSI-II :**

Investigation Period	Exchange	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	Avg Daily Mkt Vol.
Pre-UPSI Period-II (22/06/2018 to 06/07/2018)	NSE	141.50	145.40	121.45	128.85	1,00,94,891
		22-Jun-18	26-Jun-18	05-Jul-18	06-Jul-18	
	BSE	141.40	145.35	122.00	128.90	12,10,385
		22-Jun-18	26-Jun-18	06-Jul-18	06-Jul-18	
UPSI Period-II (07/07/2018 to 13/07/2018)	NSE	131.80	134.40	118.00	119.90	1,07,77,536
		09-Jul-18	10-Jul-18	13-Jul-18	13-Jul-18	
	BSE	131.15	135.00	118.10	119.95	23,41,135
		09-Jul-18	09-Jul-18	13-Jul-18	13-Jul-18	
Post-UPSI Period-II (16/07/2018 to 31/08/2018)	NSE	107.95	107.95	65.30	91.10	4,27,60,356
		17-Jul-18	23-Jul-18	20-Jul-18	31-Jul-18	
	BSE	108.00	108.00	65.35	91.15	49,43,444
		17-Jul-18	23-Jul-18	20-Jul-18	31-Jul-18	

(July 14 & July 15, 2018 trading holidays)

- f) Based on the information received from PC Jeweller, stock exchanges, stock brokers, banks and depositories as well as from Noticee No.1 and Noticee No.4 and based on the analysis of trading of entities during the Investigation Period, the SCNs alleges the following:
- g) Padam Chand Gupta being the Chairman of PC Jeweller is connected to the Company and was reasonably expected to have access to UPSI-I and UPSI-II and therefore, is a '*connected person*' and is an 'insider' in terms of Regulation 2(1)(d)(i) and 2(1)(g) of PIT Regulations, 2015, respectively.
- h) Noticee No.5 is the MD of PC Jeweller. He and Padam Chand Gupta are brothers and also the Promoters of PC Jeweller. Investigation observed from the reply of PC Jeweller's CFO dated June 17, 2019 and from letter of SBI dated 7<sup>th</sup> and 12<sup>th</sup> July, 2018, addressed to MD of the Company, that Noticee No.5 was involved in every stage of buyback proposal till its withdrawal. Investigation also noted from the Minutes of the Board Meeting (chaired by Noticee No.5) held on May 10, 2018 that Board approved the constitution of a Buyback Committee comprising of Noticee No.5, ED & COO and two other Independent Directors of PC Jeweller for implementation of buyback. The SCNs, therefore, concluded that being part of Promoter group and the Management of PC Jeweller and privy to the discussion/information regarding approval for buyback of shares of PC Jeweller and its withdrawal,

Noticee No.5 had access to UPSI-I & II and therefore, is a 'connected person' and considered 'insider' in terms of Regulation 2(1)(d)(i) and 2(1)(g) of PIT Regulations, 2015, respectively.

- i) Noticee No.1 is the wife of Noticee No.2 and the daughter-in-law of Padam Chand Gupta. Noticee No.1 is also the sister-in-law of Noticee No.3. Padam Chand Gupta gifted 1.03 Crore shares to Noticee No.1 through off-market transfers during the period April 2, 2018 to April 20, 2018. From the nature of relationship that existed between Noticee No.1 and Noticee No.2, Padam Chand Gupta and Noticee No.5, it would reasonably appear to allow her access to UPSI-I and UPSI-II, the SCNs allege that Noticee no. 1 is an insider in terms of Regulation 2(1)(g)(i) r/w. Reg, 2(1)(d)(i) of PIT Regulations, 2015. Additionally, from the analysis of trading pattern of Noticee no. 1, the SCN's concluded that Noticee No.1 had possession of UPSI-I and UPSI-II and hence, an 'insider' in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.
- j) Noticee No.2 is the son of Padam Chand Gupta and the nephew of Noticee No.5. Noticee No.2 was authorised by his wife (Noticee No.1), to trade on her behalf in respect of her trading account maintained with stock broker SS Corporate Securities Limited. From the nature of relationship that existed between Noticee No.2 and Noticee No.1, Padam Chand Gupta and Noticee No.5, it would reasonably appear that Noticee no. 2 would have access to UPSI-I and UPSI-II, the SCNs allege that Noticee no. 2 is an insider in terms of 2(1)(g)(i) r/w. Reg, 2(1)(d)(i) of PIT Regulations, 2015. Additionally, from the analysis of trading pattern of Noticee no. 1, the SCN's concluded that Noticee No.2 (trading through the account of Noticee no. 1) had possession of UPSI-I and UPSI-II and hence, an 'insider' in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.
- k) Noticee No.3 is the nephew of Padam Chand Gupta and Noticee No.5, and the son of Amar Chand Garg (Ex – Vice Chairman of PC Jeweller). He was authorised by his sister-in-law (Noticee No.1), to trade on her behalf in respect of her trading account maintained with stock broker Karvy Stock Broking Limited ('**Karvy**'). Noticee No.2 and Noticee No.3 are paternal cousins. From the nature of relationship that existed between Noticee No.3



and Noticee No.2, Noticee No.1, Padam Chand Gupta and Noticee No.5, it would reasonably appear that Noticee no. 3 would have access to UPSI-I and UPSI-II, the SCNs allege that Noticee no. 3 is an insider in terms of 2(1)(g)(i) r/w. Reg, 2(1)(d)(i) of PIT Regulations, 2015. Additionally, from the analysis of trading pattern of Noticee no. 1 and 4, the SCN's concluded that Noticee No.3 (trading through the account of Noticee no. 1 and 4) had possession of UPSI-I and UPSI-II and hence, an 'insider' in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.

- l) Noticee No.4 authorised Noticee No.3 to trade on its behalf in respect of its trading account with Karvy. Noticee No.3 held 50% shareholding in Noticee No.4 and was also its Director for the period August 8, 2015–April 3, 2018. Prior to the aforesaid period, Noticee No.4 had Noticee No.1 and Noticee No.2 as its Directors and shareholders. Further, fund transfers were observed between Noticee No.4 and Noticee No.3, which were utilised for trading in the scrip of PC Jeweller. From the nature of relationship that existed between Noticee No.4 and Noticee No.3, Noticee No.2 and Noticee No.1, it would reasonably appear to allow it (through its past directors Noticee no. 3, Noticee no. 2 and Noticee no. 1, respectively) access to UPSI-I and UPSI-II, the SCNs allege that Noticee no. 4 is an insider in terms of 2(1)(g)(i) r/w. Reg, 2(1)(d)(i) of PIT Regulations, 2015. Additionally, from the analysis of trading pattern of Noticee no. 4, the SCN's concluded that Noticee No. 4 (trading through its representative Noticee no. 3) had possession of UPSI-I and UPSI-II and hence, an 'insider' in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.
- m) Noticee No.1 (daughter-in-law of Padam Chand Gupta) traded in the scrip through stock broker Ganpati Securities (orders were placed directly by Noticee No.1). Noticee No.2 (husband of Noticee No.1 and son of Padam Chand Gupta) traded in the scrip through the trading account of Noticee No.1 with SS Corporate Securities Limited. Further, Noticee No.3 [nephew of Padam Chand Gupta and Noticee No.5 and son of Amar Chand (Ex-Vice Chairman of PC Jeweller) who is the brother-in-law of Noticee No.1 traded

in the scrip (orders were placed from mobile No.9871434400) through the trading account of Noticee No.1 with Karvy.

- n) During the UPSI Period-II, Noticee No.1, Noticee No.2 (through the account of Noticee No.1) and Noticee No.3 (through the account of Noticee No.1) traded in the scrip of PC Jeweller (net sold quantity of 15,00,000 shares) during UPSI Period-II. Summary of trading by Noticees No.1, 2 and 3 through the trading account of Noticee No.1 in the scrip of PC Jeweller during the Investigation Period is tabulated below:

**Table-VIII: (a) Day-wise Trading in the account of Noticee No.1**

Date	Buy Volume	Sell Volume	Avg. Buy Price (Rs.)	Avg. Sell Price (Rs.)	Net Volume	Buy Value (Rs. in lacs)	Sell Value (Rs. in lacs)	% activity in this scrip compared to all other scrips traded by entity
<b><u>UPSI-I :</u></b>								
<b>Pre-UPSI Period-I (April 02, 2018 to April 24, 2018)</b>								
02-Apr-18	-	3,60,000	-	313.70	3,60,000	-	1,129.33	100%
03-Apr-18	-	4,40,000	-	313.70	4,40,000	-	1,380.28	
04-Apr-18	-	1,00,000	-	298.73	1,00,000	-	298.73	
05-Apr-18	-	5,50,000	-	299.35	5,50,000	-	1,646.42	
06-Apr-18	-	7,00,000	-	297.90	7,00,000	-	2,085.31	
09-Apr-18	-	3,50,000	-	298.18	3,50,000	-	1,043.65	
10-Apr-18	-	9,00,000	-	308.07	9,00,000	-	2,772.65	
11-Apr-18	-	5,50,000	-	309.36	5,50,000	-	1,701.46	
12-Apr-18	-	9,00,000	-	306.80	9,00,000	-	2,761.20	
13-Apr-18	-	1,81,362	-	303.39	1,81,362	-	550.23	
16-Apr-18	-	7,00,000	-	300.75	7,00,000	-	2,105.23	
17-Apr-18	-	6,00,000	-	305.20	6,00,000	-	1,831.20	
19-Apr-18	-	1,40,505	-	297.64	1,40,505	-	418.20	
20-Apr-18	-	1,50,000	-	295.69	1,50,000	-	443.53	
23-Apr-18	-	6,33,855	-	296.71	6,33,855	-	1,880.72	
24-Apr-18	-	25,238	-	290.00	25,238	-	73.19	
No trades observed during UPSI Period-I(April 25, 2018 to May 10, 2018) and Post-UPSI Period-I (May 11, 2018 to May 31, 2018)								
<b><u>UPSI-II :</u></b>								
<b>Pre-UPSI Period-II (June 22, 2018 to July 06, 2018)</b>								
06-Jul-18	-	1,00,000	-	130.51	1,00,000	-	130.48	100%
<b>UPSI Period-II (July 07, 2018 to July 13, 2018)</b>								
09-Jul-18	5,000	1,05,000	131.74	131.64	1,00,000	6.59	138.22	100%
10-Jul-18	-	55,000	-	132.50	55,000	-	72.87	
11-Jul-18	-	3,45,000	-	129.01	3,45,000	-	445.08	

Date	Buy Volume	Sell Volume	Avg. Buy Price (Rs.)	Avg. Sell Price (Rs.)	Net Volume	Buy Value (Rs. in lacs)	Sell Value (Rs. in lacs)	% activity in this scrip compared to all other scrips traded by entity
12-Jul-18	-	2,00,000	-	124.66	2,00,000	-	249.32	
13-Jul-18	-	8,00,000	-	120.82	8,00,000	-	966.52	
No trades observed during Post-UPSI Period-II (July 16, 2018 to July 31, 2018)								

**Table-VIII: (b) Account-wise trading in the account of Noticee No.1 during UPSI Period-II**

Person who placed orders/ Relationship with client	No. of shares bought	No. of shares sold	Net traded quantity (sell)	Trade dates
<b>Shivani Gupta</b> (Stock Broker: Ganpati Securities)	5,000	2,10,000	2,05,000	09.07.2018–11.07.2018
<b>Amit Garg</b> (through Shivani Gupta's Account) (Stock Broker: Karvy Stock Broking Ltd.)	0	11,00,000	11,00,000	11.07.2018–13.07.2018
<b>Sachin Gupta</b> (through Shivani Gupta's Account) (Stock Broker: SS Corporate Securities Ltd)	0	1,95,000	1,95,000	10.07.2018–11.07.2018
<b>Total</b>	<b>5,000</b>	<b>15,05,000</b>	<b>15,00,000</b>	

- o) Investigation observed that Noticee No.1 traded from her trading accounts from April 02, 2018 i.e the day from which off market transfer of shares from Padam Chand Gupta's account to her demat account (NSDL) started and continued till April 24, 2018 (preliminary discussion on the proposal of buyback of shares at Rs.350/- per share started on April 25, 2018 as per CFO's reply dated June 17, 2019). Average price of shares traded by Shivani Gupta during the period i.e. upto April 24, 2018 was Rs.303.82. No trades were observed in the trading accounts of Noticee No.1 during the months of May and June 2018. However, sell trades were executed in the scrip of PC Jeweller from July 06, 2018 (SBI communicated their refusal to the buyback on July 07, 2018) till July 13, 2018, the day on which the PC Jeweller's Board approved the withdrawal of buyback proposal and the Company informed the same to stock exchanges on the same day after market hours. Noticee No.1 through her three trading accounts (orders placed by Noticee No.1, Noticee No.2 and Noticee No.3) had traded a net sell quantity of 15,00,000 shares in the scrip of PC Jeweller during the UPSI Period-II thereby avoiding a notional loss of Rs.527.43 lakh as given below:

Entity Name	No. of shares sold(Net) in NSE	Wt. Avg. Sell Price in NSE (in Rs.)	Closing Price on 16/07/18 (in Rs.)	Total Sell Value (in Rs.) (As per Tradelog)	Value of Shares as on 16/07/18	Unlawful Loss avoided (in Rs.)
	(A)	(B) = (D/A)	(C)	(D = A x B)	(E = A x C)	(F = D - E)
Shivani Gupta	15,00,000	124.36	89.20	18,65,43,255.05	3,38,00,000.00	5,27,43,255.05

- p) Investigation also observed that during the UPSI period-II and post-UPSI Period-II, Noticee No.4 traded in the scrip through Karvy (orders were placed by Noticee No.3, who held 50% shareholding in Noticee No.4 and was authorised by Noticee No.4 to place orders on its behalf).
- q) Summary of trading by Noticee No.3 through the trading account of Noticee No.4 in the scrip of PC Jeweller during the Investigation Period is tabulated below:

**Table-IX: Trading in the account of Noticee No.4 by Noticee No.3**

Date	Buy Volume/ B/F Long Qty	Sell Volume/ Qty	Avg. Buy Price (Rs.)	Avg. Sell Price (Rs.)	Net Volume	Buy Value (Rs. in lacs)	Sell Value (Rs. in lacs)	% activity in this scrip compared to all other scrips traded by entity
<b><u>UPSI-I :</u></b>								
<b>Pre-UPSI-I (April 02, 2018 to April 24, 2018)</b>								
<b><u>Cash Segment</u></b>								
18-Apr-18	1,00,000	1,00,000	304.79	292.58	0.00	304.79	292.58	40%
No trades observed during UPSI Period-I(April 25, 2018 to May 10, 2018)								
<b>Post-UPSI-I (May 11, 2018 to May 31, 2018)</b>								
<b><u>Derivatives (Futures)</u></b>								
29-May-18	1,50,000	-	171.65		1,50,000	257.48	-	63%
31-May-18	-	1,50,000	-	168.71	1,50,000	-	253.06	
31-May-18	1,50,000	-	169.58		1,50,000	254.36	-	
<b><u>UPSI-II :</u></b>								
<b>UPSI Period-II (July 07, 2018 to July 13, 2018)</b>								
<b><u>Derivative (Futures)</u></b>								
11-Jul-18	-	2,25,000	-	128.92	2,25,000	-	290.07	100%
13-Jul-18	-	3,00,000	-	119.76	3,00,000	-	359.28	
<b>Post-UPSI Period-II (July 16, 2018 to July 31, 2018)</b>								
<b><u>Derivative (Futures)</u></b>								
20-Jul-18	3,00,000	-	75.41	-	3,00,000	226.23	-	53%

- r) Investigation observed that Noticee No.4 had 100% of market wide activity during the UPSI Period-II in the scrip Futures of PC Jeweller. Noticee No.4 traded in the scrip futures from May 29, 2018 onwards (i.e. post-announcement of buyback proposal by PC Jeweller) holding long position of

1.5 lakh quantity in the scrip futures from May 29, 2018 which was further increased to 2.25 lakh on June 14, 2018.

- s) During the UPSI Period-II, Noticee No.4 held a long position of 2.25 Lakh futures in the derivatives – futures segment of the scrip of PC Jeweller which was subsequently squared-off with a short position on July 11, 2018 avoiding a loss of Rs.89.82 lakh. Further during the UPSI Period-II, Noticee No.4 followed the aforementioned transaction with a fresh short position of 3 Lakh futures of PC Jeweller on July 13, 2018 (date on which the PC Jeweller's Board approved the withdrawal of buyback and which was informed to exchanges and disseminated by the exchanges after market hours at 19:28:44 hours on the same day) in the derivatives–futures segment of the scrip.
- t) Investigation also observed that during the post-UPSI Period-II, Noticee No.4 squared-off the short position by taking a long position of 3 Lakh futures in the derivatives–Futures segment of the scrip and earned a square-off difference of Rs.133.04 lakh.
- u) The overall loss avoided/gains made by Noticee No.4 is as follows:

Sl. No.	Entity Name	No. of Futures Buy(Net) in NSE	No. of Futures Sell(Net) in NSE	Wt. Avg. Futures Buy Price in NSE (in Rs.)	Wt. Avg. Sell Futures Price in NSE (in Rs.)	Closing Futures Price on 16/07/18 (in Rs.)	Total Buy Value (in Rs.)	Total Sell Value (in Rs.)	Value of Futures as on 16/07/18 (in Rs.)	Unlawful Loss avoided / Profit earned (in Rs.)
		(A)	(B)	(C)	(D)	E	(F = A x C)	(G = B x D)	(H = B x E)	(I)
1	Quick Developers Pvt Ltd.	-	2,25,000 11-Jul-18	-	128.92	89.00	-	2,90,07,000.00	2,00,25,000.00	89,82,000.00 (I = G - H)
2		3,00,000 20-Jul-18	3,00,000 13-Jul-18	75.41	119.76	-	2,26,23,000.00	3,59,28,000.00	-	1,33,05,000.00 (I = F - G)
<b>Total Profit earned</b>										<b>2,22,87,000.00</b>

- v) Further based on the analysis of the bank account of Noticee No.4 maintained with HDFC Bank (A/c No. 50200022965595) during the period June 1, 2018 to July 31, 2018, investigation observed that there was a receipt of Rs.1 Crore from Noticee No.3 on June 1, 2018 and on the same day, out of a total credit balance of Rs.2,18,76,567.84 available in the account, payment of Rs.2 Crore was made to Karvy. Further, there was a credit of Rs.3 Crore in the form of pay-out from Karvy on 20<sup>th</sup> and 25<sup>th</sup> of July 2018 out of which Rs.2 Crore was remitted to Noticee No.3 on July 31, 2018 (post

– UPSI–II period). Further, vide an e–mail dated June 12, 2019, HDFC Bank had informed SEBI that Noticee No.3 and his wife, Nisha Garg, were the authorised signatories to the bank account even after they ceased to be Directors of Noticee No.4 w.e.f. April 3, 2018). Investigation, therefore, observed from the nature of transactions between the bank accounts of Noticee No.3 and Noticee No.4 and the fund utilisation thereof, that Noticee No.3 used the account of Noticee No.4 to trade in the scrip’s futures segment during pre-UPSI Period-II, UPSI Period-II and post UPSI Period-II while in possession of UPSI-II. Details of the transactions in the HDFC account of Noticee No.4 are as under:

**Table X– Analysis of Bank Statement of Noticee No.4**

Date	Narration	Debit(Rs.)	Credit(Rs.)	Balance(Rs.)
01-Jun-18	Amit Garg to Quick Developers Pvt Ltd by RTGS		1,00,00,000.00	2,18,76,567.84
01-Jun-18	To Karvy Stock Broking by cheque	2,00,00,000.00		18,76,567.84
16-Jul-18				18,18,317.84
20-Jul-18	Pay out by Karvy Stock Broking to Quick Developers		1,15,00,000.00	1,33,18,317.84
25-Jul-18	Pay out by Karvy Stock Broking to Quick Developers		1,85,00,000.00	3,18,18,317.84
31-Jul-18	To Amit Garg by RTGS	2,00,00,000.00		1,18,18,317.84

- w) Investigation observed from the KYC documents that Padam Chand Gupta, Noticees No.1 to 3 and 5 share common residential address and hold trading and demat account with Karvy.
- x) In view of the above, the SCNs allege that Padam Chand Gupta and Noticee No.5 have communicated UPSI-I & II to Noticee No.1, Noticee No.2, Noticee No.3 and Noticee No.4 in violation of Section 12A(e) of SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015. However, owing to the death of Shri Padam Chand Gupta on January 28, 2019, no action has been proposed by the SCNs against him.
- y) Investigation observed from the trading pattern and timing of trades, executed by Noticee no. 1, 2 and 3 (through the trading account of Noticee no. 1) coupled with the proximity that Noticee no. 1, 2 and 3, had to Late Shri Padam Chand Gupta and Noticee no. 5, that Noticee No.1, Noticee No.2 and Noticee No.3 were in the knowledge of events taking place in PC Jeweller with regard to the buyback proposal and its withdrawal and therefore concluded that trades in the accounts of Noticee No.1 during UPSI Period-II

were executed while in possession of UPSI-II so as to avoid loss arising from price fall on account of announcement of withdrawal of buyback proposal. Hence, the SCNs allege that Noticee No.1, Noticee No.2 and Noticee No.3 have violated Section 12A(d) and (e) of SEBI Act, 1992 and Regulation 4(1) read with Regulation 4(2) of PIT Regulations, 2015.

- z) Investigation also observed from the trading pattern and timing of trades executed by Noticee No.3 (through trading account of Noticee No.4) coupled with the proximity Noticee No.3 had with Padam Chand Gupta and Noticee No.5, that Noticee No.4 and Noticee No.3 were in the knowledge of events taking place in PC Jeweller with regard to the buyback proposal and its withdrawal and therefore, concluded that trades were executed in the account of Noticee No.4 during UPSI Period-II while in possession of UPSI-II so as to earn profit/avoid loss arising from price fall on account of announcement of withdrawal of buyback proposal. Therefore, the SCNs allege that Noticee No.3 and Noticee No.4 are in violation of Section 12A(d) and (e) of SEBI Act, 1992 and Regulation 4(1) read with Regulation 4(2) of PIT Regulations, 2015.
- aa) The SCNs allege that the notional/unlawful loss avoided by Noticee No.1, Noticee No.2 and Noticee No.3 by trading in the accounts of Noticee No.1 was approximately Rs.527.43 lakh whereas Noticee No.4 whose trades were executed by Noticee No.3 had avoided notional loss/made gains of approximately, Rs.222.87 lakh.
- bb) By the Impounding Order, Noticee no. 1 to 4 were called upon to show cause as to why appropriate directions under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992, should not be passed against them, as proposed hereunder:
  - I. Direction to disgorge an amount equivalent to the total gains made/loss avoided on account of insider trading in the scrip of PC Jeweller along with interest;

- II. Direction to restrain them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
- cc) By the Impounding Order, Noticee no. 5 was called upon to show cause as to why appropriate directions under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992, should not be passed against him, to restrain him from accessing the securities market and prohibiting him from buying, selling or otherwise dealing in securities for an appropriate period.
  - dd) The SCN, separately, called upon Noticees No.1 to 5 to show cause as to why appropriate penalty should not be imposed upon them under Sections 11B(2) read with 15G of SEBI Act, 1992 for the alleged violations, mentioned above.
5. The Noticees undertook inspection of documents on February 8, 2020. The Noticee no. 1 to 4 filed their combined reply dated March 5, 2020 to the impounding order and also a combined reply dated August 20, 2020 to the SCN and the Impounding Order. The Noticee no. 5 has filed his reply dated February 23, 2020 to the Impounding Order and reply dated August 7, 2020 to the SCN. All the Noticees were granted the opportunity of personal hearing in the matter on November 19, 2020, December 14, 2020, December 17, 2020 and December 24, 2020. All the Noticees sought adjournment on the earlier three hearings dates i.e. November 19, 2020, December 14, 2020, December 17, 2020 and the matter finally came to be heard on December 24, 2020. Noticee no. 5, has also filed written submissions in the matter on December 28, 2020.
  6. The Noticee no. 1 to 4 vide their reply dated March 5, 2020 and August 20, 2020, submissions made at the personal hearing held on December 24, 2020, have raised the following key contentions to the allegations in the SCNs:
    - i. **Background of the family separation:**



Noticee no. 1 is the wife of Noticee no. 2. Noticee no. 2 is the son of Late Shri Padam Chand Gupta, the promoter Chairman of the Company during the Investigation Period. However, neither Noticee no. 2 or Noticee no. 1, are/were directors of the Company, at any point of time. The promoters of the Company comprised *inter-alia* of three brothers, Late Shri Padam Chand Gupta, Shri Amar Chand Garg and Noticee no. 5. On July 1, 2011, the aforesaid 3 families entered into Family Arrangement dated July 1, 2011. As per the said Family Arrangement, the Padam Chand Gupta Family and Balram Garg Family were to hold substantial shareholding and the Amar Chand Garg Family were not to have any substantial interest in the Company. Therefore, the shareholding of the Amar Chand Garg Family reduced to 0.70% in the Company.

Thereafter, on April 10, 2015, the Padam Chand Gupta Family entered into a Family Arrangement pursuant to an oral understanding between the parties on March 4, 2015. The said Family Arrangement recorded that Noticee no. 2 will resign as president, Gold Manufacturing of the Company and that he has, in fact, resigned from the said post on March 31, 2015, alongwith his wife Noticee no. 1, who also resigned from the post of Sr. Assistant Manager, Karol Baugh Store of the Company on the same date. The said Family Arrangement further recorded that:

- I. Late Shri Padam Chand Gupta and his wife Smt. Krishna Devi will transfer at least 1.6 Crore shares of the Company to Noticee no. 2 and his family members.
- II. Noticee no. 2 and his legal heirs will not have any right whatsoever in the immovable or moveable properties of Late Shri Padam Chand Gupta and his wife Smt. Krishna Devi.
- III. Noticee no. 2 and his family are allowed to use the property at 1-C, Court Road, Civil Lines, Delhi – 110054 for residential purpose in a manner that does not hamper the enjoyment of other occupiers of the property.
- IV. The said Family Arrangement has to be completed within four years from the date of execution.

In pursuance of the said Family Arrangement dated April 10, 2015, Smt. Krishna Devi transferred a total of 57,14,182 shares of the Company to Noticee no. 1 during the FY 2016-17 and 2017-18, and Late Shri Padam Chand Gupta offered a total of 1,03,00,000 shares of the Company to Noticee no. 1 on April 2, 6, 10, 13, 17 and 20, 2018. Thus, in pursuance of the aforesaid Family Arrangement, Noticee no. 1 received a total of 1,60,14,182 shares of the Company.

Evidently, the Family Arrangement dated April 10, 2015 was made due to estrangement between Noticee no. 2 and his family and the rest of the Param Chand Gupta family. In furtherance of the Family Arrangement dated April 10, 2015 and in order to secure the future of the family of Noticee no. 2, Noticee no. 1 sold the shares of the Company that were gifted to her by Smt. Krishna Devi and Late Shri Padam Chand Gupta. Noticee no. 2 also transferred shares of the Company held by him to his wife's account by way of Gift and these too were sold by Noticee no. 1. A total of 15.05 Lakh shares were sold by Noticee no. 1 during the UPSI Period-II.

- ii. In order for SEBI to establish that the Noticee no. 1 to 4 are “connected persons”, SEBI would have demonstrated that:
  - I. The persons in question were office bearers of the Company; or
  - II. Such persons though not office bearers in the Company, had frequent communication with office bearers in the Company; or
  - III. Such persons were in a contractual or professional relationship with the Company without being office bearers; and
  - IV. By virtue of any of the above, such persons had access to UPSI or such position reasonably afforded them such access.

Even to establish that a spouse, parent, sibling, or child is a “connected person”, by reason of being “immediate relative”, it would follow that one of the following two necessary ingredients is vital:

- I. Such relative must be dependent financially; or
- II. Such relative must consult a connected person in taking decisions in relation to trading in securities.

None of these fundamental ingredients have been met by SEBI. While Noticee no. 2, being the son of Late Sri Padam Chand Gupta and Noticee no. 1, being spouse of Late Sri Padam Chand Gupta's son would qualify as relatives, the presumption that they are 'immediate relatives' would arise only when they are shown to be either financially dependent or that they consulted the connected person to taking decisions relating to trading in securities. Owing to the family arrangement and separation, referred to above, even the wrong presumption that they were 'deemed connected persons' stands rebutted.

- iii. As far as Sri. Amit Garg is concerned, he is not an "immediate relative" of the Late Sri Padam Chand Gupta. He is the Late Shri Padam Chand Gupta's nephew by virtue of being Late Shri Padam Chand Gupta's brother's son. As far as Shri Balram Garg is concerned, none of the Noticee no. 1, 2 and 3, are "immediate relatives" of Sri Balram Garg.
- iv. The mere fact that a person is a relative of a "connected person" cannot by itself be ground to visit such person with a charge of insider trading. This has been clearly laid down by the Hon'ble Supreme Court in Chintalapati Srinivasa Raju v. SEBI (2018) 7 SCC 443.
- v. Noticee no. 1, 2 and 3, do not fall in the definition of 'Connected Persons' as set out in Reg. 2(1)(d) of PIT Regulations, 2015. In this regard we submit that:
  - I. Noticee no. 2 was not part of the management of the Company since April 1, 2015.
  - I. Noticee no. 2, Noticee no. 1 and Noticee no. 3, were never directors of the Company.

- II. Noticee no. 3 and his family members lived in another building at 1-C, Court Road, Civil Lane, Delhi – 110054, alongwith Shri Amar Chand Garg and his family. In fact their address the extra words “Front Side” after the words “1-C”, in order to indicate the separate building. Shri Amar Chand Garg was not associated with the Company. In any capacity at the relevant time and is therefore, neither an insider nor a connected person qua the Company in terms of Reg. 2(1)(d) of PIT Regulations, 2015. Shri Amar Chand Garg stepped down as Vice-Chairman of the Company in September 2011, over a year before the Company was listed. Therefore, the link sought to be established between him and Sri Amit Garg is absurd.

Therefore, since Noticee no. 1, 2 and 3, are not “connected persons”, they also cannot be insiders under Reg. 2(1)(g)(i) of PIT Regulations, 2015. As far as, Reg. 2(1)(g)(ii) is concerned, SEBI would have to demonstrate that the said Noticees, despite not being “connected persons”, were in possession of or had access to UPSI. No material to this effect has been shown by SEBI.

- vi. Noticee no. 3 and his wife, were equal shareholders of Noticee no. 4, since May 29, 2015. They are not directors of Noticee no. 4 since April 3, 2018. It may be noted that:
  - I. As on June 30, 2018 and before September 30, 2018 i.e. UPSI Period-II, Noticee no. 4 did not hold any shares of the Company. Noticee no. 4 was not a holding company or a subsidiary of the Company, therefore, Noticee no. 4 was not the connected person qua the Company during UPSI Period-II.
  - II. Noticee no. 2 was never a director of Noticee no. 4, however, Noticee no. 1 was a director of Noticee no. 4 till August 10, 2015. Noticee no. 3 and his wife were directors of Noticee no. 4 till April 3, 2018 i.e. much prior to UPSI Period-II.
  - III. The directors of Noticee no. 4 during the UPSI Period-II i.e. Mr. Mukesh Sharma and Mrs. Monika Sharma were not insiders under Reg. 2(1)(g)

or connected persons as defined under Reg. 2(1)(d) of PIT Regulations, 2015 and have not been found to be as such in the interim order or the SCN.

In view of the above, Noticee no. 4 is not a connected person or an insider qua the Company and did not have either UPSI-I and UPSI-II in its possession. Hence, there was no prohibition on Noticee no. 4 from trading in the shares of the Company or in other securities based on the shares of the Company.

- vii. Regulation 4(1) of PIT Regulations, 2015, prohibits an insider from trading in securities when in possession of UPSI. In this regard it is pertinent to note that:
- I. It is not established by SEBI that Noticee no. 1, 2 and 3, were in possession of UPSI relating to the Company during the relevant period.
  - II. The preponderance of probability of the UPSI being communicated to Noticee no. 1, 2 and 3 is rebutted by the following facts and circumstances:
    - a. The estrangement between Noticee no. 1 and Late Sri. Padam Chand Gupta and the Family Arrangement dated April 10, 2015.
    - b. The fact that Noticee no. 1, 2 and 3, did not hold any position in the Company, whereby they could have access to UPSI.
    - c. Noticee no. 1 was regularly selling shares that were transferred or gifted to her by Smt. Krishna Devi and Late Shri Padam Chand Gupta under the Family Arrangement dated April 10, 2015 and the sale of shares by her on five days in July 2018 did not indicate an unusual trading pattern.
  - III. Noticee no. 2, who is alleged to be a deemed connected person, did not himself trade in the shares of the Company during the relevant

period and in so far as the trades by Noticee no. 1 are concerned, the same cannot be said to be motivated by any knowledge of the UPSI owing to the estrangement between Noticee no. 2 and Late Shri Padam Chand Gupta.

IV. Noticee no. 3 was not an insider *qua* the Company and in any event, he did not trade in the shares of the Company during the relevant period.

7. The Noticee no. 5 vide his reply dated February 23, 2020 and August 7, 2020, submissions at the personal hearing held on December 24, 2020 and written submissions dated December 28, 2020, has raised the following key contentions to the allegations in the SCNs:

i. **FOUNDATIONAL FACTS NOT PROVED TO RAISE PRESUMPTION:**

- SEBI has failed to place on record any material to prove that Noticee Nos. 1-4 are “connected person” to “Noticee No. 5” as required by Regulation 2(1)(d)(ii)(a) read with 2(1)(f) of the PIT Regulations, 2015; as none of the said Noticees are financially dependent or consult the Noticee No. 5 in any decision relating to trading in securities.
- As per the law laid down by the Hon’ble Supreme Court in Chintalapati Srinivasa Raju v SEBI, (2018) 7 SCC 443, merely because a person is related to a “connected person” that itself cannot be a ground for insider trading.
- Family settlement between Mr. Amar Chand Garg with the joint family comprising of the three brothers in the year 2011 resulted in the family being separated in two branches. Pursuant to the settlement dated July 1, 2011, Noticee No. 5 & Mr. Padam Chand Gupta were to hold a substantial shareholding in PC Jeweller and Mr. Amar Chand Garg and his family members were not to have a substantial interest in PC Jeweller.

- Noticee no. 2 resigned from the post of President (Gold Manufacturing) held by him in the Company on March 31, 2015 pursuant to family partition in Padam Chand Gupta's family. Since then, he and his wife had nothing to do with the business of the Company.
- The allegations that the Noticees have a common residential address are wrong as all of them are residents of separate houses built on a large tract of land and do not share a common dwelling house.
- It was imperative on SEBI to place on record relevant material to prove that the Noticees 1 to 4 were "dependent financially" on Noticee No. 5 or "consults" Noticee No. 5 "in taking decisions relating to trading in securities". It is humbly submitted that the facts are completely to the contrary. The said Noticees are completely financially independent of Noticee No. 5 and have nothing to do with each other in any decision making process relating to securities or even otherwise. Presumption is a rule of evidence which cannot be drawn unless & until foundational facts are proved.
- Moreover, as far as Noticee No. 4 company is concerned admittedly the same is neither holding company or associate company or subsidiary company of PC Jeweller nor Noticee no. 5 has been director of Noticee No. 4 company. Therefore, Noticee no. 4 cannot be a connected person vis-a-vis Noticee no. 5.

ii. **No material to otherwise prove transfer of information between Noticees:**

The charge against Noticee no. 5 is of communicating "unpublished price sensitive information" to the other Noticees, for such a presumption to be drawn against the Noticee No. 5, it is necessary that the foundational fact that the other Noticees are either "connected persons" or "immediate relatives" has to be established & material be placed on record to show frequent and relevant communication. As stated above neither Noticee No. 1 to 4 are connected persons nor are Noticee Nos. 1 to 3 immediate relatives of Noticee No. 5. It

was incumbent on SEBI to establish that these Noticees had frequent and relevant communication with the Noticee No. 5 before drawing the inference of alleged communication of UPSI-I and UPSI-II

On the contrary the Noticee no. 5 has brought on record the following facts which contradict each and every assertion of SEBI against the Noticee No. 5:

- Family settlement between Mr. Amar Chand Garg with the joint family comprising of the three brothers in the year 2011 resulted in the family being separated in two branches.
- Thereafter Noticee no. 2 and his family separated from Mr. Padam Chand Gupta in the year 2015. Consequently, Noticee no. 2 resigned from the post of President (Gold Manufacturing) held by him in the Company on 31.03.2015, which resulted in the Noticee No. 1 & 2 severing their ties with PC Jeweller.
- Due to the aforesaid two estrangements, the Noticee No. 5 did not regularly interact with the families of both Mr. Amar Chand Garg (including Noticee No.3) and Noticees No. 1 & 2. Moreover Noticee no. 2, Noticee no. 1 and Noticee no. 3 have never been directors in the Company, therefore, no occasion arose for Noticee No. 5 to communicate with the aforesaid three individuals either before or after or during the alleged UPSI period in respect of the business of the Company.
- Noticee No. 5 has not traded in the shares of the Company in the securities market either before or after or during the alleged UPSI period i.e. from April 1, 2018 to July 31, 2018. Noticee No. 5 did not have any financial transactions with other Noticees i.e. Noticee no. 1 to 4, either just before or during or after the alleged UPSI Period.

8. After examining the allegations levelled against the Noticees in the SCNs, I note that Noticee no. 1 to 4 have been alleged to have indulged in the act of insider trading in the scrip of PC Jeweller when in possession of UPSI-II in violation of



provisions of Regulation 4(1) of PIT Regulations, 2015 and Sections 12A(d) and (e) of SEBI Act, 1992, and Noticee no. 5 has been alleged to have communicated UPSI-I and UPSI-II to Noticee no. 1 to 4, in violation of the provisions of Regulation 3(1) of PIT Regulations, 2015 and Section 12A(e) of SEBI Act, 1992.

9. Before dealing with the violations alleged with respect to alleged UPSI-I and UPSI-II, it would be appropriate to refer to the provisions of SEBI Act, 1992 and PIT Regulations, 2015, which are relevant for determining the said violations. The relevant extract of these provisions is as under:

**Relevant extract of the provisions of SEBI Act, 1992:**

**“Functions of Board.**

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

- (a).....
- (b).....

.

- (g) prohibiting insider trading in securities;

.....

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

12A. No person shall directly or indirectly—

- (a)....
- (b).....
- (c).....
- (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;
- (f).....”

**Relevant extract of provisions of PIT Regulations, 2015:**

**“Definitions.**

2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:

- (d) "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 within 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); or
- (b). a holding company or associate company or subsidiary company; or
- (c). an intermediary as specified in section 12 of the Act an employee or director thereof; or
- (d). an investment company, trustee company, asset management company or an employee or director thereof; or
- (e). an official of a stock exchange or of clearing house or corporation; or
- (f). a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
- (g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
- (h). an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
- (i). a banker of the company; or
- (j). a concern, firm, trust, Hindu undivided family, company or association of persons where in a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

**NOTE:** It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

(f) "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

(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. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or or he couldnot access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

**Communication or procurement of unpublished price sensitive information.**

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.

**NOTE:** This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

**NOTE:** This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

.....

**Trading when in possession of unpublished price sensitive information.**

4.(1) 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:

.....

(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

.....

**NOTE:** When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.”

10. Section 11(1) of the SEBI Act, 1992 provides that it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. Section 11(2) provides that prohibiting insider trading in securities may be one of the measures, for this purpose. In discharge of its duty under Section 11(1) read with Section 11(2)(g), SEBI had framed SEBI (Prohibition of Insider Trading) Regulations, . Further, Section 12A of SEBI Act, 1992, as introduced by SEBI (Amendment) Act, 2002, in Clause (d) provides that no person shall directly or indirectly indulge in insider trading. The word “indulge” used in this Clause is of wide import. This Clause seeks to prohibit any assistance/aiding of insider trading, by any person either directly or indirectly. Section 12A(e) provides that no person shall directly or indirectly 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. SEBI (Prohibition of Insider Trading) Regulations, 1992 came to be repealed by PIT Regulations, 2015. Thus, at present, regulations referred to in Section 12A(e) are PIT Regulations, 2015. Once a person is found to be in violation of PIT Regulations, 2015, it leads to violation of Section 12A(d) and (e), also. Regulation 4(1) of PIT Regulations, 2015 provides that no insider shall trade in the securities of a company when in possession of unpublished price sensitive information. Further, Regulation 4(2) provides that if the "insider", as envisaged under Regulation 4(1), is a connected person then the onus of establishing that he was not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on the SEBI. The Note appended to Regulation 4(1) clarifies that when a person trades in securities when in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such UPSI in his possession. Proviso to Regulation 4(1) provides that despite presence of all the ingredients of Regulation 4(1) of PIT Regulation, 2015, the insider may prove his innocence by demonstrating the circumstances including those which are mentioned in the said proviso. The Note to Regulation 4(1) states that once it is established that an insider traded when in possession of UPSI, it would be open to the insider to prove

his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

11. In the present case, Noticee No.1 to 4 are alleged to have violated Section 12A(d) and (e) of the SEBI Act, 1992 and Regulations 4(1) read with 4(2) of the PIT Regulations, 2015 by trading in the shares of PC Jeweller when in possession of UPSI-II whereas Noticee No.5, is alleged to have violated Section 12A(e) of the SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015, by communicating UPSI-I and UPSI-II to Noticees No.1 to 4. Thus, in these proceedings, it has to be determined whether Noticees no. 1 to 4 have violated Regulations 4(1) and (2) of the PIT Regulations, 2015. If yes, then, Noticees no. 1 to 4 can be said to be in violation of Section 12A(d) and (e) of the SEBI Act, 1992. Similarly, it has to be determined whether Noticee no. 5 has violated Regulation 3(1) of PIT Regulations, 2015. If yes, then, Noticee no. 5 can be said to be in violation of Section 12A(e). In this order, determination of these violations has been carried out under the following heads:

- A. Whether there were UPSI-I and UPSI-II, as alleged in the SCNs?
- B. Whether Noticees are “insider”, as alleged in the SCNs?
- C. Whether Noticee no. 1 to 4 has traded in the securities of P C Jeweller when in possession UPSI- I and II and Noticee no. 5 communicated UPSI -I and II to Noticee no. 1 to 4, as alleged in the SCNs?

**A. Whether there were UPSI-I and UPSI-II, as alleged in the SCN?**

12. The information in respect of proposed buy back of upto 1,21,14,285 fully paid-up equity shares of Rs.10/- each at a price of Rs.350/- per equity share of PC Jeweller has been identified by the SCNs as UPSI-I. And the information in respect of the withdrawal of the proposed buyback offer due to non receipt of NOC from Sate Bank of India (SBI) has been considered by the SCNs as UPSI-II. I note that Regulation 2(1)(n) of PIT Regulations, 2015 defines ‘unpublished price sensitive information’ as under:

**Definitions.**

2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:—

.....

(n) "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; and (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.

13. I note that in the present case, the SCNs identifies two unpublished price sensitive information, i.e. UPSI-I and UPSI-II. Regarding UPSI-I, I note that the Company on May 10, 2018 informed the stock exchanges that its board of directors, in the meeting held on May 10, 2018 *inter alia* approved buyback of upto 1,21,14,285 fully paid-up equity shares of Rs.10/- each at a price of Rs.350/- per equity share. The said information was disseminated by BSE on May 10, 2019 at 20:29:03 and by NSE on May 11, 2019 at 08:33, on their websites. I note that as per Section 68 of the Companies Act, 2013, a purchase by company of its own shares or other specified securities is termed as "buy-back". As buy-back involves purchasing of its own shares by the company which are extinguished, therefore, consequent to a buy-back by a company, its paid-up capital stands reduced which results into change in capital structure of the company. In terms of Regulation 2(1)(n)(iii) of the PIT Regulations, 2015, information pertaining to change in capital structure of a company is *per se* treated as UPSI. Thus, in the present case, information pertaining to the decision taken by the board of directors of the Company in its meeting held on May 10, 2018 regarding buy-back of the shares of the Company was a price sensitive information and before its disclosure to the stock exchanges

on May 10, 2018 was UPSI-I, as alleged in the SCN. I note that preliminary discussion among MD, ED, COO and CFO in relation to the proposal for buyback of fully paid-up equity shares of the Company took place on April 25, 2018. Therefore, I find that UPSI-I came into existence on April 25, 2018. The said information remained UPSI-I till its disclosure to stock exchanges on May 10, 2018. In view of this, I find that the period from April 25 to May 10, 2018 is the period of UPSI-I, as alleged in the SCNs.

14. Regarding UPSI-II, as alleged in the SCNs, I note that on July 13, 2018, the Company informed the stock exchanges that the board of director of the Company in its meeting held on July 13, 2018 had approved withdrawal of buy-back and the said information was disseminated by BSE and NSE, on their websites, on the same day at 19:28:44 and 19:33, respectively. I note that said information concretely came into existence on July 07, 2018 when SBI formally communicated the refusal to grant the NOC for the proposed buy-back of shares by PC Jeweller. The said refusal was communicated to the MD (i.e. Noticee no. 5) of the Company by IDBI Capital Markets and Securities Ltd., the lead banker of the Company, by its letter dated July 07, 2018. I find that information pertaining to withdrawal of buy-back is an information which in the perception of reasonable investors, who were till then aware of the information that the Company was going to buy-back its shares as informed by the Company on May 10, 2018, was likely to materially affect the price of securities of the Company. This is because of the reason that by virtue of disclosure of buy-back made by the Company on May 10, 2018, its shares were being traded by factoring into account the impact of impending buy-back on the earning per share (EPS), leveraging of the Company, reduction in cost of capital, etc. and when the information about withdrawal of the buy-back by the Company came in public domain, it was likely to materially affect the price of the shares of the Company. Thus, said information was an unpublished price sensitive information as per the main part of the definition of UPSI as provided under Regulation 2(1)(n) of PIT Regulations, 2015 which provides that any information pertaining to a company or its securities which is not generally available and which on becoming generally available is likely to materially affect the price of its securities, is unpublished price sensitive information. The understanding also

stands fortified with the note appended to Regulation 2(1)(n) of the PIT Regulations, 2015. Without prejudice to the foregoing findings, I note that in terms of the disclosure made by the Company on May 10, 2018, the general public was made aware that the Company was going to buy-back upto 1,21,14,285 fully paid-up equity shares of the Company of Rs.10/- each at a price of Rs.350/- per equity share which was an unpublished price sensitive information within the meaning of Regulation 2(1)(n)(iii), as discussed in the previous para, as the said information was pertaining to the change in the capital structure of the Company. As the said decision of buy-back of shares by the Company was abandoned by the Company on July 13, 2018 when its board of directors decided to withdraw the buy-back offer, therefore, as a corollary, I find that the said information was also an unpublished price sensitive information within the meaning of Regulations 2(1)(n)(iii) of the PIT Regulations, 2015 as being an information pertaining to the change in capital structure of the Company. I find that as mentioned above, the said unpublished price sensitive information which has been identified as UPSI-II in the SCNs, came into existence on July 07, 2018 when the State Bank of India refused to give its NOC to the proposed buy-back of the Company and remained so till it was disclosed to the stock exchanges by the Company on July 13, 2018. Thus, I find that the period from July 07, 2018 to July 13, 2018 is the period of UPSI-II, as alleged in the SCNs. With regards to UPSI-I as well as UPSI-II, I note that the Noticees have not disputed the identification of the said information as unpublished price sensitive information by the SCNs.

**B. Whether Noticees are ‘insider’, as alleged in the SCNs?**

15. In accordance with the PIT Regulations, 2015, ‘insider’ is a person who is either a “connected person” {Regulation 2(1)(g)(i)}; or a person who is in possession of or having access to UPSI {Regulation 2(1)(g)(ii)}. In the instant case, the SCNs have identified Noticee no. 1 to 4, as ‘insiders’ under both the clauses of Regulation 2(1)(g) i.e. in terms of Regulation 2(1)(g)(i), being connected person; and Regulation 2(1)(g)(ii) being in possession of or having access to UPSI, of PIT Regulations, 2015. I note that for Noticee no. 5 the SCN has identified him as the ‘connected person’ in terms of Reg. 2(1)(d)(i) and hence, classified him as an



‘insider’ in terms of Reg. 2(1)(g)(i) of PIT Regulations, 2015. I note that while Noticee no. 1 to 4 have disputed their identification as ‘insiders’ under both the clauses, Noticee no. 5 has not disputed his identification as an ‘insider’ under Reg. 2(1)(g)(i)..

16. According to Noticee no. 1 to 4, they have wrongly been identified by the SCNs as a ‘connected person’ and consequently, wrongly classified as an ‘insider’ in terms of Regulation 2(1)(g)(i) of PIT Regulations, 2015. It is the case of the said Noticees that in order to identify a person as ‘connected person’ in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015, SEBI ought to have shown any of the following:

- a. The persons in question were office bearers of the Company; or
- b. Such persons though not office bearers in the Company, had frequent communication with office bearers in the Company; or
- c. Such persons were in a contractual or professional relationship with the Company without being office bearers; and
- d. By virtue of any of the above, such persons had access to UPSI or such position reasonably afforded them such access.

17. Regarding the identification of Noticee no. 1, 2, 3 and 4, as insiders under Regulation 2(1)(g)(i) being connected person within the meaning of Regulation 2(1)(d), by the SCNs, I note that in terms of Regulation 2(1)(d), “connected person” means any person who falls in either clause (i), connected person, or clause (ii), deemed connected person, of Regulation 2(1)(d) of PIT Regulations, 2015. I note that Noticee no. 1 to 4 have been identified by the SCNs as a ‘connected person’ in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015. As per Regulation 2(1)(d)(i), connected person means any person who is associated with the company during the past six months, in any capacity including by reason of (i) frequent communication with the officers of the company; or (ii) being in any contractual, fiduciary or employment relationship; or (iii) being a director, officer or an employee of the company; or (iv) holds any position including a professional or business relationship between himself and the company; that

allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. As per Regulation 2(1)(d)(i), if a person is found to be associated with a company during the past six months of the concerned act, in the ways mentioned thereunder, then such person becomes connected person. Regulation 2(1)(d)(i) envisages that certain associations with the company, in the ways mentioned in the definition, as allowing access or reasonable expected to allow access, to UPSI. It is worth to mention that ways of association mentioned in Regulation 2(1)(d)(i) are only illustrative and not exhaustive of the ways of association, as the word used in Regulation 2(1)(d)(i) is “including” which shows it is an inclusive list and not an exhaustive list. Association with the company that allow or reasonably expected to allow access to UPSI, is the underlying fundamental principle, under Regulation 2(1)(d)(i), for terming a person as connected person. A perusal of the SCNs shows that allegation of Noticees no. 1 to 4 being connected person under Regulation 2(1)(d)(i), seems to have been proceeded on the basis of inference drawn that Noticee no. 1 to 3 being relatives of Late Shri Padam Chand Gupta who was promoter and chairman of the P C Jewellers and Noticee no. 5 who was the MD of P C Jewellers, would be having frequent communication with Late Shri Gupta and Noticee no. 5. However, here I note that as per Regulation 2(1)(d)(i), association by virtue of frequent communication with the officer of the company must be arising in the discharge of his/her duty towards the company. The SCNs does not allege that there was any communication between Noticee no. 5 and Noticee no. 1 to 4, arising out discharge of any duty owed by Noticee no. 1, 2, 3 or 4 to the Company. However, if there is evidence to suggest that an officer of a company had communication with another person regarding UPSI then such another person becomes “insider” by virtue of having possession of UPSI as a result of the communication by the officer of the company, thereby making such another person “insider” under Regulation 2(1)(g)(ii). In this regard, I further note that under Regulation 2(1)(d)(ii), certain categories of persons have been enlisted which are presumed to be connected person. One of the categories mentioned under Regulation 2(1)(d)(ii)(a) is “immediate relatives” of the connected person. However, in terms of Regulation 2(1)(f), “immediate relative” means a spouse of a person, and includes parent,

sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities. Thus, as per the definition of “immediate relative” mere being in enumerated relationships (which is again an inclusive list) is not sufficient to be termed as “immediate relative” as further requirements like financial dependence or consultation in taking decisions relating to trading in securities, are also to be fulfilled. In the present case, allegations made in the SCNs show that Noticee no. 1, 2 and 3 have been shown as relatives of Late Shri Padam Chand Gupta and Noticee No. 5, who were the connected persons and were also “insider” as possessing UPSI-I and II, however, the SCNs do not allege that these Noticees were either financially dependent on or consulted with, in taking decisions relating to trading in securities, Late Shri Padam Chand Gupta and/or Noticee no. 5. Thus, the SCNs treats these Noticees as connected person under Regulation 2(1)(d)(i) instead of Regulation 2(1)(d)(ii). In my view, unless the persons belonging to the categories specified in Regulation 2(1)(d)(ii), satisfies the requirements under 2(1)(d)(i), separately, their deemed connection with the company concerned has to be tested on the touchstone of the parameters laid down under Regulation 2(1)(d)(ii). I note that as per the allegation made in the SCNs, Noticee no. 1, 2, 3 and 4 do not fall in any of the categories of ‘association with the Company’ as envisaged in Regulation 2(1)(d)(i). I also note that it is not the case in the SCN that Noticee no. 1, 2 and 3 were in any contractual, fiduciary or employment relationship with the Company, or were the director or officer of the Company, during the past six months of the alleged act of insider trading. Noticee no. 1 and 2 seem to be in the employment of the Company but that was way back in 2015. I also note that the SCN has also not identified that Noticee no. 1, 2, 3 or 4, had any professional or business relationship with the Company; that allows the said Noticees, directly or indirectly, access to unpublished price sensitive information. In view of the above, I find that Noticee no. 1, 2, 3 and 4 cannot be treated as ‘connected persons’ in terms of Reg. 2(1)(d)(i) of PIT Regulations, 2015.

18. The SCNs also alleges that Noticee no. 1 to 4 were insider under Regulation 2(1)(g)(ii) of the PIT Regulations, 2015. I note that Reg. 2(1)(g)(ii) identifies persons, who have access to UPSI or are in the possession of UPSI, as ‘insiders’.

The SCNs have on the basis of the findings of the investigation, which in turn on the basis of KYC documents of the trading account of Noticee no. 1 and 4, analysis of trading pattern of Noticee no. 1 and 4 before, during and after the UPSI Period-II, concentration of the trades of Noticee no. 1 and 4, concluded that Noticee no. 1, 2, 3 and 4 had possession of UPSI-I and UPSI-II because of their relationship with Noticee no. 5 and Late Shri Padam Chand Gupta and thus, classified them as 'insiders' in terms of Reg. 2(1)(g)(ii) of PIT Regulations, 2015.

19. I note that Late Shri Padam Chand Gupta had died on January 28, 2019, before the issue of the SCNs in the present matter and therefore, the SCNs have not been issued to him. I note that Noticee no. 5 has contested the charge of communication of UPSI-I and UPSI-II to Noticee no. 1 to 4, on the following grounds:

- Family settlement between Mr. Amar Chand Garg with the joint family comprising of the three brothers in the year 2011 resulted in the family being separated in two branches. Pursuant to the settlement dated July 1, 2011, Noticee No. 5 & Mr. Padam Chand Gupta were to hold a substantial shareholding in PC Jeweller and Mr. Amar Garg and his family members were not to have a substantial interest in PC Jeweller.
- Noticee no. 2 resigned from the post of President (Gold Manufacturing) held by him in the Company on March 31, 2015 pursuant to family partition in Padam Chand Gupta's family. Since then he and his wife had nothing to do with the business of the Company.
- Due to the aforesaid two estrangements the Noticee No. 5 claims that he did not regularly interact with the families of both Mr. Amar Chand Garg (including Noticee No.3) and Noticees No. 1 & 2. Moreover, according to Noticee no. 5 - Noticee no. 2, Noticee no. 1 and Noticee no. 3 have never been directors in the Company, therefore no occasion arose for Noticee No. 5 to communicate with the aforesaid three individuals either before or after or during the alleged UPSI period in respect of the business of the Company.

20. I note that the SCNs states that Late Shri Padam Chand Gupta, Notice No. 5 and Shri Amar Chand Garg are the real brothers. Here it is worth to point out that Late Shri Padam Chand Gupta was the Chairman and promoter of PC Jeweller, who alongwith Persons Acting in Concert held 60.24% in PC Jeweller. Noticee no. 5 was the MD of PC Jeweller. Both these persons were having UPSI-I and II. Noticee no. 2 is the son of Late Shri Padam Chand Gupta and nephew of Noticee no. 5. Noticee no. 1 is the wife of Noticee no. 2 and daughter-in-law of Late Shri Padam Chand Gupta. Noticee no. 3 is the Son of Shri Amar Chand Garg and thus, nephew of Late Shri Padam Chand Gupta and Noticee no. 5. Noticee no. 3 is the cousin brother of Noticee no. 2. Noticee no. 4 is a private Limited company wherein 100% shareholding is held by Noticee no. 3 and his wife. At one point of time, Noticee no. 1 was a director in Noticee no. 4. Similarly, Noticee no. 3 and his wife were also director in Noticee no. 4.
21. Regarding the contentions raised by the Noticee no. 5 based on the family settlements/arrangements made in the years 2011 and 2015, I note that the purported Family Settlement between the three brothers cum promoters of PC Jeweller in 2011 and the purported Family Arrangement between Late Shri Padam Chand Gupta and his son in 2015, may at best be regarded as internal division of their business/property interests but such settlements/arrangements do not *ipso facto* imply severing of all natural and social relationships amongst the parties to these settlement/arrangements who are otherwise close relatives. On the basis of the deed of Family Arrangement dated July 1, 2011, Noticees have claimed that there was a family arrangement in 2011 by virtue of which Amar Chand Garg's share in the Company was to be reduced and Noticee no. 5 and Padam Chand Gupta were to hold substantial stake in PC Jeweller, but that does not necessarily imply or even remotely indicate that all the relation of Noticee no. 3 (who is the son of Amar Chand Garg and paternal nephew of Noticee no. 5) and Noticee no. 5, is absolutely 'estranged' and that they are in no talking terms at all. Similarly, the purported separation of Noticee no. 1 and 2 from the family of Late Shri Padam Chand Gupta also does not imply that Noticee no. 5 has an 'estranged' relationship with Noticee no. 1 and 2. The fact that family arrangement/ settlement did not result

into complete estrangement amongst Late Shri Padam Chand Gupta, Noticee no. 1, 2, 3 and 5, is also demonstrated by *inter alia* the following facts:

- (i) The Annual Report of PC Jeweller for the FY 2015-16, 2016-17 and 2017-18, shows that Noticee no. 2 continued to have business transactions with the Company. It appears that PC Jeweller has paid rent worth to Rs. 4 Lakhs for the FY 2015-16, Rs. 77 Lakhs for the FY 2016-17 and Rs. 78 Lakhs for the FY 2017-18, to Noticee no. 2. From the Annual Report of FY 2016-17, it also appears that Noticee no. 2 has paid rent worth Rs. 66 Lakhs to PC Jeweller.
- (ii) From the Annual Report of PC Jeweller for the FY 2018-19, I find that Noticee no. 2 was the nominee of the demat account of Late Shri Padam Chand Gupta and after the death of Shri Padam Chand Gupta, the holdings of the deceased in PC Jeweller are being held by Noticee no. 2 as the nominee. I am not implying that a nominee is the successor, but being a nominee is a position of trust and responsibility. If the relations between the father and son were so 'estranged' since 2015, why would the Late Shri Padam Chand Gupta choose Noticee no. 2 as his nominee. He always had the option to make Mr. Nitin Gupta (son) or Smt. Krishna Devi (wife) to be the nominee.
- (iii) Noticee no. 1, 2, 3 and 5 share the same residential address i.e. 1-C, Court Road, Civil Lines, Delhi – 110054 albeit they reside in different dwelling units within the same address, as submitted by them.

Thus, the claims of Noticee no. 5 that Noticee no. 2 and his family ceases to have any connection/ association with PC Jeweller or his claim that he has no occasion to talk to Noticee no. 1, 2 and 3 since, they are not associated with the business of PC Jeweller, is untenable. Similarly, the claimed 'estrangement' in the relationship between Noticee no. 1 and 2 with Late Shri Padam Chand Gupta's family is also not tenable.

22. I note that in addition to the relationship/connections amongst Noticee no. 1, 2 and 3, with Noticee no. 5 and Late Shri Padam Chand Gupta, as discussed in para 20

above, the attendant facts and circumstances before me also clearly indicate that Noticee no. 1, 2 and 3 had possession of UPSI-I and UPSI-II while trading in the scrip of PC Jeweller during the Investigation Period. Here, I note that in order to prove a particular fact, an evidence can either be direct or circumstantial. In this regard, it may be relevant to refer to the observations made by the Hon'ble Supreme Court in **SEBI Vs. Kishore R Ajmera and Others MANU/SC/0212/2016**, which has been cited with approval by the Hon'ble Supreme Court in the matter of **Chintalapati Srinivasa Raju v. SEBI, (2018) 7 SCC 443 (@ Para 26)**, as under:

*"26. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."*

23. Coming to the circumstantial evidence, I note that following is the details of the trade executed by Noticee no. 1 in the scrip of PC Jeweller during Investigation Period:

**UPSI-I :**

Date	Buy Volume	Sell Volume	Avg. Buy Price (Rs.)	Avg. Sell Price (Rs.)	Net Volume	Buy Value (Rs. in lacs)	Sell Value (Rs. in lacs)	% activity in this scrip compared to all other scrips traded by entity
<b>Pre-UPSI Period-I (April 02, 2018 to April 24, 2018)</b>								
02-Apr-18	-	3,60,000	-	313.70	3,60,000	-	1,129.33	100%
03-Apr-18	-	4,40,000	-	313.70	4,40,000	-	1,380.28	
04-Apr-18	-	1,00,000	-	298.73	1,00,000	-	298.73	
05-Apr-18	-	5,50,000	-	299.35	5,50,000	-	1,646.42	
06-Apr-18	-	7,00,000	-	297.90	7,00,000	-	2,085.31	
09-Apr-18	-	3,50,000	-	298.18	3,50,000	-	1,043.65	
10-Apr-18	-	9,00,000	-	308.07	9,00,000	-	2,772.65	
11-Apr-18	-	5,50,000	-	309.36	5,50,000	-	1,701.46	
12-Apr-18	-	9,00,000	-	306.80	9,00,000	-	2,761.20	
13-Apr-18	-	1,81,362	-	303.39	1,81,362	-	550.23	

Date	Buy Volume	Sell Volume	Avg. Buy Price (Rs.)	Avg. Sell Price (Rs.)	Net Volume	Buy Value (Rs. in lacs)	Sell Value (Rs. in lacs)	% activity in this scrip compared to all other scrips traded by entity
16-Apr-18	-	7,00,000	-	300.75	7,00,000	-	2,105.23	
17-Apr-18	-	6,00,000	-	305.20	6,00,000	-	1,831.20	
19-Apr-18	-	1,40,505	-	297.64	1,40,505	-	418.20	
20-Apr-18	-	1,50,000	-	295.69	1,50,000	-	443.53	
23-Apr-18	-	6,33,855	-	296.71	6,33,855	-	1,880.72	
24-Apr-18	-	25,238	-	290.00	25,238	-	73.19	
No trades observed during UPSI Period-I(April 25, 2018 to May 10, 2018) and Post-UPSI Period-I (May 11, 2018 to May 31, 2018)								

**UPSI-II :**

Pre-UPSI Period-II (June 22, 2018 to July 06, 2018)								
06-Jul-18	-	1,00,000	-	130.51	1,00,000	-	130.48	100%
UPSI Period-II (July 07, 2018 to July 13, 2018)								
09-Jul-18	5,000	1,05,000	131.74	131.64	1,00,000	6.59	138.22	100%
10-Jul-18	-	55,000	-	132.50	55,000	-	72.87	
11-Jul-18	-	3,45,000	-	129.01	3,45,000	-	445.08	
12-Jul-18	-	2,00,000	-	124.66	2,00,000	-	249.32	
13-Jul-18	-	8,00,000	-	120.82	8,00,000	-	966.52	
No trades observed during Post-UPSI Period-II (July 16, 2018 to July 31, 2018)								

24. From the above Table, I observe the following:

- Noticee no. 1 had 100% concentration in trading in the scrip of PC Jeweller only, during pre-UPSI Periods (I & II) and during the UPSI Period-II.
- Shares were traded from Noticee no. 1's trading accounts from April 02, 2018 i.e. the day from which off market transfer of shares from Padam Chand Gupta's account to her demat account (NSDL) started and continued till April 24, 2018. I note that preliminary discussion on the proposal of buyback of shares at Rs.350/- per share started on April 25, 2018, as per CFO's reply dated June 17, 2019. Therefore, it is not a mere co-incidence that Noticee no. 1 put a halt on its selling spree exactly on the same day when the preliminary discussion on buyback proposal started at the management level at PC Jeweller. From the trading pattern of Noticee no. 1, it is observed that while Noticee no. 1 was on a selling spree since the past three weeks, however, as soon as she came in possession of UPSI-I that PC Jeweller was proposing to



come out with a buyback offer, she halted her selling spree only to be able to tender the shares in the buyback offer at a higher price.

- iii) Average price of shares traded by Noticee no.1 during the Pre UPSI Period-I was Rs.303.82 per share.
- iv) By no co-incidence, no trades were observed in the trading accounts of Noticee no., 1 during the period from April 25, 2018 to July 5, 2018, apparently indicating that Noticee no. 1 was waiting to tender her shares in the buyback offer.
- v) Sell Trades were executed in the scrip from trading accounts of Noticee no. 1 again from July 06, 2018 onwards. It is pertinent to note here that SBI officially communicated their refusal to grant NOC to the buyback offer of PC Jeweller on July 07, 2018. However, the informal communication about such refusal from SBI before July 7, 2018 to the management of PC Jeweller cannot be ruled out. Noticee no. 1 is seen to have continued its selling spree from July 6, 2018 till July 13, 2018, the day on which the Company's Board approved the withdrawal of buyback proposal. This indicates that Noticee no. 1 (and Noticee no. 2 and 3 who were placing orders from the account of Noticee no. 1) came into possession of UPSI-II and immediately, started selling the shares of PC Jeweller to avoid loss that may arise in future due to the negative news of non-receipt of NOC for buyback from SBI and subsequent withdrawal of buyback offer by PC Jeweller resulting into fall in price of shares of PC Jeweller.
- vi) No trades seen during post-UPSI Period-II.
- vii) During UPSI Period-II, Noticee no. 1 had net sold 15,00,000 shares in the scrip which constituted 15.79% of the total market deliverable quantity.

25. In view of the above facts and circumstances, it is clear that Noticee no. 1 along with Noticee no. 2 and 3 (both of whom traded on behalf of Noticee no. 1) were in the know-how of the events taking place in the Company with regard to the buyback proposal and its withdrawal. Thus, I find that Noticee no. 1, 2 and 3 had possession of UPSI-I and UPSI-II and they were 'insiders' in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.

26. Noticee no. 4 has contended that it did not have access to UPSI-I and UPSI-II by presenting the following:

- i) As on June 30, 2018 and before September 30, 2018, Noticee no. 4 did not hold any shares of PC Jeweller. Noticee no. 4 was not a holding company or a subsidiary company of PC Jeweller, therefore Noticee no. 4 was not the connected person qua the Company during UPSI Period-II.
- ii) Noticee no. 2 was never a director of Noticee no. 4, however, Noticee no. 1 was a director of Noticee no. 4 till August 10, 2015. Noticee no. 3 and his wife were directors of Noticee no. 4 till April 3, 2018 i.e. much prior to UPSI Period-II.
- iii) The directors of Noticee no. 4 during the UPSI Period-II i.e. Mr. Mukesh Sharma and Mrs. Monika Sharma were not insiders under Reg. 2(1)(g) or connected persons as defined under Reg. 2(1)(d) of PIT Regulations, 2015 and have not been found to be as such in the interim order or the SCN.

27. I note that none of the above, gives a correct and fair picture of the control and influence exercised by Noticee no. 3 on the affairs and operations of Noticee no. 4. I note that Noticee no. 4, at the relevant time was a company wholly owned by Noticee no. 3 and his wife (each of them held 50 % shareholding). Noticee no. 3 and his wife were directors of Noticee no. 4 till April 3, 2018. Further, an analysis of the HDFC Bank A/c. of Noticee no. 4, reveals the following:

- i) There was a receipt of Rs. 1 Crore from Noticee no.3 on June 1, 2018 and on the same day, out of a total credit balance of Rs. 2,18,76,567.84 available in the account, payment of Rs. 2 Crore was made into the trading account held with Karvy. Further, there was a credit of Rs. 3 Crore in the form of pay-out from Karvy on 20<sup>th</sup> and 25<sup>th</sup> of July 2018 out of which Rs. 2 Crore was remitted to Noticee No.3 on July 31, 2018 (post – UPSI Period-II).
- ii) Noticee No. 3 and his wife, Nisha Garg, were the authorised signatories to the bank account even after they ceased to be Directors of Noticee no. 4 w.e.f. April 3, 2018.

28. From the nature of transactions between the bank accounts of Noticee No. 3 and Noticee No. 4 and the fund utilisation thereof, coupled with the fact that Noticee no. 3 had placed the orders for the trades of Noticee no. 4 (through stock broker Karvy) during UPSI Period-II, I find that Noticee no. 4 was nothing but a front entity of Noticee no. 3 for trading in the securities market, including trading in the scrip of PC Jeweller. I note that Noticee no. 3 has completely downplayed the aforesaid fund transfers between him and Noticee no. 4, by calling them as an inconsequential and inconclusive evidence. However, from all the attendant facts and circumstances, I find that Noticee no. 4 was a wholly owned and controlled company of Noticee no. 3 and his family and Noticee no. 3 used Noticee no. 4 as a front entity for trading in the securities of PC Jeweller.
29. I shall now examine the trading pattern of Noticee no. 4 during the UPSI Period-II, which is as under:
- a. I note that Noticee No. 4 had 100% concentration in trading in the scrip Futures of PC Jeweller during the UPSI Period-II.
  - b. Noticee No. 4 already had an open long position of 2.25 Lakh futures of PC Jeweller which was squared-off with a short position on July 11, 2018, i.e. during UPSI Period-II. I note that by closing the open position at a time when UPSI-II was still not public, Noticee no. 4 has avoided a loss of Rs. 89.82 lakh.
  - c. During the UPSI Period-II, Noticee No.4 opened another short position of 3 Lakh futures of PC Jeweller on July 13, 2018. I note that UPSI-II became public only after market hours on July 13, 2018. It is pertinent to note that a trader opens a short position only in anticipation of a price fall. Noticee No. 4 squared-off the aforesaid short position on July 20, 2018, thereby making a profit of Rs. 133.04 lakh.

I note that the two futures positions taken by Noticee no. 4 during UPSI Period-II (one on July 11, 2018 and the other on July 13, 2018) were completely in sync with the negative impact of UPSI-II when it became public.

30. In view of the observations made at paras 27 to 29, viz. the trading pattern and timing of trades of Noticee no. 4, the overarching influence and control of Noticee no. 3 over the affairs of Noticee no. 4, the proximity of Noticee no. 3 to the promoters (Prem Chand Gupta and Noticee no. 5), it is clear that trading by Noticee no. 4 in the futures contracts of PC Jeweller was due to the possession of UPSI-II. Thus, I find that Noticee no. 4 had possession of UPSI-II through Noticee no. 3 and thus, Noticee no. 4 was an 'insider' in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.

31. I note that Noticee no. 5 was the MD of PC Jeweller. Thus, Noticee no. 5 is a connected person within the meaning of Regulation 2(1)(d)(i) of PIT Regulations, 2015. Therefore, Noticee no. 5 is an insider of PC Jeweller in terms of Reg. 2(1)(g)(i) PIT Regulations, 2015. The chronology of events which has been provided in the SCNs and also reproduced in the pre-paras of this order indicates that Noticee no. 5 was part of all the key discussions and was aware of the developments pertaining to buy-back offer, refusal of NOC from SBI and its subsequent withdrawal of buy-back offer. I also note that Noticee no. 5 has not disputed the findings of the SCNs with respect to the Chronology of Events and thereby, him having possession of UPSI-I as well as UPSI-II. Therefore, I find that Noticee no. 5 is an 'insider' in terms of Regulations 2(1)(g)(i) being connected person and Regulation 2(1)(g)(ii) being in possession of UPSI-I and UPSI-II, of PIT Regulations, 2015.

**C. Whether Noticee no. 1 to 4 has traded in the securities of P C Jeweller when in possession UPSI- I and II and Noticee no. 5 communicated UPSI - I and II to Noticee no. 1 to 4, as alleged in the SCNs?**

32. I note that neither Noticee no. 1, nor Noticee no. 4 have disputed the veracity or authenticity of the trades in the scrips of PC Jeweller that took place from their respective trading accounts during the Investigation Period. I also note that neither

Noticee no. 2, nor Noticee no. 3, have disputed the fact that certain trades (specifically mentioned in the SCN and its Annexure), in the scrip of PC Jeweller, were executed by them through the trading accounts of Noticee no. 1 during the Investigation Period.

33. I note that Regulation 4(1) of the PIT Regulations, 2015 prohibits trading by insiders when in possession of UPSI. As discussed earlier, in terms of Regulation 2(1)(g), an insider can be either a connected person or a person who is in possession of or having access to UPSI. I note that the definition of 'connected person' in Regulation 2(1)(d) of PIT Regulations, 2015 is based on the premise that in case of both type of connected persons falling under either Regulation 2(1)(d)(i) or under Regulation 2(1)(d)(ii), association mentioned in the ways mentioned therein allows access or reasonably expected to allow to access, to UPSI. Once a person is found to be "connected person" than by virtue of Regulation 2(1)(g)(i) such person becomes "insider". When a connected person is charged with violation of Regulation 4(1) of PIT Regulations, 2015 i.e. trading by insider when in possession of UPSI, then by virtue of Regulation 4(2) of PIT Regulations, 2015, the burden of proving that such connected person was not in possession of UPSI at the time of his trades, is on such connected person. There is no such presumption against the persons who are termed "insiders" by virtue of Regulation 2(1)(g)(ii) of PIT Regulations, 2015 because, a person becomes "insider" under Regulation 2(1)(g)(ii) when he is in possession of or having access to, UPSI. Possession of UPSI, in respect of persons who are termed insider by virtue of Regulation 2(1)(g)(ii) is not required to be proved separately while determining the violation of Regulation 4(1) because a person becomes 'insider' under Regulation 2(1)(g)(ii) when it is proved that he was in possession of UPSI or having access to UPSI.

34. I note that, in the instant case, Noticee no. 1 to 4 have been alleged to be insiders in terms of Regulation 2(1)(g)(i), being connected person, and 2(1)(g)(ii), being in possession of or having access to UPSI. However, as observed in para 25, Noticee no. 1, 2 and 3, were in possession of UPSI-I and UPSI-II, and, as observed in para 30, Noticee no. 4 was in possession of UPSI-II. Thus, I note that Noticee no. 1 to 4 are 'insiders' in terms of Reg. 2(1)(g)(ii) of PIT Regulations, 2015. I note that Noticee

no. 1, 2, 3 while conducting trades in the scrip of PC Jeweller through the trading account of Noticee no. 1 during UPSI Period-II and Noticee no. 3 while conducting trades through the trading accounts of Noticee no. 4, during UPSI Period-II, were found to be in possession of UPSI-II. I also find that Noticee no. 3 and his wife are 100% beneficial owner of Noticee no. 4, Noticee no. 3 was authorised to execute trades on behalf of Noticee no. 4 and Noticee no. 3 was in possession of UPSI-II while executing the trades in the futures of the Company on behalf of Noticee no. 4. Thus, from the facts and circumstances of the case, I find that Noticee no. 1, 2, 3 and 4 traded in the securities of the Company when in possession UPSI-II and thus, have violated provision of Regulation 4(1) of PIT Regulations, 2015. Consequently, I find that Noticee no. 1 to 4 have also violated Section 12A(d) and (e) of SEBI Act, 1992.

35. I note that the SCNs have alleged that UPSI-I and UPSI-II came to be communicated to Noticee no. 1 to 4 from Late Shri Padam Chand Gupta and Noticee no. 5. However, owing to the death of Late Shri Padam Chand Gupta, no action has been proposed by the SCNs against him. I note that Noticee no. 5 was MD of PC Jeweller. Being MD, Noticee no. 5 was in-charge of the day to day control of the Company. Noticee no. 5 was duly involved in all the discussions/decisions pertaining to the proposed buy-back, NOC from SBI and subsequent withdrawal of buy-back. As observed in the paragraph 31 above, Noticee no. 5 has been found to be in possession of UPSI-I and UPSI-II. The close relationship amongst the Noticees have already been discussed above. Further, as noted in the previous paragraph, the trading pattern of Noticee no. 1, during the Investigation Period clearly indicate that Noticee no. 1, 2 and 3 were in possession of UPSI-I and UPSI-II. Therefore, I note that Noticee no. 1, 2 and 3 could not have got possession of UPSI-I and UPSI-II except from communication by Noticee no. 5 and Late Shri Padam Chand Gupta. Hence, I find that Noticee no. 5 has violated provision of Regulation 3(1) of PIT Regulations, 2015 which prohibits the communication of any UPSI by an Insider, except if it is in furtherance of some legitimate purpose or in discharge of any legal obligation. I note that Noticee no. 5 has also violated the provision of Section 12A(e) of SEBI Act, 1992 which provides that no person shall communicate material or non-public information to any other person, in a manner which is in contravention of

the provisions of the SEBI Act, 1992 or the rules or the regulations made thereunder.

36. As noted in the preceding paragraphs, Noticee no. 1, 2, 3 and 4, had executed trades in the scrip of PC Jeweller during UPSI Period-II when in possession of UPSI-II in order to avoid loss and make gains on account of the fall in price of the scrip due to the announcement for withdrawal of the buyback. In this regard, the

TABLE XII – NOTIONAL LOSS AVOIDED BY NOTCEE NO. 1, 2 AND 3	
PARTICULARS	
NO. OF SHARES SOLD WHILE IN POSSESSION OF UPSI-II	15,00,000
X WEIGHTED AVERAGE SALE PRICE	Rs.124.36
SUBTOTAL (I)	Rs.18,65,43,255.05
(-) LESS	
NO. OF SHARES SOLD WHILE IN POSSESSION OF UPSI-II	15,00,000
X (MULTIPLY)	Rs.89.20
CLOSING PRICE ON THE FOLLOWING TRADING DAY AFTER UPSI-II BECAME PUBLIC	
SUBTOTAL (II)	Rs.13,38,00,000.00
LOSS AVOIDED (APPROX.) [(I)-(II)]	Rs.5,27,43,255.05

loss avoided/ unlawful gains made were computed and presented in the impounding order as under:

TABLE XIII – NOTIONAL LOSS AVOIDED BY NOTICEE NO. 4	
PARTICULARS	
NO. OF FUTURES SOLD WHILE IN POSSESSION OF UPSI-II	2,25,000
X WEIGHTED AVERAGE SALE PRICE	Rs.128.92
SUBTOTAL (I)	Rs.2,90,07,000.00
(-) LESS	
NO. OF FUTURES SOLD WHILE IN POSSESSION OF UPSI-II	2,25,000
X (MULTIPLY)	Rs.89.00
CLOSING PRICE ON THE FOLLOWING TRADING DAY AFTER UPSI-II BECAME PUBLIC	
SUBTOTAL (II)	Rs.2,00,25,000.00
LOSS AVOIDED (APPROX.) [(I)-(II) = (X)]	Rs.89,82,000.00

TABLE XIV – NOTIONAL GAINS MADE BY NOTICEE NO. 4	
PARTICULARS	
NO. OF FUTURES SOLD WHILE IN POSSESSION OF UPSI-II	3,00,000
X WEIGHTED AVERAGE SALE PRICE	Rs.119.76

SUBTOTAL (I)	Rs.3,59,28,000.00
(-) LESS NO. OF FUTURES SOLD WHILE IN POSSESSION OF UPSI-II	3,00,000
X (MULTIPLY) CLOSING PRICE ON THE FOLLOWING TRADING DAY AFTER UPSI-II BECAME PUBLIC	Rs.89.00
SUBTOTAL (II)	Rs.2,67,00,000.00
NOTIONAL GAINS (APPROX.) [(I)-(II) = (Y)]	Rs.92,28,000.00
TOTAL OF NOTIONAL LOSS AND GAINS BY NOTICEE NO. 4 (APPROX.) [(X)+(Y)]	Rs.1,82,10,000.00

**Note:** Method adopted to compute notional loss avoided/ notional gains under various scenario is:

- (a) Notional loss avoided/gains made (in case of negative news) = No. of shares/Futures sold while in possession of UPSI x Weighted Average Sale Price] Minus (-) [No. of shares/Futures sold while in possession of UPSI x Closing price on the day of UPSI becoming public].
- (b) The closing prices of the shares (Rs.89.20)/Futures (Rs.89) of PC Jeweller on the next trading day after UPSI – II became public i.e. July 16, 2018 (see also Table VII), on NSE has been considered as closing price for computation of notional loss avoided/gains made.

37. As the amount of notional loss avoided/ amount of notional gains was made during the period July 7, 2018 to July 13, 2018, it becomes reasonable and necessary to levy an interest at the rate of 12% simple interest per annum, which has been computed and presented in the Impounding Order as under:

TABLE XV – COMPUTATION OF NOTIONAL GAINS/ LOSS AVOIDED			
ENTITY NAME	GAIN /LOSS AVOIDED (AMOUNT IN Rs.)	INTEREST 12% PER ANNUM*	TOTAL (AMOUNT IN Rs.)
SHIVANI GUPTA	5,27,43,255.05	90,16,929.08	6,17,60,184.13
QDPL	1,82,10,000.00	31,13,161.64	2,13,23,161.64
*INTEREST CALCULATED ON NOTIONAL LOSS AVOIDED/ GAINS MADE DURING THE PERIOD (FROM THE DATE WHEN UPSI – II BECAME PUBLIC I.E. JULY 16, 2018 TO THE DATE WHEN IMPOUNDING ORDER WAS PASSED I.E. DECEMBER 17, 2019).			

38. I note that, the summary of loss avoided/notional gains made in the trading accounts of Noticee no. 1 and Noticee no. 4 in aggregate (including interest) through trading in the scrip of PC Jeweller while being in possession of UPSI-II amounted to **Rs.6,17,60,184.13** and **Rs. 2,13,23,161.64**, respectively. I note that



aforesaid amount has been impounded by SEBI by virtue of the Impounding Order. I also note that said Noticees i.e. Noticee no. 1, 2, 3 and 4 have not disputed the method used or the formula adopted for arriving at the aforesaid amount. I also note that none of the said Noticees have disputed the value of the alleged unlawful gain made or loss avoided by them alongwith calculation of interest that has been shown in the interim order.

39. In view of the violation of the provisions of the PIT Regulations, 2015 and SEBI Act, 1992 by the Noticees, as noted above, I find that the Noticees are liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities. Further, I find that directions under Section 11B(1) of the SEBI Act, 1992 be issued against Noticee no. 1, 2 and 3 to disgorge an amount of Rs. 6,17,60,184.13/-, jointly and severally, and against Noticee 3 and 4 to disgorge an amount of Rs. 2,13,23,161.64/-, jointly and severally.

40. I note that violations committed by the Noticees also renders them liable for imposition of penalty under Section 15G readwith Section 11B(2) of SEBI Act, 1992, which provide as under:

**SEBI Act, 1992:**

**“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 pricesensitive 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.”

**“Power to issue directions and levy penalty.**

11B(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,—
  - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
  - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

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

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”

41. I note that in terms of Section 15J of the SEBI Act, 1992, while determining the quantum of penalty under Section 15J of SEBI Act, 1992, Board is required to have due regard to the following factors, namely: -

- (i) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (ii) the amount of loss caused to an investor or group of investors as a result of the default;
- (iii) the repetitive nature of the default.

42. In the instant case, I find that for the unlawful gains made and unlawful loss avoided by Noticee no.1 and 4, for their impugned trades during UPSI Period-II appropriate directions of disgorgement of unlawful gains made/loss avoided along with penal interest are being issued. I note that material available on record does not bring out any loss caused to any specific investor or a group of investors, as a result of violations committed by Noticee no. 1 to 5 with respect to UPSI-I and UPSI-II. I note that there is no material available on record to indicate that the violations committed by Noticee no. 1 to 5 are repetitive in nature.

**Directions:**

43. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby direct as under:

- (i) Noticee no. 1, 2, 3, 4 and 5 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of this order;
- (ii) Noticee no. 1, 2, 3, 4 and 5 are restrained from buying, selling or dealing in the securities of PC Jeweller Ltd., directly or indirectly, in any manner whatsoever, for a period of two (2) years, from the date of this order;
- (iii) The Noticee no. 1, 2 and 3 are directed to disgorge, jointly and severally, a sum of Rs. 6,17,60,184.13/- which was impounded by Impounding Order passed in the present matter and the same shall be credited into the Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992;
- (iv) The Noticee no. 3 and 4 are directed to disgorge, jointly and severally, a sum of Rs. 2,13,23,161.64/- which was impounded by the Impounding Order passed in the present matter and the same shall be credited to the Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992;
- (v) Noticee no.1, 2, 3, 4 and 5 are hereby imposed with penalty of Rs. Twenty (20) Lakhs each, under Section 15G of the SEBI Act, 1992, and are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order;

The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at [portalhelp@sebi.gov.in](mailto:portalhelp@sebi.gov.in). The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD-ID7, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:- [tad@sebi.gov.in](mailto:tad@sebi.gov.in) in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

44. The restraints/ prohibition imposed in paras 43(i) and (ii), on the respective Noticees, shall run, concurrently. The obligation of the Noticees restrained/ prohibited by this Order, 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, are allowed to be discharged irrespective of the restraint/ prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/ prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/ prohibition imposed by this Order.

45. This order comes into force with immediate effect.

46. A copy of this Order shall be served on the Noticees, recognized Stock Exchanges, Depositories, Registrar and Share Transfer Agents of Mutual Funds to ensure compliance with the above directions.

Sd/-

**Date: May 11, 2021**

**Place: Mumbai**

**ANANTA BARUA  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**