

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

**FINAL ORDER**

**Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India  
Act, 1992**

**In Re: Securities and Exchange Board of India (Prohibition of Insider Trading)  
Regulations, 1992**

**In respect of:**

<b>S.No.</b>	<b>Name of the Entity</b>	<b>PAN</b>
<b>1.</b>	<b>Abhishek Mehta</b>	<b>AGCPM6239M</b>

**In the matter of Acclaim Industries Ltd.**

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**BACKGROUND**

1. Acclaim Industries Ltd (formerly known as Mukund Flexpack Ltd. and also Elpro Packaging Limited) (hereinafter referred to as '**AIL / company**') is in the business of manufacture of flexible packaging material. The company is listed on BSE Ltd. w.e.f. February 28, 1994.
2. The details of the management of the company during the period January 01, 2012 to December 31, 2012 (hereinafter referred to as the '**investigation period**') are as under:-

<b>Sl. No.</b>	<b>Name</b>	<b>Designation</b>
1.	Mr. Abhishek Mehta	Managing Director

2.	Mr. Karsan K. Chitroda	Director
3.	Mr. Pandurang Nawghane	Director (Independent)
4.	Mr. Krishnat Desai	Director (Independent)

3. The details of Promoter shareholding is hereunder:

S. No	Name	Dec 2011-June 2012			Quarter ended Sep 2012- Dec 2012			Quarter ended March 2013		
		No of shares	% of share holding	% of promoter share holding	No of shares	% of share holding	% of promoter share holding	No of shares	% of share holding	% of promoter share holding
1	Abhishek Mehta	15,37,700	30.76	55.86	7,92,782	15.85	39.48	5,12,782	10.25	29.67
2	Bhavna Rajesh Mehta	12,15,300	24.31	44.14	12,15,300	24.31	60.52	12,15,300	24.31	70.33
	<b>Total</b>	<b>27,53,000</b>	<b>55.06</b>	<b>100</b>	<b>20,08,082</b>	<b>40.16</b>	<b>100</b>	<b>17,28,082</b>	<b>34.56</b>	<b>100</b>

4. The company registered net profit of ₹ 2.55 crore and ₹ 1.38 crore for the year ended March 2011 and March 2012 and incurred loss of ₹ 17.31 crore for year ended March 2013 respectively. Company's net sales and net profit decreased for the financial year ending March 2013 in comparison to previous financial year.
5. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference from BSE and as per the reference, the holding of the Promoter of AIL, Mr. Abhishek Mehta (hereinafter referred to as '**Noticee**'), had changed by around 14.9% during the period between July 01, 2012 to December 26, 2012 which required disclosures under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter also referred to as '**PIT Regulations**').
6. Pursuant to the aforesaid reference, a detailed investigation was carried out by SEBI *inter alia* to ascertain whether trading in the scrip of AIL by the Noticee was based on Unpublished Price Sensitive Information (hereinafter also referred to as '**UPS**I')

and thus in violation of provisions of Securities and Exchange Board of India, Act 1992 (hereinafter referred to as the '**SEBI Act**') and PIT Regulations, during the investigation period.

**SHOW CAUSE NOTICE**

7. Consequent to the completion of investigation, a Show Cause Notice (hereinafter referred to as '**SCN**') dated June 22, 2017 was served on the Noticee by affixture at his last known address, in the extant matter. Subsequently, the SCN was also sent to the alternate address of the Noticee and to his email id. armehta1@gmail.com, as found in the records. Proof of service of SCN at the alternate address is on record. The SCN required the Noticee to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 including disgorgement of ill-gotten gain, should not be issued against him for the alleged violation of Regulations 12A (d) and 12A (e) of SEBI Act and Regulation 3(i) and Regulation 4 of PIT Regulations, 1992 read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015.
8. The facts and allegations as set out in the SCN are as follows:
  - It was observed that the Noticee (Managing Director of the company) had sold 7,44,918 shares during the period between July 11, 2012 to August 9, 2012. Consequently, his shareholding came down significantly from 30.76% to 15.85% of share capital. He was also the top net seller during the period under investigation. Thereafter, his shareholding reduced from 15.85% to 10.25% between January 18, 2012 to February 07, 2013.
  - The company at its meeting held on January 31, 2012, had approved the proposal of merger of the company with Database Software Technology Private Limited (hereinafter referred to as '**Database Software**'). The same was disclosed to the Exchange on February 01, 2012.
  - It is further observed that the company on August 9, 2012 informed BSE that a meeting of Board of Directors will be held on August 17, 2012 to *inter alia* consider the merger of the company for finalizing the share exchange ratio and the scheme

of amalgamation. Subsequently, on August 17, 2012, the company has informed BSE that due to unavoidable circumstances, the company has decided to postpone the Board Meeting to be held on August 17, 2012 to August 30, 2012.

- The outcome of the Board meeting held on August 30, 2012 was informed by the company to BSE on September 6, 2012, wherein it was *inter alia* informed that the merger of the company for finalizing the share exchange ratio and scheme of amalgamation has been postponed, and that the company shall consider the matter in the next Board Meeting.
- The company vide its undated letter, received in SEBI on November 02, 2015 stated that - *The next board meeting held on 18th February, 2012 for finalizing the share exchange ratio but it was unanimously decided by the Board of Directors of the Company not to merge M/s Acclaim Industries Ltd with Database Software Technology Private Ltd due to some management issues /technical issues. The company did not submit outcome of Board meeting dated February 18, 2012. This was inadvertent mistake on the part of the management of the company.*
- It may be noted that the even though the Board of Directors had cancelled the proposed merger in its meeting dated February 18, 2012 and even failed to inform the Exchange regarding the same, the company continued with its announcements regarding mergers' share exchange ratio and scheme of amalgamation.
- From the above sequence of events, it is observed that while the company has omitted to inform the cancellation of the merger as decided in Board meeting dated held on February 18, 2012, it kept on making misleading announcements regarding the merger issue without even mentioning the name of the entity with which the merger was proposed (announcements made on August 17, 2012 and September 06, 2012) unlike its corporate announcement dated February 1, 2012 where it clearly indicated name of Database Software w.r.t the proposed merger. Further, the company never updated the Exchange/public on the final status of the merger proposal.
- It is alleged that the cancellation of merger was in the nature of price sensitive information (hereinafter referred to as 'PSI') in accordance with Regulation 2(ha)

of PIT Regulations.

- The chronology of events relating to the alleged PSI is as under:

S.No.	Date	Event
1.	06/02/2012*	The company during its meeting with Database Software, during 2 <sup>nd</sup> week of February 2012, observed that the conditions regarding the merger was not set and hence the idea of cancellation of merger was mooted.  (*As the company has not been able to provide the exact date of mooting of idea of cancellation, the first day of the second week is taken as day when the idea of cancellation was first mooted.)
2.	18/02/2012	Board cancelled aforesaid proposed merger and the same was not disclosed to exchange.

- From the chronology of events provided above it is alleged that the PSI came into existence on February 06, 2012. As the cancellation regarding the merger was not informed to the Exchange during the investigation period, it is alleged that the PSI remained unpublished till the end of investigation period. Therefore, the period of UPSI is from the date of cancellation of merger till the end of investigation period, i.e. February 06, 2012- December 26, 2012.
- The Noticee was present in the Board meeting held on February 18, 2012 and he was one of the key persons with regards to the merger proposal as he was mandated to appoint the requisite Valuers, Advocates and the required Experts for carrying out the proposed merger as per Board meeting held on January 31, 2012. Further, in the Board meeting held on February 18, 2012, Noticee was the Chairman of the meeting. Hence, it is alleged that he is an insider and connected person as per Regulations 2(e) and 2(h)(i) respectively of PIT Regulations.
- It is observed that the Noticee had sold 7,44,918 shares during the period from July 11, 2012 and August 9, 2012 amounting to 14.90% of the share capital (his day wise trading details is provided in the table below). It is alleged that the Noticee had the knowledge of the Board's decision to cancel the merger, while he was selling his shares and reducing his holding i.e. he was trading when in the

possession of UPSI.

Date	No of shares held - pre Disposal as PAC	% of shareholding held - pre disposal	No of shares disposed off	No of shares disposed off as a % of paid up capital	No of shares held - post disposal	% of shareholding held - post / Disposal as PAC	Mode( ) Market/ off-market
11.07.2012	1537700	30.75%	200000	4.0%	1337700	26.75%	market
20.07.2012	1337700	26.75%	151250	3.03%	1186450	23.73%	market
23.07.2012	1186450	23.73%	10000	0.20%	1176450	23.53%	market
24.07.2012	1176450	23.53%	2197	0.04%	1174253	23.49%	market
25.07.2012	1174253	23.49%	194767	3.90%	979486	19.59%	market
27.07.2012	979486	19.59%	77139	1.54%	902347	18.05%	market
30.07.2012	902347	18.05%	38660	0.77%	863687	17.27%	market
01.08.2012	863687	17.27%	20000	0.40%	843687	16.87%	market
07.08.2012	843687	16.87%	25905	0.52%	817782	16.36%	market
09.08.2012	817782	16.36%	25000	0.50%	792782	15.85%	market

- Therefore, it is alleged that the Noticee has violated Regulations 12A(d) & 12A(e) of SEBI Act and Regulation 3(i) and Regulation 4 of PIT Regulations, 1992 read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015.
- It is alleged that by dealing in securities of AIL when in possession of UPSI w.r.t cancellation of proposed merger, the Noticee has made ill-gotten gain (without providing for benefit of loss) of approx. ₹ 34, 74, 722/-only.

9. Thus, the Noticee was called upon to show cause as to why directions under Sections 11(1), 11(4) and 11B of the SEBI Act including disgorgement of ill-gotten gain, should not be issued against him for the aforesaid alleged violations under SEBI Act and PIT Regulations.

### **REPLY & HEARING**

10. Noticee has failed to submit any reply to the SCN till date. Considering the facts of the case, the Noticee was granted an opportunity of hearing on December 11, 2018 at SEBI Bhavan, Mumbai vide hearing notice dated August 30, 2018. The said hearing notice was affixed at his last known address and was served on the alternate address of the Noticee, as available on records.

11. Noticee failed to appear for the personal hearing without giving any reason. In view of the facts and circumstances of the case and failure of the Noticee to avail the opportunity of hearing, I am of the view that principles of natural justice have been followed in the matter and I deem it appropriate to decide the matter on the basis of facts / material available on record.

### **FINDINGS & CONSIDERATIONS**

12. I have perused the SCN and other materials available on record. On perusal of the same, the following issues arise for consideration:

- i. Whether the cancellation of merger of the company with Database Software, was a PSI?
- ii. If the aforesaid information was PSI, when did it come into existence?
- iii. When the aforesaid information was made public by the company?
- iv. Whether the Noticee is an 'insider' as per Regulation 2(e) of PIT Regulations?
- v. If the answer to the aforesaid question is in affirmative, whether the Noticee has violated provisions of Regulations 12A (d) and (e) of SEBI Act and Regulations 3(i) and Regulation 4 of PIT Regulations??
- vi. If the answer to the aforesaid question is in affirmative, whether the Noticee has made any ill-gotten gains and if so, are they liable for disgorgement. Further, other directions, if any need to be issued against the Noticee?

**Issue No. 1** - *Whether the cancellation of merger of the company with Database Software, was a PSI?*

13. It is noted from the investigation report (hereinafter referred to as '**IR**') the company at its meeting held on January 31, 2012, had in-principle approved the proposal of merger of the company with Database Software. The same was disclosed to BSE Ltd. on February 01, 2012. In this regard, the following provision of PIT Regulations is noted:

*Regulation 2 (ha) of PIT Regulations read as under:*

*(ha) "price sensitive information" means any information which relates directly or*

*indirectly to a company and which if published is likely to materially affect the price of securities of company.*

*Explanation.—The following shall be deemed to be price sensitive information: —*

*(i) ...*

*...*

*(v) amalgamation, mergers or takeovers;*

*...*

14. On a perusal of explanation to Regulation 2 (ha) of PIT Regulations which defines “deemed price sensitive information”, it is noted that ‘amalgamation, mergers or takeovers’ are deemed PSI. The definition of price sensitive information under Regulation 2 (ha) of PIT Regulations is very wide and includes any information with regard to ‘amalgamation, mergers or takeovers’. Therefore, it follows that any information with respect to ‘amalgamation, mergers or takeovers’ viz., approvals, cancellation, statutory delays / hurdles faced by the company etc. are also “deemed price sensitive information” as they have an effect on company’s future plans which in turn effects company’s fortune including the growth in its value. In the same vein, it can be said that any information / events surrounding ‘amalgamation, mergers or takeovers’, has a material bearing on the price of the securities of the company.

15. Here, I would like to quote the order of Hon’ble Securities Appellate Tribunal (hereinafter referred to as ‘SAT’) in the matter of *Kemefs Specialities Pvt. Ltd. Vs. SEBI* decided on July 21, 2011 wherein the Hon’ble Tribunal observed as follows:

*“...It is not necessary for us to go into the question as to who is to blame for the deal not going through. What is material for us is that just as the information regarding acquisition of the entities by the company was price sensitive in nature, the information regarding the deal falling through was equally price sensitive...”*

16. In light of the aforesaid observation of Hon’ble SAT and on the basis of explanation to Regulation 2 (ha) of PIT Regulations, it is concluded that the announcement of cancellation of ‘merger of the company with Database Software’ was a PSI.

**Issue No. 2** - *If the aforesaid announcement was a PSI, when did it come into existence?*

17. It is observed from the IR that the company during its meeting with Database Software, during 2<sup>nd</sup> week of February, 2012, observed that the conditions regarding the merger was not set and hence the idea of cancellation of merger was mooted. During the course of the investigation, no material was collected or furnished by the company to provide the exact date of mooted idea of cancellation.
18. Thus, in absence of any material in IR and in the absence of any other direct or circumstantial evidence to indicate the existence of PSI before 2<sup>nd</sup> week of February, 2012, I have no material based on which I can differ from the observation made in the IR that the PSI came into existence on the first day of the 2<sup>nd</sup> week of February, 2012, when the idea of cancellation was first mooted.

**Issue No. 3** - *When the aforesaid information was made public by the company?*

19. The information regarding the merger of the company with Database Software was made public by the company on February 1, 2012 by disclosing the same to the BSE Ltd. It is further observed that the company on August 9, 2012 informed BSE Ltd. that a meeting of Board of Directors will be held on August 17, 2012 to *inter alia* consider the merger of the company for finalizing the share exchange ratio and the scheme of amalgamation. Subsequently, on August 17, 2012, the company has informed BSE Ltd. that due to unavoidable circumstances, the company has decided to postpone the Board Meeting to be held on August 17, 2012 to August 30, 2012.
20. The outcome of the Board meeting held on August 30, 2012 was informed by the company to BSE Ltd. on September 6, 2012, wherein it was *inter alia* informed that the merger of the company for finalizing the share exchange ratio and scheme of amalgamation has been postponed, and that the company shall consider the matter in the next Board Meeting.
21. During the course of the investigation, the company vide its undated letter submitted to SEBI as follows: *"The next board meeting held on 18th February, 2012 for finalizing the share exchange ratio but it was unanimously decided by the Board of Directors of the Company not to merge M/s Acclaim Industries Ltd with Database Software*

*Technology Private Ltd due to some management issues /technical issues. The company did not submit outcome of Board meeting dated February 18, 2012. This was inadvertent mistake on the part of the management of the company.”*

22. It is noted from the above that even though the Board of Directors had cancelled the proposed merger in its meeting dated February 18, 2012, it failed to communicate the same to the Exchange and in fact, the company continued with its announcements regarding merger, share exchange ratio and scheme of amalgamation.
23. From the above sequence of events, it is noted that while the company has failed to inform the cancellation of the merger as decided in Board meeting dated held on February 18, 2012, it kept on making misleading announcements regarding the merger issue without even mentioning the name of the entity with which the merger was proposed (announcements made on August 17, 2012 and September 06, 2012) unlike its corporate announcement dated February 01, 2012 wherein it had clearly indicated the name of Database Software w.r.t the proposed merger. Moreover, there is nothing on record to show that the company ever updated the Exchange/public on the final status of the merger proposal.
24. In view of the above and in absence of any material to show that the company informed the public at large regarding the status of its merger proposal with Database Software, I am inclined to agree with the observations of IR that the PSI remained unpublished till the end of investigation period. Furthermore, it is concluded that the period of UPSI is from the date of cancellation of merger till the end of period of the investigation, i.e. February 06, 2012- December 26, 2012.

**Issue No. 4** - *Whether the Noticee is an ‘insider’ as per Regulation 2(e) of PIT Regulations?*

25. Before I delve into the legal position, the statutory provision is to be kept in view. The relevant provision is as under:

*2 (e) “insider” means any person who,*

*(i) is or was connected with the company or is deemed to have been connected with*

*the company **and** who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*  
(ii) *has received or has had access to such unpublished price sensitive information.*

26. From the aforesaid provision, it is graphically clear that in order to be termed as an insider as stipulated under Regulation 2 (e) (i) of PIT Regulations, following two conditions have to be satisfied:

- i. The person has to be connected with the company or deemed to be connected with the company.
- ii. The person is reasonably expected to have access to UPSI or has received it or has access to it.

27. In order to examine whether the Noticee has satisfied the first condition as mentioned above, we need to place reliance on Regulation 2 (c) of the PIT Regulations, which reads as follows:

*"connected persons" means any person who:*

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

28. The definition of insider covers within its scope connected person and deemed connected person as defined under Regulations 2(c) and 2(h) respectively of PIT Regulations. It is noted from the IR that at the relevant time the Noticee was the Managing Director of the company. Thus, the Noticee falls squarely within the definition of "connected persons" as defined under Regulations 2(c) (i) of PIT Regulations.

29. With respect to whether the Noticee had access to the UPSI, it is noted from the IR that the Noticee was the Chairman of the Board Meeting held on February 18, 2012 wherein it was unanimously decided by the Board to not merge with Datasoft Software. The same as communicated to SEBI by the company vide its undated letter, received by SEBI on November 2, 2015, was due to some management issues

/technical issues. Further, the Noticee was one of the key persons with regards to the merger proposal as he was mandated to appoint the requisite valuers, advocates and the required experts for carrying out the proposed merger as per the Board Meeting held on January 31, 2012.

30. The aforesaid facts reveal that the Noticee was intimately involved in the whole merger process of the company with Datasoft Software and its subsequent cancellation. Therefore, he had access to the UPSI.
31. In view of the aforesaid findings, it can be held that by virtue of Noticee's position in the company (Managing Director) and the role played by him in the merger process, he can be safely considered as an insider in terms of Regulation 2(e) (i) of PIT Regulations.
32. It is further concluded that the Noticee is also an insider in terms of Regulation 2(e) (ii) of PIT Regulations, as he had access to the UPSI, as concluded at paragraph 30 above.

***Issue No. 5*** - *If the answer to the aforesaid question is in affirmative, whether the Noticee has violated provisions of Regulations 12A (d) and (e) of SEBI Act and Regulations 3(i) and Regulation 4 of PIT Regulations?*

33. Before proceeding further, the relevant provisions are reproduced below:

***SEBI Act***

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

*12A.No person shall directly or indirectly —*

*...*

*(d) engage in insider trading;*

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

regulations made thereunder;

### **PIT Regulations**

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

3. No insider shall—

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

*Violation of provisions relating to insider trading.*

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

34. It is observed from the IR that the Noticee had sold 7,44,918 shares of the company during the period from July 11, 2012 to August 09, 2012, amounting to 14.90% of the share capital of the company. It has already held in preceding paragraphs that the fact of cancellation of merger was UPSI from February 6, 2012 to December 26, 2012 and that the Noticee had access to UPSI. Further, it is noted from the IR that by dealing in securities of the company when in possession of UPSI w.r.t cancellation of proposed merger, the Noticee has made ill-gotten gain (without providing for benefit of loss) of approximately ₹ 34, 74, 722/- only. The calculation is hereunder:

Date	Sell Qty	Sell Value (₹)	Avg Sell Price (₹)	Weighted Avg Price on Feb 17, 2012* (₹)	Profit / (Loss)
11/07/2012	200000	5710000	28.55	33.87	-1064000
20/07/2012	151250	4578958	30.27	33.87	-719180.17
23/07/2012	10000	314000	31.4	33.87	-494000
24/07/2012	2197	72270.9	32.9	33.87	-194946.75
25/07/2012	194767	6622078	34	33.87	26000
27/07/2012	77139	2760919	35.79	33.87	384295.03
30/07/2012	38660	1438152	37.2	33.87	666000
01/08/2012	20000	762000	38.1	33.87	846000
07/08/2012	25905	945587.9	36.5	33.87	526427.72
09/08/2012	25000	975000	39	33.87	1026000

\* Weighted Avg. Price on Feb 17, 2012 (₹ 33.87) is taken for computation of profit/loss as this

*was the last trading day before the merger was called off in board meeting dated Feb 18, 2012.*

35. I note that the purpose of the insider trading regulations is to prohibit trading to which an insider gets advantage by virtue of his access to price sensitive information and the aforesaid relevant provisions of SEBI Act and PIT Regulations makes it crystal clear that there is a total prohibition on an insider to deal in the shares of the company when in possession of UPSI. In this regard the following is noted from the Order of Hon'ble SAT in the matter of *E. Sudhir Reddy Vs. SEBI* decided on December 16, 2011:

*"...A shareholder becomes an owner of the company to the extent of the value of shares held by him. He is therefore, entitled to his share in the profits earned by the company. Therefore, performance of a company is of primary importance to the investors as well as to the general public who might be interested in investing in the company. The shareholders and general public get information about the company either through the annual report or during the annual general meeting. However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the Sebi Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice."*

36. In view of the above, it is held that the Noticee by dealing in the securities of the company when he was in possession of UPSI, has contravened the provisions of

Regulations 12A (d) and (e) of SEBI Act and Regulations 3(i) and 4 of PIT Regulations.

***Issue No. 6*** - *If the answer to the aforesaid question is in affirmative, whether the Noticee has made any ill-gotten gains and if so, are they liable for disgorgement. Further, other directions, if any need to be issued against the Noticee?*

37. It has already been held in preceding paragraph that the Noticee is liable for insider trading in the scrip of AIL and by virtue of the said trading has made an ill-gotten gain of ₹ 34, 74, 722/- only. Hon'ble SAT had an occasion to deal with the concept of disgorgement in *Karvy Stock Broking Ltd. Vs. SEBI* decided on May 2, 2008 wherein the Hon'ble Tribunal observed as under:

*"...Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge. Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so..."*

38. Taking support of the aforesaid observation of Hon'ble SAT, I note that the Noticee who has unjustly enriched himself by his unlawful conduct is liable to disgorge the illegal gains made by him.

39. Here, it will be noteworthy to quote the observations of Hon'ble Supreme Court of India in the matter of *Dushyant Dalal and another Vs. SEBI* decided on October 4, 2017, wherein the Hon'ble Court observed as follows:

*"16. We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings*

...

*28. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the*

*date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity...”*

40. Considering the above observations of the Hon'ble Supreme Court of India, I note that an appropriate rate of interest should be levied on the ill-gotten gain made by the Noticee from the date on which the cause of action arose in the extant matter. By applying the principle as recognized by Hon'ble Apex Court in the aforesaid matter in the present case, interest should be levied on the respective ill-gotten gains from the respective trading days on which they were earned by the Noticee. Though, at the same time, it is also noted that in the present case, calculation of interest has not been done. Thus, considering the same, in my view, it would be reasonable that interest be calculated from the last day on which the Noticee executed trades in the scrip when in possession of UPSI i.e. August 9, 2012 as noted from the IR upto the date of payment.
41. Furthermore, I note that SEBI is mandated to protect the interests of investors and promote the development of and to regulate the securities market. For the purpose SEBI is empowered to take suitable measures. Healthy growth and development of securities market depends to a large extent on the quality and integrity of the market. Such a market can alone inspire the confidence of investors. Factors on which this confidence depends include, among others, the assurance the market can afford to all investors that they are placed on an equal footing and will be protected against improper use of inside information. In equitable and unfair trade practice such as insider trading affect the integrity and fairness of the securities market and impairs the confidence of the investors. Therefore, in view of the violations committed by the Noticee, I find that the Noticee is not only liable to disgorge the ill- gotten gain made by dealing in the securities of the company when in possession of UPSI but it also becomes necessary for SEBI to issue appropriate directions against the Noticee.

**ORDER**

42. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11 (4) (b) and 11B read with Section 19 of the Securities and

Exchange Board of India Act, 1992, hereby issue following directions:

- a) Mr. Abhishek Mehta shall disgorge the wrongful gain made by him i.e. ₹ 34,74,722/- only along with simple interest @ 12% per annum from August 9, 2012 till the date of payment. He shall pay the said amount within 45 (forty five) days from the date of this order. In case Mr. Abhishek Mehta fails to make the payment within 45 days, he shall be liable to pay future interest at the rate of 12% per annum till the date of payment. Payment will be made by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai OR through e-payment facility into Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

- b) The Banks, with whom the Noticee’s accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts held, by Mr. Abhishek Mehta except for the purposes of compliance of this order. However, credits, if any, into the accounts maybe allowed.
- c) The Depositories, with whom the Noticee’s demat accounts lie and Registrar and Transfer Agents are directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held, by Mr. Abhishek Mehta except for the purposes of compliance of this order. However, credits, if any, into the accounts of Mr. Abhishek Mehta may be allowed.
- d) Mr. Abhishek Mehta is also directed not to dispose of or alienate any of his assets/ properties/ securities, till such time the direction of this order is complied with.
- e) Mr. Abhishek Mehta shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of seven years from the date of payment of disgorgement amount along with interest as stated in preceding paragraph. Further, Mr. Abhishek

Mehta is also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public or any intermediary registered with SEBI for a period of seven years from the date of payment of disgorgement amount along with interest as stated in preceding paragraph.

43. In case Mr. Abhishek Mehta fails to pay the wrongful gains along with interest as directed herein within the above specified time, SEBI shall initiate recovery process under Section 28A of the SEBI Act.
44. This order shall come into force with immediate effect.
45. A copy of this order shall be served upon Mr. Abhishek Mehta, Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.
46. A copy of this order with respect to Mr. Abhishek Mehta having DIN: 02053510 shall be sent to MCA for information.
47. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

-Sd-

**DATE: December 28, 2018**

**PLACE: Mumbai**

**MADHABI PURI BUCH  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**