WTM/SM/IVD/ 15/ 2021-22

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Entity No.	Name	PAN	Show Cause Notice Number
1.	**G. Ananthalakshmi (Legal heir of C Gopalakrishnan)**	AHRPA0382P	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/1
2.	**G. Samshitha (Legal heir of C Gopalakrishnan)**	Not Available	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/2/1
3.	**V Karuppiah HUF**	AAFHV4956H	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/3/1
4.	**Amrabathi Investra Private Limited**	AACCA1312Q	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/4/1
5.	**Pilot Consultants Private Limited**	AABCP6293N	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/5/1
6.	**Bijco Holdings Limited**	AAACB2592B	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/6/1
7.	**Manphool Exports Limited**	AAACM1426D	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/7/1
8.	**Mangaladevi Ramamirtham**	AADPR3182R	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/8/1
9.	**Sankaranarayanan Ramamirtham**	AADPR0369J	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15277/9/1
10.	**Valsons Securities Limited**	AABCV5380Q	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15278/1/1
11.	**Hayati Dharmesh Vala**	AAEPP3771D	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15278/2/1
12.	**Paresh Nalin Sanghavi**	AGVPS7666K	SEBI/HO/OW/EFD/DRA2/SPV/ AS/2018/15278/5/1

13.	**Vasudha Anilkumar Kedia**	AMAPK7163Q	SEBI/HO/OW/EFD/DRA2/SPV/AS/2018/15278/7/1
14.	**Usha Shantikumar Loonker**	AABPL1876A	SEBI/HO/OW/EFD/DRA2/SPV/AS/2018/15278/9/1

(The entities mentioned above are individually known by their respective name or Noticee no. and collectively referred to as "Noticees")

IN THE MATTER OF SABERO ORGANICS GUJARAT LIMITED.

BACKGROUND

1. A meeting between erstwhile promoters of Sabero Organics Gujarat Limited (for convenience "*Sabero/Company*") and representatives of Coromandel International Limited ("*Coromandel / Acquirer*" for convenience) took place on May 15, 2011 in Chennai to discuss acquisition of shares of promoters of *Sabero* by *Coromandel*.

2. Thereafter, on May 31, 2011, *Coromandel* had informed the Stock Exchanges about the acquisition of shares of *Sabero* held by its promoters. Similarly, on June 02, 2011, *Sabero* informed the Stock Exchanges about the said acquisition. On the same day, i.e., June 02, 2011, a public announcement was made by *Coromandel* regarding the acquisition of shares of *Sabero.*

3. Securities and Exchange Board of India (for convenience "SEBI") conducted an investigation ("*First Investigation*" for convenience) into trading in the scrip of *Sabero* and identified 4 suspected entities (Mr. Vellayan, Mr. Murugappan, Mr. Gopalakrishnan C and V. Karuppiah–HUF) who were noticed to have allegedly acted in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 ("*SEBI Act, 1992*" for convenience) read with the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("*PIT Regulations, 1992*" for convenience). Accordingly, vide Interim Order dated May 21, 2015 (for convenience "*Interim Order*"), SEBI directed, to impound the unlawful gains earned by the aforesaid 4 entities. However, subsequently the above mentioned 4 entities filed their responses and submissions in their defense and after having heard them, SEBI vide order dated May 12, 2016 (for

convenience "*2016 Order*") set aside the said directions issued vide the *Interim Order* and ordered for a re-investigation into the matter relating to trading in the shares of *Sabero* during the relevant period. At this stage, it is befitting here to produce the relevant extract of the operating portion of the *2016 Order*, whereby re-investigation was directed by the Competent Authority: -

> *"10.9.3 I am therefore of the considered view that unless the investigation dwells deeper and brings out the truth in respect of all the entities, many of the perpetrators of the insider trading in this case may remain undetected forever. It is in the interests of investors that all the perpetrators of insider trading in this case are brought to book and sternly dealt with. As more material facts need to be unearthed to arrive at a clear finding in the matter, I am of the view that this is the fit case of re- investigation and SEBI should employ all the investigative powers entrusted to it to unearth the entire truth and to find out the role of each of the suspected entities vis a vis the persons/entities privy to the UPSI including the Noticees herein. Some contentions have been raised by the Noticees-it is necessary that these questions are addressed. The Investigating Authority shall be at liberty to look into all aspects of the impugned transactions including as to whether any of the other 'insiders' have supplied the UPSI to the entities who traded in the scrip of Sabero on the basis of such information."*

4. Subsequently, SEBI conducted re-investigation (hereinafter referred to as "Investigation") to ascertain whether certain entities had traded in the aforesaid scrip during the period May 15, 2011 to June 15, 2011 ("Investigation Period" for convenience) on the basis of Unpublished Price Sensitive Information ("*UPSI*" for convenience), which could be in contravention of the provisions of the *SEBI Act, 1992* read with the *PIT Regulations, 1992*. The investigation, *inter alia*, revealed the following findings: -

a) From the chronology of events pertaining to the acquisition of shares from the promoters of *Sabero*, it was noticed that a meeting between erstwhile promoters of *Sabero* and representatives of *Coromandel* took place on May 15,

2011 in Chennai to discuss acquisition of shares of promoters of *Sabero* by *Coromandel*. Simultaneously, on May 15, 2011, the *Acquirer* appointed legal advisers and financial advisers to explore and work out the modalities for the said acquisition.

b) The announcement about the proposed acquisition of majority shares of *Sabero* by *Coromandel* was a Price Sensitive Information ("PSI" for convenience) in terms of Regulation 2(ha)(v) of *SEBI PIT Regulations, 1992*.

c) The said PSI was published through NSE and BSE on May 31, 2011 before the opening of market trading hours, thereby making the period from May 15, 2011 to May 30, 2011 as the period of *UPSI*.

d) The Price volume analysis of the scrip of *Sabero* at NSE during the relevant period is as under:

Table-1: Price/ Volume in scrip of *Sabero*

Period	**Dates**	**Price / Volume**	**Opening price & volume on first day of period**	**Closing price & volume on last day of period**	**Low price & volume during period**	**High price & volume during period**	**Daily average no. of shares traded during period**
Pre-investigation (3 months)	February 15, 2011 to May 14, 2011	**Price**	42.10	57.80	35.20	63.10	97071
		Volume	67329	40568	7822	1089591	
During Investigation – *UPSI*	May 15, 2011 to May 30, 2011	**Price**	58.50	89.40	55.25	93.25	2175620
		Volume	1284236	1209838	457910	5664699	
During Investigation - On the day of announcement	May 31, 2011	**Price**	90.80	98.35	90.35	98.35	700201
		Volume	700201	700201	700201	700201	
		Price	108.20	126.45	108.20	130.90	586066

Period	Dates	Price / Volume	Opening price & volume on first day of period	Closing price & volume on last day of period	Low price & volume during period	High price & volume during period	Daily average no. of shares traded during period
During Investigation - Post *UPSI*	June 01, 2011 to June 15, 2011	**Volume**	28126	169029	28126	3268491	
Post-investigation (3 months)	June 16, 2011 to September 15, 2011	**Price**	126.00	121.50	115.20	133.95	83043
		Volume	40106	8089	1952	3209734	

e) The price volume analysis as presented above, shows that the price of *Sabero* increased from ₹58.50 to ₹126.45 (increased by 116%) on NSE, whereas NIFTY had decreased from 5499 points to 5447 points (decreased by 0.03%.) during the relevant period. Similarly, the price and volume of *Sabero* at NSE shot up by 145% and 1323% respectively on the first day of *UPSI* period (i.e. May 16, 2011) compared to its daily average closing price and daily average trading volume in three months prior to *UPSI* period.

f) The profit of *Sabero* had fallen from ₹38.66 Crores in 2009-10 to ₹10.58 Crore in 2010-11 i.e. by 72.63%. Similarly, the quarterly results for the quarter ending December 31, 2010 was announced on February 14, 2011 which showed that profit of *Sabero* had fallen from ₹10.97 Crore in December 2009 quarter to ₹1.02 Crore in December 2010 quarter i.e. by 90.70%.

g) On the basis of the examination of the aforesaid facts & circumstances and trading pattern in the scrip of *Sabero*, Investigation identified that certain entities had purchased shares of *Sabero* during the *UPSI* Period and then sold after the *UPSI* period and in the process had made profits. It was also noticed

from the analysis of trading done by such entities during the period April 01, 2009 to March 31, 2012 that these entities had started trading in the scrip of *Sabero* only after the May 16, 2011 i.e. the first day of *UPSI* period and had not traded in the scrip of *Sabero* prior to *UPSI* period.

h) The Investigation also observed that these entities had bought and sold shares of *Sabero* within a short period of one month between May 16, 2011 to June 15, 2011.

i) Based on the findings of facts, it was observed that the 13 *entities* who are *Noticees* in the present proceedings, had purchased shares of *Sabero* during the *UPSI* period and then sold those shares after the *UPSI* period. In the process, these entities had made profits. It is also seen that these entities have not traded further in the scrip of *Sabero* after the announcement of the above stated PSI. Details of the trading pattern of the 13 *Noticees* in the scrip of *Sabero* and the profit made by them thereon are tabulated below:

Table-2: Trades executed by *Noticees* during Investigation Period

S. No	Name	During *UPSI* period (May 15 to May 30, 2011)				Post (*UPSI* period till March 31, 2012				Wrongful Gains (in ₹Crores)
		Buy Quantity	Sell Quantity	Avg Buy Price ₹	Avg Sell Price ₹	Buy Quantity	Sell Quantity	Avg Buy Price ₹	Avg Sell Price ₹	
1	C Gopalakrishnan	319,500.00	-	85.15	-	-	319,500.00	-	125.96	1.30
2	V Karuppiah HUF	34,750.00	-	86.36	-	6,000.00	40,750.00	92.24	126.33	0.14
3	Amrabathi Investra Private Limited	99,436.00	-	69.22	-	564.00	100,000.00	125.60	125.50	0.56
4	Pilot Consultants Private Limited	332,100.00	80,600.00	69.79	83.54	-	241,750.00	-	125.69	1.41
5	Bijco Holdings Limited	641,705.00	41,141.00	75.23	75.67	2,500.00	597,373.00	123.85	125.30	3.01

S. No	Name	During *UPSI* period (May 15 to May 30, 2011)				Post (*UPSI* period till March 31, 2012				Wrongful Gains (in ₹Crores)
		Buy Quantity	Sell Quantity	Avg Buy Price ₹	Avg Sell Price ₹	Buy Quantity	Sell Quantity	Avg Buy Price ₹	Avg Sell Price ₹	
6	Manphool Exports Limited	255,000.00	193,763.00	73.63	82.93	-	50,000.00	-	125.50	0.32
7	Mangaladevi Ramamirtham	153,500.00	-	76.87	-	11,000.00	164,399.00	126.01	120.11	0.66
8	Sankaranarayanan Ramamirtham	100,000.00	27,896.00	83.45	90.59	-	72,104.00	-	125.00	0.30
	Anusooyadevi A Ramamirtham	190,000.00	-	76.59	-	10,000.00	200,000.00	121.00	124.88	0.92
9	Valsons Securities Ltd	17,500.00	-	88.39	-	-	17,150.00	-	125.00	0.06
10	Hayati Dharmesh Vala	36,300.00	6,300.00	80.28	86.95	-	30,000.00	-	124.90	0.13
11	Paresh Nalin Sanghavi	17,000.00	-	86.71	-	1,530.00	17,000.00	122.53	125.00	0.07
12	Vasudha Anilkumar Kedia	10,575.00	-	81.16	-	-	10,575.00	-	125.00	0.05
13	Usha Shantikumar Loonker	50,000.00	-	77.43	-	1,000.00	50,000.00	70.00	127.46	0.25

j) Considering the timing and pattern of trades and also the explanations furnished by the said entities with respect to their trading in the shares of *Sabero*, it was viewed that these entities had traded in the shares of *Sabero* while having access to *UPSI*.

k) In view of the above states facts surrounding the events and the act of the 13 entities in trading in the shares of *Sabero* during *UPSI* period coupled with the fact that these entities did not have any recent exposure to the scrip of *Sabero* but were seen to be selling the shares acquired during the *UPSI* almost

immediately after the *UPSI* became public, suggested that the abovementioned entities had dealt in securities of *Sabero* while in possession of *UPSI* and therefore became "insiders". The trades of the said entities were thus alleged to have been executed while in possession of *UPSI* and hence were alleged to be in violation of Section 12A (d), (e) of the *SEBI Act, 1992* read with regulation 3 (i) and 4 of the *PIT Regulations, 1992*.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Based on the aforesaid findings of facts, separate but even dated Show Cause Notices dated May 25, 2018 (herein after referred to as "**SCN/SCNs**") were issued to the said 17 entities, out of which subsequently, the proceedings against 3 entities have been disposed of by way of accepting their consent application in terms of SEBI (Settlement proceeding) Regulations, 2018. Therefore, for the present proceedings SCNs issued to 14 remaining entities (hereinafter collectively referred to as "*Noticees*" or individually by their respective names) now survive for adjudication. The SCNs have been issued to these *Noticees* asking them to show cause as to why suitable directions under Section 11B of the *SEBI Act, 1992*, including directions for disgorgement of illegal profit shall not be issued against them for their alleged acts of violations of provisions of regulation 3(i) & regulation 4 of the *PIT Regulations, 1992* read with regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("*PIT Regulations, 2015*" for convenience) and Section 12A (d) and (e) of the *SEBI Act, 1992*. I note from the available records that the aforesaid SCN was duly served on all the *Noticees*, in response to which most of the *Noticees* have submitted their written replies. From the records available before me, I note that subsequent to the issuance of SCNs, some *Noticees* had sought inspection of certain documents from SEBI which was provided to them by SEBI. Subsequently, in compliance with the principle of natural justice, an opportunity of personal hearing was accorded to the *Noticees* for which the scheduled date of hearing was fixed on December 11, 2018.

However, on the above scheduled date, the hearing was attended by the Authorized Representatives (ARs) of *Noticees no. 3* and *4* only. Thereafter, on receipt of request for adjournment of personal hearing from certain other *Noticees*, another opportunity of personal hearing was provided on May 28, 2019 to the *Noticees*, which was attended by ARs of *Noticee no. 2, 9, 10 and 12.* Subsequently, again a personal hearing was scheduled on September 15, 2020, wherein ARs on behalf of the *Noticees no. 5, 6*, 7 & *8* and *13* appeared before me and made their submissions. I note from the records before me that no one appeared on behalf of *Noticees no. 1* and *11.* It has been brought to my notice that the *Noticees no. 1* and *11* had expired during the pendency of the proceedings. Attempts were made to serve the SCN on their legal heirs, however, the legal heirs of the said *Noticees* have chosen not to appear before me till date. So far separate written replies have been filed by various *Noticees*, the details of which are tabulated below:

Table-3: Details of reply filed by the *Noticees*

Noticee No.	Date of Reply
Noticee no. 1	Not submitted
Noticee no. 2	Letter dated June 01, 2019
Noticee no. 3	Letters dated June 27, 2018, December 06, 2018,
Noticee no. 4	Letters dated June 26, 2018, December 03, 2018,
Noticee no. 5	Letters dated June 25, 2018, October 22, 2019, September 14, 2020, September 15, 2020
Noticee no. 6	Letters dated June 25, 2018, September 14, 2020, September 15, 2020
Noticee no. 7	Letter dated September 30, 2020
Noticee no. 8	Letter dated September 30, 2020
Noticee no. 9	Letter dated June 18, 2018

Noticee no. 10	Letter dated June 05, 2018
Noticee no. 11	Not submitted
Noticee no. 12	Letter dated June 15, 2018
Noticee no. 13	Letter dated January 21, 2020

6. In my view, all the *Noticees* in the SCN have been granted adequate opportunities for their personal hearings and for filing reply to the SCN. Considering the foregoing, I am convinced that the principles of natural justice have been duly complied with in the instant matter. I have now before me an obligation to examine and to deal with the replies/submissions filed by the 10 out of the 13 *Noticees* while dealing the allegations levelled against each of the *Noticees*. It is also noted that some of these *Noticees* have filed multiple replies to the SCN. After perusing the written replies submitted by the *Noticees* (as indicated in the preceding table), I find that all the *Noticees* have put forth certain identical contentions in their replies which for the sake of brevity, being central to the adjudication of the issues involved in the instant proceedings, deserve to be highlighted as under:

A. <u>Delay in the proceedings</u>

a) The SCN admittedly pertains to the transactions occurred during May 2011, i.e., seven years prior to the issuance of the SCN. Such inordinate delay in the issuance of SCN, long beyond the expiry of even the maximum document retention period prescribed under law has affected the ability of the *Noticees* to respond to SCN. Therefore, SCN stands vitiated and is liable to be set aside for such inordinate delay.

b) Reliance is placed upon following judgments of the Hon'ble SAT, opining that SEBI must ensure expeditious disposal of proceedings, since inevitably,

serious hardship, detriment, grave prejudice and harm is bound to be caused to the *Noticees:*

- *HB Stockholdings Limited vs. SEBI (DoD: August 27, 2013)*
- *Sanjay Soni vs. SEBI (DoD: November 14, 2019)*
- *Libord Finance Ltd. vs. SEBI (DoD: March 03, 2008)*
- *Rakesh Kathotia vs. SEBI (Appeal no. 7 of 2016, DoD: May 27, 2019)*

B. <u>Denial of full and fair inspection of documents to the *Noticees* is a violation of principles of natural justice</u>

c) Some of the *Noticees* have taken a plea that the copy of the report of *First Investigation*, which is also one of the annexures enclosed to the Investigation report, has not been provided to them during the Inspection. They have further argued that copy of order logs and trade logs for the scrip of *Sabero* for the period February 15, 2011 to June 15, 2011 for all the trades in the scrip has also been denied by SEBI during the Inspection. Such denial of inspection of crucial documents has caused a grave prejudice to them to effectively defend themselves.

d) A fundamental principle of natural justice that squarely applies in *quasi-judicial* proceedings, is that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been apprised of it. *(Vishakapatnam Port trust vs. M.P. Rama Chandra Reddy, JT 2001 S2 SC 42).*

e) In the absence of a full and complete opportunity to verify and inspect all the information, *Noticees'* right and ability to defend themselves has been gravely impaired and that alone is a sufficient ground for the proceedings under the SCN to be dropped.

C. <u>Not a fit case for issuance of order under Section 11B</u>

f) The power to issue directions under Section 11B of the *SEBI Act, 1992* is a drastic power having serious civil consequences and ramifications on the repute and livelihood of those against whom it is directed. Such power is not available for routine and retrospective application and cannot be used as a penal measure. It is an exceptional, extraordinary and discretionary power and SEBI has to justify the need for invocation of the said power in the facts of each case.

g) In the instant proceedings, given that the transactions pertained to the year 2011 (more than 9 years ago), the facts do not constitute an '*emergent situation*' or present an '*impending danger*' to the security of the market which would necessitate a remedial or a preventive direction to be issued against them.

h) Noticees have placed reliance on the following observations of the Hon'ble SAT in the matter of *Sterlite India Ltd. vs. SEBI (DoD: October 22, 2001):*

"But it is to be noted that the power under section11B is restricted to issue appropriate direction for the purpose of protecting the interest of the investors etc. mentioned in the section…….

Since legislature has deliberately chosen to create specific offences and penalties thereto, it is not possible to view that under section 11B the Respondent is competent to issue a direction which tantamounts to imposition of penalties."

D. <u>Regular traders in the Securities Market</u>

i) Majority of the *Noticees* have taken a plea that they are active traders and are regularly trading in the securities market. Some of them have also submitted that they were trading in the scrip of *Sabero* even before the Investigation Period and their trades were solely based on the internal research and movement of price/ volume of scrips in the market.

j) Various *Noticees* have also argued that their position in the scrip of *Sabero* was very miniscule as compared to their total volume of trades in the Indian Securities market in the Financial Year 2011-2012 and such highly disproportionate trading could not justify the alleged trade being influence by the possessions of the *UPSI*.

k) There was a significant price movement, noticed in the scrip of *Sabero* and after 16.05.2011 which inspired various *Noticees* to trade in the scrip of *Sabero*. The decision to buy the equity shares of *Sabero* was guided by positive price break out on 16.05.2011.

E. SEBI has ignored the corporate announcements in the scrip of *Sabero*

l) Certain *Noticees* have also taken plea that SEBI has ignored various positive corporate announcements in respect of the scrip of *Sabero*, which induced such *Noticees* to trade in the scrip.

F. No *UPSI* existed at the time of the relevant trades

m) Some of the *Noticees* have also argued that on May 15, 2011, only a meeting was held and the parties attending the said meeting ordered for the process of legal due diligence. Therefore, the same does not amount to a merger or an acquisition and the event could at best be seen as mere a discussion for a potential acquisition. Hence, the news or meeting held on May 15, 2011 does not amount to *UPSI*.

G. SCN is not maintainable and liable to be dropped

n) Certain *Noticees* have contended that all the allegations in the SCN pertain to the year 2011 whereas the SCN has been issued to them under *SEBI PIT Regulations, 2015*. It is a trite law that retrospective application of a law is prohibited. As the SCN fails to quote the relevant sections of *SEBI PIT Regulations 1992,* it is not maintainable. In this regard, such *Noticees* have relied

upon the following observations of Hon'ble Supreme Court in the matter of *Gorkha Security Services vs. Govt. of NCT of Delhi & Ors:*

> *"The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same."*

H. <u>No basis of connection to be held as 'Insiders' or 'possession' of *UPSI* mentioned in the SCN</u>

o) *Noticees* have further taken a plea that in the SCN, though the serious charge of insider has been levelled against them, SCN has failed to provide the basis of the said charge before labelling them as insiders. They have further contended that it is obligatory on part of SEBI to clearly show as to how the *Noticees* had 'access' to the *UPSI*, before alleging serious charges of insider trading in the SCN. In this regard, certain *Noticees* have referred to the following judgements of Hon'ble SAT in the matter of insider trading:

- *SRSR Holdings Pvt Ltd & others vs. SEBI (DoD: 11.08.2017)*

  > *"As far as the second category of "insider" is concerned (Regulation 2(e)(ii)), it clearly refers to a person who "has received or has had access to such unpublished price sensitive information". Thus, to fall under the second category of insiders, one must either have actually received the UPSI or **<u>actually had access</u>** to such UPSI in any manner without being a connected person."*

- *Samir Arora vs. SEBI (Appeal no. 83 of 2004)*

  > *"Based on the above extracts it seems that SEBI's case simply is that the appellant is covered in the definition of an insider, that the merger ratio was a price sensitive information; that since he liquidated his entire stock after having*

once commended it he must have done so as an insider on the basis of this price sensitive information and that because of these circumstances it is not necessary for SEBI to show how and from whom and from where he accessed this price sensitive information. We regret our inability to accept this line of reasoning."

- *Dilip Pendse vs. SEBI (Appeal No. 8 of 2009):*

  "The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy vs. State of West Bengal (20030 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities."

- *Factorial Master Fund vs. SEBI (Appeal no. 01 of 2017, DoD: June 29, 2018)*

  "f) It is interesting to note that in the impugned order the WTM has held that the information received by the appellant from CS/ its officials was in the 'ordinary course of business' covered under the proviso to regulation 3 of the PIT Regulations and hence there was no case for taking action against CS and its officials. Therefore, having held that neither CS nor its officials have passed on any UPSI to the appellant, SEBI is not justified in presuming that the appellant must have received UPSI during the market gauging exercise or during the conversation with Mr. Sumit Jalan of CS."

p) Reliance is also placed on SEBI order no. AO/SG-AS/EAD/15/2016 in the respect of *Reliance Petro investments Ltd.*, wherein Adjudicating officer has held the following:

"In view of the above and in absence of any evidence by the Investigating Authority to establish the access of UPSI to the Noticee, it can be concluded that the Noticee did not have access to UPSI while trading in the scrip of IPCL. Hence, it can be concluded that the Noticee and RIL are not 'insider' as alleged in the SCN in terms of provisions of Regulation 2(e) of PIT Regulations."

q) Some of the *Noticees* have also referred to the observations of Hon'ble Supreme Court in the matter of *Chintalapati Srinivsa Raju vs. SEBI (2018) 7 SCC 443* to contend that strong and clear evidence is required to charge insider trading and the charge of alleging someone as insider cannot be based on surmises and conjecture.

I. No new evidence and facts has been brought on record during the Investigation

r) The present SCN has been issued by SEBI after the order dated May 12, 2016, directing for a re-investigation into the matter. Therefore, SCN is required to be based upon fresh evidence collected during the re-investigation and new facts and material which came into existence during the re-investigation. The entire charge of SCN is based upon the trades of the *Noticees* which were already part of the records available during the *First Investigation*. Hence, the present SCN is liable to be dropped against the *Noticees* as the charge in the SCN are not maintainable.

J. Higher degree of proof is required to prove charges like insider trading

s) In addition to the above, *Noticees* have placed reliance on following judgements of Hon'ble Supreme Court stating that in case of circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person:

- *Nandkishore Prasad vs. State of Bihar (1978) 3 SCC 366;*
- *Union of India vs. H.C. Goel (AIR 1964 SC 364);*

- *Razikram vs. J.S. Chauhan (AIR 1975 SC 667; (1975) 4 SCC 769;*
- *Gulabchand vs. Kudilal (AIR 1966 SC 1734);*
- *Roop Singh Negi vs. Punjab National Bank & Ors. (2009) 2 SCC 570;*

7. Before I proceed to appropriately deal with the replies/submissions of the *Noticees* as have been summarized above, it is noteworthy to recollect here that the charges that have been levelled against the *Noticees* in the SCN are similar and identical. It has been primarily alleged in the SCN that the *Noticees*, by dealing in securities of *Sabero* when in possession of unpublished price sensitive information, have violated the provisions of section 12A(d), (e) of the *SEBI Act, 1992* read with regulation 3(i) and regulation 4 of the *PIT Regulations, 1992*. Therefore, in order to appreciate the charges levelled against the *Noticees*, it would be proper and necessary to refer to the above-stated relevant provisions which have a bearing on the allegations made against the *Noticees*. Those relevant provisions are reproduced hereunder for facility of reference:

The SEBI Act, 1992 -

"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;

……"

The PIT Regulations, 1992 –

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

"3. No insider shall –

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

……."

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."

8. I have carefully considered the allegations levelled in the SCN against the *Noticees*, their replies and submissions; both oral and written, and the materials available on record. I note that the *Noticees* have responded to the charges in two segments, viz.: first by raising certain preliminary objections and then by offering their arguments on merit. Before, I proceed to deal with the preliminary/technical objections as well as the submissions on merit, I find it proper to iterate that the respective SCNs have been issued to the individual *Noticees* herein on the basis of identical facts including transactions in the same scrip during the same Investigation Period and while in possession of the same 'price sensitive information'. In view of the specific nature of the alleged transactions and other attendant facts and circumstances of this case that are common to all the *Noticees*, even though each *Noticee* was heard separately during the present proceedings and each one has filed separate reply responding to the allegations made in the SCN, to afford a fair trial and further to prevent the proceedings from becoming mere mechanical or repetitive thereby rendering it to be an otiose and at the same time, to take a holistic view in this matter, I deem it appropriate to deal with all the thirteen separate but identical SCNs issued to the respective *Noticees* herein by way of this common and consolidated order.

9. I note that some of the *Noticees* have vehemently emphasized on the delay in initiating the present proceedings. This, according to them, has vitiated the validity of the SCN and their ability to defend themselves. In this regard, the *Noticees* have relied upon and cited various decisions of the Hon'ble SAT, most notably in the matter of *Libord Finance Ltd. (supra) and HB Stockholdings Limited (supra).*

10. I have perused the contention of the *Noticees* in this regard. As stated above in this Order, the investigation in the instant matter was initiated after the re-investigation was ordered by the competent authority vide the *2016 Order*. In compliance with the direction to re-investigate the matter, Investigation was resumed by SEBI. Evidently, it was only after the completion of the investigation and on the basis of evaluation of relevant materials collected during the investigation that the present proceedings in respect of the *Noticees* have been initiated by SEBI. I further note that SEBI's *2016 Order* directing for re-investigation into the matter is available in public domain. It is also not in dispute that the present proceedings have been initiated pursuant to the evaluation of materials obtained and brought on record and accordingly the SCN has been issued on May 25, 2018.

11. I have also perused the judicial decisions relied upon by the *Noticees* in support of their contentions against the delay in initiating the present proceedings. First of all, it goes without saying that the facts and attending circumstances specific and peculiar to each such cited case have to be taken into consideration while deciding as to whether any delay was committed in initiating proceeding in each of those cases cited by the *Noticees*. For instance, in the matter of *HB Stockholdings (supra),* the show cause notice was issued in 2005 for the trades taken place in 2000 and the order was issued in 2012. Similarly, in the matter of *Sanjay Soni (supra),* the trades pertained to the year 2009 while the second show cause notice was issued to the noticees therein in 2017. It is also pertinent to note here that both the above referred matters i.e. *HB Stockholdings (supra)* (synchronized trades) and *Sanjay Soni (supra)* were matters pertaining to violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 whereas the instant matter pertains to the alleged insider trading done by the *Noticees*. It is a common knowledge that investigation into matters of serious allegations like insider trading requires collating of various types of multiple data and information for analysis and examination. Further, it is a fact that the investigation into the alleged insider trading in the shares

of *Sabero* involved a large number of entities including the *Noticees* whose status as 'insiders' and the specific trades executed by them had also to be examined with reference to the roles played by the *Noticees*, with the support of comprehensive data about their trading and other ancillary information collected during the investigation. Notwithstanding the aforesaid, in order to ascertain as to whether there has been actually any delay in a matter, it is important not to lose sight of the fact that it is the date when the alleged violation came to the notice of SEBI which would be the relevant point for initiating any action including investigation and certainly not the date of commission of the said alleged violation. Thus, the *Noticees* cannot possibly seek shelter behind the façade of delay when it is available on record that subsequent to the completion of *First Investigation, Interim Order* was passed by SEBI on May 21, 2015 and a re-investigation was initiated promptly after the *2016 Order* (May 12, 2016) was passed and SCNs were issued in 2018 (May 25, 2018) after the completion of the said re-investigation. Further, some of the entities on whom SCNs were served had applied for settlement through the laid down consent mechanism, the processing of which took some time for disposal thereby delaying the resumption of present adjudication proceedings in respect of the *Noticees*. It is also a matter of record, as to how the *Noticees* have sought frequent adjournments on various grounds. Again, without prejudice to the aforesaid, whether a delay in a particular case is justified or not depends on the attending facts and circumstances of that specific case. In this regard, it is relevant to refer here to the observations of the Hon'ble Supreme Court in the matter of *Mahendra Lal Das vs. State of Bihar and Ors. (2002) I SCC 149,* wherein the Hon'ble Apex Court held that "*While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused, witnesses, workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case.*" In fact, in almost all the cases cited and relied upon by the *Noticees,* it has

been invariably held that each case has to be decided on its merit by taking into consideration the specific surrounding facts and circumstances.

12. I further note that the aforesaid legal position has been endorsed by the Hon'ble SAT in *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014 decided on December 16, 2015) wherein, it has been observed that:

> *".....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....."* (**Emphasis supplied**)

13. In view of the foregoing, the contention of the *Noticees that* there was inordinate delay in initiating the instant proceedings is without any merit hence, does not require further consideration. The aforesaid observations again have to be considered without prejudice to the fact that no provision under the *SEBI Act, 1992*, prescribes any time limit for taking cognizance of the alleged breach of provisions of the *SEBI Act, 1992* and rules and regulations made thereunder. As stated above, in order to ascertain as to whether there has been actually any delay in the matter, the date when the violation came to the notice of the SEBI should be the relevant point and not the date of the violation allegedly committed and whether or not the delay in a particular case is justified, would always depend on the specific facts and circumstances of that case. Therefore, keeping in view of the aforesaid, in

my considered view, there has been no delay in initiating or continuance of the proceedings, which can be called so fatal so as to warrant dropping of charges against the *Noticees* on that ground.

14. I note that certain *Noticees* have complained about non-furnishing of copy of the Investigation Report, more particularly the report relating to the *First Investigation*. Further some of the *Noticees* have raised objection that denial of the complete trade and order logs in the scrip of *Sabero* for the period February 15, 2011 to June 15, 2011 has caused prejudice to them in defending the charges effectively. In this respect, I have already stated earlier that pursuant to the issuance of the SCN, inspection of the relevant documents relied upon in the SCN was sought by *Noticees no. 7* and 8 and same was granted to the ARs of *Noticees no. 7* and 8 on February 10, 2020 and copies of all the documents that have been relied upon in the SCN while charging the violations have been duly furnished to the *Noticees no. 7* and *8*. As a matter of fact, the SCN issued in the matter pertains to the charge of insider trading and to support the said allegation, the SCN has narrated the existence of a PSI, which was not in public domain, lists out the buy trades of the respective *Noticees*, which were undeniably executed by them during the *UPSI* period and also has provided the details of sell of securities of *Sabero* by the *Noticees* bought by them during the *UPSI* period almost immediately after the disclosure/announcement of the said PSI was made through the Stock Exchanges. The SCN further makes the allegations that the *Noticees* were found to have no prior trading experience/exposure to the scrip of *Sabero* in the recent past, before the PSI came into existence. Thus, the allegations in the SCN proceed on the premise of existence of PSI, disclosure of the said PSI on a specific date on the exchange platform and the trades executed by the respective *Noticees* in the scrip of *Sabero* in support of which the *Noticees* have been duly provided with their respective trading details and other material information/documents as relied upon in the SCN while making those allegations of insider trading against them. In this regard the observations of the Hon'ble Tribunal

in the matter of *Anant R. Sathe vs. SEBI (Appeal no. 150/2020 – Date of decision July 17, 2020)* are also relevant to refer to, which are reproduced herein below:

> *"7. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by the decision of this Tribunal in Shruti Vora's (supra) wherein the Tribunal held that:*
>
> > *"In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence."*
>
> *8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence.*
>
> *9. In* ***Natwar Singh vs. Director of Enforcement and Another (2010) 13 SCC 255*** *the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.*
>
> *10. In the light of the aforesaid, the request of the Appellant for supply of documents which are in possession of the authority is misconceived and cannot be accepted."*

15. Regulation 9 of the *PIT Regulations, 1992* specifically provide that after consideration of the Investigation Report, the Board will communicate the findings to the person suspected to be involved in the insider trading or violation of the governing provisions. There is no denying of the fact in this case, that the findings of

the Investigation Report were made available to the *Noticees* in the form of SCN and all the documents relied upon in the SCN have also been made available to them, hence the requirement of adherence to the principles of natural justice has been duly complied with. Therefore, contrary to the grievances of the *Noticees*, the question of violation of principle of nature justice or causing prejudice of any nature to the interest or the *Noticees* does not arise in this case. The said view was further endorsed and upheld by the Hon'ble Tribunal in the case of *Mr. V. K. Kaul vs. the AO, SEBI* (*Appeal No. 55 of 2012 - DoD: 08.10.2012*).

16. Considering the above noted observations and the fact that the *Noticees* including *Noticees no. 7* and *8* have already been provided with the relevant documents and their respective trade logs as requested by them, I find that the complaints of the *Noticees* regarding non-furnishing of documents to them is merely an afterthought exercise and not based on any justifiable reasons, hence, are liable to be rejected.

17. Regarding the argument of the *Noticees* that the powers under section 11B of the *SEBI Act, 1992* are remedial and not punitive in nature and therefore disgorgement cannot arise in this case, I have perused the contention of the *Noticees* and the judicial decisions relied upon by them. Before I deal with the afore-said contention, it would be appropriate to refer to the provisions of section 11B of the *SEBI Act, 1992*, as they were applicable to the matter at hand herein below.

> "***Power to issue directions***
>
> *11B. 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.

18. A plain reading of the provisions of section 11B of the *SEBI Act, 1992* makes it apparent that the section vests with the Board the power to issue directions to achieve the objectives for which SEBI is established. The preamble of the *SEBI Act, 1992* proclaims that the primary objectives for the establishment of SEBI are to protect the interests of investors in the securities market apart from regulating and developing the securities market. Thus, section 11B is a very specific provision of law which is oriented towards affirmative actions and aimed at protecting the interests of the investors of Indian securities market. The power of SEBI to issue directions under section 11B of the *SEBI Act, 1992* has been the subject matter for deliberation by the courts, including the Hon'ble Apex Court as to whether the powers vested under section 11B are punitive or remedial. In this respect, the Hon'ble Gujarat High Court, while deciding an appeal against the Learned Single Judge's order in the matter of *SEBI vs. Alka Synthetics Ltd. (1999(9) SCL-460*), had an occasion to decide as to whether SEBI had the authority to issue an order under section 11B of the Act for impounding or forfeiting the money received by stock exchange as per the concluded transactions under its procedure, until final decision is made. While reversing the decision of the

Learned Single Judge, and upholding the Respondent's power to issue such a direction under section 11B, the Hon'ble High Court held and observed as under:

> *"The SEBI Act is an Act of remedial nature and, therefore, the present cases could not be compared with the cases relating to the fiscal or taxing statutes or other penal Statutes for the purposes of collection of levy, taxes, etc. As and when new problems arise, the call for new solutions and the whole context in which the SEBI had to take a decision, on the basis of which impugned orders were passed, cannot be said to be without authority of law in the fact of the provisions contained in section 11 and section 11B. As the language of section 11(1) itself shows and as the matters for which the measures can be taken are provided in sub-section (2) of section 11. It is clearly made out by the plain reading of the language of the section itself that the SEBI has to protect the interests of the investor in Securities and has to regulate the securities market by such measures as it things fir and such measures may be for any or all of the matters provided in sub-section (2) of section 11 and in the discharge of his duty cast upon the SEBI as a part of its statutory function, it has been invested with the powers to issue directions under section11B. ……... Thus, so far as the authority of law in the SEBI to issue such directions is concerned, such authority to take measures as it thinks fit is clearly discernible on the basis of the provisions contained in section 11 read with section 11B of the SEBI Act.... We have to therefore consider and interpret the power of SEBI under the provisions so as to see that the objects sought to be achieved by Act is fully served, rather than being defeated on the basis of any technicality. The duty and function had been entrusted to take such measures as it thinks fit and in order to discharge this duty, the power is vested under section 11B. .. The authority has been give under the law to take appropriate measures as it thinks fit and that by itself is sufficient to cloth the SEBI with the authority of law".*

19. The crucial importance of curbing various wrongdoings in the securities market has been stressed upon time & again by the Hon'ble Supreme Court while

delivering judgments in various matters. The Hon'ble Supreme Court in the matter of *N. Narayanan vs. SEBI [(2013) 12 SCC 152]* held as under:

> *"**A word of caution:***
>
> *43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity."*

20. Considering the settled position of law as enunciated in the aforementioned judgments pertaining to SEBI's powers to issue directions under section 11/11B of the *SEBI Act, 1992*, so as to take appropriate preventive/remedial measures to protect the interest of investors as well as the interest of the securities market, irrespective of whether the exercise of such powers may have penal consequences, the contentions of the *Noticees* against the disgorgement proposed in the SCN cannot hold ground. Consequently, the same deserves to be rejected.

21. As already mentioned in the preceding paragraphs, various *Noticees* have also raised a preliminary objection to the SCN contending that the allegations made in the SCN pertain to the year 2011 whereas the SCN that has been issued to them, has been

issued under SEBI *PIT Regulations, 2015* hence, according to them, the SCN is not maintainable and therefore be quashed. I note that certain *Noticees* have also contended that the SCN fails to quote the relevant regulations of the *PIT Regulations, 1992* and therefore it is not maintainable. In this regard, having gone through the records available before me, I note that the contentions of the *Noticees* are factually incorrect since, the SCN has been issued to the *Noticees* alleging violation of regulation 3(i) & regulation 4 of the *PIT Regulations, 1992* read with regulation 12 of the *PIT Regulations, 2015.* It is worth mentioning here that the *PIT Regulations, 1992* has been repealed by the *PIT Regulations, 2015*. Further, regulation 12 of the *PIT Regulations, 2015* provides for both savings and repeal of erstwhile *PIT Regulations, 1992,* thereby saving and enabling the continuation of proceedings initiated for the alleged violations of provisions of the *PIT Regulations, 1992.* The regulation 12 of the *PIT Regulations, 2015*, provides as under:

"**Repeal and Savings.**

12.(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, –

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed;

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause

notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations."

22. Thus, any proceedings initiated or proposed for initiation for the contraventions alleged under the *PIT Regulations, 1992* are saved and hence can be validly continued. Considering the foregoing, the instant proceedings against the *Noticees* can be continued and it does not suffer from any illegality of any nature whatsoever. I also note that reliance has been placed by the N*oticees* upon the observations of the Hon'ble Supreme Court in the matter of *Gorkha Security Services (supra)*. Having gone through observations of the Hon'ble Supreme Court in the afore-stated matter, I find that reliance placed by the *Noticees* on the said case will not be of any help to the *Noticees* as because, in the above referred matter, the Apex Court has, *inter alia*, observed that all the alleged charges levelled against any noticee should be detailed out in the SCN so as to enable a noticee to rebut the same. I note that in all the SCNs issued in the instant proceedings, charges have been ostensibly levelled against the *Noticees* with clarity backed by detailed factual findings & supporting information in the annexures and the SCN further proceeds on to ask the *Noticees* to respond as to why certain directions including the direction for disgorgement of unlawful gains allegedly made by the respective *Noticees* while trading in the scrip of *Sabero* should not be issued. Therefore, such contentions of the *Noticees* have to be out rightly rejected as baseless, out of context and not founded on facts.

23. The *Noticees* have also referred to various judicial orders to substantiate their arguments that in case of circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be

incompatible with the innocence of the accused or the guilt of any other person. Judgment of the Hon'ble Supreme Court in the matters of *Nandkishore Prasad vs. State of Bihar (1978) 3 SCC 366, Union of India vs. H.C. Goel (AIR 1964 SC 364, Razikram vs. J.S. Chauhan (AIR 1975 SC 667; (1975) 4 SCC 769, Razikram vs. J.S. Chauhan (AIR 1975 SC 667; (1975) 4 SCC 769, Gulabchand vs. Kudilal (AIR 1966 SC 1734) and Roop Singh Negi vs. Punjab National Bank & Ors. (2009) 2 SCC 570* have *inter alia* been relied upon by the *Noticees* to support their argument. Having gone through the above referred cases, I find that the observations made by the Apex count in none of the above referred cases are factually relatable to the instant proceedings. The only case cited by the *Noticees* that can possibly be considered coming factually close to the line of argument advanced by the *Noticees* is *Union of India vs. Chaturbhai N. Patel & Co. AIR 1976 SC 712* wherein it has been observed that fraud, like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be established beyond reasonable doubt but however suspicious may be the circumstances, however strange the coincidences and however grave the doubts, suspicion can never take the place of proof. However, on a closer reading of the full context of the afore cited judgment, I find that these observations were made by the Hon'ble Supreme Court in a different context altogether. In the above stated case, *Chaturbhai Patel* was not charged with or tried for fraud. In fact, it was his firm which had filed a suit for damages against the Union of India on the allegation that due to the negligence of Indian Railways the goods dispatched by them did not reach the consignee at Gaya but identical goods (Tobacco) of inferior quality reached the consignee, thereby causing them losses. The Union of India contested the suit mainly on the ground that due to fraud and collusion between *Chaturbhai* at Banaras and his father's firm in Gujarat, the consignment at Banaras was interchanged by manipulation so that inferior goods were sent to Gaya and the superior goods were sent to Gujarat which were sold by his firm at Gujarat at a huge profit. It was under these circumstances that the Hon'ble Supreme Court came to the conclusion that the defense plea of a

fraud was not backed by conclusive or reliable evidence. Therefore, in my opinion, the case laws cited by the *Noticees* are not squarely applicable to the instant proceedings, and those cases being distinguishable both on facts and context from each other, it does not require any further consideration to entertain the claim of the Noticees to drop the charges made in the SCN, solely by relying upon the afore-cited case laws.

24. Having dealt with the preliminary contentions and objections put forth by the *Noticees*, I now proceed to discuss to determine as to whether or not, the allegations of insider trading levelled against the *Noticees* in the SCN are sustainable on merit. Considering the factual intricacies and complexities involved in the case, in my opinion, in order to determine as to whether the *Noticees* have indeed contravened the provisions of the *PIT Regulations, 1992*, and whether the charges levelled in the SCN would sustain against them, the following issues first need to be determined with clarity:

a) *Issue 1: Whether there was price sensitive information in the scrip of Sabero in terms of Regulation 2(ha)(v) of SEBI PIT Regulations, 1992 which was unpublished?*

b) *Issue 2: If answer to Issue 1 is yes, whether, the Noticees had traded in the shares of Sabero during UPSI period?*

c) *Issue 3: If answer to Issue 2 is yes, whether the Noticees had traded in the shares of Sabero while in possession of unpublished price sensitive information so as to be in violation of provisions of the SEBI PIT Regulations, 1992?*

d) *Issue 4: If answer to Issue 3 is yes, whether the Noticees had made any wrongful gains while trading in the shares of Sabero?*

Issue 1: Whether there was price sensitive information in the scrip of Sabero in in terms of Regulation 2(ha)(v) of SEBI PIT Regulations, 1992 which was unpublished?

25. The first question that arises for my determination is whether there was a *price sensitive information in the scrip of Sabero* during the Investigation Period, as

envisaged in regulation 2(ha) of the *PIT Regulations, 1992,* which was likely to materially affect the price of the scrip of *Sabero*. Before the issue is taken up for further examination, it would be relevant to have a look at the provisions of law defining PSI and for the purposes of easy reference, the definition of the term '*price sensitive information*' is reproduced herein below:

> "*(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) periodical financial results of the company;*
>
> *(ii) intended declaration of dividends (both interim and final);*
>
> *(iii) issue of securities or buy-back of securities;*
>
> *(iv) any major expansion plans or execution of new projects.*
>
> *(v) amalgamation, mergers or takeovers; (***Emphasis supplied***)*
>
> *(vi) disposal of the whole or substantial part of the undertaking;*
>
> *(vii) and significant changes in policies, plans or operations of the company;*"

26. From the aforementioned definition, I note that regulation 2(ha) of the *PIT Regulations, 1992* defines as to what constitutes a PSI. In terms of the said regulation, PSI means any information which relates directly or indirectly to a company and which, if published is likely to materially affect the price of the securities of a company. The definition also provides an explanation incorporating therein various instances which shall be deemed to be PSI which include *inter alia*, "amalgamations, mergers or takeovers" of a company as one of such instances *of PSI.* Thus in terms of the aforementioned clause (v) of the explanation to regulation 2(ha) of the *PIT Regulations, 1992*, the information pertaining to acquisition of shares owned by the promoters of a company connected

with takeover of the said company shall be deemed to be PSI. In this respect, the records before me clearly suggest (which also remains undisputed), that the representatives of *Coromandel* and *Sabero* had a meeting on May 15, 2011, to discuss and negotiate the acquisition of promoters' stake in *Sabero* by *Coromandel* and pursuant to the said meeting, on that day itself, the *Acquirer* i.e. *Coromandel* had appointed legal as well as financial advisers to explore and work out the modalities for the proposed acquisition of promoters' shares in *Sabero.* As noted above, as per the *PIT Regulations, 1992*, any information / news about the mergers and acquisitions or takeovers of a company is deemed to be a price sensitive information. Accordingly, it can be safely concluded that the aforesaid information relating the acquisition of shares of *Sabero* by *Coromandel* was a price sensitive information.

27. I note that the *Noticees* have contended that the disclosure of the aforesaid PSI on the stock exchanges had little or no effect on the price of the scrip. A perusal of the aforesaid definition of '*price sensitive information*' shows that an information pertaining to a company can be termed as price sensitive, which if published, is likely to materially affect the price of the securities of the company. It is not that the information has to necessarily affect the price of the scrip when the PSI is disclosed to the market. It is so, because at any given point of time, an interplay of various factors affects the price of a scrip of a company. It is not always possible to decipher whether a particular information did actually materially affect the price. Thus, what is relevant for consideration is whether the said information is directly or indirectly related to a company and whether the information, if published, is likely to materially affect the price of securities of the company. If these two tests are met, the information would be construed to be a price sensitive information irrespective of the actual movement in market prices witnessed in the scrip post disclosure of that information. The term price sensitive information used in the regulation is wide enough to include any information relating directly or indirectly to a company, which upon disclosure may affect the price of the scrip of the company. Therefore, it can be

very well stated that the decision of *Coromandel* to acquire the shares of promoters of *Sabero* was likely to materially affect the price of securities of the target *Company* i.e. *Sabero,* hence has to be considered as a *PSI*. Notwithstanding the aforesaid, in the instant case, the said information of acquisition of shares of *Sabero* by *Coromandel* was eventually made public on May 31, 2011, when *Coromandel* informed the stock exchanges that its Board of Directors had approved the acquisition of *Sabero* shares from its Promoters. I also note from the records available before me that subsequent to the afore-stated public announcement of proposed acquisition by *Coromandel*, the price of the scrip of *Sabero* saw a 10% increase on each of the next three trading days viz: May 31, 2011, June 1, 2011 and June 2, 2011. For instance, the scrip of *Sabero* opened at NSE on May 31, 2011 at ₹90.8 and closed at 98.35. Further, on June 01, the scrip of *Sabero* opened at a price of ₹108.20 (10% high from the Closing Price on May 31, 2011) and on June 02, 2011 opened at a price of ₹119.05 (10% high from the Closing Price on previous trading day i.e. on June 01, 2011). I also note from the records that similar trend in the price movement in the scrip of *Sabero* was also observed at BSE. Therefore, from such price movements observed in the scrip of *Sabero* subsequent to the public announcement of the proposed acquisition of its promoters' shares by *Coromandel,* it can be easily inferred that the said information was indeed a price sensitive information in terms of regulation 2(ha)(v) of the *PIT Regulations, 1992* that had a strong likelihood of materially affecting the price of the scrip and it eventually did affect the price of the scrip of *Sabero,* upon its disclosure to the market.

Issue 2: If answer to Issue 1 is yes, whether the Noticees had traded in the shares of Sabero during UPSI period?

28. Having decided that the information pertaining to the proposed acquisition of shares of promoters of *Sabero* by *Coromandel* was indeed a '*price sensitive information*' in terms of regulation 2(ha) of the *PIT Regulations, 1992*, I now proceed to ascertain as to whether the *Noticees* had traded in the shares of *Sabero* during the *UPSI* period. The PSI regarding the acquisition of shares of *Sabero* by *Coromandel* effectively came into

existence on May 15, 2011, when the representatives of *Coromandel* and *Sabero* attended the aforesaid meeting, wherein a decision to appoint legal and financial advisers was also taken, and these undisputed facts provide adequate indication with respect to the of commencement of the said PSI with effect from May 15, 2011. The said PSI remained unpublished till it was announced to the in public through the Stock Exchanges before opening of market hours on May 31, 2011. The pre-announcement period (*UPSI* period) i.e. the period from May 15, 2011 to May 30, 2011, therefore becomes the period when the PSI was not published to the public. In this regard, I note that the SCN has alleged that the *Noticees* have traded in the scrip of *Sabero* during the said UPSI period, the details of which have already been presented in the table no. 2 of this Order.

29. It is a matter of record that none of the *Noticees* has disputed their respective trading in the shares of *Sabero* during the Investigation Period (which included the *UPSI* Period) as alleged in the SCN, details of which has been enumerated in the table no. 2 of this Order. In fact, all of them have accepted the trades executed by them during the aforesaid period. I note that some of the *Noticees* have contended that they are regular traders in the market and were trading in the shares of the *Company* in the ordinary course of business, or their trades in the shares of the *Company* were too miniscule to attract a serious charge of insider trading. It is pertinent to note that the scheme of the *PIT Regulations, 1992* does not carve out any exception for any person who is alleged to have carried out insider trading just because he has traded in the ordinary course of business. The contention of some of the *Noticees* that the quantity of their trade was too miniscule to warrant any charge of insider trading is also misplaced. In this regard, I would like to rely on the findings of the Hon'ble SAT in the matter of *Harish K Vaid vs. SEBI (Appeal No. 63 of 2012 – Date of Decision: October 3, 2012)* wherein it was held,

"The purpose of insider trading regulations is to prohibit trading by which an insider gets advantage by virtue of his access to price sensitive information. The quantum of trading done or the profits earned become immaterial."

30. In view of the afore-stated facts including the fact that none of the *Noticees* has disputed their alleged trades executed during the UPSI period and after having regard to the aforesaid judicial observations, it is an admitted fact that the *Noticees* had traded in the scrip of *Sabero* during the Investigation Period, which also included the UPSI period.

Issue 3: If answer to Issue 2 is yes, whether the Noticees were insider or had traded in the shares of Sabero while in possession or on the basis of unpublished price sensitive information in violation of provisions of the SEBI PIT Regulations, 1992?

31. Having held that there was a PSI which came into existence on May 15,2011 and remained a PSI till it was announced for consumption of public and market participants on May 31, 2011 and during the said period, when it remained unpublished, *Noticees* herein were seen to have traded in the scrip of *Sabero* during the *UPSI* period, I proceed now to find whether the *Noticees* were insiders and traded in the shares of *Sabero* while in possession of or on the basis of *UPSI*. I note that the *Noticees* have argued that the SCN is completely silent on the basis on which they have been alleged to be insiders and it is obligatory on part of SEBI to clearly show as to how the *Noticees* fall within the ambit of 'insider' and how they have had 'access' to the *UPSI*. I further note that the *Noticees* have placed reliance on judicial observations of the Hon'ble SAT in matters such as *SRSR Holdings Pvt Ltd & others vs. SEBI (DoD: 11.08.2017), Dilip Pendse vs. SEBI (Appeal No. 8 of 2009), Factorial Master Fund vs. Sebi (Appeal no. 01 of 2017, DoD: June 29, 2018)* as well as SEBI order no. *AO/SG-AS/EAD/15/2016* in the respect of *Reliance Petro investments Ltd* and have contended that the facts of the aforementioned cases are squarely applicable in the instant matter. Having gone through the aforementioned judicial observations referred to by the *Noticees*, I note that the facts of the above cited matters and the

factual details of the instant proceedings are completely different from each other and therefore will not come to the rescue of the *Noticees*. For instance, in the matter of *Dilip Pendse (supra),* there was no quarrel over the issue of being 'insider' and the limited issue in front of the Hon'ble Tribunal to deal with was whether the alleged trades were executed by the appellants before the possession of *UPSI* or not. Similarly, in the matter of *Factorial Master Fund (supra),* the findings of Hon'ble Tribunal dwells around the fact that the alleged trades were executed by the appellant prior to the exemption granted by SEBI and therefore, the argument that appellant had executed trades under the presumption that an application has been made to SEBI seeking exemption from the cooling period, is not sustainable. Further, in the matter of SRSR *Holdings Pvt Ltd (supra),* for one of appellant Hon'ble SAT had upheld the decision of SEBI. However, for other appellants, Hon'ble SAT had noted that the roles played by different appellants in facilitating and liquidating the shares of Satyam when in possession of UPSI differ substantially, SEBI could not have imposed uniform restraint order against all the appellants. Therefore, Hon'ble SAT while restoring the matter back to SEBI, *inter alia*, directed SEBI to consider the cost of acquisition of shares, if any, incurred by each appellant while computing the unlawful gains. Therefore, the reliance placed by the *Noticees* in the findings of the above noted matters is misplaced on facts and attendant circumstances, hence such reliance by the *Noticees* is liable to be rejected. In my view, contentions of the *Noticees* that they were neither insiders nor had any access to the *UPSI* during the relevant period have to be examined on the basis of material facts and information available in the records and not by resorting to any factually distinguishable judicial decisions.

32. With regard to the contention of some of the *Noticees* that they have traded in the scrip of *Sabero* due to certain positive corporate announcement in the scrip and accordingly they had a positive outlook about the scrip, I note from the records available before me that *Sabero* had made certain corporate announcements prior to the Investigation Period i.e. from September 01, 2010 to May 14, 2011. Those

announcements alongwith the price data for the scrip of the *Company* prior to and after the aforementioned announcements, along with the date and time of dissemination of the same by NSE on its website, are presented in the following table:

Table-4: Details of Corporate Announcements by *Sabero*

<table>
<tr><th>Date & Time of Publishing the announcement on NSE</th><th>Corporate Announcement</th><th>Impact of the announcement Price & Volume (on NSE)</th></tr>
<tr><td>September 13, 2010 @14:59</td><td>Sabero has informed BSE regarding a Press Release dated September 13, 2010 titled "Sabero Organics receives registration for Glyphosate in France and Mancozeb in Brazil"</td><td>
<table>
<tr><th>Date</th><th>Open Price (₹)</th><th>Close Price (₹)</th><th>Traded Quantity</th></tr>
<tr><td>08-Sep-10</td><td>74.50</td><td>72.60</td><td>86350</td></tr>
<tr><td>09-Sep-10</td><td>73.40</td><td>73.60</td><td>184042</td></tr>
<tr><td>13-Sep-10</td><td>75.45</td><td>74.60</td><td>196381</td></tr>
<tr><td>14-Sep-10</td><td>75.95</td><td>73.70</td><td>241546</td></tr>
<tr><td>15-Sep-10</td><td>74.00</td><td>74.15</td><td>109412</td></tr>
</table>
From the table, it can be observed that the price on the day of announcement has fallen from ₹75.45 to 74.60.
</td></tr>
<tr><td>September 28, 2010 @14:13</td><td>Sabero has informed BSE that the shareholders at the 19th Annual General Meeting (AGM) of the Company held on September 28, 2010, inter alia, have approved the resolutions for adoption of audited accounts for the financial year ended March 31, 2010, declaration of 12% dividend along with other appointment and re-appointment of directors.</td><td>
<table>
<tr><th>Date</th><th>Open Price (₹)</th><th>Close Price (₹)</th><th>Traded Quantity</th></tr>
<tr><td>24-Sep-10</td><td>69.00</td><td>70.90</td><td>45661</td></tr>
<tr><td>27-Sep-10</td><td>72.30</td><td>70.50</td><td>41939</td></tr>
<tr><td>28-Sep-10</td><td>70.75</td><td>72.55</td><td>141395</td></tr>
<tr><td>29-Sep-10</td><td>73.80</td><td>69.95</td><td>122633</td></tr>
<tr><td>30-Sep-10</td><td>69.90</td><td>69.95</td><td>29199</td></tr>
</table>
From the table, it can be observed that the price on the day of announcement has increased from ₹70.75 to 72.55. However, the same has been fallen down to 69.65 on next day of the announcement.
</td></tr>
<tr><td>November 19, 2010 @15:55</td><td>Sabero has informed BSE that the auditors have conducted the limited review of the unaudited financial results for the quarter ended September 30, 2010.</td><td>
<table>
<tr><th>Date</th><th>Open Price (₹)</th><th>Close Price (₹)</th><th>Traded Quantity</th></tr>
<tr><td>16-Nov-10</td><td>66.00</td><td>64.40</td><td>47317</td></tr>
<tr><td>18-Nov-10</td><td>64.25</td><td>63.15</td><td>50577</td></tr>
<tr><td>19-Nov-10</td><td>64.00</td><td>60.95</td><td>56869</td></tr>
<tr><td>22-Nov-10</td><td>61.00</td><td>60.95</td><td>56448</td></tr>
<tr><td>23-Nov-10</td><td>61.90</td><td>59.75</td><td>63461</td></tr>
</table>
From the table, it can be observed that the price on the day of announcement has fallen from ₹64.00 to 60.95.
</td></tr>
<tr><td>February 14, 2011 @16:13</td><td>Sabero has informed BSE about the Financial</td><td>
<table>
<tr><th>Date</th><th>Open Price (₹)</th><th>Close Price (₹)</th><th>Traded Quantity</th></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Date & Time of Publishing the announcement on NSE</th><th>Corporate Announcement</th><th>Impact of the announcement Price & Volume (on NSE)</th></tr>
<tr><td></td><td>Results for the Quarter ended December 31, 2010.</td><td>
<table>
<tr><td>10-Feb-11</td><td>41.50</td><td>40.25</td><td>44358</td></tr>
<tr><td>11-Feb-11</td><td>41.00</td><td>42.05</td><td>18685</td></tr>
<tr><td>14-Feb-11</td><td>44.70</td><td>45.50</td><td>37414</td></tr>
<tr><td>15-Feb-11</td><td>42.10</td><td>41.90</td><td>67329</td></tr>
<tr><td>16-Feb-11</td><td>42.10</td><td>42.45</td><td>25615</td></tr>
</table>
From the table, it can be observed that the price on the day of announcement has increased from ₹44.70 to 45.50. However, the same has been fallen down to 41.90 on next day of the announcement.
</td></tr>
<tr><td>February 24, 2011 @18:46</td><td>Sabero has informed BSE that the auditors have conducted the limited review of the unaudited financial results for the quarter ended December 31, 2010.</td><td>
<table>
<tr><th>Date</th><th>Open Price (₹)</th><th>Close Price (₹)</th><th>Traded Quantity</th></tr>
<tr><td>22-Feb-11</td><td>41.45</td><td>40.10</td><td>25820</td></tr>
<tr><td>23-Feb-11</td><td>40.35</td><td>38.80</td><td>46943</td></tr>
<tr><td>24-Feb-11</td><td>39.10</td><td>38.50</td><td>53119</td></tr>
<tr><td>25-Feb-11</td><td>38.55</td><td>39.85</td><td>25348</td></tr>
<tr><td>28-Feb-11</td><td>40.60</td><td>39.75</td><td>25837</td></tr>
</table>
From the table, it can be observed that the price on the day of announcement has fallen from ₹39.10 to 38.50.
</td></tr>
<tr><td>April 29, 2011 @11:12</td><td>Sabero has informed BSE that the Company proposes to publish Audited Financial Results for the year ended March 31, 2011 within 60 days from the Financial Year ended March 31, 2011 i.e. on or before May 30, 2011.</td><td>
<table>
<tr><th>Date</th><th>Open Price (₹)</th><th>Close Price (₹)</th><th>Total Traded Quantity</th></tr>
<tr><td>27-Apr-11</td><td>57.50</td><td>55.85</td><td>27095</td></tr>
<tr><td>28-Apr-11</td><td>56.00</td><td>55.95</td><td>24649</td></tr>
<tr><td>29-Apr-11</td><td>56.75</td><td>56.10</td><td>22910</td></tr>
<tr><td>02-May-11</td><td>56.45</td><td>56.00</td><td>28955</td></tr>
<tr><td>03-May-11</td><td>56.10</td><td>55.95</td><td>39155</td></tr>
</table>
From the table, it can be observed that the price on the day of announcement has fallen from ₹56.75 to ₹56.10.
</td></tr>
</table>

33. From the above noted data on price movements in the scrip of *Sabero* pursuant to various corporate announcements, I note that there was not much price or volume movement in the scrip of *Sabero* on account of any of the corporate announcements made during the above cited pre-investigation period which can be claimed to have induced the *Noticees* to trade in *Sabero* during the UPSI period. Further, *Noticees* have not produced any document including their trade details to substantiate their claim of having traded under positive influence of the above listed corporate announcements. It is further observed that out of the 6 corporate announcements

made during September 01, 2010 to May 14, 2011, only one announcement made on September 13, 2010 pertained to the expansion of the *Company*. Undisputedly, none of the *Noticees* has produced any evidence to demonstrate and substantiate the claim to have traded after being induced by these corporate announcements.

34. In view of the undeniable fact that not much movement in the price of the scrip of S*abero* was caused by any of the corporate announcements, in my opinion, the arguments of the *Noticees* that they had traded under positive sentiments caused by the corporate announcements are not found to be supported by any credible evidence, hence such unfounded claims do not require any further consideration.

35. Moving on to the next vital question before me now, I have to find an answer as to whether the materials on record are sufficient enough to establish that the *Noticees* were insiders in terms of regulation 2 (e) of the *PIT Regulations, 1992* and/ or whether they have traded in the shares of *Sabero* while in possession of or on the basis of an *UPSI.* In this respect, before proceeding further to ascertain an answer to the aforesaid question, it would be proper to visit the relevant regulatory provisions, which are reproduced below:

Regulation 2 of the PIT Regulations, 1992- Definitions

2. (a) In these regulations, unless the context otherwise requires: –

(a).....

(b).....

(c) "connected person" means any person who –

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

ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and

the company [whether temporary or permanent] and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

(e)"insider" means any person who is:

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

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

36. From the afore-stated provisions of the *PIT Regulations, 1992*, I note that regulation 2(c) defines a "*connected person*", *inter alia,* to mean any person who occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company, whether temporary or permanent, and who may reasonably be expected to have an access to *UPSI* in relation to that company. Further, regulation 2(e) of the *PIT Regulations, 1992*, defines "*insider*" as any person who 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 *UPSI* in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information.

37. In the instant case, I note that pursuant to the completion of the investigation, the SCNs which have been served on the *Noticees*, do not contain any evidence, which can even remotely indicate that the *Noticees* were holding the position of Director or employee / officer either with the *Sabero* / *Coromandel* or were enjoying any connection in any form whatsoever with any of the above noted companies or with Directors / Officers of the aforesaid two companies. I have already observed above that the *Noticees* have not been alleged to have any

association or connection with any of the companies, including having any professional or business relationship either with the *Sabero* or with the *Coromandel* nor any documents have been brought to my notice which can suggest that the relevant PSI was communicated to the *Noticees* during the *UPSI* period or they received or got to possess the PSI by any means whatsoever. In view of the aforesaid, from the materials available on record and having heard the *Noticees*, I am left with no option but to record that none of the *Noticees* was enjoying any connection/relation/association either with the *Sabero* or with the *Coromandel* in any manner whatsoever, hence, having considered the materials on record, the *Noticees* cannot be held to be connected within the ambit of regulation 2 (1) (c) of the *PIT Regulations, 1992.*

38. Having noted that the SCNs do not make any allegation that the *Noticees* were connected persons, I proceed to examine as to whether *Noticees* were insider in terms of regulation 2(e) of the *PIT Regulations, 1992* which defines 'insider' as -

"Insider" means any person:

a. who, 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

b. who has received or has had access to such unpublished price sensitive information".

39. It has been submitted on behalf of the *Noticees* that the definition of insider envisages two sets of persons as 'insiders', namely: (a) a person who is connected or deemed to be connected with the company and is reasonably expected to have an access to *UPSI* in respect of securities of a company; and (b) a person who has received or has had access to such *UPSI*. The definition further provides that a connected person or deemed to be connected person would be considered as an insider and a reasonable expectation to have an access to *UPSI* by the said connected

or deemed to be connected person is sufficient to proceed with the charge of insider trading against such person and it becomes incumbent upon such a person to establish his / her innocence to the contrary. Connections with the company or holding a material position in that company creates a sufficient legal presumption about such person to have access or reasonable access to *UPSI* and there is no necessity to prove the actual receipt of or access to *UPSI* in such cases. However, for a person, who does not enjoy any connection or deemed connection with the company, demonstration of actual receipt or actual access to *UPSI* is required to level a charge of insider trading against such a person. Reasonable expectation of access to UPSI would not be a ground sufficient enough to establish the charge of possession of UPSI by an admittedly unconnected person so as to hold him as an insider and attribute his trades in the scrip of the *Company* as an insider trading, executed while in possession of UPSI.

40. The submission made by the *Noticees* is that for a person enjoying connection with the company, reasonable expectation to have access to UPSI is sufficient, whereas for a person other than those, falling in category (b) of the definition under 2 (1) (e) of the *PIT Regulations, 1992,* actual receipt of and access to UPSI is mandatory to be established prior to making a charge of insider trading. Such a contention though initially appears to be persuasive in accordance with the provisions of the PIT Regulations, 1992, however, on a closure scrutiny of the facts and surrounding circumstances pertaining to the trading pattern followed by the *Noticees* while dealing in the scrip of *Sabero*, in my view, the aforesaid contention of the *Noticees* warrants further probing and analysis before taking a final view thereon. I cannot lose sight of the fact that the present proceedings are civil in nature and the charges are required to be proved on the principle of preponderance of probability. So, in the facts of the present case, even in the absence of any evidence of direct or actual receipt of the *UPSI* by the *Noticees* it has to be examined as to whether the attending facts and circumstantial evidences are so strong so as to guide a person of ordinary prudence,

following a logical process of reasoning from the totality of the circumstances, to an irresistible inference that the trades of the *Noticees* were nothing but based on or while in possessions of *UPSI*. Such an inference has to also stand the scrutiny of a proceedings against an entity, who may not enjoy any connection with the company nor there is any documentary/oral evidence to substantiate actual receipt of or access to *UPSI* by such entity, but the circumstantial evidences against such entity would have to so strong so as to suggest conclusively that his / its trades were influenced by the access to or receipt or possession of *UPSI*. The Supreme Court in *SEBI vs. Kanhaiyalal Patel* has rightly held that an inferential conclusion from proved and admitted facts would be permissible and legally justified so long as the same is reasonable. In support of the above view, I also rely on the observations made by the Hon'ble Tribunal (SAT) in the case of *Rajiv B. Gandhi, vs. SEBI* (Appeal Number 50 of 2007): "*…. Insider is a person who is or was connected with the company and who is reasonably expected to have access by virtue of such connection to unpublished price sensitive information in respect of securities of the company. A person who has received such information or has had access to such information is also an insider.*"

41. Keeping the aforesaid in view, I proceed to examine the materials available on the records to ascertain as to whether there are sufficient information and whether the attending circumstantial evidences are so strong enough to hold that the trades of the *Noticees* in the scrip of *Sabero* were executed on basis of possession of *UPSI* or were influenced by the possession or receipt of *UPSI*. It is noted that the SCNs issued in the instant matter have proceeded on the premise that certain persons were seen to have traded in the scrip of *Sabero* during the *UPSI* period and were further seen to have sold shares after the disclosure of the said PSI. It was also noticed that some of such persons/*Noticees* were not having prior trading experience in the scrip of *Sabero* either in the recent past or post the disclosure of the *UPSI*. Thus, prima facie, the unusual coincidences of certain acts, viz: buying of *Sabero* shares during the *UPSI* period and selling the shares after the said PSI was disseminated through the stock

exchanges and the additional fact that these traders were apparently dealing with the shares of *Sabero* for the first time, were viewed as the prime reasons to presume that the *Noticees* despite being not connected with the two companies (*Sabero* and *Coromandel*) in any manner, have traded in the scrip of *Sabero* and those occasional trading indicated to be influenced by the possession of *UPSI*. At the same time, admittedly, it is not in dispute that the SCNs do not make any allegations against these *Noticees* being connected person or have acted in concert to trade in the shares of *Sabero* while in possession of *UPSI*. Thus it a fact on record that the *Noticees* were neither having any connection with the two companies involved in the creation of the said *UPSI* nor were sharing any *inter se* connection amongst themselves and their trading in the scrip of *Sabero* was independent of each other's trading activities. The *Noticees* are rather charged as insiders solely on the premise of their purportedly unusual trading behavior in the scrip of *Sabero* during the *UPSI* period and after the disclosure of the PSI, hence, the said trades executed by the *Noticees* were alleged to be executed influenced by access to or receipt of the *UPSI*.

42. It has been however, argued by the *Noticees* that their trades were not motivated by the access to or receipt of the *UPSI* pertaining to *Sabero.* It has been emphasized by the *Noticees* that the positive news about the *Company* available in the public domain, coupled with the internal research carried out by the *Noticees* about the *Company*, cumulatively became attractive propositions for their trading in the scrip of *Sabero*. Some of the *Noticees* have furnished news clipping and articles written about the future of the scrip of *Sabero* to substantiate their conduct and act of trading in the scrip of *Sabero*. Irrespective of the aforesaid assertions made by the *Noticees* about corporate announcements and positive news about the *Company* to defend their trades in the scrip of *Sabero* during the *UPSI* period which have not been found convincing as discussed by me earlier, in my view, there are certain undisputed facts in this matter which have to be confronted for the purpose of adjudication of the question as to whether or not, the *Noticees* have indulged in insider trading in the instant

proceedings. As already indicated above, from a perusal of the factual narrations made in the SCNs issued to the *Noticees*, it is clear that the SCNs nowhere narrate or allege about any *inter-connectedness* amongst the *Noticees*. On a perusal of SCNs and examination of the trades executed by the *Noticees*, it is observed that the records do not indicate that all the *Noticees* had commenced their respective trading in the shares of *Sabero* immediately after the *UPSI* came into existence. Rather, the records clearly show that different *Noticees* had executed trades in the scrip of *Sabero* at different points of time. The records further show that trading by the *Noticees* commenced from May 16, 2011 and went up to May 30, 2011. One can argue in support of the SCN stating that different *Noticees* might have come to possess the *UPSI* at different points of time during the *UPSI* period due to which they have traded in the scrip of *Sabero* on different days, but that would take the deliberations into the realm of conjecture & surmises. The absence of any evidence to suggest any *inter connectedness* amongst the *Noticees* or any connection between the *Noticees* and *Sabero* or *Coromandel,* and the fact that different *Noticees* have followed divergent trading pattern and have executed their trades on different days during the *UPSI* period constrain me to find strength in the submissions of the *Noticees* that the circumstantial evidence adduced in the SCNs may not be strong enough to establish that the *Noticees* were indeed in possession of or had access to the *UPSI* of the C*ompany* when they were engaged in trading in the scrip of *Sabero*.

43. Moving on to the other submission of the *Noticees* that based on the materials available on record, the charges of insider trading would not sustain since the SCNs issued in the matter do not even remotely indicate about association of any nature between any of the *Noticees* and the *Company* or its officials. To buttress the submissions so advanced, it has been argued that even if the premise on which the SCNs have been issued in the matter is to be believed, the charge would still not sustain as some of the *Noticees* were also seen to have sold the shares of *Sabero* during the *UPSI* period (despite allegedly possessing a positive *UPSI*) as while many *Noticees*

were seen to have bought the shares even after the disclosure of the *UPSI*. In this respect, the details of buy and sale of shares made by *Noticees* in the scrip of *Sabero* during the *UPSI* period and post *UPSI* period are presented as under:

Table-5: Trade details of *Noticees* in the scrip of *Sabero*

S. No.	Name	Start date of trading in *Sabero* during *UPSI* period	During *UPSI* period (May 15 to May 30, 2011)		Post *UPSI* period till March 31, 2012	
			Buy Quantity	Sell Quantity	Buy Quantity	Sell Quantity
1	C Gopalakrishnan	23-May-11	319,500.00	-	-	319,500.00
2	V Karuppiah HUF	23-May-11	34,750.00	-	6,000.00	40,750.00
3	Amrabathi Investra Private Limited	16-May-11	99,436.00	-	564.00	100,000.00
4	Pilot Consultants Private Limited	16-May-11	332,100.00	80,600.00	-	241,750.00
5	Bijco Holdings Limited	16-May-11	641,705.00	41,141.00	2,500.00	597,373.00
6	Manphool Exports Limited	16-May-11	255,000.00	193,763.00	-	50,000.00
7	Mangaladevi Ramamirtham	16-May-11	153,500.00	-	11,000.00	164,399.00
8	Sankaranarayanan Ramamirtham	16-May-11	100,000.00	27,896.00	-	72,104.00
9	Valsons Securities Ltd	30-May-11	17,500.00	-	-	17,150.00
10	Hayati Dharmesh Vala	19-May-11	36,300.00	6,300.00	-	30,000.00
11	Paresh Nalin Sanghavi	30-May-11	17,000.00	-	1,530.00	17,000.00
12	Vasudha Anilkumar Kedia	18-May-11	10,575.00	-	-	10,575.00
13	Usha Shantikumar Loonker	17-May-11	50,000.00	-	1,000.00	50,000.00

44. From the aforesaid details of their trades, it has been emphasized by the *Noticees* that based on the materials on record, it would not be possible for SEBI to come to an irrefutable conclusion that the trades executed by the *Noticees* in the scrip of *Sabero* were unusual or abnormal as alleged in the SCN, which can be held to be

motivated or influenced by the possession or receipt of *UPSI*. To strengthen the above submission, the *Noticees* have relied upon the observations of the Hon'ble Tribunal in the matter of *Mr. V. K. Kaul (supra)* wherein it was reiterated that the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, there has to be a higher standard of preponderance of probabilities for establishing such a charge. The Hon'ble Tribunal in the aforesaid matter of *Mr. V K Kaul (Supra)* has placed reliance on the observations made by the Apex Court in the case of *Mousam Singha Roy vs. State of West Bengal (2003) 12 SCC 377,* to hold that though in civil/administrative proceedings a charge is to be established not beyond reasonable doubt but on the basis of preponderance of the probabilities, at the same time the case needs to be proved by evidences having stronger degrees of probability within that standard and not on surmises and conjectures. Thus, even if a conjecture based on some reasons such as unusual trading activities by the *Noticees* in the scrip of *Sabero* is to be deemed as a sufficient proof, this can hardly be a cause for satisfaction, to hold that the *Noticees* were in possession of or had access to *UPSI*.

45. *Noticees* have thus submitted that from the above noted details of trades, it cannot be logically concluded that the said trades were executed by the *Noticees* in the scrip of *Sabero* based on the receipt of or access to the *UPSI*. Further, it has also been argued that the total exposure in Indian Securities market and net worth of some of the *Noticees* were much higher than the exposure they had taken in the scrip of *Sabero* during the Investigation Period. Some of the *Noticees* have submitted that they are duly registered as Non-Banking Financial Company (for short 'NBFC') with Reserve Bank of India and their annual exposure to the securities market were more than INR 300 Crore. To support such a claim of having large exposure to trading in securities market, relevant documents viz; annual report, demat statement etc., have been produced to emphasis on the fact that they had taken exposure of trading in other scrips as well during the relevant period. It is not alleged in the SCNs that the

trades of the *Noticees* were confined to the shares of *Sabero* only so as to create a suspicion that the alleged trades were influenced by the access to or receipt of the *UPSI*. In this respect also, I find that there is nothing on record contrary to the submissions advanced by the *Noticees* in the matter.

46. The *Noticees* have also emphatically drawn my attention to the fact that based on the investigation conducted by SEBI in the matter of *Sabero*, an *Interim Order* dated May 21, 2015 was passed, which was set aside and recalled by SEBI itself vide its order dated May 12, 2016. It is also not in dispute that vide the above noted *Interim order*, proceedings were initiated only against certain limited number of entities and most of the *Noticees* of the instant proceedings were not part of the action initiated by SEBI vide the above noted *Interim order*. There is also no denial to the fact that the findings recorded in the *Interim Order* against certain entities were recalled on the ground that evidences available on record were not sufficient to establish the charge of insider trading against them and therefore, vide its order dated May 12, 2016, while ordering re-investigation, it was directed to bring more evidence so that the charge of insider could be sustained. It has been submitted by the *Noticees* that the investigation that was conducted pursuant to the aforesaid direction, has not brought out any additional evidences or new information, which were not available in public domain, to justify the issuance of SCNs against the *Noticees*, when the same materials were not perceived to be bearing any evidence to propose any action against the *Noticees* pursuant to completion of the *First Investigation*.

47. I find merit and strength in the submissions of the *Noticees*. While ordering for a re-investigation, it has been categorically observed in the *2016 Order* that proceeding merely on the basis of available but inadequate evidence on record, without support of any collateral material to arrive at conclusive finding, may not be just and reasonable to state that there was a communication of *UPSI* from to Gopalakrishnan and Karuppiah. Therefore, in the said *2016 Order*, it was specifically ordered by the Competent Authority that a deeper examination is warranted so as to

come to a better finding supported by sufficient evidence, so that the charge of insider trading could sustain.

48. I further note that the said order of May 12, 2016 goes on to record that *"I am of the view that this is the fit case of re- investigation and SEBI should employ all the investigative powers entrusted to it to unearth the entire truth and to find out the role of each of the suspected entities vis-a-vis the persons/entities privy to the UPSI including the Noticees herein."*

49. From the above, one can observe that the material and evidence available on record at that point of time were not seen as sufficient enough to establish the charge of communication of *UPSI* to the *Noticees* and trading based on such alleged communication. Accordingly, it was ordered to have a detailed and deeper investigation to unearth the actual truth pertaining to communication of *UPSI* and trading done by such unscrupulous entities, who gained undue advantage by having access to or receipt of the *UPSI*. I have also noted the submissions of the *Noticees* that no proceedings were initiated against them based on the materials and outcome of the *First Investigation*. I have also recorded above that the SCNs in the matter have made no allegations that the *Noticees* were ever connected to any of the two companies. The SCNs further make no assertion about the communication of the *UPSI* to the *Noticees* herein and rather the present proceedings have proceeded on the premise of the *Noticees* having followed an unusual trading pattern so far as the scrip of *Sabero* is concerned.

50. One cannot lose sight of the fact that it has already been held in the *2016 Order* that the materials collected during the course of *First Investigation* were not adequate enough to lead to a reasonable conclusion that the suspected entities were connected to the persons who were privy to the *UPSI.* Therefore, the Competent Authority had consciously directed for a detailed re-investigation into the case. However, the *Noticees* have forcefully pointed out to the fact that the SCNs which were served on them pursuant to completion of the said re-

investigation (*Investigation*), are silent with respect to the communication of *UPSI* (which was alleged in the *Interim Order)* and do not even identify the persons who had or who could have communicated the *UPSI* to the *Noticees* nor the SCNs have attempted to even establish that the trades of the *Noticees* were executed pursuant to the receipt of the *UPSI*. In the absence of any evidence suggesting actual access to or receipt of the *UPSI*, it may not be justified to hold the *Noticees* who were admittedly unconnected to the *Company*, guilty of any charges of insider trading, more particularly when the same set of evidences which were already available at the time of passing of *2016 Order*, were found to be inadequate to be proceeded with against the *Noticees*, due to which the Competent Authority had ordered for re-investigation in the matter. It is the contentions of the *Noticees* that the Investigation Report prepared by SEBI after the re-investigation does not contain any material improvement in terms of any additional evidence over and above the materials that were already available at the time of *First Investigation,* hence the charges of insider trading levelled against them in the SCNs are without any factual support and evidence.

51. To sum up the foregoing discussions and factual analysis, there are no two opinions that none of the *Noticees* was either a connected person in terms of regulation 2(c) or an *insider* in terms of regulation 2(e) under the *PIT Regulations, 1992.* Thus, it remains an undisputed fact that all the *Noticees* were unconnected to the *Company (Sabero)* as well as to *Acquirer (Coromandel*). Neither the *First investigation* nor the *re-investigation* (Investigation) that was conducted pursuant to the directions of the Competent Authority vide *2016 Order,* has been able to bring any factual evidence, which can indicate that the *Noticees* had any access to *UPSI* of the *Company*. Since the *Noticees* were neither insiders nor connected persons, the Investigation Report ought to have embodied strong evidence to establish that the *Noticees* were indeed in possession of or had access to *UPSI* when they traded in the scrip of the *Company* during the *UPSI* period. The

Noticees have fervently put forth their case before me that any charge of insider trading against them has to be based on irrefutable evidence whereby it can be reasonably established that the *Noticees* had indeed received *UPSI* or had access to *UPSI* of the *Company*. However, as noted in the preceding paragraphs, it has been observed that the allegations levelled against the *Noticees* in the SCNs for trading in the scrip of *Sabero* have primarily proceeded on the basis of certain circumstantial factors such as the timings of trades opted by the *Noticees*, the inadequate reasons provided by *Noticees* for justifying their trading in the scrip of *Sabero*, their past trading pattern in the scrip of *Sabero*, etc., which are purely circumstantial factors and do not carry enough strength of an unassailable evidence that can be *prima facie* considered adequate enough for reaching a conclusion that the *Noticees* had indeed executed their trades based on the actual possession of *UPSI.* In my view, the arguments put forth by the *Noticees* before me cannot be ignored, since from the records available before me, I note that Investigation Report and the SCNs issued pursuant to the re-investigation (Investigation) have not been able to muster any cogent piece of evidence which can strongly pin-point to the existence of any communication whatsoever so as to constrain me to at least infer receipt of *UPSI* by the *Noticees.* Since, the primary onus of substantiating the charge of receipt or possession of or having an access to UPSI by the *Noticees* has apparently not been discharged, a serious charge like insider trading against persons who are not connected with the *Company* becomes nebulous and unsustainable.

52. Moreover, based on the materials available on record, I am constrained to observe that there is no perceptible factual difference between the *First Investigation* Report and the Investigation Report that has been prepared pursuant to the re-investigation exercise and apparently no substantial additional information or collateral material has been brought into the re-investigation report (Investigation Report) which can be held to be carrying any

evidence in support of possession of or access to UPSI by the *Noticees.* Since the evidences which were already found to be inadequate to sustain the charge of insider trading in the *2016 Order*, have not been further strengthened or added up by collecting any additional evidences during the re-investigation exercise, it may not be appropriate now to ascribe any stronger evidentiary value to such inadequate evidences for bringing in a serious charge of insider trading against the *Noticees*. I also cannot ignore the fact that some of *Noticees* have demonstrated that they have already been trading in the scrip of *Sabero* even prior to the Investigation Period and not immediately after the origin of *UPSI* as has been alluded to in the SCN. This fact, coupled with the facts that some of the *Noticees* were found to have even sold the shares of *Company* during the *UPSI* period and their trading in the scrip of the *Company* constituted a very small fraction of their overall trading in Indian Securities market viz-a-viz their net worth, etc., supplement the strength of the contentions made before me by the *Noticees* in their defense. Under the circumstances, having considered the allegations made in the SCNs, materials brought out in support of the allegations and submissions made by the *Noticees* with documents in support thereof to rebut those allegations of insider trading, I am of the view that the evidence and the factual support that have been brought into the Investigation Report and in the SCNs, are not sufficient enough to pass the muster of the principle of preponderance of probabilities, and the same are incapable of leading me to an irresistible conclusion that the *Noticees,* while trading in the scrip of the *Company* were actually in possession of or having access to the *UPSI* of the *Company*, more particularly, when the same factual details and evidences were found to be inadequate by the Competent Authority while directing for re-investigation into the matter vide *2016 Order*. It is trite law to state that the desideratum of clarity represents one of the most essential ingredients of legality. Therefore, I am of the

view that the materials on record are not successful in bringing home the charges made in the SCNs with clarity and conviction.

Directions:

53. In view of the foregoing findings and observations in the preceding paragraphs, I find that the materials brought forth in the Investigation while propounding the allegation against the *Noticees* herein, lack the tenacity to withstand legal scrutiny required in the matter pertaining to violation of the *PIT Regulations, 1992* or suchlike. Accordingly, I am constrained to dispose of the present proceedings qua the *Noticees* without any direction.

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

55. A copy of this order shall be forwarded to the *Noticees*, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: APRIL 19, 2021

PLACE: MUMBAI

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA