WTM/AN/ISD/ISD-SEC-2/30088/2023-24

SECURITIES AND EXCHANGE BOARD OF INDIA
CONFIRMATORY ORDER

UNDER SECTIONS 11(1), 11(4), 11B and 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Noticee no.	Name	PAN
1.	Yogesh Garg	AKSPG0248E
2.	Sarita Garg	AMWPG6158M
3.	Kamlesh Agarwal	AZQPA1126Q
4.	Ved Prakash HUF	AAMHV6845A
5.	Sarita Garg HUF	ABIHS4539R

*(The above Noticees are individually referred to by their corresponding names/ Noticee numbers and collectively referred to as "**Noticees**" for the purposes of this Order)*

In the matter of suspected Noticees front running the trades of Life Insurance Corporation of India (Big Client)

A. BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") received surveillance alerts about possible front running of trades of Life Insurance Corporation of India ("**LIC**"/ "**Big Client**") by 5 Noticees during the months of January to March of 2022.

2. An examination was conducted for the period running from January 01, 2020 to March 15, 2022 ("**Examination Period**") to examine possible violations of the provisions of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and various regulations framed thereunder including SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**") by the

suspected Noticees. Pursuant to the said examination, an Ex-Parte Interim Order was passed against the 5 Noticees on April 27, 2023 ("**Interim Order**").

3. Further, by order dated July 20, 2023, based on the representation received from Ms. Kamlesh Agarwal (Noticee 3) and Mr. Anil Agarwal (husband of Kamlesh Agarwal) *vide* letters dated May 30, 2023 and June 21, 2023, the bank account of Mr. Anil Agarwal held jointly with Ms. Kamlesh Agarwal (Noticee 3) in Canara Bank bearing no. 9129xxxxxx0110 was defreezed.

B. INTERIM ORDER

4. Before proceeding to examine the objections raised by the Noticees, it would be appropriate to briefly summarize the facts of the case and the conclusions arrived at in the Interim Order.

(i) Noticee 1 is an employee of LIC since November 08, 2011. During the Examination Period, he was working in the investment department of LIC through which trades on behalf of LIC were placed. Thus, *prima facie,* Noticee 1 was in possession of information of impending trades of LIC which was not available in public domain. It was also *prima facie* concluded that Noticee 1 was operating the trading account of Late Mr. Ved Parkash Garg, father of Noticee 1, who was deceased when trades were placed in his account.

(ii) Noticees 1 to 5 are connected through family relations, common address and common phone number as per KYC details. Noticee 2 is the mother of Noticee 1. Noticee 3 is the mother-in-law of Noticee 1. Noticee 4 is a HUF in which brother of Noticee 1 is Karta and Noticee 1 and 2 are coparceners. Noticee 5 is also a HUF in which Noticee 2 is the Karta.

(iii) The trading pattern of the alleged front runners during the Examination Period shows that orders for the first leg of their intraday trades were placed and executed just prior to the impending order(s) of LIC (where Noticee 1 was

employed) and the order(s) for squaring off their trades i.e., second leg sell/ buy order(s) were placed at a limit price which is less/ more than the buy/ sell order limit price of LIC, ensuring that such sell/ buy order(s) would get matched with the buy/ sell order(s) of LIC. It has also been *prima facie* observed that the aforesaid trades were executed in Buy-Buy-Sell ("**BBS**") and/ or Sell-Sell-Buy ("**SSB**") pattern.

(iv) Based on cumulative facts such as Noticee 1's employment with LIC, details of order placement by alleged front runners, trading activity analysis pre-Examination Period, Examination Period and post-Examination Period, pattern of front running trades, analysis of bank statements, common intraday trades and proceeds generated due to such trades, it was concluded that trades executed from accounts of Late Mr. Ved Parkash Garg and Noticees 2 to 5 were front running trades of LIC.

(v) It was *prima facie* concluded that Noticees 1 to 5 were involved in a scheme to front run the trades of the Big Client and therefore they are *prima facie* jointly and severally liable for the proceeds generated from the front running trades which amounts to Rs. 244.09 lakhs. By front running trades of LIC, Noticees 1 to 5 had *prima facie* violated section 12A (a), (b), (c) and (e) of the SEBI Act and regulations 3(a), 3 (b), 3 (c), 3(d), 4(1) and 4(2)(q) of PFUTP Regulations.

(vi) Based on the aforesaid findings, certain directions were issued against the Noticees *vide* the Interim Order which are reproduced below:

Noticees 1 to 5 are restrained from buying, selling or dealing in securities either directly or indirectly, in any manner whatsoever until further orders. If Noticees 1 to 5 have any open position in any exchange traded derivative contracts, as on the date of this Order, they can close out / square off such open positions within 3 months from the date of this Order or at the expiry of such contracts, whichever is earlier. The said Noticees are permitted to settle the pay-in and pay-out

obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this Order;

Noticees 1 to 5 shall cease and desist from, directly or indirectly, engaging in any fraudulent, manipulative or unfair trade practice including front running thereby committing or causing violation of any provision of the SEBI Act and the PFUTP Regulations

The proceeds in the bank accounts of Noticees 1 to 5, to the extent of illegal gains mentioned in Table 14 above shall be impounded, jointly and severally. Further, Noticees 1 to 5 are directed to open an escrow account with a scheduled commercial bank and deposit the impounded amount mentioned therein within 15 days from the date of service of this Order. The escrow account shall be an interest-bearing escrow account and a lien shall be created in favour of SEBI. Further, the monies kept therein shall not be released without permission from SEBI;

Noticees 1 to 5 are directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, jointly or severally, including money lying in bank accounts except with the prior permission of SEBI until the impounded amount is deposited in the escrow account;

Noticees 1 to 5 are directed to provide a full inventory of all assets held in their name, jointly or severally, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 15 days from the date of receipt of this Order;

The banks where Noticees 1 to 5 are holding bank accounts, individually or jointly, are directed to ensure that till further directions, except for compliance of direction at paragraph 39.3 above, no debits are made in the said bank accounts without the permission of SEBI. The banks are directed to ensure that all the above directions are strictly enforced. On production of proof of deposit of entire amount

mentioned in Table 14 above, SEBI shall communicate to the banks to defreeze the accounts corresponding to the Noticees mentioned in said Table. Debit freeze on the bank accounts of the Noticees shall be removed only upon deposit of all illegal gains due from Noticees, as mentioned in Table 14 above. Further, the depositories are directed to ensure, that till further directions, no debits are made in the demat accounts of Noticees 1 to 5 held individually or jointly.

The registrar and transfer agents are also directed to ensure that till further directions, the securities / mutual funds units held in the name of Noticees 1 to 5 jointly or severally, are not transferred / redeemed.

C. SERVICE OF INTERIM ORDER, INSPECTION, HEARING AND REPLY

5. The Interim Order was served on the Noticees *vide* email on April 27, 2023. While the Noticees have submitted inventory of their assets, the Noticees have failed to comply with the directions in the Interim Order to deposit the wrongful gains allegedly generated from the alleged front running trades.

6. In response to the Interim Order, Noticees requested for inspection of documents in the matter. Four opportunities of inspection were granted on June 07, 2023, July 06, 2023, December 18, 2023 and January 23, 2024, wherein the following documents were shown:

(i) Examination report;
(ii) Information received from LIC vide emails dated October 04, 2022 and October 06, 2022;
(iii) Death certificate of Ved Parkash Garg;
(iv) Data / information received from TM- Anand Rathi Share and Sock Brokers Ltd and TM- Motilal Oswal Financial Services Ltd.;
(v) Details of front running instances during the Examination Period;
(vi) Details of all the trades of Noticees during the front Examination Period;
(vii) UCC details from DWBIS;

(viii) KYC details from TSPs, banks and trading members;

(ix) Bank statements from concerned banks;

(x) Data / information from LIC;

(xi) Trade log and order log data of Noticees during the Examination Period.

7. Hearing opportunity was granted to the Noticees on December 07, 2023. On the scheduled date, the authorized representatives ("**ARs**") of Noticees appeared before me through Zoom platform. The ARs requested for copies of trade log and order logs of Noticees and Big Client during the Examination Period. The request of Noticees to provide them their own trade log and order log during the Examination Period was acceded to. However, it was informed to the Noticees that the trade and order log of the Big Client constitutes third party confidential information of the Big Client, and hence, the same cannot be provided. The ARs requested for an additional hearing opportunity post filing their written submissions which was acceded to.

8. Noticee 3 submitted a reply vide letter dated May 30, 2023 in addition to the joint reply detailed in paragraph 9. The submissions made in the letter dated May 30, 2023 are summarized hereunder:

8.1. Noticee 3 is a housewife living in Ghaziabad with her husband who retired from government service in 2019. While she is educated, she does not have understanding of stocks, financial markets or trading in securities. She has neither dealt in securities nor does she understand how it works. She has no knowledge of any of the transactions/ wrongdoings mentioned in the Interim Order.

8.2. She does not use any other mobile no. apart from mobile no. xxxxxx6617. She lives with her husband and does not share any address or mobile no. with Noticee 1.

8.3. She has no knowledge of the trades and she visits Mumbai occasionally.

8.4. Noticee 3 has not opened any account for trading purpose. She learnt through the Interim Order that accounts were opened in her name and trading was done from them. She has not carried out the said trades.

8.5. She has also not received any message on her mobile no. xxxxxx6617 for trading.

8.6. With respect to MAC ID being the same for Noticee 3 with other Noticees, she does not know whose device ID A8:93:4A:7E:1D:95 is, but it is not hers. She does not know how to use a computer.

8.7. Regarding confession of Noticee 1 to LIC and being unable to provide demat statements of Noticee 3, Noticee 1 did not inform Noticee 3 about any transaction / confession / statement.

8.8. She has never sought or received any information related to securities/ trading from Noticee 1 or any other Noticee. She only knows that Noticee 1 works in LIC and he is posted in Mumbai.

8.9. With respect to bank account no. xxxxxxxxxx8208 held with HDFC Bank, she was asked by Noticee 1 to sign certain papers/ forms as he told her that he is opening the account for investment purpose. She signed the forms in good faith since Noticee 1 is her son-in law. She did not transfer any funds to the said bank account. None of the funds in the said account pertain to Noticee 3.

8.10. Noticee 3 has not received any profits / funds from the alleged front running trades.

8.11. On receipt of the Interim Order, she telephonically posed questions to Noticee 1 but he did not provide any answer. She has asked for details of bank accounts, cheque books, passbook, ATM, trading account etc, however, she has not received the aforesaid details from Noticee 1.

9. The reply of the Noticees submitted *vide* emails dated January 10, 2024, February 05, 2024, February 17, 2024, and February 28, 2024 is summarized below:

9.1 There were no active actions necessitating immediate cessation of activities, making the decision to issue an "Interim Order" appear excessive and disproportionate. A more balanced regulatory approach could have been adopted, such as issuing a mere show cause notice, which would have sufficed to serve the regulatory purpose. If interim directions were deemed necessary, such measures could have been implemented in 2022, casting doubts on the necessity and appropriateness of the Interim Order issued in 2023. This unwarranted Interim Order has inflicted significant damage on the professional standing of the Noticees, without sufficient grounds or justification. The Interim Order does not establish the rational for passing the Interim Order without affording an opportunity of hearing to the Noticees.

9.2 It is admitted in the Interim Order that the last alleged front-run trade was executed on March 14, 2022. Despite the said observation, it is absurd that *vide* the Interim Order in paragraph 39.2, a direction of cease and desist has been imposed upon the Noticees. A direction of cease and desist can only be passed on determination of any continual illegal action and in absence thereof, the same would be patently illegal and arbitrary violating the basic tenets of law and for this reason alone, the directions imposed upon the Noticees ought to be quashed.

9.3 SEBI has not furnished order and trade logs of the Big Client. Entire genesis of the charge against the Noticees is based on the allegation that the Noticees were undertaking trades on the basis of information of impending orders of Big Client which would have a significant material impact on the price and the sole intent is to derive profits. By requesting the trade log and order log of the Big Client, the Noticees had the intention of acquiring information regarding the transactions carried out by the Big Client. The Noticees sought to ascertain whether other purchase and sale orders, exhibiting a similar trading pattern to the trades alleged

to the Noticees, were also present on the trading interface. Additionally, it was within the lawful purview of the Noticees to be informed about the quantity and valuation of the purported front running orders and the Big Client's orders visible on the interface. This pertains to the rates at which these orders were placed, the extent to which they were modified, and the number of such orders that culminated in actual trades. If this data had proven to be advantageous for the Noticees, it could have had a bearing on the outcome of the case. The non-provision of such important data is in violation to the precedents set by the Hon'ble Supreme Court of India, whereby it has been mentioned that selective disclosure cannot be countenanced in law as it clearly amounts to cherry picking which derogates the commitment to a fair trial. Since the trade log pertaining to the trades of Big Client was not provided, it is presumed that the said information would not be relied upon.

9.4 Noticee 1 was employed in the debt dealing section of the investment department of LIC from March 05, 2019, to January 10, 2022, and again from January 14, 2022, to January 30, 2022. During this period, Noticee 1's responsibilities primarily revolved around managing debt portfolio-related activities, such as the daily cash management and participating in government securities auctions on behalf of LIC. There was a clear segregation between the equity dealing team and Noticee 1's role, with no communication or relationship between the two. The Interim Order does not mention how Noticee 1 came into possession of information relating to impending trades while he was posted in the debt segment prior to January 11, 2022. Majority of the trades executed during the Examination Period was during the time he was posted in the debt segment.

9.5 The dealing room was equipped with two CCTV cameras, and the office operated within the hours of 10 AM to 5:30 PM. In the dealing room, there were typically 3-5 dealers in the equity section and 4 dealers in the debt section, positioned at some distance from each other. There was no exchange of information or communication between the equity dealers and Noticee 1 in the debt section. Noticee 1 did not receive any privileged information during this time, and there was no access to

equity mandates in the SAP system. No mobile devices or other similar devices were permitted in the dealing room other than the ones permitted by LIC. Prior to the present situation there have been no instances relating to dissemination of information relating to the orders of LIC and / or engaging in front-running.

9.6 Office of the Big Client used to commence at 10 AM and the mandates for trades to be executed for the Big Client were circulated by 10.15 AM. Upon scrutinizing the alleged trades during the tenure of Noticee 1's employment, it is apparent that certain buy or sell orders of Noticees 2 to 5 were initiated prior to 10:15 AM. Hence, it cannot be alleged that Noticees indulged in any kind of front running trades because at the time of punching orders, Noticee 1 did not have possession of the alleged information regarding the impending orders of the Big Client.

9.7 Information regarding the scrip, price and quantity extracted from the entire mandate used to be conveyed specifically amongst specific dealers of the Big Client, hence, neither Noticee 1 nor any other dealer of the Big Client had access to the entire mandate or the instructions given to the other dealers of the Big Client.

9.8 On January 11, 2022, to January 13, 2022, and from January 31, 2022, to April 08, 2022, Noticee 1 briefly worked as a dealer in the equity dealing room. In the equity section, the secretary - equity typically provided mandates to the chief dealer around 10 AM. Subsequently, the chief dealer distributed the mandates among the equity dealers. In this role as an equity dealer, Noticee 1 also did not receive any privileged information. The Interim Order fails to address how Noticee 1 acquired information regarding the impending orders of the Big Client. While Noticee 1 was in the equity dealing department, he did not punch any orders in the accounts of Noticees 2 to 5, therefore, the allegation of front running subsequent to January 11, 2022 cannot stand against the Noticees.

9.9 Noticee 1 was cognizant of his obligations towards LIC. He did not have any role in sharing information pertaining to the impending orders of the Big Clients or

executing trades in the accounts of Noticees while being privy to any information. There is no determination in the Interim Order that there was dissemination of impending orders of LIC.

9.10 The Noticees carried on trading on the basis of independent research for the purpose of genuine trading and not for other fraudulent purposes such as front-running.

9.11 The Interim Order has failed to establish that:

(i) Non-public information relating to impending trades of LIC were accessible to Noticee 1 during the entire Examination Period; or

(ii) Noticee 1 had communicated the information relating to the impending orders of LIC to Noticees 2-5 thereby enabling front running; or

(iii) Noticee 1 was operating the trading accounts of Noticees 2-5 for front-running the trades of LIC; or

(iv) The trades in question were being placed on the instructions of/ based upon the information received from Noticee 1; or

(v) The Media Access Control (MAC) address through which such orders were placed belonged to Noticee 1. There is also no finding that the same were executed by Noticee 1 from premises of LIC.

9.12 The enquiry report prepared by LIC on the basis of its investigation itself has failed to arrive at any positive findings in relation to the alleged front running, this in itself proves that the said charge does not hold good and for this reason alone the proceedings ought to be quashed. Even if the allegations contained in the Interim Order are considered to be true, the entity aggrieved by the actions / omissions of the Noticees is LIC and no other investor or participant and hence if any actions are to be taken against the Noticees, the same should be taken only by LIC and not by SEBI. Even if Noticee 1 in collusion with Noticees 2 to 5 are found to have devised the scheme or to have aided some Noticees in front running the trades of LIC, the same would only amount to breach of contractual requirements of

confidentiality by the employee or breach of trust for which neither SEBI Act nor PFUTP Regulations provides a remedy and hence the present proceedings against the Noticees ought to be quashed.

9.13 From the perusal of the alleged trades, it is clear that the Big Client used to trade only in the equity segment of the exchange, while Noticees 2 to 5 have traded in the futures & options segment of the exchange as well. All the cash segment trades of LIC have been taken into account by SEBI to establish the charges of front running against the independent trades carried out in the account of the Noticees in the futures & options segment. Comparing the futures & options segment with the cash segment in order to establish the alleged price impact charges against the Noticees may not be appropriate since they operate on different trading strategies and have distinct market dynamics. The futures & options segment of the stock market generally trades at a premium as compared to the cash segment as the same belies on the future prospects / outlook of the specified scrip rather than its current values. The premium in the F&O segment is subject to continuous changes throughout the day and over the expiry of the futures & options segment. Due to the influence of various players such as arbitragers, hedgers, and speculators in the futures & options segment, any buying or selling in the cash segment may not necessarily have an impact on the futures & options segment. When trading in BBS-SSB pattern has been established against Noticees 2 to 5, it is incumbent on SEBI to establish that a trade of Big Client in the equity segment of the exchange necessarily led to a corresponding change in the prices of the futures & options segment, in exclusion of any other reason for price variation. Trades executed by Noticees 2 to 5 in the futures & options segment, cannot fit within the BBS or SSB pattern determined for front running as the said trades were executed in a different segment from the trades of the Big Client considering that cash segment and futures & options segment have little to no connection with each other.

9.14 Noticee 1's action cannot be covered under the definition of "fraud" as per the definition provided under the PFUTP Regulations, he cannot be alleged to have violated Section 12A(a), (b), (c) and (e) of the SEBI Act.

9.15 The Interim Order invokes regulation 3 of the PFUTP Regulations. Since the element of "fraud" is not established, there is no case for violation of regulation 3(a), (b),(c) and (d) of PFUTP Regulations.

9.16 The Noticees have not engaged in any act, practice, course of business which operates as fraud or deceit upon any person as Noticee 1 has not shared any non-public information with them. The Noticees have not committed any fraudulent activity, and thus the charge under regulation 4(1) and 4(2)(q) of PFUTP Regulations is not established.

9.17 "Fraud" as defined in regulation 2(c) of PFUTP Regulations is a necessary ingredient to attract regulation 3 and 4 of PFUTP Regulations. The Interim Order in the present matter does not allege that the trades were carried out by the Noticees. In view of this, charges under regulation 3(a), (b), (c), and (d) and Regulation 4(1) and 4(2)(q) of SEBI (PFUTP) Regulations cannot be sustained.

9.18 With regard to 15J(a) of SEBI Act, the findings do not lead to the conclusion that there has been disproportionate gain or unfair advantage taken by the Noticees. With regard to 15J(b) of SEBI Act, there are no investor complaints filed at any stock exchange or with SEBI against the Noticees. In absence of any direct information, the allegation of causing loss to other investors is baseless. With respect to 15J(c) of SEBI Act, the instances pointed out in the Interim Order are isolated instances and hence there is no question of repetitive nature of default.

9.19 The burden of proof lies on the authority instituting the action. Strict standards of proof are required to be met. Mere reliance on preponderance of probability is insufficient. These allegations require a high level of proof and establishment of

mens rea. No proof against the Noticees has been provided for any wrong doing. The authority ought to have arrived at a conclusive finding on the culpability of the defendant.

9.20 The Noticees have placed reliance on the following orders / cases:

#	Case name	Observation
1.	Reliance Industries Ltd. vs. SEBI (2022) 10 SCC 181	*66. In the case at hand, SEBI could not have claimed privilege over certain parts of the documents and at the same time, agreeing to disclose some part. Such selective disclosure cannot be countenanced in law as it clearly amounts to cherry-picking.*
2.	Ms. Smitaben N. Shah v. SEBI (Appeal No. 37 of 2010 dated July 30, 2010)	*7. ..... . We do not agree with the whole-time member. If the documents asked for are relevant and may help the delinquent to prepare his/her defence they have to be furnished and it is not correct to say that only the documents relied upon in the show cause notice alone are to be supplied to meet the ends of justice. Let us not forget that the details in the charts relied upon in the show cause notice have been culled out from the trade and order logs and, in the circumstances of the case, it was not only relevant but even necessary that the appellant be furnished with those trade and order logs so that she could possibly make out a case based on other orders punched into the system. The appellant had repeatedly pointed out the relevance of these documents to prepare her defence. We are, therefore, satisfied that non furnishing of the trade and order logs to the appellant in the circumstances of this case resulted in the violation of the principles of natural justice. In this view of the matter, we were inclined to remand the case to the Board for a fresh enquiry .. ..*
3.	T. Takano vs. SEBI, Civil Appeal No. 487-488 of 2022, on February 18, 2022	*The appellant has a right to disclosure of the material relevant to the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in Natwar Singh (supra) based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;* *... (iii) The disclosure of material serves a three- fold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and*

#	Case name	Observation
		enhancing the transparency of the investigatory bodies and judicial institutions;
4.	North End Foods Marketing Pvt. Ltd. vs. SEBI (Appeal No. 80 of 2019) dated 12.03.2019	*14. However, it does not mean that in every case, an ex-parte interim order should be passed on the pretext that it was imminent to pass such interim order in order to protect the interest of the investor or the securities market. An interim order, however, temporary it may be, restraining an Noticee/person from pursuing his profession/trade may have substantial and serious consequences which cannot be compensated in terms of money.* *15. Thus, ex-parte interim order may be made when there is an urgency. As held in Liberty Oil Mills & Ors. vs. Union of India &18 Ors. [AIR (1984) SC 1271] decided on May 1, 1984, the urgency must be infused by a host of circumstances, viz. large scale misuse and attempts to monopolize or corner the market. In the said decision, the Supreme Court further held that the regulatory agency must move quickly in order to curb further mischief and to take action immediately in order to instill and restore confidence in the capital markets.*
5.	Dr. Udayant Malhautra vs. SEBI (Appeal No. 145 of 2020) dated 27.07.2020	*In this regard, we may refer to the provisions of Order 38 Rule 5 to 13 of the Code of Civil Procedure, 1908 which lays down the parameters for attachment before judgment. The said principles are fully applicable in the instant case. The object of attachment before judgment is to prevent any attempt on the part of the appellant to defeat the realization of the final order on disgorgement that may be passed against the appellant. But this principle applies only when it is found that the appellant is about to dispose of the property in question. Further, this principle can only be applied when there is evidence to show that the appellant has acted, or is about to act with the intent to obstruct or delay the adjudication of the proceedings that may be passed against him. We are of the opinion that there is no finding that the appellant will remove the property or will dispose of all the property or that he would obstruct the proceedings or that he would delay the proceedings pursuant to the show cause notice. In the absence of any such finding, the ex-parte interim order cannot be sustained especially when the trades were of 2016 and from 2016 till the date of the impugned order there is no evidence to show that the appellant was trying to divert the alleged notional gain/loss.*

#	Case name	Observation
		11 . ... there is no real urgency in the matter to pass an ex-parte interim order especially during the pandemic period. There is no doubt that SEBI has the power to pass an interim order and that in extreme urgent cases SEBI can pass an ex-parte interim order but such powers can only be exercised sparingly and only in extreme urgent matters. In the instant case, we do not find any case of extreme urgency which warranted the respondent to pass an ex-parte interim order only on arriving at the prima-facie case that the appellant was an insider as defined in the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations" for short) without considering the balance of convenience or irreparable injury.
6.	Punit Mercantile Pvt Ltd Ors. vs. Union of India &Ors., 2010 SCC OnLine Raj 3814	*Interim orders are passed by the Court, Tribunal and Quasi-Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation*
7.	Cameo Corporate Services Limited vs SEBI, (Appeal No. 566 of 2019) dated 26.11.2019	*17. In our opinion, the respondent is empowered to pass an ex-parte interim order only in extreme urgent cases and that such power should be exercised sparingly. In the instant case, we do not find that any extreme urgent situation existed which warranted the respondent to pass an exparte interim order. We are of the opinion that the impugned order is not sustainable in the eyes of law as it has been passed in gross violation of the principles of natural justice as embodied in Article 14 of the Constitution of India. The restraint order is in our opinion unjustified.*
8.	DLF Limited vs. SEBI (Appeal No. 331 of 2014) decided on March 13, 2015	*We have minutely looked into Sections 12(a), (b) and (c) of Sebi Act, 1992, along with Regulations 3(a), (b), (c), (d); 4(1), 4(2)(j) and (k) of PFUTP Regulations as well as the definition of fraud. First of all we note that a person could be held guilty of fraud only if he has done an act or omission with a view to induce another person to deal in securities. The Respondent has not been able to attribute any such conduct to the Appellant anywhere in the Impugned Order ..... In any event, fraud would mean "a false statement made without reasonable ground for believing it to be true." Similarly, a representation has to be made recklessly and carelessly to investors with the potential of inducing the investors to invest on the basis of such a representation before it can amount to a fraud. A promise made*

#	Case name	Observation
		with the intention of not performing it is also said to be a fraud within the meaning of Regulation 3(c)(4). Therefore, an act to be termed as 'fraud' within the meaning of 75 PFUTP Regulation should have an element of some motive or ill-conceived idea or design. Such an element is completely lacking in the present case.
9.	Union of India vs. Chaturbhai M. Patel (AIR 1976 SC 712)	*Fraud, even in civil proceedings, must be established beyond reasonable doubt.*
10.	Parsoli Corporation vs. SEBI (Appeal No 146/2011) order dated 12th August 2011	*….a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same.*
11.	Sterlite Industries vs. SEBI (Appeal No. 20/2001 dated 22nd October 2001)	*... in the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjuncture or suspicion cannot sustain the finding of fault.*
12.	Union of India vs. H.C. Geol (AIR 1964 SC 364)	*The principle that in punishing the guilty scrupulous care must be taken to see that the innocent is not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules.*
13.	L.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 354: AIR 1976 SC 373	*In any case we are left in doubt whether the complainants version with which he had come fonvard with considerable delay was really truthful. We think that in a case of this nature, involving possible debarring of the advocate concerned the evidence should be of a character which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the Appellant guilty but had disbarred him permanently. (In Re An advocate AIR 1989 SC 245)*
14.	Razikram vs. J.S. Chauhan - AIR 1975 SC	*It is true that there is no difference between the general rules of evidence in civil and criminal cases and the definition provided in section 3 of the Evidence Act does not draw a distinction between civil and criminal cases.*

#	Case name	Observation
	667: (1975) 4 sec 769)	*Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition is that of a person of prudence and practical good sense. . . The same is equally true about proof of a charge of corrupt practice which cannot be established by a mere balance of probabilities*
15.	Ambalal vs. Union of India, AIR 1961 SC 264	*To such a situation though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply, except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing evidence*
16.	Seth Gulabchand vs. Seth Kudilal (AIR 1966 SC 1734)	*The Indian Evidence Act applies the same standard of proof in civil cases. It makes no difference between cases in which charges of a fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say that the courts will not, while striking the balance of probability keep in mind the presumption of honesty or innocence or the nature of the crime or fraud charged.*
17.	Hindustan Steel vs. State of Orissa (AIR 1970 SC 253)	*An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.*
18.	Adjudicating Officer vs. Bhavesh Pabari (Civil Appeal	*.. This dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 1ST of the SEBI Act are merely illustrative and are not the only grounds/ factors*

#	Case name	Observation
	No. (S).11311 of 2013, dated February 28, 2019	*which can be taken into consideration while determining the quantum of penalty.*
19.	Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212	*The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.*
20.	Ranjit Thakur vs. Union of India (AIR 1987 SC 2386).	*The sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits.*
21.	SEBI vs. Kanaiyalal Baldevbhai Patel (Civil Appeal No. 2595 of 2013)	Hon'ble Supreme Court has upheld the definition whereby front running is found to be an act of either buying or selling of securities ahead of a large order so as to benefit from the subsequent price move. In doing so, it has rightly upheld that the bare essential for front running would be that there has been buying or selling of securities ahead of a large order with an intent to benefit from the said price movement.
22.	Mohan Singh vs. Bhanwar Lal (AIR 1964 SC 1366)	*The onus of establishing a corrupt practice is undoubtedly on the person who sets it up, and the onus is not discharged on proof of mere preponderance of probability as in the Trial of a Civil Suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous.*
23.	Raman Bhai Nagri Bhai Patel v. Jasvant Singh Udersingh	*We may state that the charge of bribery is in the nature of a criminal charge and has got to be proved beyond doubt. The standard of proof required is that or proving a criminal or a quasi criminal charge. A clear cut evidence, wholly credible and reliable is required to prove the charge beyond doubt. Evidence merely probabilising and endeavouring to prove the fact on the*

#	Case name	Observation
	Dabhi (AIR 1978 SC 1162)	*basis of preponderance of probability is not sufficient to establish such a charge.*

D. CONSIDERATION AND FINDINGS

10. I have considered the allegations in the Interim Order, the replies/ written submissions of the Noticees, the submissions made during the hearing and other material available on record. I note that the directions issued against the Noticees in the Interim Order were based on *prima facie* findings made based on the material available on record. The present proceedings before me are confirmatory / revocation proceedings which allow me the very limited remit of assessing whether the directions issued against the Noticees based on the *prima facie* conclusions arrived at in the Interim Order need to be confirmed, revoked or modified in any manner in light of the submissions of the Noticees. The Interim Order was passed pending detailed investigation into this matter and its outcome will decide the further course of action in accordance with law.

11. Before I proceed to deal with the Noticees' written and oral submissions, it will be appropriate to reproduce the text of *prima facie* applicable provisions in the matter which are section 12A (a), (b), (c) and (e) of the SEBI Act and regulations 3(a), 3 (b), 3 (c), 3(d), 4(1) and 4(2)(q) of PFUTP Regulations. The text of the said provisions is reproduced below:

SEBI Act

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

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be

listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(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;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

**[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.]*

*(2) Dealing in securities shall be deemed to be a *[manipulative] fraudulent or an unfair trade practice if it involves any of the following:—*

(a)…

(b)…

….

(q) any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;

…

** Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

D.1 PRELIMINARY CONTENTION

12. Before going to the merits of the case, I find it appropriate to deal with the preliminary contention raised by the Noticees. The Noticees have contended that there was no urgency in passing the Interim Order and that instead of the Interim Order, a show cause notice should have been issued after completion of investigation. Further, they have submitted that they were not afforded an opportunity to defend themselves. In support of the above, the Noticees have relied on the cases of North End Foods Marketing Pvt. Ltd. *(supra)*, Dr. Udayant Malhuatra *(supra)*, Punit Mercantile Pvt. Ltd. (*supra*), and Cameo Corporate Services Ltd. *(supra)*. I have perused the said cases. I note that it is well established that sections 11 and 11B of the SEBI Act empower SEBI to pass *ex-parte* interim orders in order to prevent further contraventions of securities law and protect the interest of investors in securities market. The Interim Order has made a *prima facie* conclusion, based on the material available on record, that non-public information relating to orders placed by the Big Client was used by the Noticees to front run their trades using the trading accounts of Late Ved Parkash Garg and Noticees 2 to 5. I note that the Interim Order records that subsequent to inquiries made by SEBI, the front running activity in the accounts of Noticees 1 to 5 appear to have ceased in the month of March, 2022. However, based on material available on record, the person who has possession and passed on or acted basis the non-public information *i.e,* Noticee 1, was, at the time of passing of the Interim Order, continuing to be employed with LIC. His continued association with LIC was likely to provide him access to non-public information relating to equity market orders of LIC, thereby enabling him to possibly continue to engage in fraudulent, manipulative or unfair trade practices

including by way of front running, unless immediate preventive directions were passed. For this reason, the Interim Order was required to be passed to ensure that the Noticees would not continue to engage in front running and to ensure that if direction of disgorgement is issued against the Noticees at a later stage, the implementation of such a direction would not get defeated. Hence, I do not find merit in the submission of the Noticees challenging the urgency in passing of the Interim Order. In any case, post decisional opportunity of hearing has been granted and availed by the Noticees thereby ensuring that principles of natural justice are complied with.

13. The Noticees have submitted that due to the operation of the Interim Order, the Noticees are undergoing serious hardship as the bank accounts and trading accounts of Noticees have been frozen. Further, Noticee 1 has been debarred from associating himself with any intermediary registered with SEBI, till further orders due to which Noticee 1 is presently unemployed. The Noticees have argued that such injury caused to Noticee 1 to meet his medical and day to day expenses is greater than the alleged violation made out in the Interim Order. In this regard, I note that the Interim Order has elaborated the rationale for both impounding of the *prima facie* wrongful gains and need to prevent the Noticees from accessing and dealing in the securities market. The risk of continued front running of LIC's trades and the immense damage that such actions, if left unchecked, would cause to the integrity of the securities market is one that the securities market regulator must seek to mitigate, in compliance with the mandate of securities law.

14. The Noticees have submitted that if interim directions were necessary, such measures could have been implemented in 2022. I note, as explained earlier in this Order, examination of this case was conducted pursuant to generation of alerts by SEBI's surveillance mechanism. The period under examination covered more than two years (January 01, 2020 to March 15, 2022). Examination into front running require gathering of information from multiple institutions and intermediaries such stock brokers, stock exchanges, banks etc. Voluminous data needed to be processed and analyzed before

a *prima facie* conclusion could be drawn. It would be unlawful and counterproductive to argue that interim actions must be passed devoid of such a fact finding exercise.

15. Noticees have contended that the investigation report heavily relies on selective data related to the alleged instances of front running which lacks transparency and completeness, as it excludes critical elements, such as the complete order and trade logs of the Big Client. I have taken note of the decisions in Reliance Industries Ltd. *(supra)*, Ms.Smitaben *(supra)* and T.Takano (*supra)* put forth by the Noticee. I note that the relevant data concerning the front running instances by the Noticees was annexed to the Interim Order and it was also provided separately to them. Despite the above, during the hearing held before me on December 07, 2023, Noticees requested for the complete order log and trade log of their own trades and that of the Big Client. The Noticees have argued that from the trade log of the Big Client, they wanted *"to ascertain whether other purchase and sale orders exhibiting a similar trading pattern to the trades alleged to the Noticees were also present on the trading interface."* I note that the complete order log and trade logs of the Noticees including those executed on the futures and options segment have been provided to them. However, trade log of the Big Client may provide confidential information relating to its trading strategy, and therefore, the request for providing trade log of the Big Client was not acceded to. In any case, I do not find any merit in the rationale put forth by the Noticees for requiring the entire trade log of the Big Client. Noticees are required to explain the legality of the impugned orders/ trades to justify their submission that Interim Order was not warranted. Rather than doing so, the Noticees are seeking to disprove the allegations by pointing out trades which do not even fall within the realm of the front running allegation made in the Interim Order. The possible absence of front running pattern in other trades executed by the Noticees would not have a bearing or explain or absolve the Noticees from front running allegations in the specific trades in question.

D2. FRONT RUNNING

16. I note from the Interim Order that the *prima facie* conclusion of execution of front running trades by the Noticees, is based on the following:

(i) Noticee 1's access to non-public information of LIC;

(ii) Concerted action/ Co-ordination between Noticees

a. Connection between the Noticees

b. Unusual fund transactions between the Noticees;

(iii) Unusual trading activity by the Noticees

a. Comparison of trading activity during the Pre-Examination Period, Examination Period and Post Examination Period

b. BBS and SSB pattern of trading

c. Percentage of common intraday trading days with Big Client;

Access to Non-public Information

17. The Interim Order records that the authority to decide what scrips would be bought/ sold, the quantity/ limit price thereof etc. was vested with different committees. Fund managers and chief officers in LIC prepared the daily buy/ sell mandates out of the stocks approved by the said committees. The daily mandate prepared was handed over to the chief dealer of the equity dealing room for execution. Once the daily mandates were received by the chief dealer, the chief dealer and in his absence, the senior most dealer, would distribute them amongst dealers for execution. Every dealer was assigned a dealer code and orders were placed by them in the SAP system. The above information was provided by LIC itself to SEBI *vide* email dated October 04, 2022. The same email also provides that from January, 2020 to December, 2021, Noticee 1 was dealing in tri-party repo (TREPS), primary & secondary market dealing for government securities/ SDL and other related jobs in LIC. Thereafter, from January 2022 to March 2022, he was employed in equity dealing and he was responsible to execute orders for buying and selling of equity shares through empaneled brokers.

18. The Noticees have submitted that when Noticee 1 was employed in the debt dealing section of LIC, there was a clear segregation between the equity dealing team and Noticee 1's role, with no communication or relationship between the two. The dealing room was equipped with two CCTV cameras. In the dealing room, there were typically

3-5 dealers in the equity section and 4 dealers in the debt section, positioned at some distance from each other. According to the Noticees, there was no exchange of information or communication between the equity dealers and Noticee 1 in the debt section. Noticee 1 did not receive any non-public information during this time, and there was no access to equity mandates in the SAP system. Regarding the segregation between the debt dealing section and the equity section, I note that vide letter dated April 27, 2022, the Chief (Investment) and ED (Investment) of LIC have inter alia stated that: *"Mr. Yogesh has joined equity dealing on 11th January, 2022 though his order was issued on 07.12.2021 and before that he was in Debt dealing section which functions in the same dealing room" (emphasis supplied).* From the above, the claim made by Noticee 1 that there was clear segregation between the equity dealing section and the debt section is directly contrary to the letter received from the LIC officials. Considering the official nature of the communication received from LIC, at this stage, sans any other credible proof provided by Noticee 1, his contention cannot be relied upon.

19. Noticees have submitted that office of Big Client used to commence at 10 AM and the mandates for trades to be executed for the Big Client were circulated by 10.15 AM. Certain trades of Noticees have been initiated prior to 10.15 AM, therefore, it cannot be alleged that the Noticees indulged in any kind of front running as at the time of punching orders, Noticee 1 did not have possession of the impending orders of the Big Client. In this regard, I note that LIC in its communications with SEBI has not recorded its office timings or provided details as to when the instructions for placing orders were circulated to its dealers. In view of the above, and in the absence of documentary proof supporting the Noticees' contention, I am unable to accept this submission of Noticees at this stage.

20. Noticees have claimed that when Noticee 1 was working in the equity dealing section, he did not have access to or knowledge of any sensitive information, as evidenced by the CCTV footage of LIC. *Prima facie,* I find that Noticee 1 being a dealer with LIC was in possession of the impending orders of the Big Client. The manner in which non-public information was communicated is a subject matter of detailed investigation to be carried out by SEBI. The Interim Order is based on the potential access of Noticee 1 to

the non-public information of the Big Client (*considering his employment as a dealer with the Big Client*), as well as other factors such as connection inter-se between the Noticees, trading pattern observed in accounts of Late Ved Parkash Garg, the peculiarity of trades being executed by Noticees 2-5 when orders of the Big Client were impending, trading activity of the Noticees in pre, during and post Examination Period, commonality of instances of trades, fund movement etc. The Interim Order *prima facie* concluded that the only rational explanation for the unusual and coincidental nature of trades, by preponderance of probability, was the result of Noticee 1's access to the non-public information of the Big Client. Noticees have not been able to adequately refute the aforesaid prima facie conclusion with supporting evidence.

Concerted action/ Co-ordination between Noticees

21. The Interim Order reached the *prima facie* conclusion that Noticees were connected to each other based on the fact that Noticees were related to each other (through blood or marriage) and the fact that they had common addresses or shared phone numbers. The Interim order also recorded the conclusion that the trading account and bank account of the deceased father of Noticee 1 i.e. Late Ved Parkash Garg was infact being operated by his son – Noticee 1. Further, the order recorded that Noticee 1 (Yogesh Garg) had confessed to his seniors at LIC regarding trades executed by him from accounts of Noticee 2 (Sarita Garg) and 3 (Kamlesh Agarwal) (*discussed in detail in paragraph 20 of Interim Order*)

22. As recorded in the Interim Order, analysis of bank account statements of the Noticees, revealed that funds were transferred to each other and in turn transferred to their stockbrokers for executing trades. The inference is that if not for the said timely transfers, the respective Noticees would not have sufficient balance to transfer to the broker (as explained in the Interim Order). Some of the peculiarities in the manner of opening/operating accounts and fund transfers are as follows:

    - Noticee 3 had opened her bank account on July 10, 2021 which was 2 days before trading activity was observed from her trading account (July 12, 2021 onwards).

- Bank account of Noticee 4 was opened on January 31, 2022 and trading activity was observed from March 09, 2022. Trading was carried out only till April 04, 2022 using the account of Noticee 4 i.e., around the time Noticee 1 was transferred from the investment department of LIC. No major transactions in this bank account subsequently was observed and last transaction was observed on June 08, 2022. In the bank account of Noticee 4, most of the pay-outs received from the trading member after March 09, 2022 were transferred to Noticee 1 (Yogesh Garg) and Mr. Saurabh Garg (brother of Yogesh Garg) and significant cash withdrawals were also observed.
- Noticee 5 has opened bank account on January 28, 2022 as per bank KYC and trading activity was observed from February 07, 2022. Trades were carried out only till April 11, 2022 (i.*e, around the time Noticee 1 was transferred from the investment department of LIC*). In the bank account of Noticee 5, most of the pay-outs received from the trading member after March 10, 2022 were transferred to Garg Family Member(s). No major transactions in this bank account after the cessation of the front running activity was observed.

The Noticees have not submitted any explanation / particulars regarding the observations made in the Interim Order in the aforesaid context.

23. The Noticees have contended that the Interim Order has failed to establish that Noticee 1 was operating the trading accounts of Noticees 2 to 5 for front running or that the trades in question were placed on the instructions of / based upon the information received from Noticee 1. In this regard, I note that the Interim Order at paragraph 17 clearly records that since Noticee 1 was the joint account holder with Late Ved Parkash Garg in his bank account which was associated with his trading account and the mobile number registered for trade confirmation of Late Ved Parkash Garg was issued in the name of Noticee 1, it is *prima facie* concluded that the trading and bank account of Late Ved Parkash Garg was being operated by Noticee 1. Further, the Interim Order at paragraph 13 *inter alia* states that mobile no. xxxxxx2801 is common to Noticees 2 to 5. As per KYC provided by the TSP, this number is registered in the name of Noticee

2 (Sarita Garg) and it is registered with the trading member for trade confirmation of Noticee 2. Noticee 2 in her submissions dated May 30, 2023 has denied using the aforesaid mobile number. Hence, it is inferred that someone else apart from Noticee 2 was using the said mobile number and placing orders. Coming to other Noticees, though the mobile nos. - xxxxxx6225 and xxxxxx7044 were registered in the name of Noticee 1 (Yogesh Garg), they were used for confirmation of trades done by Noticee 3 and Noticee 4, respectively. The tower location of mobile number on which confirmation for trades done by Noticee 3 appeared in Mumbai around the residential address of Noticee 1. The Media Access Control (MAC) address (*a hardware identifier that uniquely identifies each device on a network*) through which orders were placed for late Ved Parkash Garg and Noticees 2, 3 and 5 is the same i.e., A8:93:4A:7E:1D:95. The above set of uncontroverted facts lead to the inference that Noticee 1 himself had executed the trades in their accounts.

24. The Noticees have not disputed the aforesaid factual matrix. Instead the Noticees have submitted that there was no determination in the Interim Order that there was dissemination of impending orders of LIC by Noticee 1. The exact manner of communication of this information is a subject matter for further investigation. However, the Noticees have not been able to satisfactorily refute the essential facts laid out in the Interim Order that may have led me to a conclusion different from the one reached in the Interim Order. At this stage of the matter, what is relevant to determine is whether there are grounds to believe that the *prima facie* case made out was incorrect. Rather than addressing the facts already listed in the Interim Order, the Noticees aim to puncture the allegations by asking for additional evidence at the stage of post decisional hearing. The circumstantial evidence available on record (*including the peculiarity of fund transfers, operational days of the trading accounts of the Noticees, the mobile phone numbers on which trade confirmations were being received, the use of a deceased person's trading/ bank account etc.*) supports the *prima facie* conclusion that Noticee 1 had either through active connivance of the other Noticees i.e. his relatives or through their acquiescence had been permitted the use of their trading and bank accounts to perpetrate the scheme of front running of LICs trades. The Noticees have

not been able to make any effective submission that controverts this *prima facie* conclusion at this stage.

Unusual Trading Activity

25. The Interim Order records that the trading accounts of Noticees 3 to 5 were activated in the previous month or the same month the alleged first instance of front running activity took place. It was also noted that there was significant increase in the trading activity of the Noticees during the Examination period when compared with the trading activity during the pre-Examination Period, in terms of intra-day scrip days, gross traded value and profits. Further, the post- Examination Period witnessed a sharp decline in the trading activity. This comparison is explained though tables in the Interim Order which are reproduced below for reference:

Table 1

Noticee no.	**Pre-Examination Period (from January 01, 2019 to December 31, 2019)**						**Examination Period (from January 01, 2020 to March 15, 2022)**					
	Equity - Cash	**Equity - Derivatives**	**Equity - Cash**		**Equity - Derivatives**		**Equity - Cash**	**Equity - Derivatives**	**Equity - Cash**		**Equity - Derivatives**	
	Gross Trade Value (in lakh)	**Gross Trade Value (in lakh)**	**Intra Day scrip days**	**Intra day profit (in lakh)**	**Intra Day contract day s**	**Intra day profit (in lakh)**	**Gross Trade Value (in lakh)**	**Gross Trade Value (in lakh)**	**Intra Day scrip days**	**Intra day profit (in lakh)**	**Intra Day contract days**	**Intra day profit (in lakh)**
Noticee 1 (through account of Ved Parkash Garg)	1557 .38	4167.00	46	(0.04)	140	0.92	26877.30	18924.39	391	31.34	430	13.68
Noticee 2	472. 12	113.52	15	(0.22)	5	-(1.70)	43951.99	14699.69	566	44.97	299	14.31
Noticee 3	-	-	-	-	-	-	43350.54	10667.02	697	60.87	226	19.44
Noticee 4	-	-	-	-	-	-	1533.20	-	18	5.14	-	-
Noticee 5	-	-	-	-	-	-	5414.28	2816.34	54	13.82	31	5.64

Table 2

Noticee no	FR names	Post Examination Period (fr March 16, 2022 to October 31, 2022)					
		Equity - Cash	**Equity - Derivatives**	**Equity - Cash**		**Equity - Derivatives**	
		Gross Trade Value (in lakh)	Gross Trade Value (in lakh)	Intra Day scrip days	Intra day profit (in lakh)	Intra Day contract days	Intra day profit (in lakh)
1.	Yogesh Garg through account of Ved Parkash Garg	-	-	-	-	-	-
2.	Sarita Garg	25.7	1.74	-	-	1.00	0.05
3.	Kamlesh Agarwal	67.17	-	1.00	0.00	-	-
4.	Ved Prakash Garg HUF	95.00	-	1.00	(0.14)	-	-
5.	Sarita Garg HUF	38.20	2.18	-	-	1.00	(0.32)

26. The trade log of the Noticees reveal the *prima facie* front running instances listed below:

Table 3

Noticee no.	Name	No. of front running instances observed in both NSE and BSE
1.	Yogesh Garg in account of Ved Parkash Garg	363
2.	Sarita Garg	581
3.	Kamlesh Agarwal	429
4.	Ved Prakash HUF	17
5.	Sarita Garg HUF	68
	Total	**1458**

27. The Interim Order also records that during the Examination Period the trades executed from the trading account of Late Ved Parkash Garg and Noticees 2 to 5 were regularly placed on the same day as that of the Big Client. Out of the Gross Traded Value of Rs 1,67,974 lakh, Rs. 1,47,908.2 lakhs were common intraday trades which translates to 88.05% of common intraday trading activity. This is explained in the following table:

Table 4

	Column A		Column B		Column C		
Noticee	**Total Trades (Intraday Trades and Non-Intraday Trades)**		**Intraday Trades (Common and Non common Intraday Trades)**		**Common Intraday Trades**		
	No. of Instance	**GTV (Lacs)**	**No. of Instance**	**GTV (Lacs)**	**No. of Instance**	**GTV (Lacs)**	**% of common intraday GTV**
Yogesh Garg through account of Ved Parkash Garg	1253	45678.8	815	42429.4	511	35728. 19	78.22%
Sarita Garg	1109	58543	862	56002.9	742	53614. 27	91.58%
Kamlesh Agarwal	1027	53988.8	852	52699.4	584	49318. 91	91.35%
Ved Prakash HUF	21	1533.2	18	1329.81	18	1329.8 1	86.73%
Sarita Garg HUF	98	8230.62	85	7993.08	81	7916.9 7	96.19%
Combined	**3508**	**167974**	**2632**	**160455**	**1936**	**14790 8.2**	**88.05%**
A single instance for the purposes of this table comprises either buy or sell or buy and sell in a single scrip on a particular day.							

28. Taking into account the instances of front running (*cumulatively numbering 1458 instances*), the Interim Order at Table 14 thereof recorded the consolidated profit made by Noticees 1 to 5 as amounting to INR 244.09 lakh.

29. In all the above mentioned instances of front running, it was observed that the first leg of the intra-day trade was placed on or before the last tranche of the order by the Big Client. The BBS and SSB pattern of front running observed in the trades of Noticees has been discussed in detail in the Interim Order. Herein, I find it relevant here to refer to findings of Hon'ble SAT in Madhu Chanda and Ors. vs. SEBI (Appeal no. 335 of 2021), decision dated October 30, 2023, wherein Hon'ble SAT had *inter alia* held that:

"…..We find that the very nature of front running refers to an extremely precise trading activity which is impossible to achieve unless the front runner had access to the non-public information about the impending orders of the Big Client (in this case the, Sterling group). For this reason, matching of common scrip days, common percentage of shares,

precise matching of price by the front runner with the Big Client, earning significant amounts of profits on common scrip days with the Big Client when compared to non-common scrip days are all extremely strong indicators that the front runners were placing its orders ahead of and in tandem with the large orders of the Big Client in order to make gains for themselves….".

In the absence of any explanation by the Noticees rationally justifying the peculiar and unusual manner in which their orders were placed in advance of impending orders of the Big Client, the *prima facie* conclusion made in the Interim Order that trades of the Noticees were based on the non-public information which in turn could only have been received by Noticee 1 during the course of his employment with the Big Client, remain undisturbed.

30. The Noticees have submitted that Big Client used to trade only in the equity segment of the exchange, while Noticees 2 to 5 have traded in the futures & options segment of the exchange as well. According to the Noticees, any buying or selling in the cash segment may not necessarily have an impact on the futures & options segment and that when trading in BBS-SSB pattern has been established against Noticees 2 to 5, it is incumbent on SEBI to establish that a trade of Big Client in the equity segment of the exchange necessarily led to a corresponding change in the prices of the futures & options segment, in exclusion of any other reason for price variation. I do not find this argument to be tenable. First, as articulated above, in the cash equities segment alone, an extraordinarily large number of BBS and SSB pattern of trades of the Noticees matching with the Big Client have been seen. The preponderance of probability, given the "extremely precise trading activity" as noted by the Hon'ble SAT in Madhu Chanda and Others (Supra), firmly indicates the noticees have indulged in a clear case of front-running. Trades in the cash equity segment form the bulk of illegal gains as articulated in the Interim Order. Second, fundamentally, transactions on F&O segment cannot be said to be disconnected from the underlying price movement in the cash segment. Price movement in the underlying scrip certainly has a natural nexus and correlation with the price movement in its derivative. Basic market forces and the presence of arbitrageurs provide guardrails to ensure and preserve such nexus between the cash and derivative

markets. It is certainly possible for front runners to take advantage of non-public information regarding impending large trades in the cash segment for the purpose of front running in the derivatives segment. Being a large institutional investor, LIC's trades as Big Client can be said to have had an impact on the price of the derivatives of the scrips it traded in. Besides, to reiterate, the number of trades of Late Ved Parkash Garg and Noticees 2 to 5 in the cash segment (1026) exceeded the trades in the futures & options segment (432). The futures & options trades profits amounted to 25.60% of the total profits.

31. The Noticees have submitted that they carried out trading on the basis of independent research and hence their trades cannot be considered as fraudulent attracting provisions of section 12A(a), (b), (c) and (e) of SEBI Act, regulation 3(a),(b),(c),(d) and 4(1) and 4(2)(q) of PFUTP Regulations. In this regard, I note that no reasonable explanation has been furnished by the Noticees, as to how trades were placed from trading accounts of Late Ved Parkash Garg and Noticees 2 to 5 on numerous occasions, sometimes multiple times in the same day, before the last tranche of the order of the Big Client. Attributing reversal of trades on the same days and on multiple occasions to 'independent research' is a rather irrational claim and unsupported by any documentary evidence. Therefore, I do not find this contention to be tenable.

32. Noticees have also submitted that the enquiry report prepared by LIC has not arrived at any adverse finding against Noticee 1, and for this reason alone, the proceedings ought to be quashed. They have further submitted that if Noticee 1 in collusion with Noticees 2 to 5 are found to have devised the scheme or to have aided some Noticees in front running the trades of LIC, the same would only amount to breach of contractual requirements of confidentiality by the employee or breach of trust for which neither SEBI Act nor PFUTP Regulations provides a remedy and hence the present proceedings against the Noticees ought to be quashed. I find both of the contentions untenable for the following reasons. Firstly, a copy of enquiry report prepared by LIC has not been placed before me and in absence of the same, it would not be appropriate to draw any conclusions with respect to the disciplinary proceedings conducted by LIC. Secondly,

irrespective of what LIC has concluded, the Noticees liability to comply with securities law is without question and if they are found to have contravened the provisions thereof, SEBI as the securities market regulator is well within its authority and responsibility to take necessary enforcement action.

Noticee 3's submission

33. Noticee 3 has submitted that she has not dealt in securities as she does not have understanding of how it works. Noticee 3 has not opened any account for trading purpose. She learnt through the Interim Order that accounts were opened in her name and trading was done from them. She did not use any mobile no. apart from mobile no. xxxxxx6617. She lives with her husband and does not share any address or mobile no. with Noticee 1. With respect to the tower location of mobile no. of Noticee 3 where trade confirmation was being received being Mumbai and residential address of Noticee 1, Noticee 3 claimed to have had no knowledge of the trades though she visits Mumbai occasionally. With respect to bank account no. xxxxxxxxxx8208 held with HDFC Bank, she was asked by Noticee 1 to sign certain papers/forms as he told her that he is opening the account for investment purpose. She claims to have signed the forms in good faith since Noticee 1 is her son-in law. She also claimed that she did not transfer any funds in the said bank account; all the funds in the said account do not pertain to Noticee 3.

34. With respect to the submissions specifically made by Noticee 3, I find it appropriate to refer to the order passed by Hon'ble SAT in Mahavirsingh N Chauhan and Anr. vs. SEBI (Appeal No. 393 of 2018) decided on October 18, 2019, wherein Hon'ble SAT held as follows: *"We are of the opinion that by renting their demat account, trading account etc., the appellants were concealing the id of the fraudster and, thus, were acting not only in concert but in connivance with the said fraudster. The appellants cannot, thus, escape from the liability of debarment and the wrongful gains made by them."* The aforesaid order *inter alia* makes the point that when a registered owner of an account lets another person use his/ her account which is ultimately used for fraudulent activities, the registered owner cannot be allowed to evade his/her responsibility for his/her omission

to act in a prudent manner. It is pertinent to note that the wrongful gains have been made with the help of Noticee 3. If not for her co-operation (whether active or passive), wrongful gains in her account would not have been made. Excluding such persons from liability for wrongful gains would enable orchestrators of fraudulent schemes to unjustly enrich their accomplices and indirectly themselves. While Noticee 3's exact role needs further investigation, she has not made any submission that contradicts the *prima facie* conclusion made in the Interim Order with respect to her liability for aiding/participating in the fraudulent front running scheme. In any case, in the Interim Order, *prima facie*, all the Noticees including Noticee 1 have been made jointly and severally liable for the illegal gains made.

Judicial precedents

35. Noticees have relied on the case of DLF Ltd. *(supra)* to argue that a person can be held guilty of "fraud" only if he has done an act or omission with a view to induce another person to deal in the securities. In this regard, I find it appropriate to refer to the judgment of Hon'ble Supreme Court in SEBI vs. Kanaiyalal Baldevbhai Patel and Ors. (2017)15SCC1, decision dated September 20, 2017, a case involving alleged front running. The Hon'ble Supreme Court *inter alia* held that if information was not shared by one Dipak Patel, the person in possession of sensitive trade information of Passport India Investment (Mauritius) Ltd. ("**PII**") (big client in the said matter), to one Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel ("**KB and AB**"), KB and AB would not have transacted in huge volume of shares of the particular company/scrip mentioned by Dipak Patel a little while before the bulk order was placed by PII. Thus, it was held that by the conduct of Dipak Patel, KB and AB were induced to deal in securities. Similarly, in the present case, it can be held that Noticees 2 to 5 were induced to deal in the securities due to non-public information provided by Noticee 1 regarding the trades to be executed by the Big Client. If not for the said information, given the pre and post Examination Period trading history of accounts of Late Ved Parkash Garg and Noticees 2 to 5, the transactions in question would not have been entered into. Additionally, it can be said that the Noticees by acting on non-public information of impending orders of Big Client, had induced other investors to deal in securities, as

other investors would have considered the front running transactions as genuine buy/sell transactions. This decision has also recognized that front running could also be regarded as an unfair trade practice which in turn is prohibited by regulation 4 of the PFUTP Regulations.

36. Noticees have also relied on the cases of Parsoli Corporation *(supra)*, Sterlite Industries *(supra)* and L.D.Jaisinghani *(supra)* to submit that "fraud" needs to be established on higher degree of probability and that it cannot be based on mere surmise, conjecture or suspicion. Further, they have relied on decisions of H.C Geol *(supra)* to submit that in punishing the guilty, the innocent should not be punished. Noticees have also relied upon cases of Razikram *(supra)* and Seth Gulabchand *(supra).* In the said cases, Hon'ble SC had held that there is no difference between the general rules of evidence in civil and criminal cases. Having perused the aforesaid judgments, I find that the standard of proof in civil cases is preponderance of probability, as laid down by Hon'ble SC in the context of PFUTP Regulations in the judgment of Kanaiyalal Baldevbhai Patel and Ors. *(supra)*. Thus, Razikram *(supra)* case does not help the Noticees. In Ambalal *(supra)*, Hon'ble SC had held that principles of natural justice apply before custom authorities and the burden of proof rests on them, I find that principles of natural justice have been adequately adhered to in the present case. It must also be emphasized that the order in contention *i.e.* Order dated April 27, 2023 was only interim in nature based on *prima facie* conclusions. The final determination of liability can only be based on the outcome of the detailed investigation which is pending in this case.

37. Noticees have relied upon the case of Hindustan Steel *(supra)* to submit that when there is a technical or venial breach of the provisions or where the breach flows from a *bonafide* belief that the offender is not liable to act in the manner prescribed by the statute, the authority competent to impose the penalty will be justified in refusing to impose penalty. In this regard, I note that it has been established that as soon as violation with respect certain allegation has been established, minimum statutory penalty has to follow. In any case, the current proceedings do not contemplate

imposition of monetary penalty. These proceedings are only to determine whether to confirm or revoke the directions passed by the Interim Order.

E. CONCLUSION

38. The Interim Order was passed based on the *prima facie* conclusions to prevent further perpetration of fraudulent trading activity and to prevent defalcation of the wrongful gains cumulatively amounting to INR 244.09 lakh (as elaborated in the Interim Order). In view of the reasons discussed in preceding paragraphs, I find that the submissions of the Noticees are insufficient to refute the *prima facie* conclusions drawn in the Interim Order. I further note that a detailed investigation is ongoing in the present matter. I see no reason or grounds to differ from the *prima facie* findings in the Interim Order, and therefore, the finding in the Interim Order that the Noticees have *prima facie* front run the trades of Big Client resulting in violation of section 12A (a), (b), (c) and (e) of the SEBI Act and regulations 3(a), 3 (b), 3 (c), 3(d), 4(1) and 4(2)(q) of PFUTP Regulations stands confirmed.

F. ORDER

39. Considering the material on record, replies of the Noticees and findings thereupon mentioned in the preceding paragraphs, pending investigation, I, in exercise of the power conferred upon me under sections 11(1), 11(4), 11B and 11D read with section 19 of the SEBI Act, hereby confirm all the directions of the Interim Order dated April 27, 2023. This is however subject to the miscellaneous order passed by SEBI on July 20, 2023 on the representation of Kamlesh Agarwal (Noticee 3) and Anil Agarwal (husband of Kamlesh Agarwal).

40. It is clarified that the restraint imposed *vide* the Interim Order dated April 27, 2023 on Yogesh Garg (AKSPG0248E), Sarita Garg (AMWPG6158M), Kamlesh Agarwal (AZQPA1126Q), Ved Prakash HUF (AAMHV6845A) and Sarita Garg HUF(ABIHS4539R) from buying, selling or dealing in securities either directly or indirectly, in any manner whatsoever, shall continue until further orders.

41. The Noticees are directed to deposit the proceeds in the escrow account immediately in compliance with table 14 of the Interim Order dated April 27, 2023. The directions at paragraph 39.6 of the Interim Order dated April 27, 2023 issued to the banks and depositories shall continue against the Noticees till the receipt of any other communication from SEBI in this regard.

42. The observations made in the present Order are tentative in nature and pending further investigation. The investigation shall be carried out without being influenced by any of the directions passed or any observation made either in the Interim Order or in the present Order. Based on the outcome of the investigation, appropriate proceedings may be initiated in accordance with law.

43. This Order is without prejudice to the right of SEBI to take any other action against the Noticees in accordance with law.

44. This Order shall come into force with immediate effect and shall be read along with the Interim Order dated April 27, 2023.

45. A copy of this order shall be served on all the Noticees, recognized Stock Exchanges, Depositories, Banks and Registrar and Share Transfer Agents to ensure compliance with the above directions.

DATE: March 19, 2024 **ANANTH NARAYAN G.**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA