WTM / RKA / ID7 / 48 /2012

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

Under Sections 11 and 11B of SEBI Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Insider Trading) Regulations, 1992

In respect of Mr. Arun Jain in the matter of M/s. Polaris Software Lab Limited

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Appearances:

For Noticee: 1. Mr. Anuj Kumar, Advocate

For SEBI:
1. Mr. Suresh Gupta, Chief General Manager
2. Mr. Santosh Kumar Shukla, Joint Legal Advisor
3. Mr. Rajesh Gujjar, Assistant General Manager and
4. Mr. Durgesh Kumar Thakur, Assistant Legal Adviser

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1. SEBI conducted investigation into the dealings in the scrip of Polaris Software Lab Limited (the company) based on media reports that the company had, after due diligence, called off the proposed acquisition of Data Inc., USA in the second week of September, 2000 but had belatedly informed the concerned stock exchanges i.e. National Stock Exchange of India Ltd. (NSE), Bombay Stock Exchange Limited (BSE) and Madras Stock Exchange Limited (MSE) on September 30, 2000. During the investigations, it was observed that the company had deliberately withheld this price sensitive information from the public domain. During August 23, 2000 to September 19, 2000 Allsec Securities Ltd. (Allsec), a Chennai based broking company had dealt in the scrip of the company on behalf of its clients. Polaris Holding Private Limited (PHPL) was one of such clients of Allsec. During the relevant time, PHPL, holding of 36% in the company, was one of the promoters of the company. Mr. Arun Jain was one of the promoters/ directors and Chairman- cum -Managing Director (CMD) of the company. Mr. Arun Jain and Mrs. Manju Jain were directors of PHPL.

2. Pursuant to investigations, a show cause notice (SCN) dated December 26, 2011 was issued to Mr. Arun Jain (the noticee) under sections 11, 11B and 11(4) of the SEBI Act, 1992 read with regulation 11 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations) calling upon the noticee to show cause as to why suitable directions under sections 11, 11B and 11(4) of the SEBI Act, 1992 read with regulation 11 of the PIT Regulations, including prohibiting him from buying, selling, or otherwise dealing in

securities, either directly or indirectly, in whatsoever manner, for an appropriate period, and prohibiting him from holding the position of director in any listed company for an appropriate period, should not be issued.

3. It was alleged that the noticee was an 'insider' within the meaning of regulation 2(e) of the PIT Regulations, by virtue of occupying the position of CMD and promoter of the company and as such he was reasonably expected to have access to the unpublished price sensitive information relating to the proposed acquisition by the company. It was also alleged that by dealing in securities of the company on behalf of the holding company PHPL, the noticee has violated regulation 3 of the PIT Regulations and section 12A(d) and (e) of the SEBI Act, 1992.

4. The noticee filed his reply to the SCN *vide* its advocate's letters dated January 11, 2012 and February 07, 2012. During personal hearing granted before me on June 20, 2012 Mr. Anuj Kumar, Advocate appeared on behalf of the noticee and made submissions reiterating the written replies of the noticee. He also filed written submissions during the hearing. The submissions of the noticee are *inter alia* as under:
   a. While denying the charges and allegations, the noticee has submitted that the present proceedings started after a period of 12 years from the alleged violation are neither fair nor legally reasonable.
   b. For the same allegation and charges under the same facts and circumstances SEBI had initiated adjudication proceedings vide a show cause notice no. EAD/PG/50892/2005 dated September 30, 2005 issued by the Adjudicating Officer of SEBI. In the Writ Petition filed by the noticee challenging that show cause notice, the Hon'ble High Court of Madras vide its *interim* order dated December 16, 2005 restrained SEBI from proceeding further to the show cause notice. This restraint order was passed by the Hon'ble High Court on the premise that the noticee had *prima facie* not done the alleged insider trading. In the counter affidavit filed by SEBI in the Writ Petition the contention of SEBI was same as alleged in that show cause notice.
   c. While the Writ Petition was pending and the interim order passed by the Hon'ble High Court was in operation, the noticee applied for settlement of the adjudication proceedings through a consent order by SEBI under the consent process. SEBI accepted his settlement terms. Before passing the Consent Order SEBI had informed the Hon'bIe High Court at Madras on 11th June 2008 that the High Powered Advisory Committee of SEBI has recommended that the whole case be settled by way of Consent Order and the Hon'ble High Court thereupon dismissed the Writ Petitions on request in view of the settlement through consent order. Accordingly, settlement amount of ₹ 7,00,000/- was deposited by the noticee pursuant to the agreed consent terms.
   d. The Adjudicating Officer of SEBI, accordingly, passed Consent Order dated 21/7/2008 as following:-

"6. In view of above, it is hereby ordered. that,

i) This consent order disposes of the said proceedings pending against the notice under Securities and Exchange Board of India Act, 1992 in the matter of Polaris Software Lab Ltd., and

ii) Passing of this order is without prejudice to the right of SEBI to take enforcement actions including commencing / reopening of the pending proceedings against the Noticee, if SEBI finds that

a) any representation made by the Noticee in the consent proceeding is subsequently discovered to be untrue.

b) the Noticee has breached any of the clauses/ conditions of undertakings/ waivers filed during the current consent proceedings."

e. The SCN has been issued after the whole case has been finally settled by the above order which has been passed with regard to the same charges and allegations and under the same facts and circumstances. Thus, the proceedings commenced by the present SCN on the basis of same facts and issues, ought to be closed and dropped without any further proceeding in the matter.

f. Any fresh proceedings started based on the same facts would constitute an attempt of SEBI to undermine the Order, Prestige and Dignity of the Hon'ble High Court and thus, the present SCN dated December 26, 2011 is in conflict with the judicial decision/ order dated June 11, 2008 passed by the Hon'ble High Court of Madras.

g. SEBI is bound by its own Order. In view of the terms and conditions of the above consent order dated July 21, 2008, SEBI can take enforcement actions including commencing / reopening of the adjudication proceedings against the noticee only in the circumstances mentioned in para. 6(ii) (a) or (b) of the said order. Since the noticee has not breached any of the said two terms of the consent order, it would not be fair, reasonable, proper or legal to reopen the proceedings by the SCN dated December 26, 2011. The SCN is itself in contradiction and in conflict with the order dated July 21, 2008 passed by the Adjudicating Officer. In the circumstances, the present proceedings ought to be closed and dropped in the interest of justice, equity and fair play.

h. Further SEBI is trying to punish, prosecute or warn the noticee for an alleged offence for which there had been a prosecution of the petitioner and the said prosecution was complete in all its terms, intent and spirit vide the above consent order dated July 21, 2008. For the same offence, the SEBI ought not to start any proceedings which may amount to prosecution having any consequences of a term of punishment or legal injunctions. That the sending of the Show Cause Notice once again on the same issue which has already been decided is a double jeopardy and against the fundamental rights of the noticee. The SCN is also hit by the provisions of section 26 of General Clause Act, 1897.

5. I have considered the SCN, the replies and submissions of the noticee and other material available on record. Before dealing with the charges and allegations it is necessary to examine the arguments / submissions of the noticee with regard to the maintainability of the SCN. For such examination it is relevant to refer to the scheme of enforcement actions that SEBI

may initiate in such cases under the SEBI Act read with the PIT Regulations. It is settled position that SEBI Act empowers SEBI to take both streams of actions i.e. civil and criminal, if any person contravenes the provisions of the SEBI Act or the rules or regulations made thereunder. The civil enforcement actions, in the cases that are before hand, include directions under section 11 and 11B of the SEBI Act and imposition of monetary penalty under the adjudication proceedings under Chapter VIA of the said Act. The criminal action is by way of prosecution under section 24 of the SEBI Act. Depending on the facts and circumstances of the case, the nature, gravity and seriousness of violations involved, impact thereof on the investors or the securities market and the illegal gains made or loss avoided, etc., the SEBI may initiate one or all of those three actions. It cannot be said that by initiating adjudication proceedings the Board abdicates its power to initiate other actions if the facts of the case warrant multiple enforcement actions

6. I note that, in the instant case, pursuant to completion of investigation in the matter of Polaris Software Lab Ltd., the Board contemplated both the civil actions i.e. adjudication proceedings under section 15G and also issue appropriate directions under section 11B of the SEBI Act read with regulation 11 of the PIT Regulations against the noticee. The Adjudicating Officer issued the show cause notice no. EAD/PG/50892/2005 dated September 30, 2005 under the adjudication proceedings. This show cause notice was not under section 11, 11B of the SEBI Act read with regulation 11 of PIT Regulations. Though the proceedings under section 11B were also decided and contemplated in 2005, no show cause notice with regard to the same was issued till December 26, 2011 when the present SCN was issued.

7. I find that under the consent circular dated April 20, 2007 of SEBI, a person can apply for a consent order *inter alia* in case of pending as well as contemplated proceedings. I note that the consent order dated July 21, 2008 clearly declared that it disposed of the adjudication proceedings pending against the noticee. I, therefore, find that this consent order settled only the adjudication proceedings that were pending before the Adjudicating Officer. It has not settled whole cause of action and all the proceedings, whether contemplated or pending. The present proceedings before me are independent of the proceedings already settled vide consent order dated July 21, 2008 and the said settled adjudication proceedings have not been reopened by the instant SCN. Therefore, it cannot be said that the whole case and other proceedings that were not before the Adjudicating Officer have also been settled by the said consent order passed by Adjudicating Officer.

8. The noticee has contended that he has now not breached any of the two conditions of the consent order and the instant proceedings can, thus, not be initiated. In my view, the conditions in para. 6(ii) of the consent order has to be given a contextual meaning and has to be read in the context in which the consent order has been passed. The consent order has been passed by an Adjudicating Officer disposing of the adjudication proceedings on the

basis of the consent terms. The conditions in para. 6(ii) are intended and meant for ensuring true disclosures and statements by the party. They cannot be interpreted to mean the abdication of powers of Board to initiate or continue the actions that had been contemplated or pending but not settled by the consent order. In the instant case, neither the present proceedings have been initiated nor the settled adjudication proceedings have been reopened for any untrue representation or any breach of any of the clauses/ conditions of undertakings/ waivers filed during the consent proceedings. I find that considering the nature of violations in the case, the instant proceedings had been initiated independent of the adjudication proceedings that were settled by the order dated July 21, 2008 and such settlement does not bar SEBI to issue the SCN if SEBI is of the view that the alleged violations warrant multiple civil actions. As mentioned above, such proceedings had been contemplated in 2005 itself i.e. much before the settlement of the Adjudication Proceedings through consent order dated July 21, 2008.

9. I also note that the Hon'ble High Court of Madras had not decided the matter on merit, rather had dismissed the writ petition filed by the noticee, as nothing remained to be adjudicated as the Adjudication Proceedings were agreed to be settled through consent order. I, therefore, find that present proceedings do not undermine the Hon'ble High Court Order in any way, as contended by the noticee.

10. The other contention of the noticee is that the instant SCN amounts to double jeopardy as it seeks to punish or prosecute for the same offence which had been prosecuted and settled by the consent order dated July 21, 2008 and thus the SCN is hit by section 26 of the General Clause Act, 1897 and violates fundamental rights of the noticee. I note that the principle of double jeopardy flows from the fundamental right enshrined in Article 20(2) of the Constitution of India. I note that it is judicially settled position that in order to claim the protection of Article 20(2) it is necessary to show that - (a) there was a previous prosecution, (b) as a result of which the accused was punished, and (c) the punishment was for the same offence. Unless all the three conditions are fulfilled, Article 20 (2) of the Constitution of India is not attracted.

11. Section 26 of The General Clauses Act, 1897 provides that:-

"S. 26. Provisions as to offences punishable under two or more enactments.-
Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

This section applies when an act or omission is an 'offence' under two or more enactments. This section prohibits punishment for the same offence twice under different enactments. The alleged violation in the instant case is not an 'offence' contemplated to be "punished" twice under the two different enactments.

12. The words 'offence', 'prosecution' and 'punishment' in the context of Article 20(2) of the Constitution of India and section 26 of the General Clauses Act, 1897 contemplate proceedings of criminal nature before a court of law. The Hon'ble High Court of Bombay in the matter of *SEBI Vs. Cabot International Capital Corporation (2004) to Comp L J* held that *"the adjudication for imposition of penalty by Adjudication Officer, after due inquiry, is neither a criminal nor a quasi criminal proceeding. The penalty leviable under this Chapter or under these sections, is penalty in cases of default or failure of statutory obligation or in other words, breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the regulations, there is not element of criminal offence or punishment as contemplated under criminal proceedings."* The Hon'ble Supreme Court in *Shriram Mutual Fund & Anr.* {Appeal (civil) 9523-9524 of 2003}, has also held that adjudication proceedings under SEBI Act are civil proceedings. Further the present proceedings are also civil proceedings. Therefore, in my view, principle of double jeopardy do not apply to the present civil proceedings and the earlier adjudication proceedings that were settled by the order dated July 21, 2008, do not bar the civil actions by way of directions under section 11 and 11B of the SEBI Act.

13. Having addressed the aforesaid contentions of the noticee, I now proceed to deal with the merits of the case. The provisions of the SEBI Act and PIT Regulations which are alleged to have been violated by the noticee and are relevant for the case are reproduced below:

SEBI Act.

"Functions of the Board.

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

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

(g) prohibiting insider trading in securities"

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

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

(a). ……

(b)…….

(c)…….

(d) engage in insider trading;

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

(f)……...

SEBI (Insider Trading Regulations) 1993 *(as it stood during the year 2000)*

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

Regulation 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 on the basis of any unpublished price sensitive information; or

(ii) communicate any unpublished price sensitive information to any person, with or without his request for such information, except as required in the ordinary course of business or under any law; or

(iii) counsel or procure any other person to deal in securities of any company on the basis of unpublished price sensitive information.

Directions by the Board.—

Regulation 11. *On receipt of the explanation, if any, from the insider under sub-regulation (2) of regulation 9, the Board may without prejudice to its right to initiate criminal prosecution under section 24 of the Act, give such directions to protect the interest of investors and in the interest of the securities market and for due compliance with the provisions of the Act, rules made thereunder and these regulations, as it deems fit for all or any of the following purposes, namely :—*

(a) directing the insider not to deal in securities in any particular manner;

(b) prohibiting the insider from disposing of any of the securities acquired in violation of these regulations;

(c) restraining the insider to communicate or counsel any person to deal in securities

14. I note that the alleged violation had occurred during the year 2000 whereas sections 12(A)(d) and (e) of the SEBI Act, 1992 came into force with effect from October 29, 2002. I, therefore, proceed to deal with charges levelled against the noticee in the SCN within the scope and ambit of section 11 (1) & (2), 11B of the SEBI Act and PIT Regulations as they existed at the time of alleged violation.

15. In order to establish the charge it is necessary to prove that the noticee was an ' insider' and whether he dealt in securities of the company on the basis of any *'unpublished price sensitive information'* as alleged in the SCN. In terms of regulation 2(e) of the PIT an *"'insider' means 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, by virtue of such connection to unpublished price sensitive information in respect of securities of the company or who has received or has had access to such unpublished price sensitive information."* A person to be considered as 'insider' should be one who is or was actually connected with the company or deemed to have been connected with the company. The term "connected person" has been defined in regulation 2(c) and includes any person who is a "director" of a company, as defined in clause (13) of section 2 of the Companies Act, 1956. There is no dispute as to fact that the noticee was a promoter and the Chairman

and Managing Director of the company during the relevant time. Thus, being a directly 'connected person' he was in 'insider'.

16. The second limb of the definition is that by virtue of such connection the person is reasonably expected to have access to unpublished price sensitive information or has received or has had access to such *'unpublished price sensitive information'*. The noticee had admitted during the investigation that as the CEO/CMD of the company he was responsible for the growth of the company and for defining the strategic roadmap of the company and that as the CMD of the company he was involved in most of the stages of the acquisition process except negotiations where the committee of experts played a critical role. However, he had further clarified that outside experts have an advisory role in acquisition matters as they "*help in validating the facts provided by the prospective entity against the real situation"*. Thus, it can be stated that the noticee was reasonably expected to have access to unpublished price sensitive information relating to the company.

17. The next question that arises is what was the 'unpublished price sensitive information' in this case. The term *"unpublished price sensitive information"* has been defined in regulation 2(k) of the PIT regulations, as under: -

' 2.(k)Unpublished Price Sensitive Information' means any information which relates to the following matters or is of concern, directly or indirectly, to a company, and is not generally known or published by such company for general information, but which if published or known, is likely to materially affect the price of securities of that company in the market –

i) financial results (both half-yearly and annual) of the company;
ii) intended declaration of dividends (both interim/final);
iii) issue of shares by way of public rights, bonus, etc.;
iv) any major expansion plans or execution of new projects;
v) amalgamation, mergers and takeovers;
vi) disposal of the whole or substantially the whole of the undertaking;
vii) such other information as may affect the earnings of the company;
viii) any changes in policies, plans or operations of the company.

18. With regard to the instant matter the information would be 'unpublished price sensitive information' if it is related to any of the specified matters and is not generally known or published by the company for general information but which after publishing is likely to materially affect the price of its securities in the market. One of such specified matters in regulation 2(k)(v) is '*amalgamation, mergers and takeovers'*. I find that the process for the proposed acquisition of Data Inc. by the company is thus covered within this regulation.

19. In this case, it is noted that the process for the proposed acquisition of Data Inc. by the company began with the signing of the MoU between the company and Data Inc. and

ratification thereof by the Board of the company during April/May 2000. Pandya Kapadia & Associates, CPA and KPMG and who were assigned the work of related Tax and Accounts of Data Inc. and due diligence, respectively, submitted their report on July 17, 2000 and August 07, 2000 to the company highlighting serious discrepancies with regard to the proposed acquisition. Thus, the due diligence reports represented price sensitive information. The company had undertaken the process of acquisition of Data Inc. under the *'Fast Track'* route of acquisition prescribed by the Reserve Bank of India, wherein the entire acquisition had to be completed within a period of 90 days i.e. by August 23, 2000. However, on September 30, 2000, the Audit Committee of the company recommended that the acquisition of Data Inc, in its proposed form would not be in the best interests of the shareholders of the company. Accordingly, the proposal was called off. The information relating to calling off the proposed acquisition of Data Inc. was brought in public domain when the company informed the concerned stock exchanges on September 30, 2000.

20. I note that when the company disclosed the above information to the stock exchanges on September 30, 2000, there was a decline in the price of its shares. For instance, the closing price of the scrip at NSE on September 29, 2000 was ₹ 595 which went down to ₹ 545 on the next day of trade on October 03, 2000 *(September 30 and October 01, 2000 being Saturday and Sunday respectively and October 02, 2000 being trading holiday)* and touched a intraday low of ₹ 519.80 on the same day. In the month of October 2000 there was a rapid fall in the price of the scrip which went down as low as ₹ 390 on October 23, 2000.

21. In view of the above, I find that had this information been brought in the public domain earlier, it would certainly have impacted the price of the scrip. Therefore, the fact that the proposed acquisition was not in the interest of the shareholders of the company and it was not likely to be completed by August 23, 2000 and was to be called off was clearly an *"unpublished price sensitive information"* as per regulation 2(k)(v) till September 30, 2000.

22. It is noted that the noticee had access to all information relating to the proposed acquisition of Data Inc. since the noticee, had participated in the events relating to the proposed acquisition. I, therefore, find that the said unpublished price sensitive information was known and available only to the insiders like the noticee and not to the public till September 30, 2000.

23. The noticee had admitted during investigation that he had instructed his Chartered Accountant, Mr. Sivasubramanian to sell around 15,000 shares of the company for the purpose of purchasing a plot in Gurgaon in Haryana. I note that PHPL, wherein the noticee was director during the relevant time, sold 15,080 shares of the company through Allsec at an average price of ₹ 700 per share in settlement No. 35, 36, 37 and 38 (from August 23, 2000 to September 19, 2000) on NSE, details of which is as follows:

Settlement No	Dates	Shares Sold
35	23.08.2000 - 29.08.2000	500
36	30.08.2000 - 05.09.2000	7,000
37	06.09.2000 - 12.09.2000	6,080
38	13.09.2000 - 19.09.2000	1,500
	Total	**15,080**

24. A table showing the share price from August 23, 2000 to September 19, 2000 is given below:

Date	Price (₹)	Date	Price (₹)
23-Aug-2000	641	7-Sept-2000	718
24-Aug-2000	629	8-Sept-2000	766
25-Aug-2000	632	11-Sept-2000	748
28-Aug-2000	620	12-Sept-2000	718
29-Aug-2000	619	13-Sept-2000	711
30-Aug-2000	645	14-Sept-2000	713
31-Aug-2000	660	15-Sept-2000	693
4-Sept-2000	713	18-Sept-2000	658
5-Sept-2000	700	19-Sept-2000	672
6-Sept-2000	711		

25. I note that during investigations the noticee had submitted that the shares were sold before August 25, 2000 when there was complete confidence of going ahead with deal of acquisition M/s Data Inc. Further, the shares were sold for the purpose of acquisition of an industrial plot in Gurgaon which was allotted to PHPL by Haryana State Industrial Corporation Ltd. (HSIDC) *vide* allotment letter dated March 01, 2000. I note that information about serious discrepancies with regard to the proposed acquisition, expiry of last date for completion of acquisition on August 23, 2000 and that the proposal was not likely to be completed after that date was available with the noticee when he dealt in the scrip. The sale orders were placed on various dates in Settlement No. 35 to 38 at NSE falling between August 23, 2000 and September 19, 2000. The last order for sale of 1,500 shares was placed on September 13, 2000. I note on September 15, 2000 and September 23, 2000 total funds to the tune of ₹ 90,18,000 were received in the bank account of PHPL from Allsec. Out of these funds, PHPL purchased a fixed deposit for ₹ 50,00,000 on September 26, 2000 and the balance amount was used for repayment of money taken earlier from related account (A/c No. 0041000057134). I, therefore do not agree with these defences of the noticee.

26. The noticee had also submitted during investigations that the quantity of share sold (15,080 shares) by him is very small as compared to his/PHPL's shareholding (1.5 crore shares) in

the company. In my view, quantity of shares traded by indulging insider trading in scrip is immaterial for proving the charge of insider trading. I note that, in the SCN it has been alleged that the noticee, by the trading on behalf of PHPL in 15,080 shares of the company, had made unfair gains to the tune of ₹ 27.26 lakhs.

27. From the facts and circumstances of this case, it can be reasonably inferred that the trades of PHPL, done at the instructions of the noticee when he was in possession of the unpublished price sensitive information about the company, were motivated by the information that was available with the noticee. In this regard, I note that in the matter of *Mrs. Chandrakala v. SEBI (Appeal No. 209 of 2011;* Hon'ble Securities Appellate Tribunal vide order dated January 31, 2012) held that:-

> *"It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations."*

28. In this case, I find that the noticee being 'insider'/CMD was in possession of the *'unpublished price sensitive information'* when PHPL sold 15,080 shares of the company. The noticee and Mrs. Manju Jain were the directors of PHPL when the shares were sold. Further, the shares were sold at the instruction of the noticee when he was in possession of 'unpublished price sensitive information' about the company. Thus, I find that the said trading in 15,080 shares was motivated by the information in the possession of the noticee and was on the basis of *'unpublished price sensitive information '*. The noticee has not been able to prove otherwise.

29. In view of facts and circumstances as discussed above, I find that the notice being insider dealt in 15,080 shares of the company on behalf of PHPL on the basis of *'unpublished price sensitive information'* held by him. Thus, he contravened provisions of regulation 3 of the PIT Regulations.

30. In this case, the violations occurred in the year 2000 and pursuant to investigations, enforcement actions were decided in 2005. In my view, insider trading particularly by the Chairman and Managing Director should be dealt with severely. I note that for this reason, it was contemplated to initiate multiple proceedings against the noticee in 2005. In my view, the violation in this case deserved deterrent enforcement actions at relevant time. However, I note that, at the relevant time, only the adjudication proceedings under section 15G of the SEBI Act were initiated. At that time, the maximum monetary penalty by adjudication under section 15G of the SEBI Act was ₹ 5 lakhs. In this case, the adjudication proceedings

initiated under section 15G were settled on payment of ₹ 7 lakhs through consent order date July 21, 2008. Till that date, SCN under sections 11 and 11B of the SEBI Act was not issued. The present SCN was issued belatedly on December 26, 2011 i.e. after more than 6 years after the decision in that regard was taken and after more than 3 years of the disposal of the adjudication proceedings. In my view, had the timely actions been initiated in the matter, it could have played an effective deterrence with regard to the serious nature of violation in this case. I am of the view that while the enforcement actions should act as effective deterrence to the wrongdoers, the equity, justice and fairplay should also be given due importance.

31. Considering the facts and circumstances of this case, seriousness of violations and the above mitigating factors, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 11 of the SEBI (Prohibition of Insider Trading) Regulations, 1992, I, hereby restrain Mr. Arun Jain (PAN : AAHPJ6020E) from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner for a period of two years from the date of this order.

32. Show Cause Notice dated December 26, 2011 issued to the noticee is accordingly disposed of.

33. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure that the direction given in para 31 of this Order are complied with.

34. This Order shall come into force with immediate effect.

Date : October 9th, 2012
Place : Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA