WTM/SR/SEBI/EFD/ 26 /05/2016

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

Under Section 11 and 11B of the SEBI Act, 1992 read with Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, in the matter of Sabero Organics Gujarat Limited, in respect of –

1. **Mr. A. Vellayan (PAN: AACPV2231L);**
2. **Mr. A.R. Murugappan (PAN: AAGPM9164P);**
3. **Mr. Gopalakrishnan C. (PAN: AAIPG4168P), and**
4. **Mr. V. Karuppiah–HUF (PAN: AAFHV4956H).**

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1. Securities and Exchange Board of India ("**SEBI**") conducted an investigation into the dealings in the scrip of Sabero Organic Gujarat Limited ("**Sabero**") for the period between May 15, 2011 and June 15, 2011 ("**Investigation Period"**). The investigation was based on certain complaints received by SEBI alleging that unpublished price sensitive information ("**UPSI**") pertaining to the acquisition of the shares of Sabero by Coromandel International Limited ("**Coromandel**") was leaked to certain persons, who were acting in concert with the management of Sabero/Coromandel to make unfair gains.

Investigation conducted by SEBI regarding trading in the scrip of Sabero –

2.1 Sabero was incorporated on November 1991 and was in the business of manufacturing chemical intermediates for pesticides and flame retardants. On May 15, 2011, the representatives of Sabero and Coromandel including its Chairman, Mr. A. Vellayan ("**Vellayan**") attended a meeting, in order to discuss and negotiate the acquisition by Coromandel of Sabero shares from its Promoters. On May 31, 2011, Coromandel informed the concerned Stock Exchanges about the aforesaid acquisition of Sabero shares from its Promoters representing 42.22% of Sabero's equity at a price of ₹ 160 per share.

2.2 The information relating to the acquisition of Sabero by Coromandel was deemed a *'price sensitive information'* ("**PSI**") in terms of Regulation 2(ha)(v) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**Insider Trading Regulations, 1992**"). Regulation 2(ha)(v) states that

information pertaining to amalgamation, mergers and takeovers shall be deemed to be PSI. The PSI had come into existence on May 15, 2011, and became public on May 31, 2011. The period from UPSI coming into existence till it is made public is considered as pre–announcement period or UPSI period (*i.e.* from May 15, 2011 to May 30, 2011) and the subsequent period from UPSI becoming public till the end of Investigation Period is considered as the post–announcement period (*i.e.* May 31, 2011 to June 15, 2011).

2.3 Two entities *viz.* Mr. Gopalakrishnan C. ("**Gopalakrishnan**") and V. Karuppiah–HUF ("**Karuppiah–HUF**") were found to have made gains to the tune of approximately ₹ 1.30 Crores and ₹ 15.93 Lakhs, respectively, by buying the shares of Sabero during the pre–announcement period (May 15, 2011 to May 30, 2011) and subsequently, selling them in the post–announcement period (May 31, 2011 to June 15, 2011*)*. The timings and pattern of the trades of Gopalakrishnan and Karuppiah–HUF, strongly indicated that they had traded while in possession and on the basis of UPSI**.**

2.4 It was further observed that one Mr**.** Murugappan ("**Murugappan**"), who had personal and financial relationship with Vellayan, Chairman of Coromandel (and one of the persons privy to the UPSI), had arranged funds amounting to ₹ 1 Crore for Gopalakrishnan to purchase shares of Sabero during the UPSI period. It was also observed that Murugappan and his family members were clients of Gopalakrishnan's father, who was an Astrologer by Profession. Gopalakrishnan had also acted as the introducer of Murugappan and his family members to the broker, Nirmal Bang Securities Private Limited ("**Nirmal Bang**"). Mr. V. Karuppiah (Karta of Karuppiah–HUF) is the son–in–law of Murugappan.

2.5 Considering the above facts and circumstances, the investigation observed that Vellayan, Chairman of Coromandel, who was privy to UPSI and hence, an *'insider'* in terms of Regulation 2(e)(i) of the Insider Trading Regulations, 1992, had passed on the UPSI to Murugappan, who in turn passed it on to Gopalakrishnan and Karuppiah, who thereafter, traded in the scrip of Sabero while in the possession and on the basis of UPSI. Investigation observed that by receiving UPSI from Vellayan, the entities *viz.* Murugappan, Gopalakrishnan and Karuppiah–HUF came under the ambit of definition of *'insider'* as per Regulation 2(e)(ii) of the Insider Trading Regulations, 1992.

2.6 The Investigation concluded that –

i. Vellayan and Murugappan violated Regulation 3(ii) of the Insider Trading Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**Insider Trading Regulations, 2015**") and Section 12A(d) and (e) of the SEBI Act, 1992 ("**SEBI Act**"); and

ii. Gopalakrishnan and Karuppiah–HUF violated Regulation 3(i) and Regulation 4 of Insider Trading Regulations, 1992 read with Regulation 12 of Insider Trading Regulations, 2015 and Section 12A(d) and (e) of the SEBI Act.

***Ad–Interim Ex–Parte* Order dated May 21, 2015 –**

3. In view of the aforesaid findings of the Investigation and also considering the possibility that the Noticees, viz. Vellayan, Murugappan, Gopalakrishnan and Karuppiah–HUF, might divert the unlawful gains (mentioned at Paragraph No. 2.3), SEBI vide an *Ad–Interim Ex–Parte* Order ("**Interim Order**") dated May 21, 2015, directed as under –

"… *to impound the unlawful gains of ₹ 1,92,07,206/- (alleged gain of ₹ 1,30,38,795 along with interest of ₹ 61,68,411/-) made by Mr. Gopalakrishnan. C. and ₹ 23,43,219/- (alleged gain of ₹ 15,93,325/- along with interest of ₹ 7,49,894/-) made by V. Karuppiah (HUF) (Karta: Mr. V. Karuppiah) lying in the bank accounts of Mr. Gopalakrishnan. C., V. Karuppiah (HUF) (Karta: Mr. V. Karuppiah), Mr. A.R. Murugappan and Mr. A. Vellayan with immediate effect*".

Show Cause Notice, Reply and Personal Hearing

4. On June 8, 2015, SEBI issued a common Show Cause Notice ("**SCN**") calling upon the Noticees, *viz.* Vellayan, Murugappan, Gopalakrishnan and Karuppiah–HUF, to show cause as to why suitable directions under Sections 11, 11B and 11(4) of the SEBI Act and the provisions of Insider Trading Regulations, 1992 read with Insider Trading Regulations, 2015, should not be issued against the Noticees. The charges levelled against the Noticees are as under:

i. Vellayan and Murugappan have violated Regulation 3(ii) of the Insider Trading Regulations, 1992 read with Regulation 12 of Insider Trading Regulations, 2015 and Section 12A(d) and (e) of the SEBI Act as Vellayan was alleged to have passed the UPSI (acquisition of Sabero by Coromandel) to Murugappan and Murugappan was alleged to have communicated the same to Gopalakrishnan and Karuppiah–HUF.

ii. Gopalakrishnan and Karuppiah–HUF have violated Regulation 3(i) and 4 of the Insider Trading Regulations, 1992 read with Regulation 12 of Insider Trading Regulations, 2015 and

Section 12A(d) and (e) of the SEBI Act, 1992 by trading in the shares of Sabero while in possession of the said UPSI. They have made unlawful gains by trading while in possession of the said UPSI.

5. The Noticees filed their replies to the said SCN as under –

i. Vellayan filed his reply vide letter dated July 10, 2015;
ii. Murugappan filed his reply vide letter dated July 20, 2015;
iii. Gopalakrishnan filed his reply vide letter dated August 24, 2015;
iv. Karuppiah–HUF filed their reply vide letter dated July 23, 2015.

6. The Noticees also requested for inspection of documents relied upon for the Interim Order and SCN. Accordingly, SEBI granted inspection of documents to –

i. Vellayan on June 19, 2015;
ii. Murugappan and Karuppiah–HUF on July 17, 2015; and
iii. Gopalakrishnan on September 29, 2015.

7. Thereafter, an opportunity of personal hearing was granted to the Noticees on December 18, 2015. During the hearing, Mr. Gopalakrishnan and Karuppiah–HUF were advised as below:

a. Mr. Gopalakrishnan was advised to submit the following details/documents:

i. Details of trades, if any, done by him in the shares of Sabero prior to May 15, 2011;
ii. Details of his investment in shares during the period, January 1, 2010 and June 15, 2011;
iii. Full details of funding of ₹ 57 Lakhs by the Noticee for the purchase of Sabero shares during the investigation period, supported by documents such as bank statements, etc.
iv. Documents to support the fact that Nirmal Bang had given an exposure limit of ₹ 1.15 Crores to the Noticee;
v. Full trail of ₹ 1.3 Crores (gain made by the Noticee by selling Sabero shares) deposited in the fixed account by the Noticee.

b. Karuppiah–HUF was advised to submit the details of trades, if any done by him in the shares of Sabero prior to May 15, 2011

8. In addition, the Noticees, *i.e.* Vellayan, Murugappan, Gopalakrishnan and Karuppiah–HUF were given an opportunity to make additional submissions, if any, by December 28, 2015.

9. Pursuant to the aforementioned, the Noticees, *viz.* Vellayan, Murugappan, Gopalakrishnan and Karuppiah–HUF, filed their written submissions as under –

   i. Vellayan filed his written submissions vide letter dated December 29, 2015;
   ii. Murugappan filed his written submissions vide letter dated December 28, 2015;
   iii. Gopalakrishnan filed his written submissions vide letter dated December 20, 2015 (received by SEBI on January 5, 2016);
   iv. Karuppiah–HUF filed written submissions vide letter dated December 28, 2015.

Consideration of Issues and Findings –

10.1 I have considered the material available on record such as the Investigation Report, the Interim Order, the SCN issued to the Noticees, replies filed by the Noticees to the SCN and additional submissions (both written and oral) made by the Noticees during the personal hearing before me along with the documents submitted by them. In the light of the same, I shall now proceed to deal with the issues involved, viz. –

   i. "Whether the information regarding the acquisition of Sabero, by Coromandel, was UPSI ?
   ii. Whether the trades executed by Gopalakrishnan and Karuppiah–HUF in the shares of Sabero during the Investigation Period were done while in possession of UPSI regarding the acquisition of Sabero by Coromandel ? By doing so, whether Gopalakrishnan and Karuppiah–HUF made illegal gains of ₹ 1,30,38,795/- and ₹ 15,93,562/- respectively ?
   iii. Whether Murugappan had arranged funds to Gopalakrishnan for trading in the shares of Sabero and whether the relationship which Murugappan maintained with Gopalakrishnan and Murugappan's personal family relationship with Karuppiah indicate that the said UPSI was passed by Murugappan to Gopalakrishnan and Karuppiah ?
   iv. Whether Vellayan comes under the definition of 'insider' as per Regulation 2(e)(i) of the Insider Trading Regulations, 1992 ?
   v. Whether, on the basis of personal family relationship between Vellayan and Murugappan and the financial transactions which were effected between Vellayan and Murugappan during May 2011, it can be concluded that Vellayan had passed on the said UPSI regarding the acquisition of Sabero by Coromandel to Murugappan ? "

10.2 Before I proceed to deal with the issues, the relevant legal provisions, the contravention of which have been alleged in this case are reproduced below –

SEBI Insider Trading Regulations, 1992

Regulation 2(e) (i) and (ii)

(e) "Insider" means any person who,

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

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

Regulation 3(i)

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

3. *No insider shall—*

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

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities"

Violation of provisions relating to insider trading.

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

SEBI ACT, 1992

Section 12A (d)& (e)

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

(d) engage in insider trading;

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

10.3 The aforementioned provisions of the Insider Trading Regulations, 1992, have been repealed by the Insider Trading Regulations, 2015. However, as per the provisions of the new Regulations, the right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations of Insider Trading Regulations, 1992 and any penalty, forfeiture or punishment incurred in respect of the any offence committed against the said repealed Regulations shall remain unaffected as if the repealed Regulations had never been repealed. Further, anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show cause notice issued under the repealed provisions of Insider Trading Regulations, 1992, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of Insider Trading Regulations, 2015 (Regulation 12 of the Insider Trading Regulations, 2015).

10.4 I shall now proceed to discuss the issues identified at Paragraph 10.1.

10.4.1 ***Whether the information regarding the acquisition of Sabero, by Coromandel, was UPSI?***

Regulation 2(ha)(v) of the Insider Trading Regulations, 1992, states:

*"**Price sensitive information**" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*

***Explanation** –*

The following shall be deemed to be price sensitive information –

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

10.4.2 From the aforementioned definition, it is noted that any information which relates directly or indirectly to a company and which would materially impact the price of securities of such company upon its publication, would qualify as PSI. In terms of the aforementioned clause (v) of the explanation to Regulation 2(ha) of Insider Trading Regulations, 1992, the information

pertaining to amalgamation, mergers and takeovers shall be deemed to be PSI if it satisfies the aforesaid condition. The representatives of Coromandel and Sabero attended a meeting on May 15, 2011, to discuss and negotiate the acquisition of Sabero shares by Coromandel from Sabero's Promoters. The said information was eventually made public on May 31, 2011, when Coromandel informed Exchanges that its Board of Directors had approved the acquisition of Sabero shares from its Promoters representing 42.22% of Sabero's equity at a price of ₹ 160 per share and to make a public announcement to the shareholders for acquiring upto 31% of equity. The resultant material impact on the price of the scrip of Sabero due to the public announcement of the aforesaid acquisition, was a 10% increase on each of the three days i.e. on May 31, 2011, June 1, 2011 and June 2, 2011 (as compared to the previous day's closing price).

10.4.3 The information regarding the acquisition of Sabero shares by Coromandel was indeed a deemed *'price sensitive information'* in terms of Regulation 2(ha)(v) of the Insider Trading Regulations, 1992, in view of the chronology of events described above.

10.5 ***Whether the trades executed by Gopalakrishnan and Karuppiah–HUF in the shares of Sabero during the Investigation Period were done while in possession of UPSI regarding the acquisition of Sabero, by Coromandel? By doing so, whether Gopalakrishnan and Karuppiah–HUF made illegal gains of ₹ 1,30,38,795/- and ₹ 15,93,562/- respectively ?***

10.5.1 The PSI regarding the acquisition of Sabero by Coromandel came into existence on May 15, 2011, when the representatives of Coromandel and Sabero attended the aforesaid meeting. The said PSI remained unpublished price sensitive information or UPSI till it was announced in public on May 31, 2011. The pre-announcement period (UPSI period) is therefore, taken as May 15, 2011 to May 30, 2011 and post announcement period is from May 31, 2011 to June 15, 2011. The price of the scrip at NSE, moved from ₹ 57.80 (closing price on May 13, 2011) to ₹ 126.45 (closing price on June 15, 2011) after touching an intraday high price of ₹ 130.90 on June 14, 2011, registering an increase in price of 126.47% in 22 trading days. At BSE, the price of the scrip increased from ₹ 58.00 (opening price on May 16, 2011) to ₹ 127.00 (closing price on June 9, 2011) after touching an intraday day high of ₹ 130.50 (on June 6, 2011).

10.5.2 Gopalakrishnan and Karuppiah–HUF were alleged to have made gains by buying the shares of Sabero during the pre-announcement period and subsequently selling them in the post-announcement period, across the exchanges.

10.5.3 **Trades by Gopalakrishnan**

i. The details of trades executed by Gopalakrishnan in the shares of Sabero during the investigation period, as observed from the SCN, are as under:

DATE	BUY QUANTITY (BQ)	BUY PRICE (BP)	SELL QUANTITY (SQ)	SELL PRICE (SP)
PRE-ANNOUNCEMENT PERIOD				
23/05/2011	1,00,000	82.22	-	-
24/05/2011	2,19,500	86.49	-	-
TOTAL BUY QUANTITY	**3,19,500**			
AVERAGE BUY PRICE	**85.15**			
POST-ANNOUNCEMENT PERIOD				
03/06/2011	-	-	44,500	125.00
08/06/2011	-	-	90,000	125.02
14/06/2011	-	-	99,900	127.23
15/06/2011	-	-	85,100	125.96
TOTAL NO. OF SHARES SOLD			**3,19,500**	
AVERAGE SELL PRICE				**125.96**

ii. Gains made by Gopalakrishnan by trading in the scrip of Sabero are computed as under:

PARTICULARS	TIME OF PURCHASE	AMOUNTS IN ₹
Sale Value=3,19,5000 shares x ₹ 125.96 (Av. Sale Price)	Post-announcement period (during the period June 3, 2011 to June15, 2011)	4,02,44,220
Less: Buy Value=3,19,500shares x ₹ 85.15 (Avg. Buy Price)	Pre-announcement period (May 24, 2011 and May 25, 2011)	2,72,05,425
GAINS		**1,30,38,795**

iii. The aforesaid tables indicate that Gopalakrishnan bought 3,19,500 shares (average price @ ₹ 85.15 per share) for ₹ 2.72 Crores during the UPSI period. After PSI was announced, (*i.e.* on May 31, 2011), he sold the entire quantity of 3,19,500 shares (@ average price of ₹ 125.96 per

share) during the period from June 3, 2011 to June 15, 2011. The total gains made by Gopalakrishnan on account of these transactions was ₹ 1.30 Crores

iv. The SCN alleges that the trades executed by Gopalakrishnan were solely on the basis of and while in possession of UPSI on account of the following –

a. Gopalakrishnan had never traded in the scrip of Sabero earlier.
b. Gopalakrishnan had not traded in any other scrip except Sabero during the entire Investigation Period. The only share transaction by Gopalakrishnan during the Investigation Period was in the scrip of Sabero.
c. On verification of KYC documents of Gopalakrishnan filed with Nirmal Bang, it was observed that the trading account was opened by Gopalakrishnan with that broker on November 19, 2010. On May 23 and 24, 2011, he purchased shares of Sabero worth ₹ 272 Lakhs (3,19,500 x ₹ 85.15).
d. It was also mentioned that as per KYC details, he was falling in the income slab of ₹ 1–5 Lakhs. Gopalakrishnan had thus purchased shares far beyond his Income levels.

10.5.4 **Reply by the Entity**

i. Gopalakrishnan vide his reply dated August 24, 2015, submitted:

a. "I hold Bachelor's degree in Commerce from Madras University and Post Graduate Diploma in Marketing Management in Chidambaram University. I have been analyzing stock markets and doing research on various industries. I have also done certification course from NSE in derivative markets and cash markets…
b. I have been regularly trading in capital market and I have been trading in the ordinary course through brokers like Geojit BNP Paribas, Religare Securities Ltd… In the year 2010, Nirmal Bang appointed me as their authorized persons. As an authorized person, I had introduced to start with two High Networth Individual clients, viz. Murugappan and Subramaniam to Nirmal Bang… I have never defaulted in meeting his delivery obligations, Nirmal Bang gave the margin funding on the basis of his past record.
c. The trades were done after doing research and analyzing the stock market and not on the basis of UPSI. An article of an independent market strategist on April 6, 2011, strongly recommended investment in the shares of Sabero. Price increase of Sabero scrip was a matter of record during the relevant period. The price

of the scrip had increased from ₹ 58 (as on May 16, 2011) to ₹ 82 (as on May 23, 2011). I started trading only on May 23, 2011 i.e. after the price of Sabero reached ₹ 82.

d. *The Notice does not spell out the names of persons/entities who had bought large number of shares between May 15, 2011 and May 30, 2011, other than the two entities i.e. me and V Karuppiah HUF. As per the trading records of the exchange website, a total of 3.32 Crore shares of Sabero were bought between May 15 to May 30, 2011, which indicate that there were many other persons/entities who had bought these shares during this period.*

e. *The payment of ₹ 100 lakh to me by Subramaniam (son of Murugappan) on May 28, 2011, was as advance towards the sale of my flat to Subramaniam (as per the Agreement of Sale dated May 26, 2011, executed by us). Further, the payment of ₹ 102 Lakhs to Subramaniam on June 21, 2011, by me was in consonance with the penalty clause of the said Agreement of sale.*

f. *I had financial dealings only with M. Subramaniam with regard to the sale of my flat. I am not aware as to how M. Subramaniam arranged funds to make the payments to me on May 28, 2011 and same is of no concern to me. Further, I am also not aware that Mr. Subramaniam. M received an amount of ₹ 1 Crore from his father, Mr. AR Murugappan on May 28, 2011 or that Mr. Mr. AR Murugappan had pre-closed his fixed deposit on May 28, 2011 worth ₹ 1 Crore as alleged. Nothing turns on the same. As a seller of flat, I was not aware of the ultimate source of funds of the buyer and the same is also of no concern to the seller. Admittedly, in so far as I am concerned I had received the payment only from Mr. Subramaniam's account. Therefore, nothing turns on the alleged fact that all the transactions took place on May 28, 2011.*

g. *Out of the total purchase price (of Sabero shares) of ₹ 272 Lakhs, ₹ 157 Lakhs was arranged by me from my own funds and the remaining amount of ₹ 115 Lakhs was the margin funding given by my broker Nirmal Bang. The entire payment towards the purchase of shares was made by my broker to the exchanges on May 25, 2011 and May 26, 2011. The said sequence of events indicates that even prior to the receipt of the aforesaid amount of 100 Lakhs from Subramaniam (received on May 28, 2011 towards advance for the sale of the property), I had settled the pay-in obligation for the purchase of Sabero shares. Therefore there is no nexus between my trading in the Sabero shares and the property transaction. Out of the total ₹ 272 Lakhs, even if amount received from Subramaniam is reduced, still substantial amount has been contributed by me towards the buying of shares.*

h. *There is nothing unusual as about 83.33% of the total value has been paid by way of advance. Both Subramaniam and I wanted to execute the sale within a short period and it was under these circumstances he had paid ₹ 1 Crore by way of advance.*

i. *It has to be borne in mind while branding the bonafide transaction as an arrangement that I had repaid the amount to Subramaniam subsequently and the entire gains arising from the transaction have remained*

with me and have not been transferred back to Subramaniam. The payout amounts received by me from the broker towards the sale of the shares from time to time were utilized for my personal financial purpose. The amounts were not transferred to any persons.

j. The gains have remained with me and out of the total sale proceeds (of shares) of ₹ 4.02 Crores, I have invested ₹ 1 Crore in fixed deposits with City Union Bank, Chennai.

k. I submit that my buying the shares of Sabero had no nexus with the alleged PSI… I had bought the shares during the relevant time just like other buyers… Data will bear out that stock was witnessing tremendous volumes accompanied by steep increase in the price. Therefore, bracketing my trades as pre-announcement of alleged PSI & post announcement of alleged PSI, is erroneous and misleading.

l. Merely because I traded for the first time in the scrip cannot mean that my trading is unusual. Since there was positive recommendation about the scrip in public domain.

m. I am not aware of any fund transfer between Murugappan and Vellayan... it is SEBI's own case that Murugappan has made a payment of ₹ 1 Crore to Vellayan and not the other way around.

n. The purported theory of insider trading is totally unfounded and unsustainable is also evident from the fact that if Vellayan had to indulge in insider trading through Murugappan via me, he would not have waited for the price of the scrip to increase by 35% before allegedly sharing the UPSI. The sequence of events as have transpired in the matter also goes against the alleged theory of insider trading.

o. There is no evidence at all to establish that I have traded in the shares of Sabero on the basis of UPSI and made unlawful gains as alleged."

ii. During the hearing held before me on December 18, 2015, Gopalakrishnan made the following additional submissions:

a. SCN only brands him as an *'insider'*. Para 8 of the SCN only says that UPSI was passed by Mr. Vellayan to Mr. Murugappan. It does not mention how he (Gopalakrishnan) himself received the information. Who gave UPSI to him is also not mentioned in the SCN. Therefore, he has submitted that he cannot be considered as an *'insider'* under Regulation 2(e)(i) or (ii) of the Insider trading Regulations, 1992.

b. The allegation against him is that he received UPSI from Murugappan, who also funded the transaction. However, he has received funds from Subramaniam and not Murugappan. Subramaniam is not made a Noticee in the case. His statement is also not recorded by the Investigating Authority.

c. He entered into the trading only after the stock price had already increased from ₹ 51 to ₹ 82 (during a short period from April 6, 2011 to May 23, 2011) and on the basis of an article [referred at paragraph 10.5.4(i)(c)].

d. Many others had also traded in an identical fashion as him. No action has been initiated against any of them.

iii. Pursuant to the hearing held on December 18, 2015, Gopalakrishnan vide his letter dated December 20, 2015, has additionally submitted:

a. *"I purchased Sabero shares worth ₹ 272 Lakhs. Out of this, only ₹ 100 Lakhs had come from Subramaniam (son of Murugappan). The remaining amount of ₹ 172 Lakhs was arranged by me from my own sources"* [i.e. ₹ 57 Lakhs was arranged by him from his own funds and ₹ 115 lakh was by his broker Nirmal Bang as margin funding].

b. SEBI has erroneously linked independent legitimate transactions viz. Fund transfers in context of Sale Agreement and trading done by me in the ordinary course, to draw inference of illegitimacy qua the said transactions.

c. *I had earned a profit of around ₹ 1.30 Crores out of the sales of the Sabero shares. The entire amount of profit has remained with me and the same has been used solely by me for my personal expenditures. Not even a single penny has been given or shared with Mr. Subramanian or Mr. Murugappan or Mr. Vellayan.*"

10.5.5 **Findings**

The aforesaid allegation against Gopalakrishnan *vis–a'–vis* the replies filed by him has been examined. The following are my observations:

a. Gopalakrishnan has disputed neither the trades alleged to have been executed by him during the Investigation Period nor the gain of ₹ 1.30 Crores alleged to have been made out of the aforesaid trades. The details of the said trades and the gains are mentioned in the Tables at paragraph 10.5.3(i)–(ii).

b. On analyzing the timing and trading pattern of trades executed by Gopalakrishnan, it is observed that he had not traded in any other scrip during the entire Investigation Period (i.e. May 15, 2011 to June 15, 2011). The only share transaction made by him during the Investigation Period was in the scrip of Sabero. His trading pattern during a two year period prior to the Investigation Period indicates that he had traded only in one scrip with gross trade value of approximately ₹ 2 Lakhs.

c. Gopalakrishnan in his reply has stated that the trades were on the basis of (i) an article by an Independent Analyst published in a website on April 6, 2011, recommending the Sabero

scrip and (ii) the price rise of Sabero scrip from ₹ 51 to approximately ₹ 82 in that scrip during the period April 6, 2011 to May 23, 2011. It is however noted that:

a. The trades by Gopalakrishnan were executed during the period of UPSI (on May 23 and 24 of 2011) i.e. more than a full one month after the publication of the article recommending this scrip. In other words, the trades and the analyst report are not proximate.
b. On analyzing the funding pattern in respect of the purchase of Sabero shares by Gopalakrishnan *vis–a'–vis* his trading pattern, it is observed that a person whose annual income was in the range of ₹ 1–5 Lakhs (as per the KYC documents of Gopalakrishnan filed with Nirmal Bang) had invested an amount of ₹ 157 Lakhs (including ₹ 100 Lakhs stated to have been received as advance towards sale of his property and ₹ 57 Lakhs from his own funds) in a single scrip (Sabero) during the period, on the basis of one single article by an Analyst published on April 6, 2011. The trading pattern of Gopalakrishnan during a two year period prior to investigation period indicates that he had traded only in 1 scrip with gross trade value of approx. ₹ 2 Lakhs.
c. It is hard to believe that a person with such limited means and with such a limited trading background could, all of a sudden, make such a big investment by part funding it through sale of his residential property. Gopalakrishnan, it appears, had staked his entire well–being to bet on an isolated recommendation to buy a single scrip. Indeed the story appears too farfetched. For a person of Gopalakrishnan's background, such a gamble would be plausible only when he was sure that he was going to win the bet. Indeed, the UPSI appears to have been the sole key which prompted Gopalakrishnan to do all the Sabero transactions as described in the preceding paragraphs.
d. The sequence of the events clearly belies the version of Gopalakrishnan that he relied solely upon the one single article published on April 6, 2011.

d. During the hearing held on December 18, 2015, Gopalakrishnan was asked to provide details regarding the amount of ₹ 57 Lakhs (stated to have been arranged from his own funds for the purchase of Sabero shares), supported by documents such as bank statements, etc. He has failed to provide the said details/documents till date.

e. The facts and circumstances such as the timing and pattern of Gopalakrishnan's trades in Sabero shares during the UPSI period *prima facie* points to his being traded while in possession of UPSI.

10.5.6 **Trades by Karuppiah- HUF**

i. The details of trades executed by Karuppiah–HUF in the shares of Sabero during the Investigation Period, as observed from the SCN are as under:

DATE	BUY QUANTITY	BUY PRICE (IN ₹)	SELL QUANTITY	SELL PRICE (IN ₹)
PRE-ANNOUNCEMENT PERIOD				
23/05/2011	13,200	80.99	-	-
24/05/2011	10,850	87.80	-	-
25/05/2011	8,000	92.01	-	-
27/05/2011	2,700	90.12	-	-
31/05/2011*	6,000	92.24		
TOTAL BUY QUANTITY	**40,750**			
AVERAGE BUY PRICE (₹)		**87.23**		
POST- ANNOUNCEMENT PERIOD				
10/06/2011	-	-	2,000	127.19
13/06/2011	-	-	4,000	128.00
15/06/2011	-	-	2,000	126.70
16/06/2011	-	-	3,000	126.50
17/06/2011	-	-	5,750	126.06
21/06/2011	-	-	24,000	126.00
TOTAL SELL QUANTITY			**40,750**	
AVERAGE SELL PRICE (₹)				**126.33**
***Shares bought on the date of announcement*				

ii. Gains made by Karuppiah–HUF by trading in the scrip of Sabero were computed as follows:

PARTICULARS	AMOUNTS (IN ₹)
Sale Value=40,750 shares x ₹87.23	51,48,102
Less: Buy Value=40,750 shares x ₹126.33	35,54,540
GAINS	**15,93,562**

iii. From the above table, it is observed that Karuppiah–HUF had bought 40,750 shares of which 34,750 shares had been bought between May 23, 2011 to May 27, 2011 (*i.e.* during the UPSI period) and 6000 shares were bought on the day of announcement. After the announcement of PSI on May 31, 2011, the entity sold all the shares (40,750 shares) during the period June 03, 2011 to June 21, 2011. The total gain made by Karuppiah–HUF was ₹ 15.94 Lakhs.

iv. The SCN states:

e. The majority of the trades executed by Karuppiah–HUF during the period of investigation were in the scrip of Sabero.
f. Karuppiah–HUF had not traded in the scrip of Sabero any time earlier.

10.5.7 **Reply by the Entity**

i. Karuppiah vide his reply dated July 23, 2015, has stated as under:

g. *"I was guided by various news and research reports including a report dated May 17, 2011, which stated that there was a 95% rise in the price of the scrip of Sabero in the past three months. I have traded in the scrip of Sabero from my own funds and profits or losses therefrom are attributable only to me;*

h. Apart from Mr. Murugappan, I have no relations or connection with any of the individuals named in the SCN as having traded in the scrip of Sabero,

i. *The SCN has references to the flow of funds from Mr. A.R. Murugappan to Mr. M. Subramaniam and to Mr. C. Gopalakrishnan, and that too well after Mr. Gopalakrishnan bought the scrip of Sabero. However, vis–a–vis me, there is no material at all relating to flow of funds from anyone connected with the Murugappa Group or even from Mr. Murugappan. I am not shown as having had any contact with him either for a reasonable basis to be created to level the charge. There is no connection at all between Mr. Gopalakrishnan and me, either in terms of 'knowing' him or communications with him, or indeed in terms of any dealings or engagement with him. Therefore, it is evident that my only crime seems to have been that Mr. Murugappan is my father–in–law. My trades in the scrip of Sabero are of ordinary in scale, size and in quantum, as compared to my other trades.*

j. Bought Sabero shares even after the announcement of UPSI, i.e. on September 10, 2012 and sold the shares during May 2014 at a loss of ₹ 72,891.80. This would demonstrate that I was a genuine trader.

k. Sold 2000 shares of Coromandel pre-announcement i.e. on May 24 and 25 of 2011. If I had the UPSI about the acquisition of Sabero by Coromandel, I would have waited for 5 more days before selling the scrip of Coromandel. The price of Coromandel went up from the levels of ₹ 300 to about ₹ 350 by June 2011.

l. I am working as a Senior Technical Manager with more than 15 years of experience in the software industry. I have many teams working under me executing different projects and I am responsible for many project deliveries in a software multinational. I have been regularly investing my savings in financial products and there was nothing untoward or odd about my trades in the scrip of Sabero. I have traded in other scrips also during 2011–2012. It is solely on the basis of narrowing the period to such a small one that would show my investment in Sabero to be 'concentrated' that SEBI is seeking to lay any blame upon me.

m. *It is submitted that this allegation is not sustainable given Mr. A. Vellayan's profile and stature. It is public knowledge that Mr. A. Vellayan is the head of a major business conglomerate with a net-worth of hundreds of Crores. It is submitted that it defies logic that a person of Mr. A. Vellayan's stature would give my father–in–law UPSI to enable his son–in–law to make small–time profits on the basis of UPSI."*

ii. During the hearing held on December 18, 2015, Karuppiah made the following additional (oral) submissions before me:

a. He is an active investor in many scrips.
b. Investment was based on reports in newspaper/analyst report.
c. There was no flow of funds between him and his father–in–law (Murugappan).
d. He cannot be considered as *'insider'* in view of the ruling of Hon'ble Securities Appellate Tribunal in *Samir Arora's Case (2004 SCC Online SAT 90).*

iii. Pursuant to the hearing, Karuppiah vide his reply dated December 28, 2015 has also stated that:

a. I did not trade in the scrip of Sabero prior to the calendar year 2011…
b. *During the FY 2011-2012, I traded in 5 scrips including Sabero and a Nifty option for the first time …"*

10.5.8 **Findings**

The allegation against Karuppiah *vis–a'–vis* the replies filed by him has been examined. The following are my observations:

a. Karuppiah–HUF has not disputed the trades executed by him in the scrip of Sabero during the Investigation Period [as mentioned at paragraph 10.5.6(i)] and also the gains made out of such trades. Karuppiah–HUF sold the entire shares during the post–announcement period and the total gains made by Karuppiah–HUF was ₹ 15.93 Lakhs.
b. On analyzing the trades executed by Karuppiah–HUF, it is observed that the majority (64%) of the total trades executed by Karuppiah–HUF during the Investigation Period was in the shares of Sabero. It is also relevant to note that Karuppiah–HUF had not traded in the scrip of Sabero earlier.
c. Karuppiah, during the course of investigation, when asked about the reasons for his investment in the shares of Sabero, stated (in his written statement dated September 16, 2013) "*Production of Pesticide in organic form which* is *a substitute to the banned Endosulfan and its contribution to the growth of company was the reason for investing in Sabero shares".* However, Karuppiah, in his subsequent reply dated July 23, 2015 (after the issuance of SCN) stated that his investment in Sabero shares was influenced by one particular Research Report dated May 17, 2011 of an analyst wherein it was stated that the scrip of Sabero had risen by 95% in the previous three months.
d. The fact that Karuppiah has altered his stance in respect of the reasons for his investment in Sabero shares during the UPSI period undermines his defence.
e. Karuppiah's submission that he used his own funds to trade in the shares of Sabero, cannot be accepted as a defense against the charge (that he had traded on the basis of UPSI)- it is not necessary that insider trading has to be done only with borrowed funds.
f. Further, his submission that he bought some Sabero shares during September 2011 and sold the shares at a loss of ₹ 72,891.80 during May 2014 also cannot be accepted as a valid defense. Any purchase and sale after the UPSI period (i.e. May 15 to May 31, 2011) has really no relevance to the issue at hand, especially as the scrip was bought more than 3 months and sold a full three years after the period in question.

g. Other adverse circumstances against him such as the timing and pattern of his trades in Sabero shares during the UPSI period weighs heavily against him and point to the possibility that his trades were on the basis of UPSI.

10.6 ***Whether Murugappan had arranged funds to Gopalakrishnan for trading in the shares of Sabero and whether the relationship which Murugappan maintained with Gopalakrishnan and Murugappan's personal family relationship with Karuppiah indicate that the said UPSI was passed by Murugappan to Gopalakrishnan and Karuppiah ?***

10.6.1 It is an accepted fact that Gopalakrishnan is Murugappan's family astrologer's son and it was Gopalakrishnan, who had introduced Murugappan and his family members to the broker, Nirmal Bang. Further, Mr. V. Karuppiah (Karta of Karuppiah–HUF) is the son–in–law of Murugappan.

10.6.2 It has been alleged in the SCN that Murugappan gave ₹ 1 Crore to Gopalakrishnan for buying the shares of Sabero during the Investigation Period through the account of Murugappan's son Subramaniam. This was done by Murugappan by prematurely closing his fixed deposit on May 28, 2011, and transferring the amount to his son Subramaniam's account, who, in turn, gave the money to Gopalakrishnan on the same date. Gopalakrishnan paid the same amount of ₹ 1 Crore to his broker Nirmal Bang on May 28, 2011, which was utilized for the purchase of Sabero shares.

10.6.3 It was further alleged that the aforesaid fund transfer of ₹ 1 Crore through the accounts of Murugappan, Subramaniam and Gopalakrishnan were shown to be related to a property transaction between Subramaniam and Gopalakrishnan. As per SCN, *"the said property transaction between these persons appears to be unusual as 83.33% of the total consideration of the property was paid as advance."*

10.6.4 It was also alleged that after the sale of Sabero shares, Gopalakrishnan returned an amount of ₹ 1.02 Crores to Subramaniam (son of Murugappan) on June 24, 2011.

10.6.5 In view of the said facts and circumstances, it was alleged that Murugappan had passed the UPSI to Gopalakrishnan and Karuppiah–HUF, who in turn traded in the shares of Sabero on the basis of the UPSI.

10.6.6 **Reply by the Entity**

i. In response to the allegations, Murugappan in his reply vide letter dated July 20, 2015 stated as under:

a. *"… It should be noted that not having traded in a single share of Sabero, no charge of insider trading can at all be levelled against me. In the absence of any direct trading in shares of Sabero by me, funds flows from my son to Mr. C. Gopalakrishnan, who had traded well before he was paid for a residential property purchase by my son, are being sought to be attributed to me.*
b. *My son was scheduled to get married in September 2011 and he was interested in buying a house - Mr. Gopalakrishnan was willing to sell the house to him and I gave my son money to buy the house. This is a normal family obligation that fathers in my community would discharge, and it is a bit too unfair to find fault with giving a son money to buy a roof over his head.*
c. *The payment of ₹ 1 Crore by me to my very own son M. Subramaniam on May 28, 2011, was specifically to enable him to pay for purchase of a house he would reside in after his marriage. I gave this sum of ₹ 1 Crore to my son so that he could pay Mr. C. Gopalakrishnan, the seller of the property, who was known to me through his father, who was my astrologer. I am submitting a copy of the Agreement for Sale dated May 26, 2011, entered into between Gopalakrishnan and Subramaniam.*
d. *My son obviously paid Mr. Gopalakrishnan the money on the same day because the day was considered an auspicious /vastu compliant day. Also, an agreement was entered into on May 26, 2011, entailing that the purchase of the house would be completed within a period of 30 days.*
e. *The period of 30 days to close the transaction was a short period of time and therefore, it is completely normal for my son to have paid substantial part of the consideration as part-payment. This was not some earnest money, but was in fact an actual discharge of part payment of the consideration on the house.*
f. *Mr. Gopalakrishnan developed second thoughts on a committed transaction and was pushing us for paying a higher value. We could not agree with him to pay a higher price and the deal broke off. It is sad to have my only son lose a good potential house purchase and yet that very loss be attributed to him and me as financing of insider trading in Sabero shares, which we can now see from SEBIs own show cause notice, is based on trades effected way before May 28, 2011.*
g. *As far as Mr. A. Vellayan is concerned, he did not pay me a single rupee even as per the show cause notice. On the contrary I had paid him an aggregate sum of ₹ 1 Crore, Mr. Vellayan and I had entered into an*

agreement way back on April 20, 2011, whereby I was to have bought a property in Uthandi village, and complete the transaction in six months I paid an advance of ₹ 1 Crore towards part consideration as an advance. Mr. Vellayan was kind enough to accommodate a longer timeframe for my payment of the balance amount. I was unable to pay him this amount despite his kind extension of time owing to liquidity constraints and other demands on my resources, among others, due to the wedding in the family. Eventually, he kindly permitted me to unwind the transaction and I got my money back without any interest on it since I had held up his capacity to have sold the land in a timely manner to anyone else. This return of the advance from Mr. Vellayan to me happened ten months later i.e. in the month of March 2012.

h. I have never traded in the scrip of Sabero at any point of time leave alone during the period of investigation. I further wish to state that, I have been portrayed as a connection between Mr. Gopalakrishnan and my son-in-law V. Karuppiah on the one hand, and with Mr. A. Vellayan on the other hand.

i. The show cause notice draws a sweeping inference about my alleged connection to Mr. Vellayan who is my distant relative (my mother and his paternal grandfather are siblings). This has been considered adequate for SEBI to assume that Mr. Vellayan would have given me UPSI about Sabero. Worse, a transaction where it is I who has paid money to Mr. Vellayan has been juxtaposed to suggest as if Mr. Vellayan had funded me, and that I had in turn funded Karuppiah and Mr. Gopalakrishnan (which is now proven to be utterly false).

j. … SEBI without stating any facts or circumstances of passage of UPSI, has made such grave allegations in the nature of the UPSI being communicated from Mr. Vellayan to me and by me to Karuppiah and Mr. Gopalakrishnan.

k. As regards Karuppiah's trades, I wish to first state that in our community, sons-in-law and fathers-in-law do not share in business. We have a respectful distance between our personal relationships and business dealings. Karuppiah is employed in a leading software company. He may transact in financial investments, but of his own accord and based on his own assessment of bargains. Just because he is my son-in-law, it does not mean that his dealings are with my guidance or inputs. On the contrary, he not only has an independent source of income but also his own mind...

l. It is far-fetched to connect his dealings with me. It is evident from the show cause notice itself that it is not even SEBI's allegation that a single paisa has gone from me to Karuppiah. Therefore, it is an erroneous and untenable jump to infer that Karuppiah's trades should taint me, or that my being his father-in-law should taint his trades.

m. The Ex Parte Order and the show cause notice have caused me serious disrepute in the community and in addition, the serious damage that has been caused in my name to Mr. Vellayan is deeply distressing. I have shown my bona fides by providing the funds lying in my fixed deposits for impounding by SEBI only in the faith that I have in SEBI's fairness that it would complete these proceedings expeditiously and in the confidence that I would stand exonerated once SEBI has a chance to appraise my submissions in

defence."

ii. During the hearing held on December 18, 2015, Murugappan made the following additional (oral) submissions before me:

a. He is only distantly related to Vellayan. The relationship is not as per the definition in Companies Act, 1956.
b. Presumption regarding relationship made by SEBI in this case is too farfetched.
c. He is not an insider as defined in Regulation 2(e)(ii) of Insider Trading Regulations, 1992. He did not receive any information from Vellayan.
d. No call data records have been called or obtained by the investigation.
e. It is contended that the amount of ₹ 1 Crore, which flowed from Murugappan to Vellayan (in connection with a property transaction) had nothing to do with insider trading. Money flow is in the reverse direction, *i.e.* from Murugappan to Vellayan.

10.6.7 **Findings**

i. The allegation against Murugappan *vis–a–vis* the replies filed by Murugappan, Gopalakrishnan and Karuppiah–HUF has been examined. Following are my observations:

a. The personal relationship between Murugappan and Karuppiah and the relationship between Murugappan and Gopalakrishnan, as alleged in SCN have not been disputed by Murugappan.
b. In respect of the arrangement of funds by Murugappan to Gopalakrishnan for trading in the shares of Sabero, it is observed as under:
c. Gopalakrishnan purchased 3,19,500 shares of Sabero worth ₹ 272 Lakhs (at an average rate of ₹ 85.15). The source of funds for the purchase is observed as under-

PARTICULARS	AMOUNT (₹ IN LAKHS)
1. Own Source	57.00
2. From Murugappan (as advance received towards sale of his property to Murugappan's son)	100.00
3. Exposure by the Broker	115.00
TOTAL	**272.00**

d. The bank statements of Murugappan, Subramaniam and financial ledger book of Gopalakrishnan maintained by broker, Nirmal Bang reveal that the aforesaid, ₹ 100 Lakhs had been transferred by Murugappan, as under:

- Murugappan transferred an amount of ₹ 100 Lakhs to his son Subramaniam on May 28, 2011;
- Subramaniam in turn transferred this amount to Gopalakrishnan on May 28, 2011;
- Gopalakrishnan deposited this amount with his broker, Nirmal Bang on May 28, 2011, towards payment for purchase of shares of Sabero.

e. It is also observed from the bank statements of Subramaniam that Gopalakrishnan returned an amount of ₹ 102.00 Lakhs to Subramaniam (son of Murugappan) on June 24, 2011 (*i.e.* after the sale of Sabero shares).

f. To substantiate that there was no funding of Gopalakrishnan by him, Murugappan vide his reply dated July 20, 2015 stated that the payment of ₹ 100 Lakhs on May 28, 2011 to Gopalakrishnan was pursuant to an *Agreement for sale* dated May 26, 2011 (of Gopalakrishnan's Flat) executed between Gopalakrishnan and Subramaniam. Later, when the sale fell through, Gopalakrishnan repaid Subramaniam ₹ 100 Lakhs along with the penalty amount mentioned in the said agreement i.e. an amount of ₹ 2 Lakhs (i.e. total ₹ 102 Lakhs) on June 24, 2011.

g. Murugappan has also contended that had the money been advanced to Gopalakrishnan for purposes of insider trading, then instead of Gopalakrishnan paying an amount of ₹ 2 Lakhs to Subramaniam (son of Murugappan) as penalty, Gopalakrishnan would have shared with Subramaniam his profit of ₹ 1.30 Crores earned by him from the trades. The entire profit of ₹ 1.30 Crores on the transaction has been used solely by Gopalakrishnan. Gopalakrishnan has furnished copies of bank statements to show that the profit of ₹ 1.30 Crores deposited in the City Union Bank was utilized by himself and that no part of this has been shared by him with Subramaniam or Murugappan.

h. Sharing of profits (in the instant case, illegal profits) is in no way a necessary ingredient of insider trading transactions - especially when it involves persons who are personally known to each other. I am therefore of the view that the defense taken by Murugappan (i.e. there was no profit sharing, hence there was no funding), is not tenable.

i. On perusal of the documents such as the agreement for sale, bank statements, etc. furnished by the Noticees, it appears that the amount and the dates mentioned in the accounts of Murugappan, Gopalakrishnan and Subramaniam match with the amount and the dates mentioned in the agreement to sale dated May 26, 2011. For instance, the payment of ₹ 1 Crore (vide Cheque No.089066 dated May 26, 2011) by Subramaniam to Gopalakrishnan as advance for purchase of the latter's flat is reflected in both the agreement to sale and the bank statements.

j. Further, it was explained by Murugappan that an advance part- payment of 83.33% of the total consideration of the property cannot be termed as *'unusual',* since the purchase of the property was required to be completed in a short period of 30 days.

k. Even considering that the above advance payment was *'not unusual',* the following facts do raise questions about genuineness of the *Agreement for sale.*

- On analyzing the submissions of Gopalakrishnan vide letter dated August 24, 2015 and his subsequent reply vide letter dated December 20, 2015, it is observed that he has taken two contradictory stances in response to the allegation of funding by Murugappan of his trades.
- Gopalakrishnan in his reply vide letter dated August 24, 2015 stated that he had settled the pay-in obligations on May 25, 2011 and May 26, 2011 i.e. before he received ₹ 100 Lakhs from Subramaniam/Murugappan on May 28, 2011. He stated that it was therefore erroneous to presume that Subramaniam/Murugappan had funded him. However, on verification of the bank account of Gopalakrishnan, it is found that the amount of ₹ 100 Lakhs was received by Gopalakrishnan from Subramaniam only on May 28, 2015, which was transferred to his broker on the same date towards his settlement obligation. Therefore, Gopalakrishnan's contention that the entire settlement was completed prior to receipt of ₹ 100 lakh from Subramaniam is not correct. The settlement by Gopalakrishnan was done

only on May 28, 2011, as shown above, after the receipt of funds from Subramaniam on that date.

- Gopalakrishnan in his subsequent letter dated December 20, 2015 (after the personal hearing), retracted his earlier stand (that he never used the funds received from Murugappan in settling his pay-in obligation) and stated that out of total ₹ 272 Lakhs required for purchase of Sabero shares, ₹ 100 Lakhs had come from Mr. Subramanian (son of Murugappan), thus admitting that this amount did indeed go towards settlement of the transaction of the purchase of Sabero shares.
- Considering the facts and circumstances as narrated above, the purchase/sale of a house property between Gopalakrishnan and Murugappan appears to have been only a smokescreen to camouflage the funding arrangement for the transaction. It is however observed that the funds were routed through Subramaniam and not Murugappan. This was also pointed out by Gopalakrishnan during the hearing that he has received funds from Subramaniam and not Murugappan [as mentioned in paragraph 10.5.4 (ii)(b)]. He also submitted that Subramaniam is not made a Noticee in the case and his statement is also not recorded by the investigation. I am of the view that these questions also need to be addressed.

l. As regards the allegation of passing UPSI by Murugappan to his son-in law Karuppiah, Murugappan in his reply has stated that Karuppiah's dealings in the Sabero shares was by using his own funds and on the basis of own independent assessment. Murugappan has further stated that he and Karuppiah are residing separately and SEBI has not shown how Karuppiah received UPSI from him. He has also stated that in the absence of any records or documents or other evidence regarding transmission of the UPSI from Murugappan to Karuppiah–HUF, it is erroneous to surmise that Murugappan has shared UPSI with Karuppiah–HUF.

m. It is however observed that Karuppiah (Karta of Karuppiah–HUF) is the son–in–law of Murugappan. The majority of trades executed by Karuppiah during the investigation period was in the scrip of Sabero. He had not traded in the shares of Sabero earlier. In view of the personal relationship between Murugappan and Karuppiah and the fact that Karuppiah–HUF's trades were motivated by UPSI (as already observed in paragraph 10.5.8), it is most probable that Murugappan had passed the UPSI to Karuppiah–HUF. However, there is no other material evidence available on record to substantiate that Murugappan had passed the UPSI to Karuppiah.

n. I am of the opinion that Murugappan's personal relationship with Karuppiah (son–in–law of Murugappan) and the timing and trading pattern of Karuppiah–HUF, do point towards the possibility that it was Murugappan who had passed the UPSI to Karuppiah.

10.7 ***Whether Vellayan comes under the definition of 'insider' as per Regulation 2(e)(i) of the Insider Trading Regulations, 1992?***

10.7.1 Vellayan was the Chairman of Coromandel during the Investigation Period. A meeting was held on May 15, 2011, at Chennai, in order to discuss and negotiate the acquisition of Sabero shares from its Promoters, by Coromandel. The said meeting was attended by the representatives of the management of Coromandel, including its Chairman i.e. Vellayan alongwith the management of Sabero. It is therefore clear that Vellayan was privy to the aforesaid UPSI regarding the acquisition. This fact has also not been disputed by Vellayan.

10.7.2 As per Regulation 2(e)(i) of the Insider Regulations, 1992, *'insider'* means *"any person who, is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company."* In view of this, Vellayan is indeed covered under the definition of *'insider'* in terms of Regulation 2(e)(i) of Insider Regulations, 1992.

10.8 ***Whether on the basis of personal family relationship of Vellayan and Murugappan and also the financial dealings between them during the UPSI period, it can be concluded that it was only Vellayan who had passed on the said UPSI to Murugappan?***

10.8.1 ***Allegations contained in the SCN –***

i. As per the SCN, it has been alleged that Vellayan, who had personal and financial relationship with Murugappan had passed the UPSI to Murugappan, who in turn passed it to Gopalakrishnan and Karuppiah. Thereafter, Gopalakrishnan and Karuppiah used the UPSI for trading in the scrip of Sabero i.e. entities bought shares during the UPSI or pre–announcement period and subsequently, sold such shares in the post–announcement period. As a result of the aforesaid trading, Gopalakrishnan and Karuppiah made illegal gains to the tune of ₹ 1.30 Crores and ₹ 15 Lakhs, respectively.

ii. As per the SCN –

"3. (viii) Thus, the information relating to impending acquisition, which was only in the possession of Noticee No. 1 (Vellayan) and others from CIL, much before the same was announced to the exchanges on May 31, 2011, was deemed to be unpublished price sensitive information…

4. Relationship amongst Noticees.

- *When information was sought from Noticee No. 1 (Vellayan) with regard to his relationship with Noticee 2 (Murugappan), Noticee 1 vide his letter dated Feb 17, 2014, denied having any relationship with Murugappan.*
- *However as per the statement of Murugappan on Nov 26, 2014 given to SEBI, he stated that he is acquainted with Vellayan for the last four decades and that Vellayan's grandfather whose name is Vellayam was his mother's brother and that her name is A R. Amapurani Achi. Vellayan and Murugappan were in contact with each other during pre-UPSI period i.e. May 15, 2011 to May 30, 2011."*

10.8.2 ***Vellayan's' replies to the allegations contained in the SCN –***

Vide letters dated July 10, 2015 and December 29, 2015 and also through oral submissions made during the hearing held on December 18, 2015, Vellayan made the following submissions –

i. *"The material on record does not establish that I was the source of any communication of UPSI to any of the parties who are mentioned in the SCN as having traded in Sabero Shares.*
ii. *There were many persons in the know of UPSI about the Sabero transaction and no investigation has been done on other potential source of leakage of news.*
iii. *There were many more persons who traded in shares of Sabero in a higher quantity and on a larger scale without any prior holding of Sabero shares even before the trades by persons mentioned in the SCN who are arbitrarily, tenuously and fancifully being linked to me but no investigation has been done on who could have tipped them off.*
iv. *Even if SEBI were of the view that purchases by any person between May 15, 2011 to May 31, 2011, were motivated by access to UPSI, laying the blame at my doorstep for alleged communication of UPSI is arbitrary and falls in the realm of conjecture and surmise since there is not even a reasonable preponderance of probability that I could have done what is being sought to be fancifully inferred.*

v. *There is nothing on record that would show that I had communicated any UPSI to Gopalakrishnan and Karuppiah, who traded in Sabero shares or indeed to Murugappan – in fact, it is not even SEBI's case that UPSI was communicated to Gopalakrishnan or Karuppiah and this aspect needs to be borne in mind.*

vi. *All those who traded in the shares of Sabero were left without further query or investigation as soon as a tenuous and fanciful distant linkage of Gopalakrishnan and Karuppiah was found via Murugappan, to me.*

vii. *Until the passing of the Ex Parte Order, I was the Chairman of the Murugappa Corporate Board, which oversees the Murugappa Group, a conglomerate with a business turnover of over ₹ 27000 Crores and profits of almost ₹ 1800 Crores. My personal net worth is estimated at ₹ 400 Crores, a fact that is normally not relevant to me but which I am being forced to mention in view of the insinuation that I had communicated UPSI which led to alleged insider trading involving gains of a couple of crores for the individuals who traded and with no gain having been made by me.*

viii. *The gravamen of the charge against me in the SCN is that of having communicated UPSI. The UPSI is alleged to be information about the potential takeover of Sabero by Coromandel. That date on which the UPSI allegedly came into being is May 15, 2011, when the first meeting for the proposed transaction took place. As the then Chairman of a ₹ 27000 Crore Group, I did not handle day to day operations of every company in the Murugappa Group and my involvement in Mergers and Acquisitions activity is at a highly strategic level.*

ix. *When it is evident to SEBI that a wider range of persons have traded during the period in question, if SEBI suspects such trading to be a consequence of being tipped off by an insider who is in possession of UPSI, SEBI should have examined if there could have been any other source of communication of UPSI by insiders to those who traded. Instead, SEBI has merely asked some of these agencies (and apparently, not all of them) whether they were aware of those who traded in shares of Sabero instead of checking/investigating who in these agencies and entities were the individuals who were aware and what their pattern of communications was at the relevant time. This has turned out to be a perfunctory exercise and no sooner than SEBI found that Karuppiah and Gopalakrishnan have some link to Murugappan, and that Murugappan had a distant filial relation (son of my grand aunt) to me, it would be adequate if to let the rest of the investigation trail go cold and to conclude that trades by Gopalakrishnan and Karuppiah was due to communication of UPSI by me.*

x. *No evidence of any nature at all has been brought to bear to even attempt to establish if there had been any physical or telecommunication contact between any other insider in the know of the Sabero transactions and those who traded. Therefore, I wish to submit with respect and humility that the investigation has simply not been of any scientific nature to level against me such a serious charge of communication leading to alleged insider trading.*

xi. *It is pertinent to note that I have not funded any transaction by any entity/person named in the SCN or otherwise in connection with dealings in shares of Sabero. The SCN does not allege any motive on my part in connection with the alleged communication of UPSI. Neither is any benefit alleged to have been received by me nor is it alleged that I even attempted to get any benefit. So also, there is no circumstance or fact to enable an allegation that I handled any UPSI in a negligent manner that led to the alleged insider trading. In the circumstances, it would be completely untenable and unacceptable for an allegation of this seriousness to be levelled so lightly at my doorstep.*

xii. *It is obvious from the very material on record that the price of the scrip of Sabero had started shooting upwards even before the purchases that are being assailed in the SCN by persons allegedly connected to me (through a fanciful tenuous link) were even effected. It is evident that if SEBI were to examine and investigate such data dispassionately, it would need to look at purchases made during this period, examine whether there had been any other tipper and any other tippee that lead to potential insider trading rather than look for the first sign of some linkage and jump to the conclusion that it has solved a case of insider trading.*

xiii. *On an analysis done by me of the trades done by the 19 people who were found to have shares of Sabero during the second half of May 2011 and comparison of the same with the share transfer records of Sabero, it is evident that –*

   a. *Bijco Holding Limited, which never held any shares in Sabero bought 5,05,064 shares of Sabero between May 13, 2011 and May 20, 2011.*
   b. *Pilot Consultants Private Limited, which never held any shares in Sabero bought 2,50,000 shares of Sabero between May 13, 2011 and May 20, 2011.*
   c. *Amravati Investra, which never held any shares in Sabero bought 94,436 shares of Sabero between May 13, 2011 and May 20, 2011.*
   d. *Manphool Exports, which never held any shares in Sabero bought 1,00,000 shares of Sabero between May 13, 2011 and May 20, 2011.*
   e. *Manphool Exports, which never held any shares in Sabero bought 50,000 shares of Sabero between May 20, 2011 and May 27, 2011.*
   f. *It is noteworthy that all the foregoing are based in Kolkata (West Bengal). The record indicates that these trades could be a result of someone tipping them off for such concentrated dealing in one city.*
   g. *It is noteworthy that these purchases preceded the dates on which Gopalakrishnan and Karuppiah purchased shares.*
   h. *Kailash P. Mariwalla, who never held any shares in Sabero bought 33,500 shares of Sabero by May 20, 2011 and went on to hold 36,250 shares of Sabero by May 30, 2011.*

i. R A Ansooya Devi who never held any shares in Sabero acquired 1,89,430 shares of Sabero between May 13, 2011 and May 20, 2011.

j. R Managaladevi who never held any shares in Sabero acquired 1,00,000 shares of Sabero as of May 20, 2011 and 1,23,500 shares of Sabero as on May 27, 2011; and

k. S Ramammirthan who never held any shares in Sabero acquired 50,000 shares of Sabero as of May 20, 2011 and 72,079 shares of Sabero as on May 27, 2011.

xiv. With reference to Paragraph 4 of the SCN, I say that my filial connection with Murugappan is a remote and distant one. As stated earlier, the exact relationship between Murugappan and me is that Murugappan is the son of my grand aunt (my paternal grandfather's sister's son). My statement in my letter dated February 17, 2014, stating that "I am neither personally or professionally related to Murugappan" is true and was made in the context of Murugappan not being related to me within the known parameters of being a relative in the eyes of law and the absence of any professional connection with him.

xv. The SCN is issued on the premise that the UPSI relating to the potential acquisition of Sabero by Coromandel was known only to Coromandel. This fundamental premise is erroneous – the others who were privy to the same UPSI were Sabero, its Promoters and various advisors to Coromandel and Sabero. A detailed list of all individuals who were privy to the information at various points of time is set out in Coromandel's letter dated June 29, 2013 … It is evident that there were at least thirty persons who were privy to the very same UPSI.

xvi. There were at least thirty individuals/entities who were privy to UPSI and nothing was shown by the Investigating Authority as to how and why I alone could have passed on the UPSI to Murugappan. Also how is it that it was not possible for Gopalakrishnan to have got UPSI from any of the other remaining individuals/entities, who were also privy to the UPSI.

xvii. Apart from the aforementioned, the SCN also contains a list of nineteen suspected entities including Gopalakrishnan and Karuppiah. The other remaining seventeen suspected entities had also allegedly traded in the scrip of Sabero at the relevant time as was done by Gopalakrishnan and Karuppiah. However, no investigation was done to ascertain the potential link amongst the persons who were privy to the UPSI and the said seventeen suspected entities.

xviii. In my very first letter dated February 17, 2014, which was addressed to the Investigating Authority, I had informed her of the following –

a. "I had planned sale of a property to Mr. A. R. Murugappan and received an advance of ₹ One Crore only from him. In order to regularize this, I had entered into an agreement for sale – copy attached. However, since the transaction of purchase did not materialize, the monies were subsequently returned to him.

b. I am neither professionally nor personally related to Mr. A. R. Murugappan. …"

xix. The land for the transaction was indeed in existence and was indeed contracted–there is no dispute from SEBI to these facts and there is no allegation that the land transaction was a sham.

xx. I have been accused of insider trading on account of trades done by Gopalakrishnan, who happened to be the son of Murugappan's family astrologer.

xxi. Gopalakrishnan retained the profits with himself. No trail back to me has been alleged.

xxii.No call data records were called or obtained by the Investigation.

xxiii. I repeat that UPSI cannot be deemed to have been communicated without any conclusive evidence as has been ruled inter alia by the Hon'ble SAT in Samir C. Arora vs. SEBI (Appeal No. 83 of 2004).

xxiv. The Interim Order has caused great injury to my reputation."

10.8.3 ***Findings*** **–**

Upon a consideration of the preceding paragraph, a pertinent question arises as to ***whether the source of the UPSI to Murugappan was only Vellayan as alleged in the SCN***. In this context, I note that –

i. The SCN states –

"3. (viii) Thus, the information relating to impending acquisition, which was only in the possession of Noticee No. 1 (Vellayan) and others from CIL, much before the same was announced to the exchanges on May 31, 2011, was deemed to be unpublished price sensitive information…"

ii. A chronology of events pertaining to the acquisition of Sabero by Coromandel (as observed from the Investigation Report), is detailed below –

DATE	EVENTS W.R.T. ANNONUCEMENT OF ACQUISITION
APRIL 20, 2011	Agreement signed between Sabero and Lazard in relation to evaluation of various strategic options for Sabero including potential sale of stake in Sabero and/or fundraising.
MAY 15, 2011	i. Meeting at Chennai to discuss and negotiate the acquisition of Sabero by Coromandel. ii. Legal due diligence exercise in connection with the acquisition of shares of Sabero was entrusted to legal advisors by Coromandel. iii. Chartered Accountant Firm engaged by Coromandel to carry out initial assessment of the financial information provided by Sabero.
MAY 18, 2011- MAY 30, 2011	Continuation of Discussions on major aspects connected to proposed acquisition until reaching a shareholding agreement between Erstwhile promoters of Sabero and Coromandel on 30th May 2011. During this phase various advisors were also introduced to facilitate the negotiations.
MAY 30, 2011	A Share Purchase Agreement ("**SPA**") was entered into between Coromandel and certain erstwhile Promoters of Sabero for acquisition of 42.22% of the equity share capital of Sabero.
MAY 31, 2011	i. Coromandel informed the Stock Exchanges about the acquisition of Sabero. ii. Sabero officials were informed of the arrangement for sale of shares by the Promoters at 10am in a meeting.
JUNE 2, 2011	i. Sabero informed the Stock Exchanges about the acquisition by Coromandel. ii. The Public Announcement was made by Coromandel and was published in various newspapers.

iii. From the abovementioned chronology of events, it is observed that –

a. The PSI in the instant proceedings was the announcement of the acquisition by Coromandel of Sabero on May 31, 2011. The UPSI period was therefore, from May 15–May 31, 2011, i.e. prior to the aforementioned announcement.

b. There were *sixty–nine individuals/entities* who were privy to the said UPSI i.e. announcement of the acquisition by Coromandel of Sabero on May 31, 2011, which *inter alia* included the Chairman, Vice Chairman, Managing Director, Directors, Senior Vice President, etc. of Coromandel alongwith the Chairman, Vice–Chairman, Executive Vice–Chairman, Vice Presidents, Company Secretaries of Sabero and Merchant Bankers, Legal Advisors of both the Companies.

iv. From a consideration of the aforementioned facts reproduced at paragraph 10.8.3(ii)–(iii), I find that the information relating to the impending acquisition of Sabero, which was deemed to be the UPSI, was not only in the possession of Vellayan and others from CIL (as alleged in the *SCN)* but was also in the knowledge of fifty–four other individuals/entities who *inter alia* included the Chairman, Vice–Chairman, Executive Vice–Chairman, Vice Presidents, Company Secretaries of Sabero.

10.8.4 As regards the inference that Vellayan shared a personal and financial relationship with Murugappan, the SCN states as under –

"4. Relationship amongst Noticees.

- *When information was sought from Noticee No. 1 (Vellayan) with regard to his relationship with Noticee 2 (Murugappan), Noticee 1 vide his letter dated Feb 17, 2014, denied having any relationship with Murugappan.*
- *However as per the statement of Murugappan on Nov 26, 2014 given to SEBI, he stated that he is acquainted with Vellayan for the last four decades and that Vellayan's grandfather whose name is Vellayam was his mother's brother and that her name is A R. Amapurani Achi. Vellayan and Murugappan were in contact with each other during pre-UPSI period i.e. May 15, 2011 to May 30, 2011."*

***Personal relationship between Vellayan and Murugappan* –**

10.8.5 In his contentions, Vellayan has submitted –

i. Admittedly, his (Vellayan's) grandfather is Murugappan's maternal uncle (mother's brother). It is pertinent to note that in his letter dated February 17, 2014, Vellayan had denied being personally related with Murugappan. However, vide his subsequent letter dated July 10, 2015, Vellayan admitted that Murugappan is his *grandfather's sister's son* and explained that such relation is not in the known parameters of being a relative in the eyes of law. Vellayan has therefore, maintained and continues to do so till now that Murugappan had no family relationship with him.

10.8.6 I note that as per Section 2(77) of the Companies Act, 2013, and Rule 4 of the Companies (Specifications of Definitions Details) Rules, 2014, the term *'relative'* with reference to any person means –

Anyone who is related to another if –

(i) They are the members of a Hindu Undivided Family

(ii) They are husband and wife, or

(iii) One shall be deemed to be relative of another, if he or she is related to another in the manner, viz.

(a) Father (including step father),

(b) Mother (including step-mother),

(c) Son including step-son),

(d) Son's wife,

(e) Daughter,

(f) Daughter's husband,

(g) Brother (including step-brother) and

(h) Sister (including step sister).

10.8.7 The SEBI (Insider Trading) Regulations, 1992, also employs the same definition of *'relative'* in its provisions.

10.8.8 In the instant case, I find that Vellayan and Murugappan do not qualify to be treated as relatives within the ambit of the definition of '*relative'* in the Insider Trading Regulations. It has to be said however, that Murugappan is related to Vellayan in a general sense.

10.8.9 As alleged in the SCN, Vellayan vide letter dated February 17, 2014, had denied having any relationship with Murugappan and therefore, admitted that *"I am neither personally or professionally related to Murugappan"*. I find that that the statement in Vellayan's aforesaid letter has to be viewed in the context of him not being related to Murugappan within the known parameters of being a relative in the eyes of law.

***Financial relationship between Vellayan and Murugappan* –**

10.8.10 I note that in his very first letter dated February 17, 2014, Vellayan had informed the Investigating Authority: *"I had planned sale of a property to Mr. A. R. Murugappan and received an advance of ₹ One Crore only from him. In order to regularize this, I had entered into an agreement for sale–*

copy attached. However, since the transaction of purchase did not materialize, the monies were subsequently returned to him."

10.8.11 From the *Agreement for sale* dated April 20, 2011, submitted by Vellayan vide letter dated February 17, 2014, it is observed that the said *Agreement* was entered into between Murugappan and him for sale of property situated at *Old No. 191, New No. 64, Uthandi Village, Tambaram Taluk, Kancheepuram District*.

10.8.12 Further, vide his written statement dated November 26, 2014, Murugappan informed the Investigating Authority in response to a query seeking explanation regarding *'how an Agreement dated April 20, 2011, for sale of property situated at Old No. 191, New No. 64, Uthandi Village, Tambaram Taluk, Kancheepuram District had been entered into between Vellayan and him'*, –

"I was on the lookout for buying some properties in the area where the abovementioned property is located. On enquiring with the people, I (got) to know that the property was on sale. Since I know him personally, I met him during March 2011 and discussed the price and entered into an agreement subsequently. There was no third party in the transaction."

10.8.13 From the SCN, it is observed that the details of financial transactions in Vellayan's bank account (Account No. 00042100009838, HDFC Bank, ITC Centre, Anna Salai Branch) with Murugappan, prior to and after the UPSI period, were as follows –

TRANSFER OF FUNDS BETWEEN VELLAYAN AND MURUGAPPAN		
DATE	**AMOUNT RECEIVED BY VELLAYAN FROM MURUGAPPAN (₹ IN LAKHS)**	**AMOUNT PAID BY VELLAYAN TO MURUGAPPAN (₹ IN LAKHS)**
April 20, 2011 (RTGS 135694)	50	–
April 26, 2011 (RTGS 135695	30	–
May 05, 2011 (RTGS 519503)	20	–
March 24, 2012 (Cheque No 42512)	–	50
March 24, 2012 (Cheque No 42513)	–	50
TOTAL	**100**	**100**

10.8.14 Upon a consideration of Murugappan's written statement in light of the *Agreement for sale* submitted by Vellayan, I find that the receipt of ₹ 50 Lakhs by Vellayan from Murugappan on April 20, 2011, corresponds to the date of execution of the aforementioned *Agreement* i.e. April 20, 2011. Further, I find that subsequent instalments towards sale consideration in accordance with the aforesaid *Agreement* were received by Vellayan from Murugappan on April 26, 2011 and May 5, 2011. I find therefore that a substantial portion of the consideration i.e. *70%*, was paid by Murugappan at least a couple of weeks prior to the UPSI period, which commenced on May 15, 2011. I therefore, find that the relationship between Vellayan and Murugappan, which existed even prior to May 15, 2011, has to be viewed in the context of the property transaction admittedly entered into between them vide the aforementioned *Agreement for sale.*

10.8.15 As discussed earlier, the allegation contained in the SCN proceeds on the basis that Vellayan communicated the UPSI to Murugappan, who in turn passed on the same to Gopalakrishnan and Karuppiah. At this juncture, I however, find that the issue defined in Paragraph No. 10.8 (Whether on the basis of personal family relationship of Vellayan and Murugappan and also the financial dealings between them during the UPSI period, it can be concluded that it was only Vellayan who had passed on the said UPSI to Murugappan)*,* cannot be conclusively determined in view of the aforementioned paragraphs 10.8.3–10.8.14 and also in light of the following facts –

i. *Nineteen suspected entities* despite not having traded in the scrip of Sabero during a period of 6 months prior to the Investigation Period, had nonetheless, made substantial gains– several times more than the gains allegedly made by Karuppiah–upon trading in that scrip during the said Investigation Period. Furthermore, as many as *sixty nine individuals/entities* were arrayed as *'insiders',* which raises a strong possibility that any of these entities could have supplied information to the aforementioned *suspected entities.*

ii. There were many more persons who traded in shares of Sabero in a higher quantity and on a larger scale without any prior holding of Sabero shares even before the trades by Gopalakrishnan and Karuppiah. Furthermore, the fact that there were as many as *eight suspected entities* who traded in the scrip in an identical fashion to that of Gopalakrishnan and Karuppiah (*i.e.* entities bought shares during the UPSI or pre–announcement period and subsequently sold such shares in the post–announcement period), leads to a strong likelihood that they too must have been in receipt of the UPSI from the *individuals/entities* who were privy to the UPSI. However, the possibility of the aforesaid *suspected entities* (including Gopalakrishnan and Karuppiah) of trading on the basis of UPSI obtained

from any of the other *individuals/entities*, has not been gone into by the Investigating Authority.

iii. The Investigating Authority has concluded that the *individuals/entities* who included the Vice Chairman, Managing Director, Directors, Senior Vice President, etc. of Coromandel International and also the Chairman, Vice–Chairman, Executive Vice–Chairman, Vice Presidents, Company Secretaries of Sabero and Merchant Bankers, Legal Advisors of both the Companies, were not connected to the *suspected entities* merely on a denial made by those *individuals/entities*. Such approach adopted by the Investigating Authority appears to have resulted in a finding that merely because Karuppiah and Gopalakrishnan had some link to Murugappan, and that Murugappan had some relationship (son of Vellayan's grand aunt) to Vellayan, trades by Gopalakrishnan and Karuppiah could have been only due to communication of UPSI by Vellayan.

10.9 **Conclusion –**

10.9.1 On perusal of the trading patterns of all the entities/persons who had traded in the shares of Sabero during the investigation period (as in the investigation report), I find as under –

i. There were in all *nineteen suspected entities* (including Gopalakrishnan and Karuppiah–HUF), who traded in the shares of Sabero during the investigation period.
ii. These entities too had never traded in the scrip of Sabero during a period of 6 months prior to the investigation period.
iii. These entities have also made gains (ranging between ₹ 0.06 Crores to ₹ 2.98 Crores) by trading in the shares of Sabero during the investigation period.
iv. Out of the aforesaid *nineteen suspected entities*, eight entities were found to have bought and sold Sabero shares in an exactly identical manner as done by Gopalakrishnan and Karuppiah–HUF, (i.e. the entire shares were bought during the UPSI period and were sold by these entities during the post-announcement period).
v. The timing and trading pattern of these entities clearly point to the distinct and certain possibility that their trades were also on the basis of UPSI regarding the acquisition of Sabero by Coromandel.
vi. On further examination of the Investigation Report *vis a' vis* the entities/persons who were privy to the UPSI, it is found that:

a. Including Vellayan, there were in all sixty–nine persons/entities comprising of the management of Coromandel and Sabero, besides the employees and professionals of the two companies, who were privy to the UPSI.
b. It is merely on the basis of their denial of any connection with the *suspected entities* coupled with the analysis of the bank statements of some of the *suspected entities*, Investigation concluded "*prima facie no connection of the suspected entities with the persons privy to the UPSI, could be established*".

vii. Apart from this assertion, I find no other material evidence in the Investigation Report which could lead to the conclusion (arrived by the investigation) that none of the *suspected entities* (except Gopalakrishnan and Karuppiah) could be connected to the persons privy to the UPSI. No other additional evidence has been gathered by investigation, in respect of several other clear instances of insider trading in this case.

viii. On the basis of the findings of the investigation it is difficult to arrive at a conclusion as to who exactly passed the information to Murugappan and thereby to Gopalakrishnan and Karuppiah. As stated above, many other entities had also traded in the scrip in an identical fashion during the UPSI period. As many as sixty–nine persons/entities had access to the UPSI during the Investigation Period. In this backdrop, a pertinent question arises as to the channel of communication which resulted in passing the UPSI to the said entities. The SCN alleges Vellayan's connection/relationship with Murugappan as the key evidence to indicate the flow of information from Vellayan to Murugappan and in turn to Karuppiah and Gopalakrishnan. It is however, observed that the investigation has not adduced any supporting evidence to arrive at the conclusion that the UPSI was passed by Vellayan to Murugappan and by Murugappan to Gopalakrishnan and Karuppiah–HUF who traded in the shares. Apart from inferences (even if entirely logical), it is equally important that there should at least be some collateral material on record to support the assertion/conclusion. This is important to rule out the possibility of persons privy to the UPSI other than Vellayan having passed on the UPSI to Murugappan, Gopalakrishnan and Karuppiah–HUF or to any of the other seventeen *suspected entities*, several of whom had also gained substantially by what clearly appear to be transactions based on UPSI. In this maze of facts, it is not possible to conclusively determine from where the information has flowed to the persons/entities who had traded and benefited.

ix. There was also an allegation of funding of Gopalakrishnan by Murugappan. However, it is seen that although Gopalakrishnan has received funds from Subramaniam and not Murugappan, Subramaniam is not made a Noticee in the case nor was his statement recorded by the investigation.

x. In my view, proceeding merely on the basis of available but inadequate evidence on record, without support of any collateral material to arrive at a reasonably conclusive finding that it was indeed only Vellayan who had passed the UPSI to Murugappan, who thereafter passed on the same to Gopalakrishnan and Karuppiah, may not be just and reasonable. It is also important to arrive at a conclusion regarding the many others who had made money in circumstances exactly identical to Gopalakrishnan and Karuppiah–HUF.

xi. It is also relevant to note the observations made by Hon'ble Securities Appellate Tribunal in *Appeal No. 83/2004*–***Samir C. Arora vs. SEBI*** decided on October 15, 2004 that the charge of insider trading should not be made against any person without a deep examination of the issues involved.

10.9.2 In this case, I therefore, feel a deeper examination is definitely warranted in view of all that has been discussed earlier.

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

10.9.4 A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich by way of wrongful or ill-gotten gains or avoidance of potential loss made on account of such activity. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the

securities market. In this regard, necessary powers have been conferred upon it under the securities laws. SEBI Insider Trading Regulations have put in place a framework for prohibition of insider trading in securities. The prohibitions provided in the Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the Insider Regulations would get defeated if violators of the Insider Trading Regulations are not made to face the consequences. The Hon'ble Securities Appellate Tribunal (in ***Samir Arora vs. SEBI*****;** Appeal No. 83 of 2004) has also emphasized that no punishment is too severe for those indulging in activities like *insider trading, fraudulent trade practices and professional misconduct*.

10.9.5 All things considered, I am of the view that this is the fit case of re–investigation and SEBI should employ all the investigative powers entrusted to it to unearth the entire truth and to find out the role of each of the suspected entities *vis a vis* the persons/entities privy to the UPSI including the Noticees herein.

Order –

11.1 I, therefore, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, read with Section 11, 11(4), 11B and 11C read with Regulation 11 of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 thereof, hereby direct SEBI to re–investigate the matter of the alleged insider trading in the scrip of Sabero.

11.2 SEBI shall endeavour to complete the investigation within six months from the date of this Order and thereafter, to conclude the matter expeditiously.

11.3 The Interim Order dated May 21, 2015 alongwith the SCN dated June 8, 2015, issued against Mr. Vellayan, Mr. Murugappan, Mr. Gopalakrishnan C. and V. Karuppiah–HUF, are accordingly disposed of.

11.4 I note that vide the Interim Order dated May 21, 2015, SEBI had directed the impounding of unlawful gains amounting to ₹ 1,92,07,206/- (alleged gain of ₹ 1,30,38,795/- along with interest of ₹ 61,68,411/-) made by Mr. Gopalakrishnan C. and ₹ 23,43,219/- (alleged gain of

₹ 15,93,325/- along with interest of ₹ 7,49,894.10/-) made by V. Karuppiah–HUF (Karta: Mr. V. Karuppiah) lying in the bank accounts of Mr. Gopalakrishnan C., V. Karuppiah–HUF (Karta: Mr. V. Karuppiah), Mr. A.R. Murugappan and Mr. A. Vellayan. Accordingly, SEBI vide letter dated May 22, 2015 directed all the Banks not to make any debit in the account of the Noticees until further orders. Pursuant to this, Murugappan, in compliance to the aforesaid Order had created a fixed deposit with DBS bank to the tune of ₹ 2.20 Crores. In view of the aforesaid, SEBI vide letter dated July 7, 2015, directed all the banks, to release the freeze on the bank accounts of the Noticees, except the bank account of Murugappan with DBS Bank, Anna Salai Branch, wherein he has created the aforesaid fixed deposit. I find no reason to disturb the extant position at this stage.

11.5 Order accordingly.

Place: Mumbai
Date: May 12, 2016

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA