WTM/SKM/EFD-1- DRA-II/ 19 /2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S K MOHANTY, WHOLE TIME MEMBER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992

ORDER

Sl No	Name of Noticee	In the matter of	PAN
1	Mr. Ashok Motiani	Freshtrop Fruits Limited	ABCPM8237G

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1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**), conducted an investigation into the suspected insider trading activities in the scrip of Freshtrop Fruits Limited (hereinafter referred to as **"the Company / FFL"**) for the period from January 01, 2015 to February 10, 2015 (hereinafter referred to as "**Investigation Period/IP"**). Based on the finding of investigation, following facts have been observed :

   (a) FFL was incorporated as a Private Limited Company on September 30, 1992, at Ahmedabad. It was converted into a Public Limited Company on September 22, 1994. FFL got its securities listed at (hereinafter referred to as **"BSE"**) on May 9, 1995

   (b) Mr. Ashok Motiani (hereinafter referred to as **"the Noticee"**) is one of the Promoter-Director of the Company. The promoter's shareholding during the quarter ending on December, 2014 was 55.86% and the same decreased to 55.43% by the end of quarter ending on March, 2015. The reduction in the promoters' shareholding from 67,84,611 (55.86%) shares to 67,31,870 shares (55.43%) during quarter ending on March 31, 2015 as compared to quarter ending on December 31, 2014 was found to be on account of sale of 72,741 shares by the Noticee and purchase of 20,000 shares by Freshcap Investment Pvt Ltd.

(c) It was further observed during the investigation that FFL has two major business segments namely Fresh Fruits Segment and Food Processing Segment. Their respective contributions to total revenue of the Company in FY 2013-14 and FY 2014-15 were as follows:

Source: Annual Reports of FFL

	Revenue Contribution in FY 2013-14 (in Rs. crore)	% Contribution to Revenue in FY 2013-14	Revenue Contribution in FY 2014-15 (in Rs. crore)	% Contribution to Revenue in FY 2014-15
Fresh Fruits Segment	91.12	79.38%	92.368	75.04%
Food Processing Segment	23.67	20.62%	30.727	24.96%
Total Revenue	114.79	100%	123.10	100%

(d) It was also noted that the Company had a net profit of Rs 5.65 crore and Rs 7.58 crore for the year ended on March 2014 and on March 2015 respectively. The increase in net profit for FY 2015-16 was driven by increase in revenue from operations and as the above table suggests, more than 75% of FFL's revenue was generated from its Fresh Fruits Business during FY ended in March 2014 as well as in March 2015.

(e) During the course of investigation, the Noticee had vide letter dated April 20, 2017 informed that he was provided with information on sales and party wise debtors on a daily basis for the Fresh Fruit Business Segment (which contributed more than 75% of FFL's annual revenue) and on a weekly basis for the Food Processing Business Segment. Based on the same, it was viewed that the Noticee had access to aggregate Sales and Debtors data during the entire quarter of 01/10/2014 to 31/12/2014. Since, the Income Statement of an entity consists of revenues, expenses, and the net profits /losses over a specified period of time, the access to aggregate sales and debtors data to the Noticee on a daily as well as weekly basis enabled the Noticee to

have knowledge of the amount of revenue earned during a quarter and also information about quarter-to-quarter change in revenue.

(f) The investigation has also observed that during the Investigation Period, sensex of BSE moved from 27485.77 to 28355.62 registering an increase of 869.85 points (3.16%), whereas during the same period, price of the scrip of FFL in BSE moved from Rs. 118.80 to Rs. 207.00 (on January 21, 2015) and closed at Rs. 144.20 on February 10, 2015, thereby registering an overall increase of Rs. 25.40 (21.38%). It was further observed that closing price of the scrip on February 06, 2015 (Friday) was Rs. 159.30. Then, on February 09, 2015 (Monday) the scrip of FFL had an opening price of Rs. 145.00. During the day, it had hit the lower circuit price of Rs. 143.40 at 12:46:59 hrs. It was observed that major trading in the scrip on February 09, 2015 happened after 12:46:59 hrs, as a result, 32% of day's trading volume in scrip of FFL were traded at the lower circuit price. Thus, it was observed that there was a steep fall in the price of the scrip on February 9, 2015 leading to the lower circuit and a significant portion of daily volume (32%) was traded at this lower circuit.

(g) Based on the aforesaid findings in course of investigation, it was noted that since the Noticee was being provided with information on sales and party wise debtors on a daily and weekly basis, which were the key drivers of financial results, such details were material information having impact on the price of the scrip. Further, the Company had informed BSE about the Financial Results for the 3rd quarter i.e October – December, 2014 on February 07, 2015 (Saturday) at 19:17 hrs., and the same was disseminated on the website of BSE on February 09, 2015 (Monday) at 07:58 hrs. The financial information pertaining to the quarter ending on December 31, 2014 was not available in the public domain (till February 09, 2015) and Noticee, being the Chairman cum Managing Director (hereinafter referred to **"CMD"**) of FFL is alleged to have complete access to it as on January 05, 2015, being the first Monday post the quarter ending on December, 2014 and had privileged access to the Company's internal affairs through the material information on sales and debtors data of the Company.

(h) It was also noticed that during the period when the Price Sensitive Information (hereinafter referred to as **"PSI"**) remained unpublished, the Noticee had sold a total of 72,741 shares on

February 02, 2015 and February 03, 2015 while in possession of unpublished price sensitive information (hereinafter referred to as **"UPSI"**).

2. Based on the above findings, a show cause notice dated October 24, 2018 (hereinafter referred to as **"SCN"**) was issued to the Noticee alleging that being an insider and while in possession of UPSI, the Noticee has traded in the shares of FFL and by doing so, he has acted in contravention of provisions of Section 12A (d) and (e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**), Regulations 3(i) and 4 of SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**) read with Regulation 12 of PIT Regulations, 2015. Accordingly, the Noticee has been called upon to show cause as to why appropriate directions under Section 11B of the SEBI Act, including directions for disgorgement of unlawfully averted loss of Rs 26.69 lakh should not be issued against him for trading in the scrip of FFL while in possession of UPSI.

3. From the records, it is noted that the Noticee has responded to the SCN vide his written reply dated December 08, 2018. Subsequently, in the interest of natural justice, the Noticee was provided with an opportunity of personal hearing. On February 06, 2019, the Noticee along with his authorised representative appeared before me and advanced his arguments and explained his case on the lines of reply already filed by him. During the course of hearing, certain queries were raised and the Noticee was asked to provide details and documents in support of his explanations. Accordingly, the Noticee has filed additional reply dated February 13, 2019. After perusing the written replies and after hearing him personally, I would summarise the contentions of the Noticee as under:

   (a) Complete set of documents have not been furnished to enable the Noticee to defend effectively.

   (b) He was not possessing any UPSI and the sale of shares were not made based on any UPSI, therefore, the allegation pertaining to insider trading is baseless.

   (c) There was no UPSI in existence on January 05, 2015. No consolidated data has been put up to him along with a daily or weekly report. Further, the Noticee was not having any information about expenses and profit of the Company on periodical basis.

Information of profit and loss of the Company for the quarter ending on December, 2014 was made available only on February 05, 2015, when the Draft Financial Result was put up to him for his comments. Hence, it is wrong to allege that sale made on 2nd and 3rd February, 2015 were motivated by any UPSI possessed by him on January 05, 2015.

(d) As the Draft Financial Result was put on February 05, 2015 therefore, the day the Draft Financial Result was put up to him for comments should have been taken as date for the commencement of period for UPSI.

(e) SCN has been issued without appreciating the factual background provided during the course of investigation, more particularly the issues and facts pertaining to the nature of business which has impact on the financials of the Company during the certain specified period only.

(f) Financial result of the Company for 2nd and 3rd quarters are insignificant as normally no sales/trades take places during these quarters.

(g) The fruit export business was consisting primarily of grapes and the season for the sale/trade of grapes starts in the month of February and ends in April. Therefore, the periods which cast impact on the revenue and finances of the Company are mainly 1st and 4th quarters of a year.

(h) The results related to the 2nd and 3rd quarters for the Company are historically known to be not good and the same is available in the public domain. Hence the results of these two quarters are not really price sensitive.

(i) Allegation made under the SCN is wrong, frivolous and not made on correct appreciation of the information. The SCN has made no comparable study of the financial results of quarter ending on December, 2014 with the corresponding quarter of any other years, rather proceeded on wrong perception by comparing the data of quarter ending on December, 2014 with the financial result of preceding quarter of the same financial year.

(j) The financial result of the quarter ended on December 31, 2014 was in line with the results of the corresponding quarter of other years, therefore, there is no abnormality observed in the result of the quarter so as to make it PSI.

(k) It is normally assumed that financial result for the quarter ended in December would be similar to result of corresponding quarter of past years. Hence, even assuming him to have the information, it would not make it price sensitive to trade adversely.

(l) Noticee had taken pre-clearance of trades under the Code of Conduct and further has made all the required disclosure in due compliance of law and procedure.

(m) It is wrong to allege that trades were placed when the price of the scrip had reached high and the same was with an intent to avoid further losses.

(n) He had transacted to arrange funds to meet the payment and expenses required/to be required in connection with the wedding of his daughter. The Noticee has not made any such trade/transaction in the scrip of the Company either in the past or in future.

4. During the course of hearing, certain queries were raised to the Noticee and he was asked to provide clarification to the queries with supporting documents, if any. In response, vide letter dated February 13, 2019 and July 29, 2019 the Noticee has submitted his explanations and reiterated that he received the Draft Financial Result of the Company for the quarter ended on December 31, 2014 for the first time only on February 05, 2015 for his examination and comments, before the same was submitted to the Statutory Auditors. The Noticee has submitted that he had made the impugned sale of 72741 equity shares of the Company after obtaining due pre-clearance from his Company for sale of 1,00,000 equity shares. He has also not purchased any equity shares of the Company afterwards from the sale of the impugned shares on 2nd and 3rd of February 2015. It has been further claimed that no sale data was actually made available to him on January 05, 2015 as alleged in the SCN as there was no sales of grapes during the 3rd quarter i.e October - December. The Noticee has further explained that his sale of shares after obtaining necessary pre-clearance from the Company was aimed at mobilizing funds for meeting various payments obligations in connection with the marriage of his daughter. The Noticee has also provided an explanation with respect to the transfer of funds made to the Company after the sale of impugned shares and has submitted that he used to regularly park his surplus funds with the Company. This was also

beneficial to the Company as it would pay a lower rate of interest to the promoter as compared to the market rate of interest payable to a Bank, if the Company was to avail funds from a Bank.

Consideration of Issues and Findings:

5. After examining the allegations charged in the SCN, the contents of the Noticee's submissions made vide letters dated December 08, 2018, February 13, 2019 and July 29, 2019 and also his submissions made during the personal hearing conducted on February 06, 2019 and other relevant material available on records, I find the following issues arise for consideration on merit.

   I. Whether the Noticee is an insider within the definition of PIT Regulations?

   II. Whether financial result of the quarter ending December is PSI?

   III. Whether Noticee has traded in the shares of FFL?

   IV. Whether the Noticee was in possession of UPSI on January 05, 2015 and traded in the shares of FFL while in possession of UPSI so as to be held in violation of Section 12A (d) and (e) of the SEBI Act, 1992, read with Regulations 3 (i) and 4 of the PIT Regulations and Regulation 12 of the PIT Regulations 2015.

6. Before the issues framed above are taken up for examination, it would be relevant to have a look at the provisions of law pertaining to the contraventions as alleged against the Noticee. The relevant provisions as alleged in the SCN, are reproduced as under for ready reference:

SEBI Act, 1992

"12A. No person shall directly or indirectly

(d) engage in insider trading;

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

SEBI (Prohibition of Insider Trading) Regulations, 1992

"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;

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

7. Now, I proceed to examine and decide the issues framed in para 5 above.

Issue No. I- Whether the Noticee is an insider within the definition of PIT Regulations?

8. In this regard, I note that regulation 2 (e) of PIT Regulations, defines the term "insider" as under:-

"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 a company, or

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

9. Further, regulation 2(c) of PIT Regulations, defines "connected person" as any person who -

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

ii. occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

[Explanation: - For the purpose of clause (c), the words "connected person" shall mean any person who is connected person six months prior to an act of insider trading;]

10. As noted earlier, the Noticee is the CMD of the FFL and also falls in the category of promoter of FFL. The Noticee has not disputed that he was the CMD of FFL during the relevant period of investigation. Regulations 2 (e) (i) of PIT Regulations defines "Insider" as a person who is or was connected or deemed to be connected with the Company, while Regulation 2 (c) (i) of PIT regulations defines "connected person" as any person who is a director, in term of clause (13) of

Section 2 the Companies Act, 1956, or who is deemed to a director of that company by virtue of sub-clause (10) of Section 307 of that Act. Therefore, in view of the admitted position that the Noticee was occupying the position of CMD during the Investigation Period makes the Noticee an "Insider" within the ambit of definition as defined under the PIT Regulations. Thus, the answer to the first issue is in affirmation.

Issue No. II- Whether financial result of the quarter ending December is PSI?

11. I note that Regulations 2 (ha) of PIT Regulations, defines as to what constitutes PSI. In terms of the Regulation 2 (ha) of PIT Regulations, PSI mean 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. The definition also provides an explanation including instances which shall be deemed to be PSI wherein, the periodical financial results of a company constitutes as one of such instances mentioned under the explanation to the definition of PSI. It is further noted that FFL has informed to the stock exchange about the financial result of FFL for the quarter ending on December 31, 2014 on February 07, 2015 and the same was further disseminated on the website of the stock exchange on February 09, 2015.

12. I note that the Noticee has submitted that the financial results of FFL for 2nd and 3rd quarters are generally not very significant as normally very insignificant quantity of sales take places during these two quarters. He has also submitted that during the above mentioned two quarters, the business of the Company remains dull and doesn't yield any significant business. The business segment which constitutes 70% of the turnover and over 90% of the profit is related to fresh fruit export business which is a seasonal business. The fruit export business consists primarily of grapes for which, the season for the trades starts in the month of February and ends in April of a year. Hence, the periods which actually influence the financials of the Company significantly are 1st and 4th quarters. It is further submitted that the financials results related to the 2nd and 3rd quarters are historically known to be not good and the same is corroborated by the past performances of FFL for these quarters

that are also available in the public domain. Therefore, the results of these two quarters which are historically known to be not good, are not price sensitive in nature.

13. After having gone through the replies of the Noticee and the submissions advanced by him on the issue of PSI, I note that the arguments advanced by the Noticee about the financial results and seasonal nature of its business appear to be forceful. From a perusal of the quarter's results of FFL over last 03 years, I find that the Company has incurred losses in the 2nd and 3rd quarters while earning handsome profits during 1st and 4th quarters. However, I can't agree with his submissions that the financial results of 2nd and 3rd quarters should not be considered as sensitive information. I find that the definition under the PIT Regulations, in clear and an unambiguous terms, includes the periodical financial results of a company as PSI. The definition does not make any distinction between good or bad financial results. It also does not carve out any exception that historically consistent performance of any company for any quarter or period would not be treated as price sensitive information. In case the argument of the Noticee that since historically the financial performance of the Company for the two quarters, i.e 2nd and 3rd quarters have not been good or have resulted in losses which is known to the public at large, hence, do not constitute price sensitive information is accepted, then the historically good results for the remaining two quarters i.e 1st and 4th quarters would also not be called price sensitive on the same logic that the performances of the Company for these two quarters are also available in public domain and were known as profitable quarters. The definition with respect to price sensitivity of an information under the Regulations treats includes the periodical financial result of a company as PSI and it does not depend on the good or bad performance of the company during the relevant period to fall under the definition of PSI. Moreover, both profit and loss of a company are equally important, material and sensitive from the point of view of an investor who can take his investment (buy/sale) decision depending on the good or bad financial results of the company as soon as it is known to the public. Therefore, rightly so, the definition under the PIT Regulations, make the periodical financial results as PSI irrespective of the performance of company during the period, as the quantum of performance of a company is likely to have an impact on the scrip of the company. Therefore, for the reasons

recorded hereinabove, I find that the declaration of the financial result of FFL for the quarter ended on December 31, 2014 was indeed a PSI within the definition of PIT Regulations.

Issue No. III:- Whether Noticee has traded in the shares of FFL?

14. I note that it is not disputed by the Noticee that he has sold a total quantity of 72741 shares in the scrip of FFL on 2nd and 3rd February, 2015. The Noticee has executed sell orders for 30,000 shares and 42,741 shares on February 02, 2015 and February 03, 2015 respectively in the scrip of FFL. The Noticee has submitted that it has obtained pre-clearance from the Company i.e FFL for effecting the sale and the reasons for taking pre-clearance to sell shares were mentioned in his application for pre-clearance dated January 27, 2015. Under the circumstances, the answer to the third issue also ends in affirmative.

Issue No. IV:- Whether the Noticee was in possession of UPSI on January 05, 2015 and traded in the shares of FFL while in possession of UPSI so as to be held in violation of Section 12A (d) and (e) of the SEBI Act, 1992, read with Regulations 3 (i) and 4 of the PIT Regulations and Regulation 12 of the PIT Regulations 2015?

15. As explained above, the Noticee, being the CMD of FFL is an "insider" and a "connected person" in terms of Regulation 2 (c) r/w 2 (e) of the PIT Regulations. It has also been observed above that the declaration of periodical financial results by a company is a PSI within the ambit of PIT Regulations. It is also a fact that the Noticee has sold his shares of FFL on 2nd and 3rd February, 2015. Therefore, the issue now remains for consideration and determination is whether the information, if any that was made available to the Noticee on January 05, 2015 was a PSI, which was not published or whether the Noticee was in possession of an UPSI as on January 05, 2015. Further it has to be examined if the sale of equity shares by him on 2nd and 3rd February can be held to be as trades executed while in possession of UPSI.

16. As stated above, Regulation 2 (ha) of the PIT Regulations defines "price sensitive information" and Regulation 2 (k) defines *"unpublished"* means *"information which is not published by the company or its agents and is not specific in nature."* The explanation attached to Regulation 2 (k) provides that *"Speculative reports in print or electronic media shall not be considered as published information."*

17. The instant proceedings against the Noticee alleges violations of provisions of SEBI Act and PIT Regulations on the ground that the Noticee, being the Managing Director of FFL has sold 72741 shares of FFL on 2nd and 3rd February, 2015 while having knowledge or in possession of the adverse quarterly results of FFL for the quarter ending 31st December 2014, before the same were disseminated to the general public through stock exchange on 9th February, 2015. The Noticee has thus traded in the shares of FFL while in possession of UPSI.

18. I have gone through the allegations made on the Noticee in the SCN, the reason recorded behind the imputation, the replies filed by the Noticee and arguments advanced with documents in support of the arguments to defend the allegations. The main allegation in the SCN is that on January 05, 2015 the Noticee came in possession of UPSI relating to quarterly financial results of the Company for the quarter ending December 31, 2014 and he had traded in the scrip of the Company on 2nd and 3rd February 2015 by taking advantage of the UPSI thereby avoided loss to the extent of Rs. 26.69 lakh.

19. Thus, as stated above, the core issue remains to be decided as to whether any material information was available to the Noticee on January 05, 2015 and whether the said information if any, was PSI within the ambit of Regulation 2 (ha) of PIT Regulations. Accordingly, the sale of shares by the Noticee on 2nd and 3rd February, 2015 can be categorised to have been executed while in possession of an UPSI, which was not available/disclosed in public domain.

20. I note from the records and submissions made by the Noticee that he was being provided with information on sales and party-wise debtors on a daily basis for the Fresh Fruits Business and on a weekly basis, in respect of the Food Processing Business. Based on the same, allegations

have been made in the SCN that the information provided to the Noticee on January 05, 2015 (first Monday after the quarter ending December 31, 2014), has put the Noticee in the knowledge of the results of FFL for 3rd quarter in advance before the same was disseminated in public domain. Under this presumption, the sale of shares of FFL made by the Noticee has been alleged to have been influenced by the exclusive possession of the PSI that was not been disclosed to public. I also note that the said allegation has been made based on the Noticee's own averment, made during the course of investigation, when the Noticee vide his letter dated April 20, 2017 has admitted that he was being provided *with information on sales and party-wise debtors positions on a daily basis for the Fresh Fruits Business, and information on sales and sales outstanding (debtors position) on a weekly basis for the Food Processing Business.*

21. Though the Noticee has not denied the contents of his letter dated April 20, 2017, he has vehemently contested the assumption made in the SCN on the basis of his letter that he was in the possession of an UPSI. The Noticee has further denied that the sale of 72741 shares made by him was under the influence of any unpublished negative result of FFL for the quarter ending December, 2014. He has contended that he was not in possession of any UPSI as no report was made available to him on January 05, 2015. Further, the Noticee has clarified that the information about sales and debtors position were made available to him, provided there happened to be any sales of fruits. As per the Noticee, there were hardly any sales/exports of fruits during the 3rd quarter, hence, no such daily or weekly report was being put up to him during the said quarter. I find the contention of the Noticee about negligible sales or no sales during the 2nd and 3rd quarter of a year finds support from the SCN wherein at para 7, it can be observed from the financial results of the company that it had registered a net sales figure of Rs 120.50 crores in the 4th quarter while there were a meagre amount of sale of Rs 10.23 crores and Rs 6.14 crores during 2nd and 3rd quarters respectively. In view of this, the Noticee has stated that the allegations that he had received a PSI, on 5th January 2015 based on the sales information of fruits during preceding quarter is mere a conjecture or at best an assumption having no supporting basis. Without prejudice to the above, the Noticee has additionally submitted that even assuming without admitting, that a report of sales and debtors data was made available to him on January 05, 2015, the said report/data so put up to

him, by no standard, can be held to be containing information which were so material enough to project an exact or proximate details of the financial results of the Company for the relevant quarter thereby bearing a material impact on the price of scrip of FFL, if got published.

22. I have gone through the SCN and documents annexed to it, in support of the allegations made against the Noticee and note that the SCN does not contain any report or data, which was allegedly put up to the Noticee on January 05, 2015. There is nothing on record to substantiate the imputation made in the SCN that the Noticee was furnished with information, which were price sensitive and which, if got published, would have materially affected the share price of FFL. It is the contention of the Noticee that the 3rd quarter is not the right period for sale/export of fruits, specially grapes and in the absence of any sales happening during the 3rd quarter, there was no daily and weekly report on sales/debtors required to be put up to him. The Noticee has categorically denied having received any such information on January 05, 2015 for the 3rd quarter. The submission of the Noticee is that the allegations have been made merely based on the contents of his own letter dated April 20, 2017, without appreciating the fact that such information about sales and debtors were put up to him only, when sales took place. The submissions of the Noticee further finds strength from the facts that the main source of the revenue of FFL have been from the export of grapes and the harvest of grapes remained confined to the months of February to April of a year (not during the quarter of October to December).

23. On a perusal of a sample of reports that were produced by the Noticee before me, (which were also submitted by the Noticee along with his letter dated April 20, 2017) in respect of the Fresh Fruits business, that were being made available to him during sales time, it is noted that reporting of such daily and/or weekly information contained figures such as invoice numbers, party names, container numbers, date of arrival-departure and invoice value for fresh fruit being transported. It is observed that such report were made available to him at a frequency of around eight-nine times in a month, during the period between January 23, 2015 and February 10, 2015, in respect of the Nasik and Sangli packing houses of FFL. Some of the documents annexed to the Noticee's letter of April 2017 reflect "season advance" including invoice value, dispatch details, as well as

realisation details, with respect to particular invoice numbers. Considering the fact that the aforesaid information were being provided to the Noticee on a daily and/or weekly basis during the harvest season of grapes only and such reports on sales of fruits did not contain or reflect any information pertaining to the consolidated financial performance of the Company, for the quarter ending on December, 2014 during which a negligible amount of sales took place, the Noticee can't be expected to possess the consolidated quarterly financial information immediately after the quarter ending i.e first Monday after end of December 2014 as alleged in the SCN, unless anything contrary is suggested by the SCN. As such, based on the information of sales and debtors data on a daily and weekly basis and the format in which the data was so made available to the Noticee, I am of the view that the data furnished to him didn't contain any consolidated information on the financials of the Company so as to be held as price sensitive material. The contents of the sample data and format in which he used to receive the sales and debtors' data as annexed to the Noticee's aforesaid letter corroborate his contention that no such aggregate financial data for the entire 3rd quarter was made available to the Noticee on January 05, 2015. It is also observed from the submission of the Noticee and materials on record that reporting of sales data to the Noticee started only towards the end of January 2015, with the commencement of sale season of grapes.

24. Notwithstanding the above, from the perusal of the sample data as made available to the Noticee relating to the daily and weekly report of sales of fruits, I observe that the data *per se* didn't contain anything unique or exclusive, which if got published, would have affected the decision making of an investor in the Securities Market. Therefore, in the absence of any material evidence on record substantiating the exclusive possession of financial result of FFL by the Noticee on January 5, 2015 itself, it is difficult to conclude in the facts of the case that the sales and debtors report contained such material and price sensitive information which on publication, was likely to affect the price of FFL and the possession of such information had put the Noticee in an advantageous position to the exclusion of others and further, the trades of the Noticee was executed while in possession of such PSI which was otherwise not available in public domain.

25. As observed earlier, the Noticee had sold shares in FFL pursuant to obtaining pre-clearance from the Company and the same was obtained with a view to sale 1,00,000 equity shares. The main reason for the proposed sale as stated by the Noticee was *"to arrange funds in connection with payment to various agencies which were engaged in the marriage of my daughter".* In this connection, the Noticee has furnished details of various payments made or expenses incurred towards the wedding expenses his daughter. From the perusal of such details including the bank statement as furnished by the Noticee for the relevant period, it is observed that, after executing the sales of shares of FFL, the Noticee has transferred funds amounting to Rs. 20.00 lakh to his wife and various other amounts to different other entities in connection with wedding expenses and at the same time the Noticee has also transferred an amount to the tune of Rs. 1.25 Crore to the account of FFL on February 07, 2015. The Noticee has submitted that the amounts paid to the Company was not marriage-related, but a transfer in the form of loan/deposit to the Company. He has further submitted that he has been making such deposits to the Company in the past as well out of this surplus funds and the same was for the benefit of the Company as the funds had been made available to the Company at a relatively lower rate of interest.

26. It has been observed earlier that the pre-clearance obtained by the Noticee has not been in dispute. It is also not in dispute that trading window was not closed when the impugned trades of the Noticee took place on 2nd and 3rd February, 2015. It is observed from the record that trading window was closed from 4th February, 2015 to 9th February, 2015 as the preparation of Draft Financial Result commenced on 4th February, 2015 and the approved financial result for the quarter ended on 31st December, 2014 of FFL was disseminated on 9th February, 2015. I have also observed earlier that the allegation that the Noticee possessed UPSI on January 05, 2015 is factually not found to be supported by any piece of evidence.

27. The Noticee has also submitted that he had never indulged in any unfair practices. Even, pursuant to the sale of 72741 equity shares, he has made true and fair disclosure in term of the PIT Regulations to the public at large. He has further submitted that he possessed an impeccable record and has not been found guilty for any act of contravention as he has never traded in the shares of

FFL, more particularly has not sold the shares of FFL in the past or even after the impugned trades. The Noticee has contended that even after the disclosure of sale of shares by the Noticee to the public, the said disclosure had not brought any adverse impact on the scrip of FFL. Therefore, it is not right and justified to allege that the Noticee was in possession of any PSI, which was not published and the information was so material that had it been published, it would have impacted the price of scrip of FFL.

28. Be that as it may be, keeping in view the undisputed facts that the Noticee has obtained pre-clearance for sale of 1,00,000 equity shares vide application dated January 27, 2015 and that the trading window was open during the period when the alleged trades took place and also that the explanations furnished by the Noticee pertaining to the expenses related to his daughter's marriage are reasonably supported by evidence, I am of the view that the facts and evidence based on which the allegations of indulging in an act of insider trading have been made against the Noticee are not sufficient to establish the charges levelled under the SCN. It has to be kept in mind that the Noticee is a Promoter- Director of FFL. The Promoters' shareholding of FFL amounting to 55.43 % are closely held by the Noticee and his relatives. They together hold around 67.31 Lakh equity shares of FFL. In this regard, I find it apt to refer to the observation of the Hon'ble SAT in the matter of *Manoj Gaur Vs SEBI* (DOD-03/10/2012) in which the Hon'ble SAT has held that -

> *" 16. We had an occasion to deal with a similar situation in the case of Mrs. Chandrakala vs. The Adjudicating Officer, Securities and Exchange Board of India [Appeal no 209 of 2011 decided on January 31, 2012] where we have observed that prohibition contained in regulation 3 of the Regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he has traded on the basis of unpublished price sensitive information unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he did not trade on the basis of*

unpublished price sensitive information and that he traded on some other basis, he cannot be said to have violated the provisions of regulation 3 of the Regulations." (emphasis supplied)

29. I find that in the instant case, in the absence of any evidence on record to suggest that the Noticee was provided with the aggregate or consolidated data on quarterly financial performance of FFL on January 05, 2015 which contained information material enough to influence the decision making by any investor , it would not be proper and justified to hold the Noticee accountable for such unsubstantiated insider trading charges levelled in the SCN. The records don't suggest that the impugned trades of the Noticee were motivated by any price sensitive information that was in his possession on January 05, 2015. In this regard, I notice that the opening price of the equity shares of the Company on January 05, 2015 was Rs. 120.50 and it reached upto Rs. 207.00 on January 21, 2015. Thus, after January 05, 2015, there has been a steady rise in the price of the scrip of FFL and it reached Rs. 207.00 on January 21, 2015. Afterwards, the share price of the Company started showing a slight depression, till the financial results for the 3rd quarter came to be disseminated on February 09, 2015. Notably, though the price of the scrip of FFL was on a rise from January 05, 2015 onwards, there was no trades executed either by the Noticee or any of his relatives. It was only on 2nd and 3rd February, 2015, that the Noticee executed the impugned trades after obtaining the pre-clearance and after making disclosures in terms of regulation 13 of PIT Regulations. I also note that the Noticee had bought 37,391 shares (in the weighted average price range of Rs 33.96 - Rs 38.52) of FFL during July 2014 and had sold 23,000 shares during December 09, 2014 to December 11, 2014 (in the weighted average price range of Rs. 123.35 – Rs. 123.78). However he, did not trade in the scrip of FFL during the period December 12, 2014 to February 01, 2015. It is also noted from the record that after selling the shares on 2nd and 3rd February 2015, the Noticee had not sold any shares in the scrip of FFL during the period February 04, 2015 to August 31, 2015, even though, the price of FFL scrip which had fallen down slightly after January 21, 2015 till February 09, 2015 recovered again and reached to the level Rs 195.80 on February 20, 2015 within 10 trading days. To sum up, it can be reasonably concluded from the records that the Noticee was free to sell his shares at the best possible price, when the price of the scrip touched its peak of Rs. 207.00 during January 2015 or even after the declaration of financial results for the quarter when

the share price went up to Rs. 195.00 per share after a temporary downfall, had he been influenced by an UPSI in his possession on January 05, 2015. It appears that the Noticee has sold the shares as per his own plan when the trading window was open and without being guided by any UPSI.

30. I also note that the Hon'ble SAT in the matter of Manoj Gaur (Supra) has observed that *"If the intention of Mrs. Urvashi Gaur and Mr. Sameer Gaur had been to capitalize on the UPSI allegedly communicated by Mr. Manoj Gaur, the quantum of purchase would not have been so small. Both the appellants are financially independent and trade independently which is clear from their trading pattern that they have been buying the shares in similar quantities in the immediate past as well as on later dates."*

31. Similarly, I also note that the Noticee had obtained the pre-clearance for sale of 1,00,000 shares, whereas he sold only 72741 shares. He could have sold the entire 1,00,000 shares if his intention was to capitalize on the UPSI that was allegedly in his possession on January 05, 2015. Moreover, the alleged motive to avoid loss also as has been attributed to the Noticee in the SCN is found to be factually weak, as the price of FFL shares re-bounced to Rs. 195 within 10 trading days after the publication of quarterly financial results and the Noticee could have sold even more profitably, had he sold the shares after the declaration of quarterly results. All the aforesaid factual observations indicate that the decision of the Noticee to sell his shares on 2nd and 3rd February 2015 was independent of existence of any UPSI or possession thereof on those dates. I have also observed that the Promoters, who are family relatives were holding around 55.00 % of the equity share capital, however, there was no sale by any of the other Promoters or Promoters related entities. The past trading records of the Noticee in the shares of FFL coupled with the open secret that the performance of FFL for 2nd and 3rd quarters have always been poor due to seasonal nature of grapes harvest which is well known to public including him, and hence, he didn't require any extra information to know the financial results for these two quarters so as to take his trade decision, further suggest that the sale of shares by the Noticee was not guided by any UPSI.

32. The allegations in the SCN have been made based on the premise that the Noticee was provided with data in the form a report on January 05, 2015 containing information pertaining to the financial

performance of FFL for the 3rd quarter, which was alleged to be a PSI and while in possession of the said PSI, the Noticee executed the impugned trades. However, on the basis of my factual analysis and discussions in the preceding paragraphs, I have held that there is no evidence available on record to substantiate that the Noticee was provided with any report on January 05, 2015 and more particularly there is no evidence on record to suggest that any report containing the aggregate data about the fresh fruits business was ever made available to the Noticee on January 05, 2015. It has been observed above that no sales of grapes took place during the 2nd and 3rd quarters of the year and consequently no sales data was evidently placed before the Noticee during these two lean quarters period. Moreover, the UPSI in question as per the SCN was the quarterly financial results of the Company for the quarter ending December 31, 2014 and there is nothing on record to suggest that the financial results for the said quarter was ready within five days after the end of the quarter. Further, there is nothing on record to indicate that any such report or financial results were put up to Noticee on January 05, 2015 containing the consolidated sales figures or business performances of FFL for the period from October 01, 2014 to December 31, 2014. In view of the observations made above and keeping in view the nature and quantity of trades executed by the Noticee, the undisputed facts of obtaining pre-clearance, opening of the trading window, timely disclosure of sale by the Noticee, absence of any evidence to establish that any such PSI was put up to the Noticee on January 05, 2015, I find that the allegations made out in SCN against the Noticee do not stand established. Under the circumstances, the SCN is disposed of without any direction.

-Sd-

Date: AUGUST 28, 2019 **S. K. MOHANTY**

Place: MUMBAI **WHOLE TIME MEMBER**