QJA/SS/IVD-2/ID11/31834/2025-26

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under Sections 11(1), 11(4), 11B (1) and 11B (2) read with Section 15G of the Securities and Exchange Board of India Act, 1992.

In respect of:

Noticee No.	Name	PAN
1	Mr. Vinod Bahety	AGBPB4230A
2	Mr. Tarun Jain	AACPJ9089J
3	M/s Rajtaru Enterprises	AALFR5789G
4	MC Jain Infoservices Pvt Ltd	AACCR8509E

The abovementioned persons are hereinafter individually referred to by their respective names or Noticee number and collectively as "the Noticees")

Order in the matter of alleged insider trading in the scrip of Adani Green Energy Limited by Vinod Bahety and Others

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Prefatory.

1. The Securities and Exchange Board of India Act, 1992 (SEBI Act) is an economic legislation predominantly for protection of investors' interests in securities, promotion of orderly development of and regulation of securities markets. The nomenclature of the SEBI Act often contributes to perceptions commonly misunderstood even after three decades of its enactment. In popular imagination it is only for regulation of stock market and stock exchanges. But a closer look shows that the true character of the SEBI Act lies not in its sombre title but in its design and purpose and specific provisions describing the role and functions of Securities and Exchange Board of India (SEBI) and prohibiting certain acts and conducts. It privileges investor protection over insiders' unjust enrichment, market development over undesirable transactions that affect the integrity and endanger level playing field and seeks to provide ample opportunities for creation of businesses, smooth means of capital raising and breathing life to companies where growth is possible under regulated environment.

2. The directors of a company or any other persons who are privy to the decisions in the company and/or come in possession of information which is not in public domain are in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by these persons is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that Section 11(2)(g) empowers SEBI to take *measures* to prohibit '*insider trading'* in securities and Section 12A of the SEBI Act makes provisions for prohibiting insider trading. Accordingly, SEBI has framed the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) to curb such practice and all relevant concepts falling within domain of Sections 11(2)(g), 12A(d) and (e) have been defined in the PIT Regulations

3. This is a case where more glare has been given to a company while allegations are against other entities who allegedly communicated or traded in the shares of the company on the basis of alleged unpublished price sensitive information.

4. While several judicial pronouncements, amendments, drafting and redrafting of the PIT Regulations have sought to address several concerns around many concepts in PIT Regulations, the uncertainty persists because of human ingenuity and technology for usurpation of reprehensible profits which parties are not entitled to and more importantly due to challenges faced by investigators to procure evidences to prove a communication or trading based on such communicated non-public information. Further, mostly perception of the finality of the judicial pronouncements are formed mostly as judgement *in rem* and binding precedents for all cases without distinguishing facts. This order attempts to deal with few such instances to bring out possibly the stable understanding.

Background:

5. Adani Green Energy Limited (AGEL) is a company having its shares listed on Bombay Stock Exchange Limited ("BSE") and National Stock Exchange Limited ("NSE") with effect from June 18, 2018. Noticee No. 1 joined Adani Group in February 2021 and was Head of Mergers and Acquisitions (M&A) of 'Adani Group' during the relevant period. Prior to this, he was working with Yes Bank Limited from September 2006 till January

2021, where he was looking after Infrastructure financing and corporate banking. Noticee No. 2 is one of the partners of Rajtaru Enterprises (Notice No.3), a partnership firm comprising Noticee No.2, his wife and his Hindu Undivided Family (HUF) account. Noticee No. 4 is a company wherein son, wife and brother of Noticee No. 2 are directors.

6. On May 19, 2021 at 08:20:21 hours, AGEL announced on BSE and NSE, regarding share purchase agreements (SPA) entered into by it with Softbank Group Capital Limited (SBGCL) and Bharti Global Limited (BGL) to purchase their respective stakes in SB Energy Holdings Limited (SB Energy). Post this announcement, on May 19, 2021, the price of scrip of the Company moved from close price of ₹ 1198.75 (on May 18, 2021) to a close price of ₹ 1243.65 (increase of 3.75%).

7. SEBI noted that the total portfolio of SB Energy at that time was 5GW out of which 1.7 GW was operational. AGEL had an operational capacity of 3.7 GW and total capacity of 14.8 GW. Therefore, the said acquisition led to an increase of AGEL operational capacity by 46% and overall capacity by 33%. This led to belief of SEBI that the above announcement might be price sensitive.

Investigation

8. SEBI undertook an investigation relating to trading in the scrip of AGEL for the period January 28, 2021 to August 20, 2021 (Investigation Period/ IP) and appointed an Investigating Officer (IA) on April 20, 2023.

9. Based on an Investigation Report dated November 10,2023 (IR) a *prima facie* opinion was formed that the Noticees have possibly violated the provisions of SEBI Act and Regulations made thereunder and thus, SEBI formed a *prima facie* opinion to proceed against-

   (a) Noticee No. 1 under the provisions of Section 11(1), 11(4) read with 11B (1) and under Section 11B (2) read with Section 15G of the SEBI Act; and

   (b) Noticees No. 2, 3 and 4 for directions including disgorgement of the unlawful profits under Section 11(1), 11(4) read with Section 11B (1) and also penalty under Section 11B (2) read with Section 15G of the SEBI Act.

Show Cause Notice:

10. A common show cause notice (SCN) dated November 10, 2023 was issued to the Noticees alleging that Noticee No. 1 had violated the provisions of Section 12A(e) of the SEBI Act read with Regulation 3(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) whereas Noticees No. 2, 3 and 4 had violated the provisions of Section 12A(d) and (e) of SEBI Act read with Regulation 4(1) of the PIT Regulations.

Snapshot of basis of allegations:

11. The basis of above allegations in the SCN dated November 10, 2023 are that: -

(a) From November 17, 2020 till January 04, 2021, AGEL was carrying out internal analysis of the portfolio of SB Energy. However, while the said evaluation was being carried out, an entity namely Canada Pension Plan Investment Board (CPPIB) entered into an arrangement with the sellers (SBGCL and BGL), to acquire their portfolio in SB Energy. Hence, AGEL stopped evaluating and pursuing the option of acquisition of SB Energy Portfolio at that point of time.

(b) Around the last week of April, 2021, AGEL received information over calls from BGL that on account of certain compliance pre-conditions of CPPIB, the sellers may consider cancelling the arrangement they had with CPPIB and thus, discussions can be initiated again by AGEL.

(c) Telephonic discussions were held and emails were exchanged during April 29, 2021 till May 05, 2021 among employees/ officials of AGEL to discuss the acquisition and transfer of portfolio of SB Energy.

(d) On May 07, 2021, BGL shared the offer terms of CPPIB with AGEL. In turn, on same day, AGEL made an initial offer to BGL and SBGCL. Telephonic discussions were held on May 10, 2021, where it was decided to seek more detailed information/ documents from SB Energy for the purpose of due diligence.

(e) Between May 12, 2021 and May 14, 2021, emails were sent to SB Energy seeking further details, legal counsels were engaged and Non-Disclosure Agreement (NDA) & Letter of Intent (LoI) were exchanged.

(f) On May 17, 2021, an email was sent from the Company Secretary to the Board of Directors forwarding agenda and presentation for the meeting. The proposal was presented to the Board and the same was approved.

(g) The signed SPA was exchanged on May 19, 2021 at around 01.08 hours and the information was disseminated to the stock exchanges in morning around 08:20:29 hours.

(h) The information pertaining to the acquisition of SB Energy ***by AGEL by executing a SPA with SBGCL and BGL was allegedly an Unpublished Price Sensitive Information (UPSI****) in terms of Regulation 2(1)(n)(iv) of the PIT Regulations.*

(i) The UPSI came into existence on April 29, 2021 and was made public on May 19, 2021 at 08:20:29 hours, the period commencing from April 29, 2021 to May 19, 2021 (08:20:28 hours) was the UPSI period.

(j) Noticee No. 1 was head of M&A at Adani Group while working with AGEL. He was present in various meetings wherein discussions regarding SB Energy took place. He was also marked in various emails pertaining to SB Energy. Noticee No.1 participated in the entire due-diligence process between AGEL and SBGCL. Thus, Noticee No. 1 is a *"connected person"* under Regulation 2(1)(d)(i) and an *insider* under Regulation 2(1)(g)(ii) of the PIT Regulations, who was in possession of UPSI. He, being an *insider*, was aware of the development relating to the UPSI.

(k) Noticee No. 2 had worked at Vedanta Limited from the year 1984 till March 2020 and was looking after Corporate Finance, M&A etc. At the relevant time, Vedanta Limited had banking relationship with Yes Bank, where the Noticee No. 1 was employed. Noticee No. 2 was known to Noticee No. 1 from the time when Noticee No. 1 was employed with Yes Bank. Noticee No. 2 was in contact with Noticee No. 1 during IP including the UPSI period and even after the IP.

(l) Even after Noticee No.1 had left the Yes Bank and joined Adani Group as Group Head (M&A) with effect from February 01, 2021, these two Noticees were in *constant touch* with each other by way of exchange of phone calls and emails.

Table 1: CDR analysis

Phone No	Name	Phone No	Name	Call Date	Call Time	Duration
9756722xxx	Noticee No. 1	9820070xxx	Noticee No. 2	11/05/2021	11:29:32	527
9756722xxx	Noticee No. 1	2228774xxx	Noticee No. 2	18/06/2021	15:19:57	73
9756722xxx	Noticee No. 1	2228774xxx	Noticee No. 2	21/06/2021	09:16:06	14
9756722xxx	Noticee No. 1	2228774xxx	Noticee No. 2	21/06/2021	09:16:56	5
9756722xxx	Noticee No. 1	2228774xxx	Noticee No. 2	21/06/2021	09:17:01	5
9756722xxx	Noticee No. 1	9820070xxx	Noticee No. 2	15/11/2021	14:27:02	16
9756722xxx	Noticee No. 1	9820070xxx	Noticee No. 2	07/10/2022	09:08:11	259

Table 2: Details of Emails

Vide email dated April 09, 2021 from official email-id of Noticee No. 1 with Adani Group i.e., Vinod.bahety@adani.com, a Membership form of an organization by the name of Young Professional Organization was sent to the personal email-id of Noticee No. 2 i.e. tarunjain06@yahoo.com.

(m) Both Noticee No. 1 and Noticee No. 2 have stated that they were in *touch* with each other during May 2021 with regard to a project of Vedanta namely Talwandi Sabo in which Adani Group was interested. Noticee No. 1 has further stated that to get insights of the project, he contacted Noticee No. 2 on a one on one call during this time. *However, no such call was found between the two Noticees's in terms of their CDR.* The CDR of Noticee No. 1 reflected that he contacted Noticee No. 2 at 11:29:32 hours on May 11, 2021, which was a conference call as described in the following table: -

Table 3: Details of conference call between Noticee No. 1 and Noticee No. 2

Called Number	Call Time	Call Termination Time	Type of Call	Duration
9920106xxx	11:28:34	11:38:18	CALL-OUT	584
9820070xxx	11:29:32	11:38:18	CALL-OUT	527

(n) Noticee No. 1 in his statement had stated he had talked with Noticee No. 2 to enquire about the project of Talwandi Sabo either on mobile phone or WhatsApp calls. Thus, Noticee No. 1 and Noticee No. 2 were in *touch* with each other.

(o) Noticee no. 1 and Noticee No. 2 *were in touch with each other during the UPSI period* on telephonic/WhatsApp calls/chats. By virtue of the admitted personal relationship and interaction by telephonic/WhatsApp calls/chats with Noticee No. 1, Noticee No. 2 is a connected person in terms of Regulation 2(1)(d)(i) and an insider under Regulation 2(1)(g)(i) of the PIT Regulations.

(p) Noticee No. 3 and Noticee No. 4 are entities controlled by Noticee No. 2. Admittedly, the trading orders for purchasing shares of AGEL in the account of the Noticees No. 2, 3 and 4 were placed by the Noticee No. 2. Based on the same, Noticees No. 3 and 4 are also alleged to be *connected person* under Regulation 2(1)(d)(i) of PIT Regulations and *insiders* under Regulation 2(1)(g)(i) of PIT Regulations.

(q) Noticee No. 1 has communicated the UPSI pertaining to the SB Energy acquisition to the Noticee No. 2 and has, thus, violated Section 12A(e) of SEBI Act read with Regulation 3(1) of the PIT Regulations.

(r) Noticee Nos. 2, 3 and 4 traded in the scrip of AGEL during the IP at NSE as described in the following table:

Table 4: Trading of Noticee Nos. 2, 3 and 4 in AGEL

Entity	**Date**	**Buy Quantity**	**Buy Value**	**Sell Quantity**	**Sell Value**
Pre- UPSI Period					
Noticee No.3	04-Feb-21	25000	26942452.45	0	0
	12-Feb-21	25000	27000000	25000	26853001.2
	19-Feb-21	0	0	25000	27250315.15
	Sub-Total	**50000**	**53942452.45**	**50000**	**54103316.35**
UPSI Period					
Noticee No.3	14-May-21	100000	108502883.2	0	0

Entity	Date	Buy Quantity	Buy Value	Sell Quantity	Sell Value
Noticee No.4	14-May-21	25000	26710574.6	0	0
Noticee No.2	14-May-21	75000	80187784.05	0	0
	Sub-total	***200000***	***215401241.9***	***0***	***0***
Post -UPSI Period					
Noticee No.3	19-May-21	0	0	100000	32018590.1
Noticee No.2	19-May-21	0	0	57500	72065052.85
Noticee No.2	20-May-21	0	0	17500	22342597.5
Noticee No.4	20-May-21	0	0	25000	32018590.1
	Sub-total	***0***	***0***	***200000***	***250538272.7***

(s) Noticees No. 2 and 4 did not execute any trades in the scrip of AGEL during pre-UPSI period. Noticee No. 3 bought 50000 shares of AGEL during pre-UPSI Period and sold same number of shares during pre-UPSI period. During UPSI Period, Noticee No. 2, through his other two entities, purchased a total of 2 lakh shares which was 29.36% of the day's volume at NSE. During post-UPSI period, entire holding was sold for ₹25.05 crore by these Noticees making a total profit of ₹3,51,37,030.8 (₹14219866.3 by Noticee No. 2), ₹15609149 by Noticee No. 3 and ₹5308015.5 by Noticee No. 4).

(t) No trading in AGEL scrip by Noticees No. 2 and 4 was observed during January 01, 2019 till October 27, 2020. The trading pattern of Noticees No. 2 and 4 in scrips other than AGEL is as follows:

Table 5: Trading pattern in scrips other than AGEL

Scrip	Buy Quantity	Buy Value	Sell Quantity	Sell Value
Pre- UPSI Period				
Various	29073329	389,88,04,338	27443513	457,03,38,965
UPSI Period				
Various	8406753	90,92,38,785.9	11190437	93,68,52,561.4
Post -UPSI Period				
Various	32901386	460,54,12,743	35898443	463,84,29,217

(u) Based on the above, an inference was drawn that trading in AGEL scrip by Noticees No. 2 and 4 was an abnormal trading. During UPSI period, trading of Noticees No. 2 and 4 had significantly reduced. During post UPSI Period, Noticees No. 2 and 4 bought shares worth ₹460.54 crore and sold worth ₹463.84 crore. Exposure of Noticees No. 2 and 4 in AGEL during pre-UPSI period was 1.36% of its buy value and 1.17% of its sell value. Exposure of Noticees No. 2 and 4 in AGEL during UPSI period was 19.15% of its buy value. Exposure of Noticees No. 2 and 4 in AGEL during post UPSI period was 5.12% of its sell value. There was substantial increase in the investment by Noticees No. 2 and 4 in AGEL during UPSI period as compared with the pre-UPSI period. Previously, they had never such high exposure in AGEL as % of his holdings.

Settlement Applications.

12. As per record, post the issuance of the SCN all the Noticees herein filed applications in the month of January, 2024 in terms of the SEBI (Settlement Proceedings) Regulations, 2018 ('Settlement Regulations') for the settlement of the present proceedings without admitting or denying the violations alleged against them.

Inspection of documents and reply to the SCN.

13. The Noticee No.1 inspected the documents (which are relevant and relied upon by SEBI while issuing the SCN) on January 18, 2024 and Noticees No 2-4 inspected such documents on November 05, 2024. While Noticee No. 1 filed his reply to the SCN on May 02, 2024, the other Noticees filed their replies subsequently as discussed in later part of this order.

Inquiry and hearing.

14. The matter was assigned to Quasi-Judicial Authorities in SEBI on October 06, 2023, October 18,2023 and then on September 26, 2024. Regulation 8(1) of the Settlement Regulations, 2018 provides that: - '*The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.*' The erstwhile Quasi-Judicial Authority, therefore, had proceeded with the matter by providing an opportunity of personal hearing to the Noticees on December 06, 2024. However, the matter was adjourned.

15. The matter was assigned to me pursuant to an administrative transfer of the erstwhile Quasi-Judicial Authority on December 02, 2024.The matter was accordingly, continued from the hearing stage as already decided by the Authority in seat and opportunities of hearing was granted to Noticee No. 1 on February 11, 2025 when Mr. Pradeep Sancheti, Senior Advocate, Mr. Aditya Bhansali, Ms. Akshaya Bhansali, Ms. Nirali Mehta, Mr. Suyash Bhandari and Ms. Supiya Nai appeared and made submissions on behalf of Noticee No.1. Noticee No.1 also filed additional written submissions dated March 11, 2025.

16. Noticees No. 2, 3 and 4 filed their replies on January 07, 2025 and availed the opportunity of hearing on March 06, 2025 when Ms. Shruti Rajan, Advocate appeared for them and made submissions on their behalf. They also filed a common additional written submission dated March 11, 2025.

17. In terms of Regulation 8(1) of the Settlement Regulations, the passing of the final order was kept in abeyance during pendency of the settlement applications with SEBI. Settlement Department of SEBI, on September 10, 2025 and October 01,2025 informed that settlement application of Noticee No.1 was disposed of as withdrawn on June 23, 2025 and those of Noticees No. 2, 3 and 4 were disposed of as withdrawn on September 26, 2025.

Consideration of the issues and findings.

18. The Noticees have filed detailed and voluminous replies including written submissions and have placed reliance on various judicial pronouncements. For the sake of brevity, I deem it appropriate to consider each and every relevant submission as against allegations while dealing the matter as a whole.

A. On technical objections

19. Capturing briefly the factual matrix as per the SCN as above, I deem it appropriate to first deal with the technical objections raised by the Noticees, issue –wise, before dwelling into the merits of the case.

Flawed Investigation.

20. The Noticees have contended that during inspection they have noted that there are two IRs in this case. However, they have been provided with a copy of only one IR dated November 10, 2023. Thus, there is gross violation of principles of natural justice. The first IR, if relied, in this case will vitiate the proceedings and the issuance of SCN is bad in law and *non est*. I note from record that after completion of investigation an Investigation Report dated August 08,2023 was submitted by IA to SEBI. This Report was substituted by the IR dated November 10,2023 after correcting the deficiencies as deemed appropriate by the competent authority. Thus, the Report dated August 08,2023 is not relied upon in the present proceedings. It is the IR dated November 10, 2023 which is the basis of the SCN and the copy of the same was provided to the Noticees. I, therefore, do not agree with this contention.

21. The other limb of this preliminary objection is that the investigation is deficient as no examination has been made into the *structured digital database* (SDD) for the alleged UPSI. Investigation is also flawed due to non-examination of the third person who attended the impugned conference call on May 11, 2021. I note that Regulation 3(5) of the PIT Regulations obligates the board of directors or head(s) of the organisation of every person required to handle UPSI to maintain a SDD containing the nature of UPSI and the names of the persons who have shared the information and with whom information is shared; along with the Permanent Account Number or any other identifier authorized by law. In terms of Regulation 3(6) of the PIT Regulations, the SDD has to be preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the SDD shall be preserved till the completion of such proceedings.

22. In the instant case, the IA has not examined the SDD created with respect to the alleged UPSI in the matter and also has not examined the third person who attended the impugned conference call on May 11, 2021. Though such examination could be useful in the matter, the investigation cannot be said to be flawed merely because such examination was not

done. The instant proceedings will still be valid based on the IR dated November 10, 2023 in whatsoever manner it has been made and the matter will be proceeded with in accordance with law and based on material available. I find no violation of principles of natural justice as claimed by the Noticees.

Denial of access to information and non-examination by SEBI.

23. Noticees No. 2, 3 and 4 have contended that they have not been provided complete inspection and relevant documents had been held back by SEBI. In this regard, I note that vide a common letter dated December 11, 2024, Noticees No. 2, 3 and 4, *inter alia*, had sought certain information and documents and details of all other persons who had attended the conference call on May 11, 2021. Relying upon the following observations of Hon'ble Supreme Court in ***T. Takano v. SEBI & Anr.***[1] the Noticees have, in their reply, again submitted that relevant information has been not provided and case is non- maintainable: -

"39 The following principles emerge from the above discussion:

(i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and

(ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure."

"51. The conclusions are summarised below:

(i)…….However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;"

"52. The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the appellant in the notice to show cause."

[1] *Civil Appeal Nos. 487-488 of 2022 before the Hon'ble Supreme Court*

"53. During the course of the hearing, the Court has been apprised of the fact that though the hearing before the designated officer has been held, no orders have been passed in deference to the pendency of the present proceedings. Having regard to the conclusion which has been arrived at above, we direct that after a due disclosure is made to the appellant in terms as noted above, a reasonable opportunity shall be granted to the appellant of being heard with reference to the matters of disclosure in compliance with the principles of natural justice before a final decision is arrived at."

24. These Noticees have vehemently insisted for the following additional information/ documents: -

(a) The name and number of shares purchased by top 5 buyers and top 5 sellers (excluding Noticees No. 2, 3 and 4) in the scrip of AGEL on May 14, 2021. May 17, 2021 and May 18, 2021;

(b) Names of persons other than Noticees No. 1 and 2, who had attended the conference call on May 11, 2021 which is alleged as basis of communication of UPSI to Noticee No. 2 by Noticee No.1.

(c) Name of the person with telephone number 99201xxxxx, details of discussions during the said conference call with supporting documents and a copy of the statement of that person recorded before the IA.

(d) Noticee has also placed reliance on the observation of Hon'ble Supreme Court in ***Uma Nath Pandey & Ors v. State of UP and Anr***[2] that '*The purpose of following the principles of natural justice is the prevention of miscarriage of justice.'*.

25. I note that all available documents were provided to these Noticees alongwith the SCN read with letter dated December 20, 2024. It is noted that IA has not collected or relied upon the information sought at (a) above and, thus, the same is outside the scope of instant proceedings. As regards, second and third requests at points (b) and (c) above, it is noted that as per the IR and the SCN dated November 10, 2023, Noticees No. 1 and 2, had been on a conference call on May 11, 2021. This fact is taken as one of the basis to infer that the Noticees were in contact/ '*touch'* with each other during the IP. The copies of the statements of Noticees No. 1 and 2 before the IA and call record data were already provided to them

[2] *C.A No. 471 of 2009 before Hon'ble Supreme Court*

alongwith the SCN. It is a matter of record that SEBI in its investigation has not recorded the statement of the said third person/s who attended the conference call on May 11, 2021. Accordingly, the content of the call and the details of third persons who attended the conference call was not possible to provide. As this information had not been collected by the IA and is not a part of record of these proceedings, it cannot be furnished to these Noticees. Non-furnishing of non-existent information would not be a violation of the principles of natural justice.

Denial of Cross examination

26. On October 23, 2024, Noticees No. 2, 3 and 4 for the first time, sought cross examination of Noticee No. 1 alongwith the cross examination of all other persons who had attended the conference call on May 11, 2021. The reason given by these Noticees for seeking such cross examination that '*the cross examination as requested is very crucial to demonstrate that I have not violated any provisions of law alleged in the SCN'* was not found sufficient by the erstwhile Quasi- Judicial Authority and these Noticees were advised to submit their reply to the SCN stating the reasons/ rationale for seeking cross examination. In the aforementioned letter dated December 11, 2024, Noticees No.2, 3 and 4 have reiterated the request for cross examination of Noticee No. 1 and other person/s who attended the call on May 11, 2021; stating that '*since the SCN has, inter alia, relied upon the conference call to allege at para 23 of SCN that both Noticee No. 1 and Noticee No. 2 were in touch with each other during the UPSI period on telephonic/ WhatsApp calls/ chats, the Cross-examination as requested, is very crucial'* to demonstrate that the Noticees No. 2, 3 and 4 have not violated any provisions of law alleged in the SCN.

27. On examination of the aforesaid request, it was noted that as per the SCN, Noticees No. 1 and 2 are *connected persons*, being in *touch* with each other on several factors, i.e., prior personal relationship, existence of phone calls and email communications and statement of these Noticees before the IA. Thus, it was considered that it was for the Noticees to rebut the presumption that they were in *touch* with each other and accordingly the request for cross-examination was rejected. It was also noted that Noticees No. 1 and 2 have admitted being in *touch* with each other between them. Therefore, the request of Noticee No. 2 for cross examination of Noticee No. 1 alongwith the cross examination of all other persons who had attended the conference call on May 11, 2021 was rejected.

B. On merits.

28. Having dealt with the technical objections raised by the Noticees as above, I now proceed to deal with the merits of the case. In context of anti-fraud all-encompassing law relating to prohibition of insider trading the settled position is that such charges, though civil in nature in the proceedings like the present one, for standard of proof, they are treated a quasi-criminal and demand high degree of evidence to support the allegations. Hon'ble Securities Appellate Tribunal (SAT) in its order dated November 19, 2009, in the matter of ***Dilip S. Pendse v. SEBI***[3] has held as follows:

"*13. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities."*

29. I note that the SCN alleges that Noticee No. 1 violated Section 12A(e) of SEBI Act read with Regulation 3 (1) of the PIT Regulations and Noticees No. 2, 3 and 4 violated Section 12A(d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations. The relevant portion of these provisions are reproduced as follows:

SEBI Act

*"**Section 12A: Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

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;

[3] *Appeal No. 80 of 2009 before Hon'ble SAT*

PIT Regulations.

Regulation 3: Communication or procurement of unpublished price sensitive information.

(1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders …….

NOTE: *This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.*

Regulation 4: Trading when in possession of unpublished price sensitive information.

(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Explanation – When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

30. Regulations 3 of the PIT Regulations, prohibits an '*insider*' from communicating, providing, or allowing access to any '*unpublished price sensitive information'*, relating to a company or securities to any person. Regulations 4 prohibits an '*insider*' from trading in securities when in possession of '*unpublished price sensitive information'.* The Explanation appended to Regulation 4(1) shifts the burden of proving innocence on the '*insider'* who trades in securities when in possession of '*unpublished price sensitive information'*.

31. In order to examine the charge, it becomes important to refer to definitions of the expressions '*insider'*, *'connected persons'* and '*unpublished price sensitive information'* under the PIT Regulations. Regulation 2(1)(g) provides for definition of the term '*insider*' as following: -

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

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

NOTE: *Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."*

32. The above definition shows that any person, (i) who is connected person; or (ii) who is in possession of or having access to UPSI, is an '*insider'*. The onus of showing that a person was in possession of or had access to UPSI at the time of communicating or trading would, be on SEBI. Once this onus is discharged, the said person can show otherwise as described in the above Note to Regulation 3(1).

33. Regulation 2(1)(d) defines the expression *'connected person*' in principle as well as list approach. However, relevant for this case is, only, clause (i) of Regulation 2(1)(d) which provides that *'connected person'* means: -

(*i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access."*

……
……..

"NOTE: *It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information."*

34. Thus, in terms of above clause (i), in order to treat a person as *'connected person'*, that person must be proved to be associated with *'a company'* during the six months prior to the concerned act, directly or indirectly, in any capacity including by reason of: -

(a) frequent communication with officers of the company or
(b) being in any contractual, fiduciary or employment relationship or
(c) by being a director, officer or an employee of the company or
(d) holds any position including a professional or business relationship between himself and the company whether temporary or permanent;
(e) that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

35. The Note appended to Regulation 2(1)(d) is very significant to understand its scope. As per the said Note the intent of said Regulation 2(1)(d) is to cover in its ambit -

(a) a person who has a connection with the company that is expected to put him in possession of UPSI;

(b) immediate relatives and other categories of persons specified and listed in said regulation. These persons are presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable;

(c) the persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations;

(d) those who would have access to or could access UPSI about any company or class of companies by virtue of any connection that would put them in possession of UPSI.

36. Here, it is worth mentioning that ways of association mentioned in Regulation 2(1)(d)(i) are inclusive/illustrative and not exhaustive of the ways of association. From the Regulation 2(1)(d)(i) read with Note appended to it, it is clear that association with the company that allows or reasonably expected to allow access to UPSI, is the underlying fundamental principle, under Regulation 2(1)(d)(i), for terming a person as '*connected person'*. Thus, the onus is limited to establish that the person falling in any category of Regulation 2(1)(d)(i) was in a position that allowed him or was reasonably expected to allow him access to UPSI. The standard of onus under Regulation 2(1)(d)(i) in this regard is light and SEBI need not establish actual possession of UPSI to treat such person as '*connected person'*. Once a person is found to be '*connected person*' under Regulation 2(1)(d)(i) then such person becomes '*insider'* by virtue of Regulation 2(1)(g)(i).[4]

37. Under Regulation 2(1)(g)(ii) the person concerned is not a necessarily a '*connected person' and* even if a person who is not a '*connected person´* may be an '*insider'* under Regulation 2(1)(g)(ii). Such person is one who is in possession of or having access to UPSI. Onus to establish such possession or access is on SEBI. There may be a situation that a *'connected person'* is in possession of or having access to UPSI. In such a situation both categories of '*insiders'* in Regulation 2(1)(g) converge.

38. When a '*connected person'* falling under Regulation 2(1)(g)(i) is charged under Regulation 4(1) of the PIT Regulations, (i.e. trading by such person when in possession of UPSI), then by virtue of Regulation 4(2) of PIT Regulations, there is a presumption against such '*connected person'* that he traded when in possession of UPSI and the burden of proving that such person was not in possession of UPSI at the time of his trades, is on such person. When a person falling under Regulation 2(1)(g)(ii) is charged under Regulation 4(1) then the possession of UPSI, in respect of such person is not required to be proved separately while determining the violation of Regulation 4(1) because such person becomes '*insider'* under Regulation 2(1)(g)(ii) only when it is proved that he was in possession of UPSI or having access to UPSI.

[4] *SEBI order No. WTM/AB/IVD/ID3/23/2020-21 dated February 03, 2021*

39. In terms of Regulation 3(1) a *connected person* is prohibited from communicating a UPSI. A communication of UPSI would be possible if such connected person is in possession of or has access to the said UPSI. Thus, when a '*connected person'* under Regulation 2(1)(d)(i), is charged under Regulation 3(1) that he communicated, provided or allowed access to any UPSI, the onus is on SEBI to prove that: -

(a) he was in possession of UPSI or having access to UPSI; and
(b) he communicated, provided or allowed access to any UPSI to any other person/s.

40. In the SCN and the IR all the Noticees have been treated as *'connected person'* in terms of Regulation 2(1)(d) (i). However, in the IR Noticee No.1 has been treated as '*insider'* under Regulation 2(1)(g)(ii) and in the SCN under Regulation 2(1)(g). The IR and the SCN, both treat Noticee No. 2 as *'connected person'* under Regulation 2(1)(d)(i) and '*insider'* under Regulation 2(1)(g)(i). In the IR and the SCN, Noticees No. 3 and 4 have been treated *'connected person'* and '*insiders'* under Regulation 2(1)(d)(i) and 2(1)(g)(i), respectively as they are entities controlled by Noticee No. 2. The Noticces have denied and strongly contested that they were not *"connected persons"* and, thus, not '*insiders'* as alleged.

41. Noticee No. 1 has claimed that he was not involved in the process relating to the acquisition of SB Energy by AGEL as he joined the Adani Group much later in February, 2021 and further was diagnosed with COVID and was in hospital till May 04, 2021. Pursuant to his discharge, he was quarantined for the entire month of May 2021and could not attend meetings in respect to the acquisition of SB Energy by AGEL and was not privy to the proposed transaction and its material particulars. He has further contended that the SCN is vague and *non-est*, as it fails to define the role of the Noticee nor does it specify any material particulars of the allegations. The three pre-requisites to establish the charge of insider trading are absent, namely, i.e. (i) Whether there existed any UPSI, (ii). Whether the person who executed the alleged trades was communicated such UPSI, and (iii). Whether the trades executed were executed while in possession of such UPSI.

42. In my view, what is relevant for the Noticee No. 1 to be treated as '*connected person'* is as to whether he had an association with AGEL in '*any capacity'* which put him in a position which allowed him the access, directly or indirectly, or such capacity was reasonably expected to allow him the access to such UPSI. Noticee No.1 as *"connected person"* under Regulation 2(1)(d)(i) based on the factors that: -

(a) He was working as the head of the M&A of 'Adani Group'; and

(b) He had access to information in the emails mentioned in para 13 of the SCN.

43. I note Noticee No.1 was head of the M&A of 'Adani Group' wherein AGEL is also a constituent. Such an association with AGEL was expected to put him in possession of the UPSI regarding AGEL which could bring him in the category of *"connected person"* under Regulation 2(1)(d)(i), even if he may not seemingly occupy any position in AGEL but was in regular touch with the company and its officers and was involved in the know of the company's transactions which are alleged as UPSI. I further note from the emails relied upon in para 13 of the SCN that these emails, *inter alia*, provided various updates into the stages of the acquisition of SB Energy by AGEL as under: -

(a) The two emails dated April 30, 2021 were sent by Mr. Anupam Misra, head of Corporate Finance of Adani Group to Mr. Gautam Adani whereby a power point presentation on updates regrading Adani Group's M&A in Energy Vertical and a SB Energy Note with valuation were was provided to all team members including Noticee No.1.

(b) Vide email dated May 07, 2021 from Mr. Anupam Mishra with copy endorsed to Noticee No. 1 forwarding list of specific indemnities in the SB Energy offer to which the Noticee replied "*Hi, let me know, I will also join the discussion".*

(c) By another email dated May 08, 2021 with subject "*M&A Meeting on May 08, 2021*" Mr. Anupam Mishra sent details of projects being discussed at M&A meeting.

(d) On May 13, 2021 following 4 emails were exchanged between concerned parties and Noticee No.1 was privy to all of them: -

(i) Form SBGCL forwarding reply to the offer made by AGEL on May 07,2021;

(ii) From Mr. Anupam Mishra to SBGCL informing that they (AGEL) were ok with the draft of the NDA and attached the executed version of the same for records. To this email, concerned official of SBGCL replied that the NDA will be signed by SBGCL and in the meantime VDR access will be provided to Adani officials. Mr. Anupam has asked VDR access on same day and stated that he will be sharing draft SPA in the data room within one hour. There were subsequent

emails regarding changes, which were being carried out in the SPA and LOI on May 13, 2021 to which Noticee No. 1 was also marked in emails.

(iii) From Mr. Aravind Balajee with copy marked to Noticee No. 1 forwarding the execution version of NDA.

(iv) Mr. Anupam Mishra forwarded draft LoI to certain individuals including Noticee No. 1 for their views to which Noticee No. 1 vide email on same day replied "*ok".*

44. Noticee No. 1 has not denied receipt of these emails. Thus, even if Noticee No.1 was not part of certain discussions with respect to the acquisition of SB Energy by AGEL as claimed, he was aware of the information with respect to the said acquisition. Having access to these emails, participating in discussions with respect to the acquisition of SB Energy he had access to the said alleged UPSI which brings him in the category of *'connected person'* under Regulation 2(1)(d)(i). The SCN brings out sufficient material and establish the requirements of Regulation 2(1)(d)(i) and Regulation 2(1)(g) *qua* Noticee No.1. Hence, I find that Noticee No.1 falls in category of '*connected person'* under Regulation 2(1)(d)(i) and such he would be an '*insider'* within the scope of Regulation 2(1)(g)(i) and Regulation 2(1)(g)(ii) both as alleged in the SCN if the existence of alleged UPSI and its possession / access with Noticee No.1 is proved.

45. The basis alleged identification of Noticees No. 2, 3 and 4 as *'connected persons'* (concluded in para 23 of the SCN) is that Noticees No.1 and 2 were in '*touch'* with each other during the UPSI period on telephonic/ WhatsApp calls/chats. The factors considered for alleging such *'touch'* are: -

i. Noticee No.2 was known to Noticee No.1 from the time Noticee No. 2 was working with Vedanta Limited (1984 to March 2020) and Noticee No. 1 was employed with Yes Bank Limited.

ii. He was in contact with Noticee No.1 during and after the IP by way of exchange of on telephonic/ WhatsApp calls/chats, emails.

iii. Both the Noticees have in their statements before the IA stated that they had an admitted "*personal relationship*".

46. The Noticees No. 2, 3 and 4 have vehemently denied the allegations and have *inter alia* submitted that: -

(a) The SCN at para 15 attempts to bring in banking related interaction of Noticee No. 1 with Noticee No. 2 during their past employments. This is irrelevant to be a '*connected person'*.

(b) The emails furnished at Annexure D to SCN, pertains to the period March 23, 2020 to August 31, 2020. Only 1 personal email has been sent by Noticee No. 1 to Noticee No. 2 during the IP on April 09, 2021 and the said email pertained to a membership form of Young Professional Organisation and was not associated with AGEL. the emails furnished in the SCN pertain to the period of March 23, 2020 to August 31, 2020. These alleged emails or solitary phone call did not arise out of the discharge of official duties of AGEL or in connection with alleged transaction of AGEL.

(c) As per the SCN itself there was only one solitary conference call and a single email to allege frequent communication and personal relationship between Noticees No. 1 and 2. Apart from these two instances, the other instances of calls between Noticees No. 1 and 2 pertain to the period either much before the IP or after the impugned trade on May 14, 2021.

(d) The SCN erroneously states them to be admittedly in *touch* with each other based on their statement before the IA ignoring their statements.

(e) Referring to replies of these Noticees, Ms. Shruti Rajan, Advocate pithily argued that under Regulation 2(1) (d)(i) the connection must with proved with company not with an individual who is not even an employee of the company, as alleged in this case. None of the ingredients of Regulation 2(1)(d) (i) are satisfied in this case.

47. It is noted that there is no denial of the fact that Noticee No.1 and 2 were in contact / touch with each other before the UPSI period, during UPSI period and even after the UPSI period. It is noted that by the email dated April 09, 2021, Noticee No. 1 had sent a membership form of an organization (Young Professional Organisation) to Noticee No. 2. From this email it is established that they were in contact with each other. The call on May 11, 2021 and thereafter are admitted and clearly show connection between Noticees No. 1 and 2.

48. On perusal of the relevant statements of Noticee No. 1, 2 and Mr. Anupam Mishra, it is noted that they had never claimed *"personal relationship"* between Noticees No. 1 and 2 as demonstrated from the answer of Noticee to Question No 5 in his statement before the IA wherein he categorically stated on oath that he knows Noticee No. 1 on '*professional basis'* while he was in Yes Bank. Alleged relationship *per se*, whether professional or personal, of a person is immaterial under Regulation 2(1)(d)(i). Thus, the factors relied upon in the SCN do show *acquaintances/ touch* between Noticees No. 1 and 2 during and after IP.

49. Regulation 2(1)(d)(i) is widely worded to include any person who holds *any position* including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access. The persons who may not seemingly occupy any position *in the company* but are in regular touch with the company and its officers and are involved in the know of the company's operation.

50. The factors under Regulation 2(1)(d)(i) are inclusive and if the position of the person is proved to be so, it would follow that the position allowed aces to UPSI. A reasonable expectation to be in the know of things can only be based on reasonable inferences drawn from foundational facts. Standard of onus to show connection is not to prove the case beyond reasonable doubt. In this case, as per factors brought out in the SCN, Noticees No. 2, being connected to Noticee no.1 was indirectly connected with AGEL with regard to access of information. This position allowed him access to alleged UPSI. Thus, he was a *'connected person'* and '*insider'* under Regulation 2(1)(d)(i) read with Regulation 2(1)(g)(i). I have no reason to defer with allegation that Noticees No. 3 and 4 are also '*connected persons'* and *'insider'* Regulation 2(1)(d)(i) read with Regulation 2(1)(g)(i) as they are the entities controlled by Noticee No.2.

Unpublished price sensitive information/ UPSI Period.

51. For enforcement of PIT Regulations, the expression *'unpublished price sensitive information'* is very significant and cornerstone for crucial purposes such as determining the persons who are to be treated as *'connected person'* or a person being in possession of or having access to *unpublished price sensitive information* or communication and trading etc. under Regulation 3 and 4. The expression *'unpublished price sensitive information'* has been defined in Regulation 2(1) (n) in following terms: -

"(n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel.

NOTE: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information."

52. In terms of the Regulation 2(1)(n)(iv), the information relating to acquisition transaction is UPSI, if it has following ingredients:

a. It relates to the Company or its securities, directly or indirectly;
b. Is not generally available;
c. On being generally available it is likely to materially affect the price of the securities.

53. The '*UPSI period'* though not used and defined in PIT Regulations is also very pertinent to determines so as to establish the contravention under Regulation 3 and 4. The said period is commonly understood as the period from the date of birth of UPSI till it ceases to be so on its publication as above. Thus, date of coming into existence of the UPSI is also relevant so as to deal with allegations and defences.

Contentions

54. In this instant case, information pertaining to the acquisition of SB Energy by AGEL is treated as UPSI in terms of Regulation 2(1)(n)(iv) of the PIT Regulations. The Noticees have strongly denied this as UPSI. They have also denied that the UPSI period commenced

from April 29, 2021 and have contended that there is nothing to state that the information became UPSI on the said date. According to them: -

(a) The transaction regarding sale of shareholding by the sellers had previously been dropped even after discussions and negotiations. On May 11, 2021, there was no fact which would concretely indicate that the AGEL entered into any binding arrangement with the sellers indicating their final decision to enter into the proposed transaction. On the said date there were only negotiations between the parties which were amenable to fall out and fail based on any variety of reason. Discussions in the initial stages of exploring a potential transaction are explanatory in nature and the information generated during this period is imprecise and cannot be termed as UPSI. It is only when discussions progress and culminate into a concrete deal that the UPSI comes into picture. They have placed reliance on SEBI Order dated June 30, 2021 in the matter of ***Biocon Limited***[5] and observation of Hon'ble Securities Appellate Tribunal (SAT) in the matter of ***Factorial Master Fund v. SEBI***[6] wherein Hon'ble SAT held that mere submission of an application to SEBI for exemption from the cooling-off period did not constitute UPSI. Since SEBI was under no obligation to grant the exemption and could have rejected the request, the alleged UPSI lacked certainty and finality which rendered the alleged UPSI insufficient to qualify as UPSI.

(b) There is nothing on record to indicate that UPSI came into existence on the said day. The information presumed to be UPSI began to demonstrate characteristics of price sensitivity either subsequent to the signing of a NDA between the parties on May 13, 2021 or post the conclusion of important commercial negotiations between the parties. It was only after signing of the NDA on May 13, 2021 that the Virtual Data Room (VDA) for conducting the due-diligence regarding the transaction was opened. Thus, only at this stage it can be presumed that discussion started taking shape of the deal or the UPSI germinated.

(c) Till May 14, 2021, the transaction was at preliminary stage involving internal discussions, communication and discussions on due-diligence observations. Discussions/ negotiations between the parties does not in itself gives rise to any event or information which could amount to being conclusive or material information which can be considered as an UPSI under the PIT Regulations. Same is evidenced by the

[5] *WTM/MB/IVD/ID3/12407/2021-22 order name of the entity Shreehas P Tambe*
[6] *2018 SCC OnLine SAT 276*

failing of negotiations with respect to Canada Pension Plan Investment Board (CPPIB). Noticee has placed reliance on the order of Hon'ble SAT in ***Rakesh Agarwal v. SEBI***[7] to illustrate what information would constitute as UPSI in the event of mergers and/ or takeover.

55. Mr. Pradeep Sancheti, Senior Advocate, relying upon the written reply of Noticee No.1 vehemently argued that the UPSI and UPSI period both have been wrongly determined in the IR and in para 6 of the SCN. Said Para 6 is reproduced as under: -

"6. Sequence of Events based on information received from AGEL and other documentary evidences starting from conception of the idea till it reached the conclusion and final dissemination on the stock exchange are as below:

6.1 From November 17, 2020 till January 04, 2021, AGEL was carrying out internal analysis of the portfolio of SB Energy. However, while the said evaluation was being carried out, an entity namely Canada Pension Plan Investment Board (CPPIB) entered into an arrangement with the sellers (SBGCL and BGL), to acquire their portfolio in SB Energy. Hence, AGEL stated that it stopped evaluating and pursuing the option of acquisition of SB Energy Portfolio at that point of time.

6.2 Around the last week of April, 2021, AGEL received information over calls from BGL that on account of certain compliance pre-conditions of CPPIB, the sellers may consider cancelling the arrangement they had with CPPIB and thus, discussions can be initiated again by AGEL.

6.3 Telephonic discussions were held and emails were exchanged during April 29, 2021 till May 05, 2021 among employees/officials of AGEL to discuss the acquisition and transfer of portfolio of SB Energy.

*6.4 On May 07, 2021, BGL shared the offer terms of CPPIB with AGEL. In turn on same day, AGEL made an '**initial** offer' to BGL and SBGCL.*

6.5 Telephonic discussions were held on May 10, 2021, where it was decided to seek more detailed information/ documents from SB Energy for the purpose of due diligence.

[7] ***2****003 SCC Online SAT 38*

6.6 Subsequently, between May 12, 2021 and May 14, 2021, emails were sent to SB Energy seeking further details. Further, legal counsels were engaged and Non-Disclosure Agreement & Letter of Intent were exchanged.

6.7 On May 17, 2021, an email was sent from the Company Secretary to the Board of Directors forwarding agenda and presentation for the meeting. The proposal was presented to the Board and the same was approved.

6.8 The signed Share Purchase Agreement was exchanged on May 19, 2021 at around 01.08 hrs and the information was disseminated to the stock exchanges in morning around 08:20:29 hrs."

56. According to Mr. Sancheti, the whole basis as listed in para 6.1 to 6.6 of the SCN do not lead to any inference that impugned UPSI came into existence, at least, till NDA & LoI were exchanged since the negotiations before this event were not leading to any definitive decision and were only at discussion stage. Since the contemplation of AGEL with regard to the acquisition was once dropped as stated in para 6.1 of the SCN itself. At this stage, the impugned UPSI was not existing. The event listed in para 6.2 of the SCN also does not give rise to creation of impugned UPSI either. At this stage, also, there was only communication about possibility that the sellers SBGCL and BGL *'may consider'* cancelling the arrangement they had with CPPIB and thus, discussions can be initiated again by AGEL. Till date, there was no definitive decision. Further, the telephonic discussions and emails during April 29, 2021 and May 05, 2021 amongst employees of AGEL as mentioned in para 6.3 were only for initiating discussion for acquisition and transfer of portfolio of SB Energy. This event does not lead to any conclusion about creation of alleged UPSI. Referring to para 6.4 and 6.5, Learned Senior Advocate contended that sharing by BGL of offer terms of CPPIB with AGEL and in turn initial offer of AGEL to BGL and SBGCL on May 07, 2021 and discussion to decide seeking further details from SB Energy for the purpose of due diligence can at the most give inference of expression of intent and not a definitive proposal much less a decision for acquisition. The events between May 12, 2021 and May 14, 2021 and on May 17, 2021 also indicate deliberations, discussions, presentation to form a decision by the Board of AGEL on May 17, 2021. Thus, there was no UPSI in existence as on May 17, 2021.

57. According to the Noticees, various preliminary developments such as seeking of information from SB Energy by AGEL, grant of VDR access, execution of SPA etc., happened on May 13 and 14, 2021 much later than April 29, 2021. The IR itself accepts that '*when the exchange had sought clarification from AGEL with respect to recent news*

item captioned Adani Green in talks to acquire SB Energy', AGEL vide a letter dated May 18, 2021, categorically denied that there was any event/ information that required any disclosure. The relevant text of the said announcement dated May 18, 2021 from the AGEL is as follows:

> *"This is in response to your email dated May 18, 2021 in relation to the news item which appeared in the website www.ecomnomictimes.indiatimes.com regarding "Adani Green in talks to acquire SB Energy".*
>
> *In response to your queries mentioned in your email/ letter, we request you to note the following:*
>
> ***At this point in time, there is no event/ information that requires any disclosure neither there is any definitive agreement signed by the Company which requires any disclosure. However, the Company shall make appropriate public disclosures in accordance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and other applicable laws as and when there is a disclosable event"***

58. It is accepted fact in the SCN when, in para 8, it concludes that *"information pertaining to the acquisition of SB Energy by AGEL by executing a Share Purchase Agreement with SBGCL and BGL to be Unpublished Price Sensitive Information in terms of the Regulation 2(1)(n)(iv) of the PIT Regulations"* As per this statement in SCN, the UPSI period is from May 19, 2021 at 01:08 hours (the date and time of execution of the SPA) to May 19, 2021 at 08:20:29 hours (the date and time of disclosure before Stock Exchanges). Whereas in para 9, on the basis of sequence of events received from AGEL and also from other documentary evidences, it states that since the process to give a formal shape to the proposed acquisition was initiated on April 29, 2021 and was finally disclosed to the public on May 19, 2021 at 08:20:29 hours, the UPSI period was from April 29, 2021 to May 19, 2021 (till 08:20:28 hours). However, this observation is completely contrary to the conclusions in para 6 of the SCN which recognises that various modalities of the acquisition were being discussed and there was no formal shape to the impugned acquisition till May 17, 2021 and as disclosed by AGEL on May 18, 2021. It was only on May 19, 2021, at around 01.08 hrs the SPA was executed and alleged UPSI came into existence. In support of above contentions, it was submitted by Mr. Sancheti and also on behalf of other Noticees based on their replies that Noticee have submitted relying upon the Order of Hon'ble SAT in ***Rakesh Agarwal v. SEBI***[8] wherein in reference to the earlier PIT Regulation, Hon'ble

[8] *2003 SCC Online SAT 38*

SAT has , inter alia, observed that '*only crystallization of the decision of the merger/ takeover that the information would be price sensitive'*.

59. Further, Mr. Anupam Mishra, in this statement (reproduced in Para 19 of the SCN) has stated that on May 13, 2021, whatever information was available with him was available in public domain. SEBI has also not found any fault with the announcement by AGEL on May 18, 2021, that there was no event/ information that required disclosure when clarification was sought from AGEL into the aforesaid news reports by the stock exchanges. Thus, the information stated to be UPSI was not UPSI on May, 11, 2021, May 14, 2021 or any date before May 19, 2021 as there was nothing concrete with respect to the proposed acquisition. In the context of UPSI regarding merger/ acquisition, only on crystallization of the decision of the merger/ takeover that the UPSI can come into existence. Any disclosure by a listed company based on a pre- mature deal may create information asymmetry and affect the price and investment decisions of investors adversely. In support of this argument, Noticee No.2 has referred to various acquisition deals wherein the share price of the company making the acquisition fell as the acquisition was considered expensive by the market such as:

    a. IPCA Laboratories acquisition of Unichem Laboratories (April 2023).
    b. Godrej Consumer Products Ltd's acquisition of the consumer business of Raymond Limited (April 2023).
    c. Biocon Ltd's acquisition of Viatris (February 2022).
    d. Aditya Birla Fashion and Retail acquisition of TCNS Clothing Co. Ltd (May 2023).

Consideration and findings.

60. As noted above, there are three ingredients in Regulation 2(1(n) of the PIT Regulations that must be met for an information to fall within the ambit of UPSI. The first ingredient that the information relating, directly or indirectly, to company or its securities, is a question of fact and is admitted one in this case. The second ingredient of information not being generally available is a mixed question of fact and law, as a factual verification of the availability of information must be done considering the definition of *"generally available information"*. The third ingredient of the information likely to affect the price of the securities, is a question of fact.

61. I have considered the above contentions of the Noticees carefully in light of past precedents in the matters of alleged UPSI in the context of mergers/ acquisitions as in this case. It is

pertinent to mention that in the context of free market regime, information dissemination is lifeblood of securities market and timely information dissemination and its protection from misuse are very important for protecting market integrity. It is profoundly challenging task for Regulator considering its other duty to balance between timely disclosures and possible misinformation. The dynamics of economic activity is also a relevant factor enforcing the disclosures. In the context of mergers/acquisition/ strategic alliances, etc. UPSI's relevance is paramount to protect it from unequal dissemination and insider abuse and also to protect it from possible misuse on account of premature exposure.

62. I have perused order of Hon'ble SAT in ***Rakesh Agarwal***[9] case. It is note that, importantly, in that case Hon'ble SAT decided that materiality of information is mandatory to treat it as an UPSI under Regulation 2(1)(k) of the 1992 PIT Regulations and also that the UPSI in the context of merger/acquisition does not come into existence on the date of start of negotiations but it comes into existence only after *crystallization of the decision of the merger/ takeover.* Hon'ble SAT had made following observation in that case: -

> *"But negotiations are negotiations. Negotiations may sometimes fail. It may sometimes fructify. Till the negotiations are concluded, and a decision is taken, it is not possible to conclude the ultimate result of the negotiations. But sometimes half way through a shrewd negotiator would be in a position to see what would be the outcome of the negotiation. ABS's negotiations/discussions with the overseas parties is in no way different."*

63. In that case, the information pertaining to Bayer's acquisition of a 51% stake in ABS Industries was alleged to be UPSI. Pursuant to a secrecy agreement signed in July 1995 discussions ensued. Such discussions were of a tentative and exploratory nature, lacking the requisite actionable specifics to be deemed UPSI. These early negotiations, characterized by their fluidity and uncertainty, did not meet the stringent criteria of specificity and *materiality*. Hon'ble SAT also observed that to be price sensitive the information should be of such quality that it is likely to "*materially*" affect the price of securities of the company in the market, that this requirement is inherent in the concept of price sensitivity.

[9] *Order dated November 3, 2003.*

64. However, for determining the coming into existence of UPSI which is a question of fact, it is noted that there was paradigm shift subsequently, in cases involving mergers/acquisitions. For example; in the case of ***Kemefs Specialities Pvt. Ltd***.[10], in January 2005 Pricewaterhouse Coopers facilitated an introduction between Helios and Matheson and the vMoksha group, initiating negotiations for the acquisition of three vMoksha entities. These talks crystallized into a Term Sheet on April 8, 2005, delineating the modalities of the deal, including the fixed consideration and additional value to promoters. The definitive Share Purchase Agreement was signed on May 11, 2005. Hon'ble SAT found that the information regarding these high-stakes negotiations was unequivocally price sensitive, given its potential to significantly impact Helios and Matheson's stock price upon public disclosure and concluded that the UPSI came into existence by January 2005. SEBI has also taken similar stand, based on materiality test, that UPSI came into existence when confidential negotiations about acquisition commenced (***Emami Limited***[11]) or when initial directives in a strategic meeting for the takeover was received (***United Spirits Limited***[12]***)*** although formal agreements were signed later.

65. However, in the matter of ***Biocon Limited***[13], negotiations in respect of the collaboration between *Biocon* and *Sandoz* was under progress since October 7, 2016. However, on December 4, 2017, critical points in collaboration had been pending which were discussed through subsequent meetings of senior management in Bangalore and Dubai and finally resolved on January 16, 2018. Hence, the SCN had alleged that the negotiation of critical pending points in the collaboration on December 4, 2017 was the last leg of the negotiations for the agreement which led to the announcement of collaboration with Sandoz on January 18, 2018. Thus, the SCN had alleged that the UPSI period is from December 4, 2017 to January 18, 2018. However, speaking through its Ex -Whole Time Member (WTM) Ms. Madhabi Puri Buch (who later became Chairperson of SEBI), SEBI pronounced the legal position in this regard as under: -

> *"There is no denying that the collaboration between Biocon and Sandoz was not finalised prior to January 18, 2018 and as on December 7, 2017 key points were still pending. However, it may be noted that there exists a distinction between the timelines when the parties to a transaction have opened discussions, UPSI period and the final signing. During the former, the parties are still exploring the possibilities of a potential*

[10] *Appeal No. 54 of 2011 Date of Decision: 21.07.2011*
[11] *ADJUDICATION ORDER NO.EAD/BJD/VS/21-27/201 dated May 18,2018*
[12] *WTM/AN/IVD/ID7/28946/2023-24 dated August 25,2023*
[13] *WTM/MB/IVD/ID3/12407/2021-22 dated June 30, 2021*

transaction between them. Thus, the discussions are exploratory in nature and the information generated at this stage is imprecise in nature, without a reasonable probability of the transaction going through and without any specific details. Juxtapose this with the UPSI period. Discussions during UPSI period starts with high degree of crystallisation and proceeds towards a greater degree of crystallisation with a reasonable probability of the transaction going through. This is done in a structured way by resolving issues. In other words, during the UPSI period, with each passing day, the outcome of the transaction moves towards higher and higher degree of concreteness, as the discussions are centered around resolution of specific issues. It is noted that it cannot be said with 100% certainty what will be the outcome / information before the public announcement is actually made as there is still room for the parties to the transaction to change / modify their decision till the time the decision has been publicly announced. The certainty of information can only be measured in terms of probability/degree of crystallisation and concreteness."

"..The wheels for the process of finalisation were set in motion by entering into a phase of final discussion on December 20, 2017, after almost 14 months of ongoing discussion since October 7, 2016. It is at this point that a reasonably high degree of concreteness/crystallisation / probability of transaction going through happened.29. With respect to the email dated December 29, 2017 between the companies referred to by the Noticee, it is observed that reference to the stalemate in negotiations, in the aforesaid email was with respect to "termination clause". The said termination clause referred to the events / breaches which in future may end the collaboration and the discussion had to center around simplification of termination clause and reflection of the same in legal language. The same reflects that the negotiations between the parties has already passed through a high degree of concreteness or crystallization and was moving towards a finality. Credence to this is lent by the fact that prior to December 29, 2017, a draft of press release and question and answers were exchanged between the respective PR teams of the companieson December 20, 2017."

It is further observed that with respect to UPSI period, it should be kept in mind the requirement of UPSI period does not mitigate against the idea of a possibility of failure of the deal. To elaborate on it further, if the UPSI period has to begin only when the deal or the transaction in question will 100% go through and there is no room for failure, then the only period which can be defined as UPSI period would be between the signing of the contract / agreement and the press release. This will make the concept of "UPSI period" infructuous and will lead to mischief as multitude of steps are involved before a deal or a transaction can be consummated. The initial steps of any transaction / deal, as discussed in preceding paragraphs, are explorative and uncertain in nature and only when it can be reasonably inferred that the probability of transaction of going through is high, then only the UPSI period can begin. The individuals who are part of the deal / transaction team, during the UPSI period will know with a higher degree of certainty, the probable outcome of the deal / transaction and being in possession of the said information they may trade. Therefore, if the UPSI period will begin when there is

no room for the deal / transaction to fail, then the situation as mentioned above would not be covered as insider trading, even though it leads to information asymmetry."

66. In the above ***Biocon* case,** SEBI did not treat emergence of UPSI on negotiations in respect of the collaboration between *Biocon* and *Sandoz* since October 7, 2017. SEBI alleged, in SCN, a later date i.e. December 4, 2017 as date of emergence of UPSI. Holding as above, Learned Ex WTM, SEBI held that probability of the transaction to go through was high from December 20, 2017 onwards and the information relating to the collaboration between Biocon and Sandoz was published when the public announcement was made to the Exchanges by Biocon, on January 18, 2018, post market hours and held that the period of UPSI was from December 20, 2017 to January 18, 2018.

67. In this case also, I note from records that on April 29, 2021 some internal discussions had taken place in the AGEL to discuss portfolio and structure note. Vide emails dated April 30, 2021 material, 'M&A Update', 'Note on APTCL' and 'brief update note' regarding impugned acquisition of SB Energy for M&A meeting to be held in AGEL were circulated to many employees of the company. Apparently, the information on records as available for April 29, 2021 is vague and does not suggest definitive negotiations within seller and buyer. On May 07, 2021, AGEL made an ***'initial offer'*** to BGL and SBGCL. The UPSI was not crystalised even on this date as further negotiations had to take place. Alleged UPSI did not exist even on May 10, 2021, where it was decided to seek more detailed information/ documents from SB Energy for the purpose of due diligence. It was only during May 12, 2021 and May 14, 2021 that the negotiations between the parties had passed through a high degree of concreteness or crystallization.

68. The facts of the case are closely similar to above mentioned ***Biocon*** Case. In this case also, going by the above stand of SEBI in ***Biocon*** case the certainty of transaction could be inferred from signing of NDA between the parties on May 13, 2021 when there was high degree of concreteness or crystallization and deal was moving towards a finality. It was the date when VDR for conducting the due-diligence regarding the transaction was opened. Thus, going by reasons held in ***Biocon*** case, the UPSI period in this case could be possibly from May13, 2021 to May 19, 2021. In Para 8, the SCN ostensibly agrees that information pertaining to the acquisition of SB Energy by AGEL *by executing a Share Purchase Agreement with SBGCL and BGL is UPSI* in this case.

69. In terms of Regulation 30(10) of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (LODR Regulations) the listed entity is under obligation to provide specific and adequate reply to all queries raised by stock exchange with respect to any events or information and the stock exchange shall disseminate information and clarification as soon as reasonably practicable. Further in terms of Regulation 30 (11) of the LODR Regulations, the listed entity can confirm or deny any reported event or information to stock exchange. In this case, when BSE sought clarification from the AGEL, it informed BSE that at that point in time, there was no event/ information that required any disclosure neither there was any definitive agreement signed by the Company which required any disclosure. BSE accepted this disclosure and disseminated to public on May 18, 2021. It is noted that IA has, in table 4 (page 6) of the IR considered this announcement to be a major corporate announcement recognising that the same led to a price increase of 9.08% in the scrip of AGEL compared to the previous day closing price. In view of these facts and circumstances it is a very obfuscated situation to hold that UPSI commencement on April 29, 2021. A conspicuous and tacit regulatory acquiescence has been given to accept that as on May 18, 2021 there was no UPSI.

70. It is relevant to mention that Hon'ble Supreme Court, in the matter of ***Chairman, State Bank of India v. MJ James***[14], held that acquiescence virtually destroys the right. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance.

71. In the facts and circumstances of this case, I am inclined to hold that there is tacit acceptance in the SCN that UPSI came into existence only on or after May 18, 2021. If not, then also it is established, in the facts and circumstances of this case, that the alleged UPSI certainly did not come into existence on April 29, 2021 as alleged. As per stand taken in ***Biocon*** Case, it came into existence on May 13, 2021.

Applying materiality test

72. However, I am also proceeding to examine the matter taking UPSI in terms of para 9 of the SCN. For any information to be classified as UPSI there should be a likelihood of the information *materially affecting* the price of the securities of the company. It is noted that

[14] *2021 SCC OnLine SC 106111*

materiality test as applicable under Regulation 2(k) of the PIT Regulations of 1992 in the ***Rakesh Agarwal* case**, is inherent in the definition of UPSI in Regulation 2(1)(n) of the PIT Regulations of 2015 also. Accordingly, the price sensitivity of an information has a direct correlation to the *materiality of the impact* that it can have on the price of the securities of the company[15]. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge, being "*bullish*" or "*bearish*". The materiality hinges not merely on the financial value or scale of operations of the company or the transactions involved but on the potential impact of the information on the market price of the securities of the company.

73. As per the SCN, post the announcement dated May 19, 2021, the price of scrip of AGEL moved from close price of ₹1198.75 (on May 18, 2021) to a close price of ₹1243.65 (increase of 3.75%). Noticees have contended that from April 29, 2021 to May 18, 2021, the price of the shares of AGEL was already showing an upward trend and there was already considerable interest in the scrip at the relevant time. I note (from BSE website) that the price movement in the scrip of AGEL during the alleged UPSI period was as given in the following table:

Table 6: Price movement in the scrip of AGEL on BSE

Date close	Closing Price	Price increase from previous close	Percentage of increase
28-04-2021	1054.35	0.10	0.009%
29-04-2021	1056.20	1.95	0.18%
30-04-2021	1019.00	-37.2	-3.5%
03-05-2021	1036.50	17.5	1.7%
04-05-2021	1046.45	9.95	0.96%
05-05-2021	1065.85	19.4	1.85%
06-05-2021	1099.00	33.15	3.11%
07-05-2021	1102.70	3.7	0.34%
10-05-2021	1102.95	0.25	0.02%-
11-05-2021	1077.65	-25.3	-2.29%
12-05-2021	1050.00	-27.65	-2.57%
14-05-2021	1088.15	38.15	3.63%
17-05-2021	1142.55	54.4	5.00%
18-05-2021	1198.95	56.4	4.94%
19-05-2021	1244.30	45.35	3.78%

[15] *SEBI v. Abhijit Rajan 2022 SCC OnLine SC 1241.*

74. From the above table, it is observed that the price of the scrip of AGEL was increasing prior to the announcement dated May 19, 2021 also. Thus, it is doubtful to hold that the said information remained UPSI so as to have likelihood of materially affecting the price of the scrip of AGEL upon becoming generally available on May 19, 2021 as alleged.

Whether information was Generally Available prior to May 19, 2021.

75. For any information to be classified as UPSI it should not be *generally available*. The expression *'generally available'* is very important in the context of the above definition of UPSI in Regulation 2(1) (e) to mean *an information that is accessible to the public on a non-discriminatory basis.* While Note appended to Regulation 2(1)(n) suggests that information is UPSI until it is available in '*public domain'*. The Note appended to this Regulation states that information relating to a company or securities published on the website of a stock exchange, would '*ordinarily'* be considered '*generally available'*.

76. However, while enforcing this Regulations *vis- a vis* publication of price sensitive information, it has been consistent stand ever since 1992 PIT Regulations that the information which was published in press reports despite not published on stock exchange is generally available/ publicly known information. For example;

(a) ***In Hindustan Levers Limited v. SEBI[16],*** the Hon'ble Appellate authority (as it was then the Ministry of Finance, Government of India) observed that '…..*for information to be generally known, it is not necessary that it be confirmed or authenticated by the company as otherwise, it would fall within the scope of 'published by the company'. We feel that the appellants' contention on this point is correct……"* and that any information which was published in press reports despite non -acknowledgement by the Company, was generally available/ known information if '*there are strong reasons to believe that the impending merger, though not formally acknowledged or published, was in one sense generally known and UTI's denial of knowledge cannot be implied to mean that market in general had no information in this regard.*"

(b) In the matter of **63 Moons Technologies Limited**[17] speaking through its then Whole Time Member Ms. Madhabi Puri Buch , SEBI held that:-

[16] *[1998] 18 SCL 311 [AA]*
[17] WTM Order dated January 31, 2018

"26. Having answered the first issue in the affirmative, the next issue for consideration is whether the "price sensitive information" was unpublished during the period of investigation. In this regard, it is noted that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information relating to the issuance of SCN dated April 27, 2012 to NSEL, majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL's reply to the SCN. The article also covered the possible action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007.

28. In my view, a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on part of NSEL to provide a satisfactory explanation to the allegations levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, payment defaults in relation thereto and the eventual loss to the reputation of the promoters / management of NSEL. ***Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012, and as such ceased to be UPSI from that date.*** *Accordingly, the period during which the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012."*

(….emphasis added)

(c) In the matter of **Bharti Airtel Limited**[18]**,** the Adjudicating Officer of SEBI held the same view in following words:

[18] SEBI Adjudicating Officer Order dated October 22, 2020

"*32. It is noted that the Noticees have submitted number of news articles/items published in number of widely distributed news papers and broadcasted on widely watched business news channels…….*

33. It is noted that the Noticees have submitted number of news articles/items published in number of widely distributed news papers and broadcasted on widely watched business news channels…….

34. From the above, it is noted that information related to the announcement made by the Company on October 12, 2017 on the proposed acquisition of the Consumer Mobile Business of TTSL and TTML by the company, was already in public domain by way of publication of articles in Economic Times and Live Mint, two newspapers with fairly large subscription. Further, news regarding the said acquisition was also relayed on mainstream business news channels like Zee Business, ET Now and CNBC TV18, all of which have very wide viewership. This clearly make the information regarding acquisition of consumer telecom business of TTSL and TTML by BAL as generally available information in the public domain on a non-discriminatory basis. The above references to the newspaper articles and media reports on news channels establishes that the alleged UPSI was 'generally available information' and not an unpublished price sensitive information under the PIT Regulations."

77. The above view has been confirmed by Hon'ble SAT in the matter of ***Future Corporate Resources Pvt. Ltd. & Ors. v. SEBI***[19] wherein it has *inter alia,* observed that media reports which are available to public on non-discriminatory basis constitute *generally available information*. The observations of Hon'ble SAT are follows:

"20. We find that the WTM has failed to appreciate that the significance, dominance and outreach of the media in financial sector reporting impacts investor sentiment and behaviour and impacts the securities market. We find that the publication of information regarding the transaction was also reported in multiple print and digital publications, including Economic Times, The Hindu Business Line, DNA India, Money Control, Live Mint, VCCircle, Inc42, India retailing Bureau etc. and various research reports where the imminence and nature of the transaction were highlighted in depth have been entirely ignored by the WTM.

[19] Appeal No. 81 of 2022 decided on December 20, 2023

21. The finding that the interviews and news reports does not amount to concrete information being disclosed on a non-discriminatory basis and, therefore cannot be accepted that the information about the transaction was available in the public domain as the said information was very fluid, nebulous and bereft of specific details cannot be accepted. A perusal of these news reports would indicate that the company was going ahead with the merger of its HomeTown business. Such information which was not generally available but was made available in the instant case and, therefore, in our opinion, the trades carried out were not on the basis of the UPSI as the information was generally available in the public domain.

22. Thus, the contention of the respondent that the term "generally available information" means only the information which has been disseminated on the platform of the stock exchange is taking a very narrow and restrictive view. Whereas information published on the stock exchange would constitute generally available information, it would also follow that any information accessible to the public on non-discriminatory basis would also be generally available information.

23. Thus, publication of information regarding the transaction which was reported in multiple prince and digital publication including Economic Times, The Hindu Business, Business Lines, The Money Control, etc. wherein the nature of transactions was highlighted in depth clearly leads to an irresistible conclusion that information of the transaction was generally available".

(….emphasis added)

78. Thus, if any information relating to a company or securities published on the website of a stock exchange or in media/ news reports on non- discriminatory basis are considered to be published in public domain and cease to be an UPSI on such publication. For the purposes of the instant case, the legal position settled in ***Future Corporate Resources Pvt. Ltd (supra),*** case holds good**.**

79. On perusal of the news reports mentioned in the IR and also certain additional news reports provided by the Noticees, I note that such news reports provide detailed information relating to the proposed acquisition of SB Energy by AGEL by executing a share purchase agreement. In the news reports disclosed in *public domain,* the material information about impugned acquisition was disclosed as follows:

Date and Time of publication	Media platform	Title	Relevant contents
May 16, 2021 at 03:25 PM	Mint	Adani arm eyes Softbank's majority stake in SB Energy	• AGEL is looking to buy Japan's SoftBank Group Corp.'s majority stake in solar power producer SB Energy. • It has begun due diligence of SB Energy. • Bank of America and Barclays were handling the sale process. • The diversified Adani Group has been on an acquisition spree to grow its green energy portfolio. • The stake sale efforts followed SB Energy dropping its plan in July 2020 to raise $600 million through a dollar bond.
May 16, 2021 at 04:17 PM	Bloomberg	Adani Green Said to be in Advanced Talks for SoftBank-Backed SB Energy	• AGEL is in advanced talks to acquire SB Energy Holdings Ltd. • A deal could value SB Energy, owned by SoftBank Group Corp. and Bharti Enterprises Ltd., at more than $650 million. • An announcement could come in coming weeks. • Shares in AGEL have risen more than 370% in the past year, giving the company a market value of about $23 billion.
May 16, 2021 at 05:23 PM	Economic Times	Adani Green circles around SB	• Days after its deal with CPPIB collapsed, shareholders of SB Energy have approached Adani Group with a proposal to buy them

		Energy for a buyout after CPPIB drops off	out from their struggling renewable energy venture, said multiple people involved. Talks between both sides have intensified over the last fortnight. • The due diligence by AGEL, has begun though the final valuations have not been fixed yet. • It may seek to buy 100 per cent of the company, buying out both Softbank and Bharti. • But with negotiations dragging on for months, it pulled the plug last week and terminated the exercise. ET broke that story on last Thursday.
May 16, 2021	Private Equity Insights	SoftBank Sell its Stake in SB Energy After CPPIB's $525m Deal called off.	• AGEL is looking to buy Japan's SoftBank Group Corp.'s controlling stake in solar power producer SB Energy. • A due diligence process has been started by AGEL, with its personnel been given access to SB Energy' data room.
May 17, 2021 12:46 AM	Business Standard	Adani Green in advanced talks for SoftBank-backed SB Energy: Report	• AGEL is in advanced talks to acquire privately-held SB Energy Holdings Ltd. • A deal could value SB Energy, owned by SoftBank Group Corp. and Bharti Enterprises Ltd., at more than $650 million. • Adani Green is exploring a buyout the renewable energy company through an all-stock deal.

			• Shares in AGEL have risen more than 370% in the past year, giving the company a market value of about $23 billion.
May 17, 2021 2:42 AM	Hindustan Times	Adani arm eyes SoftBank's SB Energy majority stake	• AGEL is looking to buy Japan's SoftBank Group Corp.'s majority stake in solar power producer SB Energy. • It has begun due diligence of SB Energy. • The valuation of SB Energy in the proposed deal with CPPIB was lower than the one expected by the renewable energy industry. SoftBank invested more than $800 million in the business in the past five years.
True Print Copy			
May 16, 2021	Business Standard	Adani Green in talks to acquire SB Energy	• AGEL is exploring a buyout of the renewable energy company through an all-stock deal, another person said. An announcement could come in coming weeks.
May 17, 2021	Hindustan Times	Adani arm eyes SoftBank's SB Energy majority stake	• AGEL is looking to buy Japan's SoftBank Group Corp.'s majority stake in solar power producer SB Energy, said two people aware of the matter. • It has begun due diligence of SB Energy.
May 17, 2021	LiveMint	Adani arm eyes SoftBank's majority	• AGEL has begun due diligence of SB Energy.

		stake in SB Energy	

80. The scan of these news reports as appearing in news media vividly disclose material information (which is the alleged UPSI in this case) as follows:

a. Mint article published on May 16, 2021 at 03:25 PM:

mint Premium | INDUSTRY

Adani arm eyes Softbank's majority stake in SB Energy

Utpal Bhaskar | 2 min read | 16 May 2021, 03:25 PM IST

Adani Group has been ramping up its green energy portfolio and has been on an acquisition spree. Photo: Bloomberg

SUMMARY

- *A due diligence process has been started by Adani Green Energy Ltd to acquire SoftBank Group's 80% stake in solar power producer SB Energy after its earlier proposed deal with Canada Pension Plan Investment Board (CPPIB) was called off*

NEW DELHI : Adani Green Energy Ltd (AGEL) is looking to buy Japan's SoftBank Group Corp.'s majority stake in solar power producer SB Energy, said two people aware of the development.

This follows the collapse of a plan to sell SoftBank's entire 80% stake in SB Energy to Canada Pension Plan Investment Board (CPPIB) for an estimated $525 million.

Adani Green has begun due diligence of SB Energy, the people cited above said, requesting anonymity. Mint broke the story online on Sunday.

SB Energy has a portfolio of 7.7 gigawatts (GW) in India. Bharti Enterprises Ltd owns the remaining 20% stake in the company. Bank of America and Barclays were handling

the sale process. France's Total has invested $2.5 billion for acquiring a 50% stake in 2.35GW operating solar assets of AGEL and a 20% stake in AGEL. With 3.47GW operational capacity and 15.24GW portfolio, the Adani-Total JV plans to commission 25GW by 2025.

Spokespeople for SoftBank Group, Bharti Enterprises, Bank of America and Barclays Bank India declined to comment about the fresh stake sale plans with Adani Green.

Queries emailed to spokespersons for Adani Group and Total; Raman Nanda, SB Energy's chief executive; and Rohit Modi, SB Energy's country head and president-India, on Saturday remained unanswered.

There has been sustained interest in India's green economy despite the turmoil caused by the pandemic.

India is running the world's largest clean energy programme to achieve 175GW of renewable capacity, including 100GW of solar power by 2022.

According to the Central Electricity Authority—India's apex power sector planning body—the country will require 280GW from solar projects by 2030 to meet its power requirement of 817GW by then.

The diversified Adani Group has been on an acquisition spree to grow its green energy portfolio. It recently bought Sterling and Wilson Pvt. Ltd's 75 megawatts (MW) operating solar projects and Toronto-based SkyPower Global's 50MW solar project in Telangana. Adani Enterprises Ltd has also partnered EdgeConneX to develop 1GW of data centre capacity over the next decade that will be powered by renewable energy. The valuation of SB Energy in the proposed deal with CPPIB was lower than the one expected by the renewable energy industry. SoftBank invested more than $800 million in the business in the past five years. The stake sale efforts followed SB Energy dropping its plan in July 2020 to raise $600 million through a dollar bond.

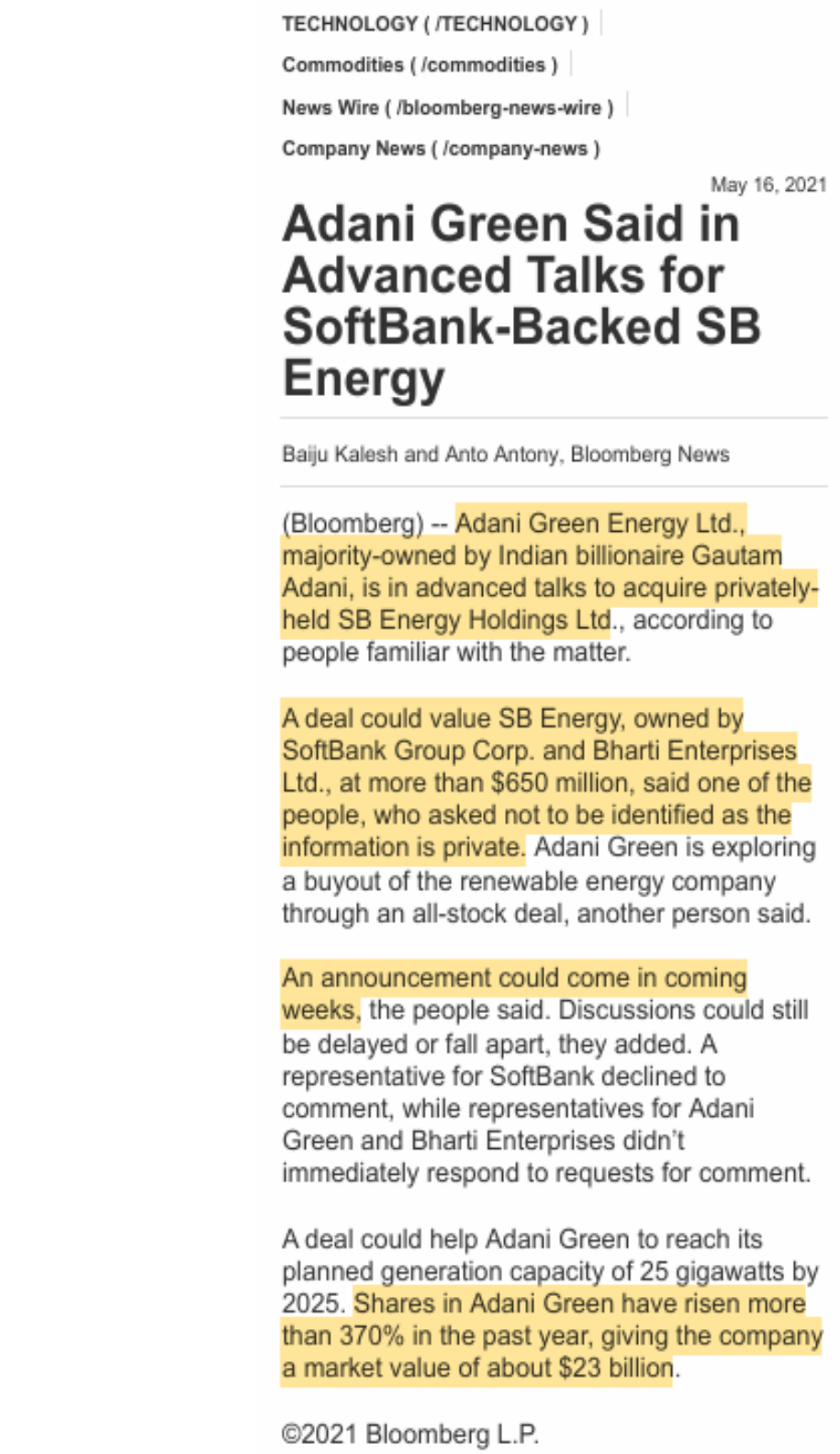
SoftBank's planned deal with CPPIB was in the works for around a year, with CPPIB placing several pre-conditions for SoftBank before finalizing the transaction. These included meeting certain project commissioning deadlines, securing new businesses, bond issuance as well as SoftBank bearing any future liquidated damages liability for acquiring the stake, as reported by Mint earlier.

In an emailed response, a CPPIB group spokesperson said, "We don't have a comment beyond our response provided on Thursday."

The same spokesperson for CPPIB said on Thursday it "continues to look for opportunities for new investments in India, including in the renewables sector, as part of our Sustainable Energy Group strategy." "CPP Investments is a major investor in India with Canadian $12 billion invested to date, and the country is core to our global, long-term investment strategy," the spokesperson said.

Mint reported on 6 July 2020 about SoftBank's plan to exit SB Energy in a shift from its earlier plan to find a significant minority investor, and its separate talks with CPPIB, Canada's Brookfield Asset Management Inc. and Abu Dhabi's sovereign wealth fund Mubadala Investment Co. for the sale.

b. Bloomberg article published on May 16, 2021 at 04:17 PM:



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May 16, 2021

Adani Green Said in Advanced Talks for SoftBank-Backed SB Energy

Baiju Kalesh and Anto Antony, Bloomberg News

(Bloomberg) -- Adani Green Energy Ltd., majority-owned by Indian billionaire Gautam Adani, is in advanced talks to acquire privately-held SB Energy Holdings Ltd., according to people familiar with the matter.

A deal could value SB Energy, owned by SoftBank Group Corp. and Bharti Enterprises Ltd., at more than $650 million, said one of the people, who asked not to be identified as the information is private. Adani Green is exploring a buyout of the renewable energy company through an all-stock deal, another person said.

An announcement could come in coming weeks, the people said. Discussions could still be delayed or fall apart, they added. A representative for SoftBank declined to comment, while representatives for Adani Green and Bharti Enterprises didn't immediately respond to requests for comment.

A deal could help Adani Green to reach its planned generation capacity of 25 gigawatts by 2025. Shares in Adani Green have risen more than 370% in the past year, giving the company a market value of about $23 billion.

c. Economic Times article published on May 16, 2021 at 05:23 PM

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Adani Green circles around SB Energy for a buyout after CPPIB drops off

By Shashwat Mohanty & Arijit Barman, ET Bureau • Last Updated: May 16, 2021, 05:23 PM IST

Synopsis
The due diligence by Adani Geen Energy Ltd, (AGEL), has begun though the final valuations have not been fixed yet, sources said.

The current market capitalisation of Adani Green is Rs 1.71 lakh crore ($24 billion).

MUMBAI: Days after its deal with CPPIB collapsed, shareholders of SB Energy have approached Adani Group with a proposal to buy them out from their struggling renewable energy venture, said multiple people involved. Talks between both sides have intensified over the last fortnight, ever since it became evident that the Canadian Pension Plan Investment Board (CPPIB) would not back down or accept several of their terms that were increasingly getting difficult to meet.

The due diligence by Adani Geen Energy Ltd, (AGEL), has begun though the final valuations have not been fixed yet, sources mentioned above said.

Set up in 2015, SB Energy is an 80:20 alliance between Softbank Group and Bharti Enterprises that had a target of setting up 20 GW of clean energy projects with an investment of $20 billion over 10 years.

Unlike last time, it is believed Sunil Mittal, chairman Bharti Enterprises, is driving the negotiations currently with Gautam Adani, chairman of the eponymous energy to ports and coal trading group. The $550 million CPPIB offer, however, has already set a valuation benchmark for SB Energy, feel industry officials who also believe Adani may seek to buy 100 per cent of the company, buying out both Softbank and Bharti. It is still not clear if the deal will eventually see a share swap or a cash transaction.

The current market capitalisation of Adani Green is Rs 1.71 lakh crore ($24 billion).

Queries sent to Adani Group, Bharti and Softbank were not immediately available.

Earlier in 2019, Softbank founder Masayoshi Son had refused to fund the high profile venture, forcing a global sale process. But with negotiations dragging on for months, he pulled the plug last week and terminated the exercise surprising even his colleagues. ET broke that story on last Thursday.

Even with a depressed offer, Softbank decided to pursue with the "distress

sale" since it was not keen to fund the business any further.

SB Energy's 4,000 MW capacity, half of which is operational and another half in the pipeline, would help Adani Green to bulk up its portfolio. A further 3,700 MW worth of projects are under "active development", but construction hasn't started on these as of yet.

Adani Green Energy Limited (AGEL), which was hived off the parent group in 2015 and listed publicly on the National Stock Exchange (NSE) in 2018, has been looking at expanding its portfolio via brownfield acquisitions to reach the 25,000 MW capacity target by 2025.

In FY 21, the clean energy giant bought assets from distressed companies Essel Group and SP Group's Sterling and Wilson.

Adani Green has a total capacity of 15,240 MW worth of renewable energy projects across the country, out of which 3,470 MW is currently operational.

French energy giant Total has a 20% stake in Adani Green, which includes a 50% share of all of AGEL's solar assets.

Recently, AGEL in March raised $1.35 billion senior debt facility with participation from 12 international banks "to finance its under-construction renewable portfolio", one of the biggest financing deals in the renewables space in Asia.

As per Mercom Capital, Adani Green is the biggest renewable energy company in the world, based on asset capacity. It has projects in all major renewable energy states in India, including Rajasthan, Gujarat, Madhya Pradesh, Maharashtra, Tamil Nadu, and Andhra Pradesh.

AGEL has also won the biggest solar tender in the world for an 8,000 MW project, involving a total investment of about $6 billion. As part of the same bid, Adani will also manufacture 2,000 MW of solar cells and modules by 2022.

d. Private Equity Insights article dated May 16, 2021.

SoftBank Sell Its Stake in SB Energy After CPPIB's $525m Deal Called Off

May 16, 2021 | News | 0 comments

Gautam Adani-led Adani Green Energy Ltd (AGEL) is looking to buy Japan's SoftBank Group Corp.'s controlling stake in solar power producer SB Energy, after SoftBank's earlier proposed deal with Canada Pension Plan Investment Board (CPPIB) was called off, said two people aware of the development.

A due diligence process has been started by AGEL, with its personnel been given access to SB Energy' data room.

stake is held by Bharti Enterprises Ltd. Bank of America and Barclays were handling the sale process.

Spokespersons for SoftBank Group, Bharti Enterprises, Bank of America, and Barclays Bank India declined comment.

Queries emailed to an Adani Group spokesperson on Saturday evening remained unanswered till press time.

With businesses spanning across energy, ports, airports, logistics, mining, resources, gas, defence and aerospace, Adani Group has been ramping up its green energy portfolio and has been on an acquisition spree. It recently bought Sterling & Wilson Private Ltd's 75MW operating solar projects and Toronto-headquartered SkyPower Global's 50MW solar project in Telangana. Adani Enterprises Ltd has also partnered EdgeConneX to develop 1GW of data centre capacity over the next decade, which will be powered by renewable energy.

France's Total has invested $2.5 billion for acquiring a 50% stake in 2.35GW operating solar assets of AGEL and a 20% stake in AGEL. With 3.47GW operational capacity and 15.24GW portfolio, the Adani-Total JV plans to commission 25GW by 2025.

A CPPIB group spokesperson in an emailed response said, "We don't have comment beyond our response provided on Thursday."

Source: Mint

e. Business Standard article published on May 17, 2021 at 12:46 AM.

Business Standard

Adani Green in advanced talks for SoftBank-backed SB Energy: Report

A deal could value SB Energy, owned by SoftBank Group Corp. and Bharti Enterprises Ltd., at more than $650 million

Baiju Kalesh and Anto Antony | Bloomberg |

Adani Green Energy Ltd., majority-owned by Indian billionaire Gautam Adani, is in advanced talks to acquire privately-held SB Energy Holdings Ltd., according to people familiar with the matter.

A deal could value SB Energy, owned by SoftBank Group Corp. and Bharti Enterprises Ltd., at more than $650 million, said one of the people, who asked not to be identified as the information is private. Adani Green is exploring a buyout of the renewable energy company through an all-stock deal, another person said.

An announcement could come in coming weeks, the people said. Discussions could still be delayed or fall apart, they added. A representative for SoftBank declined to comment, while representatives for Adani Green and Bharti Enterprises didn't immediately respond to requests for comment.

A deal could help Adani Green to reach its planned generation capacity of 25 gigawatts by 2025. Shares in Adani Green have risen more than 370% in the past year, giving the company a market value of about $23 billion.

81. IR has treated these news reports as speculative since these news reports mention that no comments were offered by the entities involved in the deal and that AGEL on May 18, 2021clarified that there was no event that required disclosure. It is noted that the information which has been treated as UPSI in this case was vividly stated in the above-mentioned news reports. The same information is alleged to be as UPSI and within the knowledge of Noticee No.1 and in possession of Noticee No.2 since he was in *touch* with Noticee No.1. This is the crux of the whole case. It cannot be the case that the information is UPSI but speculative at the same time. If this information is treated to have come into existence as UPSI on April 29,2021 as observed in the IR it cannot be speculative on May 16, 2021. Further, if it is treated as speculative as on May 16, 2021, it can come into existence only if it has crystallised by signing of SPA on May19, 2021 as alleged in the SCN. The case cannot proceed as expected in SCN based on such contradictory stands that UPSI came into existence on April 29, 2021 but its public dissemination in news report on May 16, 2021 is speculative merely because no one gave any comments to media and that AGEL informed on May 18, 2021 about non-availability of disclosable information. If this stand that the UPSI remained speculative and came into existence on May 19, 2021, is accepted the charges in SCN against Noticees do not sustain at all.

82. In my view, May 18, 2021 clarification by AGEL does not in any way deny the existence of particulars as mentioned in these news reports but has only stated there to be "*no event / information that requires disclosure neither there is any definitive agreement signed by the Company which requires any disclosure."* The facts in news reports are no different than what is treated as alleged UPSI in the IR and the SCN. Therefore, they remain verified by AGEL vide its letter dated May 18, 2021. As the IR accepts statement of AGEL then there is no reason to allege that UPSI came into existence on April 29, 2021as contended by the Noticees.

83. Going further, even if one were to still argue that the UPSI came into existence on April 29, 2021 only, then it was *generally available* and did not remain as UPSI on May 16,2021 when the first news report came in public domain. ***Report of the High Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992*** which drafted this Regulation said that: *"The term ―generally available information is defined to identify what is not UPSI and formulate a test based on whether the information in question is accessible to the public on a non-discriminatory basis."* The intent and stand of SEBI is

also deduced from the Note appended to Regulation 2(1)(n) which defines UPSI and above decisions of SEBI and SAT when UPSI becomes *generally available*. The definition clearly intends that information that is not *generally available* would be UPSI if it is likely to materially affect the price upon coming into the '*public domain'*. The Notes in PIT Regulations are unique as no legislation contain such Notes as part of it. Bills of Parliament and State Legislatures do contain Notes on clauses but such Notes do not form part of the final Act passed by the Parliament of India/ State Legislatures. Such approach was first and only time adopted by SEBI as forward looking approach in applying PIT Regulations considering its complexities and purposive enforcement. The Notes have been made part of the Regulations with a specific purpose as declared in the ***Report of the High Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992*** that:

> "*These notes are meant to be an integral and operative part of the regulations and are aimed at telling society what role the regulatory system expects the provision of the regulation to perform and help in their interpretation…..*
>
> *The Committee believes that in formulating regulatory policy, the authors of legislation should take courage not to stop short of articulating what the legislation was meant to achieve and intended to mean. ……*
>
> *Penal provisions should be precise and should not impose an unfair burden on Courts by expecting that ambiguities would be ironed out during legal proceedings…..*"

84. As further declared by the Committee the annotations are with a view to set out the legislative intent and scope of the provision and more importantly, the principles on which the regulation is based. The words *"public domain"* still exist in Note to Regulation 2(1)(n) which are binding as terms of Regulations and its scope is applicable and binding.

85. The information being available in public domain cannot lead to any prohibited communication of UPSI or trading when in possession of UPSI. I note that the impact of the above news reports on the price of scrip of the Company was much more than when formal disclosure was made by AGEL on May 19, 2021, as the scrip hit upper circuit (an increase of 5%) on May 17, 2021, and an increase of 4.84% on May 18, 2021 as compared to increase of 3.75% on May 19, 2021. Thus, the news reports had a material impact on the share price and trading activity into the scrip of AGEL.

86. Thus, in this case, the UPSI came into existence on May 13, 2021 and ceased to be UPSI on May 16, 2021 as it was available on non- discriminatory basis and became generally

available information after the publication of the news reports on May 16, 2021 (03:25 PM).

87. In view of the above, the charges in the SCN are unsustainable. However, for the sake of dealing with all the other allegations/charges, I am still examining, if the Noticee No.1 who was in possession of alleged UPSI at relevant times communicated the same to Noticee No. 2 and then Noticee No. 2 traded in the scrip of the company while in possession of the said alleged UPSI on May 14, 2021 for himself and for Noticees No. 3 and 4.

Communication of UPSI.

88. The allegation in this case is solely based on the circumstantial and intrinsic evidence. In the context of such evidences it is pertinent to mention following observations of Hon'ble Supreme Court in the matter of ***Hanumant vs. State of Madhya Pradesh***[20] :

> *"….. In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always a danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew. 227), where he said:*
>
> *"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to from parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."*
>
> *It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one*

[20] *AIR 1952 Supreme Court 343*

proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

....." *(emphasis supplied)*

89. The Noticees have contended that the findings in para 6(b) of SEBI in Whole Time Member (WTM) Order dated November 06, 2023 in the matter of ***Lux Industries Limited***[21]**,** SEBI should not have issued such SCNs as the charges levelled cannot be sustained. In this regard, reliance has been placed on Order dated April 25, 2022 passed by Hon'ble SAT in the matter of ***Pranshu Bhutra v. SEBI***[22] to state that it is upon SEBI to prove that they had access to UPSI or that they were an insider. The Noticee have also placed reliance on the observation of the Hon'ble Supreme Court in the Judgement dated March 02, 2006 in ***Bharat Sanchar Nigam Limited & Anr v. Union of India & Ors***[23] that "*Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view."* On the basis of said observation the Noticees have contended that since the facts and circumstances in present case are similar to ***Lux Industries Limited*** (supra) the present proceedings be disposed of without any adverse action against them.

90. In para 32, the SCN first time alleges communication of UPSI pertaining to the SB Energy acquisition to Noticee No.2. The SCN, however, does not allege any date of such communication. Since the acquaintance/connection/ *touch* between Noticee No.1 and 2 during UPSI period has been alleged and the impugned trades of Notcees 2, 3 and 4 happened on May 14, 2021, the communication could be inferred on May 11, 2021 when Noticees 1 and 2 were on a conference call with another person and trading pattern of Noticees 2, 3 and 4. As per para 6.4 of the IR, there was one conference call by Noticee No.1 to two numbers 992010xxxx and 982007xxxx. This was a conference call. However, Noticee No. 1 in his statement on oath stated before the IA that he had one to one call regarding the Talwandi Sabo matter with Noticee No. 2 during May 2021. This indicates, that there were "*some other calls, other than the call on May 11, 2021, "possibly" over*

[21] *WTM/AS/IVD/ID1/29740/2023-24 dated November 06, 2023*
[22] *Appeal No. 689 of 2021 dated April 25, 2022*
[23] *W.P (Civil) No. 183 of 2003*

WhatsApp". However, the IR neither attempted to find out the third party to the conference call dated May 11, 2021 nor does it bring out any details of any other call/chat on WhatsApp. I note that neither the SCN nor the IR mentions any instance of the communication of UPSI and the charge of communication of the alleged UPSI by Noticee No.1 to Noticee No. 2 has been alleged on the basis of preponderance of probability based on circumstantial inference that the Noticees No. 1 and 2 being in *touch* through calls/ emails and the trading pattern of Noticees No. 2, 3 and 4.

91. To bring home such charge based on circumstantial evidence, a cohort analysis of surrounding facts and circumstances supported by strong circumstantial evidence are necessary. The requisite evidence needed to prove a charge of insider trading on preponderance of probability differs from case to case, however, in each such case higher degree of preponderance of probability needs to be established. Hon'ble SAT in ***Affluence Fincon Service Pvt. Ltd.***[24] held that: - As per the explanatory notes to Regulation 2(1)(g) "*the onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the charge".* It further held that: - *"In our considered view, keeping in view the decision of this Tribunal in the case of Samir Arora vs. SEBI, it is obligatory on the part of the Respondent to clearly establish as to how Appellants had "access" to the alleged UPSI, which it has failed in the present case."* As regards, '*relationship'* based on remote factors as in this case, Hon'ble SAT held that the assumption that in a process, relationship is built among the parties, which may make them insiders, is only an assumption and lacks credence.

92. In similar cases dealing with the allegations of violations of PIT Regulations, SEBI has observed that in absence of sufficient evidence of communication charge of insider trading cannot sustain. In the matter of ***Lux Industries Limited (****supra****),*** WTM of SEBI held that charges levelled cannot be sustained due of lack of evidence as there was only a single call and there was no other evidence to show how the UPSI was communicated. The relevant observations of WTM, SEBI in the said Order are as follows:

"6. Pursuant to the conclusion of the investigation in the matter, the following was observed:

a)…..

[24] *Appeal No. 314 of 2021 dated October 10, 2024*

b) With regard to the communication of UPSI from Udit to Mujtaba, it was observed that Udit had made one call to Mujtaba during the UPSI period (on May 14, 2021). Except for the said one call, no other material was found during the investigation, which could establish the communication of UPSI, directly or indirectly, from Udit to Mujtaba and from Mujtaba to any of the remaining entities, i.e., (i) Evermore, (ii) Akshay, (iii) Dinero, (iv) Anju, (v) SSCSL, (vi) Sunder, (vii) Suyash, (viii) Arun and (ix) Shubham. Accordingly, the flow of communication of UPSI could not be established on account of lack of evidence. In the absence of cogent evidence available on record to show as to how the UPSI was communicated, the charges levelled cannot be sustained."

93. In the present case as noted above, there is only one conference call (on May 11, 2021) during the relevant period between Noticees No. 1 and 2 and other third person(s), but there is no examination as to the identity of the third person(s) or the content of the call. The email dated April 09, 2021 that has been evidenced to allege frequent communication between Noticees No. 1 and 2 is a single instance of email between them that too prior to alleged UPSI period. Both Noticee No.1 and 2 have stated that they were in *touch* with each other during May 2021 with regard to a project of Vedanta namely Talwandi Sabo in which Adani Group was interested. This statement has been also corroborated by the statement of Mr. Anupam Mishra. The IA has accepted this fact that call between Noticee No. 1 and 2 in May 2021 was regarding the Talwandi Sabo matter. Thus, there is no material to draw any inference of communication of UPSI from Noticee no.1 to Noticee No.2. Be as it may, the UPSI in this case did not exist on the day when Noticee No.1 was in contact with Noticee No 2.

Trading of Noticees No. 2, 3 and 4.

94. The SCN has treated trading of Noticee No. 2, 3 and 4 as '*abnormal*'. According to these Noticees, their trades on May 14, 2021 into the scrip of AGEL were done as per their usual trading pattern and volume and that the SCN selectively considers the trades of all these three Noticees collectively in some places and in other places it considers the trades in isolation in order to portray a distorted picture of '*abnormal'* trading in the account of these Noticees. According to them, there is no frequent communication between Noticees No. 1 and 2 during UPSI period and their trading behaviour was normal as may be seen from their trading pattern in other scrips as well in the scrip of AGEL. According to them, the trading pattern of a person cannot be the circumstantial evidence to prove the communication of UPSI by another. Further, when there is no material available on record to show frequent

communication between the parties, there cannot be a presumption of communication of UPSI. In this regard, the Noticees have placed reliance on the following observations of Hon'ble Supreme Court in the matter of ***Balram Garg v. SEBI***[25] : -

> *"40. We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No. 7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C. A. No. 7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties. In this context, even the show-cause notices do not allege any communication between the Appellant Balram Garg and the other appellants ……."*
>
> *"48. ……. Secondly, as has already been discussed, the SAT erred in holding the appellants in C.A. No. 7590 of 2021 to be "insiders" in terms of regulation 2(1)(g)(ii) of the PIT Regulations on the basis of their trading pattern and their timing of trading (circumstantial evidence). We are of the firm opinion that there is no correlation between the UPSI and the sale of shares undertaken by the appellants in C.A. No. 7590 of 2021. Moreover, in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No. 7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A. No. 7590 of 2021. There is no material on record for the WTM and the SAT to arrive at the finding that both later P.C. Gupta and the appellant Balram Garg communicated the UPSI to the other appellants in C.A. No. 7590 of 2021…."*

95. In my view, above observations of Hon'ble Supreme Court are not a ruling *in rem* to lay down a legally binding precedent as contended by the Noticees. The said observations are fact specific and relevant in the facts and circumstances of that case. Whether a person communicated UPSI to another and that other traded while in possession of the said UPSI

[25] *Civil Appeal No. 7054 of 2021*

are questions fact and can be determined based on direct evidence or a bundle of facts and circumstances and not merely on two limited considerations listed in the above observations of Hon'ble Supreme Court. In the said judgement of Hon'ble Supreme Court more emphasis is on proving communication of UPSI. If there is no communication of UPSI, then merely trading will not bring home the charge.

96. The above position has been accepted by Hon'ble SAT in ***Ameen Khawaja v. SEBI***[26] wherein while examining similar contention relying had held as follows:-

> *"40. In the case of Balram Garg cited (supra), also there were facts countering such expectations. There was disruption in the joint family in view of two partitions / family settlements, the parties residing separate from each other and further trading pattern of Shivani Gupta was running counter to the probabilities of having UPSI with her. Highlighting those facts, the Hon'ble Supreme Court of India upheld the case of Balram Garg and Shivani Gupta and others.*
>
> *41. In the facts and circumstances of the present case however as detailed (supra), we find that the respondent SEBI was able to show on preponderance of probabilities that appellant Ameen Khwaja and consequently other appellants are reasonably expected to have an access to UPSI in relation to the PTL"*

97. In ***Ameen Khawaja (supra)***, Hon'ble SAT considered circumstantial evidence and the conduct of the parties and held that SEBI was able to show on preponderance of probabilities that it is reasonable to expect that they traded in the shares of the company when in possession of UPSI for the following reasons:

a. Purchased in otherwise abnormal manner the illiquid scrips of the company PTL.
b. Had no earlier experience of trading in shares still they purchased substantive shares of the company PTL.
c. Were not able to show as to what was the rationale in purchasing these illiquid shares.
d. These appellants ate, drank and slept under the common roof with the appellant no. 1.

98. The relevant observations of Hon'ble SAT in ***Ameen Khawaja(supra)*** with respect to burden of proof and preponderance of probability are as follows:

[26] *Appeal No. 584 of 2019 decided on June 15, 2022*

"34. The burden of proof of having reasonable expectation of having access to the UPSI is initially no doubt on respondent SEBI. Once the respondent SEBI place material/probabilities then onus to prove shifts to the other side i.e. the appellants to prove otherwise. Since, admittedly, respondent SEBI is required to establish the facts on preponderance of probability and not beyond reasonable doubt, the similar standard of proof would apply to the appellants to shift the onus.

35. Respondent SEBI besides the facts as detailed (supra) had also added one probability in the proceedings. It was alleged in the show cause notice that appellant nos. 2 to 6 had no known source of income to buy the shares. The appellants however on the basis of copies of the registered sale deed were able to show that during the same period the respective appellants had sold certain common immovable property and from the proceeds of the same the shares were purchased."

99. In light of the above, I note that the circumstantial evidence would also include trading pattern and other attendant facts and circumstances which lead to reasonable inference of communication which would be sufficient to establish the charge based on desired standard of preponderance of probability.

100. In light of the above, I have also examined the trading pattern of these Noticees. As per SCN the trades of these Noticees are '*abnormal*" since :-

(a) Noticees No. 2 and 4 did not execute any trades in the scrip of AGEL during pre-UPSI period, Noticee No. 3 had bought 50000 shares during Pre-UPSI Period and sold same number of shares during Pre-UPSI period.

(b) During UPSI Period, Noticee No.2, in his account and in accounts of Noticees No. 3 and 4, had purchased a total of 2 lakh shares which was 29.36% of the day's volume at NSE. During post-UPSI period, entire holding was sold for ₹ 25.05 Crore.

(c) No trading in the shares of AGEL was executed by the Noticee No. 2 during January 01, 2019 till October 27, 2020.

(d) On comparison of the trading pattern of Noticees No. 2, 3 and 4 in scrips other than the scrip of AGEL, the trading in these accounts had significantly reduced as total shares worth ₹ 90.92 Crore were purchased and shares worth ₹ 93.68 crore were sold in comparison to the pre UPSI (Noticees purchased shares worth ₹ 389.88 crores and

sold shares worth ₹ 457.03 crores) and post UPSI period (Noticees purchased shares worth ₹ 460.54 crore and sold shares worth ₹ 463.84 crores.

101. I note that the SCN has considered these Noticees as a '*group*" but has considered trading of individual entities while drawing inferences. As per the SCN itself, exposure of this group. There was '*substantial increase'* in the investment of this group in AGEL during UPSI period as compared with the Pre-UPSI period. Further, the '*group'* had never taken delivery of shares in a single scrip worth more than INR 21 Crore in a single day and sold within 5 days.

102. While, the SCN considers these Noticees as '*group*' and considers their combined holding to make out the allegations, it draws inferences basis individual's acts. There is no logic for drawing adverse inference because Noticee No. 2 and 4 did not trade during pre-UPSI period. If only Noticee No3 traded during pre- UPSI period cannot be reason to hold that '*group*' had no trading during pre- UPSI period. Further there is no logic to draw adverse inference if one of the entities of the '*group'*, Noticee No. 2 did no trade in the scrip of AGEL during January 01, 2019 till October 27, 2020. The trading in these accounts cannot be seen in isolation with each other and has to be considered collectively.

103. Admittedly, the orders in the AGEL shares for the '*group'* were placed by Noticee No. 2, who has been an active trader and investor in the securities markets for over 35 years and employs various trading strategies suitable to various market conditions prevailing at various points of time. He has, *inter alia*, demonstrated the following with respect to his trading activity in the accounts of the '*group'* during the relevant period:

a. During Financial Year (FY) 2021-22, the '*group'* traded in over 300 scrips with total trading turnover of ₹ 34,000 crores.

b. The combined value of holding of the '*group'* in listed equity shares as at the end of March 2022 was over ₹ 750 crores in about 250 scrips.

c. In FY 2021-22, the total profit earned by '*group'* from stock markets was over ₹ 175 crores and paid over ₹ 35 crores in income tax.

d. The '*group'* use their own funds for investing and has total cash and cash equivalent balance on an average is over ₹ 30 crores including on May 14, 2021 i.e. on the date of purchase of shares of AGEL.

e. The total value of transactions (both buy and sell) of the '*group'* in the scrip of AGEL was about ₹ 47 crores which is about 0.14% of their turnover for FY 2021-22 and just 1.72% of their turnover for the month of May 2021 (the combined turnover of '*group'* in May 2021 was over ₹ 2,675 crores.

f. The '*group'* had no financial dealing or official dealing with Adani Group companies/ its promoters/ Key Managerial Personnel, etc and have traded and invested in peer group sector or AGEL, in companies such as Sterling and Wilson Renewable Energy Limited, Reliance Industries Limited etc. in the year 2020-21 and also in the year 2021-22.

104. The rationale for the investment into the scrip of AGEL by the '*group'* in AGEL is stated to be as follows:

i. The '*group'* had traded in companies operating in the energy sector in the year 2020-21 and also in 2021-22.

ii. AGEL released its quarterly results on May 05, 2021, just a few days before the '*group'* had purchased their shares on May 14, 2021.

iii. On May 10, 2021, AGEL made available on its website a presentation which reiterated its strong future prospects.

105. With respect to the observation in the SCN that '*The trading pattern has also reflected that Tarun Jain Group had never taken delivery of shares in a single scrip worth more than INR 21 Crore in a single day and sold within 5 days.',* Noticee No. 2 has provided a list of scrips wherein he has invested such high values in a similar manner including few cases in which the investment was even higher than INR 21 Crores as follows:

Sr. No.	**Name of the Scrip**	**Month, year**	**Value of trades (In ₹ Crores)**
1	Axis Bank	April 2021	₹ 27.80 crores
2	Bharti Airtel	January 2021	₹ 22.67 crores
3	Adani Green Energy Limited	May 2021	₹ 21 crores
4	State Bank of India	September 2021	₹ 20.64 crores
5	IDFC Limited	Januayr 2021	₹ 20 crores
6	Poonawalla Fincorp	May/ June 2021	₹ 19.9 crores

7	ICICI Bank	October 2021	₹ 18.61 crores
8	Birla Corp	March / April 2021	₹ 16.75 crores
9	NTPC Limited	April 2021	₹ 15.62 crores
10	Ultratech Cement	December 2020	₹ 14.96 crores
11	IIFL Finance Limited	July 2021/ Sept 2021	₹ 14.7 crores
12	Max Healthcare Institute	May 2021	₹ 12.59 crores
13	SBI Cards	March 2021	₹ 12.5 crores
14	Powergrid Corporation	December 2020	₹ 12.44 crores
15	Bharti Airtel	October 2021	₹ 10.9 crores
16	Sterling and Wilson Solar	February/ March 2021	₹ 10.88 crores
17	Gujarat Flurochemicals	November 2021	₹ 10 crores
18	Krsnaa Diagnostics	August 2021	₹ 10 crores
19	S H Kelkar Limited	November 2021	₹ 9.8 crores
20	Adani Ports	January 2021	₹ 7.5 crores
21	Accelya Solutions	July 2021	₹ 7.15 crores
22	State Bank of India	November 2020	₹ 6.5 crores

106. In view of the above, it is noted that the observation in the SCN that during the alleged UPSI period, the trading in the accounts of the "*group'* in scrips other than the scrip of AGEL had significantly reduced is erroneous as there is no variation in the trading pattern of these Noticees with respect to average buy/ sell value up in scrips other than AGEL during the pre-UPSI, USPI and post-UPSI period which is approximately ₹ 7 Crores per trading day. The variation in the buy value and sale value as observed in the SCN is due to the variation in the pre-UPSI period, UPSI period and post-UPSI period which is 60 trading days, 13 trading days and 65 trading days, respectively.

107. These Noticces are able to demonstrate on desired level of preponderance of probability that their trades were not influenced by any communication and were normal trading. In this regard, the case does not pass the test of circumstantial evidence as laid down in above mentioned ***Balram Garg, Ameen Khawaja*** and ***Affluence*** cases (supra). Considering all the aforesaid, I find that the trading of these Noticees cannot be termed as '*abnormal'* and does not reflect trading while being in possession of the alleged UPSI. Accordingly, such trading behaviour does not contribute to any inference of communication of UPSI from Noticee No.1 to Noticee No.2 or trading by Noticees No. 2, 3 and 4 while in possession of UPSI.

108. In light of above, I find that the communication of UPSI after it came into existence has not been established. Even the call dated May 11, 2021 does not establish on the basis of

preponderance of probability any communication of UPSI on that date. Thus, it cannot be held the trades of Noticees No. 2, 3 and 4 were done on May 14, 2021 while in possession of UPSI that came into existence on May 13, 2021 as found in this case. Since, the allegations made in the SCN are not established on several counts as above, no directions as contemplated therein can be issued.

Disposal of SCN

109. In view of the above, the SCN dated November 10, 2023, in the present matter is disposed of without issuance of any direction, including with regard to disgorgement, or imposition of any monetary penalty.

110. This order shall come into force with immediate effect.

111. In terms of Rule 6 of Adjudication Rules, copies of this order are sent to all the Noticees and also to SEBI.

SANTOSH KUMAR SHUKLA
Digitally signed by SANTOSHKUMAR SHUKLA
Date: 2025.12.12 19:14:08 +05'30'

Date: December 12, 2025
Place: Mumbai

Santosh Shukla
Quasi-Judicial Authority
Securities and Exchange Board of India