BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/SM/AD/2021-22/14894-14895]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

1) **J B Goel**
   [PAN**:** ACOPG6352K]
2) **Nakul Goel**
   [PAN: ANAPG4256F]

In the matter of Omaxe Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) on receipt of a complaint from Omaxe Limited (hereinafter referred to as '**Omaxe/By Name/the Company'**), conducted an investigation into trading in the scrip of the Company. The period of the aforementioned investigation in the Company was from April 01, 2017 to September 30, 2018 (hereinafter referred to as '**Investigation Period/IP'**). The shares of Omaxe were listed in both BSE and NSE during the IP. Pursuant to the aforementioned investigation, SEBI observed violation of provisions of Clause 6 of Schedule B of Regulations 9(1) and 9 (2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as **'PIT Regulations'**) by promoters of Omaxe, Mr. J B Goel (hereinafter referred to as '**Noticee 1'**) and Mr. Nakul Goel (hereinafter referred to as '**Noticee 2'**) (collectively referred to as '**Noticees'**) by

transacting in the scrip of the Company without taking any pre-clearance for their trades as required under the Company's Code of Conduct for Regulation, Monitoring and Prevention of Insider Trading.

2. Thereafter, SEBI initiated adjudication proceedings against Noticees under Section 15HB of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act'**) for the aforesaid alleged violations of provisions of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated July 03, 2020, SEBI appointed Ms. Sangeeta Rathod as the Adjudicating Officer (AO) under Section 19 of SEBI Act read with Section 15I(1) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15HB of SEBI Act, the alleged violations of provisions of Clause 6 of Schedule B of Regulations 9(1) and 9 (2) of PIT Regulations by Noticees. Subsequent to the transfer of Ms. Sangeeta Rathod, Mr. Prasanta Mahapatra was appointed as the AO in the said matter. Thereafter, the undersigned was appointed as the AO in the matter by SEBI vide order dated December 04, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated August 11, 2020 (hereinafter being referred to as the "**SCN**") was issued to Noticees in terms of Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticees and penalty, if any, should not be imposed upon them under the provisions of Section 15HB of SEBI Act, for violation of Clause 6 of Schedule B of Regulations 9(1) and 9(2) of PIT Regulations, alleged to have been committed by them. The SCN, *inter-alia*, alleged the following:-

a) *SEBI observed that as per the code of conduct of the Company, there is a requirement of pre-clearance for any transactions of more than 1000 shares or transactions value exceeding Rs. 5 lakh shares value by the designated person. As per the said code of conduct, the definition of designated person includes the promoters, directors as well as immediate relatives. SEBI further observed that Noticee 2, a promoter of the Company, has received 12 lakh shares from his father, Noticee 1, who is also a promoter and Whole Time Director of the Company. Subsequently, Noticee 2 has sold 10,31,000 shares in the market. Details of transactions of Noticee 2 are given as under:*

Date of transaction	*Buy/Sell*	*No. of Shares*	*Counterparty*
*17-Jul-2017**	*B*	*300000*	*J B Goel*
01-Sep-2017	*S*	*207487*	*Unconnected entities*
*07-Sep-2017**	*B*	*200000*	*J B Goel*
07-Sep-2017	*S*	*64513*	*Unconnected entities*
08-Sep-2017	*S*	*28000*	*Unconnected entities*
28-Dec-2017	*S*	*200000*	*Unconnected entities*
*11-Jun-2018**	*B*	*300000*	*J B Goel*
02-Jul-2018	*S*	*50000*	*Unconnected entities*
04-Jul-2018	*S*	*87000*	*Unconnected entities*
05-Jul-2018	*S*	*163000*	*Unconnected entities*
*31-Aug-2018**	*B*	*400000*	*J B Goel*
24-Sep-2018	*S*	*150000*	*Unconnected entities*
25-Aug-2018	*S*	*81000*	*Unconnected entities*
**off market transfers*			

b) *Accordingly, Noticees fall under the definition of designated person and as per the Company's code of conduct, Noticees were required to take pre-clearance from the Company prior to undertaking of the above said transactions in the scrip of Omaxe in accordance with clause 6 of schedule B of Regulations 9(1) and 9(2) of PIT Regulations.*

c) *The above mentioned observations in respect of transactions resulting in alleged violations of relevant provisions of PIT Regulations by Noticees as brought out above, if proved, makes Noticees liable for monetary penalty under the provisions of section 15HB of the SEBI Act.*

5. The SCN was sent via Speed Post Acknowledgement Due ('**SPAD**') to the last known addresses of Noticees as well as through digitally signed email dated August 11, 2020 and was duly served upon Noticees. Noticees were granted a time of fifteen (15) days from the date of receipt of the SCN to file their reply. Thereafter, Noticees vide letters dated August 21, 2020 requested for copy of the complaint filed by the Company with SEBI, copy of Code of Conduct for Regulation, Monitoring and Prevention of Insider Trading approved and followed by Omaxe and copy of the investigation report filed by SEBI. Vide the aforesaid letters, Noticees also requested for an opportunity of inspection of documents. Through email dated August 26, 2020 as well as through other subsequent communications, Noticees were provided the documents relied upon in the SCN by SEBI.

6. Thereafter, replies dated November 06, 2020 and November 02, 2020 were filed by Noticee 1 and Noticee 2, respectively through emails as well as through post. In the interest of natural justice, through hearing notices sent vide emails dated December

24, 2020, Noticees were granted an opportunity of personal hearing in the matter before the undersigned on January 27, 2021. The aforesaid hearing notices were duly served upon Noticees.

7. On the scheduled date of hearing, Noticees attended the hearing through their authorized representatives (hereinafter referred to as "**ARs** "), Adv. Arvind Nayar, Adv. Pooja Saigal, and Adv. Vaibhav Tyagi. During the hearing, the ARs of Noticees reiterated the earlier submissions made by Noticees vide their replies dated November 06, 2020 and November 02, 2020. Thereafter, Noticees made additional submissions through their ARs vide letters dated February 5, 2021.

8. Further, as per their request, the Noticees were provided with an opportunity of inspection of documents, which was carried by the ARs on February 24, 2021 and were provided copies of the following documents:
   a) Email dated April 26, 2018 from Mr. Ankit Singal to SEBI containing complaint from the Company.
   b) Complaint dated July 9, 2018 from Ms. Shubha Singh, Compliance officer, Omaxe Ltd to SEBI
   c) Complaints dated September 10, 2018 and September 29, 2018 from Ms. Shubha Singh to SEBI

9. Thereafter, fresh replies dated March 06, 2021 and March 05, 2021 were filed by Noticee 1 and Noticee 2, respectively. Further, in the interest of natural justice, through hearing notices sent vide digitally signed emails dated February 26, 2021,Noticees were granted another opportunity of personal hearing in the matter before the undersigned on March 19, 2021. The aforementioned hearing was postponed on the request of Noticees to July 14, 2021 vide hearing notice dated July 01, 2021. However, due to the pendency of Writ Petition (L) No. 10354 of 2021 filed by Noticees in Hon'ble High Court of Bombay for production of documents relied upon by SEBI while issuing

the SCN, the aforementioned hearing was deferred. I note that the aforementioned Writ Petition was later withdrawn by Noticees and the said Writ Petition was disposed of by the Hon'ble High Court of Bombay vide Order dated August 02, 2021.

10. Thereafter, vide hearing notice dated November 16, 2021, the hearing in the present matter was scheduled on December 13, 2021. On request of AR of Noticees, the said personal hearing was adjourned to December 16, 2021. On the aforementioned scheduled date of hearing, ARs of Noticees attended the hearing and reiterated contents of their earlier replies. Further, drawing attention to the earlier mentioned writ proceedings before Hon'ble High Court of Bombay, the ARs submitted that AO has to see the investigation report to satisfy herself that investigation report is not relied upon.

11. The relevant extracts of the submissions made by Noticee 1 vide his replies dated November 06, 2020 and February 05, 2021 are reproduced hereunder:

> "……
>
> i *I have not been provided with all the documents and records, as relied upon by SEBI to make the allegations and charges in the said SCN. It is further submitted that I have not been provided with a copy of the Investigation Report along with findings, though the same have been relied upon in the said SCN and in fact which is the basis of instant SCN. Non supply of relevant information and documents is against the Principles of Natural Justice. Further the SCN does not set out the exact penalty that is proposed to be imposed on me for the alleged violations. In this context, the guidelines setup by the Hon'ble Supreme Court of India in Gorkha Security Services vs Government (NCT of Delhi) and others 2014 (9) SCC 105 is quite materialized. Since the said SCN does not fulfil the above said requirements, as neither the relevant Investigation*

Report/Documents have been supplied, nor the SCN set out the particular penalty which is proposed to be imposed against me, so the said SCN does not cope with the Principles of Natural Justice and therefore, the SCN ought to be withdrawn.

ii *As a gesture of my love and affection towards my son, Mr. Nakul Goel, I gifted 12,00,000 shares of the Company to him, without any consideration and without any condition, during the period July 2017 to August 2018; while Mr. Nakul Goel is neither promoter, nor immediate relative, as per the relevant rules and regulations. Gift of shares to my son is not Trade. As per Company's Code of Conduct pre-clearance is required in case of Trading Only…….*

iii *it is evident that during the period July 2017 to September 2018 when I transferred shares as gift to my son Nakul Goel ("the Relevant Period"), the Insider Trading Regulations did not recognize all Directors or promoters as a Designated Persons; rather, only employees and similar persons who had access or who could reasonably be presumed to have access to Unpublished Price Sensitive Information ("UPSI") was considered as Designated Persons. I did not have access to any UPSI after the dispute including the Relevant Period. This fact was confirmed by the then Company Secretary cum Compliance Officer Ms. Subha Singh, in para no. 11 & 21 of her reply dated 07.12.2018, as she submitted before the Disciplinary Committee of the Institute of Company Secretary in India……*

iv *Vide Letter dated 17.01.2019, SEBI asked certain queries about pre-clearance etc. for the period from 01.04.2017 to 30.09.2018;*

which was duly responded by my Reply letter dated 23.01.2019 with supportive documents; where after the investigation was closed with warning/advice; and the matter was finally disposed of vide Final order dated 30.03.2020. So, the instant inquiry against the answering Noticee is against the well settled law of 'rule against Double Jeopardy' and is violation of Fundamental rights enshrined in the Constitution of India, as per Article 20(2)……

v *The Company has already agreed to withdrawal all Complaints against me & family before SEBI vide Para No. 4 of the Settlement Agreement dated 24.04.2019; which was duly confirmed by the Judgment & decree dated 08.07.2019 as passed by the Hon'ble High Court of Delhi in matter titled `Sushma Goel Versus Jai Bhagwan Goel & Others' CS No. 516 of 2018. …..”*

12. The relevant extracts of the submissions made by Noticee 2 vide his replies dated November 02, 2020 and February 05, 2021 are reproduced hereunder:

“……..

i *I have not been provided with a copy of the Investigation Report although findings in the same have been relied upon in the said SCN. I submit that the present proceedings are contrary to the Principles of Natural Justice since I have not been provided with all relevant documents and records relied upon by SEBI while arriving at the allegations and charges in the said SCN……..*

ii *The SCN does not set out the particular penalty which is proposed to be imposed against me and therefore, the said SCN does not fulfil the requirements of the principles of natural justice and therefore, ought to be withdrawn…….*

iii *The Insider Trading Regulations did not define the term "Designated Person" until Regulation 9A was amended by the SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2019 w.e.f July 25, 2019. Schedule B to the Insider Trading Regulations was also amended by the SEBI (Prohibition of Insider Trading) Amendment) Regulations, 2018 w.e.f April 1, 2019; the said amendment for the first time introduced the term "Designated Person" to Schedule B; prior thereto……*

iv *it is evident that during the period July 2017 to September 2018 when I received shares as gift from my father and sold the shares on BSE and NSE ("the Relevant Period"), the Insider Trading Regulations did not-recognize all Promoters or the immediate relative of a Director as a Designated Person; rather, only employees and similar persons who had access or who could reasonably be presumed to have access to UPSI was considered as Designated Persons. I was nor a Director or employee of the Company neither having any UPSI at the relevant time and therefore, I could not have been included in the list of Designated Persons……*

v *It is also evident that the Code of Conduct provided by the Company to SEBI and which has been relied upon to make the allegation that I was a Designated Person and required to take prior approval for trading in securities of the Company is not the Code of Conduct that was applicable at the Relevant Period……..*

vi *I submit that I do not fall within the definition of Designated Person. In this regard I submit that: -*

1 *I was neither a Director nor an employee or a Key Managerial Person of the Company.*

2 *Although the Company declared me to be a member of the Promoter Group, I was not a promoter because I did not meet the criteria specified in the definition of "Promoter" in Regulation 2 (1) (za) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.*

3 *I am also not a "Connected Person" as defined in Regulation 2 (1) (d) of the Insider Trading Regulations; a connected person includes a Director of the Company; the immediate relative of a connected person is also deemed to be a connected person.). I am indeed the son of Mr. J B Goel, the then Director of the Company; however, I am not (and at the relevant time was not) financially dependent on my father and did not consult him regarding decisions relating to trading in securities. by my letter dated July 4, 2018 I had clarified to the Company that since I was financial independent from my father, 'Mr. J.B. Goel', I could not be treated as an immediate relative or connected person.*

4 *Therefore, at the relevant time, I ought not to have been classified by the Company as a Designated Person and the Code of Conduct and the requirement of obtaining a pre-clearance for trading in securities of the Company could not have been applicable to me……...*

vii *Without prejudice to the above, I submit that receiving shares by way of an off market, inter se transfer from my father, being a gift under Gift Deeds cannot be construed as "trading" in the shares of the Company……"*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

13. Before considering the allegations and charges made against the Noticees in the SCN on their merits, I find it necessary to deal with preliminary objections raised by Noticees in their submissions. I note that Noticees in their submissions have stated that there was violation of principles of natural justice as all the documents relied upon by SEBI while issuing the SCN, including the investigation report, have not been provided to them. A Writ Petition (L) No. 10354 of 2021 was also filed before Hon'ble High Court of Bombay by Noticees seeking direction against SEBI for production of documents relied upon by SEBI while issuing SCN. I observe that the aforementioned Writ Petition was dismissed as withdrawn by the Hon'ble High Court of Bombay. I also note that Hon'ble High Court of Bombay while dismissing the writ petition has stated the following *"All contentions of both parties are kept open*."

14. With respect to the above-mentioned contention of Noticees, I note from records that copies of all the documents/evidence relied upon in the SCN to frame charges against Noticees have been provided to them in the course of adjudication proceedings. With respect to the request for the investigation report, I note that the same has not been relied upon for crystallizing charges against the Noticees in the instant matter and therefore, no prejudice is caused to the Noticees by not providing the investigation report.

15. In this context, it is pertinent to note that Hon'ble Supreme Court of India in **Natwar Singh vs. Director of Enforcement (2010) 13 SCC 255** held that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law in motion and further held that the concept of fairness is not a one way street and that the principles of natural justice are not intended to operate as a roadblock to obstruct statutory inquiries. In this regard, Hon'ble Supreme Court held that:

"…..31. *The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and the concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same*.."

16. The aforesaid principle was also considered by Hon'ble Securities Appellate Tribunal (SAT) in **Shruti Vora Vs. SEBI**, in Appeal No.28 of 2020 decided on 12th February, 2020 wherein Hon'ble SAT after analyzing the Adjudication Rules held as under:

"…..16. However, we find that Rule 4 of the Rules does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice….."

I further note that in a subsequent Appeal No. 150 of 2020 in **Anant R. Sathe vs SEBI**, the Hon'ble SAT has upheld the said principle elucidated in the Shruti Vora judgement. In view of the above, I do not find any merit in the averment of Noticees that there was violation of principles of natural justice.

17. I note that Noticee 1, in his submissions, has contended that as SEBI had issued an administrative warning to Noticee 1, vide letter dated March 30, 2020, for violation of disclosure norms by Noticee 1 in respect of same set of transactions as that in the present matter, the SCN issued in the present adjudication order is barred by the principle of double jeopardy under Article 20(2) of Constitution of India. In order to substantiate the aforementioned contention, Noticee has also placed reliance on decision of Hon'ble SAT in **Bhupendra Meghji Bheda vs. SEBI**. In regard to aforementioned contention of Noticee, I note that principle of double jeopardy as provided under Article 20(2) of the Constitution of India is applicable only to criminal proceedings and not to quasi-judicial departmental proceedings like that of the present adjudication proceedings. In this context, it is pertinent to note that Hon'ble Supreme Court of India, in its decision in **S.A. Venkataraman vs. Union of India, 1954 AIR 375** has stated as under:

> *" …..It has also been held by this court in Maqbool Hussain's case that the language of article 20 and the words actually used in it afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence. In that case the proceedings were taken under the Sea Customs Act before a Customs authority who ordered confiscation of goods. It was held that such proceedings were not "Prosecution", nor the order of confiscation a "punishment" within the meaning of article 20(2) inasmuch as the Customs authority was not a court or a judicial tribunal and merely exercised administrative powers vested in him for revenue purposes….."*

18. Further, on perusal of letter dated March 30, 2020 issued by SEBI to Noticee 1 which has been furnished by Noticee 1 in his submissions, I note that the same was issued

as an administrative warning to Noticee 1 for violation of Regulation 7(2)(a) of PIT Regulations for non-disclosure of disposal of 3 lakh shares by Noticee 1 on July 17, 2017. Whereas, the present adjudication proceeding is initiated against Noticee 1 for the alleged violation of clause 6 of Schedule B of Regulations 9(1) and 9(2) of PIT Regulations for not taking pre-clearance from Omaxe for a series of share transactions by him during the period July 17, 2017 to August 25, 2018. In this regard, I would like to place reliance on decision of Hon'ble SAT in Nirmal N. Kotecha v SEBI, decision dated June 08, 2021, wherein it was held *that "In order to apply the doctrine of res judicata it is an essential requirement that the actual issues in the two proceedings are identical*". Applying the aforesaid judgment of SAT to the instant case, I find that doctrine of res judicata is not applicable to instant proceedings as the issue dealt under administrative warning issued to Noticee vide letter March 30, 2020 by SEBI is quite distinct from the issue under consideration in the present adjudication proceedings.

19. Therefore, I find from the foregoing observations that since the present adjudication proceedings are not criminal proceeding but are quasi-judicial proceeding, the instant proceedings would not be barred by the principle of double jeopardy as contended by Noticee 1 and on account of the observations presented in the preceding paragraph, I find that the instant adjudication proceedings would not be barred even by principle of res judicata. Therefore, I find that the aforesaid arguments of Noticee 1 is not tenable.

20. Further, I note that Noticee 1 in his submissions has stated that the Company has already agreed to the withdrawal of all complaints against him and his family before SEBI vide Para No. 4 of the Settlement Agreement dated 24.04.2019; which was duly confirmed by the Judgment & decree dated 08.07.2019 as passed by the Hon'ble High Court of Delhi in matter titled **Sushma Goel Versus Jai Bhagwan Goel & Others'** CS No. 516 of 2018. In this regard, I note that such a settlement agreement between

Omaxe and Noticee1, if any, has no bearing whatsoever in the present adjudication proceeding initiated against Noticees.

21. With regard to contention of Noticee 1 that SCN has been issued without mentioning material ground which necessitated the initiation of present adjudication proceedings or exact penalty that is proposed to be imposed on Noticee 1, I note from the perusal of the SCN that such a contention of Noticee 1 is without any merit.

22. I now proceed to deal with the matter on merits. I have carefully perused the charges levelled against Noticee in the SCN, replies of Noticees and the material available on record. The issues that arise for consideration in the present case are:

II Whether Noticees have violated the provisions of clause 6 of Schedule B of Regulations 9(1) and 9(2) of the PIT Regulations?

III Do the violations, if any, attract monetary penalty under Section 15HB of the SEBI Act?

IV If yes, what should be the quantum of penalty?

23. Now, before proceeding to examine the case on its merits, it would be proper to refer to the relevant provisions of PIT Regulations which have been purportedly violated by the Noticees as alleged in the SCN. The said provisions of the law are reproduced herein below:

PIT Regulations

Code of Conduct.

9. (1) The board of directors of every listed Company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations,

adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

(2) Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

SCHEDULE B
[See sub-regulation (1) and sub-regulation (2) of regulation 9]

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

Issue I: Whether Noticees have violated the provisions of clause 6 of Schedule B of Regulations 9(1) and 9(2) of the PIT Regulations?

24. It has been alleged in the SCN that Noticees, being designated persons as per the definition in the code of conduct of the Company, have failed to take pre-clearance of their transactions in the shares of the Company in the period July 2017 to August 2018

and therefore, have violated the provisions of Clause 6 of Schedule B of PIT Regulations 9(1) & 9(2) of PIT Regulations.

25. I note that as per Regulation 9 (1) of the PIT Regulations, an obligation lies on the board of directors of every listed company/market intermediary to formulate a code of conduct to govern, regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with PIT Regulations, adopting the minimum standards as set out in Schedule B to the PIT Regulations without diluting the provisions of PIT Regulations in any manner. The standards set out in Schedule B of PIT Regulations are required to be addressed by such code of conduct. Whereas Regulation 9 (2) of the PIT Regulations mandates persons other than listed companies and market intermediaries that are required to handle UPSI to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, market intermediaries and other capital market participants. Thus, I note that the board of directors of Omaxe, which is a listed entity involved in real estate business, is bound to formulate its code of conduct in accordance with Regulation 9(1) of the PIT Regulations and is not bound by Regulation 9(2) of PIT Regulations. In light of the foregoing, I find that Regulation 9 (2) of the PIT Regulations does not apply to the facts and circumstances of this case as it relates to persons other than listed companies and market intermediaries.

26. Further, I note that Clause 6 of Schedule B of PIT Regulations mandates that when the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.

27. With respect to the alleged violation of Clause 6 of Schedule B of PIT Regulations, I note that Noticees have contended in their submissions that at the time of impugned

transactions, PIT Regulations did not recognize all promoters or the immediate relative of a director as a designated person; rather, only employees and similar persons who had access or who could reasonably be presumed to have access to UPSI were considered as designated persons. In this regard, Noticees have contended that the term "Designated Person" was introduced in the Schedule B to PIT Regulation by SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018 w.e.f. April 1, 2019. Further, Noticees have also contended that the PIT Regulations did not define the term "Designated Person" until Regulation 9A was amended by the SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2019 w.e.f July 25, 2019.

28. In regard to the above contentions, I note that the term designated persons was mentioned/provided in clause 6 of Schedule B of PIT Regulations right from its inception, i.e., even before coming into force of SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018. Moreover, I note that Clause 3 of Code of Conduct under Schedule B to the PIT Regulations, as applicable at the time of impugned transaction, defined designated persons as employees and connected persons designated on the basis of their functional role in the organisation. The aforementioned clause also states that designated persons are governed by an internal code of conduct governing dealing in securities. I also note that those amendments to PIT Regulations cited by Noticees in their contentions only provided more clarification regarding the concept and law relating to designated persons and didn't introduce a fresh concept to PIT Regulations. Thus, I find that the concept of designated person was in existence in the Schedule B of PIT Regulations right from its inception and was not introduced by SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018 as contended by Noticees. Further, I note that Noticees have drawn reference to the decision of Learned Adjudicating Officer, SEBI bearing Adjudication Order No. EAD-9NKV/NK/2020- 21/9991 in respect of Kundan K. Lal in the matter of Sonata Software Limited. In this regard, I note that the decision in the aforementioned case is

not applicable to the facts and circumstances of this case and is clearly distinguishable from the present matter. In view of the foregoing, I note that the term “designated person” was a part of PIT Regulations at the time of impugned transactions and therefore, I find that the contention with respect to the same does not hold ground.

29. Further, Noticee 1 in his submissions also contended that PIT Regulations did not recognize all Directors or promoters or immediate relatives as Designated Persons; rather, only employees and similar persons who had access or who could reasonably be presumed to have access to UPSI were considered as designated persons. In this regard, Noticee 1 has stated that he had been sidelined from the Company since 2015 and that he was not permitted to get acquainted with or participate in the day to day affairs of the Company and did not have access to any UPSI after the dispute. Therefore, he cannot be considered as designated person of Omaxe. I note that Noticee 2 in his submissions has stated that he was neither a director/employee nor does he hold any key managerial position in Omaxe and that the Company had incorrectly and illegally declared the Noticee to be a member of the Promoter Group. Noticee 2, in his contentions has also stated that he does not fell under the definition of immediate relative as he is neither financially dependent on his father,i.e. Noticee 1 nor does he consult him for taking decisions relating to trading in securities. Noticee 2 also contended that he cannot be considered as a connected person to the Company and therefore, in light of the reasons given above, he should not be considered as designated person of Omaxe.

30. With regard to the above contentions of Noticees, as mentioned earlier, I note that according to Clause 3 of Code of Conduct under Schedule B to the PIT Regulations, as applicable at the time of impugned transactions, “designated persons” are employees and connected persons designated on the basis of their functional role in the organisation and they are governed by an internal code of conduct governing

dealing in securities. The aforementioned provision also states that the board of directors must, in consultation with the compliance officer, specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and due regard shall be had to the access that such role and function would provide to UPSI in addition to seniority and professional designation. I note that in accordance with Regulation 9(1) of PIT Regulations, board of directors of Omaxe has formulated " Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information and Code of Conduct for Regulation, Monitoring and Prevention of Insider Trading which came into force on May 28, 2015. I note that as per clause 1.7 of " Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information and Code of Conduct for Regulation, Monitoring and Prevention of Insider Trading" of Omaxe (hereinafter referred to as " Code of Conduct"), designated persons include promoters, all directors of the Company and their immediate relatives. From the perusal of the aforementioned Code of Conduct of Omaxe, I note that on the basis of the functionality of their respective roles in the organisation, designated person has been listed out in the said Code of Conduct and includes directors and promoters of the Company. I observe from available records that Noticee 1 was promoter as well as executive director of Omaxe (resigned as director w.e.f. August 04, 2018) at the time of impugned transactions. I also observe that Noticee 2 was not only the son of Noticee 1 but also a promoter of Omaxe. I also note from complaints dated April 26, 2018 and July 09, 2018 received by SEBI from Omaxe that Noticees has been considered as designated persons of the Company by it.

31. With regard to the contention of Noticee 1 that due to his lack of access to UPSI, he cannot be considered as designated person, as mentioned earlier, I note that as per the Clause 3 of Code of Conduct as specified in Schedule B of PIT Regulations, designated persons are designated as such on the basis of functional role in the

organisation and as per Company's Code of Conduct, Noticee 1, being the director/promoter of the Company, shall automatically fall under the definition of designated person in terms of the aforesaid Code of Conduct.

32. With regard to the contention of Noticee 2 that he is not an immediate relative of Noticee 1 in terms of PIT Regulations, I note from records that Noticee 2 is the son of Noticee 1, who was the director as well as promoter of Omaxe at the time of impugned transaction. In terms of Regulation 2(1)(f) of PIT Regulations, immediate relative means "*a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities* ". In light of the aforementioned provision of PIT Regulations, I note that Noticee 2 is deemed to be immediate relative of Noticee 1. I note from the aforementioned regulation, that the same is a rebuttable presumption. I observe that other than a general denial that he is not dependent on his father nor consults him for decisions relating to trading in securities, Noticee 2 has not attached any documentary evidence to support his aforementioned contention. In light of the foregoing, I find that this contention of Noticee 2 lacks merit.

33. With regard to the contention of Noticee 2 that he was wrongly classified as part of the promoter group, I note from the submission of Noticee 2 that the complaint to this effect was filed by Noticee 2 with the Registrar of Companies, New Delhi only on January 02, 2020. Whereas, I note from the website of BSE that Noticee 2 has been considered as a promoter of Omaxe from the Quarter ending September 2017. I note that there has been a delay of more than 2 years on the part of Noticee 2 in filing the complaint. Moreover, I note from the website of the BSE that even for the quarter ending on December 2021, Noticee 2 is classified as promoter of Omaxe. Further, there is nothing on record to indicate that Noticee 2 had brought to the attention of the

Company regarding such wrong classification as promoter or that he has given any request for declassifying him as promoter of the Company. Therefore, I am not inclined to accept such document as proof of claim by Noticee 2 that he was not a promoter. I find that since Company has considered promoters of Company as designated persons, Noticee 2, being a promoter of the Company was a designated person of the Omaxe at the time of impugned transactions.

34. With regard to the contention of Noticee 2 that he cannot be considered as designated person as he is neither an employee nor a connected person of the Company, I note that in the light of the fact that the Company had already provided the list of the employees and connected persons who can be considered as designated persons in its Code of Conduct, there is no need for any further discussions regarding the same

35. In light of observations in the preceding paragraphs, I find that at the time of the impugned transactions Noticees were designated persons of Omaxe in terms of Company's Code of Conduct which was in force at the relevant time, as per available records. Therefore, the contentions of Noticees in this regard are found to be untenable.

36. I note from communication from Omaxe to SEBI that Noticee 2 had received 12 lakh shares from his father, Noticee 1, who was also a promoter and Whole Time Director of the Company. Subsequently, Noticee 2 sold 10,31,000 shares in the market. The details of aforementioned transactions are as given under :

Date of transaction	*Buy/Sell*	*No. of Shares*	*Counterparty*
*17-Jul-2017**	*B*	*300000*	*J B Goel*
01-Sep-2017	*S*	*207487*	*Unconnected entities*
*07-Sep-2017**	*B*	*200000*	*J B Goel*

07-Sep-2017	*S*	*64513*	*Unconnected entities*
08-Sep-2017	*S*	*28000*	*Unconnected entities*
28-Dec-2017	*S*	*200000*	*Unconnected entities*
*11-Jun-2018**	*B*	*300000*	*J B Goel*
02-Jul-2018	*S*	*50000*	*Unconnected entities*
04-Jul-2018	*S*	*87000*	*Unconnected entities*
05-Jul-2018	*S*	*163000*	*Unconnected entities*
*31-Aug-2018**	*B*	*400000*	*J B Goel*
24-Sep-2018	*S*	*150000*	*Unconnected entities*
25-Aug-2018	*S*	*81000*	*Unconnected entities*
**off market transfers*			

37. I note that Noticees in their submissions have also admitted that they have undertaken the aforementioned transaction. In this regard, I note that Clause 5.4.1 of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information and Code of Conduct for Regulation, Monitoring and Prevention of Insider Trading of Omaxe states that *"All designated Persons (Including their immediate relatives and any other person for whom they takes trading decisions) who intend to trade in the securities of the Company exceeding 1000 shares or where the transaction value of securities intended to be Traded exceeds Rupees Five Lacs (market Value) whichever is less should pre-clear the Transactions as per the procedure as described in Clause 5.4.2."*

38. In the light of the clause 5.4.1 of Code of Conduct, since Noticee 2 had received 12 lakh shares from Noticee 1, I note that Noticees were bound to obtain pre-clearance

for the aforementioned transactions from the compliance officer of Omaxe. However, it is admitted fact that Noticees have traded in the shares of Omaxe without obtaining pre-clearance from its Compliance Officer.

39. In regard to the above observation, it has been contended by Noticees that the aforementioned transactions in shares of Omaxe were in the nature of gift and cannot be considered as trading in the securities. With respect to aforementioned contention, I note that Regulation 2(1)(l) of PIT Regulations states that *" "trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly*;." I also note that the Note appended to the aforementioned Regulation provides that "*Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the SEBI Act employs the term 'dealing in securities', it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which is strictly not buying, selling or subscribing, such as pledging, etc. when in possession of unpublished price sensitive information."* From the language of Regulation 2(1)(l) of PIT Regulations, I note that the aforementioned definition is an inclusive one and is of wide ambit. I find that the term " trading" is wide enough to include even gift of shares within its ambit. Therefore, I find that the aforementioned contention of Noticees lacks merit.

40. In the light of the foregoing observations, I find that Noticees, being designated persons as per the definition in the Code of Conduct of the Company, failed to take pre-clearance of their transactions in the shares of the Company in the period July 2017 to August 2018. Therefore, I find that the allegation that Noticees have violated the provisions of Clause 6 of Schedule B of Regulation 9(1) of PIT Regulations stands established.

Issue No. II: If yes, whether the failure on the part of Noticees would attract monetary penalty under Section 15HB of the SEBI Act?

41. It has been established in the preceding paragraphs that Noticees have violated provisions of Clause 6 of Schedule B of Regulation 9(1) of PIT Regulations.

42. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held "*In our considered opinion, penalty is attracted* as *soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."*

43. Therefore, the above violation of Clause 6 of Schedule B of Regulation 9(1) of PIT Regulations by Noticees would attract monetary penalty under Section 15HB of SEBI Act. The text of Section 15HB of SEBI Act is reproduced below:

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue No. III: What would be the monetary penalty that can be imposed upon Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

44. While determining the quantum of penalty under Section 15 HB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

45. In view of the charges established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, I find that, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticees in making disclosure. I also note that material available on the record also does not indicate the amount of specific loss caused to an investor or investor group. Further, I note that there is no evidence on record to indicate that violations of Noticees are repetitive in nature.

ORDER

46. Having considered all the facts and circumstances of the case, the material available on record, and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty on Noticees as given hereunder:

SL No.	Name of Noticee	Penalty Amount
1	J B Goel	₹2,00,000/-(Rupees Two Lakhs Only)
1	Nakul Goel	₹ 2,00,000/-(Rupees Two Lakhs Only)

47. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticees.

48. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

49. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	

4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

50. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

51. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees viz. Mr. J B Goel and Nakul Goel and also to SEBI.

Place: Mumbai
Date: January 31, 2022

SOMA MAJUMDER
ADJUDICATING OFFICER