WTM/AB/IVD/ID3/23/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**FINAL ORDER**

**Under Sections 11(1), 11(4), 11B (1) and 11B (2) of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.**

| Noticee No. | Name of the Noticee | PAN |
|---|---|---|
| 1. | Future Corporate Resources Private Limited | AAJCS3979E |
| 2. | Kishore Biyani | AACPB0199B |
| 3. | Anil Biyani | AACPB0200F |
| 4. | FCRL Employee Welfare Trust (FCRLWT) | AAATF5719P |
| 5. | Rajesh Pathak | ALIPP6155A |
| 6. | Rajkumar Pande | AHTPP4635J |
| 7. | Virendra Samani | APTPS2785J |
| 8. | Arpit Maheshwari | BDEPM8754C |

*(Aforesaid entities hereinafter individually referred to as either by their respective name or the noticee number and collectively as "Noticees")*

**In the matter of trading activities of certain entities in the scrip of Future Retail Limited.**

1. Present order deals with three separate show cause notices (hereinafter collectively referred to as "**SCNs**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") to aforesaid Noticees. The details of these three SCNs are tabulated below:

| S. No. | Show Cause Notice no. and date | Issued to Noticee |
|---|---|---|
| 1. | Show Cause Notice No. SEBI/HO/IVD/ID3/OW/P/2020/2778 dated January 21, 2020 (hereinafter referred to as "**SCN-I**") | Noticee No. 1 to 6 |

| | | |
|---|---|---|
| 2. | Show Cause Notice No. SEBI/HO/IVD/ID3/OW/P/2020/2770 dated January 21, 2020 (hereinafter referred to as "**SCN-II**") | Noticee No. 7 |
| 3. | Show Cause Notice No. SEBI/HO/IVD/ID3/OW/P/2020/2771 dated January 21, 2020 (hereinafter referred to as "**SCN-III**") | Noticee no. 8 |

2. The Noticee no. 1 i.e. Future Corporate Resources Private Limited (FCRPL) has been issued SCN-I, as it is the resultant entity which had emerged on merger of Future Corporate Resource Limited (FCRL) into Suhani Trading and Investment Consultants Private Limited (Suhani) with effect from November 14, 2017 and the name of Suhani has been changed to FCRPL. Therefore, all reference in this order, unless specified otherwise, to Noticee no. 1 implies reference to FCRL, as it existed prior to its merger with Suhani.

3. The brief facts leading to the issue of aforesaid SCNs to the Noticees, as narrated in the SCN, are as under:

(i) SEBI had conducted an investigation in the scrip of Future Retail Limited (hereinafter referred to as "**FRL" / "the Company**") to ascertain whether certain persons/ entities had traded in the aforesaid scrip during the period March 10, 2017 to April 20, 2017 (hereinafter referred to as "**IP**") on the basis of unpublished price sensitive information (hereinafter referred to as "**UPSI**"), in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") read with the SEBI (Prohibition of Insider Trading ) Regulations, 2015 (hereinafter referred to as **"PIT Regulations, 2015"**).

(ii) Investigation observed that FRL made an announcement on April 20, 2017 during market hours on the exchange platform titled "*Outcome of Board Meeting stating Composite Scheme of Arrangement between Future Retail Limited ('FRL' or 'First Demerged Company') and Bluerock eServices Private Limited ('BSPL' or 'Second*

*Demerged Company') and Praxis Home Retail Private Limited ('PHRPL' or 'Resulting Company') and their respective Shareholders ('the Scheme') - Intimation under Regulation 30 and other applicable regulations of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015*". Investigation observed that the aforesaid scheme of arrangement has resulted in the demerger of certain business of FRL. Also, the said announcement had a positive impact on the price of the scrip of FRL.

(iii) From the 'Code of Conduct for Regulating, Monitoring and Reporting of Trading by Insiders in the Securities of Future Retail Limited' investigation observed that information related to mergers, demergers, acquisitions, etc. qualifies as UPSI. Also, in terms of PIT Regulations, 2015, the aforesaid information related to scheme of arrangement, which resulted in the demerger of certain business from FRL, qualifies as UPSI as per Regulation 2(1)(n)(iv) of PIT Regulations, 2015, prior to its announcement on the exchange platform dated April 20, 2017.

(iv) From the chronology of events obtained from the company, investigation observed that the announcement dated April 20, 2017 related to the "Composite Scheme of Arrangement between FRL, BSPL, PHRPL and their respective Shareholders" had come into existence on March 10, 2017 as preliminary discussion for the proposed scheme of arrangement was carried out on this date. Subsequently, a team was also created by FRL on March 14, 2017 to work on this scheme. The press release pertaining to the aforesaid scheme was made on April 20, 2017, during market hours. In view of the same, the period of UPSI was identified as March 10, 2017 to April 20, 2017.

(v) Investigation observed that Noticee no. 1 and Noticee no. 4 traded in the scrip of FRL during the period of UPSI.

(vi) Trading details of Noticee in the scrip of FRL during the period of UPSI is as under:

| **Date** | **Buy Qty** | **Sell Qty** |
|---|---|---|
| 29/03/2017 | 1750000 | - |
| 30/03/2017 | 1875000 | - |
| **Total** | **3625000** | **-** |

(vii) Noticee no. 1 was part of the promoter and promoter group of FRL during the UPSI period. Shareholding pattern of Noticee no. 1 at the time of the aforesaid acquisition of FRL shares by Noticee no. 1 is as under:

| **Shareholder** | **Shareholding in FCRL(Number of shares)** | **Beneficial Owner** |
|---|---|---|
| Samreen Multitrading LLP | 80,16,000 (32%) | Kishore Biyani 99%<br>Sangita Kishore Biyani 1% |
| Tanushri Infrastructure LLP | 42,58,500 (17%) | Kishore Biyani 1%<br>Sangita Kishore Biyani 99% |
| Kavi Sales Agency LLP | 37,57,500 (15%) | Kishore Biyani 1%<br>Anil Laxminarayan Biyani 99% |
| Oviya Multitrading LLP | 37,57,500 (15%) | Kishore Biyani 1%<br>Sunil Biyani 99% |
| Radha Multitrading LLP | 37,57,500 (15%) | Kishore Biyani 1%<br>Rakesh Biyani 99% |
| Raja Infrastructure LLP | 10,02,000 (4%) | Kishore Biyani 1%<br>Gopalkishan Bansilal Biyani 99% |
| Salarjung Multitrading LLP | 5,01,000 (2%) | Kishore Biyani 1%<br>Laxminarayan Bansal Biyani 99% |

(viii) The list containing the names of people who were privy to the UPSI, submitted by FRL, included Noticee no. 2 - Mr. Kishore Biyani, (CMD and Promoter of FRL) who was also a Director on the Board of Noticee no. 1. Noticee no. 2 being the CMD of FRL during the investigation period was a connected person in terms of Regulations 2(1)(d)(i) of PIT Regulations, 2015, hence, was an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, 2015. Also, as per the list of insiders submitted by the company, Noticee no. 2 was privy to the UPSI and hence, was also an insider in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.

(ix) Indiabulls Ventures Limited (hereinafter referred to as "**Indiabulls**"), Stock Broker of Noticee no. 1, vide letter dated February 22, 2019, submitted the copy of Noticee no. 1's Board Resolution dated March 14, 2017, where the board of Noticee no. 1 had severally authorized Noticee no. 2 and Noticee no. 3, to sell, purchase, transfer, endorse, negotiate documents and/or otherwise deal through Indiabulls on behalf of FCRL.

(x) From the replies received from Indiabulls and submissions made by Rajesh Pathak i.e. Noticee no. 5, Company Secretary of Noticee no. 1 that the orders during the

period of UPSI were placed through written instructions of Noticee no. 3 on behalf of Noticee no. 1 as authorized by Board resolution dated March 14, 2017.

(xi) From the KYC document provided by Indiabulls, investigation observed that the trading account of Noticee no. 1 with Indiabulls was opened on March 27, 2017 by Noticee no. 2 and Noticee no. 3. Subsequently, trading by Noticee no. 1 in the scrip of FRL was done on March 29, 2017 and March 30, 2017 which was just after the account opening and just prior to the announcement dated April 20, 2017.

(xii) Noticee no. 1 was deemed to be a connected person in terms of the Regulations 2(1)(d)(ii)(j) of PIT Regulations, 2015 as Noticee no. 2 indirectly held more than 10% shareholding in Noticee no. 1, and hence, was an insider as per Regulation 2(1)(g)(i) of PIT Regulation, 2015.

(xiii) Noticee no. 3 (Promoter of FRL) being immediate relative of Noticee no. 2 was deemed to be connected persons in terms of the Regulations 2(1)(d)(ii)(a) of PIT Regulations, 2015. Noticee no. 3 was also a director on the Board of Noticee no. 1 along with Noticee no. 2 during the period of investigation, hence, was indirectly associated with FRL. It was observed from the copy of emails submitted by Noticee no. 1 that Noticee no. 2 and Noticee no. 3 also had frequent communications amongst themselves during the past six months prior to announcement dated April 20, 2017. In view of the aforesaid, Noticee no. 3 was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and also deemed to be connected in terms of Regulation 2(1)(d)(ii)(a) of PIT Regulations, 2015 as he was an immediate relative of Noticee no. 2. Hence, Noticee no. 3 was reasonably expected to have access to unpublished price sensitive information and hence, was an insider as per Regulation 2(1)(g)(i) of PIT Regulations, 2015.

(xiv) It was observed that the funds for the purchase of FRL shares were transferred through RTGS from Noticee no. 1 to Indiabulls. The said payment was authorised by Noticee no. 2 and Noticee no. 3 as per the information obtained from Noticee no. 1 during investigation.

(xv) It was observed that Noticee no.1, Noticee no. 2 and Noticee no. 3, being insiders to the company, had traded in the scrip of FRL on behalf of FCRL while in possession of the UPSI, thereby indulging in “insider trading”, in terms of

regulation 4(1) of PIT Regulations, 2015. It is, therefore, alleged that Noticee no. 1, 2 and 3 have violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015.

(xvi) Trading details of Noticee no. 4 in the scrip of FRL during the period of UPSI is as under:

| Date | Buy Qty | Sell Qty |
|---|---|---|
| 28/03/2017 | 500 | - |
| 29/03/2017 | 100000 | - |
| 30/03/2017 | 50000 | - |
| 31/03/2017 | 300000 | - |
| 03/04/2017 | 150000 | - |
| 05/04/2017 | 200000 | - |
| **Total** | **800500** | **-** |

(xvii) The investigation observed that Noticee no. 4 was an employee welfare trust for the employees of Noticee no. 1 and its subsidiaries and holding company. Noticee no. 4 was settled by Noticee no. 1 with IDBI Trusteeship Services Ltd (hereinafter referred to as "**IDBI**") as the Trustee. IDBI was a professional trusteeship management company.

(xviii) Noticee no. 1 had a nomination and remuneration committee (hereinafter referred to as "**NRC**") which decided the grant of stock options, the size of the grants and the identification of who should be granted how many options. The members of NRC were three independent directors of Noticee no. 4 namely, Mr. Hemant Bhotica, Mr. Ajay Dedhia and Mr. Anil Bagri.

(xix) The authority to take day-to-day decisions relating to instructions for purchase of shares on behalf of Noticee no. 4 and funding of IDBI for the said purchases were given to Noticee no. 5 - Mr. Rajesh Pathak (Company Secretary of FCRL) and Noticee no. 6 - Mr. Rajkumar Pande (Chief Financial Officer of FCRL). The said authority was granted vide NRC's resolution dated December 19, 2016.

(xx) Noticee no. 1 being a connected entity was an insider as mentioned above, Noticee no. 5 and 6 being KMPs of Noticee no. 1 who were reporting to Noticee no. 2 (as per the submissions made by Noticee no. 1) were indirectly associated

with FRL. Also, as per the copy of emails submitted by Noticee no. 1, Noticee no. 5 and 6 had frequent communications with Noticee no. 2 during the past six months prior to the announcement dated April 20, 2017. Also, Noticee no. 5 and 6 were directors in some of the Future Group Companies along with members of the Biyani family. Further, it was also observed that Noticee no. 5 took pre-clearance on behalf of Noticee no. 1 for trading in the scrip of FRL from which it was determined that Noticee no. 5 was working together with Noticee no. 2 and 3 (persons who authorized the fund transfer and traded in the scrip of FRL on behalf of Noticee no. 1) for purchasing the shares of FRL on behalf of Noticee no. 1. Therefore, Noticee no. 5 and 6 were connected entities in terms of the Regulations 2(1)(d)(i) of PIT Regulations, 2015 who were reasonably expected to have access to UPSI and hence, were insiders as per Regulation 2(1)(g)(i) of PIT Regulations, 2015.

(xxi) Since, Noticee no. 1 being a connected entity was an insider as mentioned above, the employee trust formed by Noticee no. 1 i.e. Noticee no. 4 was deemed to be a connected person in terms of the Regulations 2(1)(d)(ii)(j) of PIT Regulations, 2015 as Noticee no. 2 had more than 10% holding in Noticee no. 1 (which was also the settlor of the Noticee no. 4) and the same was ultimately controlled by Noticee no. 2 and family and hence, was an insider as per Regulation 2(1)(g)(i) of PIT Regulations, 2015.

(xxii) Based on the aforesaid authority, as referred to in sub-para (xix) i.e. NRC Resolution dated December 19, 2016, Noticee no. 5, in consultation with Noticee no. 6, issued instructions to IDBI to purchase the shares of FRL on behalf of Noticee no. 4 during the UPSI period. IDBI then placed the order with Sajag Securities Pvt. Ltd. (hereinafter referred to as "**Sajag**"), Stock Broker of Noticee no. 4, for purchasing the shares of FRL.

(xxiii) Sajag also submitted the copy of the KYC documents of Noticee no. 4. As per the said KYC documents, it was observed that the trading account of Noticee no. 4 with Sajag was opened on March 27, 2017 by IDBI. Subsequently, trading by Noticee no. 4 in the scrip of FRL was carried out during the period from March 28, 2017 to April 05, 2017, which was just after the account opening and just prior to

the announcement dated April 20, 2017.

(xxiv) SCN-I alleges that Noticee no. 5 and 6, being insiders to FRL, had traded in the scrip of FRL on behalf of Noticee no. 4 while in possession of the UPSI, thereby resulting in "insider trading", in terms of Regulation 4(1) of the PIT Regulations, 2015. SCN-I alleges that Noticee no. 4, 5 and 6 have violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulations 4(1) of PIT Regulations, 2015.

(xxv) It is alleged that Noticee no. 1 and 4 made wrongful gains by trading in the scrip of FRL during the period of UPSI. Details of the same are as under:

| **Name** | **No. of shares bought** | **Wt. Average Buy Price (Rs.)** | **Closing Price on April 20, 2017 (Rs.)**** | **Wrongful gain (Rs.)#** |
|---|---|---|---|---|
| | **A** | **B** | **C** | **D = (A*C) - (A*B)** |
| FCRL | 36,25,000 | 257.245 | 306.3 | 17,78,25,000 |
| FCRLWT | 8,00,500 | 271.86 | 306.3 | 2,75,68,650 |

#**Note***: Wrongful gain has been calculated as per the following method:*
*Wrongful gains = (No. of shares bought when in possession of UPSI X Closing Price on the day of UPSI becoming public) – (No. of shares bought when in possession of UPSI X weighted average purchase price)*
The announcement was made on April 20, 2019 on NSE during market hours. Therefore, the closing price of scrip on April 20, 2019 i.e. Rs.306.3 at NSE was considered for computation of wrongful gains.

(xxvi) In view of the above, **SCN-I** calls upon Noticee no. 1 to 6 to show cause as to why suitable directions including debarment (for Noticee no. 1, 2, 3, 5 and 6) and disgorgement (for Noticee no. 1 and 4) be not issued under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992 for violations Section 12A(d) and (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015. The SCN-I also calls upon Noticee no. 1 to 6 except Noticee no. 4 as to why appropriate directions for imposition of penalty under Section 11B (2) read with Section 15G of SEBI Act, 1992 read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**the Rules**") be not issued to them.

(xxvii) **SCN-II** alleges that as per the information provided by FRL, Noticee no. 7 was the compliance officer as well as the Deputy Company Secretary of FRL during the investigation period and was privy to the UPSI. Further, as per the submissions made by FRL, trading window closure notice was not issued by the company with respect to the corporate announcement dated April 20, 2017. Thus, SCN-II

alleged that Noticee no. 7 (as a compliance officer of FRL) has violated Clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified in Schedule B read with Regulation 9(1) of PIT Regulations, 2015 as he failed to close the trading window with respect to the aforesaid announcement dated April 20, 2017. SCN-II further alleges that as per the list of people/entities submitted by FRL to whom pre-clearance was given for trading in the scrip of the FRL, it was observed that Noticee no. 7 gave pre-clearance to Noticee no. 1 for trading in the scrip of FRL while himself being aware of the UPSI and knowing the fact that Noticee no. 1 and its directors i.e. Noticee no. 2 and 3 are insiders and might have access to the same UPSI. Accordingly, SCN alleged the violation of Clause 8 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified in Schedule B read with Regulation 9(1) of PIT Regulations, 2015. SCN-II called upon Noticee no. 7 to show cause as to why appropriate directions for imposing penalty under Section 11B(2) read with section 15HB of the SEBI Act, 1992 and read with the Rules should not be issued against him for the alleged violations of the aforementioned provisions of PIT Regulations, 2015.

(xxviii) **SCN-III** alleges that Noticee no. 8 employed with FRL as Deputy Manager, had traded in the scrip of FRL during the period of UPSI. Trading details of Noticee no. 8 in the scrip of FRL during the period of UPSI are as under:

| **Date** | **Buy Qty** | **Sell Qty** |
|---|---|---|
| 10/03/2017 | 500 | 0 |
| 15/03/2017 | 0 | 100 |
| 13/04/2017 | 0 | 100 |
| **Total** | **500** | **200** |

(xxix) SCN-III alleges that as per the copy of emails submitted by FRL and PWC (Professional Advisor/Consultants for the Scheme of Arrangement between FRL, BSPL and PHRPL), it was observed that Noticee no. 8 was part of the emails where issue related to the scheme was being discussed. Since, he was privy to the UPSI, he was an insider in terms of Regulations 2(1)(g)(ii) of PIT Regulations, 2015. SCN-III alleges that Noticee no. 8, being insider to FRL, had traded in the scrip of FRL while in possession of the UPSI, thereby resulting in "insider trading",

in terms of Regulation 4(1) of PIT Regulations, 2015. Thus, SCN-III alleges that Noticee no. 8 has violated Section 12A (d) and (e) of SEBI Act, 1992 and Regulations 4(1) of PIT Regulations, 2015. SCN-III further alleges that Noticee no. 8 made wrongful gains by trading in the scrip of FRL during the period of UPSI, the details of which are as under:

| **No. of shares bought** | **Wt. Average Buy Price (Rs.)** | **No. of shares sold** | **Wt. Average Sell Price (Rs.)** | **Closing Price on April 20, 2017 (Rs.)**** | **Wrongful gain (Rs.)#** |
|---|---|---|---|---|---|
| 500 | 268.29 | 200 | 277.875 | 306.30 | 13,320 |

*#Note: Wrongful gain has been calculated as per the following method:*

*Wrongful gains = (No. of shares sold when in possession of UPSI X Wt. Avg Sell price) + (Quantity of remaining shares X Closing Price on the day of UPSI becoming public) - (No. of shares bought when in possession of UPSI X weighted average purchase price)*

*The announcement was made on April 20, 2019 on NSE during market hours. Therefore, the closing price of scrip on April 20, 2019 i.e. Rs.306.30 at NSE was considered for computation of wrongful gains.*

(xxx) SCN-III called upon Noticee no. 8 to show cause as to why appropriate directions under Sections 11B(1) and 11(4) read with Sections 11(1) of the SEBI Act, 1992 including debarment for an appropriate period and disgorgement of the wrongful gains should not be issued against him for the said violations of the aforementioned provisions of SEBI Act, 1992 and PIT Regulations, 2015. SCN-III also called upon Noticee no. 8 to show cause as to why appropriate directions for imposing penalty under Section 11B (2) read with Section 15G of the SEBI Act, 1992 and read with the Rules should not be issued against him for the alleged violations of the aforementioned provisions of SEBI Act, 1992 and PIT Regulations, 2015.

4. In view of the aforesaid, the SCNs referred to in para 1 above, came to be issued to the Noticees. The following documents were also provided along with the SCNs as annexure to the SCNs:

**List of Annexures to SCN-I**

| S. No. | Annexure Number | Description |
|---|---|---|
| 1. | Annexure-1 | Copy of the Code of Conduct |
| 2. | Annexure-2 | Copy of FRL letter dated February 05, 2019 |

| | | |
|---|---|---|
| 3. | Annexure-3 | Copy of Indiabulls letter dated February 22, 2019 |
| 4. | Annexure 4 | Copy of FCRLs email dated June 04, 2019 |
| 5. | Annexure 5 | Copy of FCRLs email dated July 29, 2019 |
| 6. | Annexure 6 | Copy of FCRLs email dated July 31, 2019 |
| 7. | Annexure 7 | Copy of FCRLs email dated February 07, 2019 |
| 8. | Annexure 8 | Copy of FCRLs email dated July 03, 2019 |
| 9. | Annexure 9 | Copy of email dated July 25, 2019 and July 26, 2019 from Rajkumar Pande and Rajesh Pathak, respectively |
| 10. | Annexure 10 | Copy of Sajag's email dated February 20, 2019 |

**List of Annexures to SCN-II**

| S. No. | Annexure Number | Description |
|---|---|---|
| 1. | Annexure-1 | Copy of the Code of Conduct |
| 2. | Annexure-2 | Copy of FRL letter dated February 05, 2019 |
| 3. | Annexure-3 | Copy of IFRL letter dated March 26, 2019 |

**List of Annexures to SCN-III**

| S. No. | Annexure Number | Description |
|---|---|---|
| 1. | Annexure-1 | Copy of the Code of Conduct |
| 2. | Annexure-2 | Copy of FRL letter dated February 05, 2019 |
| 3. | Annexure-3 | Copy of IFRL letter dated March 26, 2019 |

5. In response to the SCN, Noticee no. 1, 2 and 3 filed their common reply dated July 10, 2020. Similarly, Notice no. 4, 5 and 6 also filed their separate common reply dated July 10, 2020. Noticee no. 7 has filed his reply dated July 10, 2020 to SCN. Noticee no. 8 has filed his reply dated February 10, 2020.

6. Noticee no. 1, 2 and 3 in their reply dated July 10, 2020 and during the personal hearing held on October 22, 2020 made *inter alia* the following submissions:

(i) information about the Transaction was "generally available", and does not constitute UPSI for the following reasons:

(a) information about the Transaction had been widely reported across numerous media platforms, much before the dates on which the trades were undertaken by Noticee 1;

(b) the likelihood of the Transaction was also widely covered in reports issued by various equity research houses;

(c) FRL had, on 7 March 2017, specifically clarified to the stock exchanges that its board had authorized considering various options in relation to the Home Town Business; and

(d) the Announcement was only a continuation or follow-on announcement in respect of information about the Transaction which was already "*generally available*",

(ii) information about the Transaction was not price sensitive, even if it is assumed that such information was not "*generally available*", because of the following reasons:

(a) the HomeTown Business and the FabFurnish Business constituted a significantly small and miniscule portion of FRL's overall business respectively and was unlikely to contribute significantly to the price movement of the FRL shares;

(b) there were other industry-wide factors (such as, demonization, Goods and Service Tax, D-Mart IPO) which significantly contributed to price movement in the shares of FRL and other retail companies in India during that period, and the Transaction itself was not determinative of such price movement;

(c) various equity research houses had also issued research reports which had recommended a strong future for the retail sector (particularly for FRL) which contributed to FRL price movement; and

(d) price movement, if any, could be explained by a number of other factors / events, and not necessarily the Transaction.

(iii) Noticee 3, who took trading decisions on behalf of Noticee 1, did not have access to any information about the Transaction, which, in any case, did not constitute UPSI, because of the following reasons:

(a) Noticee 3 has no role to play with respect to the retail business, and his primary involvement is with respect to textile manufacturing and brand development;

(b) Noticee 3 is not an employee, executive or director at FRL;

(c) Noticee 3 and Noticee 2 operate out of different residential and office premises – in fact, we have had occasion to correct SEBI's presumption about Noticee 3's residential address vide letter dated 21 February 2020;

(d) no communications between Noticee 3 and Noticee 2 in connection with FRL's business, or with respect to decisions to trade in shares of FRL and no business of FRL was ever discussed or considered at any board meetings of Noticee 1; and

(e) Noticee 3 is financially independent from Noticee 2.

(iv) Noticee 2 and Noticee 3, both being directors on the board of Noticee 1 does not imply that Noticee 3 is an "insider" for the purposes of the PIT Regulations because of the following reasons:

(a) there is nothing on record or brought to bear by SEBI to suggest that there was any communication between Noticee 3 and Noticee 2 in connection with FRL's business, or with respect to decisions to trade in shares of FRL;

(b) no business of FRL was ever discussed or considered at any board meetings of Noticee 1; and

(c) such an approach of presuming communication of information would fall foul of the explicit ruling of the Hon'ble Supreme Court of India in the matter of ***Chintalapati Srinivasa Raju vs Securities and Exchange Board of India***;

(v) no evidence has been shown in the SCNs which substantiates a violation of PIT Regulations by Noticee 2, in that, there is no evidence shown in the SCNs that Noticee 2 traded in the securities of FRL, either on his own behalf or on behalf of Noticee 1.

7. Noticee no. 4, 5 and 6 in their reply dated July 10, 2020 and during the personal hearing held on October 22, 2020 made *inter alia* the following submissions:

(i) Noticee 4 is not a "person" for it to be a connected person in relation to FRL for the following reasons:

(a) a trust is not a legal entity such as a company – it is not a body corporate and is merely the name of the relationship between the trustee and the beneficiary in respect of application and use of the trust property;

(b) the role of Noticee 1 in the trust was of a settlor and was limited to making contributions to the trust corpus, to be held in trust on behalf of and for the benefit of the beneficiaries of the trust (not being promoters or part of the promoter group);

(c) once contributions to the trust property were completed, the control, administration and management of the trust property was undertaken by IDBI (i.e. a professional trusteeship management company), at its discretion or based on instructions; and

(d) the Trust Deed makes it clear that Noticee 4 has been set up for the benefit of the 'Beneficiaries', which explicitly excludes the promoter/promoter group (specifically Noticee 2) since promoters cannot get stock options.

(ii) Noticee 4 acted in a bona fide manner based on instructions given by a third-party (i.e. Noticee 5), and should not be penalized for acting pursuant to valid instructions issued to it for the following reasons:

(a) the acquisition of FRL shares by IDBI on behalf of Noticee 4 was taken based on instructions given by Noticee 5 and Noticee 6, pursuant to the authority granted by the NRC through resolution dated 19 December 2016; and

(b) there is no evidence in the SCNs regarding IDBI having access to and/or being in the possession of any UPSI, and therefore, there is no question of Noticee 4 or IDBI having acted in violation of the PIT Regulations.

(iii) Noticee 5 and Noticee 6 are not connected with FRL in any manner for the following reasons:

(a) they are vested with the responsibilities of being part of the company secretarial or finance function at other promoter group companies of the Biyani family and have no association with FRL;

(b) they were not part of the team formed for the purposes of the Transaction;

(c) they were not involved in any of the operation, management, secretarial or administrative activities of FRL in any manner; and

(d) they had not directly / indirectly interacted / associated with the employees of FRL in relation to the Transaction prior to the Announcement;

(iv) Noticee 5 and Noticee 6 were not aware of the Transaction and did not have any information in respect of the Transaction, prior to the Announcement for the following reasons:

(a) merely because Noticee 5 and Noticee 6 report to Noticee 2 does not make them connected persons to Noticee 2 or associated with FRL;

(b) common directorship between the Noticees and members of the extended Biyani family, does not imply that the Noticees are "connected persons" to FRL since SEBI has also not produced any evidence to show that business of FRL was ever discussed or considered by such Future Group companies;

(c) there is no frequency of communication between the Noticees and Noticee 2, as alleged by SEBI, since only 11 emails were exchanged between them in a cumulative period of 5 months prior to the Announcement, all of which were in the nature of general company-wide emails; and

(d) the pre-clearances obtained by Noticee 5 on behalf of Noticee 1 was part of Noticee 5's role as company secretary of Noticee 1.

(v) the instructions given by Noticee 5 and Noticee 6 to IDBI for acquisition of shares of FRL on behalf of Noticee 4 were bona fide instructions for the following reasons:

(a) the instructions were given pursuant to the authorizations granted by the NRC to the Noticees, which authorized them to take day-to-day decisions relating to the ESOP Plan; and

(b) the instructions were given in order to comply with pre-existing contractual obligations as set out under the Grant Letter.

8. Noticee no. 7 in his reply dated July 10, 2020 and during the personal hearing held on October 22, 2020 made *inter alia* the following submissions:

(i) For reasons provided in Paragraph 71(i) of the Promoters Response, the information about the Transaction was "generally available" and did not constitute UPSI at the time of granting the pre-clearance on 24 March 2017;

(ii) For reasons provided in Paragraph 71(ii) of the Promoters Response, information about the Transaction was not price sensitive, even if it is assumed that such information was not "generally available"

(iii) the trading window in respect of the Transaction was not required to be closed since the information in question was not UPSI. However, in accordance with the manner laid out in the FRL Code of Conduct:

(a) designated persons working on the Transaction executed undertakings pursuant to which the trading window was deemed to be closed for such persons and such undertakings had been executed by the relevant FRL personnel;

(b) there was no requirement for the Noticee to have issued a separate notice in relation to the closure of the trading window since the information in question was not UPSI, and in addition, persons involved in the Transaction had undertaken that they would not trade in the securities of FRL; and

(c) the issuance of a notice of closure of trading window in relation to the Transaction by the Noticee would have been in violation of the requirement to share UPSI only on a need-to-know basis;

(iv) The Noticee, in granting the pre-clearance to FCRPL, was not in violation of Clause 8 of the Minimum Standards for the following reasons:

(a) there was no reason for the undersigned to believe that FCRPL, Mr. Rajesh Pathak (who submitted the pre-clearance application on FCRPL's behalf), or any other persons who had not executed undertakings mentioned above, were in possession of UPSI in relation to the Transaction;

(b) FCRPL is the promoter of FRL and has no other connection with FRL - therefore, UPSI in relation to FRL could not have been shared with FCRPL due to restrictions on sharing UPSI only on a need-to-know basis; and

(c) directors of a promoter company of a listed company are not deemed to be connected persons under the PIT Regulations, 2015.

9. Noticee no. 8 in his reply dated February 10, 2020 and during the personal hearing held on October 22, 2020 made *inter alia* the following submissions:

(i) At present, I am working as Dy. Manager of Future Retail Limited ("FRL" or "Company");

(ii) I hereby confirm that I was involved for the project related to composite scheme of arrangement as you mentioned in your SCN to assist the Company Secretary to provide necessary information and prepare necessary secretarial documentation. It may be noted that I did not had access to any financial information at that point of time related to the project;

(iii) With regard to the alleged trading in the scrip of FRL during the UPSI Period and before announcement of transaction by the Company at that time, please note that I had no intention to do any trade during the Unpublished Prise Sensitive Information ("UPSI"), Period. However, it was a case of absolute ignorance and negligence on my part without any intention to make unlawful gains using the UPSI.

(iv) The violation done was due to absolute negligence and ignorance on my part during the UPSI period without any intention to make unlawful gains using the UPSI;

(v) I am a committed and a law abiding citizen;

(vi) I am a young, genuine and small investor who trades in the stock market and try to do all such small transactions within the ambit of applicable regulations. I keep on making small investments with sole intent to build corpus for me and family members to have some small savings for the unforeseen financial emergency events;

(vii) During the period while I was working on above project, I had done the investment with sole purpose of saving as stated above. However, due to need of funds for meeting sudden expense related to meet a family exigency I had sold 100 shares on March 15, 2017 and another 100 shares on April 13, 2017. The error was done without any bad motive and was solely done with intent to meet the expense requirements at that time. I believe that I should not have at first place bought the shares of the Company and secondly, should not have sold the said shares, partly, in spite of fund requirements while working on said project, however, as mentioned above it was done by error / lapse on my part (with no ulterior motive) and due to urgent funds requirement;

(viii) I accept my above error and mistake which could have been avoided with little application of knowledge about the regulations and its implications, which was not in my knowledge at that point of time due to ignorance. However, given an opportunity to rectify the error happened by oversight of violation of Insider Trading regulations of SEBI and also of company's code for insider / designated persons, I hereby accept the same and agree to deposit the wrongful gain made by me of Rs. 13,320/- as mentioned by your good office as per your direction;

(ix) I further humbly submit that I am a young professional, aged 31 years, married in 2016 and recently blessed with a baby boy. As a young aspiring professional, I am trying to achieve my objective to have a reasonable standard of living in city of Mumbai by making savings through lawful means. I am a law abiding and God fearing person and do not have any intention to use any wrong or illegal means to make my living. For your reference I am attaching the copy of my marriage certificate and birth certificate of my baby boy;

(x) I also submit that I am a young professional and any type of penal proceedings might result in a bad impact on my professional career as well. I shall be highly obliged to your goodselves and SEBI, if no such inquiry or penal proceedings are initiated, to help me avoid such blame on my professional career;

(xi) Considering the above submission, I earnestly request your kind office to direct for the deposit of the wrongful gain as identified by you and not to levy any further penalty or fine. Upon receipt of direction from your goodselves, I shall immediately deposit the said amount in the account with SEBI;

(xii) I hereby undertake that I shall now keep myself accustomed with the applicable regulations and not to take any type of actions or trades which will be in contraventions of the applicable regulations;

(xiii) Lastly, I once again submit that the lapse as stated above was unintentional and without any motive to make any wrongful gains.

10. After considering the replies made by the Noticees, an opportunity of personal hearing was granted to the Noticees on September 02, 2020, to conduct enquiry in the matter. However, Noticees sought an adjournment of hearing on the said date due to non-availability of their advocate. Noticees were given another opportunity of hearing on October 22, 2020 which was attended by the authorised representative of the Noticee no. 1 to 7 and Noticee no. 8 in person.

11. I have considered the allegations made in the SCN, submissions made by the Noticees in their replies and during the personal hearing. Before dealing with the merits of the allegations levelled in the SCNs, it would be appropriate to deal with a preliminary contention made by Noticee no. 1, 2 and 3 which has also been adopted by Noticee no. 7 that they have not been provided with inspection of all the documents in possession of SEBI rather they have been provided with the inspection of only those documents which have been relied upon in the SCN. I have perused all the letters written in this regard, by the Noticee no. 1 to 3 to SEBI, viz; letters dated February 03, 2020, February 10, 2020, February 21, 2020 and also the response to these letters sent by SEBI on February 07, 2020 and February 25, 2020. In this regard, I note that the Noticee are entitled to have inspection of all the documents which have been relied upon in the SCN. I note that the Noticees have been provided with the inspection of the documents relied upon in the SCN. In this regard, observations made by the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**") in its order dated July 23, 2019 passed in the matter of Reliance Commodities Ltd vs. NSDL and SEBI, are worth to refer to which are as under:

> "……..*2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.*
>
> *3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant. The appeal is accordingly disposed of. Misc. Application No.189 of 2019 is also disposed of*……."

12. Aforesaid observations made by the Hon'ble SAT in the Reliance Commodities matter (*supra*) squarely applies to the contention regarding inspection of documents made by the Noticees in the present matter as all the documents relied upon in the SCNs have been provided to the Noticees and hence, the contention of the Noticees, in this regard is not tenable.

13. Coming to the merits of the case, I note that FRL is a company listed on NSE and BSE. The brief case, as alleged against Noticees in the SCNs is as under:

(i) **SCN-I** which is issued to Noticee no. 1 to 6, alleges that FRL made an announcement dated April 20, 2017 related to the "Composite Scheme of Arrangement between Future Retail Limited ('FRL' or 'First Demerged Company') and Bluerock eServices Private Limited ('BSPL' or 'Second Demerged Company') and Praxis Home Retail Private Limited ('PHRPL' or 'Resulting Company') and their respective Shareholders ('the Scheme') – Intimation under Regulation 30 and other applicable regulations of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015" to the stock exchanges. The aforesaid scheme of arrangement resulted in the demerger of certain business of FRL. The said announcement had a positive impact on the price of the scrip of FRL. The price of the scrip of FRL increased 4.68% from Rs. 292.60/- per share (closing price on April 19, 2017) to Rs. 306.30/- per share (closing price on April 20, 2017), after making of corporate announcement by FRL on April 20, 2017 during the market hours. In terms of Regulation 2(1)(n)(iv) of PIT Regulations, 2015, the information relating to aforesaid scheme was a UPSI. The said UPSI came into existence on March 10, 2017 as preliminary discussion for the proposed scheme of arrangement was carried out on this date and thus, the period of UPSI was identified as March 10, 2017 to April 20, 2017. Noticee no. 1 to 6 were connected/deemed to be connected persons and thus insiders of FRL. Noticee no. 1 traded in the shares of FRL on March 29, 2017 and March 30, 2017 and thus purchased a total of 3,62,000 shares of FRL, during the UPSI period, at an average purchase price of Rs. 257.245/- per share. Noticee no. 1 made notional unlawful gains of Rs. 17,78,25,000/-. Noticee no. 2 and 3 were the persons who took aforesaid decision of trading by Noticee no. 1. In view of this, SCN-I alleges that Noticee no. 2 and 3, being insiders to the Company, had traded in the scrip of FRL on behalf of Noticee no. 1 another insider to the Company while in possession of the UPSI, thereby Noticee no. 1, 2 and 3 have violated Section 12A(d) & (e) and Regulation 4(1) of PIT Regulations, 2015. Further, Noticee no. 4 traded in the shares of FRL on March 28, 2017, March 29, 2017, March 30, 2017, March 31, 2017, April 03, 2017 and April 05, 2017 and thus

purchased a total of 8,00, 500 shares of FRL, during the UPSI period, at an average purchase price of Rs. 271.86/- per share. Noticee no. 4 made notional unlawful gains of Rs. 2,75,68,650/-. Noticee no. 5 and 6 were the persons who took aforesaid decision of trading by Noticee no. 4. In view of this, SCN-I alleges that Noticee no. 5 and 6, being insiders to the company, had traded in the scrip of FRL on behalf of Noticee no. 4 while in possession of the UPSI, thereby Noticee no. 4, 5 and 6 have violated Section 12A(d) & (e) and Regulation 4(1) of PIT Regulations, 2015.

(ii) **SCN-II** which is issued to Noticee no. 7, alleges that Noticee no. 7 who was compliance officer of FRL, failed to give notice of closure of trading window with respect to the aforesaid announcement dated April 20, 2017. Further, Noticee no. 7 gave pre-clearance to Noticee no. 1 for trading in the scrip of FRL while himself being aware of the UPSI and knowing the fact that Noticee no. 1 and its directors are insiders and might have access to the same UPSI. In view of this, SCN-II alleges that Noticee no. 7 has violated Clauses 4 and 8 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified in Schedule B read with Regulation 9(1) of PIT Regulations, 2015.

(iii) **SCN-III** which is issued to Noticee no. 8, alleges that Noticee no. 8 was employed as deputy manager with FRL and was part of the emails where issue related to aforesaid scheme of FRL was being discussed. Thus, Noticee no. 8 was privy to the UPSI and was an insider in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015. Noticee no. 8 had purchased 500 shares of FRL on March 10, 2017 and sold 100 shares on March 15, 2017 and 100 shares on April 04, 2017, during UPSI period. In view of this, SCN-III alleges that being insider to FRL, Noticee no. 8 had traded in the scrip of FRL while in possession of the UPSI, thereby Noticee no. 8 has violated Section 12A(d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015.

14. All the Noticees except Noticee no. 7, have been charged with violations of Section 12A(d) and (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015. PIT Regulations, 2015 has been framed under Section 30 read with Section 11(2)(g) and

Sections 12A(d) and (e), of the SEBI Act, 1992. Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4 of PIT Regulations, 2015, as it existed at the relevant time, provided as under:

> **"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.**
>
> **12A.** No person shall directly or indirectly—
> (a)…….
> (b)…….
> (c)…….
> (d) engage in insider trading;
> (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
> …….
> **Trading when in possession of unpublished price sensitive information.**
>
> 4.(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:
>
> Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –
>
> (I) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.
>
> (ii) in the case of non-individual insiders: –
>
> (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and
>
> (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking

trading decisions and there is no evidence of such arrangements having been breached;

(iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.

**NOTE:** 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. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

(3) The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

15. From the above, it is noted that Section 12A(d) of SEBI Act, 1992, provides that no person shall directly or indirectly in indulge in insider trading. The word used indulge in this clause is of wide import. This clause seeks to prohibits any assistance/aiding of insider trading, by any person either directly or indirectly. Section 12A(e) provides that no person shall directly or indirectly 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. As mentioned above, the regulation referred to Section 12A(e) in is PIT Regulations, 2015. Further, Regulation 4(2) provides that if the “insider”, as envisaged under Regulation 4(1), is a connected person then the onus of establishing that he was not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on the SEBI. The Note to Regulation 4(1) clarifies that when a person trades in securities when in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such UPSI in his possession. Proviso to Regulation 4(1) provides that despite presence of all the ingredients of Regulation

4(1) of PIT Regulation, 2015, the insider may prove his innocence by demonstrating the circumstances including those which are mentioned in the said proviso. The Note to Regulation 4(1) states that once it is established that an insider traded when in possession of UPSI, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

16. In the following paras, I would be examining whether the ingredients of Regulation 4(1) are present in the case of the Noticees except Noticee no. 7, as these Noticees have been charged with the violation of Regulation 4(1) of PIT Regulations, 2015. However, the finding arrived with respect to existence of UPSI, shall also apply to determination of the violations alleged to have been committed by Noticee no. 7, as the determination of violations alleged to have been committed by Noticee no. 7 is also dependent on the existence of the alleged UPSI.

16.0 **Whether there was a UPSI?**

16.1 SCN alleges that FRL made a corporate announcement to the stock exchanges on April 20, 2017 regarding outcome of its board meeting held on April 20, 2017 wherein its board approved segregation of certain business of FRL through a Composite Scheme of Arrangement between FRL, BSPL and PHRPL and their respective Shareholders. The aforesaid scheme of arrangement has in fact, resulted in the demerger of certain business of FRL. The information related to scheme of arrangement, which resulted in the demerger of certain business from FRL, was UPSI as per Regulation 2(1)(n)(iv) of PIT Regulations, 2015, prior to its announcement on the exchange platform on April 20, 2017. Also, the said announcement had a positive impact on the price of the scrip of FRL. The price of the scrip of FRL increased 4.68% from Rest. 292.60/- per share (closing price on April 19, 2017) to Rs.306.30/- per share (closing price on April 20, 2017), after making of corporate announcement by FRL on April 20, 2017, during the market hours. From the chronology of events submitted by FRL during investigations, it was observed that the announcement dated April 20, 2017 related to the "Composite Scheme of Arrangement between FRL, BSPL, PHRPL and their respective Shareholders" had come into existence on March 10, 2017 as

preliminary discussion for the proposed scheme of arrangement was carried out on this date. Subsequently, a team was also created by FRL on March 14, 2017 to work on this scheme. The press release pertaining to the aforesaid scheme was made to NSE/BSE on April 20, 2017, during market hours. In view of the same, the period of UPSI was identified as March 10, 2017 to April 20, 2017.

16.2 Noticee no. 1, 2 and 3, in their reply dated July 10, 2020 have contended that restructuring of Hometown business ("transaction") does not qualify as UPSI. Noticee no. 4 to 7, in their respective replies have adopted the submissions made by Noticee no. 1 to 3 regarding the existence of alleged UPSI. Noticee no. 1 to 7 have submitted that information relating to transaction did not qualify as UPSI because the information in respect of the transaction was widely published and generally available. It has been submitted that information about the transaction had been widely reported across numerous media platforms, including television, print and digital media, much before the date that Noticee no. 1 traded in the scrip of FRL. It has been submitted that most of such news coverage: (a) emanated pursuant to interviews and statements given by FRL or by its chairman and managing director (i.e. Noticee 2); and (b) was fairly specific, in that they had references to the HomeTown Business (including specific references to demerging the FabFurnish and HomeTown business into a new listed company). It has been submitted that due to this media coverage stock exchanges sought clarifications, and on March 07 2017, NSE and BSE sought specific clarifications from FRL with respect to the news article which had appeared in the Economic Times on 28 February 2017. In this regard, FRL on 7 March 2017 issued clarifications to NSE and BSE, as available on the website of the stock exchanges, stating that *"board has given an in-principle authority for considering various options with regard to HomeTown format, however, there is no final understanding which has been arrived at till date […]"*. In addition to the contention that information was not UPSI, Noticees have also contended that the information was not price sensitive. In this regard, Noticees have submitted that the revenues relating to the HomeTown Business constituted only 3.28% of the total consolidated revenues of FRL, and the EBITDA relating to the HomeTown Business was approximately 3.3% of FRL's total EBITDA. Further, the revenues relating to the FabFurnish Business constituted only 0.03% of the total consolidated revenues of FRL. Therefore, comparatively, the

HomeTown Business and the FabFurnish constituted a significantly small portion of FRL's overall business and was unlikely to contribute significantly to the price movement of the FRL shares.

16.3 I note that UPSI has been defined in Regulation 2(1)(n) of the PIT Regulations, 2015 as under:

> "……(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;
>
> (vi) material events in accordance with the listing agreement.
>
> **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……"

16.4 A perusal of the aforesaid definition shows that for an information to be termed as UPSI, it must, -(i) be relating to the company or its securities either directly or indirectly; (ii) not be generally available; and (iii) likely to materially affect the price of the securities. In terms of Regulation 2(1)(n)(iv) of PIT Regulations, 2015, information relating to mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions, is *per se* treated as UPSI. In the present case, the disclosure which was made by FRL to the stock exchanges on April 20, 2017 was pertaining to Composite Scheme of Arrangement between FRL, BSPL and PHRPL and their respective Shareholders. Therefore, the information which was disclosed to the stock exchanges by FRl on April 20, 2017, prior to its disclosure was UPSI. In terms of definition of UPSI as given under

Regulation 2(1)(n), any information relating to a company or its securities which upon becoming generally available is likely to materially affect the price of the securities of the company, is UPSI. In other words, in order to be termed as UPSI, the information relating to a company or its securities which is likely to materially affect the price, should not be "generally available". As one of the ingredient of the definition of UPSI is that it should not be generally available, it would be appropriate to determine what is considered as generally available information. In this regard, reference may be made to Regulation 2(1)(e) of PIT Regulations, 2015 which defines "generally available information" as follows:

> (e) "generally available information" means information that is accessible to the public on a non-discriminatory basis;
>
> **NOTE:** It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.

16.5 A perusal of the definition of "generally available information" show that an information which is accessible to the public on non-discriminatory basis, is termed as "generally available information". The note to Regulation 2(1)(e), provides that information published on the website of a stock exchange would ordinarily be considered as generally available information.

16.6 In this regard, it would be appropriate to refer to the provisions of the law which mandates disclosure of information by a company to the stock exchange. Regulation 8(1) of the PIT Regulations, 2015 provides that the board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of UPSI that it would follow in order to adhere to each of the principles set out in Schedule A to PIT Regulations, 2015, without diluting the provisions of PIT Regulations, 2015 in any manner. The Schedule A lays down 10 principles to be adhered to by a listed company with respect to fair disclosure of UPSI. The relevant clauses of Schedule A, which contain the principles regarding prompt, uniform and universal disclosure of UPSI, are reproduced hereunder:

"1. Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available.

2.Uniform and universal dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure. ……."

16.7 The aforesaid clauses state that a listed company has to make prompt, uniform and universal and non-discriminatory disclosure of UPSI. The aforesaid clauses when read together with the Note to Regulation 2(1)(e) of PIT Regulations, 2015, make it clear that disclosure/dissemination of UPSI has to be on the stock exchange making it generally available and thus ceasing to be a UPSI. Regulation 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") also requires making of prompt disclosure of material events as specified in Schedule III of LODR Regulations. Events mentioned in said Schedule III includes many price sensitive events also. In fact, the definition of UPSI, as given under Regulation 2(1)(n) of PIT Regulations, 2015, at the relevant time, also enumerated "material events in accordance with the listing agreement" as one of the event, information pertaining to which would constitute UPSI. A perusal of Regulations 30 shows that the disclosures mandated thereunder are required to be made by the listed company to the stock exchange. In the present case also, the disclosure was made by the FRL to the stock exchanges on April 20, 2017 after crystallisation of same in the form of the decision of the board of FRL, was under Regulation 30 of the LODR Regulations. The said disclosure made by FRL to the stock exchanges on April 20, 2017 is reproduced hereunder:

Quote

……..20th April, 2017

…….

Sub: Outcome of proceeding of the Board Meeting held on 20th April, 2017

**Ref: Composite Scheme of Arrangement between Future Retail Limited ('FRL' or 'First Demerged Company') and Bluerock eServices Private Limited ('BSPL' or 'Second Demerged Company') and Praxis Home Retail Private Limited ('PHRPL' or 'Resulting Company') and their respective Shareholders ('the Scheme')- Intimation**

**under Regulation 30 and other applicable regulations of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015**

We would like to inform that the meeting of Board of Directors of Future Retail Limited ('FRL'/'Company') was held today, 20th April, 2017, and the Board inter alia, considered and approved segregation of the Home Retail Business of the Company operated through HomeTown stores into Praxis Home Retail Private Limited ('PHRPL') by way of a demerger.

The proposed segregation would be carried out vide a Composite Scheme of Arrangement between Future Retail Limited ('FRL' or 'First Demerged Company') and Bluerock eServices Private Limited ('BSPL' or Second Demerged Company') and Praxis Home Retail Private Limited (proposed to be converted into public company prior to completion of the Scheme) ('PHRPL' or 'Resulting Company') and their respective Shareholders ('the Scheme') under Sections 2230 to 232 read with Section 66 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013.

In consideration for the demerger of the Home Retail Business of FRL into PHRPL in terms of the Scheme and based on share entitlement report issued by M/s Walker Chandlok & Co LLP, Independent Chartered Accountants, and fairness opinion provided by M/s Keynote Corporate Services Limited, a Category I Merchant Banker, PHRPL will issue 1(one) fully paid up equity Shares of Rs.5/- each to the equity shareholders of FRL as on the Record Date (as may be determined in terms of the Scheme) for every 20 (Twenty) fully paid up equity shares of Rs.2/- each of FRL. Please note that fractional shares arising out of the above entitlement would be consolidated and dealt with as provided in the Scheme and proceeds would be distributed to all such shareholders who were originally entitled to such fractional shares.

Pursuant to the Scheme, the shareholding of the existing shareholders of PHRPL would get cancelled and the shareholders of the Company would get equity shares of PHRPL. Upon such issue of equity shares the shareholding pattern of PHRPL shall be identical to that of the Company.

The equity shares of PHRPL to be issued to the shareholders of FRL pursuant to the Scheme shall be listed on the stock exchanges viz BSE and NSE (subject to listing permission being granted by the stock exchanges). The Scheme would be subject to approval of the National Company Law Tribunal, Stock Exchanges, SEBI and various statutory approvals, including those from the shareholders and the lenders/creditors of the companies involved in the Scheme.

The Board also authorized the Committee of Directors to take necessary actions for completing the requirement in this regard to do all acts and deeds as mayh be necessary.

The information pursuant to Regulation 30 of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 read with SEBI Circular NO.CIR/CFD/CMD/4/2015 dated 9th September, 2015 is also enclosed herewith.

…….

Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

| Particulars | Remarks |
|---|---|
| Brief details of the division to be demerged | "Home Town" format, is Home Retail Business of Future Retail Limited, which was initially established in the year 2007 and vested with the Company from Future Enterprises Limited as part of the demerged business with effect from 31st October, 2015. HomeTown format is a one-stop destination for complete home-making solutions. Various offerings in Home Town include a slew of living room, furniture, dining, bedroom furniture and furniture essentials, mattresses, modular kitchens home furnishing, décor, households and bath luxury. Home Town offers customers a unique, personalized shopping experience, and has grown to be India's biggest store in homemaking, renovation and décor. |
| Turnover of the demerged division and as a % to the total turnover of the listed entity in the immediately preceding financial year | Turnover: "Rs.187.36 crore out of Rs. 6,716.01 crore of the Company (equivalent to 2.79% of total turnover) as on 31st March, 2016.<br>*considered on the basis of five months turnover of the Demerged business vested with the Company during the previous year with effect from 31st October 2015 (Total revenue for the HomeTown division for financial year 2015-16 is Rs.477 Cr.) |
| Rationale for demerger | The Scheme would inter-alia involve the following:<br>• Demerger of Home Retail Business from FRL into PHRPL;<br>• Demerger of e-Commerce Home Retail Business from BSPL into PHRPL;<br>• Cancellation of existing paid up share capital of PHRPL;<br>• Issue of equity shares by PHRPL to the shareholder of FRL as consideration for demerger; and<br>• Issue of redeemable preference shares by PHRPL to the shareholder of BSPL as consideration for demerger |

| | |
|---|---|
| | The Demerger is expected to result in the following:<br>• Spin of specialty retail business and focusing on large format and small format pure retail businesses from FRL;<br>• Consolidation of offline and online Home Retail Business under a single entity;<br>• Attribution of appropriate risk and valuation to the respective businesses based on risk – return profile and cash flows:<br>• More focused leadership and dedicated management and<br>• Greater visibility on the performance of Home Retails Business and e-Commerce Home Retail Business |
| Brief details of change in shareholding pattern of the entities | • FRL – There would be no change in the shareholding pattern of FRL post demerger<br>• PHRPL – The shareholding of the existing shareholders of PHRPL would get cancelled and the shareholders of FRL would get equity shares of PHRPL. Upon such issue of equity shares, the shareholding pattern of PHRPL shall be identical/mirror image to that of FRL. |
| Nature of consideration | In consideration for the demerger of the Home Retail Business of FRL into PHRPL in terms of the Scheme and based on share entitlement report issued by Walker Chandok & Co LLP, Independent Chartered Accountants, and fairness opinion provided by M/s Keynote Corporate Services Limited, a Category I Merchant Banker, PHRPL will issue One (1) fully paid up equity shares of Rs.5/- each to the equity shareholders of FRL as on the Record Date (as may be determined in terms of the Scheme,) for every Twenty (20) fully paid up equity share of Rs.2/- each of FRL.<br>Please note that fractional shares arising out of the above entitlement would be consolidated and dealt with as provided in the scheme and proceeds would be distributed to all such shareholders who were originally entitled to such fractional shares. |

| | |
|---|---|
| Whether listing would be sought for the resulting company | • Yes, listing will be sought for the Resulting Company (i.e. PHRPL) |

Unquote

16.8 From the discussions at paras 16.4 to 16.7 above, it can be deduced that "generally available" as used in the definition of UPSI given under Regulation 2(1)(n) of the PIT Regulations, 2015, ordinarily means an information which has been disseminated on the platform of the stock exchange which in the present case was done on April 20, 2017. Further, an information can be termed as UPSI, if it is generally available in the form along with material particulars in which it was disclosed to stock exchanges. To explain it further, price sensitivity of an information pertaining to an event may change as the event proceeds to advance stages of consummation. Therefore, the ultimate objective may be the same, however, at each stage of development a degree of price sensitivity may be added to it by the information relating to its development. Thus, in order to contend that a particular price sensitive information was "generally available" and thus, it is not UPSI, it has to be shown/proven that it was generally available in non-discriminatory manner, in the same form alongwith all material particulars, in which it has been disclosed to stock exchange as UPSI, in terms of either PIT Regulations, 2015 or LODR Regulations, 2015. Regulation 30(7) of LODR Regulations provides that the listed entity shall, with respect to disclosures referred to in Regulation 30 (pertaining to disclosure of material events which may include price sensitive information also), make disclosures updating material developments on a regular basis, till such time the event is resolved or closed, with relevant explanations. The logic behind mandating disclosure under Regulation 30(7) of LODR Regulations, for each stage of material development of an event is that each stage of material development has price sensitivity attached to it. This logic contemplated under Regulation 30(7) for mandating post announcement material development also applies to pre-announcement developments from the date of coming into existence of UPSI and till its actual disclosure to the stock exchanges. In the present case, such developments were the meeting held on March 10, 2017 to discuss the scheme and subsequent constitution of committee on March 14, 2017, finalising of consideration for demerger.

16.9 Coming to the facts of the present case, I have perused interviews of Noticee no. 2 and news articles/research reports, as referred to by the Noticees in their reply. These interviews/news articles refer to the statements given by Noticee no. 2 in response to the questions posed by the interviewer, in his capacity as Chairman and Managing Director of FRL to select news channels, that Future Group will merge the online furnishing and home décor portal "FabFurnish" with "HomeTown" retail format and list the new entity separately. These interviews or news reports based on such interviews cannot be equated with or said to be containing the concrete information or disclosed on non-discriminatory basis which is reproduced above in para 16.7 and ultimately came to be disclosed by the FRL to the stock exchanges on April 20, 2007, for the following reasons:

(i) The said information was very fluid and nebulous as it was bereft of specific details as to how this restructuring will ultimately be executed. Questions and response to the questions posed during the interview were varied and did not contain all the information in uniform/structured manner. Though some of the news reports, relied on by the Noticees, mention that FRL would be demerging its HomeTown business and merge it with its FabFurnish business to give rise to a new entity which will be listed, however, from the point of view of readers/investors, it was only a plan which could have taken any shape or could not have been consummated or would have been consummated in a way different than the way it was disclosed in the interviews by Noticee no. 2 or could have been abandoned altogether by the Company. Further, one of the most important detail to determine price sensitivity of the information viz: consideration which would be received by the shareholders of FRL and in what proportion of their existing shareholding in FRL, which was part of the disclosure made by the FRL on stock exchanges, was not available in these interviews/news reports.

(ii) Specific details, as contained in the disclosure made by the FRL to the stock exchanges on April 20, 2017, like demerger of home retail business from FRL into PRHPL, demerger of e-commerce home retail business from BSPL into PRHPL, cancellation of existing paid up share capital of PHRPL, issue of 1

equity share of Rs. 5/- by PRHPL to the equity shareholders of FRL in proportion to every 20 fully paid up equity shares of Rs. 2/- per shares held by them in FRL (swap ratio) and issue of redeemable preference shares by PRHPL to the shareholders of BSPL as consideration for demerger, were not available in these interviews/news reports.

(iii) The interviews of Noticee no. 2 relied upon by the Noticees and most of the news reports published on the basis said interviews were telecast/published during April, May and August, of 2016 whereas in-principle approval by the board of FRL regarding divestment of HomeTown format was given by the board of FRL on December 06, 2016.

(iv) The intention of Noticee no. 2 which was reported in the news articles and the research reports about the HomeTown business of FRL, in addition to have necessary details like actual restructuring format, consideration payable, etc. also required approval of the board of directors of FRL for its implementation.

(v) In response to the clarification sought by the stock exchanges from FRL on March 07, 2017 regarding the news article which had appeared in the Economic Times on February 28, 2017 about restructuring of HomeTown business, FRL had informed the stock exchanges that *"…….board has given an in-principle authority for considering various options with regard to HomeTown format, however, there is no final understanding which has been arrived at till date……."*. This clarification shows that at that time board of FRL had given the only in-principle approval that too for considering various options with regard to HomeTown format and there was no finality about the way in which it had to take shape. The clarification sought by NSE specifically asked FRL, *"Whether such negotiations were taking place? If so, you are advised to provide the said information alongwith the sequence of events in chronological order from the start of negotiation till date."* In response to these clarifications sought, FRL on March 07, 2017 clarified the stock exchanges, as under:

> *"…..With reference to your above referred seeking information on published news item with regard to "Future Group plans to sell home furnishing business HomeTown……..", we hereby deny any such transaction at this stage.*
>
> *The Board has given an in-principle authority for considering various options with regard to HomeTown format, however, there is no final understanding which had been arrived at till date, which would require any disclosure obligation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.*
>
> *……..*
>
> *We shall inform about decisions and transactions once approved by the Board/definitive transaction documents are executed, as per applicable Regulations. ……"*

The aforesaid clarification given in response to the specific query raised by NSE as referred above, clearly shows that FRL clearly denied even the existence of any transaction and not merely the negotiations asked by NSE. It is worth to mention here that as per own submissions of Noticees, this clarification given by FRL to stock exchanges, in addition to being disseminated on the website of the stock exchanges, was also covered in various news reports.

16.10 In view of the above, I find that UPSI alleged in the SCN was not "generally available" as contemplated under Regulation 2(1)(e) of PIT Regulations, 2015 and the facts and circumstances of the case and therefore the contention of the Noticees is untenable.

16.11 The Noticees have contended that word "ordinarily" indicates that information relating to the events mentioned in the definition of UPSI may not be UPSI if they are either "generally available" or not "price sensitive". In this regard, the transaction under consideration in the present proceedings is one of the enlisted events under Regulation 2(1)(n)(iv). Information pertaining to such events, by virtue of the definition of UPSI itself, are *per se* considered and termed as price sensitive information. This is so, because, it is the likelihood of information materially affecting the price of the securities of a company and not the actual effect which makes it price sensitive information. Different investors may have different assessment or perception regarding the way in which such information would materially affect the

price. In fact, such an information which ordinarily may materially affect the price, in some circumstances may not at all affect the price of the securities of a company on becoming public or generally available. Thus, the word "ordinarily" as used in the definition of UPSI, can be construed to be giving a scope to challenge the information pertaining to enlisted events as being "generally available" and thus not "unpublished" price sensitive information. Interpretation of word "ordinarily", as sought to be canvassed by the Noticees would run counter to the definition of UPSI, as given under Regulation 2(1)(n) of PIT Regulations, 2015. The contention of the Noticees that the word "ordinarily" used in the definition of UPSI, also encompasses in its fold the "price sensitivity" so as to make the information, pertaining to the events enumerated in the definition of UPSI, open to attack on the ground of not being "price sensitive", is not tenable. The word "ordinarily" can be interpreted to mean that only those events which by virtue of inclusive nature of the definition of UPSI as given under Regulation 2(1)(n) of the PIT Regulations, 2015, get included in the said definition, are open to attack on the ground of "general availability" as well as "price sensitivity" and not the events which are enlisted in the said definition as *per se* UPSI. Thus, as per definition, information pertaining to specific events enumerated in the definition of UPSI, are not open to attack on the ground that such an information is not price sensitive and that it is only likelihood of material effect on the price and not the actual effect which is relevant to determine price sensitivity of an information.

16.12 Noticees have contended that HomeTown business and FabFurnish business constituted only 3.28% and 0.03%, respectively, of the total consolidated revenues of FRL and thus was unlikely to contribute significantly to the price movement of the FRL shares. It is not the submission of the Noticees that on becoming public by disclosure made by FRL on April 20, 2017, the UPSI did not affect the price of the securities of the Company, however, Noticees have contended that between the period of November 2016 and April 2017, there were other industry wide factors which significantly contributed to price movement in the shares of FRL and other retail companies in India and the transaction itself was not determinative of such price movement. This submission in itself shows that in view of the Noticees themselves, the said UPSI on becoming public also contributed to the price movement of shares of FRL though other factors may also be contributing to price

rise. On the facts also, regarding the price movement in the scrip of FRL, the following is observed:

| **Price Impact in the scrip of FRL - NSE** | | |
|---|---|---|
| Price variation prior to the announcement | Avg. Daily Previous Day Close to close Variation % in preceding 10 days | 0.58% |
| | Avg. Daily Previous Day Close to close Variation % in preceding 15 days | 0.95% |
| | Avg. Daily Previous Day Close to close Variation % in preceding 20 days | 0.67% |
| Price variation during announcement | **Close to close April 19, 2017- April 20, 2017** | **4.68%** |
| Price variation Post announcement | Avg. Daily Previous Day close to close Variation % in succeeding 10 days | 1.42% |
| | Avg. Daily Previous Day close to close Variation % in succeeding 15 days | 0.37% |
| | Avg. Daily Previous Day close to close Variation % in succeeding 20 days | -0.31% |

16.13 The aforesaid table shows that the scrip of FRL did not experience average daily previous day close to trading day variation of 4.68% either during 20 trading days prior to April 20, 2017 or 20 days afterwards. Here, it is worth to mention that Nifty and Sensex increased by 0.36% and 0.29%, on close to close basis, respectively, on April 20, 2017. Further, some of the peers of FRL i.e. Trent Ltd. and Aditya Birla Fashion and Retail Ltd. decreased by 0.68% and 0.95%, respectively, on April 20, 2017. Therefore, it is clear that despite existence of claimed sector specific positive developments, the corporate announcement had its own appreciable impact on the price of the shares of FRL and therefore, information was price sensitive. This finding is without prejudice to the earlier finding recorded in para 16.11 that it is only the likelihood of materially affecting the price of the securities of a company which determines the price sensitivity of an information rather actual impact caused on the price by such information. For the purpose of Regulation 2(1)(n) of PIT Regulations, 2015, in case of information enlisted thereunder even likelihood of materially affecting price is not required to be shown/proved, as likelihood of materially affecting the price is implied in such enlisted events. However, in the present case, the event was not only covered under the enlisted events but its

impact on the price, on being disclosed to the stock exchanges on April 20, 2017, also shows that it was a price sensitive information.

16.14 Noticees have also relied upon an order dated October 22, 2020 passed by adjudicating officer of SEBI in the matter of Gopal Vittal and others – in the matter of Bharati Airtel Limited, to emphasise that generally available cannot be termed as UPSI. I have perused the said adjudication order. I find that the said order has mainly emphasised on news articles and other facts and circumstances of that case as compared to placing reliance on Note to Regulation 2(1)(e) of PIT Regulations, 2015 and various other provisions mandating disclosure like Regulation 30 of LODR Regulations, 2015 which are necessary to determine the true scope and effect of said definition. Further, facts and circumstances of the present case, particularly, the clarification given by FRL to stock exchanges on March 07, 2017 wherein FRL itself had denied existence of any final understanding regarding HomeTown format, are different. In any event, findings given in any other SEBI order though may have persuasive value, however, are not binding upon the authority conducting the present proceedings.

16.15 Therefore, I find that corporate announcement made by FRL to the stock exchanges on April 20, 2017 was an unpublished price sensitive information pertaining to FRL and its securities, as alleged in the SCN.

16.16 Noticees have further contended that identification of UPSI period from March 10, 2017 to April 20, 2017, in the SCN, is not correct. It is the case of Noticees that UPSI came to an end when FRL issued a clarification to stock exchanges on March 07, 2017 wherein it was informed that various options were being considered in respect of HomeTown business. Noticees have contended that March 10, 2017 cannot be taken as starting for UPSI just because a preliminary discussion on the scheme of arrangement was held on the said date, because the discussions in relation to the HomeTown business had commenced much before March 10, 2017. Noticees have contended that in terms of the Code of Conduct of FRL designated persons who work on a proposed transaction are required to execute an undertaking to the effect that they shall not trade in the securities of the company earlier than 48 hours after the UPSI relating to project becomes generally available

or the project is abandoned and the trading window for such persons are regarded as closed. In pursuance of this requirement Noticee no. 2 had executed an undertaking in January 2017 which shows that even FRL did not consider March 10, 2017 as the start of the UPSI period. In this regard, I note that on March 07, 2017, stock exchanges had sought clarification from FRL with respect to the news article which had appeared in the Economic Times on February 28, 2017 about exit contemplated by FRL from its speciality retail formats including Home furnishing. The clarification sought by NSE specifically asked FRL, *"Whether such negotiations were taking place? If so, you are advised to provide the said information alongwith the sequence of events in chronological order from the start of negotiation till date."* In response to these clarifications sought, FRL on March 07, 2017 clarified the stock exchanges, as under:

> *"…..With reference to your above referred seeking information on published news item with regard to "Future Group plans to sell home furnishing business HomeTown……..", we hereby deny any such transaction at this stage.*
>
> *The Board has given an in-principle authority for considering various options with regard to HomeTown format, however, there is no final understanding which had been arrived at till date, which would require any disclosure obligation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.*
> *……..*
> *We shall inform about decisions and transactions once approved by the Board/definitive transaction documents are executed, as per applicable Regulations.*
> *……"*

The aforesaid clarification given in response to the specific query raised by NSE as referred above, clearly shows that FRL clearly denied even the existence of any transaction and not merely the negotiations asked by NSE. Chronology of events submitted by Noticee no. 1 shows that the said clarification was finalized by the Noticee no. 2 and other officials of Noticee no. 1. Therefore, as per FRL, there was nothing except in-principle approval of the board of Noticee no. 1 to consider various options regarding HomeTown format, as on March 07, 2017. From the chronology of events submitted by FRL, I note that after furnishing of this clarification of March 07, 2017 by FRL, preliminary discussions regarding the scheme was carried out on March 10, 2017. This was the first concrete step taken

regarding HomeTown format, to give effect to the in-principle approval accorded by the board of FRL for considering various options with regard to HomeTown format. I note that to give effect to the aforesaid in-principle approval given by the board regarding the HomeTown format, scheme of demerger was discussed on March 10, 2017. After these discussions, a team was also constituted on March 14, 2017 to work on this scheme. Therefore, I find that date of coming into existence of UPSI, as taken in the SCNs is correct and the contentions raised by the Noticees, in this regard, are untenable.

17.0 **Whether Noticees except Noticee no. 7, are insiders?**

17.1 Before dealing with the question as to whether the Noticees except Noticee no. 7 are insiders or not it would be appropriate to refer to the relevant definitions in this regard. Relevant extract of such definitions is reproduced hereunder:

> "…….
> (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 he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.
>
> (d) "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.

(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,-

(a). an immediate relative of connected persons specified in clause (i); or

(b). a holding company or associate company or subsidiary company; or

(c).an intermediary as specified in section 12 of the Actor an employee or director thereof; or

(d). an investment company, trustee company, asset management company or an employee or director thereof; or

(e). an official of a stock exchange or of clearing house or corporation; or

(f). a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or

(h). an official or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i). a banker of the company; or

(j). a concern, firm, trust, Hindu undivided family, company or association of persons where in a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

**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.

(f) "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;

**NOTE:** It is intended that the immediate relatives of a "connected person" too become connected persons for purposes of these regulations. Indeed, this is a rebuttable presumption.

……"

17.2 The definition of "insider", as given in Regulation 2(1)(g) of PIT Regulations, 2015 shows that any person, (i) who is connected person; or (ii) who is in possession of or having access to UPSI, is an insider. In terms of Regulation 2(1)(d), "connected person" means any person who falls in either clause (i) or clause (ii) of Regulation 2(1)(d) of PIT Regulations, 2015. As per Regulation 2(1)(d)(i), connected person means any person who is associated with the company in any capacity including by reason of (i) frequent communication with the officers of the company; or (ii) being in any contractual, fiduciary or employment relationship; or (iii) being a director, officer or an employee of the company; or (iv) holds any position including a professional or business relationship between himself and the company; that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. As per Regulation 2(1)(d)(i), if a person is found to be associated with a company in the ways mentioned thereunder, then such person becomes connected person. Regulation 2(1)(d)(i) envisages that certain associations with the company, in the ways mentioned in the definition, as allowing access or reasonable expected to allow access, to UPSI. Here, it is worth to mention that ways of association mentioned in Regulation 2(1)(d)(i) are only illustrative and not exhaustive of the ways of association, as the word used in Regulation 2(1)(d)(i) is "including" which shows it is inclusive. Association with the company that allow 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. Regulation 2(1)(d)(ii) enumerates certain categories, persons falling under which are deemed to be

connected person unless the contrary is proved. Such persons are also termed as connected person by Regulation 2(1)(d). Definition of connected person is based on the premise that in case of both type of connected persons falling under either Regulation 2(1)(d)(i) or under Regulation 2(1)(d)(ii), association mentioned in the ways mentioned therein allows access or reasonably expected to allow to access, to UPSI. Once a person is found to be "connected person" than by virtue of Regulation 2(1)(g)(i) such person becomes "insider". When a connected person is charged with violation of Regulation 4(1) of PIT Regulations, 2015 i.e. trading by insider when in possession of UPSI, then by virtue of Regulation 4(2) of PIT Regulations, 2015, there is a presumption against such connected person that he traded when in possession of UPSI and the burden of proving that such connected person was not in possession of UPSI at the time of his trades, is on such connected person. There is no such presumption against the persons who are termed "insiders" by virtue of Regulation 2(1)(g)(ii) of PIT Regulations, 2015 because, a person becomes "insider" under Regulation 2(1)(g)(ii) when he is in possession of or having access to, UPSI. Possession of UPSI, in respect of persons who are termed insider by virtue of Regulation 2(1)(g)(ii) is not required to be proved separately while determining the violation of Regulation 4(1) because a person becomes insider under Regulation 2(1)(g)(ii) when it is proved that he was in possession of UPSI or having access to UPSI.

17.3 SCN-I alleges that Noticee no. 1 was deemed to be a connected person in terms of the Regulation 2(1)(d)(ii)(j) of PIT Regulations, 2015 as Noticee no. 2 who is CMD and promoter of FRL, indirectly held more than 10% shareholding in Noticee no. 1, and hence, Noticee no. 1 was an insider as per Regulation 2(1)(g)(i) of PIT Regulations, 2015. Regulation 2(1)(d)(ii)(j) of PIT Regulations, 2015 states as follows:

> (d) "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.

(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,-

……

(j). a concern, firm, trust, Hindu undivided family, company or association of persons where in a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

Noticee no. 1 has contended that except being promoter of FRL, it has no connection with FRL, therefore, any information in relation to FRL much less UPSI could have been shared with Noticee no. 1. Noticee no. 1 has further submitted that PIT Regulations do not assume reasonable access to UPSI in relation to a promoter. In this regard, I note that Noticee no. 1 is not mere a promoter of FRL. Noticee no. 1's entire shareholding is held by 7 LLPs wherein partners are members of Biyani family which include Noticee nos. 2 and 3 who are also promoters of FRL. FRL is also a company belonging to Future Group. Noticee no. 2 who is CMD of FRL is also a director on the board of Noticee no. 1 alongwith Noticee no. 3. Noticee no. 2 also holds beneficial interest to the extent of 32% shares in Noticee no. 1, as detailed in the table below. Therefore, the "association" of Noticee no. 1 and FRL, which is underlying principle of Regulation 2(1)(d), is writ large in the case of Noticee no. 1. I note that Noticee no. 1 has been alleged termed as "insider" being a connected person, in terms of Regulation 2(1)(d)(ii)(j) and not because of the fact that Noticee no. 1 is a promoter of FRL. Regulation 2(1)(d)(ii)(j) *inter alia* provides that a company wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest, shall be deemed to be connected person unless the contrary is proved. In the present case, it is noted that Noticee no. 2 is the promoter FRL alongwith Noticee no. 1 as per the disclosure of shareholding pattern of FRL on the stock exchanges. Noticee no. 2 who is CMD of FRL, in the disclosures made by FRL to the stock exchanges (for the quarter ending December 31, 2020), Noticee no. 2 has been shown as person exercising significant influence on FRL being significant beneficial owner of shares

held by Noticee no. 1 in FRL. Noticee no. 2 holds beneficial interest in 32% shares of Noticee no. 1, as under:

| **Shareholder in Noticee no. 1** | **Shareholding in Noticee no. 1** | **Beneficial Owner/Partners of Shareholder in Noticee no. 1** |
|---|---|---|
| Samreen Multitrading LLP | 80,16,000 (32%) | Kishore Biyani 99%<br>Sangita Kishore Biyani 1% |
| Tanushri Infrastructure LLP | 42,58,500 (17%) | Kishore Biyani 1%<br>Sangita Kishore Biyani 99% |
| Kavi Sales Agency LLP | 37,57,500 (15%) | Kishore Biyani 1%<br>Anil Laxminarayan Biyani 99% |
| Oviya Multitrading LLP | 37,57,500 (15%) | Kishore Biyani 1%<br>Sunil Biyani 99% |
| Radha Multitrading LLP | 37,57,500 (15%) | Kishore Biyani 1%<br>Rakesh Biyani 99% |
| Raja Infrastructure LLP | 10,02,000 (4%) | Kishore Biyani 1%<br>Gopalkishan Bansilal Biyani 99% |
| Salarjung Multitrading LLP | 5,01,000 (2%) | Kishore Biyani 1%<br>Laxminarayan Bansal Biyani 99% |

17.4 I note that Sangita Biyani is the wife of Noticee no. 2, Noticee no. 3 is the brother of Noticee no. 2, Laxminarayan Bansal Biyani is the father of Noticee no. 2 and 3 and Rakesh Biyani is the cousin of Noticee no. 2 and 3. In view of beneficial interest to the extent of 32% shares in Noticee no. 1 held by Noticee no. 2 who is CMD of FRL, I find that Noticee no. 1 is a connected person of FRL in terms of Regulation 2(1)(d)(ii)(j) of PIT Regulations, 2015 and accordingly, is an insider of FRL in terms of Regulation 2(1)(g)(i) of PIT Regulation, 2015, as alleged in the SCN-I. Therefore, prohibition contained in Regulation 4(1) applies to Noticee no. 1.

17.5 SCN-I alleges that Noticee no. 2 being the CMD of FRL during the investigation period was a connected person in terms of Regulations 2(1)(d)(i) of PIT Regulations, 2015, hence, was an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, 2015 which provides as follows:

> "(d) "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.
> ….."

SCN further alleges that as per the list of insiders submitted by FRL, Noticee no. 2 was privy to the UPSI and hence, was also an insider in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015. Noticee no. 2 has not disputed these allegations made in the SCN, terming Noticee no. 2 as insider. In its reply, Noticee no. 2 has also submitted that he had executed an undertaking, in terms of code of conduct of FRL which was required to be executed by each designated person of FRL in case they were working on a proposed transaction, as he was working on the said transaction of demerger of HomeTown business. In view of this, I find that Noticee no. 2 was an "insider" of FRL within the meaning of Regulation 2(1)(g)(i) & (ii) of PIT Regulations, 2015. Therefore, prohibition contained in Regulation 4(1) applies to Noticee no. 2.

17.6 SCN I alleges that Noticee no. 3 was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulation, 2015 as he was indirectly associated with FRL being a director on the Board of Noticee no. 1 along with Noticee no. 2 and being in frequent communications with Noticee no. 2 during the past six months prior to announcement dated April 20, 2017. Regulation 2(1)(d)(i) of PIT Regulations, 2015 states as follows:

> "(d) "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.
> ….."

SCN alleges that Noticee no. 3 was also deemed to be connected in terms of Regulation 2(1)(d)(ii)(a) of PIT Regulations, 2015 as he was an immediate relative of Noticee no. 2 and hence, was an insider as per Regulation 2(1)(g)(i) of PIT Regulations, 2015. Regulation 2(1)(d)(ii)(a) of PIT Regulations, 2015 states as follows:

> "(d) "connected person" means, -
> (i) …..
> (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,-
> (a). an immediate relative of connected persons specified in clause (i);
> …"

In this regard, Noticee no. 3 has submitted that inference drawn in SCN that since Noticee no. 2 and Noticee no. 3 were both directors of Noticee no. 1 during the period of investigation, they were "*hence, indirectly associated with FRL*" is not a sustainable argument, since by that logic, a person 'A' who shares a directorship with a person 'B', would automatically become a connected person to all entities in which person 'B' is an insider – such an interpretation has no basis in the regulations, and would also result in anomalies and distortions in the corporate world. In fact, the Hon'ble Supreme Court of India in ***Chintalapti Srinivasa Raju & Ors. Vs. SEBI (2018) 7 SCC 443*** has specifically held that directors of a company, in the absence of other substantive evidence establishing access to UPSI, simply by virtue of their position cannot be regarded as "insiders". Even if they shared a common directorship of Noticee 1, at no point of time was either the business of FRL or the trading of FRL scrip ever discussed by the board of Noticee no. 1. Regarding the allegation of frequent communication between Noticee no. 2 and 3, it has been submitted that only three emails were exchanged between Noticee no. 2 and 3 and none of them related to FRL or its scrip. Regarding the contention of the Noticee no. 3 made about the inference drawn in the SCN from the common directorship of Noticee no. 2 and 3, I note that as discussed earlier, underlying fundamental principle under the definition of connected person, as given under Regulation 2(1)(d)(i), is the direct or indirect association with the company in the ways mentioned therein like frequent communication with the officers of the company. Directorship of Noticee no. 2 and 3 in Noticee no. 1, is one of the pointer

to indicate frequent communication between Noticee no. 2 and 3. The other pointers indicated in the SCN-I are the emails exchanged between the Noticee no. 2 and 3, Noticee no. 2 and 3 alongwith Noticee no. 1 are the promoters of FRL and that Noticee no. 2 and 3 are relatives. These pointers indicate association of Noticee no. 2 with FRL by virtue of frequent communication with Noticee no. 2 who was CMD of FRL. Therefore, the contention of the Noticee no. 3 that inference drawn from common directorship is not correct because business of FRL was never discussed in the board of Noticee no. 1 and that the emails exchanged between Noticee no. 2 and 3 were only three and that the contents of these emails did not relate to FRL or its scrip, are not tenable. I note that Noticee no. 2 and 3 are brothers. Noticee no. 2 and 3 are members of Biyani family which runs Future Group of companies where, as per their own submissions, Noticee no. 2 is the head of retail business whereas Noticee no. 3 is the head of textile business of future group. These are all ways of association, contemplated under Regulation 2(1)(d)(i). As already discussed in para 17.3 above, the ways of association with the company, as mentioned under Regulation 2(1)(d)(i) to term a person as connected person, are inclusive and not exhaustive. Regarding the judgment in Chintalapati matter (*supra*), I note that in the present case there are other circumstantial evidences in the form of his relationship with Noticee no. 2, common directorship in Noticee no. 1 with Noticee no. 2, opening of trading account of Noticee no. 1 with Indiabulls by Noticee no. 2 and 3, authorisation of transfer of funds for trades of Noticee no. 1 by Noticee no. 2 and 3, other than the directorship of Noticee no. 3 in Noticee no. 1, which give rise to a reasonable inference that Noticee no. 3 had access to UPSI. Therefore, principle laid down in the Chintalapati case (supra) has been met in the present case. In view of the above, I find that Noticee no. 3 is the connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015.

17.7 Regarding the allegation in SCN-I that Noticee no. 3 is the connected person in terms of Regulation 2(1)(d)(ii)(a) also, I note that in terms of Regulation 2(1)(d)(ii)(a), a person who is immediate relative of connected persons specified in Regulation 2(1)(d)(i), is deemed to be connected person. The term “immediate relative” as defined under Regulation 2(1)(f) 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. During the hearing, it was argued on behalf of Noticee no. 3 that though he is brother of Noticee no. 2, however, that does not make him "immediate relative" of Noticee no. 2, as defined under Regulation 2(1)(f) because in the SCN-I, Noticee no. 3 is neither shown as financially dependent on Noticee no. 2 nor he is shown to be consulting Noticee no. 2 in taking decisions relating to trading in securities. I find that in terms of Regulation 2(1)(f), mere existence of relationship is not sufficient to term a person as "immediate relative" unless there is financial dependence and/or consultation in financial matters. Therefore, allegation in the SCN-I, that Noticee no. 2 is connected because he is immediate relative of Noticee no. 2, is not sustainable.

17.8 SCN-I alleges that Noticee no. 4 being a trust formed by Noticee no. 1 was deemed to be a connected person in terms of the Regulations 2(1)(d)(ii)(j) of PIT Regulations, 2015 as Noticee no. 2 had more than 10% holding in Noticee no. 1 (which was also the settlor of Noticee no. 4) and the same was ultimately controlled by Noticee no. 2 and Family and hence, Noticee no. 4 was an insider as per Regulation 2(1)(g)(i) of PIT Regulations, 2015. Regulations 2(1)(d)(ii)(j) of PIT Regulations, 2015 states as follows:

> (d) "connected person" means, -
> (i) ……..
>
> (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,-
> ……
> (j). a concern, firm, trust, Hindu undivided family, company or association of persons where in a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

In this regard, Noticee no. 4 has submitted that it is a trust, which is controlled and managed by its IDBI Trusteeship Services Ltd. (IDBI), established solely for the benefit of its beneficiaries (who are not promoters or part of the promoter group of Noticee no. 1), and it is not controlled by Noticee no. 1 or shareholders of Noticee no. 1 (i.e. Noticee no. 2). It has been submitted that a "trust" is in the nature of the contractual relationship between the trustee and the beneficiary over the subject

matter of the trust property. The settlor's role is to merely set up the trust (and establish the trust property) after which it is the trustee who takes charge and custody of the trust property. It is a well-established principle that the situs of control in a trust lies with its trustee. A settlor is merely the person who has created and funds the trust for the benefit of the beneficiaries. In this regard, I note that allegation in SCN-I, against Noticee no. 4 is of violation of Regulation 4(1) of PIT Regulations, 2015 for trading in the scrip of FRL when in possession of UPSI. It is a matter of fact that impugned trades in the scrip of FRL, have been executed in the name of Noticee no. 4. In this regard, I note that there is no doubt about the legal position of trust, as submitted by the Noticees. However, despite the said legal status of a trust, Regulation 2(1)(d)(ii)(j) provides that a concern, firm, trust, Hindu undivided family, company or association of persons where in a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest, shall be deemed to be connected person. In the present case, the trust is Noticee no. 4 which is settled by Noticee no. 1. Hundred percent shareholding of Noticee no. 1 is with 7 LLPs wherein partners are members of Biyani Family (refer to para 17.3) and Noticee no. 2 being such a partner of one of the LLP holds more than 10% interest in Noticee no. 1. I note that Noticees have submitted that IDBI (as trustee of Noticee no. 4) was not making any decisions in respect of the acquisition of shares of FRL. In fact, I note that IDBI was only a professional trustee. In terms of a resolution December 19, 2016 of NRC of Noticee no. 1, Noticee no. 5, company secretary of Noticee no. 1 and Noticee no. 6, CFO of Noticee no. 1, were authorised to take day to day decisions, relating to instructions for purchase of shares and for providing funding of purchases, on behalf of Noticee no. 4. In exercise of the authority given under NRC resolution dated December 19, 2016, Noticee no. 5 in consultation with Noticee no. 6 issued instructions to trustee of Noticee no. 4, i.e. IDBI, for purchase of shares of FRL during the period of UPSI. Noticee no. 5 and 6 reported to Noticee no. 2 who was in possession of UPSI. Further, Noticees have submitted that Noticee no. 5, who is an employee of Noticee no. 1 and who has been authorised by Noticee no. 1, in consultation with Noticee no. 6, issued instructions to IDBI to purchase shares of FRL during the period between March 28, 2017 to April 05, 2017 and Noticee no. 6 provided the requisite funds to IDBI for such acquisitions. The trading account of Noticee no. 4 was opened with Sajag by trustee of Noticee no. 4, i.e. IDBI on March

27, 2017. It is not in dispute that Noticee no. 5 and 6 were both reporting to Noticee no. 2, in the capacity of company secretary and chief financial officer, respectively, of Noticee no. 1. Noticee no. 2 was the person who was in possession of UPSI. Noticee no. 5 and 6 who took trading decisions on behalf of Noticee no. 4 are also directors in other companies of future group as discussed in para 17.10, below. All these facts demonstrate that principle of association, as underlying Regulation 2(1)(d), to term a person as connected person, is very much present in the case and Noticee no. 4 is connected to FRL because of its association with FRL in aforesaid ways. Noticees have further submitted that in terms of trust deed dated February 14, 2017, role and responsibilities of Noticee no. 1 (in its capacity as the settlor) was limited to contributing shares into the trust and/or providing loans/contributions for the purposes of acquisition of shares by the trustee of Noticee no. 4. It has been further contended that role of Noticee no. 4 was limited to creating and contributing to the trust corpus / fund, which would be applied solely for the benefit of the beneficiaries of the trust who were not promoters or part of the promoter group of Noticee 1. Promoter/promoter group are excluded from the definition of "beneficiaries" as given under the trust deed. Further, promoter/promoter group is also excluded from the definition of "employee" given under ESOP Plan administered by the trust i.e. Noticee no. 4. In this regard, I note that clause 3.2 of the trust deed dated February 14, 2017 provides that "…….*The Trust may also, as determined by the Board, carry out secondary acquisitions of the ESOP Shares at the Appropriate Time from loans and/or Contribution provided to the Trust for this purpose, provided that the Trust shall hold such ESOP Shares acquired through secondary acquisitions in accordance with Applicable Law."* This clause indicates that decision to make secondary acquisition of ESOP shares which included shares of FRL also, could be taken by the Noticee no. 1. Thus, the decision to purchase shares of FRL for Noticee no. 4 was in the hands of Noticee no. 1 which was exercised by it through its employees i.e. Noticee no. 5 and 6. Legally, it is correct to say that decision takers for the trades of Noticee no. 4 were Noticee no. 5 and 6, however, factually it would be too naïve to contemplate that said decision was taken by the employees i.e. Noticee no. 5 and 6, independently, without any instruction/discussions with superior/management of Noticee no. 1. It is not out of place to mention here that Noticee no. 2 who was the CMD of FRL and was in possession of UPSI was also a director on the board of Noticee no. 1 and

Noticee no. 5 and 6 were reporting to him. Regarding the contention of the Noticees that promoter/promoter group has been excluded from being beneficiaries, I note that as per the own submission of Noticees, Noticee no. 4 has been set up by Noticee no. 1 pursuant to the ESOP Plan in order to provide an incentive to attract, retain and reward employees performing services for Noticee no. 1 and for motivating such employees to contribute to the growth and profitability of Noticee 1. A company rewards its employees with ESOPs so that it can retain talented pool of employees which ultimately contribute to its growth and profitability. Thus, though there may not be any direct incentive/benefit to Noticee no. 1, however, indirect long term benefits to Noticee no. 1 cannot be denied. In view of all the aforesaid discussions, I find that Noticee no. 4 is a connected person within the meaning of PIT Regulations, 2015.

17.9 SCN-I alleges that Noticee no. 5 and 6 were KMPs of reporting to Noticee no. 2, were indirectly associated with FRL, had frequent communication with Noticee no. 2 during the 6 months prior to April 20, 2017, were directors in some of the Future Group companies along with members of Biyani Family and took pre-clearance of trade on behalf of Noticee no. 4 and were thus connected persons in terms of the Regulations 2(1)(d)(i) of PIT Regulations, 2015. Accordingly, SCN alleges that Noticee no. 5 and 6 were insiders as per Regulation 2(1)(g)(i) of PIT Regulations, 2015. Regulation 2(1)(d)(i) of PIT Regulations, 2015 states as follows:

> "(d) "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.
> ….."

17.10 In this regard, Noticee no. 5 and 6 have submitted that they are employees of Noticee no. 1 and are engaged in the capacity of company secretary and CFO of

Noticee no. 1, respectively. They are vested with the responsibilities of being part of the company secretarial or finance function at other promoter group companies of the Biyani family and have no association with FRL. Noticees have further contended that as employees of Noticee no. 1, the Noticee no. 5 and 6, in their ordinary course of duties, report to the board of directors of Noticee no. 1 and the group – Chief Executive Officer (Group CEO) of Future Group i.e. Noticee 2. Merely because the Noticees report to Noticee no. 2 does not make them connected persons to Noticee no. 2 or associated with FRL. It has been submitted that their directorship in the other Future Group companies alongwith other Biyani Family members is merely an administrative function as part of their larger responsibilities within the promoter group. Such directorship does not imply that Noticee no. 5 and 6 are connected person. SEBI has also not produced any evidence to show that business of FRL was ever discussed or considered by such Future Group companies, where the Noticees no. 5 and 6, were directors. It has been submitted that frequency of communication between Noticee no. 2 and Noticee no. 5 and 6, having regard to the miniscule number of emails cannot be termed as “frequent”. It has been submitted that a qualitative analysis of these emails reveals that none of the communications between them were in relation to the business of the listed entities including FRL. It has been submitted that seeking of pre-clearance of trade by Noticee no. 5 on behalf of Noticee no. 1, was by virtue of his role as the company secretary of Noticee no. 1. In this regard, I find that the allegations made in the SCN viz: Noticee no. 5 and 6 reported to Noticee no. 2 who was CMD of FRL and in possession of UPSI, Noticee no. 5 and 6 were also directors in other group companies of Future Group, Noticee no. 5 and 6 had frequent communication with Noticee no 2, show the ways of direct or indirect association of Noticee no. 5 and 6 with FRL, which is the requirement under Regulation 2(1)(d) of the PIT Regulations, 2015, for terming a person as “connected person”. The contention that frequency of communication was not sufficient, just because SCN refers to only three emails, is not correct because the association shown in the SCN by virtue of these 3 emails, contemplates frequency of communication through modes other than these emails also. Having regard to the role of Noticee no. 5 and 6, particularly their reporting to Noticee no. 2, it cannot be reasonably inferred that the only communications exchanged between them through or confined to these 3 emails only. Further, I note that Noticee no. 5 was a director in the companies viz: Future Lighting India Ltd.,

Central Departmental Stores, Futurefone Limited, Fairvalue Advisors Pvt. Ltd., RSCL Trading Pvt. Ltd. and Future Hospitality Management Ltd., which were part of the Future Group. Similarly, Noticee no. 6 was a director in the companies viz: Futurefone Limited, Future Sharp Skills Ltd., Future Coupons Ltd., Future Entertainment Pvt. Ltd., and Future Capital Investment Pvt. Ltd., which were part of the Future Group. At the cost of repetition, it is worth to point out that ways of associations enumerated in the definition of "connected person" under Regulation 2(1)(d) are only illustrative and not exhaustive. Reporting of Noticee no. 5 and 6 with Noticee no. 2 – CMD of FRL, communications exchanged with Noticee no. 2, directorship of Noticee no. 5 and 6 in other future group companies, are the facts to show association of Noticee no. 5 and 6 with FRL, therefore, the frequency of communication and the quality of communication, through these 3 emails only, may not be material, to term a person as "connected person". In view of the aforesaid discussions, I find that Noticee no. 5 and 6 are the connected persons within the meaning of Regulations 2(1)(d)(i) of PIT Regulations, 2015, as alleged in the SCN.

17.11 SCN-III alleges that Noticee no. 8 was part of the emails where issue related to the scheme of demerger of HomeTown business was being discussed with PWC - Professional Advisor/Consultants for the Scheme of Arrangement between FRL, BSPL and PHRPL and thus, Noticee no. 8 was privy to the UPSI and hence, was an insider in terms of Regulation 2(1)(g)(ii) of PIT Regulations, 2015.In this regard, Noticee no. 8 has admitted that he was involved for the project related to composite scheme of arrangement, to assist the Company Secretary, to provide necessary information and prepare necessary secretarial documentation. It has been submitted that Noticee no. 8 did not have access to any financial information at that point of time related to the project. I note that Noticee no. 8 was working as deputy manager with FRL. Noticee no. 8 has admitted the allegation made in the SCN-III that Noticee no. 8 was privy to the scheme of demerger of HomeTown business of FRL, however, Noticee no. 8 has contended that he did not have any financial information pertaining to the demerger. Regarding this contention, in paragraphs 16.1 to 16.16 above, I have already found that information pertaining to scheme of demerger of HomeTown business of FRL, was UPSI in terms of Regulation 2(1)(n) of PIT Regulations, 2015 and Noticee has admitted the allegations made in SCN-III regarding his being privy to said UPSI. As Noticee no. 8 was having access to

UPSI, therefore, I find that Noticee no. 8 is insider within the meaning of Regulation 2(1)(g)(ii) of PIT Regulations, 2015, as alleged in the SCN-III. Therefore, prohibition contained in Regulation 4(1) applies to Noticee no. 8.

18.0 **Whether Noticees except Noticee no. 7, have traded in the securities of FRL when in possession of the UPSI?**

18.1 SCN-I alleges that Noticee no. 1 and 4 have traded in the shares of FRL during the period of UPSI, the details whereof are as under:

**Trading details of Noticee no. 1, as given in SCN:**

| Date | Buy Qty. | Sell Qty. |
|---|---|---|
| 29/03/2017 | 1750000 | - |
| 30/03/2017 | 1875000 | - |
| **Total** | **3625000** | **-** |

**Trading details of Noticee no. 4, as given in SCN:**

| Date | Buy Qty. | Sell Qty. |
|---|---|---|
| 28/03/2017 | 500 | - |
| 29/03/2017 | 100000 | - |
| 30/03/2017 | 50000 | - |
| 31/03/2017 | 300000 | - |
| 03/04/2017 | 150000 | - |
| 05/04/2017 | 200000 | - |
| **Total** | **800500** | **-** |

18.2 I note that as per allegation made in the SCN-I, Noticee no. 1 purchased 36,25,000 shares and Noticee no. 4 purchased 8,00,500 shares, of FRL during the period of UPSI. Noticee no. 1 and 4 has not disputed the trades undertaken by them in the shares of FRL during the period of UPSI, as alleged in the SCN-I.

18.3 Now the question which requires determination is whether the aforesaid trades by Noticee no. 1 and Noticee no. 4 can be termed to have been executed when in possession of UPSI. Here, it is worth to mention that Noticee no. 1 is a company and Noticee no. 4 is a trust. Thus, it will have to be determined who were the persons who took trading decision on behalf of these Noticees and whether such

persons were in possession of UPSI at the time of taking of such decisions. In this regard, I note that Noticee no. 1 is a company. A company being a juristic person is answerable for its act. However, the PIT Regulations, 2015 itself provides that in case of non-individual insiders, with respect to an allegation of violation of Regulation 4(1), a defence can be taken by such insiders that persons who took trading decisions and the person who were in possession of UPSI, were the different persons. Therefore, I find that in case of allegation of violation of Regulation 4(1) of PIT Regulations, 2015, inquiry can be made to find out the real decision takers/beneficiaries/beneficial owners of the insiders. SCN-I in this regard alleges that in terms of resolution passed by the board of directors of Noticee no. 1 on March 14, 2017, Noticee no. 2 and 3 were the persons who were severally authorised to sell, purchase, transfer, endorse, negotiate and/or otherwise deal through India bulls (the broker of Noticee no. 1 through which impugned trades were placed on behalf of Noticee no. 1). Trading account of Noticee no. 1 was opened with Indiabulls on March 27, 2017 by Noticee no. 2 and 3. Orders for purchase of shares of FRL during the UPSI period, i.e. purchases made on March 29, 2017 and March 30, 2017, were placed through written instructions of Noticee no. 3. Funds for the said purchase of shares of FRL were transferred through RTGS from Noticee no. 1 to Indiabulls under authorisation from Noticee no. 2 and 3. These facts are undisputed. In view of all these facts, I find that Noticee no. 2 and 3, who were insiders of FRL and were holding beneficial interest in 32% and 15% shares in Noticee no. 1, respectively, were the persons who took the decisions for impugned trades on behalf of Noticee no. 1, in the shares of FRL during the UPSI period.

18.4 Similarly, Noticee no. 4 is a trust setup by Noticee no. 1. It is an employee welfare trust for the employees of Noticee no. 1, its holding company and its subsidiary companies. There was a NRC of Noticee no. 1, comprising of independent directors. NRC by its resolution December 19, 2016 had authorized Noticee no. 5, company secretary of Noticee no. 1 and Noticee no. 6, CFO of Noticee no. 1, to take day to day decisions, relating to instructions for purchase of shares and for providing funding for said purchases, on behalf of Noticee no. 4. The trading account of Noticee no. 4 was opened with Sajag by trustee of Noticee no. 4, i.e. IDBI on March 27, 2017. In exercise of the authority given under NRC resolution dated December 19, 2016, Noticee no. 5 in consultation with Noticee no. 6 issued

instructions to trustee of Noticee no. 4, i.e. IDBI, for purchase of shares of FRL during the period of UPSI. Noticee no. 5 and 6 reported to Noticee no. 2 who was in possession of UPSI. These facts are undisputed. In view of all these circumstances, I find that decision to undertake impugned trades during the period of UPSI, on behalf of Noticee no. 4, was taken by Noticee no. 5 and 6 and under instructions from Noticee no. 2.

18.5 Now the next question which requires consideration is whether Noticee no. 2 and 3 on the one hand and Noticee no. 5 and 6 on the other hand, were in possession of UPSI, when they took decision to purchase shares of FRL during the period of UPSI, on behalf of Noticee no. 1 and 4, respectively. Before dealing with this question, it is necessary to advert to certain essential facts pertaining to matter, as narrated in the SCN. Noticee no. 2 was the CMD and promoter of FRL (as per the shareholding pattern of FRL, as disclosed by it to the stock exchanges) i.e. the listed company, in whose shares insider trading by Noticee no. 1 to 6 has been alleged in the SCN. As per the information provided by FRL, Noticee no. 2 was amongst the persons who was in possession of the impugned UPSI. This fact has not been disputed by Noticee no. 2. Therefore, I find that Noticee no. 2 was in the possession of UPSI at the time of impugned trades by Noticee no. 1. Noticee no. 3 is brother of Noticee no. 2. Both Noticee no. 2 and 3 were director on the board of Noticee no. 1 and both Noticee nos. 2 and 3 along with Noticee no. 1 were promoters of FRL. Trading account of Noticee no. 1 was opened with Indiabulls on March 27, 2017 by Noticee no. 2 and 3. Orders for purchase of shares of FRL during the UPSI period, i.e. purchases made on March 29, 2017 and March 30, 2017, were placed through written instructions of Noticee no. 3 just after opening of the trading account and prior to UPSI becoming public on April 20, 2017. Funds for the said purchase of shares of FRL were transferred through RTGS from FCRL to Indiabulls under authorisation from Noticee no. 2 and 3. Noticee no. 1 is a company wherein 100% shareholding is held by 7 LLPs as detailed in para 17.3 above wherein partners are members of Biyani family including Noticee no. 2 and Noticee no. 3. I find that all these circumstantial evidence show that Noticee no. 3, because of close association with Noticee no. 2 and their concerted acts in the form of opening of trading account of Noticee no. 1 with Indiabulls, giving of trading instructions to Indiabulls by Noticee no. 3 during the UPSI period and transfer of funds, in purchasing shares of FRL

during the period of UPSI period, was also in possession of UPSI at the time of impugned trades by Noticee no. 1 and Noticee no. 2 and 3 collectively decided to undertake the impugned trades on behalf of Noticee no. 1. I also note that Noticee no. 2 and 3 have during the hearing and in their replies have categorically submitted that in terms of resolution passed by Noticee no. 1 in the year 2014, Noticee no. 3 and Mr. Vijay Biyani were the persons who were authorised to take trading decisions on behalf of Noticee no. 1, however, as discussed above, Noticee no. 2 and 3 were instrumental in execution of impugned trades on behalf of Noticee no. 1, which further shows that the impugned trades were undertaken by Noticee no. 2 and 3 for the reason of possession of UPSI with them.

18.6 In case of Noticee no. 4, as stated above, Noticee no. 5 and 6 were authorised to take day to day decisions relating to instructions for purchase of shares on behalf of Noticee no. 4. Noticee no. 5 is the company secretary of Noticee no. 1 and Noticee no. 6 is chief financial officer of Noticee no. 1. Thus, Noticee no. 5 and 6 are the key managerial personnel of Noticee no. 1. Trades undertaken by Noticee no. 1 on March 29 and 30, 2017 have already been found to be in violations of Regulation 4(1) of PIT Regulations, 2015. SCN alleges that Noticee no. 5 and 6 were reporting to and had frequent communications with Noticee no. 2 who, as discussed above, was in possession of UPSI and who along with Noticee no. 3 took decision to trade in the shares of FRL, on behalf of Noticee no. 1 during the period of UPSI. Noticee no. 5 and 6 were directors in some of the Future Group companies along with members of the Biyani family, as mentioned in para 17.10. Noticee no. 5 was the person who also took pre-clearance from FRL, on behalf of Noticee no. 1. Further, the trading account of Noticee no. 4 was opened with Sajag on March 27, 2017 i.e. the date on which the trading account of Noticee no. 1 was opened with Indiabulls. Noticee no. 5 in consultation with Noticee no. 6 issued instructions to trustee of Noticee no. 4, i.e. IDBI, for purchase of shares of FRL during the period of UPSI. In view of all the aforesaid facts, I find that Noticee no. 5 and 6 were in possession of UPSI, at the time of impugned trades by Noticee no. 4.

18.7 Regulation 4(2) of PIT Regulations, 2015 provides as under:

"(1) .....

> (2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board……..”

18.8 I note that Noticee no.1 to 6 are connected persons. These Noticees have made several submissions to show that they were not in possession of UPSI. The first submissions in this regard, is that trades undertaken by the Noticee no. 1 were in the ordinary course of business of Noticee no. 1 to absorb the headroom available under creeping acquisition limits, as permitted under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations, 2011**”). Noticees have submitted that shares acquired by Noticee no. 1 constituted barely 0.76% and prior to the trade, the promoter/promoter group of FRL already held 48.77% shares of FRL, thus, it would fly in the face of logic that Noticee would risk their reputation on a charge of insider trading. Regarding the said contention, I note that Regulation 4(1) of the PIT Regulations, 2015 prohibits insiders from trading in securities when in possession of UPSI. Plea that acquisition of shares was within the creeping acquisition limits as provided under SAST Regulations, 2011, is no defence to the allegation of violation of Regulation 4(1). The contention of Noticees that such acquisitions were within creeping limits available to them under SAST Regulations, 2011, were being made by them in every financial year since 2016 cannot be an excuse for violation of Regulation 4(1), the fact that a particular acquisition is within the creeping acquisition limit provided under Regulation 3(2) of SAST Regulations, 2011 exempts the acquisition from making of public announcement to acquire further shares in the target company from the public shareholders of the target company. It does not exonerate the acquirer who is an insider from the liability for violation of Regulation 4(1) of PIT Regulations, 2015 if the acquisition of shares was made by the acquirer when in possession of the UPSI. In fact, as discussed in previous paras, Noticee no. 2 and 3 were privy to the UPSI which was actionable and concrete in nature and they were aware of the fact that the consummation of the demerger was going to take place. The fact that the trades by Noticee no. 1 was carried out to benefit the promoter group of FRL of which Noticee no. 1, 2 and 3 were part and Noticee no. 2 and 3 were privy to UPSI shows that the impugned trades were undertaken in the account of Noticee no. 1 because of possession of UPSI by Noticee no. 2 and 3.

This fact and the totality of facts of circumstances of the present case particularly, but not limited to, the fact that trading account of Noticee no. 1 was opened during the UPSI period just prior to the impugned trading and the trading was done at the fag end of the financial year 2016-17, show that impugned trades were undertaken in the account of Noticee no. 1 because of possession of UPSI by Noticee no. 2 and 3, the real decision takers for the trades of Noticee no. 1. Additionally, having regard to the facts and circumstances of the case I do not find that the purchase of shares by Noticee no. 1 was in the ordinary course of business as Noticee no. 1 has not contended that it was in the business of buying and selling of shares.

18.9 Noticees have submitted that Noticee no. 3 took the trading decision on behalf of Noticee no. 1 and did not possess any UPSI. In this regard, Noticees have referred to proviso (ii) (a) of Regulation 4(2) of PIT Regulations, 2015 which provides that non-individual insiders can take defence that the individuals who were in possession of such UPSI were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such UPSI when they took the decision to trade. Noticees have further submitted that Noticee no. 2 and 3 have segregated roles within the organisational structure of Noticee no. 1, which shows that Noticee no. 3 was the person who took the trading decision for Noticee no. 1 and he was not in possession of UPSI. Regarding the said contentions, I note that the said defence taken by the Noticees, is dependent on the fact that the person who took the trading decision in respect of non-individual insider (i.e. Noticee no.1) was not in possession of UPSI. However, from the facts of the present case viz: Noticee no. 3 is the brother of Noticee no. 2 who was in possession of UPSI, both Noticee no. 2 and 3 owns beneficial interest in Noticee no. 1 rather 100% shareholding of Noticee no. 1 is owned by 7 LLPs wherein partners are the members of Biyani family, Noticee no. 2 and 3 are both directors on the board of Noticee no. 1, Noticee no. 1 and Noticee no. 2 and Noticee no. 3 are promoters of FRL, Noticee no. 2 and 3 opened the trading account of Noticee no. 1 with Indiabulls, Noticee no. 2 and 3 were the persons who authorised the payment of funds to Indiabulls for purchase of impugned shares of FRL by Noticee no. 1, gives rise to a higher degree of preponderance of probabilities that Noticee no. 3 was in possession of UPSI, at the time when he gave instructions to purchase shares of FRL, on behalf of Noticee no. 1, during the UPSI period. Therefore, the

contention of the Noticees, in this regard, is not tenable. I note that the following facts and circumstances point to the conclusion that the purchase of shares of FRL by Noticee no. 1 can be attributed to Noticee no. 2/3 or be said to be on the behest of Noticee no. 2/3 (wherein Noticee no. 1, 2 and 3 were insiders and Noticee no. 2 and 3 were in possession of UPSI and took trading decision):

i) Noticee no. 1 is a promoter of FRL whereas Noticee nos. 2 an d 3 are also promoters of FRL;
ii) Both Noticee nos. 2 and 3 owns beneficial interest in Noticee no. 1 rather 100% shareholding of Noticee no. 1 is owned by 7 LLPs wherein partners are the members of Biyani family (refer to para 17.3);
iii) Noticee nos. 2 and 3 are directors on the board of Noticee no. 1;
iv) Noticee no. 2 and 3 were the persons who authorised the payment of funds to Indiabulls for purchase of impugned shares of FRL by Noticee no. 1;
v) Noticee no. 2 and 3 opened the trading account of Noticee no. 1 with Indiabulls;
vi) The trades undertaken by Noticee no. 1 was with a view to consolidate promoter group holding in FRL and the promoter group consisted of *inter alia* Noticee nos. 1,2 and 3.

18.10 Noticees contend that only Noticee no. 1 and 4 have traded and not Noticee no. 2, 3, 5 and 6, therefore, Noticee no. 2, 3, 5 and 6 cannot be held liable for violation of Regulation 4(1) of PIT Regulations, 2015. In this regard, I note that Section 12A(d) and (e) of SEBI Act, 1992 provide that no persons shall either directly or indirectly, engage in insider trading or 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. Regarding the said contention, we may refer to the order dated January 19, 2021 passed by Hon'ble SAT in Appeal No. 211 of 2020 - Amalendu Mukherjee Vs. SEBI, wherein dealing with the issue of lifting of corporate veil, Hon'ble SAT observed as under:

*"……13. Further, though FDSL was a separate legal entity, the appellant was its 'soul' - being the majority promoter and Managing Director who managed the affairs*

*of FDSL. Apart from FDSL being a separate legal entity, there is nothing on record to show that anybody else other than the appellant was in-charge of FDSL in its day-to-day management and, therefore, the attribution of FDSL activities to the appellant does not suffer from any lacunae. By the same reasoning, we find no legal error in SEBI lifting the corporate veil in order to get to the root of the suspected fictitious transactions between FDSL, Ricoh and other entities……..."*

18.11 In the present case, Noticee no. 2 and 3 are the directors of Noticee no. 1 and they hold beneficial interest in 32% and 15% shares of Noticee no. 1, respectively. Noticee no. 2, who is CMD of FRL, in the disclosures made by FRL to the stock exchanges (for the quarter ending December 31, 2020), has been shown as person exercising significant influence on FRL being significant beneficial owner of shares held by Noticee no. 1 in FRL. Noticee no. 2 was in possession of UPSI. Noticee no. 2 and 3 opened the trading account of Noticee no. 1 just prior to the impugned trades which were in violation of the provisions of PIT Regulations, 2015. Noticee no. 3 placed order on behalf of Noticee no. 1. Noticee no. 2 and 3 authorised transfer of funds to Indiabulls for purchase of shares of FRL in the name of Noticee no. 1. Thus, observations made by Hon'ble SAT in Amalendu Mukherjee case (*supra*), where the Hon'ble SAT has observed that the corporate veil can be lifted to find out the decision maker behind a juristic person, is one of the guiding factors in the present case.

18.12 Noticees have submitted that in terms of resolution passed by board of Noticee no.1 on February 14, 2014, Noticee no. 3 and Mr. Vijay Biyani, were the persons who were authorised to take trading decisions on behalf of Noticee no. 1 and accordingly, Noticee no. 3 issued instructions to Indiabulls for impugned trades. Resolution dated March 14, 2017, relied upon by SEBI, was only an enabling resolution submitted to Indiabulls as part of KYC requirements. Regarding the said contention, I note that in view of the findings recorded in the previous para, the contention of the Noticees that authority to take decision for trading on behalf of Noticee no. 1 was with Mr. Vijay Biyani and Noticee no. 3 or that opening of account of Noticee no. 1 by Noticee no. 2 and 3 was in pursuance of the enabling resolution of Noticee no. 1, has to be seen in the totality of the facts and circumstances of the case. Individual acts of the Noticees may be in accordance with the authorisations relied upon by the Noticees, however, carrying out of the acts with valid

authorisation, is no defence to the violation of Regulation 4(1) which is established, in the present case.

18.13 Noticees have submitted that in the absence of any legitimate purpose or any other need for Noticee no. 1 or 3 to know UPSI, SEBI must prove if there has been a violation of Regulation 3 by FRL in communicating such UPSI to Noticee no. 1 or Noticee no. 3 before claiming a violation of Regulation 4. In this regard, I note that allegation made out in the SCN-I proceeds on the premise that there was a communication of UPSI from Noticee no. 2 to Noticee no. 3, 5 and 6. I note that Regulation 3(1) of PIT Regulations, 2015 prohibits communication of UPSI by insiders. Noticee no. 2 being CMD and in possession of UPSI, was insider of FRL. Therefore, there is violation of Regulation 3(1) by the Noticee no. 2. However, violation of Regulation 3(1) by Noticee no. 2 is not alleged in the SCN. It does not mean that factually there was no communication of UPSI by Noticee no. 2, as claimed by Noticees or that Noticees cannot be charged with violation of Regulation 4(1) especially when there is no requirement under Regulation 4(1) to the effect that for proving allegation of Regulation 4(1), the person from whom UPSI has flown/communicated to "insider" (who has traded when in possession of UPSI), must have been charged for violation of Regulation 3(1). Therefore, absence of allegation of Regulation 3(1), is not an answer to the allegation of violation of Regulation 4(1), as contended by the Noticees. In this regard, Noticees have also referred to an order dated May 18, 2018 passed by an adjudicating officer of SEBI in the matter of Emami Ltd. to contend that in view of the prohibition contained in Regulation 3 on the insiders to communicate UPSI and also in view of the requirement contained in the said regulation that communication of UPSI can be communicated only in furtherance of legitimate purpose, etc., the evidence to show communication must be specifically brought out. As discussed in foregoing paras, circumstantial evidence in the present matter, shows that there was flow of UPSI from Noticee no. 2 to Noticee no. 3 and 5 which resulted into trades of Noticee no. 1 and Noticee no. 4. Therefore, the contention of the Noticees that such communication has not been specifically out made out, is not correct.

18.14 I observe that most of the contention of the Noticees emphasises on the facts that trade instructions, on behalf of Noticee no. 1 and 4, were issued by the persons (i.e.

Noticee no. 3 and 5, respectively), as per the authorisation given in their favour by the board of Noticee no. 1 and NRC of Noticee no. 1, respectively, decision takers for trades (Noticee no. 3 and 5) and the person possessing the UPSI (Noticee no. 2), were different, trading account opening by Noticee no. 2 and 3 for Noticee no. 1, was in pursuance of the authorisation given by the board of Noticee no. 1 on March 14, 2017, authorisation for fund transfer by Noticee no. 2 and 3 for the trades of Noticee no. 1 was in terms of the internal corporate procedures and mandates of Noticee no. 1, instruction for trades on behalf of Noticee no. 4 was given by the Noticee no. 5 in consultation with Noticee no. 6 which was in accordance with the authorisation given in their favour by NRC, vide its resolution dated December 19, 2016, to contend that everything alleged in the SCN had happened in pursuance of proper approval/authorisations/procedures. However, happening of a particular act in accordance with such authorisations/approvals/procedures, can never be a defence to any violation of law if the ingredients of such violations are otherwise satisfied. In the present case, the trades might have been placed in accordance with the authorisation provided by the Board/NRC of Noticee no. 1, however, they were placed by persons who were insider and were in possession UPSI at the time of giving instructions for the impugned trades by Noticee no. 1 and 4 and therefore, violated Regulation 4(1) of the PIT Regulations, 2015.

18.15 As per the allegation made in SCN-III, Noticee no. 8 has traded in the shares of FRL during the UPSI period, the details whereof are as under:

| **Date** | **Buy Qty.** | **Sell Qty.** |
|---|---|---|
| 10/03/2017 | 500 | 0 |
| 15/03/2017 | 0 | 100 |
| 13/04/2017 | 0 | 100 |
| **Total** | **500** | **200** |

18.16 Noticee no. 8 has not disputed the allegation made in the SCN that he was in possession of UPSI. Rather, I note Noticee no. 8 has admitted that he was aware of the UPSI. In view of this, I find that Noticee no. 1 was in possession of UPSI, at the time of trading during the period of UPSI, as alleged in the SCN.

18.17 I note that once it is established that an insider when in possession of UPSI has traded in the securities then it is a natural inference that such trades were on the basis of the UPSI. The said understanding stands fortified by the Notes to Regulation 4(1) which provides that 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.

19. SCN-II alleges that Noticee no. 7 who was compliance officer of FRL, failed to close the trading window with respect to the corporate announcement made by FRL on April 20, 2017 and has thus violated Clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders (hereinafter referred to as "**Code of Conduct**") as specified in Schedule B readwith Regulation 9(1) of PIT Regulations, 2015. SCN-II further alleges that Noticee no. 7 gave pre-clearance to Noticee no. 1 for trading in the scrip of FRL while himself being aware of the UPSI and knowing the fact that FCRL and its directors are insiders and might have access to the UPSI. In view of this, SCN-II alleges that Noticee no. 7 has violated Clauses 8 of the Code of Conduct.

20. I note that Noticee no. 7 has adopted the contentions of Noticee no. 1, 2 and 3, made in their reply dated July 10, 2017 regarding inspection of documents and regarding UPSI. I have already dealt with the contentions of Noticee no. 1, 2 and 3 regarding inspection of documents and UPSI, paragraphs 11 &12 and paragraphs 16.1 to 16.16 above, respectively, and accordingly, the findings recorded therein apply to the Noticee no. 7 also. Before dealing with the other contentions raised by Noticee no. 7, it would be appropriate to advert to Clause 4 and 8 of the Code of Conduct which are reproduced, hereunder:

> "……..
>
> 4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such

> unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.
>
> ……..
>
> 8. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.
>
> ……..”

21. Noticee no. 7 has contended that there was no requirement for the Noticee to have issued a separate notice in relation to the closure of the trading window as the provisions of Clause 4 of Code of Conduct were complied with by following the procedure laid out in the FRL-code of conduct. Noticee no. 8 has contended that Clause 5 of the FRL-code of conduct provides that in relation to *inter-alia* demergers, the 'designated persons' (i.e. the team of persons who would work on the proposed transaction) are required to execute an undertaking "not to trade in the Securities of the Company earlier than forty-eight hours after the Unpublished Price Sensitive Information regarding the activity/project becomes generally available or the activity/project is abandoned, and the trading window in respect of such 'designated persons' is regarded as closed for them." Therefore, FRL personnel who were privy to the proposed Transaction commenced executing undertakings in the manner as set out under the FRL-code of conduct from the month of January 2017. Accordingly, the requirement under the FRL-code of conduct and the Code of Conduct was complied with in relation to closure of trading window. In this manner, irrespective of the non-issuance of a notice in relation to closure of the trading window, the trading window was closed for the designated persons who had executed the relevant undertakings. In this regard, I note that the contention raised by Noticee no. 7 is flawed. As can be noted from the clause 5 of FRL-code of conduct, relied upon by the Noticee no. 7, “deemed closure” becomes operative against only those designated persons of FRL which were working on the demerger whereas other designated persons of FRL were free and could seek pre-clearance of trade, as there was no notice of actual closure of trading window. I note that Clause 4 of the Code of Conduct mandates closure of trading window, in respect of all the designated officers of the company when there is UPSI in the company, irrespective of the fact that whether all the designated persons have such UPSI or not. Therefore,

the contention of Noticee no. 7 is untenable. I note that requirement for trading window flows from Code of Conduct as specified under Schedule B read with Regulation 9 of the PIT Regulation, 2015. The requirement for trading window has been provided with a broad objective that designated persons of a company are not given pre clearance of trade during the existence of UPSI in a company so that insider trading on the basis of such UPSI can be prevented. The contention raised by the Noticee no. 7 that since there were the undertakings executed by the persons possessing the UPSI and therefore, trading window for them was deemed to be closed will set the set objective at naught, as the other designated persons (who may be in possession of UPSI without actually working on the project relating to it) will be free to trade, thus resulting into complete loss of preventive object of the Code of Conduct. I further note clause 5 of FRL-code of conduct, at the most be treated as an additional safe guard and can never be treated as a substitute for requirement of closure of trading window for the designated persons, as provided under Clause 4 of the Code of Conduct. Even assuming that the requirement provided under clause 5 of FRL-code of conduct, relied upon by Noticee no. 7, dilutes the requirement laid down in Clause 4 of the Code of Conduct then it has to yield to the latter because Regulation 9(1), under which Code of Conduct is specified, provides that a listed company can formulate its code of conduct adopting the minimum standards set out in Schedule B to PIT Regulations, 2015, without diluting the provisions of the regulations (which includes Code of Conduct also) in any manner. In view of this, I find that the contention of the Noticee that there is no violation of Clause 4 of Code of Conduct, is not tenable and that Noticee no. 7 has violated Clause 4 of the Code of Conduct.

22. Noticee no. 7 has further contended that the issuance of a notice of closure of trading window to all designated persons of FRL in relation to the transaction would have been in violation of Regulation 3 of the PIT Regulations, 2015 read with the FRL-code of conduct, which require UPSI to be shared only on a 'need to know' basis and "in furtherance of legitimate purposes, performance of duties or discharge of legal obligations". The designated persons who were in possession of UPSI in relation to the transaction had already executed the required undertakings. The other designated persons of FRL had no connection with the transaction and therefore, any information in relation to the transaction, much less UPSI, could not have been

shared with such persons, given the aforesaid restrictions. Further, I note that notice for closure of trading window does not require to mention as to what is the UPSI for which trading window is being closed. Therefore, the contention of Noticee no. 7 that notice for closure of Trading window would have made known UPSI to all the designated persons which would have been in violation of Regulation 3 of PIT Regulation, 2015, is not correct.

23. Regarding allegation of giving of pre-clearance of trade to Notice no. 1, Noticee no. 7 has submitted that Noticee no. 1 requested pre-clearance to trade in 50,00,000 shares of FRL on March 24, 2017. Along with the application for pre-clearance, Noticee no. 1 submitted an undertaking that it was not in possession of any UPSI. The application and undertaking submitted by Noticee no. 1 was executed by Noticee no. 5 i.e. the Company Secretary of Noticee no. 1. Neither Noticee no. 1 nor Noticee 5 were involved in the transaction, and neither of them had executed the requisite undertakings in accordance with the requirements under the FRL-code of conduct. The Noticee had no reason to believe that such declaration was capable of being rendered inaccurate since there was no reason for him to believe that Noticee no. 1 had any UPSI in relation to the transaction. Noticee no. 7 has further submitted that under the PIT Regulations, 2015 UPSI may be shared only on a 'need to know' basis and "in furtherance of legitimate purposes, performance of duties or discharge of legal obligations". Noticee no. 1 is the promoter of FRL and has no other connection with FRL. Therefore, UPSI in relation to FRL could not have been shared with Noticee no. 1 given the aforesaid restrictions. In this regard, I note that Clause 8 of the Code of Conduct *inter alia* provides that before giving pre-clearance of trade, Compliance Officer shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate. I note that Noticee no. 2 who is CMD of FRL and a director on the board of Noticee no. 1, was in possession of UPSI. This fact was known to Noticee no. 7, because as per his own submissions Noticee no. 2 had given an undertaking in January, 2017, in compliance with Clause 5 of FRL-code of conduct, which designated persons working on demerger project to give an undertaking to not to trade in the securities of FRL. Further, Noticee no. 1 was a company which was in control of Biyani family and Noticee no. 2 was having beneficial interest to the extent of 32% shares in Noticee no. 1. All these facts were sufficient enough to give reasonable apprehension in the mind of Noticee no. 7 who

was the compliance officer of FRL and under PIT Regulations, 2015 have been obliged upon with administration of preventive measure prescribed thereunder, that the undertaking given by the Noticee no. 5 on behalf of Noticee no. 1, was reasonably capable of being rendered inaccurate. Despite this, Noticee no. 7 gave pre-clearance of trade to Noticee no. 1. It is not the case of Noticee no. 7 that he sought further clarifications from Noticee no. 5 or Noticee no. 1, so as to dispel the apprehension which should have arisen in the mind of an ordinary reasonable man much less than the compliance officer of a listed company. It shows that Noticee no. 7 has acted in utter disregard of Clause 8 of Code of Conduct, therefore, I find that Noticee no. 7 has violated Clause 8 of the Code of Conduct, as alleged in the SCN-II.

24. Noticee no. 7 has submitted that he was aware that certain directors of Noticee no. 1 may have had access to any potential UPSI, but he did not have any basis to reject the pre-clearance application of Noticee no. 1 due to the knowledge of such persons. Under Regulation 2(1)(d) of the PIT Regulations, the director of a promoter company of the listed company is not deemed to be a connected person, merely by virtue of being a director of the promoter company. Moreover, the Noticee had no reason to believe that the trading decision on behalf of Noticee no. 1 was being made by any of its directors as the pre-clearance application was submitted by Noticee no. 5. It has been submitted that the persons taking trading decisions on behalf of Noticee no. 1 were different from persons who had access to UPSI in relation to FRL. Thus, there was no reasonable expectation for Noticee no. 1, or any other persons who had not executed undertakings in accordance with the FRL-code of conduct, to have access to UPSI in relation to FRL. This contention of the Noticee no. 7 shows that he was accustomed with the functioning of Noticee no. 1 because of which he was aware that person taking the trading decisions for Noticee no. 1 (i.e. Noticee no. 3) was different from the person having the UPSI (i.e. Noticee no. 2). So, he was also well aware of the fact that Noticee no. 2 is the brother of Noticee no. 3, which was sufficient to raise a reasonable apprehension in the mind of Noticee no. 7 at the time of giving of giving pre-clearance of trades to Noticee no. 1 that Noticee no. 1 (through Noticee no. 3) might be in possession of UPSI because of Noticee no. 2. The question here is not whether he would have denied the pre-clearance of trades to Noticee no. 1 on this basis but certainly, he could have shown his good faith by seeking further clarification from Noticee no. 1 in view of Noticee no. 1 and 3's

connection with Noticee no. 2. Therefore, I find that contention of the Noticee no. 7, in this regard, is untenable.

25. From all the contention of Noticee no.7 which have been dealt above, I note that Noticee no.7 has not disputed that he did not issue Notice for closure of Trading Window or that he did not gave pre clearance of trade to Noticee no.1. However, he has tried to justify non closure of Trading Window and giving of pre clearance of trades to Noticee no.1, by giving the defences like there was "deemed closure" of Trading Window, Regulation 3 of PIT Regulation 2015 allows sharing of UPSI on need to know basis only and that he did not have reason to believe that Noticee no.1 was in possession of UPSI at the time of seeking of pre clearance of trade. These justifications in itself indicates that Noticee no.7 had not issued notice for closure of Trading Window and also gave pre clearance to Noticee no.1 well knowing the fact that Noticee no.2 who is director of Noticee no.1 is insider and Noticee no.2 was in possession of UPSI. In view of this, I find that Noticee no.7 has violated Clauses 4 & 8 of PIT Regulation, 2015.

26. As discussed in previous paras, the Noticee no. 1 to 6 and 8 have violated Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) of the PIT Regulations, 2015.

27. In this regard, I note that SCN-I and SCN-III calls upon Noticee no. 1, 2, 3 & 4 and Noticee no. 8 to explain as to why they should not be directed to disgorge the wrongful gains made by them by violating Regulation 4(1) of the PIT Regulations, 2015, and Section 12A(d) and (e) of the SEBI Act, 1992. The calculation of wrongful gains made by Noticee no. 1 and 4 and Noticee no. 8, as alleged in the SCN, are as follows:

**Wrongful gains made by Noticee no. 1 and 4, as per SCN-I:**

| Noticee no. | No. of shares bought | Wt. Average Buy Price (Rs.) | Closing Price on April 20, 2017 (Rs.)** | Wrongful gain (Rs.)# |
|---|---|---|---|---|
| | A | B | C | D = (A*C) - (A*B) |
| Noticee no. 1 | 36,25,000 | 257.245 | 306.3 | 17,78,25,000 |

| Noticee no. | No. of shares bought | Wt. Average Buy Price (Rs.) | Closing Price on April 20, 2017 (Rs.)** | Wrongful gain (Rs.)# |
|---|---|---|---|---|
| Noticee no. 4 | 8,00,500 | 271.86 | 306.3 | 2,75,68,650 |

#**Note**: *Wrongful gain has been calculated as per the following method:*

*Wrongful gains = (No. of shares bought when in possession of UPSI X Closing Price on the day of UPSI becoming public) – (No. of shares bought when in possession of UPSI X weighted average purchase price)*

The announcement was made on April 20, 2019 on NSE during market hours. Therefore, the closing price of scrip on April 20, 2019 i.e. Rs.306.3 at NSE was considered for computation of wrongful gains.

**Wrongful gains made by Noticee no. 8, as per SCN-III:**

| No. of shares bought | Wt. Average Buy Price (Rs.) | No. of shares sold | Wt. Average Sell Price (Rs.) | Closing Price on April 20, 2017 (Rs.)** | Wrongful gain (Rs.)# |
|---|---|---|---|---|---|
| 500 | 268.29 | 200 | 277.875 | 306.30 | 13,320 |

*#Note: Wrongful gain has been calculated as per the following method:*

*Wrongful gains = (No. of shares sold when in possession of UPSI X Wt. Avg Sell price) + (Quantity of remaining shares X Closing Price on the day of UPSI becoming public) - (No. of shares bought when in possession of UPSI X weighted average purchase price)*

*The announcement was made on April 20, 2019 on NSE during market hours. Therefore, the closing price of scrip on April 20, 2019 i.e. Rs.306.30 at NSE was considered for computation of wrongful gains.*

28. I note that in their respective replies Noticee no. 1, 2, 3, 4 have disputed that they have indulged in insider trading, however, they have not made any specific submissions regarding wrongful gains made by them, as alleged in SCN-I. Noticee no. 8 has not disputed the calculation of wrongful gains pertaining to him, as alleged in the SCN-III. As these Noticees have been already been found to be in violation Regulation 4(1) of PIT Regulations, 2015 and also have been found to have made unlawful gains by violating the provisions of securities laws, I find that Noticee no. 1, 2, 3, 4 and 8 are liable for disgorging the wrongful gains made by them, as alleged in the SCN-I and SCN-III.

29. I find that violations committed by the Noticees, as found above, are serious in nature and calls for regulatory directions for debarment of the Noticees from the securities market and for disgorgement of wrongful gains made by Noticee no. 1, 2, 3, 4 and 8. I find that violations committed by Noticee no. 1, 2, 3, 5, 6, and 8 also renders them

liable for imposition of penalty under Section 15G of the SEBI Act, 1992 which provides as under:

> ***"Penalty for insider trading.***
>
> *15G. If any insider who,—*
>
> *(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
>
> *(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
>
> *(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*
>
> *shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."*

30. Further, I find that violations committed by Noticee no. 7 renders him liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 which provides as under:

> ***"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 thereunder 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."*

31. I note that while imposing penalty under Section 15G of SEBI Act, 1992 the factors enumerated in Section 15J are to be taken into consideration. Section 15J of the SEBI Act, 1992 provides as under:

> ***"Factors to be taken into account while adjudging quantum of penalty.***
>
> *15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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."*

32. I find that the material available on record does not indicate the amount of specific loss caused to investors or group of investors as a result of the default by the Noticees or that default by the Noticees is repetitive in nature. However, wrongful gains made are being directed to be disgorged by this order. Further, I note that Noticee nos. 5 and 6 were employees of Noticee no. 1 whereas Noticee nos. 2 and 3 hold beneficial interest in Noticee no. 1 who is settlor of Noticee no. 4. Further, as per own submissions of Noticee no. 1 to 3, Noticee no. 1 acquired the shares of FRL through creeping acquisition to consolidate the shareholding of promoter group which includes Noticee no. 1 to 3, in FRL.

**Directions:**

33. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections, 11(1), 11B and 15I of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and Rule 5 of the Rules, directs as under:

(i) Noticee 1 (i.e. Future Corporate Resources Private Limited), 2, 3, 5 and 6 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of this order;

(ii) Noticee no. 1 (i.e. Future Corporate Resources Private Limited), 2, 3, 5 and 6 are restrained from buying, selling or dealing in the securities of the Future Retail Limited (FRL), directly or indirectly, in any manner whatsoever, for a period of two (2) years;

(iii) Noticee 8 is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of this order;

(iv) Noticee no. 8 is restrained from buying, selling or dealing in the securities of the Future Retail Limited (FRL), directly or indirectly, in any manner whatsoever, for a period of two (2) years;

(v) Noticee no. 1 (i.e. Future Corporate Resources Private Limited), 2 and 3 are directed to jointly and severally disgorge an amount of Rs. 17,78,25,000/- (Rupees seventeen crore seventy-eight lakh twenty-five thousand) along with an interest at the rate of 12% per annum from April 20, 2020 till the date of actual payment. The said amount shall be remitted by Noticee no. 1 (i.e. Future Corporate Resources Private Limited), Noticee no. 2 and Noticee no. 3 to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992.

(vi) Noticee no. 8 is directed to disgorge an amount of Rs. 13,320/- (Rupees thirteen thousand three hundred twenty) along with an interest at the rate of 12% per annum from April 20, 2020 till the date of actual payment. The said amount shall be remitted by Noticee no. 8 to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992.

(vii) Noticee no. 1 (i.e. Future Corporate Resources Private Limited) and Noticee no. 4 are directed to jointly and severally disgorge an amount of Rs. 2,75,68,650/- (Rupees two crore seventy-five lakh sixty-eight thousand six hundred fifty) along with an interest at the rate of 12% per annum from April 20, 2020 till the date of actual payment. The said amount shall be remitted by Noticee no. 1 (i.e. Future

Corporate Resources Private Limited) and Noticee no. 4 to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992.

(viii) Noticee no. 1 (i.e. Future Corporate Resources Private Limited), Noticee no. 2, Noticee no. 3, are hereby imposed with, under Section 15G of the SEBI Act, 1992, penalty of Rs. 1 crore, each and are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai;

(ix) Noticee no. 5 and Noticee no. 6 are hereby imposed with, under Section 15G of the SEBI Act, 1992, a penalty of Rs. 25 lakh, each and are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai

(x) Noticee no. 7 is hereby imposed with, under Section 15HB of the SEBI Act, 1992, penalty of Rs. 10 lakh, and is directed to pay penalty within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai;

(xi) Noticee no. 8 is hereby imposed with, under Section 15G of the SEBI Act, 1992, penalty of Rs. 10 lakh, and is directed to pay penalty within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai.

34. During the period of restraint, as directed in para 33 above, the existing holding of securities including the units of mutual funds, of the concerned Noticees, shall remain under freeze. Debarment/restraint/freeze imposed under this order shall not apply to those existing holding of securities of such debarred entities, in respect of which any scheme of arrangement under Section 230-232 of the Companies Act, 2013, is approved by NCLT, requiring extinguishment of such securities and/or receipt of other securities in lieu of such securities.

35. The restraints given in para 33 (i) & (ii) and para 33 (iii) & (iv), to Noticee no. 1, 2, 3, 5, 6 and 8 shall run, concurrently. The obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

36. The Demand Draft of disgorgement amount and penalties, as directed above, shall be sent to “The Division Chief, Investigation Department, ID-3, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051”.

37. This Order comes into force with immediate effect.

38. This Order shall be served on all the Noticees, Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

-Sd-

**Place: Mumbai** **ANANTA BARUA**

**Date: February 03, 2021** **WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**