SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with Section 15 G of the Securities and Exchange Board of India Act, 1992 read with Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995.

In respect of:

Sr. No.	Name	PAN
1	Mr. Suresh Venkatachari	ATNPS3289H
2	Mr. R S Ramani	AHVPR9966J
3	Mr. M V Bhaskar	AAHPV8843M

Note: The above entities are hereinafter individually referred to as Noticee No. 1, 2 and 3, respectively, or by their respective names and are collectively referred to as 'the Noticees'.

In the matter of trading activities of certain entities in the scrip of SecureKloud Technologies Ltd.

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A. Introduction.

1. SecureKloud Technologies Ltd ("the Company/*SecureKloud*"), was incorporated on May 26, 1993, having its registered office at Chennai. *SecureKloud* was earlier known as 8K Miles Software Services Ltd. The shares of the Company are listed on National Stock Exchange of India Limited ("NSE") and BSE Limited ("BSE").

Interim and Final Order.

2. Securities and Exchange Board of India ("SEBI") passed an *interim order* dated August 04, 2022 ("*interim order"*) alleging *inter alia*-

   (a) financial mis-reporting/irregularities by promoters and management of and the resignation of the Company's statutory auditor, viz. Deloitte Haskins and Sells ("Deloitte"), citing various corporate governance issues.

(b) *SecureKloud* was inflating its sales since FY 2016-17 till FY 2018-19 by booking fictitious revenue with various entities namely, Ensys Technologies Inc, Idol Solutions Inc. and Intuit Micro Technologies LLC. These entities were controlled /managed by the Promoters / Directors of the Company, namely Noticee No. 1 and Noticee No. 2.

(c) There were no actual sales to these entities and there were no actual payments received from these entities. The amounts shown as received by *SecureKloud* were funded by the Company itself.

(d) The outstanding receivables shown from these three entities as on March 31, 2017, March 31, 2018 and March 31, 2019 were fictitious and the same were either written off or adjusted against one vendor, namely Nation Star IT Services Limited.

3. The *interim order, inter alia* made observations that the sale of shares by promoters of the Company during the investigation period when the financial statements were published, indicated possible violation of the provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("the PIT Regulations") as under:

"26. I note that the sale of shares <u>by two promoter Noticees</u> during the investigation period when the inflated financial statements were published points towards <u>possible violations</u> of provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015. <u>SEBI would separately examine</u> this issue and would take appropriate action, including disgorgement of illegal gains, if any."

4. The *interim order* culminated in a Final Order dated December 16, 2022 ('Final Order") passed by Whole Time Member, SEBI holding, *inter alia*, that: -

(a) In light of the misrepresentation of financial statements of the Company, the consolidated revenue of the Company rose manifold within short span of time i.e. from Rs. 271.93 Crore in FY 2015-16 to Rs. 850.39 Crore in FY 2018-19.

(b) Once the Company stopped booking fictitious revenue (from 2019-20 onwards), its revenue decreased to Rs. 386.43 crore during FY 2019-20.

(c) Further, the Company also inflated its balance sheet size by capitalizing fictitious expenditure towards development of software, resulting in its balance sheet size increasing manifold within a short span of time i.e. from Rs.44.76 crore as on March 31, 2013 to Rs.997.99 crore as on March 31, 2019.

(d) After impairment and other write offs, balance sheet size of the Company reduced from Rs. 997.99 crore to Rs. 242.82 crore i.e. in single financial year, Rs. 755.17 crore was wiped off from balance sheet of the Company.

(e) Further, the statutory auditor of *SecureKloud* viz. Deloitte resigned as company's statutory auditor citing various corporate governance issues including fraud relating to irregularities and inconsistencies in financial statements and books of accounts of the Company.

(f) As observed from the corporate announcement on NSE by *SecureKloud*, a fraud report dated September 13, 2019 was also filed by the statutory auditor Deloitte to the Central Government under Section 143(12) of the Companies Act, 2013 (As stated at Para 54 of the Final Order).

5. Accordingly, the following directions were passed in the final order against the company *SecureKloud,* Noticee No. 1, Noticee No. 2 and Mr. Gurumurthi Jayaraman (Audit Committee, Chairman) along with monetary penalties:

(a) *SecureKloud*, Noticee No. 1 and Noticee No. 2 were restrained from accessing the securities market for a period of three (3) years; and Mr. Gurumurthi Jayaraman was restrained for a period of one (1) year, in terms of the order;

(b) *SecureKloud*, Noticee No. 1, Noticee No. 2 and Mr. Gurumurthi Jayaraman were prohibited from being associated with the securities market in any manner whatsoever, including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI; and

(c) SecureKloud was directed, to undertake the measures to bring back or recover Rs. 3.83 crore from Noticee No. 1 (Mr. Suresh Venkatachari) within a period of one year.

Investigation.

6. Pursuant to the aforesaid observations in the *interim order*, an investigation was conducted by SEBI to ascertain the violation of the provisions of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and the PIT Regulations by the Noticees for trading in the scrip of the

Company on the basis of unpublished price sensitive information ("*UPSI"*). The investigation period was considered as April 01, 2017 to September 13, 2019 ("Investigation Period"/ "IP"). Upon conclusion of the investigation, the Investigating Authority ("IA") of the Board submitted the Investigation Report ("IR") in accordance with the provisions of Section 11C of the SEBI Act, giving findings and making allegations against the Noticees. The competent authority formed a *prima facie* opinion and decided to proceed based on the IR by issuing separate SCN for subject matter of the IR.

Appeal before the Hon'ble Securities Appellate Tribunal ("SAT").

7. Appeals were preferred before the Hon'ble Securities Appellate Tribunal ("SAT") under section 15T of the SEBI Act to set aside the Final Order dated December 16, 2022. The Hon'ble SAT vide its Order dated March 6, 2026 confirmed the penalty imposed in the Adjudicating Orders and found merit in the findings of SEBI in its Final Order dated December 16, 2022. However, the direction to recover Rs. 3.83 crore from Noticee No.1 (Mr. Suresh Venkatachari) was set aside as the Board resolution dated April 19, 2019 of *SecureKloud* indicated that the Board of Directors had decided to adjust the amount payable by Noticee No.1(Mr. Suresh Venkatachari) against the sum of Rs. 13.95 Crores which the Company owed to him.

B. Show Cause Notice.

8. Based on the findings and observations in the IR, a Show Cause Notice (SCN) No. SEBI/HO/QJC/QJC-1/P/OW/2025/24180/4 dated September 10, 2025 was issued to and served upon the Noticees. As per the IR, apart from Noticee No.1 and 2, Noticee No.3 (Mr. M.V. Bhaskar) was also a promoter of the company as per the shareholding pattern filed by *SecureKloud* with NSE for the year ended March 2017, March 2018 and March 2019.

C. Inspection/Replies and Hearing.

9. After inspection of documents and filing relied during inquiry, the Noticees availed the opportunities of hearings and also filed additional written submission on different dates till April 28, 2026.

D. Consideration of the issues and findings.

10. I have carefully considered the allegations made in the SCN and replies and submissions of the Noticees and note that they have filed voluminous replies including written submissions and have placed reliance on various judicial pronouncements. For the sake of brevity, I deem it appropriate to consider each relevant submission as against allegations while dealing the matter as a whole.

(i) Consideration of technical objections and findings.

(a) ***SCN is vitiated by inordinate delay and laches.***

11. Noticee No.1 has submitted that: -

(a) The present proceedings suffer from inordinate and unexplained delay in initiation, which strikes at the very root of procedural fairness. The transactions referred to in the SCN relate to transfers and pledge-related transactions undertaken during the period 2018, which the SCN retrospectively characterizes as having taken place during the alleged UPSI period spanning April 1, 2017 to November 2, 2019. The alleged UPSI, namely the purported misstatement of financial information of *SecureKloud*, is stated to have come into the public domain on November 3, 2019, when the auditor's report referring to suspected irregularities was disclosed through a corporate announcement on the stock exchanges. Accordingly, by November 2019, the material facts that form the foundation of the present proceedings were already in the public domain and available to SEBI.

(b) Thereafter, SEBI conducted extensive proceedings in relation to the affairs of the Company and ultimately passed a Final Order dated December 16, 2022, *inter alia* making observations regarding the alleged misrepresentation of the Company's financial statements. Thus, by its own admission, SEBI had already completed a detailed examination of the Company's financial reporting and related matters by 2022. Despite having knowledge of the relevant facts since, at least, 2019 and after having conducted proceedings culminating in the Final Order of December 16, 2022, SEBI has chosen to issue the present Notice only in 2025, several years after the alleged UPSI period and nearly six years after the information in question was available in the public domain. The transactions in question relate to pledge arrangements, financing structures and off-market transfers undertaken as far back as 2018. After nearly seven (7) years, the Noticee is now expected to reconstruct events relating to complex financing arrangements involving multiple intermediaries. The passage of such an extended period of time inevitably impairs the Noticee's ability to trace records, obtain information from third parties and effectively defend himself against the allegations now sought to be raised.

(c) As recorded in the interim order, SEBI itself had observed that the sale of shares by promoter Noticees during the relevant period warranted separate examination. Notwithstanding this express observation, the record reflects that SEBI initiated steps to obtain basic trading information only much later. In fact, SEBI addressed communication to the stock exchanges, namely the NSE and BSE, seeking details in relation to the alleged transactions only on August 21, 2024, nearly two years after the interim order. This chronology clearly demonstrates that, despite being aware of the alleged issue since 2022, no prompt or diligent steps were undertaken to examine the matter. Such delay in even obtaining basic trade verification further underscores the lack of a timely and systematic approach in the initiation of the present proceedings. On this ground alone, the Notice deserves to be set aside and the proceedings dropped.

(d) The Hon'ble SAT/ Supreme Court have repeatedly emphasized that inordinate and unexplained delay in initiating enforcement proceedings is contrary to the principles of fairness and due process. For instance: -

(i) In ***Mr. Rakesh Kathotia & Ors. vs SEBI, Appeal no. 7 of 2016 decided on May 27, 2019***, the Hon'ble SAT quashed the proceedings on account of inordinate delay and held as follows:

"*23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695"*

(ii) Hon'ble Supreme Court in ***Adjudicating Officer, SEBI vs Bhavesh Pabari ((2019) SCC Online SC 294)*** and held as under: -

"*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

(iii) Hon'ble SAT in ***Man Industries Limited & Ors. v. SEBI (Appeal No. 64 of 2023, decided on January 19, 2023)*** set aside the proceedings on the ground of undue delay in issuance of the show cause notice, where the alleged violation pertained to disclosures made in the year 2012 but the show cause notice was issued only in 2022. The Hon'ble SAT observed that when the information regarding the alleged violation was already available with the regulator and had entered the public domain, the authority was expected to take action at the earliest opportunity. It was further held that such undue delay itself causes prejudice to the Noticee and accordingly quashed the proceedings.

(iv) In ***Anil Kumar & Ors. v. SEBI (Appeal No. 637 of 2023, decided on July 27, 2023),*** wherein, the alleged trades had been executed during the period June 21, 2011 to December 30, 2011, whereas the show cause notice was issued only on April 4, 2022, after a lapse of nearly eleven years, Hon'ble SAT held that such unexplained delay in initiating proceedings was impermissible, particularly when the trades were already in the public domain and nothing had been brought on record to explain why the investigation or enforcement action could not have been initiated earlier. On this ground alone, the Hon'ble SAT set aside the impugned order and quashed the proceedings.

12. On careful consideration of facts and circumstances, I note that the alleged information, in this case, came into existence on April 01, 2017 and remained unpublished until *SecureKloud* made the corporate announcement on NSE on November 03, 2019 (Sunday), at 00:09:22 A.M. (after closing hours of November 02, 2019) submitting report dated November 02, 2019 of Deloitte. It is incorrect submissions and misconception of Noticee No.1 that the pledge arrangements, financing structures and off-market transfers undertaken during 2018 could be reference dates for SEBI's action. The *interim order* dated August 04, 2022 suggested *separate* examination of the *possible* violations of the provisions of the PIT Regulations. The Final Order in the matter was passed on December 16, 2022. The investigation in this aspect was undertaken during February 2023 after examination of the case. Thereafter, upon conclusion of the investigation, the initiation of proceeding was approved on March, 2025 and the case was referred to Quasi-

Judicial Authority and then the SCN was issued to the Noticees on September 10, 2025. Given that the investigation was concluded in March, 2025 pursuant to the observations made in the *interim order,* I do not agree with the objections that the SCN has been now issued despite the alleged UPSI was available in the public domain in 2019 i.e. after a period of nearly six years.

(b) ***Subject matter already decided and in knowledge of SEBI before investigation.***

13. The other contention of Noticee No. 1 is that when SEBI passed the Final Order dated December 16, 2022 pursuant to the *interim order* dated August 04, 2022, SEBI had already completed a detailed examination of the Company's financial reporting and related matters by 2022 and taken final decision. It is noted that SCN clearly mentions the background of issuance of SCN. In the *interim order* dated August 04,2022 there was no conclusive finding or direction to proceed against the Noticees for the allegations as narrated in the instant SCN. In fact, the said *interim order* pointed out in its para 26 for SEBI to '*examine' 'the possible violations'* of provisions of PIT Regulations *'separately.'* The investigation in this regard was accordingly commenced and concluded as observed hereinabove.

14. It is also pertinent to mention that the subject matter already decided by the Final Order dated December 16, 2022 and those which are the basis of the instant SCN are different. The Final Order dealt with act and conduct of the Noticees which are found to be fraudulent, unfair and manipulative under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations") based, *inter alia,* on the following observations: -

    (a) In light of the misrepresentation of financial statements of the Company, the consolidated revenue of the Company rose manifold within short span of time i.e. from Rs. 271.93 Crore in FY 2015-16 to Rs. 850.39 Crore in FY 2018-19.

    (b) Once the Company stopped booking fictitious revenue (from 2019-20 onwards), its revenue decreased to Rs. 386.43 crore during FY 2019-20.

    (c) Further, the Company also inflated its balance sheet size by capitalizing fictitious expenditure towards development of software, resulting in its balance sheet size increasing manifold within a short span of time i.e. from Rs. 44.76 crore as on March 31, 2013 to Rs. 997.99 crore as on March 31, 2019.

(d) After impairment and other write offs, balance sheet size of the Company reduced from Rs. 997.99 crore to Rs. 242.82 crore i.e. in single financial year, Rs. 755.17 crore was wiped off from balance sheet of the Company.

(e) Further, the statutory auditor of *SecureKloud viz*. Deloitte resigned as company's statutory auditor citing various corporate governance issues including fraud relating to irregularities and inconsistencies in financial statements and books of accounts of the Company.

(f) As observed from the corporate announcement on NSE by *SecureKloud*, a fraud report dated September 13, 2019 was also filed by the statutory auditor Deloitte to the Central Government under Section 143(12) of the Companies Act, 2013 (as stated at Para 54 of the Final Order).

15. The Final Order dealt with fraudulent activities of the Noticees covered under Section 12A(c) read with Regulation 3 and 4 of the PFUTP Regulations which prohibit all other kinds of fraudulent trading, dealings in securities and market abuses within the scope of provisions of Section 12A (a), (b) and (c) of the SEBI Act. Frauds like *'front running'*[1] also fall under domain of PFUTP Regulations {see Regulation 4(2)(q)} which have been framed under Section 30 of the Act to carry out the purposes of the Act and provisions under Section 11(2)(e) thereof. Accordingly, the Final Order dealt with only the fraudulent acts of the Noticees and referred the possible violation of PIT Regulations for further examination. The instant SCN has been issued for contravention of provisions of Section 12(d) and (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations.

16. In view of the above, I find that the case is not defeated on the ground of laches or delay as contended by the Noticee No.1 and also the issue decided in the Final Order dated December 16, 2022 is altogether different and independent of charge in the SCN.

(c) Penalty already paid.

17. IR substantially records findings of the Adjudicating Officer in the Adjudication Order dated July 29, 2022 whereby a monetary penalty of Rs. 2 Lakh was imposed upon Noticee No. 1 for violation of Regulations 29(2) read with 29(3), 31(1), 31(2) read with 31(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and

[1] *SEBI also invokes Section 12(e) for violation of Regulation 4(2)(q) of the PFUTP Regulations. For example, order WTM/MPB/ISD/ 166 /2021 dated January 13, 2021 passed by Ms. Madhabi Puri Buch (Ex-Whole Time Member and Ex-Chairperson, SEBI).*

Regulation 7(2)(a) and (b) of the PIT Regulation, for failure to make disclosure with regard to change in shareholding. Noticee No. 1 has paid the said penalty. In my view, the findings in the Adjudication Order do not automatically make Noticee No.1 culpable for insider trading. The disclosure obligation is not connected to UPSI. Whether the trades happen based on UPSI or not the disclosure obligations are triggered if specified threshold is crossed.

(ii) **Consideration of merits and findings.**

18. Having dealt with the preliminary objections, I now proceed to deal with the merits of the allegations. In the context of anti-fraud, all-encompassing law relating to prohibition of insider trading, the settled position is that such charges, though civil in nature in the proceedings like the present one, for standard of proof, they are treated a quasi- criminal and demand high degree of evidence to support the allegations. Hon'ble SAT in its order dated November 19, 2009, in the matter of ***Dilip S. Pendse v. SEBI***[2] has held as follows:

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

19. SCN alleges that Noticees have violated the provisions of Section 12A(d) and (e) of SEBI Act read with Regulation 4 (1) of the PIT Regulations. I deem it apposite to refer to the relevant provisions of law alleged to have been violated in the matter, extracts whereof are reproduced as follows:

<u>SEBI Act:</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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

….

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

(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;*

….

PIT Regulations:

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:*

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

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 [insiders] 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.

Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations:

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;

(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision; Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.

(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.

(v) 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;

(vi) 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, <u>his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession</u>. 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."

20. PIT Regulations of 1992 operated within the scope of power of SEBI conferred under Section 11(2)(g) of the SEBI Act. After Amendment of SEBI Act in insertion of Section 12A therein w.e.f. October 29, 2002, Clause (d) prohibits '*insider trading'* in general without any definition of this expression which is collectively used as one phrase and without any reference to trading by '*insiders'* on the basis of or while in possession of UPSI or *non-public information*. It's wording is loose and gives impression that it is open to prohibit any kind of insider trading be it by insiders sitting out of Company without being in possession of the *UPSI* or outsiders sitting inside in a Company without being in possession of the *UPSI*. This does not seem to be intent of law and its purpose had to be given effect which has been done by the PIT Regulations.

21. Prohibition in Clause (e) of Section 12A is more specific with regard to the *dealing in securities* while in possession of <u>material or non-public information</u> or communication of non-public information in a manner which is in contravention of the provisions of the Act or the regulations. PIT Regulations of 2015 operate within the scope of above prohibitions contained in Section 12A

of the SEBI Act and the powers of SEBI under Section 11(2)(g) of the SEBI Act. The above anomaly has been clarified by PIT Regulations as in its prefatory note it is declared that :- " *In exercise of the powers conferred by section 30 read with clause (g) of* *<u>sub-section (2) of section 11 and clause (d) and clause (e) of section 12A of the Securities and Exchange Board of India Act,1992 (15 of 1992),</u>* *the Board hereby makes the following regulations, to put in place a framework for prohibition of insider trading in securities and to strengthen the legal framework thereof…."*

22. It is, thus, clear that Section 12A(e) applies to trading, etc. while in possession of UPSI or communication of the *UPSI*. The plain understanding based on overall perspective of legal framework contained in Regulations 3 and 4 of the PIT Regulations, it is noted that Regulations 3 of the PIT Regulations, prohibits an '*insider*' from communicating, providing, or allowing access to any '*unpublished price sensitive* information', relating to a company or securities to any person. Regulations 4 prohibits an '*insider*' from trading in securities when in possession of '*unpublished price sensitive information'.* Thus, the scope of clause (d) and clause (e) of section 12A of the SEBI Act are dealt with in PIT Regulations. The Explanation appended to Regulation 4(1) shifts the burden of proving innocence on the '*insider'* who trades in securities when in possession of '*unpublished price sensitive information'.* The proviso enables insiders to prove *bona fide* in certain transactions if attendant conditions listed therein are complied with.

23. Briefly said, the salient observations in the SCN/IR *inter alia* are with regard to violations of PIT Regulations *inter alia* are based on the following:

    (a) On November 03, 2019 (Sunday), at 00:09:22 A.M. (after closing hours of November 02, 2019), *SecureKloud* made the corporate announcement on NSE submitting report dated November 02, 2019 of Deloitte. In the said auditor report it was *inter alia* stated that *"….During the course of our audit of the standalone and consolidated financial statements of the Company for the year ended 31 March 2019 we came across certain transactions that gave us reason to believe that suspected offences involving fraud have been committed in the Company…….Further, we also included the aforesaid matters in our report dated 13 September 2019 to the Central Government in accordance with the requirements of section 143(12) of the Act…"*

(b) The misstated financial statement of *SecureKloud* during FY 2017-18 to 2018-19 is considered as the UPSI in the instant case and it came into the public domain only on November 03, 2019 (Sunday), at 00:09:22 A.M. Therefore, the period from April 01, 2017 to November 02, 2019 has been considered as the UPSI period in the instant case.

(c) In terms of Regulation 2(1)(g) of the PIT Regulations, an '*insider'* means any person who is (i) a connected person; or (ii) in possession of or having access to UPSI. A '*connected person'* under Regulation 2(1)(d) means '*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*'.[3]

(d) Noticee No. 1 was the Promoter, Managing Director/CEO and Chairman of the company. Noticee No. 2 was the Promoter, Whole Time Director and CFO of the company. Noticee No. 3 was the Promoter of the company for year ended March 2017, March 2018 and March 2019. As the Noticees were directly connected to the Company and by virtue of their designations, they are connected persons and, therefore '*insiders'* in terms of regulation 2(1)(g) of the PIT Regulations who had access to and/or were in possession of the UPSI.

24. In order to examine the charge, it becomes important to refer to the definitions of the expressions '*insider'*, *'connected persons'* and '*unpublished price sensitive information'* under the PIT Regulations. The inquiry must be made into the following aspects:
(a) Whether the Noticees are insiders?
(b) Whether the Noticees possessed or had access to any information relating to the company?;
(c) Whether such information was price sensitive?
(d) Whether the information was unpublished? and
(e) Whether they dealt in securities by subscribing, buying, selling or agreeing to do any of activities in relation to securities of the Company?

[3] *Prior to substitution by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Third Amendment) Regulations, 2024 (w.e.f. December 06, 2024)*

(a) ***Insider.***

25. Noticees No. 1 and 2 are admittedly *connected persons* and *insiders* within the provisions of Regulation 2(1)(d) and Regulation 2(1)(g) of the PIT Regulations. Noticee No. 3 has contended that the SCN proceeds on the premise that he was reflected as a promoter in the shareholding pattern filed by *SecureKloud* with NSE for the year ended March 2017, March 2018 and March 2019 and, on that basis alone, treats him as a *'connected person'* and '*insider'* during the alleged UPSI period within the meaning of Regulation 2(1)(g) of the PIT Regulations. It is noted that Noticee No. 3 had long ceased to be involved in the affairs or management of the Company and had tendered his resignation from the Board of Directors on December 10, 2012, and his cessation is recorded as effective from September 5, 2013. Further, prior to the commencement of the alleged UPSI period and the impugned trade dated October 24, 2017, Noticee No. 3 had initiated steps for reclassification from "*Promoter*" to "*Public*" category.

26. From a copy of the letter dated September 05, 2013 addressed by *SecureKloud* to BSE, I find that one of the outcomes of its Board Meeting held on September 05, 2013, was regarding the acceptance of resignation of Noticee No. 3 as director of the company with effect from September 5, 2013. Noticee No. 3 has also enclosed an email dated February 13, 2017 addressed to Noticees No. 1 and 2 *inter alia* requesting to declassify him as a *promoter* of 8K Miles Software Services Limited (the company *SecureKloud* was earlier known as 8K Miles Software Services Limited). In the email dated February 13, 2017, Noticee No. 3 has made the following submissions:

"…As I am not in any way connected with the affairs and business of 8K Miles nor am I privy to any transaction or activities happening in 8KMiles for almost 6 years now plus the fact that my shareholding is an extremely small percentage, I have been informed that we can easily approach the concerned authorities and declassify me as a Promoter of the company.

As all of us are running around to pursue over respective interests, this issue has been left unattended. Hence seek all your help to get this done on priority and remove me from being a promoter of 8K Miles."

27. Noticee No. 3 had, vide another email dated July 27, 2018 addressed to Noticee No. 1 and 2, requested once again to remove his name from the promoter group and take such necessary steps in the next possible opportunity. Accordingly, in the 33rd AGM held on September 29, 2018, item

No. 6 was regarding the reclassification of Noticee No. 3 from the promoter category to the public category. Thereafter, NSE has vide letter dated September 19, 2019 approved the application for reclassification filed by *SecureKloud* on December 27, 2018 of promoter (Noticee No. 3), in accordance with the provisions of the SEBI (Listing Obligations and Disclosure requirements) Regulations, 2015.

28. I note that in the interim order the mandate was given to examine the possible violation with regard to *the* ***sale of shares*** ***by two promoter Noticees.*** In the SCN, the status has been imposed upon Noticee No. 3 merely based on disclosure by the Company whereas he had already disassociated himself from the Company long before the affairs financial statements of the Company were mis-stated by other Noticees. The IA has simply looked into this disclosure and has not probed further as to whether Noticee No. 3 was an *insider* during the alleged UPSI period. The IR and consequently the SCN has kept the column of period of Noticee being promoter in Company as blank. The IA has also not examined whether Noticee No. 3 had reasonable access to the alleged UPSI or if he actually received or had access to it.

29. I note that in the shareholders notice of the 33rd AGM of the Company held on September 29, 2018, it is categorically noted that Noticee No.3 has been leading his life and occupation independently and is not connected, directly or indirectly, whatsoever, with any activity of the Company. In the shareholders notice it further stated that Noticee No. 3 ….." *does not directly and indirectly , exercise control over the affairs of the company. They have never held at any time: any position of Key Managerial Personnel in the company. He does not have any special rights through formal or informal arrangements with the company or promoters or any person in the promoter group. He is also never privy to any price sensitive information of the company…".*

30. I find that the status of Noticee No. 3 is implicit from the shareholders' notice of the AGM that he did not directly or indirectly, exercise control, over the affairs of the Company, and that he has also never held at any time; any position of Key Managerial Personnel in the Company. It is also specifically mentioned that Noticee No. 3 was never privy to any price sensitive information of the Company. I note that Noticee No. 3 was also not a party/Noticee in the *interim order* dated August 4, 2022 or the Final Order dated December 16, 2022 which dealt with the allegation of financial mis-reporting/irregularities by promoters and management of and the resignation of the Company's statutory auditor. No direction was imposed on Noticee No. 3 in the above Orders.

31. Also, before the impugned trade, Noticee No. 3 had already initiated steps for reclassification from the "*Promoter*" category to the "Public" shareholder category by way of his email dated February 13, 2017. Further, Noticee No. 3 had undertaken a singular trade two years prior to the corporate announcement in November 2019. Neither the SCN nor the IR mentions any instance of communication of UPSI to Noticee No. 3. The IR simply embarks on a circumstantial inference and a presumption that *by virtue of being their designations, they are connected persons and are in possession of and also having access of financials of SecureKloud.*

32. To bring home such charge based on circumstantial evidence, a cohort analysis of surrounding facts and circumstances supported by strong circumstantial evidence are necessary. The requisite evidence needed to prove a charge of insider trading on preponderance of probability differs from case to case, however, in each such case higher degree of preponderance of probability needs to be established. Hon'ble SAT in *Affluence Fincon Service Pvt. Ltd*.[4] held that: - As per the explanatory notes to Regulation 2(1)(g) *"the onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the charge"*. It further held that: - *"In our considered view, keeping in view the decision of this Tribunal in the case of Samir Arora vs. SEBI, it is obligatory on the part of the Respondent to clearly establish as to how Appellants had "access" to the alleged UPSI, which it has failed in the present case."* I find that in the instant case, in the absence of any demonstrable instance in IR it cannot be proved with reasonable probability that Noticee No. 3 was an *insider* or was in possession of UPSI and traded on the basis of UPSI. Therefore, the allegation levied against him does not stand and, *qua* him, the SCN dated September 10, 2025 is disposed of accordingly.

(b) ***Unpublished price sensitive information / UPSI Period.***

33. For enforcement of PIT Regulations, the expression *'unpublished price sensitive information'* is very significant and cornerstone for crucial purposes such as determining the persons who are to be treated as *'connected person'* or a person being in possession of or having access to *unpublished price sensitive information* or communication and *trading* etc. under Regulation 3 and 4.

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

34. The expression *'unpublished price sensitive information'* has been defined in Regulation 2(1) (n) in following terms:

> *"(n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, <u>that is not generally available</u> which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*
>
> *(i) financial results;*
> *(ii) dividends;*
> *(iii) change in capital structure;*
> *(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
> *(v) changes in key managerial personnel.*
>
> *NOTE: It is intended that information relating to a company or securities, that <u>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.</u> 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."*

(i) ***Actual impact on price; whether an essential ingredient for an information to be UPSI?***

35. In terms of the Regulation 2(1)(n)(iv), *UPSI* is any information relating to a company or its securities that is not generally available and, once it becomes generally available, is *likely* to *<u>materially affect the price of the securities.</u>* Undoubtedly, the financial statements of *SecureKloud* were mis-stated and this information relating to the Company was not generally available till November 02,2019. The third ingredient to hold an information to be UPSI under Regulation 2(1)(n)(iv), is that on being generally available it is likely to materially affect the price of the securities.

36. As per the IR/SCN, any information having a *material adverse impact on the Company's financials is a price sensitive information in respect of the Company as they are very likely to have impact on its share price*. In this case, prior to the disclosure on November 03, 2019 the market was relying on the mis-stated financials of the Company to take investment decisions. The information relating to such mis-stated financials constituted *UPSI* until the same was disclosed to the public through the auditor's report submitted to the stock exchanges on November 03, 2019. The period from April 01, 2017, to November 02, 2019, as the UPSI period.

37. The Noticees have contended that the information did not impact the price of shares of the Company when it was disclosed. In fact, the share price was consistently falling since long period and it did not motivate the act of the alleged transfers/ pledges. In my view, the scheme of PIT Regulations must be kept in mind in order to deal with this contention. The prohibition of insider trading is based on the principles of corporate governance – transparency, openness, and disclosure. PIT Regulations aimed at prohibiting trading based on the *UPSI*. The Regulations provide for strict instance approach. Under this approach, what matters is that the person trading is in possession of *UPSI*. It does not matter how that person obtained the information, although the Regulations provide for defences, some of which are in nature of exceptions to this rule.

38. As per the legislative note appended to Regulation 2(1)(n) clarifies as guidance that the information shall be *UPSI*, *<u>if it is likely to materially affect the price upon coming into the public domain.</u>* This Regulation also says *UPSI* shall *ordinarily* include items like financial results. Thus, the adjectives "*likely*", '*materially'* and '*ordinarily'* have to be given contextual meaning keeping in mind the inclusivity of the listed information provided in said Regulation 2(1)(n).

39. In a statutory context, "*likely*" means <u>probable or expected</u>. According to Black's Law Dictionary, it indicates something that has a better chance of existing or occurring than not, generally implying a probability greater than 50%. The specific interpretation of the word often depends on its context within the legislation. The word "*likely*" means the information has a reasonable probability of materially affecting the share price, if disclosed. The Regulation cautiously uses the word "*likely*" which is distinguished from mere "*possibility*". While a possibility suggests an event could happen, "*likely*" dictates that a reasonable person would expect it to happen because there is a strong probability of the information materially affecting the price of the securities of company upon coming into the public domain.

40. *"Ordinarily*" means "usually." [OXFORD ENGLISH DICTIONARY (2d ed. 1989)]. In a statute, "*ordinarily*" means usually, generally, or most of the time. It establishes a baseline rule of conduct or application but inherently acknowledges that exceptions can and do exist, meaning it does not strictly mean "*always*" or "*without exception*". When a statute states something to "*ordinarily*" happen, courts treat it as a general rule. *Ordinarily* indicates that the listed items are the usual examples of the *UPSI*, but the list is not exhaustive, so other similar price-sensitive information can also qualify. However, this deeming presumption can be set aside if specific, contrary evidence or circumstances are proven.

41. While determining *UPSI*, its *price sensitivity* remains not only a key factor but also the central theme for prohibiting the trading by *insiders* or those receiving it. When the case is examined with respect to any of the listed information under Regulation 2(1) (n), the price sensitivity is deemed to exist and it becomes irrelevant whether the price was actually impacted or not by the said UPSI. In this context, I also take guidance from judicial/ quasi – judicial pronouncements as following: -

(a) In the matter of ***Appeal No. Appeal No. 272 of 2020 filed by Mr. B. Renganathan vs SEBI*** Hon'ble SAT, vide its order dated March 24, 2021, held that under Regulation 2(1)(n):..*"what is relevant is whether the event in question is likely to have a material effect irrespective of whether it actually impact or not"*.

(b) In *SEBI v. Abhijit Rajan*[5] **,** Hon'ble Supreme Court held that the price sensitivity of an information has a direct correlation to the *materiality of the impact* that it can have on the price of the securities of the Company. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge, being "*bullish*" or "*bearish*". It was held that with regard to the list of events in Regulation 2(1)(n), price sensitivity must independently be established as a matter of materiality of impact, not merely by matching an event to a listed category.

(c) In the matter of ***Appeal No. Appeal No. 606 of 2021 filed by Ms. Pallavi Navinchandra Mehta & Ors. vs Sebi,*** Hon'ble SAT, vide its order dated February 6, 2023 held that one of the listed information i.e. consideration of buy-back of shares was a price sensitive information and certainly UPSI until it was published which materially affects the price of the securities.

42. Further, the materiality of impact test is acknowledged by SEBI in its Board Memorandum proposing amendments but expressly preserving the illustrative character of the list and carving out routine-activity stating that: *"10.2.4. Events in the definition of UPSI are given for 'illustrative guidance.' Further, if the fund raising is routine in nature and on predictable lines*

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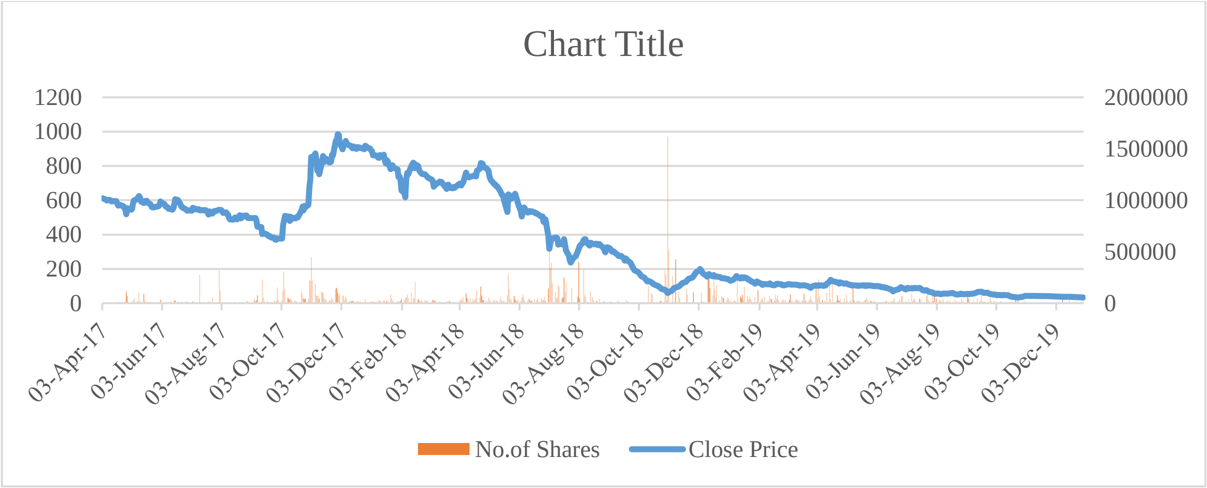
[5] *SEBI v. Abhijit Rajan [5] (Delivered on 19-9-2022) 2022 SCC OnLine SC 1241*

it would not 'be likely to materially affect the price of the securities' and thus may not be UPSI …"[6]

43. The price-volume chart in the scrip of the Company for the period April 01, 2017 to December 31, 2019 as mentioned in IR is as following:

Price Volume Movement



44. It is noted that the price of shares of the Company were on high side when financial statements were showing rosy picture about Company's performance which was actually not so good as represented from April 01, 2017 to March 31,2018. The price could not be maintained longer as the Company did not have any material information to support its price consequentially the price of the scrip dipped further when the true and correct information was published. Had the financial statements of the Company; as on March 31, 2017, March 31, 2018 and March 31, 2019; been correctly disclosed, the price of shares of the Company would have negatively impacted during the period when Noticees No.1 and 2 sold/pledged shares or pledgee invoked pledges as alleged; which trend is visible from gradual fall of the price of the scrip after April/May 2018. The information having a material adverse impact on the Company's financials is a price sensitive information in respect of the Company as they are likely to have impact on its share price. The materiality effect as held in *Abhijit Rajan's* case is met in this case also.

(ii) ***UPSI Period.***

45. The information relating to such misstated financials constituted *UPSI* until the same was disclosed to the public through the auditor's report submitted to the stock exchanges on

6 *SEBI Board Memorandum, "Proposal to include events in the illustrative list of the definition of Unpublished Price Sensitive Information (UPSI)…"* https://www.sebi.gov.in/sebi_data/meetingfiles/dec2024/1735560199191_1.pdf

November 03, 2019. The period from April 01, 2017, to November 02, 2019, as the UPSI period. During the hearing, the Ld Advocate contended that the period from April 01, 2017 to November 02, 2019 is too long period for an information to be treated as *UPSI*. According to him, the period of impugned pledge invocation over a period of 6 months from March 19, 2018 to October 1, 2018 cannot be relevant for *UPSI* period as the transactions were scattered for a long period and were not planned. I find that the '*UPSI period',* though not used and defined in PIT Regulations is very pertinent to determine the contravention under Regulation 3 and 4. The said period is commonly understood as the period from the date of birth of *UPSI* till it ceases to be so on being generally available. In my view, when *UPSI* is short-lived due the price sensitive information being made generally available by publication, etc. the *UPSI* period may be a short period. However, when the price sensitive information is withheld in the Company and remains within knowledge of insiders for longer time, it shall be *UPSI* till it is made generally available.

46. In this case, when the allegation is gauged with the conduct of Noticees it leads to conclusion that they were deliberately concealing true picture about financial results of the Company until finally the disclosure was made on November 03,2019, Sunday. The whole gamut of case as seen from the Order dated December 16, 2022 was that the fraudulent plan was orchestrated with a design as found in the said Final Order. The true picture was actively concealed and was published belatedly. The alleged *UPSI period*, thus, in the facts and circumstances of this case, is correctly determined as per the language of the Regulations. In any case, in the facts and circumstances of this case, the information relating to the mis-stated financials, constituted *UPSI*, on the dates when Noticees No.1 and 2 sold/pledged shares or pledgees invoked pledges as alleged.

(c) ***Whether pledging or invocation of pledge of shares amounts to trading.***

47. Noticees No.1 has contended that pledge for genuine purposes are not '*trading'* within the PIT Regulations. In this regard, it is pertinent to examine the scope of the word *"trading"* as defined under Regulation 2(*l*) of the PIT Regulations which provides that:

> *"(l) "trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly;*
>
> ***NOTE****: Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term "trading"*

to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc. when in possession of unpublished price sensitive information."

48. It is pertinent to mention here that the High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, headed by (Late) Justice NK Sodhi suggested that the term '*trading*' should be adopted instead of '*dealing*', since for imposing prohibition under the regulations the appropriate term would be '*trading*' which has been used in the SEBI Act. However, SEBI did not agree with this proposition since its duty is to prohibit any kind of market abuse by dealing in securities when in possession of UPSI and accordingly, it decided to use the word '*dealing*' in the above definition and did not restrict it to mere buying and selling of securities. Thus, it is clear that the definition is not limited to *trading* in common sense of the term.

49. Regulation 2(1)(*l*) provides for an inclusive definition to include all activities like, subscribing, dealings, etc. The scope is very clearly explained in the above Note appended to Regulation 2(1)(*l*). It includes creation of pledge and invocation of pledge. It is for this reason, that the disclosure obligations under the Regulations are not limited to trading by way of buying and selling of securities only but also extend to creation of pledge, encumbrance and invocation thereof.

50. The above position has been made further clear by a Comprehensive FAQs[7] on PIT Regulations dated December 31, 2024, whereby it has been clarified (in Point No.1) that '*trading*' as widely defined under Regulation 2(1)(*l*) means and includes dealing in securities and intended to curb the activities based on UPSI which are strictly not buying, selling or subscribing, such as pledging, etc. "*Hence, trading would include creation/invocation/revocation of pledge.*" In Point No.13 of the said FAQ, it has been clarified that Regulation 4(1) prohibits creation of pledge, revocation of pledge or invocation of pledge for enforcement of security while in possession of UPSI. However, the pledgor or pledgee may demonstrate that the creation/revocation of pledge or invocation of pledge by pledger or the pledgee, as the case may be, was *bona fide* and prove their innocence under proviso to sub-regulation (1) of regulation 4 of the PIT Regulations.

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[7] *https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/dec-2024/comprehensive-faqs-on-sebi-pit-regulations-2015_90403.html*

51. Having analysed the scope and ambit of the provisions of the PIT Regulations and putting foundational facts in brief as above, I proceed to deal with factual matrix of the basis allegations as described in the IR/SCN.

Trading of Noticee No. 1:

52. The basis of charge against Noticee No. 1 is the transactions in shares held by him in the Company as following -

(a) During the *UPSI Period*, Noticee No. 1 sold a total of 59,77,830 shares ("Impugned Trades") of *SecureKloud* through various off market share transfers as encumbrance between Noticee No. 1's accounts with HDFC Bank Ltd. ("HDFC") and Quantum Global Securities Limited ("QGSL")/KSBL Securities Limited ("KSBL"), off-market transfer from his account with QGSL and KSBL and pledging of shares by Noticee No. 1 with IFCI Limited ("IFCI"). The date-wise details of the such *trading* are as follows:

Sr. No.	**Date of sale/invocation of the shares**	**Closing price of the share of SecureKloud (BSE) (in Rs.)**	**No. of shares sold/invoked**	**Value of shares (Rs.)**
Off market sale/transfer of share				
1.	March 19, 2018	674.80	2,50,000	16,87,00,000/-
2.	March 20, 2018	666.00	3,74,500	24,94,17,000/-
3.	March 26, 2018	669.60	3,00,000	20,08,80,000/-
4.	April 02, 2018	695.55	7,25,500	50,46,21,525/-
5.	May 21, 2018	531.00	5,00,000	26,55,00,000/-
6.	June 28, 2018	477.25	4,50,000	21,47,62,500/-
7.	July 06, 2018	377.55	90,000	3,39,79,500/-
8.	July 09, 2018	382.25	10,000	38,22,500/-
9.	October 01, 2018	182.65	12,50,000	22,83,12,500/-
Sub – Total (A)			**39,50,000**	**1,86,99,95,525**
Pledge invocation by IFCI				**Amount recovered (in Rs)**
10.	October 16, 2018	117.90	1,12,376	1,34,42,505.65

11.	October 17, 2018	112.05	9,707	10,84,656.45
12.	November 01, 2018	60.60	14,07,547	9,50,92,083.82
13.	November 02, 2018	65.95	4,98,200	2,99,15,819.76
Sub-Total (B)			**20,27,830**	**13,95,35,065.68**
Total (A) + (B)			**59,77,830**	

* *On closure of the loan facility and issuance of NDC, the balance 2,47,170 shares were released on 07/12/2018.*

(b) The aforesaid *trading* resulted in avoidance of losses by Noticee No. 1 on account of the decline in the share price of *SecureKloud* following public disclosure of the auditor's report on November 03, 2019. By selling the said shares during the *UPSI Period*, Noticee No. 1 avoided losses amounting to approximately INR 1,75,03,91,661/- (*Rupees One Hundred Seventy-Five Crore Three Lakh Ninety-One Thousand Six Hundred Sixty-One Only*) as given in following table: -

Quantity sold/disposed (A)	**Consideration (in INR) (B)**	**Close price (INR) on November 01, 2019 on NSE (C)**	**Value of shares as per close price of November 01, 2019 (D=A*C)**	**Loss Avoided / amount (in INR) (D-B)**
59,77,830	2,00,95,30,591	43.35	25,91,38,930	1,75,03,91,661/-

(November 02, 2019 and November 03, 2019 being Saturday and Sunday respectively, for calculation of amount of loss avoided, closing price of November 01, 2019 at NSE has been considered.)

53. Noticee No.1 has contended that the transfers/sale of shares were not voluntarily executed by him but were carried out either without the authorization of the Noticee by QGSL and KSBL or pursuant to invocation of pledge by the lender IFCI. The said transactions, therefore, cannot be attributed to any trading decision of Noticee No. 1. According to him :-

(a) there was no trading by him at all so as to constitute a *"trading"* by an *"insider"* when in possession of UPSI;

(b) A credit facility for Rs. 37 crore was given by QGSL with shares of Company as a collateral for a period of one year at an interest of 21% per annum and a credit facility of Rs. 7 crores at an interest of 15% per annum was with Desert River Capital Private Limited (Account with KBSL);

(c) 23,00,000 shares were transferred from his demat account to QGSL and 3,00,000 shares were transferred to KSBL (account with KSBL for Desert River) in lieu of MoU for short term loan between him and these parties in lieu of which a short-term loan was obtained;

(d) Subsequently, out of the said 23,00,000 shares, 22,70,000 shares were wrongfully and illegally transferred through off-market transactions without the knowledge or consent of the Noticee. In this regard, the Company had lodged a police complaint against QGSL on September 07, 2018. An FIR has also been filed against QGSL on February 02, 2019;

(e) Similarly, the said 3,00,000 shares of Company were wrongfully and illegally transferred through off market transactions without the knowledge or consent of the Noticee. In this regard, the Company had lodged a police complaint against KSBL on September 07, 2018. An FIR has also been filed against KSBL on September 26, 2019. A complaint against KSBL has also been filed with SEBI on October 12, 2018;

(f) 12,50,000 shares were transferred through off-market to one Mr. Ashish Nanda towards consideration paid for acquiring interest in his business venture pursuant to a Memorandum of Understanding dated September 24, 2018 entered into between the Noticee and Mr. Ashish Nanda for the purpose of acquisition of 50% interest in Techno Gulf Dive Services, a business venture of Mr. Ashish Nanda. In terms of the said MOU, the shares were transferred as consideration for the acquisition of the said business interest;

(g) The aforesaid transaction was a commercial arrangement undertaken for acquisition of a business interest, and the Noticee has not derived any trading profit or economic gain from the said transfer of shares. The mere fact that the transfer coincidentally falls within the alleged UPSI period cannot, by itself, lead to the conclusion that the transaction was undertaken while in possession of UPSI or was motivated by the same;

(h) He had pledged 22,75,000 shares with IFCI as collateral for working capital facility availed by *SecureKloud*. Out of the said 22,75,000 shares of *SecureKloud* pledged with IFCI, 20,27,830 shares were sold by IFCI upon invocation of the pledge. Since, the share price fell, IFCI sold the shares and released the balance shares; and

(i) In view of the above, the transactions were primarily relating to (i) unauthorized sale of shares by QGSL and KSBL, and (ii) sale of shares pursuant to invocation of pledge by the lender, IFCI, and, therefore, cannot be attributed to any voluntary trading decision of the Noticee while in possession of the alleged UPSI.

54. Considering the scope of the term "*trading*" as clarified by SEBI as above and prohibitions contained in Section 12A of the SEBI Act and PIT Regulations, I am of the view that the share transfers as encumbrance between Noticee No. 1's accounts with HDFC and QGSL/KSBL, off-market transfer from his account with QGSL and KSBL and pledging of shares by Noticee No. 1 with IFCI and invocation of pledge by IFCI fall under the definition of '*trading'* by Noticees or pledgee as the case may be, in terms of Regulation 2(1)(*l*) of PIT Regulations.

55. Pledge confers lesser rights over the pledgee/pawnee *viz*. rights available in a mortgage. A pledgee/pawnee never has absolute ownership of the shares but only special property in them coupled with a power of selling and transferring them to a purchaser on default of payment at the stipulated time; to the contrary, a mortgagee acquires general rights in the mortgaged property from the date of the mortgage, which is not available to the pawnee. The pawnee cannot sell or transfer the pledged property in default of the pawnor/pledger's default in repayment of the bailment amount but has to give prior notice of sale to the third party accruing because of the former's default. It is only after giving prior notice that pawnee would be authorised to sell the pledged property to a third party towards the realisation of its outstanding debt. The right of the pawnor/pledger to redeem the pledged property remains until the lawful sale at the hands of the pawnee. Till the time the sale is affected, the pledged property can be redeemed and retrieved by the pledger.[8] Thus, while pledge and revocation of pledge could be by a pledger, the invocation of pledge can be by pledgee and pledger cannot be held responsible for *'insider trading''* on invocation of pledge by the pledgee on default of pledger in repayment of a loan unless a concerted act or *mala fide* design or communication of *UPSI* is proved on the part of pledger.

56. Noticee No. 1 has also contended that he had also created fresh pledges over certain shareholdings during the same period in favour of lending institutions as part of the ongoing financing arrangements of 1,00,000 shares on September 04, 2017 and 3,00,000 shares on September 13, 2017, followed by a pledge of 6,75,000 shares on October 01, 2018 in favour of IFCI, and further pledges of 50,000 shares on September 04, 2017, 3,50,000 shares on October 01, 2018 and 10,00,000 shares on December 27, 2018 in favour of Indian Bank. These pledge

[8] *PTC India Financial Services Ltd. v. Venkateswarlu Kari[8] (Delivered on 12-5-2022)*

creation transactions were specifically brought to the attention of SEBI during the investigation, however, the SCN does not consider or evaluate these transactions at all. The omission to consider these material facts further demonstrates that the conclusions in the SCN have been drawn without examining the complete factual record. I note that the transactions which led to the sale of securities during the UPSI are under the purview of the extant investigation. The SCN/IR does not make any reference to any other pledge/arrangements entered apart from those leading to the sale of securities. Therefore, only those transactions that fall squarely within the scope of the SCN is examined in the instant proceedings for which rule of natural justice have been duly followed.

57. It is an admitted fact that the pledge for 20,27,830 shares was invoked by IFCI during October – November 2018 as described above. Further, 12,50,000 shares were transferred off- market to Mr. Ashish Nanda on October 01, 2018. Thus, it is established that total 32,77,830 shares were transferred, directly or indirectly, by Noticee No. 1 when the material information was not generally available and was price sensitive. This fact is also corroborated by disclosure made by Noticee No.1 on January 21, 2019 to the effect that a total of total 32,77,830 were sold/invoked on October 01, 2018, October 16, 2018, October 17, 2018, November 01, 2018 and November 02, 2018.

58. It has been found in the IR that the Company, on October 12, 2018, disclosed on BSE that a total of 25,70,000 shares held by Noticee No. 1 in his demat account held with QGSL and KSBL have been wrongfully and illegally transferred through off-market transactions without his knowledge/consent and the Company had filed police complaint against QGSL and KSBL on September 17, 2018. Admittedly, Noticee No. 1 had received a consideration value of Rs. 40.5 crore either in his personal account or in company's account from Quantum Stock Broking Limited or Desert River for 25,70,000 shares held by him. He had admitted before the IA that out of said Rs. 40.5 crore received as consideration/loan amount received from off-market transfer / pledge of these shares,

(a) INR 30.5 crores was received as loan proceeds from Quantum Stock Broking Limited in his personal account.

(b) INR 4.5 crores received from Pro Fin Capital on instruction of Quantum Stock Broking Limited into 8K Miles Media Pvt Ltd bank account.

(c) INR 5.5 crores received from Desert River as loan to 8K Miles Media Pvt Ltd bank account.

59. With regard to utilization of funds received from such transfers, he had stated before the IA that the funds from Quantum and Desert River were utilized for his personal investments and loan to his co-promoter in his other business. IFCI Loan was for *SecureKloud* working capital. The Loan proceeds were not returned or repaid as said entities illegally sold his shares before the loan maturity period. It is important to note that in the Adjudication Order dated July 29, 2022, the Adjudicating Officer had negated this contention of Noticee No.1 that 25,70,000 shares had been wrongfully and illegally transferred through off-market without his knowledge/consent. Noticee No.1 has paid the penalty imposed by the Adjudicating Officer.

60. During the hearing, the Ld. Advocate of Noticee No.1 was asked to confirm by evidence to support his claim regarding: -

(a) loan transaction between Noticee No.1 as one part and QGSL and KSBL, respectively on the other part,

(b) nature of transfer of 25,70,000 shares in the demat account of those two entities;

(c) steps were taken for recovery of costs of shares if they were transferred without consent particularly why civil action was not tried, if the claim was correct.

61. Subsequently, the Noticee No.1 filed an affidavit making same submissions without any evidence with respect to entering into any loan transaction between him and QGSL and KSBL, respectively. On the one hand, it has been submitted that the arrangement was a short term loan, against which shares were provided as collateral/security, on the other hand it is submitted that shares were sold without any knowledge. Further, Noticee No. 1 did not bother to take recourse to civil remedy of recovery of such a large amount and files FIR with Police and complaint with SEBI. Even when the FIR was quashed by Hon'ble High Court of Madras in May 2023, observing that allegations therein had a predominantly civil flavour arising out of a commercial dispute and were in private nature, instead of pursuing civil remedy which any person of reasonable prudence would do for recovery of shares, Noticee No.1 chose not to do so. He has stated on oath that he did not pursue the FIR on account of demise of certain individuals. He was constrained to initiate civil action for recovery of amounts as QGSL was declared defaulter by

NSE in April 2020 and by BSE on May, 01,2025. QGSL was facing significant financial distress and was not in a position to make repayment of amounts thereby rendering the prospects of recovery through civil proceedings uncertain and commercially unviable. The principal person in KSBL was very serious and was in critical condition, hence no civil action could be taken. KSBL has also been declared defaulter by NSE and BSE on February 28, 2020 and BSE on March 03, 2020.

62. I do not find above explanation to be plausible and cogent. The claim of a short term loan transaction without any evidence for proof of transaction cannot be accepted. If at all, there is no evidence, it is not prudent to file criminal action. Even otherwise, criminal action was not appropriate step if at all such transaction amongst Noticee No.1 and QGSL and KBSL existed as claimed. Not pursuing action on account of ill health or demise of any person in the said two entities cannot be accepted as valid reason. Delay in taking civil action is also on the part of the Noticee and not a reasonable excuse. If at all, the shares were transferred to those entities for securing a short term loan in 2018, the remedy was available, at the very moment, when Noticee No.1 came to know about claimed wrongful transfer of his shares by QGSL and KBSL. There is no communication from Noticee No.1 to those entities questioning such unauthorised act, if any, on their part. The available remedy was to pursue recovery of shares and return of loan amount if it was so received by Noticee No.1. Considering all facts and circumstances of the case including conduct of Noticee No.1 in the affairs of the Company, I find that the approach suggested by Noticee No.1 is not even a lethargic indifference or needless procrastination but is employed as ruse to camouflage the real facts. In this regard it is pertinent to mention the following observations of Hon'ble Supreme Court in its judgement and order dated July 31,2025 in the matter ***Urmila Devi & Others Vs. Balram in Criminal Appeal No. 3300 of 2025 arising out of SLP (Crl.) No.10251 of 2019:- "****It is writ large on the face of the record that the complaint case has been employed as a circuitous tool to abuse the process of law, especially after the complainant-respondent No.1 failed to pursue the remedies available to it….".* It was also observed that: "*In R.K. Vijayasarathy, this Court held that while exercising powers under Section 482 of the Cr.P.C, a High Court can examine <u>whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Recently, in Vishal Noble Singh v. State of Uttar Pradesh, 2024 SCC OnLine SC 1680, this Court held that courts have to be vigilant to ensure that the machinery of criminal justice is not misused for achieving oblique motives and agendas. Tacitly endorsing such misuse only unnecessarily burdens the courts and the criminal</u>*

justice system." In my view, all these steps as submitted by Noticee No.1 were nothing but a strategy to masquerade his transactions.

63. With regard to the claim of Noticee No.1 about transfer of 12,50,000 shares to Mr. Ashish Nanda, pursuant to the MOU executed between the Noticee and Mr. Ashish Nanda, he has contended that the shares were transferred as consideration for the acquisition of business interest and formed part of a *bona fide* commercial arrangement. It is noted that post MoU activities evidencing the purported acquisition of 50% interest in Techno Gulf Dive Services, a business venture of Mr. Ashish Nanda as claimed has not been substantiated by any evidence. It is a fact that such transfer occurred while in possession of the UPSI and the transaction was undertaken on the basis of UPSI. The reliance on judgement of Hon'ble SAT in ***Shreehas P. Tambe v. SEBI (Appeal No. 491 of 2021, decided on July 26, 2022)*** is not appropriate in the facts and circumstances of this case. In ***Shreehas P. Tambe*** case, the transaction involved use of sale proceeds for making part payment for a residential flat to the developer. Hence, Hon'ble SAT on facts of that case, observed that sale was not motivated or induced by UPSI. In the instant case, an MoU was entered between Noticee No. 1 and Mr. Ashish Nanda for the purpose of acquisition of 50% interest in a business venture of Mr. Ashish Nanda. In terms of the MoU shares were transferred as consideration for acquisition of a business interest. I find that the transaction was in the nature of business interest for the benefit of Noticee No. 1. Such transaction cannot be considered *bona fide* defence under the PIT Regulations.

64. As regards invocation of pledge of 20,27,830 shares pledged by Noticee No. 1 to IFCI Limited, I find that the Pledge Agreement was executed on February 22, 2017 when the scrip price was higher than at the time of pledge invocation but before the UPSI came into existence. The Pledge Agreement was entered between; (i) Noticee No. 1 as the "the Pledgor"; (ii) the company *SecureKloud*[9] as the "the Borrower" or "the Share Issuer" and (iii) IFCI Limited who was "the Lender" or "the Pledgee". In terms of the Agreement, Noticee No. 1 pledged 10,50,000 shares and further agreed to pledge such number of shares as may be required, to maintain the security cover at 2.25 times the loan amount. As per the Pledge Agreement, the pledge was created only as a security mechanism to secure the repayment obligations of the Company. Further, the Pledge Agreement was entered as a result of a Corporate Loan Agreement dated February 17, 2017 entered between the Borrower (*SecureKloud*) and the Lender (IFCI Limited). In the Pledge

[9] *Was known as M/s 8K Miles Software Services Limited at the time of the Pledge Agreement*

Agreement the loan facility extended by IFCI Limited was a corporate loan obtained by *SecureKloud* for the purpose of investments and business operations. As a security for the loan, Noticee No. 1 had pledged shares held by him as collateral security to facilitate *SecureKloud* in obtaining the said financing arrangement. It is an admitted position that in terms of the Pledge Agreement, IFCI recalled the loan pursuant to default by the *SecureKloud*, invoked the pledge and realised the sale proceeds from the pledged shares towards recovery of its outstanding dues. The IR does not bring about with desired degree of probability that Noticee No. 1 acted in concert with IFCI or communicated UPSI prompting it to invoke the pledge. Further, neither any question has been asked nor any examination or adverse findings made or drawn about timing of loan and creation of pledge in this case.

65. As per the IR, Noticee No. 1 was aware that post falling share price below the stipulated cover, additional equity shares or upfront cash margin was supposed to be deposited with IFCI. Despite being aware about the additional shares / margin requirement and holding sufficient number equity shares of the company, neither additional share was pledged nor was any other action taken to avoid the invocation of pledged shares. It is noted that the "Event of Default" clause in the Pledge Agreement stated that:

> "11. *The Pledgor hereby agrees that in case the market value of the pledged shares goes down by 10% of the stipulated security cover, the Pledger shall provide top up of shares to ensure that the stipulated security cover becomes 2.25 times the loan amount within 2 (two) exchange business days. That the Borrower's/the Pledgor's failure in providing top-up would be treated as an Event of Default in terms of the Loan Agreement and give a right to the Pledgee exercise the rights conferred upon it under the Financing Documents including the right to sell the Pledged Shares without any interference of any Court*."

66. As per Schedule –I of the Pledge Agreement, the number of shares pledged by the Noticee No. 1 initially was 10,50,000 shares. In terms of the "Event of Default" clause, Noticee No. 1 had pledged additional number of shares of *SecureKloud* constituting 12,25,000 shares on various dates on 28/2/2017, 4/09/2017, 13/09/2017 and 1/10/2018, bringing the total number of pledged shares to 22,75,000 shares[10]. In view thereof, in terms of the "Event of Default" clause, Noticee No. 1 did pledge additional shares on various dates to avoid the invocation of pledge. Therefore,

[10] *On closure of the loan facility and issuance of NDC, the balance shares (2,47,170 shares were released on December 7, 2018.*

the allegation in the SCN that Noticee No. 1 could have pledged additional share to avoid the invocation of pledged shares is not true. Noticee No. 1 has while contending that the pledge was for *bona fide* purpose relied on the following cases of the Hon'ble SAT in ***Rajeev Vasant Sheth & Ors. v. SEBI (Appeal No. 536 of 2021, decided on April 19, 2022)*** which held as follows:

"12. A perusal of the aforesaid Regulation indicates that no insider shall trade in securities when in possession of UPSI and a person who has traded in the securities while in possession of UPSI his trades would be presumed to have been motivated by the knowledge and awareness of the price sensitive information which was in his possession. ***<u>The proviso however gives a window to the insider to prove his innocence by demonstrating the circumstances under which he has traded. The words "including" under the proviso to Regulation 4 is inclusive and is not exhaustive. It is not confined to the circumstances provided under Clause (i) to (vi) of the proviso to Regulation 4(1) of the PIT Regulations. There could be other circumstances on the basis of which the insider could prove his innocence.</u>"***

67. The Corporate Loan Agreement and the Pledge Agreement both were entered before the birth of the UPSI, although additional shares were pledged by Noticee No. 1 when the UPSI came into existence. Moreover, the price of the scrip was trading low i.e. at Rs. 117/-, Rs. 112/-, Rs. 60/- and Rs. 65/- as on date(s) of the invocation of pledge which corroborates with the reply of IFCI that the shares of the scrip were falling and could not keep up with the stipulated security cover, thereby leading to invocation of pledge. In view of the above facts, I am inclined to treat the pledge of shares and invocation thereof, by IFCL as *bona fide*, as consequences of the financing arrangement between the Company and the IFCI Limited and not '*trades'* motivated by possession of UPSI.

68. In this regard, I further note that in the Final Order dated December 16, 2022, one of the directions was for *SecureKloud* to recover Rs. 3.83 crore from Noticee No. 1 within a period of one year. In an appeal filed before the Hon'ble SAT, it was also contended that Noticee No. 1 had guaranteed loan from IFCI by pledging his shares in the company and as the company could not repay the debt, IFCI recovered the outstanding loan by selling shares pledged by Noticee No. 1. As a result, Noticee No. 1 had lost his shares and *SecureKloud* had to compensate him. *SecureKloud* in its Board meeting in February 2018 had resolved to repay Noticee No. 1 and it was resolved to adjust the sum of Rs. 3.83 crore payable by Noticee No. 1 to *SecureKloud* with the amount payable by *SecureKloud*. The Hon'ble SAT in its order dated March 6, 2026 while

dismissing the appeal has set aside the direction against *SecureKloud* to recover Rs. 3.83 crores from Noticee No. 1. I note that the loss of shareholding of Noticee No. 1 by invocation of pledge has been indirectly acknowledged and making Noticee liable for the same pledge is contradictory.

69. As per Explanation to Regulation 4(1) of the PIT Regulations, any insider who trades while in possession of *UPSI* is presumed to have been motivated by that information. On careful analysis of proviso to Regulation 4(1), I note that an insider may prove his innocence by demonstrating the circumstances including those specified in the proviso. The Note appended to Regulation 4(1) further declares that the person traded when in possession of UPSI 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. In this case, the transactions of Noticee No.1 viz. the off-market transfer of 27,00,000 shares from his account with QGSL and KSBL and transfer of 12,50,000 shares to Mr. Ashish Nanda do not fall in any of the specified situations in the proviso and the Noticee No.1 has failed to demonstrate his *bona fide*. Thus, those transactions attract the prohibition under Regulation 4(1) of the PIT Regulations.

70. Relying on the judgement of Hon'ble Supreme Court in the matter of ***SEBI v. Abhijit Rajan, 2022 SCC OnLine SC 1241,*** Ld. Advocate vehemently argued that motive of Noticee No. 1 is a relevant factor and must be taken into account. I note that in the ***Abhijit Rajan*** case, Hon'ble Supreme Court was examining the scope of Regulation 3 of the PIT Regulations of 1992 which did not provide for exceptions on the lines of the proviso to Regulation 4(1) of the PIT Regulations, 2015. Be that as it may, in the ***Abhijit Rajan*** case also Hon'ble Supreme Court highlighted that **if a person enters a transaction, which is surely likely to result in loss, he cannot be accused of insider training** and, thus, the actual gain or loss is immaterial. Referring to the judgment of ***SEBI v. Kanaiyalal Baldevbhai Patel***[11], Hon'ble Supreme Court further held that the nature of trading and timing of transactions may be taken into account to find out whether there has been an attempt at encashing the benefit of the information that the insider was in possession. It should not be judged on the avail of *mens rea*, but on the sound probability of expected gains. ***".....For instance, the sale by a person in possession of price sensitive information, at a time when the price is likely to take a plunge, will certainly be an attempt at***

[11] *(2017) 15 SCC 1*

taking advantage of or encashing the information. Similarly, the purchase by a person in possession of UPSI at a time when the price of the security is about to skyrocket, will certainly be an attempt to take advantage. In the instant case, certainly the motive of Noticee No.1 was to make gain by avoiding eventual loss due to impending fall in prices of the shares if the true picture about financials of the Company was disclosed. I, therefore, do not find merit in this contention.

71. Another contention is that the trading pattern itself demonstrates that the said transactions were not motivated by any alleged UPSI. The SCN, does not show that surrounding facts and circumstances indicate that the trades were undertaken because of the informational advantage arising from UPSI. It has been contended that the largest quantity of shares was transferred when the market price had already substantially declined, whereas, during periods when the share price was significantly higher, the quantity transferred was comparatively lower. 12,50,000 shares were transferred on October 1, 2018 at a price of approximately Rs. 182.65 per share. This price represents a decline of approximately 74% from the price of Rs. 695.55 per share recorded on April 2, 2018, when the share price was at one of its highest levels during the alleged UPSI Period. In contrast, during earlier periods when the share price was significantly higher - such as Rs. 674.80 on March 19, 2018, Rs. 666.00 on March 20, 2018 and Rs. 695.55 on April 2, 2018 - the quantities transferred were comparatively lower. If the Noticee had, in fact, been trading on the basis of alleged *UPSI*, the economically rational course would have been to transfer or sell the largest quantity of shares or the whole set of shares when the share price was at its peak, thereby maximizing the alleged advantage from *UPSI* prior to the disclosure of any adverse information. However, the trading pattern reflected in the SCN demonstrates the exact opposite - the largest transfer of shares took place when the market price had already significantly declined. In my view, such submission is misleading. IR/SCN has recorded that no transactions were carried out by Noticee No. 1 on either of the exchanges. Noticee No. 1 made off-market transfers to Mr. Ashish Nanda (12,50,000 shares) and 27,00,000 shares were transferred from his demat account to QGSL and KSBL. Admittedly, these off-market transfers were carried out off market and have benefitted the Noticee No.1 as he could avoid eventual losses although to the optimum as contended. Magnitude of loss or profit is immaterial for establishing a case of insider trading.

Trading of Noticee No. 2:

72. SCN has alleged that: -

(a) During the UPSI period, Noticee No. 2 sold 16,82,506 shares of *SecureKloud*. The date - wise selling by him in the scrip of *SecureKloud* are detailed as under:

Date	**No. of shares sold (A)**	**Avg. Sale Price (B)**	**Sale Value (C) = (A*B) (INR)**
15.05.2017	5,75,000	Rs. 595.46/- Per Share	34,23,89,500
15.05.2017	50,000	Rs. 580.33/- Per Share	2,90,16,500
16.05.2017	2,25,000	Rs. 595.50/- Per Share	13,39,87,500
19.05.2017	1,50,000	Rs. 587.67/- Per Share	8,81,50,500
22.01.2018	6,82,506	Rs. 749.14/- Per Share	51,12,92,544
Total	**16,82,506**		**1,10,48,36,544**

(b) The aforesaid *trading* resulted in avoidance of losses by Noticee No. 2 on account of the decline in the share price of *SecureKloud* following public disclosure of the auditor's report on November 03, 2019. By selling the said shares during the UPSI Period, Noticee No. 2 avoided losses amounting to approximately INR 1,03,18,98,118/- (*Rupees One Hundred and Three Crore Eighteen Lakh Ninety-Eight Thousand One Hundred Eighteen Only*) as given in following table:

Quantity sold (A)	**Sale value (in INR) (B)**	**Close price (INR) on November 01, 2019 on NSE (C)**	**Value of shares as per close price November 01, 2019 (D=A*C)**	**Loss Avoided / Unlawful gains amount (in INR) (D-B)**
16,82,506	1,10,48,34,753	43.35	7,29,36,635	1,03,18,98,118/-

November 02, 2019 and November 03, 2019 being Saturday and Sunday respectively, for the calculation of amount of loss avoided, closing price of November 01, 2019 at NSE had been considered.

(c) Upon analysis of bank statement of Noticee No. 2 i.e. Bank account number **********760 with HDFC Bank Limited (for period April 01, 2017 to March 31, 2019) and bank account number ************381 with Axis Bank (for period April 01, 2017 to August 31, 2022), it was observed that a total of INR 1,10,15,76,089/- *(Rupees One Hundred and Ten Crore Fifteen Lakh Seventy-Six Thousand and Eighty-Nine Only***)** was deposited in the Noticee's bank account by brokers HDFC Securities Limited, ASL Capital Holdings Limited and Axis Direct.

73. Noticee No. 2 has contended that the impugned trades undertaken by him were driven by *bona fide* personal considerations and were in no manner motivated by UPSI. According to him:-

(a) he was contemplating retirement from the strenuous nature of his professional commitments and was considering retirement from his active roles in the Company. He eventually stepped down from his position as Chief Financial Officer (CFO) on September 28, 2018 and subsequently from the position of Whole Time Director of the Company on November 02, 2019, substantiating that the impugned trades were undertaken in furtherance of his decision to retire from the Company.

(b) the funds realised from the sale of shares were redeployed towards investments in media and other business ventures.

(c) he had extended financial assistance to *SecureKloud*, a loan agreement for an amount of INR 40,00,00,000 (Rupees Forty Crore) was executed between *SecureKloud* and Noticee No. 2.

(d) SEBI has failed to produce any cogent material on record to establish that Noticee No. 2 was in possession of UPSI prior to or at the time of the execution of the impugned trades.

(e) Noticee No. 2 sold around10,00,000 shares of *SecureKloud* between May 15, 2017 and May 19, 2017 at an average price of Rs. 593.54. The scrip subsequently attained a higher price of Rs. 1029.95 on November 29, 2017. If the intention had been to derive any unlawful gain on the basis of UPSI, the shares would not have been sold at a significantly lower price several months earlier when the market price of the scrip later rose considerably.

74. Indisputably, Noticee No. 2 was an '*insider'* within the meaning of the term under Regulation 2(1) (g) of the PIT Regulations and as such was in possession of UPSI and he traded on the basis of the same. As per the SCN, the trading by Noticee No. 2 was for his personal benefits. SCN has detailed fund transfers made from the bank accounts of Noticee No. 2 (HDFC Bank and Axis Bank) to his other accounts and other entities. Noticee No. 2 has in order to demonstrate the *bona fide* nature of the transactions, provided the nature of such transactions which is reproduced in the last column of the following table:

Transfers made from Noticee No. 2's HDFC Bank Account:

Sr No.	Transfer to account	Date	Amount	*Nature of transaction as provided by Noticee No. 2*
1.	50200022796457- MANTHRA ENTERPRISES P LIMITED	17/05/2017	7,75,00,000	*Short-term loan extended for expansion purposes pursuant to the agreement executed with Manthra Enterprises.*
		19/05/2017	7,00,00,000	
		25/05/2017	1,00,00,000	
2.	SOFTLAB SERVICES INDIA PRIVATE LIMITED-50200021855714	17/05/2017	6,00,00,000	*Short term loan given partially returned on 06/2/2018.*
3.	IMOGO TECH SOLUTIONS PRIVATE	17/05/2017	6,00,00,000	*Short term loan*
4.	V SHANKAR RAMAN - AXIS BANK	19/05/2017	2,50,00,000	*Unsecured Loan given to friends and family.*
5.	R S RAMANI- INDIAN BANK	19/05/2017	15,00,00,000	*Transfers to own account for creation of a fixed deposit, against which an overdraft facility was availed and utilised for extending funds to the Company and for repayment of certain existing borrowings.*
	R S RAMANI- INDIAN BANK	22/05/2017	6,00,00,000	
	RAMANI R S- LAXMI VILAS BANK	23/05/2017	7,50,00,000	
6.	R S RAMANI- INDIAN BANK	26/05/2017	22,50,000	*Personal account.*
7.	NITHIYAA RAVINDHAR-50100191289582-	25/01/2018	1,61,50,000	*Unsecured Loan given to friends and family.*
8.	R S RAMANI- INDIAN BANK	25/01/2018	10,00,00,000	*Transfer to own account for creation of a fixed deposit, against which an overdraft facility was availed and utilised for extending funds to the Company and for repayment of certain existing borrowings.*
9.	SOFTLAB SERVICES-50200014307711	25/01/2018	2,58,74,216	*Loan given partially returned on 14/2/2018.*
10.	8K MILES MEDIA PVT LTD-ITC CENTRE-6535305897- INDIAN BANK	25/01/2018	4,54,00,000	*Investment by way of debt and equity in pursuant to the investment agreement executed with 8K Media.*
		29/01/2018	2,50,00,000	
		29/01/2018	5,00,00,000	
11.	*8K MILES SOFTWARE SERVICE LTD**	31/01/2018	5,00,00,000	*The said transfer was made as a loan in terms of the loan agreement executed between Noticee No. 2 and 8K Miles Software Services Ltd. (Annexure E)*

Sr No.	Transfer to account	Date	Amount	*Nature of transaction as provided by Noticee No. 2*
	Total		**90,21,74,216**	

**Incorrectly entered as 8K Miles Media Pvt Ltd in the SCN.*

Transfers made from Noticee No. 2's Axis Bank Account:

Sr. No.	Transfer to account	Date	Amount	*Nature of transaction as provided by Noticee No. 2*
1.	THESEUS SPORTS	24/01/2018	2,15,00,000	*Personal Investment for Sports Activity.*
2.	R S SUBRAMANIYA BHARATHI	29/01/2018	1,62,00,000	*Unsecured Loan given to friends and family.*
3.	8K MILES MEDIA PVT LTD	05/02/2018	3,00,00,000	*Investment by way of debt and equity in pursuant to the investment agreement executed with 8K Media.*
		05/02/2018	6,00,00,000	
		14/02/2018	3,00,00,000	
4.	G CHANDRA RAMANI	06/02/2018	2,00,00,000	*Unsecured Loan given to friends and family.*
5.	VENKATACHARI SURESH	07/02/2018	82,73,000	*Repayment of loans.*
	Total		**18,59,73,000**	

75. On analysis of the transactions provided by Noticee No. 2, the following fund transfers are noted as under:
   (a) Rs. 38.07 Crore was short term/unsecured loan given to third party/friends and family;
   (b) Rs. 38.50 Crore was transfers to his own account for creation of a fixed deposit, against which an overdraft facility was availed and utilised for extending funds to in *SecureKloud* and for repayment of certain existing borrowings;
   (c) Rs. 24.04 Crore was investment in 8K Miles Media P Ltd;
   (d) Rs. 5 Crore was loan as per Loan Agreement dated June 26, 2017 with *SecureKloud;*
   (e) Rs. 2.15 Crore was personal investment in a third party activity;
   (f) Rs 22.50 Lakhs were transfers to his personal account;
   (g) Rs. 82.73 Lakhs as repayment of loans to Noticee No. 1.

76. Noticee No. 2 has claimed that impugned trades were *bona fide* transactions and executed to provide loan to *SecureKloud* during the relevant period. However, from the above fund transfers, I find that only Rs. 43.5 Crore (Rs. 38.5 Crore plus Rs. 5 Crore) was utilized towards extending funds to *SecureKloud* and the remaining sum Rs. 65.94 Crore was utilized towards personal uses/benefits like investment or providing loans to third party/friends or transfers to his personal account etc. Noticee No.2 has contended that he had extended financial assistance to the *SecureKloud* by way of a loan of INR 40,00,00,000 (Rupees Forty Crore) pursuant to a Loan

Agreement executed between *SecureKloud* and Noticee No. 2. Along with his submissions, Noticee No. 2 has enclosed a copy of the Loan Agreement dated June 26, 2017 for an amount of INR 40,00,00,000 (Rupees Forty Crore) between *SecureKloud* and himself. I note that the said Loan Agreement bears signatures of Noticee No. 1 and 2 along with the Company's seal, however, the same is not executed on a valid stamp paper or e-stamp. This Loan Arrangement as claimed is also not corroborated with bank transfers amounting to the amount of Rupees Forty Crore from the account of Noticee No. 2. Further, Noticee No. 2 has in the transaction as provided in the aforesaid table, referred to a Loan Agreement against the debit entry of Rupees 5 Crores on January 31, 2018. I note that the date of transfer in the bank account and the sum do not correspond to the date of agreement (June 26, 2017) and loan amount in the Loan Agreement. Be that as it may, the argument may look attractive *ex facie*, but the scheme of the SEBI Act clearly shows that the loan given to the Company out of unlawful/wrongful gains cannot absolve Noticee No.2. I, therefore, find that the claim of Noticee No. 2 is an afterthought without proper reasoning. I, therefore, reject such claim that the impugned trades were *bona fide* transactions executed to provide loans to *SecureKloud.*

77. In support of the above contention of Noticee No.2, the Ld. Advocate has relied on the judgment of ***Rajiv B Gandhi v. SEBI***[12] wherein, the Hon'ble SAT had held that -*"The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading."* In the instant case, Noticee No. 2 has not been able to prove or demonstrate that he did not trade on the basis of *UPSI* or that the motive of the trade was to meet an emergency.

78. Reference has also been made to the case of ***Shreehas P Tambe v. SEBI***[13]**,** where proceeds from sale of the shares were used by the appellant to make part payment with the developer for

[12] *Rajiv B Gandhi v. SEBI, 2008 SCC OnLine SAT 78*
[13] *(2022) SCC OnLine SAT 1519*

purchase of a residential flat. I note that in ***Shreehas P Tambe*** case, the Hon'ble SAT provided benefit of the proviso to Regulation 4(1) of the PIT Regulations to the appellant because the appellant had obtained pre-clearance and had used the sale proceeds to fund an apartment purchase pursuant to an MOU with a developer. According to the Hon'ble SAT, these facts showed that the trades were bona fide and not motivated or induced by UPSI. In the instant case, there is nothing on record to show that the trades of Noticee No. 2 were as a result of any *bona fide* agreement or that he had obtained pre-clearance for his trades. The Noticee No.2 has also relied upon the case of ***Rajeev Sheth v. SEBI***[14] wherein the Hon'ble SAT held that the sale of shares by the promoter group was not an insider trading as the sale proceeds were used to fund the company to enable it to repay loans and avoid a non-performing asset downgrade. In the ***Rajeev Sheth*** case, the appellant had demonstrated his dire need to infuse fund in the company. The appellants had after selling the shares infused the entire money in the company to bring in the required working capital. Further, the Hon'ble SAT has noted that the sale amount of the shares was not retained by the appellants for their personal use or gain. I find that the case of Noticee No. 2 is unrelated to the above set of facts. Noticee No. 2 has not been able to demonstrate that the motive of the trade was to meet an impending emergency. Noticee No. 2 has also not infused funds in the working capital or for maximizing growth or operational efficiency of *SecureKloud* and the loan if granted is still liability on the Company. Admittedly, Noticee No. 2 has utilized the fund for his own personal investments.

79. Noticee No.2 has further contended that *UPSI* pertains to the financial statements of the Company for the financial years 2017-18 and 2018-19, the trades attributed to Noticee No. 2 are confined only to a limited period in May 2017 and a singular trade in January 2018. No sale transactions were undertaken during the financial year 2018-19. The absence of any trading activity during the subsequent financial year further undermines and is wholly inconsistent with the inference sought to be drawn in the SCN. In this regard the Noticee has relied in the judgment of the Hon'ble Supreme Court of India in ***Hanumant v. State of M.P.***[15]:

"12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency

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[14] *Rajeev Sheth v. SEBI (2022) SCC OnLine SAT 949*
[15] *Hanumant v. State of M.P (1952) 2 SCC 71*

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

80. Noticee has also made a reference Order of SEBI in the matter of ***Adani Green Energy***[16], wherein it was held that: *"91. To bring home such charge based on circumstantial evidence, a cohort analysis of surrounding facts and circumstances supported by strong circumstantial evidence are necessary. The requisite evidence needed to prove a charge of insider trading on preponderance of probability differs from case to case, however, in each such case higher degree of preponderance of probability needs to be established…"*

81. The above cases are not applicable because the charge against Noticee No. 2 is not based on circumstantial evidence to prove his status and trade. As per Explanation to Regulation 4(1) of the PIT Regulations, any insider who trades while in possession of *UPSI* is presumed to have been motivated by that information. The trades of Noticee No. 2 also do not fall in any of the specified situations in the proviso and Noticee No. 2 has failed to demonstrate his *bona fide*. Further, Noticee No. 2 was a Whole Time Director and Chief Financial Officer (CFO) of *SecureKloud*. Noticee No. 2 was responsible for the financial affairs of the Company and has been found to be complicit in misrepresentation in books of accounts of the Company in the Final Order. During the UPSI, Noticee No. 2 sold a total of 16,82,506 shares (5.55%) when the Company declared inflated financial statements and high profitability leading to increase in price of the scrip. As per the details of the promoters holding, as on year ended March 2017 Noticee No. 2 held 21,57,506 (7.07%) shares of the company and by year ended March 2019 his shareholding reduced to 4,65,000 shares (1.52%). Noticee No. 2 has executed transactions on BSE as well as NSE and sold majority of his shares (6,82,506 shares) on January 22, 2018 when the price of the scrip was trading at Rs. 749.14. Under the circumstances, the trades of Noticee No. 2 attract prohibition under 4(1) of the PIT Regulations.

E. Conclusion.

82. In light of the above, it is established that Noticee No. 1 and 2 were *insiders* and *traded* in the shares of *SecureKloud* while in possession and on the basis of the *UPSI*. The transactions

[16] *SEBI Order dated December 12, 2025.*

amounting to 39,50,000 shares of Noticee No. 1 *viz*. the off-market transfer of 27,00,000 shares from his account with QGSL and KSBL and transfer of 12,50,000 shares to Mr. Ashish Nanda and the sale transactions of Noticee No. 2 amounting to 16,82,506 shares were in violation of Section 12A(d) and (e) of the SEBI Act and Regulations 4(1) of the PIT Regulations. The allegation levied against Noticee No. 3 is disposed of *qua* him in terms of this Order. Accordingly, the consequences of such contraventions should follow as the act and conduct of Noticees No. 1 and 2 is not *bona fide* and no allowance can be given from such behaviour.

83. The SCN contemplates directions under Section 11(1), 11(4), and 11B (1) of the SEBI Act including direction for disgorgement of loss avoided / unlawful gains made and appropriate penalty under Sections 11(4A) and 11B(2) read with section 15G of the SEBI Act. The relevant provisions of Sections 11(1), 11(4), 11(4A), 11B (1), 11B (2) and 15G of the SEBI Act are reproduced below:

*"**Functions of Board.***

11. (1) *Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.*

...

(4) *Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:— (a) suspend the trading of any security in a recognised stock exchange;*

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder: Provided that the Board shall, within ninety days of the said attachment, obtain confirmation

of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

***(4A)** Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.*

Power to issue directions and levy penalty.

***11B. (1)** Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary, —*

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions, —

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation. —For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) *Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.*

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."

84. Section 11 deals with the functions and duties of the Board, Section 11B is on the powers of the Board. Section 11B is in a sense a functional tool in the hands of the Board and one of the measures available to the SEBI to enforce its prime duty under Section 11 by issuing directions under Section 11(4) and Section 11B (1) and/or also imposing monetary penalty under Section

11B (2) and 11(4A). I note that the power under Section 11B (2) is *pari materia* the power under Section 11(4A). In fact, the power under the both the sections are nothing but a replica of each other in two different sections. This power is not intended for inflicting same monetary penalty twice under the charging sections referred in Section 11(4A) and replicated under Section 11B (2) of the SEBI Act.

85. Noticee No. 1 was the Managing Director (MD)/ CEO as well as the Chairman of the Board of Directors of *SecureKloud* and Noticee No. 2 was a Whole Time Director and Chief Financial Officer (CFO) during the relevant period. Noticees at such senior leadership having privy to key information *traded* while in possession of UPSI. Insider trading by persons who have fiduciary duties towards the company and its shareholders not only reveal the brazen undermining of the regulatory principles governing the securities market but also the integrity of the securities market. Therefore, the present case is not only fit for regulatory directions but also imposition of monetary penalty under Sections 11B (2) read with section 15G of the SEBI Act.

86. The range of monetary penalty prescribed in said Section 15G is not 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. However, the said Section 15G gives discretion and Section 15J of the SEBI Act mandates factors to be taken into consideration while adjudging quantum of penalty and provides for the following guiding factors:

*"**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."

87. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under Section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in Section 15J. Further, in the explanation appended to Section 15J, which was brought vide Part VIII of Chapter VI of the Finance Act, 2017, the legislative intent has been reinforced that while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in Section 15J. It is also settled position that the words "*shall be liable to*" used in the context of *"penalty*" in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the authority to impose any penalty as he deems fit and commensurate with the violation. Further, having regard to the factors listed in Section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI v. Bhavesh Pabari Civil Order Appeal No(S). 11311 of 2013* vide judgement dated February 28, 2019, it is noted that the provisions of Section 15J has to be properly understood, and not to be mechanically applied and other factors reasonable for the facts of the case are also relevant to take into account for adjudging the quantum of penalty.

88. This is a case where, persons who are in the position of managing the affairs of the Company and persons in possession of *UPSI,* not only devised a fraudulent scheme as found in the Final Order but also traded in the scrip to avoid losses and in turn gain unjust enrichment. They have not been able to explain any *bona fide*. It is also a case where persons holding managerial position have misrepresented the financial results and misused their position in complete disregard of statutory regulations. Insider trading is fundamentally an ethical and legal breach of fiduciary duty. Allowing privileged few to profit from non-public information destroys the foundational "level playing field" in the financial system and imperils market integrity. Noticee No. 1 and 2 have shown impenitence and obduracy towards cardinal principles of trust, values of integrity and unrelenting pursuit of corporate governance ideals.

89. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of the Noticees is not in the interest of investors and the securities market, necessary action ought to be taken against them. I am of the view that such activities cannot be dealt with leniently. I am of the considered view that preventive measures are called for to stop such activities in the interest of the securities market and commensurate directions must be issued. I am convinced that this is a fit case where

suitable directions need to be issued and appropriate monetary penalty also needs to be imposed on Noticee No. 1 and 2.

90. In the final order dated December 16, 2022 Noticee No. 1 and 2, were *inter alia* prohibited from buying, selling or otherwise dealing in securities, for a period of three (3) years and also prohibited from being associated with the securities market in any manner whatsoever, including as a director or Key Managerial Personnel in a listed company or an intermediary registered with SEBI for a period of one (1) year. A monetary penalty totalling Rs. 3 Crore and Rs. 2 Crore was also imposed on Noticee No. 1 and 2, respectively. The above directions were upheld by Hon'ble SAT vide its order dated March 6, 2026.

F. Disgorgement.

91. SCN has also contemplated directions for disgorgement of wrongful gain against the Noticees. In the matter of ***Karvy Stock Broking Ltd. v. SEBI*** (Appeal No. 6 of 2007, Order dated May 2, 2008), SAT *inter alia* held that "*Only such wrongdoers who have made gains as a result of their illegal act(s) could be asked to do so. Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity. In a disgorgement action, the burden of showing that the amount sought to be disgorged reasonably approximates the amount of unjust enrichment is on the Board".* As held by Hon'ble SAT in ***National Stock Exchange of India Ltd. & Ors vs SEBI*** (Appeal No. 333 of 2019, Order dated January 23, 2023), that disgorgement is not a penal remedy, but an equitable one — aimed only at depriving a wrongdoer of ill-gotten gains. Further, Hon'ble SAT, in the matter of ***Kiran Madhusadhan Seth v. SEBI*** (Appeal No. 446 of 2020, Order dated September 20, 2021), *inter alia* held that- *"The concept of disgorgement under the SEBI laws is based on the principle that a person in possession of wrongful gains by which he is enriched may be asked to part with the amount equivalent to such gains along with interest".*

92. Accordingly, Noticees No. 1 and 2 are liable to disgorge the wrongful gains made by them along with interest as equitable remedy.

Calculation of wrongful gain (by avoidance of loss) and disgorgement.

93. The Noticees have also disputed the method of calculation of disgorgement amount and have also contended that they are not liable to disgorge the amount as alleged. According to them, the price fall during November 2019 cannot relate to the alleged UPSI as price had been falling prior to disclosure and post disclosure both. It is noted that the *UPSI period* in this case is a long period ranging from April 01, 2017 to November 03, 2019. For the purposes of calculation of amount of loss avoided by the insider trading by Noticees No.1 and 2, the SCN has taken the market price on the dates of off market transfers and no actual price has been determined. Further, for the purpose of such calculation, market price as on the date of the off market transfers and market price as on November 1, 2019 which is the date two days prior to the date of disclosure as November 2-3, 2019 being Saturday and Sunday. The last traded date of the Noticees was in 2018 i.e, one year prior to the date of announcement in November 2019. The price difference for calculation of profit as done in this case, could be relevant in case with shorter UPSI period.

94. Noticee No. 1 and 2 *traded* on different dates during the year 2017 and 2018. In this case, from the price volume data as given in IR /SCN, the market price of the scrip was stable on May 15, 2017 (Rs. 595.46/), May 16, 2017 (Rs. 595.50) and May 19, 2017 (Rs. 587.67) when Noticee No. 2 sold shares by his first tranche of trades. The price of the scrip shored upward during November 2017 till April 2018. During this period, Noticee No.2 sold shares of the Company on January 22, 2018 (Rs. 749.14). During this period, i.e. April 2017 to April 2018, Noticee No.1 did not engage in trading. The tainted trades of Noticee No.1 started on March 19, 2018 (Rs. 674.00). The downward trend was quite visible and it could not be sustained. This was within knowledge of insiders who were holding in the disclosures of true and correct financial information about the Company. Thus, Noticee No.1 engaged in off market transactions on June 28, 2018 (Rs. 477.25), July 06,2018 (Rs. 377.55), July 09, 2018 (Rs.382.25) and October 01,2018 (Rs.182.65). The market price started falling substantially after October 2018 and reached to Rs. 43.5/-[17] on November 1, 2019. Subsequent to the disclosure, market price of the scrip closed at Rs. 41.35/-, Rs. 39.3/-, Rs. 37.55/- and Rs. 36.8/- on November 25, 2019, December 2, 2019, December 9, 2019 and December 16, 2019, respectively.

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[17] November 02, 2019 and November 03, 2019 being Saturday and Sunday respectively, for calculation of amount of loss avoided, closing price of November 01, 2019 at NSE has been considered in the IR and the SCN.

95. It is also noted that during the *UPSI* period, there were several instances where there was increase and decrease in the market prices of the scrip. For instance, the price of the scrip increased from Rs. 617 on February 6, 2018 to Rs. 818 on February 14, 2018, then it dropped to Rs. 787 on February 15, 2018 and to Rs. 766 and 738 on February 21 and 28, 2018, respectively. Similarly, on May 15, 2018 the scrip was trading at Rs. 640 and its price decreased to Rs. 531 on May 21, 2018. The scrip opened at Rs. 635 on May 22, 2018 and then further increased to Rs. 637, Rs. 505 and Rs. 557 on May 29, 2018, June 5, 2018 and June 7, 2018, respectively. From the price volume movement chart, I note that the scrip has been on a downward trend and appeared flat since early 2019. In 2019, there were recurrent price fluctuations, for instance, on March 20, 2019 the scrip was trading at Rs. 105 and decreased to Rs. 92 and Rs. 89 on March 26 and 27, 2019. Even few weeks before the disclosure, on October 24, 2019, the scrip was trading at Rs. 32.6 and increased to Rs. 39.5, Rs. 41.45 and Rs. 43.5 on October 30, 2019, October 31, 2019 and November 1, 2019 respectively. While the analysis of such price fluctuations is absent from the IR, it is likely that the share price during the *UPSI* period could also be influenced by other factors or economic indicators. Thus, the *UPSI*, although impacted the price of the scrip, such impact was to be reckoned as on an earlier date in the facts and circumstances of this case.

96. I am of the view that considering several metrics in the market dynamics facts each case may lead to different conclusions. There cannot be a straight- jacket formula to lay down uniform standards in this regard. SEBI, accordingly considers each case based on the facts and circumstances of each case. Some of such examples are dealt with hereinafter.

    (a) In the matter of *TV Vision Limited*[18], the *UPSI* period was from September 01, 2017 to September 21, 2017. After the corporate announcement, the price of the scrip decreased by around 4.99% and witnessed a fall of 65.62% in its price in the next 22 trading days. The loss avoided was therefore calculated by taking the average closing market price on the next date after the date of announcement. The calculation formula was adopted as under: -
    "Unlawful loss avoided = No. of shares sold while in possession of UPSI (X) weighted average sale price per share (-) No. of shares sold while in possession of UPSI (X) closing price ***on the next date after the date of announcement****."*

[18] *SEBI Order dated March 24, 2023.*

(b) In the matter of *Sharon Bio-Medicine Ltd*[19], the UPSI period was from September 01, 2014 to February 15, 2015 i.e. till the time the quarterly results of the company were published. A detailed analysis of the corporate announcement/disclosures made by the company during the UPSI period and their impact on the price of the scrip was analysed till the date of announcement of the quarterly result. On the date of the announcement the price of the scrip was observed to close by 4.79% below its previous day's closing price. The disgorgement amount was thus calculated by taking the closing price on the day of UPSI becoming public. The calculation adopted for unlawful loss avoided was = *No. of shares sold while in possession of UPSI (X) weighted average sale price (-) No. of shares sold while in possession of UPSI (X) Closing price* ***on the day of UPSI becoming public***.

(c) In the *Ex-Parte Interim Order in the matter of IndusInd Bank Limited*[20], the *UPSI* period was from December 4, 2023 to March 10, 2025 (15 months). When the disclosure/announcement was made on March 10, 2025, the share price had crashed by 27.165% on the next day i.e. March 11, 2025. The order has observed that as the *UPSI* period was spread out, the share price during the period was also influenced by other factors, hence, it would not be appropriate to calculate likely disgorgement amount by subtracting closing share price as on March 11, 2025 with the price at which shares were sold during UPSI period. Therefore, the percentage crash of the share price on the date of disclosure was taken into consideration for calculation of disgorgement amount. The disgorgement amount was calculated by multiplying ***the impact of percentage crash*** on the date of sale of shares by entities during the UPSI.

(d) In *Religare Enterprises Limited*[21], the UPSI period was for a brief period from September 8, 2023 to September 25, 2023. In the matter, after the public announcement was made on the exchange, the actual impact of the public announcement on the scrip was observed across the entire day of the announcement. The closing price on the date of disclosure was adopted for calculation of disgorgement amount. *Number of shares sold while in possession of UPSI (X) weighted average sale price (-) Number of shares sold while in possession of UPSI (X)* ***closing price of the day of UPSI becoming public***.

[19] *SEBI Order dated June 22, 2023.*
[20] *SEBI Order dated May 28, 2025.*
[21] *SEBI Order dated May 13, 2026.*

97. I find that the calculation of unlawful gains made is based on the unique facts of each case and it may not be possible to have one uniform straight jacket formula. However, what is common in the aforementioned matters is that the impact on the share price of the company after the announcement/disclosure or on the date of disclosures was taken as a reference point for calculation of disgorgement amount. However, in this case, this formula cannot be applied for the following reasons: -

(a) The extant case at hand is peculiar and the methodology as observed in the aforementioned cases cannot be adopted in the case of *SecureKloud* as the price of the scrip did not register any immediate change pursuant to the disclosure of the corporate announcement. A fair value must be assigned for calculation of wrongful gain and investigation in this case cannot assume the close price in November 2019 after more than one year of the last trade, simply because the announcement was made on that date.

(b) The price was falling much before the announcement was made on in November 2019. Therefore, unlawful loss avoided cannot be determined without reasonable assessment by using the factor of percentage loss on the date of disclosure of UPSI or next date of such disclosure.

98. Thus, I am of the view that the entire decline in the *SecureKloud* share price over a long UPSI period of two and half years (from April 01, 2017 to November 02, 2019) cannot be attributed predominantly to the *UPSI*. Therefore, in respect of the method adopted in the SCN for calculation of the avoidance of loss, I am of the considered view that the computation methodology in the SCN does not satisfy the requirement of reasonable approximation of the amount to be disgorged. In cases, like the present one, when misuse of *UPSI* is visible, the possible avoidance of losses cannot be determined considering price impact after long period of more than one year of the last transaction when price had been fluctuating during relevant period. The impact of *UPSI* has not been done at all in this case. Considering these peculiar facts and circumstances of the case, I am of the view that assessment of the wrongful gain has not been quantified in definitive and reasonable terms. Therefore, I am unable to direct disgorgement of wrongful gains of the amount provided in the SCN as equitable remedy. However, SEBI is at liberty to do empirical analysis to pursue disgorgement of wrongful gain by avoidance of loss and then issue fresh show cause notice in that regard, if deemed appropriate.

G. Orders and Directions.

99. In view of the above, I, in exercise of powers conferred upon me under sections 11(1), 11(4), 11(4A), 11B (1) and 11B (2) read with section 19 of the SEBI Act, do hereby prohibit and restrain Noticees No.1 and 2 from accessing the securities market and further prohibit from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the following period, from the date of this order: -

Noticee No.	Name of the Noticee	PAN	Period of debarment
1	Mr. Suresh Venkatachari	ATNPS3289H	2 years
2	Mr. R S Ramani	AHVPR9966J	2 years

100. In light of the facts and circumstances of this case, as discussed above, the factors listed in Section 15J of the SEBI Act and in exercise of powers conferred upon me under Sections 11(4A), 11B (2) and Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalty for the violations of the provisions as alleged against the Noticees:

Noticee No.	Noticee Name	Provisions violated	Penalty under section 15G (Amount in Rs.)
1	Mr. Suresh Venkatachari	Section 12A(d) and 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations.	Rs. 10 Lac (Rupees Ten Lacs Only)
2	Mr. R S Ramani		Rs. 10 Lac (Rupees Ten Lacs Only)

101. Noticees shall remit/ pay the amounts of penalties mentioned against their names in the table above para 100, within 45 days of receipt of this Order through online payment facility available on the website of SEBI i.e. *www.sebi.gov.in* on the following path, by clicking on the payment link www.sebi.gov.in/ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, the Noticee (s) may contact the support of *portalhelp@sebi.gov.in*.

102. Noticees shall forward the details of online payment made in compliance with the directions contained in this Order to the "*The Division Chief, IVD-ID-9, Securities and Exchange Board of India, SEBI Bhavan – II, Plot No. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051*" and also to email id: *tad@sebi.gov.in*, in the following format:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

103. It is hereby clarified the period of restraint imposed vide this Order (in para 99) shall commence after the expiration of the period of restraint imposed upon Noticee No. 1 and 2, vide the Final Order dated December 16, 2022. Rest all the directions and the obligation to pay monetary penalty shall come into force with immediate effect.

104. Show Cause Notice dated September 10, 2025 stands disposed against Noticee No. 3 without any direction and with regard to Noticee No. 1 and 2, in terms of the above directions/penalties.

105. This Order shall be served on all the Noticees herein, SEBI, recognised Stock Exchanges, Depositories and Registrar and Share Transfer Agents to ensure necessary compliance.

SANTOSHKUMAR SHUKLA

Digitally signed by SANTOSHKUMAR SHUKLA
Date: 2026.07.31 17:00:15 +05'30'

Date: July 31, 2026 **SANTOSH SHUKLA**

Place: Mumbai **QUASI JUDICIAL AUTHORITY**

SECURITIES AND EXCHANGE BOARD OF INDIA