

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

S. No.	Noticee Name	PAN
1	Sanjay Chandra	AACPC5804C
2	Ajay Chandra	AACPC5803F

In the matter of routing of funds to the Indian Securities Market using overseas bank accounts with UBS AG.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted a *suo-moto* investigation to ascertain whether there was any routing of funds to Indian Securities Market by Sanjay Chandra and Ajay Chandra (hereinafter collectively referred to as "**Noticee No. 1**" and "**Noticee No. 2**" respectively and collectively referred to as "**Noticees**") through the bank accounts with UBS AG (hereinafter referred to as "**UBS**"), in violation of the provisions of SEBI Act, 1992 and regulations framed thereunder and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**SEBI**

Order in the matter of routing of funds to the Indian Securities Market using overseas bank accounts with UBS AG by Sanjay Chandra and Ajay Chandra

(PFUTP) Regulations, 2003) during the period from April 01, 2006 to March 31, 2008 (hereinafter referred to as *“Investigation Period”* or *“IP”*). However, in case where there is a need for reference to a period other than the IP, the same was accordingly considered.

2. Based on the examination and analysis of the information available, investigation revealed and alleged the following:

2.1. United Corporate Parks PLC (hereinafter referred to as *“UCP”*) was connected to Noticees/Unitech Limited (hereinafter referred to as *“Unitech”*) as under:

2.1.1. Noticee No.2 was a non-executive director in UCP.

2.1.2. Unitech had shareholding of 4.52% in UCP through its subsidiary viz. Nectrus Limited. Nectrus is foreign subsidiary of Unitech and its account was held with UBS Singapore Branch.

2.1.3. Unitech had worked in 40:60 joint venture with UCP and Noticees have 0.22% stake in UCP through a company called Fairway Advisory Services where Noticees were beneficial owners.

2.2. Further, during investigation, it was also observed that account of Unitech Overseas Ltd., a foreign subsidiary of Unitech was maintained with UBS bank at Zurich.

2.3. There were email communications exchanged between employees of UBS on the discussion with Noticees for opening of account and transfer of funds.

2.4. The extracts of aforesaid email communications are as under:

<p><i>".... Daniel Grob to take a look at Unitech Corporate Parks request and ask him to discuss it with Sanjay Chandra..... Then act on his advice".</i></p>
<p><i>"Sanjay Chandra- Atlantic (Aman to complete a/c opening as top priority – imp that this a/c is opened and we can transfer monies in by Friday 25th may 2007)"</i></p>
<p><i>"Ajay Chandra- Chocolate (Aman to complete and try have this a/c opened by Friday 25th may 2007)"</i></p>
<p><i>"As per the client's request, subscribe to Pluri Emerging Companies PCC (Cell G) Fund for the nominal amount of USD 4,000,000 for value date 18/05/2007 for the account Unitech Corporate Parks Plc (account number 206-383429)"</i></p>

2.5. From the above email extracts, the investigation analyzed and observed the following:

2.5.1. The employees of UBS were communicating regarding the dealing with the request for Noticee No.1 and Noticee No.2 to open the accounts named as *Atlantic* and *Chocolate* respectively.

2.5.2. The employees of UBS were communicating regarding the request of Noticees for subscribing to Pluri Emerging Companies PCC (Cell G) (hereinafter referred to as "**Pluri**") Fund for certain amount for the account of UCP. Pluri was incorporated in the Republic of Mauritius as a private company limited by shares and is a protected cell company under The Protected Cell Companies Act, 1999.

2.5.3. As mentioned in the preceding para Unitech Corporate Parks PLC is related to Noticees.

2.6. Based on the above, investigation inferred that Noticees were communicating with employees of UBS for opening of their accounts at UBS and were also discussing about transfer of funds to Pluri through the accounts of UCP with UBS.

2.7. Following fund transfers were also observed and alleged w.r.t. the routing of funds by Unitech:

2.7.1. With an intention to route the funds through foreign entities to get it invested in the scrip of the company through various entities in such a way to hide their identity, an amount of USD 8 mn was transferred by Unitech on September 16, 2008 through its account with Canara Bank in India to the account of its foreign subsidiary, Unitech Overseas Limited, maintained with UBS bank at Zurich.

2.7.2. Based on the email communications between the employees of UBS, it was inferred that there was a fund transfer of USD 4 mn to Pluri through the accounts of UCP maintained with UBS on the request of the Noticees.

2.7.3. Further, it was observed that Pluri invested USD 2.8 mn on April 16, 2007 and USD 3.1 mn on January 04, 2008 respectively in Nectrus, a subsidiary of Unitech and Candor, a subsidiary of UCP, through its cash

custodian, Deutsch Bank Mauritius Limited (hereinafter referred to as “**DBML**”).

2.7.4. It was also observed that Pluri invested an amount of around USD 15 mn in the scrip of Unitech through Sophia Growth Fund (a sub account of registered FII, Somerset India Fund) on January 23, 2008.

3. In light of the above observations, it was alleged that the funds were transferred by Noticees from Indian account of Unitech to the overseas subsidiary viz. Unitech Overseas Ltd. Subsequently, these funds were also transferred among the other foreign subsidiaries of Unitech, including the connected/related entity viz. UCP/its subsidiaries using UBS accounts in different countries. Thereafter, these parked funds in the accounts with UBS in the name of subsidiaries/related entities of Unitech, as well as Unitech Overseas Ltd., were ultimately routed to Pluri which were then directly or indirectly invested/used to buy the shares of Unitech Limited.

4. Based on the above observations, it was alleged that Noticees had dealt in securities of Unitech, indirectly in a fraudulent manner and employed manipulative and deceptive practices in connections with the purchase and sale of securities of Unitech, and have also misrepresented the truth and concealed a material fact known to them of buying the shares of Unitech, fraudulently and by doing so, the Noticees have violated the provisions of Regulations 3(a), (b), (d) and 4(2)(f) of PFUTP Regulations, 2003 and Section 12A(a) and 12A(c) of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING:

5. In this regard, Show Cause Notice dated May 03, 2023 (hereinafter referred to as “**SCN**”) was issued to the Noticees to call upon them to show cause as to why directions under section 11B(1) read with section 11(1) of the SEBI Act, 1992 should not be issued against them.

6. Since it was learnt that Noticee No.1 and Noticee No.2 were in judicial custody at Mumbai Central Prison and Taloja Central Jail respectively, the SCN was forwarded to the aforementioned jails vide letters dated May 03, 2023 with a request to the respective Jail Superintendent to serve the SCN to the Noticees in order to provide fair opportunity to them to represent and defend the allegations and to provide response within 21 days. As no response was received from the Noticees, reminder letters dated June 08, 2023 were sent to both the Noticees and served upon them in the aforementioned jails through the respective Jail Superintendent. Subsequently, Noticee No.1 submitted his reply vide letter dated June 23, 2023. However, no reply was received from Noticee No.2. Therefore, it was thought proper that before moving further, it would be appropriate that Noticees should be provided with the opportunity of hearing. Accordingly, in order to ensure that the proceedings are being conducted in compliance with principle of Natural Justice, notice of hearing dated November 02, 2023 was served on them in the aforementioned jails through the respective Jail Superintendent and were

given an opportunity of hearing on November 22, 2023. However, none of the Noticees appeared for the hearing.

7. I note that, as brought out in the preceding para, the SCN as well as hearing notice was delivered to the Noticees through the Jail Superintendent, Mumbai Central Prison and Taloja Central Prison, Mumbai and the proof for the same is available on record before me. However, only Noticee No.1 submitted his reply but not appeared for hearing despite specifically requesting for hearing opportunity in his reply. I note that Noticee No.2 has neither filed any reply in the matter nor appeared for hearing although he was aware of the present proceedings initiated against him. Considering that despite providing sufficient opportunities to Noticee No.2 to defend his case, he did not avail the opportunity of hearing and the fact that enough time has lapsed since the date of issuance of the SCN, I am constrained to proceed with passing of the order against the said Noticee *ex-parte*, on the basis of the material available on record in the matter and it is presumed that Noticee No.2 has nothing to submit in respect of the allegations levelled in the SCN.

8. The Noticee No.1 vide his reply dated June 23, 2023, has *inter alia* submitted the following:

8.1. I have been in prolonged judicial custody since March 2017 and am having limited access to legal and accounting support while in custody. Hence, I am not in a position to be able to respond in entirety on all issues forming part of the SCN.

- 8.2. *In accordance to law, I wish to be granted a personal hearing to respond to each of the findings.*
- 8.3. *I would need access to documents and accounts of Unitech and Unitech Group Companies and should be provided with a copy of the documents and reply submitted by Unitech and respondents to previous notices.*
- 8.4. *I don't know about the emails between employees of UBS or their relevance. These are not my instructions. Unitech Corporate Parks is not a company in my control neither am I signatory or board member. UCP is an independent listed entity and in 2007 to my recollection, directly or indirectly, Unitech or I did not have any shareholding in the company.*
- 8.5. *The finding that Nectrus, a subsidiary of Unitech owned 4.52% of UCP is incorrect at that time and it, if any, had negligible shareholding in UCP.*
- 8.6. *Also, to my recollection, 0.22% holding of Fairway would also be incorrect as Fairway was incorporated much later. Also even the combined holding would not put the respondent in a position of any control.*
- 8.7. *In response by Sachin Karpe, it clearly says Mr. Karpe is talking on hearsay and he does not have direct knowledge. He clearly says he is not aware of the structure (PIC structure for investment in Indian Securities market).*
- 8.8. *I am not a director or shareholder of Unitech overseas Limited and direct instructions or authority cannot be attributed to me. Law cannot work on inference as the end use has not been determined.*

8.9. *I am not a shareholder or director or beneficiary of Pluri Emerging. Unitech had large number of FII's investing on regular basis and I will not be aware or responsible for their buying and selling of shares.*

8.10. *Candor is a subsidiary of UCP where in both Candor and UCP, I have no involvement. Further, no role or evidence has been shown to proving my involvement in effecting the said transfers.*

8.11. *UCP was a London listed company where I have no involvement. Unitech India acted as a project manager to stepdown subsidiaries to UCP for developing IT parks in India for which Unitech received funds from these subsidiaries.*

9. Given the facts and circumstances above, I am of the view that, sufficient opportunity has been accorded to the Noticees and matter is required to be concluded considering the materials available on record. Accordingly, I proceed to examine the allegations and record my findings in the following paragraphs.

CONSIDERATION OF ISSUES AND FINDINGS:

10. Having gone through the allegations levelled through SCN and materials available on record, I am of the view that following issues arise for consideration.:

Issue No. I. Whether the Noticees have violated the provisions of Regulations 3(a), (b), (d) and 4(2)(f) of PFUTP Regulations, 2003 and Section 12A(a) and 12A(c) of SEBI Act, 1992?

Issue No. II. If the answer to issue No. I is in affirmative, then what action should be taken u/s 11(1) and 11B(1) of the SEBI Act, 1992 ?

11. Before dealing with the replies of Noticee No.1 on specific charges on merit, I deem it appropriate first to deal with the following preliminary objection raised by him:

He is in prolonged judicial custody and have limited access to legal and accounting support and therefore not in a position to be able to respond in entirety on all issues forming part of the SCN.

12. With regard to the contention of Noticee No.1 of not providing documents for inspection, I would like to refer to the observation of the Hon'ble SAT in the matter of **Anant R Sathe Vs. SEBI** (Appeal No. 150 of 2020) vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein and held that: "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence*". In this regard, it is noted that all the relevant and relied upon information and records in respect of all the Noticees

including Noticee No.1 were already provided in the SCN as well as annexures to the SCN, wherein *inter-alia* allegation is made in respect of them. The alleged violations in the present proceeding is that the Noticees had dealt in securities of Unitech, indirectly in a fraudulent manner and employed manipulative and deceptive practices in connections with the purchase and sale of securities of Unitech, and have also misrepresented the truth and concealed a material fact known to them of buying the shares of Unitech, fraudulently. Further, he has also not specified any particular document or information which he could not obtain because of being in judicial custody. However, I note that Noticee No.1 has also submitted reply on the merit of the case.

13. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticees, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticees. Accordingly, I find that the aforesaid contention of Noticee No.1 has no merit in it.

14. Before proceeding to deal with the allegations as recorded above against the Noticees, for the purposes of easy reference, relevant provisions of the applicable sections, regulations, guidelines, etc. which have allegedly been contravened as per the SCN are reproduced hereunder:

SEBI Act, 1992

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

- a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- b)*
- c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

PFUTP Regulations, 2003,

3. *No person shall directly or indirectly—*

- a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- c)*

d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on are cognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4(2). Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following—

(a).....

.....

(e).....

f) knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

Issue No. 1. Whether the Noticees have violated the provisions of Regulations 3(a), (b), (d) and 4(2)(f) of PFUTP Regulations, 2003 and Section 12A(a) and 12A(c) of SEBI Act, 1992?

15. In this regard, I note from the SCN that the Noticees were managing director (MD) and promoter of the company viz. Unitech Limited during the IP and the investigation specifically dealt with the alleged routing of funds from Unitech by the Noticees through foreign entities to get it invested indirectly in the scrip of Unitech in India.
16. Further, I note that the focus of the investigation was to ascertain whether Unitech or the Noticees had used their bank accounts with UBS situated in Zurich to route funds to Indian Securities Market to trade in the scrip of their own company listed in India.
17. In this regard, I also note that the SCN alleged that Noticees used UCP which was connected to Noticees/Unitech by virtue of Noticee No.2 being a non-executive director in UCP, Unitech having shareholding of 4.52% in UCP through its subsidiary viz. Nectrus Limited and Noticees having 0.22% stake in UCP through a company called Fairway Advisory Services where Noticees were beneficial owners for the aforementioned routing of funds.
18. In respect of the aforesaid alleged connection between Noticees/Unitech with UCP, Noticee No.1 has contended that UCP is not a company in his control neither is he a signatory or board member. He further contended that UCP is an independent listed entity and in 2007, directly or indirectly, Unitech or he did not had any shareholding in the company. Further, he mentioned that the finding that Nectrus,

a subsidiary of Unitech, owned 4.52% of UCP is incorrect at that time and it, if any, had negligible shareholding in UCP and further adding that 0.22% holding of Fairway would also be incorrect as Fairway was incorporated much later.

19. With regard to the above contention of the Noticee, as per available record, I note that the observation of the investigation w.r.t. the stake of Unitech and Noticees in UCP was only based on a press release of Unitech dated July 27, 2010 which specified their stake in UCP as on the date of the said press release and there was no other documentary evidence in support of the same. It is therefore, considering that the stake of Noticees in UCP is one of the important factor in support of the alleged connection between Noticees and UCP which in turn is based on the press release dated July 27, 2010, it will be difficult to accept the same as the stated press release was subsequent to the aforesaid IP period i.e. April 01, 2006 to March 31, 2008 and the said fact doesn't confirm that the Noticees/Unitech were having the same stake in UCP during the period from April 01, 2006 to March 31, 2008 to accept the charge of connection between Noticees and UCP during the investigation period.

20. As regards to the allegation of routing of funds from Unitech through foreign entities to the scrip of Unitech, I note that investigation, on the analysis of bank statement for the A/C no. 0390261000141 with Canara Bank in the name of Unitech, observed that there was a credit transaction of USD 8 mn in September

2008, from the aforesaid account to the account of Unitech Overseas Ltd. which was maintained with UBS bank at Zurich.

21. Further, I note that based on the above, the investigation inferred that the amount of USD 8 mn was transferred to foreign subsidiary by Unitech on the instructions of Noticees as both were MD/Promoters of Unitech. It was also noted that though the investigation could not trace the end use of USD 8 mn transferred by Unitech to Unitech Overseas Limited, a foreign subsidiary of Unitech, they reasonably inferred that Noticees have regularly transferred funds to foreign subsidiaries for the purpose of routing of funds.

22. Further I note that considering the above mentioned facts coupled with the submission of Mr. Sachin Karpe, who was the Desk Head of the Asia II Desk of UBS, which provided wealth management services to customers, resident in India, or of Indian origin in his recorded statement that he was aware of the meetings with Noticee No.2 and that both Noticees were in discussion with UBS employees viz. Jaspreet Ahuja/ Kurt Kumshick, investigation also reasonably presumed that Noticees were communicating with the employees of UBS AG with regard to management of their funds parked in the accounts with UBS AG in the name of subsidiaries/related entities of Unitech Ltd., which were based abroad and also it was inferred that there were discussions for subscribing to Pluri Emerging Company PCC (Cell G).

23. With regards to the above, I note that Noticee No.1 has contended that he was not a director or shareholder of Unitech Overseas Limited and direct instructions or authority cannot be attributed to him. He further contended that law cannot work on inference as the end use of the fund has not been determined.
24. I note that the above contention of the said Noticee that direct instructions or authority cannot be attributed to him, is devoid of any merit as the charges here against the Noticees is that in the capacity of MD and Promotor of Unitech, they had given instructions to Unitech to transfer funds to Unitech Overseas Limited and this has nothing to do with him not being the director of Unitech Overseas Limited.
25. Further, as contented by the Noticee No.1, I note that it is a fact that the investigation failed to bring out the end use of the said amount by Unitech Overseas Limited which was recorded in the SCN as well. In this regard, I note that the inference drawn in the investigation that Noticees have regularly transferred funds to foreign subsidiaries for the purpose of routing of funds cannot be justified as the said inference has been simply drawn based on only one transaction of USD 8 mn between Unitech and Unitech Overseas Limited and the end use of the same has also not been traced in absence of the details of bank transactions or without any other supporting documentary evidence on the same.

26. As regards to the role of Pluri in the alleged routing of funds, I note that investigation observed from the analysis of account statement of Nectrus Ltd., which is a foreign subsidiary of Unitech, that there were credit/debit transactions happening between Nectrus Ltd. and different foreign subsidiaries of Unitech. I further note that investigation also observed that there were few transactions between Nectrus Ltd. with Candor Investment Ltd (a subsidiary of UCP) which was found to be evident to the point that Noticees/Unitech were connected/related to UCP.
27. Further, I note that investigation also observed upon further analysis of statement of Nectrus Limited that there were incoming payments of USD 2.8 mn on April 16, 2007 with description B/O Candor Investments Ltd & a cash transfers of USD 3.1 mn on January 04, 2008 from DBML.
28. In support of the above, I note that the investigation observed that there was a mail dated May 18, 2007 between UBS employees which referred to subscription of funds from the account of UCP to Pluri and also from one of the documents received during investigation, DBML was shown as the Cash Custodian of Pluri as well as the bank account of Pluri was held with DBML. Further, I also note that investigation observed that the above-mentioned email conversation between UBS employees also referred to earlier subscription of “client” (i.e. Noticees) to this Cell G fund. Based on the above said facts, investigation connected this with the fund transfer from DBML to Nectrus on April 16, 2007.

29. Taking into the consideration of above said facts and with the combined reading of the transaction showing payments from DBML to Nectrus and the e-mail dated May 18, 2007 between the employees of UBS AG, investigation inferred that such transactions of DBML with Nectrus was for transactions with Pluri on behalf of the Noticees.
30. From the above, investigation found it evident that there were indirect cash transactions happening between Pluri (through DBML) and Unitech (through its subsidiary viz. Nectrus Ltd) and accordingly inferred that Noticees had routed the funds indirectly between Unitech and Pluri using a web of subsidiaries of Unitech and subsidiaries of UCP through accounts held in different countries.
31. With respect to the investment of Pluri in Unitech through Sophia Growth Fund (which is a sub account of registered FII, Somerset India Fund), I note from the investigation that Pluri had an investment in a fund viz. Sophia Growth of around USD 15 mn. Further, I note that Standard Chartered Bank, the custodian of fund, provided the information that Sophia Growth Fund had invested around USD 15 mn in the scrip of Unitech in India on January 23, 2008 and exited from the shareholding of Unitech on March 11, 2010.

32. Besides above, I also note that investigation observed from the financial statement for the year ended 2007 and 2008 that Pluri had an investment in the scrip of Unitech of USD 6.1 mn for year ended 2007 and USD 5.9 mn for year ended 2008.
33. In light of the aforesaid facts, investigation concluded that Pluri had invested in the shares of Unitech directly and also indirectly through other funds/FIIs.
34. I note that finally based on the above findings, investigation inferred that Noticees had used the mechanism as under for routing of funds to ultimately invest the same in the scrip of Unitech:
- 34.1. Funds were transferred from Unitech in India by Noticees to the overseas subsidiary viz. Unitech Overseas Ltd. Thereafter, these funds were transferred among the other foreign subsidiaries of Unitech including the connected/related entity viz. United Corporate Parks PLC/its subsidiaries using UBS accounts in different countries.
- 34.2. Further, these funds were ultimately routed from UBS accounts to Pluri Emerging Companies PCC (Cell G) which were then used to finally buy the shares of Unitech Limited directly or indirectly through funds/FIIs.
35. In view of the above, investigation made the allegations against the Noticees as mentioned above in this order i.e. violation of the provisions of Regulations 3(a),

(b), (d) and 4(2)(f) of PFUTP Regulations, 2003 and Section 12A(a) and 12A(c) of SEBI Act, 1992.

36. In this regard, I note that Noticee No.1 has submitted that:

36.1. He was not a shareholder or director or beneficiary of Pluri Emerging and as Unitech had large number of FII's investing on regular basis he will not be aware or responsible for their buying and selling of shares.

36.2. He further submitted that Candor is a subsidiary of UCP and in both Candor and UCP, he has no involvement and no role or evidence has been shown to proving his involvement in effecting the said transfers.

36.3. He also submitted that UCP was a London listed company where he has no involvement and that Unitech India acted as a project manager to stepdown subsidiaries to UCP for developing IT parks in India for which Unitech received funds from these subsidiaries.

37. With regards to the above, I note that the whole allegation in the matter is that Noticees transferred the funds from Unitech to its overseas subsidiary viz. Unitech Overseas Ltd. and then these funds were transferred among the other foreign subsidiaries of Unitech including the connected/related entity viz. UCP/its subsidiaries using UBS accounts in different countries. Further, these funds were ultimately routed from UBS accounts to Pluri which were then finally used to buy the shares of Unitech, directly or indirectly, through funds/FIIs like Sophia Growth

Fund and DBML. In other words, the alleged routing of funds commenced from Unitech and then after being transferred among various other entities, ultimately were invested in the scrip of Unitech.

38. In this regard, it is observed from the IR that the transfer of funds of USD 8 mn from Unitech to Unitech Overseas Ltd. was done on September 16, 2008. However, the alleged transactions of USD 2.8 mn and USD 3.1 mn from Pluri (through DBML) to Nectrus, a subsidiary of Unitech and to Candor, a subsidiary of UCP, happened on April 16, 2007 and January 04, 2008 respectively. Further, the alleged investment of around USD 15 mn of Pluri through Sophia Growth Fund in the scrip of Unitech happened on January 23, 2008. From the above transactions, it is noted that the investment by Pluri in the scrip of Unitech, either through Sophia or through DBML, happened much before the transfer of funds of USD 8 mn from Unitech to Unitech Overseas Ltd., which is contrary to the alleged scheme of routing of funds in the IR according to which the same originated with Unitech transferring funds to Unitech Overseas Ltd. and then it getting transferred to Pluri and finally being invested in the scrip of Unitech by Pluri.

39. I further note that neither there is any evidence, documents or detail on record to establish that the fund transferred by Unitech to Unitech Overseas Ltd. was only subsequently transferred to Pluri nor there is any material/facts/information whatsoever brought on record in the IR to show that the source of investment by Pluri w.r.t. its investment in the scrip of Unitech, directly or indirectly, is linked to

Unitech. Further, there is no detail or evidence on record with regards to fund transactions from Unitech/its subsidiaries to UCP or its subsidiaries, as alleged in the SCN.

40. In view of the above, I do not find sufficient corroborative evidence, either in the IR or in the material made available along with the IR to establish the allegation that Noticees have dealt in securities of Unitech indirectly in a fraudulent manner and employed manipulative and deceptive practices in connections with the purchase and sale of securities of Unitech or have misrepresented the truth and concealed a material fact known to them of buying the shares of Unitech fraudulently.

41. In this regard, reliance has been made on the order dated 04.05.1951 of Hon'ble Supreme Court of India in the matter of ***Bishundeo Narain & Anr vs. Seogeni Rai & Anr***, wherein the Hon'ble Supreme Court opined that:

“Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be”

42. Further, I also note that the order dated 16.09.2010 of the Hon'ble Securities Appellate Tribunal in the matter of **R K Global v/s SEBI** observed as under:

“Let us not forget that the appellant has been charged for executing fraudulent trades which is, indeed, a serious charge and cannot be established on mere suspicion and should have a firmer ground to stand upon. A high degree of probability must exist before such a charge could be found to have been established.”

43. Further, in the matter of **Narendra Ganatra v/s SEBI**, Hon'ble Securities Appellate Tribunal on 29.07.2011 observed that:

“We should not lose sight of the fact that the charge against the appellant is of conniving with the group entities in creating false and misleading appearance of trading in the market and artificially raising the price of the scrip and for such a serious charge, higher degree of probability is required. Such a charge cannot stand on surmises and conjectures.”

44. Thus, placing reliance on the aforesaid judgements and in light of the facts of the cases as well as material and information available on record, as brought out in the preceding paras, I note that holding the Noticees to have violated the provisions of Regulations 3(a), (b), (d) and 4(2)(f) of PFUTP Regulations, 2003 and Section 12A(a) and 12A(c) of SEBI Act, 1992 may not be feasible with regards to the allegations made against them.

Issue No. II. If the answer to issue No. I is in affirmative, then what action should be taken u/s 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act, 1992?

45. As concluded in the preceding para, the alleged violations of the provisions of Regulations 3(a), (b), (d) and 4(2)(f) of PFUTP Regulations, 2003 and Section 12A(a) and 12A(c) of SEBI Act, 1992 against the Noticees have not been established in the instant matter. Hence, the said issue does not require any consideration.

Order:

46. In view of the above, I, in exercise of powers conferred upon me under section 19 read with sections 11(1) and 11B(1) of the SEBI Act, hereby dispose of the proceedings initiated against the Noticees vide SCN dated May 03, 2023 without issuance of any directions.

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

48. A copy of this order shall be sent to the Noticees.

Date: June 21, 2024
Place: Mumbai

G. Ramar
Chief General Manager
Securities and Exchange Board of India