**WTM / AN / SRO/ SRO /29840/ 2023-24**

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**ANANTH NARAYAN G., WHOLE TIME MEMBER**

**ORDER**

**Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992**

**In respect of:**

| Noticee. No. | Name of the Noticees | PAN |
|---|---|---|
| 1 | B Ramalinga Raju | ACVPB8311J |
| 2 | B. Rama Raju | ACEPB2813Q |
| 3 | B. Suryanarayana Raju | ACEPB2811N |
| 4 | SRSR Holdings Pvt. Ltd. | AAKCS0134N |
| 5 | Vadlamani Srinivas | ABEPV4019P |
| 6 | G. Ramakrishna | ACAPG1654L |

**In the matter of Satyam Computers Services Limited**

*(Noticee Nos.1 to 6 are hereinafter collectively referred to as "**Noticees**")*

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## I. BACKGROUND:

1. An investigation was carried out by SEBI into the affairs of Satyam Computer Services Ltd. (hereinafter referred to as **"SCSL"/ "Satyam"/ "Company"**) after receipt of an email from Mr. B Ramalinga Raju, Ex-Chairman of SCSL, inter alia, admitting and confessing to the company's balance sheet having recorded non-existent bank balances and accrued interest, understated liabilities and overstated debtors position

as a result of manipulation of books of accounts and other company records. SEBI carried out investigation into the affairs of SCSL to ascertain, particularly, whether the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and Rules and Regulations framed thereunder have been violated. The investigation revealed that the directors and employees of SCSL namely Mr. B Ramalinga Raju (Ex-Chairman), Mr. B Rama Raju (Ex-Managing Director), Mr. Vadlamani Srinivasa (Ex-Chief Financial Officer), Mr. G Ramakrishna (Ex-Vice President, Finance) and Mr. V. S. Prabhakara Gupta (Ex-Head 'Internal Audit') had, since January 2001, connived and collaborated in overstatement, fabrication, falsification and misrepresentation of books of account and financial statements of SCSL. They presented a rosy picture about the financials of SCSL before its investors in order to mislead them and ultimately to defraud them. The investigation found material that corroborated the confession of Ramalinga Raju that promoter shares were pledged, which was executed through a company – SRSR Holdings Private Limited promoted and managed by the promoters. The investigation also revealed, *inter alia* that B Suryanarayana Raju, the brother of Ramalinga Raju had sold shares during the period January 2001 to December 2008 when in possession of unpublished price sensitive information about the adverse financial position of the company. Ramalinga Raju, Rama Raju and Suryanarayana Raju are brothers and SRSR Holdings Pvt. Ltd., is a private limited company which is owned/controlled by the Raju family.

## II. CHRONOLOGY LEADING UPTO THE SAT ORDER DATED FEBRUARY 02, 2023

2. Pursuant to the investigation and issue of show cause notice/ supplementary show cause notice, the said notices were disposed of through orders. SEBI vide order no. WTM/RKA/SRO/64 - 68/2014 dated July 15, 2014 (hereinafter referred to as **"First SEBI order"**), passed directions *inter alia* against (a) Mr. B Ramalinga Raju (hereinafter referred to as **"Noticee No.1"**), (b) Mr. B Rama Raju (hereinafter referred to as **"Noticee No.2"**), [Noticee No. 1 and Noticee No. 2 are collectively referred to as **"Raju Brothers"**] (c) Mr. Vadlamani Srinivas(hereinafter referred to as **"Noticee**

**No.5"**) and (d) Mr. G Ramakrishna (hereinafter referred to as **"Noticee No.6"**) to restrain them from accessing the securities market and further prohibit from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, (hereinafter referred to as **"Restraint"**) for a period of 14 years for violation of provisions of Section 12A (a), (b), (c), (d) and (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**); regulation 3(b), (c) and (d), regulation 4(1) and regulation 4(2)(a),(e),(f),(k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**); and regulations 3 and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**). The Noticee No. 1, 2, 5 & 6 were further directed to disgorge the wrongful gain made by them from their contraventions, as mentioned in below table, with simple interest @12% per annum from January 07, 2009 till the date of payment.

***Table No. 1***

| **Name of Noticees** | **Amount (INR)** | **Mode of transaction** |
|---|---|---|
| B Ramalinga Raju and B Rama Raju | 543.93 Crores | Sale of shares |
| | 1,258.88 Crores | Pledge of shares |
| Vadlamani Srinivas | 29.5 Crores | Sale of shares |
| G Ramakrishna | 11.5 Crores | Sale of shares |

3. SEBI vide order no. WTM/RKA/EFD-SRO/108-117/2015 dated September 10, 2015 (hereinafter referred to as **"Second SEBI order"**) passed directions *inter alia* against the relatives/ associates of Noticee No. 1 and Noticee No. 2 including B. Suryanarayana Raju (hereinafter referred to as **"Noticee No.3" / "BSR"**) and SRSR Holdings Private Limited (hereinafter referred to as **"SRSR" / "Noticee No.4"**) to disgorge quantified illegal / unlawful gains made by them and to restrain them for a period of 7 years for violation of provisions of Section 12A (d) and (e) of the SEBI Act and regulation 3(i) of the PIT Regulations. Further, i*nter alia* Mr. B. Ramalinga Raju,

Mr. B. Rama Raju, Mr. B. Suryanarayana Raju and SRSR were directed to disgorge the wrongful gain made by them, with simple interest @12% per annum from January 07, 2009 till the date of payment. The disgorgement directions were as under:

3.1. Mr. B. Ramalinga Raju and Mr. B. Rama Raju to disgorge INR 56,16,85,195 (i.e., sum of INR 26,62,50,000 and INR 29,54,35,1950) jointly and severally;

3.2. **SRSR Holdings Pvt. Ltd.** to disgorge the wrongful gain of INR 1258.88 crore **jointly and severally with Mr. B. Ramalinga Raju and Mr. B. Rama Raju**;

3.3. Mr. Chintalapati Srinivasa Raju, for himself and for Mr. Anjiraju Chintalapati (since deceased) to disgorge INR 1,44,56,15,492/- (INR 136,64,01,742 + INR 7,92,13,750), jointly and severally with Mr. B. Ramalinga Raju and Mr. B. Rama Raju;

3.4. Ms. B. Appalanarasamma (INR 8,00,43,125), Ms. B. Jhansi Rani (INR 8,50,63,350), Mr. B. Rama Raju Jr. (INR 46,00,17,218), **Mr. B. Suryanarayana Raju** (INR 89,71,70,765), Mr. B. Teja Raju (INR 49,31,43,762), Chintalapati Holdings Pvt. Ltd. (INR 82,49,37,875 ) and IL&FS Engineering and Construction Company Limited (INR 59,16,49,091) to disgorge the amounts mentioned against their respective names**, jointly and severally with Mr. B. Ramalinga Raju and Mr. B. Rama Raju**.

(emphasis supplied)

4. In other words, the Second SEBI Order directed that Ramalinga Raju and Rama Raju bear liability for all of the unlawful gains made by their relatives/associates as well.

5. Aggrieved by the First SEBI order, among others, Noticee No. 1, 2, 5 & 6 filed appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) and an order dated May 12, 2017 was passed by Hon'ble SAT (hereinafter referred to as **"First SAT Order")**. Aggrieved by the Second SEBI Order, among others, Noticee No. 3 and Noticee No. 4 filed appeals before the Hon'ble SAT and an order dated August 11, 2017 was passed by Hon'ble SAT (hereinafter referred to as **"Second SAT Order")**.

6. The First SAT order upheld the findings of First SEBI order but remanded the matter to SEBI for passing fresh orders on the issues of period of restraint and quantum of illegal gains on the grounds that (a) all the appellants cannot be uniformly restrained from accessing the securities market for 14 years without assigning any reasons; and (b) the quantum of illegal gain directed to be disgorged by each Noticees are mutually contradictory. The Second SAT Order upheld the findings of the Second SEBI order but set aside the directions in the Second SEBI Order and remanded the matter to SEBI for passing fresh orders on the issues of period of restraint and quantum of illegal gains on the grounds that (a) without considering the merits of each case, SEBI could not have imposed uniform restraint order against all the appellants; and (b) First SEBI order in case of Ramalinga Raju and Rama Ramu and Second SEBI order passed against the appellants are mutually contradictory because in First SEBI order it is held that the unlawful gains specified therein are made by Ramalinga Raju and Rama Raju and in Second SEBI order it is held that the said gains are the unlawful gains made by the appellants herein. The Orders also directed that the cost of acquisition of shares be considered while computing the unlawful gain.

7. An appeal was preferred against the Second SAT order before the Hon'ble Supreme Court and Order dated May 14, 2018 was passed by Hon'ble Supreme Court (hereinafter referred to as **"SC Order"**). Hon'ble Supreme Court vide said order exonerated all the appellants except SRSR Holdings Pvt. Ltd. and B. Suryanarayana Raju and upheld the finding of Second SAT order dated August 11, 2017 in respect of SRSR Holdings Pvt. Ltd. and B. Suryanarayana Raju.

8. Subsequently, in Civil Appeal No. 8242 of 2017 filed by G. Ramakrishna against the First SAT order, the Hon'ble Supreme Court vide its order dated 21.07.2017 (as corrected by its order dated 15.09.2017) and in Civil Appeal No. 11298 of 2017 filed by V. Srinivas against the First SAT order, Hon'ble Supreme Court vide its order dated 15.09.2017 directed that *" Be that as it may, having heard learned counsel for the parties, we direct that the undertaking shall remain in force till we adjudicate this appeal. In the meantime, as far as the proceedings on remand are concerned, such*

*proceedings before the WTM, SEBI, shall continue and order be passed but the same shall not be given effect to without leave of this Court."* In the Civil Appeals filed by Ramalinga Raju (CA. No. 9493/2017) and Rama Raju (C.A. No. 9524/2017), the Hon'ble Supreme Court vide its order dated November 09, 2017 held as follows: "*Interim order passed by this Court's order dated 21.07.2017 as corrected on 15.09.2017 shall apply to these cases on the same terms."* As regards SRSR Holdings Pvt. Ltd. and B. Suryanarayana Raju, it is noted that the second SAT Order had directed in para 23(c) thereof as follows: *"Till fresh order is passed by the WTM of SEBI on the aforesaid issues, the appellants shall not deal in securities or access the securities market in any manner whatsoever."* The appeals filed by G. Ramakrishna, V Srinivas, B Ramalinga Raju and B Rama Raju against the First SAT Order before Hon'ble Supreme Court are pending as on date.

9. Meanwhile, the Hon'ble Supreme Court vide its order dated May 14, 2018, heard and decided the appeals filed by entities against whom the Second SEBI Order was passed, on the merits of the case. The Hon'ble Supreme Court agreed with the Second SAT Order *(and inturn effectively with the conclusions of the Second SEBI Order)* as far as the liability of SRSR and Suryanarayana Raju were concerned. In the case of Suryanarayana Raju, in addition to discussing the Second SAT Order the Hon'ble Supreme Court cited the SFIO Report and the CBI Special Court judgment in connection with the Satyam scam and specifically referred, with agreement, to those portions that brought out the active involvement of Suryanarayana Raju. The Hon'ble Supreme Court accordingly concluded with respect to Suryanarayana Raju stating as follows – *"This appellant's case, therefore, stands apart from the other family members of B. Ramalinga Raju, in that the SFIO's report as well as the aforesaid judgment clearly and unmistakably point to his complicity, unlike that of the other family members, in the fraud committed from 2001 onwards."* (emphasis supplied) Similarly, with respect to SRSR, the Hon'ble Supreme Court *inter alia* quoted the following extracts of the Second SAT Order and stated its agreement with the said extracts: *"Thus, on one hand Ramalinaga Raju and Rama Raju manipulated the*

*books of Satyam and ensured that the market price of Satyam were higher and on the other hand through SRSR got the Satyam shares pledged and obtained higher loan on the basis of higher market price of Satyam shares… mode and the manner in which SRSR was incorporated, mode and the manner in which shares of Satyam were transferred by Ramalinga Raju, Rama Raju and their wives to SRSR and the mode and the manner in which the shares of Satyam were pledged and the pledged amounts were utilized, leave no manner of doubt that SRSR was a front entity established by Ramalinga Raju and Rama Raju for off loading their shareholding in Satyam…"* (emphasis supplied)

10. In compliance with the remand directions of Hon'ble SAT vide First and Second SAT orders, SEBI passed two orders – one order dealing with Noticees who were promoters/relative of promoters of SCSL and the other with respect to the Noticees who were employees of SCSL. The orders also took into consideration the decision of the Hon'ble Supreme Court dated May 14, 2018. The order no. WTM / GM / EFD / 67 / 2018-19 dated October 16, 2018 (hereinafter referred to as **"Third SEBI order"**) passed directions *inter alia* against Noticee No. 5 and Noticee No. 6, in partial modification of the First SEBI Order, to disgorge quantified illegal / unlawful gains made by them along with simple interest at the rate of 12% per annum from January 07, 2009 till the date of payment and to restrain them for a period of 7 years. Vide the said Third SEBI order, period of debarment to be undergone by each noticee and the amount of illegal gain made by each noticee to be disgorged, were quantified as under:

***Table No. 2***

| **Name of Noticee** | **Debarment period with effect from (w.e.f.) July 15, 2014** | **Amount (INR) to be disgorged with simple interest of 12% p.a from January 07, 2009 till date of payment** |
|---|---|---|
| V Srinivas | 7 years | 15,65,97,987 |
| G Ramakrishna | 7 years | 11,50,00,000 |

11. Similarly, order no. WTM / GM / EFD / 74 / 2018-19 dated November 02, 2018 (hereinafter referred to as **"Fourth SEBI order"**) was passed against the promoter noticees i.e. Ramalinga Raju, Rama Raju, Suryanarayana Raju and SRSR Holdings Private Limited wherein directions were issued in partial modification of the Second SEBI Order with respect to disgorgement of illegal / unlawful gains made by them along with simple interest at the rate of 12% per annum from January 07, 2009 till the date of payment and to restrain them for a period of 14 years. Vide said fourth SEBI order, period of debarment to be undergone by each noticee and the amount of illegal gain made by each noticee to be disgorged, were quantified as under:

***Table No. 3***

| **Name of Noticee** | **Debarment period** | **Illegal gain (INR) to be disgorged with simple interest of 12% p.a from January 07, 2009 till date of payment** |
|---|---|---|
| B Ramalinga Raju | 14 years (w.e.f. July 15, 2014) | 26,62,50,000 |
| B Rama Raju | 14 years (w.e.f. July 15, 2014) | 29,54,35,195 |
| B. Suryanarayana Raj | 14 years (w.e.f. September 10, 2015) | 81,84,35,650 |
| SRSR Holdings Pvt. Ltd | 14 years (w.e.f. September 10, 2015) | 675,39,48,813 |

12. Since the Fourth SEBI Order was passed '**in partial modification**' of the Second SEBI Order, the net result was that while Ramalinga Raju and Rama Raju continued to jointly and severally liable for the illegal gains made by Suryanarayana Raju and SRSR Holdings Pvt. Ltd. as well, the gains computed individually were reduced owing to deductions for cost of acquisition of shares/ taxes paid/ loan amount satisfied using invoked SCSL shares.

***SAT order dated February 02, 2023:***

13. With regard to the enforcement of Third SEBI order and Fourth SEBI Order the said orders also stated as follows:

    (i) Third SEBI Order (para 33): *"As directed by the Hon'ble Supreme Court in C.A. Nos. 11298/2017, 8242/2017, and 10215/2017 this Order shall come into effect from such date as the Hon'ble Supreme Court directs. Till such decision of the Hon'ble Supreme Court, the Noticees shall continue to abide by their undertakings submitted to the Hon'ble Supreme Court in the aforementioned Appeals"*

    (ii) Fourth SEBI Order (para 24): *"As directed by the Hon'ble Supreme Court in C.A. Nos. 9493/2017 and 9524/2017, this Order shall come into effect from such date as the Hon'ble Supreme Court directs. Till such decision of the Hon'ble Supreme Court, the Noticees shall continue to abide by the directions of the Hon'ble SAT (in its order dated August 11, 2017) and the Noticees' undertakings submitted to the Hon'ble Supreme Court in the aforementioned Appeals, as discussed in paragraph 5 of this Order."*

(emphasis supplied)

14. Noticee No. 5 & 6 preferred appeals before Hon'ble SAT against Third SEBI order in January 2019 and Noticee Nos. 1 to 4 preferred appeals before Hon'ble SAT against the Fourth SEBI order in January 2019. These appeals were decided by order dated February 02, 2023 passed by Hon'ble SAT (hereinafter referred to as **"the Third SAT Order"**). The Third SAT Order set aside the Third SEBI order and Fourth SEBI order, *inter alia*, on the grounds that (a) SEBI is required to consider all appropriate methods / methodologies for calculating the unlawful gains, including the methodology of taking into consideration the intrinsic value; (b) SEBI has calculated the unlawful gains against each of the appellants, once the amount is calculated, then each of them is only liable to pay the unlawful gains attributable to his own act. The unlawful gains cannot be clubbed together nor can any direction be issued to disgorge the amount

jointly and severally; (c) when the direction of disgorgement was set aside, the issue of payment of interest was automatically set aside; (d) WTM has travelled beyond the scope of the remand order. It is no longer available to the WTM upon remand to revisit the issue regarding the complicity in the fraud committed by B. Ramalinga Raju and B. Rama Raju. B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. cannot be worse off on remand; (e) No reason has been given in arriving the magic figure of 14 years of restraint; and (f) the finding of the WTM on the issue of unlawful gain on pledge of shares is without any application of mind and without following the direction of the Tribunal. Accordingly, the matter was remanded to SEBI for passing fresh orders on the issues mentioned at paragraph 120 therein, which read as under:

*"120. For the reasons stated in the preceding paragraphs, the impugned orders dated October 16, 2018 and November 2, 2018 passed by the WTM are set aside. All the appeals are allowed. The matter is remitted to the WTM to pass a fresh order within four months after giving an opportunity of hearing to all the appellants on the following issues:-*

1. *The WTM will consider the intrinsic value while calculating the unlawful gain.*
2. *The unlawful gain, if any, will be calculated individually for all the appellants by the WTM.*
3. *The WTM will consider the issue on interest.*
4. *The WTM will reconsider the issue on period of restraint afresh for all the appellants.*
5. *The WTM will reconsider the issue on pledge of shares."*

15. Hon'ble SAT vide the Third SAT Order dated February 02, 2023 stated that *"… The matter is remitted to the WTM to pass a fresh order within four months after giving an opportunity of hearing to the all the appellants…"* Subsequently Hon'ble SAT decided MA no. 703 of 2023 vide order dated June 13, 2023 *inter alia* stating that *"….we dispose of the matter directing Whole Time Member to decide the matter as per*

*directions given in paragraph 120 of our order dated February 2, 2023 on or before November 30, 2023…"*

## III. SUPPLEMENTARY SHOW CAUSE NOTICE AND HEARING:

16. Pursuant to the Third SAT order, an opportunity of hearing was granted to all 6 Noticees on March 21, 2023. Due to administrative exigency, the hearing in the matter was rescheduled to April 11, 2023. Noticee No. 4 viz., SRSR filed written submission dated April 10, 2023 wherein the Noticee No. 4, *inter alia*, insisted that *"the authority has to notify the Noticee as to the cause he has to show and address".* Authorised Representatives of Noticee No. 1 to 5 jointly appeared for hearing before me on April 11, 2023. Noticee No. 6 did not appear for hearing. In the said hearing, Authorized Representatives of Noticee No. 1 to 5 reiterated and agreed with the aforesaid submission made by Noticee No. 4. This was also recorded in the "Record of Proceedings" which was sent via email dated April 13, 2023 to the Noticees. The same was acknowledged vide email dated April 17, 2023 by the AR of Noticee No. 4 and 5 with a copy marked to the ARs of the other noticees. Accordingly, Supplementary Show Cause Notice dated June 06, 2023 (hereinafter referred to as **"SSCN"**) was issued to all 6 Noticees with respect to specific issues raised in the Third SAT order dated February 02, 2023 as mentioned in the preceding paragraph.

17. The SSCN included an annexure dealing with the proposed manner of calculation of unlawful gains. The same is reproduced in Annexure to this Order.

18. The Noticees submitted their replies to the SSCN and filed additional written submissions post conclusion of hearing in the matter. The Noticees reply and additional written submissions are summarized in subsequent paragraphs. The dates of replies and additional written submissions submitted by Noticees are mentioned in Table No. 4 below.

***Table No. 4***

| Noticee No. | Noticee Name | Reply date / written submissions date |
|---|---|---|
| 1 | B Ramalinga Raju | July 18, 2023 and October 31, 2023 |
| 2 | B. Rama Raju | July 18, 2023 and October 31, 2023 |
| 3 | B. Suryanarayana Raju | July 18, 2023 and October 31, 2023 |
| 4 | SRSR | April 10, 2023, July 18, 2023, October 31, 2023 and November 01, 2023 |
| 5 | Vadlamani Srinivas | July 18, 2023 and October 31, 2023 |
| 6 | G. Ramakrishna | June 22, 2023 |

19. Opportunities of hearing was granted to all 6 Noticees. The date of hearings granted to Noticees post issuance of SSCN and details thereof are as under:

***Table No. 5***

| Noticees | Date of hearing | Remarks |
|---|---|---|
| Noticee No. 1 to 6 | September 12, 2023 | Adjourned to 15.09.2023 on request of Noticee no. 1 to 5.<br>Noticee No. 6 neither appeared for hearing nor requested for adjournment. Hearing concluded qua Noticee No. 6. |
| Noticee No. 1 to 5 | September 15, 2023 | Adjourned to 29.09.2023 on request of Noticee No. 1 to 5. |
| Noticee No. 1 to 5 | September 29, 2023 | Adjourned to 13.10.2023 due to declaration of holiday on 29.09.2023. |
| Noticee No. 1 to 5 | October 13, 2023 | Partly heard and adjourned to 25.10.2023. |
| Noticee No. 1 to 5 | October 25, 2023 | Hearing concluded in respect of Noticee No. 1 to 5. |

20. During the course of hearings, for Noticee No. 1 & 3 the AR had submitted summarized note titled *"Note on the Intrinsic Value of the Shares and Quantum of Disgorgement"*; for Noticee no. 3, the AR had submitted summarized note titled *"Note on the Effect of the 2002 Amendment to the SEBI (Prohibition of Insider Trading) Regulations, 1992"*; for Noticee No. 4, the AR submitted summarized note titled

*"SRSR's loan and pledge of shares – No unlawful gains"*. The AR also submitted a "*General Note alongwith the Judgments thereto*". The AR made the oral argument in line with said notes.

21. The copy of record of proceeding of hearing dated April 11, 2023, October 13, 2023 and October 25, 2023 was sent to Noticees and same was acknowledged by the ARs of Noticee No. 1 to 5.

22. Prior to the hearing dated October 25, 2023, in the context of the submission of Noticee No. 4 that it had acquired SCSL shares through a block deal for a consideration of INR 2,266 crore, bank account statements were called for by SEBI. The AR of Noticees were provided copy of the bank statement of SRSR (a/c no. 007605001609) for period September 01, 2006 to September 30, 2006, bank statement of B Ramlinga Raju (a/c no. 007605001605), B Nandini Raju (a/c no. 007605001608) and B. Radha (a/c no. 007605001607) for period April 01, 2005 to March 31, 2010. Further, bank statement of Rama Raju (a/c no. 007605001606) for period April 01, 2005 to March 31, 2010 along with all the said bank statement were once again provided to all Noticees while forwarding the record of proceeding of hearing dated October 25, 2023.

23. During the course of hearing dated April 11, 2023, Authorized representative (AR) of Noticee No. 5 informed that G Ramakrishna (Noticee No. 6) had suffered a stroke on the night of April 10, 2023 and is admitted in hospital and therefore could not appear for hearing scheduled on April 11, 2023. Further, during the course of hearing on October 25, 2023, the AR of Noticee No. 5 once again stated that since G Ramakrishna (Noticee No. 6) suffered a paralytic stroke, he was not in a position to appear for hearing. During the course of said hearing, the AR of Noticee No. 5 was advised to submit an authority letter from Noticee No. 6. A letter dated November 29, 2023 from Noticee No. 6 (G. Ramakrishna) was received via email confirming that he had requested the AR for Noticee No. 5 to mention about his medical condition and inability to attend the physical hearing. He also stated that he had requested Noticee

No. 5's AR to state that his written submissions may be considered as his oral submissions also and that any oral submissions made by any of the authorized representatives beneficial to him and not contrary to his written submissions, be considered as adopted by him.

**IV. REPLY**- The replies, both written and oral are summarized below:

24. **Noticee No. 1, 2 & 3 – B Ramalinga Raju, B Rama Raju and B Suryanarayana Raju:** The replies of B. Ramalinga Raju, B. Rama Raju and B. Suryanarayana Raju are similar. Therefore, their common replies are recorded under one head and their additional replies are recorded separate head. The common replies of of Noticee Nos. 1, 2 & 3 are summarized in brief as under:

24.1. The SSCN issued by SEBI is ex facie unsustainable in law and is beyond the scope of remand directed by 3rd SAT Order.

24.2. **Intrinsic Value:**

24.2.1. SEBI has not disclosed the relevance of NSE IT Index in calculating the intrinsic value of a share. The NSE IT Index, cannot form the legal basis for calculating the unlawful gain. It was not part of the original show cause notice. The methodology adopted by SEBI for arriving at the intrinsic value is faulty and ought not to be used, as the same will not enable SEBI in arriving at an accurate value in an objective and scientific manner.

24.2.2. While calculating unlawful gains, the intrinsic value of the stocks is to be excluded. The valuation of company is driven by several factors, primarily by intangible assets the company builds over a period. The implied asset base of SCSL, while arriving at the market capitalisation, would comprise of Fixed Assets; Current Assets, including cash balances; Brand value (SCSL operated in over 65 countries); Customer loyalty (SCSL had 165 fortune 500 companies); and Human resources (SCSL had an experienced and well-trained work force of 53,000 associates/employees).

24.2.3. SEBI’s consideration of INR 58/- per share as the intrinsic value of SCSL is without any plausible explanation and logic. The shares of SCSL at a price of INR 58/- per share is only an offer made during a distress sale which would not represent SCSL's assets, brand value, customer base, and value of human resources, etc. that it had built over many years of operation.

24.2.4. The Noticee sold his shares way back during the year 2005, when the alleged fraud was very low as per SEBI's own claim/investigation and therefore applying the same intrinsic value throughout the UPSI period is illogical, meaningless, and unsustainable. It is illogical for SEBI to claim that intrinsic value has no relation to the quantum of fraud committed.

24.2.5. It is incorrect to apply 23.25% as a uniform formula to calculate the intrinsic value of each share for the entire UPSI period. The intrinsic value of the share as on the date of the sale is important and material.

24.2.6. The intrinsic value of 23.25% (based on the valuation price of INR 58/- per share as reckoned by Tech Mahindra) could not be directly applied because (a) the price of INR 58/- per share was a fire sale price and not a true indication of intrinsic value; (b) Tech Mahindra buy back offers closed on 01 July 2009, by then, SCSL shares were trading at INR 73.25/- per share; and (c) In buy-back offer made by Tech Mahindra at INR 58/- per share to the then existing shareholders, only a small minority of the existing shareholders (less than 0.11 %) agreed to participate.

24.2.7. Tech Mahindra's offer closed on 01 July 2009. The share price of SCSL as on 01 July 2009 was INR 73.25/- per share. Therefore, the three months average from that date was INR 103.43/-; six months average from then was INR 103.97/- ; nine months average from then was INR 103.06/-. Thus, the price of INR 103/- per share was the true intrinsic value of the share in 2009, as determined by the market.

24.2.8. As per SEBI's finding at para 52 of the first SEBI Order, the cumulative fictitious revenue upto Quarter 2 of 2009 i.e., for the entire alleged fraud

period is INR 4782.75 Crores. On 06 January 2009, before the news of the scam broke out, the price of SCSL's share was INR 178.95/- per share. After the so-called scam became public, the intrinsic value fell to INR 103/- as analyzed earlier. Therefore, the intrinsic value of the share comes to 57.56% (103/178.95*100) which in other words means that the quantum of wrongful gain is 42.44%.

24.2.9. In 2009, when the cumulative fictitious revenues were INR 4,782.75 Crore, the wrongful gain is 42.44% of the sale consideration. However, it is to be noted that the cumulative fictitious revenues upto 31 March 2005 were only INR 522.66 Crores which amounts to 10.9% of the total falsification. The wrongful gain should be only 4.63% (10.9% of 42.44%) of the sale consideration in May, 2005.

24.2.10. SEBI has not made out any case to how the NSE IT Index is appropriate in order to ascertain the intrinsic value of the shares of SCSL. Assuming whilst denying that it is relevant, the Noticee states that the correlation between the NSE IT Index and SCSL share price ought to have been examined considering the weight of SCSL share in the NSE IT Index.

24.2.11. The methodology suggested by SAT is more appropriate i.e. the value of the share one day before the alleged manipulation of the books of account could be taken into consideration i.e. December 29, 2000 - INR 323.35 per share.

24.3. **Joint and several Liability**

24.3.1. Liability for disgorgement cannot be "joint and several". This issue is no longer res integra. The findings of Hon’ble in third SAT order operate as res judicata in the present remand proceedings.

24.3.2. Hon'ble SAT vide third SAT order laid down that the unlawful gains, if any, have to be disgorged by the Noticee individually to the extent of the unlawful gain computed against him. The unlawful gains against Noticee No. 1, 2 & 3 have been calculated on an individual basis in the SSCN, the

Noticee No. 1, 2 & 3 cannot be made jointly and severally liable along with other parties to the proceedings.

24.4. **Rate of Interest**

24.4.1. The interest can only be calculated after SEBI computes the amount of disgorgement. Since the amount of disgorgement is yet to be computed, the question of levying interest at the rate of 12% per annum from January 7, 2009 till the date of payment does not arise at all.

24.4.2. SEBI has charged an interest rate of 4% in the matter of Kirloskar Brothers case, 6% in the matter of NDTV and 6% in the matter of Gagan Rastogi.

24.4.3. Section 4(2) of the Interest Act allows interest *'at such rate as the court may consider reasonable'*. Section 3(1) of the Interest Act postulates the concept of *'current rate of interest'* and as per Section 2(b) of the same Act "'*current rate of interest' means the highest of the maximum rates at which interest may be paid on different classes of deposits"*. State Bank of India (as on June 15, 2009) was paying an interest of 5% on one year and above deposits (of INR 1 Crore and above).

24.4.4. The Show Cause Notice dated 09 March 2009 and First Supplementary Show Cause Notice dated June 02, 2009, did not contain even a whisper about the levy of any interest.

24.4.5. Interest becomes payable only after computation of the disgorgement amount is made. The date on which the disgorgement amount is finally quantified, would represent the date of the cause of action, for payment of the disgorgement amount. It is only from this date that interest becomes leviable, and not from any prior date. There is no legal rationale for seeking to recover interest from the date of the email dated January 07, 2009

24.4.6. The interest rate of 12% per annum with effect from January 07, 2009 is arbitrary, excessive, and exorbitant. Further, the WTM has imposed lower interest rates in other proceedings in the past. There must be parity in the

rates of interest levied. There is no basis for the Ld. WTM to levy such a high rate of interest in the present case, that too without any reasons.

24.4.7. The rate of interest of 12% per annum ought to be reduced to 2% per annum considering the huge amounts involved and long passage of time of over 14 years since January 2009 and by applying the principle of parity

24.5. **Period of Restraint:**

24.5.1. The period of restraint already undergone (over 14 years) by Noticee No. 1 & 2 since the beginning of investigations shall be taken into consideration and no further restraint be imposed on the Noticee No. 1 & 2.

24.5.2. The 7-year debarment imposed on Noticee No. 3 by Second SEBI order dated September 10, 2015 has already been served by the Noticee No. 3. Hence, the restraint order be lifted immediately.

25. Additional submissions of B Ramalinga Raju and B Rama Raju are summarized as under:

25.1. Considering the calculation of intrinsic value as mentioned at aforesaid paras, the amount of wrongful gain that needs to be disgorged from Noticee No. 1 and Noticee No. 2 is INR 1.23 Crores each (i.e., 4.63% of INR 26,62,50,000/-).

25.2. Sale of shares were for philanthropic purpose and Noticee No. 1 & 2 had not unjustly enriched themselves. Sale proceed were utilized towards medical emergencies through the 108-ambulance scheme in the erstwhile state of Andhra Pradesh and for Byrraju Foundation.Reliance placed on Hon’ble Supreme Court of India in civil appeal no. 563 of 2020 in SEBI V/s Abhijit Ranjan and Hon'ble SAT Appeal No. 536 of 2021 in Rajeev Vasant Sheth & others V/s SEBI.

25.3. The sale of shares by Noticee 1 & 2 were not motivated or induced by UPSI. The sale of SCSL shares by the Noticee 1 & 2 was bona-fide and for philanthropic purposes and hence, the ratio laid down by the Hon'ble Supreme Court of India and Hon'ble SAT would be applicable to the facts and circumstances of the case and accordingly the said receipt from sale of shares should not be treated as unlawful gain.

25.4. **Clerical error in calculation of disgorgement amount for Rama Raju**

25.4.1. There is a mathematical / calculation error in the consideration for 6,00,000 shares sold by **Rama Raju**. 6,00,000 shares were sold by Rama Raju at INR 444.66/- per share. Therefore, the amount comes to INR 26,67,50,000/-. However, SEBI in its SSCN has considered the total sale amount as INR 29,54,35,195/-. This error occurred on account of addition of quantum of shares sold by Mr. Rama Raju Jr., to the aforesaid amount of INR 26,67,50,000/-.

25.4.2. SEBI erroneously calculated the alleged wrongful gain made by the Noticee as INR 29,54,35,195/- even though the Noticee sold only 6,00,000 shares of SCSL and received a sale consideration of INR 26,67,50,000/-. The number of shares sold, and the sale consideration received by the Rama Raju was same as Mr. B. Ramalinga Raju.

25.5. Ramalinga Raju submitted that SEBI has calculated the intrinsic value of each share at 23.25%, by adopting the formula 58 / 249.5. In this connection, the following submissions are set out

25.5.1. **Numerator of 58** – The offer price of INR 58 per share is not a proper or valid factor to ascertain the intrinsic value. The said offer price merely represents an offer made during a distress sale. The offer was a commercial decision taken by Tech Mahindra to earn profit, and nothing more. The Noticee No. 1 has adopted INR 103 as the intrinsic value of each share on the basis of 3 month average, 6 month average and 9 month average from July 01, 2009. The said averages would represent the stabilisation and normalization of the share price over a period of time, post the negative news which caused the volatility in share price.

25.5.2. **Denominator of 249.50** – SEBI's approach insists on correlating the share price of Satyam with the NSE IT Index is an incorrect approach. The market index is a metric that measures market fluctuations based on market trends. Market trends are linked to factors such as speculation and expectation of investors, government policies, supply and demand, etc.

These factors determine the market value of the share price, and not the intrinsic value of a particular share. In fact, the intrinsic price of a share is independent of, and unrelated to, the fluctuations in the market. The intrinsic value of the share is premised on the fundamentals of the Company. Therefore, the IT Index (which measures market trends) cannot be correlated to the intrinsic value of the share. The illustration of the Adani Group stocks post the Hindenburg Report may be viewed as an analogy. If the intrinsic value is linked to market forces, then there would be no difference between the market price of a share and its intrinsic value.

25.5.3. The IT Index should not be considered at all while considering the intrinsic value of the share and cannot be made the basis for calculating the unlawful gain

25.6. Rama Raju additionally submitted as under:

25.6.1. The requirement to disgorge ill-gotten gains is based on the principle that the person guilty ought not to be permitted to unjustly enrich himself. In the facts and circumstances, Noticee No. 2 have not unjustly enriched himself. The SCSL shares in May 2006 were sold for philanthropic purpose. Therefore, there is no case for disqorqement of the said proceeds from Noticee No. 2.

25.6.2. PFUTP Regulations, 2003 which had also been invoked, have come into effect with effect from July 17, 2003. There is no provision in these PFUTP Regulations, 2003 to retrospectively apply these regulations for any alleged violation committed prior the date of promulgation of PFUTP Regulations, 2003 i.e. before July 17, 2003 nor mention of any 'saving' in the SEBI Order dated July 14, 2014. In support, reliance is placed on the judgment of Supreme Court of India in the matter of Assistant Excise Commissioner, Kottayam Vs Esthappan Cherian LL 2021 SC 419 wherein it stated that a rule or statute cannot be read as retrospective unless it shows a clear or manifest purpose to do so. Therefore, the period of restraint deserves to be reduced.

25.6.3. To arrive at offer price of Rs 58/-, the requirements for the floor price under the DIP Guidelines, was dispensed with by SEBI, hence INR 58 does not reflect intrinsic value.

25.6.4. The financials of Satyam were inflated gradually over a period of 7 years from the year 2001 to 2008. Thus, the intrinsic value of shares would also vary over those 7 years, i.e. higher intrinsic value in year 2001, which went on reducing by the year 2008 in proportion to the said falsification. Considering uniform intrinsic value for all Noticees irrespective of their date/year of sale of shares would be a faulty exercise.

26. Additional submission of B Suryanarayana Raju is summarized as under:

26.1. Considering the calculation of intrinsic value as mentioned at paras above, in the earlier years when inflation of revenues was lower, the intrinsic value would be higher, hence, there was no wrongful gain made by the Noticee No. 3.

26.2. Further, considering the methodology suggested by SAT i.e. taking the intrinsic value as INR 323.35/- as mentioned at para above, and Noticee No. 3 had sold all his shares in the years 2002 and 2003 when price of SCSL shares was between INR 260/- to 320/-, the total wrongful gain made by the Noticee No. 3 comes to approximately INR 1.39 Crores.

26.3. **Trades Executed prior to 20-02-2002 PIT Regulations Amendment:**

26.3.1. Prior to 20 February 2002, the test for being found guilty of insider trading under Regulation 3(i) of the PIT Regulations, was that of "dealing in securities on the basis of UPSI" as opposed to 'when in possession of' UPSI. There is no allegation in the SCN that the Noticee No. 3 dealt in securities on the basis of price sensitive information.

26.3.2. A similar argument was advanced on behalf of Ms. B.Jhansi Rani in the appeal preferred by her which was upheld by the second SAT order.

26.3.3. Out of the 27,89,000 shares, the Noticee had sold 2,95,000 shares for an aggregate value of INR 12,17,66,530/- prior to February 20, 2002. Therefore, sum of INR 12,17,66,530/- is liable to be deducted from any

computation of ill-gotten gains and the consequential amount to be disgorged.

27. **Noticee No. 4 – SRSR Holdings Private Limited:** The replies of Noticee No. 4 is summarized in brief as under

27.1. **Pledge of shares:**

27.1.1. On September 16, 2006, the Noticee No. 4 acquired 2,78,64,000 shares of SCSL prior to issue of bonus shares through a block deal in the stock exchange paying approximately INR 815/- per share for a total consideration of INR 2,266 Crores.

27.1.2. Mr. B Ramalinga Raju (Noticee No. 1), Mr B Rama Raju (Noticee No. 2), Mrs. B Nandini Raju and Mrs. B Radha Raju infused share capital into SRSR which was used by SRSR towards purchasing the 2,78,64,000 shares (Pre bonus) of SCSL held by these four people.

27.1.3. SRSR pledged 6,28,83,317 shares with financial institutions. 5,49,81,939 shares were invoked by the lenders.

27.1.4. Shares with the Noticee No. 4 were pledged on behalf of 10 entities and an amount of INR 1,219.25 Crores was availed as loan by the said 10 entities. Out of this amount, INR 889.26 Crores were against pledging the shares of SCSL and a sum of INR 330 crores were availed by pledging shares of Maytas Infra Limited held by SCSL.

27.1.5. Out of the total availed loan amount of INR 1,219.26 Crores, an amount of INR 1,215.83 Crores was already repaid partly by invoking the pledge. Hence, the outstanding loan is only INR 3.43 Crores. There was nothing wrong / unusual about repayment of loan amount on account of invocation of pledge and by other modes.

27.1.6. The Noticee No. 4 reiterates that it did not obtain any unlawful gains as the Hon'ble SAT has categorically determined that loan amounts accompanied by liability to repay cannot be considered unlawful gains under any securities law. Furthermore, since most of the loan amount has been

repaid and the cost of acquisition being more than the loans obtained, there is no basis for issuing a disgorgement order against Noticee No. 4.

27.1.7. Noticee No. 4 has transferred the entire loan amount of INR 1219.25 crores (received by pledging the shares) to SCSL to fund its operations. In this regard, Reliance placed on Hon’ble Supreme Court of India in civil appeal no. 563 of 2020 in SEBI V/s Abhijit Ranjan and Hon'ble SAT Appeal No. 536 of 2021 in Rajeev Vasant Sheth & others V /s SEBI.

27.1.8. Noticee No. 4 had to pledge the shares and infuse the proceeds into SCSL in order to facilitate its functioning. In case, the Noticee No. 4 had any intention of benefiting from the proceeds of pledge of shares, it would have sold the shares instead of pledging them. Alternatively, it would have not deposited the pledge proceeds with SCSL. In view of the above, the ratio laid down by the Hon'ble Supreme Court of India and Hon’ble SAT (supra) would be applicable to the facts and circumstances of the case and accordingly and also after accounting for the said amount of INR 1230.40 Crores infused into SCSL, there is no unlawful gain made by the Noticee No. 4.

27.1.9. The act of 'pledging' doesn't fall within the ambit of 'dealing in securities' and hence the act of 'pledging' does not attract Regulation 3 of PIT Regulations.

27.1.10. SEBI has erred in holding that sale or invocation of pledge by NBFC's and the amount derived from such invocation is an 'unlawful gain' in the hands of Noticee No. 4. Moreover, there is no whisper of any such allegation in the SCN issued in 2009. The Noticee submits that the new allegation in the SSCN transcend beyond the allegations in the main SCN. The scope of SSCN cannot go beyond the remand directions contained in the Order dated February 2, 2023. In the absence of any such allegation in the main SCN, the SSCN is in gross violation of principles of natural justice. Therefore, the allegation of 'wrongful gain' by sale of shares is outside the scope of the main SCN issued by SEBI and

the said allegation in the SSCN is not tenable. SEBI cannot improve or alter its case in the second remand proceedings. In this regard, reliance is placed on decision of Hon'ble Supreme Court in the matter of *Reckitt & Colman of India Limited vs Collector Of Central Excise dated October 29, 1996* and *Gorkha Security Serl'ices vs Govt. of NCT Of Delhi & Ors dated August 04, 2014*. Thus, Noticee No. 4 cannot be now asked to disgorge any amount on the new ground of sale of shares by invocation of pledge.

27.2. **Intrinsic Value:**

27.2.1. According to SEBI, the negative news started to percolate from December 17, 2008 itself, which influenced the share price movement as considered in the calculation of intrinsic value (refer to paragraphs 5. 2, 5. 3, 5. 6.1 of the Annexure 1 of the SSCN). Thus, the lenders sold the shares at significantly lower prices after the negative news had become known. Therefore, there can be no unlawful gain when someone sells shares after the negative news has been disseminated in the market.

27.2.2. SEBI's own position acknowledges that the negative news began to circulate from 17 December 2008. Since all the lenders sold the shares well after this date, it is submitted that there can be no unlawful gain, and therefore no disgorgement is warranted.

27.3. **Benefit / deduction of cost acquisition of shares:**

27.3.1. The question of *"why should SRSR be given the benefit / deduction of cost acquisition of shares"* is not the subject matter of the present SSCN dated 06.06.2023 and it has never been subject matter of any of the previous SCNs issued by SEBI. This query also exceeds the scope of the Hon'ble SAT's remand Order. In remand proceedings, SEBI cannot improve on its case. Strictly without prejudice to the said submission, SRSR must be given benefit of the cost of acquisition of the shares for calculating the disgorgement amount.

27.3.2. The finding of the Hon'ble SAT vide Order dated August 11, 2017 that SRSR was a "front" entity established by Noticee Nos. 1 and 2 for offloading their shares of SCSL, was only in the context of deciding whether SRSR was an "insider" within the meaning of Regulation 2(e) of the SEBI (PIT) Regulations. The Hon'ble Supreme Court affirmed was merely that SRSR was an "insider". Nothing more can be read into this aspect, let alone using such a finding for computing unlawful gains.

27.3.3. It is a settled position of law, and as affirmed by the SAT Order dated February 02, 2023, that a Noticee cannot be worse-off upon remand.

27.3.4. By way of the above query, it would appear that SEBI is effectively seeking to lift the corporate veil of SRSR. It is impermissible. The corporate veil may be pierced only in rare and exceptional cases. Inter-alia, shareholding and control of a company is not enough to justify piercing the corporate veil. SRSR, a company, is a distinct and separate legal entity from its shareholders / directors / promoters. No case has been made out for lifting the veil. The veil cannot be pierced by simply raising the present query. There are no grounds made out in the present SSCN or in any of the previous SCNs. There are no valid grounds for piercing the corporate veil.

27.3.5. Merely because the shares were acquired from Noticee Nos. 1 and 2 and their wives cannot mean that SRSR should be deprived of the benefit / deduction of acquisition costs. By doing so, SEBI would completely be disregarding the corporate veil. This is impermissible in law.

27.4. It is agreed upon that the loan raised by the 10 entities against the pledge of Satyam shares is not unlawful gain in the hands of SRSR or Rajus. It was held by the Hon’ble SAT that the loan amount could not considered as unlawful gain. If the entire amount is not considered as unlawful gain, a part of it cannot be considered as unlawful gain.

27.5. The SEBI order dated 02-11-2018 had directed the SRSR to disgorge INR 675,39,48,813/- which was set aside by the Hon'ble SAT vide its order dated

02-02-20213. Hence the issue with regard to quantum of disgorgement is resjudicated and thus issue estopped.

27.6. Raising a loan and the invocation of pledge are two distinct stages in a commercial transaction. To now call invocation of pledge as unlawful gain in the hands of pledger is a significant shift in the stand of SEBI with regard to unlawful gains, which is against natural justice.

27.7. **Joint and several liability, Rate of interest and period of restraint:**

27.7.1. The submission of Noticee No. 4 with regard to Joint and several liability and Rate of interest is same as submission of Noticee No. 1 & 2 and with regard to period of restraint is same as submission of Noticee No. 3, hence the same are not repeated here for the sake of brevity.

28. **Noticee No. 5 – V. Srinivas:** The replies of Noticee No. 5 is summarized in brief as under:

28.1. The issuance of SSCN is beyond the scope of order of remand of the Hon'ble SAT Order. The SSCN is unsustainable in law.

28.2. The Noticee No. 6 adopts the submissions of B Ramalnga Raju, B Suryanaryana Raju and others on the issues of (a) Benefit of amendment to PIT Regulations of the year 2002; (b) Interest on the amount to be disgorged to the extent applicable to his facts and circumstances.

28.3. **Intrinsic Value:**

28.3.1. Noticee No. 5 placed reliance on para 78 & 79 of Third SAT order.

28.3.2. The employee stock options at a strike price are in the nature of perquisite provided to an employee and the same shall be treated as part of the salary and cannot be subjected to the rigors of the Securities Laws.

28.3.3. Noticee has been allotted Stock options worth 3,60,000 shares on post bonus and post-split basis (36,000 stocks on presplit and pre-bonus basis) before the commencement of the alleged fraud period i.e., before 31-3-2001 and the acceptance amount was paid on 24-12-1999 and 15-11-2000. Therefore, these 3,60,000 shares are historic in nature and are

allotted to the Noticee well before the alleged UPSI period and hence taking the original cost of acquisition without taking into consideration the market value of the shares would lead to a faulty calculation of unlawful gain. Thus, market value of shares as on the date of acceptance of the warrants should be taken into account.

28.3.4. As per the calculation submitted by the Noticee, the intrinsic value with regard to 3,60,000 shares comes to INR 13,98,40,000/- and an amount of INR 2,00,08,695 was to deducted towards cost of acquisition while calculating the disgorgement amount by SEBI at para 10.4 of the SSCN. Noticee No. 5 submitted that an additional amount of INR 11,98,31,305/- should be deducted from the disgorgement amount.

28.4. **Trades Executed prior to 20-02-2002 PIT Regulations Amendment:**

28.4.1. To charge an Insider of committing violation of Insider Trading, it has to be established that (a) prior to 20-02-2002 the insider has traded '*on the basis of'* UPSI; and (b) after 20-02-2002 the insider has traded *'while in possession of'* UPSI.

28.4.2. The case of SEBI is that the Noticee No. 5 has sold the shares of SCSL *'while in possession of UPSI'.* SEBI has failed to establish that Noticee No. 5's trades (shares sold) that happened prior to 20-2-2002 was 'on the basis of' UPSI.

28.4.3. As para 129 of First SEBI order the total shares sold by the Noticee in the year 2000-01 was 29,000 shares (INR 58.43 Lakhs) and 3,61,500 shares (INR 613.62 Lakhs) in the year 2001-02. Thus, 3,90,500 shares amounting to INR 672.05 were sold prior to 20-2-2002 i.e. the date with effect from which the amendment applies and the same should be excluded while computing the disgorgement amount as SEBI had failed to establish that the Noticee sold these shares *'on the basis of'* UPSI.

28.5. **Clerical Error in the Calculation of Disgorgement Amount:**

28.5.1. In the last row of the table in para 129 of the First SEBI Order, it is shown that 5,142 shares were sold on 11-12-2008 at a price of INR 442.65 (being

the closing price of the day). The closing price on 11-12-2008 is only INR 224.45. The closing price as on 11-12-2007 was taken by mistake instead of taking the closing price as on 11-12-2008. Therefore, an amount of INR 11,21,984/- (442.65 – 224.45 = 218.20 * 5142) was taken excess and hence, the same is required to be reduced from the total amount to be disgorged.

28.6. **Calculation of the Amount to be Disgorged:**

28.6.1. The amount to be disgorged from Noticee No. 5 may be calculated as under

***Table No. 6***

| | | |
|---|---|---|
| a. | Amount as shown at para 10.4 of SSCN. | INR 15,65,97,987 |
| b. | Less: Clerical error | INR 11,21,984 |
| c. | Less: Shares acquired prior to UPSI period | INR 11,98,31,305 |
| d. | Amount to be disgorged (a-b-c). | INR 3,56,44,698 |

28.6.2. Therefore, the amount to be disgorged comes to INR 3,56,44,698/-.

28.7. **<u>Submissions on Interest to be Paid on Disgorgement Amount</u>**

28.7.1. None of Show Cause Notices issued by SEBI mention anything about the levying of interest and quantum of interest and period for which interest needs to be paid and therefore, SEBI has failed to put notice on this issue of interest which is in violation of principles of natural justice. In this regard, reliance is placed on decision of Hon'ble Supreme Court in the matter of *Reckitt & Colman of India Limited vs Collector Of Central Excise dated October 29, 1996* and *Gorkha Security Serl'ices vs Govt. of NCT Of Delhi & Ors dated August 04, 2014*. Thus, the issue of interest was never raised by SEBI in the SCN and hence, a case for interest had never been canvassed by SEBI which Noticee No. 5 had never been required to meet. The Noticee No. 5 now cannot be asked to pay any interest on the disgorgement amount.

28.7.2. Without prejudice to the above, it is further submitted that the interest rate of 12% is arbitrary, excessive, and exorbitant. SEBI has charged an interest rate of 4% in the matter of Kirloskar Brothers case, 6% in the matter of NDTV and 6% in the matter of Gagan Rastogi. Therefore, the principle of parity should be applied to the case of the Noticee No. 5 and a lower rate of interest should be considered and request a simple interest of 2% per annum may be levied.

28.8. **Period of Restraint**

28.8.1. Noticee No. 5 has already completed the seven years of restraint imposed by SEBI. The seven year period ended on 14/7/2021. Therefore, the restraint imposed on Noticee No. 5 may be lifted without any delay.

29. **Noticee No. 6 – G. Ramakrishna:** The replies of Noticee No. 6 is summarized in brief as under:

29.1. The issue of SSCN is beyond the scope of remand made by Third SAT order and is untenable in law.

29.2. The Noticee No. 6 had suffered a Brain Stroke on 10-04-2023 and had suffered paralytic stroke on the left side limbs and was hospitalized on 11-04-2023 and was therefore not able to attend the Personal Hearing granted on 11-04-2023 either in person or through authorized representative

29.3. **Submissions on Intrinsic Value Calculations:**

29.3.1. SSCN is not clear on what basis Noticee No. 6 prima facie is not eligible for the additional benefit of deduction of intrinsic value from the unlawful gains made by the Noticee no. 6. The benefit of intrinsic value should also be given to the Noticee No. 6 while computing the unlawful gains since the order of the Hon'ble SAT mandated it while remanding the matter to the WTM.

29.3.2. The use of IT Index for computation of historical share prices of Satyam shares is erroneous, arbitrary and without any logical basis.

29.3.3. The usage of cumulative inflated sales data to be considered as the proportion in which the share price increased can be an ideal manner of

computing the fair value of shares at different points in time. The price of share fell from INR 178.95 to INR 41.05 on 07-01-2009, therefore, the cumulative inflated sales from April 2003 to September 2008 resulted in the reduction in the price by 77.06%. Since there is no inflation in sales found prior to April 2003, there is no inflation in the sales price prior to that period.

29.3.4. With the above mentioned criteria, the fair value computation and the amount of illegal gain for the shares is ( % inflation in share price = 77.06% / Total fictitious sales during April 2003 to September 2008, multiplied with Cumulative Fictitious Sales as per the last quarterly published results), for each date of sale of shares.

29.3.5. For example for 3,000 shares sold on 12-12-2003 the % inflation in Sale Price is equal to 72.43 / 478,275 * 77.06 %. Applying this formula / calculation for sale of shares from December 2003 to November 2007, the illegal gains is INR 1,05,26,264/- (calculation in tabular form is enclosed).

29.4. **Trades Executed prior to 20-02-2002 PIT Regulations Amendment:**

29.4.1. The shares sold by Noticee No. 6 before February 20, 2002 is 1,20,000 shares with sale value of INR 2,78,21,500/-.

29.4.2. To charge an Insider of Insider Trading violations, it has to be established that (a) prior to 20-02-2002 the insider has traded '*on the basis of*' UPSI; and (b) after 20-02-2002 the insider has traded *'while in possession of'* UPSI.

29.4.3. The case of SEBI is that the Noticee No. 6 has sold the shares of SCSL *'while in possession of UPSI'.* SEBI has failed to establish that all trades of Noticee No. 6's (shares sold) that happened prior to 20-2-2002 (120000 shares having a value of Rs 278.21 Lakhs) was 'on the basis of' UPSI.

29.4.4. No finding is recorded in the First SEBI order that the Noticee no. 6 had sold shares of SCSL on the basis of UPSI (in the case of all trades prior to 20-2-2002 Amendment), therefore, the amount of Rs 278.21 lakhs realised

by the Noticee no 6 (by selling 1,20,000 shares) should be excluded while computing the disgorgement amount.

29.4.5. Noticee No. 6 placed reliance on SRSR Holdings Pvt Ltd. & Others Vs SEBI (Appeal No 462/2015) (Date of Decision: 11-8-2017) that *"As there is no finding recorded in the impugned order that Jhansi Rani sold shares of Satyam on the basis of UPSI, impugned order passed against Jhansi Rani cannot be sustained".*

29.5. **Interest on Disgorgement Amount**

29.5.1. The interest rate of 12% is arbitrary, excessive, and exorbitant in view of the fact that the interest rates have come down drastically over the years.

29.5.2. Section 4(2) of the Interest Act, 1978 allow interest *'at such rate as the court may consider reasonable'.* Section 3(1) of the Interest Act, 1978 postulates the concept of *'current rate of interest'* and as per Section 2(b) of the same Act ""*current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits".*

29.5.3. The amount involved is large and in view of long passage of time of over 14 years, it is requested that a simple interest of 2% per annum may be levied.

29.6. **Period of Restraint**

29.6.1. Noticee No. 6 has already completed the seven years of restraint imposed by SEBI. The seven year period ended on 14/7/2021. Therefore, the restraint imposed on Noticee No. 6 may be lifted without any delay.

## V. CONSIDERATION OF ISSUES AND FINDINGS:

30. As a preliminary objection, the Noticees have submitted that issuance of SSCN is beyond the scope of remand by Third SAT order and is untenable in law and that it is not open to SEBI to issue a fresh or supplementary show cause notice directing the Noticees to re-justify the legal positions settled by the Hon'ble SAT in its Third SAT order. In this regard, I note that SRSR vide submission dated April 10, 2023 *inter alia*,

submitted that *"…..In light of the above we request you to kindly let us know of the method that SEBI proposes to employ for the computation of the intrinsic value of the shares, as per the principles laid down by the Hon'ble Securities Appellate Tribunal to enable us to give our submissions on the same. It is settled law that the authority has to notify the Noticee as to the cause he has to show and address…".* In the hearing dated April 11, 2023 all the Noticees have heard jointly and said submission of SRSR was discussed and in the context of the said submission, the AR of all Noticees who appeared for hearing conveyed their view that SEBI must formally notify the Noticees as to the cause they have to show and address. This *inter alia* would require SEBI to specify the quantum and manner of computation of unlawful gains proposed to be done vis-a-vis Noticee. The record of proceedings of hearing dated April 10, 2023 was sent to the AR of the Noticees and was acknowledged by them. Therefore, SSCN dated June 06, 2023 was necessitated due to the submissions made by Noticee Nos. 1 to 5, and in compliance with principles of natural justice they were given opportunities to show cause on the issues mentioned in Third SAT order. There is no deviation from or fresh adjudication of the points decided in the Third SAT Order. In view of the same, I do not find any merit in the submission of the Noticees that issuance of SSCN is beyond the scope of remand.

31. The Hon'ble SAT vide the First SAT order has given its verdict on facts confirming the liability of the Noticee No. 1, Noticee No. 2, Noticee No. 5 and Noticee No. 6 herein for "fraud" in SCSL, as concluded by SEBI in the First SEBI order and proceeded to hold that they have traded during the relevant period while in possession of the Unpublished Price Sensitive Information (UPSI). Further, Hon'ble SAT vide its Second SAT order and Hon'ble Supreme Court vide order dated May 14, 2018 has given its verdict on facts confirming the liability of the Noticee No. 3 and Noticee No. 4 herein for "insider trading" in SCSL, as concluded by SEBI in the Second SEBI order and proceeded to hold that they had traded during the relevant period while in possession of the UPSI. Accordingly, the Hon'ble SAT has upheld First SEBI order and Second SEBI order on merits concurring with SEBI on its findings with respect to the involvement of respective Noticees in the fraud/ insider trading thereby violating

provisions of the SEBI Act, PFUTP Regulations and PIT Regulations. Hence the findings on merits cannot be reopened while the matter is being taken up for consideration on a direction of limited remand. The relevant part of the Third SAT Order reads as:

*"120. For the reasons stated in the preceding paragraphs, the impugned orders dated October 16, 2018 and November 2, 2018 passed by the WTM are set aside. All the appeals are allowed. The matter is remitted to the WTM to pass a fresh order within four months after giving an opportunity of hearing to all the appellants on the following issues:-*

1. *The WTM will consider the intrinsic value while calculating the unlawful gain.*
2. *The unlawful gain, if any, will be calculated individually for all the appellants by the WTM.*
3. *The WTM will consider the issue on interest.*
4. *The WTM will reconsider the issue on period of restraint afresh for all the appellants.*
5. *The WTM will reconsider the issue on pledge of shares."*

32. Thus, in accordance with the aforestated specific directions of the Hon'ble SAT, this order would delve into the merits of the case only to the limited extent of determination of aforesaid issues with respect to each Noticee. Staying within the scope of the limited remand, I now proceed to consider the matter afresh on aforesaid issues.

## A. ***Issue of Intrinsic Value/ underlying value / value of Satyam shares had the fraud been known:***

33. The Noticees have contended that intrinsic value of Satyam shares must be deducted before illegal gain is arrived at. The Noticees have also relied on the specific direction of the Hon'ble SAT in para 120 of the Third SAT Order, to argue that the intrinsic value must be considered while calculating the unlawful gain made. Relevant extracts of the Hon'ble SAT's observations leading up to the specific direction of the Hon'ble SAT are reproduced below for reference:

*"68. .... On the issue of disgorgement, we find that the requirement to disgorge ill-gotten gains is based on the principle that the person guilty ought not to be permitted to unjustly enrich himself by taking the offending action. In the case of a gain made by sale of securities, such gain would ordinarily be the amount realised by the sale of shares less the acquisition cost and statutory taxes to the person concerned. The computation based on "net profits" method adopted in the impugned orders is usually applied by SEBI in many cases while computing the disgorged amount but is not the only method adopted by SEBI.*

*71. In a given case, the "net profit" method may be appropriate; in a another case, "the intrinsic value" may be appropriate and yet in another case, "market absorption" method could be most suitable. ...*

*73. In the instant case, the WTM has adopted the "net profit" method, namely, the difference between the cost of acquisition of shares and the amount realised by sale less statutory taxes. …*

*79. But where shares purchased were historic and includes bonus shares and these shares have grown in value over the years, in such cases, the calculation of unlawful gain by taking the value of the original cost of acquisition would not be the appropriate method. …. The underlying value of the shares which would be akin to the cost of acquisition in the instant case has to be reduced from the sale value while computing the unlawful gain. Thus, in cases where the acquisition of the shares which had no co-relation to the alleged wrong and the acquisition of shares was not based on UPSI, then, in our opinion, the calculation of unlawful gain has to take into consideration the* ***underlying value / intrinsic value of the stock****.*

*82. We are of the opinion that when the Tribunal directed the WTM to consider the cost of acquisition, it required the WTM to consider all appropriate methods / methodologies for calculating the unlawful gains, including the methodology of taking into consideration the intrinsic value.*

*84. In our opinion, the WTM fell in error in taking "Nil" as the value for the acquisition of shares. Every share has a value and, in the instant case, it cannot*

*be said that the value of the shares was "Nil". Thus, the computation of unlawful gain made by the WTM was faulty and cannot be sustained.*

*85. … Considering the peculiar facts and circumstances of the case, the respondent is required to take into consideration the* ***intrinsic value of the shares*** *while computing the unlawful gain….."*

(emphasis supplied)

34. From the above observations in the Third SAT Order, it is clear that the Hon'ble SAT has advised that in case of shares that were historically acquired much prior to the fraud having commenced or price sensitive information having been available, the intrinsic value of shares must be deducted from the sale value in order to arrive at the unlawful gain.

35. The previous SEBI order i.e. the Third and Fourth SEBI orders were passed pursuant to the remand by the First and Second SAT Orders which had specifically directed deduction of cost of acquisition and taxes paid before illegal gains are computed. During the course of the proceedings the Noticees had then also contended that intrinsic value must be deducted from the gain to arrive at the unlawful gain. The then WTM, SEBI had (in the Third SEBI Order) found that in accordance with the specific mandate of the directions of the First and Second SAT orders, SEBI was only required to consider cost of acquisition and taxes, and that the promoter noticees did not provide details of the costs of acquisition unlike the details provided by the employee noticees (Srinivas, Ramakrishna and Gupta). Further, the following was observed with respect to the concept of 'intrinsic value' in the order:

*"……The concept of intrinsic value of share is not circumscribed by a sharp definition in the world of finance and hence the term is employed flexibly depending upon the objectives on hand. Book value is considered as a reasonably close enough proxy for intrinsic value, although book value does not take into account the future growth potential. The market traded price of a share may not mirror the intrinsic value as the market price loads in investor*

*expectations regarding future prospects. Given the nebulousness of the concept of intrinsic value, there is no one objective or uniform methodology of arriving at it. Leaving aside this practical difficulty of arriving at an objective number, the more important question that needs to be addressed is whether persons who are themselves instrumental in perpetrating a fraud, should be given benefit of the intrinsic value while computing the disgorgement amount. Any act done with a clear motive of fraud places the self-interest of reaping unlawful gains uppermost and, in the process, there is scant regard for other common investors or market integrity. Given this backdrop associated with a fraud, it is open to question whether allowing a carve out for lawful gain will sit well with a transaction mired in an ulterior and fraudulent motive. This would certainly, tantamount to conferring underserving benefits to such person and may actually act as a moral hazard rather than as a strong deterrent. Hence, I am not inclined to accept arguments advanced to take the intrinsic value into account to arrive at the amount of disgorgement…."*

36. If one were to go by a standard Corporate Finance textbook definition of "intrinsic value" of a company, one empathises with the arguments put forth by the then WTM around its nebulousness. A Corporate Finance valuation exercise for determination of the "intrinsic value" of any enterprise is not a precise science. Depending on the valuation methodology adopted (for instance, the ICAI refers to three broad approaches – market approach, income approach, or cost approach for valuation, with several possible nuances within each approach) and depending on the many inevitable assumptions that would have to be made by any analyst, one can arrive at significantly divergent valuation outcomes.

37. However, what is the relevance of such textbook "intrinsic value" calculations, when it comes to determining the price of frequently traded securities? In a free, fair and liquid market, i.e., absent any fraud, unfair trading, insider trading, or illegal information asymmetry of any kind, the fair value of the shares at a point in time is simply the

traded price of the share, determined by willing buyers and willing sellers. In such cases, while there could be a wide range of analyst views on what the textbook "intrinsic value" of the underlying company "ought" to be, they would remain individual opinions that cannot argue in the present with the hard-nosed truth of the price established in a free and fair market between willing buyers and willing sellers. At best, one could posit that the current market price, the meeting point of current supply and demand, represents the consensus opinion of all participants in the market, with all their diverse opinions and expectations. A participant in the market can scarcely expect sympathy – let alone any compensation - if the free, fair, and liquid market does not give him or her the price that he or she expects based on a particular textbook valuation model.

38. What if the market is liquid and frequently traded, but not entirely free and fair? Consider an illustrative case of insider trading, where an insider in possession of some UPSI (assume one that is unfavourable to the prospects of the company), sells shares in a liquid market before such information becomes public. In this event, there is illegal information asymmetry, where unlike the insider seller, the buyer in the market is unaware of the impending negative UPSI, and is therefore paying a price higher than he/ she would have been willing to pay, had he/ she been aware of the UPSI. How would one determine the unlawful gain enjoyed (or loss averted) by the insider? Logically, it would be the difference between the sale proceeds enjoyed by the insider, and the lower value the insider would have received had the market been aware of the UPSI. The key question to ask, therefore, would be – "what is the price the insider would have obtained in the first place, had the market then been aware of the UPSI?"

39. How should one go about answering this question? With the working assumption that the change in the traded price of the share between the time of the insider's trade and the time of the information becoming public, is wholly or substantially attributable to the event of the UPSI becoming public, the price of the share after the information becomes public itself could be a reasonable estimate of the price the insider would have originally accessed, had the market been aware of the UPSI.

40. Therefore, in the above illustration, the difference between the actual price accessed by the insider, and the price in the market after the UPSI becomes public, would form a basis to determine the unfair gains enjoyed (or losses avoided) by the insider. Even if the working assumption does not hold, i.e., if there were other events in the market that may have moved the price in the intervening period between the time of the sale by the insider and the UPSI becoming public, in liquid markets with frequent price discovery, there should be ways to isolate and estimate the impact of this particular UPSI becoming public from the market data for this and other comparable stocks. By its very nature, even a reasonable estimate would be just that – an estimate, since it would be impossible to provide a precise answer to what is essentially a hypothetical question of "what may have been". However, since we are dealing with the price of frequently traded liquid securities, the best estimates are likely to be obtained from the market itself, rather than from one of the myriad Corporate Finance textbook approaches to determine the "intrinsic value" of a share at any point in time.

41. Given this background, it does not make sense to mechanically interpret and limit the phrase "intrinsic value" of the shares to imply a theoretical Corporate Finance textbook valuation exercise. Instead, for the purpose of the specific context of insider trading in this case, I hereinafter use the phrase "intrinsic value" of a share to mean the answer to the question: "what is the price the insider would have accessed in the first place, had the market been aware of the UPSI?" The difference between the actual price accessed by the insider and such "intrinsic value" of the share can then be used to determine the illegal gains of (or losses averted by) the insider.

42. What if after the initial move after the information becomes public, the prices happen to move substantially over the next few days? Should that in turn impact the anchor "intrinsic value" of the share in question? The answer would wholly depend on the specific context of each case. As a logical approach, however, one would have to reasonably estimate as to how much of the continued move can be attributed to the

UPSI becoming public. In certain situations of prolonged uncertainty, markets could take a long time to digest significant pieces of new information.

43. Let us now look at this specific case of insider trading in Satyam in some more detail, in order to arrive at a plausible methodology to arrive at the "intrinsic value" of the share. In the current case, it transpires that there was a prolonged period of time where a fair market in Satyam shares did not really exist. Between 2001 and late 2008/ early January 2009, by their own admission and as an established fact, an egregious fraud was perpetuated by the promoters and noticees that the public at large was unaware of. Public suspicion of something being seriously wrong in the affairs of the Satyam group only emerged towards the end of 2008.

44. To that extent, being aware of this crucial UPSI during this extended period between 2001 to early January 2009, whenever the noticees directly or indirectly offloaded Satyam shares in the market, they were receiving substantially higher consideration for these shares from unknowing and unsuspecting buyers. The consideration was far more than the amount that any such buyers would have been willing to pay had they been aware of the egregious fraud perpetrated by the promoters. There can be no doubt of the core fact, therefore, that given the egregious and shocking nature and extent of the fraud, the noticees enjoyed substantial unlawful gain from every instance of offloading of Satyam shares by them during this period. Arguments presented by noticees to obfuscate this basic truth, or to claim that there was in fact little or no unlawful gain, are disingenuous, and brazen insults to public intelligence and common sense.

45. However, the approach and arguments used by the noticees should not come in the way of the need to arrive at a reasonable estimate of the "intrinsic value" of the share in this specific instance of insider trading. Particularly when there is a relatively large time interval between the trade by the insider in possession of UPSI, and the information becoming public, the working assumption that the change in stock price

during the interregnum is substantially attributable to the UPSI becoming public should be tested.

46. Investments are subject to two types of risks – systematic and unsystematic. Systematic risk refers to the risk inherent to the entire market or entire sector, and includes factors such as macroeconomics (e.g. interest rates, growth prospects, inflation, and geopolitics), and overall market sentiment. Akin to the maxim that a rising tide lifts all boats, a steady growth in positive sentiment in the economy, for instance, can support the prices of all shares. On the other hand, unsystematic risk refers to idiosyncratic risk that is unique to a company. Business risk, fraud risk, operational risk, or legal risk that are unique to an entity are examples of unsystematic risk.

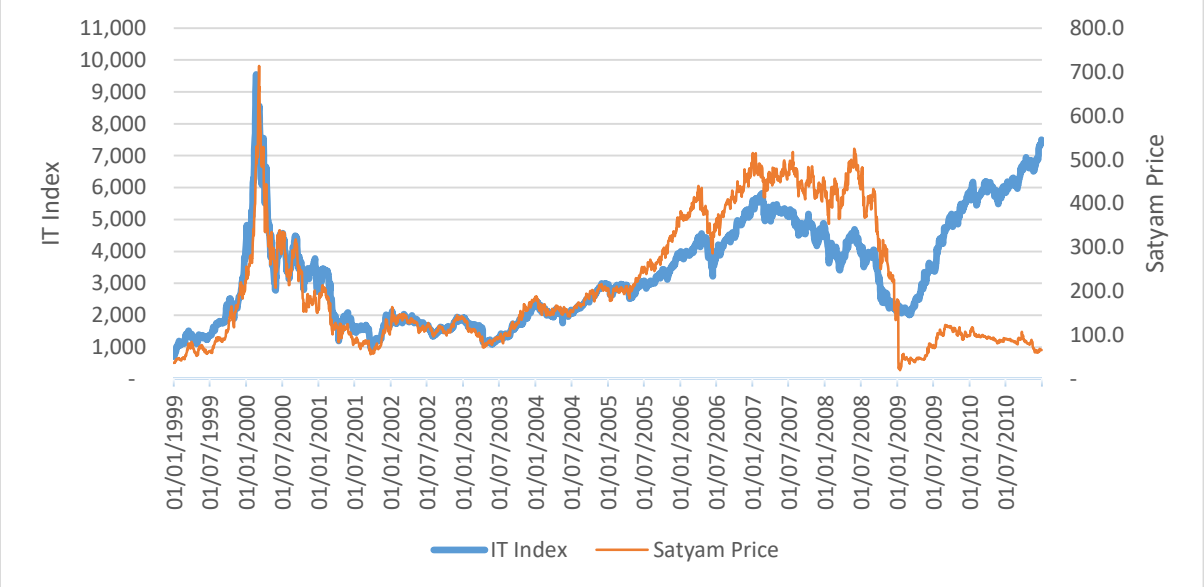
47. When trying to arrive at the "intrinsic value" of a share, particularly across long intervals of time, one must differentiate between the movement in the share price because of systematic factors, and idiosyncratic factors unique to the company. For instance, the noticees have contended that in comparison to the Tech Mahindra open offer price of INR 58 on April 22, 2009, the price of SCSL was INR 73.25 on July 1, 2009, a rise of 26%. What they fail to point out is that the broader IT index, which is a basket of major IT stocks, moved up from 2,495 to 3,527 during the same period, a rise of 41%. If anything, SCSL underperformed the broader IT segment; while a rising market tide lifted all boats during that time, the SCSL boat was lifted up less than the others. As I shall point out later, much of the price points that that the noticees have quoted, similarly attempt to portray what was essentially a systematic move across the market as an idiosyncratic SCSL move.

48. In the case under consideration, the nature of the admissions by the promoters in January 2009 were so shocking, so deleterious to the core reputation of a company that had otherwise built the image of being standard bearers of good governance, and so destructive of investor value and stakeholder trust in the company and the group, that every other company-specific news in the interregnum simply pale in terms of

impact and relevance. The confession to the fraud was the one unsystematic factor that dominated the price of SCSL shares at the time, causing it to severely underperform the rest of the market.

49. Nevertheless, frequently traded stock prices are rarely – if ever - static, even in the absence of any fresh company specific information. Systematic factors operate at all times. Macro and sectoral developments, or just plain changes to market sentiment, can bring about flows that move prices of the overall market, and hence specific sectors and individual stocks within the market.

***Chart No. 1***




50. Chart No. 1 traces the price and volume of SCSL shares and the IT index, between January 1999 and December 2010. The share price of SCSL has been adjusted for the intervening bonus issuance, to make the prices across all days in the period comparable. To reiterate, note that the IT Index provides a benchmark that captures the performance of the IT segment of the stock market in India. Until early January 2009, when it was removed after the fraud became known, SCSL was a significant constituent of the basket of IT stocks that formed the IT index.

51. The Satyam stock price fell on December 17, 2008 by a sharp 36% from the previous close of INR 226, an idiosyncratic and unsystematic move, far more than the rest of the market and other peer IT sector stocks. This was a result of rumours and media reports suggesting that something was amiss in the Satyam group. In comparison, the benchmark IT sector index, fell just by 2% on the day. Even this smaller move in the IT index was entirely attributable to the fall in the share price of its constituent Satyam alone. Over the next few days, Satyam share price remained at or around these depressed levels, closing at INR 179 on January 6, 2009. The promoters finally admitted to their fraud on January 7, 2009. While suspicions had been swirling, the egregious nature and extent of fraud that the promoters confessed to still shocked the market. The price of Satyam shares fell dramatically to close at INR 40.3 on January 7, 2009, and thereafter hit an intraday low of just INR 6 per share on January 9, 2009.

52. Pursuant to the confession of fraud in SCSL by Mr. B. Ramlinga Raju (then Chairman of SCSL) on January 07, 2009, the Government of India ("GOI") filed Company Petition 1 of 2009 with Company Law Board ("CLB"). Pursuant to the proceedings instituted by GOI with the CLB under Sections 388B, 397 and 398 read with Sections 401 to 408 of the Companies Act, 1956, the CLB, on January 9, 2009, suspended the then-existing Board of Directors and passed orders directing the GOI to nominate up to ten (10) directors on SCSL's Board. Further, as per the CLB order dated February 19, 2009, the Board of Directors of SCSL formulated a proposal to conduct an open and competitive bidding process.

53. On April 14, 2009, Venturbay Consultants Private Limited (Acquirer) (a subsidiary of Tech Mahindra Limited) along with Tech Mahindra Limited (PAC), won the bid to become the new owner of SCSL. The Acquirer bid INR 58 per share, higher than Larsen & Tubro's bid of INR 45.90 per share, and Wilbur Ross's bid of INR 20 per share. This gave the Acquirer a controlling stake of 51% in the company. Under terms of the bid, the Acquirer had to mandatorily make an open offer to SCSL's existing shareholders for another 20%. Media reports at the time do not support the noticees'

contention that the Acquirer picked up the stake at a bargain or distressed price. If anything, it was noted that the Acquirer's price was significantly higher than the other bidders' price, and also higher than the secondary market price for the stock. In fact, even after the Acquirer purchased the majority stake at Rs 58 per share, and launched an open offer for 20% of the holdings at the same price on April 22, 2009, the secondary market price of SCSL stayed below Rs 58 for the next 40 days. Media reports of the time also suggested that some major existing shareholders would not be able to participate in the Acquirer's open offer, on account of lock-in restrictions.

54. Under terms of the offer, the Acquirer made a public announcement dated April 22, 2009 to acquire 19,90,79,413 Shares of SCSL representing 20% of the Fully Diluted Share Capital of SCSL, **at a price of INR 58/- (Rupees Fifty-Eight Only)** for each Share of SCSL. Note that despite this, the traded market price in SCSL closed at INR 46.9 on April 22, 2009, lower than the bid price. In fact, SCSL prices did not close at or beyond INR 58 until June 1, 2009, a full 40 days after the open offer. Note that between April 22, 2009 and June 1, 2009, the IT index itself moved up by over 32%, indicating the underlying systematic move underway in markets.

55. The analysis of the movement of NSE IT index – which gives an indication of the systematic element of a tech company's price risk, vis-à-vis movement of price of SCSL is as under:
    55.1. Correlation between IT Index and Satyam between 01.01.1999 and 16.12.2008 (before negative news about SCSL started percolating) = **93.5%** (~ 10 year history)
    55.2. Correlation between IT Index and Satyam between 17.12.2007 and 16.12.2008 (before negative news about SCSL started percolating) = **94%** (~1 year history)
    55.3. Correlation between IT Index and Satyam between 17.12.2008 and 31.12.2010 = **36.0%** (full fraud came to light on 07.01.2009, but negative news started percolating from December 17, 2008) – indicating that the move in SCSL during

this period had a significant unsystematic component, given the idiosyncratic fraud risk that came to light in the interim.

55.4. Correlation between IT Index and Satyam between 22.04.2009 and 31.12.2010 = 20.8% (Tech Mahindra takeover announced on 22.04.2009) – essentially, reflective of the deep scars that the promoters had inflicted on SCSL, Satyam continued to underperform the broader market even after Tech Mahindra takeover; while IT index grew by over 200% during this period, Satyam (Tech Mahindra) only grew by 14%.

55.5. Tech Mahindra announced an open offer to purchase 20% of shares at a price of Rs 58 per share on April 22, 2009. However the market price on 22.04.2009 (Rs. 46.9) was well below INR 58, and stayed below INR 58 till end of May 2009.

56. Given all of the above, what is the best candidate as the price anchor for determination of the "intrinsic value" of the share in this particular case of insider trading? Several candidates could be considered. The market close on January 7, 2009 (INR 40.3), the all-time low seen intraday on January 9, 2009 (around INR 6), the Tech Mahindra open offer price (INR 58) announced on April 22, 2009, the market closing price on April 22, 2009 (INR 46.9), or the average closing price between April 22, 2009 and May 29, 2009 (INR 47.7), all come to mind.

57. My over-arching consideration, however, is to arrive at a reasonable price at a point in time that best reflects the fair price of the stock for a significant number of shares, amidst the considerable uncertainty and chaos in a market still shell-shocked by the trust destruction following the explosive admissions by the promoters. From the price action and the news flow after January 7, 2009, it does appear that the markets remained shaken by the extent of the fraud confessed to by the promoters, and considerable uncertainty around the true picture of affairs in the company persisted for several days thereafter. To my mind, therefore, amongst all the candidates, the considered Tech Mahindra open offer price of INR 58 per share, announced on April

22, 2009, qualifies best as the anchor for determining the “intrinsic value” of the share in this particular case.

58. As an aside, I note that considering the acquisition price of INR 58 as an anchor for determining the “intrinsic value” of the share, rather than either of the market close on January 7, 2009 (INR 40.3), the all-time low seen intraday on January 9, 2009 (INR 6), or the closing price on April 22, 2009 (INR 46.9), or the average closing price between April 22, 2009 and May 29, 2009 (INR 47.7), actually favours the insiders and the noticees. It is worth considering if brazen violators of the law deserve such consideration, when their actions caused so much distress to so many investors in the market. My intent, however, is to set aside any such extraneous considerations, and instead to choose the candidate that reasonably qualifies as the anchor for determination of the “intrinsic value” of the share. To my mind, amidst the fog of uncertainty in the aftermath of the explosive confessions of the promoters, this open offer price – as of April 22, 2009 – is the reasonable candidate to pick.

59. At this stage, we have a price of SCSL as of December 16, 2008 (closing price of INR 226.6), before the rumours started to bring the prices down, and the Tech Mahindra offer price of INR 58, announced on April 22, 2009, as the anchor for determination of the “intrinsic value” of the share. I reiterate that the nature of the admissions by the promoters on January 7, 2009 were so shocking that every other company-specific news (unsystematic factors) in the interregnum simply pale in terms of impact and relevance. To that extent, at least in terms of company specific news, the price as of April 22, 2009 can be reasonably posited to be a good indicator of what the price as of December 16, 2008 would have been, had the market known of the UPSI on the date. What about the systematic factors though?

60. The period of 2008 and 2009 was a volatile period in the overall market, since this was when the Global Financial Crisis unfolded, and then the recovery commenced. While disregarding company-specific news, one must still ensure that the overall movements in the markets themselves are considered. As on December 16, 2008, the

IT index was at 2,266. It rose to 2,495 as of April 22, 2009, higher by about 10.11% during the period. Ceteris paribus, to compute the "intrinsic value" of the SCSL share as of December 16, 2008, given that the anchor for the same was INR 58 as of April 22, 2009, one must reduce this INR 58 by this 10.11% to account for this overall change in market (on account of systematic factors) in the interim period. That makes the "intrinsic value" of the share, as of December 16, 2008, at INR 52.67, or 23.25% of the market price of INR 226.6 on December 16, 2008.

61. From the above, we posit that it is reasonable to estimate that the "intrinsic value" of the share on December 16, 2008, was 23.25% of the closing price of the day. Extrapolating from this, given that shares were directly or indirectly offloaded by the noticees at different points of time, we posit that the "intrinsic value" of the share at any point of time during the period of the UPSI was 23.25% of the share price accessed by the insider. Note that this approach acknowledges that notwithstanding the egregious breach of trust by the promoters, the franchise continued to retain value even after the full facts came to the fore. In contrast to the previous WTM's order, we do not implicitly ascribe nil intrinsic value.

62. I do not represent that this 23.25% is perfectly accurate and precise – as argued earlier, given we are answering a hypothetical "what might have been" question, it is impossible to know what the precise answer would have been. To my mind, however, as stated above, the process of arriving at this construct uses a plausible, reasonable and unbiased approach based on data and observed market prices, differentiating between systematic and unsystematic factors that may have caused movements in prices. As an aside, as shown above, the approach has chosen an anchor price for the "intrinsic value" of the share that happens to favour the noticees, from amongst many other candidates for such an anchor.

63. The noticees have also argued that this formulation of attributing 23.25% of dealt price as the "intrinsic value" of the share cannot be applied to sales by the insiders in 2005, since the extent of the fraud by the promoters was "only" INR 522.66 crores at that

time. The noticees suggest we should use perhaps a proportionate and linear approach, which ascribes a higher intrinsic value to a “lower” fraud. This argument completely misrepresents the vital value of trust in determination of the price of a security, and seeks to attach a price to this basic hygiene requirement of integrity. I will consider this issue in greater detail later in this order.

***Alternative approaches to calculating illegal gain as proposed by Noticees***

64. The Noticees have argued that instead of the calculation of intrinsic value proposed by SEBI in the SSCN dated June 06, 2023 the market price of the share one day before the alleged manipulation of books of accounts commenced must be considered for arriving at the unlawful gain. The market price of Satyam shares on December 29, 2000 i.e. the trading prior to commencement of investigation period, was INR 325.35 per share. This argument is disingenuous on several counts. First, the noticees have conveniently ignored the fact that there was a 1:1 bonus issue effective October 2006. As a result, to start with, for a like comparison with the ex-bonus SCSL prices after October 2006, SCSL prices prior to that need to be halved. Second, the noticees have conveniently ignored the systematic factors during the intervening periods. In December 2000, stock prices in the IT industry were still inflated from the dot-com bubble, and the IT index averaged 3,350. A year later, in December 2001, as the dot-com bubble burst, the IT index averaged 1,842, down 45% from a year ago. Finally, even 8 years later in December 2008, the IT index averaged 2271, down 32.2% from the levels of December 2000.

65. In summary, I do not find merit in this contention of the Noticees given the facts and circumstances of this case. It appears that this disingenuous argument (given it ignores the 2006 bonus issue and ignores the sharp systematic movement in the markets over time) is rooted in an attempt to curry financial benefit to the noticees by hook or crook, since if this so-called “cost of acquisition” is adopted, the resultant illegal gain would be significantly reduced. Noticees have urged that this figure be

adopted pointing to the observation made by Hon'ble SAT in the Third SAT Order. I have perused the Third SAT order. The Hon'ble SAT has not specified a particular price as the deductible cost of acquisition; the reference to INR 323.35 was merely to suggest the various possible methods of computing cost of acquisition. In the facts of this case, the fraud was perpetrated over an 8-year period. The said period i.e. the years 2000 and 2001 were a volatile period for IT stocks. After the dot-com bust of 2000, price of Satyam scrip along with other IT stocks had fallen during 2001 and in the beginning of 2002. Considering this very long investigation period, the significant systematic moves in the overall market during the period, the intervening bonus issue in SCSL, using the unadjusted price of the Satyam scrip on the day prior to the start of the investigation period as the "intrinsic value" of Satyam's shares is simply not justifiable.

66. Ramalinga Raju, Rama Raju and Suryanarayana Raju have contended that the intrinsic value should be INR 103 and not INR 58 as was proposed in the SSCN. The reason for this, according to their contention, is that the three-month, six- month and nine-month average of (reckoned from July 01, 2009) of the share price all hovered around INR 103 (without considering fractions of a rupee). It appears that July 01, 2009 is relevant because it is the date on which Tech Mahindra's open offer at the price of INR 58, closed. According to them the price of share fell from INR 178.95 per share to INR 103 on January 06, 2009 and therefore the intrinsic value would be (103 ÷178.95) x100 i.e. 57.56% and the wrongful gain would be 42.44%. The noticees proceed to argue that since the inflation in revenues was lesser in the earlier years of the scam and since bulk of their shares were sold during these earlier years, the percentage of illegal gain made by them must be significantly lower. In this regard, computations from Noticees 1 to 3 are as follows:

***Table No. – 7***

| Quantification of unlawful gains of Noticee No. 1 & 2 each | | | | | | |
|---|---|---|---|---|---|---|
| **Financial year** | **Inflated Revenues (Rs. Cr) as per original SEBI order 15/7/2014 (cumulative)** | **Inflated Revenues as a proportion of total inflation in revenues of Rs. 4782.76 crores** | **Inflation in shares prices in respective years (when the inflation in share prices is 42.44% after the total fraud came to light)** | **Transaction date** | **Sale value of SCSL shares in INR** | **Unlawful gains in INR** |
| **A** | **B** | **C [(B/4782.76)*100]** | **D (C*42.44%)** | | **E** | **F (E*D** |
| 2008-09 | 4782.76 | 100% | 42.44% | N.A. | N.A. | N.A. |
| 2004-05 | 522.66 | 10.93% | 4.64% | 30/05/2005 | 26,62,50,000 | **1,23,54,000** |

***Table No. - 8***

| Quantification of unlawful gains of Noticee No. 3 | | | | | | |
|---|---|---|---|---|---|---|
| **Financial year** | **Inflated Revenues (Rs. Cr) as per original SEBI order 15/7/2014 (cumulative)** | **Inflated Revenues as a proporion of total inflation in revenuex of Rs. 4782.76 crores** | **Inflation in shares prices in respective years (when the inflation in share prices is 42.44% after the total fraud came to light)** | **Transaction date** | **Sale value of SCSL shares in INR** | **Unlawful gains in INR** |
| **A** | **B** | **C [(B/4782.76)*100]** | **D (C*42.44%)** | | **E** | **F (E*D)** |
| 2008-09 | 4782.76 | 100% | 42.44% | | | |
| 2001-02 | NIL | NIL | NIL | Nov-Dec 2002 | 32,01,00,000 | 0 |
| 2002-03 | NIL | NIL | NIL | Sep to Dec 2003 | 40,96,00,000 | 0 |
| 2003-04 | 213.21 | 4.46% | 1.89% | 11/19/2004 | 2,06,00,000 | 4,00,000 |
| Less: Taxes paid (limited to unlawful gain amount) | | | | | | 4,00,000 |
| **Disgorgement amount** | | | | | | **0** |

67. As noted earlier, the rationale behind the aforesaid contention appears to be rooted in what is more financially beneficial to the noticees. I do not find the proposal to be rational, reasonable or justifiable.

68. The argument that the open offer price proposed by Tech Mahindra was a fire sale price, is not tenable. The fire sale took place immediately after the shocking revelation

by Ramalinga Raju on January 07, 2009. The panic selling led to the stock market price crumbling down to intraday low as INR 6.3 on January 09, 2009. The subsequent recovery was a cautious one, since the extent of the fraud and the veracity of the confession remained a lingering doubt. In light of the confession by Ramalinga Raju, the Government of India ("GOI") filed Company Petition 1 of 2009 with the Hon'ble Company Law Board ("CLB"). The CLB, on January 9, 2009, suspended the then-existing Board of Directors and passed orders directing the GOI to nominate up to ten (10) directors on SCSL's Board. On February 19, 2009, the CLB passed an order allowing SCSL to (i) introduce a new investor/promoter into SCSL; (ii) enhance the authorized share capital of SCSL and to make a preferential allotment of equity shares to an investor without seeking the consent of shareholders; and (iii) to infuse fresh capital into SCSL by way of such preferential allotment of Shares in favour of such investor. Following the order of the CLB dated February 19, 2009, the Board of Directors of SCSL formulated a proposal to conduct an open and competitive bidding process which contemplated the selection of an investor to acquire a controlling interest in SCSL at an agreed upon price per Share. Based on the order of the CLB and the in-principle approval of SEBI, on March 9, 2009, SCSL commenced the formal process of identifying a strategic investor and initiated the competitive bidding process by inviting interested bidders to register their interest to participate in a competitive bidding process ("Bid Process"). The Bid Process included the selection of a successful bidder to subscribe to such number of Shares that would immediately following the allotment represent 31% of the Diluted Share Capital of the Company through a preferential allotment of equity shares, make a consequent public offer under the Regulations and if, upon having made the Public Offer, the investor acquired less than 51% of the Fully Diluted Share Capital pursuant to the Preferential Allotment and the Public Offer, at the successful bidder's option, subscribe to additional shares by way of subsequent preferential allotment to take the bidder's shareholding up to 51% of the Fully Diluted Share Capital. As noted earlier, the open offer made by Tech Mahindra was the consequence of it being the highest bidder, having significantly outbid other investors who offered much lesser price per share for preferential

allotment. Thus at the relevant point in time, the open offer price was determined by the acquirer after careful evaluation of the company's assets and liabilities (existing and potential). It is also relevant in this context to note that the market price on April 22, 2009 was INR 46.9, which was well below the open offer price of INR 58. It stayed below Rs 58 till June 1, 2009. Rama Raju's contention that the open offer price of INR 58 could be offered only because compliances were relaxed, does not further his contention. To supplement this with hard numbers, the average IT index for 3 months from April 22, 2009 was 3,265, or 30.9% higher than the IT index as on April 22, 2009. In contrast, the average price of SCSL from 3 months from April 22, 2009 was Rs 63.7, just 9.8% higher than the Acquirer's bid of Rs 58. Even with the relief of a new respectable management in place, the market still gave the Acquirer a relatively poor return compared to the overall IT index. Even three months into the acquisition, there was simply nothing in the market to suggest that the Acquirer had made a good bargain; if anything, the evidence suggests the contrary.

69. Let us now consider the contentions of Ramalinga Raju, Rama Raju and Suryanarayana Raju that the intrinsic value should be INR 103 and not INR 58 as was proposed in the SSCN. The reason for this, according to their contention, is that the three-month, six- month and nine-month average of (reckoned from July 01, 2009) of the share price all hovered around INR 103. This argument is also downright disingenuous on several counts. First, the choice of 3, 6, and 9 months from July 1, 2009 is curious. In April 2009 itself, the Acquirer had taken over the ruins of the company that the erstwhile promoters had left behind with their egregious fraud. One wonders at what point the noticees would attribute the movement in the price of their erstwhile company to the trust and governance restored by the new management, rather than to themselves. Note that nine months from July 1, 2009 ended at March 2010, more than a year after the promoters confessed to their egregious fraud. Second, once again, the noticees are trying to pull wool over our eyes, by passing off what is a systematic move in markets as a unique unsystematic move in SCSL (Tech Mahindra) alone. The 3, 6, and 9 month average in the IT index from July 1, 2009 was

4,327, 4,806, and 5,144 respectively. Compared to the IT index of 2,495 as on April 22, 2009, this represented a 73.4%, 92.6%, and 106.1% rise in the IT index respectively. In contrast, compared to the Acquirer's open offer price of Rs 58, the 3, 6, and 9-month average price in SCSL starting from July 1, 2009 represented a 77%-79% rise. In fact, seen from April 22, 2009 to December 31, 2010, the IT index rose by 118%, while SCSL (Tech Mahindra) prices rose only by 55%. A rising tide of a sharp recovery in the aftermath of the Global Financial Crisis was raising all prices, and if anything, the prices of SCSL (Tech Mahindra) was underperforming the market over time. I cannot accept what is a systematic increase in all prices (with SCSL in fact underperforming the market) as an unsystematic and idiosyncratic reflection of SCSL's worth alone.

70. The noticees refute the anchor for the intrinsic value of INR 58 on the ground that there was minimal participation (0.11%) to the open offer made by Tech Mahindra for Satyam's shares. Therefore, according to the noticees, the shareholders roundly rejected the price of INR 58 and INR 103 is the price that the market agreed upon. Once again, this is a twisted interpretation of the affairs of Satyam in April 2009. In 2009, in the aftermath of one of the largest corporate scandal in India, regulators and government departments/ agencies stepped forward to ensure a smooth transition for the company and its shareholders with a view to ensure that confidence was revived in the integrity of the securities market. The fact that Tech Mahindra then bid for the preferential allotment and subsequently followed up with an acquisition of shares through an open offer, likely resulted in a renewed optimism in the prospects of the company. Media reports also suggested that some large shareholders could not participate in the open offer because of lock-in restrictions. In addition, despite the announcement of Rs 58 as the open offer price on April 22, 2009, the secondary market price of SCSL stayed below this level till June 1, 2009. The secondary market did eventually reach 73.25 as on July 1, 2009, or 26.3% higher than the Rs 58 offer price. However, between April 22, 2009 and July 1, 2009, the IT index itself moved up from 2,495 to 3,527; a 41.3% rise. If anything, there was a much larger systematic

move underway in IT shares during that period, and SCSL was in fact underperforming that systematic move up. Once again, the noticees seem to be trying to obfuscate what was in fact a larger systematic move in the underlying market and IT sector, as an unsystematic reflection of SCSL's unique worth.

71. Similarly, the noticees' contention that the price fell from INR 178 on January 06, 2009 to "103" is disingenuous. Post the confession, the price fell from INR 178 on January 6, 2009 to INR 41.05 on January 07, 2009 and eventually further fell to an intraday low price of INR 6.3 on January 09, 2009. Relating the price of SCSL on January 06, 2009 to an average market price of SCSL several months later, without acknowledging that the broader IT index itself had moved up significantly in same period (from 2,313 to 5,144, or 122% higher) is a dishonest apples to oranges comparison.

72. Further, as discussed earlier, the noticees have also argued that the formulation of attributing 23.25% of dealt price as the "intrinsic value" of the share cannot be applied to sales by the insiders in 2005, since the extent of the fraud by the promoters was "only" Rs 522.66 crores at that time. The noticees suggest we should use perhaps a proportionate and linear approach, which ascribes a higher intrinsic value to a "lower" quantum of fraud. This argument completely misrepresents the vital value of trust in determination of the price of a security, and seeks to attach a price to this basic hygiene requirement of integrity. Our capital market ecosystem survives on trust. When there is any doubt whatsoever about the integrity of the promoters of a company, the valuation of that company is doomed. Unlike financial results, where one can ascribe some degree of correlation and proportionality between the nature of the results and the performance of the share, trust and integrity is a bare minimum hygiene requirement. One is either a fraud, or not. There is no such thing as a half-fraud or a quarter-fraud. Further, investors and market stakeholders had implicit trust in SCSL, as a benchmark for good governance. The group and the promoters had over the years won several prestigious awards, including the Golden Peacock Award for Excellence in Corporate Governance (2002 and 2008), CNBC's Corporate Citizen

of the Year Award (2002), and the Hyderabad Management Association's Lifetime Achievement Award (2007). If investors were aware that promoters had engaged in egregious fraud to dress up the financial results of the company, irrespective of the size of the fraud, they would have rushed to the exit door.

73. By urging that the scale of fraud was lesser in earlier years when the promoters sold their shares, these noticees appear to be seeking to reduce their culpability by pointing to the lesser gain they made. This is far from the truth. The large scale of the fraud in Satyam was built up from the early 2000s. It was not an overnight exercise. The promoters/ management played the central role in this build up. Further, much of the promoter holding was moved to SRSR Holdings Pvt Ltd for raising funds through pledge of shares and then offloaded later due to invocation of the security. In view of the above, I am unable to accept the contention that the intrinsic value was higher in earlier years of the fraud.

74. Noticee No. 6 – G Ramakrishna, has adopted yet another method of computing illegal gain without specifically alluding to 'intrinsic value'. According to him, the fair value computation and the amount of illegal gain should be based on the following formula – 77.06%/Total fictitious sales during April 2003 to September 2008 multiplied by Cumulative Fictitious Sales as per last quarterly published results). 77.06% has been arrived at by the noticee as a percentage fall in the price of Satyam from INR 178.95 to INR 41.05 on January 07, 2009 *(after the confession)*. Accordingly, computation of illegal gain according to G Ramakrishna is as follows:

***Table No. 9***

| Date of transfer | No. of Shares | Price Rs. | Value of shares sold Rs. Crores | Cumulated Inflated Sales | % inflation in share price | Illegal Gain Rs. |
|---|---|---|---|---|---|---|
| 12-Dec-2003 | 3,000 | 343.75 | 10,31,250 | 72.43 | 1.17 | 12,039 |
| 13-Dec-2003 | 2,000 | 343.75 | 6,87,500 | 72.43 | 1.17 | 8,026 |
| 13-Dec-2003 | 5,000 | 343.75 | 17,18,750 | 72.43 | 1.17 | 20,065 |
| 13-Dec-2003 | 2,000 | 343.75 | 6,87,500 | 72.43 | 1.17 | 8,026 |
| 13-Dec-2003 | 2,000 | 343.75 | 6,87,500 | 72.43 | 1.17 | 8,026 |

| Date of transfer | No. of Shares | Price Rs. | Value of shares sold Rs. Crores | Cumulated Inflated Sales | % inflation in share price | Illegal Gain Rs. |
|---|---|---|---|---|---|---|
| 13-Dec-2003 | 3,000 | 343.75 | 10,31,250 | 72.43 | 1.17 | 12,039 |
| 13-Dec-2003 | 5,000 | 343.75 | 17,18,750 | 72.43 | 1.17 | 20,065 |
| 13-Dec-2003 | 2,000 | 343.75 | 6,87,500 | 72.43 | 1.17 | 8,026 |
| 15-Mar-2005 | 27,152 | 409.05 | 1,11,06,526 | 389.85 | 6.28 | 6,97,893 |
| 16-Jun-2005 | 30,384 | 483.45 | 1,46,89,145 | 522.66 | 8.42 | 12,37,454 |
| 25-Apr-2006 | 20,733 | 762.75 | 1,58,14,096 | 1184.86 | 19.10 | 30,19,791 |
| 09-Nov-2007 | 31,678 | 426.5 | 1,35,10,667 | 2515.08 | 40.52 | 54,74,811 |
| | 1,33,947 | | 6,33,70,434 | | | **1,05,26,264** |

75. Unlike the promoter noticees who chose to rely on inflation in revenues as a benchmark, G Ramakrishna has taken inflation in fictitious sales as a benchmark to compute illegal gain. Again this is financially favourable to the noticee since a large chunk of shares sold were during the years when the quantum of inflated sales was lesser in comparison to later years. While this computation doesn't explicitly seek out the 'intrinsic value' of Satyam shares, the emphasis on the 'lesser fraud' when shares were sold by Ramakrishna cannot be accepted for the reasons already elaborated in the earlier paragraphs.

76. As is evident from all the above computations on illegal gain, it appears that noticees have individually relied on different logic, customized to suit the specific number and period of sale of Satyam shares held by them. With the insiders being aware of the crucial UPSI during this extended period between 2001 to early January 2009, whenever the noticees directly or indirectly offloaded Satyam shares in the market, they were receiving substantially higher consideration for these shares from unknowing and unsuspecting buyers. The consideration was far more than the amount that any such buyers would have been willing to pay had they been aware of the egregious fraud perpetrated by the promoters. There can be no doubt of the core fact, therefore, that given the egregious and shocking nature and extent of the fraud, the noticees enjoyed substantial unlawful gain from every instance of offloading of Satyam shares by them during this period. Arguments presented by noticees to obfuscate this

basic truth, or to claim that there was in fact little or no unlawful gain, are disingenuous, and brazen insults to public intelligence and common sense.

77. The approaches proposed by the noticees are clearly whimsical and a race to the bottom, that cannot be relied on for the purposes of computation of underlying value/ notional cost of acquisition as directed by the Hon'ble SAT

### B. ***Issue of Joint and Several Liability:***

78. As noted earlier in this Order, the Second SEBI Order directed that the liability for illegal gains made by associated entities/ relatives would be borne by Ramalinga Raju and Rama Raju as well, jointly and severally. The Third and Fourth SEBI Orders *(passed pursuant to the remand of the First and Second SEBI Orders)* only partially modified the directions *inter alia* by revisiting the quantum of unlawful gains made by each noticee.

79. The directions of the Third SAT order, however, is unambiguous and does not leave me any scope to impose joint and several liability for the unlawful gains made by SRSR and Suryanarayana Raju. Unlike the other sub-paras of para 120 of the Third SAT Order, sub-para 2 reads as follows - *"The unlawful gain, if any, will be calculated individually for all the appellants by the WTM*". Sub-para 2 does not use the expression "WTM will consider" or "WTM will reconsider". Since the direction is explicit, in compliance with the appellate tribunal's orders, the liability for illegal gains made by the Noticees is required to be borne by them individually. Consequently, Ramalinga Raju and Rama Raju cannot be made jointly and severally liable either for the unlawful gains made by Suryanarayana Raju or for the unlawful gains made by SRSR.

## C. ***Issue of Interest on Unlawful gain***

80. Hon'ble SAT vide its Third SAT Order directed WTM to consider the issue on interest. In this context, relevant paragraphs of Third SAT order are as read as follows:

*"……*

*117. The WTM in its two orders has directed the appellants to disgorge the amount along with simple interest @ 12% p. a. with effect from January 7, 2009 till the date of payment. The WTM in the impugned order has rejected the contention of the appellants on the issue of rate of interest on the short ground that this Tribunal had not specifically set aside the rate of interest in its orders.*

*118. In this regard, we find that this Tribunal had set aside the order of disgorgement and had directed the WTM to decide the issue of disgorgement afresh on merits. In our opinion, interest becomes payable after the computation of the disgorgement is made. Once the amount of disgorgement was set aside, the imposition of interest on it was automatically set aside. It is on account of this reason that the issue on interest was not considered and was left open by the Tribunal. To look at this issue from another angle, if for some reason, the WTM agrees with the contention of the appellants and holds that no amount of disgorgement is payable, then obviously, no interest is payable. In view of this, when the direction of disgorgement was set aside, the issue of payment of interest was automatically set aside and was left open.*

*119. In view of the aforesaid reasoning, it was necessary for the WTM to consider the plea of the appellants on the issue of interest, especially when it has been urged that SEBI has been imposing lower rate of interest in a large number of matters…."*

(emphasis supplied)

81. Pursuant to the aforesaid, Noticees vide SSCN were advised to show cause as to why they should not be directed to pay simple interest at the rate of 12% per annum on the unlawful gains from January 07, 2009 till the date of payment in addition to the illegal / unlawful gains proposed to be disgorged from them.

82. Noticees contented that:

82.1. The interest is payable only after computation of the disgorgement amount is made and the date on which the disgorgement amount is finally quantified, would represent the date of the cause of action for payment of the disgorgement amount not from any prior date.

82.2. Since the amount of disgorgement is yet to be computed, the question of levying interest at the rate of 12% per annum from January 7, 2009 till the date of payment does not arise at all. The interest rate of 12% per annum with effect from January 07, 2009 is arbitrary, excessive, and exorbitant.

82.3. SEBI has charged an interest rate of 4% in the matter of Kirloskar Brothers case, 6% in the matter of NDTV and 6% in the matter of Gagan Rastogi. The WTM has imposed lower interest rates in said matter. There must be parity in the rates of interest levied.

82.4. The rate of interest of 12% per annum ought to be reduced to 2% per annum considering the huge amounts involved and long passage of time of over 14 years since January 2009 and by applying the principle of parity.

83. In the case of *Dushyant N. Dalal v. Securities and Exchange Board of India* (AIR 2018 SC 447), the Hon'ble Supreme Court referred to the decision of the Hon'ble Bombay High Court in *Prabhavati Ramgarib B. v. Divisional Railway Manager* [(2010) 4 Mah LJ 691] wherein it was held that interest was payable in equity. The Hon'ble Bombay High Court held as under:

> *"35. The petitioner's claim for interest would fall within the ambit of the words "or other rule of law" in section 4(1). The other rule of law being on grounds of equity. Even under the Interest Act, 1839, interest was payable under the proviso to section 1 which reads: "Provided that interest shall be payable in all cases in which it is now payable by law." Interest was payable by law under that Act in equity. This was recognized in a series of judgments. For instance in Trojan and Co. v. Nagappa Chettiar, 1953 SCR 789, the*

*Supreme Court, in paragraph 23, observed that it was well settled that interest is allowed by a Court of equity in the case of money obtained or retained by fraud. Interest was, therefore, awarded in equity. …. ..*

*36. The position is not different under the Interest Act, 1978. The words, in section 4(1) "or other rule of law" would include interest payable in equity. In fact, interest has been awarded by our Courts in equity as well as on principles analogous to section 34 of the Code of Civil Procedure on the basis that section 34 is based upon principles of justice, equity and good conscience."*

After quoting the aforesaid passage from the Bombay High Court decision, the Hon'ble Supreme Court, held as under:

*"28. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity."*

84. I note that the Noticees have held on to the illegal gain (from the date of transaction) by dealing in the shares of SCSL while in possession of UPSI which is in violation of PIT Regulations. Therefore, I am of the view that interest is payable because the Noticees had received unlawful benefit (illegal gains), which the Noticees were not entitled to.

85. Rate of interest for the violation of Securities laws have generally been based on applicable statutory provisions, case laws or past precedents. For instance, In Deemed Public Issue cases, the interest on refund have, in most cases, been imposed at the rate of 15%. Under Section 73(2) of the Companies Act, 1956, if monies received from applicants to a public issue were not repaid within a period of 8 days after the company became liable to repay, the company and directors who were officers in default were mandated to repay the money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed.

Further, in terms of rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rates of interest, for the purposes of Section 73(2), was 15 per cent per annum. Hence, as per Section 73(2) read with Rule 4D, the applicable rate of interest on refund amount was 15% per annum. Similarly, as per Section 220(2) of income tax act, if the taxpayer fails to pay the amount specified in any notice of demand issued under section 156(1) of income tax act within the period as allowed in this regard, then he shall be liable to pay simple interest at 1% for every month or part of a month. This provision, among others, applies to SEBI's recovery proceedings under section 28A of the SEBI Act.

86. In case of delayed open offers under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, simple interest has been imposed at the rate of 10% per annum after the Hon'ble Supreme Court's decision in *Clariant International Limited and Another v. Securities and Exchange Board of India, [(2004) 8 SCC 524].* The Court held **-** *"…..30. Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefore, for which a written demand is mandatory…… We, therefore, direct, having regard to the peculiar facts and circumstances of the case, that the interest of justice would be sub-served, if the rate of interest is directed to be paid at 10% per annum from March 1998 till 2003"*

87. I note from several orders passed by SEBI in cases involving violation of PFUTP Regulations and PIT Regulations, the interest on disgorgement amount is generally imposed at the rate of 12 % per annum simple interest. Most of these orders have been upheld by the Hon'ble SAT. The details of a few recent orders of the Hon'ble SAT where SEBI orders imposing simple interest at the rate of 12% on disgorgement of illegal gains from the date of the violation are recorded below for reference:

## *Table No.10*

| Sr. No. | Case Name | Date of SAT order | Regulations Violated | Interest Rate Imposed on disgorgement amount | Period of Interest | SAT observation |
|---|---|---|---|---|---|---|
| 1 | Dushyant N. Dalal | November 12, 2010 | PFUTP Regulations | 12% | From the date of violation in 2005 till the date of order passed in 2009 i.e. for 4 years (2005-09). | ***"The rate of 12 per cent as fixed by WTM is not excessive by any standard. It was not necessary for the Board to mention in the show cause notice that the appellants would also be liable to pay interest once they are ordered to disgorge the ill-gotten gains."*** |
| 2 | Navin Tayal and ors in the matter of Bank of Rajasthan | August 02, 2021 | PIT Regulations | 12% | From date of transaction/violation till date of order i.e. May 27, 2010 to December 31, 2015. | ***"The appellants made unlawful gains in 2010 and have earned interest on it, and therefore, the authority was justified in imposing interest on the disgorged amount from the date of the cause of action and not from the date of the order."*** |
| 3 | SMS Techsoft (India) Limited | October 18, 2019 | PFUTP Regulations | 12% | From the last date of investigation period i.e. November 05, 2013, till the date of payment | |
| 4 | Dhyana Finstock Ltd | June 10, 2022 | PFUTP Regulations | 12% | From the last date of investigation period i.e. July 27, 2015 till the date of payment | |
| 5 | KLG Capital Services Limited | July 29, 2022 | PIT Regulations | 12% | From the day after the UPSI was published i.e. February 29, 2008 till the date of order | |
| 6 | Palred Technologies Limited | June 15, 2022 | PIT Regulations | 12% | From the date of buy transaction till January 31, 2016 (date of interim order) | |
| 7 | Top Class Capital Markets Pvt. | March 08, 2022 | PIT Regulations | 12% | From the day after the UPSI was published i.e. March 04, | |

| Sr. No. | Case Name | Date of SAT order | Regulations Violated | Interest Rate Imposed on disgorgement amount | Period of Interest | SAT observation |
|---|---|---|---|---|---|---|
| | Ltd in the mater of Aurobindo Pharma Ltd | | | | 2009 till date of actual payment | |

88. As can be seen from the sample set of recent SAT orders, the general practice *(accepted and upheld by the Hon'ble SAT)* in orders involving PFUTP and PIT violations has been for SEBI to impose simple interest on illegal gains to be disgorged at the rate of 12% to be calculated from the date of violation/ last date of investigation period till the date of payment. I do not find any extraordinary reason to differ with the prevailing norm in the facts of this case. Any other rate of interest imposed can only be viewed as exceptions which are based on the specific circumstances of a particular case. The exceptional circumstance that the Noticees have pointed to, in their replies to the SSCN, is that there has been a lapse of long time of over 14 years in this case. I do not find this contention to be justifiable. The first SCN in this case was issued on March 09, 2009 i.e. 2 months after the confession of Ramalinga Raju that lead to the investigation by SEBI. Para 34(a) of the First SAT Order held as follows: "… *all documents relating to the charge of inflating/ manipulating the books of Satyam were made available to the appellants and inspite of receiving requisite documents appellants (excluding Prabhakara Gupta) failed and neglected to file detailed reply to the show cause notices till May 2014. Moreover, during the period from 2011 till May 2014 appellants, including Prabhakara Gupta consistently failed and neglected to participate in the proceedings before the WTM even though their request for keeping the proceedings in abeyance till conclusion of the criminal trial was repeatedly rejected and repeatedly the appellants were warned that ex-parte order would be passed if they fail to avail the opportunity of hearing. In these circumstances, in the facts of present case, argument of the appellants that the impugned order is violative of the principles of natural justice cannot be accepted."*

Similarly para 19 of the Second SEBI Order records in detail the number of opportunities afforded to all the entities therein to make their submissions before the Second SEBI Order could be passed. The subsequent chronology of events in this case leading up to this Order have already been elaborated in this Order. Therefore it cannot even be justifiably argued that SEBI delayed in initiation of proceedings in this case. In this context, I find the observations of the Hon'ble SAT in its order dated August 02, 2021 in the matter of **Navin Kumar Tayal and Ors. Vs. SEBI** to be instructive. The Hon'ble SAT held that *"…..It was urged that the rate of interest awarded is excessive and arbitrary and further the interest could only be levied from the date of the order and not from the date of cause of action. This contention cannot be accepted. The appellants made unlawful gains in 2010 and have earned interest on it, and therefore, the authority was justified in imposing interest on the disgorged amount from the date of the cause of action and not from the date of the order…."* (emphasis supplied). This SAT order is also relevant in the context of the Noticees' contention that interest can only be calculated after SEBI computes the amount of disgorgement, and that since the amount of disgorgement is yet to be computed the question of levying interest at the rate of 12% per annum from January 07, 2009 till the date of payment does not arise at all. In view of the aforementioned orders of the Hon'ble Supreme Court and SAT., I do not find any merit in the contention of the Noticees that interest would be applicable form the date of order of disgorgement. Infact going by the *Navin Tayal* and the *Dushyant Dalal* decisions (supra), the interest on illegal gain may accrue from the date of the violation i.e. the date of the impugned sale of shares while in possession of UPSI. Yet, a lenient view was already taken in the earlier SEBI orders by imposing interest only from January 07, 2009 i.e. the date the fraud came to light and not from the date of the cause of action.

89. In view of all of the above, I find that imposition of simple interest on illegal gains at the rate of 12% from January 07, 2009 till date of payment, is neither arbitrary nor excessive by any standard. On the contrary it is imposed judiciously in the facts and circumstances of this case and is consistent with past precedents.

### *D. Issue of Period of Restraint*

90. Hon'ble SAT vide its Third SAT Order directed WTM to reconsider the issue on period of restraint afresh for all Noticees. In this context, relevant paragraphs of third SAT order are reproduced below for reference:

*"……*

*116. In our opinion, this approach of the WTM is patently erroneous and cannot be sustained for the following reasons:-*

*1. No reason has been given as to why the magic figure of 14 years of restraint was appropriate.*

*2. No reason is given, nor any discussion is made with regard to the restraint of 14 years against B. Ramalinga Raju and B. Rama Raju.*

*3. The WTM in the 1st SEBI order had restrained B. Ramalinga Raju, B. Rama Raju, V. Srinivas and G. Ramakrishna for 14 years in view of violating the PIT Regulations and the PFUTP Regulations. The WTM in the 2nd SEBI order restrained SRSR Holdings Pvt. Ltd. and B. Suryanarayana Raju for 7 years for violating only the PIT Regulations. The WTM exonerated them under the PFUTP Regulations. The Hon'ble Supreme Court was considering the appeal of B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. with regard to the violation only under the PIT Regulations and while considering the SFIO's report found complicity of B. Suryanarayana Raju in the fraud. The fraud found by the Hon'ble Supreme Court was under the PIT Regulations and not under the PFUTP Regulations. In fact, the Hon'ble Supreme Court was not concerned with the violations under PFUTP Regulations.*

*In view of the aforesaid, the WTM has wrongly misconstrued the order of the Hon'ble Supreme Court and, consequently, the finding that B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. are equal perpetrators is without any basis.*

*4. In our view, B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. cannot be worse off on remand. The increase in period of restraint over and above the earlier order of remand is wholly illegal and cannot be sustained…"*

91. In this regard, vide SSCN-

91.1. Noticee Nos. 1 to 4 were advised to show cause as to why they should not be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 14 years.

91.2. Noticee No. 5 & 6 were advised to show cause as to why they should not be restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 7 years.

92. With regard to the period of restraint, Noticees *inter alia* submitted as under:

92.1. Noticee No. 1 & 2 had already undergone the period of restraint (over 14 years) since the beginning of investigations and same shall be taken into consideration and no further restraint be imposed on them.

92.2. Noticee No. 3 & 4 has already served the 7-year debarment imposed on them by Second SEBI order. Hence, the restraint order be lifted immediately.

92.3. Noticee No. 5 & 6 has already completed the seven years of restraint imposed by SEBI. The seven year period ended on July 14, 2021. Therefore, the restraint imposed on Noticee No. 5 & 6 be lifted without any delay.

93. Before I proceed further, I am required to consider para 33 of the Third SEBI Order and para 24 (read with para 5) of the Fourth SEBI Order. Both Orders recorded that the respective orders would come into effect only from such date as the Hon'ble Supreme Court directs, in accordance with the directions passed by the Hon'ble

Supreme Court; such directions were passed in C.A Nos. 11298/2017, 8242/2017, 10215/2017, 9493/2017 and 9524/2017. Thus the findings in the Third and Fourth SEBI Orders as well as all directions whether with respect to disgorgement or restraint or otherwise, could have taken effect only from such date as directed by the Hon'ble Supreme Court. Importantly, as elaborated in para 8 of this Order, the aforesaid paras of the Third and Fourth SEBI Orders also recorded the directions of the Hon'ble Supreme court to not access the securities market and not to deal in securities directly or indirectly till the Hon'ble Supreme Court adjudicated the C.A. Nos. 11298/2017, 8242/2017, 10215/2017, 9493/2017 and 9524/2017. **Therefore, any directions on restraint passed in this Order, must be subject to directions by the Hon'ble Supreme Court when the aforesaid Civil Appeals are adjudicated**.

94. Based on the aforesaid directions of the Hon'ble Supreme Court, I note that as on date the following noticees – Ramalinga Raju, Rama Raju, V. Srinivas and G Ramakrishna are restrained from dealing in securities or accessing the securities market in any manner whatsoever. Since, Hon'ble SAT has directed SEBI to reconsider the issue on period of restraint afresh, my observations / findings in respect of all 6 Noticees are as under:

94.1. **Ramalinga Raju and Rama Raju**- These two noticees had been restrained by the First SEBI Order and Fourth SEBI Order for a period of 14 years from July 15, 2014 and are currently under continued debarment. However, they claim that they had not dealt in securities market since the beginning of investigation and thereby had already served 14 year restraint period. The conclusion that Ramalinga Raju and Rama Raju had orchestrated the whole Satyam fraud, was upheld by the First SAT Order. However, taking into consideration the period of debarment already undergone, and considering that the Third SAT Order has directed that noticees cannot be worse of on remand, I find that these noticees are required to undergo remaining period of debarment as directed in the First and Fourth SEBI orders.

94.2. **Suryanarayana Raju and SRSR Holdings Pvt. Ltd.** - The Second SEBI Order had imposed a restraint of 7 years against these two noticees from the date of the order. Pursuant to remand by SAT, in partial modification of the Second SEBI Order, SEBI passed the Fourth SEBI Order whereby this period of restraint was increased to 14 years, taking into account the observations of the Hon'ble Supreme Court in its order dated May 14, 2018. However, the Third SAT order dated February 02, 2023 has observed that these noticees cannot be worse off on remand and therefore remanded the matter to SEBI to reconsider the issue on period of restraint. I note that these noticees have already undergone/completed the seven (7) years of restraint imposed by Second SEBI order and in view of the observations of the Third SAT Order, any further period of restraint would tantamount to these noticees being worse of on remand which according to the Hon'ble SAT is not sustainable.

94.3. **V Srinivas and G Ramakrishna** – The First SEBI Order had imposed a restraint of 14 years against these two noticees from the date of the order. Pursuant to remand by SAT, in partial modification of the First SEBI Order, SEBI passed the Third SEBI Order whereby this period of restraint was reduced to 7 years. It was also clarified that the period already undergone shall be taken into account for calculating the period of restraint. Consequently, the period of debarment earlier ordered by SEBI has already been undergone/completed by these 2 noticees.

95. Notwithstanding the above observations/ findings, directions passed in this Order, including with respect to period of restraint shall be subject to the directions of the Hon'ble Supreme Court, as discussed in paras 8 and 93 above.

### *E. Issue of Pledge of Shares*

96. The First SEBI Order concluded that SRSR had pledged shares of Satyam in order to obtain funds in the name of connected entities, when Ramalinga Raju and Rama Raju were involved in and had full knowledge that financials of Satyam were being

manipulated by them for several years. Accordingly, the entire borrowing of INR 1258.88 core obtained on the basis of UPSI was regarded as unlawful gain made by the two Raju brothers and the order *inter alia* directed them to disgorge this amount. The Second SEBI Order concluded that SRSR had borrowed to the extent of INR 1258.88 crore on the basis of unpublished price sensitive information and that their unlawful gains could also be regarded as unlawful gain made by the two Raju brothers. Accordingly, SRSR was ordered to disgorge the unlawful gains and that the two Raju brothers would bear joint and several liability for the said gain as well along with SRSR.

97. As noted earlier, the First and Second SEBI Orders' merits were upheld (i.e. the entities were all found to have violated PFUTP or PIT Regulations) and their roles in the Satyam scam were crystallised. However the two orders were remanded back to SEBI for reconsideration of the directions for disgorgement and restraint. The First SAT order made certain important observations in this context. The relevant extracts are reproduced below:

> *"h) Fact that the financial institutions while sanctioning loan to the 10 group entities took the market value of Satyam shares pledged by SRSR and the market value of Satyam shares was based on inflated/manipulated books of Satyam could not be a ground for the WTM to hold that the sanctioned loan of `1258.88 crore was the unlawful gain made by Ramalinga Raju and Rama Raju. Even if higher loan was sanctioned on the basis of inflated price of Satyam scrip, loan sanctioned with an obligation to repay could not by itself constitute gain under any provision of the securities laws.*
>
> *i) Apart from the above, facts on record reveal that out of the sanctioned loan of `1258.88 crore, the loan availed by the 10 group entities was `1219.25 crore and the loan repaid by the said 10 group entities on account of invocation of pledge and by other modes was to the extent of `1215.83 crore. Thus, the balance loan repayable was only to the extent of ` 3.43 crore. All these facts were available before the WTM. In such a case, decision of the WTM holding that the sanctioned loan of `1258.88 crore*

*represents the illegal gain made by Ramalinga Raju and Rama Raju clearly shows total non-application of mind on part of the WTM."*

(emphasis supplied)

98. Based on the aforesaid observations and the material submitted before SEBI, the Fourth SEBI Order was passed, in which the following was stated, in the context of unlawful gain made by way of pledge of shares:

*"19.2 From the above two SAT orders, what transpires is that SAT had upheld SEBI's contention that SRSR Holdings had violated PIT Regulations but it did not view the receipt of money from pledge of shares as illegal gain since there was an obligation to repay and that the loan was repaid with only Rs 3.43 crore remaining unpaid. The Hon'ble Supreme Court upheld the decision in the second SAT Order thereby meaning that SRSR Holdings was infact liable for having violated PIT Regulations. …*

*19.3 … Therefore the amounts raised by SRSR for the benefit of the Satyam group entities to the extent of the loan amount realised by liquidation of SCSL shares would become part of the illegal gains liable to be disgorged. As per the annexures filed along with submissions made by SRSR Holdings before SEBI, while Rs 540,43,82,089 was repaid out of 'other sources', Rs 675,39,48,813 was repaid by way of sale of SCSL shares. Therefore in my view the latter amount constitutes illegal gain made by SRSR Holdings and is liable to be disgorged."*

(emphasis supplied)

99. Vide the Third SAT Order, the Hon'ble SAT has now directed the WTM to re-consider the issue on pledge of shares. While directing so, the Hon'ble SAT stated that the Fourth SEBI order has neither considered nor followed the directions mentioned in the First SAT order and Second SAT order. Relevant extracts of SAT's observations in this regard, are reproduced below:

*"112. …. In our opinion, without considering the direction of this Tribunal as to how the loan sanctioned by the financial institutions could be held to be an unlawful gain by B. Ramalinga Raju and B. Rama Raju or how the loan amount can be an unlawful gain when there was an obligation to repay the loan amount which has also been repaid and whether the balance loan amount of Rs. 3.43 crore which remained unpaid could at best be the unlawful gain. In the absence of any discussion that the shares of Satyam was purchased for valuable consideration, we are of the opinion that the finding of the WTM on the issue of unlawful gain on pledge of shares is without any application of mind and without following the direction of the Tribunal and, therefore, the said finding cannot be sustained."*

(emphasis supplied)

100. The above observations provide context to the Hon'ble SAT's direction in para 120 to "reconsider the issue on pledge of shares". The above observations indicate that the following issues need to be addressed in this Order in the context of pledge of shares by SRSR –

100.1. Can a loan sanctioned by financial institutions to promoter group entities amount to unlawful gain by SRSR, Ramalinga Raju and Rama Raju?

100.2. When an insider allows the sale of pledged shares by a lender to extinguish a loan liability, while in possession of UPSI, does this involve an unlawful gain?

100.3. Whether the valuable consideration paid by SRSR for acquisition of Satyam shares is required to be deducted from the gain, if any, made by SRSR to compute illegal gain?

101. Taking into consideration the Fourth SEBI Order *(wherein the liability of SRSR was crystallised after taking into account Hon'ble SAT's observations in the Second SAT Order)* the SSCN has asked why the amount raised by way of pledge of Satyam shares held by SRSR which was eventually invoked and sold, should not be considered as illegal / unlawful gain made by SRSR which is liable for disgorgement.

102. In response to the SSCN, SRSR (Noticee No. 4) submitted that on September 16, 2006 it had acquired 2,78,64,000 shares of SCSL through a block deal in the stock exchange paying approximately INR 815/- per share for a total consideration of INR 2,266 Crores. Out of the total availed loan amount of INR 1,219.26 Crores, an amount of INR1,215.83 Crores was already repaid partly by invoking the pledge and the outstanding loan is only INR 3.43 Crores. There was nothing wrong / unusual about repayment of loan amount on account of invocation of pledge and by other modes. The Noticee No. 4 claims to have not obtained any unlawful gains as the Hon'ble SAT has categorically determined that loan amounts accompanied by liability to repay cannot be considered as unlawful gains under any securities law. Further, most of the loan amount has been repaid and since the cost of acquisition being more than the loans obtained, there is no basis for issuing a disgorgement direction against it. Noticee No. 4 has further placed reliance on the Third SAT order to state that the unlawful gains, if any, has to be disgorged by the Noticee No. 4 individually to the extent of the unlawful gain computed against it. Noticee No. 4 goes on to state that the unlawful gains against Noticee No. 4 have been calculated on an individual basis in the SSCN, the Noticee No. 4 cannot be made jointly and severally liable along with other parties to the proceedings.

103. I have considered the written and oral submissions made by SRSR in this regard and now turn to address the issues listed in para 100 above. I note that the Second SAT order which was upheld by the Hon’ble Supreme Court in its order of May 14, 2018 *inter alia* concluded that Ramalinga Raju and Rama Raju used SRSR as a front entity to pledge shares of Satyam and obtain loan thereby allowing them to offload their shares on the basis of higher market price of Satyam shares. What therefore follows from the above judgment of the apex court, is that unlawful gains, if any, made by SRSR (*basis the pledge of Satyam shares transferred to it by the Raju brothers and their wives*), would in effect be the gain of Ramalinga Raju and Rama Raju as well.

104. In the First SAT order, the Hon'ble SAT also observed that *"Even if higher loan was sanctioned on the basis of inflated price of Satyam scrip loan sanctioned with an obligation to repay could not by itself constitute gain under any provision of the securities laws."* Therefore, what is now in question is whether loans extinguished through sale of pledged shares could be regarded as involving any unlawful gain.

105. The First SAT Order stated that 'facts on record reveal that out of the sanctioned loan of INR 1258.88 crore, the loan availed by the 10 group entities was INR 1219.25 crore and the loan repaid by the said 10 group entities on account of invocation of pledge and by other modes was to the extent of INR 1215.83 crore.' Based on the material available on record, the Fourth SEBI Order had noted that the repayment of the amount of INR 1215.83 crore was by way of sale of Satyam shares (INR 675,39,48,813) as well as through other sources (INR 540,43,82,089). I have considered the observations made in the First and Second SAT orders as well as the Fourth SEBI Order.

106. Loans come with a repayment obligation, and are a financial liability of the borrower. Any collateral is pledged as a security, to be forfeited by the borrower/ pledger in the event of a default on the loan. Both the lender and the borrower/ pledger usually expect the borrower to repay the loan out of other cashflows, rather than by them forfeiting the collateral. Invocation and sale of collateral is not the normal route for repayment of a loan – this occurs only when there is a default in repayment of the loan. In the instant case, the promoter entity borrowers defaulted on loan availed of by using the shares held by another promoter entity namely – SRSR. The liability to the lenders was not directly extinguished. Therefore, the lenders took over and enforced the collateral, i.e., *inter alia*, sold the pledged shares of SCSL, owned by SRSR, in the market, between late December 2008 and early January 2009, before the UPSI became public. As insiders, SRSR and the other promoters were well aware of the inflated nature of Satyam's scrip due to the manipulation of books and accounts of Satyam. Had the loans been repaid using other funds of SRSR or the promoters,

other than from sale of pledged Satyam shares (*belonging to SRSR*), or had the additional demands for collateral from the lenders ben met, the question of illegal gains made by SRSR would not have arisen. Instead, knowing fully well that the assets placed as security for obtaining loans were inflated in value, the promoters defaulted on their loans and did not top up the margins, which in turn allowed the lenders to offload the pledged shares of SCSL owned by SRSR into the market to extinguish the liabilities of the promoter groups. These sales were conducted prior to the UPSI becoming public on January 7, 2009. The confession email sent by Ramalinga Raju on January 07, 2009 itself admitted to the use of the pledge of promoter shares to raise funds to cover up the shortfall that was temporarily hidden from public view through a web of doctored documents and manipulated statements. The relevant extract from his email is reproduced below for reference:

> *"The aborted Maytas acquisition deal was the last attempt to fill the fictitious assets with real ones. Maytas' investors were convinced that this is a good divestment opportunity and a strategic fit. Once Satyam's problem was solved, it was hoped that Maytas' payments can be delayed. But that was not to be. What followed in the last several days is common knowledge. I would like the Board to know:*
>
> *…*
>
> *2. <u>That in the last two years a net amount of 12.30 billion rupees was arranged to Satyam (not reflected in the books of Satyam) to keep the operations going by resorting to pledging all the promoter shares and raising funds from known sources by giving all kinds of assurances</u> (Statement enclosed, only to the members of the board). Significant dividend payments, acquisitions, capital expenditure to provide for growth did not help matters. Every attempt was made to keep the wheel moving and to ensure prompt payment of salaries to the associates. <u>The last straw was the selling of most of the pledged share by the lenders on account of margin triggers</u>."*
>
> (emphasis supplied)

107. While the confession email and the submissions of the noticees have attempted to justify the pledge of shares explaining the bonafide purpose for which loans were taken, the indisputable fact is that loans were raised against the collateral of overvalued Satyam shares. Crucially, rather than repay the loan directly or to up the collateral margin as they were obligated to, the promoters defaulted on the loans, and instead allowed the loans to be extinguished by sale of overvalued Satyam shares by the lenders in the market, when the UPSI was still not public. Sans the availability of the artificially inflated shares as pledged instruments, SRSR/ the promoters would have had to look for other sources to repay these loans. Given this overall context, I find that the promoter group loan liabilities extinguished through sale of Satyam shares by the lenders, involved unlawful gains made by SRSR along with Ramalinga Raju and Rama Raju, akin to them having directly conducted such sales of SCSL shares in the market.

108. In summary, by defaulting on repayment of the loan, and failing to top up the collateral, and hence allowing the lenders to sell the shares in the market to extinguish their loan liability, SRSR and the Raju brothers effectively and implicitly sold overvalued shares in the market to extinguish promoter liability, prior to the UPSI becoming public. While the trigger to sell the shares may have been pulled by the lenders, they were not stopped from doing so by SRSR and the Raju brothers, who should have instead arranged for alternate funds to extinguish the loan obligations or increase loan collateral. When an insider allows the sale of pledged shares by a lender to extinguish a loan liability, while in possession of UPSI, this does involve an unlawful gain, akin to the insider having directly sold the shares in the market. As discussed earlier in this Order, the Hon'ble Supreme Court had affirmed the finding of the Second SAT Order which described SRSR as a 'front entity' used by the promoters/Raju brothers. SRSR was used for promoter entities to avail loans by pledging shares transferred to SRSR by the Raju family. By allowing the pledged shares to be sold by

the lenders to extinguish the loan liability, effectively SRSR ensured unlawful gains for it and the promoters, akin to it selling the shares in the market directly.

109. The next question to be addressed is should 'valuable consideration' paid for the acquisition of shares by SRSR from the Raju brothers *(and their wives)* be deducted from the unlawful gain made by sale of Satyam shares held by SRSR. In its reply dated July 18, 2023, at para 5.8 SRSR has specifically argued that since the cost of acquisition is more than the loans obtained, there is no basis for issuing a disgorgement order against the Noticee. Further, in its additional reply dated October 31, 2023, SRSR has argued that *"Merely because the shares were acquired from Noticee Nos.1 and 2 and their wives cannot mean that SRSR should be deprived of the benefit/deduction of acquisition costs."* In this regard, I am drawn back to the conclusions of the Second SAT order upheld by the Hon'ble Supreme Court in its 2018 order *(discussed above)*, wherein SRSR was described as a 'front entity' and that the shares were transferred to it by the Raju brothers merely to enable its eventual offloading in the market so that the benefit of artificially inflated shares would accrue to the promoters. The shares simply moved from individual promoters to a body corporate promoter which was nothing but an alter ego of the promoters. Again, this is supported by the aforementioned confession email of Ramalinga Raju. However, the Noticees have repeatedly in their submissions before me contended that shares were acquired by SRSR for valuable consideration at a higher price. Therefore, in addition to the existing material on record, I called for bank account details in this regard. I was informed that the bank account associated with settlement of the bulk deal claimed by SRSR pertained to ICICI Bank.

110. Upon perusal of the said bank account details the following transactions are observed to have taken place on September 18, 2006 i.e. the settlement date for the sale of shares from the Raju brothers and their wives (B Nandini Raju and B. Radha) [B Ramlinga Raju, B. Rama Raju, B Nandini Raju and B. Radha are collectively

referred to as **"Raju Family"**] to SRSR through block deal mechanism on the stock exchange:

110.1. Raju Family received a loan of total amount of approx. INR 2,266 crore from an NBFC arm of DSP Merrill Lynch Limited (stock broker for both Noticee No. 4 and Raju Family) (**"DSP"**) under an agreement dated September 15, 2006 executed between Raju Family, Noticee No. 4, DSP Merrill Lynch Capital Limited (NBFC) and ICICI Bank Limited.

110.2. On receipt of said loan, the Raju Family in turn transferred approx. INR 2,266 crore to Noticee No. 4 (SRSR).

110.3. SRSR in turn had transferred approx. INR 2,266 crore to DSP towards purchase of SCSL shares from Raju Family.

110.4. Raju Family received approx. INR 2,266 crore from DSP towards sale of SCSL shares to SRSR.

110.5. Thereafter, Raju family had transferred the approx. INR 2,266 crore to NBFC arm of DSP towards repayment of loan.

110.6. The said bank account of Noticee No. 4 was opened on September 13, 2006 and closed on September 19, 2006, which suggests that the said bank account was opened specifically for the execution of aforesaid fund transaction only.

111. The aforesaid fund transactions (***all of which happened on a single day***) further supports the earlier findings that SRSR was a front entity established by Noticee No. 1 & 2 for off-loading their shareholding in SCSL. From the above, I also find that acquisition of 2,78,64,000 SCSL shares by SRSR from the Raju Family were funded by Raju family themselves. Bank balance of the ICICI account in question reveals that SRSR had NIL funds as on the date of the acquisition of shares by SRSR. Sans the fund transferred to SRSR on the very same day by the Raju family, SRSR would not have been in a position to purchase the 2,78,64,000 SCSL shares from the very same Raju family. Therefore, effectively, SRSR had acquired the said shares without paying any consideration. The pledging of SCSL shares by SRSR and selling of the

said pledged shares in the market on account of invocation of pledge by financial institutions (due to margin shortfall) amounted to an indirect sale of SCSL shares by SRSR on behalf of the Raju brothers. Further, due to invocation of pledge, the liability to repay the loans was also extinguished. The contention that shares were acquired by SRSR from the Raju family *(which as observed in the Second SAT order were the promoters of Satyam)* for 'valuable consideration' appears to be an attempt to lend artificial legitimacy to the transactions. The so-called acquisition of shares can only be viewed as movement of shares from the left pocket to right pocket of the main perpetrators of the scam- Ramalinga Raju and Rama Raju. Allowing the deduction of this bogus cost i.e. the cost of acquisition, on the strength of the aforementioned round tripping of funds would end up in grossly injuring the confidence of investors in the integrity of the securities market. In view of the same, I do not find any reason to deduct the claimed cost of acquisition of Satyam shares amounting to INR 2,266 crore from the unlawful gain made by SRSR. I also do not agree with the contention that since the cost of acquisition is more than the loans obtained, there is no basis for issuing a disgorgement order against SRSR. Nonetheless, intrinsic value of the Satyam shares may be considered for deduction from the illegal gains made by SRSR, as has been discussed elsewhere in this Order.

*Other contentions with respect to pledge of shares*

112. Noticee no. 4 submitted that the act of 'pledging' doesn't fall within the ambit of 'dealing in securities' and hence the act of 'pledging' does not attract Regulation 3 of PIT Regulations. Further, it has submitted that it has transferred the entire loan amount of Rs 1219.25 crores (received by pledging the shares) to SCSL to fund its operations and had no intention of benefiting from the proceeds of pledge of shares. Therefore, according to SRSR, the ratio of Hon'ble Supreme Court of India in Civil appeal no. 563 of 2020 in SEBI vs. Abhijit Ranjan and Hon'ble SAT Appeal No. 536 of 2021 in Rajeev Vasant Sheth & others vs. SEBI would be applicable in its case.

113. The facts of the present case differ from those in the cited decisions. In Abhijit Ranjan case, the insider claimed to have had sold the shares while in possession of UPSI to prevent the parent company from bankruptcy. In Rajeev Vasant case, the insider claimed to have had sold the shares to infuse the fund in the company to bring required working capital. On the other hand, in the present case, SRSR, which was held to be a front entity of Noticee 1 and 2 had pledged the Satyam shares while in possession of UPSI and infused the proceeds of pledge of shares in SCSL *to hide the fraud* (inflated / manipulated financials of SCSL) committed by Noticee No. 1 & 2 in SCSL for several years. The infusion of fund into Satyam was necessitated not to serve a bona fide or genuine purpose, rather to perpetuate a fraudulent one.

114. In this regard, I note that Hon'ble SAT vide Second SAT order held that *"…..Expression 'dealing in securities' as defined under regulation 2(d) of the PIT Regulations is not restricted to any particular type of dealing but is wide enough to cover all types of dealing in securities including the activity of pledging the securities. Although pledging of securities is not per se illegal under the PIT Regulations, regulation 3 of the PIT Regulations prohibits an 'insider' from pledging the securities when in possession of UPSI. Thus, the prohibition contained in the PIT Regulations do not apply to bonafide pledge of securities, but apply only to pledge of securities by an insider when in possession of UPSI. In the present case, shares of Satyam were transferred by Ramalinga Raju, Rama Raju and their wives to SRSR a company owned by Ramalinga Raju, Rama Raju and their family members while in possession of UPSI. Moreover, before transferring the shares of Satyam, Ramalinga Raju and Rama Raju became Directors of SRSR and thereafter on transfer of shares, SRSR pledged those shares for obtaining loan to the entities owned by Ramalinga Raju and his family members. In these circumstances, decision of the WTM of SEBI that acquisition and pledge of Satyam shares by SRSR was a device adopted for off loading the shares of Satyam when in possession of UPSI and hence violative of regulation 3 of the PIT Regulations cannot be faulted…".* From the second SAT order, I note that expression 'dealing in securities' is wide enough to cover all types of dealing

in securities including the act of 'pledging the securities' by an insider when in possession of UPSI. Hence, I do not find any merit in the said submission of Noticee No. 4.

115. In any case, I do not find these arguments to be relevant at this stage of the proceedings. As earlier discussed, the merits of the case i.e. whether SRSR was an 'insider' or not and whether it had violated PIT Regulations by way of pledging Satyam shares, has already been determined by the Hon'ble Supreme Court vide its order dated May 14, 2018. Therefore, any attempt to re-open or re-look at the conclusions arrived at by the Hon'ble Supreme Court is not permissible. Therefore I do not find any merit in the contention that the cases of Abhijit Ranjan and Rajeev Vasant Sheth must be considered.

## VI. UNLAWFUL GAIN TO BE DISGORGED – RECALCULATED

116. Having deliberated on the issues as directed by the Hon'ble SAT in the Third SAT Order, I now proceed to re-calculate the unlawful gain to be disgorged. The re-calculation takes into account the following:

116.1. Value of Satyam shares, had the true state of financial affairs been known to the shareholders (intrinsic/underlying value)

116.2. Exclusion of shares sold prior to 20.02.2002

116.3. Removal of clerical errors

117. Noticee No. 3, 5 & 6 submitted that prior to the 2002 amendment to the PIT Regulations w.e.f. 20.02.2002, the test for determining whether an insider had violated Regulation 3(i) of the PIT Regulations, involved ascertaining whether he had dealt in securities "*on the basis of UPSI"* as opposed to dealing in securities *"when in possession of UPSI"*. According to the noticees, there is no allegation in the SCN that the Noticee No. 3. 5 & 6 dealt in securities on the basis of unpublished price sensitive information and therefore sale proceeds of SCSL shares sold prior to February 20,

2002 should be excluded while computing the disgorgement amount. In this regard, I find that there was no allegation in the SCNs or in the earlier SSCNs issued to Noticee No. 3, 5 & 6 that they had dealt in or sold SCSL shares 'on the basis' of UPSI. Further, the First SEBI order and Second SEBI order did not find Noticee Nos. 3, 5 & 6 to have dealt in or sold SCSL shares 'on the basis' of UPSI. On the contrary, Noticees were found to have dealt in / sold / transferred SCSL shares held by them 'while in possession of' UPSI, thereby violating the provisions of Section 12A(d) and (e) of SEBI Act and Regulation 3(i) of PIT Regulations.

118. I also note the Hon'ble SAT's finding in the Second SAT order which states as follows: *"….Similarly, in para 65 of the impugned order it is held that Jhansi Rani sold shares of Satyam 'when in possession' of UPSI and therefore she has violated regulation 3 of the PIT Regulation. It is relevant to note that Jhansi Rani sold the shares of Satyam prior to the amendment of regulation 3 on 20.02.2002. On the date on which Jhansi Rani sold the shares of Satyam, the prohibition under regulation 3 was that no 'insider' shall trade in the shares of the company 'on the basis' of UPSI. The words 'on the basis' was substituted by the words 'when in possession' with effect from 20.02.2002. Thus, sales effected by Jhansi Rani could be said to be violative of regulation 3, only by establishing that she had sold the shares of Satyam not only when in possession of UPSI but also on the basis of UPSI. As there is no finding recorded in the impugned order that Jhansi Rani sold shares of Satyam on the basis of UPSI, impugned order passed against Jhansi Rani cannot be sustained…"* Relying on the finding of Hon'ble SAT and considering the fact that there is no finding in First SEBI order and Second SEBI order that the Noticees have dealt in / sold / transfer SCSL shares on the basis of UPSI, I am of the view that any sale consideration arising out of shares sold by the Noticees prior to February 20, 2002 shall not be considered for computation of unlawful gains liable to be disgorged.

119. The details of SCSL shares sold by Noticee No. 3, 5 & 6 on or prior to February 20, 2002 are as under:

***Table No. 11 - Noticee No. 3***

| Date of SCSL Share sold / Transfer | No. of shares sold / transfer | Price in INR | Sale value in INR |
|---|---|---|---|
| 22.01.2001 | 71,000 | 425.40 | 3,02,03,400 |
| 22.01.2001 | 80,000 | 425.40 | 3,40,32,000 |
| 22.01.2001 | 80,000 | 425.40 | 3,40,32,000 |
| 05.02.2001 | 25,000 | 403.65 | 1,00,91,250 |
| 05.02.2001 | 13,000 | 403.65 | 52,47,450 |
| 05.02.2001 | 19,500 | 403.65 | 78,71,175 |
| 05.02.2001 | 5,000 | 403.65 | 20,18,250 |
| 05.02.2001 | 2,000 | 403.65 | 8,07,300 |
| **Total** | **2,95,500** | | **12,43,02,825** |

***Table No. 12 - Noticee No. 5***

| Date of transfer from demat account after sale | No. of Shares | Closing price of the Day (INR) | Sale Value in INR |
|---|---|---|---|
| 06-Mar-01 | 1,000 | 244.6 | 2,44,600 |
| 13-Mar-01 | 28,000 | 199.95 | 55,98,600 |
| 24-Apr-01 | 15,000 | 248.95 | 37,34,250 |
| 24-May-01 | 20,000 | 238.75 | 47,75,000 |
| 25-May-01 | 10,000 | 247 | 24,70,000 |
| 28-May-01 | 30,000 | 250.15 | 75,04,500 |
| 29-May-01 | 10,000 | 249 | 24,90,000 |
| 28-Aug-01 | 5,000 | 174.6 | 8,73,000 |
| 05-Sep-01 | 5,000 | 165.2 | 8,26,000 |
| 08-Sep-01 | 15,000 | 172.2 | 25,83,000 |
| 10-Sep-01 | 29,000 | 171.35 | 49,69,150 |
| 11-Sep-01 | 45,000 | 174.85 | 78,68,250 |
| 12-Sep-01 | 5,000 | 157.5 | 7,87,500 |
| 15-Sep-01 | 6,000 | 139.75 | 8,38,500 |
| 26-Sep-01 | 15,000 | 128.15 | 19,22,250 |
| 01-Oct-01 | 10,000 | 122.4 | 12,24,000 |
| 05-Oct-01 | 10,000 | 125.2 | 12,52,000 |
| 06-Oct-01 | 48,200 | 125.2 | 60,34,640 |
| 08-Oct-01 | 26,800 | 119.2 | 31,94,560 |

| Date of transfer from demat account after sale | No. of Shares | Closing price of the Day (INR) | Sale Value in INR |
|---|---|---|---|
| 11-Oct-01 | 39,275 | 139.35 | 54,72,971 |
| 12-Oct-01 | 725 | 141.75 | 1,02,769 |
| 17-Oct-01 | 16,500 | 147.85 | 24,39,525 |
| | **3,90,500** | | **6,72,05,065** |

***Table No. 13 - Noticee No. 6***

| Date of transfer from demat account after sale | No. of Shares | Closing price of the Day (INR) | Sale Value in INR |
|---|---|---|---|
| 17-Jul-01 | 5,000 | 180.75 | 9,03,750 |
| 17-Jul-01 | 5,000 | 180.75 | 9,03,750 |
| 31-Jul-01 | 5,000 | 147.45 | 7,37,250 |
| 18-Aug-01 | 5,000 | 170.5 | 8,52,500 |
| 30-Aug-01 | 5,000 | 173.85 | 8,69,250 |
| 20-Oct-01 | 5,000 | 148.3 | 7,41,500 |
| 29-Oct-01 | 5,000 | 142.85 | 7,14,250 |
| 10-Nov-01 | 5,000 | 149.1 | 7,45,500 |
| 21-Nov-01 | 5,000 | 195.3 | 9,76,500 |
| 24-Nov-01 | 5,000 | 213.2 | 10,66,000 |
| 24-Nov-01 | 5,000 | 213.2 | 10,66,000 |
| 10-Dec-01 | 5,000 | 267.65 | 13,38,250 |
| 11-Dec-01 | 5,000 | 258.9 | 12,94,500 |
| 09-Jan-02 | 5,000 | 296.15 | 14,80,750 |
| 12-Feb-02 | 7,500 | 287 | 21,52,500 |
| 13-Feb-02 | 12,500 | 288.5 | 36,06,250 |
| 20-Feb-02 | 30,000 | 279.1 | 83,73,000 |
| **Total** | **1,20,000** | | **2,78,21,500** |

**Note:** Considering the settlement period in 2002, I note that on February 20, 2002, 30,000 shares were transferred from the demat account of Noticee No 6, however the said shares would have been sold prior to February 20, 2002, hence the sale consideration of said shares were excluded from the calculation of unlawful gains.

120. From the above, I note that sale consideration mentioned in the below table arises out of SCSL shares sold by the Noticee No. 3, 5 & 6 prior to February 20, 2002 and the same shall be deducted while computing unlawful gains liable to be disgorged from respective Noticee.

***Table No. 14***

| Noticee No. | No. of shares sold / transfer | Sale value in INR |
|---|---|---|
| 3 | 2,95,500 | 12,43,02,825 |
| 5 | 3,90,500 | 6,72,05,065 |
| 6 | 1,20,000 | 2,78,21,500 |

121. Noticee No. 2 (Rama Raju) submitted that there is calculation error in the consideration for 6,00,000 shares sold by him. The sale value of 6,00,000 shares at INR 444.66/- per share comes to INR 26,67,50,000/-. However, SEBI has considered the total sale amount of 6,00,000 SCSL shares as INR 29,54,35,195/-. The said error occurred on account of addition of quantum of shares sold by Mr. Rama Raju Jr., to the aforesaid amount. In this regard, from the document available on record, I find that while in possession of UPSI, B Rama Raju on May 30, 2005 had sold 6,00,000 shares at INR 443.75/- per share for a consideration of INR 26,62,50,000/- instead of INR 29,54,35,195/- as mentioned in SSCN.

122. After considering the intrinsic value, details of taxes paid, shares sold prior to February 20, 2002 and removal of clerical error, the unlawful gains made by Noticee no. 1 to 4 which is liable to be disgorged is as under:

***Table No. 15***

| Notice No. | Noticee | Clerical Error (INR) | Sale value of Shares Sold prior to February 20, 2002 (INR) | Total Sale value of shares sold post February 20, 2002 in INR (A) | Intrinsic value (in INR) on Sale amount (B) = 23.25% of (A) | Details of Taxes paid (C ) | Unlawful gains (In INR) on sale of shares (D) = (A) - (B) - (C) |
|---|---|---|---|---|---|---|---|
| 1 | Ramaling a Raju | 0 | 0 | 26,62,50,000 | 6,19,03,125 | 0 | 20,43,46,875 |
| 2 | Rama Raju | 2,91,85,195 | 0 | 26,62,50,000 | 6,19,03,125 | 0 | 20,43,46,875 |
| 3 | Suryanar ayana Raju | 0 | 12,43,02,825 | 77,28,67,940 | 17,96,91,796 | 7,87,35,114 | 51,44,41,030 |
| 4 | SRSR Holding Private Limited * | 0 | 0 | 6,75,39,48,813 | 1,57,02,93,099 | 0 | 5,18,36,55,714 |
| **Total** | | | | | | | **6,10,67,90,494** |

* Sale value of shares sold pursuant to the invocation of pledge

123. As noted earlier, the shares sold prior to February 20,2002 stand excluded for the purposes of computation of illegal gains. However, Noticee No. 5 claims that the market price of shares acquired post conversion of ESOPs prior to February 20, 2002 must also be reduced as intrinsic value of those shares. I am unable to agree with these contentions. The number of shares sold by Noticee No. 5 prior to February 20, 2002 is mentioned at Table no. 12 above. The details of number of shares acquired by Noticee No. 5 prior to February 20, 2002 are as under:

***Table No. 16***

| **Cost of acquisition of shares acquired by Noticee No. 5 prior to 20.02.2002** | | |
|---|---|---|
| **Date** | **Shares acquired** | **Prices (INR)** |
| 24.12.1999 | 60,000 | 28,23,441 |
| 04.04.2001 | 1,00,000 | 56,15,300 |
| 10.04.2001 | 33,000 | 18,56,679 |
| 28.04.2001 | 1,29,500 | 73,37,340 |
| 12.09.2001 | 55,000 | 34,84,704 |
| 17.09.2001 | 45,000 | 24,44,522 |
| 08.10.2001 | 37,500 | 22,34,475 |
| **Total** | **4,60,000** | **2,57,96,461** |

124. From Table no. 12 & 16 I note that prior to February 20, 2002 Noticee had acquired 4,60,000 shares and sold 3,90,500 shares. Thus, I note that 3,60,000 shares which according to the Noticee were acquired by him prior to commencement of fraud period / UPSI period *(fraud period started from 1.04.2001 as claimed by Noticee)* were already sold by Noticee prior to February 20, 2002. I have already concluded above in this order that the sale value of shares which were sold prior to February 20, 2002 would not be considered for calculating unlawful gains. Hence, I am of the view that no benefit of intrinsic value can be extended for 3,60,000 shares of the Noticee because these shares are not at all considered for calculation of unlawful gains.

125. Noticee no. 5 submitted that there is a clerical error in calculating the sale value of shares sold on December 11, 2008. According to him, SEBI had considered the closing price of December 11, 2007 instead of closing price of December 11, 2008. In this regard, from the available data, I note that the closing price of SCSL share on December 11, 2008 was Rs 224.45 instead of Rs 442.65 (INR 442.65 is the closing price on December 11, 2007). Therefore, the sale value of 5,142 SCSL shares taken in calculating unlawful gains in First SEBI was in excess INR 11,21,984/- (442.65 – 224.45 = 218.20 * 5142). Hence, I find that INR 11,21,984/- must be deducted from total sale value as mentioned in First SEBI Order, while calculating unlawful gains liable to be disgorged.

126. After considering the cost of cost of acquisition, details of taxes paid, shares sold prior to February 20, 2002 and removal of clerical error, if any, the unlawful gains (in INR) made by Noticee no. 5 & 6 which is liable to be disgorged is as under:

***Table No.17***

| Calculation of Unlawful gains of Noticee No. 5 - V Srinivas (in INR) | | |
|---|---|---|
| A | Total value of shares sold as per First SEBI order | 29,50,88,263.30 |
| B | **Less:** Sale Value of SCSL shares sold Prior to 20.02.2002 | 6,72,05,065.00 |
| C | **Less**: Clerical Error | 11,21,984.00 |
| D | **Total Sale Value of shares sold after 20.02.2002 (A-B-C)** | 22,67,61,214.30 |
| E | **Less:** Intrinsic value on Sale Value of shares sold after 20.02.2002 = 23.25% of (D) | 5,27,21,982.32 |
| F | **Total Sale Value after deduction of intrinsic value: (D-E)** | 17,40,39,231.98 |
| | | |
| G | Cost of acquisition of SCSL shares acquired after 20.02.2002 | 6,88,16,249.00 |
| H | **Less:** Intrinsic value on Cost of acquisition of SCSL shares acquired after 20.02.2002 = 23.25% of (G) | 1,59,99,777.89 |
| I | **Total Cost of Acquisition after deduction of intrinsic value: (G-H)** | 5,28,16,471.11 |
| | | |
| J | **Less:** Capital gains tax for FY 2002-03 to FY 2007-08 | 2,51,69,327.72 |
| K | **Less:** STT (Average STT rate for relevant period is taken as 0.100 percent) on Total Sale Value of shares sold after 20.02.2002 | 2,26,761.21 |
| | **Net unlawful gains (F-I-J-K)** | **9,58,26,671.93** |
| **Note:** As sale value of shares sold prior to 20.02.2002 has not been considered, therefore, deduction of gain made in Financial Year 2000-01 as mentioned in SSCN has also not been considered. | | |

***Table No.18***

| Calculation of Unlawful gains of Noticee No. 6 - G Ramakrishna (in INR) | | |
|---|---|---|
| A | Total value of shares sold as per First SEBI order | 11,50,81,934.00 |
| B | **Less:** Sale Value of SCSL shares sold Prior to 20.02.2002 | 2,78,21,500.00 |
| C | **Total Sale Value of shares sold after 20.02.2002 (A-B)** | 8,72,60,434.00 |
| D | **Less:** Intrinsic value on Sale Value of shares sold after 20.02.2002 = 23.25% of (C) | 2,02,88,050.91 |
| E | **Total Sale Value after deduction of intrinsic value: (C-D)** | 6,69,72,383.10 |
| | | |
| F | Cost of acquisition of SCSL shares acquired after 20.02.2002 | 3,71,59,307.18 |
| G | **Less:** Intrinsic value on Cost of acquisition of SCSL shares acquired after 20.02.2002 = 23.25% of (F) | 86,39,538.92 |
| H | **Total Cost of Acquisition after deduction of intrinsic value: (F-G)** | 2,85,19,768.26 |
| | | |
| I | **Less:** Capital gains tax | Not submitted by the Noticee N, 6, hence not applicable |
| J | **Less:** STT (Average STT rate for relevant period is taken as 0.100 percent) on Total Sale Value of shares sold after 20.02.2002 | 87,260.43 |
| | **Net unlawful gains (E-H-I-J)** | **3,83,65,354.40** |

127. From Table no. 15, 17 & 18 above, the amount of unlawful gains made by Noticee no. 1 to 6 which is liable to be disgorged is as under:

***Table No. 19***

| Noticee No. | Name of the Noticee | Amount of Unlawful gain made (INR) |
|---|---|---|
| 1 | B Ramalinga Raju | 20,43,46,875 |
| 2 | B Rama Raju | 20,43,46,875 |
| 3 | B Suryanrayana Raju | 51,44,41,030 |
| 4 | SRSR Holding Private Limited | 518,36,55,714 |
| 5 | V Srinivas | 9,58,26,672 |
| 6 | G Ramkrishna | 3,83,65,354 |
| **Total** | | **624,09,82,520** |

**ORDER**

128. In view of the above, I, in exercise of the powers conferred upon me under section 11, 11(4) and 11B of the SEBI Act read with section 19 of the SEBI Act, 1992, and regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, and regulation 11 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, for the reasons elaborated in paras 93 and 94 of this Order, hereby restrain the following noticees from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, for the period specified below:

***Table No. 20***

| Name of Noticee | PAN | Period of restraint |
|---|---|---|
| B Ramalinga Raju | ACVPB8311J | Till July 14, 2028 |
| B. Rama Raju | ACEPB2813Q | Till July 14, 2028 |

Also, for the reasons elaborated in paras 93 and 94 of this Order, no directions of restraint/debarment is imposed on B. Suryanarayana Raju (PAN: ACEPB2811N), SRSR Holdings Pvt. Ltd. (PAN: AAKCS0134N), V. Srinivas (PAN: ABEPV4019P) and G. Ramakrishna (PAN : ACAPG1654L) by this Order. For the reasons elaborated in para 67 of this Order, notwithstanding the aforesaid directions, Ramalinga Raju, Rama Raju, V. Srinivas and G. Ramakrishna shall continue to remain under restraint as directed by the Hon'ble Supreme Court till appeals in C.A. Nos. 11298/2017, 8242/2017, 10215/2017, 9493/2017 and 9524/2017 are decided. Directions of restraint/debarment passed in this Order shall be subject to any direction by the Hon'ble Supreme Court in the aforesaid appeals.

129. Further, I, in exercise of the powers conferred upon me under section 11, 11(4) and 11B of the SEBI Act read with section 19 of the SEBI Act, 1992, and regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, and regulation 11 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, hereby direct that the Noticees shall disgorge the unlawful gain made by them calculated in Table No. 19 of this Order, along with simple interest at the rate of 12% per annum from January 07, 2009 till the date of payment. As directed by the Hon'ble SAT vide its order dated February 02, 2023, the unlawful gain shall be borne individually.

130. The Noticees shall pay the said amount within 45 (forty five) days from the date of this Order becoming effective, by way of demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai or by e-payment* to SEBI account as detailed below.

| Name of the Bank | Branch Name | RTGS Code | Beneficiary Name | Beneficiary Account No. |
|---|---|---|---|---|
| Bank of India | Bandra Kurla Branch | BKID 0000122 | Securities and Exchange Board of India | 012210210000008 |

** Noticees who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:*

| | |
|---|---|
| 1. Case Name: | |
| 2. Name of the payee: | |
| 3. Date of payment: | |
| 4. Amount paid: | |
| 5. Transaction No: | |
| 6. Bank Details in which payment is made: | |
| 7. Payment is made for: (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details: | |

131. As directed by the Hon'ble Supreme Court in C.A.Nos.11298/2017, 8242/2017 10215/2017, 9493/2017 and 9524/2017 this Order shall come into effect from such date as the Hon'ble Supreme Court directs. Also, the Noticees shall continue to abide by the directions of the Hon’ble Supreme Court, referred to in para 7 of this Order.

132. A copy of this order shall be served upon all 6 Noticees. A copy of this order shall also be forwarded to concerned Registrar of Companies, Stock Exchanges, Registrar and Transfer Agents and Depositories for their information and necessary action.

-Sd-

**DATE: NOVEMBER 30, 2023** **ANANTH NARAYAN G.**

**PLACE: MUMBAI** **WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

*Encl: Annexure – Extract of SSCN on Calculation of Unlawful gains in the matter of Satyam Computer Services Ltd.*

**ANNEXURE**

EXTRACT OF SSCN ON CALCULATION OF UNLAWFUL GAINS IN THE MATTER OF SATYAM COMPITER SERVICES LIMITED

1. Pursuant to the confession of fraud in Satyam Computers Services Limited (SCSL)) by Mr. B. Ramlinga Raju (then Chairman of SCSL) on January 07, 2009, the Government of India ("GOI") filed Company Petition 1 of 2009 with Company Law Board ("CLB").

2. Pursuant to the proceedings instituted by GOI with the CLB under Sections 388B, 397 and 398 read with Sections 401 to 408 of the Companies Act, 1956, the CLB, on January 9, 2009, suspended the then-existing Board of Directors and passed orders directing the GOI to nominate up to ten (10) directors on SCSL's Board. Further, as per the CLB vide order dated February 19, 2009, the Board of Directors of SCSL formulated a proposal to conduct an open and competitive bidding process.

3. Venturbay Consultants Private Limited (Acquirer) (a subsidiary of Tech Mahindra Limited) alongwith Tech Mahindra Limited (PAC) had made a **public announcement dated April 22, 2009** to acquire 19,90,79,413 Shares of SCSL representing 20% of the Fully Diluted Share Capital of SCSL, **at a price of Rs.58/- (Rupees Fifty-Eight Only)** for each Share of SCSL.

4. The said Tech Mahindra acquisition offer price of Rs. 58/- per share was calculated after considering market mayhem pursuant to the confession made by B Ramlinga Raju on January 07, 2009 (price fall drastically from Rs.178.95 to Rs.41.05 and intra-day lowest was Rs. 6/-) and all other relevant market factors. Thus, the said Tech Mahindra acquisition offer price of Rs. 58/- per share may be considered as the intrinsic value of SCSL shares on April 22, 2009.

5. The next question which arises is that had there been no disclosures of fraud, what would be the market value of SCSL shares on April 22, 2009. The same may be calculated by analyzing the movement of NSE IT index vis-à-vis

movement of price of SCSL shares during the period from 01.01.1999 to 31.12.2010 (i.e. for comparison taking starting period as 2 year prior to the start of fraud till 2 year period after the fraud came into light). The movement of NSE IT index and movement of price of SCSL shares during the period from 01.01.1999 to 31.12.2010 as obtained from Bloomberg Terminal is attached as **Annexure – C**. Additionally factor which has also been taken into consideration is that Negative news about SCSL had started in December 2008. The analysis is as under:

5.1. Correlation between IT Index and Satyam between 01.01.1999 and 16.12.2008 (before negative news about SCSL started percolating) = **93.5%** (~ 10 year history)

5.2. Correlation between IT Index and Satyam between 17.12.2007 and 16.12.2008 (before negative news about SCSL started percolating) = **94%** (~1 year history)

5.3. Correlation between IT Index and Satyam between 17.12.2008 and 31.12.2010 = **36.0%** (full fraud came to light on 7/1/2009, but negative news started percolating in December 2008)

5.4. Correlation between IT Index and Satyam between 22.04.2009 and 31.12.2010 = 20.8% (Tech Mahindra takeover announced on 22/4/23) – essentially, correlation remained damaged even after Tech Mahindra takeover. IT index grew by over 200% during this period, while Satyam (Mahindra) only grew by 14%.

5.5. Rs. 58 was the 'intrinsic price' on 22/4/2009 – the day the Tech Mahindra deal was announced. Note that market price (at 46.9) was well below 58, and stayed below 58 till end-May 2008.

5.6. Had there been no fraud, and assuming correlation between IT Index and the (headline) SCSL price (referenced to 16.12.2008) may have been **249.5 on 22.04.2009**. By this way, **percentage of the intrinsic value**

**vis-à-vis market value on 22.04.2009 is 23.25%** (58/249.5). The Calculation of **Rs. 249.5** as on 22.04.2009 is as under:

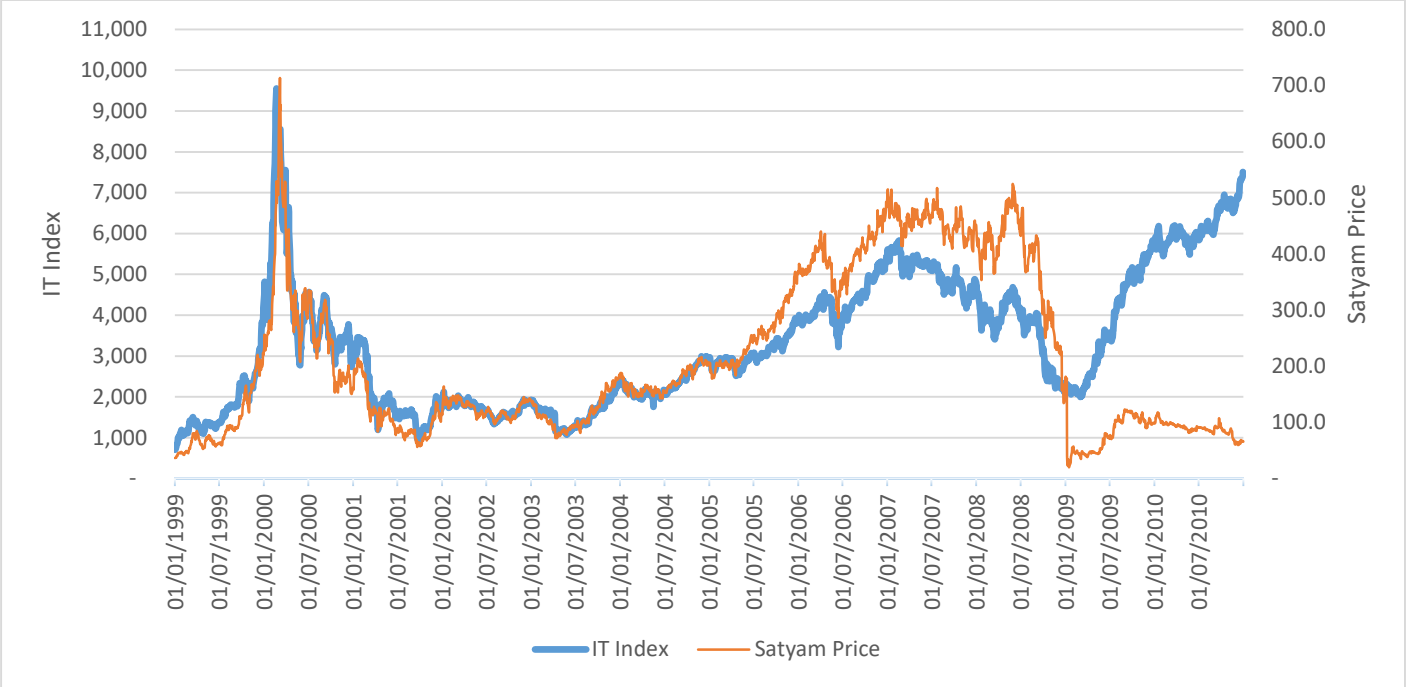
5.6.1. On December 16, 2008, the day till which no negative news about SCSL was in public domain, the IT Index value was 2,266 and the price of SCSL share was Rs. 226.6. The negative news about SCSL started percolating from December 17, 2008.

5.6.2. On April 22, 2009, the day when Tech Mahindra made a Public announcement to acquire SCSL shares at the rate of Rs. 58 per share, the IT index value was 2,495. The market price of SCSL as on April 22, 2009 was Rs. 46.9. Therefore, between December 16, 2008 and April 22, 2009, the IT index has increased by 10.11% whereas SCSL price has fallen by 79.30%.

5.6.3. As already explained, the correlation between Satyam share price and IT index was more than 90% when there was no negative news in the public domain. Therefore, the share price of SCSL as on April 22, 2009, if no fraud had been disclosed, would have followed the IT index and the price would have increased by 10.11%. from the price as on December 16, 2008 i.e., to **Rs. 249.5**

5.7. In view of the foregoing, **23.25%** percentage of each SCSL shares may be taken as intrinsic value throughout the UPSI period / fraud period i.e. from 2001 to 2008. Thus, after considering the intrinsic value, the unlawful gain on sale of each SCSL shares during the entire period of 2001 to 2008 is **76.75%** percentage of sale consideration of each SCSL shares.

6. The graphical representation of movement of NSE IT index vis-a-vis SCSL shares during the period January 01, 1999 to December 31, 2010 is shown below:




7. With regard to SRSR holding Private Limited (SRSR), it is observed that:

*7.1.* SRSR was a company formed by Mr. Ramalinga Raju, Mr. Rama Raju and their wives Smt. Nandini Raju and Smt. Radha Raju.

*7.2.* In September 2006, these four Raju's had transferred their individual holdings in SCSL to SRSR, which had pledged those shares for the loans taken by various promoter group entities.

*7.3.* The movement of SCSL shares from Raju's Family to SRSR is just like transferring the shares from individual person to artificial person representing natural person.

*7.4.* Hence, SCSL shares held by SRSR are historically held shares of Raju's family.

*7.5.* In December 2008, on account of shortfall in margin, which were required to maintain in accordance with terms of contract because of a fall in share price of SCSL, the lenders / trustee had invoked the pledged and sold those historically held SCSL shares in market to the tune of Rs. 675,39,48,813/-.

*7.6.* Thus, SRSR had indirectly sold SCSL shares in market to the investors.

*7.7.* Therefore, for calculation of unlawful gain, on invocation of pledge of historically held shares, the aforesaid intrinsic value method may be considered.

8. After considering the intrinsic value, the unlawful gain made by B Rama Raju, B Ramalinga Raju, B. Suryanarayana Raju and SRSR is as under:

| **Noticee** | **Total Sale amount in INR (A)** | **Intrinsic value (in INR) on Sale amount (B) = 23.25% of (A)** | **Details of Taxes paid (in INR) (C )** | **Unlawful gains (In INR) on sale of shares (D) = (A) - (B) - (C)** |
|---|---|---|---|---|
| B Ramalinga Raju | 26,62,50,000 | 6,19,03,125 | 0 | 20,43,46,875 |
| B Rama Raju | 29,54,35,195 | 6,86,88,683 | 0 | 22,67,46,512 |
| B Suryanraya na Raju | 89,71,70,765 | 20,85,92,203 | 7,87,35,114 | 60,98,43,448 |
| SRSR Holding Private Limited * | 6,75,39,48,813 | 1,57,02,93,099 | 0 | 5,18,36,55,714 |
| **Total** | | | | **6,22,45,92,549** |

* Sale consideration pursuant to the invocation of pledge

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