WTM/MPB/EFD/ 129 /2018

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 READ WITH REGULATION 12 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015.

IN THE MATTER OF INSIDER TRADING IN THE SCRIP OF 63 MOONS TECHNOLOGIES LIMITED [ERSTWHILE FINANCIAL TECHNOLOGIES (INDIA) LIMITED] IN RESPECT OF:

S. No.	NAME	PAN
1.	SHRI SHREEKANT JAVALGEKAR	AARPJ9648L
2.	SMT. ASHA SHREEKANT JAVALGEKAR	ABRPJ2888H
3.	SHRI MANISH P. SHAH	AMXPS9294F
4.	SHRI PRAKASH SHAH	AOUPS4514H
5.	SHRI HARIHARAN VAIDYALINGAM	AABPV4103E
6.	SHRI V. ARVINDKUMAR IYENGAR	AADPI3727M
7.	SMT. DHANASHRI IYENGAR	AEQPK1802C
8.	SHRI BHARAT KANAIYALAL SHETH	AAQPS2482L

1. Securities and Exchange Board of India ("SEBI") conducted an investigation in the scrip of 63 Moons Technologies Limited [erstwhile Financial Technologies (India) Limited] (hereinafter referred to as "FTIL") for the period April 27, 2012–July 31, 2013 (hereinafter referred to as the "Investigation Period").

2. Upon completion of investigation in the matter, SEBI passed an *ex-parte* interim order dated August 2, 2017 (hereinafter referred to as "*interim order*") against 8 persons namely, Shri Shreekant Javalgekar, Smt. Asha Shreekant Javalgekar, Shri Manish P. Shah, Shri Prakash Shah, Shri Hariharan Vaidyalingam, Shri V. Arvindkumar Iyengar, Smt. Dhanashri Iyengar and Shri Bharat Kanaiyalal Sheth (hereinafter collectively referred to as "Noticees" and individually by their respective names) directing that the loss averted by the Noticees

while dealing in the scrip of FTIL in violation of the provisions of SEBI (Prevention of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") be impounded. SEBI also directed the Noticees not to dispose of or alienate any of their assets/properties/securities, till such time the individual amount of loss averted is credited to an Escrow Account created specifically for the purpose in a Nationalized Bank. It was further directed that the said Escrow Account(s) shall create a lien in favour of SEBI and the monies kept therein shall not be released without permission from SEBI.

3. Vide the *interim order*, the Noticees were also advised to show cause as to why suitable directions under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and regulation 11 of the PIT Regulations, 1992 read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations, 2015"), should not be taken/imposed against them including directing them to disgorge an amount equivalent to the total loss averted on account of insider trading in the scrip of FTIL along with interest thereupon.

4. Subsequent to passing of the *interim order*, certain entities requested SEBI for inspection of documents in the matter. Acceding to the said request, all the entities who had requested for inspection of documents, were provided an opportunity of inspection of the documents relied upon by SEBI for the purpose of passing of the *interim order* i.e. the investigation report along with its annexures.

5. In the meantime, the *interim order* was appealed by 4 Noticees (i.e. Shri Shreekant Javalgekar, Smt. Asha Shreekant Javalgekar, Shri Manish P. Shah and Shri Prakash Shah) before the Hon'ble Securities Appellate Tribunal ("SAT"). The appeals filed by them were disposed by Hon'ble SAT vide separate orders. A summary of the directions issued by Hon'ble SAT in these appeals is noted in the table below:

S. No.	**APPELLANT'S NAME**	**DATE OF HON'BLE SAT'S ORDER**	**DIRECTIONS OF HON'BLE SAT**
i	SHRI MANISH P. SHAH	Aug 10, 2017	SEBI was directed to pass final order as expeditiously as possible and in any event within three months from the date of receiving the objections/ representation of the entity. In respect of appeals filed by Shri Shreekant Javalgekar and Smt Asha
ii	SHRI SHREEKANT JAVALGEKAR	Aug 16, 2017	
iii	SMT ASHA SHREEKANT JAVALGEKAR		

iv	SHRI PRAKASH SHAH	Aug 10, 2017	Shreekant Javalgekar Hon'ble SAT directed the entities to secure the amount of loss averted by way of furnishing / creation of fixed deposits and marking of lien in favour of SEBI. In respect of the appeals filed by Shri Manish p. Shah and Shri Prakash Shah, Hon'ble SAT directed de-freezing of specific accounts for enabling the entities to meet their day to day expenses.

6. Pursuant to orders of Hon'ble SAT the aforesaid appellants filed their respective representations / objections/ replies to the *interim order*. Shri Hariharan Vaidyalingam, Shri V. Arvindkumar Iyengar, Smt Dhanashri Iyengar and Shri Bharat Kanaiyalal Sheth also filed their representations/replies. All the Noticees, vide their respective representations / objections/ replies, requested for an opportunity of personal hearing. Considering the said requests, an opportunity of hearing was provided to all the Noticees on September 13, 2017. In respect of the hearing scheduled on September 13, 2017, all the Noticees except Shri V. Arvindkumar Iyengar and Smt. Dhanashri Iyengar requested for adjournment of hearing. The aforesaid request for adjournment was acceded to and the hearing was adjourned to October 4, 2017. Hearing in respect of Shri V. Arvindkumar Iyengar and Smt Dhanashri Iyengar was also re-scheduled to October 4, 2017.

7. In the meantime, certain Noticees who had not availed an opportunity of inspection of documents earlier, made a request in that regard. Acceding to their requests, an opportunity of inspection of documents relied upon by SEBI for the purpose of passing of the *interim order* was provided to them.

8. On the scheduled date of hearing i.e. October 4, 2017, authorized representatives on behalf of Shri Shreekant Javalgekar, Shri Manish P. Shah, Shri Prakash Shah and Shri Bharat Kanaiyalal Sheth appeared and made submissions which are noted in the subsequent paragraphs. On behalf of Shri Shreekant Javalgekar, the authorized representative made submissions without prejudice to his request seeking inspection of documents collected or statements recorded or correspondence exchanged by the investigating officer during the course of investigation and which are on record.

9. The respective authorized representatives on behalf of Shri Hariharan Vaidyalingam, Shri V. Arvindkumar Iyengar and Smt. Dhanashri Iyengar requested for an adjournment on the

ground of non-availability of the respective Counsels engaged in the matter. The authorized representative for Smt. Asha Shreekant Javalgekar appeared and made an application seeking cross-examination of the investigating officer in the matter on the ground that many of the conclusions drawn in the investigation are not borne out by documentary evidence but are assumptions and presumptions drawn by the investigating officer, the basis of which only he can explain.

10. The above named Noticees who made submissions on October 4, 2017 were asked to file their written submissions latest by October 31, 2017. It is noted that written submissions have been received on behalf of Shri Shreekant Javalgekar, Shri Manish P. Shah, Shri Prakash Shah and Shri Bharat Kanaiyalal Sheth. Smt. Asha Shreekant Javalgekar has also submitted her written submissions without prejudice to her pending request seeking cross-examination of the investigating officer in the matter.

11. Subsequently, a hearing in respect of Shri Hariharan Vaidyalingam was scheduled on December 5, 2017, which was adjourned first to December 12, 2017 and subsequently to December 19, 2017 at his request. On December 19, 2017, his authorized representatives appeared and made submissions on his behalf. He was given time till December 31, 2017 to file his written submissions in the matter which was extended to January 15, 2018 at his request. Thereafter, on January 16, 2018, written submissions were filed by Shri Hariharan Vaidyalingam.

12. It is noted that in the appeals filed by the Noticees, Hon'ble SAT directed SEBI to pass final orders as expeditiously as possible and in any event within three months from the date of receiving the objections/representation of the respective entity. Accordingly, the timeline for passing of final orders in respect of the Noticees has been calculated as three months from the date of filing of final written submissions/replies/objections/representations by the Noticees.

13. The replies / written submissions / submissions made during the hearing by all the Noticees and their finals submissions are, *inter alia*, as under:

SHRI SHREEKANT JAVALGEKAR

Order passed in gross violation of principles of natural justice

i. The said Order is vitiated by gross violation of principles of natural justice, inasmuch as no opportunity was provided to me to explain my version and the circumstances as stated in the said Order do not justify dispensation of pre-decisional hearing. It is a cardinal principle of natural justice that these rules are sacrosanct and must be

observed, particularly when the proposed action - order has serious adverse consequences. No cogent reasons have been given in the said Order so as to deny the right of hearing. Further the said Order is also in violation of the Wednesbury principle of reasonableness which is one of the most fundamental principle of administrative law.

Matter already prejudged

ii. By passing the said Order and directing impounding of alleged losses averted, even prior to issuance of Show Cause Notice, granting opportunity of filing reply and opportunity of hearing and passing of final order, SEBI has completely subverted the whole process. It may be noted that even if statute dispenses with pre decisional hearing, the same should be resorted to in exceptional circumstances since post decisional hearing is not a remedial hearing and authority will embark on with a closed mind and there are little chances of getting a proper consideration of the representation and also because once a decision has been taken there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

iii. By returning the findings in said Order, which are final and not merely prima facie, SEBI has completely prejudged the case and rendered the proceedings an empty formality, inasmuch as fate of the proceedings has already been decided by the said Order.

No emergent situation warranting Ex parte Order No reasons set out or emergency

iv. The power to issue directions under section 11 and section 11(B) of SEBI Act has to be exercised judiciously and it is all the more necessary in a case having adverse civil consequences as well as reputational adversity. Further, it is well settled that a discretionary power is not to be invoked arbitrarily devoid of justification, as has been done in the matter under reference. An ex-parte order is justified if the circumstances justify the same. For instance, cases where due to a prevailing emergency, time cannot be wasted even by offering a right of being heard to the affected party against whom such an ex parte interim order is proposed to be passed. It is only when prompt action is required that such powers are to be invoked at once.

v. Given the facts and circumstances of the present case, there was no requirement to exercise the powers as sought to be done by the said Order, there was no extreme urgency and hence, the exercise of the said powers is arbitrary, unwarranted, unreasonable and against well-established principles. Admittedly, the transactions impugned in the said Order relate to the year 2013 i.e. around 4 years ago. Thus there has been an enormous time gap between the date of impugned transactions and the date of the said Order. This itself demonstrates that there is no imminent danger or urgency to pass any ad-interim ex-parte order. Further, admittedly, SEBI

had received alleged complaint in September 2014 and the investigations have been going on since then. During the course of investigations, I had been fully cooperating with SEBI and had provided all the information/ explanation as sought by SEBI from time to time. Therefore, suddenly after a lapse around 3 years, there was no urgency to pass ex parte order without granting me an opportunity of hearing in the matter. However, drastic and severe directions have been issued against me with unnecessary haste and ex pane. This action of SEBI, which has resulted in enormous financial and reputational adversity without proper adjudication of various issues, is contrary to the well-established principles of Natural Justice.

vi. While exercising powers conferred under Sections 11 (1), 11 (4) and 11B, SEBI has failed to take into consideration the following well settled principles:
   (a) It cannot be resorted to indiscriminately without clearly spelling out the urgency in a given case.
   (b) The party, which is directly and adversely affected by the ex-parte Order has at least a legitimate expectation of being treated reasonably and being given an opportunity of being heard before such findings and directions are issued against it.
   (c) Unjust actions in exercise of powers conferred under sections 11(1), 11(4) and 11B are liable to be struck down simply on grounds of unfairness.
   (d) Exercise of discretion in an unruly manner is not envisaged in the scheme of SEBI Act.
   (e) Invocation of discretion has to be rational and guided by principles of natural justice and fair play in action.
   (f) Exercise of powers cannot be based on speculative inferences.
   (g) Exercise of powers is to be based on legal conclusions drawn after analyzing questions of law and disputed facts after affording an opportunity to be heard.
   (h) Power of the kind that SEBI possesses brings monumental responsibility and needs to be exercised with great care and caution so that no one might question the acts of sole regulators of the Indian Securities Market purely on the basis of non-observance of the principles of natural justice.
   (i) Powers to pass ex parte interim orders should be exercised only upon showing the existence of circumstances which warrant such a drastic measure.
   (j) There is inherent need to show that the danger to be averted or the act to be prevented is so imminent that the pre-decisional hearing must be dispensed with.
   (k) There must be a balance between the need for expedition and the need to give a full opportunity to the person against whom charges have been levied.
   (l) The necessity of striking a pragmatic balance between the competing requirement of acting urgently and fairly can never be ignored.

(m) The power to pass ex parte interim orders are to be exercised sparingly only in cases of extreme urgency.

vii. If the essentials of natural justice in the sense of granting an opportunity of hearing is ignored in passing an order to the prejudice of a person, the order is a nullity for want of natural justice and no amount of post decisional hearing can cure the same.

Directions in contravention of provisions of sec 11(41(e) of SEBI Act

viii. The direction to Banks to not to allow any debit in the bank accounts till such time the alleged averted losses and interest thereon are deposited in the Escrow Account is completely without jurisdiction, *non-est, null* and *void ab initio*. The said direction circumvents the provisions of Section 11 (4) (e) of the SEBI Act, by in effect purporting to attach the bank and demat accounts without following the mandatory provisions and process of Section 11(4)(e).

ix. As per section 11 (4) (e) of the SEBI Act, the power of SEBI to attach the bank account of any person involved in violation of any of the provisions of this Act, or the rules or the regulations made there under, is subject to the check and balance of making an application for approval of such attachment to a First Class Judicial Magistrate. Further, the proviso to said section makes it clear that SEBI has no power to attach bank accounts which are not actually involved in the alleged violation. In the present case, SEBI has not obtained any such approval, leave alone seeking the approval necessary for attaching bank accounts. Therefore, the direction is wholly without jurisdiction, beyond the powers of SEBI and not in consonance with the provisions of SEBI Act.

Directions in contravention of provisions of sec 11 (41(d) of SEBI Act

x. SEBI has completely ignored and overlooked that as per Section 11 (4) (d) SEBI can impound and retain the proceeds or securities in respect of any transaction which is under Investigation. The power would necessarily be over the proceeds or securities, which are involved in the alleged transactions which are under investigation. Therefore, first step would be to identify as to which are the proceeds/ securities which are pertaining to transactions under investigation and the second step would be to identify where the said identified proceeds/ securities have gone.

xi. All this has been done without giving an opportunity to be heard. Thus, without following the due process of law, the said Order has violated my constitutional rights to carry on his business. The directions in the said Order amount to an attachment before judgment, and the same principles as set out in Order XXXVIII Rule 5 of the Code of Civil Procedure would be applicable, however, none of the essential criteria thereof have even been averred, much less shown to exist.

Directions out and out penal in nature and not or safeguarding the interest of securities market

xii. The directions under section 11 and 11(B) are issued for safeguarding the markets and are not for penalizing the persons and denying their legal rights, on the basis of assumptions and presumptions. The open ended direction (without any time limit) issued against me, at this juncture is neither preventive or remedial nor curative, but out and out penal. There is nothing in the said Order to indicate as to how by issuing the directions the interest of 'investors' is protected. Further, there is nothing to indicate that the interest of any investors was being hampered on account of my activities since the past 5 years.

xiii. Without prejudice to the above Preliminary Objections based on which the said Order should be withdrawn, I submit the following submissions for your consideration.

Background

xiv. During 2004, I joined FTIL Group and continued with FTIL till June 2012 as a Director (Finance & Investor Relations). I was never on the Board of Directors of FTIL and was never a Key Management Person in FTIL. On July 2012 I was appointed as the Managing Director of MCX. As a Managing Director from in July 2012 to October 2013, I was looking after the affairs of MCX which had become the first listed exchange in India. It may be noted that I was the Non-Executive Director of NSEL from 25.02.2011 to 13.08.2013.

xv. During the tenure of my employment with FTIL, I was allotted certain shares of FTIL in terms of FTIL's Employee Stock Option Plan. Further, I had also acquired shares from the market.

xvi. It may be noted that during the aforesaid sales I was not an employee of FTIL and was not associated with FTIL in any manner.

xvii. I had decided to sell FTIL shares since I wanted to invest in shares of Premier Auto & Strides Arcolabs and post the sale of 1100 shares of FTIL on 1.1.13 sold another 1000 shares on 2.1.13, I had brought 9500 shares of Premier Auto and 1025 shares of Strides Arcolabs. Further , I had sold 6900 shares of FTIL on 8.3.2013 so as to invest in mutual funds, which I had done post said sale, by making investment as follows: ICICI Pru Mutual fund 25,00,000/-, Reliance Mutual Fund Rs.8,oo,ooo/-& UTI Bond Fund Rs.25,00,000/-.

xviii. Despite the detailed explanations provided by me, to the utter shock and surprise, SEBI has passed the said order, without even referring to or considering the said submissions made by me, which is legally untenable and unsustainable.

Not an "insider"

xix. I am not an "insider" as contemplated under Regulation 2(e) of the Insider Trading Regulations. As per Regulation 2(e) “insider" means any person who:

(i) is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information.

xx. Admittedly, save and except the fact that I was an employee of FTIL, it has not been substantiated as to how I was reasonably expected to have access to unpublished price sensitive information in respect of securities of NSEL. Same is required to be established before branding me as "insider". In any event, during the time when aforesaid sales took place I was not an employee of FTIL and was not associated with FTIL in any manner.

xxi. It may be noted that merely, because the person was an employee of the company cannot lead to automatic inference that he is an insider. Additionally, it has also to be demonstrated that the said employee was reasonably expected to have access to unpublished price sensitive information. There is deafening silence on this aspect.

xxii. Admittedly, I was merely a Non-Executive Director of NSEL and I had no role to play in the day to affairs and management of NSEL, which were handled by its Managing Director (Mr. Anjani Sinha) and his team of various executives. I categorically submit that at the relevant time Mr. Anjani Sinha had not informed the Board about the issuance of SCN to NSEL. It was only in the Board meeting of July 30, 2013 that the Board was informed about the issuance of SCN dated 27.04.2012 by DCA.

xxiii. Since, there is nothing on record to substantiate that I had access or I could be reasonably expected to have access to unpublished price sensitive information, It is reiterated that there is deafening silence on this aspect. Therefore, I cannot be branded as insider and I do not fall within the ambit of term "insider", which is a prerequisite for invoking Regulation 3(i) of Insider Trading Regulations.

xxiv. I was neither aware of, nor in possession of the alleged UPSI pertaining to NSEL at the relevant time. There is nothing in the Order to show as to how I was in possession of the alleged UPSI, when I had sold the shares of FTIL in January and March 2013. In the absence of thereof, no charge of violation of Regulation 3(i) of Insider Trading Regulations can sustain.

Alleged UPSI pertaining to NSEL cannot be treated as UPSI pertaining to FTIL

xxv. The alleged UPSI pertaining to NSEL cannot be treated as UPSI pertaining to FTIL (whose shares I have traded). For a charge of insider trading the `Insider', the `UPSI',

the Trading' must relatable to the same company. It cannot be that for the purpose of determining "Insider"/"UPSI" there is one company and for determining Trading' there is another company. `Insider' and UPSI' perforce should relate to the company whose shares are being traded by the `Insider'. In the instant case, based on purported UPSI relating to NSEL, which is an independent company from FTIL, trading in the scrip of FTIL cannot be alleged to be tainted by insider trading .It may be appreciated that the information pertaining to NSEL cannot be unpublished price sensitive information , in so far as trading in shares of FTIL is concerned. The concept of insider trading is based on the premise that insiders of a "particular company" should not trade till the time the UPSI is published by that "particular company". In the matter under reference, based on alleged UPSI pertaining to NSEL and trading done by me in the scrip of FTIL, it has been alleged that I have indulged in insider trading, which is untenable on fact as well as law. Without prejudice to the aforesaid it is submitted that during the sale of shares of FTIL in January and March 2013, I was not an employee of FTIL and was not associated with FTIL in any manner.

Alleged UPSI pertaining to NSEL had already become public on 3.10.12

xxvi. The alleged UPSI pertaining to NSEL had already been published on 3.10.12 in 'The Economic Times' and become public and was therefore no more '"unpublished". In this context it may be noted that as per Regulation 2(k) unpublished means information which is not published by the company or its agents and is not specific in nature. Further the "Explanation" to the said Regulation states that Speculative Reports in print or electronic media shall not be considered as published information Thus, the non- speculative reports in print or electronic media shall be considered as published information. In the matter under reference, the alleged UPSI regarding issuance of SCN to NSEL was published and available in public domain, as will be evident from the following:

(a) Article dated 3.10.12 published in the Economic Times:

(b) Communication dated 3.10.12 issued by NSEL: As stated in the said Order, on 3.10.12, NSEL through an exchange communication informed all its members the fact regarding the issuance of the SCN and had also offered its clarifications on the said article which appeared in the Economic Times.

(c) In the response given by the Ministry of Consumer Affairs, Food and Public Distribution in Raiya Sabha on 3rd December, 2012 to a query posed in the Rajya Sabha, the Ministry of Consumer Affairs, Food and Public Distribution had stated as follows:-

"A show cause notice was issued to NSEL for non-compliance of stipulated conditions of the notification dated 05.06.2007. NSEL has submitted reply to the notice, the same is under examination of the Government".

xxvii. From the aforesaid, it is evident that the factum of issuance of SCN by DCA to NSEL and the implications flowing there from were all in public domain, part of public record and part of generally available information to all interested person/members of public. Post the aforesaid publications, which were non-speculative, nothing remained "unpublished" about the issuance of SCN and its implications. Strangely, SEBI has totally ignored and overlooked the same, despite acknowledging and recording about the publication of article in Economic Times and Communication issued by NSEL, in order to arrive at preconceived conclusions. Admittedly, the publications of article in Economic Times, etc. are not said to be speculative. Therefore any trading in shares after this date cannot, in any case, be considered as trading while in possession of alleged UPSI.

Implications flowing from SCN issued to NSEL

xxviii. The allegations are based on the assumption that as on 27.4.12 when the SCN was issued, NSEL and its directors (including me) were aware that NSEL would be closed in July 2013. The attribution of the said knowledge is totally absurd and completely contrary to factual position. Cleary, SEBI has bent over backwards to somehow construct a charge of insider trading .In this context your attention is drawn to the certain events on illustrative basis as have transpired in the matter which would dispel any such notion (i.e. of being aware of closure of NSEL on 27.4.12) viz. A similar notice was also issued to N-Spot exchange and that exchange was allowed to close properly whereas NSEL was closed abruptly. Further, I have been given to understand that FMC came to inspect NSEL for registration under Sec 14 of FCRA and FMC inspected the trading system, settlement system, delivery system and still did not find any wrongdoing which has been told to NSEL. With such proactive measures for changing regulatory system, how anyone could have assumed that FMC intended to close NSEL. If FMC intended to close NSEL, then FMC could have done in April 2012 when the

xxix. SCN was issued as the outstanding liability then was Rs. 2500 crore whereas the same in July, 2013 was Rs. 5600 crore. In fact, there was a news in June, 2012 wherein the Ministry of Consumer Affairs had indicated that a new law was being brought in to regulate the three Spot Exchanges by FMC. Admittedly, till date FMC has not adjudicated the said SCN. This only shows that at the relevant time NSEL was never intended to be closed.

xxx. Therefore, to allege that I as a Non-Executive Director knew the alleged implication of SCN (i.e. the closure of NSEL in July, 2013) on the date of SCN issuance i.e. 27.4.12, is totally untenable and unsustainable. It is reiterated that at the relevant time, no one was aware about the said unprecedented drastic implication.

Sales made in the scrip of FTIL

xxxi. In so far as sale of 9000 shares made during January 2013 to March 2013 are concerned, it may be noted that same were made when the factum of issuance of SCN by DCA to NSEL and the possible implications flowing therefrom were all in public domain, part of public record and part of generally available information to all and sundry. After the aforesaid publications, nothing remained "unpublished" about the issuance of SCN and its purported implications. Therefore, the said sales also cannot be alleged to have been made while in possession of alleged UPSI.

Charge of insider Trading incompatible with the trading pattern

xxxii. The allegation of insider trading is completely incompatible with my trading pattern. Same is evident from the following :

(a) There is no nexus between the date of origination of the alleged UPSI (April 2012) and the dates of sales (January 01 & 02, 2013 & March 08, 2013) made by me. Further, even there is no nexus between the date of alleged UPSI becoming public (on October 3, 2012 by virtue of article in Economic Times) and the dates of sales. Absolute lack of nexus between the date of origination of the alleged UPSI or the date of its becoming public, completely belies the allegation of insider trading.

(b) The reason for my sale of FTIL shares, which were made in the ordinary course, were bonafide and the same had no nexus whatsoever with the alleged UPSI.

(c) After the aforestated newspaper report on October 03, 2012 the prices of the shares of FTIL went up from Rs. 961 (as on October 03, 2012) to Rs. 1032 (as on October 05, 2012) and it reached Rs. 1216.95 on November 15, 2012. I however had not sold shares even during that time. However, I sold small quantity during January 01 and 02, 2013 and I sold the balance quantity only after the budget announcement on February 28, 2013 wherein imposition of CTT on MCX was announced) as a result of which prices of FTIL shares came down to Rs. 823/-. My sales were based on the perception that the trading volume on MCX would go down and affect the market cap and share price of FTIL. Indeed during this timer the Average daily turnover of MCX had fallen from

Rs. 55,278 Cr in February 2013 to Rs. 35,278 Cr in July 2013/- (CTT was implemented from July 2013).

SMT ASHA SHREEKANT JAVALGEKAR

No information sought during Investigation

i. The Investigation Report, which is the basis of the Impugned Order issued by SEBI refers to sale of 465 shares of FTIL by me. However, during the course of Investigation no enquiry was made from me regarding the sale of 465 shares (although enquiry was made regarding the sale of MCX shares).
ii. It appears that the conduct of the Investigating Officer is fallacious, flawed and mala fide. The Investigating Officer could not have drawn any conclusion against me for sale of FTIL shares without making proper enquiry in this regard.

Noticee not an "insider"

iii. I was not an "insider" and is not employed with NSEL, FTIL or MCX in any capacity. Merely because my husband (viz. Shreekant Javalgekar) was associated with MCX, inference has been drawn that I had received or had access to alleged UPSI.
iv. I categorically deny that I had received or had access to any UPSI as alleged. It may be noted that I am financially independent and the impugned sales were carried out by me independently, in the ordinary course.
v. At Para 2.4.4 (i) of the Impugned Order, it has been alleged that *"it can be reasonably expected that she would have received or had access to UPSI in respect of securities FTIL"*. There is no clarity as to how and on what basis it has been alleged that I am reasonably expected to have received or had access to the alleged UPSI. Especially, in light of the fact that I was not employed with NSEL, FTIL or MCX in any capacity. Save and except making a sweeping and bald allegation there is nothing that indicates that I had received or had access to the alleged UPSI.
vi. At Para 2.4.4 (i) of the Impugned Order, it has been further alleged that *"when in possession of UPSI, Smt. Asha Shreekant Javalgekar sold 465 shares (for Rs. 3,87,552) of FTIL."* However, there is no clarity as to when I was in possession of UPSI. Save and except making a sweeping and bald allegation there is nothing that indicates that I had sold 465 shares when in possession of UPSI.
vii. The inference that I had received or had access to alleged UPSI has been drawn against me on the basis that my husband (viz. Shreekant Javalgekar) was associated with MCX, which is legally untenable. Nothing has been brought on record to substantiate that I had received the alleged UPSI or had access to the alleged UPSI through Mr. Shreekant Javalgekar and the inference is legally untenable and unsustainable. I submit that no

UPSI as alleged was ever communicated by Mr. Shreekant Javalgekar to me. In any event it may be noted that in fact, it is the case of Mr. Shreekant Javalgekar that he himself was not aware of alleged UPSI. Therefore, the issue of I becoming aware of having received any UPSI from Mr. Shreekant Javalgekar cannot and does not arise.

viii. It is obligatory on the part of SEBI, before alleging serious charges of insider trading in the SCN, to clearly show as to how Shreekant Javalgekar himself was aware of alleged UPSI and how through him I became aware of alleged UPSI or had received alleged UPSI. It is submitted that the said burden has not been discharged by SEBI. The issues of: (a) when Shreekant Javalgekar had passed on the alleged UPSI, (b) how Shreekant Javalgekar had passed on the alleged UPSI; are still at large, which makes the allegations vulnerable to the vice of vagueness, in gross violation of principles of natural justice. Therefore, the allegations are legally untenable and unsustainable.

ix. Significantly, it may be noted that when I had sold the shares of FTIL on March 08, 2012, my husband was not employed/associated with FTIL in any manner.

Alleged UPSI had become "*published*" on 3.10.12.

x. The Impugned Order itself refers to NSEL's press release dated 3rd October, 2012 (Para B.ii.b). Hence to suggest that after 3rd October, 2012 the information was unpublished is ex facie incorrect and unsustainable.

xi. Moreover, the article published in the Economic Times a national daily of repute having wide circulation also seems to have been overlooked. This article contains statements of facts as to :

(a) the issuance of the SCN by DCA to NSEL;
(b) reports of FMC to DCA;
(c) FMC's observations in relation to alleged short selling as also settlement of contracts beyond 11 days;
(d) the details of enquiry conducted so far
(e) the minister / ministry considering whether to take the enquiry forward.

xii. Thus the information contained in the news reports contained all the relevant factual aspect including the SCN and the stand taken by NSEL (in response to SCN).

xiii. The said information cannot be considered to be unpublished thereafter particularly keeping in mind the explanation to Regulation 2 (k). By no stretch of imagination one could say that the information contained in the said news report was speculative. Thus, in any view of the matter, by 3rd October 2012 the information ceased to be unpublished.

Shares traded (sold) not on the basis of alleged UPSI

xiv. The prohibition contained in Regulation 3 applies only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. The reason for my sale of FTIL shares, which were made in the ordinary course, were *bona fide* and the same had no nexus whatsoever with the alleged UPSI. As explained in my reply, after the budget announcement on February 28, 2013 (wherein imposition of CTT on MCX was announced) as a result of which prices of FTIL shares came down to Rs. 823/-. My sales were based on the perception that the trading volume on MCX would go down and affect the market cap and share price of FTIL. The same was the basis for my sale.

xv. Since my sales were not on the basis of alleged UPSI, therefore no charge can be made against me for violation of Regulation 3 of Insider Trading Regulations .In this context your attention is invited to Order dated 31-01-2012 passed by the Hon'ble Tribunal in the matter of *Mrs. Chandrakala vs. Securities and Exchange Board of India* wherein it has *inter alia* been observed as follows:

> *"The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider.* ***If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations.*** *Going by the facts of the present case, we are of the view that appellant in the present case has placed sufficient material on record to show that she has not traded on the basis of unpublished price sensitive information."*
>
> **(Emphasis supplied**

<u>Calculation of "averted losses" erroneous</u>

xvi. In the Impugned Order the anchor date for calculation of losses has been taken as 01-08-13 (wherein the average closing price of that date has been taken).While calculating "averted losses", it has been ignored that share price of FTIL was witnessing downward

trend due to various other external factors including Introduction of Commodities Transaction Tax (CTT) in the Budget resulting in a reduction in price from Rs 911/- to Rs 844/- per share. My cost of acquisition and holding has also not been considered while computing my alleged gains.

xvii. Therefore, taking the closing price on 01-8-13 (i.e. immediately when the Exchange was temporarily closed under emergency power and not when the alleged UPSI became public on 03-10-12), for calculation of alleged averted losses, would not be fair and proper.

xviii. I may also point out that the allegation that the top brass of FTIL and NSEL were aware of the alleged UPSI and they have dealt with shares of FTIL based on the UPSI stands rebutted/defeated by the conclusions drawn by SEBI itself wherein it is shown that no action is taken against most employees/ top brass of FTIL and NSEL. Moreover such persons in fact bought shares of FTIL on different dates during the alleged UPSI. Thus, if the alleged information was PSI, there is no way why such persons would have thought it fit to buy the shares of FTIL.

xix. I reiterate that there is no evidence of alleged insider trading, except for mere surmises and conjectures. It is now well settled that mere suspicions, conjectures and hypothesis cannot take the place of evidence as provided in the Indian Evidence Act. It is respectfully submitted that SEBI has failed to discharge the burden of proof or the standard of proof incumbent upon it to sustain the grave and serious allegations of insider trading, having far reaching adverse civil consequences.

xx. This submission is filed without prejudice to my right to seek and obtain cross examination, complete inspection and to make further submissions in my defense post providing the cross examination and complete inspection.

SHRI MANISH P. SHAH

Noticee not an "Insider" at the relevant time of trading and trading done when not in possession of UPSI:

i. It is respectfully submitted that the primary basis on which the ex-parte impounding order has been passed is that the Noticee is an insider and was in possession of UPSI, namely the notice dated 27 April, 2012 at the time when the transaction in question were undertaken. In other words, the charge is that the show cause notice was not in public domain and was deemed to have been known to the Noticee.

ii. Without prejudice to all other submissions, it is respectfully submitted that the aforesaid premise of the ex parte order is non-existent as, clearly and admittedly, the fact of the show cause notice dated 27th April, 2012 and the contents were put in public domain, *inter alia* by an article published in Economic Times on October 3, 2012. The said article clearly stated, *inter alia*, the following:-

a. That the Ministry of Consumer Affairs, Food and Public Distribution had issued a show cause notice to NSEL and is probing into alleged discrepancies in contact position of NSEL
b. That the Notice is dated 27th April, 2012,
c. That the notice, *inter alia*, states that the government has not granted any exemption to NSEL in respect of NTSD contracts and therefore, all contracts traded on NSEL with a settlement period exceeding 11 days are in violation of Forward Contracts Regulation Act, and
d. That the SCN has directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of notification dated 05/06/2007 within 15 days of the receipt of the notice failing which the Department would be compelled to withdraw the exemption granted thereunder without any further communication.
e. The press report also notes the reply of NSEL.

iii. From the aforesaid, it is clear that the fact of the show cause notice and its contents ceased to be unpublished at least on and from 3rd October, 2012 and thus any action taken by the Noticee after the said date can, by no stretch of imagination, be treated as based on or while in possession of UPSI. Without prejudice to the above, it is submitted that since the DCA SCN came to be in public domain on and from October 3, 2012, Manish Shah ceased to be an insider from that date. Since his trades in the scrip of FTIL were pursuant to him ceasing to be an insider, his trades do not violate PIT Regulations, 1992. On this short ground alone, the proceedings against the present Noticee is liable to be dropped.

Manish Shah is not an Insider:

iv. SEBI's view that Manish Shah is an insider as per Regulation 2(e) of the PIT Regulations is completely incorrect and wrong.
v. By virtue of Manish Shah being a brother of Directors of FTIL he is 'deemed to be a connected person' in terms of Regulation 2(h)(viii) of the PIT Regulations, 1992. To be an 'insider' in terms of Regulation 2(e) of the PIT Regulations, in addition to being deemed to be a connected person deemed it necessary that he was reasonably expected to have access to UPSI.
vi. There is no material in the Ex-Parte Impounding Order on the basis of which a view can be taken that Manish Shah was reasonably expected to have access to UPSI. The mere relationship of Manish Shah with the Directors of FTIL is not sufficient to assume that he was reasonably expected to have access to UPSI.
vii. The Ex-parte Impounding Order demonstrates that SEBI completely lost sight of the fact that:

a. Manish Shah has been independent from his brothers (who during the Relevant Period were Directors of FTIL) and has his own sole proprietary business of iron and steel which he runs under the name and style of M/s. Alka Corporation from its office situated at Malad, Mumbai
b. Manish Shah also resides separately from his brothers.
c. Manish Shah was not an employee/Director of FTIL, NSEL or any of its group companies at any point in time.
d. Manish Shah had no access to UPSI whatsoever pertaining to those companies and could not be reasonably expected to have access to UPSI.
e. Further, since Manish Shah was not in possession of UPSI when he traded in the scrip of FTIL he has not been in violation of Regulation 3(i) of the PIT Regulations,1992.

Inherent Contradictions in what constituted UPSI:

viii. In paragraph I.2(B)(iii) at page 8 and Paragraph 2.3.5 at page 23 of the Ex-Parte Impounding Order, SEBI has taken a view that UPSI in respect of shares of FTIL was the implication of the DCA SCN, i.e., suspension of contracts and deferral of settlements and subsequent payment defaults by Members of NSEL alongwith loss of reputation of Promoters/Management of FTIL.

ix. In the same breath, in paragraph 1.2(B)(iv) at page 8 and paragraph 1.2(D)(vi)(a) at page 20 of the Ex-Parte Impounding Order, SEBI has taken a view that UPSI came into existence on April 27, 2012 upon the issuance of the DCA SCN.

x. The aforesaid clearly demonstrates that SEBI itself is not clear on what constitutes UPSI.

xi. It is submitted that 'implications' arc not 'information' and as such the 'implications of the DCA SCN' cannot be UPSI. Should the issuance of the DCA SCN be treated as UPSI, then the fact that the same ceased to be UPSI with effect from October 3, 2012 is explained hereinabove.

There was no impact on the price:

xii. It should be noted that upon the fact of issuance of DCA SCN coming into the public domain on October 2, 2012, the price of FTIL's shares did not fall and in fact increased.. Even after the news of the Hon'ble Ministers reply in the Rajya Sabha was reported in newspapers i.e. the information relating to the SCN, there was little impact on the price of the scrip of FTIL.

If an Insider, Manish Shah's conduct is contrary to abusive assumption:

xiii. Throughout the Relevant Period, Manish Shah had a shareholding of 86,538 shares in FTIL (constituting 0.19% stake in FTIL) of which he only sold 15,000 shares during the alleged UPSI period. If the hypothesis proposed by SEBI, that he had possession of

adverse UPSI about NSEL and he averted losses by selling shares of FTIL were assumed to be right, prudence would demand that he sold his entire holding in FTIL and not merely I 5,000 shares (comprising less than 0.033% of the total promoter group holding). The very fact that he didn't sell all or substantially all the shares held by him, clearly establishes that he was not in possession of UPSI.

xiv. Mr. .Jignesh Shah, brother of Manish Shah, who is the single largest shareholder of FTIL, (holding 8,329,585 shares constituting I 8.08% stake in FTIL) as also La-Fin which holds 26.76% stake in FTIL, did not sell any of their shares in FTIL during the investigation period.

xv. Manish Shah sold FTIL shares for a bona fide purposes i.e., (i) to purchase a bungalow in Lonavala which transaction was not completed due to problems associated with legal title of the property), (ii) for paying off certain business liabilities and (iii) for incurring expenses of a personal nature.

xvi. Without prejudice to the foregoing, it is submitted that the sale of Manish Shah's shares in comparison to the total number shares held by the promoter group is miniscule (less than 0.033%) and therefore cannot be construed as trading while in possession of UPSI.

xvii. This demonstrates that reason for Manish Shah selling his shares in FTIL was not to secure any unfair advantage and/or to cheat any person but only for a just and bona fide cause and as such he cannot be treated as being in violation of PIT Regulations, 1992.

Procedure under regulation 6 not followed

xviii. Regulations 5 and 6 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, *inter alia*, provide for investigation. Regulation 5 specifics the right of the Board to investigate while Regulation 6 prescribes the procedure for investigation. Once the Board under Regulation 5 decides to investigate, such investigation can be undertaken under Regulation 6(1) by giving reasonable notice to the insider who is sought to be investigated. The exception to the requirement of such a notice stipulated in Regulation 6(2) provides that if the Board is satisfied that in the interests of the investors or in public interest, no such notice should be given, it may by an order in writing direct that the investigation should be taken up without such notice.

xix. In the present case, the investigation report does not recite the fact of any such order of the Board under Regulation 6(2). The noticee is not aware of the fact whether any such order was passed or not. The noticee has requested for inspection of the file of SEBI relating to the present investigation but no inspection has been given of any such order that may have been passed under Regulation 6(2). In the absence of such an order being produced, it is respectfully submitted that the entire investigation would be vitiated by not following the principles of natural justice and/or the mandatory provisions of Regulation 6(1).

SHRI PRAKASH SHAH

Blatant violation of law

i. The ex-parte impounding order is an order in the nature of attachment since all debits to all my bank accounts (except one) and demat accounts have been frozen and the ex-parte impounding order even directs all the banks and depositories not to allow debits. In this regard, it is stated that Parliament has consciously highlighted in section 1(4)(e) of the SEBI Act that when it comes to bank accounts, SEBI does not have any power of its own to attach any property and even where attachment is contemplated care has been taken to restrict the scope of such power.

ii. A bare perusal of section 11(4)(e) makes it evident that an order of attachment can only be passed by a Magistrate of First Class, after receiving an application made by SEBI. Besides only such bank accounts which are said to be involved in the alleged violations can be attached – it is simply illegal to have a nationwide, industry-wide blanket ban across all banks and all bank accounts irrespective of the involvement of such bank accounts in violation of the provisions of the SEBI Act.

iii. The ex-parte impounding order therefore represents a gross abuse of law and a violation of the basic principles embedded in the Constitution of India, by seeking to bypass the checks and balances mandated by Parliament under section 11(4)(e).

Determination of UPSI, vague, ambiguous and incorrect

iv. The alleged UPSI constituting the bedrock of the ex-parte impounding order, and the alleged violation of PIT Regulations, is based on highly illusory/imaginary assumption and perverse logic which is based on the far-fetched possibility that Mr. Prakash Shah was in a position to predict that NSEL would suspend the exchange operations, more than one year before it actually did.

v. In any event I have been given to understand that the DCA SCN has not been adjudicated upon till date. Therefore, to suggest that the implication of the DCA SCN was UPSI is completely erroneous and far-fetched.

vi. Without prejudice to the foregoing, the issuance of the SCN whether it resulted in suspension or not was not anyone's guess. As far as I am concerned, I did not and could not have known the existence of implication of SCN. There is no evidence to the contrary relied upon by SEBI in this regard.

Noticee not an "Insider" at the relevant time of trading and trading done when not in possession of UPSI:

vii. The primary basis on which the ex-parte impounding order has been passed is that the Noticee is an insider and was in possession of UPSI, namely the notice dated 27 April,

2012 at the time when the transaction in question were undertaken. In other words, the charge is that the show cause notice was not in public domain and was deemed to have been known to the Noticee.

viii. Without prejudice to all other submissions, it is submitted that the aforesaid premise of the ex parte order is non-existent as, clearly and admittedly, the fact of the show cause notice dated 27 April, 2012 and the contents were put in public domain, inter alia by an article published in Economic Times on 3rd October, 2012. The said article clearly stated, *inter alia*, the following:-

- That the Ministry of Consumer Affairs, Food and Public Distribution had issued a show cause notice to NSEL and is probing into alleged discrepancies in contact position of NSEL
- That the Notice is dated 27 April, 2012,
- That the notice, inter alia, states that the government has not granted any exemption to NSEL in respect of NTSD contracts and therefore, all contracts traded on NSEL with a settlement period exceeding 11 days are a violation of Forward Contracts Regulation Act, and
- That the SCN has directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of notification dated 05/06/2007 within 15 days of the receipt of the notice failing which the Department would be compelled to withdraw the exemption granted thereunder without any further communication.

ix. The press report also notes the reply of NSEL. From the aforesaid, it is clear that the fact of the show cause notice and its contents ceased to be unpublished at least on and from 3rd October, 2012 and thus any action taken by the Noticee after the said date can, by no stretch of imagination, be treated as based on or while in possession of UPSI. Without prejudice to the above, it is submitted that since the DCA SCN came to be in public domain on and from October 3, 2012, Prakash Shah ceased to be an insider from that date. Since his trades in the scrip of FTIL were pursuant to him ceasing to be an insider, his trades do not violate PIT Regulations, 1992. On this short ground alone, the proceedings against the present Noticee is liable to be dropped.

Prakash Shah is not an Insider:

x. SEBI's view that Prakash Shah is an insider as per Regulation 2(e) of the PIT Regulations is completely incorrect and wrong. By virtue of Prakash Shah being a father of Directors of FTIL he is 'deemed to be a connected person' in terms of Regulation 2(h)(viii) of the PIT Regulations, 1992. To be an 'insider' in terms of Regulation 2(e) of

the PIT Regulations, in addition to being deemed to be a connected person deemed it necessary that he was reasonably expected to have access to UPSI.

xi. There is no material in the Ex-Parte Impounding Order on the basis of which a view can be taken that Prakash Shah was reasonably expected to have access to UPSI. The mere relationship of Prakash Shah with the Directors of FTIL is not sufficient to assume that he was reasonably expected to have access to UPSI.

xii. The Ex-parte Impounding Order demonstrates that SEBI completely lost sight of the fact that:

- Prakash Shah, a senior citizen, has been independent from his sons (who during the Relevant Period were Directors of FTIL). He also resides separately from his sons Manjay Shah and Jigncsh Shah
- Prakash Shah was not an employee/Director of FTIL, NSEL or any of its group companies at any point in time.
- Prakash Shah had no access to UPSI whatsoever pertaining to those companies and could not be reasonably expected to have access to UPSI.

xiii. Since Prakash Shah was not in possession of UPSI when he traded in the scrip of FTIL he has not been in violation of Regulation 3(i) of the PIT Regulations, 1992.

Inherent Contradictions in what constituted UPSI:

xiv. In paragraph 1.2(B)(iii) at page 8 and Paragraph 2.3.5 at page 23 of the Ex-Parte Impounding Order, SEBI has taken a view that UPSI in respect of shares of FTIL was therefore, the implication of the DCA SCN, i.e., suspension of contracts and deferral of settlements and subsequent payment defaults by Members of NSEL alongwith loss of reputation of Promoters/Management of FTIL.

xv. In the same breath, in paragraph 1.2(B)(iv) at page 8 and paragraph 1.2(D)(vi)(a) at page 20 of the Ex-Parte Impounding Order, SEBI has taken a view that UPSI came into existence on April 27, 2012 upon the issuance of the DCA SCN.

xvi. The aforesaid clearly demonstrates that SEBI itself is not clear on what constitutes UPSI.

xvii. It is submitted that 'implications' arc not 'information' and as such the 'implications of the DCA SCN' cannot be UPSI. Should the issuance of the DCA SCN be treated as UPSI, then the fact that the same ceased to be UPSI with effect from October 2/3, 2012 is explained hereinabove.

There was no impact on the price:

xviii. It should be noted that upon the fact of issuance of DCA SCN coming into the public domain on October 2, 2012, the price of FTIL's shares did not fall and in fact increased. Even after the news of the Hon'ble Ministers reply in the Rajya Sabha was

reported in newspapers i.e. the information relating to the SCN, there was little impact on the price of the scrip of FTIL.

If an Insider, Prakash Shah's conduct is contrary to abusive assumption:

xix. Prakash Shah sold FTIL shares for a bona .fide purposes to meet his personal expenses. His sons who were directors of FTIL, Mr. Jignesh Shah and Mr. Manjay Shah were not involved in his trading.

xx. It is pertinent to note that Mr. Prakash Shah had sold shares of FTIL even prior to the alleged UPSI period, to meet his personal expenses.

xxi. Throughout the Relevant Period, Prakash Shah had a shareholding of 47,351 shares in FTIL of which he only sold 10,000 (constituting 0.021% of the total Promoter shareholding in FTIL) shares during the alleged UPSI period. If the hypothesis proposed by SEBI, that Prakash Shah had possession of adverse UPSI about NSEL and he averted losses by selling shares of FTIL were assumed to be right, prudence would demand that he sold his entire holding in FTIL and not merely 10,000 shares (of which 1,000 shares were sold on August 22, 2012 and 9,000 shares were sold on October 8, 2012). The very fact that he did not sell all or substantially all the shares held by him, clearly establishes that he was not in possession of UPSI.

xxii. Mr. Jigncsh Shah, son of Prakash Shah, who is the single largest shareholder of FTIL, (holding 8,329,585 shares constituting 18.08% stake in FTIL) as also La-Fin which holds 26.76% stake in FTIL, did not sell any of their shares in FTIL during the investigation period

xxiii. This demonstrates that reason for Prakash Shah selling his shares in FTIL was not to secure any unfair advantage and/or to cheat any person but only for a just and bonafide cause of meeting his personal expenses and as such he cannot be treated as being in violation of PIT Regulations, 1992.

Procedure under regulation 6 not followed

xxiv. Regulations 5 and 6 of PIT Regulations, 1992, *inter alia*, provide for investigation. Regulation 5 specifics the right of the Board to investigate while Regulation 6 prescribes the procedure for investigation. Once the Board under Regulation 5 decides to investigate, such investigation can be undertaken under Regulation 6(I) by giving reasonable notice to the insider who is sought to be investigated. The exception to the requirement or such a notice stipulated in Regulation 6(2) provides that if the Board is satisfied that in the interests of the investors or in public interest, no such notice should be given, it may by an order in writing direct that the investigation should be taken up without such notice.

xxv. In the present case, the investigation report does not recite the fact of any such order of the Board under Regulation 6(2). The noticee is not aware of the fact whether any such order was passed or not. The noticee has requested for inspection of the file of SEBI relating to the present investigation but no inspection has been given of any such order that may have been passed under Regulation 6(2). In the absence of such an order being produced, it is respectfully submitted that the entire investigation would be vitiated by not following the principles of natural justice and/or the mandatory provisions of Regulation 6(I).

xxvi. These submissions are without prejudice to Prakash Shah's right to seek and obtain complete inspection of all the documents collected by the Investigating Authority during the course of investigation and to make further submissions in defence post providing the inspection.

SHRI HARIHARAN VAIDYALINGAM

i. The sole basis for passing the said Order is the allegation that the information about the Show Cause Notice dated April 27, 2012 ("SCN"), issued by the Department of Consumer Affairs (DCA), Ministry of Consumer Affairs, Government of India to National Spot Exchange Limited (NSEL), that allegedly culminated in the suspension of trading in contracts, and deferment of settlement on NSEL, is the unpublished price sensitive information ("UPSI") (page 8 sub paragraph iii of said Order) and that I have sold FTIL shares while in possession of the said UPSI. I say that the facts set out hereafter would demonstrate that I was neither in a position to know nor was I privy to the said SCN until it was available in the public domain i.e. October 3, 2012, when it was widely published in the newspapers. I say that - (a) I ceased to be a director on the board of NSEL on December 20, 2011, which is 4 months prior to the issuance of the Show Cause Notice dated April 27, 2012; and (b); I ceased to be an employee of FTIL in June 20, 2011.

ii. I say that the said Order has been passed on the presumption that I was in possession of the USPI, without any material to support it. I say that the said Order records the fact that I ceased to be the Non-Executive Non-Independent Director (nominated by FTIL) of NSEL from December 20, 2011. The said Order also records that my employment with FTIL came to an end in June 20, 2011. In view of these facts, it is inconceivable that I could have been in possession of the purported UPSI, when I was not a director in either of these entities viz. FTIL and NSEL during the period starting from April 27, 2012 to July 31, 2013 ("Investigation Period").

iii. The said Order also alleges that I have averted potential loss in the scrip of FTIL amounting to Rs.28,17,114/-. I say that after receipt of the said Order, I have gone through the historical data pertaining to value of FTIL scrip during the period from August 2012 to February 2013 (I sold shares of FTIL on November 16, 2012), available on the

NSE website. It is evident that during the period April 2012 to January 2013, the movement in the price of the FTIL scrip was upward and in fact in November 2012 it went up to average price of Rs. 1,202/-. I say that the allegation of SEBI is that issuance of SCN to NSEL is the beginning point of UPSI and had the news of issuance of SCN to NSEL broke out, the same would have had material impact on the FTIL scrip. Admittedly, the news of issuance of SCN broke out on October 3, 2012 in various newspapers and if SEBI's allegation above is accepted to be true, the price of FTIL scrip ought to have fallen. However, this allegation of SEBI stands belied by the fact that the average price of FTIL scrip, which was Rs. 968/- on October 3, 2012 increased to Rs. 1,124/- on January 31, 2013. This also shows that I did not avert any loss and in fact incurred loss by selling the shares at a particular price.

iv. Without prejudice to the contention that I was not privy to the SCN until it was widely published, I say that the said Order records (on page 27) that "FTIL was the holding company of NSEL, it is reasonably expected that Directors, etc. of FTIL and NSEL had access to UPSI". The Investigation Period determined by SEBI for its investigation in the present matter is from `April 27, 2012 to July 31, 2013'. Admittedly, I was not a Director either in FTIL or in NSEL during the Investigation Period. Therefore, the said Order is factually and legally incorrect and deserves to be recalled.

v. It is pertinent to note that SEBI admits in paragraph B (viii) (page 9 of said Order) that the price of the scrip of FTIL decreased substantially only after the announcement of suspension of trading by NSEL was made on July 31, 2013. Admittedly, I sold shares of FTIL much prior to the said announcement. In view thereof, assuming and without admitting that there was any UPSI, the same came into existence much after I dealt with FTIL shares held in my name.

vi. It is submitted that SEBI's action of passing an ex-parte ad interim Order cum Show Cause Notice dated August 2, 2017 in respect of sale of shares that took place more than 4.5 years ago and imposing plenary and oppressive restrictions on my enjoyment of legitimately acquired property (including funds lying in my bank accounts), thus preventing me from meeting even the day to day requirements of my life and the needs of my family, without establishing any urgency or pressing need for the same and without considering any of the clarifications or explanations provided by me in the course of investigation, is bad in law, and contrary to principles of natural justice.

vii. It is submitted that the Ld. Whole Time Member in the said Order cum Show Cause Notice at paragraph nos. 2.3.3 and 2.3.4 has admitted that it was not the issuance of the Show Cause Notice but the implication thereof i.e. suspension of contracts and publication thereof on July 31, 2013 was the UPSI. As stated above the balance scrips of FTIL were dealt with much prior thereto and therefore, cannot by any stretch of imagination be construed to have dealt with the same while in possession of UPSI. In view thereof, it is submitted that the findings recorded by the Ld. Whole Time Member at

paragraph no. 2.4.5 are incorrect and have been made without taking into consideration the aforesaid facts.

viii. In view of the aforesaid facts, it is submitted that the observations of the Learned Whole Time Member who has passed the said Order cum Show Cause Notice, in relation to the applicability of the SEBI (Prohibition of Insider Trading) Regulations1992 regulations namely, Regulation 2(e) -"insider", Regulation 2(ha) -`price sensitive information", and Regulation 2(k)-"unpublished" are not applicable to the present scenario.

ix. I was associated with (FTIL) as an employee from January 1, 2001 to June 20, 2011. During my tenure with FTIL, I was appointed as "Chief Technology Officer" until March 31, 2005 and was assigned the role of technology product development, which includes within its scope the designing, development and implementation of various software products of FTIL. From April 1, 2005, onwards I acted as the "Director -Strategy (non-Board)" of FTIL, wherein I was involved in the strategies relating to design of next generation software products of FTIL.

x. FTIL has a 99% subsidiary called NSEL, which had been permitted by the Government of India to carry on the business of forward contract of one day duration for various commodities.

xi. During my employment with FTIL, from May 18, 2005 to December 20, 2011, I was appointed as a Non-Executive Director on the board of NSEL. As the Non-Executive Director, I did not have any role whatsoever in the day to day functioning of NSEL and the same was taken care of by the NSEL Executives, team management headed by the MD and CEO.

xii. Further, I have never attended any board meetings, while I was on the board of NSEL. It is pertinent to note that during my tenure as the non-executive director of NSEL, I did not draw any salary, sitting fees or any amounts from NSEL. I ceased to be a director of NSEL from December 20, 2011. I say that it is not in dispute that the SCN was issued 4 months after I ceased to be a director on the board of NSEL. Additionally, even after resigning from the directorship of NSEL on December 20, 2011, I was never associated with NSEL in any manner whatsoever namely as an employee, director and/ or consultant. Therefore, I am not an insider within the meaning of PIT Regulations. I am neither a connected person or deemed to be connected person. Accordingly, I could not have and was never privy to the said Show Cause Notice until it was published on October 3, 2012. A Copy of Form-32 filed by NSEL in accordance with the provisions of the Companies Act, 1956, which demonstrates that I ceased to be a director of NSEL on December 20, 2011 is enclosed.

xiii. I permanently shifted to Singapore from May 2011 onwards and I am currently residing and working in Singapore. On June 21, 2011, I was appointed as an interim CEO of Singapore Mercantile Exchange Pte Ltd. ("SMX"), a- multi asset exchange, for a period of 6 months starting from June 21, 2011. A copy of the Employment Pass dated June

24, 2011, issued by the Ministry of Manpower (Republic of Singapore) in my favour for a period of two years, is enclosed. The Employment pass was later renewed before expiry as "Personalised Employment Pass" on November 5, 2012 for a period of 5 years. A copy of letter dated June 20, 2011 addressed by Monetary Authority of Singapore ("MAS"), to Mr. Ang Swee Tian (Chairman - SMX) confirming my appointment as the Interim CEO is enclosed.

xiv. On December 21, 2011, I was confirmed as the CEO of SMX. Additionally, I was appointed as the CEO of SMX Clearing Corporation Pte Ltd. I continued to act as the CEO of both SMX and SMX Clearing Corporation Pte Ltd. till February 03, 2014.

xv. From February, 2014 to date, I have been acting as an advisory to various Corporate Companies in Singapore and USA. It is pertinent to note that I was not privy to the Show Cause Notice dated April 27, 2012, since as on the date of issuance of the SCN I was neither the employee of FTIL nor nominee Non-Executive Director of NSEL.

xvi. Out of the total shareholding of 10,000 shares of FTIL standing in my name, I sold part of the shares i.e. 7000 shares on or about September, 2010 and further on November 16, 2012 the balance 3000 shares were sold by me on the Bombay Stock Exchange (BSE).

xvii. Pursuant to the appointment as an Interim CEO of SMX, I resigned from the boards of all companies in India wherever I was a director or employee on or about June 20, 2011.

xviii. Since I had shifted to Singapore I was no longer interested to pursue any business association and/or commercial interest in India and decided to sell my shares in FTIL and other entities. Accordingly, I sold 3,000 shares of FTIL on the Bombay Stock Exchange Limited ("BSE") on November 16, 2012, at the average price of Rs. 1128.48/, for a total consideration of Rs. 33,85,429.25/-. After the payment of Brokerage and Securities Transaction Tax the net amount credited to my account was Rs. 33,80,022.98/-. As stated above, the shares of FTIL were sold by me to meet the expenses towards my daughter's education expenses in USA, her educational loan, for her marriage which took place on November 30, 2012 at Chennai, to reduce my outstanding liabilities, which I had incurred on account of financial assistance availed from different banks/financial institutions. I crave leave to refer to and rely upon the documents, evidencing utilization of sale proceeds of FTIL shares, if required.

xix. It is pertinent to note that after a period of almost 4.5 years from the date of the sale of balance 3000 shares of FTIL by me, SEBI vide email dated January 20, 2017 sent a letter of same date and sought certain information from me in relation to (i) my association of FTIL with NSEL; (ii) the reasons why I sold FTIL shares; and (iii) the origin of shares sold by me. The said email/letter was replied to by me vide my email dated February 3, 2017 and the necessary information and particulars were provided.

xx. On August 2, 2017, without giving any notice and/or seeking clarification, if required, SEBI passed the said Order cum Show Cause Notice on an ex pane basis. By the said

Order cum Show Cause Notice, SEBI has inter alia computed a convoluted sum of "loss averted" in the sum of Rs.28,17,114/-, and computed interest thereon @ 12% constituting Rs.13,52,215/- until the date of the said Order, i.e. a total amount of Rs.41,69,329/-. By the said Order cum Show Cause Notice, SEBI has inter alia directed that I should not dispose of or alienate any of my assets/properties/securities, till the allegedly wrongfully "averted losses" are credited by me to an Escrow Account and freezing all my bank accounts and demat accounts.

xxi. Despite receipt of the relevant information and being aware of the facts stated herein above, SEBI passed the said Order. As stated above, no explanation nor clarification was sought from me. No personal hearing was granted and as such the said Order is bad in law and facts.

Without prejudice to the above, submissions on merits are as under:

xxii. The Complaint dated 26 September 2014 ("the said Complaint") is devoid of any merits and in any event, makes totally false, frivolous and incorrect allegations against me.

xxiii. On a plain reading of the said Complaint, there is no case against me. I say that on the Complainant's own showing, I cannot be termed as an `insider' being privy to price sensitive information. I further say that the said Complaint has proceeded on a totally false premise that I was a Director of FTIL, when in fact, I have never been appointed Director of FTIL. Furthermore, I have had nothing to do with FTIL from June 20, 2011. During the period from January 1, 2001 to June 20, 2011, I was associated with FTIL as an employee. During my tenure with FTIL, I was first appointed as the "Chief Technology Officer" until March 31, 2005 and was assigned the role of technology product development, which includes within its scope, the designing, development and implementation of various software products of FTIL. From April 1, 2005 onwards, I acted as the "Director (non-Board) of Strategy" of FTIL, wherein I was involved in the strategies relating to design of next generation software products of FTIL. I say that if the investigation was properly carried out, it was very clear that there is no case against me in the Complaint and further proceeding ought to have been dropped.

xxiv. I repeat and reiterate that I was the non-executive Director on the board of NSEL from May 18, 2005 to December 20, 2011. As a Non-Executive Director, I was not involved in day-to-day affairs and management of NSEL and have not attended any board meetings during the relevant period. I ceased to be a Director of NSEL from December 20, 2011. I say that it is not in dispute that the said Order was issued 4 months after I ceased to be a Director on the board of NSEL. Accordingly, after resigning from the directorship of NSEL on December 20, 2011, I was never associated with NSEL in any manner whatsoever namely as an employee, director and/or consultant. Accordingly, I could not have and was never privy to the said Order until it was published on October 3, 2012 and as I was not aware of the issuance of the said Order, the issue of my being in

possession of the alleged UPSI does not arise. Admittedly, and it is also the case of SEBI at item 8 at page 5 of the said Order that an article was published in "The Economic Times", Mumbai edition dated October 3, 2012, setting out issuance of the show cause notice, its contents and the response of Mr. Anjani Sinha, then MD & CEO of NSEL, and the same being in public domain, the sale of my shares of FTIL cannot constitute a violation of insider trading norms. I also understand that NSEL had published the Exchange Communication dated October 3, 2012 on their website and was issued to all the Members, hence it was in the public domain. Therefore, on this count also there has been no violation of insider trading by me as alleged by SEBI in the said Order. Further, the alleged UPSI had already become public and had come in the public domain, the issue of alleged UPSI remaining unpublished cannot and does not arise. The rest of the contents of paragraphs under reply are denied.

xxv. I have unnecessarily been roped in as an insider, when according to SEBI, I have not been a Director or a Promoter of FTIL. I have not even been in employment of FTIL from the time when I effected sale of 3,000 shares of FTIL, clearly showing that I could in no way have access to any information whatsoever much less any price sensitive information at a point of time when I sold the aforesaid shares. I have deliberately been termed as a "Non-Executive Director" for the purpose of attracting the said Insider Trading Regulations, 1992 when it is clear from the record that I have never been a Non-Executive Director of FTIL. From April 1, 2005 onwards, I have only been a Director (non-Board) of Strategy of FTIL.

SHRI V. ARVINDKUMAR IYENGAR AND SMT DHANASHRI IYENGAR

i. It is submitted that Shri V. Arvindkumar Iyengar (Noticee No. 6) was a software developer who had no connection with the management, corporate, regulatory or legal functions of FTIL. His wife, Smt. Dhanashri Iyengar (Noticee No.7), had no connection whatsoever with FTIL. Shri V. Arvindkumar Iyengar was a mid-level technical professional who handled software development of FTIL and was not a key managerial personnel or part of the executive management of FTIL. His role was limited to developing better software products for his employer. As a technician, he was not privy to any information on corporate or regulatory issues qua FTIL.

ii. It is stated in the said Order that the Show Cause Notice dated April 27, 2012 ("SCN"), was issued by the Department of Consumer Affairs ("DCA") to the National Spot Exchange Limited, a wholly owned subsidiary of FTIL ("NSEL"), and that the same was the so called unpublished price sensitive information ("UPSI"). The present Noticees are not even aware of whether the same was ever available in the records of FTIL, if so from what date, and if at all the same was in the records FTIL, then at the most the same may have been known to the corporate, legal and/or secretarial departments of FTIL, and the

present Noticees had no access to the same at all. The present Noticees were neither aware of the said SCN, nor did they have access to the same and nor can they reasonably be expected to have had access to the said alleged UPSI. The present Noticees did not know about the existence or the contents of the said SCN till the same was in the public domain as herein below stated.

iii. It is most pertinent to note that it is admitted in the said Order that the alleged UPSI ceased to be UPSI as the said information was published in the Economic Times newspaper on October 03, 2012. The said article clearly referred to the SCN issued by DCA to NSEL and contained information which is alleged to be UPSI in the said order. Therefore, at the highest, the UPSI can only be alleged to have existed from April 27, 2012 till October 03, 2012. Admittedly the said present Noticees did not trade in any shares of FTIL during this time period. All the trades of the said present Noticees, as are impugned in the said Order, were only in November 2012, which admittedly was after the said information was in the public domain, and therefore was no longer UPSI. It is submitted that on this short ground alone the said Order ought to be withdrawn as against the present Noticees, since it can never be alleged that their trades were during the UPSI period or that the same were executed while in possession of UPSI.

iv. Without prejudice to anything else herein stated, it is submitted that merely the issuance of the SCN by any authority can never amount to UPSI. Even the Insider Trading Regulations do not identify the issuance of such a SCN as amounting to UPSI. Further, even the disclosure of the SCN vide the article in the Economic Times newspaper on October 03, 2012 apparently did not have any adverse impact on the price of the FTIL shares, which proves that the mere issuance of the SCN was not price sensitive information. In fact, it was the shutdown of all trading in the NSEL in July August 2013 that was price sensitive information, and the prices of FTIL shares had also fallen at that time. In fact the present Noticees believed that FTIL would ultimately revive and flourish and that therefore the said crash in prices was a good opportunity to buy the shares of FTIL. Shri V. Arvindkumar Iyengar had therefore in fact purchased about 13039 shares of FTIL since August 2015, and is holding the same to date, as inter alia also disclosed to SEBI vide his letter dated August 16, 2017, whereby he furnished the disclosures of assets as required by the Order.

v. However, on the other hand, if for the sake of argument the issuance of such a SCN is assumed to be UPSI, FTIL ought to have closed the trading window in accordance with the Insider Trading Regulations, 1992, but the same was never closed. The Order does not even allege that the trading window was ever closed, nor are we aware of any such charge or allegation in this regard against FTIL, its compliance officer or its Board of

Directors. Therefore in any event, no fault can be found with the impugned trades of the present Noticees.

vi. Without prejudice to anything else herein stated, it is submitted that the Order proceeds on the basis that the said alleged UPSI, which commenced by the issuance of the said SCN on April 27, 2012 by the DCA to NSEL, ceased on July 31, 2013 when NSEL issued a circular suspending the trading in all contracts except a-series contracts and deferred settlement of all pending contracts. However, this July 31, 2013 circular was obviously pursuant to the July 12, 2013 letter of the DCA to NSEL, by which it directed that no further / fresh contracts be launched by NSEL and that all existing contracts be settled. Therefore, the UPSI, if any, was the said direction of the DCA in its letter dated July 12, 2013. Until that point of time, it was not known to anyone as to what stand the DCA would take pursuant to the SCN dated April 27, 2012 and the NSEL's response thereto. Admittedly, the present Noticees' trades were in November 2012 and were therefore prior to the actual said UPSI coming into existence on July 12, 2013.

vii. Without prejudice to the aforesaid, it is submitted that the Order has been issued based on the incorrect assumption that the present Noticees are `insiders' of FTIL. It is submitted that even though the Shri V. Arvindkumar Iyengar was an employee of FTIL, in view of his position in FTIL wherein he was only concerned with IT technology issues related to specific products of FTIL like ODIN or ZEUS, he can never be reasonably expected to have had access to the alleged UPSI at any time.

viii. Further, it is not even alleged in the Order that there is any material or any evidence to conclude that the present Noticees had access to the said UPSI. It is submitted that present Noticees are not `insiders' as defined under the Insider Trading Regulations, 1992, nor are they connected persons or deemed connected persons who can be reasonably expected to have access to the said UPSI, and nor did they receive or have access to the said UPSI at any time.

ix. Further, it is submitted that the trades conducted by the Noticees during the Investigation/ alleged UPSI Period were done for legitimate reasons, i.e. in order to fund an acquisition of a residential flat. The said sale of FTIL shares by the present Noticees during the Investigation Period was not motivated by or on the basis of any knowledge of any such alleged UPSI, but was for the legitimate funding of the purchase of the said flat by the present Noticees.

x. The fact that the present Noticees did not trade on the basis of the said alleged UPSI at the relevant time is also proved by the fact that during the Investigation Period, the present Shri V. Arvindkumar Iyengar did not sell shares of Multi Commodity Exchange of India ("MCX") which were held by him, and in fact Smt Dhanashri Iyengar purchased shares of MCX during the said period. Had they been aware of the said information while the same was UPSI, there can be no logical reason for Smt Dhanashri Iyengar to purchase the said shares.

xi. Therefore, it is submitted that the allegations and findings against the present Noticees in the Order are erroneous, that the present Noticees were never `insiders' of FTIL, that they never had access to UPSI nor traded when in possession of UPSI, and that they are not guilty of insider trading in violation of regulation 3(i) and/or regulation 4 of the Insider Trading Regulations read with section 12A(d) of the SEBI Act as alleged in the Order.

BACKGROUND

xii. Shri V. Arvindkumar Iyengar is a graduate in Electronic Engineering from Mumbai University, and is a software developer whose work entailed developing, managing and troubleshooting the software used by capital and commodity market participants. From June 1996 to March 2000, Shri V. Arvindkumar Iyengar was employed with the National Stock Exchange ("NSE"), as a Software Developer. Thereafter, from April 2000 to March 2001, Shri V. Arvindkumar Iyengar was employed as a Systems Administrator with Internet Exchangenext.com Limited, a Reliance Group company. Thereafter in 2001, he started working as an Assistant Vice President in respect of IT Technology at FTIL, a public limited company incorporated under the Companies Act, 1956, and listed both on the NSE and BSE Limited. The work profile of Shri V. Arvindkumar Iyengar entailed working with a team of software developers to develop, manage and troubleshoot the ODIN software, i.e., a software used by capital market participants. In April 2007, Shri V. Arvindkumar Iyengar was directed by the management, based on his experience in the software field, to lead a team to design and develop a new software product called ZEUS which was to replace ODIN in the future. In 2008, in line with FTIL's policy and based on his performance, he was given the designation of Senior Vice President and Head Technology (ZEUS). Shri V. Arvindkumar Iyengar was transferred to Ticker Plant Info vending Limited ("TPIL"), a subsidiary company of FTIL, for the period between April 2009 and September 2011, after which he was transferred back to FTIL and continued to work on and develop the ZEUS software and retained the same said designation. In mid-2012, the said ZEUS project was abandoned and the ZEUS team was merged with the ODIN team. Subsequent to the termination of the ZEUS project, Shri V. Arvindkumar Iyengar was once again tasked with developing and managing the ODIN software and his designation was changed to "Solutions Architect - ODIN", a designation that appropriately reflects the true nature of the work of the Shri V. Arvindkumar Iyengar throughout his time at FTIL including during the Investigation Period, i.e., he was merely a software developer. Shri V. Arvindkumar Iyengar resigned from FTIL in August 2013.

xiii. Smt Dhanashri Iyengar is the wife of Noticee No. 6. She is also a qualified IT professional and was also employed with FTIL as a "Senior Software Specialist' 'from November 1997

till she resigned from FTIL in 2007, after which she was not in any manner connected with FTIL. She had no relation with FTIL during the Investigation Period.

THE SAID ORDER / COMPLIANCE BY THE PRESENT NOTICEES

xiv. Without prejudice to their rights and contentions, the present Noticees have complied with the said directions contained in the Order by depositing on August 11, 2017 into an escrow account the amount as directed by the Order and by providing a full list of their assets and properties vide their letter dated August 16, 2017.

SUBMISSIONS AND OBJECTIONS TO THE SAID ORDER:

There was no UPSI in existence on the date of the impugned trades

xv. it is expressly acknowledged in Serial No. 8 of the chronology of events in Table III in the said Order itself, that a news article was published on October 03, 2012 in the Economic Times (a very widely circulated and respected publication), by which the alleged UPSI was in fact widely published and was in the public domain. It may be noted that upon checking, we find that in fact the said news article was uploaded on the Economic Times web-site on October 02, 2012 at 7:48 PM, and the same was also carried in the said newspapers print edition on October 03, 2012.

xvi. It is submitted that the said news article inter alia clearly published and disclosed to the public at large:-

(i) That the NSEL was under the lens / scanner of the Government and the Commodities Regulator;
(ii) That the Ministry of Consumer Affairs had issued the said SCN dated April 27, 2012 to NSEL, and was probing the alleged discrepancies in NSEL;
(iii) That NSEL had been promoted by FTIL and another;
(iv) That the FMC and the Ministry of Consumer Affairs had questioned the paired contract products of the NSEL, and had contended that the same amounted to short selling and to settlement beyond the stipulated 11 days in violation of the provisions of the Forward Contracts (Regulation) Act;
(v) That FMC had sent a Report to the Ministry to take appropriate action in the matter;
(vi) That according to the Ministry, although FMC had made it mandatory for sellers to actually deposit goods in the warehouses, NSEL did not have a stock check facility for validating a members position ;
(vii) That although NSEL had disputed the allegations, the Ministry had rejected the submissions of NSEL;
(viii) That as per the said SCN dated April 27, 2012, NSEL had been directed to Show Cause as to why action should not be initiated against it for violation of the

conditions of the Notification dated June 05, 2007 within 15 days, failing which the Department would be compelled to withdraw the exemption granted to the NSEL by the said Notification.

xvii. It is therefore undeniable that the existence of the said SCN dated April 27, 2012 issued to NSEL, the charges therein, the violations alleged to have been committed by the NSEL, the contentions of the NSEL, the rejection thereof by the Ministry and FMC and the threatened action of withdrawing the exemption granted to NSEL vide the said Notification dated June 05, 2007, were all clearly published and disclosed to the public at large by the said news articles on October 02, 2012 and October 03, 2012. Since all the said information was in the public domain, it cannot be alleged that the same was "unpublished", and the alleged UPSI therefore ceased to be UPSI since October 02, 2012 or October 03, 2012.

xviii. In fact, it is also acknowledged in the said Order itself at Serial No. 9 of the said chronology of events in Table III therein, NSEL had issued a circular to all its members on October 03, 2012, wherein the NSEL had admitted receipt of the said SCN dated April 27, 2012, and that it had submitted its reply to the same. Therefore, information about the said SCN dated April 27, 2012 was undeniably published and in the public domain since October 2012.

xix. On the other hand, the said Order itself records and admits in pars VI at page 19, that the present Noticees impugned trades were all only in November 2012, i.e., one month after the said alleged UPSI had already been published and was in the public domain. Therefore it can never be held that the present Noticees' said impugned trades were undertaken while in possession of or on the basis of the said alleged UPSI.

xx. It is therefore respectfully submitted that the said Order as against the present Noticees be withdrawn and/or set aside. All other submissions made herein are without prejudice to the aforesaid submission.

Issuance of a SCN cannot amount to UPSI

xxi. Without prejudice to anything else herein stated, it is submitted that merely the issuance of the SCN by any authority can never amount to UPSI.

Allegation that UPSI ceased to exist on July 31, 2013

xxii. Without prejudice to anything else herein sated, it is submitted that the said order proceeds on the basis that the said alleged UPSI which commenced by the issuance of the said SCN on April 27, 2012 by the DCA to NSEL ceased on July 31, 2013, when NSEL issued a Circular suspending the trading in all contracts except e-series contracts and deferred settlement of all pending contracts. However, this July 31, 2013 circular was obviously pursuant to the July 12, 2013 letter of the DCA to NSEL, by which it

directed that no further / fresh contracts be launched by NSEL and that all existing contracts be settled.

xxiii. Therefore, the UPSI, if any, was the said direction of the DCA in its letter dated July 12, 2013. Until that point of time, it was not known to anyone as to what stand the DCA would take pursuant to the SCN dated April 27, 2012 and NSEL's response thereto. Admittedly, the present Noticees' trades were in November 2012 and were therefore prior to the actual said UPSI coming into existence on July 12, 2013.

Allegation that the present Noticees were insiders of FTIL

xxiv. Regulation 3(i) and regulation 4 of the Insider Trading Regulations, 1992, state that no "insider" shall either on his own behalf or on behalf of any other person deal in securities of a company listed on any stock exchange when in possession of any UPSI and that any "insider" who deals in securities in contravention of this shall be guilty of insider trading. Therefore, for anyone to be guilty of insider trading, such person must qualify as an "insider".

xxv. It is submitted that, to be qualified as an insider under the Insider Trading Regulations, 1992, a person has to be:

(i) connected or deemed to be connected with the company and be reasonably expected to have access to UPSI in respect of securities of a company (herein after referred to as "Category I").

(ii) a person who has actually received UPSI or has actually had access to UPSI in any manner even without being a connected person (herein after referred to as "Category II").

xxvi. In the case of the Noticees, it is submitted that they do not fall under either of the above categories and therefore cannot be held to be "insiders" of FTIL at any point in time.

Category I: Connected/deemed connected persons reasonably expected to have access to UPSI

xxvii. It is submitted that, for the present Noticees to be considered as `insiders' of FTIL as per Category I of the definition of `insider', they must satisfy both of the following criteria:-

a. The present Noticees must be connected persons or deemed to be connected persons of FTIL; and

b. The present Noticees must reasonably be expected to have access to UPSI.

The present Noticees were not connected persons of FTIL

xxviii. As per sub-clause (i) under the definition of connected person, a director or a deemed director of a company qualifies as a connected person of such company. Admittedly Shri V. Arvindkumar Iyengar was never a director or a deemed director of FTIL and that there

is no such allegation in the said Order as well. Therefore, it is submitted that Shri V. Arvindkumar Iyengar does not qualify as connected person as per sub-clause (i) under the definition of connected person.

xxix. It is submitted that sub-clause (ii) under the definition of connected person requires a person to satisfy both of the following requirements to qualify as a connected person:

a. He must occupy the position of an officer or employee or a position involving a professional or business relationship; and
b. He must reasonably be expected to have an access to the unpublished price sensitive as a result of the position occupied.

xxx. It has been alleged that he was an officer/employee of FTIL holding the position of senior vice-president and head of technology department of FTIL. In this regard, it is submitted that Shri V. Arvindkumar Iyengar was an employee of FTIL during the Investigation Period, but he was not the head of or leading the Technology Department of FTIL. He was tasked with developing and managing of certain software such as ZEUS and ODIN and his team were not part of the technology department of FTIL. His correct designation during the Investigation Period, as is accurately stated at Sr. No. 68 of Table V in the said Order, was "Senior Vice President and Head - Technology (ZEUS)". In mid-2012, his designation was changed to "Solutions Architect - ODIN", as is evidenced by the Certificate dated August 30, 2013 as was issued to- Shri V. Arvindkumar Iyengar at the time when he retired from FTIL.

xxxi. It has been alleged that Shri V. Arvindkumar Iyengar qualified as an `insider' of FTIL and that he was reasonably expected to have had access to the said alleged UPSI. In this regard, it is submitted that FTIL is a listed company having a code of conduct for prevention of insider trading in terms of the Insider Trading Regulations, 1992. As is recorded in the code of conduct, FTIL ensures that all UPSI was handled only on a "need to know" basis. Chinese walls were in place to segregate different teams and departments. Shri V. Arvindkumar Iyengar was not part of the management, corporate, secretarial, or regulatory affairs teams of either NSEL or FTIL nor did he have any role in the management, policy or legal decisions of FTIL or NSEL. He was merely a software developer and his day to day affairs in FTIL was developing and managing software such as ZEUS and ODIN. During the Investigation Period, Shri V. Arvindkumar Iyengar was reporting to the Chief Delivery Officer (ODIN) and subsequently to the Senior Vice President, ODIN, and not to any director of FTIL. Further, the nature of reporting and interactions was restricted to the said software product quality and the timelines of delivery of the software, and involved no discussion of any of the said information which is alleged in the said Order to be the UPSI.

xxxii. In view of the aforesaid true and correct facts, it is submitted that it cannot be reasonably expected that the position occupied by Shri V. Arvindkumar Iyengar would

have enabled him to have access to any UPSI of the type as alleged in the said Order. Therefore, although Shri V. Arvindkumar Iyengar was an employee of FTIL he was not occupying a position in which he could be reasonably expected to have had access to the said alleged UPSI. Therefore, he is not a connected person as per sub-clause (ii) of the definition of "connected person" as well. As a matter of fact, his role in FTIL never involved and could never involve any access to any such UPSI.

xxxiii. In regard to Smt Dhanashri Iyengar , she was not a director or a deemed director of FTIL. She did not occupy the position of an officer or employee of FTIL at the relevant time, nor did she occupy a position involving a professional or business relationship with FTIL during the Investigation Period. Therefore, Smt Dhanashri Iyengar does not qualify as a connected persons as per sub-clause (i) or (ii) under the definition of "connected person".

Category II: Person who has received UPSI or has had access to UPSI

xxxiv. As explained above in detail, Shri V. Arvindkumar Iyengar was merely a software developer tasked with developing and managing software such as ZEUS and ODIN, and therefore it cannot be reasonably expected that he would have had access to the said alleged UPSI. Further, neither the SCN nor the Investigation Report allege that Shri V. Arvindkumar Iyengar had in fact received the said alleged UPSI. In regard to Smt Dhanashri Iyengar , it is submitted that, although she was an employee of FTIL from 1997 to 2007, she had no existing connection with FTIL or NSEL during the Investigation Period. While she was an immediate relative of, Shri V. Arvindkumar Iyengar himself had never received UPSI or had access to UPSI. Therefore, it is submitted that the present Noticees never received UPSI or had access to UPSI. Therefore, they do not qualify as `insiders' under Category II.

SALE OF FTIL SHARES DURING INVESTIGATION PERIOD UNDERTAKEN FOR LEGITIMATE REASONS

xxxv. It is submitted that the sale of FTIL shares by the present Noticees during the Investigation Period was not based on any UPSI but was in order to meet the substantial and legitimate monetary needs of the present Noticees at that time. The present Noticees had found a very suitable flat situated at 303, EMP 1, Thakur Village, Kandivali East, Mumbai, and were very keen to purchase the same as it was adjacent to another Flat already in the possession of the Smt Dhanashri Iyengar , and combining the two flats would automatically give the present Noticees a larger residential premises. The total price they would have to pay to acquire the said flat from the previous owner, Mr. George Varghese, was Rs. 78 Lakhs. In order to finance this transaction, the present Noticees decided to liquidate some of their mutual funds and stock market investments. The

present Noticees liquidated not just their investment in FTIL but certain other securities as well, between October and November 2012, to provide for the said large expense…

xxxvi. The present Noticees paid an advance sum of Rs. 5,00,000/- to the said vendor, Mr. George Varghese, on October 27, 2012. The remaining payments were made to Mr. George Varghese by the present Noticees on November 06, November 07, November 14, and November 15 of 2012, after sale of the said shares and all mutual fund redemptions.

xxxvii. After the payment of the full agreed consideration of Rs. 78 lacs, the Sale Deed for the transfer of the property to the present Noticees was executed on November 30, 2012. Stamp duty and registration charges totalling to about Rs. 4.2 lacs was also paid by the present Notices thereon. The vendor has admitted the receipt of the full said consideration in the said Sale Deed. A copy of the said Sale Deed dated November 30, 2012 along with payment receipts is enclosed.

xxxviii. It is reiterated that in fact the present Noticees believed that FTIL would ultimately revive and flourish and that therefore the subsequent crash in prices was a good opportunity to buy the shares of FTIL. Shri V. Arvindkumar Iyengar had therefore in fact purchased about 13039 shares of FTIL from August 2015 and is holding the same to date, as inter alia also disclosed to SEBI vide his letter dated August 16, 2017, whereby he furnished the disclosures as required by the said Order.

TRADING PATTERN IN MCX SHARES SHOWS THAT PRESENT NOTICEES HAD NO ACCESS TO UPSI

xxxix. We draw your attention to the order issued by SEBI bearing reference number WTM/SR/IVD/ID-6/45/08/2017 dated August 02, 2017 ("MCX Order"). FTIL held 26% of the total equity share capital of MCX during the Investigation Period, and FTIL, NSEL and MCX were companies under a common management with common directors.

xl. Further, the allegations in the said MCX Order are the same; i.e. the said SCN dated April 27, 2012 issued to NSEL was prima facie UPSI also in respect of the shares of MCX. Even the investigation period / UPSI period in both Orders is alleged to be the same, and the same also contains similar allegations. The said MCX Order also refers to the trades of Smt Dhanashri Iyengar as herein below stated.

xli. In light of this, it is submitted that the trading pattern of the present Noticees and their shareholding position in the shares of MCX should also be considered while determining whether they traded in the shares of FTIL in a manner that indicated they had traded on the basis of the said alleged UPSI. The following tables accurately depicts the transactions undertaken by the present Noticees in the shares of MCX, and present

Table3 - Trading by Shri V. Arvindkumar Iyengar in shares of MCX (highlighted row shows transactions during Investigation Period)

Date or period of transactions	**Number of shares acquired / purchased**	**Number of shares sold**	**Total holding at end of period**	**Remarks**
2009	3000	-	3000	ESOP Scheme
2011	750	**-**	3750	Bonus Issue
Investigation period	-	-	3750	No trading
November 18 – November 20, 2013	-	3750	0	On market

Table 4- Trading by Smt Dhanashri Iyengar in shares of MCX (highlighted rows show transactions during Investigation Period)

Date or period of transactions	**Number of shares acquired / purchased**	**Number of shares sold**	**Total holding at end of period**	**Remarks**
2009	120	-	120	ESOP Scheme
2011	30	-	150	Bonus Issue
March 07 to April 13, 2012	30	--	180	On-market
April 30 toMay 28, 2012	120	-	380	On-market
July 16, 2012	-	150	150	On-market
July 25, 2012	150	-	300	On-market
August 09 to November 05, 2012	300	450	150	On-market
November 18, 2013	-	150	0	On-market

xlii. As shown in Table 3 hereinabove, during the Investigation Period, Shri V. Arvindkumar Iyengar had 3750 shares of MCX which were acquired as part of the MCX ESOP Scheme and through a bonus issue. These shares were subject to lock-in requirements as part of the MCX ESOP Scheme until March 31, 2013. Shri V. Arvindkumar Iyengar did not buy or sell any shares of MCX at any time during the Investigation Period even after the completion of the said lock-in period. These shares were sold by Shri V. Arvindkumar Iyengar only long after the Investigation Period. This fact also militates against any allegation of access to UPSI or of insider trading.

xliii. As shown in Table 4 hereinabove, during the Investigation Period, Smt Dhanashri Iyengar had 180 shares of MCX of which 150 were acquired as part of the MCX ESOP Scheme and 30 through on market transactions undertaken prior to the Investigation Period. The shares acquired through the MCX ESOP Scheme were subject to lock-in requirements as part of the scheme until March 31, 2013. During the Investigation Period, Smt Dhanashri Iyengar continued to buy and sell MCX shares in small numbers with the net buy and sell position being30 shares on the sell side. In the period subsequent to the investigation period, Smt Dhanashri Iyengar sold 150 shares which were acquired under the MCX ESOP Scheme and were subject to lock-in until March 31, 2013. These facts also militates against any allegation of access to UPSI or of insider trading.

xliv. It is submitted that, if the present Noticees had been trading in the shares of FTIL on the basis of the said alleged UPSI to avert losses, they would obviously also have sold off the shares of MCX held by them based on the same UPSI during the said alleged UPSI period, but they did not do so. This proves that they did not have access or receive the said alleged UPSI, trade on the basis of or while in possession of the alleged UPSI, and that they are not guilty of any insider trading or any violations as alleged in the said Order or otherwise.

xlv. In addition, we draw your attention to the findings relating to Smt Dhanashri Iyengar as contained in the MCX Order, wherein it is alleged that the Investigation Report pertaining to the MCX Order had alleged that she was allegedly one of the insiders of MCX and that she had traded in shares of MCX during the Investigation Period. However, on considering the trading undertaken by her during the Investigation Period, it was found that no adverse inference can be drawn for her trades. In other words, it is submitted that this finding implies that Smt Dhanashri Iyengar had not traded based on the said alleged UPSI.

xlvi. In this regard, it is submitted that it is pertinent to note the ratio of the judgment in the case of *Chandrakala v. SEBII*, wherein the Hon'ble SAT observed that a person in possession of UPSI which, on becoming public is likely to cause increase in the share price, would only buy the shares and would sell them

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i. The Ex Parte Order entailed the following premises:

(a) sale of 6000 shares of FTIL ("Transactions") by the Noticee between 9 November 2012 and 6 February 2013;
{b) such period falling with in the period between 27 April 2012 and 31 July 2013 ("Alleged UPSI Period");
(c) the Noticee being the brother of one Mr Ravi K Sheth ("RKS"), who was a director on the board of FTIL ("Board") during the Alleged UPSI Period;
(d) the Noticee allegedly being reasonably expected to have received or had access to unpublished price sensitive information ("UPSI"};
(e) knowledge of the implications of the show cause notice dated 27 April 2012 issued by Department of Consumer Affairs, Government of India ("DCA SCN"} to NSEL and the eventual suspension of contracts and deferral of settlements and consequent loss of reputation of Promoters / Management of FTIL allegedly constituting UPSI;
(f) consequently, the alleged UPSI coming into existence on 27 April 2012, i.e., the date on which the SCN was issued;
(g) the alleged UPSI remaining unpublished until 31July 2013 {i.e., the date on which NSEL issued a circular, *inter alia*, suspending trading in all contracts except e-series contracts);
(h) consequently, the Transactions being motivated by the unpublished adverse information about NSEL and thereby adverse to FTIL, allegedly in possession of the Noticee, allegedly motivating him to sell before the adverse UPSI became public, resulting in the difference in value between the market price after the alleged publication and the price for the sales being allegedly "averted losses" of Rs 56,47,287; and such allegedly averted losses being liable for disgorgement, various bank accounts being required to be frozen without limit even while the Ex Parte Order purported to freeze a certain value and despite the SEBI Act clearly imposing various legal safeguards that have been blatantly violated by the Ex Parte Order.

ii. The aforesaid premises are incoherent, untenable and unsustainable insofar as they relate to the Noticee. At the outset, the Noticee emphasises that not only are these premises flawed, but also assuming they are not flawed, any proposition that the Transactions translate into insider trading, is wholly untenable, unsustainable and evidently incapable of being supported by law or facts. If only SEBI had asked questions and given an opportunity to the Noticee to explain, SEBI would have realised that any

suspicion that the Noticee violated Insider Trading Regulations was a "false positive" - where the seeming ingredients are seemingly present but indeed, it would be completely untenable and illogical to state that there could be even a whisper of an allegation that the Noticee traded in violation of the Insider Trading Regulations.

Ex Parte Order Unfair; Places the Defence on Trial; Unconstitutional:

iii. The passing of the Ex Parte Order without granting the Noticee any opportunity of being heard has led to serious and grave infirmity apart from overwhelming injustice in the instant case insofar as it relates to the Noticee. The Noticee has suffered immense reputation damage with bankers across the globe seeking explanations about why India's capital market regulator believes (even on a prima facie basis) that there has been a violation of the Insider Trading Regulations by the Noticee.

iv. Not only was the use of extraordinary powers under Sections 11(1),11(4) and 11B of the SEBI Act on an ex-parte basis qua the Noticee unwarranted in the facts of the present case, the usage in the instant case is clearly violative of these very provisions of the SEBI Act. The Ex Parte Order caused a blanket freeze across all bank accounts of the Noticee by purporting to freeze balances to the extent of the amount stated in the Ex Parte Order. In the process, every single bank account bearing the PAN number of the Noticee across the country was blocked. Such a blanket freeze is clearly contrary to the SEBI Act. The explicit and clear-cut provisions of the SEBI Act, which are extracted below would make it clear that any freezing of any bank account by SEBI requires a warrant from a Magistrate. Besides any such freezing can only be for a period of 30 (Thirty} days. Moreover, for any such freezing to even be effected, it should be shown that what is being frozen are the proceeds of violative trading in securities. All these carefully-chosen safeguards provided by Parliament have been given the go-by in blatant and utter disregard of the law.

v. In addition to the foregoing, for such powers to be used one should first show that there is any grave threat or emergency requiring a remedial measure of this nature to be taken on an ex parte basis. Nothing of that sort has been done by SEBI in the instant case. In the stroke of a pen, bank balances to the tune of more than Rs. 43 Crore and securities to the tune of more than Rs. 258 Crore were blocked. Indeed, the Noticee put up the amount set out in the Ex Parte Order and requested the Learned Whole Time Member who passed the Ex Parte Order to direct the release of the freeze, which was done. However, the freeze to begin with, was blatantly and clearly illegal, as explained above.

vi. Due to this indiscriminate freezing of banks and de-mat accounts of the Noticee, the Noticee could not even honour his delivery obligations for the shares sold by him on 1 August 2017 in the scrip of HC Technologies limited. The said failure caused financial

loss to the tune of more than Rs 4 lacs and reputational damage to the Noticee for no fault on his part.

vii. To make matters worse, the absence of any emergency or urgency is made even starker by the fact that: -

(a) The Transactions in question were admittedly executed and settled by the Noticee between November 2012 and February 2013, i.e., more than 4.5 years prior to the issuance of the Ex Parte Order;

(b) The Complaint, pursuant to which the entire investigation was initiated by SEBI was admittedly received by SEBI on 26 September 2014,i.e.,more than 2.5 years prior to the issuance of the Ex Parte Order;

(c) The only query received by the Noticee was on 12 April 2017, i.e., around 4 (Four) months prior to the issuance of the Ex Parte Order; and

(d) The answer from the Noticee providing even more information and data than what was set out in the aforesaid query was given on 18 April 2017, i.e., around 4 (Four) months prior to the issuance of the Ex Parte Order.

viii. Having waited this long, if only notice of any proposed impounding had been given, the Noticee would have put up funds of the size referred to in the Ex Parte Order, without prejudice to his contentions in just the same way he has had after the Ex Parte Order. There was nothing to indicate a risk of the Noticee alienating assets in a manner that he would not be good for credit of more than Rs 83 lacs i.e., the purported "total loss averted".

ix. Even worse, having taken a public position, SEBI has rendered persons such as the Noticee vulnerable to the institution attempting to prove itself right by continuing to hold a negative view. The presumption of innocence has thus been changed to a presumption of guilt, with the reply and the defence after the Ex Parte Order being tested and placed on trial.

x. In these submissions, the Noticee has addressed the issues on merits as argued in the Ex Parte Order, without prejudice to the aforesaid fundamental violation of the SEBI Act by the Ex Parte Order.

Missing links to Noticee and Infirm Conclusion of Knowledge of Adversity of DCA SCN:

xi. Before dealing with the allegations in the Ex Parte Order, some background and context would be relevant. The Noticee belongs to the Sheth family that has founded and managed a Global leading shipping company called The Great Eastern Shipping Company ltd. ("GE Shipping"). The Noticee is currently serving as the Deputy

Chairman and Managing Director of GE Shipping; Chairman of Greatship (India) ltd. and is a director of North of England P&I Association ltd, Steamship Mutual Underwriting Association, Indian National Shipowners association & International Tankers Owners Pollution Federation Ltd.

xii. The Noticee's business focus is on the shipping industry which demands most of his strategic time and attention. The Noticee's personal investments in securities span securities of more than 80 listed companies including Titan Industries Limited, State Bank of India, Reliance Industries Limited, Power Finance Corporation Limited, Power Grid Corporation, Maruti Udyog Limited,larsen and Turbo Limited, HDFC Limited etc.

xiii. Mr Ravi K Sheth ("RKS") is the Noticee's brother. During the Alleged UPSI Period, RKS was indeed a non-executive director on the Board of FTIL. RKS did not have any additional insight or role in the day-to-day operations of FTIL other than what any independent director could have. He could not have been classified as "independent" because the shareholding of RKS, the Noticee and related family members in FTIL was in excess of 2% of the paid-up capital of FTIL and as such he was not eligible to be categorized as an "independent director" in terms of applicable law. During the relevant period, prior to the Transactions, the cumulative family stake was 8.28% in FTIL. RKS resigned from the Board of FTIL with effect from 21 February 2014 .

xiv. In any case, it is not even SEBI's case that RKS is guilty of communicating or counselling information that is being alleged to be UPSI to the Noticee. There is nothing on the record to even point to it, and SEBI has indeed levelled no such allegation in the absence of any material to suggest that RKS communicated UPSI to the Noticee.

xv. Indeed, there is no charge even in the Investigation Report dated 18 July 2017 or anywhere else in the material on the record, much less in the Ex Parte Order that RKS had access to the alleged UPSI or it to be communicated or counselled to the Noticee. If RKS did not have access to the alleged UPSI and there is nothing to show that RKS communicated it to the Noticee, there is no basis to find fault with the Transactions by the Noticee.

xvi. While this foundational infirmity would itself be adequate to demonstrate that no action would be maintainable against the Noticee, the Noticee's case is further buttressed by the fact that the conduct of the Noticee and the other attendant facts would clearly point to the only possible inexorable conclusion-that the Noticee did not have access to the alleged UPSI. (This is of course, without prejudice to the fact that the ingredients of the "Alleged UPSI" are completely vague inasmuch as it relates to "implications" of the DCA SCN - in itself a wide range of possibilities exist for an outcome of a show cause notice, and the outcome referred to is not a culmination of the DCA SCN but the outcome of proceedings initiated by the Forward Markets Commission.)

xvii. Without prejudice to the foregoing, even if it were to be assumed that the Noticee had knowledge of the DCA Snit would follow that he could never have perceived the

DCA SCN's and its implications to be adverse since he remained invested in not only shares of FTIL but 'also in the very contracts of NSEL. These are dealt with in subsequent paragraphs.

Sale Transactions in FTIL Shares Could Never Be Motivated by Adverse UPSI:

xviii. The charge against the Noticee is that the Noticee averted losses of Rs. 56,47,287 by executing the Transactions, which were all sales of shares of FTIL, before the alleged UPSI got published. Such a conjecture ignores several vital facts that would demonstrate that the surmise is completely untenable. These are: -

(a) the Noticee has always been and continues to be (even today) a long-term investor in the shares of FTIL, holding these since FY 1999-2000, i.e. for more than 17 years;
(b) the Noticee currently holds individually, equity shares of FTIL aggregating to about 2.76% of the equity share capital of FTIL. Further, the aggregate family holdings of the Noticee in FTIL is, even currently,8.12% of the equity share capital of FTIL;
(c) The Noticee first bought 34,200 shares of FTIL on 5 February 2000. Since then, the Noticee has been routinely buying and selling shares in FTIL from time to time;
(d) At the start of the Alleged UPSI Period the holdings of the Noticee was 13,13,739 shares of FTIL representing 2.85% individually. Along with his family, the total holdings were 38,13,931 shares representing 8.28%;
(e) The sales during the Alleged UPSI Period was of a mere 6,000 shares and he continued to hold 13,07,739 shares individually and 38,07,931 equity shares collectively with family. At the same average price at which the Transactions took place, the Noticee's individual shareholding in FTIL at the end of the Alleged UPSI Period would be valued at more than Rs.148 Crore while the collective shareholding with his family at the end of the Alleged UPSI Period would be valued at more than Rs. 431Crore;
(f) If the Noticee was being motivated by access to the alleged UPSI, he would not have continued to hold on to shares worth more than Rs.148 Crore on his own and shares worth more than Rs. 431 Crore along with his family. All he routinely sold was worth Rs. 67,97,487 (Rupees Sixty-Seven Lacs Ninety-Seven Thousand Four Hundred and Eighty-Seven) in the ordinary course.

xix. The aforesaid facts are yet another clear pointer to how the Noticee could never have been someone who can be reasonably suspected of acting on adverse UPSI in his possession.

xx. The entire construct of SEBI's charge is based on the DCA SCN being adverse to FTIL and its adverse implications being known to, among others, to the Noticee. The premise is that the DCA SCN cast doubt over the future of the NSEL and its contracts that were alleged to be violative of the basis on which NSEL was set up. It is submitted that in fact the Noticee through his partnership firm had started trading in the NSEL contracts only after the Alleged UPSI come into existence. Further, the Noticee's exposure to those very contracts of NSEL as at the end of the Alleged UPSI Period was more than Rs. 6.70 Crore which he continued to hold. As on date, the Noticee's loss on NSEL has been to the tune of more than Rs. 6.27 Crore.

xxi. Had the Noticee been a reasonable man who would reasonably react to adverse implications of the DCA SCN, he would have not entered into the NSEL post issuance of the DCA SCN. A man who seeks to "avert losses" of Rs. 56,47,287 (Rupees Fifty-Six Lacs Forty-Seven Thousand Two Hundred and Eighty-Seven) would not stay on to suffer losses of Rs. 6.27 Crore. On this ground alone, the premise that the Noticee through his family partnership firms (wherein he is also a partner) would have been aware of the alleged UPSI and was reacting to the unpublished adverse UPSI by executing the Transactions stands belied.

Routine Sale of Securities in Ordinary Course with no Abnormal Scale:

xxii. The Transactions were effected in the ordinary course of his dealing in the securities of various companies. In November 2012, the Noticee routinely decided to sell a few shares of FTIL in the open market and the proceeds were used to meet routine household expenses. There had been a steady upward price movement in the shares of FTIL during the six months prior to the Transactions.

xxiii. It will be seen that the closing price of the shares of FTIL had, between 9 May 2012 and 9 November 2012 increased from Rs. 597.70 to Rs. 1,095.65, i.e., an increase of Rs. 497.95, i.e. more than 83 %. The increase for the period from 9 May 2012 to 6 February 2013 was from Rs. 594.00 to Rs. 1118.00, i.e., an increase of 88.21%. It would be a natural tendency to book profits on a small number of shares held in the portfolio.

xxiv. It is noteworthy that the sale of the meagre 6,000 shares of FTIL during the Alleged UPSI Period constituted 0.46% of the Noticee's individual shareholding in FTIL and 0.16% of the entire holding in FTIL along with family members.

xxv. Besides, it will also be seen that the shares of FTIL were not the only securities sold by the Noticee during the Alleged UPSI Period. The Noticee had also similarly marginally diluted his shareholding in Tata Consultancy Services Limited, Tata Global Beverages

Limited, ETF units of Gold Bees, shares of Gemini Communications Limited and Coal India Limited to the tune of more than Rs. 5.3 Crore.

xxvi. It would thus become clear that the Transactions were routine sale transactions and there was nothing unusual, irregular or abnormal about these transactions. They were consistent with past practice, consistent with approach towards other securities and the sale proceeds were used for meeting routine expenses. Besides, even after the Transactions, a large exposure to FTIL and indeed to the very contracts in NSEL that formed subject matter of the DCA SCN, continued. It would be completely illogical and irrational to attribute the sale of FTIL Shares involved in the Transactions, to alleged possession of adverse UPSI, and motivated by an expectation of averting losses.

Other Factors to Point to the Ex Parte being Fallacious:

xxvii. In addition to the substantive and clear-cut factors dealt with above, there are other factors that would also inexorably show that the Noticee cannot be reasonably said to be a person motivated by adverse UPSI in his possession. These include:-

(a) The DCA SCN was issued on 27 April 2012. The first sale transaction in FTIL shares during the Alleged UPSI Period was on 9 November 2012. If the Noticee was a person motivated by the adverse implications of this purported UPSI, he would not have waited for six months before making his first sale of FTIL shares;

(b) If the Noticee had been a person in possession of the purported UPSI i.e. the issuance of the DCA SCN and its implications, he would have also been aware that on 12 July 2013 the DCA had called upon NSEL to give the following undertaking:
   i) No further/fresh contracts shall be launched by NSEL; and
   ii) All the existing contracts will be settled on the due dates.

(c) The Noticee did not sell any FTIL shares between 12 July 2013 and 31July 2013, which is the date on which the alleged UPSI ceased to be in existence.- clearly pointing to the fact that the Noticee was not a person in the know of developments on the DCA SCN;

(d) Since RKS was on the Board of Directors of FTIL, the Noticee had duly sought and had been granted pre-clearance by the Compliance Officer of FTIL on 9 November 2012, 20 November 2012 and 5 February 2013 for a sale of 10,000 shares on each of the three occasions. Yet the total sale by the Noticee was of 6,000 shares.

(e) If the Noticee was aware of an adverse implication of the DCA SCN, he would not have entered into new contracts on NSEL through his partnership firm after the issuance of the DCA SCN. On the contrary, the Noticee through his partnership

started trading in the contracts offered by NSEL only after issuance of the SCN. Further, the contracts entered into by the said firm were the ones which were suspended by DCA and NSEL on 12 July 2013 and 31July 2013 respectively. Between the period of 16 August 2012 and 9 July 2013, the firm entered into several contracts offered by NSEL. Copies of the ledger statements for the contracts executed by the Noticee through his partnership firm in the scrip of NSEL are annexed

(f) That the DCA SCN and its implications was never brought before the Board of FTIL (and therefore could not have been brought to the attention of RKS, who in turn is not even accused of communicating or counselling it to the Noticee) has also been confirmed by the Company Secretary of FTIL vide his letter dated 18 September 2017 issued in response to a specific query by RKS vide letter dated 12 September 2017.

(g) The Noticee sought and analysed the minutes the Board of Directors of FTIL for the period between April 2012 and April 2013- an exercise that SEBI has either not done, or having done, not taken forward since it did not support its supposition of insider trading. A summary of the details of the minutes in a tabulated form is set out herein below:

DATE OF MEETING	**WHETHER RKS WAS PRESENT**	**WHETHER ALLEGED UPSI WAS DISCUSSED**	**WHETHER NSEL MINUTES WERE PLACED**	**WHETHER NSEL MINUTES DISCUSSED THE ALLEGED UPSI**
30 May 2012	No	No	Yes, but were only shown to the directors present at the meeting.	No
6 August 2012	No	No	Yes, but were only shown to the directors present at the meeting.	No
31October 2012	No	No	Yes, but were only shown to the director's present a t the meeting.	No

6 December 2012	Yes	No	No	No minutes placed
28 January 2013	No	No	No	No minutes placed
22 April 2013	Yes	No	No	No minutes placed

(h) RKS had attended only one Board meeting in the financial year 2012-2013,i.e., the time during which the trades in the 6,000 shares of FTIL were concluded by the Noticee. The annual report of FTIL for the said period as is available on the websites of the stock exchanges, demonstrates this position.

xxviii. Further, it is not disputed that that first trade in shares of FTIL was concluded by the Noticee on 9 November 2012, i.e. prior to RKS even attending a meeting of FTIL.

xxix. If only SEBI had sought explanations, the passing of the Ex Parte Order against the Noticee would have been obviated.

Flawed Approach to UPSI- Ambiguous and Untenable:

xxx. The arguments made above are based on the assumption (purely for the sake of argument) that the DCA SCN was UPSI-yet, it shows how the Ex Parte Order is untenable. However, the very proposition that the alleged UPSI is at all relevant for these proceedings in relation to the Noticee is fraught with infirmities. The very composition of what is UPSI in the Ex Parte Order, which doubles up as a show cause notice, is vague.

xxxi. The Ex Parte Order terms the DCA SCN and the implications of the DCA SCN as being UPSI. The "implications" inferred are:-

(a) suspension of contracts;
(b) deferral of settlements;
(c) subsequent payment defaults by Members of NSEL; and
(d) loss of reputation of Promoters/Management of FTIL.
(e) According to the Ex Parte Order, the aforesaid alleged UPSI came into existence on 27April 2012, upon issuance of the DCA SCN and ceased to remain unpublished when NSEL issued a circular on 31July 2013 suspending trading in all the contracts (except e-series contracts) and deferred settlement of all pending contracts.

(f) It is pertinent to note that on 3 October 2012, using the very same means of dissemination i.e. a circular issued by NSEL, the receipt of the DCA SCN had been published by NSEL. Therefore, if circular of NSEL issued on 31July 2013 is a valid means of dissemination for the information to become "published", the circular of NSEL

dated 3 October 2012 too should be a valid means of dissemination to make the existence of the DCA SCN to be regarded as having become "published". In the sequence of events listed by SEBI in the Ex Parte Order, Items 8 and 13 will bear this out- Paragraph 1.2A.ii on Page 3;

(g) The NSEL publication was widely disseminated and was reported in the media. The Economic Times, India's largest and widest-selling business newspaper reported this development.

(h) Thus, even if one were to assume purely for the sake of argument that the DCA SCN was UPSI, such UPSI ceased to remain "unpublished" on 3 October 2012, when it became generally available and widely known i.e. when it came into possession of the general public;

xxxii. Among the transactions involving sale of shares of FTIL by the Noticee assailed in the Ex Parte Order, the very first transaction was on 9 November 2012 - well after 3October 2012;

xxxiii. Consequently, without prejudice to the Noticee's fundamental and clear argument (that even assuming that the alleged UPSI were to be UPSI, the Noticee's conduct would show that he was not motivated by possession of UPSI), even the approach of the Ex Parte Order to whether the alleged UPSI was UPSI at all, is flawed.

Case law relied on:

xxxiv. It is now settled law and the ratio laid down by tribunals and courts above SEBI that for violation of insider trading to occur:

(a) A person who is likely to be in possession of UPSI is an insider;
(b) However, the insider ought to be in possession of UPSI for the prohibition on trading to be attracted;
(c) If the UPSI allegedly in possession of the insider is adverse and the insider has sold before its publication, or if the UPSI allegedly in possession of the insider is positive and the insider has bought before its publication, there would be basis to suspect insider trading -in other words, it would be open to a person accused to show that the nature of the UPSI was adverse or positive and it was contrary to his trades;
(d) If an insider allegedly in possession of adverse UPSI did not sell his securities to avert losses and went on to remain invested or made even more investments, he cannot be alleged to have indulged in violative insider trading;
(e) If an insider allegedly in possession of positive UPSI did not acquire securities to gain from the UPSI and went on to either sell or make no new investments, he cannot be alleged to have indulged in violative insider trading.

xxxv. The following judgements are relevant in support of the foregoing:

(a) Candrakala v. SEBI, Appeal No. 209 of 2011- paragraph 7 on page 8;

(b) Manoj Gaur & Ors. v. SEBI, Appeal No.64 of 2012 - paragraphs 16 to 19 on pages 17 to 19;

(c) Dilip Pendse v. SEBI, Appeal No. 80 of 2009- paragraph 13 on page 16;

(d) Nandkishore v. State of Bihar, (1978) 3 SCC 366- paragraph 19 on pages 4; and

(e) Bank of India v. Degal Suryanarayan, (1999) 5 SCC 762- paragraph 11 on page 4.

SUMMARY AND CONCLUSION:

xxxvi. It is evident that the Ex Parte Order is fundamentally flawed. If only the Noticee had been heard, there would have been no question of SEBI coming up with such an unsustainable proposition as alleged insider trading by the Noticee. To summarise:-

(a) There is no link at all in the findings of the investigations between any insider to FTIL who was in the know of the DCA SCN and its implications, and RKS to begin with;
(b) There is no finding at all in the investigations of any communication or counselling by RKS to the Noticee of any component of the alleged UPSI- the Ex Parte Order merely proceeds on the footing that the Noticee and RKS are siblings- and indeed, no fault is found with RKS through such a long-drawn and detailed investigation;
(c) The dealings in the shares of FTIL by the Noticee are not only minuscule and consistent with all other dealings in securities but also the Noticee remained substantially invested in shares of FTIL through the Alleged UPSI Period;
(d) The Noticee through his partnership firms made fresh investments during the alleged UPSI period in the very contracts traded on NSEL that were subject matter of the DCA SCN - if the Noticee had possession of information about the DCA SCN, and if so, if the Noticee believed that the future of NSEL and of FTIL was in jeopardy because of the DCA SCN and its "implications" the Noticee would not have made such investments on the NSEL, in the very contracts that were subject matter of the DCA SCN;

(e) The Noticee through his partnership firm not only made fresh investments on the NSEL during the alleged UPSI period, but held on to suffer losses of more than Rs. 6.27 Crore - it stands to reason he would not have affected the Transactions seeking to "avert losses" of Rs 56,47,287 (Rupees Fifty Six Lacs Forty Seven Thousand Two Hundred and Eighty Seven) in fear of news about the DCA SCN to NSEL becoming published;

(f) The Noticee indeed sought and obtained pre-clearances for sale of 10,000 shares of FTIL thrice in the Alleged UPSI Period and in total sold only 6,000 shares-again, hardly consistent with a theory that he was seeking to profit from possession of adverse UPSI as alleged or at all by "averting losses" with sale of these shares;

(g) There is a large time gap between his minuscule sale of 6,000 shares (the first sale was on 9 November 2012) and the date of the DCA SCN (27 April 2012-the date on which the alleged UPSI came into existence);

(h) Each of the aforesaid factors show that the vague assertion that "implications of the DCA SCN" did not constitute to the mind of the Noticee, adverse UPSI to motivate him to sell shares of FTIL ahead of others in the market.

xxxvii. Without prejudice to the foregoing, it is noteworthy that every single sale by the Noticee is after 3 October 2012, which is the date on which NSEL published information about the DCA SCN- which would render the information about the DCA SCN to become "published", thereby rendering the DCA SCN never to qualify for being UPSI during the period when the Noticee sold the said shares.

ISSUES AND CONSIDERATION

14. I have considered the *interim order* cum SCN, oral and written replies/ submissions of the Noticees and other material available on record. Considering the allegations leveled in the *interim order,* arguments advanced by the Noticees in that regard and other material available on record, the following issues arise for consideration:

A. Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information in respect of FTIL?

B. If the answer to issue A is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?

C. If the answer to issue B is in the affirmative, which of the Noticees traded in the scrip of FTIL during the period when the price sensitive information remained unpublished?

D. Which of the Noticees violated the provisions of regulation 3(i) and regulation 4 of the PIT Regulations, 1992 and section 12A (d) of the SEBI Act while they traded when in possession of UPSI?

15. The consideration of the issues in light of the facts and circumstances of the case and the arguments advanced by the Noticees is discussed in the subsequent paragraphs.

A. Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information in respect of FTIL?

16. The first question which arises for consideration is whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL was "price sensitive information" in respect of FTIL. To answer the question, it becomes important to analyze the contents of the SCN dated April 27, 2012 and also the backdrop in which the said SCN was issued.

17. The expression "price sensitive information" has been defined under regulation 2(ha) of the PIT Regulations, 1992, which reads as under:

> *(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*
>
> *Explanation.—The following shall be deemed to be price sensitive information :—*
> *(i) periodical financial results of the company;*
> *(ii) intended declaration of dividends (both interim and final);*
> *(iii) issue of securities or buy-back of securities;*
> *(iv) any major expansion plans or execution of new projects.*
> *(v) amalgamation, mergers or takeovers;*
> *(vi) disposal of the whole or substantial part of the undertaking;*
> *(vii) and significant changes in policies, plans or operations of the company;*

18. It is noted that vide Notification S. O. No. 906(E) dated June 5, 2007, the DCA had granted exemption to NSEL from the operation of the Forward Contracts (Regulation) Act, 1952 ("FCRA") for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform, subject to the following conditions –

> *a. No short sale by Members of the Exchange shall be allowed;*
> *b. All outstanding positions of the trade at the end of the day shall result in delivery;*
> *c. NSEL shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;*
> *d. All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;*

e. The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary, and

f. In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.

19. The contents of the SCN dated April 27, 2012 are reproduced as under:

"National Spot Exchange Limited was given exemption from operation of the forward Contracts (Regulation) Act, 1952 for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform in terms of the Department of Consumer Affairs Notification S.0. No. 906 (E) dated 5.6.2007 subject to the conditions mentioned therein. FMC was declared as the `designated agency to call for data from the spot exchanges in accordance with the Department of Consumer Affairs Notification dated 6.02.2012. On the basis of data obtained from National Spot Exchange limited, FMC has reported the following discrepancies:

(I) The NSEL has not made it mandatory for the seller to actually deposit goods in the warehouse before he take a short position through a Member of the Exchange. The Exchange system has no stock check facility which validates the member position. The Exchange allows trading on the Exchange platform without verifying whether the seller member has the stocks with him or not. In this way, the Exchange has violated the conditions stipulated that no short sale for the members of the Exchange shall be allowed,

(II) FMC has also found that out of total contracts, 55 contracts offered for trade by NSEL have settlement period exceeding 11 days. NSEL has agreed that all the contracts traded on the Exchange platform for which settlement period exceed 11 days are N'TSD contracts. NSEL has, however, claimed that Government has granted exemption to the Exchange in respect of these contracts and therefore, trading in these contracts is not violation of the previsions of the FC(R) Act. The claim of NSEL, however, cannot be accepted as the Government has not granted any exemption to NSEL in respect of NT'SD contracts. Therefore, all contracts traded on NSEL with settlement period exceeding I1 days are violation of the provisions of the FC(R) Act.

2. National Spot Exchange Limited are, therefore, directed to explain as to why the action should not be initiated against them for violation of the conditions of the Notification dated 5.6.2007 within 15 days of the receipt of this letter failing which the Department would be compelled to withdraw the exemption granted thereunder without any further communication."

20. On a perusal of the above, it is noted that the possible outcome of the SCN was withdrawal of the exemption granted to NSEL with regard to non-applicability of FCRA to all forward contracts of one day duration for the sale and purchase of commodities traded on the platform of NSEL. It is noted that majority of the contracts being traded on NSEL were in the name of one day forward contracts. Thus, it would be reasonable to conclude that the possible outcome of the SCN would have had significant and serious implications on the functioning and operations of NSEL.

21. It is noted that FTIL was the holding company of NSEL holding 99.99% shares therein. Any adverse impact on the business and operations of NSEL was likely to have a contagion, cascading and materially adverse impact directly or indirectly on the holding company – FTIL. In my view, the possibility of serious challenges to be faced by NSEL which is almost wholly owned by FTIL had the potential to materially affect the price of the securities of FTIL when disclosed to public. Further, the same would have also led to a loss of reputation and credibility of the promoters and management of FTIL. In view of the above, considering the nature, extent and timing of the information relating to issuance of SCN by DCA to NSEL and its possible implications, I find that the said information was a price sensitive information in respect of FTIL.

22. It was argued that the price sensitive information as defined under Regulation 2(ha) is information that pertains to the company in question and not of a group company. It has been contended on behalf of the Noticees that the alleged UPSI under the *interim order* related to NSEL and not to FTIL, with regard to whose shares, the allegation of insider trading has been made in the *interim order*. In this context, I note that the very definition of the expression "price sensitive information" under regulation 2(ha) provides that the information under consideration would be subjected to the test of likelihood of material effect on the price of the securities even if it directly or indirectly relates to the company, which in the present case is FTIL. As noted above, any information having an adverse impact on NSEL would have had an indirect adverse effect on FTIL, and therefore for reasons discussed in above paragraph, the information as alleged in the interim order was price sensitive information in respect of FTIL.

23. Further, it was argued by certain Noticees that the information alleged in the interim order to be "price sensitive information" is not specifically covered in the explanation to definition of "price sensitive information" under regulation 2(ha) of the PIT Regulations, 1992, and therefore, does not qualify as price sensitive information. In this regard, I note that the explanation to regulation 2(ha) only provides for illustrative sets of information which would be deemed as "price sensitive information". For any information to be price sensitive, it has

only to meet the essential ingredients of regulation 2(ha) and it need not necessarily fall under any of the clauses provided under the explanation to regulation 2(ha). In view thereof, I do not find any merit in the arguments made by the Noticees in this regard.

24. It was also argued that the alleged UPSI was not price sensitive at all which was evidenced by the fact that when the article relating to the SCN dated April 27, 2012 was published in Economic Times on October 3, 2012, the price of the scrip of FTIL went up and not down. In this regard, I note that the definition of "price sensitive information" under regulation 2(ha) requires that the information should be such which if published is *likely to* materially affect the price of securities of the company. The actual impact on the price of the securities is not essential to the definition under regulation 2(ha) rather the real test is the *likelihood* of the material effect on the price of the securities of the company. I, therefore do not find any merit in the arguments in this regard and reject the same.

25. Considering the above, I find that the implication of the SCN dated April 27, 2012 as alleged in the *interim order* was "price sensitive information" in respect of FTIL.

B. If the answer to issue A is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?

26. Having answered the first issue in the affirmative, the next issue for consideration is whether the "price sensitive information" was unpublished during the period of investigation. In this regard, it is noted that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information relating to the issuance of SCN dated April 27, 2012 to NSEL, majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL's reply to the SCN. The article also covered the possible action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007.

27. On a careful perusal of the newspaper article dated October 3, 2012, I find that the publication of the said article made the following information public:

- DCA had issued a show cause notice dated April 27, 2012 to NSEL whereby it had found fault with certain types of contracts which were being traded on NSEL.
- There were allegations against NSEL that it was permitting short selling on its platform. It was also alleged that NSEL did not have a stock check facility for validating a member's position.

- SCN also alleged that all contracts traded on NSEL with a settlement period exceeding 11 days were in violation of the provisions of FCRA.
- The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.
- NSEL had filed its reply to the SCN issued by DCA.
- In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication.

28. In my view, a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on part of NSEL to provide a satisfactory explanation to the allegations levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, payment defaults in relation thereto and the eventual loss to the reputation of the promoters / management of NSEL. Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012, and as such ceased to be UPSI from that date. Accordingly, the period during which the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012.

C. If the answer to issue B is in the affirmative, which of the Noticees traded in the scrip of FTIL during the period when the price sensitive information remained unpublished?

29. As observed above, since the UPSI existed during the period April 27, 2012 to October 3, 2012, the next aspect for examination is who amongst the Noticees traded during the period April 27, 2012 to October 3, 2012.

30. On a perusal of the trades carried out by the Noticees which have also been mentioned in the *interim order*, it is noted that only one Noticee namely, Shri Prakash Shah traded during the period April 27, 2012 to October 3, 2012. It is noted that during the said period, Shri Prakash Shah did not buy any shares of FTIL but sold its shares. The relevant details of

his trades are mentioned in the table below. The same have not been disputed by Shri Prakash Shah.

Trades of Shri Prakash Shah

DATE	NO. OF SHARES SOLD	AMOUNT (IN ₹)
22.08.2012	1,000	8,52,525

D. Which of the Noticees violated the provisions of regulation 3(i) and regulation 4 of the PIT Regulations, 1992 and section 12A (d) of the SEBI Act while they traded when in possession of UPSI?

31. It is noted that all the Noticees except Shri Prakash Shah dealt in the shares of FTIL after October 3, 2012 i.e. the date when price sensitive information got published by way of the newspaper article in Economic Times. Consequently, since the Noticees (except Shri Prakash Shah) did not trade in the shares of FTIL when in possession of UPSI, the violation of regulation 3(i) and 4 of the PIT Regulations, 1992 cannot be established against the said Noticees.

32. Since only Shri Prakash Shah sold shares of FTIL during April 27, 2012 to October 3, 2012, the examination relating to alleged violations of Regulation 3(i) and Regulation 4 of the Insider Trading Regulations, 1992 and Section 12A(d) of the SEBI Act narrows down to his trades during the said period.

33. For the purpose of examination of the present issue, I find it relevant to quote the following regulations of the PIT Regulations, 1992:

> ***Regulation 2(e)*** *– "insider" means any person who,*
> *i. is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*
> *ii. Has received or has had access to such unpublished price sensitive information.*
>
> ***Regulation 2(c)*** *– "connected person" means any person who –*
> *i. Is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or*

ii. Occupies the position as an office or an employee of the company or holds a position involving a professional or business relationship between himself and the company (whether temporary or permanent) and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

[Explanation:—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;]

***Regulation 2(h)** – "person is deemed to be connected person" if such person –*

i. is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;

ii. is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

iii. is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

iv. is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956;

v. is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body;

vi. is a relative of any of the aforementioned persons;

vii. is a banker of the company;

viii. relatives of the connected person; or

ix. is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest.

34. It is noted that Shri Prakash Shah is a Promoter of FTIL and his sons, *viz*. Shri Jignesh P. Shah and Shri Manjay P. Shah, were also Promoters of FTIL. Shri Jignesh Shah was Chairman and Managing Director of FTIL while Shri Manjay Shah was Whole-time

Director of FTIL during the investigation period. Jignesh Shah was also a non-executive director of MCX and NSEL during the investigation period.

35. The term "promoter" has been defined under section 2(59) of the Companies Act, 2013 as under:

> *2(69) —promoter means a person—*
> *(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or*
> *(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or*
> *(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:*

36. The role of promoters to advise, direct or instruct the board of directors of the company has also been recognized under section 5(e) of the Companies Act, 1956.

37. I note that Shri Prakash Shah was the father of Shri Jignesh Shah (Chairman and Managing Director of FTIL) and Shri Manjay Shah (Whole Time Director of FTIL). Shri Jignesh Shah and Shri Manjay Shah were also the promoters of FTIL with Shri Jignesh Shah holding more than 18% shares of FTIL. Shri Jignesh Shah was also a director of La-fin Finance Services Pvt. Ltd., which held the majority shareholding in FTIL. Also, Mr. Prakash Shah had received 46,000 shares on October 16, 2008 from Jignesh P Shah by way of gift.

38. Shri Prakash Shah was "*deemed to be a connected person*" by virtue of regulation 2(h)(viii) of the PIT Regulations, 1992 as he is the relative of connected persons i.e. Shri Jignesh Shah and Shri Manjay Shah. As a promoter of FTIL, Shri Prakash Shah had the power to advice, direct or instruct the board of directors of FTIL. Further, as the father of the Chairman/Managing Director/controlling shareholder of FTIL, it is reasonably expected that Mr. Prakash Shah would have had access to the UPSI regarding the SCN issued to NSEL. Considering the above mentioned facts and circumstances, I find that since Shri Prakash Shah was a promoter of FTIL and the father of the Chairman /Managing Director/ controlling shareholder of FTIL, it can reasonably be expected that he had access to the UPSI, and as a deemed connected person reasonably expected to have access to UPSI, he was an "insider" within the definition of the term provided in regulation 2(e) of PIT Regulations, 1992.

39. Having observed as above, the next question that emerges for consideration is whether Shri Prakash Shah violated regulation 3(i) read with regulation 4 of the PIT regulations. For reference, the text of the said regulations is reproduced as under:

> ***Prohibition on dealing, communicating or counselling on matters relating to insider trading.***
>
> *3. No insider shall—*
> *(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;*
>
> ***Violation of provisions relating to insider trading.***
> *4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.*
>
> ***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***
> *12A. No person shall directly or indirectly—*
> *…*
> *(d) engage in insider trading;*

40. As noted above, Shri Prakash Shah was an "insider" within the meaning of the term under regulation 2(e) of the PIT Regulations 1992 and during the period April 27, 2012 to October 3, 2012, he sold 1,000 shares of FTIL. For the purpose of determining whether Shri Prakash Shah violated regulation 3(i) and 4 of PIT Regulations, 1992 and section 12A(d) of the SEBI Act while selling 1,000 shares of FTIL, it needs to be ascertained whether he sold the said shares "*when in possession of*" UPSI as required under regulation 3(i).

41. Before dealing with the submissions of Prakash Shah on merit, I find it pertinent to refer to the order of Hon'ble SAT in the matter of *Rajiv B. Gandhi and Ors. v. SEBI* (Hon'ble SAT's order dated May 9, 2008) wherein the Hon'ble SAT observed the following:

> *"We are of the considered opinion that if an insider trades or deals in securities of a listed company,* ***it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary****. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that*

he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established."

42. The principle of presumption of possession of information by insiders indicated in the case of *Rajiv B. Gandhi and Ors. v. SEBI* by Hon'ble SAT was also recognized later by Hon'ble SAT in another order in the matter of *Reliance Petro Investments Limited v. SEBI* (Hon'ble SAT's order dated December 7, 2015) in the following words:

"On perusal of para 9 and 10 of the impugned order it is seen that apart from denying that the Appellant was an insider, Appellant had placed on record various documents to rebut the presumption of being in possession of UPSI at the time of purchasing shares and the Appellant had also made submission to the effect that the price sensitive information itself came into existence after the shares were purchased by the Appellant."

43. As observed above, Shri Prakash Shah was an "insider" having access to UPSI under regulation 2(e) of the PIT Regulations, 1992 and therefore, there is a presumption that he traded when in possession of the unpublished price sensitive information. Consequently, it becomes necessary to examine whether Shri Prakash Shah has been able to rebut the said presumption in the facts and circumstances of the case.

44. Shri Prakash Shah has submitted that even assuming that the alleged information regarding implications of SCN was price sensitive and unpublished, he was not at all aware of the same. He submitted that he was not a director of FTIL, NSEL or MCX. Further, only because of the fact that he was the father of directors of FTIL, it could not be assumed that he was aware of issuance of SCN dated 27-04-12 to NSEL by DCA and NSEL's reply dated May 29, 2012. He also submitted that no such information was communicated to him. Mr. Prakash Shah further submitted that he had been holding the shares of FTIL for long and he had also been selling the shares of FTIL in small tranches since May 2009 and prior to his sale under consideration dated August 22, 2012, he had sold the shares of FTIL on around 19 occasions. Subsequently, he sold 9000 shares of FTIL after October 3, 2012 (when the alleged UPSI had become "published"). He further submitted that he had sold the shares from time to time based on his personal requirements and even as on date he continues to hold more than 37,000 shares of FTIL.

45. From the above submissions of Shri Prakash Shah, it appears that the sale of 1,000 shares by him during the period when the price sensitive information was unpublished (i.e. from

April 27, 2012 to October 3, 2012) was in line with his trading behavior which he had exhibited since the year 2009 as he had been selling shares of FTIL since then in lots ranging from 50 to 1,000. Further, Shri Prakash Shah still holds more than 37,000 shares of FTIL. Thus, the presumption under law that as an insider, his trades were carried out when in possession of UPSI stands rebutted. In view of the facts, circumstances and observations discussed above, the violation of regulation 3(i) and 4 of the PIT Regulations, 1992 and section 12A(d) of the SEBI Act does not stand established against Shri Prakash Shah.

46. Coming to certain ancillary issues of the proceedings, it is noted that Shri V. Arvindkumar Iyengar and Smt Dhanashri Iyengar were provided an opportunity of hearing on September 13, 2017 but the same was adjourned to October 4, 2017. On October 4, 2017, hearing was adjourned at the request of their authorized representative for non-availability of counsel engaged in the matter. It is noted they have filed his initial submissions to the *interim order* which have been taken on record. As observed above, Shri V. Arvindkumar Iyengar and Smt Dhanashri Iyengar sold the shares of FTIL after the publication of price sensitive information on October 3, 2012 and therefore their trading cannot be said to have been done *when in possession of UPSI*. Accordingly, the direction against Shri V. Arvindkumar Iyengar and Smt Dhanashri Iyengar issued vide the *interim order* will have to be revoked. Considering the above, since no prejudice would be caused to Shri V. Arvindkumar Iyengar and Smt Dhanashri Iyengar by this order, I find that there is no requirement of providing them another opportunity of hearing in adherence to principles of natural justice.

47. Shri Prakash Shah in his replies has stated that his submissions are without prejudice to his right to seek and obtain complete inspection of all the documents collected by the Investigating Authority during the course of investigation and that he reserves his right to make further submissions in his defence post providing the inspection. In this regard, I note that an opportunity of inspection was provided to Shri Prakash Shah on August 24, 2017 when his authorized representatives took inspection on his behalf. During the said inspection, his authorized representatives were provided with an inspection of the investigation report along with all its annexures, which have been relied upon by SEBI for the purpose of passing of the *interim order* dated August 2, 2017. No other document, even if collected by the investigating officer during investigation, has been relied upon by the investigating officer for arriving at the conclusions of the investigation, or by the whole time member of SEBI for the purpose of issuance of directions against the Noticees vide the *interim order*. In light thereof, I am of the view that grant of inspection of documents which were collected during investigation but were not relied upon by SEBI would not be necessary as Shri Prakash Shah was provided with all the relevant documents which

would have enabled him to submit his appropriate defense in the present proceedings. Without prejudice to the above findings regarding inspection of documents, I also find that in any event since the allegations levelled against Shri Prakash Shah in the *interim order* have not been established, no prejudice would be caused to him if the inspection of all the documents collected by the Investigating Authority during the course of investigation is not provided.

48. Further, it is noted that during the hearing, the authorized representative for Smt. Asha Shreekant Javalgekar appeared and made an application seeking cross-examination of the investigating officer in the matter on the ground that many of the conclusions drawn in the investigation are not borne out by documentary evidence but are assumptions and presumptions drawn by the investigating officer, the basis of which only he can explain. In this regard, I note that the conclusions of the investigating officer in the investigation report have been drawn on the basis of the facts that emerged from the material collected during the investigation. The investigating officer has not brought out any facts in the investigation report or has drawn any conclusions therein from his personal knowledge. An inference drawn by the investigating officer on examination of specific facts and circumstances that were noted by him during the investigation cannot be equated with assumptions and presumptions. Moreover, the conclusions / inferences drawn by the investigating officer in his report are not final in any manner and the Noticee has been given ample opportunity to submit her defense to the allegations levelled against her. Further, the investigation report along with all the annexures, which were relied upon by SEBI for the purpose of passing of the *interim order* were also given to the Noticee during inspection. Considering the above, I do not find any merit in the request of the Noticee for cross-examination of the investigating authority and reject the application of the Noticee (Smt. Asha Javalgekar) in that regard. Without prejudice to the above findings regarding the request of Smt. Asha Javalgekar for cross-examination, I also find that in any event since the allegations levelled against Smt. Asha Javalgekar in the interim order have not been established, no prejudice would be caused to her if her request for cross-examination is denied.

49. In view of the foregoing, I, in exercise of the powers conferred under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 and regulation 11 of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015, hereby revoke the directions issued against the Noticees herein vide *interim order* dated August 2, 2017. The order dated August 2, 2017 is disposed of accordingly as against the Noticees.

50. I note that by way of this order directions issued against Shri Hariharan Vaidyalingam issued vide the interim order dated August 2, 2017 in the matter of FTIL (i.e. 63 Moons Technologies Limited) are being revoked. However it is also noted that SEBI vide another

order dated August 2, 2017 in the matter of Multi Commodity Exchange of India Limited had issued directions against Shri Hariharan Vaidyalingam, the proceedings in respect whereof are still pending. Thus, it is clarified that the revocation of directions against Shri Hariharan Vaidyalingam in this order shall not in any manner affect the continuance of directions issued against him vide the said order dated August 2, 2017 in the matter of Multi Commodity Exchange of India Limited.

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

52. This Order shall be served on all Recognized Stock Exchanges and Depositories and Banks to ensure necessary compliance.

Sd/-

DATE: January 31, 2018
PLACE: MUMBAI

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA