BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/AP/AS/2021-22/11876 - 11877]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee No.	Noticee Name	PAN No.
1	Ms. Pia Johnson	AGVPJ6093M
2	Mr. Mehul Johnson	ABBPJ3414H

In the matter of Indiabulls Venture Limited (currently known as Dhani Services Limited)

1. Indiabulls Ventures Limited (hereinafter referred as "**IVL/the Company**") is a listed company having its shares listed on Bombay Stock Exchange Limited ("**BSE**") and National Stock Exchange of India Limited ("**NSE**") and its Global Depository Receipts ("**GDRs**") are listed on the Luxembourg Stock Exchange. The Company is also registered with Securities and Exchange Board of India ("**SEBI**") as a Stock Broker, a Depository Participant, a Research Analyst and a Merchant Banker in Category I. On March 15, 2017 at 08:53 AM, the Company informed NSE that on March 14, 2017, Indiabulls Distribution Services Limited ("**IDSL**"), a wholly owned subsidiary ("WOS") of the Company had signed a definitive agreement to sell its 100% shareholding in India Land and Properties Limited ("**ILPL**"), at a consideration of Rs. 685 Cr, to Indiabulls Infrastructure Limited ("**IIL**"), a WOS of Indiabulls Real Estate Limited ("**IREL**"). Post the above announcement the price of the scrip of the Company was observed to have moved from an open price of Rs. 39.20 on March 15, 2017 to a closing price of Rs.166.95 on July 06, 2017 i.e. its registered a price rise of 325.89% in 38 trading days and it touched a high price of Rs. 199.40 on June 22, 2017. SEBI observed that the connected entities of the Company, *viz*. Ms. Pia Johnson (hereinafter referred as "**Noticee No. 1**") and Mr. Mehul Johnson (hereinafter referred as "**Noticee No. 2**"), together bought 8.44 lakh shares of the Company during February, 2017 and March 2017. Further, no trading by the Noticee No. 1 and 2 (hereinafter together referred as "**Noticees**") was observed in the scrip during six months prior to February 2017.

2. Accordingly, SEBI had conducted an investigation into suspected insider trading activities of the Noticees in the scrip of the Company for the period January 01, 2017 to November 03, 2017

(hereinafter referred as "**Investigation Period**") to ascertain whether or not the Noticees had traded in the aforesaid scrip on the basis of unpublished price sensitive information (hereinafter referred as "**UPSI**"), in contravention of the provisions of SEBI Act, 1992 (hereinafter referred as "**SEBI Act**") read with SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred as "**PIT Regulations")**.

3. On completion of the investigation in the said matter, following was observed by SEBI:

a. The Company is an integral part of capital market providing securities and derivative broking services. The Company's subsidiary, 'Indiabulls Commodities Limited', provides commodities services. The Company was formerly known as 'Indiabulls Securities Limited' and changed its name to Indiabulls Ventures Limited in March 2015. IVL was incorporated in the year 1995. The details of Directors / Managerial Personnel of the Company are tabulated hereunder:

Table 1

IVL's Management during the Investigation Period (Source: IVL reply dated August 10, 2018)			
Board			
Name	**Designation**	**Appointment Date**	**Cessation Date**
Divyesh B. Shah	Whole-time Director & CEO	09/03/2005	-
Aishwarya Katoch	Independent Director	06/10/2003	18/09/2017
Brig. Labh Singh Sitara	Independent Director	15/01/2008	-
Prem Prakash Mirdha	Independent Director	15/01/2008	23/09/2017
Amiteshwar Choudhary	Whole-time Director	28/09/2016	28/08/2017
Pia Johnson	Non-Executive Director	10/03/2015	28/08/2017
Sameer Gehlaut	Non-Executive Chairman	28/08/2017	-
Gagan Banga	Non-Executive Director	28/08/2017	-
Ajit Kumar Mittal	Non-Executive Director	28/08/2017	23/09/2017
Pinank Jayant Shah	Executive Director	28/08/2017	-
Vijayalakshmi Rajaram Iyer	Independent Director	28/08/2017	-
Shyam Lal Bansal	Independent Director	28/08/2017	-
Alok Kumar Misra	Independent Director	28/08/2017	-
Others			
Lalit Sharma	Company Secretary	20/01/2016	-
Rajeev Lochan Agrawal	Chief Financial Officer	22/04/2014	-

b. IREL, a group company is primarily engaged in the business of construction and development of real estate. It has net worth of Rs. 5,480 Cr, as on June 30, 2017, with presence in both commercial and residential real estate development. IREL was incorporated in the year 2006 and is listed on BSE and NSE.

c. The financial results of the company during the investigation period are as follows:

Table 2 (Rs. in crores)

Particulars	Year Ended (Audited)		Quarter Ended (Unaudited)				
	2015-16	2016-17	Dec-16	Mar-17	Jun-17	Sep-17	Dec-17
Net Sales	76.34	83.60	18.62	27.42	27.31	30.44	35.38
Other Income	28.18	67.82	5.05	22.67	13.71	28.32	13.84
Total Income	104.52	151.42	23.67	50.10	41.02	58.75	49.22
Net Profit	16.87	47.09	0.27	19.16	16.09	18.42	8.30

Source: BSE Website

d. In view of above table, it was observed that the Company had registered profit of Rs. 47.09 crores during the financial year ended 2016-17. Further, both net sales and net profit increased during the financial year 2016-17 in comparison to financial year 2015-16.

e. The Price Volume analysis of the Company at NSE is as follows:

Table 3

Period	Dates		Opening Price & Volume on first day of the period (Rs.)	Closing Price & Volume on last day of the period (Rs.)	Low Price & Volume during the period (Rs.)	High Price & Volume during the period (Rs.)	Total number of shares traded during the period	Average number of shares traded daily during the period
Before Investigation	03/10/2016 - 30/12/2016	**Price**	25.35	20.50	18.50 (27/12/2016)	28.40 (07/10/2016)	23,475,265	378,633
		Volume	1,410,641	298,141	83,617 (05/12/2016)	1,410,641 (03/10/2016)		
During Investigation (before UPSI period)	02/01/2017 - 23/01/2017	**Price**	20.50	21.60	20.10 (02/01/2017)	22.35 (04/01/2017)	3,124,771	195,298
		Volume	113,340	104,741	94,858 (06/01/2017)	549,436 (11/01/2017)		
During Investigation (UPSI period)	24/01/2017 - 14/03/2017	**Price**	21.65	38.15	20.00 (31/01/2017)	41.00 (27/02/2017)	84,924,232	2,573,462
		Volume	154,637	2,495,800	154,637 (24/01/2017)	11,627,614 (16/02/2017)		
During Investigation (after UPSI period)	15/03/2017 - 03/11/2017	**Price**	39.20	302.40	39.20 (15/03/2017)	307.00 (03/11/2017)	587,833,038	3,673,956
		Volume	11,450,940	4,346,465	256,886 (06/04/2017)	14,600,217 (12/05/2017)		
After Investigation	06/11/2017 - 31/01/2018	**Price**	300.45	245.40	233.35 (18/12/2017)	303.50 (07/11/2017)	93,470,268	1,532,299
		Volume	3,206,809	1,054,511	485,267 (01/01/2018)	4,231,921 (23/11/2017)		

*****December 31, 2016, January 01, 2017 and November 04 & 05, 2017 were trading holidays.

f. The Price Volume analysis of IVL at BSE is as follows:

Table 4

Period	Dates		Opening Price & Volume on first day of the period (Rs.)	Closing Price & Volume on last day of the period (Rs.)	Low Price & Volume during the period (Rs.)	High Price & Volume during the period (Rs.)	Total number of shares traded during the period	Average number of shares traded daily during the period
Before Investigation	03/10/2016 - 30/12/2016	**Price**	25.70	20.55	18.50 (27/12/2016)	28.35 (07/10/2016)	8,139,288	131,279
		Volume	337,252	67,095	12,963 (05/12/2016)	1,772,186 (13/12/2016)		
During Investigation (before UPSI period)	02/01/2017 - 23/01/2017	**Price**	20.90	21.65	20.25 (02/01/2017)	22.30 (04/01/2017)	628,593	39,287
		Volume	59,192	30,602	21,525 (17/01/2017)	82,068 (03/01/2017)		
During Investigation (UPSI period)	24/01/2017 - 14/03/2017	**Price**	21.90	38.15	20.00 (01/02/2017)	40.95 (27/02/2017)	21,765,786	659,569
		Volume	31,166	750,175	25,481 (30/01/2017)	2,259,228 (23/02/2017)		
During Investigation (after UPSI period)	15/03/2017 - 03/11/2017	**Price**	40.00	301.95	39.30 (15/03/2017)	306.00 (03/11/2017)	172,891,522	1,080,572
		Volume	20,793,277	1,084,495	47,134 (03/04/2017)	20,793,277 (15/03/2017)		
After Investigation	06/11/2017 - 31/01/2018	**Price**	301.70	245.20	234.35 (18/12/2017)	302.90 (07/11/2017)	17,855,171	292,708
		Volume	386,273	282,989	135,595 (19/12/2017)	761,401 (23/11/2017)		

*****December 31, 2016, January 01, 2017 and November 04 & 05, 2017 were trading holidays.

g. During pre-UPSI period and UPSI period i.e. January 01, 2017 to March 14, 2017, the price of the shares of the Company increased from Rs.20.50 to Rs.38.15 at NSE i.e. increased by 86.10% and during after UPSI period i.e. March 15, 2017 to November 03, 2017 the price of the shares of the Company increased from Rs.39.20 to Rs.302.40 i.e. increased by 671.43% on NSE. Similar trend was observed at BSE. The closing price of the shares of the Company on March 27, 2019 was Rs. 283.00 on NSE and Rs. 281.75 on BSE.

h. The corporate announcements made by the Company during the investigation period with respect to Sale of ILPL / investment of IIL in ILPL along with its impact on the price of the scrip is tabulated as under:

Table 5

<table>
<tr><th>Sr. No</th><th>Date & Time of display on Exchange Website</th><th>Particulars</th><th>Price Impact</th><th>Remarks</th></tr>
<tr><td rowspan="2">1.</td><td>NSE

20-Jun-2016

12:01 hours</td><td rowspan="2">IVL informed Exchanges that the Extraordinary General Meeting (EGM) of the company will be held on 15-Jul-2016 to inter alia transact the following special business:

Sale of investment

Sale of up to 100% of shares held by IDSL, a WOS of the company, in ILPL a WOS of IDSL.</td><td>17-Jun-2016 (NSE)

<table><tr><th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr><tr><td>22.05</td><td>22.80</td><td>21.80</td><td>21.95</td><td>1268763</td></tr></table>
20-Jun-2016 (NSE)

<table><tr><th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr><tr><td>21.70</td><td>22.15</td><td>21.20</td><td>21.70</td><td>1189250</td></tr></table></td><td>On June 20, 2016, the price of the scrip closed at ₹ 21.70 i.e. 1.14% fall against the previous day closing price.</td></tr>
<tr><td>BSE

20-Jun-2016

12:07 hours</td><td>17-Jun-2016 (BSE)

<table><tr><th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr><tr><td>22.30</td><td>22.80</td><td>21.85</td><td>22.00</td><td>224613</td></tr></table>
20-Jun-2016 (BSE)

<table><tr><th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr><tr><td>21.15</td><td>22.15</td><td>21.15</td><td>21.75</td><td>373395</td></tr></table></td><td>On June 20, 2016, the price of the scrip closed at ₹ 21.75 i.e. 1.14% fall against the previous day closing price.

(June 18, 2016 and June 19, 2016 were trading holidays)</td></tr>
<tr><td rowspan="2">2.</td><td>NSE

15-Jul-2016
15:19 hours</td><td rowspan="2">IVL informed Exchanges that members of company in EGM held on 15-Jul-2016 approved the following:

Preferential Issue of an aggregate of up to 5.83 crores Convertible Warrants to Promoter group entities and CEO & Whole-time Director of the company.

Sale of up to 100% of shares held by IDSL, a WOS of the company, in ILPL a WOS of IDSL.</td><td>14-Jul-2016 (NSE)

<table><tr><th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr><tr><td>31.55</td><td>33.65</td><td>29.60</td><td>33.00</td><td>5597645</td></tr></table>
15-Jul-2016 (NSE)

<table><tr><th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr><tr><td>33.25</td><td>34.00</td><td>31.50</td><td>32.55</td><td>4004040</td></tr></table></td><td>On July 15, 2016, the price of the scrip closed at ₹ 32.55 i.e. 1.36% fall against the previous day closing price.</td></tr>
<tr><td>BSE

15-Jul-2016
15:01 hours</td><td>14-Jul-2016 (BSE)

<table><tr><th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr><tr><td>31.60</td><td>33.55</td><td>30.00</td><td>33.00</td><td>1586220</td></tr></table></td><td>On July 15, 2016, the price of the scrip closed at ₹ 32.70 i.e. 0.91% fall against the previous day closing price.</td></tr>
</table>

<table>
<tr><th>Sr. No</th><th>Date & Time of display on Exchange Website</th><th>Particulars</th><th>Price Impact</th><th>Remarks</th></tr>
<tr><td></td><td></td><td></td><td>15-Jul-2016 (BSE)
<table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>33.80</td><td>33.90</td><td>31.55</td><td>32.70</td><td>946263</td></tr></table></td><td></td></tr>
<tr><td>3.</td><td>NSE

15-Mar-2017 08:53 hours</td><td rowspan="2">IVL informed Exchanges that:

IDSL (a WOS of IVL) has signed a definitive agreement to sell its 100% shareholding in ILPL, at a consideration of Rs.685 crores, to IIL, a WOS of IREL and the deal is expected to be completed in the current financial year.

A meeting of the Board of Directors of the Company will be held on Friday the 17th March, 2017 to consider, inter alia, declaration of interim dividend, if any, on the Equity shares of the Company, for the financial year 2016-17.</td><td>14-Mar-2017 (NSE)
<table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>37.00</td><td>38.75</td><td>36.80</td><td>38.15</td><td>2495800</td></tr></table>
15-Mar-2017 (NSE)
<table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>39.20</td><td>41.95</td><td>39.20</td><td>41.95</td><td>11450940</td></tr></table></td><td>On March 15, 2017, the price of the scrip opened at ₹ 39.20 i.e. 2.75% rise against the previous day closing price and closed at ₹ 41.95 i.e. 9.96% rise against the previous day closing price.</td></tr>
<tr><td></td><td>BSE

14-Mar-2017 23:05 hours</td><td>14-Mar-2017 (BSE)
<table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>36.50</td><td>38.70</td><td>36.50</td><td>38.15</td><td>750175</td></tr></table>
15-Mar-2017 (BSE)
<table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>40.00</td><td>41.95</td><td>39.30</td><td>41.95</td><td>20793277</td></tr></table></td><td>On March 15, 2017, the price of the scrip opened at ₹ 40.00 i.e. 4.85% rise against the previous day closing price and closed at ₹ 41.95 i.e. 9.96% rise against the previous day closing price.</td></tr>
</table>

i. The term "*unpublished price sensitive information*" has been defined under Regulation 2(1)(n) of the PIT Regulations as follows:

"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;
(ii) dividends;
(iii) change in capital structure;
(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
(v) changes in key managerial personnel; and
(vi) material events in accordance with the listing agreement.

***NOTE**: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

Unpublished Price Sensitive Information (UPSI)

j. As mentioned above, the Company made the following corporate announcements with respect to sale of the shareholding of ILPL and/or investment of IIL in ILPL:

   i. On June 20, 2016, the Company informed the exchanges that an Extraordinary General Meeting ("**EGM**") will be held on July 15, 2016 for seeking/enabling authorization for sale of investment by IDSL in the shares of ILPL and submitted the notice convening an EGM.

   ii. On July 15, 2016, the Company had submitted voting result of EGM held on July 15, 2016, wherein shareholders approved the resolution of sale of upto 100% of shares held by IDSL in ILPL, to any prospective buyer.

   iii. Thereafter, on March 14, 2017, the company informed exchanges that IDSL has signed a definitive agreement to sell its 100% shareholding in ILPL, at a consideration of Rs.685 Cr, to IIL and the deal is expected to be completed in the current financial year.

k. Further details were sought from the Company, IDSL, ILPL, IIL and IREL w.r.t. sale of ILPL and/or investment of IIL in ILPL. From the information/documents submitted by the Company, IDSL, ILPL, IIL and IREL, inter-alia, following was observed:

   i. Board of Directors of IDSL in their meeting dated May 04, 2016 accorded their consent for sale of ILPL.

   ii. Board of Directors of IVL in their meeting dated June 15, 2016 accorded approval, subject to approval of shareholders, for sale of ILPL and decided to call an EGM on July 15, 2016.

   iii. The shareholders of IVL in an EGM held on July 15, 2016 approved the sale of upto 100% of shares held by IDSL in ILPL, to any prospective buyer and the same was announced on exchanges.

   iv. On January 24, 2017 during a meeting between Mr. Divyesh Shah (CEO of IVL & Director of ILPL) and Mr. Gurbans Singh (CEO of IREL & Director of IIL) a request was made to Mr. Gurbans Singh, seeking loan facility of approximately Rs.500-550 crores against securities from IIL for ILPL.

   v. On January 25, 2017, Notice for convening Board Meeting on February 03, 2017 was issued by IIL to consider convening of an EGM.

vi. In IIL's Board Meeting held on February 03, 2017 it was decided to convene an EGM on March 01, 2017 for seeking enabling authorization to the board to invest surplus funds, by way of loan which may inter-alia be in the form of Debentures or Non-Convertible Redeemable Preference Shares of ILPL or any other security as may be offered by ILPL. Draft Notice of the proposed EGM was also placed and approved by the Board in the same Board Meeting.

vii. In IIL's EGM held on March 01, 2017 an enabling composite authorization in terms of Section 186 of the Companies Act, 2013 was approved and following special resolution was passed:

*"**RESOLVED THAT** pursuant to the provisions of Section 186 and other applicable provisions, if any, of the Companies Act, 2013, read with the Rules framed there under, as may be amended from time to time, consent of the members be and is hereby accorded to the Board of Directors of the Company:*

(a) to grant loans, give guarantee(s) or provide security, in connection with a loan made by any person to or to any person, up to an aggregate value of Rs.600,00,00,000/- (Rupees Six Hundred Crore) from time to *time in one or more trenches, to India Land and Properties Limited on such terms and conditions as may be considered expedient in the interest of the Company, and*

(b) to invest Company's fund by way of subscription, purchase or otherwise, in the securities of India Land and Properties Limited from time to time in one or more trenches up to the aggregate of Rs.600,00,00,000/- (Rupees Six Hundred Crore) on such terms and conditions as may be considered expedient in the interest of the Company,

notwithstanding that the aggregate of loans, investment already made or to be made and the guarantees or securities already provided or to be provided, may exceed the limits prescribed under the said Section."

viii. In this regard, IIL and ILPL confirmed that no amount of surplus funds was provided as loan to ILPL by IIL pursuant to above authorization. Further, IIL has submitted that on March 07, 2017 during a meeting between Mr. Gurbans Singh and Mr. Divyesh Shah pursuant to abovementioned EGM dated March 01, 2017, the loan proposal was discussed and it was agreed in principle that IIL will rather purchase shareholding of ILPL.

ix. The Company submitted that no buyer or acquirer approached IVL/IDSL/ILPL or gave any formal/informal proposal for purchasing ILPL prior to March 07, 2017. Further, it was observed from the replies of the Company and statement recording of CEO of the Company that real estate market was sluggish and not conducive at that time.

l. In view of the above, despite the fact that the Company had announced its intention to sell ILPL on June 20, 2016, it was crucial to find a suitable buyer and finalize the consideration to

execute their intention. Hence, the information regarding identification of the buyer, finalizing the consideration and the actual event of signing of the definitive agreement to sell 100% shareholding in ILPL, to IIL, is considered to be price sensitive information. Accordingly, the information announced on March 14, 2017 i.e. the investment of IIL in ILPL is considered as UPSI in terms of Regulation 2(1)(n) of the PIT Regulations.

Period of UPSI

m. In order to ascertain the date when the UPSI came into existence, the Company, IDSL, ILPL, IIL and IREL were advised to provide the chronology of all events pertaining to investment of IIL in ILPL, till the date of announcement. From the replies of aforementioned entities, the chronology of events with respect to investment of IIL in ILPL has been tabulated as given hereunder:

Table 6

Date	Particulars (Details of the matter discussed and conclusions)
May 04, 2016	IDSL Board of Directors (BOD) in the meeting held on May 04, 2016 considered sale of ILPL to improve liquidity of IDSL and decided to sell the entire investment in ILPL.
June 15, 2016	From the minutes of IVL Board Meeting held on June 15, 2016, it was observed that BOD decided to call an EGM on July 15, 2016 for seeking approval of shareholders.
June 20, 2016	IVL had sent EGM Notice dated June 15, 2016 to its Shareholders, inter-alia, for seeking / enabling authorisation for sale of investment by IDSL in the shares of ILPL, subject to the approval of shareholders. Same was informed to stock exchanges.
July 15, 2016	Shareholders of IVL in their EGM held on July 15, 2016, approved the sale of investment by IDSL, in the shares of ILPL, to any prospective buyer(s). Same was informed to stock exchanges.
July 27, 2016	In IVL's Board Meeting, Management Committee was authorized to authorise IDSL to sell its stake in ILPL. Members of the committee were Mr. Divyesh Shah, Mr. Ashok Sharma (till Sept 28, 2016), Mr. Aishwarya Katoch and Ms. Pia Johnson (w.e.f. Sept 28, 2016)
January 24, 2017	During a meeting between Mr. Divyesh Shah (CEO of IVL & Director of ILPL) and Mr. Gurbans Singh (CEO of IREL & Director of IIL) a request was made to Mr. Gurbans Singh, seeking loan facility against securities from IIL for ILPL
January 25, 2017	Notice for convening Board Meeting on February 3, 2017 was issued by IIL to consider convening of an EGM
February 3, 2017	In IIL's Board Meeting held on February 03, 2017 it was decided to convene an EGM on March 01, 2017 for seeking enabling authorization to the board to invest surplus funds, by way of loan which may inter-alia be in the form of Debentures or Non-Convertible Redeemable Preference Shares of ILPL or any other security as may be offered by ILPL. Draft Notice of the proposed EGM was also placed and approved by the Board in the same Board Meeting
March 01, 2017	In IIL's EGM enabling composite authorization in terms of Section 186 of the Companies Act, 2013 was approved
March 07, 2017	During a meeting between Mr. Gurbans Singh and Mr. Divyesh Shah pursuant to EGM dated March 01, 2017, the loan proposal was discussed and it was agreed in principle that IIL will rather purchase shareholding of ILPL
March 07, 2017 to March 14, 2017	Discussions and finalization of the terms and conditions w.r.t. sale of ILPL to IIL. The idea of IIL purchasing IDSL's 100% shareholding in ILPL was proposed and agreed to

Date	Particulars (Details of the matter discussed and conclusions)
	in-principle. This was subject to the price which was to be discussed further to meet with the conditions on pricing for disinvestment as proposed by the shareholders of IVL. The legal team of IREL Group prepared the documentation on behalf of IIL, as IREL's Group legal team works for IREL and all its subsidiaries.
March 14, 2017	Pursuant to IDSL, ILPL & IIL's BOD Meeting held on March 14, 2017, a definitive agreement among IDSL, ILPL and IIL has been executed w.r.t. sale of ILPL by IDSL to IIL. Same has been Intimated to stock exchanges.

n. Upon analysis of facts and chronology of events and the information received from the Company, it was observed that the proposal relating to grant of loan from IIL to ILPL against securities originated on January 24, 2017, i.e. the date when Mr. Divyesh Shah (CEO of IVL & Director of ILPL) approached Mr. Gurbans Singh (CEO of IREL & Director of IIL) for seeking loan facility against securities, from IIL for ILPL. The said proposal ultimately culminated in sale of ILPL to IIL / investment of IIL in ILPL. Thus, the date of abovementioned proposal for grant of loan against securities of ILPL i.e. January 24, 2017 is considered as the origin point of the UPSI, which was published on BSE on March 14, 2017 at 23:05 hours and on NSE on March 15, 2017 at 08:53 hours. Thus, the period from January 24, 2017 to March 14, 2017 is determined as the UPSI period.

Insider Trading by Noticees:

4. It was observed from the trade log obtained from NSE and BSE that the Noticees No. 1 and 2 have traded in the scrip of the Company during the UPSI period. Accordingly, an analysis of their trading in the scrip of the Company was carried out and following was observed:

A. Ms. Pia Johnson (Noticee No. 1 – PAN No. AGVPJ6093M, Non-Executive Director of the Company):

a. The Company vide its reply dated May 03, 2018, submitted the list of entities connected to the Company and the Noticee No. 1, Pia Johnson being the Non-Executive Director of the Company was part of the list of connected entities. It was further observed that in the Company's board meeting dated July 27, 2016, Management Committee of the Board of Directors of the Company was authorized to authorize IDSL to sell its entire investment in ILPL and as per the Company's reply, Noticee No. 1 was appointed as member of the said Committee *w.e.f.* September 28, 2016.

b. In view of the above, Noticee No. 1 being the Non-Executive Director of the Company is a connected person in terms of Regulation 2(1)(d)(i) of the PIT Regulations and being a member of the aforesaid Management Committee of the Company, was reasonably expected to have access to the UPSI. As such, Noticee No. 1 is considered to be an '*insider*' in terms of Regulation

2(1)(g) of the PIT Regulations. The provisions specified under Regulations 2(1)(d)(i) and 2(1)(g) of the PIT Regulations are as follows:

PIT Regulations, 2015

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under: –

(d) "connected person" means, -

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

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

c. The date wise trading activity of the Noticee No. 1 in the scrip of the Company is as follows:

Table 7

Period	Trade date	Buy Quantity	Buy Value (Rs.)	Sell Quantity	Sell Value (Rs.)
Pre-UPSI Period (April 01, 2015 - January 23, 2017)	20/06/2016	135000	2916252	0	0
	21/06/2016	170000	3669603	0	0
	05/07/2016	0	0	25000	803412
	Total	**305000**	**6585855**	**25000**	**803412**
During UPSI Period (January 24, 2017 - March 14, 2017)	16/02/2017	275000	9401223	0	0
	17/02/2017	80000	2744461	0	0
	22/02/2017	150000	5528327	0	0
	Total	**505000**	**17674011**	**0**	**0**
Post-UPSI Period (March 15, 2017 to March 31, 2018)	-	0	0	0	0

d. The summary of trading activity of the Noticee No. 1 in the scrip of the Company *vis-à-vis* gross trading across the market is as follows:

Table 8

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	IVL	%	Total	IVL	%	Total	IVL	%
Pre-UPSI Period (April 01, 2015 to January 23, 2017)	40911634	6585855	16.10%	25121501	803412	3.20%	66033135	7389267	11.19%
During UPSI Period	17674011	17674011	100.00%	1142774	0	0.00%	18816785	17674011	93.93%

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	IVL	%	Total	IVL	%	Total	IVL	%
(January24, 2017 to March 14, 2017)									
Post-UPSI Period (March 15, 2017 to March 31, 2018)	12452980	0	0.00%	24981504	0	0.00%	37434485	0	0.00%
Total	**71038625**	**24259866**	**34.15%**	**51245780**	**803412**	**1.57%**	**122284404**	**25063278**	**20.50%**

e. As seen from the tables above, during UPSI period the Noticee No. 1 had bought in total 5,05,000 shares of the Company. Her trade concentration in the scrip of the Company was 11.19%, 93.93% and 0.00%, during pre-UPSI period from April 01, 2015, during UPSI period and post-UPSI period till March 31, 2018, respectively.

f. Vide email dated July 09, 2018, the Noticee No. 1 *inter-alia*, had submitted the following with respect of her trades in the scrip of the Company during UPSI period:

i. The source of the funds utilized for trading was self-generated income / own sources.

ii. The rationale behind trading in the scrip of IVL was building a long term investment portfolio.

iii. IVL was the broker for her trades in the scrip of IVL. She was a Non-Executive director on the board of IVL during the period of March 10, 2015 to August 28, 2017. Her spouse, Mehul Johnson, is an employee of a subsidiary of IREL.

iv. She was not aware of the UPSI at the time of trading in the scrip of IVL.

g. It was observed that the contentions made by the Noticee No. 1 were not tenable, since she was the director of the Company and also was a member of the management committee of the Company.

1st set of allegations against the Noticee No. 1

h. In view of above, it was observed that Ms. Pia Johnson, the Noticee No. 1 being an insider, had bought 5,05,000 shares of the Company during UPSI period, while in possession of UPSI. Therefore, it was alleged that the Noticee No. 1 had violated Sections 12A (d) & (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations.

B. Mr. Mehul Johnson (Noticee No. 2 – PAN No. ABBPJ3414H):

a. It was observed from the KYC documents received from Noticee No. 2 broker, UCC details received from exchanges and his reply dated July 09, 2018, that he and Ms. Pia Johnson, Noticee No. 2 are husband and wife. They share common address i.e. *Flat no. 2502, 25th Floor,*

Tower B, RahejaVivarea, Jacobs circle, Mahalaxmi station, Mumbai. Both are registered with the same broker i.e. the Company. Also, they jointly hold HDFC bank account no. 00011000083619.

b. In view of the above, Mr. Mehul Johnson, Noticee No. 2 being husband (*immediate relative*) of Ms. Pia Johnson, Noticee No. 2, is deemed to be a connected person in terms of Regulation 2(1)(d)(ii)(a) r/w Regulation 2(1)(f) of the PIT Regulations and was reasonably expected to have access to UPSI. Hence, Noticee No. 2 is considered to be an *insider* in terms of Regulation 2(1)(g) of the PIT Regulations. The provisions specified under Regulations 2(1)(d)(ii)(a) and 2(1)(f) of the PIT Regulations are as follows:

PIT Regulations, 2015

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under: –

(d) "connected person" means, -

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

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

……

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

c. The date wise trading activity of the Noticee No. 2 in the scrip of the Company is as follows:

Table 9

Period	**Trade date**	**Buy Quantity**	**Buy Value (Rs.)**	**Sell Quantity**	**Sell Value (Rs.)**
Pre-UPSI Period (April 01, 2015 to January23, 2017)	20/06/2016	45000	978245	0	0
	Total	**45000**	**978245**	**0**	**0**
During UPSI Period (January24, 2017 to March 14, 2017)	14/02/2017	166000	4973249	0	0
	16/02/2017	122970	4030835	0	0
	09/03/2017	50000	1817209	0	0
	Total	**338970**	**10821293**	**0**	**0**
Post-UPSI Period (March 15, 2017 to March 31, 2018)	-	0	0	0	0

d. The summary of trading activity of Noticee No. 2 in the scrip of IVL *vis-à-vis* gross trading across the market is as follows:

Table 10

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	**IVL**	**%**	**Total**	**IVL**	**%**	**Total**	**IVL**	**%**
Pre-UPSI Period (April 01, 2015 – January 23, 2017)	11580765	978245	8.45%	9696605	0	0.00%	21277370	978245	4.60%
During UPSI Period (January24, 2017 - March 14, 2017)	10821293	10821293	100.00%	6106696	0	0.00%	16927989	10821293	63.93%
Post-UPSI Period (March 15, 2017 - March 31, 2018)	11547435	0	0.00%	89382556	0	0.00%	100929991	0	0.00%
Total	**33949493**	**11799539**	**34.76%**	**105185857**	**0**	**0.00%**	**139135350**	**11799539**	**8.48%**

e. As seen from the tables above, during UPSI period the Noticee No. 2 had bought in total 338970 shares of the Company. His trade concentration in the scrip of the Company was 4.60%, 63.93% and 0.00%, during pre-UPSI period from April 01, 2015, during UPSI period and post-UPSI period till March 31, 2018, respectively.

f. Vide email dated July 09, 2018, July 16, 2018 and March 27, 2019, the Noticee No. 2 *inter-alia*, had submitted the following in respect of his trades in the scrip of the Company during UPSI period:

i. The source of the funds utilized for trading was self-generated income / own sources.

ii. The rationale behind trading in the scrip of the Company was building a long term investment portfolio.

iii. The Company was the broker for his trades in the scrip of the Company. His wife was a Non-Executive director on the board of the Company for about two years.

iv. He is a senior official equivalent to the grade of '*President'* and is designated as "*Director*" (*although not a member of the Board*) of a subsidiary of IREL. He is associated with the Indiabulls Group companies since April 2006.

v. He was not aware of the UPSI at the time of trading in the scrip of the Company.

g. It was observed that the contentions made by the Noticee No. 2 were not tenable, since deemed to be a connected person in terms of Regulation 2(1)(d)(ii)(a) r/w Regulation 2(1)(f) of the PIT Regulations and was reasonably expected to have access to UPSI.

h. Further, between close family members as is the relation/connection between Noticee No. 1 and 2, generally, there will be no written communication. As such, it cannot be ruled out that the UPSI has not been communicated by Noticee No. 1 to her husband, Noticee No. 2. Also

the fact that the connected persons had traded during the UPSI period indicates that the UPSI was communicated by Pia Johnson.

Allegations against the Noticee No. 2

i. From the above, it was observed that Mr. Mehul Johnson, Noticee No. 2 being an insider, had bought 3,38,970 shares of the Company during UPSI period, when he was in possession of the UPSI, which was communicated to him by his wife Pia Johnson, Noticee No. 1. It was also alleged that Noticee No. 2 procured the UPSI from the insider i.e. Noticee No. 1 for the purpose of trading in the shares of the Company during UPSI period. Therefore, it was alleged that the Noticee No. 2 has violated Sections 12A (d) & (e) of the SEBI Act and Regulations 3(2) and 4(1) of the PIT Regulations.

2nd set of allegations against the Noticee No. 1

j. It was further alleged that the Noticee No. 1, Ms. Pia Johnson had also violated Regulation 3(1) of the PIT Regulations r/w Section 12A (e) of the SEBI Act, by communicating UPSI to her husband Mr. Mehul Johnson, Noticee No. 2.

5. The wrongful gains made by the Noticees No. 1 and 2 through their trading in the shares of the Company during UPSI period, while in possession of UPSI are as follows:

Table 11

Name	No. of shares bought	Total Buy Value (Rs.)	Average Buy Price (Rs.)	Closing Price on March 15, 2017 (Rs.)**	Wrongful gain (Rs.)#
	A	B	C=B/A	D	E = A x (D-C)
Pia Johnson	505000	17674011	35.00	41.95	35,10,739.00
Mehul Johnson	338970	10821293	31.92	41.95	33,98,498.50
**The announcement was made on March 14, 2017 on BSE at 23:05 and on March 15, 2017 on NSE at 08:53. Therefore, the closing price of scrip on March 15, 2017 i.e. Rs.41.95 at BSE and NSE is considered.					

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

Wrongful gain = (Closing price on the next day of announcement** - Average buy price) x No. of shares bought during UPSI period.

6. From the above, it was observed that the Noticees No. 1 and 2, being an insider have bought shares of the Company during UPSI period, while in possession of UPSI and made a wrongful gain of Rs 35,10,739 and Rs 33,98,498.50, respectively. It was further observed that Noticee No. 1 had communicated UPSI to her husband, Noticee No. 2 and based on which Noticee No. 2 traded in the scrip of the Company. In view of the above observations, it was alleged that the Noticees No. 1 and 2 have violated the following provisions of the SEBI Act and PIT Regulations:

Table 12

Noticee No.	Name of the Noticees (PAN)	Violations	Actions
1.	Ms. Pia Johnson (AGVPJ6093M), Non-Executive Director of the Company	Section 12A (d) & (e) of SEBI Act, 1992 & Regulation 3(1) and 4(1) of SEBI (PIT) Regulations, 2015.	Adjudication Proceedings under Section 15G (i) & (ii) of SEBI Act, 1992.
2.	Mr. Mehul Johnson (ABBPJ3414H)	Section 12A (d) & (e) of SEBI Act, 1992 & Regulation 3(2) and 4(1) of SEBI (PIT) Regulations, 2015.	Adjudication Proceedings under Section 15G (i) and 15HB of SEBI Act, 1992

7. In view of the above, SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid alleged violations of the provisions of the SEBI Act and PIT Regulations by the Noticees No. 1 and 2, respectively. Accordingly, undersigned was appointed as Adjudicating Officer in the matter by a *communication-order* dated July 17, 2020 to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred as "Adjudication Rules") and under section 15G(i), 15G(ii) and 15HB of the SEBI Act, for the alleged violations of the aforesaid provisions by the Noticees, respectively.

8. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15(I) of the SEBI Act, the notice to show cause no. EAD-2/ADJ/AP/AKS/13545/1-2/2020 dated August 20, 2020 (hereinafter referred to as "SCN") was issued to the Noticees, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15G(i), 15G(ii) and 15HB of the SEBI Act, for the alleged violations of the aforesaid provisions by the Noticees, respectively.

9. The SCN was duly served upon the Noticees *via* Courier on August 28, 2020, however, the Noticees failed to submit their replies to the SCN. Accordingly, in terms of principle of natural justice in terms of Rule 4(3) of the Adjudication Rules, the opportunity of hearing was granted to the Noticees on December 11, 2020, wherein, they were also allowed to file their replies to the SCN two days before the date of scheduled hearing. Vide e-mail dated December 03, 2020, the Noticee No. 2 submitted that, he had not received SCN in the concerned matter and possibly the SCN was delivered to his ex-landlord address mentioned in the hearing notice and he did not reside on said address since March 2020. His current address is "*2804, Indiabulls Sky, Tulsi Pipe Road, Lower Parel, Mumbai – 400013*". He further submitted that after receiving hearing notice, he approached his ex-landlord and found SCN along with CD lying in the drop-box unattended. As he has now collected the SCN and therefore, he requested to provide two weeks' time to respond to the SCN and a personal hearing be granted anytime thereafter. Accordingly, the Noticees were granted time up to December 17, 2020 to submit their replies to the SCN

and they were allowed to appear for personal hearing on December 22, 2020. Accordingly, vide letter dated December 13, 2020, the Noticees submitted their common reply and availed the opportunity of hearing through WEBEX on December 22, 2020, through their authorized representatives ("AR") Mr. Ravichandra Hegde, Advocate and Mr. Robin Shah, Advocate. During the hearing ARs made submissions on the basis of Noticees reply dated December 13, 2020 and requested for a weeks' time to file an *aide-de-memoire* to oral submissions made during the personal hearing. Thereafter, the Noticees filed *aide-de-memoire* vide letter dated December 31, 2020.

10. The submissions/ replies/ *aide-de-memoire* of the Noticees made during the instant proceedings vide letters dated December 13, 2020 and December 31, 2020 *inter alia* are as follows:

a. On the exact same set of allegations an order dated February 20, 2020 ("WTM Order") has been passed by Learned Whole Time Member ("WTM") of SEBI against them, wherein, they were directed to - (i) not buying, selling, dealing in securities market for period of one year and (ii) disgorge an amount of Rs. 87,21,918.55/-. They have challenged the aforesaid order before the Hon'ble Securities Appellate Tribunal ("SAT") and the matter is pending adjudication.

b. In terms of amended provisions dated March 8, 2019 of the SEBI Act, the Learned WTM has been vested with the power to adjudicate the issues under the Section 15-I of the SEBI Act. By doing so, the Learned WTM could have holistically considered the entire issue in one-go. Initiation of additional proceedings on same set of allegations and directing the Noticees to undergo one more round of litigation and quasi-judicial proceeding with SEBI is prejudicial to their interest.

c. The Noticees requested to take the cognizance of the fact that, they have already undergone a restraint of almost nine months and also deposited an amount of Rs. 87,21,918.55/- with SEBI in June, 2019. From the regulatory perspective the ends of justice have been met, which is a strong mitigating factor in our favor for non-imposition of additional monetary penalty on them. Such restraint is undergone by them irrespective of the outcome of the Appeal filed before Hon'ble SAT.

d. Under the Adjudication Rules, the learned adjudicating officer is required to first send a SCN to Noticee to show cause why an inquiry be not held against the Noticee under Rule 4(1) of the Adjudication Rules. It is only after the reply is filed, the Adjudicating Officer ("AO") is required to consider the reply and decide whether at all an inquiry is needed in

the matter. If there is a decision taken for further inquiry, the date of personal hearing is scheduled. In the present case, the AO has already scheduled a personal hearing in the matter before the reply is filed.

e. The SCN is issued on the basis of an incorrect assumption that Noticee No. 1, being a connected person of IVL, had access to the purported UPSI and communicated the same to her husband Noticee No. 2. It is respectfully submitted that the presumption of UPSI which forms the foundation of issuing the SCN is incorrect and unsustainable since:

i. The Board of Directors' decision to sell, the shareholder approval for such sale, and indeed the price originally invested, were all available in the public domain at all relevant times for the trades carried out by them in February and March of 2017.

ii. The desire of IVL and its subsidiary IDSL to sell the investment in ILPL so long as at least the amount invested originally is recovered was well available in the public domain.

iii. SEBI's supposition that a discussion between the CEOs of IVL and IREL to get financing for ILPL from IREL / IIL in January 2017 as the commencement of UPSI relating to the sale transaction that was subsequently finalised, is flawed, erroneous and a conjecture that is not supported by the material on record.

iv. Noticee No. 1 membership in a management committee constituted by the Board of Directors was only to facilitate the publicly declared intention to sell ILPL is of no relevance, particularly, since she was not present in the management committee and leave of absence was recorded in the only meeting which the Managing Committee held. Further, the Managing Committee could not have been presented with any proposal for any sale and purchase transaction, as it was constituted only to effect the decision of the sale of assets, thereby breaking all reasonable inference of a link or chain of communication to her.

v. The proposal for a loan that was discussed in January between the CEO's of the two related parties that are also listed companies indeed culminated in an enabling resolution for a loan proposal of Rs. 600 Crores, which transaction was eventually shelved and not acted upon – shareholders meeting held on March 1, 2017 indeed considered such a loan proposal.

vi. It is a matter of record that, only on March 7, 2017 the two CEOs decided to pursue a share acquisition, a fact which was made known to them, only from the SCN and

aforesaid Order. All her purchases and almost all of the purchases of her husband had been completed well before this date. Her husband made a small purchase of 50,000 shares on March 9, 2017, which is a fraction of his total purchases effected well before the aforesaid date – thereby indicating that the share sale and purchase held no motivation for the purchase.

vii. At the time of purchase of the shares of IVL (mainly February - 2017) by them, IVL was seeking to get funds for its cash-starved business and had publicly made known its intention to sell the shares of ILPL for a value, which is at least the value of the investment. Such a fireside sale by a company seeking monies would not mean that IVL shares would be positively affected for insiders in the know to purchase the shares.

viii. Insider trading would typically be done in the form of purchases of securities of a company about which positive information is UPSI, or in the form of sales of securities of a company about which adverse information is UPSI. In the instant case, the loan transaction would only point to IVL being cash starved and the shares acquired by them are those of IVL. There is as such no correlation to any news and the purchases made by us as is clear from the facts mentioned above.

f. Without prejudice to the foregoing, in insider trading, the profiteer from the UPSI would reverse the trade after the UPSI becomes public news. In this case, Noticee No. 2 continues to hold the shares, which they acquired.

g. There is no material on record to point to any remote assessment of the alleged violation of the insider trading norms, as the existence of the alleged UPSI was not in Noticee No. 1 knowledge, when the impugned trades were undertaken. Neither had she communicated any such UPSI to the Noticee No. 2 nor had she derived any gain out of the impugned transactions undertaken by them.

h. The key chronology of events, which are set out in the instant case are as follows:

Table 13

Sl. No.	Date	Particulars
1.	November 19, 2014	IDSL agreed to acquire 100% of the share capital of ILPL for a consideration of Rs. 600 Crores, making ILPL a wholly owned subsidiary of IDSL. This information, including in particular the consideration of Rs. 600 Crores, was duly disclosed in the disclosures to the stock exchanges. Such information therefore became *"generally available"* within the meaning of the PIT Regulations. ILPL owns a commercial complex consisting of 3 towers in Chennai with a total constructed area of 2.4 million Sq. ft and leasable area of 2 million Sq. ft. The total

Sl. No.	Date	Particulars
		land area of the complex is over 10 acres. Certain portions of the towers were leased to various entities including RBS, Kone, Britannia Industries, Ajuba, Covenant, Telebuy, IBox and others.
2.	May 4, 2016	The Board of IDSL accorded its consent for the sale by IDSL of its entire holding in IIPL ("**Proposed Sale**"). The revenue of ILPL was the rent received from the lessee, which had become lesser than the interest costs of the company.
3.	June 15, 2016	The Board of IVL accorded approval for the Proposed Sale, subject to the consent of the shareholders to be obtained at a general meeting on July 15, 2016. The resolution of the Board of IVL expressly stated that the ***"consideration.. shall be more than the amount invested by IDSL in such shares…"***. The amount invested by IDSL in ILPL was Rs. 600 crores which has been in the public domain since November 19, 2014. It is noteworthy that therefore, the public was made aware that the consideration for the Proposed Sale would not be lower than the amount invested i.e. it would exceed Rs 600 crores.
4.	July 20, 2016	The Proposed Sale was approved by the shareholders of IVL and the stock exchanges were duly notified. The enabling resolution of the shareholders too provided that the consideration for the Proposed Sale would be more than the amount invested by IDSL i.e. in excess of Rs 600 crores.
5.	July 27, 2016	The Board of IVL constituted a management committee to authorize IDSL to sell its entire holding in ILPL. Iwas a part of this committee. It is noteworthy that no meetings of this committee were at all held.
6.	January 24, 2017	A meeting was held between Mr. Divyesh Shah (CEO of IVL) and Mr. Gurbans Singh (CEO OF IREL), where a request was made to Mr. Gurbans Singh to extend a loan facility of approximately Rs. 500-550 Crores against securities, from IIL to ILPL. The loan requested for is an independent event which had nothing to do with the Proposed Sale.At this time, there was no decision that had been taken by IIL to purchase the shares of ILPL. According to SEBI this was the starting period of the UPSI – a proposition that is flawed and not backed by either facts or reason.
7.	February 3, 2017	The Board of IIL decided to convene a general meeting on March 1, 2017, to seek an enabling resolution to permit the Board to invest surplus funds by way of loan which may inter-alia be in the form of Debentures or Non-Convertible Redeemable Preference Shares of ILPL or any other security as may be offered by ILPL. This was duly disclosed to exchanges by IIL under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as IIL was a listed company.
8.	March 1, 2017	The shareholders approved the Board's proposal to authorize IIL to invest surplus funds by way of loan in ILPL.
9.	March 7, 2017	A meeting was held between Mr. Divyesh Shah and Mr. Gurbans Singh, where it was proposed for the first time and agreed in principle that the parties execute the Proposed Sale transaction. Based on the material provided by SEBI, it is evident that considering the sluggish real estate market, no buyers expressed any interest in the real estate assets (mentioned in the statements of Mr. Divyesh Shah). Even until March, 2017, no buyers had approached to purchase the assets of said company. The outcome of this meeting was never informed to any outsiders as per the statements of the two CEO's which were recorded by the investigating team of SEBI.

Sl. No.	Date	Particulars
10.	March 14, 2017	IVL informed the exchanges that IDSL had signed a definitive agreement to sell 100% shareholding in ILPL at a consideration of Rs 685 crores, to IIL. This marks the end of the UPSI period, according to SEBI.

i. Noticee No. 1 was a non-executive director in IVL during the investigation period. She resigned from IVL in August 2017. While IVL constituted a management committee for the Proposed Sale, no meetings of this committee were at all held. This committee was meant to play the role of executing a transaction once any such decision was taken. No specific transaction ever got concluded until March 14, 2017 and there were no such discussions held for the said transaction to begin with. Specifically, between January 27, 2017 and March 14, 2017, there was neither any meeting nor any call or electronic decision-making of any nature at all, by this management committee. As a non-executive director of IVL, she was never in charge of, or responsible for the day to conduct of the business of IVL, let alone its subsidiaries. It is not even SEBI's case that there were any such discussions over the transaction during any such committee meetings.

j. Apart from alleging that Noticee No. 1 was a non-executive director and that she was a member of the Managing Committee, whose meetings she never attended, SEBI has not set out how such a position could be said to be reasonably affording access to the purported UPSI. One cannot lightly presume that every bit of price sensitive information including information emanating from discussions at the highest echelons of the executive management would be known to a non-executive director, until they are formally tabled at a Board meeting. From the records and statements provided to them, which were obtained by SEBI during the investigation, it is clear that there was hardly anytime taken for the decision over the transaction which was decided between the two CEOs and no external person was involved, let alone any discussions in the Committee, where she was a member.

k. Allegedly, the purported UPSI, according to SEBI came into existence on January 24, 2017, when a meeting was held between Mr. Divyesh Shah and Mr. Gurbans Singh. She was admittedly not part of this meeting. Therefore, to attribute the knowledge of the meeting and discussion to her is illogical and baseless. It is clear from the material on record that by this day i.e. January 24, 2017 – the decision to sell ILPL was generally available information and that it would be sold for at least Rs. 600 Crores if and when sold, was also generally available information. The meeting between Mr. Divyesh Shah and Mr. Gurbans Singh on

this date was for financing facility for ILPL and as its holding company IVL, which was not at all in any advantageous position for them to be motivated to buy shares of IVL.

l. It is pertinent to note that there is nothing on record to indicate any knowledge of the purported UPSI with Noticee No. 1 during the period when the impugned trades were executed. Further in any event, she was not aware of the discussions held between the two CEOs, be it for the loan proposal or the proposal to purchase the share as is evident from their statements made before SEBI and the minutes of the Board meeting of IVL on March 1, 2017.

m. As a non-executive director of IVL, Noticee No. 1 was not privy to discussions held between the executive management of IVL. As a non-executive director, she was not in charge of or responsible for the day-to-day operations of the Company and consequently knowledge and information in the possession of the executive management and CEO cannot be imputed to her, till they are formally tabled in a Board meeting or through Board processes. This unequivocal position is made clear by Section 149(12) of the Companies Act, 2013, which envisages liability of a non-executive director, only through Board processes. Through the Board processes, I came to know of the decision of IIL to purchase the shares of ILPL by only on March 14, 2017. The Noticee No. 1 placed reliance upon the judgement of the Hon'ble Supreme Court in *Chintalapati Srinivasa Raju case* (*Civil Appeal 16805 of 2017, Order dated May 14, 2018*).

n. The allegation in the SCN that the Proposed Sale constituted UPSI and that the date of the UPSI was January 24, 2017, is incorrect for the following reasons:

   i. The decision of IDSL to sell its shareholding in ILPL was already in the public domain since June 15, 2016.

   ii. That the consideration for the Proposed Sale would be in excess of Rs 600 crores too was known, as it was disclosed on June 15, 2016, that the consideration would be more than the value of IDSL's investment in ILPL. The value of IDSL's investment in ILPL was generally available since November 19, 2014.

   iii. Even if the date of the alleged UPSI is accepted as January 24, 2017 which too is wrong, SEBI has ignored that the information ceased to be UPSI on February 3, 2017, when a Board meeting of IIL was convened with the explicit purpose of investing surplus funds in ILPL, several weeks prior to the Impugned Trades.

iv. SEBI has also wrongly conflated the discussions at the meeting on January 24, 2017 with the Proposed Sale. The meeting on January 24, 2017, between the two CEOs was about a loan and a debt investment by IIL in ILPL and not an outright purchase of IDSL's entire equity interest in ILPL.

v. Indeed, even the alleged UPSI according to SEBI i.e. "*the information regarding identification of the buyer, finalizing the consideration and the actual event of signing of the definitive agreement to sell 100% shareholding in ILPL, to IIL"*, came into existence only on March 7, 2017 and not January 27, 2017.

o. Admittedly, for the first time on March 7, 2017, the proposal by IIL to buy the shareholding of ILPL rather than providing the loan to ILPL came across during the discussions between Mr. Divyesh Shah and Mr. Gurbans Singh. There could have been no concrete and conclusive decision whatsoever even on this date.

p. The minutes of meeting dated March 1, 2017 which was signed on March 7, 2017 clearly reflects that there was no decision taken on the sale of shares even on March 7, 2017. The minutes do not reflect any concrete decision/discussion pertaining to purchase of shareholding of ILPL by IIL.

q. Further, Mr. Divyesh Shah in his statement has expressly stated on oath that "*no information has been passed to an outsider during the period of 7th March 2017 and 14th March 2017*". This confirms the fact that there was no discussion pertaining to sale of shareholding of ILPL to IIL before March 7, 2017 and hence treating January 24, 2017 as a starting point of the purported UPSI has led to fundamental error which vitiates and cuts at the root of the allegation in the SCN.

r. SEBI has not provided any rationale or basis to correlate the events of March 14, 2017 with the events of January 24, 2017. The analysis of SEBI in treating January 24, 2017 as the starting point of UPSI is therefore incorrect. The starting point of UPSI if at all shall be the date when the Board of IIL approved the purchase of shares and executed the definitive agreement. This is a fundamental and fatal flaw in the SCN.

s. The identity of the buyer i.e. IIL was not price sensitive at all, when the factum of the proposed sale and the floor price i.e. the minimum consideration payable by the prospective buyer, was generally available. The identity of the counterparty therefore cannot be said to be price sensitive.

t. The identification of a counter party cannot be yet again, considered price sensitive information as the public was made aware of the same on June 2016. It is settled law that once the information is published and it was already digested by the public, such information ceased to be "*sensitive*" as is observed by the Hon'ble SAT in the case of *Hindustan Lever Limited case* [Appeal No. 1&2 of 1998] and SEBI in the *63 Moons Technologies Limited case* [Order dated January 31, 2018].

u. In fact, the statement of Mr. Gurbans Singh makes it apparently clear that the decision to sell the shares to IIL was taken on March 14, 2017 after the required approvals of all the concerned were obtained including the decision on the sale consideration. In other words, the only development that took place in relation to the entire issue of sale of investments is the identity of the purchaser.

v. When Noticee No. 1 herself was not in possession of UPSI, the question of her having passed on any UPSI to her husband i.e. Noticee No. 2, is untenable.

w. The impugned purchases were executed by Noticee No. 1 much before the decision for sale of investment was taken, after duly obtaining pre-clearance from IVL. It is a settled practice that the compliance officer grants pre-clearance after duly verifying that there exists no UPSI at the relevant period. This establishes the fact that at the time of execution of the Impugned Trades there was no UPSI. Therefore, the decision of the compliance officer to grant pre-clearance in February 2017 and March 2017 is valid and legal. Copy of the letter dated February 16, 2017, February 14, 2017 and March 9, 2017 granting pre-clearance to Noticees No. 1 and 2 is annexed with reply.

x. The Noticees are regular investors in the securities market since 2005 and their current portfolio includes investment in several listed and unlisted companies. They have always carried out trades with due compliance with all applicable laws. The purchase of the shares of IVL was also similar to their all-other trades, executed solely with the intention of having a long-term investment considering the consistent rise in share price since January 2017. Their investment portfolio clearly shows that the analysis in the SCN over their trades is misplaced and incorrect.

y. Even assuming whilst denying that Noticee No. 1 had access to the alleged UPSI, she cannot still be held liable as the impugned trades were not executed on the basis of UPSI. On a plain reading of Regulation 3 of the PIT Regulations, it is apparent that the prohibition contained therein shall apply only when an insider trades or deals in securities on the basis

of any UPSI and not otherwise. The words *"on the basis of"* are significant and mean that the trades executed should be motivated by the information in possession of the insider. To put it differently, the information in possession of the *"insider"* should be the factor or circumstance that should induce him/her to trade in the scrip of the company. And since she was not motivated to trade by the UPSI allegedly in her possessions, which is evident from the previous trades undertaken by her, it cannot be said that she had violated PIT Regulations. It is settled principle that if an insider shows that he / she did not trade on the basis of UPSI and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of Regulation 3 of the PIT Regulations as observed by the Hon'ble SAT in the *Chandrakala case* [Appeal 209 of 2011].

z. A bare perusal of the Noticees trading history demonstrate that their trading during the alleged UPSI period has been at a much lower scale in comparison to their general trading pattern since 2005-2006. The shares are purchased out of their own funds and with an investment objective.

aa. SEBI has overlooked the price movement of the scrip at the time of execution of the impugned trades. The impugned trades were executed by them looking at the constant and steady increase in share price of IVL since January 2017. At the time when Noticee No. 1 purchased the shares of IVL, the prices had already escalated. Her husband purchased the shares at a further escalated price. If at all she was in possession of UPSI, they would have purchased the shares of IVL way back in January when the price witnesses the lowest price at Rs. 20.41, rather than purchasing them in February at an average price of Rs. 33.97. In fact, post execution of the impugned trades by her, the shares of IVL were traded in the same range and remained constant for some time. It must be appreciated that the rise in the price of the scrip of IVL was not on account of corporate announcement made by IVL but on account of other relevant factors like general bullish trend in the market. Therefore, the observation of SEBI that the share price of IVL escalated because of the announcement made on March 14, 2017 is incorrect and devoid of merit.

bb. Save and except making a sweeping and bald allegation there is nothing that indicates that Noticee No. 1 had received or had access to the alleged UPSI. She was a non-executive director of IVL and being a non-executive director, she cannot be expected to have access to all "*sensitive information*" in the company, if any. SEBI has singularly failed to substantiate that she had access to sensitive information and that using such accessible information, she purchased the shares and involved in insider trading. A charge of insider trading is a serious

allegation and charge to deal with. It is a settled principle of law for proving serious charges like insider training, mere assumptions would not suffice. The charges should be backed with some minimum credible evidence, beyond assumptions, against the alleged offenders as observed by SEBI in *Polaris Software Lab Limited case* and the Hon'ble SAT in *Dilip Pendse case [SAT Appeal No 80 of 2009]*. Therefore, as is mandatorily required, there has to be a logical and plausible justification to the allegation levelled against her.

cc. Purchasing of shares of IVL by me and my husband at the time when it was parting away with its investment cannot in any event establish even remotely any intention to make profit. The SCN fails to substantiate that I had traded in the scrip of IVL while being in possession of UPSI, as alleged therein. In the event of charges of insider trading against me not being established, the question of any illegal notional gain *thereof* does not arise. The Noticees have placed reliance upon the judgement of *Rakesh Agarwal case [2004 49 SCL 351 SAT]*.

dd. Without prejudice to above, the computation and quantification of the unlawful gain is contrary to the settled position. The unlawful gain is computed on the basis of actual realization of the funds. SEBI has failed to appreciate the fact that Noticee No. 2 is still holding the shares purchased by them and therefore profit/loss, if any cannot be ascertained unless the same are sold. Based on erroneous observation, assumption and presumptions, SEBI has worked out alleged "*gains*" in respect of the impugned trades in an arbitrary, whimsical & callous manner.

ee. The investigating team has overlooked the provisions of the SEBI Act. The "Explanation" appended to Section 11B of the SEBI Act provides as under:

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

ff. They again reiterate that the impugned trades were executed by them only to consolidate and accumulate the shares of IVL. There was no borrowing or financial assistance taken from any entity and the purchase of shares of IVL is similar to their all-other long-term investments, which demonstrate their innocence and accordingly, the proceedings shall be set aside.

gg. There is a difference in approach in considering what is the starting point of UPSI and the UPSI itself. This is evident from the below observations:

i. Information of the proposed sale of ILPL namely the identification of buyers and the actual price is considered as UPSI despite there being a generally available information in public that the subject assets are up for sale.

ii. Event for considering the starting point of such UPSI is discussion of loan transaction between CEO of IVL and IREL to get financing for ILPL from IIL, which never fructified, and which is different and unconnected to the transaction of agreement to sell 100% shareholding in ILPL executed between IDSL and IIL.

hh. Hence, the two unrelated events cannot pertain to the same information which SEBI considered as UPSI. Any or all such information around the loan discussions cannot be considered as any "sensitive information" as per the definition of the UPSI.

ii. SEBI has not provided any rationale or basis to correlate the events of March 14, 2017 with the events of January 24, 2017. In any case, consideration of January 24, 2017 as starting point of UPSI (*vide* the WTM Order and SCN) is incorrect since:

i. Definitive agreement could have been signed only after *'identification of buyer'* on March 7, 2017 and not prior thereto as per SEBI's own case. Even on March 7, 2017, the meeting was not scheduled for discussing the sale purchase terms but to discuss the loan proposal which turned out in an informal discussion on sale purchase negotiation, an event which was never contemplated until the two CEOs met as per their statements which are on record.

ii. The outcome of the proposal and initial decision to purchase the shares which was offered by Mr. Gurbans Singh could not have attained finality on March 7, 2017, as the essential terms of the sale and the definitive terms was to be deliberated in the respective companies and thereafter the decision would have to be made.

iii. There is no mention of any date or event in the WTM Order and the SCN that there were discussions on the sale – purchase prior to March 7, 2017, pertaining to sale of ILPL by IDSL to IIL. The statements of the CEOs have been accepted by SEBI and therefore, there cannot be a change in approach at this stage.

jj. The mere fact of discussion between two CEO's for sale purchase transaction of ILPL, while discussing loan proposal cannot lead to any reasonable inference about conclusion of sale transaction. The proposal and the initial offer on March 7, 2017 were subject to various approvals which were obtained on March 14, 2017. The Hon'ble SAT has ruled that such uncertain information cannot be the basis of alleging UPSI (*ref: Samir Arora's case* and *Reliance Petro Investment's case*).

kk. Mere discussion on loan proposal or operational matters between the KMPs of a company cannot be basis of fastening serious charge of insider trading on an individual which must be backed by a minimum credible evidence beyond assumption and surmises (*ref: Arun Jain's case*).

ll. Assuming while denying that there was any UPSI in either case, there is nothing, apart from a mere *ipse dixit*, in the SCN or otherwise to demonstrate how the Noticees came to possess the same. One of the important limb of Regulation 2(e)(i) of PIT Regulations is that besides being a 'connected person', the entity must be *"reasonably expected"* to have access to UPSI. There must be *material to show* that such person can reasonably be so expected to have access to UPSI, which the SCN singularly fails to establish.

mm. The ratio on the discharge of burden of proof is clearly laid down in a recent order by the learned WTM of SEBI in the case of *Udayant Malhoutra.,* which squarely applies to the present case as elucidated hereinabove. After the burden of proof was discharged by the Noticees, SEBI ought to have proved its case. None of the submissions of the Noticees have been demolished in the SCN, which was issued subsequent to the WTM Order. In their humble opinion, the rebuttable presumption is said to be rebutted by the Noticees and hence there is no need for an additional monetary penalty on them.

nn. In view of above, the Noticees respectfully submitted that the SCN be disposed-off without any monetary penalty against the Noticees.

11. Before dealing with the issues involved in the matter, it would be appropriate to refer to the provisions of laws which have been alleged to have been violated by the Noticees and the relevant extracts of the same are reproduced below:

SEBI Act, 1992:

"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;*

(e) *deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;……."*

PIT Regulations, 2015:

***"Definitions of "connected persons" and relevant provisions as per Regulation 2(1)(d)(i), 2(1)(d)(ii)(a),* 2(1)(f) and 2(1)(g) – Refer paras 4.A.b. and 4.B.b.**

Communication or procurement of unpublished price sensitive information.

3. (1) *No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*

NOTE: *This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.*

(2) *No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*

NOTE: *This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.*

Trading when in possession of unpublished price sensitive information.

4.(1) *No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:*

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

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

12. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticees, documents produced by the Noticees and oral submissions made during the personal hearing before undersigned. Before dealing the case on merit basis, I would first deal with several preliminary technical/legal contentions raised by the Noticees as under: -

A. <u>Initiation of adjudication proceedings on same set of allegations</u>

The Noticees contended that, the proceedings to issue directions under Section 11 of the SEBI Act and the Adjudication Proceedings under Section 15I of the SEBI Act on same set of allegations, should have initiated before Learned WTM, in terms of amended provisions dated March 8, 2019 of the SEBI Act, wherein, the Learned WTM has been vested with the power to adjudicate the issues under the Section 15-I of the SEBI Act. In this regard, I note that the proceedings to issue directions under Section 11B of the SEBI Act and the proceedings to impose monetary penalty under Section 15 of the SEBI Act are two separate proceedings and there is no bar on initiation of both proceedings simultaneously. Further, it is the prerogative of the competent authority, to conduct both proceedings by a single authority in terms of amended provisions dated March 8, 2019 of the SEBI Act or conduct the separate proceedings by two separate authorities. In the instant matter the parallel proceedings under Section 11B of the SEBI Act was initiated by way of an *ad interim order* dated May 24, 2019 of Learned WTM and followed by the final order dated February 05, 2020. Since, there is no mandatory provision specified in SEBI Act that the parallel proceedings shall be conducted by a sole authority, who is pursuing 11B proceedings, I found the contention of the Noticee not tenable and note that no prejudice have been caused to the Noticees due to the same.

B. <u>Inquiry initiated in terms of Rule 4(3) of Adjudication Rules without considering the replies of the Noticees</u>

a. The Noticees have contended that the hearing notice was issued in the matter without considering the Noticees replies. In this regard, I note that, Rule 4(1) of Adjudication Rules

provides for issuing of a notice to a person, who has committed contraventions as specified in any of sections 15A to 15HB of the SEBI Act, requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof), why an inquiry should not be held against him. Rule 4(2) provides for the notice containing the nature of offence alleged to have been committed by him. Rule 4(3) further provides for granting opportunity of personal hearing to the person, if authority is of the opinion that an inquiry should be held after considering the cause, if any, shown by such person. Rule 4(7) provides for proceeding with the inquiry by authority, if any person fails, neglects or refuses to appear before the authority. I further note that, in the instant proceedings, the SCN issued in terms of Rule 4(1) and in compliance with Rule 4(2) of the Adjudication Rules was duly served upon the Noticees on August 28, 2020 *via* courier, however, no replies to the SCN was received from them in this regard. In order to proceed further, in the absence of any reply by the Noticee, the notice of hearing was issued under Rule 4(3) of the Adjudication Rules after having considered the material available on records.

b. I am of the opinion that, while applying the principle of natural justice, it is to keep in mind that same are founded on the principle of "*fairness*". Two cardinal principle of fairness are – (a) the person against whom action is contemplated, is liable to be informed of the basis on which the proposed action is to be taken (i.e. the affected party is required to be put to notice); and (b) before taking any adverse action, the affected party is liable to be afforded an opportunity to present his defence (i.e. an opportunity to be heard).

c. Therefore, in terms of aforementioned cardinal principles of natural justice, which provides for '*audi alteram partem*' i.e. the principle that no person should be judged without a fair hearing, was considered by me and the opportunity of hearing was granted to the Noticees and they were also allowed to submit their replies to the SCN, two days prior to the date of schedule of hearing. Thereafter, the Noticees pleaded for two weeks' time to submit their replies to the SCN and grant hearing on a later date. Accordingly, the Noticees were accommodated and they were granted further time upto December 17, 2020 to file their replies and to appear for hearing on December 22, 2020, which the Noticees eventually availed. Considering the aforesaid facts and circumstances and factum of principle of natural justice, I am of a view that the Noticees contention in this regard is unfounded and baseless.

C. <u>Allegations of Insider Trading in the SCN based merely on the basis of presumptions:</u>

In this regard, I note that the SCN provides various details like the trades undertaken by the Noticees in the scrip of the Company, Noticee No. 1 directorship in the Company, Noticee no. 1 membership in the management committee, chronology of events with respect to investment of IIL in ILPL, detail of UPSI, the announcements made by the Company with respect to Sale of ILPL / investment of IIL in ILPL along with its impact on the price of the scrip, etc. which are facts and not presumptions. I further note that, the SCN supports the allegations levelled therein with direct as well as circumstantial evidence. I also note that the charging and penal provisions for aforementioned violations of the PIT Regulations and the SEBI Act, respectively, has been mentioned in SCN and I therefore do not agree with such contentions of the Noticees that the SCN have been made on the basis of presumptions.

13. I now proceed to deal with the merits of the case. I note that the SCN has made certain allegations related to trading by the Noticees while in possession of the UPSI. Regulation 4 of the PIT Regulations deals with the trading while in possession of UPSI and Regulation 4(1) of the PIT Regulations provides that – 'no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI'. Therefore, there are three basic ingredients of aforesaid violation – (a) insider; (b) possession of UPSI by the insider; and (c) trading in securities by the insider. Accordingly, the three issues before me to be determined in the instant proceedings are as follows:

    a. Whether the Noticees are "insider" in terms of Regulation 2(1)(g) of the PIT Regulations or a "connected person" in terms of Regulation 2(1)(d) of the PIT Regulations;

    b. Whether there was any UPSI;

    c. Whether the Noticees were in possession of UPSI or had access to UPSI; and

    d. Whether the Noticees traded in the scrip of the Company while in possession of UPSI.

14. In terms of Regulation 2(1)(g) of the PIT Regulations an "insider" means a connected person or a person who is in possession of or having access to UPSI. In terms of Regulation 2(1)(d) of the PIT Regulations, a "connected person" is a person having certain association/position with/in the company, that allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access. Thus, if such a person is found to be "connected person" then by virtue of their association/position with/in the company like director, officer, employee, etc., access to UPSI with such person is implied. In note that, in the instant matter,

Noticee No. 1 was a non-executive director in the Company during the relevant time. She was also the member of the 'management committee' authorised by the board of IVL to sale entire stake of IDSL in ILPL. Therefore, I am of the opinion that the Noticee No. 1 is a "connected person" in the instant case in terms of Regulation 2(1)(d)(i) of the PIT Regulations. Since, Noticee No. 1 is a "connected person" in the instant case and thus, she is an "insider" in terms of Regulation 2(1)(g) of the PIT Regulations.

15. In terms of Regulation 2(1)(d)(ii) of the PIT Regulations, a person enumerated therein shall be deemed to be "connected persons" unless the contrary is established. In terms of Regulation 2(1)(d)(ii)(a), "immediate relative" of a connected person as specified in clause (i), is a deemed connected person. Further, in terms of Regulation 2(1)(f), "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities. Noticee No. 2 is the spouse of Noticee No. 1 and in above para, Noticee No. 1 has been found to be connected person in terms of Regulation 2(1)(d)(i) of the PIT Regulations. Hence, Noticee No. 2 being an "immediate relative" in terms of Regulation 2(1)(f) is deemed to be a "connected person" by virtue of Regulation 2(1)(d)(ii)(a). Accordingly, Noticee No. 2 is also a "connected person" and thus, an "insider" in terms of Regulation 2(1)(g) of the PIT Regulations.

16. The Noticee No. 1 has contended that she was a non-executive director and she was not privy to the discussions held between the executive management of IVL and consequently knowledge and information in the possession of the executive management and CEO cannot be imputed to her, till they are formally tabled in a Board meeting or through Board processes. Through the Board processes, she came to know of the decision of IIL to purchase the shares of ILPL by only on March 14, 2017 and no "specific transaction" ever got concluded till March 14, 2017 and therefore, she cannot be considered as insider in relation to purported to UPSI. The Noticees have further contended that to term a person as "insider", such connection must be of a nature that allows the person access to the "specific UPSI" in question, or reasonably allows such access. In this regard, I note that the interpretation by the Noticees on the term "insider" and the "connected person" as defined under the PIT Regulations is misconstrued. The definition of the "connected person" encompasses within its fold all those associations/relations/positions in the company by virtue of which "generally and reasonably" UPSI comes into possession of such persons like - director, officer, employee, etc. PIT Regulations in addition to prohibiting "insider" from trading in the securities when in possession of UPSI, also enjoins other liabilities/duties on insiders like, prohibition on communication of

UPSI, formulation and implementation of trading plans, disclosures and abiding with Code of Conduct. These liabilities/duties on the "insider" have been fastened because they are "connected person", who generally receive UPSI due to their association/position with/in the company. Thus, definition of "insider" has got wider purpose of prevention of insider trading, under the PIT Regulations in addition to prohibiting actual insider trading. The definition does not require that connected person must have 'specific UPSI' in his/ her possession before he/ she can be termed as insider. With regard to same, Regulation 4(2) of the PIT Regulations provides that, if a connected person is charged with insider trading then onus of establishing that "*he was not in possession of UPSI shall be on such person and in other cases such onus would be on SEBI*". Meaning thereby, connected persons who generally receive UPSI are attributed with possession of specific UPSI and thus, the above, contention of the Noticees is untenable.

17. Noticees have placed reliance upon the judgment of the Hon'ble Supreme Court in *Chintalapati Srinivasa Raju (Supra)* to further contend that mere connection or deemed connection is not sufficient to term a person as "insider", it must also be proved that there was reasonable expectation of such persons having access to UPSI. In the present case, such reasonable expectation of access to UPSI has been alleged on the basis that the Noticee No. 1 was the non-executive director of IVL and was a member of the Managing Committee which was entrusted by the board of directors of IVL with the task of "*sale of stake of IDSL in ILPL*". I note that that in *Chintalapati matter (Supra)*, Hon'ble Supreme Court was dealing with the provisions of the PIT Regulations, 1992 and not with the violations of PIT Regulations, 2015, as in the instant matter. In the said matter, the Hon'ble Supreme Court interpreted the definition of "*insider*" as given under Regulation 2(e) of PIT Regulations, 1992 which provided as under:

> *"(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 is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or*
> *(ii) has received or has had access to such unpublished price sensitive information;"*

18. While interpreting the definition of "insider", Hon'ble Supreme Court held that a person can be termed as insider under Regulation 2(e)(i) of PIT Regulations 1992 when such person is - (i) connected or deemed to be connected with the company; and (ii) there is reasonable expectation of such person having access to UPSI. It was held that both these conditions must be satisfied before a person can be termed as insider. Since *Chintalapati case* (*supra*) was pertaining to the PIT Regulations, 1992, hence, the finding of same case is not squarely applicable in the instant

matter, which pertains to PIT Regulations, 2015, where definition of "*insider*" is different and for the sake of convenience, reproduced hereunder:

(g)"insider" means any person who is:

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

19. In the said case, Hon'ble Supreme Court also observed that under Regulation 2(1)(g) of PIT Regulations, 2015, there is no requirement that reasonable expectation of having access to UPSI must be separately proved and the fact that a person is a connected person (as defined) is sufficient to term such person as an insider. In this regard, Hon'ble Supreme Court observed as under:

"10…….In the present case, the new 2015 Regulations also throw considerable light on the definition of "insider", as an insider is now defined to mean only a person who is a connected person or a person who is in possession of or having access to unpublished price sensitive information. Obviously, post 2015, an "insider" need not satisfy the second test of the 1992 Regulations and it is enough that such person be a "connected person" as defined. The disjunctive "or" contained in the 2015 Regulations must be contrasted with the expression "and" contained in the 1992 Regulations……..."

20. A perusal of definition of "connected person" as given under Regulation 2(1)(d) of PIT Regulations, 2015 reveals that if a person occupies a position or enjoys a relationship with the company such as director, officer, employee, etc. which allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access, such person is termed as connected person.

21. In view of aforesaid discussion, it is clear that definition of "connected person" as given under Regulation 2(1)(d), covers all those persons in the definition of connected persons, who have such a connection with the company which puts or reasonably expected to put them in possession of UPSI. Further, a "connected person" is treated as "insider" without any further proof of access of any "specific UPSI" to connected person. In the present case, Noticee no. 1 was holding the position of non-executive director on the board of IVL. She was also the member of the 'management committee' authorised by the board of IVL to sale entire stake of IDSL in ILPL. Such position can reasonably and generally be expected to allow access to UPSI to the person holding such position like of non-executive director through board processes and

management committee member. Therefore, in such facts and circumstance, the contentions of Noticees are rejected hereby.

22. Now coming to the second facet of the charge i.e. existence of UPSI in the instant matter, as the Noticees has contended that the information regarding the sale of shares of ILPL by IDSL for a consideration more than the amount invested (i.e. Rs. 600 crore) by IDSL in such shares, which is termed as UPSI in this matter was already available in the public domain since June 20, 2016 when IVL had sent EGM Notice dated June 15, 2016 to its shareholders. In this regard, the SCN alleges that "sale of shares of ILPL to IIL/investment in ILPL by IDSL, is an UPSI". I note that IVL decided to sell its 100% shareholding of ILPL held by IDSL, a wholly owned subsidiary of IVL for a consideration more than the amount invested by IDSL. I further note that, on January 24, 2017 the two CEOs of IVL and IREL held discussions regarding loan to ILPL by IIL. During the investigation, I note IVL had submitted that no buyer or acquirer approached IVL/IDSL/ILPL or gave any formal/informal proposal for purchasing ILPL prior to March 07, 2017. Further, it stated that real estate market was sluggish and not conducive at that time. After the said meeting a notice convening the meeting of the board of directors on February 03, 2017 was sent by IIL on January 25, 2017. On February 03, 2017, board of directors of IIL decided to convene an EGM on March 01, 2017 for seeking enabling authorization to the board to invest surplus funds, by way of loan which may *inter-alia* be in the form of Debentures or Non-Convertible Redeemable Preference Shares of ILPL or any other security as may be offered by ILPL. Draft Notice of the proposed EGM was also placed and approved by the board of IIL in the same board meeting. In the EGM held on March 01, 2017, an enabling composite authorization in terms of Section 186 of the Companies Act, 2013 was approved and following special resolution was passed:

"RESOLVED THAT pursuant to the provisions of Section 186 and other applicable provisions, if any, of the Companies Act, 2013, read with the Rules framed thereunder, as may be amended from time to time, consent of the members be and is hereby accorded to the Board of Directors of the Company:

(a) to grant loans, give guarantee(s) or provide security, in connection with a loan made by any person to or to any person, up to an aggregate value of Rs.600,00,00,000/- (Rupees Six Hundred Crore) from time to time in one or more trenches, to India Land and Properties Limited on such terms and conditions as may be considered expedient in the interest of the Company, and

(b) to invest Company's fund by way of subscription, purchase or otherwise, in the securities of India Land and Properties Limited from time to time in one or more tranches up to the aggregate of Rs.600,00,00,000/-

(Rupees Six Hundred Crore) on such terms and conditions as may be considered expedient in the interest of the

Company, notwithstanding that the aggregate of loans, investment already made or to be made and the guarantees or securities already provided or to be provided, may exceed the limits prescribed under the said Section."

23. Pursuant to aforesaid EGM of IIL on March 01, 2017, during a meeting between Mr. Gurbans Singh and Mr. Divyesh Shah, the loan proposal was discussed and it was agreed that IIL will purchase shares of IDSL in ILPL. On March 14, 2017, a definitive agreement was executed amongst IDSL, ILPL and IIL and was intimated to the stock exchanges by IVL *inter alia* as:

"we wish to inform that today i.e. March 14, 2017, Indiabulls Distribution Services Limited (IDSL) (a wholly owned subsidiary of Indiabulls Ventures Limited {IVL}) has signed a definitive agreement to sell its 100% shareholding in India Land and Properties Limited (ILPL), at a consideration of Rs. 685 crores, to Indiabulls Infrastructure Limited (IIL), a wholly owned subsidiary of Indiabulls Real Estate Limited. The deal is expected to be completed in the current financial year."

24. In view of above, the proposal relating to grant of loan from IIL to ILPL or investment by IIL in ILPL, which originated on January 24, 2017, i.e. the date when CEOs of IVL and IREL met and discussed loan facility against securities, from IIL for ILPL, ultimately culminated in sale of ILPL shares held by IDSL to IIL/ investment of IIL in ILPL, for a consideration of Rs. 685 crore. The said information was "price sensitive" information, which could likely materially affect the price of securities of IVL. The said UPSI on being made public, on March 15, 2017 had materially affected the price of the scrip of IVL i.e. an increase of 9.96% over the previous day's closing price of Rs. 38.15/- per share, as closing price on March 15, 2017 of the scrip of IVL was Rs. 41.95/- per share. In view of aforesaid discussion, facts and circumstances, I am of an opinion that the information regarding investment by IIL in ILPL or sale of shares ILPL was an UPSI in the instant matter, which came into existence on January 24, 2017 and became generally available, when published on March 14, 2017. Therefore, contending that UPSI was "uncertain information" and cannot be a basis of alleging UPSI and placing reliance upon the Hon'ble SAT judgments in the matter of *Samir Arora's case* and *Reliance Petro Investment's case* is an out of place argument and thus, I reject the contentions of the Noticees in this regard.

25. I further note that, on June 20, 2016, IVL forwarded a notice regarding, convening of an EGM of its shareholders on July 15, 2016 to transact the special business, to the stock exchanges, wherein, relevant extract provides as under:

"Item No. 2. Sale of Investment

To consider and, if thought fit, to pass the following Resolution as a Special Resolution:

RESOLVED THAT pursuant to the provisions of the Companies Act, 2013, as amended, read with applicable Rules framed thereunder (including any statutory modification(s) or re-enactment thereof, for the time being in force), and applicable provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, approval be and is hereby accorded to the Board of Directors of the Company and of its subsidiary (hereinafter referred to as the "Board" which term shall include any committee thereof), to sell upto 100% of shares held by Indiabulls Distribution Services Limited, a wholly owned subsidiary of the Company ("IDSL"), in India Land and Properties Limited, a wholly owned subsidiary of IDSL, on the terms and conditions, including the consideration, which shall be more than the amount invested by IDSL, in such shares, as the Board may finalize.

RESOLVED FURTHER THAT the Board be and is hereby authorized to delegate all or any of the powers herein conferred by above resolutions to any Director or to any Committee of Directors or any other executive(s) / officer(s) of the Company or any other person as the Board at its discretion deem appropriate; to do all such acts, deeds, matters and things as also to execute such documents, writings, etc. as may be necessary in connection therewith and incidental thereto as the Board in its absolute discretion deem fit without being required to seek any fresh approval of the shareholders of the Company and to settle all questions, difficulties or doubts that may arise in this regard and that the decisions of the Board shall be final, binding and conclusive in all respects."

26. The aforesaid agenda item was approved by the shareholders of IVL on July 15, 2016. From the said resolution passed by the shareholders of IVL, it is noted that, firstly, authorisation was given to sell "upto 100% shares" of IDSL in ILPL, secondly, there was no timeline prescribed for selling the said shares and thirdly, resolution merely stated that sale consideration shall be more than the amount invested by IDSL, in such shares. It is further noted that the said resolution did not have any mention that amount invested by the IDSL in the shares of ILPL was Rs. 600 crore. I note that, said amount of Rs. 600 crore becomes known from the disclosure made by the IVL on May 19, 2014 to the stock exchanges that its subsidiary IDSL had acquired 100% shares of ILPL. Accordingly, to know the minimum consideration amount expected by IVL, an investor expected to be aware of the disclosure made by IVL on May 19, 2014, wherein, it was informed that, Rs. 600 crore was the amount invested by IDSL in purchase of 100% shares of ILPL. Therefore, I am of the opinion that the said notice of EGM was in public domain since June 20, 2016, however, it was a raw information and it could crystallise in concrete UPSI, only when there is an identified purchaser, ascertained number of shares to be sold, ascertained consideration amount, agreed time between buyer/seller to close the deal and

other terms and condition. All these facts were not ascertained as on June 20, 2016, therefore, in the absence of critical facts like identified purchaser, ascertained number of shares to be sold, ascertained consideration amount, agreed time between buyer/seller to close the deal and other terms and condition, the contention of the Noticees that the alleged UPSI was in public domain since June 20, 2016 are not tenable.

27. I note that the proposal relating to grant of loan from IIL to ILPL or investment by IIL in ILPL was originated on January 24, 2017. This was for the first time that the approval accorded by the shareholders of IVL regarding the sale of stake of IDSL in ILPL on July 15, 2016, moved from in-principle approval to actual execution stage and on the said date information regarding investment by IIL in ILPL came into existence. The said proposal was different from the decision of IVL i.e. selling the shares of ILPL held by IDS, taken in the meeting of board of directors of IVL held on June 15, 2016 and informed to the stock exchanges on June 20, 2016 because the said loan was subject to the approval by the board of IVL. Further, on this date, a real investor in the form of IIL came forward to actually discuss the granting of loan against the shares of ILPL. The said proposal of loan against the shares of ILPL ultimately culminated in sale of shares ILPL held by IDSL to IIL/investment of IIL in ILPL, for a consideration of Rs. 685 crore i.e. an amount which was not known earlier at the time of in-principle given by the board of IVL on June 15, 2016. However, from January 24, 2017, the in-principle approval accorded by the board of IVL on June 15, 2016 entered into execution stage which could have resulted either into "loan (as discussed)" or "sale (as it actually happened)". The said information was "price sensitive" information which could likely materially affect the price of securities of IVL. As discussed above, the said UPSI on being made public on March 15, 2017 had materially affected the price of the scrip of IVL. I also note that on March 07, 2017, the two CEOs agreed in principle that instead of giving loan, IIL would be purchasing the shares in ILPL which resulted into a formal agreement amongst IDSL, ILPL and IIL, on March 14, 2017, however, IIL came forward as willing investor (as lender) in ILPL, first time on January 24, 2017 and finally ended up in purchasing the shares in ILPL, on March 14, 2017. Therefore, in my opinion there is no ambiguity that UPSI came into existence on January 24, 2017 and thus, any of the contention of the Noticees in this regard is rejected hereby.

28. In view of aforesaid discussion, UPSI came into existence on January 24, 2017, therefore, the Noticees reliance upon the judgment of Hon'ble SAT in the matter of *Hindustan Lever Limited case* [Appeal No. 1&2 of 1998] and SEBI in the *63 Moons Technologies Limited case* [Order dated January 31, 2018] regarding information ceased to be "*sensitive*" is not applicable in this case.

29. The Noticees have also contended that the alleged UPSI was not material information and therefore it is not price sensitive information. In this regard, I note that the said UPSI was securing of loan from IIL against the shares of ILPL, finally resulting into sale of the shares of ILPL by IDSL in favour of IIL, for a consideration of Rs. 685 crore. Such an information regarding sale of the shares for a consideration of Rs. 685 crore, will reasonably be considered by an investor, to have likely material effect on the shares of IVL, though in fact it may not have any such effect. In the instant matter, said UPSI on becoming generally available resulted in surge in the price of the scrip of IVL by 9.96% i.e. Rs. 41.95/- per share from its previous day's closing price of Rs. 38.15/- per share. However, increase in price of shares post dissemination of UPSI is a corroborative event though not mandatory. Therefore, I reject such contentions of the Noticees.

30. In view of aforesaid discussions till now, it is observed that the Noticees are "connected persons" and therefore are "insiders" in terms of PIT Regulation, 2015 and information regarding sale of ILPL by IDSL to IIL is an UPSI in the instant matter. Thus, I move to the third and fouth facet of the charge i.e. whether the Noticees were in possession of or have access to the said UPSI; and whether the Noticees have traded in the scrip on the Company, while in possession of said UPSI. In this regard, I note that, in terms of Regulation 4(2) of the PIT Regulations, 2015, in the case of "connected persons" the onus of establishing, that they were not in possession of UPSI, shall be on such "connected persons". Therefore, the burdens of proof in such cases are shifted on "connected person". In the instant matter, the Noticees are "connected persons" and the fact that there was UPSI and that these Noticees have admittedly traded in the shares of IVL during the period of existence of said UPSI, give rise to presumption of dealing in securities when in possession of UPSI by these Noticees, as envisage under Regulation 4(2). Thus, in this case, the burden to prove that the Noticees were not in possession of said UPSI, at the time of execution of their impugned trades in the scrip of IVL is upon the Noticees. As the Noticees failed to discharge the burden of proof cast upon them under Regulation 4(2) of the PIT Regulations, 2015 in the instant proceedings, therefore, the principles applied by the learned WTM of SEBI in the case of *Udayant Malhoutra* is not applicable in this case and thus, I reject such contentions of the Noticees.

31. I further note that Noticee No. 1 was a member of the management committee of the Board of Directors of IVL since September 28, 2016, which was constituted by the board of directors of IVL on July 27, 2016 to empower IDSL to sell its entire investment in ILPL. Apart from Noticee No. 1, the said committee members were Mr. Divyesh Shah, Mr. Ashok Sharma (till September 28, 2016) and Mr. Aishwarya Katoch. It has been stated that Mr. Diveysh Shah (CEO of IVL

and Director of ILPL) was the person who held the discussions with Mr. Gurbans Singh (CEO of IREL and Director of IIL) for loan facility against securities for ILPL from IIL. Further, Noticee No. 2, who is husband of Noticee No. 1, is also associated with Indiabulls group as an employee of subsidiary of IREL, a company belonging to Indiabulls group. Also, he was director in 8 companies of Indiabulls Group, namely, Indiabulls Industrial Infrastructure Ltd., Indiabulls Buildcon Ltd., Indiabulls Lands Ltd., Indiabulls Infrastructure Development Ltd., Indiabulls Constructions Ltd., Indiabulls Estate Ltd. Indiabulls Builders Ltd. and Indiabulls Integrated Services Ltd. He continues to be director in 7 such companies except Indiabulls Integrated Ltd., where he ceased to be director on September 28, 2017.

32. I also note that during the UPSI period, Noticee No. 1 purchased 5,05,000 shares of IVL for a consideration of Rs. 1.76 crore (approx.) and her trade concentration in the scrip of IVL was 93.93% during UPSI period. While her trade concentration in the scrip of IVL was 11.19% and 0% during pre-UPSI and post-UPSI periods, respectively. Similarly, Noticee No. 2 purchased 3,38,970 shares of IVL for a consideration of Rs. 1.08 crore during UPSI period and his trade concentration in the scrip of IVL during UPSI period was 63.93%, while his trade concentration in the scrip of IVL was only 4.6% and 0 % during pre-UPSI and post-UPSI periods, respectively. Therefore, in addition to presumption w.r.t. the Noticees by virtue of Regulation 4(2), corroborated with the fact of their position as stated in paras 30 and 31 and their impugned trades in the scrip of IVL during UPSI period are sufficient attendant circumstances to suggest that the Noticees were in possession of said UPSI at the time of impugned trades.

33. It was contended by the Noticee no. 1 that, though she was member of management committee, however, she was not present in the management committee and leave of absence was recorded in the only meeting which the Managing Committee held. Further, between January 27, 2017 and March 14, 2017, there was neither any meeting nor any call or electronic decision making of any nature at all held, by this management committee. In this regard, I note that during the EGM held on July 15, 2016, shareholders authorised board of IVL to sell upto 100% of shares held by IDSL in ILPL and for the said purpose, they also authorised to delegate all or any of the powers conferred by the resolution to any director or to any committee of directors or any other executive(s) / officer(s) of the company or any other person as the Board at its discretion deem appropriate. The management committee of the board was authorised by the board of IVL to authorise IDSL to sell its holding in ILPL for a consideration more than the amount invested by IDSL in such shares *via* passing a resolution dated July 27, 2016. The execution of such sale by the management committee was binding on the board of IVL and was pursuant to the authorisation given in EGM to the board of IVL.

34. I further note that the case before me is not that Mr. Diveysh Shah, CEO-IVL, who was also a member of the management committee and participated in the discussions held with Mr. Gurbans Singh, CEO-IREL, acted on his own or exceeded the authority given to the management committee and sold the shares of ILPL to IIL, independently, and an action has been initiated against the Mr. Shah for exceeding his authority. The management committee was authorised on July 27, 2016 and agreement of sale of stake of IDSL in ILPL to IIL was signed on March 14, 2017. On March 14, 2017, IVL informed BSE *inter alia* as "*we wish to inform that today i.e. March 14, 2017, Indiabulls Distribution Services Limited (IDSL) (a wholly owned subsidiary of Indiabulls Ventures Limited {IVL}) has signed a definitive agreement to sell its 100% shareholding in India Land and Properties Limited (ILPL), at a consideration of* Rs. *685 crores, to Indiabulls Infrastructure Limited (IIL), a wholly owned subsidiary of Indiabulls Real Estate Limited. The deal is expected to be completed in the current financial year."* Thus, in my view the resolution passed by the shareholders of the IVL, in the EGM dated July 15, 2016 has been accepted, implemented and informed to stock exchanges by IVL and same cannot be solely attributed to Mr. Divyesh Shah, CEO-IVL.

35. With regard to contention of no meeting, nor any call or electronic decision making held by this management committee, I note that, the Noticees excluded the period from January 24, 2017 to January 26, 2017. I am of a view that, such exclusions by the Noticees suggest the possibilities of discussions/communications between the member of the management committee between January 24, 2017 to January 26, 2017 and same cannot be ruled out, in view of the position of the Noticee No. 1 in IVL as non-executive director, membership of Noticee no. 1 in the management committee and impugned trades undertaken by the Noticees during UPSI period. On January 24, 2017, Mr. Diveysh Shah (CEO of IVL and Director of ILPL) and Mr. Gurbans Singh (CEO of IREL and Director of IIL) discussed for loan facility against securities for ILPL from IIL, as opposed to the previous decision of IVL to sell the stake of IDSL in ILPL. The said information regarding investment of IIL in ILPL/loan against shares of ILPL by IIL, was UPSI which eventually culminate into definitive agreement for sale of 100% shares of ILPL by IDSL to IIL on March 14, 2017. Aforesaid facts and circumstances imply that Noticee no. 1 had communication during January 24, 2017 to January 26, 2017, with other members of the committee during UPSI period. During the UPSI period, Noticee no. 1 purchased 5,05,000 shares of IVL and Noticee no. 2 purchased 3,38,970 shares of IV and they purchased shares worth Rs. 69.09 lakh before signing of the definitive agreement on March 14, 2017. In view of above observations, the contentions of the Noticees are rejected hereby.

36. With regard to role of non-executive director, the Noticee No. 1 have placed reliance upon observation made by Hon'ble Supreme Court in the *Chintalapati case* (*supra*) and contended that she being non-executive director cannot be fastened with inference that she was aware about inside information. In this regard, I note that PIT Regulation, 2015 does not distinguish between an executive and non-executive/independent director and the provisions thereof applies to both executive and non-executive directors, alike. Further, a non-executive director may not be involved in the day to day functioning of the company, however he may get access to UPSI through board processes or through participation in the meeting of sub-committees of the board like audit committee, management committee, etc. A UPSI may come into existence by virtue of day to day affairs of the company as well as through board processes/decision taken in the board meetings. In many cases price sensitive decisions pertaining to financial results, dividends, change in capital structure, mergers, de-mergers, acquisitions, delisting's, disposals and expansion of business, etc. are discussed in the board meetings which is attended by the non-executive directors also. On the other hand, there may be a UPSI which only the persons (like executive directors), who are involved in the day to affairs of the company, are only aware of. I note that in the *Chintalapati case* (*supra*), Hon'ble Supreme Court was dealing with a case wherein, the UPSI involved was of such nature that it could be in the possession of those directors, who were involved in the day to day affairs of the company and not the non-executive directors of the company who participates only in the board meetings or sub-committee of board. In the instant matter, Noticee No. 1 was not only the non-executive director but was also member of the management committee which was entrusted with the task of authorising IDSL to sell its stake in ILPL. Therefore, I reject such contentions of the Noticees considering the facts of the instant matter.

37. The Noticees have contended that their impugned trades were not executed on the basis of said UPSI. In this regard, I note that PIT Regulations, 1992 prohibits trading by insiders "*on the basis*" of UPSI. Subsequently, in the year 2002, provisions of PIT Regulations, 1992 were amended to prohibit trading by insiders "*when in possession*" of UPSI. The PIT Regulations, 2015, also prohibits trading by insiders "*when in possession*" of UPSI. Therefore, in my opinion for proving the violation of Regulation 4(1) of the PIT Regulations, 2015, the requirement is to prove that trading was done by the insider "*when in possession of UPSI*". Further, it has been found that the Noticees being insider traded in the scrip of IVL, while in possession of the said UPSI. Also, note appended to said Regulation 4(1) provides that, once it is proved that "insider" has traded while in possession of UPSI, then there is a presumption that such trading was done "*on the basis of UPSI*" and the onus of proving that the trades were not done on the basis of UPSI shifts on the "insider" and he has to prove that his case falls within the defences provided under the

proviso to Regulation 4(1) of the PIT Regulations, 2015. In the instant matter, there is presumption that Noticees traded on the basis of UPSI and the Noticees have not proved or even contended that they have any of the defence available to them, as provided under proviso to Regulation 4(1). Further, the same principle was applied by the Hon'ble SAT in the matter of *Chandrakala case* [Appeal 209 of 2011], wherein, Hon'ble SAT held that – "*".....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*". Considering the aforesaid principle, I reject contentions of the Noticees in this regard.

38. The Noticees have further contended that the charges should be backed with some minimum credible evidence, beyond assumptions, against the alleged offenders as observed by SEBI in *Polaris Software Lab Limited case,* the Hon'ble SAT in *Dilip Pendse case [SAT Appeal No 80 of 2009] and Arun Jain's case.* Therefore, as is mandatorily required, there has to be a logical and plausible justification to the allegation levelled against the Noticees. In this regard, I note that, the Noticee No. 1 was admittedly a non-executive director in IVL and a member of management committee, which was formed on July 27, 2016 to authorise IDSL to sell its stake in ILPL. Noticee No. 1 and his husband Noticee No. 2, both admittedly traded in scrip of IVL during said UPSI period. Therefore, in my opinion the charge in this case is not based on mere assumptions, instead charges are supported by credible evidence of the chronology of event culminated between May 04, 2016 to March 14, 2017 and trades of the Noticees. Thus, the Noticees reliance upon the aforementioned judgments is out of place and their contention in this regard is not tenable.

39. The Noticees have contended that the said UPSI was positive from the perspective of purchase of shares of IREL, which was going to buy 100% stake of ILPL through its wholly owned subsidiary - IIL and not from the perspective of purchase of shares of IVL which was going to sell 100% shares of ILPL owned by IDSL, a wholly owned subsidiary of IVL. In this regard, I note that selling of its 100% stake in the indirect subsidiary need not necessarily be negative news for the seller company when the said company is getting consideration amount, which was Rs. 685 Crore in the present case. Further, the price rise in the shares of IVL by 9.96% on the said UPSI being made public on March 15, 2017 shows the positive impact of event on share price of IVL. Therefore, the contention of the Noticee's in this regard is untenable.

40. The Noticees have further contended that, they have not taken large positions during UPSI period and they have taken much larger positions in the scrip of IVL in the previous financial years starting from 2005-06. In this regard, I note that the Noticees have purchase substantial

number of shares of IVL during the UPSI period i.e. 5,05,000 shares by Noticee No. 1 and 3,38,970 shares by Noticee No. 2 of value Rs 1.76 crore and 1.08 Crore, respectively, and therefore, the fact of their much larger position in the scrip of IVL in past and their previous trading pattern does not absolve them from liability for trading when in possession of UPSI. Further, in the instant matter, there is no charge upon the Noticees of taking large positions during UPSI period as compared to pre and post UPSI period. Under these facts and circumstances, the contention of the Noticees is rejected hereby.

41. One of the Noticees contentions is that all of their trades were executed after obtaining the pre-clearance of trades from IVL and their purchases of shares of IVL were in the due course and were not influenced by said UPSI. I note that, Clause 6 for pre-clearance of trades, of the minimum standard for Code of Conduct to regulate, monitor specified under Schedule B read with Regulation 9(1) and (2) of the PIT Regulations, 2015 provides as under:

> *"6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed."*

42. I further note that, the requirement of pre-clearance of trade is a preventive measure to contain the insider trading. However, if an insider trades when in possession of UPSI and thus, actually commits insider trading then compliance with such preventive measures i.e. pre-clearance of trades undertaken during the existence of UPSI period, is no defence to the act of insider trading. It is noted that in a connected proceeding before me, the Company, IVL has been found to be in violation of provision of Clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified in Schedule- B r/w Regulation 9(1) of the PIT Regulations, 2015 and Clause (V) of the Code of Conduct adopted by the company as required under Regulation 9(1) of the PIT Regulations, 2015, for not closing the trading window during the UPSI period. Therefore, the Noticees cannot be allowed to take shelter under a wrong act of the Company, wherein, it failed to close the trading window. Therefore, I reject such contentions of the Noticees.

43. The Noticees have contended that the unlawful gain of Rs 35,10,739/- and Rs 33,98,498.50/- computed for Noticees No. 1 and 2, respectively, was contrary to the settled position that, the unlawful gain is computed on the basis of actual realization of the funds. Further, Noticee No. 2 is still holding the shares purchased by them and therefore profit/loss, if any cannot be ascertained unless the same are sold. In this regard, I note that the ill-gotten gains made by the

Noticees have been computed using the formula of - multiplying the total number of shares purchased by each Noticee with the difference of average buy price of each Noticee and the closing price of the shares of IVL on March 15, 2017 i.e. the next day of making of UPSI publically available. The closing price of shares of IVL on March 15, 2017 has been taken in view of the fact that there is no actual sale of the shares by the Noticees and the prohibition on trading by insiders in the scrip of the company continues till next day of becoming public of UPSI. In view of aforesaid circumstances, I am of a view that formula applied for calculation of the notional ill-gotten gains made by the Noticees has been computed correctly and the Noticees No. 1 and 2 have made gain of Rs 35,10,739/- and Rs 33,98,498.50/-, respectively. Therefore, I found that the judgment of Hon'ble SAT in the matter of *Rakesh Agarwal case [2004 49 SCL 351 SAT]* on which the Noticees have placed reliance upon is not applicable in the fact of unlawful gain made by the Noticees in this case, and thus, the contentions raised by the Noticees in this regard are not tenable.

44. In view of aforesaid facts and circumstances, submissions made by the Noticees in their replies and during hearings, I am of a view that the Noticees No. 1 and 2 are found to be "connected persons" and thus, "insiders" in terms of relevant provisions of the PIT Regulations. Further, the information regarding sale / investment of IIL in ILPL is found to be UPSI in this matter and in terms of attendant circumstances, I find Noticees No. 1 in possession of or access to said UPSI and Noticee No. 2 being husband to Noticee No. 1 is also found to be having access to said UPSI by having it procured in violation of Regulation 3(2) of the PIT Regulations. Since, the Noticees No. 1 and 2 have traded in the scrip of the Company, while in possession of said UPSI, the Noticee No. 1 has violated the provisions of Section 12A (d) & (e) of SEBI Act, 1992 & Regulation 3(1) and 4(1) of the PIT Regulations and Noticee No. 2 has violated the provisions of Section 12A (d) & (e) of SEBI Act, 1992 & Regulation 3(2) and 4(1) of the PIT Regulations, respectively. As such (a) the Noticees No. 1 is liable for penalty under section 15G(i) and 15G(ii) of the SEBI Act; and (b) the Noticees No. 2 is liable for penalty under section 15G(i) and 15HB of the SEBI Act, for the alleged violations of the aforesaid provisions of the SEBI Act and PIT Regulations. The aforesaid penalty provisions are mentioned as under:

SEBI Act, 1992

Penalty for insider trading.

15G. *If any insider who, —*

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

45. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty"* are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act. The factors stipulated in Section 15J of the SEBI Act reads as follows: -

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investor/+s as a result of the default;

(c) the repetitive nature of the default.

46. It is noted from the material available on record, that wrongful gain accrued to the Noticees No. 1 and 2 through trading in the scrip of the Company, while in possession of said UPSI was Rs 35,10,739 and Rs 33,98,498.50, respectively. Noticee No. 1 was non-executive director in the Company during relevant period and was a member of management committee constituted on July 27, 2016 to authorize IDSL to sell its entire holding in ILPL. In this regard, in the matter of *E. Sudhir Reddy vs. SEBI* (Appeal no. 138 of 2011 decided on December 16, 2011) the Hon'ble Tribunal observed that:

"……However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in

public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice."

47. Further, Noticee No. 2 is husband of Noticee No. 1 and the employee of IREL and has association with Indibulls Group companies. Noticees No. 1 and 2 are found to be "connected persons" and thus, are "insiders" in the instant proceedings. I am of a view that, the "insiders" invariably have access to the UPSI by virtue of their position in the corporate hierarchy or on account of their official duties. This access creates an information asymmetry between those having access to such information and the multitude of shareholders/ investors who have no access to such information. The protection of investors in the securities market requires that there should not be any information asymmetry between these two classes of stakeholders. The PIT Regulations are aimed at addressing the information asymmetry and it prohibits trading in the shares of the company by the insiders while in possession of UPSI. Such regulation of trades of the insider is necessary to protect the interest of investors in the securities market and also for regulation and development of the market. If insider trading is not contained, prohibited and dealt with firmly, it would hamper and jeopardize the interest of an investor.

48. I have also taken note of the SEBI order dated February 05, 2020 in the parallel proceedings under section 11B of the SEBI Act against the Noticees, on same subject matter, wherein, Ld. WTM barred Noticees No. 1 - 2 from the securities market for a period of one year from the date of aforementioned order and directed them to disgorge the amount of Rs 87,21,918.55/- (unlawful gain + interest). As per submissions of AR, the Noticees have deposited the aforesaid amount in June, 2019, when disgorgement order was passed in the parallel proceedings. Further, the Noticee No. 2 is still holding the shares of IVL purchased during the UPSI period. The aforesaid factors may be the mitigating factor while deciding the penalty. Having said that, I am of an opinion that, the act of insider trading as found in this case has a potential to keep the investors in dis-advantage position in comparison to "insiders" and same cannot be in the interest of securities market. The law does not permit any allowance to be made for such act as found in this case. The act of "insiders" as found in this case, had clearly defeated the purposes of the Regulations i.e. investor protection and orderly development of the securities markets.

49. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs 25,00,000/- (Rupees Twenty-Five Lakh Only) each on Noticees Ms. Pia Johnson and Mr. Mehul Johnson. The aforesaid penalty commensurate with the violations committed by these Noticees, respectively, in this case:

50. The Noticees shall remit / pay the said tot al amount of penalty within 45 days of receipt of this order by way online payment on SEBI website at following tabs on SEBI website www.sebi.gov.in – ENFORCEMENT -> Orders ->Orders of AO -> Pay Online or by way of using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.In case you face any difficulties in payment of penalties, you may contact the support at portalhelp@sebi.gov.in .

51. The said confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD 1-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

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

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

53. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: May 21, 2021 **Amit Pradhan**

Place: Mumbai **Adjudicating Officer**