WTM/AB/IVD/ 18 /2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11(5) and 11B of Securities and Exchange Board of India Act, 1992

In respect of:

Name of the Noticee	PAN
Shri Udayant Malhoutra	ADKPM5097J

In the matter of:

Dynamatic Technologies Limited.

1. The present proceedings emanate from an ad interim ex parte order cum show cause notice dated June 15, 2020 (hereinafter referred to as the "**interim order or SCN**") passed by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") in the matter of Dynamatic Technologies Ltd. (hereinafter referred to as "**DTL**" or "**the Company**"). In the interim order Shri Udayant Malhoutra (hereinafter referred to as "**Noticee**") who is the CEO & Managing Director of DTL was found to have traded in the shares of the Company while being in possession of unpublished price sensitive information (hereinafter referred to as "**UPSI**") and thus *prima facie* violated Sections 12A (d) and(e) of the Securities and Exchange Board of India Act, 199122 (hereinafter referred to as "**SEBI Act**") and Regulation 4(1) read with Regulation 4(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") as well as Clause 6 of

Schedule B read with Regulation 9(1) of the PIT Regulations. In the interim order the following directions were issued in respect of the Noticee:

"25…..

a. A sum of ₹3,83,16,230.73, being the notional loss avoided on account of trades carried out during the UPSI Period, shall be impounded from Udayant Malhoutra (PAN: ADKPM5097J) with immediate effect.

b. Udayant Malhoutra is directed to credit the aforesaid amounts to an Escrow Account ("Escrow Account in Compliance with SEBI Order dated June 15, 2020–A/c Udayant Malhoutra") in a nationalized Bank, by marking a lien over it. Banks are not allowed to transfer the amounts available in the bank accounts of Udayant Malhoutra (PAN: ADKPM5097J) other than to the said Escrow Account until the amounts as stated above are transferred to the Escrow Account. Credits, if any, into the accounts may be allowed. Depositories are directed that no debit shall be made without the permission of SEBI, in respect of the demat accounts held by the aforesaid person. The Banks and the Depositories are directed to ensure that all the aforementioned directions are strictly enforced.

26. Further, Udayant Malhoutra is directed not to dispose of or alienate any of his assets/properties/securities till such time the amounts are credited to Escrow Account. Further, he is directed to provide, within 7 days of this Order, a full inventory of all his assets and properties and details of all their bank accounts, demat accounts and holdings and holdings of shares/securities, if held in physical form and details of companies in which he holds substantial or controlling interest.

27. The prima-facie observations/findings contained in this Order are made on the basis of the material available on record. In the light of the alleged violations of the provisions of Sections 12A(d)and(e) of the SEBI Act and Regulation 4(1) read with Regulation 4(2) of PIT Regulations as well as Clause 6 of Schedule B read with Regulation 9(1) of the PIT Regulations, by Udayant Malhoutra, this Order shall be treated as a Notice under Section 11(1), 11(4), 11B(1),11(4A) and 11(5) read with Section 15G and 15HB of the SEBI Act, calling upon him to show cause as to why certain directions shall not be passed against him, as proposed hereunder;

    a. Direction to disgorge an amount equivalent to the loss avoided on account of insider trading in the shares of DTL along with interest;

    b. Direction to restrain him from accessing the securities market and prohibiting him from buying, selling or otherwise dealing in securities for an appropriate period;

c. Levying monetary penalty under the provisions of Sections 11(4A) and 11B(2)read with Section 15G and 15HB of the SEBI Act."

2. Aggrieved by the interim order the Noticee filed an Appeal (bearing Appeal No 145/2020) before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") and vide an order dated June 27, 2020, the Hon'ble SAT observed as follows:

> *"11. As held in North End Foods Marketing Pvt. Ltd. (supra) there is no real urgency in the matter to pass an ex-parte interim order especially during the pandemic period. There is no doubt that SEBI has the power to pass an interim order and that in extreme urgent cases SEBI can pass an ex-parte interim order but such powers can only be exercised sparingly and only in extreme urgent matters. In the instant case, we do not find any case of extreme urgency which warranted the respondent to pass an ex-parte interim order only on arriving at the prima-facie case that the appellant was an insider as defined in the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations" for short) without considering the balance of convenience or irreparable injury.*
>
> *12. In the light of the aforesaid, the impugned order cannot be sustained and the same is quashed at the admission stage itself without calling for a counter affidavit except the show cause notice. The appeal is allowed. The Misc. Application No. 154 of 2020 and Misc. Application No. 155 of 2020 are accordingly disposed off. We further direct that the appellant to file a reply to the show cause notice within four weeks from today. The respondent will decide the matter finally after giving an opportunity of hearing to the appellant either through physical hearing or through video conference within six months thereafter. During the interim period, in order to safeguard the interests of the respondent and more particularly the interest of the investors in the securities market and also to protect the integrity of the securities market, we direct the appellant to give an undertaking to the respondent within four weeks from today that he will not alienate 50% of his total shareholdings of the company DTL held as on date, as stated by the learned counsel for the appellant."*

3. On being aggrieved by the said order of the Hon'ble SAT, in so far as it contained observations regarding power of SEBI, a Civil Appeal was filed by SEBI before

Hon'ble Supreme Court of India under Section 15 Z of the SEBI Act. The aforesaid civil appeal filed by SEBI was disposed of by Hon'ble Supreme Court, *inter alia*, with the following observations:

> *"……9 Since we have come to the conclusion that the Tribunal was on the facts of the case correct in setting aside the ex-parte order of the Whole Time Member on the ground that no urgency has been made out to sustain such an order, it is necessary for this Court to clarify that the interpretation which has been placed by the Tribunal on the powers of SEBI, particularly in paragraph 9 of the impugned order, which has been extracted above, shall not be cited as a precedent in any other case. The order passed by the SEBI must necessarily be in accord with Section 11(4) of the SEBI Act……..."*

4. In this background the present proceedings are being conducted. The facts and allegations in the present case, as observed in the interim order, are as follows:

4.1. SEBI conducted an investigation into the possible insider trading in the shares of DTL during the period from August 17, 2016 to November 11, 2016 (hereinafter referred to as the "**Investigation Period**"), on the basis of UPSI, in contravention of the provisions of the SEBI Act, read with PIT Regulations. DTL is a company registered under the Companies Act, 1956 and its shares are listed on BSE Limited (hereinafter referred to as "**BSE**") and the National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**").

4.2. The Directors and Key Personnel of DTL during the investigation period were as under:

Table 1

Director Name	Designation	Date of appointment	Date of Cessation
Govind Manik Mirchandani	Director	June 27, 2008	--
Udayant Malhoutra	Managing Director	October 1, 1989	--
Air Chief Marshal S Krishnaswamy	Director	July 23, 2005	August 13, 2017
Vijay Kapur	Director	January 31, 1992	August 13, 2017

N R Mohanty	Director	September 16, 2006	--
P S Ramesh	Whole Time Director	November 14, 2014	--
Hanuman Kumar Sharma	CFO	November 14, 2014	February 14, 2018
Malavika Jayaram	Director	June 27, 2008	--
Shirish Saraf	Additional Director	November 11, 2016	April 25, 2018

4.3. The shareholding pattern of DTL for various quarters prior to, during and subsequent to the Investigation Period are as under:

Table- 2 Shareholding Pattern

Particular	**Quarter ending March 16**			**Quarter ending June 16**		
	No. of shareholders	**No. Of shares**	**%**	**No. of shareholders**	**No. Of shares**	**%**
Promoters	11	32,42,245	51.13	11	32,42,245	51.13
Public	10,180	30,99,198	48.87	9,933	30,99,198	48.87
Total	**10,191**	**63,41,443**	**100.00**	**9,944**	**63,41,443**	**100.00**

Particular	**Quarter ending September 16**			**Quarter ending December 16**		
	No. of shareholders	**No. Of shares**	**%**	**No. of shareholders**	**No. Of shares**	**%**
Promoters	11	32,42,245	51.13	10	31,91,245	50.32
Non Promoters	9,264	30,99,198	48.87	9,701	31,50,198	49.68
Total	**10,191**	**63,41,443**	**100.00**	**9,711**	**63,41,443**	**100.00**

4.4. On November 11, 2016 (after the trading hours), DTL announced the consolidated financial results for the quarter ended September 30, 2016 wherein it was observed that the consolidated Net Profit after Tax (hereinafter referred to as "**NPAT**") for the quarter had decreased by 37.27% over the previous quarter. The price of the shares of DTL touched a 52 week high of ₹3,655.80 on October 24, 2016, i.e., prior to the announcement of the financial results. The price of the shares of DTL on November 11, 2016 (i.e., on the day when the announcement was made after

the trading hours) and on November 15, 2016 (i.e., the succeeding trading day) respectively, were as under:

Table- 3 Price Movement in the Shares of DTL

Exchange	Date	Opening Price (₹)	High Price (₹)	Low Price (₹)	Closing Price (₹)	Number of shares traded
BSE	Nov 11, 2016	3,111.30	3,299.00	3,066.00	3,227.40	1,006
	Nov 15, 2016	3,154.40	3,275.00	2,861.00	2,895.10	1,676
NSE	Nov 11, 2016	3,175.05	3,289.95	3,142.00	3,166.75	3,341
	Nov 15, 2016	3,200.00	3,200.00	2,865.00	2,899.55	10,306

4.5. The closing prices of the shares at BSE and NSE were ₹2895.10 and ₹2899.55 respectively on November 15, 2016 as against closing prices of ₹3,227.40 and ₹3,166.75 on November 11, 2016 i.e. a decrease of ₹332.30 and ₹267.20, respectively. SEBI carried out an investigation of the entities who have traded during the investigation period to find any violation of the PIT Regulations.

4.6. The consolidated financial results of the company for the quarter ended September 30, 2016 indicated that the consolidated NPAT for the quarter had decreased by 37.27% over the previous quarter. In view of the above, there existed an unpublished price sensitive information - relating to decline in the consolidated profit for the Quarter ended September 2016, till the financial results for the said Quarter were disclosed to the stock exchanges by DTL on November 11, 2016.

Date when Unpublished Price Sensitive Information (hereinafter referred to as "**UPSI**") came into existence:

4.7. The Company, vide its letter May 02, 2017 confirmed the dates of receipt of standalone financial results for the quarter ended September 30, 2016, from all the

subsidiaries for preparation of the consolidated Profit & Loss Account and the Balance Sheet, as under:

Table - 4 Chronology of receipt of standalone financial results from subsidiaries		
Sl. No.	**Name of the Subsidiary Company**	**Date of receipt of financials by DTL**
1.	JKM Ferrotech Limited, India	October 11, 2016
2.	JKM Erla Automative Limited, India	October 19, 2016
3.	JKM Research Farm, Ltd., India	October 22, 2016
5.	JKM Global Pte Limited, Singapore	October 23, 2016
6.	**Dynamatic Ltd., UK**	**October 18, 2016**
7.	Yew Tree Investments Ltd., UK	October 18, 2016
8.	**Eisenwerk Erla GmbH, Germany**	**October 20, 2016**
9.	JKM Erla Holdings GmbH, Germany	October 20, 2016
10.	Dynamatic LLC, US	October 18, 2016

4.8. Further, the Company, vide email dated May 12, 2017, submitted that the decline in the consolidated revenue for the quarter ended September 30, 2016 when compared with the previous quarter ended June 30, 2016, was majorly attributable to the decline in revenue of Dynamatic Ltd., UK and Eisenwerk Erla GmbH, Germany. This decline in revenue of the aforesaid two subsidiaries resulted in overall decline in EBITDA for the quarter ended September 30, 2016 when compared with the previous quarter ended June 30, 2016. Hence, in the extant matter, the date of receipt of financials from the aforesaid subsidiaries shall be treated as the date when the UPSI came into existence. Accordingly, the date of receipt of the financials from Dynamatic Ltd., UK (i.e., October 18, 2016) and Eisenwerk Erla GmbH, Germany (i.e.,October 20, 2016) shall be considered as the relevant date of existence of UPSI. Therefore, the earliest date being October 18, 2016 i.e., the date of receipt financials from Dynamatic Ltd., UK is taken as the date when the UPSI came into existence.

Date when UPSI ceased to exist and became public

4.9. Price Sensitive Information i.e. the decline in the consolidated profit for the quarter ended September 30, 2016,ceased to exist and became public when DTL disclosed its quarterly consolidated financial results, to the stock exchanges on November 11, 2016 (after the trading hours).

4.10. Therefore, the Period of UPSI has been determined as - from October 18, 2016 to November 11, 2016 (both days inclusive). The announcement regarding decline in the consolidated profit of DTL for the quarter ended September 30, 2016 had a negative impact on the share price of DTL, as given below:

Table 5- Impact of Announcement by DTL on the share price of DTL at BSE & NSE:

<table>
<tr><th>Date</th><th>Announcement by DTL</th><th>Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr>
<td>November 11, 2016 (after trading hours)</td>
<td>Consolidated quarterly financial results for the quarter ended September 30, 2016</td>
<td>
11/11/2016 – BSE
<table>
<tr><th>Open</th><th>High</th><th>Low</th><th>Closing</th></tr>
<tr><td>3111.30</td><td>3,299.00</td><td>3,066.00</td><td>3,227.40</td></tr>
</table>
No. of shares traded: 1,006

11/11/2016 – NSE
<table>
<tr><th>Open</th><th>High</th><th>Low</th><th>Closing</th></tr>
<tr><td>3,175.05</td><td>3,289.95</td><td>3,142.00</td><td>3,160.00</td></tr>
</table>
No. of shares traded: 3,341

15/11/2016 - BSE
<table>
<tr><th>Open</th><th>High</th><th>Low</th><th>Closing</th></tr>
<tr><td>3,154.40</td><td>3,275.00</td><td>2,861.00</td><td>2,861.00</td></tr>
</table>
No. of shares traded: 1,676

15/11/2016 - NSE
<table>
<tr><th>Open</th><th>High</th><th>Low</th><th>Closing</th></tr>
<tr><td>3,200.00</td><td>3,200.00</td><td>2,865.00</td><td>2,899.55</td></tr>
</table>
No. of shares traded: 10,306

16/11/2016 - BSE
<table>
<tr><th>Open</th><th>High</th><th>Low</th><th>Closing</th></tr>
<tr><td>2,936.35</td><td>2,971.30</td><td>2,850.00</td><td>2,944.85</td></tr>
</table>
No. of shares traded: 425

16/11/2016 - NSE
<table>
<tr><th>Open</th><th>High</th><th>Low</th><th>Closing</th></tr>
<tr><td>3,055.95</td><td>3,056.00</td><td>2,861.50</td><td>2,953.25</td></tr>
</table>
No. of shares traded: 4,592
</td>
<td>Price of the scrip closed at ₹3,227.40 in BSE and at ₹3,160 in NSE on November 11, 2016.

The price of the scrip decreased substantially on November 15, 2016 i.e., the next trading day, and touched a low of ₹2,861 in BSE and ₹2,865 in NSE i.e. a fall of ₹366.40 and ₹295 respectively from close of November 11, 2016.

Further, volume of the scrip increased substantially at both the exchanges. From 1,006 to 1,676 and from 3,341 to 10,306 in BSE and NSE respectively, as compared to volume of November 11, 2016.</td>
</tr>
</table>

4.11. It is observed from above table that the price of the shares decreased substantially on November 15, 2016 touching a low of ₹2,861.00 and ₹2,865.00 in BSE and NSE respectively, i.e. a fall of 11.35% at BSE and 9.34% at NSE, compared to the closing prices on November 11, 2016.Accordingly, I note that the announcement was price sensitive and had a significant influence over the prices of the shares of the company.

4.12. Shri Udayant Malhoutra, being the CEO & Managing Director of DTL, is connected to the Company and was reasonably expected to have access to the aforesaid UPSI. Therefore, prima-facie, Shri Udayant Malhoutra is a "connected person" in terms of Regulation 2(1)(d)(i) of the PIT Regulations and can be considered to be an "insider" in terms of Regulation 2(1)(g) of the PIT Regulations.

4.13. The investigation also revealed that the said entity viz., Shri Udayant Malhoutra had traded in the shares of DTL during the period of UPSI. The details of the trades carried by Shri Udayant Malhoutra in the shares of DTL during the period of UPSI are given below:

Table 6

Date	Buy Qty	Buy value	Sell Qty	Sell Value (Rs)
24/10/2016 (BSE)	0	0	23,483	8,01,76,043.75
24/10/2016 (NSE)	0	0	27,517	9,42,46,746.30
TOTAL			51,000	17,44,22,790.05

4.14. Therefore, Shri Udayant Malhoutra being "insider", has traded in the shares of the company while being in possession of UPSI and has, *prima-facie*, violated Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) read with 4(2) of the PIT Regulations by trading in the shares of DTL when in possession of UPSI, thereby indulging in insider trading.

4.15. The Investigation Report, *inter alia*, observed that the contention of Shri Udayant Malhoutra that the sale of shares was executed to comply with the covenants of the agreement entered into with the banks, is not tenable as the sale was not done

within the timeline stipulated therein and he could have sold these shares anytime between July 15, 2016 to October 12,2016.

4.16. The consolidated quarterly financial results of DTL were communicated to the stock exchanges after the trading hours on November 11, 2016. Further, the price of the shares of DTL witnessed fall on the immediately succeeding trading day i.e., November 15, 2016. Thus, Shri Udayant Malhoutra, having traded on the basis of UPSI and during the UPSI period, have avoided loss on account of the fall in price of the shares due to the announcement of the said quarterly consolidated financial results of DTL.

4.17. The formula for and the computation of notional loss avoided by trading while in possession of UPSI is as given below:

Unlawful loss avoided	=	[No. of shares sold while in possession of UPSI (A) x Weighted Avg Sell Price (B)] Minus (-) [No. of shares sold while in possession of UPSI(A) x Avg Closing

4.18. Based on the above formula, the notional loss averted by Shri Udayant Malhoutra by selling 51,000 shares of DTL before the announcement of financial results, is calculated at ₹2,66,59,215.05 (Rupees two crore sixty six lakh fifty nine thousand two hundred and fifteen and paise five only) as per Table 7 given below:

Table 7

Exchange	No. of shares sold	Wt.Avt. Sell Price	Avg CP* on 15 Nov 2016	Total Sale Value (As per Trade Log from the Exchanges concerned)	Value of Shares as on 15 Nov 2016	Unlawful Loss avoided
	(A)	(B)=((D/	(C)	(D)	(E) = (AxC)	(F) = (D-E)
BSE	23,483	3414.22	2897.325	8,01,76,043.75	6,80,37,882.97	1,21,38,160,78
NSE	27,517	3425.04	2897.325	9,42,46,746.30	7,97,25,692.03	1,45,21,054.27
TOTAL	51,000	3420.05	2897.325	17,44,22,790.0	14,77,65,575.0	2,66,59,215.05

4.19. Factors considered for calculation of notional loss avoided are as given below:

i. Vide announcement disseminated on November 3, 2016, the trading window in accordance with the PIT Regulations, was closed from November 4, 2016 to November 14, 2016 (both days inclusive).

ii. As the shares are listed on BSE and NSE and the entity has sold the shares in both the exchanges, average of closing prices on November 15, 2016 is calculated for the purpose {(Average Closing Price = Closing Price at BSE + Closing Price at NSE)/2 = (₹2,895.10 + ₹2899.55)/2 = ₹2,897.325}.

4.20. Accordingly, it is, prima-facie, observed that Shri Udayant Malhoutra had avoided the loss of ₹2,66,59,215.05 by selling 51,000 shares of DTL before the declaration of the financial results to the stock exchanges. As the amount of notional loss avoided was pertaining to the period from October 24, 2016, it becomes reasonable and necessary to levy an interest at the rate of 12% simple interest per annum, which has been computed as under:

Table-8 –Computation of Notional Loss avoided by Shri Udayant Malhoutra

Name of the Entity	Notional Loss avoided (in ₹)	Interest @ 12% per annum*(in ₹)	TOTAL(in ₹)
Udayant Malhoutra	2,66,59,215.05	1,16,57,015.68	3,83,16,230.73

*Interest calculated on notional loss avoided, during the period from the date when the entity traded i.e., on October 24, 2016 to the date of this order, i.e. June 15, 2020

4.21. As observed above, the amount of loss avoided by Shri Udayant Malhoutra in aggregate including interest through trading in the shares of DTL amounted to ₹3,83,16,230.73/- (Rupees Three crore eighty-three lakh sixteen thousand two hundred and thirty and paise seventy-three)

4.22. It is also observed that Shri Udayant Malhoutra approached Motilal Oswal Securities Ltd. to sell 60,000 shares on October 24, 2016. However, as per the information submitted by the DTL, Shri Udayant Malhoutra, vide his Application

for Pre-Trading Approval dated October 20, 2016, sought approval for sale of 51,000 shares only, which was approved by the Compliance Officer on October 20, 2016. Also, it is observed from the trade logs obtained from the Exchanges, the entity placed two Sell Orders for 26,000 shares each in both BSE and NSE by his trading member Motilal Oswal Securities Ltd. Hence, it is, *prima facie*, observed that the Pre-Trading Approval was not taken for the required number of shares for which sale orders were placed. Further, a designated person shall not apply for pre-clearance of any proposed trade if such person is in possession of unpublished price sensitive information even if the trading window is not closed. Since Shri Udayant Malhoutra was the Managing Director and 'a connected person', he has, *prima facie*, violated Sections 12A(d)and(e) of the SEBI Act and Regulation4(1) read with Regulation 4(2) of PIT Regulations as well as Clause 6 of Schedule B read with Regulation 9(1) of the PIT Regulations.

5. In response to the interim order, Noticee has filed a reply dated July 24, 2020 wherein *inter alia*, Noticee has submitted as under:

5.1. At the outset, the Noticee denied and disputed all the allegations, averments, contentions and statements contained in the SCN and he denied that he had violated the SEBI Act and the PIT Regulations as alleged in the SCN or otherwise.

5.2. The allegations in the SCN against him are based on mere conjectures and surmise, and contrary to the record. Serious allegations of insider trading have been made without examining the full record and without bringing to bear the standard of proof necessary to make out even a *prima facie* case, let alone sustain such a serious charge.

5.3. SEBI has failed to provide complete inspection of documents, as requested by his letter dated July 03, 2020. While SEBI shared some of the documents, it failed to provide the following documents on the basis

that it had not relied upon the same (without dealing with whether it is relevant or not, which is the real test):

a. Letter dated March 10, 2017 addressed by National Stock Exchange (NSE) to SEBI along with the analysis report referred to in paragraph 1 at page 1 of the Investigation Report.

b. The minutes of the meeting of the ISD or any other document of ISD referring the matter for detailed investigation to IVD referred to in paragraph 1 at page 1 of the Investigation Report.

c. The minutes of the meeting of the Scrutiny committee of IVD held on July 04, 2017 referred to in paragraph 1 at page 1 of the Investigation Report.

5.4. The charge of breach of the PIT Regulations is untenable for the following key reasons:

a. The alleged UPSI i.e. information relating to the adverse consolidated financial results for the quarter ended September 30, 2016, could not have come into existence on October 18, 2016 or October 20, 2016 as the information relating to the two subsidiaries, that was received by email on these dates contained raw financial data for half-yearly period ending September 30, 2016 in local currencies (GBP and Euro) and not the quarterly financial results.

b. This data in any event was received by officials of DTL, and the Noticee was not marked on any of these emails nor were these emails forwarded to him. In fact, the attachments to the emails contained no information that would point to a decline in the consolidated net profits for the quarter ended September 2016.

c. Pertinently, SEBI has merely relied on the covering emails in question received from officials of the two subsidiaries and did not ask for the underlying attachments before arriving at a firm finding that the information in the emails constituted UPSI - a case of acting on half-

baked information, suspicion and surmise rather than cogent evidence. Had SEBI sought the attachments to the emails and perused them, it would have clearly shown that the data in question on its own, could not be reasonably regarded as having foreshadowed a purportedly adverse quarter.

d. An accurate insight into the consolidated financial position of DTL would have necessarily entailed a full review of the results of all its 10 subsidiaries along with the standalone results. In fact, data from two subsidiaries (JKM Research Farm Ltd. India and JKM Global Pte Limited, Singapore), admittedly, was received as late as on October 22, 2016 and October 23, 2016 i.e. just a day before the trade. In fact, the consolidation can be said to have occurred only on October 25, 2016, when a first draft of the consolidated results, was shared with the auditors;

e. In any case, the sale of shares was driven by the need to comply with covenants entered into with lenders in June 2016, and the sale was effected immediately after permission from the lenders who had an encumbrance over these shares to let me sell them was received. The covenants under the new loan agreement executed in June 2016 required the promoter group of DTL to reduce the percentage of shares pledged by the promoter group to 7.5% from 24.94%, as a condition for disbursal of the loan to enable DTL to undertake a project of national importance. A reduction in the quantum of promoter holding that was pledged, entailed repayment of loans due to the pledgee, IL&FS – financed substantially by a refinancing arrangement with ICICI and partly by sale of the promoter holding;

f. The record bears out that IL&FS released the pledge on October 24, 2016, and the Noticee sold 51,000 shares (representing 0.8% of the equity share capital of DTL) and clearly used the proceeds to repay

the indebtedness due to IL&FS. A sale undertaken in furtherance of meeting *bona-fide* pre-existing obligations, has been held to constitute a relevant and valid circumstance in determining whether the trades in question were violative of Insider Trading Regulations.

g. Yet another fundamental flaw in the SCN is the allegation that the UPSI was adverse by wrongly comparing the results of the quarter ended September 30, 2016 with the immediately preceding quarter i.e. the quarter ending June 30, 2016 instead of comparing it with the results of the corresponding quarter of the previous year. DTL's business is cyclical in nature and it is fallacious to compare every quarter of the year as being identical.

h. The SCN also wrongly links the decline in share prices to the allegedly adverse results when there were a number of other external factors were responsible for the decline – forgetting that the announcement of demonetisation took place on November 8, 2016, which led to a market-wide reaction in stock prices during the period when the quarterly results were announced (November 11, 2016).

i. The allegation that there was a difference between the numbers of shares for which pre-clearance was sought and the shares actually sold clearly erroneous – as pre-clearance was indeed sought for sale of 51,000 shares and 51,000 shares were sold and not 52,000 shares as wrongly alleged in the SCN.

5.5. The facts related to the matter:

a. In order to finance the new aerospace facilities being set up by DTL, it approached a consortium of bankers led by ICICI for financial assistance for INR 390 Crores. During the negotiations which concluded in June 2016, ICICI insisted on limiting the pledge by the Promoter/Promoter Group to a maximum of 7.5% of equity capital of DTL from the then prevailing 24.94%, as one of the loan covenants.

This pledge was originally created as security from the Noticee / Promoter Group towards direct loan of INR 50 Crores availed from IL&FS Financial Services Limited (IL&FS) by JKM Erla Automotive Limited (100% Subsidiary of DTL), and also an additional INR 50 crores borrowed by the Promoter Group to invest into DTL as growth capital.

b. In the new facility agreement, the ICICI-led consortium refinanced the entire JKM Erla Automotive Limited loan of INR 50 crore which was repaid to IL&FS. Additionally, by prepaying part of the promoter loan to IL&FS, the total pledge of the promoter group would be reduced from 24.94% to below 7.5% in line with the new covenant insisted upon by ICICI. This was to be raised through sale of shares by me (< 1% of DTL), bringing down promoter shareholding from 51.1% down to 50.1% thus requiring me to sell some of my shares to repay part of the Promoter debts. Therefore, ICICI also modified its original covenant of minimum Promoter Shareholding from 51.1% down to 50.1% coupled with personal guarantee of Promoter

c. Accordingly, efforts were made from June 2016 onwards to get a No Objection Certificate from ILFS as well as a release of pledged shares to enable sale. Despite many emails and phone calls, ILFS took a long while to give effect to this. Finally, ILFS released the locked shares on October 24, 2016, and immediately on the same day the Noticee was able to sell 51,000 shares. Consequently, the Noticee was able to repay part of the ILFS loan from the proceeds and reduce the pledge. Based on this the ICICI- led consortium released the final tranche of loans to DTL.

d. On November 04, 2016, the Compliance Officer of DTL closed the trading window as per internal Code of Conduct pursuant to SEBI (PIT) Regulations. On November 11, 2016, the Company's Board met and

reviewed quarterly financial performance along with the limited review report of the Auditors for the half year ended September 30, 2016. At the end of the meeting the Board publicly released results for the quarter as well as half year ending September 30, 2016. It was the best (Q2) September quarter performance of the company over the past decade.

e. With demonetization being announced just two days prior to announcement of the Q2 results, the Stock Market went in to a meltdown, and almost all companies (especially automotive/FMCG) saw their stocks plunge by 6~16%. DTL's stock (NSE) too fell over 3% & 8% on November 11 & 15, 2016, respectively.

f. Over the next three-and-a-half years SEBI sent a few questions each year to DTL, each of which was answered fully. Not a single communication was sent directly to the Noticee. On November 28, 2019, the Noticee was asked for 4 standard clarifications through the compliance officer of DTL, and the response was sent back through him to SEBI on December 24, 2019. Over the entire period, despite requests for a personal hearing on over 7 occasions, none were granted.

g. On June 15, 2020, to the Noticee's surprise, he received an ex-parte impounding order from SEBI for alleged violation of Insider Trading Regulations as stated above.

5.6. The covering emails in his possession dated October 18/20, 2016 which have been used to establish the date on which UPSI came in to existence, on their own do not contain any financial data. In the normal course, the investigator ought to have called for the attachments referred to in the covering email which evidently has not been done. If he had done so, he would have found that it only contained raw and incomplete data required to arrive eventually at the half yearly financials (not pertaining to the quarter under investigation). Thus, it appears that all the allegations

pertaining to violation of SEBI (PIT) Regulations against the Noticee are made by SEBI based on the information provided by Company vide letter dated May 02, 2017 giving the post-facto analysis of quarter financials made at the time accounts were fully ready for presentation to the Board on November 11, 2016. SEBI's conclusion that UPSI came into existence on the 18 and 20 of October 2016, on the assumption that the post-facto analysis which were presented to the Board on November 11, 2016, would be readily available on the dates of exchange of raw data on the aforesaid dates is flawed and untenable.

5.7. It appears that all the allegations pertaining to violation of SEBI (PIT) Regulations by SEBI, against the Noticee are based on a chart provided by DTL vide letter dated May 02, 2017 giving the post facto analysis of the quarterly results after the accounts were fully ready for presentation to the Board on November 11, 2016. This information was not available with the Noticee as UPSI on 18th/ 20th October 2016. In fact, this analysis was not available to any one prior to finalization of accounts.

5.8. As a consequence, SEBI has erred in concluding that UPSI came into existence on the dates of emails from the aforesaid two subsidiaries without even examining the underlying data received vide these emails. The data received was the raw data for the six-month period ended September 30, 2016 in local currency GBP and Euro and does not contain any information or analysis.

5.9. DTL had 10 wholly owned subsidiaries in India, UK, Germany and Singapore in 2016-17. In addition, its manufacturing units operated at multiple locations with multiple trading currencies (INR, USD, EURO, GBP). The subsidiaries of DTL commenced sharing their first raw cut financials for the half year ending September 30, 2016 from October 11, 2016 to October 23, 2016 by emails, none of which were marked to the Noticee. The first cut standalone financials for the half year ending September 30, 2016 of

Dynamatic Limited, UK and Eisenwerk, Germany were shared with finance team of Dynamatic on 18th and 20th October 2016 respectively in local currencies (Euro and GBP). The Noticee was not marked on these emails either. The Noticee is unable to find any reference to the quarters ending 30th September 2016 and 30th June 2016 in the emails dated 18th/20th October 2016 referred to by the SCN from the aforesaid two entities (UK & Germany). The information received vide these emails (not sought by SEBI) had to be consolidated by the finance and audit team as per applicable accounting standards to derive consolidated data for six month ended 30th September 2016. With this limited information, the rationale adopted by SEBI to conclude UPSI came into existence on 18th October 2016 is unclear. The first cut of the consolidated financials for the half year ended September 30, 2016 were shared by DTL on 25th October, 2016 with the auditors by an email. Again, the Noticee was not marked on this email. This data underwent various iterations before the final consolidated numbers indicating quarterly results for 30th September 2016 emerged on 5th November 2016. It is reiterated that half yearly data contained in the emails dated 18th/20th October 2016 could not be considered as UPSI and the date on which it came into existence.

5.10. The date on which raw half yearly financials were received from Dynamatic UK, and Eisenwerk Erla GmbH cannot be treated as the date on which UPSI came into existence as they were raw data which cannot be considered as UPSI. Thus, it is abundantly evident that the alleged UPSI for the quarter under investigation was not even in existence on or prior to the sale of shares.

5.11. Noticee is the Managing Director and therefore it is being assumed that he would be in the know of everything at all times. At the relevant time he was not in possession of the information which is claimed to be UPSI, which

itself, the information is not. He was not marked on any of the emails vide which the alleged draft financials of DTL's subsidiaries were shared.

5.12. Pertinently, the Company vide an email dated 4th November, 2016, while circulating the detailed agenda to the Board of Directors, Mr. Naveen Chandra, Head – Legal, Compliance & Company Secretary of Dynamatic did not circulate the unaudited financial results for the quarter and half year ended 30th September, 2016 to the board of directors of Dynamatic including me pursuant Secretarial Standard-1. The sole object of the rule that the secretary of the company is not required to provide unaudited financials beforehand and only on a date closer to the Board Meeting is to avoid leakage of the UPSI, if any. Therefore, it is abundantly clear that I did not have access / possession of alleged UPSI.

5.13. To invite a charge of insider trading the ingredients in Regulation 4 (1) are required to be established. One of the key ingredients is being in possession of unpublished price sensitive information when trading in the shares of the company. Section 4 (2) places a burden on the Noticee to prove that he was not in possession of UPSI. As demonstrated by him above, he was not marked in any of emails exchanged with respect to the standalone financials of the subsidiaries, nor the consolidation of the financials. Clearly, the shares were sold much before that including prior to the consolidation of the financials for the quarter ending 30th September, 2016. Therefore, he has discharged the burden placed on him to prove that he was not in possession of the UPSI. As a result, the burden then shifts on SEBI to prove the contrary and SEBI has failed to discharge the burden of proof or the standard of proof incumbent upon it in order to prove that I was in possession of UPSI.

5.14. The covenant in the Facility Agreement to reduce the pledge was the sole motivation to sell the shares in order to enable free flow of capital to fund DTL's aerospace expansion for the ultimate benefit of its shareholders and other stakeholders. The decision to sell the shares to comply with the said

covenant was taken was taken on 29th June 2016, the day Dynamatic agreed to ICICI's loan covenant to reduce the promoter/promoter group pledge to a maximum of 7.5%, which is prior to the investigation period. If not for the loan covenant, the Noticee would not have sold the shares held by him in Dynamatic thus bringing down his shareholding by over 1% from 51.1 to 50.1%.

5.15. On the other hand, failure on his part to comply with the loan covenant would have led to irreversible project cost and time over runs. Additionally, the lenders consortium could have recalled the loan and most certainly would have refused to disburse the balance loan amount.

5.16. Therefore, there is no question of the intent to sell being driven by alleged UPSI, and the same had no connection whatsoever to the financial information for the quarter ended September 2016. Irrespective of the results, the Noticee was obligated to sell the requisite number of shares and failure on his part to sell the shares would have triggered negative consequences impacting the performance and growth of the Company to the detriment of all the shareholders.

5.17. Given the multiple tasks that had to be executed to ensure compliance of loan covenants and timely disbursal of loan amounts for the project, DTL formed a core team of professionals to take care of the same. As submitted by the Noticee earlier, there was a considerable delay on the part of ILFS to release the pledge. The aforesaid team made a request to ILFS to release the shares pledged with them as early as 27th June 2016. In the middle of September 2016, ILFS promised to release the pledge, based upon which the team obtained pre-trading approval from the Compliance Officer on 19th September 2016 to sell 60,000 shares (based on the prevailing market price). However, ILFS failed to release the shares.

5.18. In the meanwhile, ICICI was exerting tremendous pressure on the Company to comply with the loan covenant before releasing the final tranche of the

loan. After constant follow up, ILFS again verbally confirmed on 20th October 2016 that clearance had finally been received by their committee and written confirmation would be sent the next day. On the basis of this, the team obtained pre-trading approval from the Compliance officer for sale of 51,000 shares (based on the prevailing market price) on 20th October 2016. IL F S's written confirmation initiating the process of release was received on 21st October 2016 followed by formal release of 3,75,000 shares on 24th October 2016. This finally enabled the sale of 51,000 shares on the same day, thus ensuring compliance of the loan covenant.

5.19. It is evident from the above, that the Noticee was able sell his shares only after release by ILFS on October 24th 2016, prepay the loan to ILFS and reduce the pledge in compliance with the loan covenant.

5.20. It is clear from Section 15G of the SEBI Act, 1992 that the reasons for which the trades in the securities took place are at the heart of the determination of whether the trading by an alleged insider is violative in nature. Some judgements which elucidate the above principle are as follows: Mrs. Chandrakala vs. SEBI (Order dated 31.1.2012 in Appeal No.209 of 2011), Rajiv B. Gandhi and Ors. v. SEBI (Order dated 09.05.2008 in Appeal No.50 of 2007), Abhijit Rajan vs. SEBI (Appeal 232 of 2016).

5.21. Thus, considering the above facts and supporting judgements, it can be concluded that since the Noticee has been able to demonstrate that the sale of shares by him was not motivated by the alleged UPSI, but solely to comply with covenants of the Facility Agreement dated 29th June 2016 he cannot be charged for insider trading.

5.22. SEBI has selectively picked only decline in the consolidated profit of DTL for the quarter ended September 2016 as against the quarter ended June 30, 2016 to come to the conclusion that announcement regarding results for quarter ended September 2016 has had a negative impact on the share price of DTL. It has ignored the positive information of significant growth in

the quarter ended September 2016 as compared to corresponding quarter ended September 2015 which was also part of the same announcement as can be seen below, to ascertain the positive impact on the price of DTL shares. The announcement made by the Company on November 11, 2016 (published in newspapers on November 12, 2016 was in accordance with Regulation 52 (8), read with Regulation 52(4), of the SEBI (LODR) Regulations, 2015, shows comparison of the Quarter ended September 30, 2016 with the corresponding Quarter ended September 30, 2015. It is clear from this information that Dynamatic recorded a Consolidated PAT of INR 8.04 Crores vs. INR 0.31 Crores. (Net Profit growth of 2452%). This was the best Q2 Result DTL recorded over the previous 5 years.

5.23. In doing so, SEBI has ignored the basic tenet that for a manufacturing Company like DTL the comparison of performance of any quarter with the corresponding quarter in the preceding year is more relevant and poignant. It is for this reason that mandated formats for publication of unaudited financial results as stipulated under the SEBI Act, require listed companies to incorporate data pertaining to corresponding quarter in the preceding year along with data of previous and current quarters to ensure investors have complete information. Like all companies in Germany, Eisenwerk Erla GmbH (100% Subsidiary) shuts down for summer vacation during the month of August, and contribution from this business is always muted during Quarter ended September. This is a normal feature of financials of DTL, and its stakeholders take this into consideration every year while evaluating performance. By no stretch of imagination can this information be considered as UPSI.

5.24. The announcement of demonetisation by the Government of India on 8th November 2016 had a massive impact on the stock market. The share prices of not just DTL but several other companies in the same sector like Tata Motors, Hero Honda etc. dropped ranging from 6 to 16%. Thus

the alleged decrease in price of the shares can be directly attributed to the announcement of demonetisation by the Government of India.

5.25. The Noticee was not in possession of the "UPSI", and did not trade on the basis of alleged UPSI and therefore did not avoid any loss whatsoever as alleged by SEBI. It is well settled that for issuing a direction in nature of disgorgement, it is essential to form an opinion that the amount directed to be disgorged should be an "ill-gotten gain". It is also pertinent to mention here that the entire proceeds from the sale of shares were used for satisfaction of the loans pursuant to the covenant under the Facility Agreement and to the benefit of DTL.

5.26. No loss has been avoided by the Noticee by the sale of 51000 shares as alleged in the SCN and consequently this is not a fit case for a direction of disgorgement to be passed.

5.27. With regard to the pre approval of the trades, in or about late September/ early October, the team entrusted with the sale of shares approached Motilal Oswal Financial Services Limited for sale of a proposed volume of between 50,000 to 60,000 shares (depending on the market price realised). The process of opening a trading account with Motilal Oswal was initiated on 18th October 2016, and on the next day the Noticee's KYC documents were submitted with Mr. Mk Srinivas solely nominated as the authorised point of contact. On 20th October, 2016, on the basis of price prevailing in the market, the team sought the approval of the Compliance officer for sale of 51000 shares. Finally, on 24th October, 2016, immediately on the release of pledge of 3,75,000 shares by ILFS, 51000 shares were sold on the basis of the Pre-Trading approval taken on 20th October, 2016. The Noticee is completely unaware of the reason for placing 2 sell orders of 26000 each by the stock broker, Motilal Oswal Financial Services. No such order was placed by Mr. MK Srinivas on behalf of the Noticee.

5.28. The Noticee has already demonstrated that he was not in possession of UPSI when the shares of DTL held by him were sold, hence this allegation has no basis whatsoever and is denied. Moreover, the Code of Conduct for Prevention of Insider Trading of DTL clearly provides that a Compliance Officer will not approve any proposed trade by a Designated Person until he / she determines that such Designated Person is not in possession of UPSI even though the trading window is open. Since the Compliance Officer approved the Pre-Trading Application for approval, it is evident that the Noticee was not in possession of UPSI at the time of the sale of shares.

6. An opportunity of hearing was provided to the Noticee on September 17, 2020. The Noticee, along with his authorized Representative appeared on that day and made submissions.

7. Vide written submissions dated September 30, 2020 the Noticee has further reiterated his submissions made in the reply dated July 24, 2020. The additional points submitted by the Noticee in the written submissions are as follows:

7.1. If the attachment to the impugned emails are perused it will be noted that the profit for the half year ending September 2016 for Dynamatic Limited, UK was 10,57,405 pounds and the profit for the year ending March, 2016 was 11,63,833 pounds. Thus, the profit for the half yearly period for the above subsidiary was almost equivalent to the profit earned in the whole year ended March, 2016. Profit for the half year ending 2016 for Eisenwerk Erla, GmbH was 15,11,073 Euros and the profit for the year ending March, 2016 was 29,37,195 Euros.Thus, the profit for the half yearly period for the above subsidiary was more than half of the profit earned in the whole year ended March, 2016 The above data as it stands does not Indicate an adverse result at all for the half yearly period ending September30 ,2016.On the contrary it shows a positive result. Moreover, the above data clearly does not indicate any adverse result for the quarter ending 30th September, 2016.

7.2. The subsidiaries of DTL commenced sharing their first cut raw financial for the half year ending September 30, 2016 from October 11, 2016 to October 23, 2016, none of which were marked to the Noticee. As stated in DTL's letter to SEBI dated May 02, 2017, date of commencement of process of consolidation of financial was October 25 2020 i.e after the sale of shares by the Noticee In fact, the consolidation was completed and unaudited financial results were only finalised on November 08, 2016.The above dates and events have been recorded by SEBI in its Investigation Report.

7.3. It Is pertinent to note that SEBI vide its email dated April 27,2017 specifically sought from DTL a comparison between the financial results for the quarter ending June 30, 2016 and September 30, 2016. On May 02, 2017 in its response to the above email, DTL shared a chart which showed a decline in the Net Profit after Tax by 37.27% in the quarter ending September,2016 as compared to the previous quarter. This post facto analysis was only done for the presentation to the Board of Directors on November,11 2016 and was not available on October 18/20,2016 (dates on which the alleged UPSI came into existence as per SEBI) or on the date of sale of the shares on October 24, 2016· or any date prior thereto. In fact. this analysis was not ayailable to any one prior to finalisation of the accounts. It is pertinent to note that effective tax rates for quarter ended June 30, 2016 was 34.7% whereas in quarter ended September 30, 2016 it was 43.4% resulting in 8.7% increase in effective tax rate impacted NPAT.

7.4. In the SCN, SEBI has selectively picked only decline in the consolidated profit of DTL for the quarter ended September 2016 as against the quarter ended June 30, 2016 to come to the conclusion that announcement regarding results for quarter ended September 2016 has had a negative impact on the share price of DTL. SEBI has ignored the fact that quarter ended September 30, 2016 result was the best Q2 result DTL recorded over the previous 5 years. In fact it was the best September quarter in operating profit in the history of DTL.

7.5. The announcement made to the stock exchange in November 11, 2016 by DTL as per the SEBI (LODR) Regulations, 2015 shows that the net profit during the quarter ended September 30, 2016 (Rs. 8.04 crores) as against September 30, 2015 (Rs.0.31crores) and the net profit during the half year ended September, 2016 (Rs. 20.07 crores) as against the net loss during the half year ended September 2015 (Rs.9.39 crores) shows a significant Increase. Additionally, the net profit of the half year ended September 2016 (20.88 crores) is more than the net profit of the entire year ended March 2016 (12.28 crores). Any investor looking at the results would have perceived these results as a positive result and not an adverse result. SEBI has cherry picked only the decline in the September 2016 quarter as compared to quarter ended June 2016.

Consideration of replies and observations

8. I have considered the allegations levelled against the Noticee in the interim order, reply of the Noticee, submissions made by the Noticee during the personal hearing and the written submissions filed after the personal hearing. Before dealing with the submissions made by the Noticee, it would be appropriate to refer to the relevant provisions of law pertaining to the matter, extract whereof is reproduced below:

Relevant extracts of the provisions of 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;

…"

Relevant extracts of the provisions of PIT Regulations:

"Trading when in possession of unpublished price sensitive information.

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

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: -

(i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

(ii) in the case of non-individual insiders: -

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, 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.

(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."

"Code of Conduct.

9.(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner."

SCHEDULE B

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

…..

"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."

9. Before dealing with the merits of the allegations levelled in the interim order, it would be appropriate to deal with a preliminary issue raised by the Noticee that he has not been provided with certain documents. The Noticee has contended that SEBI has not provided him complete inspection of documents, as requested by his letter dated July 03, 2020. In this regard, I note that vide mail dated July 07, 2020, SEBI replied to the Noticee's request for documents and provided certain documents to him as follows:

Sr. No.	**Particulars of information**	**Findings**
Documents mentioned/referred to in the SCN:		
1.	The documents/ materials based on which the table on impact of announcement by DTL on the share price of DTL at BSE and NSE (Table-5), was prepared and referred to in Paragraph 8/Page 7 of the SCN.	Price/Volume Data (for the scrip of DTL and for the trading day specified in the SCN) as obtained from BSE (www.bseindia.com) / NSE (www.nseindia.com) websites

		were relied upon. Enclosed for your ready reference – Annexure 1
2.	The documents/ material based on which the table on computation of notional loss avoided by Udayant Malhoutra (Table – 7) was prepared and referred to in paragraph 17/ page 12 of the SCN	No. of shares sold, Wt. Avg. selling price are as obtained from the Trade Log data obtained from BSE / NSE. Trade log data sent to you vide email dated June 16, 2020. However, the same is once again enclosed as Annexure-2. As regards rates under the column "Average Closing Price on Nov.15, 2016", explanation given in para 18 ii may please be seen. The closing prices of both BSE and NSE on November 15, 2016 are as obtained from the Price/Volume data as in remarks to Item 1 above.
Documents mentioned/ referred to in the Investigation Report		
3.	Letter dated 10th March, 2017 addressed by National Stock Exchange ("NSE") to SEBI along with the Analysis report enclosed therewith and referred to at Paragraph 1/page 1 of the Investigation Report.	Not relied upon
4.	The minutes of the meeting of ISD or any other document of ISD referring the matter for detailed investigation to IVD referred to at paragraph I/page 1 to the Investigation Report.	Not relied upon
5.	The minutes of the meeting of the Scrutiny Committee of IVD held on 4th July 2017 referred to at Paragraph 1/Page 1 to the Investigation Report.	Not relied upon
6.	The approval accorded by the competent authority for initiation of detailed investigation and allocating the case to ID-11 vide ON dated 27th July 2017 referred to at Paragraph 1/page 1 to the Investigation Report.	1. Copy of Proceedings appointing Investigating Authority dated 25th September 2017, in terms of approval accorded by the

		competent authority for initiation of detailed Investigation and allocation of the Case to ID-11 vide ON dated 27th July 2017. (Enclosed as Annexure 3a) 2. Subsequent to the transfer of the Investigating Authority appointed vide Proceedings dated 25th September 2017, the present Investigating Authority was appointed vide Proceedings for Order Appointing Investigating Authority dated 24th July 2019 (Enclosed as Annexure 3b)
7.	An email dated 10th December 2019 from Mr.Neeraj Agrawal, Senior Group Vice President, Compliance, Motilal Oswal Financial Services Ltd., to SEBI being Annexure 7 to the Investigation Report.	Enclosed as Annexure 4
Miscellaneous Documents:		
8.	All documents referred to and / or relied upon in the SCN and Investigation Report	All the documents/information that were relied upon in the SCN and mentioned as Annexure to the Investigation Report have been shared with you vide our emails dated June 16, 2020. However, in case you require any other document/ information that you feel are relied upon in the SCN but not mentioned as Annexure in the SCN/ Investigation Report, you may specifically seek the same to enable us to consider furnishing to you.
9.	Copies of all the documents that have been collected by SEBI during the course of this investigation or generated during the course of investigation including all digital records and other records pursuant to which the SCN has been issued	

10. The Noticee has further sought the following documents stating that they are critical and denial of complete inspection of these documents has impaired and prejudiced his ability to put in an effective reply to the Show Cause Notice. In this regard, my observation regarding the said documents is as follows:

Sr. No.	Documents sought by the Noticee	Observation
a.	Letter dated March 10, 2017 addressed by National Stock Exchange (NSE) to SEBI along with the analysis report referred to in paragraph 1 at page 1 of the Investigation Report	SEBI has carried out its independent investigation into the matter based on which the interim order has been issued. Therefore, the said document is not relevant in the present matter andt he request of the Noticee is untenable
b.	The minutes of the meeting of the ISD or any other document of ISD referring the matter for detailed investigation to IVD referred to in paragraph 1 at page 1 of the Investigation Report	This document is not relevant to the allegations levelled against the Noticee in the interim order and therefore this request is untenable.
c.	The minutes of the meeting of the Scrutiny committee of IVD held on July 04, 2017 referred to in paragraph 1 at page 1 of the Investigation Report.	This document is not relevant to the allegations levelled against the Noticee in the interim order and therefore this request is untenable.

11. In this regard, reference may be made to the order dated February 12, 2020 passed by Hon'ble SAT in Appeal (L) No. 28 of 2020 – Shruti Vora Vs. SEBI, wherein it was observed as under:

"In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO

is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence."

The aforesaid observations made in Shruti Vora's case has been reiterated with confirmation by Hon'ble SAT in its order dated July 17, 2020 passed in Appeal No. Anant R Sathe Vs. SEBI wherein it was observed as under:

"…….8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence……"

In the present case also, I find that the Noticee has been provided with all the relevant documents relied upon in the interim order which are sufficient for the Noticee to file an efficacious reply in the matter. I find that the Noticee has filed his detailed responses dated July 24, 2020 and September 30, 2020 to the interim order, therefore, the contention of the Noticee this regard is not tenable.

12. With respect to the merits of the case, the Noticee has made various submissions, which can be summed up in a nutshell as follows:

a. The UPSI related to the quarterly financial results of DTL did not exist on October 18 and 20, 2016 and the impugned emails dated October 18, 2016 and October 20, 2016 did not contain any UPSI and contained raw data;
b. The decline in NPAT was in accordance with expected trend since DTL's profits were cyclical in nature and therefore the information related to decline in NPAT for the quarter ending September 30, 2016 was not UPSI;
c. The interim order wrongly links the decline in share price of DTL to the allegedly adverse results when there were a number of other external

factors which were responsible for the decline- the announcement of demonetisation took place on November 8, 2016, which led to a market-wide reaction also had an adverse impact on the price of the scrip of DTL;

d. The Noticee did not have access to the UPSI as he was not marked on any of the impugned emails nor involved in the discussions thereon;

e. Noticee's sale of shares of DTL on October 24, 2016 was in pursuance of covenants entered into with lenders in June 2016, and the sale was effected immediately after permission from the lenders who had an encumbrance over these shares to let the Noticee sell them was received. The covenants under the new loan agreement executed in June 2016 required the promoter group of DTL to reduce the percentage of shares pledged by the promoter group to 7.5% from 24.94%, as a condition for disbursal of the loan to enable DTL to undertake a project of national importance. A reduction in the quantum of promoter holding that was pledged, entailed repayment of loans due to the pledgee, IL&FS – financed substantially by a refinancing arrangement with ICICI and partly by sale of the promoter holding. IL&FS released the pledge on October 24, 2016, and the Noticee sold 51,000 shares (representing 0.8% of the equity share capital of DTL) and clearly used the proceeds to repay the indebtedness due to IL&FS. Therefore, the sale of shares of DTL was a sale undertaken in furtherance of meeting *bona-fide* pre-existing obligations.

13. As per SCN, the allegation against the Noticee is that he being an "insider", has traded in the shares of the company while being in possession of UPSI and has, *prima-facie*, violated Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) read with 4(2) of the PIT Regulations by trading in the shares of DTL when in possession of UPSI. It is alleged that the consolidated financial results of the Company for the quarter ended September 30, 2016 indicated that the consolidated Net Profit after Tax (NPAT) for the quarter had decreased by 37.27%

over the previous quarter, which was a UPSI till the financial results for the said quarter were disclosed to the stock exchanges by DTL on November 11, 2016. The said consolidated financial results of the company were to be prepared on the basis of the standalone financial results, of the 10 subsidiaries, Indian and overseas, of the company, which it started to receive from these subsidiaries on October 11, 2016 and till October 23, 2016. During the investigation, the Company, vide email dated May 12, 2017, submitted that the decline in the consolidated revenue for the quarter ended September 30, 2016 when compared with the previous quarter ended June 30, 2016, was majorly attributable to the decline in revenue of Dynamatic Ltd., UK and Eisenwerk Erla GmbH, Germany. Hence, the date of receipt of financials from the aforesaid two subsidiaries i.e. Dynamatic Ltd., UK on October 18, 2016 and Eisenwerk Erla GmbH, Germany October 20, 2016, has been considered as the relevant date for coming into existence of UPSI. Since, the October 18, 2016 was earliest, therefore, same is taken as the date when the UPSI came into existence and thus, SCN alleges that period from October 18, 2016 to November 11, 2016 (the date when the quarterly financial results of DTL were disclosed to the stock exchange) was the period of UPSI. SCN alleges that the Noticee being the CEO & Managing Director of DTL, was connected to the Company and was reasonably expected to have access to the aforesaid UPSI. SCN alleges that Noticee being connected person was insider and since Noticee sold 51,000 shares of the company on October 24, 2016 for a total consideration of Rs. 17,44,22,790.0/- during UPSI period before UPSI became public on disclosure of consolidated quarterly financial results for the quarter ending September 30, 2016 by DTL on November 11, 2016, therefore, the Noticee has traded while being in possession of UPSI and has *prima facie* violated Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) read with 4(2) of the PIT Regulations.

14. PIT Regulations has been framed under Section 30 read with Section 11(2)(g) and Sections 12A(d) and (e), of the SEBI Act. Therefore, to ascertain whether Noticee has violated the provisions, as alleged in the SCN, it has to be determined whether Noticee has violated Regulation 4(1) of PIT Regulation, and if it is so, it will also lead to the violation of Section 12A(d) and (e) of the SEBI Act, 1992. Regulation 4 of PIT Regulations, provides as under:

> *"**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:*
>
> *Provided that the insider may prove his innocence by demonstrating the circumstances including the following: -*
>
> *(i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.*
>
> *(ii) in the case of non-individual insiders: -*
>
> *(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and*
>
> *(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;*
>
> *(iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.*
>
> *NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, 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.

(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."

15. From the above, it is noted that essential ingredients of Regulation 4(1) are as under:

(i) Noticee must be an insider;
(ii) There must be a UPSI;
(iii) Insider must have traded in the securities of the company when in possession of such UPSI.

Proviso to Regulation 4(1) provides that despite presence of all the aforesaid ingredients, the insider may prove his innocence by demonstrating the circumstances including those which are mentioned in the said proviso.

The Note to Regulation 4(1) states that once it is established that an insider traded when in possession of UPSI, 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.

Regulation 4(2) provides that in the case of connected persons the onus of establishing that they were not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on SEBI.

16. **Noticee must be an insider:**

16.1. The first ingredient of Regulation 4(1) is that there must be an “insider”. The term “insider” has been defined in Regulations 2(1)(g), as follows:

> *(g) "insider" means any person who is:*
>
> *i) a connected person; or*
>
> *ii) in possession of or having access to unpublished price sensitive information;*
>
> ***NOTE:*** *Since “generally available information” is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an “insider” regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.*

16.2. As per the aforesaid definition, a person can be insider if he is a connected person or if he is in possession of or having access to UPSI. The term “connected person” has been defined under Regulation 2(1)(d) of PIT Regulations, 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.

(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

(b). a holding company or associate company or subsidiary company; or

(c). an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d). an investment company, trustee company, asset management company or an employee or director thereof; or

(e). an official of a stock exchange or of clearing house or corporation; 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

(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

(h). an official or an employee of a self – regulatory organization recognised or authorized by the Board; or

(i). a banker of the company; or

(j). a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the

company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information."

16.3. The SCN states that the Noticee was the Managing Director and CEO of DTL and was an "insider" of DTL, at the relevant time. This fact has not been disputed by the Noticee. Rather Noticee, has during the hearing submitted that he has been the Managing Director of DTL since 1989. Thus, in terms of Regulation 2(1)(d)(i), Noticee is the connected person of DTL and in terms of Regulation 2(1)(g)(i) of PIT Regulations, Noticee is an "insider" of DTL.

17. **There must be a UPSI:**

17.1. The next ingredient of Regulation 4(1) is that there must be a UPSI. In this regard, the SCN alleges that the consolidated financial results of the company for the quarter ended September 30, 2016 indicated that the consolidated Net Profit after Tax (NPAT) for the quarter had decreased by 37.27% over the previous quarter, which was an unpublished price sensitive information (UPSI) till the financial results for the said quarter were disclosed to the stock exchanges by DTL on November 11, 2016. The said consolidated financial results of the company were to be prepared on the basis of the standalone financial results, of the 10 subsidiaries, Indian and overseas, of the company, which it started to receive from these subsidiaries on October 11, 2016 and till October 23, 2016. The Compliance Officer of the Company, vide email dated May 12, 2017 had informed the investigating authority, had submitted that the decline in the consolidated revenue for the quarter ended September 30, 2016 when compared with the previous quarter ended June 30, 2016, was majorly attributable to the decline in revenue of Dynamatic Ltd., UK and Eisenwerk Erla GmbH, Germany. Hence, the date of receipt of financials from the aforesaid two

subsidiaries i.e. Dynamatic Ltd., UK on October 18, 2016 and Eisenwerk Erla GmbH, Germany October 20, 2016, has been considered as the relevant date for coming into existence of UPSI. Since, the October 18, 2016 was earliest, therefore, same is taken as the date when the UPSI came into existence and thus, SCN alleges that period from October 18, 2016 to November 11, 2016 was the period of UPSI.

17.2. The Noticee, in his replies and submissions has contended that the information contained in the two impugned emails was not UPSI and he was not privy to this information at the time of his impugned trades. Noticee has submitted that the financial data which was received by Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL, from the subsidiaries of DTL was raw and in case of overseas subsidiaries was in foreign currency and it required conversion into Indian currency and was to be considered by auditors to arrive at a view on its impact on the consolidated financial of DTL. In this regard, the Noticee has submitted that the alleged UPSI could not have come into existence on October 18, 2016 or October 20, 2016, as the information relating to the two subsidiaries of DTL that was received by the impugned emails by Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL on these dates contained raw financial data for half-yearly period ending September 30, 2016 in local currencies (GBP and Euro) and not the quarterly financial results. The Noticee has contended that the attachments to the emails received by Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL contained no information that would point to a decline in the consolidated net profits for the quarter ended September 2016 and that an accurate insight into the consolidated financial position of DTL would have necessarily entailed a full review of the results of all its 10 subsidiaries along with the standalone results. The consolidation can be said to have occurred only on October 25, 2016, when a first draft of the consolidated results, was shared with the auditors. The Noticee has also contended that SEBI has

ignored the basic tenet that for a manufacturing Company like DTL the comparison of performance of any quarter with the corresponding quarter in the preceding year is more relevant and poignant and that like all companies in Germany, Eisenwerk Erla GmbH (100% Subsidiary) shuts down for summer vacation during the month of August, and contribution from this business is always muted during Quarter ended September. This is a normal feature of financials of DTL, and its stakeholders take this into consideration every year while evaluating performance. By no stretch of imagination can this information be considered as UPSI.

17.3. UPSI has been defined under Regulation 2 (1) (n) of the PIT Regulations which provides as under:

> *"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*
> *(vi) material events in accordance with the listing agreement."*

17.4. The aforesaid definition of UPSI *inter alia* provides that UPSI 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, *inter alia*, information relating to the financial results. Thus, definition itself makes it

clear that it is not only the financial results in themselves but also the information relating to financial results which is to be treated as UPSI. I observe that the quarterly financial results of DTL pertaining to the quarter ending September 30, 2016 were disclosed to the stock exchanges on November 11, 2016 and it indicated that the consolidated NPAT for the quarter had decreased by 37.27% over the previous quarter. I note that these financial results were prepared *inter alia* after taking into account the financial data forwarded by the subsidiaries of DTL on the various dates, as mentioned below:

Sl. No.	Name of the Subsidiary of DTL	Date of receipt of financials by DTL
1.	JKM Ferrotech Limited, India	October 11, 2016
2.	JKM Erla Automative Limited, India	October 19, 2016
3.	JKM Research Farm, Ltd., India	October 22, 2016
5.	JKM Global Pte Limited, Singapore	October 23, 2016
6.	Dynamatic Ltd., UK	October 18, 2016
7.	Yew Tree Investments Ltd., UK	October 18, 2016
8.	Eisenwerk Erla GmbH, Germany	October 20, 2016
9.	JKM Erla Holdings GmbH, Germany	October 20, 2016
10.	Dynamatic LLC, US	October 18, 2016

17.5. I also note that, from the subject line of the emails through which aforesaid financial data was forwarded by the subsidiaries of DTL, it is evident that they were forwarded to Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL, by the subsidiaries for the purpose of preparation of quarterly financial results. On a reading of the impugned emails along with the attachments which were received by Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL from Dynamatic UK and Eisenwerk Erla GmbH on October 18, 2016 and October 20, 2016 respectively, I find the following:

(i) The email dated October 18, 2016 from Dynamatic UK to Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL mentioned quarterly report as the subject on the covering email.

(ii) The attachment to the email dated October 18, 2016 contained financial data related to Dynamatic UK for the half year ending September 30, 2016 which included financial data pertaining to the quarter ending September 30,2016.

(iii) The email dated October 18, 2016 also enclosed *inter alia* profit and loss statement for the half year ending September 30,2016 pertaining to Dynamatic UK.

(iv) The said profit and loss statement showed profit after tax in the half year ending September 30, 2016 as compared to the full year ending March 31, 2016 (10,57,405 GBP as compared to 11,63,833 GBP).

(v) The email from Eisenwerk Erla GmbH dated October 20, 2016 to Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL mentioned 'Erla Q2 group pack' (which implies that it related to the second financial quarter) as subject and contained financial data related to Eisenwerk Erla GmbH for the half year ending September 30, 2016 which included financial data pertaining to the quarter ending September 30,2016.

(vi) The email dated October 20, 2016 also enclosed *inter alia* profit and loss statement for the half year ending September 30, 2016 pertaining to Eisenwerk Erla GmbH.

(vii) The said profit and loss statement showed profit after tax in the half year ending September 30, 2016 as compared to the year ending March 31, 2016 (15,11,073 EURO as compared to 29,37,195. EURO).

17.6. From the information listed above, I find that the two emails received from Dynamatic UK and Eisenwerk Erla GmbH on October 18, 2016 and October 20, 2016, respectively, by Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL, contained financial data based on which a view could be taken regarding the financial performance of these two subsidiaries and their impact on the financial results of DTL in the quarter ending September 30, 2016. Therefore,

I find that the Noticee's contention that these two mails did not contain any relevant data that would point to a decline in the consolidated net profits for the quarter ended September 2016 cannot be accepted. Moreover, I also find that the consolidated quarterly financial data of DTL was prepared *inter alia* based on the said information contained in these two emails. Noticee has not contended that any other email or information was received by DTL from Dynamatic UK and Eisenwerk Erla GmbH for preparation of the consolidated quarterly results. Thus, I find that the financials of Dynamatic UK and Eisenwerk Erla GmbH were major constituents of the consolidated financials of DTL as given in para 17.7 and thus, the impugned emails dated October 18, 2016 and October 20, 2016 can be reasonable said to be information related to the financial results of DTL.

17.7. I also note from the Annual Reports of DTL pertaining to three years preceding the FY 2015-16, that, amongst the subsidiaries of DTL, Dynamatic UK and Eisenwerk Erla GmbH were the two best performing subsidiaries. The details of the Profit after tax of the various subsidiaries of DTL, as mentioned in its Annual Reports pertaining to three years preceding the FY 2015-16, are as follows:

Sl. No.	**Name of the Subsidiary Company**	**Profit after tax**		
		FY 2015-16	**FY 2014-15**	**FY 2013-14**
1.	JKM Ferrotech Limited, India	-1099	-2788	-2026
2.	JKM Erla Automative Limited, India	-783	-480	-261
3.	JKM Research Farm, Ltd., India	2	46	39
4.	JKM Global Pte Limited, Singapore	-319	752	275
5.	**Dynamatic Ltd., UK**	**1097**	**1465**	**2012**
6. .	Yew Tree Investments Ltd., UK	58	57	55
7.	**Eisenwerk Erla GmbH, Germany**	**2607**	**4160**	**4598**
8.	JKM Erla Holdings GmbH, Germany	-464	2285	1664

17.8. As informed by the Compliance Officer of DTL during the investigation, there was a decline in the revenue of the two subsidiaries of DTL, Dynamatic Ltd., UK and Eisenwerk Erla GmbH, Germany in the quarter ending September 30, 2016 which led to an overall decline in NPAT of DTL. The information of decline in revenue of these two subsidiaries would have emerged from the financial data of these two subsidiaries which were forwarded to DTL vide the impugned emails dated October 18, 2016 and October 20, 2016. Since these two subsidiaries were the best performing subsidiaries of DTL (as noted form the table above), it is a reasonable inference that if there is a substantial decline in profit of these two subsidiaries there will be an overall decline in the NPAT of DTL. Though the data could be raw as it was not consolidated and was in foreign currencies also, however, performance of the subsidiaries could be made out even if the figures contained therein were in foreign currency. Therefore, I find that the Noticee's contention that the two impugned mails did not contain any relevant data that would point to a decline in the consolidated net profits for the quarter ended September 2016 cannot be accepted.

17.9. In view of the discussion above, I am unable to accept the Noticee's contention that the information related to quarterly financial results of DTL did not exist on October 18, 2016 and October 20, 2016 and that the two impugned emails did not contain data from which information pertaining to quarterly results could be derived. I find that the information forwarded by Dynamatic UK and Eisenwerk Erla GmbH vide the emails dated October 18, 2016 and October 20, 2016 could be reasonable said to be related to the financial results of DTL, as discussed in para 17.6 above, and contained information related to the decline in revenue of these two subsidiaries which if published would have likely to materially affect the price of the scrip of DTL and hence, was a UPSI within the meaning of Regulation 2(1)(n) of PIT Regulations, 2015 which came into existence on October 18, 2016

and continued till November 11, 2016, i.e. the date of disclosure of the financial results of DTL to the stock exchanges.

18. **Insider must have traded in the securities of the company when in possession of such UPSI.**

18.1. The next ingredient of Regulation 4(1) is that insider must have traded in the securities of the company when in possession of UPSI. Regarding the trading, SCN alleges that Noticee sold 51,000 shares of DTL on October 24, 2016 during UPSI period before UPSI became public on disclosure of consolidated quarterly financial results for the quarter ending September 30, 2016 by DTL on November 11, 2016. The fact of selling 51,000 shares of DTL on October 24, 2016 has not been disputed by the Noticee. Now, to attract violation of Regulation 4(1), it needs to be established that the insider was in possession of UPSI on October 24, 2016 when he traded in the shares of DTL. This ingredient has to be read with Regulation 4(2) which provides that in the case of connected persons the onus of establishing that they were not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on SEBI. I find that the SCN has not made any specific allegation stating that the Noticee was in possession of the UPSI. In this regard, SCN alleges that Noticee being “connected person” within the meaning of Regulation 2(1)(d)(i) of PIT Regulations had traded in the shares of DTL during the UPSI period. SCN further alleged that the contention of Noticee that the sale of shares was executed to comply with the covenants of the agreement entered into with the banks, is not tenable as the sale was not done within the timeline stipulated under the covenant and he could have sold these shares anytime between July 15, 2016 to October 12,2016. In view of this, the SCN, apparently, has proceeded on the premise that Noticee was not able to discharge the burden of proof, to the effect that he was not in possession of UPSI, as envisaged under Regulation 4(2) and hence, the Noticee was in possession

of UPSI as he failed to sell the shares within the timelines stipulated in the covenant of the loan agreement entered into between DTL and ICICI led consortium. On this premise, the SCN has charged the Noticee for violation of Regulation 4(1) and 4(2) of the PIT Regulations.

18.2. In the present proceedings, in response to the SCN, Noticee has submitted that at the relevant time he was not in possession of the information which is claimed to be UPSI. He has stated that he was not marked on any of the emails vide which the alleged draft financials of DTL's subsidiaries were shared and which were marked to Shri Nitin R. Ajage (General Manager, Corporate Accounting) of DTL. Further, he has submitted that SEBI has not been able to produce a shred of evidence to show that the Noticee was in possession of the UPSI. The Noticee has also stated that, on November 04, 2016, while circulating the detailed agenda to the Board of Directors, Mr. Naveen Chandra, Head- Legal, Compliance & Company Secretary of DTL did not circulate the unaudited financial results for the quarter and half year ending on September 30, 2016 to the board of directors of DTL including the Noticee pursuant to Secretarial Standard-1. It has been submitted that in DTL there was a separate Chairman and the Noticee was MD not a Chairman. The sole object of the Secretarial Standard-1 is that the secretary of the company is not required to provide unaudited financials beforehand to the board of directors and only on a date closer to the Board Meeting so as to avoid leakage of the UPSI, if any. Therefore, the Noticee has stated that he did not have access / possession of alleged UPSI at all, at the time of his trades October 24, 2016 till the time it was circulated at a date close to the date of the Board meeting scheduled on November 11, 2016. The Noticee has submitted that to invite a charge of insider trading the ingredients of Regulation 4(1) are required to be established. One of the key ingredients is being in possession of UPSI when trading in the shares of the company. Section 4 (2) places a burden on the Noticee to prove that he was not in possession of UPSI.

18.3. The Noticee has stated that as demonstrated by him above, he was not marked any of emails received containing standalone financials of the two subsidiaries, nor he was marked the email sent to the auditors by officials of DTL after consolidating the financials of subsidiaries and in line with the Secretarial Standard 1 the agenda for the board meeting was shared on November 04, 2016 but the detailed notes on UPSI related agenda was circulated on a date closer to the board meeting scheduled on November 11, 2016. Therefore, the Noticee has submitted that in his reply he has discharged the burden placed on him to prove that he was not in possession of the UPSI. As a result, the burden then shifts on SEBI to prove the contrary and SEBI has failed to discharge the burden of proof or the standard of proof incumbent upon it in order to prove that he was in possession of UPSI.

18.4. I note from the documents submitted with the reply of the Noticee that the impugned emails dated October 18 and 20, 2016 were addressed to one Shri Nitin R. Ajage (General Manager, Corporate Accounting) with a copy marked to the CFO of DTL (Shri Hanuman Kumar Sharma). The Noticee has also submitted that the consolidation of raw data received Shri Nitin R. Ajage (General Manager, Corporate Accounting) from 10 subsidiaries of DTL, for the purpose of preparation of financial results of DTL, took place only on October 25, 2016 which was forwarded to the auditors on that day but he was not marked on those emails also. I find that the material made available does not indicate that the recipients of the impugned emails either forwarded these emails to Noticee or shared or discussed the financial results of the subsidiaries with the Noticee before the date of his trades i.e. October 24, 2016. I note that the Secretarial Standard – 1 issued by Institute of Chartered Secretaries of India (ICSI) under Section 118(10) of the Companies Act, 2013, contains the following provisions as regards Agenda to board meetings:

1.3.7 The Agenda, setting out the business to be transacted at the Meeting, and Notes on Agenda shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

Agenda and Notes on Agenda shall be sent to all Directors by hand or by speed post or by registered post or by e-mail or by any other electronic means. These shall be sent to the postal address or e-mail address or any other electronic address registered by the Director with the company or in the absence of such details or any change thereto, to any of such addresses appearing in the Director Identification Number (DIN) registration of the Directors.

In case the company sends the Agenda and Notes on Agenda by speed post or by registered post, an additional two days shall be added for the service of Agenda and Notes on Agenda. Where a Director specifies a particular means of delivery of Agenda and Notes on Agenda, these papers shall be sent to him by such means. However, in case of a Meeting conducted at a shorter Notice, the company may choose an expedient mode of sending Agenda and Notes on Agenda. Proof of sending Agenda and Notes on Agenda and their delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director. However, the mode of sending Notice, Agenda and Notes on Agenda to the original director shall be decided by the company.

Notes on items of business which are in the nature of Unpublished Price Sensitive Information may be given at a shorter period of time than stated above, with the consent of a majority of the Directors, which shall include at least one Independent Director, if any.

General consent for giving Notes on items of Agenda which are in the nature of Unpublished Price Sensitive Information at a shorter Notice may be taken in the first Meeting of the Board held in each financial year and also whenever there is any change in Directors. Where general consent as above has not been taken, the requisite consent shall be taken before the concerned items are taken up for consideration at the Meeting. The fact of consent having been taken shall be recorded in the Minutes. Supplementary

Notes on any of the Agenda Items may be circulated at or prior to the Meeting but shall be taken up with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

1.3.10 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.

The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

18.5. From the above, I note that the agenda for the meeting of the Board of Directors of a company, setting out the business to be transacted at a meeting and notes on agenda shall be given to the directors at least seven days before the date of the meeting, unless the articles of association of company prescribe a longer period and the notes on items of business which are in the nature of UPSI may be given at a shorter period of time with the consent of a majority of the directors, which shall include at least one independent director, if any. The Noticee has submitted that as per Secretarial Standard-1, the agenda of the Board meeting are consolidated by the company secretary and placed before the Chairman before circulation. With respect to DTL at the relevant time the Noticee was not the Chairman of the Board of Directors of DTL. I note that as per Regulation 4(2) of the PIT Regulations, in the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, is on such connected persons. The reason for putting such burden of proof on the insider is because if an insider who is connected person with the company trades in the securities of that company when there was a UPSI, then it gives rise to a reasonable inference that such person has traded when in possession of UPSI, therefore, the burden of proving that he was not in possession of UPSI when he

traded, is on such person. The Noticee, in order to discharge his burden of proof related to possession of UPSI has stated that he was not marked any of emails received containing standalone financials of the two subsidiaries, nor he was marked the email sent to the auditors by officials of DTL after consolidating the financials of subsidiaries and in line with the Secretarial Standard 1 the agenda for the board meeting scheduled on November 11, 2016 was also circulated at date close to the board meeting. From the discussions in the previous paragraphs and the facts and circumstances of the case, I note that although the Noticee was treated as an insider to DTL, being a connected person to DTL, he has discharged the burden of proof as envisaged under Regulation 4 (2) of the PIT Regulations.

18.6. Even assuming that the Noticee was in possession of the UPSI, proviso to Regulation 4(1) provides that an insider may prove his innocence by demonstrating the circumstances “including” those mentioned in the said proviso. Therefore, circumstances enumerated in the proviso to Regulation 4(1) to prove innocence, are merely illustrative and not exhaustive and an insider can demonstrate circumstances other than those mentioned in the said proviso, to prove his innocence.

18.7. In this regard, the Noticee has submitted that the sale of 51,000 shares of DTL on October 24, 2016 by him was to comply with the covenants under the new loan agreement entered into by DTL with the consortium of banks led by ICICI on June 29, 2016. The Noticee has submitted that in order to finance the new aerospace facilities being set up by DTL, it approached a consortium of bankers led by ICICI for financial assistance for Rs. 390 Crores. During the negotiations which concluded in June 2016, consortium of banks led by ICICI insisted on limiting the pledge by the promoter/promoter group of DTL to DTL’s previous lender i.e. IL&FS, to a maximum of 7.5% of equity capital of DTL from the then prevailing 24.94%. This pledge was originally created as security from the

Noticee / promoter group of DTL towards direct loan of Rs. 50 Crores availed from IL&FS by JKM Erla Automotive Limited (100% Subsidiary of DTL), and also an additional Rs. 50 crores borrowed by the promoter group of DTL to invest into DTL as growth capital. The Noticee has submitted that in the new facility agreement, the ICICI-led consortium refinanced the entire JKM Erla Automotive Limited loan of INR 50 crore which was repaid to IL&FS. Additionally, by prepaying part of the promoter loan to IL&FS, the total pledge of the promoter group to IL&FS was envisaged to be reduced from 24.94% to below 7.5% in line with the new covenant insisted upon by ICICI requiring pledged shareholding of promoter group in DTL to be at 7.5%. The Noticee has submitted that this reduction of pledge was to be achieved through sale of shares by him (< 1% of DTL), bringing down promoter shareholding from 51.1% down to 50.1%, thus, requiring him to sell some of his shares which were pledged with IL&FS, to prepay part of the Promoter debts to IL&FS. Therefore, according to the Noticee, ICICI also modified its original covenant of minimum Promoter Shareholding from 51.1% down to 50.1% coupled with personal guarantee of Promoter. The Noticee has also stated that efforts were made from June 2016 onwards to obtain a No Objection Certificate from IL&FS as well as a release of pledged shares to enable him to sale so that the Noticee could pre-pay the loan owed to IL&FS to bring down the percentage of pledged shares of promoter group of DTL to 7.5% from 24.94% but despite many emails and phone calls, IL&FS took a long time to give no-objection certificate and release the pledged shares. The Noticee has stated that IL&FS released the pledged shares on October 24, 2016, and immediately, on the same day the Noticee was able to sell 51,000 shares. Consequently, the Noticee was able to repay part of the IL&FS loan from the proceeds of the sale of 51000 shares of DTL and reduce the pledge to 7.5% from 24.94%. Based on this the ICICI- led consortium released the final tranche of loans to DTL.

18.8. The SCN records the observation of investigation that this contention of the Noticee was not tenable as the sale was not done within the timeline stipulated

therein the Noticee could have sold these shares of DTL anytime between July 15, 2016 to October 12, 2016 in order to comply with the covenant but did so only on October 24, 2016. The Noticee has contested the findings in the SCN to the effect that he could have sold the share any time between July 15, 2016 to October 12, 2016. The Noticee, contesting the same, has stated that although the timeline for the compliance expired on the completion of 90 days from the first disbursal (which took place on July 15, 2016), DTL was actively following up with IL&FS to release the pledged shares from June 2016 onwards and the delay was caused at the end of IL&FS. The Noticee has produced an email dated October 28, 2016 from officials of ICICI bank to other members of the consortium stating that they may take approvals for releasing Rs.14 cores for capital expenditure to DTL at the earliest and that "*The delay in security creation is primarily due to multiple parties and change in RBI guideline (for pledge). It is not exactly from Borrower side."* The Noticee has contended that even the lending consortium had accepted delayed compliance in reduction of percentage of shares pledged with IL&FS and released the further amount of loan.

18.9. In support of the aforesaid contention, Noticee has submitted various documents such as the emails exchanged between DTL and ICICI regarding conditions subsequent of the Facility Agreement, emails exchanged between officials of DTL/ promoters of DTL to IL&FS regarding the release of pledged shares, etc. From the perusal of said documents, a timeline emerges, which is as follows:

Pre- investigation period	Pledge of shares of promoter group of DTL was created as security towards: a. direct loan of Rs. 50 crore availed previously from IL&FS by JKM Erla Automotive Ltd. (a 100% subsidiary of DTL) b. additional Rs. 50 cores borrowed by the promoter group of DTL (Wavell Investments Pvt. Ltd.).

June 29, 2016	DTL enters into Facility Agreement for the Syndicated Rupee Term Loan of Rs. 390 crores with bank consortium led by ICICI Bank. The consortium consisted of: 1. ICICI Bank Ltd., as the Original Lender, "Mandated Lead Arranger 1" & Facility Agent 2. Axis Bank Ltd., as the Original Lender and "Mandated Lead Arranger 2" 3. IndusInd Bank Ltd., as the Original Lender Through this Agreement the consortium provided a Syndicated Rupee Term Loan of Rs. 390 crores to DTL which included refinancing the entire JKM Erla Automotive Ltd. loan of Rs. 50 crore which was repaid to IL&FS. The Facility Agreement for the said loan included a condition subsequent that, the total pledge of shares of the promoter group with IL&FS had to be reduced to 7.5% from 24.94% in line with the new covenant insisted upon by the ICICI led consortium of banks. In order to achieve said reduction in the number of shares pledged with IL&FS, consortium led by ICICI Bank also agreed to dilution of total shareholding of the promoters in DTL, from 51% to 50.1% as per the Non- Disposal Undertaking 2
June 27, 2016	Email from official of DTL to IL&FS requesting release of 4,32,000 shares of DTL pledged with it, which was in excess of the requisite asset cover for the loan taken by DTL from IL&FS.
July 15, 2016	First disbursal under the Facility Agreement dated June 29, 2016
July 21, 2016	Email from official of DTL to IL&FS requesting release of 3,60,000 shares of DTL pledged with it, which was in excess of the requisite asset cover for the loan taken by DTL from IL&FS. The email sated that a Rs. 48 crore loan was taken by Wavell Investments Pvt. Ltd. from IL& FS for which the required cover was 2.5 times. This was provided by pledging 1,56,000 shares of Wavell Investments Pvt. Ltd and 4,333,500 shares of the Noticee.

Various dates in August, 2016	Emails exchanged between officials of ICICI Bank and DTL regarding Loan Agreement wherein a condition subsequent is mentioned as 'achieving 7.5% share pledge of Promoter and Promoter Group as part of NDU2'
August 24, 2016	Email from official of DTL to IL&FS requesting release of 4,32,000 shares of DTL pledged with it, which was in excess of the requisite asset cover for the loan taken by DTL from IL&FS.
October 03, 2016	Letter from Wavell Investments Pvt. Ltd. (a promoter group entity of DTL) to IL&FS for release of 4,10,000 shares of DTL owned by the Noticee which was in excess of the required security cover for loan of Rs.50 Crore taken by Wavell Investments Pvt. Ltd. from IL&FS
October 18, 2016 an October 20, 2016	Impugned emails received with attachment from Dynamatic UK and Eisenwerk Erla GmbH by one Shri Nitin R. Ajage (General Manager, Corporate Accounting of DTL) and also marked to the CFO of DTL and the group CFO of DTL (Shri Hanuman Kumar Sharma) regarding the financial data of these two subsidiaries for the purpose of preparation of financial results pertaining to quarter ending September 30, 2016
October 21, 2016	Email from U. Nandkumar of IL&FS to Upendar Reddy of IL&FS, also marked to official of DTL asking to initiate release of pledge of 3,75,000 shares of DTL pledged by the Noticee
October 22 and 23, 2016	Saturday and Sunday
October 24, 2016	Sale of 51,000 shares out of 3,75,000 shares of DTL by the Noticee
October 25, 2016	Updated standalone results for the subsidiaries was shared by the officials of DTL with the auditors of DTL as prepare dby the Company and on the same day the first cut of the consolidated financials of DTL was shared
October 28, 2016	Email from officials of ICICI bank to other members of the consortium stating that they may take approvals for releasing Rs.14 cores for capital expenditure to DTL at the earliest and that *"The delay in security creation is primarily due to multiple parties and change in RBI guideline (for pledge). It is not exactly from Borrower side."*

November 04, 2016	Agenda for board meeting (without unaudited financial results for the quarter and half year ended September 30, 2016) to be held on November 11, 2016 was circulated to the directors on the board of DTL.
November 11, 2016	The agenda pertaining to unaudited financial results for the quarter and half year ended September 30, 2016 was discussed in the meeting of the board of DTL and DTL discloses its quarterly consolidated financial results to the stock exchanges.

18.10. From the aforesaid, I note that it was imperative on the part of the promoter group of DTL to bring down its pledged shares with IL&FS to 7.5% as a condition subsequent of the Facility Agreement dated June 29, 2016 entered into with consortium led by ICICI Bank and to do the same the loan with IL&FS (Rs. 50 crore loan of promoter group of DTL) had to be repaid to IL&FS. For the prepayment of the loan to IL&FS the Noticee required cash which was generated by selling the shares of DTL released from pledge by IL&FS, by the Noticee on October 24, 2016. I note that in order to enable Noticee to achieve said reduction in the number of shares pledged with IL&FS by pre-paying the outstanding loan of IL&FS through sale of shares of DTL by Noticee, consortium led by ICICI Bank also agreed to dilution of total shareholding of the promoters in DTL, from 51% to 50.1% as per the Non- Disposal Undertaking 2. I note that as soon as IL&FS released the pledge on the shares of DTL owned by Noticee on October 21, 2016, the Noticee sold 51,000 shares on the very next trading day, i.e. October 24, 2016 (October 22 and 23, 2016 being Saturday and Sunday) and used the proceeds to pre pay the loan to IL&FS which brought down percentage of pledged shares at level desired by the consortium. I also note that 3,75,000 shares of DTL were released from pledge by IL&FS out of which the Noticee disposed of only 51,000 shares and used the proceeds to pre pay the loan to IL&FS. I note that the Noticee could not have sold the shares before October 24, 2016 since the shares were pledged with IL&FS. I also note that the requests for releasing the shares of DTL held in pledge by IL&FS in excess of the required security was being made by

the officials of DTL from June 2016 onwards, to officials of IL&FS, which was before the beginning of the investigation period. I find that there is a close nexus between the release of shares from pledge by IL&FS and resultant sale of shares by the Noticee. Further, these transactions were with consortium of banks comprising of ICICI Bank Ltd., Axis Bank Ltd. and IndusInd Bank Ltd. and financial institution i.e. IL&FS, pursuant to loan and pledge agreement, Non Disposal Undertaking-2 etc. and cannot be said to be stage managed by the Noticee to wriggle out of the present proceedings. Therefore, the impugned sale of 51,000 shares of DTL by the Noticee was to pre-pay the loan of IL&FS, to bring down the shareholding of the promoter group which was pledged with IL&FS, to comply with the covenant of loan agreement with consortium led by ICICI Bank dated June 29, 2016. I also find merit in the contention of the Noticee that failure on his part to comply with the loan covenant would have led to irreversible project cost and the lenders consortium could have recalled the loan and would have refused to disburse the balance loan amount which in the long run would have adversely affected DTL. I note that the SCN did not accept the contention of the Noticee as the sale was not done within the timeline stipulated in the covenant in the loan agreement with consortium led by ICICI Bank and the Noticee could have sold the shares of DTL anytime between July 15, 2016 to October 12, 2016 in order to comply with the covenant but did so only on October 24, 2016. However, form the above , it is observed that Noticee has demonstrated that by the subsequent conduct of the parties to the loan agreement, the timelines for complying with the covenants such as reduction of pledged shares from 24.94% to 7.5% stood modified alongwith other covenants related to non-disposal of promoter group shareholding from 51.1% to 50.1%

19. I further note that SCN also calls upon the Noticee to show cause *inter alia* as to why penalty under Section 15G of the SEBI Act should not be imposed. Section 15G of SEBI Act provides as under:

"Penalty for insider trading.

15G. If any insider who, —

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

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

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

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

20. In this regard, I note that the Hon'ble SAT in the matter of *Mrs. Chandrakala vs. SEBI* (Order dated 31.1.2012 in Appeal No.209 of 2011) while deciding an appeal wherein an order passed by adjudicating officer imposing penalty under Section 15G for violation of Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 which is *pari materia* with Regulation 4(1) of PIT Regulations, 2015, was challenged, observed as under:

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

In *Abhijit Rajan vs. SEBI* (Appeal 232 of 2016 decided on 08.11.2019), Hon'ble SAT while deciding an appeal wherein an order passed by SEBI under Section 11

and 11B of the SEBI Act, 1992 for violation of Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992, was challenged by the appellant who was found to be indulged in the insider trading, Hon'ble SAT observed as under:

> *"……. Further, even if it is assumed that the information was is a price sensitive information, still the appellant cannot be blamed of insider trading for the reasons that he did not trade "on the basis of the information". The appellant was able to show his dire need to infuse fund in the entity under the master restructuring agreement to implement a CDR package as detailed supra. He was even required to sell his agricultural land and flat details of which are already given hereinabove. In these circumstances he sold the shares. In the case of Rajiv B. Gandhi on fact this Tribunal held that the appellants therein were able to rebut the presumption that they traded on the basis of UPSI as they had a necessity to sell the shares. Similar is the case of Gujarat NRE Mineral Resources Ltd. and Mrs. Chandrakala decided by this Tribunal……..."*

21. In the facts and circumstances of the case, I find that sale of 51,000 shares of DTL by Noticee, on October 24, 2016 was to comply with the covenant in the Facility Agreement dated June 29, 2016 entered by DTL with the consortium led by ICICI Bank which stood extended by the subsequent conduct of the parties thereto. In view of these findings, I observe that the allegation of allegation of violation of Sections 12A (d) and (e) of the SEBI Act and Regulations 4(1) and 4(2) of the PIT Regulations is not established against the Noticee.

22. Another allegation levelled against the Noticee is that Noticee had taken pre-clearance for selling 51,000 shares only, however, he approached broker-Motilal Oswal to sell 60,000 shares, and therefore, has violated Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations. In this regard, the Noticee has stated that in or about late September/ early October, the team entrusted with the sale of shares of DTL which comprised of Mr. M.K. Srinivas and others (team) approached Motilal Oswal Financial Services Limited for sale of a proposed volume of between 50,000 to 60,000 shares (depending on the market price realised). On October 24, 2016, immediately on the release of pledge of 3,75,000 shares by IL&FS, 51000 shares were sold on the basis of the Pre-Trading approval taken by the team on

20th October, 2016. I note that the team sought pre-clearance on September 19, 2016 for 60,000 shares but did not carry out the trades, which was informed to DTL on September 23, 2016. I also note that the team had sold only 51,000 shares of DTL on October 24, 2016 and not 60,000 shares, therefore, the trades were in consonance with the pre-clearance taken on October 20, 2016. In terms of Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations, pre-clearance is required to be taken in respect of trades. Thus, placing of mere order by the team without actually selling of the shares, does not result into violation of Clause 6 of Schedule B read with Regulation 9(1) of PIT Regulations, in the facts and circumstances of the case.

Directions

23. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby dispose of the proceedings against Noticee without any directions.

24. This Order comes into force with immediate effect.

25. A copy of this Order shall be forwarded to the Noticee, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

Date: December 18, 2020 **ANANTA BARUA**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA