BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/NK/2020-21/8081]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Haresh Parmanand Jashnani (PAN: AAJPJ7020L)

In the matter of

Investigation in the matter of insider trading activity of certain entities in the scrip of United Spirits Limited)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**hereinafter referred to as SEBI**) had conducted an investigation in the matter of insider trading activity of certain entities in the scrip of United Spirits Limited (hereinafter referred to as "**Company/USL**") for the period January 01, 2014 to April 17, 2014 and into the possible violation of the provisions of the SEBI Act, 1992 and various Rules, Regulations and Guidelines made there under. Investigation alleged that Mr. Haresh Parmanand Jashnani (hereinafter referred to as Mr. Haresh /Mr. Haresh Jashnani /Noticee) was an insider within the meaning of Regulation 2 (e)(ii) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and deemed to be a connected person within the meaning of Regulation 2(h)(vi) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as SEBI (PIT) Regulations, 1992). He was therefore privy to the Unpublished Price Sensitive Information (hereinafter referred to as UPSI) pertaining to the public announcement of open offer for acquisition of

37785214 equity shares of USL, constituting 26% (approximately) of the total paid up share capital of USL by JM Financial Institutional Securities Limited (hereinafter referred to as JMFL) and HSBC Securities & Capital Markets (India) Private Limited (hereinafter referred to as HSCI) on behalf of the acquirers Relay B.V. (hereinafter referred to as Relay/Acquirer) together with Diageo PLC (hereinafter referred to as the Diageo/PAC) as the person acting in concert (PAC). Investigation further alleged that the above UPSI was communicated by Mr. Nishat Shailesh Gupte (hereinafter referred to as Mr. Nishat) to the Noticee, and the Noticee based on the aforesaid UPSI had allegedly traded in the scrip of USL and made unfair gain.

2. In view of the above, it was alleged that the Noticee violated the provisions of Regulation 3(i) and Regulation 4 of the SEBI (PIT) Regulations, 1992 read with Regulations 12 of SEBI (PIT) Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. Mr. D. Sura Reddy was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudgeunder section 15G of the SEBI Act,1992 for the alleged violations of the provisions of Regulation 3(i) and Regulation 4 of the SEBI (PIT) Regulations, 1992 read with Regulations 12 of SEBI (PIT) Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992. Subsequently, I was appointed as the Adjudicating Officer in place of Mr. D. Sura Reddy in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice no. EAD-2/DSR/RG/6258/2/2017 dated March 22, 2017 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of the SEBI Act, 1992 for the alleged violations specified in the SCN.

5. It was alleged in the SCN that on April 15, 2014, before market opened, Relay B.V ("Relay") together with Diageo Plc ("Diageo") as the Person Acting in Concert ("PAC") made public announcement to acquire upto 3,77,85,214 fully paid up equity shares of USL at a price of Rs. 3,030/- per share. After the public announcement, price of the scrip surged from Rs. 2,557 (previous close price - April 11, 2014) to Rs. 2,853 (closing price on April 15, 2014) in a single trading day registering an increase of 11.57%. The Open Offer was announced on April 15, 2014 by the managers to the offer, viz. JM Financial Institutional Securities Limited ("JMFL") and HSBC Securities & Capital Markets (India) Private Limited ("HSCI"), for and on behalf of the Acquirer (Relay B.V.) and the PAC (Diageo PLC) to the public equity shareholders of the target company, viz. USL. The Acquirer and the PAC had made the open offer to acquire up to 3,77,85,214 fully paid up equity shares of face value of Rs. 10/- each of USL, constituting 26% of the total fully diluted voting equity share capital of USL at a price of Rs. 3,030/- per share offered, aggregating to total consideration of Rs.1,14,48,91,98,420 (approx. Rs. 11.44 thousand crore). It was further observed that in addition to the equity shares representing 25.02% of the Voting Share Capital acquired, in aggregate under the earlier open offer (which was completed on May 13, 2013), under a preferential allotment agreement dated November 09, 2012 between the Acquirer and the PAC with the Target Company (which was completed on May 27, 2013) and under a share purchase agreement dated November 09, 2012 between the Acquirer and the PAC with the selling shareholders (which was completed on July 04, 2013), the Acquirer has acquired 3.76% of the Voting Share Capital during the financial year from April 01, 2013 to March 31, 2014. Thus, as a result, on the date of the Public Announcement, the Acquirer held 28.78% of the Voting Share Capital of the Target Company.

6. The SCN alleged that the open offer announcement by Relay and the PAC on April 15, 2014 to acquire up to 3,77,85,214 fully paid up equity shares of USL constituting 26% of the total fully diluted voting equity share capital of USL at a price of Rs. 3,030/- was considered as price sensitive information (hereinafter referred to as "PSI") in terms of SEBI (PIT) Regulations.

It was alleged that from chronology of the events as submitted by the Manager to the Offer, HSBC Securities & Capital Markets (India) Private Limited (hereinafter referred to as "HSCI") and JM Financial Institutional Securities Limited (hereinafter referred to as "JMFL"), Relay and Platinum Partners (Diageo's Indian legal counsel), it was noted that the PSI related to the Open Offer had come into existence on March 12, 2014 after Platinum Partners received preliminary instructions from Diageo regarding the Open Offer. The PSI was published when the corporate announcement of the Open Offer was made to the Exchanges on April 15, 2014 before the market opened. Thus, it was alleged that the period of UPSI was from March 12, 2014 to April 14, 2014.

7. As per the replies to the SEBI queries, Managers to the open offer, Relay, USL and Platinum Partners (Indian Legal Counsel of Diageo) submitted that Mr. Nishat Gupte, Global Business Development Manager of Diageo, among others was privy to the information about the open offer till the date of its Public Announcement / was involved in the discussions with the Manager(s) to the open offer / was aware of the open offer till the date of the open offer or till the date of its public announcement / was in possession of the PSI prior to the public announcement. Therefore he was in possession of the price sensitive information prior to its public announcement and therefore an insider in terms of Regulation 2(e) of the SEBI (PIT) Regulations, 1992. The SCN further alleged that Mr. Nishat Gupte was related to the Noticee, Mrs. Poonam Haresh Jashnani **(hereinafter referred to as Mrs. Poonam Jashnani/Mrs. Poonam)** and Mr. Varun Haresh Jashnani **(hereinafter referred to as Mr. Varun Jashnani/Mr. Varun)**. Mr. Nishat Gupte (an insider), husband of Mrs. Menka Haresh Jashnani **(hereinafter referred to as Mrs. Menka Jashnani/Mrs. Menka)**, is the son-in-law of Mrs. Poonam and Mr. Haresh and brother-in-law of Mr. Varun. Thus, the Noticee along with Mrs. Poonam and Mr. Varun are deemed connected persons in terms of Regulation 2(h)(vi) of SEBI (PIT) Regulations. Therefore, the Noticee, Mrs. Poonam and Mr. Varun are insiders in terms of Regulation 2(e)(ii) of SEBI (PIT) Regulations,1992 by virtue of them being deemed to have been connected with the company (through Mr. Nishat Gupte, Global Business Development

Manager of Diageo) and were reasonably expected to have access to the UPSI in respect of securities of USL.

8. The SCN further alleged that Mr. Nishat Gupte had communicated the aforesaid UPSI to the Noticee and the Noticee had traded in the scrip of USL based on the alleged communication of the UPSI, thereby making unfair gains. It was alleged that during the UPSI period, the Noticee, had traded only in 2 symbols on NSE, viz. McDowell –N and NIFTY. Prior to the UPSI period, i.e. from January 01, 2014 to March 12, 2014, the trades of the Noticee were observed only on 2 days, viz. March 10 & 11, 2014, in the symbol of McDowell – N and the traded quantity was insignificant in comparison to his trades during the UPSI period. Further, the traded quantity post UPSI was also insignificant in comparison to the trades during the UPSI period. The Noticee had not traded in F & O segment of BSE during the investigation period. Further, the Noticee did not trade in the cash or F&O segment during the period April 2012 to March 10, 2014. Also, the holding period of the option contracts were barely 3 weeks (during the UPSI period) for majority of the contracts. It was also alleged that the part of the unfair gains made by the Noticee from the aforesaid trades were transferred to Mr. Nishat Gupte indirectly through the bank account of Mrs. Menka (Wife of Mr. Nishat Gupte). It was alleged that Mrs. Poonam (A/c No. 016200100012532, Saraswat Bank) transferred funds (Rs.18.40 lakh) received from Religare Securities Limited as a part of the futures settlement proceeds pertaining to the trades in the symbol of McDowell-N to Mr. Haresh (A/c No. 016200100012563, Saraswat Bank) on May 09, 2014. After receipt of the said funds, Mr. Haresh transferred the entire funds to the bank account of his daughter Mrs. Menka Haresh Jashnani, wife of Mr. Nishat Gupte. In view of all of the above and on the basis of the connection with the insider, trading pattern and fund flow, it is alleged that Mrs.. Poonam, Mr. Haresh and Mr. Varun have indulged in insider trading activity in the shares of USL on the basis of UPSI relating to the open offer for acquisition of shares of USL by Relay together with Diageo as PAC communicated by Mr. Nishat Gupte. In view of the aforesaid it was alleged that the Noticee had violated the provisions of Regulation 3 (i) and Regulation 4 of the SEBI (PIT)

Regulations, 1992 read with Regulation 12 of the SEBI (PIT) Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992.

9. In response to the SCN, the Noticee vide letter dated April 6, 2017 informed that he was in the process of getting legal advice and requested for additional time to submit his reply, which was acceded to. The Noticee through his advocate, Joby Mathew & Associate replied to the SCN vide letter dated April 17, 2017. The Noticee in the aforesaid reply requested for certain documents relied upon and also an opportunity for inspection of the originals. The Noticee vide letter dated June 9, 2017 was informed that all the documents relied upon was provided along with the SCN. However, once again the same was being provided. Further, for inspection of documents, the Noticee may contact General Manager, SEBI, EFD-DRA-IV before July 10, 2017. It was brought to my notice by the office of General Manager, SEBI, EFD-DRA-IV that there was another proceedings under section 11(1) 11(4) and 11B of the SEBI Act, 1992 before the Whole Time Member (WTM) SEBI for the same facts. Further, that the Authorised Representatives (AR) of the Noticee had availed the opportunity of inspection of documents in the aforesaid proceedings before the SEBI WTM. In view of the aforesaid the request for inspection of documents in the present proceedings was declined Officer since there was no additional documents relied upon in the present Adjudication Proceedings.

10. The Noticee through his Advocate submitted a common preliminary reply to the SCN vide letter dated August 2, 2017 on behalf of the Noticee and Mr. Varun Jashnani and Mrs. Poonam Jashnani. The relevant part of his aforesaid reply is summarised below:

- *The Noticee has not been provided with all the documents and records that are relevant to the matter and which have been relied upon by SEBI. The refusal of SEBI to provide its clients with the documents and records which have been relied on by SEBI is not only in violation of the Principles of Natural Justice, but also in violation of the decision/order of the Hon'ble Supreme Court of India (hereinafter referred to as "SC") in the matter of PriceWaterhouse Coopers vs. SEBI.*
- *Based on the statement of Platinum Partners, the Indian Counsel of Diageo, SEBI has come to the conclusion that the PSI came into being on March 12, 2014.*

However, neither the said SCN nor the documents and records made available show when Mr. Nishat, the then Global Business Development Manager (M&A) of Diageo came to be in possession (or was deemed to have come into possession) of the PSI.

- *Furthermore, neither the said SCN nor the documents and records made available show when, how and in what manner, the PSI was communicated to its clients by Mr. Nishat, if at all.*
- *It may be noted that merely being a deemed connected person/insider is not sufficient to draw an inference that its clients' trades during the period March 12, 2014 to April 14, 2014 were done on the basis of the PSI.*
- *It is noted for the trades done by the Noticee in McDowell- N during the period March 12, 2017 to April 14, 2014, the strike price of the contracts for the dates March 25, 2014 to April 11, 2014 is shown as Rs. 5,700/- to Rs. 5,900/-. To the best of the knowledge of the Noticee, the Options Contracts of McDowell - N never had these strike prices - whether before, during or after the said alleged UPSI period.*
- *Furthermore, the total "Brought forward long qty." as on April 14, 2014 is shown as 2,87,450 which is totally erroneous since our said client never had this long position in McDowell-N options at any given time before or during or after the said alleged UPSI period.*
- *Furthermore, the public announcement regarding the Open Offer was displayed on the websites of BSE Limited and the National Stock Exchange of India Limited on April 15, 2014 at 8:40 am i.e. prior to market hours Thus, the PSI ceased to be unpublished from 8:40 am on April 15, 2014. It is observed therein that the period of UPSI would be from March 12, 2014 to April 14, 2014. Yet, the trades of Noticee on April 15, 2014 have been erroneously included.*
- *It is noted that the trades of the Noticee on March 10 and 11, 2017 i.e. trades prior to the said alleged UPSI period have also been included while computing alleged profits. Even if it is assumed, but not admitted that the Noticee was deemed connected person, his trades prior to March 12, 2014 cannot be considered to compute alleged profits made on the basis of alleged insider trading.*

- *Furthermore, fresh positions taken on April 21, 2014 after public announcement on April 15, 2014 are also included in the calculations of profit. Further, profit and loss of strike price Rs. 3000 are not included.*

11. Thereafter, an opportunity of personal hearing was granted to the Noticee on November 28, 2017 vide letter dated November 3, 2017. The Advocate of the Noticee vide letter dated November 23, 2017 requested for adjournment of the scheduled personal hearing which was acceded to. Accordingly, another hearing was granted to the Noticee on December 11, 2017 vide email dated November 24, 2017. The Advocate vide letter dated November 27, 2017 submitted that the Noticee would not be able to attend the scheduled personal; hearing on December 11, 2017, therefore requested to grant the personal hearing after December 11, 2017 other than December 13 and 18, 2017. The request of the Noticee was acceded to and accordingly the personal hearing was rescheduled to December 14, 2017. The Advocates of the Noticee confirmed their attendance on behalf of the Noticee vide email dated December 12, 2017 and also enclosed a copy of the common reply to the SCN vide letter dated December 12, 2017 on behalf of the Noticee, Mr. Varun Haresh Jashnani and Mrs. Poonam Jashnani. The Advocates of the Noticee vide email dated December 13, 2017 informed of the scheduled hearing before the Hon'ble SAT and due to the same they would not be able to attend the scheduled hearing before the AO and therefore sought adjournment of the personal hearing which was acceded to. Accordingly, the personal hearing was rescheduled to January 5, 2018. The relevant part of his reply dated December 12, 2017 is summarised below:

- *Mr. Haresh is a textile chemist by qualification. Mr. Haresh had been trading in shares and other securities since the 1980s. He used to carry out even Vyaj Badla trades till around 1999-2000, when these were stopped by SEBI. In and around 2000, Manghandas Jayramdas, a partnership firm in which Mr. Haresh was one of the partners and which firm traded in textiles till 2000, opened a trading account with Satco Securities and Financial Services Private Limited. Manghandas Jayramdas mostly traded in Futures and Options.*

- *As a result of the wrongful and illegal act of Satco Securities and Financial Services Private Limited, Manghandas Jayramdas and Haresh Jashnani HUF suffered financial losses and faced litigation in respect of amounts due and payable by them to their creditors. On account of the same, the firm stopped trading in 2005. In and around 2006, several Insolvency Petitions were filed by creditors of Manghandas Jayramdas against the firm and against Mr. Haresh as partner of the firm; as a result of which, Mr. Haresh could not open a trading account or trade in securities until dismissal of the Insolvency Petitions in July 2008. In December 2012, Mr. Haresh opened a trading account with Religare Securities Limited. As mentioned earlier, suits were filed by the creditors of Manghandas Jayramdas against the firm and against Mr. Haresh as a partner since 2006. These suits came up for hearing in 2012 and since he had to attend the hearings, brief advocates etc.; Mr. Haresh traded only in small quantities till March 2013 and he did not trade till March 2014. Many of the suits were settled out of Court by 2014 and therefore, Mr. Haresh was able to resume trading by March 2014.*
- *By the beginning of 2014, the market expected Diageo and Relay, to acquire more shares either through market purchase or through another open offer in order to protect their existing investment in USL and hence, the open offer by Diageo and Relay in April 2014 did not come as a surprise to anyone who was conversant with the developments relating to USL. Various reports in the media at the relevant time favoured an open offer since a market acquisition had limits on the quantity and price. Therefore, information that an open offer was to be made would not per se have been PSI. Rather, it was information regarding the details of the offer i.e. the offer price, the quantity and the date of announcement of the offer that would have been price sensitive. If at all, a decision by Diageo / Relay not to make an open offer would have impacted the price of the scrip.*
- *Its clients started purchasing Options on USL shares from March 10, 2014 and collectively, by March 11, 2014, they had purchased a total of 33,000 options. Even as per the said SCN, the PSI came into being on March 12, 2014 when Platinum Partners purportedly received "preliminary instructions" from Diageo relating to the*

Open Offer. Thus, it is clear that a substantial quantity of options contracts was purchased by its clients even prior to the coming into existence of the said alleged PSI.

- *Mr. Nishat joined Diageo in 2011 and to the best of its clients knowledge, he was with Diageo when they made their first acquisition and open offer in 2012-13. Its clients, did not trade in the shares or future or options of USL during the said period despite Mr. Nishat being in the employment of Diageo. Therefore, the allegation that its clients trades in 2014 were based on UPSI obtained from Mr. Nishat is a mere surmise and conjecture and not based on any documents, records or other reliable evidence.*
- *If, as erroneously alleged, its clients had knowledge of the impending Open Offer:-*
  - *They would have bought equity shares and not derivative contracts.*
  - *Even if they did not have the money to purchase a substantial equity shares of USL on a delivery basis and chose to buy derivative contracts, they would have, in the first instance, chosen to buy Futures Contracts and not Options Contracts because they would not have had to pay Options Premium, which is high at the start of the Option Period.*
  - *Even in Options contracts, they would have bought April Expiry Contracts and not March expiry contracts since the Open Offer would have been announced in April 2014.*
  - *If at all they had bought March Expiry contracts, they would rollover the same to April Expiry.*
  - *Again, in the case of March Expiry Options, they would have bought At the Money Options i.e. with a strike price at and around the price of the underlying scrip - i.e. strike price around Rs. 2500 since the price of USL scrip was at Rs. 2,466.60 on March 10, 2014, the date of purchase of Options by its clients.*

  Instead, its clients did the following:

  - *They purchased 33,000 Deep Out of the Money European Call Options contracts with a strike price of Rs. 2,700. These were March 2014 Expiry European Options*

and could be exercised only on expiry date unlike American Options, which could be exercise at any time and were expiring on March 27, 2014.

- *They further purchased 2,38,250 March Expiry Contracts at strike prices of Rs.2,600/-, Rs. 2,700/- and Rs. 2,800/- on various dates between March 12, 2014 and March 21, 2014. They sold 2,71,250 of these contracts (including the 33,000 contracts purchased prior to the PSI coming into existence) during the said period. In fact, some of the contracts were bought and sold on the same day i.e. traded intraday.*

The aforesaid behaviour of its clients in selling the March Options Contracts much before the expiry date, rather than rolling over the contracts to the next month of April 2014, when the Open Offer took place, and in trading in the contracts rather than holding on to them clearly shows that they did not possess the said alleged PSI at the time of purchase or sale of the aforesaid Options Contracts.

- *Furthermore, its clients purchased March Options and April Options by paying premium and other costs. If our clients were in possession of UPSI, they would have purchased only April Options and NOT March Options since Out of the Money contracts have only "Time value" - their "Intrinsic Value" is "0" and their value declines with time and therefore, these are "Depreciating Assets". It is pertinent to note' that eventually March 2014 Contracts of Strike price 27000CE & 2800CE did expire worthless. The aforesaid clearly indicates that its clients traded in Options contracts of USL based on available market information including historical data daily price movement alone and not based on the PSI as falsely alleged or otherwise.*
- *Its clients submit that their purchase of the aforesaid Options Contracts was based on sound and tested trading strategies that was rooted in the basic principles of options, trading. In this regard, the following may be observed:*
  - *Two important factors that a purchaser of a Deep Out of the Money contract would look for are (1) Time Value of the Contract and (2) Implied Volatility or sensitivity of the Option's price to changes in the volatility in the price of the underlying asset (expressed as Vega). Together these 2 factors constitute the extrinsic value of the*

contract. As mentioned earlier, intrinsic value of DOMO Contracts is zero. For this reason, "Out of the Money" contracts are significantly cheaper to purchase than "In the Money" or "At the Money" and they offer better leverage to a trader as and when they exhibit volatility.

- *At the beginning of any series of Options Contracts, the impact of Vega is negligible since there is substantial time for the contract to expire; therefore, the maximum impact of volatility is midway between start and expiry of the contracts. Its clients purchased the aforesaid 33,000 Deep Out of the Money contracts on March 10 and 11, 2014 which is almost midway between the start and end of the March expiry contracts.*
- *Volatility was expected in the price of USL's scrip on account of market reports relating to the developments in USL and acquisition of the company by Diageo/Relay and the Options Contracts on USL exhibited sensitivity to the price of the underlying scrip.*
- *The encouraging values of Delta i.e. the ratio of the change in price of the options contract to the change in price of the underlying asset for the Deep Out of the Money contracts at the time of their trading was another factor that determined its clients' decision to purchase/trade in the aforesaid Options Contracts in and around the middle of the Options Period.*

➢ *It is pertinent to note that the April 2014 contracts with strike price 2800CE expired at a loss of the premium and April 2014 contracts with strike price 2900CE and 3000CE expired "worthless."*

➢ *It is pertinent to note that the letter from Platinum Partners does not say that preliminary instructions from Diageo regarding the open offer on March 12, 2014 included details of the proposed open offer including offer price, quantity or announcement date. The record relied upon by SEBI and the chronology set out in the SCN further show that the offer price and other details were determined much later. Furthermore, such a preliminary instruction, if at all, would have been received by Platinum Partners aftermarket hours on March 12, 2014 (India time) considering the time difference of 5:30 hours between Mumbai and London. Hence the*

observation of SEBI that the UPSI came into existence on March 12, 2014 (Mumbai local time), is erroneous.

- *Relay has stated that it was on March 19, 2014 that the Board of Directors (of Relay) met and discussed potential transactions to be entered into by Relay, to acquire shares in USL and sub delegated certain powers and authority to a transaction committee. They have further stated that the decision to launch an open offer was taken in a meeting of the transaction committee held on April 14, 2014. This information has been confirmed by the Merchant Bankers. Thus, the idea of a second open offer was for the first time considered (but not decided) by the Board of Relay in its meeting held on March 19, 2014. In facts and circumstances of the case that existed in March, 2014, the information that Relay was considering an open offer would not have been PSI. The details of the open offer were decided by the transaction committee of the Board of Relay on April 14, 2014.*
- *The Noticee submitted that he is not related to any person or entity as set out in clauses (i) to (v) of sub regulation (h) of Regulation 2 of the SEBI (PIT) Regulations; therefore, the finding that he is deemed connected person as defined in Regulation 2 (h) (vi) of the SEBI (PIT) Regulations is erroneous, false and unsustainable.*
- *As far as USL is concerned, Mr. Nishat cannot be considered as a Connected Person as defined under Regulation 2 (c) of SEBI (PIT) Regulations since he was never a Director or Employee of USL, nor did he had any professional relationship with USL. Therefore, for this reason also, the Noticee cannot be deemed connected person under Regulation 2 (h) (vi) as far as USL is concerned on the basis of their relationship with Mr. Nishat as falsely alleged in the SCN or otherwise.*
- *SCN does not disclose how and in what manner the Noticee could be reasonably expected to have access to UPSI in respect to securities of USL.*
- *It may be noted that on March 12, 2014, the Noticee purchased Options well before offices opened in London between 9:15 AM to 3:10 PM IST i.e. 3:45 AM to 9:40 AM London time. Even if it is assumed, but not admitted that instructions were given by Diageo / Relay to Platinum Partners on March 12, 2014, the same would have been given only after offices opened in London i.e., earliest at 10 AM London time, 3:30*

PM IST. Therefore, the purchase of 43,250 Options contracts on March 12, 2014 cannot be considered as having been based on the said alleged UPSI.

- *The allegation in SCN that in comparison to the UPSI period, the trades of Noticee in the pre UPSI Period were insignificant is misplaced and erroneous. The Noticee submits that Open Positions rather than total traded quantity ought to have been considered. It may be noted that prior to the UPSI period that is January 1, 2014 to March 12, 2014, the total Open Positions in McDowell-N of Mr. Haresh Mrs. Poonam and Mr. Varun was 76,250. Therefore, the Open Positions during the pre UPSI period were not at all insignificant when compared to the UPSI Period (41,500). It is also pertinent to note that if, as alleged, Noticee had access to the UPSI, they would have held on to the purchased contracts rather than sell them.*
- *The Noticee purchased more of the options contracts of USL after March 12, 2014 because the settlement price of the contracts was falling and the "risk-reward ratio" prompted them to obtain more contracts at a lower price to offset the fall in the price of the contract. SEBI has failed to consider this explanation for the increase in purchase and sale of the options contracts.*
- *In the said alleged "post UPSI" period, trades of Noticee in options of USL were not significant because: -*
  - *Once an acquirer announces an open offer, the price of the scrip does not vary by much during the period when the offer remains open since arbitragers enter the scrip and seek to maintain the price until the offer closes. Consequently, there will not be much scope for trading in the scrip or in derivative contracts on such scrip and a prudent trader in options of such scrips will wait till the "premium" on the underlying shares on account of the open offer disappears.*
  - *In the present case, the open offer opened on June 06, 2014 and closed on June 19, 2014 and the price movements of the underlying script scarcely moved. There was a significant discount in the pricing of Futures contracts compared to spot prices of USL which converged to the futures rate on closing of tendering of open offer shares on June 19, 2014. Trading in Out of the Money Options during this period would not have been fruitful as the intrinsic*

value is "0" of the said contracts and it would not have changed until the open offer closed; hence volatility of the contracts would have been low and the time decay would have eroded the option premium day by day till it rendered the option worthless on expiry. Thus, trading – in these contracts in these circumstances will not usually be rewarding.

- *The Noticee was travelling out of India.*

- *It is denied that during the relevant period i.e. UPSI period and post UPSI period, the trades of Noticee were concentrated in the symbol of McDowell-N. In fact, in terms of value, Noticee's trades in NIFTY futures and options exceeded those in the symbol McDowell-N.*
- *It is not clear what adverse inference is sought to be drawn against Noticee on account of the "holding period" of the options being "barely" three weeks during the UPSI period. Since, the market expected Diageo/Relay to acquire more shares before the expiry of the Financial Year i.e. March 31, 2014, and the USL scrip was to be included in the Nifty 50 from March 28, 2014, a prudent trader would have bought options of USI, expiring in March 2014. In fact, Diageo/Relay would have to had to purchase the shares on or before March 27, 2014 to get the shares before March 31, 2014. Similarly, the Index based funds would streamline their portfolio by the addition of the USL in their portfolio by March 28, 2014.*
- *In view of the above, it is quite logical that the Options purchased by Noticee in March 2014 had March 27, 2014 as the expiry date. Furthermore, options are considered to be "Depreciating Assets" unlike Equity, Option contracts are much more complex instruments, wherein the premium pricing in "Out of the Money" Contracts consist of only "Time Value" since the intrinsic value is "0" and the Time Decay accelerates as one gets closer to expiration and eventually they may expire worthless as in the present case.*
- *Mr. Haresh had transferred an amount of Rs.15.70 lakh to the account of Mrs. Poonam between April 04, 2014 to April 09, 2014 and subsequently Smt. Poonam has transferred an amount of Rs.18.40 lakh thereafter on May 09, 2014, and therefore, no adverse inference may be drawn on account of such transfers.*

- *Regarding the transfer of funds from Mr. Haresh to his daughter Mrs. Menka Jashnani on May 9, 2014, it is submitted that since neither Mr. Haresh nor his wife had a credit card or an internationally accepted debit card and since they were travelling alone, they did not want to carry international currency in large quantities. Therefore, in order to meet their expenses while in SEBI (PIT)London and the UK, Mr. Haresh transferred a sum of around Rs.19 lakh to his daughter on May 9, 2014 i.e. prior to his travel, so that she could be compensated for the expenses incurred on their behalf while in London.*
- *It may be noted that the tabulations of profit of the Noticee, Mrs. Poonam and Mr. Varun includes profit made on purchase transactions prior to the alleged UPSI and post alleged UPSI period amounting to Rs. 30,00,762.50 pertaining to Noticee, Mrs. Poonam and Mr. Varun. Without prejudice to the aforesaid submissions and without admitting to any irregularity before, during or after the said alleged UPSI period, these profits cannot anyway be termed as illegal and therefore, ought not to have been included in the tabulation of profit by NSE and/or SEBI.*
- *It may be noted that the profit made in March contracts was made 25 days prior to the PSI was published and eventually all March contracts expired worthless. Typically, in insider trading, the insider would make a profit or avoid loss after the PSI is published. The clients made profits well before the PSI was published. Per se, this indicates that its client's trades were not based on the UPSI as falsely alleged or otherwise.*

12. The Noticee was represented by his Authorised Representatives (Advocates) (hereinafter referred to ARs) on the scheduled date of hearing. The ARs reiterated the submission made vide letter dated December 12, 2017 and requested for additional time to submit further reply in the matter which was acceded to. The Advocates of the Noticee vide letter dated January 30, 2018 requested for further time to submit the additional reply in the matter. The Advocates of the Noticee submitted a joint (Mr. Haresh, Mrs. Poonam and

Mr. Varun) additional reply in the matter vide letter dated February 14, 2018 on behalf of relevant portions of which is summarised as:

- The allegation in the SCN is about insider trading in the scrip of USL, therefore the company in the matter is USL and since Mr. Nishat was neither a director, employee nor an officer of USL, therefore he is not connected person within the meaning of Regulation 2 (c) of the SEBI (PIT) Regulations.
- Mr. Haresh, Mrs. Poonam and Mr. Varun are not relatives of Mr. Nishat and therefore not deemed to be connected to Mr. Nishat. It is not evident since when Mr. Nishat was in possession of the UPSI and also there is no evidence of passing on of the UPSI to Mr. Haresh, Mrs. Poonam and Mr. Varun.
- The date of UPSI coming into existence is 14.04.2014 when the launching of open offer was approved and not on 12.03.2014 as alleged in the SCN. The SCN does not disclose what happened between 12.03.2014 to 19.03.2014 (1st date in everyone else's disclosure). UPSI can only be the decisions regarding quantity and price by the acquirers which was made on 14.04.2014.
- If assumed considering whether to make and open offer was UPSI, then the information was only in public domain long before their trading in the scrip of USL and therefore cannot be said to be Price Sensitive Information.
- Mr. Haresh was trading in the market since the 1980s. He was associated with a firm which traded in Vyaj Badla transaction (modern day F & O Trades) and had to suspend trading due to disputes leading to litigation with certain creditors of the firm.
- Mr. Haresh operated the bank accounts and trading accounts of Mrs. Poonam and Mr. Varun besides his own.
- Owing to the efforts of Diageo/Relay to acquire control of USL, the price of the shares of USL was volatile which made trading in the options on the scrip very attractive. Diageo/Relay wanted to acquire majority stake in USL and had been trying to get the same through share purchase agreement/ preferential allotment/ open offer/ market purchase/ negotiated/bulk deal etc. They were also considering creeping acquisition.

The market price of the shares of USL was increasing as a result of expectation of open offer. The shares of USL was to be included in the NIFTY 50 from 28.03.2014.

- Mr. Haresh, Mrs. Poonam and Mr. Varun traded in the scrip of USL due volatility in price of the scrip much before the UPSI i.e. 10.03.2014. Even if the period of UPSI (12.03.2014 to 14.04.2014) as set out in the SCN is accepted, the trades of Mr. Haresh, Mrs. Poonam and Mr. Varun prior to the period of UPSI cannot be said to be based on UPSI.
- The trading pattern of Mr. Haresh, Mrs. Poonam and Mr. Varun proves that the same were not based on UPSI. If they were trading on the basis of UPSI, they would have :
    - Traded in equity shares instead of options.
    - Would have bought April Expiry Contract and not March expiry contract.
    - Would have traded in at the money options and not out of money options.
- The above shows that Mr. Haresh, Mrs. Poonam and Mr. Varun were trading not based on UPSI but based volatility of the scrip. Further, they have made profits and incurred losses as well. Their trades were spread through prior to UPSI period, during UPSI period and post UPSI period. They traded after the open offer also incurred losses as well. They had much larger exposure to NIFTY 50 than McDowell N Option. Further they did not traded during the 1st open offer period even though they had more profit potential.
- None of the McDowell N Options Contracts traded by Mr. Haresh, Mrs. Poonam and Mr. Varun had strike price of Rs. 5700 to Rs. 5900 as alleged in the SCN. Further the total bought forward long quantity is factually incorrect. Computation of profit is ex-facie wrong as it includes even those of March expiry contracts.
- The trades dated 12.03.2014 cannot be taken into account as the instructions given by Diageo to Platinum Partners would have been after the market hours. Some of the losses have not been taken into account while computation of profit.

13. Thereafter another opportunity of personal hearing was granted to the Noticee on May 27, 2019 vide letter dated May 07, 2019. The Noticee submitted that he has already attended a personal hearing granted to it on January 5, 2018 and therefore do not want a fresh hearing. The Noticee further submitted that his earlier replies may be taken on record and does not wish to make any new submission in the matter. Thereafter another opportunity of personal hearing was granted to the Noticee on February 17, 2020 vide letter dated January 27, 2020. The Noticee vide email dated February 14,2020 requested for adjournment of the personal hearing which was acceded to. Accordingly another opportunity of personal hearing was granted to the Noticee on February 28, 2020. The Noticee vide email dated February 27, 2020 once again requested for adjournment which was acceded to. Accordingly another opportunity personal hearing was granted on March 13, 2020. The Noticee vide email dated March 12, 2020 submitted that he does not wish to appear for the personal hearing but would submit additional representation in the matter and therefore requested for 2 weeks time to submit his representation which was acceded to. Accordingly, he was advised to submit his reply by March 27, 2020. The Noticee vide email dated March 26, 2020 requested for 6 weeks time in view of the unprecedented countrywide lockdown. Which was acceded to. The Noticee once again vide email dated May 5, 2020 requested for additional time till May 25, in view of the extension of the lock down period which was acceded to. The Noticee once again vide email dated May 22, 2020 requested for additional time till May 18, 2020 and then further to May 31, 2020. The Noticee further requested to grant time till June 7, 2020 and then till June 18, 2020. The above request of the Noticee were acceded to in view of the prevailing lockdown in the state.

14. The Noticee vide letter dated June 19, 2020 submitted a joint (Mr. Haresh, Mrs. Poonam and Mr. Varun) additional reply in the matter. I find the submissions in the aforesaid reply to be similar to the submissions made vide letter dated February 14, 2018 and December 12, 2017. In the present reply, the approval by CCI (Competition Commission of India) to Diageo/Relay for acquisition of 53.04% Shares of USL within a period of 5 years have been referred to as one of the events by which it was anticipated that the open offer was

in the offing. Further, Mr. Haresh, Mrs. Poonam and Mr. Varun have submitted that reply of the CEO of Diageo in one of the interviews was one of the indicators of the open offer. I also note that Mr. Haresh, Mrs. Poonam and Mr. Varun have referred to the SEBI order dated September 6, 2018 which as per them was one of the indicators of the open offer. Further, the submissions pertaining to the trading pattern analysis of the aforesaid persons, transfer of funds to Mrs. Menka Jashnani (wife of Mr. Nishat Gupte) are similar to as submitted vide letter dated December 12, 2017 and February 14, 2018, therefore do not require to be mentioned again.

15. In view of the above, I am convinced that the Noticee was given sufficient opportunity to present his case before me and that the principle of natural justice have been complied with respect to the Noticee's matter.

CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully perused the charges levelled against the Noticee in the SCN, reply to the SCN, and other material/documents available on record. In the instant matter, the following issues arise for consideration and determination:-

1) Whether the Noticee was in receipt of the Unpublished Price Sensitive Information (UPSI)? If yes, whether he being an Insider had traded on the basis of the said UPSI and made unfair gains? Whether by the above, the Noticee violated the provisions of Regulation 3(i) and Regulation 4 of the SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992?

2) Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15G of the SEBI Act,1992?

3) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

17. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Act, 1992, SEBI (PIT) Regulations, 1992 and SEBI (PIT) Regulations 2015 which reads as under:-

SECURITIES AND EXCHANGE BOARD OF INDIA 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 there under;

SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) ---------- :

Provided *that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.*

Violation of provisions relating to insider trading.

4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

Repeal and Savings.

12.(1)The Securities and Exchange Board of India (Prohibition of Insider Trading)Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offencecommitted against the repealed regulations, or any investigation, legal proceeding or remedy inrespect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b)anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued there under by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Issue 1) ***Whether the Noticee was in receipt of the Unpublished Price Sensitive Information (UPSI)? If yes, whether he being an Insider had traded on the basis of the said UPSI and made unfair gains? Whether by the above, the Noticee violated the provisions of Regulation 3(i) and Regulation 4 of the SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992?***

18. Before proceeding to deal with the aforesaid issues, I note the submission of the Noticee that principles of natural justice have been not followed in the extant matter as he was not provided with documents which have been relied upon by SEBI. I note from the documents/ material available on record that vide letter dated June 9, 2017 the Noticee was provided with the documents relied upon while issuing the SCN. Further, from the records, it is noted that the ARs of the Noticee had carried out inspection of all the relied upon documents on June 8, 2017 in another proceedings under section 11(1) 11(4) and 11B of the SEBI Act, 1992 before the Whole Time Member (WTM) SEBI for the same facts. Pursuant to which, photocopies of documents as sought by them were provided to them. Thus, from the aforesaid it is noted that all the documents which were relied upon to issue the SCN have been provided to the Noticee. Here, I would like to refer to the observation of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "Hon'ble SAT") in the matter of **Mayrose Capfin Pvt. Ltd. vs. SEBI** decided on March 30, 2012 wherein the Hon'ble SAT observed as follows: *"…The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count."*

19. Further, with respect to the reliance placed by the Noticee on the order of Hon'ble Supreme Court in the matter of **PriceWaterhouse Coopers vs. SEBI,** I note that SAT in its order of **Mr. B Ramalinga Raju et. al. vs. SEBI** dated May 12, 2017 has observed as

follows: *"…Fourthly, Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases."*

In light of the finding that relied upon documents have been inspected and provided to the Noticee and the observation of Hon'ble SAT in the matter of **Mr. B Ramalinga Raju et. al. vs. SEBI**, it is held that in the circumstances of the extant matter, the reliance placed by the Noticees in the matter of **PriceWaterhouse Coopers vs. SEBI** is misplaced.

20. I find from material available on record that the Noticee had allegedly received UPSI pertaining to the open offer by Relay and its PAC Diageo to acquire shares of USL from his relative and based on which he had traded in the scrip of USL and made unfair gains. It is also alleged that the above acts of the Noticee was in violation of the provisions of Regulation 3(i) and Regulation 4 of the SEBI (PIT) Regulations, 1992 read with Regulation 12 of the SEBI (PIT) Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992. I note that to conclude the above allegation either in the affirmative or negative, an answer is required to some other questions such as:

- Whether there was a price sensitive information (PSI)? If yes what was the PSI?
- Whether the aforesaid PSI was unpublished? If yes, what was the period when the PSI remain unpublished or the UPSI Period?
- Whether the Noticee was an "Insider" in terms of SEBI (PIT) Regulations, 1992?
- Whether the Noticee has violated the applicable provisions of SEBI (PIT) Regulations and the SEBI Act.?

21. I find from material /documents available on record that the Public Announcement dated April 15, 2014 contained the relevant information regarding open offer size, timing and price amongst other information as mandated under Regulation 15 (1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Noticee has

submitted that information and possibility of an open offer was already in public domain and therefore, cannot be per se considered as a PSI. Rather, it was information regarding the details of the offer i.e. the offer price, the quantity and the date of announcement of the offer that would have been price sensitive. In this regard, the following provision of SEBI (PIT) Regulations is noted:

Regulation 2 (ha) of SEBI (PIT) Regulations read as under:

(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

22. As on the date of the public announcement, the Acquirer was holding 28.78% of the voting share capital of the Target Company. The public announcement was made pursuant to the decision and intention of the Acquirer and the PAC to increase the shareholding of the Acquirer in the Target Company by additionally acquiring up to 26% of the voting share capital under the open offer, which together with the existing shareholding of the Acquirer in the Target Company, would result in the Acquirer holding up to 54.78% of the voting share capital. Thus, the acquisition of the offered shares by the Acquirer in the open offer, assuming full acceptance, would give the Acquirer a majority stake in the Target Company which is a material information relating to the Target Company. Further, the following is noted from the trading in the scrip of the Target Company:

Date	Open (Rs.)	High (RS.)	Low (Rs.)	Close (Rs.)	No. Of Shares	No. Of Trades
11/04/2014	2604.95	2604.95	2537.35	2557.00	67793	9919
15/04/2014	2812.70	2940.55	2812.70	2853.15	267559	30307

BSE Ltd. had disseminated the public announcement on its platform at 08:01:13 AM. From the above table, it is noted that the scrip opened at Rs. 2,812.70 from the previous day closing price of Rs. 2,557.00, reached a high of Rs. 2,940.55 and closed at Rs.

2,853.15, which is 11.57% higher in comparison to the previous closing price. Moreover, the number of trades executed in the scrip also increased by 205.54%. From the above, it is observed that not only the information of the Acquirer acquiring a majority stake in the Target Company is a material information, the announcement had also materially affected the price of the securities of the Target Company, though the definition of price sensitive information requires only the likely impact on the price of the security.

23. I note that the Noticee submitted that possibility of an open offer / information that an open offer was to be made would not per se be a PSI. I find on perusal of the SCN, that the SCN unequivocally states that "the open offer announcement of HSCI & JMFL on behalf of Relay and the PAC on April 15, 2014 is considered as PSI in terms of Regulation 2(ha) of the SEBI (PIT) Regulations". In other words, as per the SCN, the announcement of open offer by Relay and Diageo is the PSI and not the prospect and possibility of the open offer. Furthermore, any entity / person making the public announcement is obligated to include certain specified information as mandated under Regulation 15 (1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 which inter alia includes name and identity of the acquirer and persons acting in concert with him, the offer price, offer size and offer period. Bereft of the details as mentioned in the aforesaid provision, the public announcement will not be legally tenable. Therefore, the act of announcement of open offer and the details / particulars mentioned therein cannot be seen / treated separately, rather, it is the whole process vide which the intention / decision of the acquirer with relevant details is made known to the public at large. Thus, the open offer announcement along with the details of Acquirer and PAC, size of the offer, timing and the offer price is the price sensitive information.

24. It is also gathered from the replies of the Noticee that for any particular information to be price sensitive, same has to have some degree of certainty and finality. In this regard, it is noted that the elements of absolute certainty and finality, are irrelevant to the provision of Regulation 2 (ha) of SEBI (PIT) Regulations. The requirement under the said Regulation is that the information should be such that if published, it is likely to materially affect the price of the scrip. Without prejudice to the aforesaid finding, it is noted that it

cannot be said with 100% certainty what will be the information before the public announcement is actually made as there is still room for the Acquirer to change / modify his decision till the time his decision has been publicly announced. The certainty of information can only be measured in terms of probability/degree of certainty of its execution which in the given case, as seen from the email dated March 12, 2014, the wheels for the process of crystallising the information were set in motion by formally introducing the various professionals / members of the project referred to as Project Cape with each other by the PAC. Therefore, even on this count the submission of the Noticees that there has to be certainty and finality to the information, is not acceptable as absolute certainty and finality is not envisaged under Regulation 2 (ha) of SEBI (PIT) Regulations.

25. In view of the above, it is concluded that the open offer announcement issued by HSCI and JMFL on behalf of Relay and Diageo, as discussed in the above paragraphs was PSI in terms of Regulation 2 (ha) of SEBI (PIT) Regulations.

26. Having concluded that there was a PSI, the next issue to consider is whether the aforesaid PSI was unpublished? If yes, what was the period when the PSI remain unpublished or the UPSI Period?

27. I find that the Noticee has submitted that it was anticipated and widely reported in media (national and international) that another open offer would be in the offing soon. Thus, the prospect and possibility of an open offer was already in public domain and cannot in itself be considered an UPSI. In this regard, it would be relevant to refer to the definition of "unpublished" as defined under SEBI (PIT) Regulations. Regulation 2(k) of SEBI (PIT) Regulations defines *"unpublished" to mean "information which is not published by the company or its agents and is not specific in nature. Explanation.— Speculative reports in print or electronic media shall not be considered as published information."* As seen from the definition of *"unpublished",* media reports are speculative in nature. Hence, any report published in media with respect to acquisition of shares of USL by the Acquirer which has not been published by USL/Relay/ Diageo cannot be treated as published. Further, as per Regulation 2 (k) of SEBI (PIT) Regulations, even if the media report is published by the Company, it would still be deemed as *"not published"* if the information was not

specific in nature. It is not the case of the Noticee that the specific details of the open offer announcement was in public domain. Therefore, the submission of the Noticee that PSI was in public domain and cannot in itself be considered an UPSI, is not acceptable.

28. I find from the material available on record that the PSI related to open offer had come into existence on March 12, 2014 after Platinum Partners received preliminary instructions from Diageo regarding the open offer. Accordingly, the period of UPSI would be March 12, 2014 to April 14, 2014, considering the corporate announcement of the open offer was made to the Exchanges by managers to the offer on April 15, 2014.

29. I note that the Noticee has stated that the SCN is silent on when Mr. Nishat became aware of the alleged UPSI. Noticee has also submitted that the Investigation had conveniently cherry picked the date stated by Platinum Partners in its letter, which too was only based on the recollection of the signing partner and rejected the version of three entities viz. HSCI/JMFL/Relay, as to the date of arising of alleged UPSI. The above, therefore cannot be taken as a reliable date. Further, the Noticee has submitted that the statement of Platinum Partners is very vague and devoid of material particulars, for the following reasons:

- does not disclose what exactly happened from March 12, 2014 to March 19, 2014 (the 1st date in everyone else's disclosures);
- does not disclose what the discussions were and with whom - important to note that there is no reference to Mr. Nishat;
- considering that they were Diageo's lawyers, in the absence of particulars, at best, it can be assumed that Diageo sought their opinion as to whether an open offer was permissible in law and if so, what documentation would be required - the SCN cannot be based on lacuna of information;
- without prejudice to the above, Platinum Partners would have received preliminary instructions only after market hours on March 12, 2014 (due to the 5 ½ hours difference in time between London and India) and therefore, trading on March 12, 2014 cannot be alleged to have been done on the basis of UPSI.

30. I note that as per the Noticee, it is only in the evening of April 14, 2014, the PSI came into existence when the Transaction Committee of the Acquirer in Amsterdam and the meeting of CEO and CFO of PAC held in London, approved the launching of open offer. I also note that the Noticee submitted that the SCN is silent on when Mr. Nishat became aware of the PSI, I note that the SCN has laid down the chronology to establish the period when the PSI came into existence and when it was published. Further, based on the response of JMFL, HSCI, Relay, USL and Platinum Partners, who all have submitted that Mr. Nishat, Global Business Development Manager of Diageo among others was privy to the open offer till the date of its Public Announcement / was involved in the discussions with the Manager(s) to the open offer / was aware of the open offer till the date of the open offer or till the date of the public announcement / was in possession of the PSI prior to the public announcement. Therefore, considering that Mr. Nishat was involved in the discussions for the acquisition of shares of USL till the date of the public announcement coupled with the chronology of events which shows that the allegation is to the effect that PSI came into existence at least on March 12, 2014 and the Mr. Nishat and his relatives including the Noticee were in possession of PSI till the date of public announcement from March 12, 2014, if not before it. Thus, the submission of the Noticee that SCN is silent on Mr. Nishat and his awareness of UPSI is incorrect.

31. Moreover, from the email correspondences available on record, following is noted:

- Email dated July 31, 2013 from Mr. Nishat Gupte to JMFL – *"Atul- can you share with me the updated cost associated with a preferential allotment compared to any other route. Also it would be helpful for Vinay and me to receive an update every other week on share price movement and a couple of lines commentary for significant movements."*

  In response to the aforesaid email, JMFL vide its email dated August 2, 2013 to Mr. Nishat Gupte with the subject "Plan B" had shared with him PAA analysis (PAA vs Creeping workings). Thus, from the aforesaid, it can be seen that various options for share consolidation were being explored by the Acquirer and PAC and in this context,

Mr. Nishat Gupte had advised the Manger to the Offer to keep him abreast with the share price movement including any significant movements therein.

- Email dated August 30, 2013 from Mr. Nishat to JMFL and Platinum Partners – On perusal of the said email, it is noted that Mr. Nishat is outlining the agenda for the meeting to be held in the week of 9th September. The topics which Mr. Nishat advised the Manager to the Offer and to the Legal Counsel to address were overall recommendation for share consolidation, value implications of price range, share price sensitivity, division of responsibility amongst teams, legal form of the proposed structure including a detailed step plan / timing for the activities to be carried out and Q&A (Question & Answer) for Investor Relations purposes. Thus, it can be seen that Mr. Nishat was leading and guiding a team of experts / professionals which was exploring in detail the viability of various options from all perspectives (price, sensitivity and legal) to consolidate the shareholding of the Acquirer in the Target Company. In response to the aforesaid email, JMFL vide its email dated September 3, 2013 had sent a working draft of the consolidated presentation on Plan B for review to Mr. Nishat.

- Subsequent to the aforesaid emails, email correspondences dated September 20, 22 and 30, 2013 with HSCI, the other Manager to the Offer to which Mr. Nishat was also a party / privy shows that discussions were taking place on valuation, shareholder analysis and various options including tender offer available to Diageo.

- It is noted from Mr. Nishat's submission that the various discussions that took place subsequent to the failure of first open offer, lead to creeping acquisitions on November 28, 2013 and February 4, 2014. Seeing the aforesaid submission in light of the email dated March 12, 2014 from Mr. Vinay Tanna to the team of "Project Cape" addressed to Manager to the offer and the Legal Counsel wherein he is formally introducing all the team members and is also requesting JMFL and Platinum Partners to familiarise HSCI team members with the various regulatory / legal matters that the rest of the "Project Cape" team have been discussing over recent weeks indicates that from February 4, 2014 onwards momentum was steadily building and strategy of

the Acquirer to consolidate its shareholding in USL was getting more and more crystallised towards launching another open offer.

32. I note from the above discussions that Mr. Nishat was part of the core team that was representing Diageo / PAC in the transaction to consolidate shareholding of the Acquirer in the Target Company and was guiding the team since the beginning of the transaction lifecycle which led to creeping acquisitions and open offer. Moreover, from the email dated March 12, 2014 it is noted that there is a strong preponderance of probability that in the weeks leading up to March 12, 2014, the strategy of launching another open offer was gaining momentum and a team “Project Cape” was formally put together in place to delineate each firms respective role and to consider various regulatory / legal issues. The various events prior to March 12, 2014 were in fact giving more and more certainty and the nature of discussions moved towards the crystallisation of the UPSI on March 12, 2014. I note that the email was sent by Mr. Vinay Tanna (Corporate Finance M&A Director, Diageo) on March 12, 2014 at 6:39 PM to various officials of Platinum Partners, HSCI, JMFL and copy marked to Diageo officials including him wherein he asked to coordinate with each other to discuss the legal and regulatory feasibility of a potential tender offer. Therefore, it can be safely said that as on March 12, 2014, the UPSI had come into existence. Mr. Nishat being part of the core team of “Project Cape” who was in possession of information at various stages became in possession of UPSI from March 12, 2014 onwards till its public announcement.

33. With respect to Noticee's submission that SEBI has cherry picked the date stated by Platinum Partners, following is noted:

- As already noted in the preceding paragraphs, Mr. Nishat was part of the core team which was working on the strategy of open offer to consolidate the shareholding of the Acquirer in the Target Company in the weeks leading up to March 12, 2014. I note that individuals in a team or group working on the issues relating to the open offer had a very specific role to play. Therefore, it is not necessary that the Acquirer / PAC, would have approached them simultaneously. Moreover, the Acquirer and therefore Mr. Nishat is a common factor in all of these matters as he was part of the

core team which was handling all the strategy discussions post first open offer. The following is noted from the extract of the meeting of the Board of Directors of the Acquirer dated March 19, 2014 :

"IT WAS NOTED THAT discussions have been ongoing in relation to certain potential transactions to be entered into by the Company to acquire equity shares in United Spirits Limited…

IT WAS RESOLVED to approve to proceed with the strategy outlined in the pre-circulated paper in relation to the potential transactions and consistent with that strategy provide to … (the "Transaction Committee") the delegated powers and authority (with the ability to sub-delegate), to consider and approve executing the steps set out below:

To consider and if thought appropriate, to approve or to delegate authority (with the authority to sub-delegate), the Company, together with Diageo plc and any other Diageo group companies acting as parties in concert, launching a potential open offer to the public shareholders of United Spirits Limited ("Open Offer"), in terms of the Securities & Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended ("SEBI (SAST) Regulations"). The Open Offer price would be set in accordance with the SEBI (SAST) Regulations. …

To consider and if thought appropriate, to approve or to delegate authority (with the authority to sub-delegate), RBV making further purchases of equity shares in United Spirits Limited during the period of the Open Offer, apart from and in addition to any equity shares tendered by public shareholders and acquired by RBV in the Open Offer".

- From the aforesaid minutes, it is noted that discussions with respect to the acquisition of shares of USL were ongoing i.e. even before March 19, 2014 and based on that a paper was pre-circulated before the said Board Meeting on the strategy. Further, the subsequent paragraph lays emphasis on acquiring the shares through open offer in terms of SEBI (SAST) Regulations and acquisition of shares by the Acquirer during

the period of open offer. To take the crystalized strategy forward in conformity with the legal requirements / obligations under SEBI (SAST) Regulations, the PAC has approached its Indian legal counsel, Platinum Partners. The same is also in line with the submission of Platinum Partners. I note that at this stage, the discussions with legal counsel have to be with respect to the various obligations of the Acquirer and the PAC under SEBI (SAST) Regulations in the matters of open offer.

34. Moreover, as noted from the email dated March 12, 2014 of Mr. Vinay Tanna, Corporate Finance M&A Director of Diageo to the Manager to the Offer and to the Indian Legal Counsel that prior to that email, he had already spoken to the lead in each firm which inter alia included their respective roles in the team, "Project Cape" and the various discussions that he had with them over recent weeks with respect to various challenging regulatory / legal matters. Further, as noted in preceding paragraphs, from February 4, 2014 onwards, momentum was steadily gaining towards open offer as a viable option to consolidate the shareholding of the Acquirer in the Target Company, is indicative of the discussions Mr. Vinay Tanna was having with JMFL and Platinum Partners which would mainly focus around the regulatory and legal challenges pertaining to an open offer.

35. In view of the aforesaid discussion, I am of the considered view that the submission of Platinum Partners that preliminary instructions and discussions were initiated with PAC from March 12, 2014 onwards, is credible. The same as discussed in preceding paragraphs is very specific in nature pertaining to the consolidation of the shareholding of the Acquirer in the Target Company via open offer route and the said discussion was held with Diageo / PAC.

36. I understand that a due diligence certificate has to be submitted by the Merchant Banker with every letter of offer. Moreover, as seen from the chronology of events, the PAC first approached its Indian legal counsel, Platinum Partners on March 12, 2014 with its preliminary instruction, subsequent to which the Boards of the Acquirer and the PAC met to discuss the strategy on March 19, 2014 and March 27, 2014 and finally the entire process / discussions regarding open offer was concluded on April 14, 2014. Furthermore, as seen from the email dated March 12, 2014 of Diageo that discussions

with respect to potential open offer including the challenging regulatory / legal matters related to it which were conducted, were being formalised among officials of Diageo, JMFL and Platinum Partners over weeks preceding that email date. Thus, it can be seen that before making the public announcement on April 15, 2014, more than a month long exercise (starting with weeks before March 12, 2014 and culminating on April 15, 2014) was undertaken focusing on various details / particulars and obligations, both financial and regulatory / legal of the open offer which was to acquire up to 37,785,214 fully paid up equity shares of face value of Rs. 10/- each of the Target Company, constituting 26% of the total fully diluted voting equity share capital of the Target Company at a price of Rs.3,030/- per offer share aggregating to total consideration of Rs. 114,489,198,420/-. I note that above, if read together with the chronology of events and the offer size per se, the submission of Platinum Partners that discussions were held during April 13-14, 2014 with the PAC to finalise the documents for open offer, shows that the discussions and strategy planning was going on much prior in time. Further, as discussed in the preceding paragraphs, only upon public announcement, it can be said that the information has absolutely crystallised and irrevocably final as prior to the announcement, it may undergo modifications / changes.

37. It is noted from the material available on record that JMFL in its correspondence with SEBI has stated that emails pertaining to various stake building options were exploratory in nature and similarly emails of HSCI were general marketing presentation. I note that the above is acceptable as it is not the case of SEBI that the Acquirer and PAC had decided to come out with another open offer immediately after the failure of first open offer. Rather, the point that is being made by referencing the email correspondence with JMFL and HSCI is that Mr. Nishat was part of the core team and was involved in the discussions / strategizing relating to enhancement of equity stake of Acquirer and PAC in USL from a very early stage (contrary to his claim in the affidavit) in the transaction cycle where various acquisition methods were discussed including open offer. Mr. Nishat being a member of the core team was party to all the communications specifically regarding price and share valuation. The same can be seen from the email dated July 31, 2013

wherein he is advising the Manager to the offer, JMFL to send him an update every other week on the share price movement and a couple of lines commentary for significant movements.

38. I note from the material/documents available on record that JMFL's letter dated July 24, 2019 does not provide correspondence in relation to the VTO announced on April 15, 2014 as it has been dealt separately in its letter dated July 5, 2019. Firstly, July 24, 2019 letter is in addition to the letter dated July 5, 2019, hence is in continuation of it. Secondly, the correspondence attached with the letter dated July 24, 2019 revolves around exploring various feasible alternatives available to the Acquirer along with PAC to consolidate its shareholding in USL including an open offer.

39. I note that in response to the email dated July 31, 2013 which was from Mr. Nishat, JMFL vide its email dated August 2, 2013 had sent a presentation which discussed the cost associated with two of the modes of acquisition of shares i.e. preferential allotment vis-à-vis creeping acquisition which only helped in narrowing down the alternatives available to the Acquirer and PAC for a major consolidation of shareholding in the Target Company. It cannot be said that these correspondences have nothing to do with the open offer as it explored the viability of the aforesaid 2 modes of acquisition of shares keeping in my mind the objective of the Acquirer and PAC to have a majority stake in USL. Pursuant to the said emails, Mr. Nishat had himself sent an email dated August 30, 2013 to Platinum Partners and JMFL to come up with an overall recommendation to achieve the share consolidation including price range and timing of the activities. More importantly this shows the active role played by Mr. Nishat in steering / giving direction as to the manner in which the discussions / agenda have to be shaped to accomplish the objective of the Acquirer and PAC including the details about the pricing and timing of various options. It is further added that the reliance on the aforesaid emails are not being placed to establish that discussions on second open offer started, right after the failure of first open offer, rather the reliance is placed on the said emails to demonstrate that Mr. Nishat was part of the core team and was actively involved in all the discussions pertaining to exploring

various options to consolidate the shareholding of the Acquirer in USL from the very beginning contrary to his claim in his affidavit.

40. I note from material /documents available on record that Mr. Nishat had stated that Plan B resulted in creeping acquisitions by the Acquirer and PAC is not entirely correct. Plan B was the result of the guidance provided by Mr. Nishat vide his email dated August 30, 2013 which was to achieve the share consolidation in the Target Company and one of the method which was discussed therein was Creeping Acquisitions. However, the same did not result in achieving the overall objective of the Acquirer and PAC to have a controlling stake in the Target Company, the other alternatives including open offer which was discussed in the said Plan B were still active / being considered.

41. I note from material/documents available on record that the emails dated July 31, 2013 and August 30, 2013 show that JMFL was making representations as sought by Diageo and was in response to the queries raised by Diageo. I also note and as discussed in preceding paragraph, irrespective of whether, it was a pitch by HSCI to market its service or the same was made prior to their appointment as Manager to the Offer, it demonstrates the level of involvement Mr. Nishat had subsequent to the first open offer to enable the Acquirer and PAC to increase its stake in the Target Company. Not only was he receiving regular updates on price movement of the scrip of the Target Company including significant movements (email dated July 31, 2013), he was also setting the agenda for the meetings and steering it towards an outcome (email dated August 30, 2013). He was also involved in the discussions with other market participants (HSCI) with respect to evaluation of options for share consolidation in the Target Company. As per Mr. Nishat's own admission, the outcome of the various discussions that took place subsequent to first open offer, led to creeping acquisitions on November 28, 2013 and February 4, 2014. Seeing this in light of the Board Meeting which was held on March 19, 2014 wherein potential open offer was discussed, it can be reasonably inferred that post February 4, 2014, the idea of second open offer was gaining momentum and certainty which was one of the routes being discussed for achieving share consolidation in the Target Company by the core team of Diageo which included Mr. Nishat.

42. I note from the material available on record that Relay vide its letter dated June 25, 2019 submitted that, “In addition to discussions within the Diageo group, Mr. Gupte was also involved in discussions with the external advisors who were engaged in connection with the potential transaction” further confirms that Mr. Nishat’s involvement in the transactions relating to potential acquisition of further shares in USL was much prior than April 14, 2014.

43. I take note of email dated March 12, 2014 claiming that potential advisors were put together for the first time on March 12, 2014. On a perusal of the said email it is noted that challenging regulatory issues with respect to potential tender offer was being discussed among officials of Diageo, Platinum Partners and JMFL over the recent weeks preceding March 12, 2014. The aforesaid is indicative of the fact that the idea of second open offer was being seriously considered amongst advisors and the PAC, prior to March 12, 2014. Secondly, the officials of HSCI who were not part of the aforesaid discussions that took place in weeks preceding March 12, 2014, were to be made familiar with the regulatory challenges pertaining to the potential open offer. I note that the submission of Mr. Nishat that potential advisors were asked to consider legal and regulatory issues for the first time only on March 12, 2014 is not borne out from the facts of the case. As can be seen from email dated August 30, 2013 from Mr. Nishat to JMFL and Platinum Partners, they were advised to ensure that their overall recommendation to achieve consolidation of shares in USL should take into consideration all the legal implications and regulatory challenges. In response to the said email, a working draft on Plan B was sent to him on September 3, 2013. The said Plan B included key regulatory and other considerations impacting the options and timelines for the Acquirer. Various options like primary infusion, secondary purchases and other options like merger, stock repurchase were explored in detail with parameters of pricing, time for execution, regulatory approvals etc. Thus, it can be seen that with the aim to consolidate the shareholding of Acquirer in the Target Company, the efforts / work had begun as early as July 31, 2013 where the option of preferential allotment was explored vis-a-vis other options and the said effort led to 2 creeping acquisitions in the month of November, 2013 and February, 2014. And as

noted from email dated March 12, 2014 and from the minutes of the Board Meeting dated March 19, 2014 of the Acquirer that discussions on potential transactions to acquire equity shares of USL were ongoing subsequent to the creeping acquisition and strategy paper was being pre-circulated prior to the Board Meeting based on which the Transaction Committee was given the authority to consider launching potential open offer. Thus, as stated in preceding paragraphs, from February 4, 2014 onwards, after second creeping acquisition, momentum of the strategy was steadily being directed towards open offer and the option of launching second open offer was taking root.

44. I note from material/documents available on record that Mr. Nishat has claimed that the email dated March 12, 2014 referred to an exploratory discussion with respect to the possibility of potential open offer and thus clears the discrepancy that UPSI existed from March 12, 2014 which was attributed to the vague submission made by Platinum Partners. I, on the contrary, find that the email strengthens the submission of Platinum Partners. It is Mr. Nishat's own submission that the said email is about the open offer. It has already been found in preceding paragraphs that as per the email, regulatory / legal matters pertaining to the potential open offer had already been discussed in previous weeks. Discussion surrounding potential open offer subsequent to the creeping acquisition on February 4, 2014 and bringing HSCI formally on board to take part in the said discussions, demonstrates that in the weeks leading to March 12, 2019, the idea that second open offer is a viable option to consolidate shareholding in USL was taking root firmly and therefore, various particulars related to it including regulatory / legal issues were being crystallised in all seriousness.

45. The submission of the Noticee that the preliminary instruction, if at all, would have been received by Platinum Partners aftermarket hours on March 12, 2014 (India time) considering the time difference of 5:30 hours between Mumbai and London, is not supported by any evidence. The email dated March 12, 2014 from Diageo to various officials of Platinum Partners, JMFL and HSCI is related to the formal introduction of officials of various advisors to the open offer to each other, as part of the team “Project Cape” and a request to other team members to ensure that the officials of HSCI are made

aware of the discussions that took place over previous weeks. The said email cannot be read as a preliminary instruction to the Platinum Partners, who as noted from the email, were already part of the discussions related to regulatory / legal issues pertaining to the open offer. The relevant extract of the said email is reproduced below: *"I have spoken to the lead in each firm on respective roles etc, my immediate request is that collectively you catch up soonest to ensure that Sunil/Amit are familiarized with some of the challenging regulatory issues that we have discussed over the recent weeks."* From the aforesaid extract of the email, it is observed that Mr. Vinay Tanna had already spoken to each firm on their respective roles and Platinum Partners being one of the firms, it is clear that the role of Platinum Partners was already discussed prior to sending of the email. Thus, Platinum Partners had received instructions from Diageo, prior to the email dated March 12, 2014 of Mr. Vinay Tanna based on which they were already having discussions with Diageo.

46. I note from material /documents available on record that the PSI was published when the public announcement of the open offer was made to the Stock Exchanges by JMFL and HSCI on behalf of the Acquirer and PAC, on April 15, 2014, before the market opened.

47. In view of the discussions in the foregoing paragraphs, I am of the considered view that the price sensitive information (PSI) came into existence on March 12, 2014 and the same was disclosed to the public through Stock Exchanges on April 15, 2014 before the start of business hours (market hours). Therefore, the UPSI period is from March 12, 2014 to April 14, 2014.

48. The next issue for consideration is whether the Noticee was an "Insider" in terms of SEBI (PIT) Regulations, 1992? I find that the statutory provisions in respect of the above is as under:

2 (e) "insider" means any person who,

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

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

49. From the aforesaid provision, it is clear that in order to be termed as an insider as stipulated under Regulation 2(e) of the SEBI (PIT) Regulations, one has to satisfy either of the sub-clauses. In the extant matter as noted from the material /documents available on record, the Acquirer and the Managers to the Offer have stated that Mr. Nishat, was one of the employees of the PAC who was aware of the offer till the date of public announcement. Mr. Nishat has submitted that based on the letters written by JMFL / HSCI / Relay, it cannot be concluded that he was in possession of the PSI prior to the public announcement. In this regard, it has already been concluded in the preceding paragraphs that post February 4, 2014 the strategy for consolidation of shareholding of the Acquirer in the Target Company was increasingly crystallised in favour of open offer and by March 12, 2014 UPSI has come into existence and that Mr. Nishat was a part of the core team from the beginning of the transaction cycle, till the public announcement that was working on the consolidation of shareholding of the Acquirer and PAC in the Target Company on behalf of PAC. This leads to the conclusion that he had access to UPSI.

50. I note from the material /documents available on record that it is contended that Mr. Nishat cannot be considered as a Connected Person as defined under Regulation 2(c) of SEBI (PIT) Regulations since he was never a Director or Employee of USL, nor did he have any professional relationship with USL. In this context, I refer to and rely upon the decision of Hon'ble SAT in **Mr. V. K. Kaul vs. The Adjudicating Officer** dated October 8, 2012

"The decision taken by Solrex to purchase shares of the target company is not a decision in public domain and known only to insiders of Solrex. Hence it is a price sensitive information for Solrex. Regulation 2(e) defines 'insider' to mean any person who, (i) is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company or; (ii) has received or has had access to such unpublished price sensitive information. It needs to be appreciated that the clause makes a distinction between 'the company' and 'a company'. When it refers to 'the company, the references is to the company whose Board of Directors is taking a decision

and when it refers to 'a company', the reference is to a company to which the decision pertains…"

"We are, therefore, of the view that the term price sensitive information used in regulation 2(ha) is wide enough to include information relating directly or indirectly to 'a company'. The Solrex had decided to purchase shares of the target company. Here, Solrex is 'the company' and target company is 'a company'. The decision of Solrex to purchase shares of the target company is likely to materially affect the price of securities of the target company. Only the insiders of Solrex are aware about this decision of the company. If the insiders of Solrex are allowed to trade in the shares of the target company ahead of purchase of shares by Solrex, surely the trading will be on the basis of insider information…"

51. I note that the above decision of Hon'ble SAT clears the ambiguity surrounding 'insiders' in a scenario where acquisition/purchase is made by one company in another company. In case where the acquisition is through agreement between the Promoters/shareholders of the Target Company and the Acquirers, the fact of acquisition is known to the Acquirers as well as the Target Company. Therefore, in such a scenario, insider would also include those connected with the Target Company and those who are or were connected with the Acquiring company/PAC or are deemed to have been connected with the Acquiring company/PAC. In the case of a hostile takeover, the Acquirer / PAC would have the inside information relating to their takeover bid and thus persons connected with the Acquirer / PAC will be insiders for the purposes of that transaction. In the present case Mr. Nishat, is not only an officer of Diageo but was also the Global Business Development Manager (M&A) of the PAC. The fact that he was Global Business Development Manager (M&A) puts him in the position where he is reasonably expected to have access to unpublished price sensitive information (UPSI) in relation to the acquisition of shares in the Target Company. Therefore, Mr. Nishat falls within the definition of insider by virtue of being connected person on this score alone. The fact that Mr. Nishat was involved from the very beginning till the public announcement points to the evidence that he was not only reasonably expected to have access to the unpublished price sensitive information but

there is a strong preponderance of probability that he was in fact in possession of UPSI. Therefore, it is held that Mr. Nishat is an insider in terms of Regulation 2 (e) (i) of PIT Regulations as he was connected with the company, Diageo and was reasonably expected to have access to the UPSI pertaining to the proposed acquisition majority stake in USL by Relay B.V. and Diageo.

52. Alternatively, it can be argued that considering Diageo / PAC along with the Acquirer was consolidating its shareholding in USL and by virtue of this fact, they had a temporary business relationship with USL. I note that Diageo / PAC is a juristic entity, the discussions on its behalf as noted in preceding paragraphs were led by the core team which included Mr. Nishat Gupte since the very beginning, post the failure of first open offer. It was Mr. Nishat who was asking for regular updates on price movement, who was setting the agenda for the meetings regarding consolidation of shareholding and giving specific instructions to the Manger to the offer and to the Legal Counsel and it was he who was a part of the core team that was evaluating various options available for the Acquirer based on several parameters (pricing, timing, regulatory / legal challenges etc.). Thus, he was intricately involved in the entire transaction life cycle of consolidation of shareholding of the Acquirer and PAC in the Target Company. Thus, by virtue of him being part of the core team of "Project Cape" which was working on the potential open offer, Mr. Nishat also had a temporary business relationship with USL in respect of the said open offer. The term "business relationship" has to be interpreted broadly. It is a well recognized rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. A construction should be adopted that advances rather than suppresses this object. The purpose of insider trading regulations is to prohibit trading by which an insider gets advantage by virtue of his access to price sensitive information as the same distorts the level playing field for the investors transacting in the market and undermines investors' confidence. Business relationship from a particular transaction point of view (in the given case, consolidation of shareholding of the Acquirer in the Target Company) means connection that exists among all the entities involved in the transaction. In the instant matter, a team by name of "Project Cape" was specifically

formed for the acquisition of shares in the Target Company which indicates that the said team had a temporary business relationship with the Target Company.

53. It has already been established that Mr. Nishat had access to the UPSI. Therefore, even in terms of Regulation 2 (e) (i) of SEBI (PIT) Regulations, it is concluded that Mr. Nishat is an insider as he was connected with the company, Diageo and was reasonably expected to have access to the UPSI pertaining to the proposed acquisition of majority stake in USL by Relay B.V. and Diageo and since the Noticee was relative of Mr. Nishat, the Noticee is also deemed to be connected and therefore an Insider as per SEBI (PIT) Regulations. *The next issue for consideration is whether he had communicated the UPSI to his relatives namely, Mrs. Poonam, Mr. Haresh and Mr. Varun who had traded in the scrip of USL on the basis of the UPSI*.

54. I note from material/documents available on record that Mr. Nishat has denied that Mrs. Poonam, Mr. Haresh (Noticee) and Mr. Varun are his "relatives" as alleged. Mr. Nishat has contended that the aforesaid persons do not fall within the definition of relatives as prescribed under the SEBI (PIT) Regulations. The term "relative" has been defined under Regulation 2(i) of SEBI (PIT) Regulations to mean *"a person, as defined under Section 6 of the Companies Act, 1956"*. Mr. Nishat had stated that since Mrs. Poonam, Mr. Haresh and Mr. Varun do not fall within the definition of “relative" as contemplated under SEBI (PIT) Regulations, they cannot be deemed connected persons in terms of Regulation 2(h) (vi) of SEBI (PIT) Regulations, as alleged. Further they also cannot be insiders under Regulation 2(e)(i) as alleged, as they are not deemed connected persons - which is the basis of treating them as insiders. It is argued that since the whole foundation of the SCN in this context is totally flawed, the further allegation that by being "relatives", Mrs. Poonam, Mr. Haresh and Mr. Varun were "reasonably expected to have access to UPSI in securities of USL” also collapses. Section 6 of the Companies Act, 1956 states that a person shall be deemed to be a relative of another if, and only if, (a) they are members of a Hindu undivided family, or (b) they are husband and wife, or (c) the one is related to the other in the manner indicated in Schedule IA. The basis of the argument of Mr. Nishat is that Mrs. Poonam, Mr. Haresh and Mr. Varun will be relatives only when they are related

in the manner as shown in the list of relatives. The argument is that the manner in which Mrs. Poonam, Mr. Haresh and Mr. Varun are related to Mr. Nishat is as Mother-in law, Father-in law and Wife's brother and the list does not feature those relationships.

55. I note that the aforesaid understanding of Mr. Nishat is flawed. The Schedule IA of Companies Act, 1956 which provides the lists of relatives includes Father, Mother, Father's father, Son's wife and Brother's wife. A perusal of the list and Section 6(c) of Companies Act, 1956 shows that one person shall be deemed to be relative of another, if one is related to the other in the manner indicated in Schedule IA. I find that serial no. 14 of the list identifies daughter's husband as relative which means that if Mr. X's daughter's husband is Mr. Y then Mr. X and Mr. Y are relatives. Similarly, Mrs. Z's daughter's husband is Mr. Y then Mrs. Z and Mr. Y are relatives. I note that in the instant matter, Menka Jashnani, wife of Mr. Nishat Gupte is daughter of Mr. Haresh Jashnani (Noticee) and Mrs. Poonam Jashnani i.e. Mr. Nishat is "daughter's husband" of Mr. Haresh and Mrs. Poonam Jashnani and therefore, they are relatives as discussed aforesaid. Similarly, serial no. 22 identifies sister's husband as one of the relatives. In the present matter, Mr. Varun's sister, Mrs. Menka Jashnani is wife of Mr. Nishat i.e. Mr. Nishat is "sister's husband" of Mr. Varun. Therefore, Mr. Nishat and Mr. Varun are relatives. Therefore, the fact that one side of relationship is not mentioned in the list of relatives does not have any significance as relationships come in pairs. The purpose of adoption of the definition of "relatives" as defined in the Companies Act, 1956, is because such relatives are "deemed to be connected persons" to the company. The purpose of such deeming provision would be defeated, unless both the persons forming the pair of relatives is considered as relative. Unless such an interpretation is adopted, it would defeat the very basis of relationship that both the pair in the relationship are related to each other. Or else it will lead to an absurd situation where X is a relative of Y but Y is not a relative of X. Adopting the interpretation of Mr. Nishat would defeat the regulatory requirement of categorisation of the pair of relatives as deemed to be connected to the company, is by virtue of having a relationship. Therefore, I do not find any merit in the argument that Mrs. Poonam, Mr. Haresh and Mr. Varun are not relatives of Mr. Nishat. I

find that Mrs. Poonam, Mr. Haresh and Mr. Varun are relatives of Mr. Nishat as per Section 6(c) of the Companies Act, 1956 by virtue of reciprocity that is an inherent part of a relationship and are therefore deemed to be connected persons.

56. In view of the aforesaid discussion in the foregoing paragraphs it is established that Mr. Nishat is an Insider in terms of Regulation 2(e)(i) of SEBI (PIT) Regulations and that Mr. Haresh, Mrs. Poonam and Mr. Varun are his relatives as defined under Regulation 2(i) of SEBI (PIT) Regulations read with section 6(c) of Companies Act, 1956. Consequently, Mr. Haresh, Mrs. Poonam and Mr. Varun are deemed to be connected person and therefore 'insiders' under Regulation 2 (e) of SEBI (PIT) Regulations. *The next issue for consideration is whether he had communicated the UPSI to his relatives namely, Mrs. Poonam, Mr. Haresh and Mr. Varun who had traded in the scrip of USL on the basis of the UPSI*.

I note that the Noticee has submitted that Mr. Nishat has not communicated any UPSI to his relatives (Mrs. Poonam, Mr. Haresh and Mr. Varun) as he was not in possession of the same. I find that in the preceding paragraphs it has already been established that there was a PSI and it was unpublished. Further it has also been established that the Noticee was in possession of the UPSI. It is pertinent here to refer to the observations of Hon'ble SC in the matter of ***SEBI vs Kishore R Ajmera*** decided on February 23, 2016 wherein the Hon'ble Court observed as follows:

"…It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion there from. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

57. I note that Hon'ble Supreme Court by the aforesaid observation acknowledged the fact that there may not be direct evidence in matters of insider trading activities and therefore emphasised on the need to collect and establish through circumstantial evidence. In such situations the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded have to be taken into consideration while arriving at a conclusion. To arrive at a finding of whether Mr. Haresh, Mrs. Poonam and Mr. Varun had received the UPSI or had access to it, the following parameters have been considered:

- Trading behaviour in the scrip of USL.
- Fund flow.
- Relationship between Mr. Haresh, Mrs. Poonam and Mr. Varun and Mr. Nishat.

58. I note that the relatives of Mr. Nishat, the alleged recipients of UPSI have not traded in equity shares of USL rather have traded in option contracts. An argument is that had they had access to UPSI they would have traded either in the equity shares or future contracts and in option contracts where option premium is to be paid. I understand that trading in options gives more exposure to the trader at a lower investment than trading in equity and therefore the profit earned by trading in option is more in comparison to the trading in equity shares. I note that in the instant matter, the Noticee bought 'Out of the Money' Options at a much lesser premium than the equity shares which enabled him to have more exposure leading him to make much more profit as a percentage of his investment than by trading in equity shares, for the same increase in the underlying asset. To illustrate, it is noted from the price data for McDowell call option during the period March 3, 2014 to March 27, 2014 that the settlement price on March 10, 2014 when the Noticee has bought the call option was Rs. 10.75 for the strike price of Rs. 2,700 when the underlying value was Rs. 2,466.60. The said call option when the Noticee sold on March 21, 2014 had a settlement price of Rs. 56.75 when the underlying value was Rs. 2648.40. Thus, the profit while trading in options increased by 428%, while the same would have

been 7.3% if the trading was done in equity shares. Similarly for Future Contracts, the settlement price for the underlying value of Rs. 2,466.60 on March 10, 2014 was Rs. 2482.60. The settlement price had increased to Rs. 2659.16 on March 21, 2014 when the underlying had increased to Rs. 2648.40. Thus, it can be seen that proportionate increase in profit is almost equivalent while trading in Futures and Equity and is much less than the Options trading. I understand that the fact that the Noticee preferred to buy 'out of the money options' is a strong circumstantial evidence to indicate that the Noticee had confidence and believed that the price of the underlying asset will be close/equivalent to the strike price. The said purchases/trades in out of the money options is an evidence that he was in receipt of the UPSI.

59. I note that another argument is that was there an inside information/UPSI, the Noticee would have bought April Expiry contracts and not March expiry contracts since the open offer would have been announced in April 2014. I understand that the premium is dependent on the duration of time to expiry of the contract. If there is more time expiry then the premium will be more and the same will reduce with reduction in the time to expiry. Therefore since there is more time available for the April Expiry contracts compared to March Expiry contracts, April Expiry contracts have more time value and hence more expensive than March Expiry contracts. Further, the liquidity / no. of contracts available for April Expiry in the first couple of weeks of March would generally be lower than liquidity for March Expiry. Thus, investing in March Expiry Options would also be a logical and viable strategy when one is in possession of UPSI. I note that this is another significant circumstantial evidence that the Noticee was in possession of the UPSI, else he would not have had the confidence that in all probability the value of the underlying would reach near the open offer price of Rs. 3,030 in April and thus would not have had the confidence to buy options with strike price range of Rs. 2,600 to Rs.3,000 in March. He also had an option to roll it over to April (when liquidity improves) if in March the value of the underlying did not reach near the strike price. In any case, as the settlement price of the March Expiry contracts towards expiry had increased manifold from the time of purchase of the options, the Noticee booked profit in the said contracts right away.

60. Further with respect to rollover of the March expiry contract to April Expiry it is noted from the price data for McDowell call option during the period March 3, 2014 to March 27, 2014 that the settlement price of McDowell call option was very high during the period March 20, 2014 to March 22, 2014 in the range of Rs. 54.20 to Rs. 83.55 and there was a good opportunity to book profit which the Noticee did, instead of rolling over the March Expiry contracts. Furthermore, post booking profit, he continued to deal in buying and selling of Out of the Money Options of McDowell which is again indicative of the fact that the value of the underlying asset will approach the strike prices down the line and the value of his options increasing further.

61. I note that another argument on the trading aspect of the Noticee is that if he was in receipt of UPSI, he would have bought "At the Money Option" instead of "Out of Money Option". I note that "At the Money Option" has much higher premium than "Out of Money Option". The same not only limits the exposure, but the profit made in "Out of Money Option" is significantly higher than "At the Money Option". The same cane illustrated as: it is noted from the price data for McDowell, "At the Money Option" during the period March 3, 2014 to March 27, 2014 that the settlement price on March 10, 2014 when the Noticee bought the call option was Rs. 106 for the strike price of Rs. 2,400 when the underlying value was Rs. 2,466.60. The said "At the Money Option" when sold on March 21, 2014 had a settlement price of Rs. 272.70 when the underlying value was Rs. 2648.40. Thus, the value of the option while trading in "At the Money Option" would have increased by 157% while trading in "Out of Money Option" (strike price Rs. 2,700) increased by 428% (Settlement price for Options with strike price of Rs. 2,700 went up from Rs. 10.75 to Rs. 56.75). Thus, the Noticee earned a substantial profit while trading in "Out of the Money Option" in McDowell. Moreover, as stated in preceding paragraphs when the investor is certain that the price of the underlying asset will increase (on the basis of UPSI), he knows that the risk of not making a profit on "Out of the Money Options" is negligible/very low. Also, he could take almost 10 times the exposure with the same investment (Rs. 106 for 1 option at the strike price of Rs. 2,400 vs. Rs. 10.75 for 1 option at the strike price of Rs. 2,700).

62. Another argument advanced is that if the Noticee was in possession of UPSI, he would have purchased only April Options and NOT March Options since "Out of the Money" contracts have only "Time value" - their "Intrinsic Value" is "0" and their value declines with time and therefore, these are "Depreciating Assets". I understand that due to time value, "Out of the Money" contracts with March Expiry would be lower priced than "Out of the Money" contracts with April Expiry. Therefore any rationale investor wanting to optimize return on the investment will buy March Expiry options with near certain information that the price of the shares would increase on public announcement of the UPSI and therefore, the value of the options would increase. If it is accepted that the Intrinsic Value of the "Out of the Money" contracts is zero, then it should be used as a strategy to hedge some other position in the underlying (equity or derivative). If it is not so, then there is no economic rationale for investing in it for its Time Value. However, the Noticee still dealt in "Out of the Money" contracts with March Expiry indicates that trades were driven by outside information i.e. possession of UPSI.

63. It is noted that trades in the stock options of McDowell has been attributed to volatility in the price of the underlying asset by Noticee and not to any UPSI. On perusal of material /documents available on record I note that during the two financial years i.e., 2013-2014 and 2014-2015, apart from derivative trading in NIFTY and McDowell, the aforesaid persons have bought stock options in four other scrip and sold stock options in 3 scrip. All the buying and selling in the options have been executed on the same day i.e. intra-day trades, except in the scrip of State Bank of India (buy transactions was executed on 3 days and sell transactions was executed on 4 days) and number of transactions executed in a day was not more than 8 instances. In view of the aforesaid, I note that from a bucket of approximately 200 stock options, the trades were mainly concentrated in only one scrip (USL/McDowell) in which the relative was an Insider.

64. I note that the Noticee have not demonstrated any trading strategy employed while trading in the stock options of McDowell or in any other scrip's stock options. Moreover, he was buying the stock options of McDowell at the strike price range of Rs. 2,600 – Rs. 2,900 when the offer price was Rs. 3,030. I find that if the same is viewed/examined in the light

of the price of the underlying in the preceding two months when there was a fall in the price from Rs. 2,608.05 on January 1, 2014 to Rs. 2387.25 on February 28, 2014 which inter alia is indicative of the fact that performance of the stock was not very good. I note that even if it is accepted that one of the reasons for his trade in stock options of McDowell was volatility, the same is not substantiated by their trading in any other stock options with similar volatility and even when the price of the underlying was falling, still the Noticee was bullish that the value of the underlying would reach around Rs. 2,900. I find that the circumstances of the extant matter is more than enough to conclude that Mr. Nishat had passed on the UPSI to the Noticee who was trading in the scrip which gave them the reason/confidence to deal in "Out of Money" stock options of McDowell.

65. I find from material available on records that the Noticee bought the stock options in McDowell for the first time on March 10, 2014. Thus, the timing / proximity of the trades of the Noticee to the UPSI period and the fact that he consistently bought options with strike prices of Rs. 2,700 and Rs. 2,800 with March 24, 2014 expiry during the period March 12, 2014 to March 20, 2014. I find that a prudent and rationale investor would not indulge into such trades unless in possession of inside information with respect to the price of then scrip. It is argued that at the beginning of any series of Options Contracts, the impact of Vega (the **vega** of an **option** expresses the change in the price of the **option** for every 1% change in underlying volatility) is negligible since there is substantial time for the contract to expire; therefore, the maximum impact of volatility is midway between start and expiry of the contracts. I understand that the said statement is theoretically not correct as more the time remains for an option to expire, higher will be Vega, as time value makes up a larger proportion of the premium for longer term options and it is the time value that is sensitive to changes in volatility. In other words, options approaching expiration tend to have lower Vega as compared to similar options that are further away from expiration. Without prejudice to the aforesaid observation, even if it is accepted that theoretically the said submission is correct, it need not be true in every circumstance.

66. It has also been argued that the April 2014 contracts with strike price 2800CE expired at a loss of the premium and April 2014 contracts with strike price 29000E and 3000CE expired "worthless". With respect to April 2014 contracts with strike price 2800CE, it is noted that Mr. Haresh had bought 8,375 stock options of April 24, 2014 expiry with strike price 2800CE on April 11, 2014 at Rs. 23.87. He had sold 5,500 of the said contracts during the period April 15 - 22, 2014 at an average price of Rs. 57.99. Thus, based on the above trading details, it is noted that he has earned profits while dealing in the April 2014 contracts with strike price 2800CE. Further, though some of the contracts bought by him expired worthless, but looking holistically at the trading done by him in the April 2014 contracts with strike price 2800CE, strike price 29000E and 3000CE, he has earned substantial profits. The circumstance that he has incurred losses because of the expiry of the contract is outweighed by the multiple circumstances wherein he has reaped profits. Therefore, the circumstance of 'loss' given the weightage of the multiple circumstance of the 'profits' cannot have a leading effect on the conclusion that the trades were not in possession of UPSI. Thus, in this context, the fact that some of the options expired worthless is irrelevant, as he had reaped profits out of the other positions without waiting for the expiry date / rollover. Furthermore, as observed by Hon'ble SAT in the matter of **Mr. Harish K Vaid vs. The Adjudicating Officer** decided on October 3, 2012 that *the quantum of trading done or the profits earned becomes immaterial in insider trading matters as the purpose of insider trading regulations is to prohibit trading by which an insider gets advantage by virtue of his access to price sensitive information*.

67. With respect to the discrepancies highlighted by the Noticees in the strike price of stock options of McDowell, it is noted that the strike prices of Rs.5,700, Rs.5,800 and Rs.5,900 have been inadvertently shown as trades by the concerned Noticees in the symbol of McDowell-N instead of NIFTY. Further, the strike price of ` 0 pertains to the instrument type FUTSTK (Stock Futures) in the F & O Segment in the symbol of McDowell-N and is not related to Stock Options of McDowell-N. The same is accepted as an inadvertent error in the SCN.

68. In order to explain the timing of his trades, Mr. Haresh has submitted that only after many suits against his firm were settled by 2014 that he resumed trading by March 2014. Though the Noticee has mentioned that several insolvency petitions were filed by the creditors against the firm in which he was a partner, he has not quantified it and has not submitted any documentary proof regarding the settlement of suits. But even if the submission of the Noticee is taken on face value, it still does not explain his concentrated / focused dealing in the options in the derivative of USL and not in the derivative of any other scrip. Further, Noticee's trading in NIFTY can be explained based on his own submission that there were reports that USL was going to be included in index and the Noticee was expecting an increase in the underlying price of USL and thus the value of the option contract of NIFTY also.

69. It has been argued that in terms of value, trades in NIFTY futures and options exceeded those in the symbol of McDowell-N which does not negate the fact that apart from NIFTY, he has singled out option contracts in McDowell-N to trade in out of 200 possible option contracts, have dealt in strike price which was away from the price of the underlying asset and with an increased frequency from March 12, 2014 onwards. Such kind of focused and concentrated trading in the option contract of McDowell-N is also not backed by their normal trading behaviour / pattern as discussed in preceding paragraphs. Moreover as stated earlier, it is his own submission that USL was going to be included in NIFTY 50 from March 28, 2014 onwards and that he wanted to hold position in NIFTY options to take advantage of increase in the settlement price of NIFTY options subsequent to the inclusion of USL in the index since he had the UPSI that price of the scrip of USL was expected to increase.

70. It is argued that he has traded during open offer period also when the prices fell sharply in effect to establish that he was consistent traders in the USL options. The argument presumably raises the question whether such a trading post publication of PSI, is a strong enough circumstance to conclude that the trading during the UPSI period was without having possession of UPSI. The determination of this question again depends on the other countervailing circumstances (the concentrated / focused trading in the stock option

of USL, the timing and particulars of the trades in the stock option of USL, practically no trades in other stock options of other scrips and the fact that his relative (Mr. Nishat) was working with the PAC which was in the process of consolidating its holding in USL). The combined effect of the said circumstances which is more than countervailing, outweighs the effect that he was a consistent traders based on the trades, post publication of PSI, as argued. Therefore, this circumstance cannot support a conclusion that the trading during UPSI period is not without being in possession of UPSI.

71. I note from the material/documents available on record that Mrs. Poonam (A/c No. 016200100012532, Saraswat Bank) transferred Rs. 18.40 lakh received from Religare Securities Limited as a part of futures settlement proceeds pertaining to the trades in the symbol of McDowell-N to Mr. Haresh (A/c No. 016200100012563, Saraswat Bank) on May 09, 2014. After receipt of the said funds, Mr. Haresh had transferred the entire funds to the bank account of his daughter Mrs. Menka Haresh Jashnani, w/o Mr. Nishat Gupte. I note that the Noticee has submitted that fund transfer was done to meet the their (Mrs. Poonam and Mr. Haresh) expenses in United Kingdom, as they were travelling to meet their daughter and grandson and that the Noticee had also transferred a sum of Rs. 9.24 lakh to his daughter previously on September 13, 2013.

72. The aforesaid submission of the Noticee is not acceptable for the following reasons:

- The proximity of transfer funds from Religare Securities Limited to Mrs. Poonam to Mr. Haresh and then immediate transfer of funds by Mr. Haresh to his daughter.
- There has been no financial transaction between Mr. Haresh and his daughter subsequent to her marriage in the year 2008 except the one made on May 9, 2014. Transfer of a sum of Rs. 9.24 lakh to his daughter previously on September 13, 2013, is not supported by any documentary evidence or explanation.
- It has not been brought on record that whether Mrs. Poonam and Mr. Haresh have travelled to meet their daughter before or that they have transferred funds to her, prior to their earlier/other visits as well.

73. From the above discussions and in absence of any convincing justifiable reason to transfer the funds to Mrs. Menka Jashnani (wife of Mr. Nishat Gupte), it is further concluded that the Noticee was in receipt of UPSI from Mr. Nishat Gupte and he has traded in the scrip of USL while in possession of the UPSI and that he had transferred part of the profits indirectly to Mr. Nishat Gupte.

74. I note that in the preceding paragraphs It has been concluded that Mr. Nishat had access to UPSI and he was the son-in-law of Mr. Haresh. Thus, it can be said that the relationship between them was a close family connection. Moreover, it has also been concluded that Mr. Nishat and Mr. Haresh are relatives within the meaning of the definition of relatives as per SEBI (PIT) Regulations.

75. In view of the aforesaid discussions, based on the trading behaviour of the Mr. Haresh, movement of funds and the family relationship amongst them, it is concluded that Mr. Nishat was an insider in possession of the UPSI pertaining to the Public Announcement of Open Offer by JMFL and HSCI on behalf of Relay B.V. and its PAC Diageo. Further the said UPSI was communicated to Mr. Haresh based on which they traded in the option Contract of McDowell- N (USL) and thereby earned substantial unfair gains.

76. I note that in the foregoing paragraphs that it has been concluded that there was a PSI which remained unpublished and the period of UPSI. It has also been concluded that Mr. Nishat was an Insider as defined under SEBI (PIT) Regulations and that he was in possession of the UPSI which he had communicated to the Noticee who had traded in the scrip of USL based on the UPSI. Having concluded as aforesaid, the next issue for consideration is whether, the Noticee violated the applicable provisions of SEBI (PIT) Regulations?

77. I note that the principle of presumption of possession of PSI by insiders was recognised by Hon'ble SAT in the matter of **Rajiv B. Gandhi and Ors. v. SEBI (Appeal No. 50 of 2007), decided on May 9, 2008,** "*if an insider trades or deals in securities of a listed company, it would be presumed that he has traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary".*

78. I find that in the preceding paragraphs the Noticee's explanation with respect to the his trades on the basis of UPSI communicated by Mr. Nishat have been rebutted for the following reasons:

- Proximity of their trades in the stock options of USL vis-a-vis the UPSI period.
- Insignificant trading in the stock options of other scrips.
- The trading in NIFTY can be explained based on his own submission that USL was going to be included in the NSE index. Consistent buying and selling in the stock option of USL during the UPSI period and not in any other stock option during that period.
- No plausible explanation as to why when the price of the underlying asset was falling, he was bullish about buying the stock options of USL at the strike prices of Rs. 2,700, Rs. 2,800 and Rs. 2,900.
- Fund transfer from to his daughter's (wife of Nishat Gupte) account subsequent to the trading for which the explanation has not been supported.
- Family relationship of the Noticee with Mr. Nishat and the access of Mr. Nishat to the UPSI being part of the core team member of Project Cape and being involved from the beginning of transaction life cycle to consolidate the shareholding of the Acquirer and PAC in the Target Company.

79. I note that in the present matter, the parameters of appreciation of evidence on record has been laid down by Hon'ble SAT in the matter of **Dilip S. Pendse vs. SEBI** decided on November 19, 2009, wherein the Hon'ble SAT has observed as follows; *"The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same."*

The aforesaid observation was also reiterated in the matter of **Mr. Manoj Gaur vs. SEBI** decided on October 3, 2012 wherein it was held as follows: *"having regard to the gravity*

of charge of insider trading, higher degree of preponderance of probabilities is needed to bring home the charge."

Furthermore, the Hon'ble SC in the matter of **SEBI vs Kishore R Ajmera** decided on February 23, 2016 laid down the test that has to be adopted to arrive at a conclusion based on circumstantial evidence under securities laws. It observed *"… The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed there under is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt."*

80. Taking note of the observations of Hon'ble Supreme Court and Hon'ble SAT, I am of the considered view that degree of proof required to establish a charge of insider trading is what a reasonable/prudent man would adopt to arrive at a conclusion based on preponderance of probability and not that of establishing beyond reasonable doubt.

81. In view of the aforesaid discussions, based on the higher degree of preponderance of probability of the circumstantial evidence gathered from the timing of the trades in close proximation of the UPSI period, concentration of the trades in stock options of USL, insignificant trades in any other stock options except NIFTY which itself was linked to USL, relationship between Mr. Nishat and Mr. Haresh and movement of the funds from stock broker to Mrs. Poonam to Mr. Haresh and to the wife of Mr. Nishat, leads to the conclusion that Mr. Haresh, has traded in the stock options of USL when in possession of UPSI communicated by Mr. Nishat.

82. The next issue that arises for consideration is, how Mr. Haresh, Mr. Varun and Mrs. Poonam did come in the possession of UPSI. It is noted from material made available on record that Mr. Nishat who is Mr. Haresh and Mrs. Poonam's Daughter's husband and Mr. Varun's sister's husband was part of the core team who was holding discussions / strategising on the open offer on behalf of the PAC and was also involved from the beginning of transaction life cycle to consolidate the shareholding of the Acquirer and PAC in the Target Company. It has been held in the preceding paragraph that the trades

of Mr. Haresh, Mr. Varun and Mrs. Poonam show a strong preponderance of probability that they were executed when they were in possession of UPSI. Considering the close family relationship amongst Mr. Nishat, Mr. Haresh, Mr. Varun and Mrs. Poonam, it can reasonably be concluded that, it was Mr. Nishat who had communicated the UPSI to them.

83. The Noticee has submitted that the SCN is silent on how and when the UPSI was communicated to him. In this regard, as stated earlier, in insider trading matters, direct evidence will not be available always. A reasonable inference has to be drawn from the circumstantial evidence and conduct of parties. In the extant matter, it has already been established that the Noticee has traded when in the possession of UPSI. Mr. Nishat, being part of the core team of PAC (Diageo) which was working on the open offer was privy to the UPSI. His close relationship with the Noticee, the flow of funds amongst from Noticee to Mr. Nishat's wife, sudden and concentrated interest in the trading of options in USL and the trading pattern establishes that the UPSI was communicated by Mr. Nishat to the Noticee. Thus, even though SCN is silent on precisely how and when Mr. Nishat has communicated the UPSI, in the given facts and circumstances of the case, it can be reasonably established and concluded that based on strong preponderance of probability, the UPSI was communicated by him to the Noticee.

84. Mr. Haresh has submitted that he has operated the bank and trading accounts of Mrs. Poonam and Mr. Varun. Even if the submission of Mr. Haresh is taken on face value, it is observed that Mrs. Poonam and Mr. Varun knowingly allowed Mr. Haresh to deal in their trading account and thus have played an equal role in the insider trading activity. Here, I would like to refert o the order of Hon'ble SAT in the matter of **Mahavirsingh N Chauhan and ANR vs. SEBI** decided on October 18, 2019 wherein the Hon'ble SAT has observed as follows; "*We are of the opinion that by renting their demat account, trading account etc., Order in the matter of United Spirits Ltd. Page 95 of 108 the appellants were concealing the identity of the fraudster and, thus, were acting not only in concert but in connivance with the said fraudster. The appellants cannot, thus, escape from the liability of debarment and the wrongful gains made by them."*

85. I note that the purpose of the SEBI (PIT) Regulations, is to prohibit trading by an insider who gets advantage by virtue of his access to price sensitive information and the aforesaid relevant provisions of SEBI Act and SEBI (PIT) Regulations makes it crystal clear that there is a total prohibition on an insider to deal in the shares of the company when in possession of UPSI. Here it is pertinent to refer to the observations of Hon'ble SAT in the matter of **E. Sudhir Reddy vs. SEBI** decided on December 16, 2011: *"…A shareholder becomes an owner of the company to the extent of the value of shares held by him. He is therefore, entitled to his share in the profits earned by the company. Therefore, performance of a company is of primary importance to the investors as well as to the general public who might be interested in investing in the company. The shareholders and general public get information about the company either through the annual report or during the annual general meeting. However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice."*

86. In view of all of the above, I am of the considered view that the Noticee by dealing in the securities of the Target Company when in possession of UPSI, has violated the provisions

of Regulations 3(i) & 4 of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 and Sections 12A (d) and (e) of SEBI Act, 1992.

87. Having concluded that the Noticee had violated the provisions of Regulations 3(i) & 4 of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 and Sections 12A (d) and (e) of SEBI Act, 1992, the next issue for consideration is whether the Noticee has made any unfair gains as a result of his acts which were in contravention of the aforesaid provisions of law.

88. I find from material available on record that the Noticee had made an unfair gain of Rs. 31 lakh approximately by trading when in possession of UPSI in the derivative of USL.

89. I note that the Noticee has submitted that the tabulations of profit includes profit made on purchase transactions prior to the alleged UPSI and post alleged UPSI period amounting to Rs. 30,00,762.50 (combined of Mrs. Poonam, Mr. Haresh and Mr. Varun). In this regard, it is noted from the material available on record that for the purchase of stock options on March 10-11, 2014, the aforesaid entities including the Noticee have sold them subsequently in March, 2014 while they were in possession of the UPSI. Under Regulation 3(i) of SEBI (PIT) Regulations, dealing in securities when in possession of UPSI is prohibited. *"Dealing in securities"* has been defined under Regulation 2(d) of PIT Regulations as *"… an act of subscribing, buying, selling or agreeing to subscribe, buy, sell or deal in any securities by any person either as principal or agent".* I note that the aforesaid definition includes the act of selling and the same is prohibited while the insider is in the possession of UPSI, as per Regulation 3 (i) of SEBI (PIT) Regulations. Since, Mrs. Poonam, Mr. Haresh and Mr. Varun have sold the stock options bought prior to the UPSI period, during the UPSI period, while being in possession of UPSI, the same has to be considered while computing the unfair gains. Similarly stock options bought and sold during UPSI period and stock options bought during UPSI period and sold subsequent to publishing of PSI, will also be included while calculation unlawful/unfair gains. Further, the Noticee's submission to the extent that stock options bought post UPSI period have to be excluded from the computation of profit, is acceptable.

90. Without prejudice to the findings that PSI came into existence on March 12, 2014, it is noted that the submission of the Noticee that options bought on March 12, 2014 will not be taken for computation of unlawful/unfair gains as they were bought during Indian trading hours and there is a time gap of 5:30 hours between London and Mumbai, is not acceptable. As discussed in preceding paragraph, dealing in securities is prohibited under SEBI (PIT) Regulations by an insider while he is in possession of UPSI. Therefore, even if the Noticee has bought stock options on March 12, 2014 during Indian trading hours, he had sold the said options before PSI was published. Hence, for the purpose of computation of unlawful/unfair gains, stock options bought on March 12, 2014 will also be taken into account.

91. Noticee has further submitted that Open Positions rather than total traded quantity ought to have been considered. As noted in the preceding paragraph as per Regulation 3 (i) of SEBI (PIT) Regulations, dealing in securities is prohibited during the UPSI period. Thus, buying and selling of options have to be considered for determining profit / loss, as open positions will not give an accurate picture of Noticee's trading. The same will give only the net position of the Noticee's trading. Open position has no relevance to the actual loss / profit made by the Noticee while trading in options. A situation may arise where the Noticee would have bought, for instance 10 call options at a strike price of Rs. 1,000 at a premium of Rs.10 for a sum total of Rs. 100/-, expiring on a certain date and the price of the underlying asset increased before the said expiry date. The Noticee sold 9 call options at an increased premium of Rs.15 for Rs. 135. Thus, making a profit of Rs. 35. But if the net open position is seen, then the Noticee is left with 1 call option which for some reason, he chose not to sell and let it expire worthless, thereby suffering a loss of Rs. 10, if only his open position is taken into account.

92. Thus, taking into account the buying and selling of options, Unlawful gains of the Noticees have been calculated as follows:

Unlawful gain = (Number of options bought while in possession of UPSI X Closing Price on the day of UPSI becoming public) - (Number of options bought while in possession of UPSI X weighted average purchase price).

Closing price of various contracts of options pertaining to USL expiring on April 24, 2014, as on April 15, 2014 (date of publication of PSI) are given below:

Date	Expiry Date	Option Type	Strike Price	Close
15 April 2014	24 April 2014	CE	2700	156.65
15 April 2014	24 April 2014	CE	2750	108.45
15 April 2014	24 April 2014	CE	2800	68.90
15 April 2014	24 April 2014	CE	2850	33.30
15 April 2014	24 April 2014	CE	2900	17.30
15 April 2014	24 April 2014	CE	3000	7.50

Closing price of contracts expiring on March 27, 2014 have not been considered as the same would expire prior to the end of the UPSI period, i.e. April 15, 2014. Accordingly the unlawful/ unfair gains are calculated as follows:

A. Value of options bought during UPSI period and sold subsequent to UPSI period:

Noticee has bought during UPSI period, option contracts with expiry date of April 24, 2014 and have sold the same subsequent to the UPSI period. Profits as per above mentioned formula is given below:

Name	Date	Expiry Date	Strike Price	Gross Buy	Deemed Gross Sell	Buy Value	Deemed Sell Value	Profit
Haresh Jashnani	11 April 2014	24 April 2014	2700	6250	6250	253437.50	979062.50	725625.00
Haresh Jashnani	11 April 2014	24 April 2014	2750	4375	4375	136468.75	474468.75	338000.00
Haresh Jashnani	11 April 2014	24 April 2014	2800	8375	8375	199900.00	577037.50	377137.50
Haresh Jashnani	11 April 2014	24 April 2014	2900	1375	1375	18818.75	23787.50	4968.75

								1445731.25

B. Value of options bought and sold during UPSI period:

Noticee have bought and sold following contracts during the UPSI period. Since these options contract had expired before announcement of UPSI, actual profits have been calculated as follows:

Profits = Sell quantity * Average sell price – Buy quantity * Average Sell price. The details of the profits made are as follows:

Name	Date	Expiry Date	Strike Price	Gross Buy	Gross Sell	Buy Value	Sell Value	Profit
Haresh Jashnani	12-14 March, & 18-21 March 2014	27 March 2014	2800	28750	28750	386718.75	578550.00	191831.25
Haresh Jashnani	12-14 March, & 18-21 March 2014	27 March 2014	2700	51625	51625	525212.50	1628543.07	1103330.57
								1295161.82

C. Value of options bought pre UPSI period and sold during UPSI period:

Noticee has bought following option contracts before UPSI period and sold them during UPSI period. Accordingly for calculations of profits, following formula has been applied [Profits = (Sell Quantity X Average Sell Price) – (Buy Quantity in pre-UPSI period X Opening price on 12 March 2014)] and the details of the profits made are as follows:

Name	Date	Expiry Date	Strike Price	Gross Buy	Gross Sell	Buy Value	Sell Value	Profit
Haresh Jashnani	10-11 March, 2014	27 March 2014	2700	17000	17000	169150.00	536275.68	367125.68

In view of the aforesaid, I note that the Noticee has made an unfair/unlawful gain by trading in the shares of USL while in possession of UPSI to the tune Rs. 3108019/- approximately.

93. Furthermore, I note that SEBI is mandated to protect the interests of investors and promote the development of and to regulate the securities market. For the purpose, SEBI is empowered to take suitable measures. Healthy growth and development of securities market depends to a large extent on the quality and integrity of the market. Such a market can alone inspire the confidence of investors. Factors on which this confidence depends include, among others, the assurance the market can accord to all investors that they are placed on an equal footing and will be protected against improper use of inside information. In equitable and unfair trade practice such as insider trading affect the integrity and fairness of the securities market and impairs the confidence of the investors.

Issue 2) - Does the violation, if any, attract monetary penalty under section 15G of SEBI Act?

94. I note that by communicating the UPSI to his relatives who traded on the basis of the said UPSI, the Noticee has violated the provisions of SEBI Act and SEBI (PIT) Regulations. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of **Chairman, SEBI vs. Mr.ram Mutual Fund {[2006] 5 SCC 361**} wherein it was held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

95. As the violation of the provisions of Regulation 3(ii) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 is established, the Noticee is liable for monetary penalty under section 15G of SEBI Act, 1992 which, at the time of violation, read 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].

96. While determining the quantum of penalty under section 15G of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer while adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

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

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

(c) the repetitive nature of the default."

97. I note that the Noticee has repeatedly traded in the scrip of USL while in possession of the UPSI. I gather from material available on record and as put on record by the Noticee, a proceedings under section 11 of the SEBI Act, 1992 was also initiated, wherein similar charges were levelled in respect of the Noticee. I note from the material available on record that Whole Time Member (WTM) SEBI, has passed an order in the said matter directing the Noticee

" *153. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11, 11 (4) (b) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue following directions:*

a) Shri Haresh Parmanand Jashnani (PAN: AAJPJ7020L) shall disgorge the wrongful gain made Rs. 31,08,019/-. along with simple interest @ 12% per annum from April 11, 2014 till the date of payment. They shall pay the said amount within 45 (forty five) days from the date of service of this order. In case Shri Haresh fail to make the payment within 45 days, they shall be liable to pay future interest at the rate of 12% per annum till the date of payment.

b) The Banks, with whom the Noticee accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts held, by Shri Haresh Parmanand Jashnani except for the purposes of compliance of this order. However, credits, if any, into the accounts maybe allowed. On compliance of the direction at paragraph 153(a), the Noticees shall apply to SEBI for an instruction to defreeze their bank accounts.

c) The Depositories, with whom the Noticee (Shri Haresh Parmanand Jashnani) demat accounts lie and Registrar and Transfer Agents are directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held, by Shri Haresh Parmanand Jashnani except for the purposes of compliance of this order. However, credits, if any, into the accounts of Shri Haresh Parmanand Jashnani may be allowed under the supervision of the concerned Exchange / RTA.

d) Shri Haresh Parmanand Jashnani is also directed not to dispose of or alienate any of their assets/ properties/ securities, till such time the direction of this order is complied with.

e) Shri Haresh Parmanand Jashnani shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of seven years from the date of payment of disgorgement amount along with interest as stated in preceding paragraph. Further, Shri Haresh Parmanand Jashnani is also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public or any intermediary registered with SEBI for a period of seven years from the date of payment of disgorgement amount along with interest as stated in preceding paragraph. However, any outstanding position in the derivatives segment of the market should be closed within 3 months or at its expiry, whichever is earlier.

154. In case Shri Haresh Parmanand Jashnani fail to pay the wrongful gains along with interest as directed herein within the above specified time, SEBI shall initiate recovery process under Section 28A of the SEBI Act."

98. I note from the material/documents available on record that while the loss to the investor /investors have not been quantified, the unfair/unlawful gains made by the Noticee has been quantified to be Rs. 31.08 lakh approximately. I further note that the Noticee has entered into a number of trades (Buy and Sell Transactions), therefore the violation treated as repetitive in nature.

99. Further, Hon'ble Supreme Court of India in the matter of **Shriram Mutual Fund** refereed supra had observed that *"… imputing mensrea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations."*

100. In view of all of the above I am of considered view that the Noticee has violated the provisions of Regulations 3(i) & 4 of SEBI (PIT) Regulations, 1992 and Sections 12A (d) and (e) of SEBI Act, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 and that it is a fit case for imposition of penalty for violation of the aforesaid Regulations.

ORDER

101. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a impose a monetary penalty of Rs. 93,24,057/- (Rupees Ninety Three lakh Twenty Four Thousand Fifty Seven only) on the Noticee i.e. Mr. Haresh Parmanand Jashnani under section 15G of the SEBI Act, 1992 for the violation of the provisions of Regulations 3(i) & 4 of SEBI (PIT) Regulations, 1992 and Sections 12A (d) and (e) of SEBI Act, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015.

    I note that even though the provisions of section 15G the SEBI Act,1992 proposes for penalty which shall not be less than Rupees Ten lakh but which may extend to Rupees Twenty Five crore or three times the amount of profits made out of insider trading, whichever is higher, considering the fact that the WTM SEBI has already ordered disgorgement of the unfair gains made by the Noticee along with interest @12% p.a., I restrict the amount of penalty to three times of the unfair gains made by the Noticee.

102. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the following way:

    a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html; OR
    b. By way of Demand Draft in favour of *"SEBI - Penalties Remittable to Government of India",* payable at Mumbai; OR

103. The Noticee shall forward the said Demand Draft in the format as given in table below shall be sent to "The Division Chief, Enforcement Department -DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, BandraKurla Complex, Bandra (East), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

Case Name	

Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (likepenalties/disgorgement/recovery/Settlement amount andlegal charges along with order details)	
Penalty	

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

105. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: June 30, 2020 **Prasanta Mahapatra**

Place: Mumbai **Adjudicating Officer**