

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
ORDER

Under Sections 11(1), 11(4) and Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 10 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 – In the matter of Indiabulls Ventures Limited.

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

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1. The present proceeding has been initiated by an *ex-parte ad interim* impounding order cum show cause notice dated May 24, 2019 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), against the Noticees. The brief facts, leading to issue of aforesaid interim impounding order cum SCN, as narrated in the SCN, are as under:
 - (i) SEBI conducted an investigation into suspected insider trading activities of certain entities in the scrip of Indiabulls Ventures Limited (hereinafter referred to as “**IVL**”/“**the company**”) for the period January 01, 2017 to November 03, 2017 (hereinafter referred to as “**Investigation Period**”) to ascertain whether or not the suspected entities had traded in the aforesaid scrip on the basis of unpublished price sensitive information (hereinafter referred to as “**UPSI**”), in contravention of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”).

- (ii) The equity shares of IVL are listed on the National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) and BSE Ltd. (hereinafter referred to as “**BSE**”) and its Global Depository Receipts are listed on the Luxembourg Stock Exchange.
- (iii) The Board of Directors of IVL during the Investigation Period was as under:

[SOURCE: IVL’s reply dated August 10, 2018]	
Name	Designation
Divyesh B. Shah	Whole-time Director & CEO
Aishwarya Katoch	Independent Director
Brig. Labh Singh Sitara	Independent Director
Prem Prakash Mirdha	Independent Director
Amiteshwar Choudhary	Whole-time Director
Pia Johnson	Non-Executive Director
Sameer Gehlaut	Non-Executive Chairman
Gagan Banga	Non-Executive Director
Ajit Kumar Mittal	Non-Executive Director
Pinank Jayant Shah	Executive Director
Vijayalakshmi Rajaram Iyer	Independent Director
Shyam Lal Bansal	Independent Director
Alok Kumar Misra	Independent Director

- (iv) The Standalone Quarterly Financial Results of IVL prior to, during and subsequent to the Investigation Period is provided below:

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

- (v) Indiabulls Distribution Services Limited (hereinafter referred to as “**IDSL**”) is a wholly owned subsidiary of IVL. IDSL held 100% shareholding in India Land and

Properties Limited (hereinafter referred to as “**ILPL**”), making ILPL a wholly owned subsidiary of IDSL. Thus, ILPL was indirectly owned by IVL.

- (vi) IVL made the following announcements with respect to sale of ILPL to Indiabulls Infrastructure Limited (hereinafter referred to as “**IIL**”) [a WOS of Indiabulls Real Estate Limited (hereinafter referred to as “**IREL**”)]/ investment of IIL in ILPL. The price and volume data for the scrip, just before and after these announcements, is tabulated below:

Sr. No	Date & Time of display on Exchange Website	Particulars	Price Impact	Remarks																				
1.	NSE 20-Jun-2016 12:01 hours	IVL informed Exchanges that the Extraordinary General Meeting (EGM) of the company will be held on 15-Jul-2016 to <i>inter alia</i> transact the following special business : Sale of investment Sale of up to 100% of shares held by IDSL, a WOS of the company, in ILPL, a WOS of IDSL.	17-Jun-2016 (NSE) <table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>22.05</td><td>22.80</td><td>21.80</td><td>21.95</td><td>1268763</td></tr></table> 20-Jun-2016 (NSE) <table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>21.70</td><td>22.15</td><td>21.20</td><td>21.70</td><td>1189250</td></tr></table>	Open	High	Low	Close	Traded vol.	22.05	22.80	21.80	21.95	1268763	Open	High	Low	Close	Traded vol.	21.70	22.15	21.20	21.70	1189250	On June 20, 2016, the price of the scrip closed at ₹21.70 i.e. 1.14% fall against the previous day closing price.
	Open	High	Low	Close	Traded vol.																			
22.05	22.80	21.80	21.95	1268763																				
Open	High	Low	Close	Traded vol.																				
21.70	22.15	21.20	21.70	1189250																				
	BSE 20-Jun-2016 12:07 hours		17-Jun-2016 (BSE) <table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td><td>Traded vol.</td></tr><tr><td>22.30</td><td>22.80</td><td>21.85</td><td>22.00</td><td>224613</td></tr></table> 20-Jun-2016 (BSE)	Open	High	Low	Close	Traded vol.	22.30	22.80	21.85	22.00	224613	On June 20, 2016, the price of the scrip closed at ₹21.75										
Open	High	Low	Close	Traded vol.																				
22.30	22.80	21.85	22.00	224613																				

Sr. No	Date & Time of display on Exchange Website	Particulars	Price Impact					Remarks
			Open	High	Low	Close	Traded vol.	i.e. 1.14% fall against the previous day closing price. (June 18, 2016 and June 19, 2016 were trading holidays)
			21.15	22.15	21.15	21.75	373395	
2.	NSE 15-Jul-2016 15:19 hours	IVL informed Exchanges that members of company in EGM held on 15-Jul-2016 approved the following : Preferential Issue of an aggregate of up to 5.83 crores Convertible Warrants to Promoter group entities and CEO & Whole-time Director of the company.	14-Jul-2016 (NSE)					On July 15, 2016, the price of the scrip closed at ₹32.55 i.e. 1.36% fall against the previous day closing price.
			Open	High	Low	Close	Traded vol.	
			31.55	33.65	29.60	33.00	5597645	
			15-Jul-2016 (NSE)					
			Open	High	Low	Close	Traded vol.	
			33.25	34.00	31.50	32.55	4004040	

Sr. No	Date & Time of display on Exchange Website	Particulars	Price Impact	Remarks																				
	BSE 15-Jul-2016 15:01 hours	Sale of up to 100% of shares held by IDSL, a WOS of the company, in ILPL, a WOS of IDSL.	14-Jul-2016 (BSE) <table border="1"> <tr> <th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr> <tr> <td>31.60</td><td>33.55</td><td>30.00</td><td>33.00</td><td>1586220</td></tr> </table> 15-Jul-2016 (BSE) <table border="1"> <tr> <th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr> <tr> <td>33.80</td><td>33.90</td><td>31.55</td><td>32.70</td><td>946263</td></tr> </table>	Open	High	Low	Close	Traded vol.	31.60	33.55	30.00	33.00	1586220	Open	High	Low	Close	Traded vol.	33.80	33.90	31.55	32.70	946263	On July 15, 2016, the price of the scrip closed at ₹32.70 i.e. 0.91% fall against the previous day closing price.
Open	High	Low	Close	Traded vol.																				
31.60	33.55	30.00	33.00	1586220																				
Open	High	Low	Close	Traded vol.																				
33.80	33.90	31.55	32.70	946263																				
3.	NSE 15-Mar-2017 08:53 hours	IVL informed Exchanges that : IDSL (a WOS of IVL) has signed a definitive agreement to sell its 100% shareholding in ILPL, at a consideration of Rs.685 crores, to IIL, a WOS of IREL and the deal is expected to be completed in the current financial year. A meeting of the Board of Directors of the Company will be held on Friday the 17th March, 2017 to consider, inter alia,	14-Mar-2017 (NSE) <table border="1"> <tr> <th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr> <tr> <td>37.00</td><td>38.75</td><td>36.80</td><td>38.15</td><td>2495800</td></tr> </table> 15-Mar-2017 (NSE) <table border="1"> <tr> <th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr> <tr> <td>39.20</td><td>41.95</td><td>39.20</td><td>41.95</td><td>11450940</td></tr> </table>	Open	High	Low	Close	Traded vol.	37.00	38.75	36.80	38.15	2495800	Open	High	Low	Close	Traded vol.	39.20	41.95	39.20	41.95	11450940	On March 15, 2017, the price of the scrip opened at ₹39.20 i.e. 2.75% rise against the previous day closing price and closed at
Open	High	Low	Close	Traded vol.																				
37.00	38.75	36.80	38.15	2495800																				
Open	High	Low	Close	Traded vol.																				
39.20	41.95	39.20	41.95	11450940																				

Sr. No	Date & Time of display on Exchange Website	Particulars	Price Impact	Remarks																				
		declaration of interim dividend, if any, on the Equity shares of the Company, for the financial year 2016-17.		₹41.95 i.e. 9.96% rise against the previous day closing price.																				
	BSE 14-Mar-2017 23:05 hours		14-Mar-2017 (BSE) <table border="1"> <tr> <th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr> <tr> <td>36.50</td><td>38.70</td><td>36.50</td><td>38.15</td><td>750175</td></tr> </table> 15-Mar-2017 (BSE) <table border="1"> <tr> <th>Open</th><th>High</th><th>Low</th><th>Close</th><th>Traded vol.</th></tr> <tr> <td>40.00</td><td>41.95</td><td>39.30</td><td>41.95</td><td>20793277</td></tr> </table>	Open	High	Low	Close	Traded vol.	36.50	38.70	36.50	38.15	750175	Open	High	Low	Close	Traded vol.	40.00	41.95	39.30	41.95	20793277	On March 15, 2017, the price of the scrip opened at ₹40.00 i.e. 4.85% rise against the previous day closing price and closed at ₹41.95 i.e. 9.96% rise against the
Open	High	Low	Close	Traded vol.																				
36.50	38.70	36.50	38.15	750175																				
Open	High	Low	Close	Traded vol.																				
40.00	41.95	39.30	41.95	20793277																				

Sr. No	Date & Time of display on Exchange Website	Particulars	Price Impact	Remarks
				previous day closing price.

(vii) As observed from the table above, corporate announcements dated March 14, 2017 on BSE and March 15, 2017 on NSE made by the company had a positive impact on the price of the scrip.

(viii) The determination of UPSI was made *inter alia* upon consideration of the following factors –

- a. Board of Directors of IDSL in their meeting dated May 04, 2016 accorded their consent for sale of ILPL;
- b. Board of Directors of IVL in their meeting dated June 15, 2016 accorded approval, subject to approval of shareholders, for sale of ILPL and decided to call an EGM on July 15, 2016;
- c. On June 20, 2016, IVL informed the exchanges that an EGM will be held on July 15, 2016 for seeking/enabling authorization for sale of investment by IDSL in the shares of ILPL and submitted the notice convening an EGM;
- d. The shareholders of IVL in an EGM held on July 15, 2016 approved the sale of upto 100% of shares held by IDSL in ILPL, to any prospective buyer and the same was announced on exchanges;
- e. On January 24, 2017 during a meeting between Mr. Divyesh Shah (CEO of IVL & Director of ILPL) and Mr. Gurbans Singh (CEO of IREL & Director of IIL) a request was made to Mr. Gurbans Singh, seeking loan facility of approximately Rs.500-550 crores against securities, from IIL to ILPL;
- f. On January 25, 2017, Notice for convening Board Meeting on February 03, 2017 was issued by IIL to consider convening of an EGM;

- g. In IIL's Board Meeting held on February 03, 2017, it was decided to convene an EGM on March 01, 2017 for seeking enabling authorization to the board to invest surplus funds, by way of loan which may *inter-alia* be in the form of Debentures or Non-convertible Redeemable Preference Shares of ILPL or any other security as may be offered by ILPL. Draft Notice of the proposed EGM was also placed and approved by the Board in the same Board Meeting;
- h. In IIL's EGM held on March 01, 2017 an enabling composite authorization in terms of Section 186 of the Companies Act, 2013 was approved and following special resolution was passed:
- "RESOLVED THAT pursuant to the provisions of Section 186 and other applicable provisions, if any, of the Companies Act, 2013, read with the Rules framed thereunder, as may be amended from time to time, consent of the members be and is hereby accorded to the Board of Directors of the Company:*
- (a) *to grant loans, give guarantee(s) or provide security, in connection with a loan made by any person to or to any person, up to an aggregate value of Rs.600,00,00,000/- (Rupees Six Hundred Crore) from time to time in one or more trenches, to India Land and Properties Limited on such terms and conditions as may be considered expedient in the interest of the Company, and*
- (b) *to invest Company's fund by way of subscription, purchase or otherwise, in the securities of India Land and Properties Limited from time to time in one or more tranches up to the aggregate of Rs.600,00,00,000/- (Rupees Six Hundred Crore) on such terms and conditions as may be considered expedient in the interest of the Company, notwithstanding that the aggregate of loans, investment already made or to be made and the guarantees or securities already provided or to be provided, may exceed the limits prescribed under the said Section."*
- i. In this regard, IIL and ILPL confirmed that no amount of surplus funds were provided as loan to ILPL by IIL pursuant to above authorization. Further, IIL has submitted that on March 07, 2017 during a meeting between Mr. Gurbans Singh and Mr. Divyesh Shah pursuant to abovementioned EGM dated March 01, 2017, the loan proposal was

discussed and it was agreed in principle that IIL will rather purchase shareholding of ILPL;

- j. IVL submitted that no buyer or acquirer approached IVL/IDSL/ILPL or gave any formal/informal proposal for purchasing ILPL prior to March 07, 2017. Further, it was observed from the replies of IVL and statement recording of CEO of IVL that real estate market was sluggish and not conducive at that time;
- k. On March 14, 2017, IVL informed BSE and NSE that on March 14, 2017 IDSL has signed a definitive agreement to sell its 100% shareholding in ILPL, at a consideration of Rs.685 Crore, to IIL and the deal is expected to be completed in the current financial year;
- l. Considering the above factors, it was noted that despite the fact that IVL had announced its intention to sell ILPL on June 20, 2016, it was crucial to find a suitable buyer and finalize the consideration to execute their intention. Hence, the information regarding identification of the buyer, finalizing the consideration and the actual event of signing of the definitive agreement to sell 100% shareholding in ILPL, to IIL, is considered to be a price sensitive information;
- m. Therefore, the abovementioned information relating to the sale of ILPL to IIL / investment of IIL in ILPL, prior to being announced on March 14, 2017, was considered as UPSI in terms of Regulation 2(1)(n) of PIT Regulations, 2015.

- (ix) As per the information obtained from IVL, IDSL, ILPL, IIL and IREL, the chronology of events relating to the announcement of the aforesaid sale of ILPL to IIL / investment of IIL in ILPL, is as under:

DATE	PARTICULARS/EVENTS
May 04, 2016	IDSL's Board of Directors (BOD) in the meeting held on May 04, 2016 considered sale of ILPL to improve liquidity of IDSL and decided to sell the entire investment in ILPL.
June 15, 2016	IVL's BOD in the meeting held on June 15, 2016 decided to call an EGM on July 15, 2016 for seeking approval of shareholders.

DATE	PARTICULARS/EVENTS
June 20, 2016	IVL had sent EGM Notice dated June 15, 2016 to its Shareholders, inter-alia, for seeking / enabling authorisation for sale of investment by IDSL in the shares of ILPL, subject to the approval of shareholders. Same was informed to stock exchanges.
July 15, 2016	Shareholders of IVL in their EGM held on July 15, 2016, approved the sale of investment by IDSL, in the shares of ILPL, to any prospective buyer(s). Same was informed to stock exchanges.
July 27, 2016	In IVL's Board Meeting, Management Committee was authorized to authorise IDSL to sell its stake in ILPL. Members of the committee were Mr. Divyesh Shah, Mr. Ashok Sharma (till September 28, 2016), Mr. Aishwarya Katoch and Ms. Pia Johnson (w.e.f. September 28, 2016)
January 24, 2017	During a meeting between Mr. Divyesh Shah (CEO of IVL & Director of ILPL) and Mr. Gurbans Singh (CEO of IREL & Director of IIL) a request was made to Mr. Gurbans Singh, seeking loan facility against securities, from IIL for ILPL
January 25, 2017	Notice for convening Board Meeting on February 03, 2017 was issued by IIL to consider convening of an EGM
February 03, 2017	In IIL's Board Meeting held on February 03, 2017 it was decided to convene an EGM on March 01, 2017 for seeking enabling authorization to the board to invest surplus funds, by way of loan which may inter-alia be in the form of Debentures or Non-convertible Redeemable Preference Shares of ILPL or any other security as may be offered by ILPL. Draft Notice of the proposed EGM was also placed and approved by the Board in the same Board Meeting
March 01, 2017	In IIL's EGM enabling composite authorization in terms of Section 186 of the Companies Act, 2013 was approved
March 07, 2017	During a meeting between Mr. Gurbans Singh and Mr. Divyesh Shah pursuant to EGM dated March 01, 2017, the loan proposal was discussed and it was agreed in principle that IIL will rather purchase shareholding of ILPL
March 07, 2017 to March 14, 2017	Discussions and finalization of the terms and conditions w.r.t. sale of ILPL to IIL. The idea of IIL purchasing IDSL's 100% shareholding in ILPL was proposed and agreed to in-principle. This was subject to the price which was to be discussed further to meet with the conditions on pricing for disinvestment as proposed by the shareholders of IVL. The legal team of IREL Group prepared the documentation on behalf of IIL, as IREL's Group legal team works for IREL and all its subsidiaries.
March 14, 2017	Pursuant to IDSL, ILPL & IIL's BOD Meeting held on March 14, 2017, a definitive agreement among IDSL, ILPL and IIL was executed w.r.t. sale of ILPL by IDSL to IIL. Same was Intimated to stock exchanges.

The Period of UPSI –

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

Pia Johnson:

- (xi) Noticee No. 1 was the Non-Executive Director of IVL from March 10, 2015 to August 28, 2017. As per the company's reply dated May 03, 2018, being the Non-Executive Director, she was one of the entities connected to the company. Further, it was observed that Pia Johnson was a member of the Management Committee of the Board of Directors of IVL which was authorized to authorize IDSL to sell its entire investment in ILPL. Being a member of the aforesaid Management Committee of IVL, she was reasonably expected to have access to the aforesaid UPSI. In view of the same, it is noted that Pia Johnson is a "connected person" in terms of Regulation 2(1)(d)(i) of Insider Trading Regulations, 2015. Hence, she is considered to be an insider in terms of Regulation 2(1)(g) of Insider Trading Regulations, 2015.

- (xii) The summary of trading activity of Pia Johnson in the scrip of IVL is as under:

Period	Trade date	Buy Quantity	Buy Value (Rs.)	Sell Quantity	Sell Value (Rs.)
Pre-UPSIPeriod	20/06/2016	135000	2916252	0	0
	21/06/2016	170000	3669603	0	0
	05/07/2016	0	0	25000	803412

Period	Trade date	Buy Quantity	Buy Value (Rs.)	Sell Quantity	Sell Value (Rs.)
(April 01, 2015 to January 23, 2017)	Total	305000	6585855	25000	803412
During UPSI Period (January 24, 2017 to March 14, 2017)	16/02/2017	275000	9401223	0	0
	17/02/2017	80000	2744461	0	0
	22/02/2017	150000	5528327	0	0
	Total	505000	17674011	0	0
Post-UPS I Period (March 15, 2017 to March 31, 2018)	-	0	0	0	0

(xiii) The summary of trading activity of Pia Johnson in the scrip of IVL vis-à-vis gross trading across the market is as under:

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	IVL	%	Total	IVL	%	Total	IVL	%
Pre-UPS I Period (April 01, 2015 to Janua	40911634	6585855	16.10%	25121501	803412	3.20 %	66033135	7389267	11.19 %

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	IVL	%	Total	IVL	%	Total	IVL	%
Period (April 23, 2017)									
During UPSI Period (January 24, 2017 to March 14, 2017)	17674011	17674011	100.00%	1142774	0	0.00%	18816785	17674011	93.93%
Post-UPSI Period (March 15, 2017 to March 31, 2018)	12452980	0	0.00%	24981504	0	0.00%	37434485	0	0.00%
Total	71038625	24259866	34.15%	51245780	803412	1.57%	122284404	25063278	20.50%

(xiv) As seen from the tables above, it was observed that during the UPSI period, Pia Johnson had bought in total 505000 shares of IVL. Her trade concentration in IVL scrip was 11.19%, 93.93% and 0.00% respectively during pre-UPSI period from April 01, 2015, during UPSI period and post-UPSI period till March 31, 2018.

Mehul Johnson:

(xv) From the KYC documents received from broker, UCC details received from exchanges and Mehul Johnson's reply, it was observed that Mehul Johnson is husband of Pia Johnson. They share common address i.e. Flat no. 2502, 25th

Floor, Tower B, Raheja Vivarea, Jacobs circle, Mahalaxmi station, Mumbai. Both are registered with the same broker i.e. IVL. Also, they jointly hold HDFC bank account no. 00011000083619. As per his replies, he is a senior official equivalent to the grade of 'President' and is designated as "Director" (although not a member of the Board) of a subsidiary of IREL and is associated with the Indiabulls Group companies since April 2006.

(xvi) As per the provisions of regulation 2(1)(d)(ii)(a) read with regulation 2(1)(f) of the PIT Regulations, 2015, the spouse (immediate relative) of a "connected person" is also deemed to be a "connected person", unless the contrary is established. In view of the same, since Mehul Johnson is husband (immediate relative) of Pia Johnson (i.e. the connected person), he is deemed to be a connected person in terms of Regulation 2(1)(d)(ii)(a) r/w Regulation 2(1)(f) of PIT Regulations, 2015. There is nothing on record which indicates to the contrary. Hence, Mehul Johnson is considered to be an "insider" in terms of Regulation 2(1)(g) of PIT Regulations, 2015.

(xvii) The summary of trading activity of Mehul Johnson in the scrip of IVL is as under:

Period	Trade date	Buy Quantity	Buy Value (Rs.)	Sell Quantity	Sell Value (Rs.)
Pre-UPSI Period (April 01, 2015 to January 23, 2017)	20/06/2016	45000	978245	0	0
	Total	45000	978245	0	0
During UPSI Period (January 24, 2017 to March 14, 2017)	14/02/2017	166000	4973249	0	0
	16/02/2017	122970	4030835	0	0
	09/03/2017	50000	1817209	0	0
	Total	338970	10821293	0	0
Post-UPSI Period (March 15, 2017 to March 31, 2018)	-	0	0	0	0

(xviii) The summary of trading activity of Mehul Johnson in the scrip of IVL vis-à-vis gross trading across the market is as under:

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	IVL	%	Total	IVL	%	Total	IVL	%
Pre-UPSI Period (April 01, 2015 to January 23, 2017)	11580765	978245	8.45%	9696605	0	0.00%	21277370	978245	4.60%
During UPSI Period (January 24, 2017 to March 14, 2017)	10821293	10821293	100.00%	6106696	0	0.00%	16927989	10821293	63.93%
Post-UPSI Period (March 15, 2017 to March 31, 2018)	11547435	0	0.00%	89382556	0	0.00%	100929991	0	0.00%
Total	33949493	11799539	34.76%	105185857	0	0.00%	139135350	11799539	8.48%

(xix) As seen from the tables above, during UPSI period, Mehul Johnson had bought in total 338970 shares of IVL. His trade concentration in IVL scrip was 4.60%, 63.93% and 0.00%, respectively, during pre-UPSI period from April 01, 2015, during UPSI period and post-UPSI period till March 31, 2018.

(xx) Based on the close family relation between Pia Johnson and Mehul Johnson and their trading in the scrip during the period of UPSI, it is *prima facie* established that Pia Johnson and Mehul Johnson, both being insiders to the company, had traded in the scrip of the company while in possession of the UPSI, thereby

indulging in “insider trading”, in terms of regulation 4(1) of the PIT Regulations, 2015. There is a *prima facie* case that Pia Johnson had communicated the UPSI to her husband, Mehul Johnson, who executed his trades while in possession of the same.

Wrongful gains made by Pia Johnson and Mehul Johnson

(xxi) Pia Johnson and Mehul Johnson bought shares of IVL during the UPSI period and the gains made by them is calculated as under:

Name	No. of shares bought	Total Buy Value (Rs.)	Average Buy Price (Rs.)	Closing Price on March 15, 2017 (Rs.)**	Wrongful gain (Rs.)#
	A	B	C=B/A	D	E = A x (D-C)
Pia Johnson	505000	17674011	35.00	41.95	35,10,739.00
Mehul Johnson	338970	10821293	31.92	41.95	33,98,498.50

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

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

** The announcement was made on March 14, 2017 on BSE at 23:05 and on March 15, 2017 on NSE at 08:53. Therefore, the closing price of scrip on March 15, 2017 i.e. Rs.41.95 at BSE and NSE is considered for computation of wrongful gains.

(xxii) In view of the above, it is observed on the basis of investigation that Pia Johnson and Mehul Johnson traded in the scrip of IVL when in possession of UPSI pertaining to sale of ILPL to IIL / investment of IIL in ILPL and alleged to have collectively made wrongful gains of Rs.69.09 Lakhs.

2. Therefore, it was alleged in the SCN that Noticee no. 1 *prima facie* violated Section 12A (d) & (e) of SEBI Act, 1992 and regulations 3(1) and 4(1) of PIT Regulations, 2015 by communicating UPSI to her husband Mehul Johnson i.e. Noticee no. 2 and by trading in the scrip of the company when in possession of UPSI thereby indulging in insider trading. It was also alleged that Noticee no. 2 *prima facie* violated Section 12A (d) & (e) of SEBI Act, 1992 and regulations 3(2) and 4(1) of PIT Regulations, 2015 by procuring UPSI from his spouse i.e. Noticee no. 1 and

by trading in the scrip of the company while being in possession of UPSI thereby indulging in insider trading.

3. As the alleged gains were made during January 24, 2017 to March 14, 2017 (i.e. the period of UPSI), the total alleged wrongful gains made by the Noticees, through trading in the scrip of IVL during the UPSI period, including interest thereon, were alleged to have amounted to Rs. 87,21,918.55. Accordingly, as an interim measure, an *ex-parte ad interim* order cum SCN, for impounding such alleged profits under Section 11(1) read with 11(4)(d) and Section 11B of the SEBI Act read with Regulation 10 of the PIT Regulations, 2015, was issued against the Noticees.
4. Vide the *ex-parte ad interim* order, the aforesaid entities were also advised to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India (“SEBI Act”) and Regulation 10 of the SEBI (Prohibition of Insider Trading) Regulations, 2015, for the alleged violations of the provisions of Sections 12A(d) & (e) of the SEBI Act, 1992 and regulations 3(1) / 3(2) & 4(1) of Insider Trading Regulations, 2015 should not be taken/imposed against them including:
 - (a) Directing them to disgorge an amount equivalent to the total gains made on account of insider trading in the scrip of IVL along with interest,
 - (b) Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

Replies, Inspection, Hearing and Written submissions:

5. Noticees were provided inspection of the documents relied on in the SCN on July 08, 2019. Copies of the inspected documents were also provided to the advocate for Noticees. Noticees were provided an opportunity of hearing on August 26, 2019 when the Noticees along with their advocates were present. The advocates representing Noticees sought time to file reply and an adjournment of the hearing as the main counsel who was supposed to argue the matter was unable to attend

the hearing on that date. In view of this, Noticees were given a final opportunity of hearing on September 17, 2019. On the said date, the advocates representing the Noticees made their submission and hearing was concluded. The advocates sought time to file reply cum written submissions and were granted 10 days' time to file the same. The joint reply cum written submission was filed by the Noticees on October 15, 2010.

Submissions of the Noticees and consideration thereof:

6. I have perused the SCN, reply cum written submissions and also considered the arguments advanced during the hearing. Before dealing with contentions raised by the Noticees regarding the merit of the case, it would be appropriate to deal with some preliminary issues raised by Noticees which have been dealt in the following paras.
7. Noticees have contended that SEBI has not provided them with complete inspection of the documents. In this regard, Noticees have also relied upon the order dated January 10, 2017 passed by the Hon'ble Supreme Court in *SEBI Vs. Pricewaterhouse Coopers (Civil Appeal No. 6003-6004)*.
8. Regarding order of the Hon'ble Supreme Court in *Pricewaterhouse Coopers* matter (*supra*) relied on by the Noticees, I note that said order by the Hon'ble Supreme Court came to be passed in the Civil Appeal Nos. 6000-6001 of 2012 and 6003-6004 of 2012, filed by SEBI before Hon'ble Supreme Court, against the order dated June 01, 2011 passed in Appeal No. 8 of 2011 and other connected appeal, by Hon'ble SAT. I note that Hon'ble SAT in its order dated June 01, 2011 passed in Appeal No. 8 of 2011 observed as under:

"17. Be that as it may, there is no rule of law which permit appellants to have access to all the material available with the Board which has not been relied upon or referred to in the show cause notice issued to the appellants.

16. We have given our thoughtful consideration to the prayer made by the appellants. After hearing both the parties and perusing the record, we are inclined to agree with learned Advocate General that in the facts and circumstances of this case,

it is not appropriate nor it is the requirement of principles of natural justice that appellant should be allowed inspection of all the material that might have been collected during the course of investigation but has not been relied upon in the show cause notice. In the case law discussed above, it has been abundantly made clear that what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of the case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for the purpose. There is no provision in the Act that all material collected during the course of investigation should be made available to the appellant.....

.....The present show cause notice has been issued by the Board on the basis of evidence collected by it which prima-facie shows that there might have been complicity of the auditors in manipulation of accounts and they might have aided and abetted the company in making such a large scale manipulation and that too for a number of years. If any material collected during the course of investigation has not been relied upon in the show cause notice, it will not deprive the appellant to produce its defence before the Board to show that it was not a party to the fraud. In our this view, we are supported by the judgment of the Supreme Court in the case of Natwar Singh vs Director of Enforcement (2010) 13 SCC 255 where the Apex Court has observed that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of the principles of natural justice. The situation may be different in a criminal case where the investigation report is placed before the court and the accused person asks for copy of the material collected during the course of investigation. This is not so here.....”

9. Aggrieved with the other observations given in the order dated June 01, 2011 passed by Hon'ble SAT, SEBI filed Civil Appeal Nos. 6000-6001 of 2012 and 6003-6004 of 2012 before Hon'ble Supreme Court. Hon'ble Supreme Court while disposing of the aforesaid civil appeals vide its order dated January 10, 2017 directed as under:

“1. Having heard learned counsel for the rival parties, we find no justification to examine the matter in detail. We wish to dispose of this case with some simple clarifications.

2. We direct, that all statements recorded during the course of investigation shall be provided to the respondents. We further direct, that all documents collected during investigation shall be permitted to be inspected by the respondents. The authors of such statements (recorded during investigation), which are to be relied upon (against the respondents), shall be offered for cross-examination to the respondents. Only thereupon, it will be permissible to rely upon the same.

3. Since the process was initiated as far back as in the year 2010, and has remained pending since then, we consider it just and appropriate to direct the Whole Time Member, before whom the matter is pending, to conclude the same, within six months from today.

4. Disposed of in the aforesaid terms.”

10. The aforesaid directions passed by the Hon’ble Supreme Court in *Pricewaterhouse Cooper case (supra)* have been relied upon by the Noticees to contend that they are entitled to inspection of complete investigation report and all the documents collected by SEBI during the investigation. In this regard, I note that similar contention based on the aforesaid directions of Hon’ble Supreme Court were raised by the appellant in Appeal No. 286 of 2014 – B. Ramalinga Raju Vs. SEBI before Hon’ble SAT. Hon’ble SAT vide its order dated May 12, 2017 passed in the said appeal, rejected the said contention holding as under:

“21. 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.....”

11. Therefore, the submissions that said order is applicable to all other cases, generally, is not correct. I note that Noticees are entitled to inspection of all the documents relied on in the SCN. In the present case Noticees have been provided

with the inspection of the nine documents relied on in the SCN, on July 08, 2019. Details of the documents inspected by the Noticees during the inspection provided on July 08, 2019, copies of which were also provided to them, are as under:

- (I) Minutes of the Board meeting of IDSL dated May 04, 2016;
- (II) Minutes of the Board meeting of IVL dated June 15, 2016;
- (III) Results of EGM of IVL held on July 15, 2018;
- (IV) ILPL's email dated December 26, 2018;
- (V) Notice dated January 25, 2017 issued by IIL to convene board meeting on February 03, 2017;
- (VI) Minutes of board meeting of IIL held on February 03, 2017;
- (VII) Minutes of EGM of IIL held on March 01, 2017;
- (VIII) Statements of Shri Divyesh Shah and Shri Gurbans Singh, recorded on May 30, 2018 with regard to IVL;
- (IX) Extracts of trade and order logs of Noticees.

12. I note that the SCN issued in the present matter, contains all the relevant extracts of the investigation report which have been relied upon in the SCN. The Noticees have also filed detailed reply cum written submissions dated September 25, 2019 after inspection of documents. In view of the above and the fact that the documents relied on in the SCN have been provided to the Noticees and hence, the contentions raised by the Noticees in this regard are untenable.

13. The Noticees have raised a contention that there was no urgency to pass interim order in the matter, as SEBI had already concluded the investigation before passing the present *ex parte ad interim* order. In this regard, I note that SEBI Act, 1992 empowers SEBI to pass *ex parte ad interim* orders either pending investigation or inquiry or on completion of investigation or inquiry. It is further observed that pendency or completion of investigation is not the sole factor to determine the urgency for passing the *ex parte ad interim* order, as law itself envisage passing of *ex parte ad interim* order either during pendency of investigation or conclusions thereof. In the present case, findings of the investigation were that the Noticees have done trading in the shares of IVL in violation of the provisions of the PIT Regulations, 2015 and has thus made notional

profits by violating the provisions of law. Thus, once investigation had brought to fore these facts, SEBI passed the ex parte interim order to secure the amount of such notional profits which Noticees might be required to disgorge, if they are found in violation of alleged provisions of law on conclusion of present proceedings. It was done with a view to avoid a situation where at the conclusion of the proceedings, it is found that the unlawful gains are not available for disgorgement due to appropriation/diversion of such gains. Therefore, I do not agree with the contention of the Noticees that there was no urgency to pass the ex parte ad interim order of disgorgement.

14. The Noticees have contended that the present ex parte ad interim order is beyond the powers given under Section 11(4)(e) of the SEBI Act, 1992 which requires attaching of bank accounts after obtaining order from the judicial magistrate of the first class. In this regard, I note that the present order has been passed under Section 11(4)(d) of the SEBI Act, 1992 which empowers SEBI to impound and retain the proceeds or securities in respect of any transaction which is under investigation. It is further noted that ex parte ad interim order in the matter allowed debit for amounts available in the accounts of the Noticees, in excess of the amount to be impounded/d disgorged. Thus, on this count, ex parte ad interim order passed by SEBI was well within the powers of SEBI. In view of this, I find that contention raised by the Noticees in this regard is not tenable.

15. The Noticees have also contended that Explanation appended to Section 11B of the SEBI Act, 1992 which provides for directions of disgorgement provides for disgorgement of actual wrongful gain or loss averted. It does not contemplate disgorgement of notional wrongful gains which is the present case as Noticees have not sold their shares pursuant to UPSI becoming public. In this regard, I note that the law provides for disgorgement of wrongful gains. It does not qualify wrongful gains with the word "actual". Thus wrongful gains include actual as well as notional gains. Therefore, the contention of the Noticees in this regard is not tenable.

16. Noticees have also contended that serious allegation of insider trading has been based merely on the basis of presumptions. I find that SCN gives various details

like trading undertaken in the scrip of IVL by the Noticees, directorship of Noticee no. 1 in IVL, membership of Noticee no. 1 in the management committee, etc. which are facts and not presumptions. I further find that SCN supports the allegations levelled therein with the evidence direct as well as circumstantial, as discussed in the following paras, which shows high degree of preponderance of probability of existence of fact constituting allegations. Therefore, the contention raised by the Noticees that allegation in the SCN have been made on the basis of presumptions, is untenable.

17. Before dealing with the contentions raised by the Noticees regarding the merits of the case, it would be appropriate to refer to the relevant provisions of Law which are extracted hereunder:

Relevant extract of provisions of SEBI Act, 1992:

“Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a).....

(b).....

(d) engage in insider trading;

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

Relevant extract of provisions of PIT Regulations, 2015:

“Definitions.

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

(d) "connected person" means,-

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in

any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

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

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

(b).....

.....

NOTE: *It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.*

(f) "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

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

i) a connected person; or

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

NOTE: *Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive*

information should be considered an “insider” regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or or he couldnot access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

Communication or procurement of unpublished price sensitive information.

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

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

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

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

.....

Trading when in possession of unpublished price sensitive information.

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

.....

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

.....

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

18. The Noticees have been charged with trading when in possession of UPSI. Regulation 4(1) of the PIT Regulations, 2015 which deals trading when in possession of UPSI or insider trading, has three ingredients to attract the prohibition contained therein, viz:

- (i) insider;
- (ii) possession of UPSI by the insider; and
- (iii) trading in securities by the insider.

The term “insider” has been defined under Regulation 2(1)(g) which provides that “insider” means any person who is,-

- (i) connected person; or
- (ii) in possession of or having access to UPSI.

19. The term “connected person” has been defined under Regulation 2(1)(d) to mean any person having certain association/position with/in the company, that allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access. Thus, if such a person is found to be “connected person” then by virtue of their association/position with/in the company like director, officer, employee, etc., access to UPSI with such person is implied. In the present case, Noticee no. 1 was a non-executive director and the member of the management committee authorised by the board of IVL to sale entire stake of IDSL in ILPL. Therefore, Noticee no. 1 is the connected person within the meaning of Regulation 2(1)(d)(i) of the PIT Regulations, 2015 and thus an “insider” within the meaning of Regulation 2(1)(g) of the PIT Regulations, 2015.

20. Regulation 2(1)(d)(ii) of PIT Regulations provides that persons enumerated therein shall be deemed to be connected persons unless the contrary is established. In terms of Regulation 2(1)(d)(ii)(a), immediate relative of connected person as specified in Regulation 2(1)(d)(i), is a deemed connected person. As per Regulation 2(1)(f), “immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities. In the previous para, Noticee no. 1 has been found to be connected person. Noticee no. 2 is the spouse of Noticee no. 1 and hence, an immediate relative as per Regulation 2(1)(f) and deemed connected person by virtue of Regulation 2(1)(d)(ii)(a). Therefore, Noticee no. 2 is also connected person and consequently, an insider within the meaning of “insider” as given under Regulation 2(1)(g) of PIT Regulations, 2015.

21. The Noticees have contended that to term a person as “insider”, such connection must be of a nature that allows the person access to the “specific UPSI” in question, or reasonably allows such access. I find that the interpretation placed by the Noticees on the term “insider” and the “connected person” as defined under the PIT Regulations, 2015, is not correct. The definition of the “connected person” encompasses within its fold all those associations/relations/positions in the company by virtue of which “generally and reasonably” UPSI comes into

possession of such persons like director, officer, employee, etc. In this regard, I note PIT Regulations, 2015, in addition to prohibiting “insider” from trading in the securities when in possession of UPSI also enjoins other liabilities/duties on insiders like, prohibition on communication of UPSI, formulation and implementation of trading plans, disclosures and abiding with Code of Conduct. These liabilities/duties on the “insiders” have been fastened because they are connected person who generally receive UPSI due to their association/position with/in the company. Thus, definition of “insider” has got wider purpose of prevention of insider trading, under the PIT Regulations, 2015 in addition to prohibiting actual insider trading. The definition does not require that connected person must have specific UPSI in his possession before he can be termed as insider. Thus, if the contention of Noticees is accepted it would lead to a situation that a connected person would not be an “insider” even for these preventive mechanisms unless he is having specific UPSI. In this regard, Regulation 4(2) of PIT Regulations, 2015 is also important which provides that if a connected person [thus insider by virtue of Regulation 2(1)(g)(i)] is charged with insider trading then onus of establishing that he was not in possession UPSI shall be on such person and in other cases such onus would be on SEBI. Meaning thereby, connected persons who generally receive UPSI are attributed with possession of specific UPSI. In view of the above, contention of the Noticees is untenable.

22. Noticees have further relied on the judgment of the Hon’ble Supreme Court in ***Chintalapati Srinivasa Raju Vs. SEBI (2018) 7 SCC 443*** to further contend that mere connection or deemed connection is not sufficient to term a person as insider, it must also be proved that there was reasonable expectation of such persons having access to UPSI. In the present case, such reasonable expectation of access to UPSI has been alleged on the basis that the Noticee no. 1 was the non-executive director of IVL and was a member of the Managing Committee which was entrusted by the board of directors of IVL with the task of sale of stake of IDSL in ILPL. It is submitted that a non-executive director can be fastened with liability for an act if the act happened with his knowledge attributable through board processes. Noticees have contended that since, the decision of IIL to purchase the shares of ILPL came to the notice of Noticee no. 1 through the board meeting held March 14, 2017, therefore, Noticees were not having the knowledge of UPSI. Further,

knowledge of UPSI, being a member of Managing Committee is also not correct as no meeting of the said committee was ever held nor has been so alleged in the SCN, the reasonable expectation of access to UPSI with Noticee no. 1 goes and hence, Noticee no. 1 is not insider and consequently, Noticee no. 2 is also not insider. I note that that in Chintalapati matter (*Supra*), Hon'ble Supreme Court was dealing with the case wherein the appellants were charged with the violations of the provisions of the PIT Regulations, 1992 and not with the violations of PIT Regulations, 2015, as is the present case. Hon'ble Supreme Court interpreted the definition of "insider" as given under Regulation 2(e) of PIT Regulations, 1992 which provided as under:

- "(e) "insider" means any person who,*
- (i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or*
 - (ii) has received or has had access to such unpublished price sensitive information;"*

23. While interpreting the above quoted definition of "insider", Hon'ble Supreme Court held that a person can be termed as insider under Regulation 2(e)(i) of PIT Regulations 1992 when such person is (i) connected or deemed to be connected with the company; and (ii) there is reasonable expectation of such person having access to UPSI. It was held that both these conditions must be satisfied before a person can be termed as insider. Since *Chintalapatti case (supra)* was pertaining to the PIT Regulations, 1992, hence, the same is not applicable in the present case which pertains to PIT Regulations, 2015 where definition of "insider" is different and for the sake of convenience, reproduced hereunder:

- (g)"insider" means any person who is:*
- i) a connected person; or*
 - ii) in possession of or having access to unpublished price sensitive information;*

24. In the Chintalapatti matter (*supra*), Hon'ble Supreme Court also observed that under Regulation 2(1)(g) of PIT Regulations, 2015, there is no requirement that

reasonable expectation of having access to UPSI must be separately proved and the fact that a person is a connected person (as defined) is sufficient to term such person as an insider. In this regard, Hon'ble Supreme Court observed as under:

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

25. A perusal of definition of “connected person” as given under Regulation 2(1)(d) of PIT Regulations, 2015 reveals that if a person occupies a position or enjoys a relationship with the company such as director, officer, employee, etc. which allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access, such person is termed as connected person. It is worth to note here that PIT Regulations, 2015 were framed on the basis of the recommendations made by the High Level Committee to review the SEBI (PIT) Regulations, 1992 constituted by SEBI under the Chairmanship of Justice (Retd.) N. K. Sodhi. The committee, in its report, also referred to the observations made by the Hon'ble Supreme Court in ***Daichi Sankyo Company Ltd. Vs. Jayayram Chigurupati & Ors. (2010) 7 SCC 449*** which are as follows:

“..... Now that we have more and more of the regulatory regime where highly important and complex and specialized spheres of human activity are governed by regulatory mechanisms framed under delegated legislation it is high time to change the old practice and to add at the beginning the “object and purpose” clause to the delegated legislations as in the case of the primary legislations.....”

26. In view of the aforesaid observations of the Hon'ble Supreme Court in the Daichi Sankyo case (*supra*), the Committee, in the draft regulations proposed by it in its report, also provided specific notes on each provision setting out the legislative intent for which that provision was formulated. The said Committee also

suggested a draft Regulations 1(3) which provided that the notes set out along with the provisions of the regulations are an integral part thereof setting out the legislative intent to guide the interpretation of the regulations. However, said proposed Regulation 1(3) does not find place in the ultimately notified PIT Regulations, 2015. However, the Note has been referred to in this order, just to throw light on the true purport and intent of the Regulation 2(1)(d) of the PIT Regulations, 2015 and not to enhance or limit the scope of the provision. The said Note appended to Regulation 2(1)(d) provides as under:

“It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company’s operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.”

27. The aforesaid Note appended to Regulation 2(1)(d) of the PIT Regulations, 2015 also makes it clear that definition of “connected person” as given under Regulation 2(1)(d), covers all those persons in the definition of connected persons who have such a connection with the company which puts or reasonably expected to put them in possession of UPSI. As discussed above, a “connected person” is treated as “insider” without any further proof of access of any specific UPSI to connected person. In the present case, Noticee no. 1 was holding the position of non-executive director on the board of IVL. Such position can reasonably and generally be expected to allow access to UPSI to the person holding such position like of non-executive director through board processes. Therefore, the contention of Noticees, in this regard, are not tenable.

28. As discussed in the aforesaid paras, Noticees are insiders of IVL. Now the next question to be determined is whether there was any UPSI when the Noticees undertook impugned trades during February, 2017. Regarding existence of UPSI, SCN alleges that sale of shares of ILPL to IIL/investment in ILPL by IDSL, as an UPSI. I find that IVL decided to sell “up to” 100% shares of ILPL held by IDSL, a wholly owned subsidiary of IVL for a consideration more than the amount invested by IDSL. I note that on January 24, 2017 the two CEOs of IVL and IREL held discussions regarding loan to ILPL by IIL. It is noted from the SCN that the IVL had submitted during the investigation that no buyer or acquirer approached IVL/IDSL/ILPL or gave any formal/informal proposal for purchasing ILPL prior to March 07, 2017. Further, it is stated in the SCN that real estate market was sluggish and not conducive at that time. After the said meeting a notice convening the meeting of the board of directors on February 03, 2017 was sent by IIL on January 25, 2017. On February 03, 2017, board of directors of IIL decided to convene an EGM on March 01, 2017 for seeking enabling authorization to the board to invest surplus funds, by way of loan which may *inter-alia* be in the form of Debentures or Non-convertible Redeemable Preference Shares of ILPL or any other security as may be offered by ILPL. Draft Notice of the proposed EGM was also placed and approved by the board of IIL in the same board meeting. In the EGM held on March 01, 2017, an enabling composite authorization in terms of Section 186 of the Companies Act, 2013 was approved and following special resolution was passed:

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

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

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

29. Pursuant to aforesaid EGM of IIL on March 01, 2017, during a meeting between Mr. Gurbans Singh and Mr. Divyesh Shah, the loan proposal was discussed and it was agreed that IIL will purchase shares of IDSL in ILPL. On March 14, 2017, a definitive agreement was executed amongst IDSL, ILPL and IIL and was intimated to the stock exchanges by IVL *inter alia* as “we wish to inform that today i.e. March 14, 2017, Indiabulls Distribution Services Limited (IDSL) (a wholly owned subsidiary of Indiabulls Ventures Limited {IVL}) has signed a definitive agreement to sell its 100% shareholding in India Land and Properties Limited (ILPL), at a consideration of Rs. 685 crores, to Indiabulls Infrastructure Limited (IIL), a wholly owned subsidiary of Indiabulls Real Estate Limited. The deal is expected to be completed in the current financial year.” Thus, the proposal relating to grant of loan from IIL to ILPL or investment by IIL in ILPL, which originated on January 24, 2017, i.e. the date when CEOs of IVL and IREL met and discussed loan facility against securities, from IIL for ILPL, ultimately culminated in sale of ILPL shares held by IDSL to IIL/ investment of IIL in ILPL, for a consideration of Rs. 685 crore. The said information was a price sensitive information which could likely materially affect the price of securities of IVL. In fact, the UPSI on being made public, on March 15, 2017 had materially affected the price of the scrip of IVL i.e. an increase of 9.96% over the previous day’s closing price of Rs. 38.15/- per share (closing price on March 15, 2017 was Rs. 41.95/- per share). Therefore, I find that information regarding investment by IIL in ILPL/sale of shares ILPL was a UPSI pertaining to IVL which came into existence on January 24, 2017 and became generally available or published on March 14, 2017.

30. The Noticees have contended that there was no UPSI during the period when they traded in the shares of IVL, Noticees have submitted that the information regarding the sale of shares of ILPL by IDSL for a consideration more than the amount invested (i.e. Rs. 600 crore) by IDSL in such shares, was already in public domain since June 20, 2016 when IVL had sent EGM Notice dated June 15, 2016 to its shareholders, *inter-alia*, for seeking /enabling authorisation for sale of investment by IDSL in the shares of ILPL, subject to the approval of shareholders which was informed to stock

exchanges. Accordingly, said information was not “unpublished”. It has further been submitted that if at all sale of shares of ILPL by IDSL can be termed as UPSI, the same can be said to have come into existence only on March 7, 2019 when it was decided between the CEOs of IVL and IREL that instead of giving any loan to ILPL against the shares of ILPL held by IDSL, IIL would be purchasing the shares of ILPL or on March 14, 2017 when a definitive agreement was signed between ILPL, IIL and IDSL regarding sale of shares of ILPL by IDSL to IIL for a consideration of Rs. 685 crores. Noticees submitted that January 24, 2017 can never be a date when UPSI could have arisen because at that time CEOs of IVL and IREL discussed only about giving of loan to ILPL from IIL.

31. I note that on June 20, 2016, IVL forwarded to the stock exchanges, a notice convening EGM of its shareholders on July 15, 2016 to transact the special business as contained in the said notice. The item no. 2 in the said notice of EGM, provided as under:

“Item No. 2. Sale of Investment

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

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

RESOLVED FURTHER THAT the Board be and is hereby authorized to delegate all or any of the powers herein conferred by above resolutions to any

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

32. The said agenda item no. 2 was approved by the shareholders of IVL in the EGM held on July 15, 2016. It is clear from the said resolution passed by the shareholders of IVL that firstly, authorisation was given to sell “upto 100% shares” of IDSL in ILPL, secondly, there was no timeline prescribed for selling the said shares and thirdly, resolution merely stated that sale consideration shall be more than the amount invested by IDSL, in such shares. However, said resolution did not mention that amount invested by the IDSL in the shares of ILPL was Rs. 600 crore. The said amount of Rs. 600 crore becomes known from the disclosure made by the IVL on May 19, 2014 to the stock exchanges that its subsidiary IDSL had acquired 100% shares of ILPL. Therefore, any investor reading the disclosure made by IVL on June 20, 2016, in order to know the minimum consideration amount expected by IVL through sale of shares of IDSL in ILPL, must also be aware of the disclosure made by IVL on May 19, 2014 wherein it informed Rs. 600 crore, as the amount invested by IDSL in purchase of 100% shares of ILPL. Therefore, the aforesaid notice of EGM was in public domain since June 20, 2016 but it was a raw information and it could crystallise in concrete UPSI when there is an identified purchaser, ascertained number of shares to be sold, ascertained consideration amount, agreed time between buyer/seller to close the deal and other terms and condition. All these facts were not ascertained as on June 20, 2016, therefore, the contention of the Noticees that the alleged UPSI was in public domain since June 20, 2016 despite the absence of critical facts like identified purchaser, ascertained number of shares to be sold, ascertained consideration amount, agreed time between buyer/seller to close the deal and other terms and condition, is not correct. Normally in the AGM/EGM, enabling approvals like raising of capital, etc., are accorded to the board of directors

of the company which are to be executed by the board of directors at appropriate time. It would not be farfetched to envisage that in some cases such resolutions passed are not acted upon for various reasons and thus lapse. The proposal relating to grant of loan from IIL to ILPL or investment by IIL in ILPL, first time originated on January 24, 2017. This was for the first time that the approval accorded by the shareholders of IVL regarding the sale of stake of IDSL in ILPL, moved from in-principle approval to actual execution stage. Further, this was on the said date when for the first time, information regarding investment by IIL in ILPL came into existence. The said proposal was different from the decision of IVL (selling the shares of ILPL held by IDSL) taken in the meeting of board of directors of IVL held on June 15, 2016 and informed to the stock exchanges on June 20, 2016 because the said loan was subject to the approval by the board of IVL. Further, on this date, a real investor in the form of IIL came forward to actually discuss the granting of loan against the shares of ILPL. The said proposal of loan against the shares of ILPL ultimately culminated in sale of shares ILPL held by IDSL to IIL/investment of IIL in ILPL, for a consideration of Rs. 685 crore i.e. an amount which was not known earlier at the time of in-principle given by the board of IVL on June 15, 2016. However, from January 24, 2017, the in-principle approval accorded by the board of IVL on June 15, 2016 entered into execution stage which could have resulted either into loan (as discussed) or sale (as it actually happened). The said information was a price sensitive information which could likely materially affect the price of securities of IVL. As discussed above, in fact, the said UPSI on being made public on March 15, 2017 had materially affected the price of the scrip of IVL i.e. an increase of 9.96% over the previous day's closing price of Rs. 38.15/- per share (closing price on March 15, 2017 was Rs. 41.95/- per share). It is correct that on March 07, 2017, the two CEOs agreed in principle that instead of giving loan, IIL would be purchasing the shares in ILPL which resulted into a formal agreement amongst IDSL, ILPL and IIL, on March 14, 2017, but IIL came forward as willing investor (as lender) in ILPL, first time on January 24, 2017 and finally ended up in purchasing the shares in ILPL, on March 14, 2017. Therefore, SCN rightly alleges that UPSI came into existence on January 24, 2017 and the contention of the Noticees in this regard is untenable.

33. Regarding UPSI, Noticees have also contended that the alleged UPSI was not material. In this regard, I note that Regulation 2(n) defines UPSI to mean any

information relating to a company or its securities that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities. Thus, it is the likelihood of materially affecting the price of the securities and not the actual materiality itself, which is the criteria to determine UPSI. The UPSI involved in the present case was securing of loan from IIL against the shares of ILPL resulting into ultimate sale of the shares of ILPL by IDSL in favour of IIL, for a consideration of Rs. 685 crore. Such an information will be taken by a reasonable investor to likely have material effect on the shares of IVL though in fact it may not have any such effect. In the present case, in fact, on becoming public/generally available of said UPSI, the price of the scrip of IVL closed with an increase 9.96% at Rs. 41.95/- per share as against the previous day's closing price of Rs. 38.15/- per share. Thus, the contention of the Noticees that such information was not material is not correct and hence, untenable.

34. The next question to be determined is whether the Noticees being insider of the company-IVL, traded in its securities when in possession of UPSI. SCN alleges that Noticees have traded in the scrip of IVL during the UPSI period i.e. January 24, 2017 to March 14, 2017, as follows:

Trades of Noticee no. 1	
Date of trade	Buy quantity
16/02/2017	275000
17/02/2017	80000
22/02/2017	150000
Total	505000
Trades of Noticee no. 2	
Date of trade	Buy quantity
14/02/2017	166000
16/02/2017	122970
09/03/2017	50000
Total	338970

35. I note that Regulation 4(2) of PIT Regulations, 2015 provides that in the case of connected persons the onus of establishing, that they were not in possession of UPSI, shall be on such connected persons. Thus, said regulation is shifting the

burden of proof on connected person and hence, is a form of presumption. In the present case, both the Noticees are connected persons and the facts that there was UPSI and that these Noticees traded in the shares of IVL, give rise to presumption of possession of UPSI by these Noticees, as envisaged under Regulation 4(2). Now, the burden of proving that they were not in possession of UPSI, at the time of execution of impugned trades is on the Noticees.

36. Apart from presumption, SCN in the present case, alleges that Noticee no. 1- Pia Johnson was a member of the management committee of the Board of Directors of IVL which was authorized to empower IDSL to sell its entire investment in ILPL. I note that Noticee no. 1 was a member of the management committee since September 28, 2016 which was authorised by the board of directors of IVL on July 27, 2016 to authorise IDSL to sell its stake in ILPL. The other members of the said committee were Mr. Divyesh Shah, Mr. Ashok Sharma (till September 28, 2016) and Mr. Aishwarya Katoch. It has been stated that Mr. Diveysh Shah (CEO of IVL and Director of ILPL) was the person who held the discussions with Mr. Gurbans Singh (CEO of IREL and Director of IIL) for loan facility against securities for ILPL from IIL. I note that during the UPSI period, Noticee no. 1 purchased 5,05,000 shares of IVL for a consideration of Rs. 1.76 crore (approx.) and her trade concentration in the scrip of IVL was 93.93% during UPSI period which was only 11.19% and 0% during pre-UPSI and post-UPSI periods, respectively. Similarly, Noticee no. 2 who is husband of Noticee no. 1 and also associated with Indiabulls group (as an employee of subsidiary of IREL, a company belonging to Indiabulls group), purchased 3,38,970 shares for a consideration of Rs. 1.08 crore of IVL during UPSI period. His trade concentration in the scrip of IVL during UPSI period was 63.93% which was only 4.6% and 0 % during pre-UPSI and post-UPSI periods, respectively. Therefore, in addition to presumption operating against Noticees by virtue of Regulation 4(2), I find on the basis of facts narrated above that Noticees were in possession of UPSI at the time of impugned trades.

37. Additionally, it is noted that Noticee no. 2, at the time of impugned trades, was director in 8 companies of Indiabulls Group, namely, Indiabulls Industrial Infrastructure Ltd., Indiabulls Buildcon Ltd., Indiabulls Lands Ltd., Indiabulls Infrastructure Development Ltd., Indiabulls Constructions Ltd., Indiabulls Estate Ltd.,

Indiabulls Builders Ltd. and Indiabulls Integrated Services Ltd. Noticee no. 2 continues to be director in 7 such companies except Indiabulls Integrated Ltd. where he ceased to be director on September 28, 2017.

38. Noticee no. 1 has submitted that no meeting of this management committee (authorised to sell the stake of IDSL in ILPL) was at all held and that between January 27, 2017 and March 14, 2017, there was neither any meeting nor any call or electronic decision making of any nature at all, by this management committee. I note that in the EGM held on July 15, 2016 shareholders of IVL *inter alia* authorised board of IVL to sell upto 100% of shares held by IDSL in ILPL and for this purpose also authorised to delegate all or any of the powers conferred by the resolution to any director or to any committee of directors or any other executive(s) / officer(s) of the company or any other person as the Board at its discretion deem appropriate. I note that by a resolution dated July 27, 2016, the management committee of the board was authorised by the board of IVL to authorise IDSL to sell its holding in ILPL for a consideration more than the amount invested by IDSL in such shares. The execution of such sale by the management committee will bind the board of IVL and was pursuant to the authorisation given in EGM to the board of IVL. It is not the case of the Noticees that Mr. Diveysh Shah, CEO-IVL who also member of the management committee and participated in the discussions held with Mr. Gurbans Singh, CEO-IREL, acted on his own or exceeded the authority given to the management committee and sold the shares of ILPL to IIL, independently, and an action has been initiated against the Mr. Shah for exceeding his authority. Moreover, the further delegation of power to sale by management committee (a delegatee) to Shri Divyesh Shah is a debatable issue. The management committee was authorised on July 27, 2016 and agreement of sale of stake of IDSL in ILPL to IIL was signed on March 14, 2017. *I note that on March 14, 2017, IVL informed BSE inter alia as “we wish to inform that today i.e. March 14, 2017, Indiabulls Distribution Services Limited (IDSL) (a wholly owned subsidiary of Indiabulls Ventures Limited {IVL}) has signed a definitive agreement to sell its 100% shareholding in India Land and Properties Limited (ILPL), at a consideration of Rs. 685 crores, to Indiabulls Infrastructure Limited (IIL), a wholly owned subsidiary of Indiabulls Real Estate Limited. The deal is expected to be completed in the current financial year.”* Thus, I find that the resolution passed by the shareholders of the IVL, in the EGM dated July 15, 2016 has been accepted, implemented and informed to stock

exchanges, by IVL and same cannot be solely attributed to Mr. Divyesh Shah, CEO-IVL, as sought to portrayed by the Noticees.

39. The Noticees, in their submissions, have submitted that between January 27, 2017 and March 14, 2017, there was neither any meeting nor any call or electronic decision making of any nature at all, by this management committee, thus excluding the period from January 24, 2017 to January 26, 2017 which give rise to an inference that possibility of discussions/communications between the member of the management committee between January 24, 2017 to January 26, 2017, can't be ruled out, particularly in view of the position of the Noticee no. 1 in IVL as non-executive director, membership of Noticee no. 1 in the management committee and impugned trades undertaken by the Noticees during UPSI period. I note that on January 24, 2017, Mr. Diveysh Shah (CEO of IVL and Director of ILPL) and Mr. Gurbans Singh (CEO of IREL and Director of IIL) discussed for loan facility against securities for ILPL from IIL, as opposed to the previous decision of IVL to sell the stake of IDSL in ILPL which was intimated to the stock exchanges by IVL on June 20, 2016. The said information regarding investment of IIL in ILPL/loan against shares of ILPL by IIL, was UPSI which ultimately culminated into definitive agreement for sale of 100% shares of ILPL by IDSL to IIL on March 14, 2017. It further gives rise to an inference that Noticee no. 1 had communication during January 24, 2017 to January 26, 2017, with other members of the committee during UPSI period. I note that during the UPSI period, Noticee no. 1 purchased 5,05,5000 shares of IVL and her trade concentration in the scrip of IVL was 93.93% during UPSI period which was only 11.19% and 0% during pre-UPSI and post-UPSI periods, respectively. Similarly, Noticee no. 2 who is husband of Noticee no. 1 and also associated with Indiabulls group through directorship in 7 companies belonging to Indiabulls group, purchased 3,38,970 shares of IVL during UPSI period and his trade concentration in the scrip of IVL during UPSI period was 63.93% which was only 4.6% and 0 % during pre-UPSI and post-UPSI periods, respectively. Noticees purchased shares worth Rs. 69.09 lakh before signing of the definitive agreement on March 14, 2017. Therefore, the contention raised by the Noticees are not tenable, in view of the observations made in paras 38 and 39 above.

40. Noticees have relied upon another observation made by Hon'ble Supreme Court in the Chintalapatti case (*supra*) that non-executive directors are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company. Relying on this observation, Noticees have contended that Noticee no. 1 was being non-executive director, therefore, there cannot be any reasonable inference that the notice was aware about inside information. As discussed above, since the Noticees are connected person, therefore, Noticees are insiders. SCN in the present matter imputes access to UPSI to Noticee no. 1 on the basis of her being member of the management committee of IVL which was assigned the task of authorising the IDSL to sale its stake in ILPL. I note that PIT Regulation, 2015 does not distinguish between an executive and non-executive/independent director and the provisions thereof applies to both executive and non-executive directors, alike. A non-executive director may not be involved in the day to day functioning of the company, however he may get access to UPSI through board processes or through participation in the meeting of sub-committees of the board like audit committee, management committee, etc. An executive director of the company may get access to the UPSI either because of his involvement in the day to day functioning of the company or through board processes or through participation in the meeting of sub-committees of the board like audit committee, management committee, etc. A UPSI may come into existence by virtue of day to day affairs of the company as well as through board processes/decision taken in the board meetings. It is noted that many price sensitive decisions pertaining to financial results, dividends, change in capital structure, mergers, de-mergers, acquisitions, delistings, disposals and expansion of business, etc. are discussed in the board meetings which is attended by the non-executive directors also. On the other hand, there may be a UPSI which only the persons (like executive directors), who are involved in the day to day affairs of the company, are only aware of. I note that in the Chintalapatti matter (*supra*), Hon'ble Supreme Court was dealing with a case wherein the UPSI involved was of such nature that it could be in the possession of those directors who were involved in the day to day affairs of the company and not the non-executive directors of the company who participate only in the board meetings or sub-committee of board. In the present case, Noticee no. 1 was not only the non-executive director but was also member of the management committee which was entrusted with the task of authorising IDSL to sell its stake in

ILPL. Therefore, the contention of the Noticees that a non-executive director cannot have access to UPSI because he is not involved in the day to day business of the company, is not correct and the said contention is not applicable to the facts of the present case.

41. The Noticees have contended that assuming Noticee no.1 had access to the alleged UPSI, Noticees cannot still be held liable as the impugned trades were not executed on the basis of UPSI. In this regard, I note that PIT Regulations, 1992 prohibited trading by insiders "on the basis" of UPSI. Thereafter, PIT Regulations, 1992 were amended in the year 2002, to prohibit trading by insiders "when in possession" of UPSI. The PIT Regulations, 2015, also prohibits trading by insiders "when in possession" of UPSI. Thus, for proving the violation of Regulation 4(1) of the PIT Regulations, 2015, the requirement is to prove that trading was done by the insider "when in possession of UPSI". It is not the requirement of the said Regulations 4(1) that trading should have been done "on the basis of UPSI". Thus, the said contention of the Noticees is not correct and hence, untenable. Even assuming that there is any such requirement, in addition to presumption of possession of UPSI operating against Noticees, on the facts alleged in the SCN, it has been found that the Noticees being insider of IVL, traded in the shares of IVL when in possession of the UPSI. In such a case, Note appended to said Regulation 4(1) provides that once it is proved that insider has traded when in possession of UPSI, then there is a presumption that such trading was done "on the basis of UPSI" and the onus proving that the trades were not done on the basis of UPSI shifts on the insider which can be discharged by such insider only by proving that his case falls within any of the defences provided under the proviso to Regulation 4(1). Therefore, in the present case there is presumption that Noticees traded on the basis of UPSI. The Noticees have not proved or even contended that they have any of the defence available to them, as provided under proviso to Regulation 4(1). Thus, the said contention of the Noticees is untenable.

42. Noticees have further contended that the nature of UPSI does not support the conduct of Noticees. Noticees have submitted that the UPSI was positive from the perspective of purchase of shares of IREL which was going to buy 100% stake of ILPL through its wholly owned subsidiary - IIL and not from the perspective of

purchase of shares of IVL which was going to sell 100% shares of ILPL owned by IDSL, a wholly owned subsidiary of IVL. I note that selling of its 100% stake in the indirect subsidiary need not necessarily be a negative news for the seller company when the said company is getting consideration amount which in the present case was Rs. 685 Crore. As mentioned in the SCN, the UPSI on being made public on March 15, 2017 had a positive impact on the price of the scrip of IVL (closing price on March 15, 2017 was Rs. 38.15/- per share), i.e. an increase of 9.96% over the previous day's closing price of Rs. 41.95/- per share. Therefore, the contention of the Noticee's that UPSI was not positive with respect to IVL, so as to motivate the purchases of the shares of IVL by the Noticees, is untenable.

43. The Noticees have also contended that they had not taken large positions during UPSI period and they had taken much larger positions in the scrip of IVL in the previous financial years starting from 2005-06. In this regard, I note that small quantum of shares traded as compared to their previous trading in the scrip of IVL, as contended by Noticees, is not the sole factor for determining the violation of Regulation 4(1). Further, in the present case, SCN alleges that Noticees have taken large positions during UPSI period as compared to pre and post UPSI period. Therefore, the contention of the Noticees that they had taken much larger positions in the previous financial years, is not an excuse for the insider trading committed by them.

FY	Cash Segment			F&O Segment			Total Turnover
	Purchase value	Sale Value	Turnover	Purchase value	Sale Value	Turnover	
Noticee no. 1							
2005 -06	696019.80	0	696019.80	0	0	0	696019.80
2006 -07	2383953.9 6	2468503.0 4	4852457	0	0	0	4852457
2007 -08	11508128. 26	13546296. 70	25054424. 96	0	0	0	25054424.9 6
2008 -09	4919931.5 0	5353356.4 9	10273287. 99	411593.64	451298	862891.64	11136179.6 3
2009 -10	17168454. 08	17398332. 02	34566786. 10	0	0	0	34566786.1 0
2010 -11	3792503.9 4	3940417.8 5	7732921.7 9	0	0	0	7732921.79
2011 -12	292106.50	375460.50	667567	0	0	0	667567
2012 -13	251485.60	508836.89	760322.49	0	0	0	760322.49
2014 -15	0	454680.32	454680.32	59546898.7 5	59460033.7 5	119006932. 5	119461612. 82

2015 -16	661990.74	0	661990.74	0	0	0	661990.74
2016 -17	59467914.66	27599193.15	87067107.81	276855209.21	277357828.60	554213037.60	641280145.43
2017 -18	11143194.38	23477392.59	34620586.97	0	0	0	34620586.97

FY	Cash Segment			F&O Segment			Total Turnover
	Purchase value	Sale Value	Turnover	Purchase value	Sale Value	Turnover	
Noticee no. 2							
2007 -08	747864.64	566325.16	1314189.80	0	0	0	1314189.80
2008 -09	625396.90	2229613.75	2855010.65	0	0	0	2855010.65
2009 -10	12356083.96	42660683.98	55016767.94	0	0	0	55016767.94
2010 -11	143584.45	19504563.69	196481148.14	0	0	0	196481148.14
2012 -13	0	10155260.11	10155260.11	0	0	0	10155260.11
2014 -15	0	18793671.66	18793671.66	0	0	0	18793671.66
2015 -16	0	1934759.88	1934759.88	0	0	0	1934759.88
2016 -17	22476758.52	13807343.43	36284101.95	94811591.52	94768542.54	189580134.1	225864236.01
2017 -18	11583949.61	89083069.88	100667019.49	0	0	0	100667019.49
2018 -19	0	15551228.62	15551228.62	0	0	0	15551228.62

44. The aforesaid trading pattern of Noticees in the scrips of IVL shows that Noticees traded in substantial quantity, in the scrips of IV. As mentioned in the SCN, Noticee no. 1 had been the non-executive director on the board of IVL since March 10, 2015 and continued so till August 28, 2017, thus, in terms of Regulation 2(1)(n) readwith Regulation 2(1)(d) of the PIT Regulations, Noticee no. 1 is an insider and Noticee no. 2 being spouse of Noticee no. 1 is also an insider, of IVL. As an insider of the company, the Noticees are not accepted to trade so aggressively in the scrips of the company. Be that as it may be, the previous trading pattern of Noticees does not absolve them from liability for trading when in possession of UPSI.

45. Noticees have further contended that all the trades of the Noticees were made after the pre clearance of trades and the purchases of shares made by the Noticees were in the due course and were not influenced by any UPSI. In this regard, it is observed that pre-clearance of trades, is provided under the minimum standard for Code of Conduct to regulate, monitor and report trading by insiders, as specified under Schedule B readwith Regulation 9(1) and (2) of the PIT Regulations, 2015. The

Clause 6 of the said Code of Conduct pertaining to pre-clearance of trades, provides as under:

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

46. I note that the requirement of pre-clearance of trade is a preventive measure to contain the insider trading. However, if an insider trades when in possession of UPSI and thus actually commits insider trading then compliance with such preventive measures i.e. pre-clearance of trades undertaken during the existence of UPSI period, is no defence to the act of insider trading. Therefore, contention of the Noticees in this regard is not tenable.

47. The Noticees have also contended that alleged gains have been incorrectly computed and that interest cannot be impounded at the ad interim stage. In this regard, I note that in the SCN gains made by the Noticees have been computed by multiplying the total number of shares purchased by each Noticee with the difference of average buy price of each Noticee and the closing price of the shares of IVL on March 15, 2017 i.e. the next day of making of UPSI public/generally available. The closing price of shares of IVL on March 15, 2017 has been taken in view of the fact that there is no actual sale of the shares by the Noticees and the prohibition on trading by insiders in the scrip of the company continues till next day of becoming public of UPSI. Therefore, I do not find that the notional gains made by the Noticees have been wrongly computed. Further, if an order for impounding of disgorgement of wrongful gains is being passed after making of the wrongful gains then interest component for the interregnum period is equitable. When the intention is to secure the disgorgement amount at the ad interim stage it has to be alongwith the interest for the interregnum period because the concerns for securing the interest amount are also same as that of securing the principal disgorgement amount. In view of this, I find that the contentions raised by the Noticees are not tenable.

48. Noticee no. 1 is the spouse of Noticee no. 2. As stated above, during the UPSI period, Noticee no. 1 purchased 5,05,5000 shares. Her trade concentration in the scrip of IVL was 93.93% during UPSI period which was only 11.19% and 0% during pre-UPSI and post-UPSI periods, respectively. Noticee no. 2 purchased 3,38,970 shares during UPSI period. His trade concentration in the scrip of IVL during UPSI period was 63.93% which was only 4.6% and 0 % during pre-UPSI and post-UPSI periods, respectively. The Noticees also share common address, hold joint account in HDFC Bank with no. 00011000083619 and are registered with same broker i.e. IVL. Spouse of connected person is also included in the definition of insider in terms of Regulations 2(1)(g) read with Regulations 2(1)(d)(ii)(a) and Regulation 2(1)(f) of PIT Regulations, 2015. These circumstantial evidence show that Noticee no. 1 communicated UPSI to Noticee no. 2, Noticee no. 2 procured UPSI from Noticee no. 1 and Noticee no. 2 traded when in possession of UPSI.

49. In view of the aforesaid, I find that Noticee no. 1 has violated violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulations 3(1) and 4(1) of PIT Regulations, 2015 by communicating UPSI to her husband Mehul Johnson i.e. Noticee no. 2 and by trading in the scrip of IVL when in possession of UPSI thereby indulging in insider trading. I find that Noticee no. 2 has violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulations 3(2) and 4(1) of PIT Regulations, 2015 by procuring UPSI from his wife i.e. Noticee no. 1 and by trading in the scrip of IVL when in possession of UPSI thereby indulging in insider trading. I also find that Noticees have made notional wrongful gains by committing the aforesaid violations and have thus rendered themselves liable for disgorgement of such notional wrongful gains.

Directions:

50. In view of the aforesaid findings, I, in exercise of the powers conferred upon me under Section 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby, directs, -

- a. That Noticees shall remain restrained from accessing the securities market and from buying, selling or dealing in securities including the units of mutual funds, directly or indirectly, in any manner whatsoever, for a period of 1 year;
- b. That Noticees shall remain restrained from buying, selling or dealing in the securities of the Indiabulls Ventures Limited, directly or indirectly, in any manner whatsoever, for a period of 3 years; and
- c. That the amount of Rs. 87,21,918.55/- which was impounded from the Noticees vide interim impounding order cum show cause notice dated May 09, 2019 stands disgorged and shall be remitted to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992.

51. This Order shall come into force with immediate effect. The restraints directed in para 50 (a) and (b) shall run concurrently.

52. This Order shall be served on all Recognized Stock Exchanges, Depositories and Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

Place: Mumbai

Date: February 05, 2020

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA