**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/GR/KG/2020-21/8240]**

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

In respect of

**Mr. Anil Mittal**

**[PAN: ADBPM4212A]**

In the matter of

**Insider Trading in the scrip of Indiabulls Real Estate Limited**

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## BACKGROUND

1. Securities and Exchange Board of India **("SEBI")** carried out an analysis of the trading activity in the scrip of **Indiabulls Real Estate Limited** ("**IBREL**"/"**Company"**) for two separate events for the period January 02, 2017 to April 18, 2017 (hereinafter referred to as the "**First period**") and for the period March 22, 2017 to June 21, 2017 (hereinafter referred to as the "**Second period**"). On an examination of the trading activity in the scrip of IBREL it was observed that the trading pattern of certain entities suggested that these entities may have traded on the basis of unpublished price sensitive information **("UPSI").** Investigation *inter alia* revealed that on June 22, 2017, IBREL informed the exchange

regarding the sale of its 3.3 Crore shares by its promoter entity **IBREL IBL Scheme Trust** (hereinafter referred to as the "**Trust**") of which IBREL is the sole beneficiary. Post the above announcement on June 22, 2017, price of the scrip fell from Rs.204.70 at 12:15:06 to Rs.192.00 on the same day, thereby registering a fall by 6.20%.

2. From the websites of stock exchange and submission by the company, it was observed that the Trust is part of the Promoter and Promoter Group of IBREL. The Trust was holding 4.25 Crore shares (8.88%) of the company at the quarter ended March 2017 which reduced to 95.00 Lacs shares (2.00%) at the quarter ended June 2017. It was observed that the average daily trade volume in the scrip of IBREL during the period April 11, 2017 to June 22, 2017, on NSE and BSE was around 2.73 Crore and 43.88 Lacs respectively. Considering the above, such sale of substantial quantity of shares by the promoters of a listed company was bound to impact the scrip price of the company and it was seen that post announcement of sale of shares by Trust, the price of the scrip fell by 9.80% on NSE and 9.76% on BSE against the previous day's closing price, which was a significant fall. Thus, the announcement made by IBREL on June 22, 2017 w.r.t. sale of shares of the company by Trust was observed to have materially impacted the scrip price (-9.80%) of the scrip and hence, considered to be a Price Sensitive Information **("PSI")** in terms of Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015. It was also observed that such PSI had come into existence on June 8, 2017 i.e. the date of meeting of Operations Committee of IBREL, wherein it was decided to authorize the Trust to dispose off/ sell 4.25 Crore equity shares of the company. Such PSI remained unpublished till June 22, 2017. The corporate announcement pertaining to sale of shares of the company by the Trust was disseminated on June 22, 2017 on BSE at 12:15 PM and on NSE at 12:17 PM, which is the time when the UPSI was published. Thus, the period of UPSI is taken to be the period between June 8, 2017, when the actual and concrete decision to sell the 4.25 Crore shares

was taken by Operations Committee of IBREL and June 22, 2017 (12:15 PM on BSE and 12:17 PM on NSE).

3. Investigation further revealed that Mr. Anil Mittal (hereinafter referred to as the "**Noticee**") was the Chief Financial Officer **("CFO")** of IBREL at the relevant point of time when the said UPSI existed. The Noticee had attended the meeting of the Operations Committee, as an Invitee, on June 8, 2017, when the alleged UPSI came into existence. It was therefore *prima facie* observed that the Noticee was one of the persons who were having access to and/or were in possession of the said UPSI.

4. It was also *prima facie* observed from the trade log obtained from BSE and NSE that the Noticee who was the CFO of IBREL, had traded in the scrip of IBREL during the UPSI period pertaining to the second period. It was alleged that the Noticee, being an "insider" had sold 10000 (ten thousand) shares of IBREL on June 12, 2017, during the period of the UPSI.

5. In view of the aforesaid, it was alleged that the Noticee, being the CFO of IBREL was an insider and had traded in the said scrip while in possession of UPSI. Noticee was thus, alleged to have violated Regulation 4(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations"), read with section 12A (d) and (e) of the SEBI Act, 1992.

## APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned has been appointed as the Adjudicating Officer (hereinafter referred to as the **"AO")** vide order dated January 10, 2020, conveyed vide communique dated January 20, 2020. The undersigned has been appointed as the AO under Rule 3 of Securities and

Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 *(hereinafter referred to as **"SEBI Adjudication Rules"**)* read with Section 15-I of the Securities and Exchange Board of India Act, 1992 *(hereinafter referred to as **"SEBI Act"**)* to inquire into and adjudge under Section 15G(i) of SEBI Act, 1992, the alleged violation of the provisions of Section 12A (d) and (e) of SEBI Act, 1992 read with Regulation 4(1) of the PIT Regulations, 2015.

**SHOW CAUSE NOTICE, REPLY AND HEARING**

7. Show Cause Notice dated February 5, 2020 (herein after referred to as "**SCN**") was issued to Noticee under Rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee in terms of Rule 4 of the Rules read with section 15I of SEBI Act, 1992 and penalty be not imposed under Sections 15G and 15A(b) of SEBI Act, 1992 for the violations specified in the SCN. The copies of the documents relied upon in the SCN were provided to Noticee along with the SCN. The Noticee vide letter dated February 20, 2020, sought inspection of "*entire records and papers in possession of SEBI*" including the file noting pertaining to the appointment of the undersigned as the AO in the present case, which, according to the Noticee were necessary for him to file an effective reply to the SCN. SEBI Vide letter dated June 12, 2020, the Noticee was informed that all documents to be relied upon in the present proceedings have already been provided to him along with the SCN. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the SEBI Adjudication Rules, the Noticee was also advised to attend the hearing before the AO on June 22, 2020, either in person or through video conference and reply to the SCN, if any, may be filed before the hearing. Vide letter dated June 18, 2020, the Noticee filed his reply to the SCN. The Noticee also sought the hearing through electronic means by web conference. Accordingly, the hearing was held through

web conference on June 22, 2020, which was attended by the Noticee and his Authorised Representatives before the AO. The Noticee and his Authorised Representatives reiterated the submissions already made vide the aforesaid letter dated June 18, 2020. And further undertook to file additional submissions within seven days from the date of the hearing. The submissions made by the Noticee vide his letter dated June 18, 2020, are stated herein below:

***"Preliminary Submissions:***

a) *Without prejudice to the merits of the matter, I respectfully place on record certain concerns regarding the proceedings before the learned Adjudicating Officer for appropriate directions in this regard.*

b) *To enable me to understand the basis of the Show Cause Notice where a serious allegation of insider trading is made by SEBI which is to be decided by the learned Adjudicating Officer, I had requested SEBI to provide me with the relevant documents especially the Analysis Report of the exchange which is referred and relied upon in the Show Cause Notice. As explained in the proceeding paragraphs, this is relevant especially because of the price analysis, an information is termed as price sensitive by SEBI. However, I am not yet given the said report which the learned Office may consider directing SEBI to furnish me with a copy of the same.*

c) *The Show Cause Notice is issued to me to show cause why an inquiry under Rule 4(3) of the Adjudication Rules be not held in the matter. Therefore, I am filing the present reply showing cause as to why the inquiry be not held in the matter. It is important to note that the Show Cause Notice was received by me on February 5, 2020 and I had immediately requested SEBI for inspection of records vide my letter dated February 20, 2020. SEBI did not respond to the request and directed me to appear before the Adjudicating Officer vide notice of hearing dated June 12, 2020.*

d) *This is the first time, SEBI replied to me after my request for inspection of records. On receipt of the communication from SEBI, I requested for additional time considering the pandemic and the worsening situation in New Delhi where we are all compelled to work from home, and also on the pending request for inspection. However, SEBI refused to entertain the request and insisted on conducting the personal hearing. While the officer of the SEBI, was kind enough to address to my request and inform me that all the relevant documents are provided to me, I fail to understand the reservations of SEBI in granting me additional time. Even under the Adjudication Rules, it is clear that adequate time be given to the Noticee for responding to the Notice and also when a request for additional time is needed. In this regard it is relevant to note that the matter pertains to June 2017 and SEBI has chosen to initiate the proceedings only in 2020 and therefore the Notice for hearing without granting time could have been avoided as there is no urgency in the matter nor any prejudice would be caused to SEBI. However, with due regard and respect to the learned Adjudicating Officer and the regulator, I am filing the reply to the Show Cause Notice and will also attend the personal hearing along with legal representative.*

*Submissions of the Noticee:*

a) *There was no UPSI to begin with when the Impugned Sale was executed.*

b) *Even if there was any UPSI in existence, the same came into existence only on June 15, 2017 when the Trust (after having decided to sell the shares),applied for pre-clearance of trades under the Insider Trading Code of IBREL.*

c) *The power to take any concrete decision with respect to the sale of shareholding of the Trust in IBREL was conferred only upon the trustees of the Trust and the said power was exercised only on June 15, 2017 i.e. after execution of the Impugned Sale.*

*d) The Impugned Sale was not motivated based on any information whatsoever, let alone being motivated by UPSI. The Impugned Sale was a decision taken to generate liquidity and the very shares sold on June 12,2017 was planned to be sold in May 2017 by me.*

*e) There is no basis to consider me as a "connected person" or an "insider" as there was no price sensitive information which germinated from IBREL but because of the decision taken by the Trust which is independent and there is admittedly no relationship between me and the Trust nor I had / have the ability to access any information from the Trust. It is submitted that even IBREL could not have had knowledge of the decision making of the Trust until the pre-clearance application was filed, by which time, the Impugned Sale as already effected.*

*f) The final decision with respect to sale of the holdings of the Trust in the company and the financial terms for the same was taken solely by the trustees of the Trust and I had no knowledge about the same. In any event, the concrete decision with respect to sale of the shareholding of the Trust was taken only on June 15, 2017 whereas the Impugned Sale were executed on June 12, 2017."*

8. Vide email dated June 29, 2020 the Noticee had reiterated his earlier submissions dated June 18, 2020.

**CONSIDERATION OF ISSUES AND FINDINGS**

9. The issues that arise for consideration in the present case are :

a) Whether Noticee had violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992 read with Regulation 4(1) of the PIT Regulations, 2015?

b) Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15G of SEBI Act?

c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

**FINDINGS**

10. Before entering into the merits of the case, preliminary issue of compliance with the principles of natural justice must be settled first. I note that the Noticee was granted adequate time to file his response to the SCN as all documents relied upon during the proceedings were provided to him along with the SCN. The documents relied upon are primarily the minutes of the meeting of the Operations Committee of IBREL held on June 8, 2017 and the trading data of the Noticee for June 12, 2017, which have not even been disputed by the Noticee. Therefore, I find that the preliminary objections of the Noticee to the instant proceedings are unacceptable.

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings on the merits of the case hereunder.

**Issue I- Whether Noticee had violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992, read with Regulation 4(1) of the PIT Regulations, 2015?**

12. Contents of the said provisions of law is reproduced herein below:

**SEBI (PIT) Regulations, 2015**

***Trading when in possession of unpublished price sensitive information.***

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

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

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

*(ii) in the case of non-individual insiders: – (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;*

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

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

**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)* *******

*(c)* *******

*(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;*

The aforesaid provisions, among others, prohibits an insider, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI and any person who deals in securities in contravention thereof is guilty of insider trading.

13. I am of the view that for proving the charge of insider trading the following questions needs to be answered in affirmative:

a. Whether the information was price sensitive information?
b. If so, whether the same was unpublished?
c. Whether the Noticee was an 'insider'?
d. Whether the Noticee had dealt in the shares while in possession of /on the basis of UPSI.

14. It is not disputed by the Noticee that he was present in the meeting dated June 8, 2017, of the Operation Committee, when the authority was given to the Trust to dispose off/sell 4.25 Crore shares of the IBREL, in one or more tranches, at such time(s) and at such price(s) as may be considered appropriate by the Trustees of the Trust in the best interest of IBREL. It has also not been disputed that the said information, i.e, the decision to sell 4.25 Crore shares of IBREL was not published until June 22, 2017, when IBREL had informed the exchanges that the "Trust", of which IBREL is the sole beneficiary, has sold 3.3 crore shares of the company, on June 22, 2017 at the stock exchange and has realized approx. Rs.662.83 crore. As per the information regarding the shareholding pattern in IBREL obtained from the website of BSE, it is observed that the Trust was a part of the 'Promoter Group' in IBREL. Regulation 2(1)(n) of PIT Regulations defines '*unpublished price sensitive information*' to mean any information which relates directly or indirectly to a company and/or its securities, that is not generally available and which if published is likely to materially affect the price of the securities of the company. In the instant case, the "*information*" pertained to sale of almost 6.88% of the total shareholding in the company by an entity / body (in this case, the trust) which was/is a part of the Promoter Group of IBREL.In this regard, I note that the definition of UPSI indicates that it is the likelihood of materially affecting the price of the securities and not the actual materiality itself, which are the criteria to determine UPSI. The UPSI involved in the present case was the decision to sell the 4.25 Crore shares of IBREL held by the Trust to raise funds for its ongoing businesses and general corporate purposes. Such information will be taken by a reasonable investor to likely have material effect on the shares of IBREL. In the present case, in fact, on becoming public/generally available of said UPSI, the price of the scrip of IBREL fell by 9.80% on NSE and 9.76% on BSE in a single day, which was a significant fall. Thus, I hold the said information to be material in nature.

15. Thus, the announcement made by IBREL on June 22, 2017 w.r.t. sale of shares of the company by Trust was observed to have materially impacted the price of the scrip and hence, considered to be a UPSI in terms of Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015.The decision to sell such number of shares and the requisite authorisation for undertaking such sale was decided during the meeting of the Operation Committee, held on June 8, 2017, which was attended by the Noticee. It may be noted that the Regulations 2(ha) of the erstwhile SEBI (PIT) Regulations, 1992, deemed the "*disposal of the whole or substantial part of the undertaking*" in a company as price sensitive information. The same essence is captured at Regulation 2(1)(n)(iv) of the SEBI (PIT) Regulations, 2015. Accordingly, the sale of 6.88 % shares of the company by a promoter group entity was informed by the company to the stock exchange on June 22, 2017. In this context I note that the entire chain of events had concluded within a short period of 14 days from the date of the decision of the Operations Committee (i.e., June 8, 2017) to sell the shares of IBREL held by the Trust. This clearly indicates that information of all material events which constituted the said act of sale of shares by the Trust, were material price sensitive information. All such events which materially formed part of the said act of sale of shares, from the decision taken by the Operations Committee to sell such shares, the authorisation provided to the trust in this regard and finally the sale of shares by the Trust, in totality constituted a continuous chain of concrete actions which could have had material impact on the price of shares. Therefore, I hold that anyone in possession of material information about any such part would have reasonably known/understood the possible impact of such action on the price of the shares of the company. Therefore, I hold that the knowledge about the outcome of the meeting of the Operations Committee held on June 8, 2017, was in fact price sensitive information. Admittedly, the said decision of the Operations Committee was not made public until June 22, 2017. Therefore, I answer the questions raised at paragraph no. 13(a) and (b) in this order, in the affirmative. I hold that

the Noticee was in possession of UPSI after coming to know the decision of the Operations Committee to sell the shares of IBREL held by the Trust and authorising it in this behalf.

16. Regulation 2(e) of the PIT Regulations, 2015, defines an "insider" as reproduced herein below:

> *(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 10[***] to unpublished price sensitive information in respect of securities of 11[a] company, or*
>
> *(ii) has received or has had access to such unpublished price sensitive information ;]*

As already noted above, the Noticee was the Chief Financial Officer of IBREL and had admittedly attended the meeting of the Operations Committee of IBREL when the decision to sale 4.25 Crore shares held by the Trust was taken. Therefore, the Noticee had received the UPSI with respect to the aforesaid sale of shares as on June 8, 2017. Also, by virtue of being an employee of IBREL for the continuous period of more than six months prior to the commencement of the UPSI, the Noticee was a "connected person" as per Regulation 2(e)(i) of the PIT Regulations, 2015. For this, I hold him to be an "insider" with respect to the instant UPSI. Therefore, I answer the questions raised at paragraph no. 13(c) in this order, in the affirmative.

17. It is not disputed by the Noticee that he had sold 10000 shares of IBREL on June 12, 2017. It is also not disputed that he had attended the meeting of the Operations Committee on

June 8, 2017, when the decision to sell 4.25 Crore shares of IBREL was taken. In this context, the Noticee has preferred two arguments.

a. The decision to sell 10000 shares held by him, was not motivated by the said UPSI;

b. He had obtained pre-clearance from the compliance officer of IBREL before selling the shares. A copy of the said application along with the clearance received from the Compliance Officer of IBREL has been provided by the Noticee in this regard.

18. The text of Regulation 4(1) of the PIT Regulations, 2015, is reproduced herein below:

**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 <u>when in possession of unpublished price sensitive information</u>:*

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

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

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

*(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making*

*individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and*

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

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

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

19. On a plain reading of the aforesaid provision of Regulation 4(1) of the PIT Regulations, 2015, it becomes clear that a trade conducted by an insider while being in possession of an UPSI shall be presumed to be 'motivated' by the knowledge of such UPSI and thereby in violation of the said Regulation. It has been categorically stated in the explanatory note to the Regulation 4(1) that the reasons for which the impugned trades were conducted or the purposes to which the insider has applied the proceeds of such trades are not intended to be relevant for determining whether a person has violated the regulation. Therefore, I hold that the elaborate reasoning sought to be provided by the Noticee for conducting the impugned sale transaction is wholly irrelevant for the purpose of proving his innocence in

the present proceedings. The only method stipulated in the PIT Regulations to rebut the presumption of the violation of Regulation 4(1) is by establishing that any of the circumstances stipulated under the proviso (i), (ii) or (iii) existed for the insider to trade while being in possession of UPSI. The Noticee, while being an "insider", was not a promoter of IBREL and the transaction in question was not an inter se transfer of securities between promoters. The impugned transaction was decided and implemented by an individual who was having the UPSI at the time of executing the said transaction while the counter party to the trade was not aware of such UPSI. The impugned transaction was not executed pursuant to any 'trading plan' as contemplated under Regulation 5 of the PIT Regulations and as such an intention of the Noticee to sell his shares of IBREL came to public knowledge only on June 12, 2017, when the impugned sale transaction was executed by him and not any time prior to it. Therefore, I hold that none of the circumstances stated under the aforesaid proviso was existing with respect to the impugned transaction of the Noticee. Accordingly, I hold that the argument of the Noticee stated at paragraph no. 16(a) in this order is wholly irrelevant for the purpose of the present proceedings and that none of the defences available under the proviso to Regulation 4(1) are applicable qua the impugned transaction of the Noticee.

20. I also note that the Noticee had executed the impugned transaction within a period of 4 days from the date when the Operations Committee of IBREL had authorised the Trust to sell its shares. Within three days thereafter, the Trust had sought pre-clearance for executing its sale and on obtaining the same on June 15, 2017, had effected the sale of 6.88% of the total shareholding in IBREL within another 7 days, i.e., by June 22, 2017. It is noted from the reply dated June 18, 2020, of the Noticee that he had sold the shares due to certain urgent financial requirements. In this regard, I note that the Noticee had admittedly sold 5000 shares on May 19, 2017, attempted unsuccessfully to sell the

remaining 10000 shares again on May 25, 2017 and finally sold them on June 12, 2017. Be that as it may, it is seen that after the Noticee acquired the knowledge of the UPSI on June 8, 2017, that it had immediately 4 days thereafter sought pre-clearance for selling the remaining 10000 shares and on receiving the same, sold the entire bulk on that day itself. This chain of material events show that the impugned transaction was in fact executed while being in possession of UPSI, which the Noticee, being an "insider" by virtue of being a senior ranked employee of IBREL, should not have done, till the dissemination of such a PSI to the public.

21. In the factual context as stated immediately above, the Noticee has sought to argue that the "motivation" behind its impugned transaction was not the UPSI in question, but his personal financial requirements. In this regard, I consider it important to note that Regulation 4(1) of PIT Regulations, 2015, as stated above, does not create any specific requirement of "motivation" on the part of an insider to be held in contravention of the said law. Regulation 4(1) clearly prohibits an insider to trade in the securities of a listed company while being in possession of UPSI except in such situations as clearly and exhaustively mentioned at the proviso to the said Regulation. Further, the legislative note to Regulation 4(1), clearly stated the legislative intent that 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. This presumption is rebuttable by establishing that any of the circumstances as stated in the proviso thereto, existed for undertaking the impugned transaction. As already stated in the preceding paragraphs, no such circumstances existed for the impugned transactions executed by the Noticee, and hence, I hold that the impugned transactions were motivated by the UPSI in possession of the Noticee in the present case.

22. I note that the Noticee has submitted that the he had sold the shares received on the exercise of the ESOP provided by IBREL. In this regard, I note that vide the guidance note dated August 24, 2015, it was *inter alia* stated by SEBI with respect to the applicability of the PIT Regulations 2015 on the exercise of ESOP:

> "*Exercise of ESOPs shall not be considered to be "trading" except for the purposes of Chapter III of the Regulations. However, other provisions of the Regulations shall apply to the sale of shares so acquired."* [emphasis supplied]

It was therefore clear and unambiguous as on the date of the impugned transaction that for sale of shares received through the exercise of ESOP no exception from the general rule under Regulation 4(1) is available. Thus, I hold that the Noticees' submissions on the ground of sale of shares received through ESOP, is not a valid defense to the charge of insider trading.

23. With respect to the argument stated at paragraph nos. 17(b) in this order, I note that the application for pre-clearance of trade made by the Noticee as a 'designated person' of IBREL before the Compliance Officer (copy received from the Noticee)*inter alia* stated the following in his undertakings:

    1. *That I do not have any access to or have not received any "price sensitive information" upto the time of signing this undertaking.*
    2. *That in case I receive or have access to any "price sensitive information" after signing the undertaking but before the execution of the transaction which I intend to do, s disclosed in my Application for Pre-Clearance of Trade ("the Application"), I shall refrain from dealing in Shares of the Company either personally or through any Immediate Relative of mine, till such information becomes public and shall necessarily inform the Compliance Officer of the Company, of the same.*

24. As already demonstrated in the preceding paragraphs, the Noticee was well aware of the UPSI since June 8, 2017, i.e, even at the time of signing the aforesaid undertaking in its application for pre-clearance dated June 12, 2017. Therefore, the contents of paragraphs no. 1 and 2 in the said undertaking are factually incorrect and was a misrepresentation on the part of the Noticee before the Compliance Officer of IBREL. The clearance received from the Compliance Officer based on such an application is clearly vitiated by the serious misrepresentation made by the Noticee as stated above. Also, Clause 6 of the Code of Conduct specified under Schedule B read with Regulation 9(1) and (2) of the PIT Regulations, 2015 states that 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**. Therefore, I hold that the said clearance received on the basis of misrepresentation of a vital fact, is not a valid clearance and the Noticee cannot seek to defend its action on the basis of the said clearance.

25. In view of what has been stated at preceding paragraphs number 17 to 20 in this order, I answer the question placed at paragraph no. 13(d) in the affirmative and hold that the Noticee had indeed traded in the securities of IBREL while being in possession of the UPSI. I also hold that such impugned transaction of the Noticee is not defensible by any of the grounds available under the proviso to Regulation 4(1).

26. Thus, having answered all the questions at paragraph no.13 in the instant order in the affirmative, I hold that the Noticee has violated Section 12A (d) and (e) of SEBI Act, 1992 read with Regulation 4(1) of the PIT Regulations, 2015.

**Issue No.2: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15G of SEBI Act?**

27. As the violation of Regulation 4(1) of PIT Regulations has been established, I hold that the Noticees are liable for monetary penalty under section 15G(i) of SEBI Act, which reads as under:

> ***15G****. If any insider who,—*
>
> *(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
>
> *(ii) *******
>
> *(iii) *******
>
> *shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher].*

**Issue 3: What would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?**

28. While determining the quantum of monetary penalty under Section 15G(i) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

**29. 15J - Factors to be taken into account by the adjudicating officer**

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

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

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

*c) the repetitive nature of the default"*

30. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India held that:-

*"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant….."*

31. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's act. It is an established fact that the Noticee, being a senior employee (Chief Financial Officer) of IBREL in the instant case had traded in the shares of IBREL while being in possession of UPSI in violation of the SEBI (PIT) Regulations, 2015. It is necessary to take stern action to curb such practice, failing which the object and purpose with which SEBI Act and the PIT Regulations, 2015, are enacted, would be defeated. Further, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Trading in securities with knowledge which is yet not present in the public domain is an unethical act and such practices if left unchecked, shall jeopardize the integrity of the securities market.

**ORDER**

32. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of

the Adjudication Rules, I hereby impose penalty of **Rs. 10,00,000/-** (Rupees Ten Lakhs Only) on **Shri Anil Mittal** payable by the Noticee in terms of Section 15G(i) of the SEBI Act, for his violation of Regulation 4(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

33. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at linkhttps://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

34. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-I), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai – 400 051."

| | |
|---|---|
| Case Name : | |
| Name of Payee : | |
| Date of Payment: | |
| Amount Paid : | |
| Transaction No. : | |
| Bank Details in which payment is made : | |
| Payment is made for : | |

| | |
|---|---|
| (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details) | |

35. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

36. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

**Date : July 10, 2020** **G. Ramar**

**Place : Mumbai** **Adjudicating Officer**