

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Noticee No.	Noticee Name	PAN
1.	Poonam Haresh Jashnani	ADUPJ8724H
2.	Varun Haresh Jahnani	AIGPJ8710L
3.	Haresh Parmanand Jashnani	AAJPJ7020L

(The aforesaid entities are hereinafter referred to by their respective names / noticee numbers or collectively as “the Noticees”)

In the matter of Insider Trading activity of Certain Entities in the scrip of United Spirits Limited (“USL”)

A. Background

- Relay B.V (hereinafter referred to as “**Relay/ Acquirer**”) together with Diageo Plc as the Person Acting in Concert (hereinafter referred to as “**Diageo**” / “**PAC**”) made a public announcement on April 15, 2014, before market opened, to acquire upto 3,77,85,214 fully paid up equity shares of face value of ₹10/- each of United Spirits Limited (hereinafter referred to as “**USL / Target Company**”), constituting 26% of the total fully diluted voting equity share capital of USL at a price of ₹3,030/- per offered share aggregating a total consideration of ₹1,14,48,91,98,420 (approx. ₹11.44 thousand crore).

2. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) observed that after the public announcement was made, the price of the scrip of USL surged from ₹2,557 (previous close price - April 11, 2014) to ₹2,853 (closing price on April 15, 2014) in a single trading day, registering an increase of 11.57%. SEBI initiated an investigation to ascertain whether trading in the scrip of USL by certain entities was based on Unpublished Price Sensitive Information (hereinafter referred to as “**UPSI**”) and was thus in violation of the provisions of the Securities and Exchange Board of India, Act 1992 (hereinafter referred to as the “**SEBI Act**”) and SEBI (Prohibition of Insider Trading) Regulations, 1992, (hereinafter referred to as the “**PIT Regulations**”) during the period January 01, 2014 to April 17, 2014 (hereinafter referred to as the “**investigation period**”).
3. Consequent to the investigation, a show cause notice dated March 29, 2017 (hereinafter referred to as “**SCN**”) was served on Smt. Poonam Haresh Jashnani (hereinafter referred to as the “**Poonam/ Noticee No. 1**”), Shri Haresh Parmanand Jashnani (hereinafter referred to as the “**Haresh/ Noticee No. 3**”), Shri Varun Haresh Jashnani (hereinafter referred to as the “**Varun/ Noticee No. 2**”) and Shri Nishat Shailesh Gupte (hereinafter referred to as the “**Nishat**”) in the extant matter. The SCN *inter alia* alleged as follows:
 - 3.1. The open offer announcement by Relay and the PAC on April 15, 2014 to acquire up to 3,77,85,214 fully paid up equity shares of USL constituting 26% of the total fully diluted voting equity share capital of USL at a price of ₹3,030/- is considered as price sensitive information (hereinafter referred to as “**PSI**”) in terms of PIT Regulations.
 - 3.2. The chronology of events related to open offer announcement are as follows:
 - 3.2.1 As per letter dated July 10, 2014 from the Manager to the Offer, HSBC Securities & Capital Markets (India) Private Limited (hereinafter referred to as “**HSCI**”):

S. No.	Date	Event
1	March 19, 2014	Quorate meeting of the Board of Directors of the Acquirer delegated powers and authority (with the ability to sub-delegate) to a Transaction Committee to consider and if thought appropriate, launch a potential open offer.
2	March 27, 2014	Quorate meeting of the Board of Directors of the PAC delegated powers and authority (with the ability to sub-delegate) to a Sub-Committee to consider and if thought appropriate, launch a potential open offer.
3	April 11, 2014	Quorate meeting of the Sub-Committee of the Board of Directors of the PAC held on 11 April 2014 delegated powers and authority (with the ability to further sub-delegate) to the CEO and the CFO of the PAC to consider and if thought appropriate, launch a potential open offer.
4	April 14, 2014	Quorate meeting of the Transaction Committee of the Acquirer held on the evening of April 14, 2014 in Amsterdam approved launching the Open Offer. Quorate meeting of the CEO and CFO of the PAC held on the evening of April 14, 2014 in London approved launching the Open Offer.
5	April 15, 2014 (03:37 IST)	HSCI received scanned copies of the approved resolutions as referred to in points 4 & 5 above.
6	April 15, 2014 (07:15 IST)	Emails containing the Public Announcement sent to BSE, NSE and the Bangalore Stock Exchange Limited ("BgSE")
7	April 15, 2014	Public Announcement gets updated on the websites of BSE and BgSE for public view at 08:01 IST and on the website of NSE for public view at 08:40 IST

3.2.2 As per letter dated July 11, 2014 from the Manager to the Offer, JM Financial Institutional Securities Limited (hereinafter referred to as "JMFL"):

S. No.	Date	Event
1	March 19, 2014	Relay's board of directors met and discussed the strategy with respect to its investment in USL.
2	March 27, 2014	Diageo's board of directors met and discussed the strategy with respect to Relay's investment in USL. Further meeting of Relay's board of directors to discuss the strategy with respect to its investment in USL.
3	April 11, 2014	Sub-committee of the board of directors of Diageo met and considered Relay's investment in USL.
4	April 13, 2014	Discussions between representatives of Diageo and its financial advisors on strategy in relation to Relay's investment in USL.
5	April 14, 2014	Further round of discussions between representatives of Diageo and its financial advisors.

6		Respective Transaction Committees of Relay & Diageo decided on April 14, 2014 (evening London/Amsterdam time) to launch an open offer to the public shareholders of USL and public Announcement was made accordingly on April 15, 2014 (morning India time)
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3.2.3 As per letter dated May 11, 2015 from Relay:

S. No.	Date	Event
1	March 19, 2014	Meeting of the Board of Directors of Relay to discuss potential transactions to be entered into by Relay to acquire shares in USL, and sub-delegating certain powers and authorities to a transaction committee of the board.
2	April 14, 2014	Meeting of the transaction committee of Relay on April 14, 2014 (evening Amsterdam time), deciding to launch an open offer to the public shareholders of USL. Accordingly, public announcement of the offer was made on April 15, 2014 (morning India time).

3.2.4 As per letter dated August 01, 2016 from Legal Counsel of Diageo-Platinum Partners:

S. No.	Date	Event
1	March 12 – April 12, 2014	Preliminary instructions from, and discussions with, Diageo regarding the Open Offer, including assistance in preparation of template documents
2	April 13-14, 2014	Discussions with Diageo in relation to finalizing documents for the Open Offer

3.2.5 From the chronology of events as submitted by the Managers to the Offer, Relay and Platinum Partners (Diageo's Indian legal counsel), it is noted that the PSI related to the Open Offer had come into existence on March 12, 2014 after Platinum Partners received preliminary instructions from Diageo regarding the Open Offer. The PSI was published when the corporate announcement of the Open Offer was made to the Exchanges on April 15, 2014 before the market opened. Thus, it is observed that the period of UPSI would be March 12, 2014 to April 14, 2014.

3.3. As per the replies to the queries from SEBI, Managers to the Offer, Relay, USL and Platinum Partners submitted that Shri Nishat, Global Business

Development Manager (M&A) of Diageo, among others was privy to the Offer till the date of the Public Announcement / was involved in the discussions with the Manager(s) to the Offer / was aware of the Offer till the date of the Offer or till the date of the public announcement / was in possession of the PSI prior to the public announcement.

3.4. It was also revealed during investigation that Shri Nishat was related to Noticees. Shri Nishat (an insider), husband of Smt. Menka Haresh Jashnani, is the son-in-law of Smt. Poonam and Shri Haresh and brother-in-law of Shri Varun. Thus, Noticees (relatives of a connected person) were deemed connected persons in terms of Regulation 2(h)(vi) of PIT Regulations. Therefore, the Noticees were insiders in terms of Regulation 2(e)(i) of PIT Regulations by virtue of them being deemed to have been connected with the company (through Shri Nishat, Global Business Development Manager-Diageo) and were reasonably expected to have access to UPSI in respect of securities of USL.

3.5. During the UPSI period, Noticees had traded only in 2 symbols on NSE, viz. McDowell–N (i.e. USL derivative contract) and NIFTY. Prior to the UPSI period i.e. from January 01, 2014 to March 12, 2014, the trades of the aforesaid 3 Noticees were observed only on 2 days, viz. March 10 & 11, 2014, in the symbol of McDowell–N. However, the trade quantity was insignificant in comparison to their trades during the UPSI period. Further, the trade quantity post UPSI was also insignificant in comparison to their trades during the UPSI period. The said 3 Noticees had not traded in F & O segment of BSE during the investigation period.

3.6. The trading pattern of all 3 Noticees was similar in nature and was primarily concentrated in the symbol of McDowell–N. Further, none of the Noticees had traded in the cash or F&O segment during the period April 2012 to March 10, 2014. Also, the holding period of the option contracts was barely 3 weeks (during the UPSI period) for majority of the contracts.

- 3.7. Smt. Poonam (A/c No. 016200100012532, Saraswat Bank) transferred funds (₹18.40 lakhs) received from Religare Securities Ltd. as a part of futures settlement proceeds pertaining to the trades in the symbol of McDowell-N to Shri Haresh (A/c No. 016200100012563, Saraswat Bank) on May 09, 2014. After receipt of the said funds, Shri Haresh transferred the entire funds to the bank account of his daughter Smt. Menka Haresh Jashnani, w/o Shri Nishat who is an insider.
- 3.8. In light of the above and on the basis of the connection with the insider, trading pattern and fund flow, it was alleged that Smt. Poonam, Shri Haresh and Shri Varun had indulged in insider trading activity in USL on the basis of UPSI relating to the open offer for acquisition of shares of USL by Relay together with Diageo as PAC and thus were alleged to have violated Regulations 3(i) & 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Sections 12A (d) and (e) of SEBI Act.
- 3.9. It was alleged that the Noticees, Smt. Poonam, Shri Haresh and Shri Varun, had made wrongful gains of approximately ₹45.44 lakh, ₹29.24 lakh and ₹26.18 lakh respectively by trading on the basis of UPSI in the scrip of USL. Noticees were called upon to show cause as to why directions under Sections 11(1), 11(4) and 11B of the SEBI Act including disgorgement of wrongful gain, jointly and severally, should not be issued against them for the aforesaid alleged violations under SEBI Act and PIT Regulations.
- 3.10. It was further alleged that based on the trading pattern of Smt. Poonam, Shri Haresh and Shri Varun and the fund transfer observed from the bank account of Smt. Poonam to that of Smt. Menka Haresh Jashnani (w/o Shri Nishat) coupled with the fact that Shri Nishat is an insider, that the Noticees were trading on the basis of the UPSI communicated to them by Shri Nishat. Thus, it was alleged that Shri Nishat had violated Regulations 3(ii) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

4. Subsequently, replies were filed by the Noticees and Shri Nishat and personal hearings were granted to them. SEBI passed a final order dated January 10, 2020 under Sections 11(1), 11(4) and 11B of the SEBI Act against the Noticees for violation of provisions of PIT Regulations and SEBI Act by carrying out insider trading activities in the scrip of USL. Vide the said Order, Noticees were *inter alia* directed to disgorge the wrongful gains made by them along with interest at 12% p.a. from April 11, 2014 till the date of payment and to not deal in the securities market for a period of seven years from the date of payment of disgorgement amount. Further, Shri Nishat was directed not to deal in the securities market for a period of seven years from the date of the Order and restrained from associating with any listed public company for a period of seven years from the date of the Order.
5. Noticees and Shri Nishat filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). During the course of pendency of said appeal before Hon'ble SAT, Shri Nishat settled the matter in terms of SEBI (Settlement Proceedings) Regulations, 2018 and the same was approved by Hon'ble SAT vide its order dated November 04, 2020 disposing of the appeal filed by Shri Nishat against SEBI Order dated January 10, 2020.
6. In the appeals filed by the Noticees, the Hon'ble SAT vide its order dated November 30, 2022 set aside the Order on the ground of violation of principles of natural justice, without going into the merits of the case, with directions as reproduced below:

"17. The matters are remitted to the authorities who are directed to supply the documents as requested in Exhibit "W1" in Appeal No. 255 of 2020 and, upon supply of the documents and, after giving an opportunity to rebut the same and file additional reply, and after giving an opportunity of hearing, a fresh order would be passed. In this regard, the appellants will appear before the authorities on December 09, 2022 on which date the documents would be supplied as prayed

for. Thereafter the authorities will grant three weeks' time to the appellants to rebut those documents and file documents if so required. The matters would be heard thereafter and authorities will pass a fresh order within three months from the date of conclusion of hearing....”

B. Inspection, Reply and Hearing

7. As directed by Hon'ble SAT, the documents were provided to Shri Haresh, authorized to collect on behalf of all the Noticees, on December 09, 2022 and December 13, 2022. Shri Haresh requested for inspection of documents and an opportunity of inspection was provided to him on December 23, 2022. However, Shri Haresh requested for rescheduling the inspection on any date after December 28, 2022 and accordingly, inspection of documents was provided on December 29, 2022.
8. As requested by the Noticees, a time period of four weeks from the date of inspection was granted to file reply to the SCN. A reply was filed by Noticees vide their letter dated January 20, 2023.
9. An opportunity of personal hearing was granted to the Noticees on April 06, 2023. However, upon request of the Noticees seeking adjournment, the hearing was rescheduled to May 04, 2023. During the hearing, Noticees requested for and were granted three weeks' time to file their additional written submissions. Noticees filed their written submissions vide their letter dated May 25, 2023.
10. The submissions of the Noticees to the allegations in the SCN are summarized below:
 - 10.1 Mr. Haresh is a textile chemist by qualification and has been trading in shares and other securities since 1980s. In and around 2000, Manghandas Jayramdas, a partnership firm in which Mr. Haresh was one of the partners,

opened a trading account and mostly traded in Futures and Options. On account of dispute with the stock broker, the partnership firm stopped trading in 2005. In December 2012, Mr. Haresh opened a trading account with Religare Securities Ltd. and traded in small quantities till March 2013. He was able to resume trading by March 2014.

10.2 Smt. Poonam and Mr. Varun are wife and son respectively of Mr. Haresh. Smt. Poonam opened a trading account with Religare Securities Ltd. Mr. Varun opened a trading account in October 2007 with Market Creators Limited, a stock broker and traded in Futures and Options. In April 2010, he closed the said account and opened another account with Religare Securities Ltd.

10.3 In the tables at para 13 and 15 of SCN for trades by Mr. Haresh and Mr. Varun respectively, the strike price of contracts is shown as 5,700/- to 5,900/. Noticees submitted that Options Contracts of McDowell–N never had these strike prices, before, during or after the alleged UPSI period.

10.4 Furthermore, the total brought forward long quantity as on April 14, 2014 is shown as 2,87,450, 2,33,725 and 3,09,625 for Noticee Nos. 3, 2 and 1 respectively which is erroneous as Noticees never had this long position in McDowell-N options at any given time, before or during or after UPSI period.

10.5 The Public Announcement regarding the open offer was displayed on BSE and NSE on April 15, 2014 at 8:40 AM i.e. prior to market hours. Thus, the PSI ceased to be unpublished from 8:40 AM on April 15, 2014. Yet, in the tables at para 13 and 15 of SCN, trades of Noticee Nos. 2 and 3 have been erroneously included as trades during the UPSI period.

10.6 The trades of Noticees prior to and after UPSI period cannot be considered to compute alleged purported gain made on the basis of alleged UPSI.

10.7 There has been inordinate delay on the part of SEBI in the matter.

- 10.8 Due to wide media coverage of the desire of Diageo/ Relay to acquire a controlling stake in USL, by the beginning of 2014, the market expected Diageo and Rely to acquire more shares either through market purchase or through another open offer in order to protect their existing investment in USL. The timing and pricing were the matter which could materially affect the price of the scrip of USL and the concrete and credible information never existed until April 14, 2014.
- 10.9 Noticees had purchased significant quantity of Options Contracts prior to coming into existence of the said alleged PSI. If Noticees had knowledge of the impending open offer:
- 10.9.1 Noticees would have bought Options Contracts of April expiry and not March expiry since the PSI would be published in April 2014. Further, Noticees would roll over the March expiry contracts to April 2014 which they did not.
- 10.9.2 All the strike price of March 2014 expiry contracts, in which Noticees had exposure, expired with 100% loss of premium to the options buyers.
- 10.9.3 Noticees would have bought in-the-money or at-the-money Options Contracts i.e. with a strike price at and around the price of the underlying scrip. However, they instead purchased deep-out-of-the-money European Call Options contracts with March expiry even before the PSI came into existence. They further collectively purchased March expiry contracts and sold these contracts during the said UPSI period wherein some of the contracts were traded intraday. A person in possession of positive UPSI will not liquidate their positions much before the event has even begun to take shape.
- 10.10 Noticees purchased March 2014 Options and April 2014 Options by paying premium and other costs. If Noticees were in possession of UPSI, they would purchase April Options and not March Options since out-of-the-money contracts have only Time Value and their value declines with time.

The Noticees traded in Options contracts of USL based on available market information including historical data/ daily price movement alone and not based on any PSI.

10.11 Their purchase of the aforesaid Options Contracts was based on sound and tested trading strategies as mentioned below:

10.11.1 Out-of-the-money contracts are significantly cheaper to purchase and they offer better leverage to trader as and when they exhibit volatility.

10.11.2 At the beginning of any series of Options Contracts, Vega (implied volatility or sensitivity of Option's price to the changes in volatility in the price of underlying asset) has little impact as there is more time to expiry. The maximum impact of volatility is experience during midway between start and expiry of the contracts which is when the Noticees started purchasing the deep-out-of-the-money Options Contracts.

10.11.3 Volatility was expected in the price of USL's scrip on account of acquisition by Diageo/ Relay, scrip of USL was to be included as one of the stocks of Index "Nifty 50" from March 28, 2014 which would compel the Index based funds to rebalance their portfolio by addition of USL in their portfolio.

10.11.4 Market had confidence that Diageo will acquire majority stake in USL to safeguard their investment in USL.

10.12 Assuming, without admitting, that Noticees were in possession of the knowledge that Diageo/ Relay were coming out with an open offer, they would have purchased April 2014 contracts with strike prices at and around prevailing price of the underlying scrip. Instead, Noticees purchased April 2014 contracts at higher strike prices which would have per se minimized profits or even caused losses. The contracts with strike price 2800CE expired at loss of the premium and contracts of strike price 2900CE and 3000CE expired worthless. If a person enters into a transaction which is surely likely to result in loss, he cannot be accused of insider trading.

- 10.13 In the present case, if Noticees had access to the said alleged UPSI, they would have increased their delta position prior to publishing of the UPSI and would have purchased April 2014 Options with strike price in and around the price of the underlying scrip i.e. strike price with higher delta. Instead, Noticees purchased deep-out-of-the-money Option contracts with the lower delta which clearly show that they intended to make profits from speculative trading in stock options in the scrip of USL at a time when the market for stock options was volatile.
- 10.14 Noticees had sufficient finances in the form of ledger credit with the broker which could have used to buy larger quantity of options of USL so as to take advantage of UPSI had they been in possession of the same. The fact that they did not do so clearly indicates that Noticees did not possess the alleged UPSI.
- 10.15 The market had already discounted the possibility of an open offer and therefore, information that an open offer was to be made would not per se have been price sensitive. Rather, credible and concrete information regarding the details of the offer which would materially affect the price of the scrip would be termed as price sensitive. SEBI has considered the date of origin/ coming into the existence of PSI as March 12, 2014 when Platinum Partners received preliminary instructions from Diageo regarding the open offer. This conclusion appears to have been based on Platinum Partners letter dated August 01, 2016. However, it is pertinent to note that said letter from Platinum Partners does not say that such preliminary instructions included details of the proposed open offer including offer price, quantity or announcement date.
- 10.16 SEBI has brought on record an e-mail sent by Mr. Vinay Tanna (Corporate Finance M&A Director, Diageo) on March 12, 2014 to Managers to the Offer and Platinum Partners, which is not part of SCN. Even the said email was sent on March 12, 2014 beyond market hours and hence, the

observation of SEBI that UPSI came into existence on March 12, 2014 is erroneous. Further, in the said e-mail, there is no reference to any decision or parameters that would be necessary for the second open offer and it only refers to challenging regulatory issues and legal matters. Apart from the said e-mail, SEBI has not produced any documentary evidence that could show that a decision had crystallised on March 12, 2014.

10.17 Noticees submit that the actual UPSI period is from April 14, 2014 to April 15, 2014 which is when the concrete and credible information was crystallised. The idea of second potential open offer was for the first time considered by the Board of Relay in its meeting held on March 19, 2014. SEBI has rejected the version of three entities viz. merchant bankers HSCI/ JMFL and the acquirer as to the date of arising of alleged UPSI. SEBI has also failed to appreciate that Relay has responded to SEBI that there was no due diligence conducted either by Relay or Diageo in connection with open offer and it was only on April 13-14, 2014, it had discussions with financial advisors just prior to the public announcement. SEBI has ignored the fact that prior to April 14, 2014, the only information which existed was that there could be a potential open offer.

10.18 Noticees state that they are not related to any person or entity as set out in clauses (i) to (v) of sub-regulation (h) of Regulation 2 of PIT Regulations and therefore, the finding that they are deemed connected persons as per Regulation 2(h)(vi) of PIT Regulations is erroneous.

10.19 Furthermore, Noticees are not 'relatives' of Shri Nishat as alleged. Upon perusal of Section 6 of Companies Act, 1956 read with Schedule IA, it becomes evident that the term father-in-law, mother-in-law and brother-in-law is not used anywhere to depict a relative. A person is deemed relative under Section 6 if and only if they fall in the list of relatives in Schedule IA. This has been admitted by SEBI in its Order dated November 22, 2017 in the matter of Bank of Rajasthan wherein it was held that Section 6 of the Companies

Act, 1956 does not cover reciprocal relationships in the reverse direction. This position is further affirmed by Hon'ble SAT's order dated August 11, 2017 in the matter of Chintalapati Srinivas Raju (SAT Appeal No. 451/2015) wherein it was held that Section 6 uses the phrase if and only if which means that only those listed can be considered as relative. As the Noticees are not relatives, they cannot be deemed connected persons in terms of Regulation 2(h)(viii) of PIT Regulations. Also, they cannot be insiders under Regulation 2(e)(i) of PIT Regulations as they are not deemed connected persons which is the basis for treating them as insiders.

10.20 Under second limb of Regulation 2(e)(i), the connected person must be reasonably expected to have access to UPSI. There must be material to show that such person can be reasonably be so expected to have access to UPSI. SCN does not disclose how and in what manner Noticees could be reasonably expected to have access to UPSI.

10.21 Noticees cannot be roped in as insiders as per Regulation 2(e)(ii) of PIT Regulations which clearly refers to a person who has received or has had access to such UPSI.

10.22 In order to prove violation of Regulation 3 of PIT Regulations, the actual receipt of information has to be proved and the onus of showing that a certain person was in possession of or had access to PSI is on person levelling the charges. Hence, the burden of proof is on SEBI to establish any communication of UPSI by placing on record cogent evidence as held by Hon'ble Supreme Court in the matter of Balram Garg v. SEBI (C.A. No. 7054 of 2021). SEBI has not put forth any evidence to show that Shri Nishat communicated the UPSI to the Noticees or that Shri Nishat communicated or discussed any information regarding his work to Noticees. The trading pattern and fund flow of the Noticees cannot be the circumstantial evidence to prove the communication of UPSI to Noticees. Noticees cannot be held to be insiders only and entirely on the basis of circumstantial evidence.

- 10.23 There is not only buying but also consistent selling of the Option contracts of McDowell-N. In value terms, the purchase and sales in the Options contracts of USL across all Noticees during the UPSI period is negative. The nature of the trade should be consistent with the character of the UPSI whereas in the present case even though UPSI is positive in nature, there is consistent selling during the UPSI period. Noticees have relied on Hon'ble SAT's order dated January 31, 2012 in the matter of Mrs. Chandrakala v. SEBI (SAT Appeal No. 209/2011).
- 10.24 The summary of the trading activity of Noticees during the UPSI period clearly demonstrates that the trading of the Noticees was not concentrated in the scrip of USL, in fact the trading was predominantly concentrated in Nifty 50.
- 10.25 Noticees trades in McDowell-N post UPSI period is significantly greater than during the UPSI period. Haresh and Varun traded in June and July expiry contracts, long after the public announcement
- 10.26 On the issue of holding period of barely three weeks during UPSI period, Noticees submitted that market expected Diageo/ Relay to acquire more shares through creeping acquisition before expiry of financial year and USL scrip was to be included in Nifty 50 from March 28, 2014. Further, there was very low float of USL in the market and any kind of stake buying could make stocks to move exponentially. In view of the above, a prudent trader would have bought options of USL expiring in March 2014 and it is quite logical that options purchased by Noticees in March 2014 had March 27, 2014 as expiry date.
- 10.27 Regarding the movement of funds between Noticees, the funds were transferred between bank accounts of family members as and when required. Mr. Haresh had transferred collectively an amount of ₹15.70 lakhs to Smt. Poonam between April 04, 2014 and April 09, 2014 (i.e. before publishing of PSI). Subsequently, Smt. Poonam returned the said amount by way of

transferring ₹18.40 lakhs on May 09, 2014. The subsequent transfer of ₹18.40 lakhs to Menka Jashnani was for the purpose of meeting the expenses of their London trip in May 2014 and to compensate Menka Jashnani for the expenses incurred on their behalf while in London. Noticees annexed the VAT refund receipts and statements to demonstrate that shopping done on Menka's card was done by Noticee Nos. 1 and 2.

10.28 SCN alleges that Noticees made unlawful gains by trading on the basis of UPSI in the scrip of USL. As per the decision of Hon'ble SAT in *Mrs. Chandrakala v. SEBI (supra)*, it was held that prohibition contained in Regulation 3 applies only when the insider has traded on the basis of any UPSI and that the trades executed should be motivated by information in possession of the insider.

10.29 The tabulations of profit of Noticees includes profit made on purchases and sales transactions during the UPSI period, of March 27, 2014 expiry. These transactions are evidently not on the basis of UPSI as they have expired before the publishing of PSI and SEBI cannot hold them as ill-gotten gains. Further, profits made by the Noticees purchase and sales transactions post alleged UPSI is also included in SCN which cannot be said to be made on the basis of alleged UPSI since these transactions were done after the publication of UPSI. Also, the loss made by Mr. Varun in April contracts of strike price 3000CE has not been considered for tabulation of profits in the SCN. SCN has erred in calculating profit by not deducting various statutory charges levied by NSE and the broker while trading.

10.30 SCN does not mention imposition of interest and as such, no interest should be imposed. Alternatively, if interest is imposed, the interest should be governed by Interest Act which states that interest rate to be levied at reasonable rates prevailing at that relevant time.

Relevant extracts of the provisions of SEBI Act, 1992:

Functions of Board.

11. (1) *Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.*

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;
(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation :

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

Power to issue directions.

11B.(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

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

12A. No person shall directly or indirectly—

(d) engage in insider trading;

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

Relevant extracts of the provisions of PIT Regulations, 1992

2(e) “insider” means any person who,

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

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

(h) “person is deemed to be a connected person”, if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or

(v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body; or

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person;

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

Explanation.—The following shall be deemed to be price sensitive information:—

(i) periodical financial results of the company;

(ii) intended declaration of dividends (both interim and final);

(iii) issue of securities or buy-back of securities;

(iv) any major expansion plans or execution of new projects.

(v) amalgamation, mergers or takeovers;

(vi) disposal of the whole or substantial part of the undertaking;
(vii) and significant changes in policies, plans or operations of the company;

(i) “relative” means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956);

(k) “unpublished” means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.

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

3. No insider shall—

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

Violation of provisions relating to insider trading.

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

Relevant extracts of the provisions of PIT Regulations, 2015

Repeal and Savings.

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

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or

punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

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

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

C. ISSUES FOR CONSIDERATION

11. After considering the SCN and the replies filed by Noticees, the following issues arise for consideration:

Part I- Unpublished Price Sensitive Information

(a) Whether the announcement of open offer is PSI in terms of PIT Regulations? If yes, whether the PSI was unpublished?

(b) What was the period of UPSI?

Part II- Role of Noticees

(a) Whether Noticees were 'insiders' for UPSI as per Regulation 2(e) of PIT Regulations?

(b) Whether Noticees can be said to have traded in the scrip of USL while in possession of UPSI?

Part III- Computation of Illegal Gains

(a) Whether the computation of illegal gains as proposed in the SCN must be differed with?

12. Before I deal with the aforementioned issues, I note that Noticees have raised a preliminary objection that there has been delay in the proceedings and that SEBI is required to exercise its powers within a reasonable time. I note that after preliminary examination of the matter, a detailed investigation was initiated in 2015 against multiple entities including the Noticees. Pursuant to the completion of Investigation, the enforcement action was approved in January 2017. SCN was issued to the Noticees on March 29, 2017. Subsequently, Noticees were provided multiple opportunities of inspection wherein adjournments were also sought by Noticees. Noticees filed their preliminary submissions in July 2017 and submitted their reply in December 2017. Thereafter, a hearing was scheduled for the Noticees on December 06, 2018 which was subsequently advanced to November 13, 2018. However, the Noticees sought adjournment of hearing to any date after December 15, 2018. Upon the said request of Noticees, hearing was rescheduled to January 08, 2019. Pursuant to hearing of Noticees on January 08, 2019 and Shri Nishat's hearing on January 25, 2019, certain information was sought from Acquirer and Managers to the Offer on the earliest stage, role and point in time, the open offer information was handled by Shri Nishat as Shri Nishat had contended that he had become aware of UPSI on the evening of April 14, 2014. The replies were received from the Acquirer and Managers to the Offer in June and July 2014. Subsequently, response was sought from Shri Nishat in view of the replies received from the Acquirer and Managers to the Offer

inter alia inferring that Shri Nishat had knowledge and awareness of models and/ or simulations that were undertaken by Acquirer/ PAC to acquire further shares in USL including by way of another open offer, since September 2013. The response from Shri Nishat was received in September 2019. Upon analysis of the replies from various entities and the information available on record, SEBI passed the final order dated January 10, 2020. In the instant matter, during the course of investigation, information pertaining to the open offer, connection between entities and chronology of events was sought from Acquirer & PAC (situated outside India), USL, Managers to the Offer, Legal Counsel of PAC, etc. Further, trading data of the Noticees was sought from NSE along with bank statements from banks, details from the brokers, etc. Further, information was also sought from the Noticees and there were multiple instances when information was not provided by Noticees within the stipulated time and reminder letters were sent to Noticees. I note that SEBI has conducted its proceedings in compliance of principles of natural justice wherein opportunity has been granted to all entities and their submissions have been considered, even when the same were made for the first time before the quasi-judicial authority. The timeline between alleged violation and issuance of SCN is not more than 3 years. Noticees have not represented how the delay has prejudiced their ability to defend the allegations. Considering all of the above, I am of the view that the proceedings cannot be said to have been unjustifiably or unduly delayed or that the delay has vitiated the quasi-judicial proceedings.

PART I- UNPUBLISHED PRICE SENSITIVE INFORMATION

13. Whether the announcement of open offer is PSI in terms of PIT Regulations? If yes, whether the PSI was unpublished?

13.1 The following is noted from the public announcement dated April 15,

2014 issued by JMFL and HSCI, for and on behalf of Acquirer and PAC:

“ ...

1. Offer Details

Size: The Acquirer and the PAC hereby make this Offer to the Public Shareholders to acquire up to 37,785,214 fully paid up equity shares of face value of ₹10.0 (Rupees Ten only) each of the Target Company (“**Offer Shares**”), constituting 26% of the total fully diluted voting equity share capital (as of the 10th working day from the closure of the tendering period for the Offer) (“**Voting Share Capital**”) of the Target Company at a price of ₹3,030 (Rupees Three Thousand and Thirty) per Offer Share (“**Offer Price**”) aggregating to total consideration of ₹114,489,198,420 (Rupees One Hundred Fourteen Billion Four Hundred Eighty Nine Million One Hundred Ninety Eight Thousand Four Hundred Twenty) (“**Offer Size**”), subject to the terms and conditions mentioned in this Public Announcement and in the detailed public statement (“**DPS**”) and the letter of offer (“**LoF**”) that are proposed to be issued in accordance with the SEBI (SAST) Regulations.

Price / Consideration: The equity shares of the Target Company are frequently traded in terms of SEBI (SAST) Regulations. The Offer Price of ₹3,030 (Rupees Three Thousand and Thirty) per Offer Share is in accordance with Regulation 8(2) of the SEBI (SAST) Regulations.

...”

13.2 In terms of SCN, the open offer announcement of HSCI & JMFL on behalf of acquirer and PAC on April 15, 2014 is considered as PSI in terms of PIT Regulations and the period of UPSI is considered to be March 12, 2014 to April 14, 2014.

13.3 The Noticees have submitted that information and possibility of an open

offer was already in public domain and cannot be *per se* considered as a PSI. Rather, it was information regarding the details of the offer i.e. the offer price, the quantity and the date of announcement of the offer that would have been price sensitive. In this regard, I note that Regulation 2(ha) of PIT Regulations provides the definition of price sensitive information which is reproduced below:

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

Explanation.—The following shall be deemed to be price sensitive information:—

(i)

.....

(v) amalgamation, mergers or takeovers;

13.4 As per Explanation (v) to Regulation 2(ha) of PIT Regulations, takeover is deemed to be a price sensitive information. The Hon’ble Supreme Court *inter alia* examined the aforesaid definition of ‘price sensitive information’ in the matter of Abhijit Rajan (Judgment dated September 19, 2022 in Civil Appeal No. 563 of 2020). The relevant extracts of the judgment of Hon’ble Supreme Court are reproduced below:

“25. the main part of Regulation 2(ha) defines “price sensitive information” to mean any information, which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of a company. The Explanation under Regulation 2(ha) creates a deeming fiction and it makes 7 items of information listed thereunder as price sensitive information.

26. It may be interesting to note that out of the 7 items of information listed under the Explanation, all the others except Item No.(vii) are likely to have an impact directly upon the financial strength of the company. Item No.(vii) stands apart, in that it is very broad and general in nature. While nothing more is required to show that the information listed in Items (i) to (vi) of the Explanation under Regulation 2(ha) is likely to materially affect the price of securities of a company, the same is not the case insofar as the information in Item No.(vii) is concerned. In other words, the likelihood of the price of the securities getting materially affected, is inherent in Items (i) to (vi) namely,

- “(i) periodical financial results of the company;*
- (ii) intended declaration of dividends (both interim and final);*
- (iii) issue of securities or buyback of securities;*
- (iv) any major expansion plans or execution of new projects.*
- (v) amalgamation, mergers or takeovers;*
- (vi) disposal of the whole or substantial part of the undertaking;”*

The Hon’ble Supreme Court has held that information pertaining to aforesaid six matters has inherent ability to materially affect the price of securities and nothing more is required in this regard.

13.5 The submission of the Noticees is that possibility of an open offer / information that an open offer was to be made would not *per se* be a PSI. On a perusal of the SCN, it is noted that the SCN unequivocally states at paragraph 6 that “*the open offer announcement of HSCI & JMFL on behalf of Relay and the PAC on April 15, 2014 is considered as PSI in terms of PIT Regulations*”. In other words, as per the SCN, the announcement of open offer by Relay and Diageo is the PSI and not the prospect and possibility of the open offer.

13.6 Noticees have submitted that there was substantial media coverage of Diageo / Relay’s desire to acquire a controlling stake in USL and various

media reports at the relevant time favoured an open offer. In this regard, it would be relevant to refer to the definition of “unpublished” as defined under PIT Regulations. Regulation 2(k) of PIT Regulations defines “unpublished” to mean *“information which is not published by the company or its agents and is not specific in nature. Explanation.—Speculative reports in print or electronic media shall not be considered as published information.”* The definition of “unpublished” excludes speculative media reports. Hence, such reports published in media with respect to acquisition of shares of USL by the Acquirer cannot be treated as published. Further as per Regulation 2(k) of PIT Regulations, even if the media report is published by the Company or its agents, it would still be deemed as “not published” if the information was not specific in nature. It is not the case of the Noticees that the specific details of the open offer announcement was in public domain. Therefore, I do not find any merit in the submission of Noticees.

14. What was the period of UPSI?

14.1 The IR observes that the PSI related to open offer had come into existence on March 12, 2014 after Platinum Partners received preliminary instructions from Diageo regarding the open offer. Therefore, as per the IR, the period of UPSI would be March 12, 2014 to April 14, 2014, considering that the announcement of the open offer was made to the Exchanges by managers to the offer on April 15, 2014.

14.2 Noticees have further submitted that for any particular information to be price sensitive, same has to have some degree of certainty and finality. I am of the view that the certainty of information can only be measured in terms of probability/ degree of certainty of its execution which in the given case, as seen from the email dated March 12, 2014, the wheels for the process of crystallising the information were set in motion by formally introducing the various professionals / members of *Project Cape* with each other by the PAC.

- 14.3 Noticees have submitted that SEBI has brought on record an e-mail dated March 12, 2014 sent by Vinay Tanna (Corporate Finance M&A Director, Diageo) to various officials of Platinum Partners, HSCI and JMFL which is not even part of the SCN and hence cannot be considered. Further, Noticees have submitted that upon examination of the e-mail there is no reference to any decision or parameters that would be necessary for the second open offer and it only refers to the challenging regulatory issues and legal matters. Further, the Noticees have submitted that the said e-mail is an introductory e-mail familiarising one set of advisors with the other. As per Noticees, SCN has failed to explain how verbal discussions that are being referred to in the said e-mail can lead to a conclusion that UPSI came into existence on March 12, 2014.
- 14.4 Noticees have submitted that the Investigating Officer has rejected the version of three entities viz. HSCI/JMFL/Relay, as to the date of arising of alleged UPSI, and conveniently cherry picked the date stated by Platinum Partners in its letter, which too was only based on the best of their recollection that they received preliminary instructions. Further, it is submitted that the said letter does not say that such preliminary instructions included details of the proposed open offer including offer price, quantity or announcement date. As per the Noticees, the actual UPSI period is from April 14, 2014 to April 15, 2014 before the opening of markets when the concrete and creditable information was crystallised.
- 14.5 I note that the SCN has laid down the chronology to establish the period when the PSI came into existence and when it was published. In compliance with the directions of Hon'ble SAT, the aforesaid e-mail was shared with Noticees in December 2022 and an opportunity of hearing has also been granted to the Noticees.
- 14.6 It is noted from material available on record that the various discussions that took place subsequent to the failure of first open offer lead to creeping

acquisitions on November 28, 2013 and February 4, 2014. The email dated March 12, 2014 (as provided by JMFL vide its letter dated July 05, 2019) from Shri Vinay Tanna to the team of “*Project Cape*” addressed to Managers to the offer (2 in nos.) and the Legal Counsel along with Shri Nishat is reproduced below:

“Gentlemen,

*This is to introduce you formally in the context of the above project. I have spoken to the lead in each firm on respective roles etc, my immediate request is that collectively you catch up soonest to ensure that Sunil/Amit are familiarised with some of the challenging regulatory issues that we have discussed over the **recent weeks**. Going forward, Sunil/Amit will join us on regular calls dealing with regulatory/legal matters.*

Kind regards

Vinay Tanna | Corporate Finance M&A Director | DIAGEO | ...” (emphasis supplied)

14.7 The aforesaid email indicates that the issues were individually discussed with the recipients of the email in the weeks prior to March 12, 2014. From February 04, 2014 onwards, the strategy of launching another open offer was gaining momentum and a team “*Project Cape*” was formally put together to delineate each firms’ respective role and to consider various regulatory / legal issues. The various events leading up to March 12 2014 were in fact lending more certainty and the nature of discussions moved towards the crystallisation of the UPSI on March 12, 2014.

14.8 With respect to Noticees submission that SEBI has cherry picked the date stated by Platinum Partners, I note that the query raised by SEBI with respect to the chronology of events was raised with Managers to the Offer, Acquirer and Diageo’s Legal Counsel (the chronology of events provided by

these entities is mentioned at para 3.2 of this Order). Since the query was directed to individual entities and they had a very specific role to play in the open offer, it is not necessary that the Acquirer / PAC, would have approached them simultaneously. Platinum Partners have stated in their letter that from March 12, 2014 onwards, discussions were held with Diageo with respect to Open Offer and the same is reproduced below:

S. No.	Date(s)	Activity
1	March 12 – April 12, 2014	<i>Preliminary instructions from, and discussions with, Diageo regarding the Open Offer, including assistance in preparation of template documents</i>
2	April 13-14, 2014	<i>Discussions with Diageo in relation to finalizing documents for the Open Offer</i>

14.9 This fact is further corroborated by the aforementioned e-mail dated March 12, 2014 provided by JMFL in response to SEBI's query about stage, role and point in time when Shri Nishat was involved with its relationship as a Manager to Offer and JMFL stated that in context of the offer relating to public announcement they have the email dated March 12, 2014 where Shri Nishat is marked and which formally introduced the parties proposed to be involved in the project.

14.10 The following is noted from the extract of minutes of the meeting of the Board of Directors of the Acquirer dated March 19, 2014 :

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

*IT WAS RESOLVED to approve to proceed with the strategy outlined in the **pre-circulated paper** in relation to the potential transactions and*

consistent with that strategy provide to ... (the “Transaction Committee”) the delegated powers and authority (with the ability to sub-delegate), to consider and approve executing the steps set out below:

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

...

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

From the aforesaid minutes, it is noted that discussions with respect to the acquisition of shares of USL were “ongoing” i.e. even before March 19, 2014 and based on that a paper was “pre-circulated” before the said Board Meeting on the strategy. The focus of the strategy can be gathered from the subsequent bullet points in the aforesaid extracts which lay emphasis on acquiring the shares through open offer in terms of SAST Regulations and acquisition of shares by the Acquirer during the period of open offer.

14.11 Noticees submission that the actual UPSI period is from April 14, 2014 to April 15, 2014 before the opening of markets when the concrete and

credible information was crystallised is illogical and cannot be accepted. A process relating to open offer is not decided on a single day as it involves a number of discussions amongst all the stakeholders on various aspects of the open offer viz. price, cost, etc.

14.12 Noticees have also submitted that in response to SEBI's query, Relay has responded that there was no due-diligence conducted either by Relay or Diageo in connection with the open offer and that it was only on April 13-14, 2014, it had discussions with financial advisors just prior to the public announcement. Platinum Partners, too, have also referred to these dates as to when they had "*Discussions with Diageo in relation to finalizing documents for the open offer.*"

14.13 In this regard, I note that a due diligence certificate has to be submitted by the Merchant Banker with every letter of offer. Moreover, as seen from the chronology of events, the PAC first approached its Indian legal counsel, Platinum Partners, on March 12, 2014 with its preliminary instruction, subsequent to which the Boards of the Acquirer and the PAC met on March 19, 2014 and March 27, 2014 respectively to discuss the strategy and finally the entire process / discussions regarding open offer was concluded on April 14, 2014. Furthermore, as seen from the email dated March 12, 2014 of Diageo that discussions with respect to potential open offer including the challenging regulatory / legal matters were being formalised among officials of Diageo, HSCI, JMFL and Platinum Partners over weeks preceding the said email. Thus, it can be seen that the public announcement on April 15, 2014, was preceded by a long exercise of several weeks that was undertaken focusing on various details / particulars and obligations, both financial and regulatory / legal of the open offer which was to acquire up to 37,785,214 fully paid up equity shares of face value of ₹10.0 each of the Target Company, constituting 26% of the total fully diluted voting equity share capital of the Target Company at a price of ₹3,030 per offer share aggregating to total

consideration of ₹114,489,198,420. The aforementioned chronology of events clearly show that the discussions were going on much prior in time.

14.14 Noticees have submitted that the e-mail from Shri Tanna was sent beyond market hours and hence, observation of SEBI that UPSI came into existence on March 12, 2014 is erroneous. I note that the email dated March 12, 2014 from Shri Tanna to various officials of Platinum Partners, JMFL and HSCI is related to the formal introduction of officials of various advisors to the open offer to each other, as part of the team “*Project Cape*” and a request to other team members to ensure that the officials of HSCI are made aware of the discussions that took place over previous weeks.

14.15 Shri Nishat was the Global Business Development Manager (M&A) of Diageo and in that capacity, dealt with acquisitions by Diageo. Therefore, he was all along informed and possibly instrumental for the acquisition efforts made by Diageo including the open offers and creeping acquisitions in McDowell-N/USL. It is in this context that e-mail dated March 12, 2014 from Vinay Tanna must be viewed. The fact that the e-mail itself records that the recipients of the e-mail including Nishat Gupte were aware of the proposed acquisition and the regulatory challenges associated with the same. Therefore, clearly, Nishat can be said to have been aware of the crystallization of the proposal on making a second open offer at least more than a week prior to March 12, 2014. This is also corroborated by the trading pattern of the Noticees which will be discussed in subsequent paragraphs. However, since the investigation concluded that the UPSI period commenced from March 12, 2014 and the same is reiterated in the SCN, in the interest of compliance with principles of natural justice, for the purposes of this order and calculation of illegal gains, if any, the period of UPSI shall be regarded as having commenced from March 12, 2014.

PART II- ROLE OF NOTICEES

15. Whether Noticees were ‘insiders’ for UPSI as per Regulation 2(e) of PIT Regulations? Whether Noticees can be said to have traded in the scrip of USL while in possession of UPSI?

15.1 An insider is defined under Regulation 2(e) of the PIT Regulations which is reproduced below:

“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 a company, or

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

15.2 As noted earlier, Shri Nishat was Global Business Development Manager (Mergers and Acquisitions) of Diageo/ PAC which suggests that the acquisition of USL was within his domain/ role at Diageo. As already mentioned above, Shri Nishat was part of the core team that was representing Diageo in the transaction to consolidate shareholding of the Acquirer in the Target Company and was in discussions since the beginning of the transaction lifecycle which led to creeping acquisitions and open offer. I note that the role of Shri Nishat is provided by the following entities in response to the queries raised by SEBI:

15.2.1 HSCI vide its letter dated July 10, 2014 stated that Shri Nishat was involved in discussion with HSCI prior to public announcement.

15.2.2 JMFL vide its letter dated July 11, 2014 stated that Shri Nishat was involved in discussion with JMFL.

15.2.3 Relay vide letter dated May 11, 2015 stated that Shri Nishat was aware of the Offer till the date of the public announcement.

15.3 Also as noted earlier, Nishat Gupte was one of the recipients of Shri

Tanna's e-mail dated March 12, 2014 clearly indicating that Shri Nishat was part of the core team of Project Cape and was in possession of UPSI weeks before March 12, 2014.

15.4 As already noted earlier in this Order, Shri Nishat has settled the proceedings initiated against him under Settlement Regulations.

15.5 SCN alleges that Noticees are relatives of Shri Nishat in the following manner:

Table- 1

Name of Noticee	Nature of Relationship with Shri Nishat (Insider)
Shri Haresh Parmanand Jashnani	Father-in-law
Smt. Poonam Haresh Jashnani	Mother-in-law
Shri Varun Jashnani	Brother-in-law

15.6 The SCN alleges that the Noticees are 'relatives' of the connected person and thereby, 'deemed connected persons' in terms of Regulation 2(h)(vi) of PIT Regulations. Consequently, the Noticees were alleged to be 'insiders' in terms of Regulation 2(e)(i) of PIT Regulations by virtue of them being deemed to have been connected with the company and been reasonably expected to have access to UPSI in respect of securities of USL.

15.7 Noticees have submitted that they are not related to any person or entity as set out in clauses (i) to (v) of sub-regulation (h) of Regulation 2 of PIT Regulations and therefore, the finding that they are deemed connected persons in terms of Regulation 2(h)(vi) is erroneous and unsustainable.

15.8 Further, Noticees have submitted that they are not relatives of Shri Nishat. In this regard, Noticees have relied on the definition of 'relative' as provided under Regulation 2(i) of PIT Regulations which states that "*relative*" means a person, as defined in section 6 of the Companies Act, 1956.

Noticees have relied on the list provided under Schedule 1A of the Companies Act, 1956 (hereinafter referred to as “**Companies Act**”) read with Section 6 of the Companies Act to contend that terms mother-in-law, father-in-law and brother-in-law have not been used therein to depict a relative. Noticees submitted that the definition of relative under Section 6 of the Companies Act provides that a person can be regarded as a relative, ‘if and only if’ the person falls under the list of relatives in Schedule 1A. In this regard, Noticees have relied on the decision of SEBI in the matter of Bank of Rajasthan (WTM Order dated November 22, 2017) and Hon’ble SAT’s decision in the matter of Chintalapati Srinivas Raju (SAT Order dated August 11, 2017) to contend that only those listed under Schedule IA can be considered as a relative and it does not cover reciprocal relationships in the reverse direction. Accordingly, Noticees submitted that they cannot be deemed connected persons in terms of Regulation 2(h)(viii) of PIT Regulations.

15.9 Noticees have submitted that under second limb of Regulation 2(e)(i), Noticees are reasonably expected to have access to UPSI but SCN has failed to disclose how and in what manner he can be reasonably expected to have access to UPSI. Further, Noticees have submitted that Notices cannot be roped in as insiders under Regulation 2(e)(ii) of PIT Regulations since to be regarded under the said category, one must either have actually received the UPSI or actually had access to such UPSI in any manner.

15.10 Upon perusal of the definition of deemed to be a connected person as provided under Regulation 2(h) of PIT Regulations, I note that relatives are deemed to be connected either if they are relatives of the persons mentioned under provisions of Regulation 2(h)(i-v) of PIT Regulations or are relatives of the connected person under Regulation 2(h)(viii) of PIT Regulations. The relevant provisions are reproduced below:

“(h) “person is deemed to be a connected person”, if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or

(v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body; or

(vi) is a relative of any of the aforementioned persons;

(vii)

(viii) relatives of the connected person;

15.11 Upon perusal of Regulation 2(h)(i-v) of PIT Regulations, I note that Shri Nishat is not covered in any of the aforesaid categories. As the Noticees are deemed to be connected through Shri Nishat, therefore, they cannot be deemed to be connected persons under Regulation 2(h)(vi) of the PIT

Regulations. Accordingly, the submissions of Noticees in this regard are accepted.

15.12 I note that Regulation 2(h)(viii) of PIT Regulations provides that ‘relatives of the connected person’ are deemed to be connected persons. Therefore, in the facts of this case, in order to establish that the Noticees are deemed to be connected persons, they have to be found to be ‘relatives’ of Shri Nishat in accordance with Section 6 of the Companies Act. Section 6 of the Companies Act, 1956 provides as follows:

“6. Meaning of “Relative”

A person shall be deemed to be a relative of another if, and only if,

(a) they are members of a Hindu undivided family, or

(b) they are husband and wife, or

(c) the one is related to the other in the manner indicated in Schedule IA.”

I have taken into consideration the submissions of the Noticees highlighting difference in SEBI’s stand in the earlier order dated January 10, 2020 in the matter of USL and SEBI’s order dated November 22, 2017 in the matter of Bank of Rajasthan and SAT Order dated August 11, 2017 in the Satyam matter. Upon perusal of the SAT Order in Satyam matter, I note that the said observation is made in the minority judgment of SAT in the said matter. For the purpose of this provision, the relationship of the person is with respect to the connected person only and not vice-versa i.e. the relationship of connected person with such deemed connected persons is not to be considered. The use of the expression ‘*if, and only if*’ clearly indicates that there is little room to interpret the manner of relationship mentioned in the said definition. In other words, the relationships have to be construed in only one manner and cannot be reciprocal. Therefore, in order to satisfy the conditions of PIT Regulations, the relationship has to be considered in only one direction and cannot be considered in reverse/ reciprocal manner to establish the charges against the Noticees. The relationship of the entities is

provided in Table-1 above. I note that Schedule 1A read with Section 6 of the Companies Act does not mention any of the relations mentioned in aforesaid Table. Further, A. Ramaiya's 'Guide to the Companies Act' records that Department of Company Affairs had clarified that the relationships mentioned under Section 6(c) does not cover reciprocal relationships in the reverse direction. This position has also been taken by SEBI in the order dated November 22, 2017 in the matter of Bank of Rajasthan. In view of all of the above, I find that the Noticees cannot be regarded as relatives under PIT Regulations, 1992 and as a consequence, Noticees cannot be regarded as deemed to be connected persons in terms of Regulation 2(h) of the PIT Regulations.

15.13 As per Regulation 2(e)(i) of the PIT Regulations, a person is an insider who 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 UPSI. I note that the definition of 'connected person' under Regulation 2(c) of the PIT Regulations, 1992 is a restrictive definition which only includes a director of a company or a person occupying a position in the company or an employee of the company or holds a position and is reasonably expected to have access to UPSI. In the present matter, the Noticees are not covered within the said definition of 'connected person'. As already stated in earlier paragraphs, the Noticees are not deemed to be connected persons. The two fold requirements of connected and reasonably expected to have access are conjunctive as it uses 'and' between them and they cannot be used independently of each other. Accordingly, Noticees cannot be 'insider' as per Regulation 2(e)(i) of the PIT Regulations.

15.14 Regulation 2(e)(ii) of the PIT Regulations defines insider to be any person who has received or has had access to such UPSI. Under this provision, it has to be shown that the entity has actually received UPSI or had access to the UPSI. In this context I have examined the following:

- (a) Peculiarity of the Trading Behaviour of Noticees in the scrip of USL
- (b) Fund Transaction and Relationship between Noticees and Shri Nishat

Peculiarity of the Trading Behaviour of Noticees in the scrip of USL

15.15 Absence of trades during the 1 year preceding UPSI period

15.15.1 Before addressing the submissions of the Noticees, I note that SCN alleges that trades of Noticees were similar in nature and primarily concentrated in the symbol of McDowell-N (i.e. USL derivative contract). Before the impugned trades, Noticee No. 1 had last traded in securities market on December 11, 2012, Noticee No. 2 had not traded for more than a year and Noticee No. 3 last traded on March 13, 2013. Smt. Poonam and Shri Haresh, bought the stock options in McDowell for the first time on March 10, 2014 while Shri Varun bought on March 13, 2014. Thus, the timing / proximity of the trades of the Noticees to the UPSI period and that they consistently had bought options with strike prices of 2,700 and 2,800 with March 24, 2014 expiry during the period March 12, 2014 to March 20, 2014. Suddenly, after a gap of almost a year, out of approximately 200 possible options contracts available for trading during the relevant period of time, Noticees decided to trade in McDowell-N where Shri Nishat was an insider and took an exposure not commensurate with their trading in securities market as discussed in subsequent paragraphs.

15.15.2 Noticees have submitted that they traded in Nifty as USL was to be included in the Nifty Index. In this regard, I have noted that 8 scrips were included and excluded respectively in the Nifty Index during the period April 2013 – March 2015. A summary of the same is provided in the table below:

Table-2

Event Date	Scrip Name	Description
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01-Apr-13	Siemens Ltd.	Exclusion from Index
01-Apr-13	Wipro Ltd.	Exclusion from Index
01-Apr-13	IndusInd Bank Ltd.	Inclusion into Index
01-Apr-13	NMDC Ltd.	Inclusion into Index
27-Sep-13	Reliance Infrastructure Ltd.	Exclusion from Index
27-Sep-13	Wipro Ltd.	Inclusion into Index
28-Mar-14	Jaiprakash Associates Ltd.	Exclusion from Index
28-Mar-14	Ranbaxy Laboratories Ltd.	Exclusion from Index
28-Mar-14	United Spirits Ltd.	Inclusion into Index
28-Mar-14	Tech Mahindra Ltd.	Inclusion into Index
19-Sep-14	United Spirits Ltd.	Exclusion from Index
19-Sep-14	Zee Entertainment Enterprises Ltd.	Inclusion into Index
27-Mar-15	DLF Ltd.	Exclusion from Index
27-Mar-15	Jindal Steel & Power Ltd.	Exclusion from Index
27-Mar-15	Vodafone Idea Ltd.	Inclusion into Index
27-Mar-15	Yes Bank Ltd.	Inclusion into Index

15.15.3 However, Noticees have not traded in any of the above scrips except USL during the said period even though they were also included in the Index. Therefore, the argument of Noticees in this regard cannot be accepted.

15.16 Trades done by Noticees in other scrips during the period April 2013 – March 2015

15.16.1 During the aforesaid period of 2 years, Noticees had traded in Nifty and 4 other scrips in F&O segment at NSE.

15.16.2 Nifty Trades

15.16.2.1 For the trading in Nifty, Noticees have submitted that they traded in Nifty as USL was going to be included in the index and Noticee was expecting an increase in the underlying price of USL and thus the value of the option contract of Nifty also. Upon perusal of the trades of Noticees in Nifty Options, I note that the positions taken by Noticees were always closer to in-the-money (i.e. for call options, their strike price was less than the underlying price and for put options, their strike price was more than the underlying price). This means that Noticees took safe positions in Nifty options i.e. they did not anticipate substantial changes in the price and were trading around the

underlying price which is substantially different from their trading in USL during March – April 2014 which is discussed in subsequent paragraphs.

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

15.16.3 Also, during the two financial years i.e., 2013-2014 and 2014-2015, apart from doing derivative trading in NIFTY and McDowell, Noticees have bought stock options in four scrips and sold stock options in 3 scrips. All the buying and selling in the options have been executed on the same day i.e., intra-day trades, except the scrip of State Bank of India (buy transactions was executed on 3 days and sell transactions was executed on 4 days) and number of transactions executed in a day was not more than 8 instances. Noticees always took in-the-money positions and the premium paid by the Noticees was just ₹1.3 lakh in all the trades. Noticees never took out-of-the-money positions in any of these 4 scrips and the profit earned by them was almost negligible. This is in complete contrast with the trades undertaken by Noticees in USL during March –

April 2014 which is discussed in subsequent paragraphs.

15.17 Probability of knowledge of UPSI

15.17.1 I have perused the trading done by Noticees from April 2013 – March 2015 in the F&O segment. I note that from April 01, 2013 till March 09, 2014, Noticees had not undertaken a single trade in F&O segment. However, from March 10, 2014 onwards, they built their positions in USL (McDowell-N) for March and April expiry contracts in deep-out-of-the-money contracts. The trades done by Noticees for March and April expiry contracts of McDowell-N is provided in the tables below:

Table-3

McDowell-N March Expiry Contracts (Expiry Date: March 27, 2014)

Date of Trade	Client Name	Strike Price	Underlying Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg. Price	Sell Avg. Price	Days Buy Value	Days Sell Value	Pay Out
10-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2466.6	8,000	0	12.66		1,01,275.00	0.00	-1,01,275.00
10-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2466.6	8,000	0	13.05		1,04,362.50	0.00	-1,04,362.50
11-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2467.7	8,000	0	11.27		90,181.25	0.00	-90,181.25
11-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2467.7	9,000	0	10.17		91,562.50	0.00	-91,562.50
12-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2469.2	14,000	0	7.93		1,11,056.25	0.00	-1,11,056.25
12-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2469.2	19,625	0	7.77		1,52,418.75	0.00	-1,52,418.75
12-Mar-2014	POONAM HARESH JASHNANI	2,800.00	2469.2	7,000	0	4.27		29,856.25	0.00	-29,856.25
12-Mar-2014	HARESH PARMANAND JASHNANI	2,800.00	2469.2	2,625	0	3.98		10,456.25	0.00	-10,456.25
13-Mar-2014	VARUN HARESH JASHNANI	2,700.00	2495.3	16,375	0	8.29		1,35,775.00	0.00	-1,35,775.00
13-Mar-2014	VARUN HARESH JASHNANI	2,800.00	2495.3	8,000	0	4.83		38,668.75	0.00	-38,668.75
14-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2466.8	9,000	0	7.97		71,750.00	0.00	-71,750.00
14-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2466.8	11,000	0	7.42		81,631.25	0.00	-81,631.25
14-Mar-2014	HARESH PARMANAND JASHNANI	2,800.00	2466.8	1,500	0	4.35		6,525.00	0.00	-6,525.00
18-Mar-2014	VARUN HARESH JASHNANI	2,600.00	2486.05	3,000	3,000	11.25	17.78	33,756.25	53,350.00	19,593.75
18-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2486.05	10,500	2,625	9.95	9.15	1,04,506.25	24,012.50	-80,493.75
18-Mar-2014	VARUN HARESH JASHNANI	2,700.00	2486.05	7,625	7,625	9.09	7.65	69,337.50	58,350.00	-10,987.50
18-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2486.05	8,000	8,000	9.50	9.28	76,000.00	74,212.50	-1,787.50
18-Mar-2014	POONAM HARESH JASHNANI	2,800.00	2486.05	4,000	0	5.02		20,093.75	0.00	-20,093.75
18-Mar-2014	VARUN HARESH JASHNANI	2,800.00	2486.05	21,125	0	4.95		1,04,581.25	0.00	-1,04,581.25
18-Mar-2014	HARESH PARMANAND JASHNANI	2,800.00	2486.05	3,000	0	4.90		14,700.00	0.00	-14,700.00
19-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2557.8	1,250	14,375	10.99	12.75	13,737.50	1,83,287.50	1,69,550.00
19-Mar-2014	VARUN HARESH JASHNANI	2,700.00	2557.8	0	625		12.00	0.00	7,500.00	7,500.00
19-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2557.8	0	14,000		12.52	0.00	1,75,218.75	1,75,218.75
19-Mar-2014	VARUN HARESH JASHNANI	2,800.00	2557.8	0	3,750		5.16	0.00	19,362.50	19,362.50
20-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2619.6	8,875	7,000	16.20	16.68	1,43,793.75	1,16,750.00	-27,043.75
20-Mar-2014	VARUN HARESH JASHNANI	2,700.00	2619.6	2,500	0	22.90		57,250.00	0.00	-57,250.00
20-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2619.6	13,000	8,875	16.55	15.68	2,15,162.50	1,39,118.75	-76,043.75
20-Mar-2014	POONAM HARESH JASHNANI	2,800.00	2619.6	24,375	0	14.26		3,47,581.25	0.00	-3,47,581.25

20-Mar-2014	VARUN HARESH JASHNANI	2,800.00	2619.6	20,250	0	10.89		2,20,431.25	0.00	-2,20,431.25
20-Mar-2014	HARESH PARMANAND JASHNANI	2,800.00	2619.6	21,625	0	16.42		3,55,037.50	0.00	-3,55,037.50
21-Mar-2014	POONAM HARESH JASHNANI	2,700.00	2648.4	0	35,625		52.79	0.00	18,80,681.25	18,80,681.25
21-Mar-2014	VARUN HARESH JASHNANI	2,700.00	2648.4	0	18,250		48.69	0.00	8,88,656.25	8,88,656.25
21-Mar-2014	HARESH PARMANAND JASHNANI	2,700.00	2648.4	0	37,750		47.05	0.00	17,76,268.75	17,76,268.75
21-Mar-2014	POONAM HARESH JASHNANI	2,800.00	2648.4	0	35,375		21.72	0.00	7,68,387.50	7,68,387.50
21-Mar-2014	VARUN HARESH JASHNANI	2,800.00	2648.4	0	45,625		23.20	0.00	10,58,456.25	10,58,456.25
21-Mar-2014	HARESH PARMANAND JASHNANI	2,800.00	2648.4	0	28,750		20.12	0.00	5,78,550.00	5,78,550.00

Table- 4

McDowell-N April Expiry Contracts (Expiry Date: April 24, 2014)										
Date of Trade	Client Name	Strike Price	Underlying Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg. Price	Sell Avg. Price	Days Buy Value	Days Sell Value	Pay Out
11-Apr-2014	POONAM HARESH JASHNANI	2,700.00	2557.25	9,250	0	42.59		3,93,968.75	0.00	-3,93,968.75
11-Apr-2014	VARUN HARESH JASHNANI	2,700.00	2557.25	3,750	0	42.18		1,58,181.25	0.00	-1,58,181.25
11-Apr-2014	HARESH PARMANAND JASHNANI	2,700.00	2557.25	6,250	0	40.55		2,53,437.50	0.00	-2,53,437.50
11-Apr-2014	POONAM HARESH JASHNANI	2,750.00	2557.25	4,750	0	30.73		1,45,968.75	0.00	-1,45,968.75
11-Apr-2014	HARESH PARMANAND JASHNANI	2,750.00	2557.25	4,375	0	31.19		1,36,468.75	0.00	-1,36,468.75
11-Apr-2014	POONAM HARESH JASHNANI	2,800.00	2557.25	21,375	0	24.44		5,22,306.25	0.00	-5,22,306.25
11-Apr-2014	VARUN HARESH JASHNANI	2,800.00	2557.25	17,625	0	25.81		4,54,956.25	0.00	-4,54,956.25
11-Apr-2014	HARESH PARMANAND JASHNANI	2,800.00	2557.25	8,375	0	23.87		1,99,900.00	0.00	-1,99,900.00
11-Apr-2014	POONAM HARESH JASHNANI	2,850.00	2557.25	2,750	0	16.66		45,806.25	0.00	-45,806.25
11-Apr-2014	POONAM HARESH JASHNANI	2,900.00	2557.25	1,000	0	12.63		12,625.00	0.00	-12,625.00
11-Apr-2014	VARUN HARESH JASHNANI	2,900.00	2557.25	33,125	0	14.58		4,82,818.75	0.00	-4,82,818.75
11-Apr-2014	HARESH PARMANAND JASHNANI	2,900.00	2557.25	1,375	0	13.69		18,818.75	0.00	-18,818.75
11-Apr-2014	VARUN HARESH JASHNANI	3,000.00	2557.25	3,750	0	10.88		40,781.25	0.00	-40,781.25
15-Apr-2014	POONAM HARESH JASHNANI	2,700.00	2853.95	125	1,625	154.40	153.23	19,300.00	2,49,006.25	2,29,706.25
15-Apr-2014	HARESH PARMANAND JASHNANI	2,700.00	2853.95	0	1,625		156.57	0.00	2,54,431.25	2,54,431.25
15-Apr-2014	POONAM HARESH JASHNANI	2,750.00	2853.95	0	1,500		106.18	0.00	1,59,268.75	1,59,268.75
15-Apr-2014	HARESH PARMANAND JASHNANI	2,750.00	2853.95	0	1,375		109.81	0.00	1,50,987.50	1,50,987.50
15-Apr-2014	POONAM HARESH JASHNANI	2,800.00	2853.95	0	9,375		72.57	0.00	6,80,343.75	6,80,343.75
15-Apr-2014	VARUN HARESH JASHNANI	2,800.00	2853.95	0	11,250		72.50	0.00	8,15,662.50	8,15,662.50

15-Apr-2014	HARESH PARMANAND JASHNANI	2,800.00	2853.95	0	625		72.96	0.00	45,600.00	45,600.00
15-Apr-2014	POONAM HARESH JASHNANI	2,850.00	2853.95	0	2,750		40.95	0.00	1,12,606.25	1,12,606.25
15-Apr-2014	POONAM HARESH JASHNANI	2,900.00	2853.95	2,750	3,750	17.15	19.39	47,162.50	72,706.25	25,543.75
15-Apr-2014	VARUN HARESH JASHNANI	2,900.00	2853.95	0	33,125		18.49	0.00	6,12,393.75	6,12,393.75
15-Apr-2014	HARESH PARMANAND JASHNANI	2,900.00	2853.95	2,750	4,125	16.75	20.43	46,062.50	84,287.50	38,225.00
15-Apr-2014	VARUN HARESH JASHNANI	3,000.00	2853.95	0	3,750		7.30	0.00	27,368.75	27,368.75
16-Apr-2014	POONAM HARESH JASHNANI	2,700.00	2871.8	0	7,750		165.34	0.00	12,81,406.25	12,81,406.25
16-Apr-2014	VARUN HARESH JASHNANI	2,700.00	2871.8	0	1,250		169.20	0.00	2,11,500.00	2,11,500.00
16-Apr-2014	HARESH PARMANAND JASHNANI	2,700.00	2871.8	0	4,625		167.26	0.00	7,73,562.50	7,73,562.50
16-Apr-2014	POONAM HARESH JASHNANI	2,750.00	2871.8	0	3,250		113.77	0.00	3,69,743.75	3,69,743.75
16-Apr-2014	HARESH PARMANAND JASHNANI	2,750.00	2871.8	0	2,250		121.72	0.00	2,73,875.00	2,73,875.00
16-Apr-2014	POONAM HARESH JASHNANI	2,800.00	2871.8	0	8,750		76.86	0.00	6,72,493.75	6,72,493.75
16-Apr-2014	HARESH PARMANAND JASHNANI	2,800.00	2871.8	0	250		74.00	0.00	18,500.00	18,500.00
17-Apr-2014	HARESH PARMANAND JASHNANI	2,750.00	2853.4	0	250		111.00	0.00	27,750.00	27,750.00
17-Apr-2014	POONAM HARESH JASHNANI	2,800.00	2853.4	0	2,250		63.58	0.00	1,43,062.50	1,43,062.50
17-Apr-2014	VARUN HARESH JASHNANI	2,800.00	2853.4	0	2,000		68.66	0.00	1,37,325.00	1,37,325.00
21-Apr-2014	POONAM HARESH JASHNANI	2,800.00	2847.3	0	1,000		52.16	0.00	52,156.25	52,156.25
21-Apr-2014	VARUN HARESH JASHNANI	2,800.00	2847.3	0	2,625		51.42	0.00	1,34,968.75	1,34,968.75
21-Apr-2014	HARESH PARMANAND JASHNANI	2,800.00	2847.3	0	1,375		47.28	0.00	65,012.50	65,012.50
21-Apr-2014	VARUN HARESH JASHNANI	2,850.00	2847.3	0	3,875		12.56	0.00	48,668.75	48,668.75
21-Apr-2014	HARESH PARMANAND JASHNANI	2,850.00	2847.3	0	2,250		11.99	0.00	26,981.25	26,981.25
22-Apr-2014	HARESH PARMANAND JASHNANI	2,800.00	2833.1	0	3,250		37.73	0.00	1,22,625.00	1,22,625.00
22-Apr-2014	HARESH PARMANAND JASHNANI	2,850.00	2833.1	0	1,000		13.00	0.00	13,000.00	13,000.00

15.17.2 For March expiry contracts, Noticees have paid a premium of ₹28.01 lakhs (approx.) to purchase the said contracts and have sold the said contracts for ₹78.02 lakhs (approx.), thereby earning a profit of ₹50 lakhs (approx.). Similarly, for April expiry contracts, Noticees have paid a premium of ₹29.78 lakhs (approx.) to purchase the said contracts and have sold the said contracts for ₹76.37 lakhs (approx.), thereby earning a profit of ₹46.6 lakhs (approx.).

15.17.3 Apart from their trades during the aforesaid period of March – April 2014, Noticee Nos. 2 and 3 traded in Options contracts of McDowell-N during June 2014, July 2014, August 2014 and September 2014. A brief summary of the trades of Noticees in USL (McDowell-N) during the period of March – September 2014 is provided below:

Table-5

McDowell-N Contracts				
Expiry Month	Premium Paid (₹)	Returns (₹)	Profit / Loss (₹)	Average Variation from Underlying Price vis-à-vis Strike Prices of Contracts
March 2014	28,01,487	78,02,162	50,00,675	9%
April 2014	29,78,562	76,37,293	46,58,731	10%
June 2014	6,03,543	3,09,300	(2,94,543)	2%
July 2014	3,35,225	3,92,281	57,056	6%
August 2014	3,28,981	1,57,268	(1,71,712)	2%
September 2014	25,481	28,137	2,656	1%

15.17.4 As can be seen from the above tables, Noticees have continuously bought deep out-of-the-money call option contracts in USL, paying a relatively large premium, only during the period March-April 2014. On average, their call option strike price (i.e., the price at which they have purchased the right to buy the underlying stock) during these two months was 10% higher than the then prevalent stock price in the cash market. However, for the remaining four months, Noticees' trades have been closer to at-the-money, that is, the variation of the option strike price from the underlying scrip price is significantly lesser than March-April

expiry contracts.

15.17.5 When one purchases a large amount of 10% out-of-the-money call option that expires in a few days (i.e., when one purchases the right to buy a significant amount of the underlying scrip a few days later at a price 10% higher than the prevalent price), one is taking a substantial risk. Unless the price moves up sharply, and/ or market expectations and volatility dramatically rise over the next few days, the value of the option will decline rapidly over time. At the limit, when the option expiry comes up, if the underlying price has not moved up, the original option buyer stands to forgo the entire premium.

15.17.6 When the Noticees purchased out-of-the-money call options of USL from March 10, 2014 (for March 27, 2014 expiry) for ₹28.01 lakhs, and on April 11, 2014 (for April 24, 2014 expiry) for ₹29.78 lakhs, therefore, they were potentially risking the entire option amount paid, unless there was a substantial move up in the underlying scrip price and/ or volatility and market expectations over that short period of time.

15.17.7 It is pertinent to note that the Noticees took such risky out-of-the-money call option bets only on two occasions – during March 2014 and April 2014. They held such bets for about 14 days (spanning these two occasions), out of the 278 trading days between March 2014 and April 2015. Taking this period, the probability that they were running such risky bets during that time was about 5% (i.e. 14 trading days out of 278 trading days).

15.17.8 Such risky bets would pay off only if there were a sharp rise in the value or volatility of the underlying scrip over a very short period of time. During the said period of March 2014 – April 2015 (spanning 278 trading days), there were only 16 instances where the price of the underlying USL scrip moved up by more than 10% over the course of seven trading days. In probabilistic terms, the probability of a more-than-

10% move in the price of USL scrip over seven trading days during that time can said to be 16/278, or 5.75%.

15.17.9 Fortuitously or otherwise for the noticees, the only two times that they took such risky out-of-the-money call option bets by paying and risking substantial option premium, the market moved dramatically in their favour, and their bets paid off handsomely. Thus, they were able to sell their March 2014 expiry out-of-the-money call options, for which they had paid INR 28.01 lakhs, for INR 78.02 lakhs, or for 278% of the principal deployed. Likewise, they were able to sell their April 2014 expiry out-of-the-money call options, for which they had paid INR 29.78 lakhs, for INR 76.37 lakhs, or for 256% of the principal deployed. Note that there a UPSI period during substantial parts of both March 2014 and April 2014.

15.17.10 What is the probability that this was entirely fortuitous or attributable to some unique skill of the noticees? As we have seen, the noticees were very selective in deploying such risky strategies; they deployed them only about 5% of the time. We have also seen that the probability of a substantial rise in the USL stock price over a short time during that period was about 5.75%. If these were independent events, the probability of them coinciding once is about 0.29%. The probability that the two events (one of large risk taking by the noticees, and of a large move in the underlying scrip) would coincide and overlap not just once, but twice within the period, is 0.0008%. In other words, the odds against something like this happening is 99.9992%. And yet, this is indeed what we have witnessed in this case.

15.17.11 If we add to this the context of the close relationship between the Noticees and Shri Nishat, and the context that if this was on the back of some special skills of the noticees in stockpicking, such skill was never on display again from the noticees in USL or in any other security, the preponderance of probability would veer towards the other rational

explanation; i.e., that these were not two independent events at all, but that the noticees very likely had the advantage of knowledge of the UPSI that informed their large bets during that specific period.

Hypothesis of the Noticees

15.18 Rather than justifying the peculiarity of their trading pattern, Noticees have presented various alternate hypothesis regarding what would constitute insider trading behavior. I will now deal with the Noticees main contentions/ hypothesis.

15.18.1 Trading in Options vis-à-vis Cash and Futures

15.18.1.1 I note that trading in options gives more exposure to the trader at a lower investment than trading in equity, thereby proportionately on a comparative basis the profit made by trading in options compared to equity, will be more.

15.18.1.2 In the instant matter, the Noticees bought out-of-the-money Options at a much lesser premium than the equity shares which enabled them to have more exposure leading them to make much more profit as a percentage of their investment than by trading in equity shares, for the same increase in the underlying asset.

15.18.2 Only April Expiry contracts would have been purchased had UPSI been known

15.18.2.1 Considering there is more time available for the April Expiry contracts compared to March Expiry contracts, April Expiry contracts have more time value and hence are more expensive than March Expiry contracts. Further, the liquidity / no. of contracts available for April Expiry in the first couple of weeks of March would generally be lower than liquidity for March Expiry. Thus, investing in March Expiry Options would also be a logical and viable strategy

when one is in possession of UPSI. It is one of the strong circumstantial evidences that unless the Noticees were in possession of UPSI, they would not have had the confidence that in all probability the value of the underlying would reach near the open offer price of ₹3,030 in April and thus, would not have had the confidence to buy options with strike price range of ₹2,600 to ₹3,000 in March. In any case, as the settlement price of the March Expiry contracts towards expiry had increased manifold from the time the Noticees had bought the options, Noticees booked profit in the said contracts right away.

15.18.2.2 Noticees have submitted that if at all they had bought March Expiry contracts, they would rollover the same to April Expiry. It is relevant to mention that, unlike Futures, the Options contract cannot be rolled over. They are either exercised if they are in-the-money or expire worthless if are out-of-the-money on expiry date.

15.18.2.3 If the Noticees would have to roll over positions to next month, they had to close their existing positions and purchase the options of next expiry. I note that a person trading in the market is always looking to book maximum profits and his decisions are influenced by the price movement in the contracts.

15.18.2.4 With respect to the March expiry contracts, it is noted from the price data for McDowell call option during the period March 3, 2014 to March 27, 2014 that the settlement price of McDowell call option was very high during the period March 20, 2014 to March 22, 2014 in the range of ₹54.20 to ₹83.55 and there was a good opportunity to book profit which the Noticees took instead of settling them.

15.18.2.5 Noticees have submitted that if they had UPSI, they would have bought at-the-money contracts. In this regard, it is noted that at-the-money Option has much higher premium than the out-of-the-

money Option. The same not only limits the exposure, but the profit made in out-of-the-money Option is significantly higher than at-the-money Option.

15.18.2.6 Since, the Noticees had purchased deep-out-of-the-money options, they booked profits on the price rise witnessed during March 19, 2014 and March 21, 2014 (i.e. the price of the scrip of USL increased from ₹2486.05 on March 18, 2014 to close at ₹2648.4 on March 21, 2014) and completely closed their positions on March 21, 2014. If the entities had not closed their positions on March 21, 2014, their positions would have expired worth less on expiry.

15.18.2.7 Post booking profit, Noticees did not immediately take any positions in the April Expiry contracts and instead purchased deep-out-of-the-money contracts for April expiry just before the announcement of UPSI when the price of underlying scrip was ₹2557.25 with a variation ranging from 10% – 18% from the underlying price. Noticees have not provided any reason for taking such extreme positions. As already discussed, this provide a strong inference that the trading was done while in possession of UPSI.

15.18.3 Expiry of Certain Contracts at loss / worthless

15.18.3.1 Noticees have submitted that the April 2014 contracts with strike price 2800CE expired at a loss of the premium and April 2014 contracts with strike price 29000CE and 3000CE expired "worthless".

15.18.3.2 With respect to April 2014 contracts with strike price 2800CE, it is noted that Smt. Poonam had bought 21,375 stock options on April 11, 2014 at ₹24.44 and had sold 20,375 options between the period April 15 -17, 2014, at an average price of ₹71. Shri Haresh had bought 8,375 stock options of April 24, 2014 expiry with strike price 2800CE on April 11, 2014 at ₹23.87. He had sold

5,500 of the said contracts during the period April 15 - 22, 2014 at an average price of ₹57.99. Shri Varun also had bought on April 11, 2014, 17,625 stock options at the strike price of 2,800CE with April 24, 2014 expiry at ₹25.81. He had sold 15,875 options during the period April 15 - 21, 2014, at an average price of ₹64.19. Thus, based on the trading of the Noticees in April 2014 contracts with strike price 2800CE, it is noted that Noticees have made profits while dealing in the April 2014 contracts with strike price 2800CE. Further, though some of the contracts bought by the Noticees expired worthless, but looking holistically at the trading done by Noticees in the April 2014 contracts with strike price 2800CE, 2900CE and 3000CE, Noticees have made substantial profits as mentioned in Tables above.

15.18.3.3 Thus, in this context, the fact that some of the options expired worthless is irrelevant, as the Noticees had reaped profits out of their other positions without waiting for the expiry date. Furthermore, as observed by Hon'ble SAT in *Mr. Harish K Vaid vs. The Adjudicating Officer* decided on October 3, 2012 that the quantum of trading done or the profits earned becomes immaterial in insider trading matters as the purpose of insider trading regulations is to prohibit trading by which an insider gets advantage by virtue of his access to price sensitive information.

15.18.4 Delta Positions of Noticees

15.18.4.1 I note that Noticees have compared their delta positions across all positions in the options contracts of USL on two particular days (March 20, 2014 and April 11, 2014) with respect to two completely different contracts (March Expiry and April Expiry) which is not an accurate comparison to highlight the positions taken by Noticees. Delta of an option is the change in the option's price or

premium due to change in the price of the underlying. Delta of the option contract depends upon the type i.e. call or put, the strike price, the volatility of the underlying, the risk free rate and the time to maturity. An in-the-money option will have a higher delta than an at-the-money option which will have a higher delta than an out-of-the-money option.

15.18.4.2 As already mentioned above, options contract cannot be rolled over like futures. As Noticees bought deep-out-of-the-money contracts (2700CE and 2800 CE), they booked profits on price rise around March 20, 2014 when the underlying scrip reached around ₹2650.

15.18.4.3 Noticees again purchased deep-out-of-the-money call options on April 11, 2014, the previous trading day before the date of announcement. Because they bought deep-out-of-the-money options of strike prices – 2700, 2800, 2900 and even 3000 when the underlying prices closed at ₹2557.25, the delta of these options were negligible and even though the entities bought huge quantities of such options, their overall delta remained low in comparison to that on March 20, 2014.

15.18.4.4 The total pay in requirement of the Noticees, underlying wise, from trading the options on NSE was maximum for USL i.e. ₹28.66 lakhs on April 11, 2014 and the second highest pay in requirement was of ₹17.54 lakhs for trades in options of Nifty on March 27, 2014.

15.18.4.5 Therefore, the submissions of Noticees on delta positions on March 20, 2014 and April 11, 2014 cannot be accepted.

Fund Transactions and Relationship between Noticees and Shri Nishat

- 15.19 It is noted from the Investigation Report that Smt. Poonam (A/c No. 016200100012532, Saraswat Bank) transferred ₹18.40 lakh received from Religare Securities Ltd. as a part of futures settlement proceeds pertaining to the trades in the symbol of McDowell-N to Shri Haresh (A/c No. 016200100012563, Saraswat Bank) on May 09, 2014. After receipt of the said funds, Shri Haresh had transferred the entire funds to the bank account of his daughter Smt. Menka Haresh Jashnani, w/o Shri Nishat.
- 15.20 Noticees have submitted that Shri Haresh had earlier transferred ₹15.70 lakhs to Smt. Poonam and the same was returned by her with an excess of ₹2.70 lakh. Noticees have submitted that fund transfer was done to meet the expenses of Smt. Poonam and Shri Haresh in United Kingdom, as they were travelling to meet their daughter and grandson and that Shri Haresh had transferred a sum of ₹9.24 lakh to his daughter previously on September 13, 2003. Noticees have submitted VAT refund receipts from UK for the expenses incurred by them through the credit card of Smt. Menka.
- 15.21 I have considered the submissions of Noticees in this regard. However, the following aspects continue to render the impugned fund transfers as being suspicious and constitute circumstantial evidence of insider trading:
- (a) The proximity of transfer funds from Religare Securities Ltd. to Smt. Poonam to Shri Haresh and immediate transfer of funds by Shri Haresh to his daughter.
 - (b) As per the documents available on record and submissions of Noticees, there has been no financial transaction between Shri Haresh and his daughter subsequent to her marriage in the year 2008 except the one made on May 9, 2014. Transfer of a sum of ₹9.24 lakh to his daughter previously on September 13, 2003, is not supported by any documentary evidence or explanation.

- (c) Smt. Poonam and Shri Haresh have not demonstrated that this was the only time that they have travelled to meet their daughter or that they have transferred funds to her, prior to some other visit to her as well.

Communication of UPSI

- 15.22 It has been held in preceding paragraphs that Shri Nishat had access to UPSI and he was the son-in-law of Shri Haresh and Smt. Poonam and brother-in-law of Shri Varun. Noticees have not made any submission that there was any animosity between them and Shri Nishat. In fact, it is on record that Noticee Nos. 1 and 3 had visited their daughter Menka (Shri Nishat's wife) and Shri Nishat in London in May 2014 and incurred huge expenses for the said trip which shows that they shared a cordial relationship with each other.
- 15.23 In view of the aforesaid discussions, based on the trading behavior of the Noticees, movement of funds between stock broker to Smt. Poonam to Shri Haresh to the wife of Shri Nishat and the family relationship amongst them, there is a strong preponderance of probability that when the trades were executed by Shri Haresh, Shri Varun and Smt. Poonam in the stock options of McDowell, they were in the possession of UPSI i.e. they had received the UPSI prior to trading.
- 15.24 Noticees have submitted that as per definition of insider under Regulation 2(e)(ii) of PIT Regulations, one must either have actually received the UPSI or actually had access to such UPSI in any manner. Further, to prove the violation of Regulation 3 of PIT Regulations, the actual receipt of information has to be proved and the onus of showing that a certain person was in possession of or had access to the UPSI is on SEBI. Noticees have relied on the decision of Hon'ble Supreme Court in Balram Garg (*supra*) to contend that burden of proof is on SEBI to establish any communication of UPSI by placing on record cogent evidence. The relevant extracts of the

judgment of Hon'ble Supreme Court in Balram Garg (*supra*) are reproduced below:

“40. We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No.7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A. No.7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties. In this context, even the show-cause notices do not allege any communication between the Appellant Balram Garg and the other appellants in C.A. No.7590 of 2021.....

.....

*47. Lastly, we have given our anxious consideration to the judgements relied upon by the learned counsel of the Respondent viz. **SEBI vs Kishore R. Ajmera [(2016) 6 SCC 368]** and **Dushyant N. Dalal vs. SEBI [(2017) 9 SCC 660]**. Suffice it to hold that these cases are distinguishable on the facts of the present case, as the former is not a case of insider trading but that of Fraudulent/Manipulative Trade Practices; and the latter case relates to Interests and Penalty rather than the subject matter at hand. Reliance placed on the case of **Kishore R. Ajmera (supra)** to show that presumption can be*

*drawn on the basis of immediate and relevant facts is contrary to law already settled by this Court in the case of **Chintalapati Srinivasa Raju (supra)** where it is held that “a reasonable expectation to be in the know of things can only be based on reasonable inference drawn from foundational facts”. It has further been held that merely because a person was related to the connected person cannot by itself be a foundational fact to draw an inference.*

48. We are of the firm opinion that there is no correlation between the UPSI and the sale of shares undertaken by the appellants in C.A. No.7590 of 2021. Moreover, in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No.7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A. No.7590 of 2021. There is no material on record for the WTM and the SAT to arrive at the finding that both late P.C. Gupta and the appellant Balram Garg communicated the UPSI to the other appellants in C.A. No.7590 of 2021....."

- 15.25 Upon perusal of the aforesaid judgment I note that Hon'ble Supreme Court has categorically stated that trading pattern cannot be a circumstantial evidence to prove the communication of UPSI and communication can be proved by showing cogent materials for the same. I note that at the time of passing of the earlier order of SEBI in the matter in January 2020, the test of preponderance of probabilities as laid down by the Hon'ble Supreme Court in the matter of SEBI v. Kishore R. Ajmera ((2016) 6 SCC 368) was followed which held that in absence of direct evidence, test would be to reach a conclusion on the basis of immediate and proximate facts and circumstances surrounding the events.

CONCLUSION

- 15.26 As has already been explained in paragraph 15.17 above, given Noticees' trading patterns and the nature of market moves during the relevant period, the probability that the Noticees managed to fortuitously coincide their large risk positions in March and April of 2014 with the sharp market moves in their favour, was just 0.0008%. This clearly points to the preponderance of probability of them having been in possession of UPSI when they dealt in the scrip of USL. In all likelihood, such UPSI would have been received from Shri Nishat Gupte (*who was the son-in-law of Noticee Nos. 1 & 3*) considering his role in the company, as has already been elaborated in para 14.15 above.
- 15.27 However, in the matter of Balram Garg (*supra*), the Hon'ble Supreme Court has differentiated its decision in Kishore R. Ajmera (*supra*) by stating that a reasonable expectation can only be based on reasonable inference drawn from foundational facts and merely because a person was related to the connected person cannot by itself be a foundational fact to draw an inference of communication of UPSI. In view of the above, as on date, the test laid down by Hon'ble Supreme Court in the matter of Balram Garg (*supra*) is in force.
- 15.28 I note that in the present matter the Investigation Report and the material available on record does not refer to any communication between Shri Nishat and the Noticees. Pursuant to replies filed by Noticees to the SCN, it was informed that they had undertaken a trip to London inter alia to participate in Noticee No. 1 and 3's grandson's (*son of Nishat*) birthday. This trip took place more than a month after the UPSI period and as per the tickets submitted by the Noticees, the trip was booked two-three weeks after the UPSI period. While the trip to London could serve as an inference of the Noticees having a cordial relationship with Nishat and his family, it does not adequately satisfy the test of 'cogent evidence' required to prove

communication of UPSI, as laid down by the Hon'ble Supreme Court in the Balram Garg case (*supra*) discussed in previous paragraphs.

15.29 There is a strong preponderance of probability that the positions taken by Noticees in USL during March - April 2014 could not have been taken without having access to UPSI. However, in absence of any cogent evidence of communication, in view of the decision of Balram Garg (*supra*), I cannot rely solely on the peculiar trading pattern of the Noticees to draw an inference that they traded while in possession of UPSI.

15.30 Thus, based on the material available on record and the requirements of evidence as mandated by the Hon'ble Supreme Court in the matter of Balram Garg (*supra*), I must conclude that Noticees cannot be regarded as insiders under Regulation 2(e) of PIT Regulations, 1992. Consequently, Noticees cannot be said to be in violation of Regulations 3(i) & 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Sections 12A (d) and (e) of SEBI Act.

Part III- Computation of Illegal Gains

16. As the trades of Noticees in the instant matter are not in violation of PIT Regulations in view of the decision of Hon'ble Supreme Court in Balram Garg (*supra*), the profits made by them in such trades cannot be termed as illegal gains.

DIRECTIONS:

17. In view of the above, the Show Cause Notice dated March 29, 2017 issued to Noticees is disposed of without passing any directions against the Noticees.

18. This order shall come into force with immediate effect.

19. A copy of this order shall be served upon Smt. Poonam Haresh Jashnani, Shri Haresh Parmanand Jashnani and Shri Varun Haresh Jashnani, Stock

Exchanges and Depositories for necessary action and compliance, if any, with the above directions.

Sd/-

Place: Mumbai

ANANTH NARAYAN G.

Date: August 25, 2023

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA