BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/GD/2022-23/20170)

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

In respect of Monika Arora

(PAN: AAAPK2238G)

In the matter of NIIT Technologies Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the activities of NIIT Technologies Ltd. and certain other entities during the period December 22, 2014 to March 23, 2015 (hereinafter referred as 'Investigation period') to ascertain if there was any violation of the various provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act 1992"), Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act 1992"), SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") PIT Regulations and the Listing Agreement pursuant to corporate disclosure made viz. March 23, 2015, on the next day the scrip price of NIIT opened at Rs. 367.1 on BSE and touched a low of Rs. 340 before closing at Rs. 350.75. Thus, the price of the scrip decreased by 6.37% on BSE on March 24, 2015 from previous day's closing price. Similarly, the price of the scrip fell by 5.96% on NSE on March 24, 2015.

2. During the course of investigation, it was observed that Ms. Monika Arora (hereinafter referred to as 'Noticee/ Monika'), NIIT Technologies Ltd., Rosita

Rabindra and Devendra Gupta had allegedly violated the following provisions as tabulated below:

Sl.No.	Name of the entity	Alleged Violations
1.	NIIT Technologies Ltd. (NIIT / Company)	Clause 36 of the listing agreement read with Regulation 103(2) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**Listing Agreement'**)
2.	Monika Arora	a. Clause 3.2 read with clause 3.1 under Schedule II of Code of Corporate disclosure practices for Prevention of Insider Trading, read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations - 2015**'). b. Clause 3.2 read with clause 1.2 under Schedule I – Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies, read with Regulation 12(1) of the PIT Regulations and Regulation 12 of the PIT Regulations - 2015. c. Clause 1.2 read with clause 3.3.2 and 3.3.3 under Schedule I – Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies read with Regulation 12(1) of PIT Regulations and Regulation 12 of the PIT Regulations - 2015.
3.	Rosita Rabindra	• Violation of regulation 13(4) read with regulation 13(5) of the PIT Regulations, 1992 read with Regulation 12 of the PIT Regulations - 2015.
4.	Devendra Gupta	• Clause 3.3.1 under Schedule I – Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies, read with Regulation 12(1) of PIT Regulations, 1992 and Reg 12 of SEBI (PIT) Reg, 2015. • Clause 4.2 under Schedule I – Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies, read with Regulation 12(1) of PIT Regulations, 1992 and Reg 12 of SEBI (PIT) Reg, 2015. • Violation of regulation 13(4) read with regulation 13(5) of SEBI (PIT) Regulations, 1992 and Reg 12 of SEBI (PIT) Reg, 2015.

3. Based on the findings of investigation, SEBI initiated adjudication proceedings against the Noticee and others indicated above under the provisions of Section 15HB SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI vide Communiqué dated 04 May 2020 had appointed Ms. Anitha Anoop as Adjudicating Officer. Pursuant to transfer of Ms. Anitha Anoop, vide order dated October 21, 2020, the matter was transferred to Shri Suresh Menon Subsequently, vide order dated June 06, 2022, the matter was transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice ref. SEBI/EAD/AA/KL/12850/2020 dated August 06, 2020 (hereinafter referred to as "**SCN"**) was issued to the Noticee and other entities in terms of the provisions of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of section 15HB of the SEBI Act, 1992. I note that SCN was duly served to the said Noticee vide speed post Acknowledgement due and email dated August 19, 2020. The SCN was also served to the other entities in the instant matter. In respect of NIIT Technologies Ltd., SCN was disposed off as NIIT Technologies Ltd. has opted for settlement proceedings. In respect of Rosita Rabindra and Devendra Gupta, SCN was disposed off vide adjudication orders dated September 25, 2020 and September 30, 2020 respectively.

6. The allegations levelled against the Noticee in the SCN are as follows:

a. *NIIT Technologies is a global IT solutions organization which is listed on BSE and NSE. On March 23, 2015 aftermarket hours, NIIT informed BSE and NSE 'that a dispute has arisen between one of the Company's subsidiary & its client in the APAC region which may result in claims and counter claims'. The Company also informed that it is 'exploring various options to resolve the dispute. However, in terms of its accounting policy, the company shall be providing up to a value of US$ 10mn, towards unbilled revenue, during the current quarter'. The details of the* *announcement as given in the website of BSE and NSE are enclosed as Annexure to SCN.*

b. *As the abovementioned corporate announcement made by NIIT appeared to be price sensitive, SEBI conducted an investigation into the activities of NIIT and certain other entities during the period December 22, 2014 to March 23, 2015 (hereinafter referred as 'Investigation period') to ascertain if there was any violation of the various provisions of SEBI Act, PIT Regulations and the Listing Agreement. It is observed that on the next day of making the corporate disclosure viz. March 24, 2015, the scrip price of NIIT opened at Rs. 367.1 on BSE and touched a low of Rs. 340 before closing at Rs. 350.75. Thus, the price of the scrip decreased by 6.37% on BSE on March 24, 2015 from previous day's closing price. Similarly, the price of the scrip fell by 5.96% on NSE on March 24, 2015.*

c. *It is seen that in its annual report for the F.Y. 2014-15, NIIT stated the following: "During the financial year under review, revenues increased 3% on a consolidated basis, from Rs. 23,050 million in FY2014 to Rs. 23,725 million in FY2015.The consolidated Profit after Tax (PAT) for the year was Rs. 1,141 million, representing a decline from the preceding financial year mainly due to exceptional items relating to the settlement of a dispute between one of the Company's subsidiaries and its client in the Asia-Pacific region, with a total impact of Rs. 800 million". Thus, it is observed that the above mentioned disputed Rs. 80 crore is 3.37% of the consolidated revenue of the company (Rs. 2,372.5 crore) for the F.Y. 2014-15 and it appears to be a significant change in the operations of the company. Further, it is also observed that the price of the scrip of NIIT fell by 6.37% on BSE and 5.96% on NSE on March 24, 2015 i.e the next day of the company making the corporate disclosure. Thus, the said announcement made by NIIT was, prima facie, a price sensitive information (hereinafter referred to as '**PSI'**) in terms Regulation 2(ha) of the PIT Regulations.*

d. *In this regard, the Noticees and their connection with NIIT is depicted in the following table*.

Table - 2

Sl No	Name	Connection with NIIT
Noticee 1	NIIT Technologies Ltd.	The company itself
Noticee 2	Monika Arora	Company Secretary
Noticee 3	Rosita Rabindra	Chief People Officer
Noticee 4	Devendra Gupta	Senior Vice President

e. *During the course of investigation, NIIT made several submissions with respect to the UPSI which involves NIIT, one of its subsidiaries viz. NIIT Technologies Pty Limited Australia (hereinafter referred to as '**NTPL'**) and one of its clients viz. Tenix Solutions IMES Pty. Limited (hereinafter referred to as '**TSIPL'**). As already mentioned, the information with respect to the dispute between NIIT, its subsidiary NTPL, and its client TSIPL and the subsequent provisioning of US$ 10 million towards the same was disclosed by NIIT to BSE and NSE on March 23, 2015, after market hours. Upon analysis of the above submissions made by NIIT, the chronology of events regarding the PSI is depicted in the following table*:

Table - 3

Date	***Event***
December 22, 2014	*Gadens (Law Firm) advising NIIT and NTPL to commercially resolve the issue via the dispute resolution process.*
January 05, 2015	*Gadens informing NIIT that the issue is likely to escalate and if so, then NIIT is likely to be placed in a more difficult position.*
January 14, 2015	*Board meeting of NIIT where it was approved to raise USD 10M for NTPL, Singapore to finance the projects in Singapore and its other subsidiaries*
January 21, 2015	*NIIT issued notice to TSIPL under the dispute resolution process*
March 02, 2016	*NIIT issuing without prejudice notice to TSIPL for dispute resolution process*
March 06, 2015	*TSIPL issued draft default notice to NIIT alleging breach of delivery under the agreement dated July 22, 1010 (amended on October 11, 2011 and August 02, 2012) and further claims for its entitlement to liquidated damages under the aforesaid agreement.*

Date	Event
March 13, 2015	*NTPL received three default notices from TSIPL in respect of the agreement between NTPL and TSIPL dated July 22, 2010*
March 13, 2015	*NTPL immediately informs the management of NIIT about the default notices received by NTPL*
March 16, 2015	*The validity of the claims raised by TSIPL vide the aforesaid default notices refuted by NTPL. NTPL and TSIPL engage in a dialogue process*
March 22, 2015	*Pursuant to the dialogue process, NTPL and TSIPL enter in to a standstill agreement whereby both the parties consent to suspend all activities relating to the project, including any claims, counter claims.*
March 23, 2015	*A meeting of the Board of Directors was held on March 23, 2015 (13:00 hrs) to apprise them about the dispute between NTPL and TSIPL and the requirement to make provision to the tune of US$10mn.*
March 23, 2015	*The information with respect to the dispute between the company's subsidiary and its client and the provision of US$10mn towards the same was informed to BSE (17:22) and NSE (17:27)*

f. *On perusal of the submissions made by NIIT, it is alleged that NIIT was aware of the situation from December 22, 2014 (email from Gaden enclosed as annexure to SCN). Subsequently, the company sought approval from the Board in its meeting held on January 14, 2015 to raise around USD 10 million, which was equivalent to the unbilled revenue from the project and equivalent to the disputed amount disclosed by it to NSE and BSE on March 23, 2015. From further correspondence, it has been observed that USD 10 million was raised by NIIT for investment in NTPL in order to meet its fund requirement. Therefore, the date of the email from Gadens to NIIT i.e. December 22, 2014, can be considered as the date when the information regarding the dispute came into existence. Thus the price sensitive information appears to be unpublished during the period December 22, 2014 to March 23, 2015 (hereinafter referred to as '**UPSI**').*

g. *Vide email dated February 04, 2019 (enclosed as annexure to SCN), NIIT, inter-alia, submitted the following:*

i. Monika Arora / Noticee 2 was appointed as the interim compliance officer during the period February 18, 2015 till May 31, 2015 prior to which she was assisting the secretarial team.

ii. She became privy to the dispute only on receipt of default notice dated March 13, 2015.

iii. Email dated December 22, 2014 received from Dentons (erstwhile Gadens Lawyers) was neither marked nor copied to Monika Arora.

iv. The Agenda item in the Board meeting dated January 14, 2015, relating to infusion of the amount not exceeding USD 10mn in NIIT Technologies Pte. Ltd., Singapore, was circulated on January 6, 2015. Monika Arora, being part of the secretarial team may have become aware of the Agenda when the same was circulated and/or when the minutes of the Board Meeting were finalized/signed.

h. *It is observed that Monika Arora was appointed as the interim compliance officer of NIIT during the period from February 18, 2015 to May 31, 2015, prior to which she was assisting the secretarial team. Further, it is observed that the agenda item in the Board meeting dated January 14, 2015, relating to infusion of the amount not exceeding USD 10 million in NIIT Technologies Pte. Ltd., Singapore (hereinafter referred to as '**NPLS'**), was circulated on January 6, 2015. It is alleged that she being part of the secretarial team, prima facie, became aware of the Agenda item of Board meeting relating to infusion of the amount of USD 10 million in NPLS, on or after January 06, 2015 (when the agenda item was circulated). The said amount was raised for investment in NTPL, Australia which was equivalent to the disputed amount disclosed to NSE and BSE. Therefore, it is alleged that Monika Arora became aware of the UPSI between the period January 06, 2015 – January 14, 2015, as she had access to the agenda and the minutes of the said board meeting (enclosed as annexure to SCN). In this context w.r.t the agenda and the minutes of the said board meeting, it is also alleged that she was aware of the following:*

i. *The Chief Financial Officer of the company viz. Ms Pratibha Advani (hereinafter referred to as 'Pratibha') and the Group Financial Officer of the company viz. Ms. Ashok Arora (hereinafter referred to as 'Ashok') are attending the board meeting dated January 14, 2015.*

ii. *Pratibha and Ashok getting access to the UPSI by attending the said board meeting.*

i. *Pratibha and Ashok were allegedly aware of the UPSI as they attended the Board meeting held on January 14, 2015. In this context, it is observed that Pratibha sold 25,000 shares of NIIT in the market on February 25, 2015 and Ashok sold 7037 shares of NIIT in the market on March 10, 2015. It is also observed that Pratibha and Ashok received pre-clearance for the abovementioned trades from the compliance officer viz. Monika Arora. Monika Arora being a compliance officer is responsible for monitoring adherence to the rules for the preservation of PSI, pre-clearing of designated employees', monitoring of the trades and implementation of the code of conduct under the overall supervision of the Board of the listed company. Being a compliance officer, she is also responsible for ensuring that the directors/officers/designated employees had neither received nor had access to PSI, before giving pre clearance for the transaction of the trades intended to be made by them. However, as per the discussions above, it is alleged that Monika Arora failed in her responsibility as a compliance officer by granting pre-clearance to Pratibha and Ashok knowing the fact that they had access to the UPSI and also whilst herself being aware of the same UPSI, which is in violation of Clause 1.2 read with clause 3.3.2 and 3.3.3 under Schedule I – Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies read with Regulation 12(2) of PIT Regulations and Regulation 12 of PIT Regulations, 2015.*

j. *Further, Monika Arora, being a compliance officer, had the responsibility for ensuring that the company complies with continuous disclosure requirements, overseeing and coordinating disclosure of price sensitive information to stock exchanges. In this regard, she had the responsibility for ensuring that the details of the aforesaid UPSI are disclosed by NIIT to the exchange immediately on receiving the default notice from TSIPL i.e on March 13, 2015. However, as NIIT disclosed the UPSI to the exchanges on March 23, 2015 i.e. with a delay of 10 days, it is alleged that Monika Arora failed in her responsibility as a Compliance Officer for ensuring the timely disclosure of UPSI to the exchanges by NIIT. Therefore, it is alleged that Monika Arora violated Clause 3.2 read with clause 3.1 under schedule II of Code of Corporate disclosure practices for Prevention of Insider Trading read* *with Regulation 12(2) of PIT Regulations and Regulation 12 of PIT Regulations, 2015.*

k. *Further, as per the provisions of Model Code Of Conduct For Prevention Of Insider Trading for Listed Companies read with PIT Regulations, trading window shall be closed during the time of such information which may result in change in policies, plans or operations of the company. Since the dispute between the company's subsidiary and its client had an impact on the consolidated revenue and its operations, it was required to close the trading window prior to disclosing the information in public domain. However, NIIT vide email dated September 18, 2018 (enclosed as annexure to SCN) submitted that the trading window for the said announcement was closed from April 10, 2015 onwards which is much later to the date of announcement i.e March 23, 2015. In this regard, Monika Arora as the Compliance officer of NIIT was required to close the trading window prior to disclosing the information in public domain which was allegedly not done in the instant case. Therefore, it is alleged that Monika Arora violated Clause 3.2 read with clause 1.2 under Schedule I - Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies, read with Regulation 12(1) of PIT Regulations and Regulation 12 of PIT Regulations, 2015.*

l. *Based of the above discussions Monika Arora is alleged to have committed the following violations:*

   i. *Clause 3.2 read with Clause 3.1 under Schedule II of Code of Corporate disclosure practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations and Regulation 12 of PIT Regulations, 2015.*
   ii. *Clause 3.2 read with clause 1.2 under Schedule I - Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies, read with Regulation 12(1) of PIT Regulations and Regulation 12 of PIT Regulations, 2015.*
   iii. *Clause 1.2 read with clause 3.3.2 and 3.3.3 under Schedule I - Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed*

Companies read with Regulation 12(1) of PIT Regulations and Regulation 12 of PIT Regulations, 2015

7. I note that vide email dated August 24, 2020, Noticee requested for inspection of documents. Vide email dated September 03, 2020 Noticee was granted inspection of documents through cisco webex. Vide letter dated September 22, 2020, Noticee submitted reply to the SCN. Vide email dated September 29, 2020 Noticee was granted an opportunity of hearing on October 08, 2020 by the erstwhile Adjudicating officer (Ms. Anitha Anoop). At the scheduled date of hearing, Noticee appeared and reiterated the submissions made in her reply dated September 22, 2020. Pursuant to change in adjudicating officer, Noticee submitted additional submissions vide letter dated May 14, 2022. Subsequently owing to transfer of case to the undersigned and in terms of principles of natural justice, vide email dated July 20, 2022 Noticee was provided with another opportunity of hearing on August 04, 2022, however Noticee did not appeared on the said date of hearing. Further vide letter dated August 11, 2022 and email dated August 11, 2022, Noticee was provided with another hearing opportunity on August 26, 2022. On the scheduled date Noticee appeared and reiterated the contents of reply submitted vide letter dated September 22, 2020 and sought time till September 01, 2022 to make additional submissions which was acceded to. Noticee vide letter dated September 01, 2022 has submitted her additional submissions.

8. The Key submissions made by Noticee vide replies dated September 22, 2020, May 14, 2022 and September 01, 2022 are as under:

Reply vide letter dated September 22, 2020

a. *At the outset, I wish to submit that the SCN and these proceedings are invalid and this response is being submitted without prejudice to my rights to seek that the SCN be set aside on the following grounds:*
b. *The events which are subject matter of the SCN relate to March 2015 and the SCN was issued in August 2020, which is more than 5 years from the occurrence of the said events and is, therefore, after the lapse of a reasonable period of time. This fact*

itself makes the SCN and all proceedings relating thereto invalid due to the law of limitation.

c. *Despite a written request and reminders relating thereto, I have not been provided with the information available with SEBI and the Company, which is necessary for me to prove compliance of SEBI regulations on my part. My last email on the subject dated September 14, 2020 (further to my earlier emails dated August 24, 2020 and August 27, 2020) has not yet been responded to and no indication have yet been provided whether the requested information will be shared or if the date by which a response to the SCN was requested may be extended. Therefore, I am forced to respond to the SCN without having means to access information that can help me prepare a comprehensive and factual response.*

d. *SCN relates to certain events and delays in disclosure of information relating thereto to the stock exchanges. Any cause for action against persons responsible for disclosure of such information can only be based on their knowledge and also need to pass the basic test of whether the unpublished information could have had a material impact on the share price of the Company. This has not yet been established and can only be done so after completion of adjudication proceedings against the Company. The SCN refers to only 1 day's price movement of 6% on March 24, 2015, which could well have been driven by several factors including potential misunderstanding of the disclosure by the selling investors. It is relevant to note that the share price of NIIT Tech recovered on the National Stock Exchange in less than 10 trading sessions when the intra-day share price of NIIT Tech shares (Rs.374.80) on April 8, 2015, exceeded the closing price on March 23, 2015 (Rs.374.40), which was the day prior to the disclosure to the stock exchanges. This makes it obvious that the determination of whether such disclosure was indeed materially sensitive to the share price of NIIT Tech needs to be made first before any adjudication can be initiated for disclosure related compliances.*

e. *Considering the above items, the SCN is clearly against principles of natural justice and applicable regulations. I have also submitted on several occasions that I am no longer in the employment of NIIT Tech or any of its affiliates and do not have access to documents or emails pertaining to the subject or the period under discussion. I am also not party to replies submitted by NIIT Tech in the said matter and should not be presumed to have knowledge of any assertions therein and retain my rights to dispute any of their submissions.*

f. *I request you to consider the above and withdraw the SCN.I reiterate the fact that I have complied with duties of my profession and positions occupied. I have also been true to complying with all the laws and regulations in letter and spirit to the best of my knowledge and information available with me.*

g. *Without prejudice to the above and on basis of incomplete information and relying to the best of my recollection while awaiting receipt of further information from SEBI, I* *submit the following and request you to arrive at the obvious conclusion that no further action against me is warranted under the SCN.*

h. *I reiterate the fact that my tenure as company secretary of NIIT Tech was an interim role and for a limited for a period of 3 months. I was appointed as compliance officer on February 18, 2015, and later as company secretary on March 1, 2015, just to fulfill the statutory requirement imposed by the Listing Agreement LODR. I was a junior member of the company secretarial team of NIIT Tech and was asked to assume this interim role after the departure of the previous company secretary in February 2015. The relevance of this is as follows:*

i. *The outgoing company secretary was also the internal legal counsel and a very senior member of the management team. I was a part of the larger secretarial team and previously designated as company secretary of one of the affiliates of the Company - NIIT Technologies Services Limited. Along with other members of the legal and Secretarial team, I reported to the outgoing company secretary and legal counsel. Confidential matters known to senior management of NUT Tech, which may have been shared with the outgoing company secretary and legal counsel, were not shared by him with the rest of the team which operated on a need to know basis. Therefore. no presumption should be made regarding my knowledge of confidential affairs of the Company prior to the date of my appointment referred above and knowledge of these remained with senior management of NIIT Tech, including its outgoing company secretary and legal counsel.*

j. *I was specifically told by senior management of NUT Tech that my appointment will be interim in nature, necessitated to fulfil statutory requirement while the Company searched for a senior professional to occupy the position. The Stock Exchange intimation for my appointment as compliance officer also mentioned that the appointment is for the interim period. This is also obvious from the fact that my tenure ended on May 31, 2015, when the new candidate assumed his position and I was relieved of the aforesaid responsibilities. Consistent with the interim role, I was assigned only routine compliances during my tenure and all confidential matters were directly handled by the senior management of NIIT Tech. Decisions made by the senior management were communicated to me when they considered the same relevant for disclosure purposes or for handling related compliances. Therefore, even during this period where I occupied these interim positions. no presumption should be made regarding my possession of confidential information until the same is evidenced by the records and books of the Company to have come into my possession.*

k. *Specifically, legal matters of the Company were not shared with the secretarial team which handled routine compliances and was not made party to discussions at senior management level. During the tenure of my predecessor, who was designated company secretary and legal counsel, secretarial and legal matters were supervised by a common senior executive co-heading the two departments. This was* *discontinued during my tenure, when I was asked to handle only secretarial matters. All legal matters were directly handled by other members of the senior management during my tenure and any developments that they considered relevant were shared by them with the secretarial team as and when they considered appropriate. Therefore, even during this period where I occupied these interim positions, no presumption should be made regarding my possession of information relating to legal proceedings that were initiated or threatened against the Company until the same is evidenced by the records and books of the Company to have come into my possession.*

l. *I submit that I became aware of the facts disclosed in the filings to the stock exchanges on the same day, i.e. March 23, 2015. Therefore, no question of non-compliance or delay in disclosure on my part. SEBI team seems to have relied upon a submission made by NIIT Tech in their email response dated February 4, 2019 stating that "she became privy to the dispute only on receipt of the default notice dated March 13, 201S'. This statement appears to be a misunderstanding on part of SEBI and I or the Company as I submit as under:*

m. *While it is true that the default notice was dated March 13, 2015, I was not provided copy of the same until after disclosure to the stock exchanges on March 23, 2015. The statement by the Company above possibly refers to date of the receipt of default notice by the Company and not of the date when it was brought to my knowledge. Any other inference from this statement is a misunderstanding on part of SEBI and leads to improper and erroneous conclusions.*

n. *Even if the Company response implies that the default notice was shared with me on March 13, 2015, I humbly request SEBI to procure that the Company submit documentary evidence of the same having been done. In view of the interim role assigned to me and senior management practices summarized in para above, there should be no presumption regarding this important fact. To prove the same, I had requested copies of emails exchanged between me and relevant members of the NIIT Tech team and also emails where the default notice was received and subsequently copied and I or forwarded to various employees, including myself, within NIIT Tech. Since SEBI has not shared this information with me, I am unable to prove this conclusively and request your team to share the requested information to enable me to do so.*

o. *While I do not yet have documentary evidence to prove, I recall that even at the time of making the disclosure to the stock exchanges on March 23, 2015, I did not have a copy of the default notice. The disclosure notice was prepared on the basis of summary shared by senior members of the management team and I was told that this has been drafted after obtaining legal advice. I also recall, and request you to find in the copies of emails in your possession, that after the disclosure to the stock exchanges, I had requested someone in the legal team for a copy of default notice* *so that I had adequate knowledge regarding the same. I request SEBI team to procure copies of emails from the Company which will help prove the same.*

p. *Para 8 of the SCN refers to NIIT's email dated February 4, 2019, wherein the Company has stated that "She became privy to the dispute only on receipt of default notice dated March 13, 2015." This statement is vague and does not provide a specific date on which such information was provided to me and by whom and by which means. The date of March 13, 2015 referred is the date of receipt of the default notice by the Company.*

q. *Submissions in this regard are already stated in paras above and I reiterate that any suggestion / inference that I became privy to the dispute immediately on the date of the receipt of the default notice is erroneous in view of the facts and circumstances explained in para 4 above.*

r. *Rather than presume knowledge on my part, I respectfully submit that reference be made to specific emails exchanges between myself and other members of the senior management team of NUT Tech to establish the date on which a copy of the dispute notice was actually shared with me.*

s. *I request SEBI to determine from the emails in its own records or requisitioned from the Company which should clearly evidence the day when this default notice was shared with me. These emails have been requested by me in my emails dated August 24, 2020, August 27, 2020 and September 1, 2020 which request remains pending and, therefore, I reiterate the same.*

t. *Pending receipt of the requested information, I am unable to provide evidence regarding the following and request SEBI to establish from the documents on its record that:*

u. *Under whose authorization was the Notice/ Agenda of the board meeting held on March 23, 2015, was circulated: to the best of my recollection, it was not sent under my signatures and I was updated about the Board meeting after it had been held.*

v. *The location and time of the aforesaid board meeting: to the best of my recollection, this was not in the Company offices and was at some other location where and that time I was not present. While this may or may not be reflected by the final minutes recorded but I recall that the draft of minutes of the aforesaid board meeting prepared by me should indicate that I was not present at the aforesaid board meeting.*

w. *Under whose instructions was the disclosure to stock exchanges prepared: to the best of my recollection, I was provided a draft of the disclosure notice and was told that this had been approved by the Company's legal team and advisors.*

x. Para 11 of SCN refers to delay of 10 days, i.e. from March 13, 2015 (being the date of receipt of the default notice by NIIT Tech to March 23, 2015 (being the date of disclosure to the stock exchanges).

y. SEBI's attention is invited to the submission in para 5 above and I reiterate that any suggestion I inference that I became privy to the dispute immediately on the date of the receipt of the default notice is erroneous in view of the facts and circumstances explained in para 4 above.

z. Since I did not have a copy of the default notice or awareness of the matter disclosed on March 23, 2015, prior to the date of the disclosure, there can be no question of delay on my part and this alleged violation is, therefore, incorrect.

aa. SEBI's attention is invited to the submission in above paras and I reiterate that any suggestion I inference that I became privy to the dispute immediately on the date of the receipt of the default notice is erroneous in view of the facts and circumstances explained in para 4 above.

bb. Since I did not have a copy of the default notice or awareness of the matter disclosed on March 23, 2015, prior to the date of the disclosure, there can be no question of lapse on my part for not closing the trading window prior to disclosing the information in the public domain and this alleged violation is, therefore, incorrect.

cc. SEBI's attention is invited to the fact that as explained in above paras, I was a junior member of the secretarial team reporting to the erstwhile company secretary and legal counsel, who was a senior professional and member of the senior management team of NUT Tech. Confidential information was not shared by the erstwhile company secretary and legal counsel with all other members of the team and no such presumption of knowledge of such matters can be made in this regard.

dd. While as a member of the secretarial team, I had access to the Agenda and the Minutes of the meeting dated January 14, 2015 as stated in the SCN, these documents were prepared on the basis of memos I notes typically provided on email by relevant departments rather than examination of underlying business records by the secretarial team. On basis of these memos/ notes typically provided on email, the secretarial team assisted in preparing the description that appeared in the agenda and further discussions thereon were then captured in the minutes.

ee. I have requested for various documents for the relevant period under my emails dated August 24, 2020, August 27, 2020 and September 14, 2020, which request remains pending and, therefore, I reiterate the same request to help me prove the above.

ff. Pending receipt of the requested information, I am unable to provide evidence regarding the following and request SEBI to establish from the documents on its record whether any material information beyond what is contained in the agenda or the minutes was in my possession.

gg. In so far as I can recollect as regards the agenda item relating to infusion of capital in NIIT Technologies Pte. Ltd. Singapore (NPLS) :

- *Finance department provided an email update regarding potential infusion of capital in the subsidiary. The update provided justification on the grounds that:*
- *Tenix had not yet accepted the billing milestones and the scope of the contract was enhanced. This caused working capital requirements to increase, which necessitated NTPL Australia to borrow.*
  Note: While this potentially eroded the profitability of the project, there was no mention of the project resulting in any loses.

- *Some of the borrowings were due to be repaid in May 2015 by when NTPL Australia may not have sufficient cash flows to repay the borrowings on its own. Additional working capital may also be required for regular business. Both these factors supported the need for further investment by the Company in the subsidiary. Note: Justification provided emphasized on loan repayment and regular working capital requirements rather than any imminent losses.*

- *As per the applicable tax laws in Australia, NTPL Australia was unable to claim tax deduction for full amount of interest expenses du e to t hin capital issues and, therefore, the current capital structure was not efficient for the Australian subsidiary. Further, NIIT Tech has sufficient spare cash which could be used to invest in subsidiaries and reduce interest costs.'*
  Note: Saving of interest cost and tax inefficiency of borrowings was highlighted to justify equity investment rather than any imminent losses.

- *Therefore, the finance department proposed that NIIT Tech invest the proposed amount as convenient for repayment of debt and for working capital purposes*
  .
  To reiterate, no mention of any upcoming losses was made by the finance department and a review of emails for this period should confirm the same. The secretarial team relied on the update provided by the finance department and reviewed the transaction as per the provisions of the applicable sections of the Companies Act i.e. Section 179, 186 and RBI compliance of filing of an ODI upon transfer of funds.

hh. The minutes of the aforesaid board meeting reflect most of the facts stated in para above and this is what was known to me as one of the member of the secretarial team. Operational issues in Australian business or disputes relating to Tenix matter may or may not have been discussed in the Board Meeting dated January 14, 2015.

As I was neither an attendee nor an invitee to the Board Meeting, I was unaware of any such discussion that may have happened in the Board Meeting.

ii. *I reiterate that as mentioned above, I became aware of the facts disclosed in the filings to the stock exchanges on the same day, i.e. March 23, 2015, I was not aware of any UPSI while granting pre-clearance approvals to Ms. Pratibha Advani & Mr. Ashok Arora.*

jj. *Since I was neither an attendee nor an invitee to the Board Meeting held on January 14, 2015 and hence unaware of any discussion that may have happened in the Board Meeting, there is no question of my being aware that Ms. Pratibha Advani & Mr. Ashok Arora could be in possession of any UPSI while submitting their trade pre-clearance request. Mr. Ashok Arora & Ms. Pratibha Advani, both followed the usual process of seeking pre-clearance and submitted an undertaking which confirmed that they do not have access to any UPSI. Pre-clearance was granted to them based on the undertaking that they do not possess any UPSI. There can be no question of lapse on my part as I acted diligently in compliance with the Code of Conduct of the Company and this alleged violation is, therefore, incorrect.*

Reply vide letter dated May 14, 2022

kk. *Firstly, I would like to again submit that the SCN & these proceedings be treated as invalid and set aside on the grounds mentioned in 1.1; 1.2 & 1.3 of my response dated September 22, 2020 and the fact that a further period of 18 months has lapsed after the hearing on October 8, 2020 i.e. a reasonable period of time has lapsed after the hearing, which had given me assurance that my request for setting aside of the Show cause notice (SCN) has been accepted.*

ll. *This is to my surprise that I have now been told to make additional submission in the matter, which apparently after the submission of my response in September 2020 and the hearing on October 8, 2020 gave an impression that my request has been accepted and the matter has been closed, as it lacked the substance. During this period of 18 months, neither was I provided with any access to the documents sought by me, to help me prove my innocence nor a single communication was made to me regarding the change in Adjudication officer and that the matter is still open for a final decision.*

mm. *This response is being submitted without prejudice to my rights to seek that the SCN be set aside as mentioned above and previously. I have submitted my response in detail vide my letter dated September 22, 2020. I have submitted earlier as well that the SCN is clearly against principles of natural justice and applicable regulations. I have also submitted on several occasions that I am no longer in the employment of NIIT Technologies or any of its affiliates and do not have access to documents or emails pertaining to the subject or the period under discussion. I am also not party to replies submitted by NIIT Technologies in the said matter and should not be presumed* *to have knowledge of any assertions therein and retain my rights to dispute any of their submissions.*

Reply vide letter dated September 01, 2022

nn. No presumption should be made regarding my possession of confidential information until the same is evidenced by the records and books of the Company to have come into my possession.
(This point has been covered in detail in my earlier replies dated September 22, 2020 and reiterated in the personal hearing dated October 8, 2020 and my subsequent reply dated May 14, 2022)

oo. To consider the precedent set by the SEBI order dated June 9, 2022 ("the Order") in the matter of Noticee No.2- Mr. Ashok Arora. As per Para 9 & 10 of Show cause notice (SCN) dated August 6, 2020, it has been alleged that I became aware of the UPSI between the period January 06, 2015 -January 14, 2015 since I was a member of the secretarial team and had access to the Agenda and the Minutes of the meeting dated January 14, 2015. While issuing the SCN, SEBI had framed an initial view that the infusion of an amount of approx. USD 1OMillion in NTPL (NIIT Singapore, wholly owned subsidiary) is inter- related with the disputed amount disclosed to the Stock Exchange on March 23, 2015.However, SEBI vide its order dated June 9, 2022 in the matter of Noticee No. 2- Mr. Ashok Arora has decided otherwise. In Para 14.6 of the Order, SEBI has held that "Noticee no. 2 cannot be strictly said to be privy to the UPSI on the basis of his attendance in the said board meeting".

pp. I would further like to draw your attention to my submission in Para 9.1.5 of my letter dated September 22, 2020 wherein I had mentioned the following with respect to my knowledge of infusion of funds in Singapore entity-
i) there was no mention of the project resulting in any losses.
ii) Justification provided emphasized on loan repayment and regular working capital requirements rather than any imminent losses.
iii) Saving of interest cost and tax inefficiency of borrowings was highlighted to justify equity investment rather than any imminent losses

qq. Further, I would like to once again highlight as stated in my letter dated September 22,2020 that I was neither an attendee nor an invitee to the Board Meeting held on January 14, 2015 as I was the junior member of the team. I may only have access to the Agenda/Minutes as member of the secretarial team and my knowledge of the matter was restricted and based on the justification as submitted in Para 9 of my reply dated September 22, 2020.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:
   I. Whether the Noticee has violated aforesaid provisions of PIT Regulations?
   II. Does the violations, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992?
   III. If the answer to Issue No. II is in affirmative, then what should be the quantum of monetary penalty?

10. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are provided hereunder:

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.

PIT Regulations, 1992

SCHEDULE I, (PART A)

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation: For the purpose of this Schedule, the term 'designated employee' shall include:— (i) officers comprising the top three tiers of the company management

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

3.2 Trading window

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.2.3 The trading window shall be, inter alia, closed at the time :— (a) Declaration of financial results (quarterly, half-yearly and annually). (b) Declaration of dividends (interim and final). (c) Issue of securities by way of public/rights/bonus etc. (d) Any major expansion plans or execution of new projects. (e) Amalgamation, mergers, takeovers and buy-back. (f) Disposal of whole or substantially whole of the undertaking. (g) Any changes in policies, plans or operations of the company.

[3.2.3A The time for commencement of closing of trading window shall be decided by the company.]

3.2-4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

3.2-5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

3.2-6 In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall [not] be allowed when trading window is closed

3.3 Pre-clearance of trades

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable:

(a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.

(b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public. (c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.

(d) That he/she has made a full and true disclosure in the matter.

SCHEDULE II

CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING

3.1 Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.

3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

Preliminary Issues raised by Noticee

11. I note that Noticee has raised some preliminary submissions regarding delay in initiating adjudication proceedings qua notice and the proceedings are liable to be quashed on account of delay of more than 5 years from occurrence of the said events. In this regard I note during the investigation, information was requisitioned from various entities including but not limited to the stock exchanges, depositories, banks, the Company, the directors of the Company etc. Thereafter, the investigation inter alia entailed examination of emails, Minutes of Board meetings, secretarial records, announcements made to stock exchanges, movement of funds and analysis of Scrip. I note from the available record it can be ascertained that adjudication proceedings were approved after completion of investigation. Thereafter SEBI vide Communiqué dated 04 May 2020 had appointed Ms. Anitha Anoop as Adjudicating Officer. Pursuant to transfer of Ms. Anitha Anoop, vide order dated October 21, 2020, the matter was transferred to Shri Suresh Menon. Subsequently, vide order dated June

06, 2022, the matter was transferred to the undersigned. I note that the SCN dated August 06, 2020 was sent to the Noticee, thereafter vide email dated August 24, 20220, Noticee requested for inspection of documents. Vide email dated September 03, 2020 Noticee was granted inspection of documents through cisco webex. Thus, as can be seen from the above, the entire process is quite exhaustive and detailed which involves various steps at different points of time depending on the requests of Noticee and therefore the delay has not caused any prejudice to the Noticee that would vitiate the proceedings.

12. I find it relevant to rely on Hon'ble SAT order passed in *Hemant Sheth and Ors. vs. SEBI, Appeal No. 521 of 2021, decided on January 07, 2022,* it was argued by the appellants that the adjudicating officer was appointed on July 04, 2013 but the show cause notice was issued in 2016 and therefore there was an inordinate delay of 30 months for which no plausible explanation was given. The Hon'ble SAT while dismissing the aforesaid contention of the appellants held that:

"9. Insofar as the delay is concerned we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."

13. I note that some Noticee has raised the issue regarding non supply of documents / information and emails. In this respect, it is noted that documents which have been relied upon in the SCN have been provided to the Noticee in the SCN. In this regard, I note that vide email dated August 24, 20220, Noticee requested for inspection of documents. Vide email dated September 03, 2020 Noticee was granted inspection of documents which were lied upon while

issuance of SCN through cisco WebEx. Therefore, the contention relating to non-supply of documents is erroneous and hence unacceptable.

14. Having discussed preliminary issues, I now proceed to deal with the other issues in the matter.

15. I find that there are three major violations to be established for attracting the provisions stated in Issue I in the instant matter: (i) Non-disclosure of UPSI to the exchanges; (ii) Non closure of trading window prior to disclosing the information in public domain; and (iii) Granting of pre-clearance to officers knowing the fact that they have access to UPSI.

Non-disclosure of UPSI to the exchanges

16. I note from material available on record Noticee was required to disclose to the exchanges immediately on receiving the default notice from TSIPL i.e. on March 13, 2015. However, NIIT disclosed the UPSI to the exchanges on March 23, 2015 i.e. with a delay of 10 days. Noticee in her reply has contended that she was not aware of default and did not receive the copy of default notice and further after the disclosure to stock exchanges, she had requested the legal team to provide her a copy of default notice so that she had adequate knowledge regarding the same.

17. Noticee also contended that she was appointed for an interim role and for a limited period of 3 months and to fulfil the statutory requirement under Listing agreement/LODR.

18. Considering the aforesaid violation, it is pertinent to refer to the chronology of events as tabulated below:

Date	Event
December 22, 2014	Gadens (Law Firm) advising NIIT and NTPL to commercially resolve the issue via the dispute resolution process.

January 14, 2015	Board meeting of NIIT where it was approved to raise USD 10M for NTPL, Singapore to finance the projects in Singapore and its other subsidiaries and appointment of Monika Arora as the interim company secretary for the interim period w.e.f March 1, 2015.
January 21, 2015	NIIT issued notice to TSIPL under the dispute resolution process
March 02, 2016	NIIT issuing without prejudice notice to TSIPL for dispute resolution process
March 13, 2015	NTPL received three default notices from TSIPL in respect of the agreement between NTPL and TSIPL dated July 22, 2010
March 13, 2015	NTPL immediately informs the management of NIIT about the default notices received by NTPL
March 23, 2015	A meeting of the Board of Directors was held on March 23, 2015 (13:00 hrs) to apprise them about the dispute between NTPL and TSIPL and the requirement to make provision to the tune of US$10mn.
March 23, 2015	The information with respect to the dispute between the company's subsidiary and its client and the provision of US$10mn towards the same was informed to BSE (17:22) and NSE (17:27)

19. The corporate announcement made by the Company to the Stock Exchanges on March 23, 2015, the scrip price of the Company witnessed a fall by 6.37% on the BSE and by 5.96% on the NSE on March 24, 2015 i.e., the trading day after the said PSI relating to the said dispute was disseminated to the Stock Exchanges. It is noted from annual report for F.Y. 2014-15 that the total impact of the dispute was 3.47% of the consolidated revenue for the F.Y. 2014-15, which is a significant change in the operation of the Company. On the basis of submissions made by NIIT during investigation it was found that NIIT was aware of the situation from December 22, 2014, it is evident from email dated December 22, 2014, from Gadens (Law Firm) advising MIT and NTPL to commercially resolve the issue via the dispute resolution process. Therefore, the said information relating to the dispute was certainly a PSI in terms of the PIT Regulations with the corresponding period i.e., December 22, 2014 to March 23, 2015 (till the disclosure on the BSE at 17:22) being the UPSI period.

20. I will now consider the role of Noticee during the UPSI period. I note from material available on record that Noticee was appointed as the interim company secretary for the interim period w.e.f February 18, 2015 in the board meeting held on January 14, 2015, prior to which she was assisting the secretarial team.

It was alleged that Noticee being part of the secretarial team ostensibly became aware of the Agenda item of Board meeting relating to infusion of the amount of USD 10 million in NPLS, on or after January 06, 2015 (when the agenda item was circulated).

21. In this context upon perusal of records, I note that Noticee's role was limited to secretarial team. Further she was not the compliance officer during the board meeting held on January 14, 2015. Upon perusal of Board meeting minutes held on January 14, 2015, Noticee was not present either as secretarial staff or as invitee to Board meeting.

22. I note that NIIT has submitted various letters during investigation viz. letters dated August 29, 2016 (hereinafter referred to as "2016 reply"), January 12, 2017, (hereinafter referred to as "2017 reply") August 21,2018 (hereinafter referred to as "2018 reply") wherein the List of Designated persons who were privy to the dispute between NTPL, Australia and TSIPL. Upon perusal of same, I find that NIIT has given inconsistent replies with regard to list of persons who were privy to expected to have the information/development regarding dispute. The 2016 reply, 2017 reply and 2018 reply contains 16, 22, 12 persons who were privy to the dispute respectively. Further, the name of Noticee was included only in the 2016 reply as person who was privy to the information. The reply letters contain far too many contradictions for it to be considered in any way.

23. Investigation has particularly relied upon the email dated February 04, 2019, wherein NIIT has submitted Noticee has become privy to the dispute only on receipt of default notice dated March 13, 2015. The email further states that the agenda papers for the board meeting on January 14, 2015 which was circulated 7 days prior to board meeting, Noticee being part of secretarial team *may have become aware* of the agenda when the same was circulated and/or when the minutes of the board meeting were finalized/signed.

24. In this context, I note that upon perusal of available records viz. Email correspondences between NIIT officials, from March 13, 2015 i.e. date when the dispute notice was received by NIIT to March 23, 2013 i.e. date of disclosure to stock exchanges, no email was marked, copied or sent to the Noticee. The discussion relating to the dispute Notices and course of action was limited to few individuals. Under the given circumstances and in the absence of contrary, I note that Noticee was not part of the email correspondence where the discussion relating to the dispute was held.

25. Noticee has vehemently contended that she was not in possession of default Notice dated March 13, 2015 in all her replies, I find merit in the contention of the Noticee. Further there is nothing on record to show that the Board or the management has taken any step to communicate said UPSI to compliance officer for disclosure to stock exchanges.

26. In this regard, reliance is placed on the order of *Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of KSL & Industries Ltd. Vs. SEBI (Appeal No. 9/2003),* wherein it was held:
"… A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained."

27. The information related to default notice dated March 13, 2015 which is the UPSI in the present case was not communicated to then compliance officer. In the absence of any evidence suggesting that UPSI was communicated or shared with Noticee, the charge relating to disclosure of UPSI to the exchanges cannot be sustained.

28. In view of the above, I find that alleged violation of Clause 3.2 read with clause 3.1 under schedule II of Code of Corporate disclosure practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations and Regulation 12 of PIT Regulations, 2015 does not stands established.

Closure of trading window prior to disclosing the information in public domain

29. The Compliance officer needs to ensure that the trading window shall be closed during the time of such information which may result in change in policies, plans or operations of the company. Noticee was required to close the trading window prior to disclosing the information in public domain.

30. As already established in the foregoing paragraphs that Noticee was not in possession of the Default Notice dated March 13, 2015 i.e. UPSI in the instant case and in the absence of evidence to the contrary, it is difficult to hold that the Noticee was privy to the UPSI and hence required to close of trading window prior to disclosing the information in public domain.

31. In view of the above, I find that alleged violation of Clause 3.2 read with clause 1.2 under Schedule I - Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies, read with Regulation 12(1) of PIT Regulations and Regulation 12 of PIT Regulations, 2015 does not stand established.

Granting of pre-clearance to Designated persons knowing the fact that they have access to UPSI.

32. I note that as per the SCN, it was alleged that Noticee while herself being aware of the UPSI has granted preclearance to employees viz. Mr. Ashok Arora (hereinafter referred to as "employee 1") and Ms. Pratibha Advani (hereinafter referred to as "employee 2"), knowing the fact that they also had access to the UPSI.

33. In this regard, I would like to place reliance on *WTM's order ref: WTM/SM/IVD/ID16/16958/2022-23 dated June 09, 2022* in the scrip of NIIT Technologies Ltd with respect to employee 1.

14.5 Having examined the aforesaid replies/letters of the *Company*, I now move on to examine the minutes of the board meeting of the *Company* held on January 14, 2015 on the basis of which the SCN also alleges that the *Noticee no. 2 (Ashok Arora)* was in possession of the UPSI. In this context, I note that the SCN records that approval was sought from the Board of the *Company* in its meeting held on January 14, 2015 to raise around USD 10 Million i.e. equivalent to the unbilled revenue from the project and equivalent to the disputed amount disclosed to the Stock Exchanges on March 23, 2015 and the said meeting was *inter alia* attended by the *Noticee no. 2*. In this regard, it would be apposite to refer to the minutes of board meeting for better appreciation and the same reads as under:

"15. CONSIDERATION AND APPROVAL OF INFUSION OF AN AMOUNT NOT EXCEEDING USD 10 MN IN NIIT TECHNOLOGIES PTE. LTD., SINGAPORE WHOLLY OWNED SUBSIDARY OF THE COMPANY

The Board has approved that NTL Australia is the step down subsidiary of NTL India through NTL Singapore. In 2010, NTL Australia entered into a contract with Tenix for AUD 18.18 Million. Over a period of time due to scope creep the value of the contract enhanced to AUD 25.08 Million. This also led to increase in effort and time to complete thereby, eroding the profitability in this program.

The Company has decided to infuse capital in Singapore entity with a view to finance the ongoing projects in Singapore and also to finance its subsidiaries as and when required.

Singapore entity currently is not equipped to infuse the equity directly into Australia as cash balance available with the entity is USD 945K.

Australian regulation of thin capital is applicable with the current capital of AUD 1 Million and borrowings of AUD 14.99 Million. We are unable to leverage tax benefit against the interest expenses.

NTL India has sufficient free cash of INR1000 Mn to infuse equity into Singapore entity.

The Board granted in principle approval for infusion of equity into Singapore entity, subject to all regulatory compliances thereof & passed the following resolution in this regard:

RESOLVED THAT subject to the provisions of Section 186(1) of the Companies Act, 2013 & Foreign Exchange Management Act, 1999 and any amendment therein and all other applicable provisions, if any and subject to the approval from Authorised Dealer/ Bankers, Reserve Bank of India, Government of India or any other authorities, if any the unanimous consent of the Board of Directors be and is hereby accorded for infusion of Equity Share Capital upto an amount not exceeding USD 10 Mn in NIIT Technologies Pte. Ltd. Singapore, wholly owned subsidiary of the Company, in one or more tranches.

RESOLVED FURTHER THAT any of the following Director/Officials of the Company.

Mr. Rajendra S Pawar
Mr. Arvind Thakur
Ms. Pratibha K. Advani
Mr. Natranjan M
Mr. Anil Narang

Be and are hereby severally authorized on behalf of the Company to execute and sign relevant documents and papers as may be required for the purpose and further authorized on behalf of the Company to sign, file and submit necessary returns, reports with the Authorized Dealers/Bankers, Reserve Bank of India, Government of India or any other authorities, if any and to do all the necessary acts, deeds and things related there to.
RESOLVED FURTHER THAT a copy of the aforesaid resolution certified to be true signed by any Director of the Company or Company Secretary be furnished to the concerned authorities for necessary action."

14.6 I note that a bare reading of the aforesaid resolution reveals that the Board of the Company accorded its approval for infusion of capital into the Singapore entity (NTPL, Singapore) with a view to finance the ongoing projects in Singapore and also to finance its subsidiary (NTPL, Australia) as and when required. The above resolution shows that the approval for remittance of funds to NTPL, Singapore was for its ongoing projects in Singapore as well as to its Australian subsidiary (NTPL, Australia) and not exclusively for NTPL, Australia or to say the least to address the dispute which arose with TSIPL. Further, a simple perusal of the above referred resolution also reveals that though there is a reference of the Agreement between NTPL, Australia and TSIPL and enhancement of the contract value from AUD 18.18 Million to AUD 25.08 Million over a period of time on account of scope creep however, there is no mention or reference to any dispute or any discussion with the lawyers etc. in the said board meeting. Further, I note that the reference to "provisioning of up to a value of USD 10 mn towards unbilled revenue" as mentioned in the corporate announcement made by the Company to the Stock Exchanges on March 23, 2015 is also conspicuously absent in the above cited minutes of the board meeting. It is noted that the said resolution inter alia records that "….Australian regulation of thin capital is applicable with the current capital of AUD 1 Million and borrowings of AUD 14.99 Million. We are unable to leverage tax benefit against the interest expenses." The said clause indicates that NTPL, Australia would be in need of funds perhaps to reduce the loan amount and increase equity share with a purpose to gain tax benefit. In view of the aforesaid deliberation that happened in the board meeting referred to above, I note that the Noticee no. 2 cannot be strictly said to be privy to the UPSI on the basis of his attendance in the said board meeting. Thus, considering a holistic evaluation of the Company's letters and the minutes of the said board meeting referred to above, I find merit in his contention that the aforesaid replies of the Company to SEBI i.e., letters dated August 29, 2016 and August 21, 2018 did not name him as a person who was privy to the price sensitive information/development pertaining to the dispute between the NTPL, Australia and TSIPL of Australia and for the reason that he was named as a person aware of the Default Notice which was admittedly received by the Company only on March 13, 2015(i.e., after he had already sold his shares on March 10, 2015), it would not be sufficient to bring home the charge of holding the Noticee no. 2 an insider based on the above piece of evidence. In view of the aforesaid discussion, I find that on the strength of the aforesaid replies/letters and the details of subject matter of the board meeting of the Company, and in the absence of any other material available on record *indicating that the Noticee no. 2 was privy to the said price sensitive information when he sold his shares, he cannot be said to be a person privy to the UPSI and consequently cannot be said to be an insider under regulation 2(e) of the PIT Regulation, 1992 for the purpose of holding him guilty of indulging into insider trading while in possession of the above stated UPSI.*

34. After consideration of facts and merits of the case, learned WTM has held that employee 1 cannot be strictly said to be privy to the UPSI on the basis of his attendance in the said board meeting, consequently he cannot be said to be an insider under regulation 2(e) of the PIT Regulation, 1992 for the purpose of holding him guilty of indulging into insider trading while in possession of the UPSI.

35. As regards, employee 2, it is observed from records that she has availed settlement proceedings without any admission or denial of the charges levelled against her, accordingly proceedings with respect to her were disposed off, hence the charge was not adjudicated upon.

36. In view of above, since the charge on employee 1 and 2 being insiders is not established, the question of granting of pre-clearance to employees who were insiders does not arise.

37. Further as regards the allegation that the Noticee was aware of the UPSI as she had access to the agenda and the minutes of the board meeting on January 14, 2015, I note that there is no material on record to indicate Noticee's participation in the Board meeting held on January 14, 2015. Further even as per the email dated February 04, 2019 of NIIT it is stated that the agenda papers for the board meeting on January 14, 2015 was circulated 7 days prior to board meeting and Noticee being part of secretarial team *may have become* aware of the agenda when the same was circulated and/or when the minutes of the board meeting were finalized/signed. Thus even NIIT has just presumed that Noticee may have become aware of the UPSI. Even if it is assumed that Noticee had access to Board agenda and minutes on account of her being part of secretarial team, considering the arguments laid out in abovementioned WTM's order in

the case of employee 1, Noticee cannot be stated to be in possession or aware of UPSI.

38. Hence the charge pertaining to granting of pre-clearance to designated persons knowing the fact that they have access to UPSI and also whilst being aware of the same UPSI does not sustain.

39. In view of the above, I find that alleged violation of Clause 1.2 read with clause 3.3.2 and 3.3.3 under Schedule I – Part A of Model Code Of Conduct For Prevention Of Insider Trading For Listed Companies read with Regulation 12(2) of PIT Regulations and Regulation 12 of PIT Regulations, 2015 does not stands established.

Issue II. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992

Issue III. If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

40. I find that since the first issue has been answered in negative, the question of penalty does not arise in the current matter. Accordingly, Issue No. II and III are disposed off.

41. Hon'ble SAT had in the matter of *P.G Electroplast Ltd. & Ors. Vs. SEBI in Appeal no. 281 of 2017* had held that:

"If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether penalty should be imposed or not...The above was precisely held by the Supreme Court in M/s. Hindustan Steel Ltd. vs. State of Orrisa, 1969 (2) SCC 627."

ORDER

42. Considering the facts and circumstances of the case as stated above, I am of the view that no monetary penalty is warranted in respect of the allegations levelled in the instant matter. The SCN issued against the Noticee is accordingly disposed of.

43. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai	**ASHA SHETTY**
Date: October 06, 2022	**ADJUDICATING OFFICER**