BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. PM/NR/2021-22/13289

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,1995

In respect of

Awaneesh Srivastava
(PAN: BCFPS2047R)

In the matter of Essar Shipping Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (SEBI) carried out an investigation in the scrip of Essar Shipping Ltd., (*hereinafter referred to as "ESL" / "Company"*) to ascertain any possible violation of the provisions of the SEBI Act and SEBI (Prohibition of Insider Trading) Regulations, 2015 *(hereinafter referred to as "PIT Regulations"),* during the period July 31, 2017 to August 24, 2017 *(hereinafter referred to as "Investigation Period" / "IP").*

2. ESL on August 24, 2017 after-market hours made an announcement on the exchanges' (BSE & NSE disseminated time 19:47:30 hrs., and 20:05:00 hrs., respectively) platform that *'FCCB holder, M/s Essar Shipping & Logistics Limited, Cyprus, has exercised its right to convert the FCCBs of USD 240 million into equity shares. The Company issued and allotted 122,852,787 equity shares at a price of Rs. 91.70, at pre-determined exchange rate of Rs. 46.94 per USD. The said FCCBs was issued by Essar Shipping Ports & Logistics Limited, which got demerged into Essar Ports Limited and Essar Shipping Limited under the Scheme of Arrangement by the order of Honourable High Court of Gujarat dated March 01,2011. Consequently, FCCBs amounting to USD 240 million became the liability of Essar Shipping Limited. In principle approval for the listing of equity shares issued on conversion was obtained by the Company from NSE and BSE on July 28, 2010 and July 27, 2010 respectively. The Company is initiating the process of final listing of the aforesaid shares. Kindly take the above on your records'".*

3. Subsequently, on the same day i.e., Aug 24, 2017 the above announcement was withdrawn by the company (ESL) by making the following corporate announcement:

   "We hereby inform you that the intimation for conversion of FCCB's into equity shares submitted by us pursuant to Regulation 30 of SEBI (LODR) Regulations, 2015 on August 24, 2017 at 07.47 pm stands withdrawn.
   We request you to kindly consider the said intimation as invalid."

4. It is observed that the Board of ESL in their meeting dated July 31, 2017 resolved to allot 122,852,787 fully paid-up equity shares to IDH International Drilling Holdco Limited (IDH) (formerly known as Essar Shipping & Logistics Limited, Cyprus) (*"FCCB Holder")* IDH at the relevant date of August 24, 2017. It is observed that the conversion of FCCBs into equity shares is a material event in accordance with the listing agreement. Thus, the UPSI came into existence on July 31, 2017 i.e., the date on which the Board of ESL decided about conversion of FCCBs into equity shares and the same remained UPSI until an announcement was made by ESL on NSE & BSE on August 24, 2017. Therefore, the period from July 31, 2017 to August 24, 2017 is considered as the period of UPSI *(unpublished price sensitive information)*.

5. However, it is observed from the submissions of ESL, that the trading window was not closed during the period July 31, 2017 to August 24, 2017 i.e., during the period of UPSI. Hence, it is alleged that the Compliance Officer of the Company, Awaneesh Srivastava (*hereinafter referred to as "Awaneesh"/ "Noticee"*), failed to administer the code of conduct and failed to determine the trading window closure when the designated persons or class of designated person can reasonably be expected to have possession of UPSI. Accordingly, it is alleged that the Noticee has violated the provisions of Code of Conduct as prescribed under Regulation 9(1) and 9(3) read with Clause-4 of Schedule B- Minimum Standard of code of conduct to Regulate, Monitor and Report Trading by Insiders under the SEBI (Prohibition of Insider Trading) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

6. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as the Adjudicating Officer vide Order dated April 5, 2021 under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as "Adjudication Rules"*) to inquire into and adjudge under Section 15HB of the SEBI Act, for the alleged violation of the provisions of SEBI (PIT) Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. A Show Cause Notice (*hereinafter referred to as "SCN")* bearing ref. no. EAD-8/PM/NJMR/10263/2021/1 dated May 12, 2021 was issued to the Noticee under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against him in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Section 15HB of the SEBI Act, 1992, for the violation alleged to have been committed by him. In terms of the provisions of Rule 7(b) of SEBI Adjudication Rules, the SCN was served on the Noticee at his Email IDs: avaneesh_sri@yahoo.co.in ;awaneeshsrivastavanj@gmail.com ;AVANEESH_SRI@REDIFFMAIL.COM through digitally signed email. I note that the said email sent to the Noticee at his Email ID: awaneeshsrivastavanj@gmail.com did not bounce, whereas in respect of the Email IDs avaneesh_sri@yahoo.co.in and AVANEESH_SRI@REDIFFMAIL.COM, the Email bounced. Vide the aforesaid SCN, the Noticee was given a timeframe of 14 days to submit his reply, if any, to the charges alleged in the SCN. I note from the records that the Noticee did not file his reply.

8. Thereafter, in the interest of natural justice and in terms of Rule 4(3) of SEBI Adjudication Rules, vide notice dated June 21, 2021, the Noticee was given an opportunity of personal hearing through video conference on July 1, 2021. In terms of the provisions of Rule 7(b) of SEBI Adjudication Rules, the SCN was served on the Noticee through digitally signed email at his Email IDs: avaneesh_sri@yahoo.co.in;awaneeshsrivastavanj@gmail.com;AVANEESH_SRI@REDIFFMAIL.COM;. I note that the said email sent to the Noticee at his Email

ID: awaneeshsrivastavanj@gmail.com did not bounce, whereas in respect of the Email IDs avaneesh_sri@yahoo.co.in andAVANEESH_SRI@REDIFFMAIL.COM the Email bounced. However, I note that the notice did not appear for the hearing on the scheduled date.

9. Thereafter, the SCN along with the Annexures mentioned therein was duly served on the Noticee at his alternate Email ID: avnish786@gmail.com on June 22, 2021.The Noticee vide email dated June 23, 2021 addressed from his Email ID: avnish786@gmail.com submitted that the SCN and the notice of hearing sent on May 12, 2021 and June 21, 2021 respectively were not received by him since the same were sent to his earlier Email accounts, which are no longer in use. Since, the SCN was received by him on June 22, 2021, the Noticee vide the aforesaid email sought time of three weeks till July 15, 2021 to submit his reply. In pursuance of the request made by the Noticee, vide email dated June 23, 2021 the Noticee was informed of granting extension of time till July 15, 2021 to submit his reply and accordingly the hearing scheduled on July 1, 2021 was adjourned.

10. The Noticee vide email dated July 15, 2021 submitted his reply, which is summarized hereunder:

   a) *Request for your attention to the Annual Reports of the Company for the years 2015-16 and 2016-17 wherein the said details are available at several places. Copies of both the annual reports are enclosed for your ready reference and marked as Annexure 2 and 3. The annual reports of the Company were widely circulated to all stakeholders (including the stock exchanges) and was always hosted on the website of the Company and the stock exchanges from where it can be freely assessed by the entire world at large.*

   b) *In view of non-availability of unpublished price sensitive information, I strongly believe that there is no failure on my part to administer the code of conduct and no provisions of Code of Conduct as prescribed under Regulation 9(1) and 9(3) read with Clause - 4 of Schedule B - Minimum Standard of code of conduct to Regulate, Monitor and Report Trading by Insiders under the SEBI (Prohibition of Insider Trading) Regulations, 2015 has been violated by me as alleged.*

   c) *All my actions and acts for discharging my professional duties have been taken in good faith in the interest of the investors, following good corporate* *governance practices and in compliance with the applicable regulations prescribed by the Securities and Exchange Board of India and other applicable laws. I strongly believe that I have acted reasonably and rationally in compliance with the applicable regulations prescribed by the Securities and Exchange Board of India.*

d) I trust no default has been committed by me as alleged in your letter dated May 12, 2021, numbered as EAD-8/PM/NJMR10263/2021/1 and my actions and acts have not resulted into any gain or unfair advantage to me or any loss to an investor or group of investors and this is the first time ever in my professional career that I have received a letter from a regulatory authority alleging to commit a default related to compliances with applicable laws.

11. In order to conduct an inquiry in the matter, in terms of the provisions of Rule 4(3) of SEBI, the Noticee was given an opportunity of hearing on July 22, 2021, which was communicated vide notice of hearing dated July 16, 2021, sent through Email at the Noticee's Email ID: avnish786@gmail.com. In view of the difficulties faced by all concerned due to Covid-19 pandemic, the hearing proceedings were conducted online through videoconferencing on the Webex platform. Owing to certain administrative exigencies, the hearing scheduled on July 22, 2021 was advanced to July 19, 2021 and the link for joining the hearing along with the login credentials were sent to the Noticee at his Email ID avnish786@gmail.com on July 16, 2021. Accordingly, the Noticee along with his Authorized Representative appeared before me through vide conference on July 19, 2021 and reiterated the submissions made by him vide his Email dated July 15, 2021. The Noticee sought an additional time till July 23, 2021 to make fresh submissions which was acceded to. The Noticee vide email dated July 23, 2021 made additional submissions, which are summarized hereunder:

a) Your good office has overlooked the fact that the date of conversion i.e., August 24, 2017, the price of conversion and the ratio of conversion i.e., FCCBs are convertible into 122,852,787 equity shares of Rs. 10 each of the Company at a conversion rate of Rs. 91.70 per equity share at a fixed exchange rate of Rs. 46.94 are all published facts already available in the public domain and no designated person or class of designated persons were in possession of unpublished price sensitive information;

b) *Since the above information was already in public domain, it cannot be termed as unpublished price sensitive information and I strongly believe that there is no failure on my part to administer the code of conduct and no provisions of Code of Conduct as prescribed under Regulation 9(1) and 9(3) read with Clause - 4 of Schedule B - Minimum Standard of code of conduct to Regulate, Monitor and Report Trading by Insiders under the SEBI (Prohibition of Insider Trading) Regulations, 2015 has been violated by me as alleged.*

c) *Further as clarified and submitted during the hearing, the information relating to withdrawal of the consent of the FCCBs holder for conversion of the FCCBs into equity shares of the Company was received by the Company only after notifying the stock exchanges about the conversion of the FCCBs into Equity Shares during off market hours and accordingly the earlier intimation given was promptly informed to the stock exchanges without any delay as withdrawn. In view of the same, at the time of withdrawal as well, there was no unpublished price sensitive information with the Company which requires closure of the trading window. Post the date of notifying the Stock Exchanges about the withdrawal, the next three days i.e., August 25, 2017, to August 27, 2017, were trading holidays*

CONSIDERATION OF ISSUES

12. I have taken into consideration the facts and material available on record. The charge against the Noticee is that being the Compliance Officer of ESL failed to administer the code of conduct and failed to determine the trading window closure when the designated persons or class of designated person can reasonably be expected to have possession of UPSI and thereby alleged to have violated the provisions of Code of Conduct as prescribed under Regulation 9(1) and 9(3) read with Clause-4 of Schedule B- Minimum Standard of code of conduct to Regulate, Monitor and Report Trading by Insiders under the SEBI (Prohibition of Insider Trading) Regulations, 2015.

13. After perusal of the material available on record, I have the following issues for consideration, viz.,

    I. *Whether the Noticee has violated the provisions of Regulation 9(1) and (3) read with Clause 4 of the Code of Conduct prescribed under Schedule B of the SEBI (PIT) Regulations, 2015?*

II. Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act?

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

ISSUE-I: Whether the Noticee has violated the provisions of Regulation 9(1) and (3) read with Clause 4 of the Code of Conduct prescribed under Schedule B of the SEBI (PIT) Regulations, 2015?

14. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 2015 alleged to have been violated by the Noticee, which reads as under:

> ***Code of Conduct - Regulation 9 (1) of SEBI (PIT) Regulations**:*
> *The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*
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> ***Code of Conduct - Regulation 9 (3) of SEBI (PIT) Regulations**:*
> *Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a Compliance Officer to administer the code of conduct and other requirements under these regulations.*
>
> ***Clause 4 of the Code of Conduct prescribed under SCHEDULE B***
> *[See sub-regulation (1) and sub-regulation (2) of regulation 9]*
> *Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders*
>
> *4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the Compliance Officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.*

15. The objective of framing a Model Code of Conduct (CoC) under the SEBI (PIT) Regulations, 2015 is to prevent insider trading and prevent misuse of the price

sensitive information which undermines the confidence of investors. I note that SEBI (PIT) Regulations specifically provide that every listed company should frame its own code of conduct for prevention of insider trading and adopt appropriate mechanisms and procedures to enforce the codes. Further, Model Code of Conduct also requires that a listed company should appoint a senior level employee as a Compliance Officer, who shall report to the Managing Director/ Chief Executive Officer, and who shall inter alia be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of Price Sensitive Information and implementation of the code of conduct under the overall supervision of the Board of the listed company. The CoC is applicable to all the Designated Persons / Insiders of the group as defined in the code from time to time. Against this backdrop, I would like to record my findings hereunder:

16. I note that during the year 2010-11, Essar Shipping Ports & Logistics Ltd., (“ESPLL”) had issued USD 150 million 5% FCCB due on August 24, 2015 (the “Series-A Bonds”) and USD 130 million 5% FCCB due on August 24, 2017 (the “Series-B Bonds”). IDH International Drilling Holdco Ltd., (formerly known as Essar Shipping & Logistics Ltd., Cyprus) ("FCCB Holder") had subscribed certain Foreign Currency Convertible Bonds issued by Essar Shipping Ports and Logistics Ltd., ("ESPLL") on August 24, 2010, amounting to USD 280 million. Pursuant to demerger of Essar Shipping, Ports and Logistics Ltd., with Essar Ports Ltd., and Essar Shipping Ltd., under the Scheme of arrangement by the order of Hon’ble High Court of Gujarat dated March 01, 2011, these FCCBs were split into USD 240 million and USD 40 million between Essar Shipping Ltd., and Essar Ports Ltd., respectively. Consequently, FCCBs amounting to 240 million became the liability of Essar Shipping Ltd., Thus, it is pertinent to note that the due date for conversion of FCCBs amounting to USD 240 million into equity shares of Essar Shipping Ltd., was on August 24, 2015 in respect of Series “A” and August 24, 2017 in respect of Series “B”.

17. In order to ascertain whether the conversion of FCCBs constitutes UPSI, which warrants closure of trading window by the Compliance Officer, I find it appropriate to look into the relevant legal provisions concerning the same, in view of the contention raised by the Noticee that the details of conversion of FCCBs

amounting to USD 240 million into equity shares were available in public domain viz., Annual Reports of the Company for the financial years 2015-16 and 2016-17.

18. The definition of 'unpublished price sensitive information' as prescribed under Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015 is as follows:

> *"unpublished price sensitive information" means any information relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*
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> i. *financial results*
> ii. *dividends*
> iii. *change in capital structure*
> iv. *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions*
> v. *changes in key managerial personnel; and*
> vi. ***material events in accordance with the listing agreement***
>
> ***NOTE****: It is intended that information relating to a company or securities, that is not generally available would-be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

19. From the plain reading of the aforementioned Regulation, I note that the conversion of FCCBs into equity shares is a material event in accordance with the listing agreement, which is corroborated from the fact that in terms of the provisions of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, vide communication dated August 24, 2017, ESL had intimated BSE and NSE of conversion of FCCBs into equity shares. In view of the above, it is an undisputed fact that conversion of FCCBs into equity shares is a material event in accordance with the listing agreement. Therefore, I am of the view that the material event in the instant proceedings i.e., conversion of FCCBs into equity shares is a price sensitive information.

20. As specifically stated under the aforesaid provision of 2(1)(n) of SEBI (PIT) Regulations, 2015, material events in accordance with the listing agreement is a "*unpublished price sensitive information*" (UPSI) which I note is of the nature that

is not generally available and upon becoming generally available, is likely to materially affect the price of the securities.

21. The chronology of events with regard to the corporate announcement of conversion of FCCB into equity shares and its withdrawal intimation is given below:

Sl. No.	Event	Date
1	IDH International Drilling Holdco Limited (IDH) (formerly known as Essar Shipping & Logistics Limited, Cyprus) ("FCCB Holder") had subscribed to certain foreign currency convertible bonds ("FCCBs") issued by Essar Shipping, Ports and Logistics Limited ("ESPLL"), amounting to USD 280 million. Pursuant to demerger of ESPLL, these FCCBs were split into USD 240 million and USD 40 million between the Company (formerly known as Essar Shipping, Ports & Logistics Limited) and Essar Ports Limited respectively.	August 24, 2010
2	Application for extension of the term for Series A FCCB in August, 2015	August 19, 2015
3	Audit Committee Meeting for conversion of FCCB into Equity shares/CCPS on 31st July, 2017	July 31, 2017
4	**Board Meeting to consider and approve conversion of FCCB's into Equity shares/CCPS (Compulsory Convertible Preference Shares)**	**July 31, 2017**
5	Request to IDH to exercise for equity conversion of FCCBs	August 09, 2017
6	IDH issues Letter stating that their consent requires their Board's approval	August 14, 2017
7	IDH gives its consent intimating that the Board of IDH has given its consent for ESL to convert FCCBs into equity shares and allotment of 122852787 fully paid-up equity shares of ESL.	August 21, 2017
8	**ESL letter to BSE and NSE intimation for conversion of FCCBs into equity shares**	**August 24, 2017**
9	NSE disseminated the details under corporate announcement	August 24, 2017 (Time-20:05:00)
10	BSE disseminated the details under corporate announcement	August 24, 2017 (Time-19:47:30)
11	**ESL receives a Letter from IDH regarding withdrawal of consent for conversion into Equity Shares. Intimated that the board of IDH has reconsidered its decision to convert its FCCB investment into equity shares.**	**August 24, 2017**
12	ESL files the withdrawal of consent for conversion to Equity shares on 24th August, 2017 at 21.20 Hours.	August 24, 2017
13	BSE disseminated the details of withdrawal of intimation for conversion of FCCBs into equity shares.	August 24, 2017 (Time-21:20:48)
14	NSE disseminated the details of withdrawal under corporate announcement	August 28, 2017 (Time-08:19:00)

		(## Aug 25 to 27, 2017- Trading holiday)

22. From the chronology of events as tabulated above, I note that the Board of ESL in their meeting held on July 31, 2017 had resolved to allot 122,852,787 fully paid-up equity shares to IDH at the relevant date of August 24, 2017. Accordingly, ESL vide letter dated August 09,2017 inter-alia intimated to IDH that *we are facing severe financial stress due to which we are unable to ensure on-time payment of vendors and lenders……. request you to kindly exercise the option of converting the FCCBs into equity shares before the maturity date of August 24, 2017.* From August 09, 2017 to the actual announcement made with regard to conversion of FCCBs into equity shares by ESLL, it was clear that officials of ESL involved in the processes would be in possession of UPSI with regard to the consent to be given by the FCCB holder to convert FCCBs of 240 USD million in to equity shares or redeem the same. It is also observed that the consent for conversion was resulting in reducing the current borrowings of ESL by ₹1,556 crores with a resultant increase in the company's networth. In view of the fact that conversion of FCCBs being a material event in accordance with the listing agreement, which is a UPSI, came into existence on July 31, 2017 i.e., the date on which the Board of ESL decided about conversion of FCCBs into equity shares and the same remained UPSI until an announcement was made by ESL on NSE & BSE on August 24, 2017. Therefore, the period from July 31, 2017 to August 24, 2017 is considered as the period of UPSI *(unpublished price sensitive information)*. However, I note that the trading window was not closed during the period July 31, 2017 to August 24, 2017 i.e., during the period of UPSI.

23. However, the Noticee contended that the conversion of FCCB into equity shares is in public domain, which is duly furnished in the Annual Reports of the Company for the financial year 2015-16 and 2016-17 and thus it cannot be termed as unpublished price sensitive information. It is pertinent to note that the original redemption of FCCBs (Series "A") was August 24, 2015, which was further extended to August 24, 2017 by the Company. I have perused the information pertaining to outstanding FCCBs furnished by the Company in its Annual Reports since the financial years 2012-13 to 2016-17 and I note from these Annual Reports

that the Company had disclosed the following information on FCCBs under the head "*Outstanding GDRs/ADRs/Warrants or any convertible instruments, conversion date and likely impact on Equity"*, which is reproduced hereunder financial year-wise:

<u>Annual Report – 2012-13</u>

As on March 31, 2013, the total outstanding Foreign Currency Convertible Bonds (FCCB) were 2800, 5% FCCBs (Series A and Series B) aggregating to USD 240,000,000. Series A FCCBs due on 24th August, 2015 and Series B FCCBs due on 24th August, 2017. These FCCBs are convertible into 122,852,787 equity shares of ₹10 each of the Company at a conversion rate of ₹91.70 per equity share at a fixed exchange rate of ₹46.94.

<u>Annual Report – 2013-14</u>

As on March 31, 2014, the total outstanding Foreign Currency Convertible Bonds (FCCB) were 2800, 5% FCCBs (Series A and Series B) aggregating to US$ 240,000,000. Series A FCCBs due on August 24, 2015 and Series B FCCBs due on August 24, 2017. These FCCBs are convertible into 122,852,787 equity shares of ₹10 each of the Company at a conversion rate of ₹91.70 per equity share at a fixed exchange rate of ₹46.94.

<u>Annual Report – 2014-15</u>

As on March 31, 2015, the total outstanding Foreign Currency Convertible Bonds (FCCB) were 2800, 5% FCCBs (Series A and Series B) aggregating to USD 240,000,000. Series A FCCBs due on 24th August, 2015 and Series B FCCBs due on 24th August, 2017. These FCCBs are convertible into 122,852,787 equity shares of ₹10 each of the Company at a conversion rate of ₹91.70 per equity share at a fixed exchange rate of ₹46.94.

<u>Annual Report – 2015-16</u>

As on March 31, 2016, the total outstanding Foreign Currency Convertible Bonds (FCCB) were 2800, 5% FCCBs (Series A and Series B) aggregating to USD 240,000,000. Series A FCCBs due on 24th August, 2015 extended to 24th August, 2017 and Series B FCCBs due on 24th August, 2017. These FCCBs are convertible into 122,852,787 equity shares of ₹10 each of the Company at a conversion rate of ₹91.70 per equity share at a fixed exchange rate of ₹46.94.

<u>Annual Report – 2016-17</u>

As on March 31, 2017, the total outstanding Foreign Currency Convertible Bonds (FCCB) were 2400, 5% FCCBs (Series A and Series B) aggregating to USD 240,000,000. Series A FCCBs due on 24th August, 2015 extended to 24th August, 2017 and Series B FCCBs due on 24th August, 2017. These FCCBs *are convertible into 122,852,787 equity shares of ₹10 each of the Company at a conversion rate of ₹91.70 per equity share at a fixed exchange rate of ₹46.94.*

24. I note from the above extracts of Annual Reports that the conversion of FCCBs which were initially due on August 24, 2015, was extended to August 24, 2017. Further, I also note from the announcement made by the Noticee on August 24, 2017, wherein it had intimated BSE and NSE of withdrawal of the intimation given earlier in the day i.e., August 24, 2017 about conversion of FCCBs to equity shares. Thus, it is noted that the FCCBs which were due for conversion on August 24, 2015, which was extended to August 24, 2017 has not taken place even on the schedule date i.e., August 24, 2017 despite the same was disclosed in the Annual Reports by the Company every year since 2012-13 till 2016-17. Thus, I am of the view that aforementioned disclosures were periodic affairs giving periodic / year end status about FCCBs issue and didn't gave immediate information of redemption of FCCBs, which is corroborated from the fact of non-conversion of FCCBs into equity shares in 2015 and 2017. Therefore, it can be seen that the disclosures of periodic affairs on status of FCCBs until resulted into a corporate action cannot be construed as publicly available information, even though a disclosure is made in the annual report. Nevertheless, the information provided in annual reports is not the substitute for the mechanism put in place, where the Compliance Officer of the Company is expected to comply with the extant regulatory provisions for prevention of insider trading by administering the code of conduct diligently, which is not found in the instant case.

25. With a view to prevent misuse of UPSI, the Model Code of Conduct under the SEBI (PIT) Regulations, 2015 prescribes that all directors/ officers and designated employees of the company shall be subject to trading restrictions and the company is required to specify a trading period to be called the 'trading window' for trading in company's securities. Such trading window is to be closed from the date of notice given to stock exchanges for convening the meeting of the board of directors of the company to consider declaration of financial results, dividends, rights issue etc. and is to be opened 48 hours after the information is made public. As per Regulation 9(1), 9(3) read with Clause 4 of Code of Conduct prescribed under Part A of Schedule B of the SEBI (PIT Regulations), 2015, the Compliance

Officer is inter-alia 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, monitoring of trades and the implementation of the code of conduct, under the overall supervision of the Board of the listed company.

26. The abovementioned provision clearly provides that the Compliance Officer is responsible to take all steps to ensure that any insider trading based on UPSI be prohibited. Accordingly, the Noticee being the Compliance Officer of ESL had major role to play in the company, of monitoring adherence to the rules for preservation of price sensitive information and implementation of the Code. Even though the clause specifies that the Compliance Officer is to execute his responsibilities under the overall supervision of the Board, yet the provision confers key responsibilities on the Compliance Officer, which cannot be overlooked. The Noticee as the Compliance Officer of ESL thus carried the responsibility of ensuring the closure of trading window under the circumstances given in Clause 4 of Code of Conduct for prevention of insider trading.

27. I am of the view that it is not material whether any Employee or Director traded in the securities during the UPSI period, it is mandatory on the part of the Compliance Officer of the Company to ensure that the trading window remains closed during the UPSI period and opened 48 hours after the public announcement is made. In the instant case, though no trades took place during the window closure period, but it was the responsibility of the Compliance Officer to close the trading window, which the Noticee failed to do so.

28. In this regard, I find it appropriate to refer to the Order of the Hon’ble Securities Appellate Tribunal in the matter of G Jayaraman v SEBI (Appeal No. 182 of 2012), where it was held that: *‘Model Code contained in PIT Regulations further requires Compliance Officer to keep the trading window closed during the period when information referred to in para 3.2.3 is unpublished. Object of keeping the trading window closed under para 3.2.3 of Model Code in addition to prohibition contained in regulation 3 of PIT Regulations is to doubly ensure that directors/officers and designated employees of the Company do not misuse ‘Price Sensitive Information’*

and trade in securities of the Company while in possession of such unpublished price sensitive information. Therefore, Compliance Officer is mandatorily obliged under Model Code to keep the trading window closed when in possession of price sensitive information specified in para 3.2.3 of Mode Code. If Compliance Officer fails to close the trading window inspite of being in possession of price sensitive information, then he would be violating PIT Regulations. In such a case, whether any employee/director by taking undue advantage has traded in securities of that company or not, Compliance Officer would be liable for violating PIT Regulations. In other words, Compliance Officer would be liable for penalty if he fails to close trading window when in possession of unpublished price sensitive information even if no employee has traded in shares of that company when in possession of unpublished price sensitive information."

29. In view of the above, I am not inclined to take a different view and conclude that the Noticee being the Compliance Officer of ESL failed to administer the code of conduct and failed to determine the trading window closure when the designated persons or class of designated person can reasonably be expected to have possession of UPSI and thereby violated the provisions of Code of Conduct as prescribed under Regulation 9(1) and 9(3) read with Clause-4 of Schedule B-Minimum Standard of code of conduct to Regulate, Monitor and Report Trading by Insiders under the SEBI (Prohibition of Insider Trading) Regulations, 2015.

ISSUE-II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act?

30. Any violation of the code of conduct that is specifically designed to protect the interests of investors cannot be treated lightly. It is of utmost importance that a sense of fair play is to be maintained in the market so that innocent investors do not find themselves at the receiving end of irregular conduct by entities related to the companies. Since, it is established that the Noticee being a Compliance Officer of Essar Shipping Ltd., had failed to administer the code of conduct and failed to determine the trading window closure, which is in violation of the provisions of 9(1) and 9(3) read with Clause-4 of Schedule B- Minimum Standard of code of conduct prescribed under SEBI (PIT) Regulations, 2015, the Noticee is liable for monetary

penalty under Section 15HB of the SEBI Act, the contents of which are reproduced hereunder:

Section 15HB of SEBI Act

"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees".

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

31. While determining the quantum of monetary penalty under Section 15HB of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 15 - I, the Adjudicating Officer shall have due regard to the following factors, namely:

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

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

(c) the repetitive nature of the default.

32. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

33. The basic purpose of the trading window closure requirement in the SEBI (PIT) Regulations is to prohibit trading by insiders by virtue of their access to price sensitive information and thereby gain at the cost of investors. This is to bring about fairness in the securities market. Thus, any violation of the SEBI (PIT)

Regulations and the Code prescribed therein has to be viewed seriously. It has been established that the Noticee failed to comply with the requirements under the Code prescribed in PIT Regulations. The duty weighs even more on a person like Compliance Officer, who is conferred upon with key responsibilities in a company and hence the violation by the Noticee needs to be viewed seriously

ORDER

34. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, hereby impose penalty of ₹1,00,000 (Rupees One Lakh only) on the Noticee i.e., Awaneesh Srivastava, under Section 15HB of SEBI Act.

35. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

36. The Noticee shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

37. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

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

Date: September 1, 2021	**PRASANTA MAHAPATRA**
Place: Mumbai	**ADJUDICATING OFFICER**