

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/JS/AU/2022-23/19887-19903**

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of:

Noticee No.	Name of the Noticee	PA No.
1.	Unitech Ltd.	AAACU1482H
2.	Mr. Ramesh Chandra	AACPC5805D
3.	Mr. Ajay Chandra	AACPC5803F
4.	Mr. Sanjay Chandra	AACPC5804C
5.	Mr. A. S. Johar	AADPJ1534B
6.	Ms. Minoti Bahri	AAAPW7205R
7.	Mr. G R Ambwani	AAEPA8996K
8.	Dr. P.K Mohanty	AEYPM6095D
9.	Mr. Anil Harish	AAAPH8876M
10.	Ms. Honey Harish	AAAPH5508C
11.	Mr. Sanjay Bahadur	AAGPB7876B
12.	Mr. Ravinder Singhanian	AMQPS4602L
13.	Mr. S. Ravi Aiyar	AADPA8913H
14.	Mayfair Capital P Ltd	AAACM2505R
15.	Mr. Rana Rajesh Kumar Gangahar	AATPR0373A
16.	Mr. Ashok Kumar Rastogi	ACEPR1905R
17.	Mr. Shantanu Mallick	AJDPM3649P

In the matter of Unitech Ltd.

BACKGROUND

1. Unitech Limited (hereinafter referred as "Unitech" or "the company") is a company having its shares listed on BSE Ltd. ('BSE') and National Stock Exchange of India Ltd. ('NSE'). Securities and Exchange Board of India ("SEBI") conducted investigation in the scrip of

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Unitech during the period from October 01, 2008 to March 31, 2009 ('Investigation Period' / 'IP').

2. Investigation was conducted to ascertain possible violations by the Noticees (Noticee No. 1 to 17 as mentioned in the table above) of the provisions of the SEBI Act, 1992 ('SEBI Act'), Securities Contracts (Regulation) Act, 1956 ("SCRA"), SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations, 1992'), SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations, 2015'), Equity Listing Agreement, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('SAST Regulations, 1997') and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST Regulations, 2011'). Pursuant to investigation, it was alleged by SEBI that the aforesaid Noticees violated the provisions of Listing Agreement, PIT Regulations 1992 and SAST Regulations, 1997. In view of above, SEBI initiated adjudication proceedings against the Noticees to inquire and adjudge under Sections 15A(b), 15HB, 15G(i) of the SEBI Act and Sections 23A(a) and 23E of Securities Contracts (Regulation) Act, 1956 ('SCRA').
3. The details of allegation against the Noticees as per communique dated November 03, 2017 are summarized as follows:

Sr. No	Noticee Name	Findings in brief	Provisions violated	Penal provision(s)
1	Unitech Ltd	Failed to disclose the Price Sensitive Information to the Stock Exchanges on an immediate basis	Clause 2.1 and 3.2 of the Code of Corporate Disclosure Practices For Prevention of Insider Trading specified under Schedule II read with Regulation 12 (2) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15HB of SEBI Act
		Failed to close the trading window during the period of Unpublished Price Sensitive Information ('UPSI')	Clause 3.2 read with Clause 1.2 of Part A –Model Code of Conduct for Prevention of Insider Trading by Listed Companies specified in Schedule I under Regulation 12 (1) and Regulation 12(3) of PIT Regulations, 1992 read with	

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Sr. No	Noticee Name	Findings in brief	Provisions violated	Penal provision(s)
			Regulation 12 of PIT Regulations, 2015.	
		Made incorrect disclosures in the quarterly shareholding of promoters disclosed on the stock exchange website for quarter ended March 2009 and June 2009	Clause 35 of Listing Agreement read with Section 21 of SCRA.	Section 23A(a) and Section 23E of SCRA
		Failed in disclosing the Price Sensitive Information to the stock exchanges on an immediate basis	Clause 36(7) of Listing Agreement. read with Section 21 of SCRA	
2	Ramesh Chandra ('Ramesh')	Failed to close the trading window during the period of Unpublished Price Sensitive Information ('UPSI')	Clause 3.2 read with Clause 1.2 of Part A –Model Code of Conduct for Prevention of Insider Trading by Listed Companies specified in Schedule I under Regulation 12 (1) and Regulation 12(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15HB of SEBI Act
3	Ajay Chandra ('Ajay')			
4	Sanjay Chandra ('Sanjay Chandra')			
5	A S Johar ('Johar')			
6	Mionti Bahri ('Minoti')			
7	G R Ambwani ('Ambwani')			
8	Dr. P K Mohanty ('Mohanty')			
9	Anil Harish ('Anil')			
10	Sanjay Bahadur	Failed to close the trading window during	Clause 3.2 read with Clause 1.2 of Part A –Model Code of Conduct for	

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Sr. No	Noticee Name	Findings in brief	Provisions violated	Penal provision(s)
	('Sanjay Bahadur')	the period of Unpublished Price Sensitive Information ('UPSI')	Prevention of Insider Trading by Listed Companies specified in Schedule I under Regulation 12 (1) and Regulation 12(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15HB of SEBI Act
		Failed to obtain pre-clearance for the trades carried out in the Scrip. Noticee also has not held its investments for a period of 30 days as well as entered into opposite transactions of buy and sell during the next six months following the prior transactions for its other trades.	Clause 3.3 and 4.2 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of PIT Regulations, 2015.	
		Failed to file disclosure for the change in holding exceeding Rs. 5 lakhs in value to Company and Stock Exchange	Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15A(b) of the SEBI Act
		Entities have traded while in possession of UPSI	Regulation 3(i) read with Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15G(i) of SEBI Act
11	Ravinder Singhania ('Ravinder')	Entities have traded while in possession of UPSI	Regulation 3(i) read with Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15G(i) of SEBI Act
		Failed to close the trading window during the period of Unpublished Price Sensitive Information ('UPSI')	Clause 3.2 read with Clause 1.2 of Part A –Model Code of Conduct for Prevention of Insider Trading by Listed Companies specified in Schedule I under Regulation 12 (1) and Regulation 12(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15HB of SEBI Act

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Sr. No	Noticee Name	Findings in brief	Provisions violated	Penal provision(s)
		Failed to obtain pre-clearance for the trades carried out in the Scrip	Clause 3.3 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of PIT Regulations, 2015.	Section 15A(b) of the SEBI Act
		Failed to file disclosure for the change in holding exceeding Rs. 5 lakhs in value / 25000 shares to Company/Stock Exchange	Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	
12	Ravi Aiyar ('Ravi')	Entities have traded while in possession of UPSI	Regulation 3(i) read with Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15G(i) of SEBI Act
		Failed to close the trading window during the period of Unpublished Price Sensitive Information ('UPSI')	Clause 3.2 read with Clause 1.2 of Part A –Model Code of Conduct for Prevention of Insider Trading by Listed Companies specified in Schedule I under Regulation 12 (1) and Regulation 12(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15HB of SEBI Act
		Failed to disclose the Price Sensitive Information to the Stock Exchanges on an immediate basis	Clause 2.1 and 3.2 of the Code of Corporate Disclosure Practices For Prevention of Insider Trading Specified under Schedule II read with Regulation 12 (2) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	
		Failed to obtain pre-clearance for the trades carried out in the Scrip. Noticee also has not held its investments for a period of 30 days as well as entered into opposite transactions of buy and sell during the next six months	Clause 3.3 and 4.2 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of PIT Regulations, 2015.	

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Sr. No	Noticee Name	Findings in brief	Provisions violated	Penal provision(s)
		following the prior transactions for its other trades.		
		Failed to file disclosure for the change in holding exceeding Rs. 5 lakhs in value to Company and Stock Exchange	Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15A(b) of the SEBI Act
13	Mayfair Capital P Ltd. ("Mayfair")	Failed to make disclosures with respect to invocation of pledged shares to the Company (trigger dates 12/3/2009 and 2/4/2009)	Regulation 8A(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011	Section 15A(b) of the SEBI Act
		Failed to make disclosures with respect to change in its holding exceeding 2% of total shareholding to the Company (trigger date 2/4/09)	Regulation 13(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	
		Failed to make disclosures with respect to sale aggregating 2% or more of the share capital of the target company to the Company and the Stock Exchanges (trigger date 19/1/09)	Regulation 7(1A) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011	
		Failed to disclose the creation of pledge on certain dates to the Company	Regulation 8A(2) of SAST Regulations, 1997 read with SAST Regulations, 2011.	
14	Rana Rajesh Kumar Gangahar ('Rana')	Entities have traded while in possession of UPSI	Regulation 3(i) read with Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15G(i) of SEBI Act

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 6 of 85



Sr. No	Noticee Name	Findings in brief	Provisions violated	Penal provision(s)
		Failed to obtain pre-clearance for the trades carried out in the Scrip. Noticee also has not held its investments for a period of 30 days as well as entered into opposite transactions of buy and sell during the next six months following the prior transactions for its other trades.	Clause 3.3 and 4.2 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of PIT Regulations, 2015.	Section 15HB of SEBI Act
15	Ashok Kumar Rastogi ('Ashok')	Entities have traded while in possession of UPSI	Regulation 3(i) read with Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.	Section 15G(i) of SEBI Act
16	Shantanu Mallick ('Shantanu')			
17	Honey Harish ('Honey')			

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide communication order dated May 03, 2016, an Adjudicating Officer ('erstwhile AO') was appointed under Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') and under Section 23-I of the SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCRA Adjudication Rules') to inquire into and adjudge the alleged violations by the Noticees under Sections 15A(b), 15G(i) and 15HB of SEBI Act and under Sections 23A(a) and 23E of SCRA. Subsequent to the transfer of the erstwhile AO, vide order dated May 18, 2017, the case has been transferred to the present AO and proceedings are continued

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 7 of 85



for the aforesaid alleged violations against the Noticees and the same was communicated to the present AO vide communique dated November 03, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice ('SCN'), dated November 20, 2017, in terms of provisions of Rule 4 of Adjudication Rules and SCRA Adjudication Rules was issued to the Noticees, which were duly served to the Noticees through various modes such as Speed Post Acknowledgement Due (SPAD), Affixture and News Paper Publication. The details of hearing granted to the Noticees and the submissions made are as follows:

Noticee Name	Date of Ist Hearing Notice/s	Status of delivery of Ist Hearing Notice (HN)	Date of Ist Hearing, status of hearing	Date of IInd, IIIrd and IVth Hearing	Status of Hearing and Submissions of the Noticee	Reply of the Noticee
Unitech	09/3/18	Served on 12/3/18	26/3/18, Noticee not attended hearing	Noticee was granted hearing on 25/4/18, 25/5/18, 18/6/19	HN were delivered, however, Unitech failed to appear before the AO	24/4/18, 29/07/21, 07/05/22, 10/05/22
Ramesh	09/3/18	Served on 12/3/18	26/3/18, Noticee not attended hearing	Noticee was granted hearing on 25/4/18, 25/5/18, 13/6/18, 12/6/19	HNs were delivered, however, Ramesh failed to appear before the AO.	Noticee failed to file reply to SCN
Ajay	09/3/18	Undelivered	26/3/18	Noticee was granted hearing on 16/7/18, affixed status unknown. Paper publication of the SCN dated 20/11/17 and hearing notice to appear on 11/7/19 was carried out.	Noticee failed to appear before the AO.	Noticee failed to file reply to SCN



Noticee Name	Date of Ist Hearing Notice/s	Status of delivery of Ist Hearing Notice (HN)	Date of Ist Hearing, status of hearing	Date of IInd, IIIrd and IVth Hearing	Status of Hearing and Submissions of the Noticee	Reply of the Noticee
Sanjay Chandra	09/3/18	Undelivered	26/3/18	Noticee was granted hearing on 16/7/18, affixed status unknown. Paper publication of the SCN dated 20/11/17 and hearing notice to appear on 11/7/19 was carried out.	Noticee failed to appear before the AO.	Noticee failed to file reply to SCN
Johar	09/3/18	13/3/18	26/3/18, attended hearing	Noticee was granted another on 10/6/19, however noticee failed to attend	Noticee attended the hearing dated 26/3/18.	27/3/18
Minoti	09/3/18	Undelivered	26/3/18	Noticee granted hearing on 16/7/18, the HN was delivered to noticee, however, noticee have not attended the hearing. Subsequent HN dated July 18, 2018 were returned undelivered. Paper publication of the SCN dated 20/11/17 and hearing notice to appear on 11/7/19 was carried out.	Noticee appeared for the hearing on 11/7/19.	Email dated 5/7/19
G R Ambwani	09/3/18	14/3/18	26/3/18, not attended the hearing	Noticee granted hearing on 25/4/18,	-	-

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Noticee Name	Date of Ist Hearing Notice/s	Status of delivery of Ist Hearing Notice (HN)	Date of Ist Hearing, status of hearing	Date of IInd, IIIrd and IVth Hearing	Status of Hearing and Submissions of the Noticee	Reply of the Noticee
				however notice was returned undelivered with remarks- Noticee passed away		
Mohanty	9/3/18	14/3/18	26/3/18, not attended the hearing	Noticee was granted hearing on 25/4/18, 25/5/18, 12/6/19. The HNs were duly delivered	Noticee failed to attend the hearing	Noticee failed to reply to SCN
Anil Harish	10/1/18	Delivered	30/1/18	Noticee attended the hearing held on 30/1/18. Subsequent hearing was granted to the Noticee on 10/6/19. Noticee appeared for the hearing held on 23/08/2021	Noticee appeared for the hearing held on 23/08/2021	21/12/17, 21/2/18 and 11/08/21
Sanjay Bahadur	19/1/18	Delivered	15/2/18, subsequently rescheduled to 23/2/18. Noticee attended the hearing	Noticee was granted another hearing on 10/6/19	Noticee attended the hearing	12/1/18
Ravinder Singhania	9/1/18	Delivered, sought adjournment	29/1/18, subsequently adjourned to 15/2/18.	Noticee attended the hearing on 15/2/18. Another hearing was granted on 5/7/19. Noticee appeared for the hearing held on 23/08/2021	Noticee attended the hearing on 5/7/19 and 23/08/2021	3/1/18, 28/2/18, 11/08/2021 and 02/09/2021

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Noticee Name	Date of Ist Hearing Notice/s	Status of delivery of Ist Hearing Notice (HN)	Date of Ist Hearing, status of hearing	Date of IInd, IIIrd and IVth Hearing	Status of Hearing and Submissions of the Noticee	Reply of the Noticee
Ravi Aiyar	15/6/18	Delivered	16/7/18. Not attended the hearing. Vide email dated 6/9/18, sought reschedule of hearing	Noticee was granted on 31/10/18. Noticee appeared and made submissions. Another HN was granted on 12/6/19	Noticee not attended the hearing	21/9/18
Mayfair	09/03/18	Undelivered with remarks- "Left without address"	26/3/18	Noticee was granted hearing on 12/7/18. Subsequently, paper publication of the hearing notice was carried out informing Mayfair to appear for hearing on July 11, 2019	Noticee attended the hearing on July 11, 2019	Not filed
Rana Rajesh Kumar	12/1/18	Delivered. Email dated 15/2/18 confirming the receipt of the letter dated 12/1/18	15/2/18	Noticee was granted another hearing on 7/3/18 and Noticee attended the hearing. Another hearing was granted vide HN 13/5/19	The noticee attended the hearing on 10/6/19 and made submissions.	20/12/17 and 12/3/18
Ashok Rastogi	9/3/18	Delivered, confirmed the receipt of the letter vide email dated 14/3/18	26/3/18, not attended the hearing	Noticee was granted another opportunity on 25/4/18. The noticee sought waiver of notice for the hearing	The noticee availed waiver of notice for the hearing	Emails dated 6/12/17, 14/3/18

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Noticee Name	Date of Ist Hearing Notice/s	Status of delivery of Ist Hearing Notice (HN)	Date of Ist Hearing, status of hearing	Date of IInd, IIIrd and IVth Hearing	Status of Hearing and Submissions of the Noticee	Reply of the Noticee
Shantanu Mallick	12/1/18	Delivered	15/2/18, not attended	Another hearing was granted on 7/3/18. Noticee attended the hearing. Another opportunity of hearing was granted on 10/6/19, duly delivered	Noticee failed to attend the hearing dated 10/6/19	29/11/17, 25/1/18, 20/3/18
Honey Harish	10/1/18	Delivered	30/1/18	Noticee attended the hearing held on 30/1/18. Subsequent hearing was granted to the Noticee on 10/6/19. Noticee appeared for the hearing held on 23/08/2021	Noticee appeared for the hearing held on 23/08/2021	21/12/17, 21/2/18 and 11/08/21

6. The SCNs sent through SPAD could not be delivered to Ajay, Sanjay, Mayfair and Minoti. The undelivered SCNs and HNs were uploaded on the SEBI website i.e. www.sebi.gov.in under the heading "unserved summons/notices".

7. With respect to the Noticee Minoti, the SCN dated November 20, 2017 and the HNs dated June 15, 2018 and July 18, 2018 were issued to the address of Minoti available on record i.e. "R-87, Greater Kailash-1, Delhi- 110048", which were returned undelivered except the HN dated June 15, 2018 which was duly delivered to Minoti. In this regard, Minoti vide letter dated July 09, 2018, has informed that he has not received the referred SCN. It is observed that the said letter of Minoti was issued from "R-87, Greater Kailash-1, Delhi- 110048", which is the same address to which the SCN and HNs were attempted to deliver. Accordingly, vide letter dated July 18, 2018, a copy of SCN along with

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



annexures were forwarded to Minoti and informed to file reply to SCN and to appear for hearing. The said letter dated July 15, 2018 was issued to the same address i.e. "R-87, Greater Kailash-1, Delhi- 110048", however, it was returned undelivered, which was subsequently uploaded in SEBI website i.e. www.sebi.gov.in.

8. Subsequently, the notice for hearing was published in both English and Hindi Newspaper on June 29, 2019, informing Minoti and other two Noticees namely Ajay and Sanjay to collect the SCN by sending an email to the Office of the Adjudicating Officer i.e. ead-3@sebi.gov.in; ead-8@sebi.gov.in and/or to download from the SEBI website (www.sebi.gov.in). Also, vide the publication, Ajay, Sanjay and Minoti were also informed to file reply to the SCN on or before July 05, 2019 and to appear before the AO for the hearing on July 10, 2019.
9. On the date of hearing, Minoti appeared before the AO and reiterated the submission made vide email dated July 05, 2019 and sought copy of referred SCN and its annexures. While it was informed that the SCN was already published on the website which could be easily downloaded from the website by the noticee, and that it was clearly mentioned in the public notice to download the same from website, there was no response. Further, the notice was asked as to how one Noticee gets delivered at the said address and other notices get undelivered there was no response. However to carry the proceedings forward, despite the opportunities available to the Noticee to have access to the SCN, another copy of SCN and annexures were duly provided to the Noticee in a CD. Despite providing the same the said Noticee did not file reply to the SCN.
10. With respect to Noticee Ambwani, it is stated that vide Notice dated April 09, 2018, Ambwani was informed to appear for the hearing on April 25, 2018. The said notice was returned undelivered with remarks "Addressee Expired on 12/4/18". In this regard, through SEBI-NRO, the death certificate of Ambwani was obtained. Death certificate of Ambwani was received vide email dated May 22, 2019 from Neetu Ambwani. On perusal of the death certificate it is observed that, G R Ambwani passed away on March 09, 2018,



place of death as "C-34, Mayfair garden Hauz Khas New Delhi- 110016". The referred death certificate was issued by South Delhi Municipal Corporation on March 13, 2018. In this context, a reference has been made from the order of Hon'ble Supreme Court, in *Girijanandini Vs Bijendra Narain* (AIR 1967 SC 2110), wherein it was court observed that *in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim action personalis moritu cum persona (personal action dies with the death of the person) would apply*". Further, it is relevant to refer to the decision of the Hon'ble Securities Appellate Tribunal in *Chandravadan J Dalal Vs. SEBI* (Appeal No. 35/2004 decided on June 15, 2005), wherein it was held that *"The appeal abate since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates"*.

11. Thus, given that the present proceedings were initiated against the personal acts of alleged omission or commission of a person who is no more to face the charges, therefore, these proceedings against G R Ambwani as alleged in the SCN dated November 20, 2017 are abated and hence, the SCN dated November 20, 2017 issued to G R Ambwani is disposed accordingly.
12. With respect to Mayfair, the SCN and the hearing notices were issued to the address available on record i.e. "C-41, Mayfair Capital, New Delhi, India- 110016", however, it was returned undelivered. Subsequently, the undelivered SCN dated November 20, 2017 and Notices dated March 09, 2018 and June 26, 2018 were uploaded in the SEBI website (www.sebi.gov.in) under Sub-heading 'Unserved Summons/Notices' of the heading 'Enforcement'. Subsequently, the notice was published in newspaper informing the Noticee to appear for hearing on July 11, 2019. On the date of hearing, the representative appeared on behalf of Mayfair. During the hearing, the representative produced a copy of the letter of authority provided by Mayfair, which contains the registered office address of Mayfair i.e. 'C-41, Mayfair Garden, New Delhi- 110016',



which is the same address to which SCN, hearing Notices were attempted to delivered however the same was returned undelivered. Mayfair sought time to file reply to the SCN. The request of Mayfair was denied on the ground that the SCN and Notices were attempted to deliver to the same address from which the Noticee is appearing before the Adjudicating Officer, however, the same has been returned undelivered. Secondly, the undelivered SCN/hearing notices were uploaded in the SEBI website however, the Noticee continue to ignore it. Considering the above, it is concluded that the Noticee was provided enough opportunity however, continue to not to appear before the Adjudicating Authority and failed to file reply to the SCN. Hence, these proceedings are continued against Mayfair based on the information available on record.

13. With respect to Honey Harish and Anil Harish, the Noticees had earlier appeared for hearing on January 30, 2018 and made submissions. Subsequent to the hearing, the Noticees made additional submissions on February 21, 2018. Since the Noticees was heard and the order was pending, Noticees were once again granted hearing opportunity however, both Harish and Anil sought adjournment. Subsequently, the Noticees were again granted an opportunity of hearing on August 23, 2021, during which they reiterated their submissions dated August 11, 2021.
14. With respect to Noticee Ravinder Singhania, he earlier appeared for hearing on February 15, 2018 and made submissions. Noticee was once again granted hearing opportunity on July 05, 2019. Subsequently, the Noticee was again granted an opportunity of hearing on August 23, 2021, during which he reiterated his submissions dated August 11, 2021 and also submitted post hearing additional submissions vide letter dated September 02, 2021.
15. With respect to Unitech, Ajay, Sanjay and Mohanty, the Noticees have failed to appear for the hearing and to file reply to the SCN. Thus, the matter with respect to these entities namely Unitech, Ajay, Sanjay, Minoti and Mohanty is being proceeded based on the facts available on record.



16. The submissions of the Noticees are as follows:

Unitech, vide letter dated April 24, 2018, has made the following submissions:

In this matter, we would like to place on record certain orders passed by the Hon'ble Supreme Court of India in SLP (Cr) 598-79 of 2017 titled Sanjay Chandra and Another vs State Government of NCT of Delhi and others.

On 30th October 2017, the Hon'ble Supreme Court passed the following order:

'.....it is hereby made clear that the petitioners are only entitled to negotiate in respect of unencumbered properties or assets. If any proceeding is pending against the petitioners and the company, that may continue and the final order be passed, but no coercive Steps will be taken for executing the said orders. We have passed such an order as the entire scenario has been projected before us and we are sure that the petitioners shall comply with the directions issued by this Court from time to time'

In the aforesaid order, the term "Company" refers to Unitech Limited.

The aforesaid order was further supplemented vide order dated 20th November 2017 by the Hon'ble Supreme Court in the following terms:

"..... Having heard learned counsel for the parties, it is directed that jail authorities shall provide adequate time to the petitioners to have the negotiation so that the properties can be sold and money can be deposited. Be it noted, vide our order dated 30th October 2017 we had directed that no coercive steps will be taken for executing the orders Passed in respect of the petitioners. Needless to Say, when we Say 'no coercive steps for execution', all the forums are bound by it. Ordered accordingly....."

The aforesaid order was necessitated in light of certain Clarifications sought by presiding officer(s) of Punjab State Consumer Dispute Redressal Commission.

The aforesaid order was further supplemented by the following order of the Hon'ble Supreme Court dated 9th April 2018:

"..... As an interim protection, it is directed that no other court or authority shall take any coercive Steps against petitioner no 3 and its subsidiary companies except for production of petitioner nos. 1 and 2 in the concerned criminal courts....."

In light of the aforesaid directions of the Hon'ble Supreme Court, a large number of judicial, quasi-judicial, administrative and regulatory authorities have adjourned the matters pending before them in which Unitech Limited is a respondent / defendant. A copy of order dated 1st March 2018 issued by the Hon'ble High Court of Delhi is also attached for your ready reference.

Accordingly, you are requested to adjourn the matter as all forums are directed by the Hon'ble Supreme Court not to take any coercive steps against Unitech Limited which may also include imposing penalties on Unitech Limited as well.

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 16 of 85



Mr A S Johar, vide email dated December 28, 2017 and letter dated March 27, 2018, inter alia made the following submissions:

- i. *The said SCN is time-barred as it is issued after the limitation period and hence is not legally valid.*
- ii. *I have not done any trading in securities of Unitech Ltd. during the SEBI's investigation period of 01 October 2008 to 31 March 2009 and this includes the Show Cause Notice (SCN) period of 01 January 2009 to 31 March 2009.*
- iii. *I was a Director (Finance) of Unitech Limited during the relevant period. However, I was diagnosed with Oral Cancer and was at USA for its treatment during 07 March 2009 to 20 August 2009. During this period, I had not acted as Director of Unitech Ltd. and also not attended any Board Meetings or other meetings of Unitech Ltd*
- iv. *Even if it is presumed, without admitting, that I was in possession of Unpublished Price Sensitive Information (UPSI) as per SEBI (Prohibition of Insider Trading) Regulations 1992 during the period from 25 October 2008, i.e. the date on which UPSI came into existence [as per para 23 of the said SCN] till 31 March 2009 (the period of SCN) or till 20 August 2009, i.e. the date on which the PSI was published [as per para 24 of the said SCN], since I had not done any trading in the securities of Unitech Limited, no violation of any SEBI regulations was made by me.*
- v. *It is settled position that the responsibility of the compliance of the SEBI (Prohibition of Insider Trading) Regulations 1992 is that of the Compliance Officer. Even otherwise, I am not liable for any violation of these regulations by Unitech Limited due to following reasons:*
 - a. *Unitech Limited was having a compliance officer during the relevant time and he was reporting to the Chairman of Unitech Limited. Thus, I was not in the know of things. The Compliance Officer was not reporting to or working as per my instructions.*
 - b. *To ensure that duty cast on the Board of Directors of Unitech Limited under various laws including the SEBI (Prohibition of Insider Trading) Regulations 1992 are discharged properly, Unitech Limited was having an internal system of submission of quarterly compliance certificate of all applicable laws, which was placed in every quarterly Board meetings of Unitech Ltd. by its Managing Director, and the Managing Director of Unitech Limited had submitted clean reports on legal compliances, i.e. there was no reporting of non-compliance of SEBI (Prohibition of Insider Trading) Regulations 1992. Hence, I have had no reason to suspect or doubt about non-compliance, if any, of SEBI (Prohibition of Insider Trading) Regulations 1992 by Unitech Limited or its officers. Thus, I have discharged my duties and functions diligently as part of the Board of Unitech Ltd.*

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Minoti Bihari vide email dated July 05, 2019 has made the following submissions:

- i. I was first made aware of this SCN only vide the newspaper advertisement published by your office on 29.06.2019 wherein I was asked to file a reply by your office by 05th July, 2019. The same being an extremely short period to address the issue, I request that in the interest of natural justice you may allow me to give additional submissions at a later date. As is evident from your advertisement the hearing notices were not served upon me and thus, I was completely unaware of these proceedings.
- ii. It may be noted that I had received a Letter No. SEBI/HO//EAD-3/UNITECH/JS/SP17295/3/2018 dated 15th June, 2018, which was bereft of any details. I had replied to the same on 09th July, 2018 seeking a copy of the SCN and other relevant documents. However, your office did not deem it fit to either reply to my letter or provide me a copy of the SCN and the relevant annexures. Your office has been remiss in the same.
- iii. I have downloaded the SCN from the website as advised in the advertisement, however the same did not contain any annexures as mentioned in the SCN. I request that the same be provided before I can file a detailed reply. However, without prejudice to the same, on the basis of the SCN itself, it is clear that no allegations have been made as against me.
- iv. As you are aware I was a non-executive director on the Board of Unitech ("Company") and have since 07th December, 2017 resigned from the said Board.
- v. Since I was a non-executive director, I had no control over the disclosures being made by the Company to either SEBI or any regulatory authority. I had no control over the finances or the day to day functioning of the Company, under which head the transactions referred to in the SCN relating to PSI and UPSI fall.
- vi. In fact, there has been no allegation made in the SCN as against me, and I have no reason to believe that any inquiry is required against me. As far as I can fathom, you have two grievances as against the Company:-
 - a. Non-disclosure of transfer of 75% of shareholding in wholly owned subsidiaries of the Company to 3 affiliate companies; and
 - b. Trading on the shares of the Company based upon the said UPSI.
- vii. As is evident, my name only appears as being a person being aware of the UPSI and not in any other manner. I have not traded in securities of the Company and neither have I breached any law, rule or regulation with regard to insider trading. It is neither alleged, nor have I, passed on the UPSI to any third parties creating profit for either them or myself.
- viii. As far as non-disclosure of transfer is concerned, I would like to draw your attention to Para 18 and 22 of the SCN which clearly states that a Board meeting was not held on the issue of transfer of 75% of shareholding to affiliate companies. The managers and Directors of the Company sought it fit to not have a discussion and inform the

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Board of Directors upon the same. As a non-executive director, I was unaware of the scheme of arrangement or the changes sought to be made by those who were actively involved in managing the Company and responsible for the decisions so made. Thus, I had no control or knowledge over the events that transpired.

- ix. Since there are no specific allegations made against me, I request you to close the said enquiry against me.
- x. The above submissions made are without prejudice to the stand of the Company that the information was not Price Sensitive Information.

Anil Harish, vide letter dated December 21, 2017, February 21, 2018 and August 11, 2021 has inter alia made the following submissions. Similar submissions have been made by his wife Honey Harish:

- i. It is submitted that being an independent director of the company, Anil Harish was aware of the business of Unitech to the extent that the same was discussed at the level of the Board of Directors and was not at all involved in a more detailed manner.
- ii. In the present case and in relation to the allegations contained in the Show Cause Notice, it is submitted that as recorded in the Show Cause Notice itself on the basis of the earlier response of the Noticee, the trades of the Noticee and Honey Harish were in fact independent of one another. It may be noted that while he was a director on the Board of Unitech, all trades of the Noticee have been duly disclosed by him to Unitech and by the company to the stock exchanges in compliance with the applicable rules and regulations and the company's Code of Conduct. It is therefore submitted that there was no intention on the part of the Noticee to trade on the basis of any alleged UPSI. The only reason that Honey Harish's transaction of a relatively small value of Rs. 1,02,834/- was not disclosed was because the Noticee verily believed that there was no requirement to disclose the said trade.
- iii. Insofar as the Noticee is concerned, the Show Cause Notice proceeds on the basis that during the Investigation Period the Noticee's wife traded in the shares of Unitech whilst in the possession of UPSI, presumably shared with her by the Noticee. As per the Show Cause Notice, the UPSI in question pertained to a decision of Unitech to transfer 75% of its holding in eight subsidiary entities engaged in the business of wireless cellular connections (the said subsidiaries are collectively termed "Unitech Wireless") to three affiliate companies of Unitech. SEBI's allegation is founded on the basis that as Unitech was disposing of a majority of its stake in Unitech Wireless, the same constituted price sensitive information and ought to have been disclosed via the medium of the stock exchanges to the public at large. However it is submitted that the decision by Unitech to transfer 75% of its holding in Unitech Wireless to three affiliate companies did not constitute price sensitive information at all.



- iv. A reference to Unitech's earlier reply dated August 1, 2013, being Annexure 13 to the Show Cause Notice, sets out the background and rationale of the transaction i.e. the transfer by Unitech of 75% of its holding in Unitech Wireless to three affiliate companies and why the same does not constitute price sensitive information. Unitech submitted that in February 2008 the Unitech Wireless companies were granted pan-India Unified Access Services Licenses by the Department of Telecommunications, Government of India. To assist with the funding requirement to roll-out telecom services, Unitech entered into a deal with Telenor, a company largely owned by the Government of Norway, whereby Telenor would invest Rs. 6120 crores into shares of Unitech Wireless.
- v. It is submitted that the fact of the transaction between Unitech and Telenor, was determined by the management of Unitech to be price sensitive information, and was duly disclosed to the stock exchanges, i.e. BSE and NSE, on October 29, 2008. A press release made by Unitech and released to the stock exchanges, inter-alia states as follows:
- "Telenor has entered into a definitive agreement with Unitech Wireless whereby Telenor will invest over Rs. 6120 crores to subscribe to new shares in the company, resulting in an enterprise value of Rs. 11,620 crores. Subject to regulatory approvals, Telenor will hold up to 60% stake in Unitech Wireless."
- vi. Unitech's Reply dated August 1, 2013 further states that the Unitech Wireless companies, being subsidiaries of a public company were considered public companies and hence Telenor required that as a condition precedent to the funds being infused, the said companies be converted into private limited companies. In order to complete the transaction, Unitech agreed to convert the Unitech wireless companies into private limited companies by transferring 75% of its holding in the said companies to three affiliate companies, all of which were private limited companies.
- vii. However, in the said Reply dated August 1, 2013 submitted by Unitech, the company has further stated that it took the following steps to ensure that its and its shareholders' economic interests in Unitech Wireless were protected:
- a) Unitech's shareholding in the Unitech Wireless companies was pledged with a consortium of banks since August 4, 2008. The 75% holding was agreed to be transferred subject to the condition that it will remain pledged with the consortium of banks as security for the credit facilities availed;
 - b) ii. Unitech through its wholly owned subsidiary viz. Unitech Holding Limited (UHL) purchased call options and thereby retained a right to acquire at par value the entire shareholding of the three affiliate companies from their respective shareholders; and
 - c) iii. Unitech through UHL subscribed to compulsorily convertible debentures (CCDs) issued by the three affiliate companies, which were convertible into 99.97% of the equity capital of the three affiliate companies.



- viii. By means of the aforesaid steps, it is submitted by the company that although Unitech was transferring 75% of its holding in the Unitech Wireless companies, Unitech had ensured that its and its shareholders' economic interest in the Unitech Wireless companies was retained and that the transfer, done with a view to ensure completion of the transaction with Telenor, did not in any manner impact Unitech. It was therefore submitted that in light of the fact that the said transfer did not in any manner dilute Unitech's economic interests or impact the interests of its shareholders, the same did not constitute price sensitive information.
- ix. Although the fact of the deal between Unitech and Telenor was considered to be price sensitive and duly disclosed to the stock exchanges on October 29, 2008, the transfer of 75% of Unitech's holding in the Unitech Wireless companies, pertained only to the structuring/modalities of the transaction with Telenor and was not considered by the management of the company to be price sensitive information and hence was not separately disclosed to the stock exchanges. However the same was explained to the shareholders in the company's Annual Report for the year 2008-2009, which was published in August 2009. The Annual Report for the year 2008-2009 was approved and adopted by the shareholders of Unitech at the Annual General Meeting held on August 20, 2009.
- x. After the information about the transaction between Unitech was made announced on October 29, 2008, the same was widely reported in the news media, both print and electronic. For instance, the transaction was reported in the corporate section of The Economic Times on October 31, 2008, under the headline of "Telenor buys 60% in Unitech Telecom Unit". The news of the transaction was also reported in the Times Business section of the Times of India on October 31, 2008 under the headline of "Unitech sells 60% in arm for Rs. 6K Cr." The transaction was also reported in The Hindu Business Line on October 29, 2008 and the Live Mint on October 30, 2008.
- xi. However, even after information about Unitech selling 75% of its stake in the Unitech Wireless companies to three affiliate companies was made available to the public on and after the Annual General Meeting was held on August 20, 2009, the same was not reported or discussed in the news media at all. This goes to show, that the information about the transfer of 75% of Unitech's stake in Unitech Wireless was not considered by the public as material or price sensitive information, as alleged or at all.
- xii. Finally, it is submitted that even after the news about the sale of 75% of Unitech's stake in Unitech Wireless was made available to the public on August 20, 2009, the stock price of Unitech did not react and in fact moved in tandem along with the Sensex and Nifty. The shares of Unitech were moving in tandem with the market, demonstrating that the information about the sale of Unitech's stake in Unitech Wireless was in fact not price sensitive and did not have any impact on the price of the scrip when it came to be disclosed to the public.



- xiii. It may also be noted that where the transaction between Unitech and Telenor has been disclosed by the management of the company to the stock exchanges, as being price sensitive information, it does not necessarily follow that every aspect, detail or development in the transaction would also be price sensitive information and would need to be disclosed in the public domain. There is no allegation in the Show Cause Notice that Unitech's sale of 75% of its stake in Unitech Wireless was a deviation from the transaction as announced to the public on October 29, 2008 and if that is so, there would be neither any requirement of a separate disclosure nor can the structuring of the transaction, which has already been disclosed, be considered to be price sensitive information.
- xiv. It cannot be said that the information about the structure of a disclosed transaction / investment / acquisition, was information which is likely to materially affect the price of the share upon coming into the public domain. Further, given that the information about the structure of a disclosed transaction is nuanced legal information there would have been no reason whatsoever for the Noticee to share the said information with anyone, including with his wife.
- xv. As per the Show Cause Notice, the UPSI in question pertained to a decision on the part of the management of Unitech to transfer 75% of its holding in eight subsidiary entities engaged in the business of wireless cellular connections (the said subsidiaries are collectively termed "Unitech Wireless") to three affiliate companies of Unitech. SEBI's allegation is founded on the basis that as Unitech was disposing of a majority of its stake in Unitech Wireless, the same constituted price sensitive information and ought to have been disclosed via the medium of the stock exchanges to the public at large. However it is submitted that the decision by Unitech to transfer 75% of its holding in Unitech Wireless to three affiliate companies did not constitute price sensitive information at all.
- xvi. It is submitted that the disclosure of the deal between Telenor and Unitech, as disclosed to the public by way of an announcement dated October 29, 2008 (Exhibit A to the Reply) makes it clear that the deal was taking place between the "Unitech Group" and Telenor. The fact that phrase "Unitech Group" was used as opposed to merely Unitech makes it clear, that the group was acting as a whole and hence any involvement of any other entities from within the group like the three affiliate companies, would not be contrary to the transaction as disclosed. Given that the role of the three affiliate companies is not only not contrary to the transaction as disclosed but is merely one of the facets of the same makes it clear that no separate disclosure of such a fact is required and the same would not constitute UPSI. It is not the position in fact or in law that every aspect of a transaction, which by itself may be price sensitive information, is also price sensitive or that the same needs to be separately disclosed.



- xvii. It is submitted that the transfer of shareholding from Unitech to the three affiliate companies would not fall under the head of "disposal of an undertaking" for inter-alia the following reasons:
- a. It is not a transfer to any third party but rather an intra- group transfer. There is no allegation in the Show Cause Notice that the three affiliate companies are not part of the Unitech Group or that the same were not under the common control of Unitech- hence it cannot be said that the transfer amounts to a "disposal" at all;
 - b. As more particularly stated in paragraph 13 of the Reply of Honey Harish, though Unitech transferred the shares of the Wireless Companies to the three affiliate companies, Unitech retained economic interest in the Wireless Companies inter-alia by way of permission from lenders, acquiring call options and subscribing to compulsorily convertible debentures through its wholly owned subsidiary Unitech Holdings Limited; and
 - c. Finally, the shares of the Wireless Companies do not constitute an "undertaking" in terms of the PIT Regulations or Section 293 of the Companies Act, 1956 (referred to in paragraph 18 of the Show Cause Notice).
- xviii. As regards the proposition that shares of a company can never constitute an "undertaking" in terms of Section 293 of the Companies Act, 1956, a reference may be made to a judgment of the Hon'ble Bombay High Court in the case of Brooke Bond India Limited v. U.B. Limited & Ors., wherein it has been held by a Learned Single Judge that:
- "29. ... The sale of shares, whatever be their number, even if it amounts to a transfer of the controlling interest of a company, cannot be equated to the sale of any part of the "undertaking" so as to come within the mischief of Section 293(1) (a)..."
- xix. In the case of CDS Financial. Services Limited v. BPL Communications Limited & Ors., a Division Bench of the Hon'ble Bombay High Court referred to and affirmed the decision of the Learned Single Judge in the case of Brooke Bond (supra) and held that the sale of shares cannot be equated with the sale of undertaking or any part thereof.
- xx. Further in this case, the Hon'ble Bombay High Court expressly took note that the even after the sale of shares it was the defendant no. 1 therein that would continue to operate the business and that the business would be intact i.e. the Court was inclined to consider the effect of the transaction and who would actually operate the business. Even in the present case, it is submitted, that the transfer of shares of the Wireless Companies from Unitech to the three affiliate companies would not have any real effect on the business of the Wireless Companies in that the economic interest was in fact retained by Unitech, as stated herein and in the Reply.
- xxi. It is submitted that if the sale of shares does not constitute disposal of an undertaking it is submitted that the same cannot fall within any of the categories of deemed UPSI under Regulation 2(n) of the PIT Regulations. Given that the information does not fall within the categories of "deemed price sensitive information" it would then be



necessary to consider whether the same in fact constitutes price sensitive information. In this regard it may be noted that the information pertained only to a minor restructuring for the purposes of an existing transaction. As mentioned in paragraph 19 of the Reply of Mrs. Honey Harish, even when the information regarding the transfer of shares of the Wireless Companies by Unitech was disclosed in the public domain on August 20, 2009 - there was no change in the price of the shares of Unitech and the same moved in tandem with the BSE Sensex and Nifty. This further shows that the information was not in fact price sensitive.

xxii. Finally, a reference may be made to of the Subscription Agreement dated October 28, 2008 entered into between Unitech, the Wireless Companies and Telenor ("Subscription Agreement") (being part of Annexure 14 to the Show Cause Notice). Clause 5.1.3 of the Subscription Agreement reads as follows:

"5.1.3 The Indian Strategic Partner and the Indian Nominee Partners shall not save with the prior written consent of the Foreign Strategic Partner, sell, transfer or in any other manner, encumber the Equity Shares in a Licensee Company, except as already pledged with the Existing Lenders. This restriction shall not apply for any sale or transfer of the Equity Shares in any Licensee Company by either the Indian Strategic Partner or the Indian Nominee Partners to its respective Affiliates who join the Shareholders Agreement as parties." (Emphasis supplied)

xxiii. A perusal of Clause 5.1.3 above makes it clear that even amongst the parties to the transaction, namely Telenor and Unitech, it was understood that a restructuring of the holding amongst affiliate companies of Unitech would be permissible and the same would neither constitute a transfer and would not require the prior consent of Telenor. This goes to show, that the restructuring by way of the shareholding in the Wireless Companies was transferred from Unitech to the three affiliate companies was not a "disposal" at all but merely a restructuring that was expressly permitted and in fact required under the terms of the Subscription Agreement, which was duly disclosed in the public domain on October 29, 2008.

xxiv. In view of the all of the above, it is submitted that the said information does not constitute unpublished price sensitive information, as alleged or at all.

xxv. Neither the Noticee nor his wife have been alleged to have made any unlawful gains by trading in the scrip of Unitech during the Investigation Period or otherwise and in fact have made no such gains.

xxvi. At the outset, in the case of Mrs. Honey A. Harish it was submitted that under the provisions of the PIT Regulations she would fall within the classification of a "person is deemed to be a connected person" or a "deemed connected person". Accordingly, it is submitted that there is no a priori presumption that she was also in possession in UPSI. Further, the charge that such a deemed connected person was in possession of UPSI would be a rebuttable presumption that may be discharged.



- xxvii. It is submitted that as recorded in the Show Cause Notice itself on the basis of the earlier response of Mr. Anil Harish, the trades of the Noticee and Anil Harish were in fact independent of one another. Since the Noticee was not a director or otherwise related to Unitech and she was trading independent of Anil Harish, their trades were not on the same footing and were treated separately. It may be noted that while he was a director on the Board of Unitech all trades of Anil Harish, during the investigation period and thereafter, have been duly disclosed by Anil Harish to Unitech and by the company to the stock exchanges in compliance with the applicable rules and regulations and the company's Code of Conduct. It is therefore submitted that firstly that there was no intention on the part of Anil Harish or the Noticee to trade on the basis of alleged UPSI and secondly that the trades of Anil Harish and the Noticee were being treated as distinct and independent of one another. The only reason that the Noticee's transaction of a relatively small value of Rs. 1,02,834/- was not disclosed was because the Noticee verily believed that there was no requirement to disclose the said trade.
- xxviii. In this regard, it is submitted that it is the case of Mrs. Honey A. Harish that she was not in possession of the alleged UPSI and hence it cannot be stated that she traded while in the possession of UPSI. In order to demonstrate that a person, though such a person may be a deemed connected person, was not in possession of UPSI there are various surrounding circumstances that would attain legal significance in such a case. It may be noted that the Show Cause Notice does not bring on record any material to show that the Noticee has not traded on the basis of allegedly UPSI.
- xxix. One such circumstances, is the pattern in which such a person has traded. In the present case, as more particularly stated in the Reply of Mrs. Honey A. Harish, there was only one trade during the period in which the alleged UPSI was in existence i.e. between October 25, 2008 and August 20, 2009. It is further mentioned in paragraph 30(d) of the Show Cause Notice and paragraph 25 of the Reply that the sole trade of Mrs. Honey A. Harish during the relevant period was in respect of a miniscule amount of 2900 shares for a total value of Rs. 1,02,834/- only. It is an admitted fact that the Noticee had substantial investment in the company prior to the coming into existence of the alleged UPSI.
- xxx. Furthermore, the said shares were not sold immediately upon the alleged UPSI becoming public and there are no other trades that would show that the Noticee was in possession of or acting with a view to take advantage of the said UPSI or to make any unlawful gain. In fact, no gain was made by the Noticee and as stated in paragraphs 26 and 27 of the Reply, the shares were ultimately sold by the Noticee between August and September 2017 at a substantial loss.
- xxxi. In regard to the above factual position, the Noticee placed reliance on the judgment of the Hon'ble Securities Appellate Tribunal in the case of Mrs. Chandrakala v. The Adjudicating Officer, SEBI, dated January 31, 2012. In that case the Hon'ble Tribunal

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



were considering similar allegations of insider trading against the appellant therein who was the wife of the promoter of the concerned company and hence a person who is deemed to be a connected person within the meaning of the PIT Regulations.

- xxxii. The judgment in the case of Chandrakala (supra) shows that the trading pattern of a Noticee is an important factor to consider in order to determine whether or not the Noticee was trading based on UPSI. Further, the Hon'ble Tribunal observed that an analysis of the nature of the alleged UPSI - i.e. whether the information is positive or negative is relevant to see whether the Noticee is acting in accordance with such information. In the present Show Cause Notice, there is no statement as to whether the alleged UPSI is positive or negative. However, it is submitted that the alleged UPSI concerns disposal of an undertaking by Unitech. If such information is considered negative, then the Noticee would not have bought shares but would have sold shares. Alternately, if the information is considered positive, the Noticee would have chosen to sell as soon as the information became public in response to a price rise. However, in the present case — the Noticee bought shares both before and after the alleged information came into existence and did not sell the shares upon the information becoming public. Accordingly, it may be seen that the Noticee was clearly not acting on the basis of any UPSI or in possession of any alleged UPSI.
- xxxiii. The judgment in the case of Chandrakala was relied upon and followed by the Hon'ble Tribunal in the case of Manoj Guar v. SEBI dated October 3, 2012. In this case also the Hon'ble Tribunal was considering the case of a deemed connected person viz. the wife of a connected person.
- xxxiv. It is submitted that facts and ratio of the judgment in Manoj Gaur apply squarely in the present case and all the elements that were considered by the Hon'ble Tribunal are present in this case, in the following manner:
- a) The Noticees were trading not only in the scrip of Unitech but in other scrips as well;
 - b) The Noticee was trading regularly and independently;
 - c) The trading pattern of the Noticee is inconsistent with the alleged UPSI;
 - d) That during the period when the alleged UPSI was in existence the Noticee purchased only a miniscule amount of shares and she was already holding shares of the said Company at that point in time;
 - e) If Mrs. Honey Harish had received the alleged UPSI from Mr. Anil Harish she would not have traded only for 2900 shares but would have purchased more shares; and
 - f) The Noticees, considering their standing, would not risk their reputation for merely 2900 shares for a value of Rs. 1,02,834/-.
- xxxv. It is submitted that the judgments in the case of Mrs. Chandrakala and Manoj Gaur (supra) apply squarely to the facts of the present case and Show Cause Notice be quashed qua the Noticees herein.

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 26 of 85



Mitigating Factors

- xxxvi. Finally and in the alternative to all that is stated hereinabove, the Noticees submit that Section 15J of the SEBI Act, 1992 sets out certain relevant factors that ought to be taken into account by the Adjudicating Officer in determination of the amount of penalty, which are as under: .
- xxxvii. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default: It is submitted that in the present case there is no mention whatsoever of any disproportionate or unfair gain that has been made by either of the Noticees. In fact in the case of Mrs. Honey A. Harish, as stated herein and in paragraphs 26 and 27 of the Reply, the shares were sold by the Noticee between August — September 2017 at a substantial loss. In the case of Mr. Anil Harish it is an admitted position that there were no trades whatsoever during the period during which the alleged UPSI was in existence and hence there is no question of his having made any disproportionate gain or unfair advantage;
- xxxviii. The amount of loss caused to an investor or group of investors as a result of the default: It is submitted that the Show Cause Notice and the Investigation Report are absolutely silent in this respect and contain no allegations about any loss caused to any investors; and
- xxxix. The repetitive nature of the default: It is submitted that the defaults, if any, are not repetitive and apart from the present proceedings there are no other proceedings pending against the Noticees in SEBI and the Noticees have an impeccable record of statutory compliance.
- xl. For the reasons stated hereinabove, it is submitted that the Show Cause Notice be set aside and the proceedings against the Noticee be dropped without imposition of penalty.

Sanjay Bahadur, vide letter dated January 12, 2018 inter alia made the following submissions:

Sanjay Bahadur made similar submissions on the aspect that the transfer of 75% was not considered as a UPSI by Unitech as this did not affect the economic interest of Unitech Limited in any manner. Since the subsidiaries of a public limited company was considered to be public limited companies, one of the conditions precedent to the agreement with Telenor was that the holding of Unitech in the three subsidiaries be transferred to private limited companies and hence since the main agreement was reported to the stock exchange and widely discussed in the press, this transfer of 75% was not considered to be price sensitive at all. Consequently, he submitted the following:

- i. I totally deny that I was in possession of any UPSI between October 2008 to August 2009.



- ii. I would like to deny that the trades were done while being in possession of UPSI. I merely bought and sold these shares as an investment. Further I would like to submit that I was an independent director on the Board of Unitech and hence was not considered as a designated person / employee of the Company for the purpose of applicability of the Model Code of Conduct under the SEBI (PIT) Regulations, 1992. As a result the requirement of pre-clearance of trades and provisions with regard to Contra Trade were not applicable to me. Necessary disclosures were not made by me purely because of oversight and being unaware that disclosures had to be made to the stock exchanges and to the company. Further I would like to submit that the shares transacted by me was less than 50000 shares which does not even constitute 0.0001% of the then capital of Unitech Limited. Considering the small percentage, I would like to submit that there was no malafide intention and the purchase and sale was only made as a pure investment.

Ravinder Singhania vide letter dated January 03, 2018, February 28, 2018, August 11, 2021 and September 02, 2021 has made the following submissions:

- i. Ravinder Singhania made similar submissions on the aspect that the transfer of 75% was not considered as a UPSI by Unitech as this did not affect the economic interest of Unitech Limited in any manner. The Noticee has also placed reliance on the response filed by Unitech.
- ii. Since the subsidiaries of a public limited company was considered to be public limited companies, one of the conditions precedent to the agreement with Telenor was that the holding of Unitech in the three subsidiaries be transferred to private limited companies and hence since the main agreement was reported to the stock exchange and widely discussed in the press, this transfer of 75% was not considered to be price sensitive at all. Consequently, he submitted the following:
- a. The Noticee had received Rs. 34,42,500/- being redemption proceeds of Government of India Saving Bonds on February 2, 2009 and since BSE Realty Index was down from high of 13,848 in January 2008 to a low of 1354 in February 2009, part of redemption money was invested in script of Unitech. The realty sector rapidly recovered in later part of the year 2009 to a high of 4,452 in August 2009 and once having complied with the obligation of holding shares for at least six months, as a director of the Company, the Noticee sold the shares in August, 2009. Prior to selling said shares, the Noticee did check with the then Company Secretary of Unitech on whether any impediment in selling those shares from listing agreement or SEBI regulation point of view and only upon confirmation by him to go ahead, said shares were sold.
- b. Finally, it is submitted that even after the Noticee sold his shares on August 6, 2009 and the information was published in the Annual Report on August 20,

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



2009, the share prices of the company continued to rise till September 19, 2009 and remained in similar band up till a later till October 1, 2010.

- c. The Noticee infact had approached Unitech and obtained pre-clearance prior to buying as well as selling of shares but due to non- availability of proof, for the reasons mentioned herein above, is unable to furnish any evidence with that respect.
- d. The Noticee was not investing only in the scrip of Unitech but in other investments as well; The Noticee had also invested in mutual funds, other investments and Insurance. Policies during the relevant period. Some of the investments of the Noticee as on date are as mentioned below:
 - i. HDFC Relief Bond
 - ii. Public provident Fund
 - iii. NSC
 - iv. HDFC SLIC
 - v. HDFC SLIC - Unit Linked End
 - vi. LIC Bhima Nivesh &
 - vii. LIC Jeevan Astha
- e. The trade was on account of inflow of income from the redemption proceeds of Government of India Saving Bonds.
- f. The Noticee was trading regularly and independently;
- g. The trading pattern of the Noticee is inconsistent with the alleged UPSI;
- h. That during the period when the alleged UPSI was in existence the Noticee purchased only a miniscule amount of shares.
- i. If Noticee had received the alleged UPSI he would not have traded only for 50,000 shares which was not even 0.0001 % of total paid up capital of Unitech at particular point of time and same is a miniscule proportion of the total paid up capital;
- j. The Noticee, considering his standing, would not risk his reputation for merely 50,000 share.
- k. The Noticee traded in only 50,000 shares which was not even 0.0001 % of total paid up capital of Unitech at particular point of time and same is a miniscule proportion of the total paid up capital. It is submitted that the very fact that the trade was of a small amount evinces that there was no intention to act on the basis of UPSI or any other fraudulent or manipulative intent behind the impugned trades. If that had been so, the Noticee would certainly have purchased more shares for a larger sum of money, which was not the case. The fact that Noticee had received redemption proceeds of RBI Bonds worth Rs. 34 lakhs and yet invested only a small portion for the purchase of the shares demonstrates that



Noticee was not trading on any information but considering the future of the company.

- i. It is evident from perusal of the stock market trend that shares prices of Unitech in line with all the scrips of realty sector continued to increase even after selling of shares by the Noticee on August 6, 2009 clearly conveys that the decision on trades made by the Noticee were in ordinary course and upon an assessment of market conditions. It was not based on any price sensitive information and same was only due to completion of obligatory period six months coupled with reasonable return on the invested amount. The price details for the BSE Realty Index and Unitech during the relevant period are set out in Exhibit "F" annexed herewith.
- m. It is submitted that it is not even the case in the Show Cause Notice that the Noticee had any further trades during the Investigation Period or immediately thereafter. The whole purpose of insider trading would be to take act on the basis of the "insider information" or "UPSI" in order to make an unlawful gain. However there is no such allegation against the Noticee in the Show Cause Notice and in fact there can be none. Judgments in the case of Mrs. Chandrakala and Manoj Gaur (supra) apply squarely to the facts of

Ravi Aiyar, vide letter dated September 21, 2018 made the following submissions:

- i. Considering the fact that the present proceedings dealt for the period from 01.01.2009 till 31.03.2009, the Notice is barred by period of limitation in terms of the Limitation Act, 1963. Even if the limitation period is considered from my last reply dated 25.03.2015, the Notice is not valid and the present proceedings are hit by the Limitation Act, 1963, more so for the reason that the alleged offence as per the Notice is not a continuing offence.
- ii. It is respectfully submitted that in case the provisions of the Limitation Act, 1963 are not applied to the present proceedings, it would cause great hardship to me as neither myself nor Unitech Ltd. has preserved the records related to compliance with the SEBI (PIT) Regulations 1992 for the period related to the present proceedings. In terms of the relevant provisions of the SEBI (PIT) Regulations 1992 and the prevailing Code of Conduct for Prevention of Insider Trading adopted by Unitech Ltd. ("Code of Conduct"), and as confirmed by Unitech Ltd. as well vide its email dated 23.11.2015 (Page 16 of Notice), Unitech Ltd. is required to maintain records of all the applications, undertakings, declarations, etc. submitted by the insiders only for a limited period of three years from the date of receipt of such documents and therefore, the documents submitted by me to comply with the relevant provisions of the SEBI (PIT) Regulations 1992 and Code of Conduct adopted by Unitech Ltd. during the relevant period under consideration are not available.

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



- iii. Without prejudice to the above, I hereby respectfully submit that as a matter of practice, I used to take prior approval of Managing Director of Unitech Ltd. on all my proposed transactions in the shares of Unitech Ltd. irrespective of the fact whether such transaction is within or beyond the prescribed threshold limit under the Code of Conduct. However, as stated earlier in my letters dated 24.05.2014 and 25.03.2015, I do not have supporting documents of disclosures/pre-clearance applications filed by me for these transactions and I tried to procure the same from Unitech Ltd. but have been advised that since the law requires the company to retain such records for a period of three years, the company does not have disclosures/pre-clearance applications filed in the year 2009.
- iv. I had resigned and left the services of Unitech Ltd. with effect from 07.04.2009 vide my resignation letter dated 09.03.2009 which was accepted by Unitech Ltd. vide its letter no. UL:HR:3043:09 dated 03.04.2009. Unfortunately, this critical fact has been ignored in the Notice and on this ground also, the Notice is bad and needs to be set aside. A copy of my reply letter dated 25.03.2015, resignation letter dated 09.03.2009 submitted to Unitech Ltd. and acceptance letter issued by Unitech Ltd, is enclosed. Therefore, any transaction in the shares of Unitech Ltd. subsequent to my resignation has no relevance for the purpose of present proceedings.
- v. Without prejudice to the above submissions, my respectful submissions to the allegations against me in the Notice are as under:
- (A) Violated Clause 3.2 read with Clause 1.2 of Part A — Model Code of Conduct for Prevention of Insider Trading by Listed Companies specified in Schedule I and Schedule II under Regulation 12(1), 12(2) and 12(3) of the SEBI (PIT) Regulations, by not making prompt disclosures and not closing the trading window
- (i) Firstly, as per Para 22 of the Notice (at Page 12), the transaction considered as Price Sensitive Information ("PSI") in the Notice took place on 25.10.2008 which is admittedly outside the period of present proceedings mentioned in Para 3 of the Notice (at Page 3) and therefore, this transaction cannot be taken as basis for the present proceedings.
- (ii) Secondly, as noted in Para 15 of the Notice (at Page 9-10), Unitech Ltd. has admitted and confirmed that it did not consider transfer of 75% stake of 8 Unitech Wireless Subsidiaries to 3 Affiliate Companies as PSI and the reasons for the same are already explained by Unitech Ltd. in its reply letters. It is submitted that when Unitech Ltd. and its Board of Directors did not consider the aforesaid event as PSI, it was not proper and appropriate for me as compliance officer to override the decision of the Board and take a different stand when I was also convinced that the said event was not PSI under the SEBI (PIT) Regulations 1992 based on legal advice and discussion with eminent law firms of India advising Unitech and Telenor on this transaction relating to partnership between Unitech and

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Telenor. It was a bona fide view taken at that point of time and that is why, trading window was not closed as noted in Para 27 of the Notice (at Page 15).

(B) Violated Clause 3.3 of Part A of Schedule I of the SEBI (PIT) Regulations for not obtaining pre-clearance for the trades and Clause 4.2 of Part A of Schedule I of the Model Code of Conduct of the SEBI (PIT) Regulations for entering into the opposite transaction within six months of entering into the transaction

(i) As mentioned in my earlier letters dated 24.05.2014 and 25.03.2015, I wish to reiterate that I had always complied with the applicable provisions of the prevailing Code of Conduct as well as the SEBI (PIT) Regulations, 1992 As a matter of practice, I used to take prior approval of Managing Director of Unitech Ltd. on all my proposed transactions in the shares of Unitech Ltd. irrespective of the fact whether such transaction was within or beyond the prescribed threshold limit under the Code of Conduct, and Such approvals used to cover waiver from minimum holding period of securities. Unfortunately, neither I have retained copy of the disclosures/ pre-clearance applications submitted by me to Unitech Ltd. nor Unitech Ltd. has retained the same for the reason that these records were not required to be maintained for more than 3 years. As evident from Para 30(a) of the Notice (at Page 16), Unitech Ltd. vide its email dated 23.11.2015 has already stated that in terms of the SEBI (PIT) Regulations, it is maintaining the records of all declarations, given by directors/ designated employees /officers for a period of three years from the date of receipt of these documents i.e. pre-clearance and disclosures.

It is my humble submission that mere failure to furnish a copy of the compliances done by me for the above reason should not be construed as violation by me of the provisions of the SEBI (PIT) Regulations 1992. There are no presumptive provisions to this effect under the SEBI Act or the SEBI (PIT) Regulations 1992.

(ii) It is pertinent to mention that as per Para 3 of the Notice (at Page 3), the present proceedings are for the period from 01.01.2009 till 31.03.2009. Therefore, any transaction in the shares of Unitech Ltd. either before or after 01.01.2009 and/or after 31.03.2009 should not be considered because such transactions are not relevant for the purpose of the present proceedings.

As far as the transactions during the period from 01.01.2009 till 31.03.2009 are concerned, the followings transactions have been stated in Para 30(a) of the Notice (at Page 16):

Date	Exchange	Buy (No.)	Rate (Rs)	Buy amount (Rs)	Sell (No)	Rate (Rs)	Sell Amount (Rs)
01/01/2009	NSE	4,500	43.66	1,96,470	-	-	-

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



05/01/2009	NSE	-	-	-	5,000	48.50	2,42,500
29/01/2009	NSE	5,000	31.65	1,58,250	5,000	31.05	1,55,250

It is pertinent to mention that on 29.01.2009, my broker bought by mistake 5,000 shares of Unitech Ltd. in my demat account and when I came to know about this transaction, I instructed him to reverse this transaction immediately on same day as I had no intention to buy the shares of Unitech Ltd. due to my expected change of job and resignation from Unitech Ltd. This mistake of my broker had resulted in loss of Rs.3,000 and no profit was made in this unauthorized transaction.

Further, as per the details given above, total number of traded shares in the month of January 2009 was 9,500 shares having total trade value of Rs.4,38,970 which was less than the threshold limit of 25,000 shares or yet Rs5,00,000 in transaction value or 1% of paid-up share capital, prescribed in the Code of Conduct of Unitech Ltd. effective from 01.01.2009. ve A Consequently, no pre-clearance of trade was required for these a transactions in the shares of Unitech Ltd. during the month of January 2009, However, I had taken prior approval from Managing Director of Unitech Ltd. for all these transactions despite the fact that these transactions were within the prescribed threshold limit under the Code of Conduct.

Further, during the period from 21.10.2008 till 07.04.2009 when I left my job in Unitech Ltd., I had bought 19,600 shares of Unitech Ltd. (excluding 5,000 shares purchased by mistake and reversed on same day of 29.01.2009) for total purchase value of Rs.9,99,971 and sold the same at total sale value of Rs.9,95,181, which resulted in total loss of Rs.4,790 which itself shows that no trading was done and/or gain was made by me based on any price sensitive information.

- (iii). Regarding non-disclosure in terms of Regulation 13(4) of SEBI (PIT) Regulation for purchase of 6000 shares on 08.06.2009 (value exceeding Rs.5 lac), it is hereby respectfully submitted that I had already resigned and left the services of Unitech Ltd. with effect from 07.04.2009, as mentioned in my reply letter dated 25.03.2014, and consequently, I was not required to give any disclosure or obtain any permission for any transaction in the shares of Unitech Ltd. on and after 07.04.2009. Accordingly, no disclosure was required to be filed by me in terms of Regulation 13(4) of SEBI (PIT) Regulation for purchase of 6000 shares on 08.06.2009 (value exceeding Rs.5 lac) as wrongly mentioned in the Notice. Hence, there is no violation of Regulation 13(4) of SEBI (PIT) Regulation as wrongly alleged in the Notice. Further, the transactions are beyond the period of present proceedings, i.e. 01.01.2009 to 31.03.2009.

Rana Rajesh, vide letter dated December 20, 2017, March 12, 2018 has made the following submissions:



I have not done any trading in the shares of Unitech Ltd. on the basis of any unpublished price sensitive information ("UPSI") and/or during the period when "Trading Window" was closed by Unitech Ltd. and therefore, I have not violated any provisions of the SEBI (PIT) Regulations. It is more so for the reason that I am a qualified Civil Engineer and during UPSI period in question, I was designated as GM (Projects) and posted at site of Unitech Ltd. I had no knowledge or awareness about impact of any business decision/information on the share price of the Company as my nature of job was purely technical.

(A) Transfer of 75% stake in 8 Unitech Wireless Subsidiaries to 3 Affiliate Companies was not price sensitive information

He made similar submissions and relied on the response filed by Unitech on the aspect that the transfer of 75% was not considered as a UPSI by Unitech as this did not affect the economic interest of Unitech Limited in any manner. Since the subsidiaries of a public limited company was considered to be public limited companies, one of the conditions precedent to the agreement with Telenor was that the holding of Unitech in the three subsidiaries be transferred to private limited companies and hence since the main agreement was reported to the stock exchange and widely discussed in the press, this transfer of 75% was not considered to be price sensitive.

(B) All trading were done in compliance with the provisions of the Model Code of Conduct for Prevention of Insider Trading

To the best of my knowledge, I was not required to file any disclosure under the SEBI (PIT) Regulation but I had always complied in the past the relevant provisions of the Model Code of Conduct for Prevention of Insider Trading. Unfortunately, I have not retained copy of the compliances done during the period from 25.10.2008 till 20.08.2009 being old record having no relevance.

After receipt of your Notice, I contacted the concerned secretarial staff of Unitech Ltd. to obtain a copy of the documents/ applications submitted by me in the past in order to comply with the relevant provisions of the Model Code of Conduct for Prevention of Insider Trading. However, I have been informed that as per Clause 3(d) of the Model Code of Conduct for Prevention of Insider Trading, the Compliance Officer of Unitech Ltd. maintain records of all the Applications, Undertakings, Declarations, etc. submitted by Officers and designated Employees and their dependants for a period of three years from the date of receipt of the document, and accordingly, they have no such records for the period under inquiry, i.e. from 25.10.2008 till 20.08.2009.

It is my humble submission that mere failure to furnish a copy of the compliances done by me for the above reasons should not be presumed that I have violated the provisions of the SEBI (PIT) Regulations.

(C) Nature of Trades were contrary to way a reasonable person would trade

During the UPSI period of 10-months, I have done miniscule trading in shares of Unitech Ltd. resulting in overall profit of less than Rs. 50,000 (Rupees Fifty Thousand

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



only) during the period from 25.10.2008 till 20.08.2009. The trading pattern, as shown in the chart given in your Notice, does not lead to the conclusion that my trades were induced by the alleged UPSI. Had I been trading based on the alleged UPSI, I would have been only selling my shareholding in Unitech Ltd. and my gains from such trades would have been much higher. In other words, the trades executed by me are not motivated by the alleged UPSI. My trades were contrary to what a reasonable person would do if he was trading based on UPSI. Further, I have not caused loss to any investor(s) on account of these trades.

(D) Trades were done in scrips of several companies in the normal course

The Trades mentioned in the chart given in your Notice were done in the normal course in addition to trading in shares of many other companies, as evident from the details of scrips of other companies traded during the period from 25.10.2008 till 20.08.2009. Therefore, said trades in the shares of Unitech Ltd. were not done on the basis of any UPSI.

Considering the fact of miniscule gain of less than Rs. 50,000/- from the trades in question and that too, without causing loss to any person/investor and no past history of violation of any rules and regulations of SEBI, it is my humble request to your esteemed office to take a lenient view in this matter as far as I am concerned and to close the same without any adverse action against me.

Ashok Rastogi vide emails dated December 06, 2017, March 14, 2018 and April 19, 2018

I had worked as AGM in the Projects Department of the Company. Since, Unitech had more than 300 subsidiaries hence, to fulfill the requirements of Companies Act w.r.t. the number of directors on Board, as a policy matter the employees of the Company were made to act as "non -executive directors" of the subsidiaries. My appointment as director of UWEPL, UWDL, UWSL & UWKL was also one of such appointments only. I have never participated in the business affairs of the Companies.

I have been named to be in possession of UPSI. Here I wish to submit that though I was director of UWEPL, UWDL, UWSL & UWKL but all the business related decisions were made by the management of Unitech Limited and more particularly by Mr. Sanjay Chandra. I neither attended any business/ client meetings on behalf of the Company nor was part of the said transaction.

As is evident from the details mentioned in the letter I was not an active trader in the securities both in terms of quantity and frequency (one time buying only). I am a law abiding citizen and have always remained within the legal framework. I never traded whenever the Company closed the trading window. I hereby humbly submit that while

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 35 of 85



trading I was not in possession of UPSI and also the number of shares traded was also within the number specified by the Company as per the Model Code of Conduct for the Employees. And more importantly I have not booked any profit. All the 400 shares are still lying unsold even after close to nine years of time. Further, if the authority deems fit I am ready to surrender the shares to IEPF Account also.

In view of the above I most humbly request please to drop my name from the investigations and also spare me personal hearing scheduled on April 24, 2018 and oblige.

Shantanu Mallick vide letters dated November 29, 2017, January 25, 2018 and March 20, 2018

I am an Architect by profession working with Unitech Ltd. I was not at all aware about the business and financial matters, I am having all these supporting documents to prove my innocence and was not at all aware about the internal affairs of the company during the period of my service.

As an employee of Unitech Limited from Oct 21, 2002 to May31, 2013. I had worked as DGM in the Architectural Department of the Company. Since, Unitech had more than 300 subsidiaries hence, to fulfill the requirements of Companies Act w.r.t. the number of directors on Board, as a policy matter the employees of the Company were made to act as "non -executive directors" of the subsidiaries. My appointment as director of Cestos, Simpson and Acorus is also one of such appointments only. I have never participated in the business affairs of the Companies. I wanted to inform you that I was working as an Employee of M/s Unitech Ltd (letter attached for ref.) and was Nominated as an Non-Executive Director of Various Companies, (List Attached, 35 companies) just for signing relevant documents, without any Monetary Benefit. I was not the key managerial person as per companies Act or SEBI regulations.

I myself is also struggling for my Full and Final payments from the Organization and have taken a Legal Help for the same(cover letter attached). Many other employees of unitech Ltd. are being used by the company for fulfilling companies objectives without knowing the real facts. All of them are struggling for their payments from the company.

I belong to a middle income group family, law abiding citizen of this country and dependent on Salaried Job/Income for which I submit Income Tax return every year and nothing to do with that volume of money.

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 36 of 85



I left Unitech Ltd on May 31, 2013 (letter attached for your reference). I have repeatedly informed Unitech Ltd about the Notices being received from Income Tax Department and they are not at all responding to that. I am extremely helpless in this context.

I wanted to inform you that I was working as an Employee of M/s Unitech Ltd (letter attached for ref.) and was nominated as an Non-Executive Director of 35 companies just for signing relevant documents, without any Monetary Benefit.

This was not by choice but as per the directives of the Owners (Full Time Directors). Interestingly, they have used my PAN number, my Home Address and my DIN in all correspondences.

I left M/s UNITECH LTD on May 31, 2013 (letter attached for your reference) Sir, I have repeatedly informed M/s Unitech Ltd about the Notices being received from Income Tax Department and they are not at all responding to that. I am extremely helpless in this context.

Just to inform you. I myself is also struggling for my Full and Final Payment from the Organization and have to take a Legal Help for the same. I belong to a middle income group family, law abiding citizen of this country and dependent on Salaried Job/Income for which I submit Income Tax return every year and nothing to do with that volume of money.

I would sincerely request you to send the Notices/ do all future correspondences directly, with the Owners/Directors of M/s UNITECH LTD.

I was not an active trader in the securities both in terms of quantity and frequency. I am a law abiding citizen and have always remained within the legal framework. I never traded whenever the Company closed the trading window. I hereby humbly submit that while trading I was not in possession of UPSI and also the number of shares traded was also within the number specified by the Company as per the Model Code of Conduct for the Employees. Further, if the authority deems fit I am ready to transfer the profit made from such trade deal to IEPF Account also.

In view of the above I humbly request you to kindly drop my name from the investigations.

17. Before proceeding into the findings of the matter, it is necessary to deal with the technical issues made in the submissions of the Noticees. The Noticees in general has raised some common issue with respect to these proceedings being time-barred in terms of the Limitation Act, 1963. In this regard, it is stated that the Limitation Act, 1963 has no



applicability to the proceedings before the Adjudicating Officer as the said Act provides for 'limitation' only with respect to civil suits and appeals, being wholly judicial proceedings.

18. Further, it is also pertinent to refer Hon'ble Securities Appellate Tribunal ('SAT') order dated March 04, 2016 in the matter of Vaman M Apte, Devaki L Apte, Vikram V Apte and Mithila V Apte vs SEBI, which inter-alia states that "*Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because, firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws.*"
19. Further, with respect to the technical issue raised by the Noticee Unitech, it is stated that it is clear from the various order passed by the Hon'ble Supreme Court that "*proceeding is pending against the petitioners and the company, that may continue and the final order be passed, but no coercive steps will be taken for executing the said orders. We have passed such an order as the entire scenario has been projected before us and we are sure that the petitioners shall comply with the directions issued by this court from time to time ...*". From the above order of the Hon'ble Supreme Court, it is clear that there is no restrictions on the order to be passed by the Authority. Hence, the proceedings against Unitech is continued in the matter.
20. Noticees have brought up the issue that while the investigation period is mentioned as October 2008 to March 2009, however some of the observations/instances are beyond the period of investigation, and thus such instances/observations should not be considered. In this respect it is clear from documents that the SCN at para 4(four) the



reference has been made to the period outside the investigation period. The verbatim of the para is reproduced herein below for better appreciation :-

"SEBI, conducted investigation in the scrip of Unitech for the period October 01, 2008 to March 31, 2009 (hereinafter referred to as 'Investigation Period/IP'). However, wherever deemed necessary reference has been made to outside this period."

21. Thus it is clear that the Investigating Authority has focused his efforts on the specific period, but has included observations beyond the period to cover the activities beyond the period also. In fact the SCN records those instances away from the period to compare the shareholding pattern of the various Noticees before as well as after period of investigation.

22. Furthermore, u/s 11C of the SEBI Act under which the Investigations have been conducted do not bind the Investigation Authority to any particular period to a particular act, which may need to be investigated beyond the identified period of investigations. Even otherwise the plaint of the Noticees is suitably addressed as in compliance with the principles of natural justice the charges and the evidential documents were provided to the Noticees with enough opportunities to repudiate the allegations mentioned in the SCN. Thus from the above it is clear that the contention of the various Noticees on this count has no merit.

23. Having settled the common technical issues as above, the main issues are being now being considered and matter proceeded with.

CONSIDERATION OF ISSUES AND FINDINGS

24. After perusal of the material available on record, the following issues are for consideration viz.

- A. Whether Unitech has violated Clause 35, of Listing Agreement read with Section 21 of SCRA?**
- B. Whether Unitech has violated Section 21 of SCRA read with clause 36(7) of Listing Agreement, clause 2.1 and 3.2 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading specified under Schedule I, Clause**

Adjudication Order in respect of various entities in the matter of Unitech Ltd.
Page 39 of 85



- 3.2 read with clause 1.2 of Part A- Model Code of Conduct for Prevention of Insider Trading by Listed Companies read with Regulation 12 (1),(2),(3) of the PIT Regulations 1992 read with Regulation 12 of PIT regulation 2015.
- C. Whether Sanjay Bahadur, Ravinder, Ravi, Rana Rajesh, Ashok, Shantanu and Honey have violated Regulation 3(i) read with Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?
- D. Whether Unitech, Ramesh, Ajay, Sanjay Chandra, Johar, Minoti, Mohanty, Anil, Sanjay Bahadur, Ravinder and Ravi have violated Clause 3.2 read with Clause 1.2 specified in Schedule I under Regulation 12(1) and Regulation 12(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?
- E. Whether Unitech and Ravi have violated Clause 2.1 and 3.2 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading specified under Schedule II read with Regulation 12(2) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015? Also, whether Unitech have violated Clause 36(7) of Listing Agreement read with Section 21 of SCRA?
- F. Whether Sanjay Bahadur, Ravinder, Ravi and Rana Rajesh have violated Clause 3.3 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.
- G. Whether Sanjay Bahadur, Ravi and Rana Rajesh have violated Clause 4.2 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.
- H. Whether Sanjay Bahadur, Ravinder and Ravi have violated Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?
- I. Whether Mayfair have violated Regulation 8A(2), 8A(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011; Regulation 13(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015; Regulation 7(1A) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011?



J. Do the violations, if any, on the part of the Noticees attract any penalty under SEBI Act?

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

FINDINGS

Issue A: Whether Unitech has violated Clause 35, of Listing Agreement read with Section 21 of SCRA?

25. The texts of the said provisions are reproduced as under:

SECURITIES CONTRACTS (REGULATION) ACT, 1956

LISTING OF SECURITIES

Conditions of listing

21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with the stock exchange.

LISTING AGREEMENT

Clause 35

"The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-

- a. One day prior to listing of its securities on the stock exchanges.*
- b. On a quarterly basis, within 21 days from the end of each quarter.*
- c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital".*

26. SEBI alleged certain discrepancies regarding the promoters shareholdings in the disclosures on the stock exchange vis-à-vis the data received from the depositories (NSDL and CDSL) on shares invoked with respect to the holdings of the promoters of Unitech for the quarter ended March 2009 and June 2009 were allegedly observed as tabulated below:

For the quarter ended March 2009:

Adjudication Order in respect of various entities in the matter of Unitech Ltd.
Page 41 of 85



Promoter Name	Shareholding as per BSE website for quarter ended March 2009	Shareholding as per data provided by RTA & Depositories for quarter ended March 2009	Excess Shareholding disclosed to the exchanges	Reasons provided by Unitech Ltd. in emails dated March 24 and March 26, 2014
May fair Investment Pvt. Ltd. (MIPL)	10,72,29,053	10,71,64,053	65,000	65,000 shares of Ramesh Chandra shown held by MIPL.
Mayfair Capital Pvt. Ltd. (MCPL)	1,14,91,270	1,14,91,270	Nil	N.A.
Prakausali	55,86,23,938	53,24,53,938	2,61,70,000	52,20,000 shares invoked by Laxminarayan Investments Ltd. (lender) on 12.3.2009 (revoked subsequently). 2, 09,50,000 shares invoked by Aditya Birla Finance Ltd. (Formerly Birla Global Finance Co. Ltd.) the lender on 12.3.2009. (Revoked subsequently)

For the quarter ended June 2009:

Promoter Name	Shareholding as per BSE website for quarter ended June 2009	Shareholding as per data provided by RTA & Depositories for quarter ended June 2009	Excess Shareholding disclosed to the exchanges	As the company has not provided information for quarter ended June 2009, observations based on reply provided by company for quarter ended March 2009.
MIPL.	10,72,29,053	10,71,64,053	65,000	65,000 shares of Ramesh Chandra shown held by MIPL.
MCPL	1,14,91,270	1,14,91,270	Nil	N.A.
Prakausali	55,86,23,938	*52,56,37,835	3,29,86,103	* As per quarter ended March 2009 (RTA and depositories) Prakausali was holding 53,24,53,938 shares Less : 71,00,000 shares invoked 2/4/2009 Add : 2,83.897 Shares acquired from ILFS Trust company on 21/5/2009.



27. Thus, it is observed that 65,000 shares held by one of the promoter Ramesh Chandra was wrongly shown in the holding of MIPL as on March 31, 2009 and June 30, 2009. Further, it is also observed that a total of 2,61,70,000 shares of Prakausali were invoked by the lenders on March 12, 2009 but were included in the shareholding of Prakausali for the quarter ended March 31, 2009. With respect to quarter ended June 2009, total shares of 3,29,86,103 shares of Prakausali are shown in excess of his actual holding.
28. In view of the above, it is alleged that the Company has made incorrect disclosures of the shareholding of its promoters viz Ramesh Chandra, MIPL and Prakausali for the quarter ended March 2009 and June 2009 and thus, alleged to have violated Clause 35 of the Listing Agreement read with Section 21 of the SCRA 1956.
29. Admittedly the compliance with the clause 35 of the Listing Agreement was wanting. There is no dispute. As per the submissions of the Noticee Unitech as well as information available on the website of the company is now under the new management in compliance with the order of the Honourable Supreme Court dated January 20, 2020. Noticee Unitech submitted that, *".....the Hon'ble Supreme Court of India directed the Union of Government to appoint an Independent Management of Unitech Limited. In compliance thereto, the Central Government propose the constitution of a new Board of Directors which was approved by the Hon'ble Supreme Court vide its order dated 20-1-2020. The Ministry of Corporate affairs thereafter issued appointment letter dated 21.1.2020 for new Board of Directors."*
30. In this regard, the Hon'ble Supreme Court accepted the proposal submitted on behalf of the Union Government in the Case vide its order dated January 20, 2020 ("Order") for the appointment of directors on the board of the Company to take over its management. It is relevant to refer the Hon,ble Supreme Court vide order dated January 20, 2020 in the matter of Bhupinder Singh Versus Unitech Ltd. (Civil Appeal No.(s) 10856/2016) held that:



We issue the following directions:

(i) The existing Board of Directors of Unitech Limited is superseded with immediate effect in order to facilitate the taking over of management by the new Board of Directors constituted in terms of the proposal submitted by the Union government;

.....

(vii) Pending further orders of this Court, there shall be a moratorium against the institution of proceedings against Unitech Limited and its subsidiaries. The moratorium shall also extend to existing proceedings against the company as well as the enforcement of orders that may have been passed against the company;

(viii) The moratorium which has been imposed by this Court in clause (vii) above shall not impede, affect or restrain any existing investigation or prosecution or any investigation or prosecution which may hereafter be initiated against the erstwhile management or officers of Unitech Limited for acts involving a criminal wrong doing.....”

In view of the above, it is concluded that since the company is under a new management due to the insolvency proceedings under law, the instant proceedings cannot be continued against the Noticee Unitech.

Issue B: Whether Unitech has violated Section 21 of SCRA read with clause 36(7) of Listing Agreement, clause 2.1 and 3.2 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading specified under Schedule I, Clause 3.2 read with clause 1.2 of Part A- Model Code of Conduct for Prevention of Insider Trading by Listed Companies read with Regulation 12 (1),(2),(3) of the PIT Regulations 1992 read with Regulation 12 of PIT regulation 2015.

31. The text of the relevant provisions alleged to have violated are mentioned here for reference:-

Conditions of listing

21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with the stock exchange.

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 44 of 85



Clause 36 of the Listing Agreement

Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

(1)----

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;

- i) Issue of any class of securities.
- ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.
- iii) Change in market lot of the company's shares, sub-division of equity shares of company.
- iv) Voluntary delisting by the company from the stock exchange(s).
- v) Forfeiture of shares.
- vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.
- vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.
- viii) Cancellation of dividend/rights/bonus, etc.

The above information should be made public immediately.

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

Code of internal procedures and conduct for listed companies and other entities.

12(1) All listed companies and organisation associated with securities markets including:

- (a) the intermediaries as mentioned in section 12 of the act, asset management company and trustees of mutual funds;
- (b) the self-regulatory organisations recognized or authorised by the Board;
- (c) the recognised stock exchanges and clearing house or corporations;

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 45 of 85



- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956;
and
(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

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

3.2.1 The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.

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).

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



- (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

3.3.1 All directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

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.

4.0 Other restrictions

4.1----

4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.



In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities actually allotted.

SCHEDULE II
CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

3.0 Overseeing and coordinating 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.

SEBI (PROHIBITION OF INSIDER TRADING) 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.



32. It is alleged in the SCN that Unitech transferred 75% stake in its wholly owned subsidiaries to 3 affiliate companies is the Price Sensitive Information ('PSI'). Thus this should have been disclosed to the stock exchange. Further that the trading window should have been closed for the time that the information was unpublished. Some of the directors of Unitech and other Insiders while in possession of the Unpublished Price Sensitive Information ('UPSI') alleged to have traded in the Scrip and accordingly violated PIT Regulations. The Chronology of events relating to transfer of 75% stake in 8 wireless subsidiaries to the 3 private companies of the promoter-directors as alleged in the SCN, are as follows:

Sr.No.	Date	Event (Source : Reply of company dated Aug.1,2013)
1.	October 25, 2008	Board of Unitech Ltd. passed a resolution through circulation for holding 75% stake in 8 wireless companies through the 3 affiliate companies for which a share purchase agreement was signed by Unitech Ltd. and the 3 affiliate companies.
2.	October 28, 2008	Subscription Agreement entered among by Telenor Asia Pte. Ltd and Telenor Mobile Communications AS (Telenor), with Unitech Ltd., 3 affiliate companies, and 8 wireless companies
3.	January 30, 2009	Approval received from the Lenders for transfer of 75% stake in the 8 wireless companies to the 3 affiliate companies subject to the condition that the 75% stake will continue to be pledged with them. Accordingly, 75% stake transferred from the Unitech Ltd. to 3 affiliate companies and simultaneously Unitech Ltd. (through wholly owned subsidiary i.e Unitech Holding Ltd.) subscribed to Compulsory Convertible Debenture (CCDs) in these affiliate companies.
4.	August 20, 2009	Shareholders of Unitech approved the above transaction by approving the annual report which included the note on transfer of 75% stake, investment schedule and related party transactions.

The details of PSI came into existence, when PSI was published and period of UPSI as alleged in the SCN, are detailed below:

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



When PSI came into existence?

The PSI came into existence on October 25, 2008 when the board of directors of Unitech Ltd. passed a resolution through circulation for holding 75% stake in the Unitech Wireless companies through the 3 Affiliate companies.

When PSI was published?

In the Annual General Meeting of Unitech held on August 20, 2009 the shareholders of Unitech Ltd. adopted the annual report which included the note on transfer of the 75% stake in Unitech Wireless Companies to the 3 Affiliate Companies, investment schedule and related party transactions.

What was the period of UPSI?

The period of UPSI for transfer of 75% stake in the wholly owned subsidiaries of Unitech Ltd. to 3 affiliate companies of some of the promoter-directors was from October 25, 2008 to August 20, 2009.

33. It is on record that eight Unitech Wireless Companies, subsidiaries of Unitech, were granted pan-India Unified Access Services Licenses by the Department of Telecommunications, Government of India. The details of holding of Unitech in the eight subsidiaries are as follows:

Sr. No	Name of the Company	No of shares held by Unitech	Total Paid Up Share capital
1	Unitech Wireless (North) P Ltd.	25,999,940	26,000,000
2	Unitech Wireless (South) P Ltd.	24,999,940	25,000,000
3	Unitech Wireless (Kolkata) P Ltd.	9,999,940	10,000,000
4	Unitech Wireless (Delhi) P Ltd.	9,999,940	10,000,000
5	Unitech Wireless (East) P Ltd.	21,999,940	22,000,000
6	Unitech Wireless (Tamil Nadu) P Ltd.	9,999,940	10,000,000
7	Unitech Wireless (Mumbai) P Ltd.	9,999,940	10,000,000
8	Unitech Wireless (West) P Ltd.	24,999,940	25,000,000

From the above table, it is observed that more than 99% of the share capital of the 8 subsidiaries companies are held by Unitech.



34. Unitech entered into a Share Purchase Agreement ('SPA') with three companies Cestos Unitech Wireless P Ltd. ('Cestos'), Simpson Unitech Wireless P Ltd. ('Simpson') and Acrous Unitech Wireless P Ltd. ('Acrous'). Cestos, Simpson and Acrous collectively referred as '**Purchasers**'. From the SPA, it is observed that Unitech is the absolute legal and beneficial owner of the sale of shares of the 8 subsidiaries companies and shall sell and transfer to the purchaser, all of its rights, title and interest in the following 8 Unitech wireless companies.

Sr. No	Name of the Company	Earlier Known as *	No. of Equity shares of Rs. 10 each to be transferred	& of total issued & paid-up share capital
1	Unitech Wireless (North) P Ltd.	Adonis Projects Pvt. Ltd.	44,20,000	17%
2	Unitech Wireless (South) P Ltd.	Aska Projects Ltd	42,50,000	17%
3	Unitech Wireless (Kolkata) P Ltd.	Azare Properties Ltd	17,00,000	17%
4	Unitech Wireless (Delhi) P Ltd.	Hudson properties Ltd	17,00,000	17%
5	Unitech Wireless (East) P Ltd.	Nahan Properties P Ltd	37,40,000	17%
6	Unitech Wireless (Tamil Nadu) P Ltd.	Unitech Builders & Estates P Ltd.	17,00,000	17%
7	Unitech Wireless (Mumbai) P Ltd.	Unitech Infrastructure P Ltd	17,00,000	17%
8	Unitech Wireless (West) P Ltd.	Volga Properties P Ltd	42,50,000	17%

*Source- Annual Report of Unitech Ltd 2008-2009

These aforesaid 8 entities are collectively referred as 'Licensee Companies'. In terms of Annual Report of Unitech Ltd for the Financial Year 2007-2008, the abovementioned 8 entities were shown as the subsidiaries of Unitech. It is observed from SPA that Ravi Aiyar, director on behalf of the Purchasers entered into an agreement with Unitech. It is further observed that Ravi Aiyar was the then Company Secretary and the director of the Licensee Companies of Unitech.

35. The following are the important terms and conditions observed from SPA:

- "The licensee Companies have availed the Financial Assistance in the form of Short term loan of Rs. 1,200 crores and Guarantee Assistance of Rs. 882 Crores from the Consortium of banks comprising Punjab National Bank, Vijaya Bank , Bank of India, Oriental Bank of Commerce, Canara Bank and Central bank of India (collectively referred as Lenders) vide the facility agreement dated August 04, 2008 and the Sale shares are pledged with Punjab National Bank, acting as the Lenders Agent and Security Trustee, to secure the said Facility. The Purchaser (i.e. Simpson Unitech Wireless P Ltd., Cestos Unitech Wireless P Ltd., Acorus Unitech Wireless P Ltd.) hereby agrees and undertakes that the sale shares shall continue to be pledged in favour of the Lenders as a security for the due repayment of the said facility and shall be released by the lenders only upon discharge of the facility, and it shall be released by the lenders upon discharge of the facility, and it shall observe and discharge all the applicable terms and conditions of the Finance documents executed/to be executed for availing the facility from the lenders"
 - The obligations of the purchaser is to purchase the sale shares and make the payment of the sale share consideration to the seller and the obligation of the seller to sell the sale shares to the purchaser and to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions precedent (collectively referred to as the 'Conditions Precedent'):
- The seller (Unitech) and the purchaser shall have obtained all relevant corporate, lender, third party, regulatory consents and authorisations and governmental approvals, if any required for execution, delivery and performance of this agreement and the transactions contemplated by this agreement in accordance with the terms hereof;
 - The seller and the purchaser shall have agreed to or entered into an arrangement/agreement pursuant to which the seller shall have an option to acquire, either directly and/or through its subsidiaries, the direct or indirect ownership/economic interest in the sale shares at any time in future;

36. During the investigation, Unitech submitted the following:

- a. Change of status to private limited companies as pre-condition for investment by new investor: considering the financial difficulties, Unitech wireless companies were making attempts to associate/collaborate with an investor/operator to finance the telecom project and to provide necessary technical know-how to provide world class telecom services to the citizens of India at affordable prices. Unitech Wireless Companies (being subsidiary of the public ltd. Co.) were also considered as public limited companies wherein transfer restrictions on shares were not enforceable and these companies were facing difficulty in finding a suitable collaborator. Telenor group

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



was also willing to invest in Unitech Wireless Companies only after conversions thereof to private limited companies so that the shares transfer restrictions are enforceable on their respective shareholders.

- b. Therefore in the interest of investors, Unitech transferred its 75% stake in Unitech Wireless Companies at par value for the sole purpose of changing the status of Unitech Wireless Companies to private limited companies.
- c. The entire shareholding of Unitech in Unitech Wireless Companies, including 75% stake transferred to 3 Affiliate companies, was pledged with the consortium of banks comprising Punjab National Bank, Vijaya Bank, Bank of India, Oriental Bank of Commerce, Canara Bank and Central bank of India (since August 04, 2008 to secure the loan of Rs. 1200 crores and guarantee assistance of Rs. 882 crores availed by Unitech Wireless Companies. Further, 75% stake in Unitech Wireless Companies was transferred by Unitech to 3 Affiliate companies with a condition that it will remain pledged with the Unitech Wireless Lenders
- d. Unitech, through its wholly owned subsidiary Unitech Holdings Ltd. (UHL) retained right to acquire (option) at PAR Value the entire shareholding of 3 Affiliate Companies from their respective shareholders, which will make 3 Affiliate companies as wholly owned subsidiaries of Unitech and indirectly reverse this transaction of 75% stake sale by bringing back these shares into investment schedule of Unitech.
- e. In addition to the aforesaid option, unitech (through UHL) also subscribed to compulsorily convertible debentures (CCD) in 3 Affiliate Companies, convertible into 99.97% stake thereof. These CCDs are convertible at any time within 5 years from the date of issue thereof or in case of profits in 3 Affiliate Companies and/or Unitech Wireless Companies for 2 continuous years, whichever is earlier.
- f. In other words, by virtue of an option to acquire the entire shareholding in 3 Affiliate companies and subscription of CCDs therein, Unitech (through UHL) retained with itself total economic interest in 75% stake in Unitech Wireless Companies transferred to 3 Affiliate Companies. The following note was given in the Annual report 2008-09 (Management Discussion and Analysis, page 33) of Unitech to inform its investors and other stakeholders about this arrangement which was duly approved by the shareholders of Unitech at their meeting held on August 20, 2009:
"In January 2009 the company transferred 75% of its stake in Unitech wireless to three associate Companies, namely Cestos Unitech Wireless P Ltd., Simpson Unitech Wireless P Ltd and Acorus Unitech Wireless P Ltd. to fulfill the conditions precedent for investment under the Subscription Agreement. However, the Company continues to hold economic interest in Unitech Wireless through compulsorily convertible debentures and options in the three associate companies."
- g. UHL acquired back the shares of Unitech Wireless in March 30, 2010 and the same once again become wholly owned subsidiaries of Unitech Ltd at a nominal price of Rs. 3 lakhs demonstrates that the economic interest of Unitech was never divested

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



37. Similar submissions have been made by some of the other Noticees. Other Noticees have provided further depth by providing the following submissions in these proceedings:

- I. Although the fact of the deal between Unitech and Telenor was considered to be price sensitive and duly disclosed to the stock exchanges on October 29, 2008, the transfer of 75% of Unitech's holding in the Unitech Wireless companies, pertained only to the structuring/modalities of the transaction with Telenor and was not considered by the management of the company to be price sensitive information and hence was not separately disclosed to the stock exchanges. However the same was explained to the shareholders in the company's Annual Report for the year 2008-2009, which was published in August 2009. The Annual Report for the year 2008-2009 was approved and adopted by the shareholders of Unitech at the Annual General Meeting held on August 20, 2009.
- II. It is submitted that the transfer of shareholding from Unitech to the three affiliate companies would not fall under the head of "disposal of an undertaking" for inter-alia the following reasons:
 - a. It is not a transfer to any third party but rather an intra- group transfer. There is no allegation in the Show Cause Notice that the three affiliate companies are not part of the Unitech Group or that the same were not under the common control of Unitech- hence it cannot be said that the transfer amounts to a "disposal" at all;
 - b. As more particularly stated in paragraph 13 of the Reply of Honey Harish, though Unitech transferred the shares of the Wireless Companies to the three affiliate companies, Unitech retained economic interest in the Wireless Companies inter-alia by way of permission from lenders, acquiring call options and subscribing to compulsorily convertible debentures through its wholly owned subsidiary Unitech Holdings Limited; and
 - c. Finally, the shares of the Wireless Companies do not constitute an "undertaking" in terms of the PIT Regulations or Section 293 of the Companies Act, 1956
- III. As regards the proposition that shares of a company can never constitute an "undertaking" in terms of Section 293 of the Companies Act, 1956, a reference may be made to a judgment of the Hon'ble Bombay High Court in the case of Brooke Bond India Limited v. U.B. Limited & Ors., wherein it has been held by a Learned Single Judge that:

"29. ... The sale of shares, whatever be their number, even if it amounts to a transfer of the controlling interest of a company, cannot be equated to the sale of any part of the "undertaking" so as to come within the mischief of Section 293(1) (a)..."



- IV. In the case of *CDS Financial Services Limited v. BPL Communications Limited & Ors.*, a Division Bench of the Hon'ble Bombay High Court referred to and affirmed the decision of the Learned Single Judge in the case of *Brooke Bond (supra)* and held that the sale of shares cannot be equated with the sale of undertaking or any part thereof.
- V. Further in this case, the Hon'ble Bombay High Court expressly took note that the even after the sale of shares it was the defendant no. 1 therein that would continue to operate the business and that the business would be intact i.e. the Court was inclined to consider the effect of the transaction and who would actually operate the business. Even in the present case, it is submitted, that the transfer of shares of the Wireless Companies from Unitech to the three affiliate companies would not have any real effect on the business of the Wireless Companies in that the economic interest was in fact retained by Unitech, as stated herein and in the Reply.
- VI. It is submitted that if the sale of shares does not constitute disposal of an undertaking it is submitted that the same cannot fall within any of the categories of deemed UPSI under Regulation 2(n) of the PIT Regulations. Given that the information does not fall within the categories of "deemed price sensitive information" it would then be necessary to consider whether the same in fact constitutes price sensitive information. In this regard it may be noted that the information pertained only to a minor restructuring for the purposes of an existing transaction. The information regarding the transfer of shares of the Wireless Companies by Unitech was disclosed in the public domain on August 20, 2009 - there was no change in the price of the shares of Unitech and the same moved in tandem with the BSE Sensex and Nifty. This further shows that the information was not in fact price sensitive.
- VII. Finally, a reference may be made to of the Subscription Agreement dated October 28, 2008 entered into between Unitech, the Wireless Companies and Telenor ("Subscription Agreement"). Clause 5.1.3 of the Subscription Agreement reads as follows:
- VIII. "5.1.3 The Indian Strategic Partner and the Indian Nominee Partners shall not save with the prior written consent of the Foreign Strategic Partner, sell, transfer or in any other manner, encumber the Equity Shares in a Licensee Company, except as already pledged with the Existing Lenders. This restriction shall not apply for any sale or transfer of the Equity Shares in any Licensee Company by either the Indian Strategic Partner or the Indian Nominee Partners to its respective Affiliates who join the Shareholders Agreement as parties." (Emphasis supplied)
- IX. A perusal of Clause 5.1.3 above makes it clear that even amongst the parties to the transaction, namely Telenor and Unitech, it was understood that a restructuring of the holding amongst affiliate companies of Unitech would be permissible and the same would neither constitute a transfer and would not require the prior consent of Telenor. This goes to show, that the restructuring by way of the shareholding in the Wireless Companies was transferred from Unitech to the three affiliate companies was not a



"disposal" at all but merely a restructuring that was expressly permitted and in fact required under the terms of the Subscription Agreement, which was duly disclosed in the public domain on October 29, 2008.

X. It is submitted that even as per Unitech's own case, the transaction between Unitech and Telenor whereby Telenor acquired a stake in Unitech Wireless would constitute price sensitive information, as defined in Regulation 2(n) of the PIT Regulations. However, while the fact of the transaction as a whole would constitute price sensitive information, the definition of price sensitive information does not in any manner indicate or provide that each aspect of the transaction, such as the specific structure or modalities of the transaction would also be price sensitive information.

XI. This is further made out by the reaction of the public and the media to the information being disseminated. After the information about the transaction between Unitech was made announced on October 29, 2008, the same was widely reported in the news media, both print and electronic. For instance, the transaction was reported in the corporate section of The Economic Times on October 31, 2008, under the headline of "Telenor buys 60% in Unitech Telecom Unit". The news of the transaction was also reported in the Times Business section of the Times of India on October 31, 2008 under the headline of "Unitech sells 60% in arm for Rs. 6K Cr." The transaction was also reported in The Hindu Businessline on October 29, 2008 and the Livemint on October 30, 2008.

XII. However, even after information about Unitech selling 75% of its stake in the Unitech Wireless companies to three affiliate companies was made available to the public on and after the Annual General Meeting was held on August 20, 2009, the same was not reported or discussed in the news media at all. This goes to show, that the information about the transfer of 75% of Unitech's stake in Unitech Wireless was not considered by the public as material or price sensitive information, as alleged or at all.

XIII. Finally, it is submitted that even after the news about the sale of 75% of Unitech's stake in Unitech Wireless was made available to the public on August 20, 2009, the stock price of Unitech did not react and in fact moved in tandem along with the Sensex and Nifty. The price of the shares of Unitech between August 19, 2009 and August 24, 2009 as compared with the BSE Sensex and Nifty 100. The shares of Unitech were moving in tandem with the market, demonstrating that the information about the sale of Unitech's stake in Unitech Wireless was in fact not price sensitive and did not have any impact on the price of the scrip when it came to be disclosed to the public.

XIV. It may also be noted that where the transaction between Unitech and Telenor has been disclosed by the management of the company to the stock exchanges, as being price sensitive information, it does not necessarily follow that every aspect, detail or development in the transaction would also be price sensitive information and would need to be disclosed in the public domain. There is no allegation in the Show Cause Notice that Unitech's sale of 75% of its stake in Unitech Wireless was a deviation from

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



the transaction as announced to the public on October 29, 2008 and if that is so, there would be neither any requirement of a separate disclosure nor can the structuring of the transaction, which has already been disclosed, be considered to be price sensitive information.

38. Unitech had ensured that its shareholders economic interest in the Unitech Wireless companies was retained, which was evident from the fact that Unitech through its wholly owned subsidiary Unitech Holdings Ltd. (UHL) retained right to acquire (option) at PAR Value the entire shareholding of 3 Affiliate Companies from their respective shareholders and Unitech (through UHL) also subscribed to compulsorily convertible debentures (CCD) in 3 Affiliate Companies, convertible into 99.97% stake thereof. As per the condition of SPA, the seller and the purchaser shall have entered into an arrangement/agreement pursuant to which the seller have an option to acquire, either directly and/or through its subsidiaries, the direct or indirect ownership/economic interest in the sale shares at any time in future. Unitech through its wholly owned subsidiary UHL acquired back the shares of Unitech Wireless in March 30, 2010 and hence, the economic interest of Unitech was retained.
39. As per the Annual Report of Unitech for the Financial Year 2009-10, it is mentioned that: *"In January 2009 the company transferred 75% of its stake in Unitech wireless to three associate Companies, namely Cestos Unitech Wireless P Ltd., Simpson Unitech Wireless P Ltd and Acorus Unitech Wireless P Ltd. to fulfill the conditions precedent for investment under the Subscription Agreement. However, the Company continues to hold economic interest in Unitech Wireless through compulsorily convertible debentures and options in the three associate companies."* It is noted that Unitech in the Annual Report for the Financial Year 2009-10 has shown that Cestos, Simpson and Acorus are the subsidiaries of Unitech.
40. Further, there is no information available on records to show alienation and thus requiring disclosure to the stock exchanges. The 8 Licensee Companies were shown as subsidiaries companies in the books of accounts of Unitech for the year 2007-08 and



upon transfer of its holdings to the three affiliate companies, Untiech continued to show these 3 affiliates as its subsidiary companies in the Annual Report of Unitech for the year 2009-10.

41. Given all of the above, especially the terms of the SPA and the orders passed by judicial authorities do lean on the aspect that the transfer of holdings of Unitech in 8 Licensee Companies to three affiliate companies namely Cestos, Simpson and Acrous does not tantamount to price sensitive information as alleged in the SCN. In view of the aforesaid facts, the alleged violations against the Noticee Unitech do not stand established.

Issue C: Whether Sanjay Bahadur, Ravinder, Ravi, Rana Rajesh, Ashok, Shantanu and Honey have violated Regulation 3(i) read with Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?

42. The text of the relevant provisions alleged to have violated are mentioned here for reference

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

PROHIBITING ON DEALING, COMMUNICATING OR COUNSELLING ON MATTERS RELATING TO INSIDER TRADING.

3. No insider shall—

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

Violation of provisions relating to insider trading.

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

43. It is alleged that the Sanjay Bahadur, Ravinder Singhania, Ravi Aiyar, Rana Rajesh Kumar Gangahar, Ashok Kumar Rastogi, Shantanu Mallick and Honey Harish while in



possession of UPSI i.e. transfer of 75% stake in the wholly owned subsidiaries of Unitech Ltd. to 3 affiliate companies, have traded in the scrip of the Unitech. As established in the Issue B of the instant order, it is pertinent to mention that the allegation that the transfer of companies holdings of Unitech in 8 Licensee Companies to 3 affiliate companies namely Cestos, Simpson and Acrous is not a price sensitive information and hence, the trades carried out by the Noticees namely Sanjay Bahadur, Ravinder Singhanian, Ravi, Rana Rajesh, Ashok, Shantanu and Honey in the scrip during the period of unpublished price sensitive information does not stand established. Therefore, the allegation to this extent against Sanjay Bahadur, Ravinder Singhanian, Ravi Aiyar, Rana Rajesh Kumar Gangahar, Ashok Kumar Rastogi, Shantanu Mallick and Honey Harish does not stand established.

Issue D: Whether Unitech, Ramesh, Ajay, Sanjay Chandra, Johar, Minoti, Mohanty, Anil, Sanjay Bahadur, Ravinder and Ravi have violated Clause 3.2 read with Clause 1.2 specified in Schedule I under Regulation 12(1) and Regulation 12(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?

Issue E: Whether Unitech and Ravi have violated Clause 2.1 and 3.2 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading specified under Schedule II read with Regulation 12(2) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015? Also, whether Unitech have violated Clause 36(7) of Listing Agreement read with Section 21 of SCRA?

44. From the preceding paragraphs, it is established that the transfer of companies holdings of Unitech in 8 Licensee Companies to 3 affiliate companies namely Cestos, Simpson and Acrous is not a price sensitive information and hence, dissemination of the information and closure of trading window for such period does not arise. Therefore, the charges against the Noticees i.e. Unitech, its Board of Directors and its then compliance officer that they had failed to implement the code of conduct for prevention of insider trading adopted by the company does not stand established.



45. As a result, the charge against Unitech that it had failed to disseminate the price sensitive information on a continuous and immediate basis and charge against Ravi Aiyar for not overseeing and coordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media etc and failed to close the trading window for such price sensitive information also does not survive. Resultantly, the charges against Unitech, Ramesh Chandra, Ajay, Sanjay Chandra, Johar, Minoti Bahri, P K Mohanty, Anil Harish, Sanjay Bahadur, Ravinder Singhanian, and Ravi Aiyar are not maintainable.

Issue F: Whether Sanjay Bahadur, Ravinder, Ravi and Rana Rajesh have violated Clause 3.3 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

46. It is alleged in the SCN that the Noticees namely Sanjay Bahadur, Ravinder, Ravi and Rana Rajesh being directors/officers/designated employees of the Company have traded in the Scrip of Unitech. However, they had failed to obtain pre-clearance of such trades as required under the Model Code of Conduct of the PIT Regulations. As per clause 3.3 of Model Code of Conduct, all directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder. Further, 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.



47. Before proceeding further, it is necessary to mention that Unitech during the course of investigation has filed two Model Code of Conduct for Prevention of Insider Trading. One which was effective from July 2002 and another that was amended and effective from January 2009.

48. The relevant clause of the 2002 Model Code of Conduct of Unitech are as follows:

h. The Code of Conduct shall apply to:

i. All the directors of Unitech Ltd. and its subsidiary companies

Restriction on trading in shares of the Company

Pre-Clearance of Trades

A. All Directors/designated employees who intend to deal in the shares of the Company exceeding five hundred shares in a period of one month shall obtain clearance from the Compliance officer before entering into the trading transaction.

Other restrictions

A. Minimum Holding Period

All Director/designated employees must hold their investments in shares of the Company for a minimum period of thirty days

The holding period shall also apply to subscription in the primary market (IPOs) to the Company's Securities. In the Case of IPOs, the holding period would commence when the securities are actually allotted.

In case the sale of shares is necessitated by personal emergency, the holding period may be waived by the Compliance Officer after recording in writing his/her reasons in this regard.

c. Compliance Officer:

A. The Company shall appoint a Compliance Officer (a senior level employee) who shall report to the Managing Director/chief Executive Officer of the Company

B. The compliance officer shall:

1.

2.

3. Maintain records of all the Applications, Undertakings, Declaration, etc. submitted by the Directors/ designated employees for a minimum period of three years from the date of receipt of the document."

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



49. It is also observed that Unitech, during the investigation has also submitted revised Insider Trading Policy which was applicable with effect from January 01, 2009. The relevant points of the policy are as follows:

i. *Applicability of the policy:*

This policy shall be applicable only to the insiders which will include but not limited to the following categories of persons:

i) *Officers:*

- *All the directors of Unitech Ltd.*
- *Chief Executive Officer/Chief Financial officer of Unitech Ltd*
- *Company Secretary of Unitech Ltd*

ii) *Designate Employees:*

- *All employees in the accounts, finance of secretarial department of Unitech Ltd.*
- *All employees in other departments/divisions of Unitech Ltd from the level of General manager & above;*
- *All employees in corporate relation & corporate communication department of Unitech Ltd.*
- *All employees in corporate relation & corporate communication department of unitech ltd.*
- *All employees who are attached to directors/MD/CEO's office of Unitech Ltd*
- *Employees of other departments/divisions on a case-to-case basis, who could be reasonably expected to have access to unpublished price sensitive information relating to the company, to be decided by the chairman/managing director/whole time director/compliance officer, on a case-to-case basis.*
- *Dependants of the officers and designated employees*

j. *The Compliance Officer shall maintain records of all the applications, undertakings, declaration etc. submitted by insiders for a period of three years from the date of receipt of the documents*

k. *Pre-clearance of trades:*

- i. *All Officers/designated employees and their dependents who intend to deal in the securities of the company exceeding the minimum threshold limit of 25000 shares or Rs. 5 lacs in transaction value or 1% paid up share capital whichever is lower in a calendar month shall obtain pre-clearance of the transactions from*

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



the compliance officer before entering into the transaction as per the pre-dealing procedure as described hereunder.

I. Other restrictions:

- i. Transaction must be executed within one week from the next day after the approval of pre-clearance obtained from the compliance officer. If transaction is not executed within one week, the officer/designated employee must obtain pre-clearance for the transaction once again.
- ii. All officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e sell or buy any number of shares during the next six months following the prior transaction. All officers/designated employees shall also not take positions in derivative transactions in the shares of the company of any time.

50. From the submissions made by Unitech, the following is observed:

Sr. No	Name of the Noticee	Designation
1	Sanjay Bahadur	Independent Director, Unitech
2	Ravinder	Independent Director, Unitech
3	Ravi	Company Secretary, Unitech
4	Rana Rajesh	Director of Unitech Wireless (Delhi) Ltd., Unitech Wireless (South) Ltd. Unitech Wireless (Kolkata) Ltd.

51. From the above, it is clear that the aforesaid Noticees were designated employees and thus were required to comply with the provision of pre-clearance of trades in terms of the Model Code of Conduct framed by the Company.

52. Records show that the aforesaid Noticees carried out trades in the Scrip in the following manner:

Trades of Sanjay Bahadur, Independent Director, Unitech Ltd:

Date	Exchange	Buy (No.)	Rate (Rs.)	Buy Amount (Rs.)	Sell (No.)	Sell (Rs.)	Sell Amount (Rs.)
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Adjudication Order in respect of various entities in the matter of Unitech Ltd.



02/12/2008	BSE	5000	22.86	1,14,300	-	-	-
02/12/2008	NSE	5,000	22.86	1,14,300	-	-	-
11/12/2008	NSE	10,000	35.45	3,54,500	-	-	-
23/12/2008	BSE				20,000	42.04	8,40,810
19/03/2009	BSE	18,000	26.97	4,85,500	-	-	-
16/04/2009	BSE				18000	52.70	9,48,600
21/05/2009	NSE	10000	70.81	7,08,105.15	-	-	-

Trades of Ravinder Singhania, Independent Director, Unitech Ltd. (Opening Balance as on 1/10/2008 –nil)

Date	Exchange	Buy (No.)	Rate (Rs.)	Buy Amount (Rs.)	Sell (No.)	Rate (Rs.)	Sell Amount (Rs.)
05/02/2009	NSE	50,000	28.07	14,03,500	-	-	-
06/08/2009	NSE				50,000	92.50	46,25,000

Trades of Ravi Aiyar, the then Company Secretary, Unitech Ltd. (Opening balance as on 1/10/2008 – 5500 shares)

Date	Exchange	Buy (No.)	Rate (Rs.)	Buy Amount (Rs.)	Sell (No.)	Rate (Rs.)	Sell Amount (Rs.)
21/10/2008	NSE	900	80.40	72,360	5,400	76.96	4,15,577
22/10/2008	NSE	3,600	73.76	2,65,545	900	72.00	64,800
23/10/2008	NSE	-	-	-	3,700	67.16	2,48,476
28/10/2008	NSE	5,600	48.86	2,73,596	200	48.05	9,610
31/10/2008	NSE	-	-	-	5,400	47.95	2,58,930
16/12/2008	NSE	5,000	38.40	1,92,000	-	-	-
26/12/2008	NSE	-	-	-	4,500	37.97	1,70,865
01/01/2009	NSE	4,500	43.66	1,96,470	-	-	-
05/01/2009	NSE	-	-	-	5,000	48.50	2,42,500
29/01/2009	NSE	5,000	31.65	1,58,250	5,000	31.05	1,55,250
05/05/2009	NSE	2,000	52.74	1,05,483	-	-	-
11/05/2009	NSE	1000	48.00	48,000	-	-	-
19/05/2009	NSE	-	-	-	1000	68.00	68,000
20/05/2009	NSE	1,000	73.10	73,100	0	-	0
02/06/2009	NSE	0	-	0	3000	94.17	2,82,500
08/06/2009	NSE	6000	94.36	5,66,175	0	-	0
28/07/2009	NSE	0	-	0	1500	91.65	1,37,475

With regard to the transactions made by Ravi Aiyar in the scrip of Unitech as mentioned in the above table, it is observed from the available record that Noticee Ravi Aiyar

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



resigned from Unitech vide letter dated March 09, 2009 and the same was acknowledged by Company. Therefore the transactions after the said periods is not to be taken into the period of allegation as he was not in the capacity of Company secretary of Unitech.

b) Trades of Rana Rajesh Kumar Gangahar, Director of Unitech Wireless (Delhi) Ltd., Unitech Wireless (South) Ltd. Unitech Wireless (Kolkata) Ltd.

Date	Exchange	Buy (No.)	Rate (Rs.)	Buy Amount (Rs.)	Sell (No.)	Sell (Rs.)	Sell Amount (Rs.)
08/10/2008	NSE	200	90.45	18,090			
29/10/2008	NSE	500	51.88	25940			
10/11/2008	NSE			0	300	55.92	16776
14/05/2009	NSE			0	400	47.67	19068
20/05/2009	NSE	1,000	75.97	75970			0
26/05/2009	NSE	500	73.51	36755			0
04/06/2009	NSE			0	500	96.44	48220
08/06/2009	NSE	500	86.09	43045			0
08/07/2009	NSE	300	69.32	20796			0
16/07/2009	NSE	1000	85	85000			0
05/08/2009	NSE			0	3198	91.6	292937
14/08/2009	NSE	500	94.1	47050			0
17/08/2009	NSE	500	85.99	42995			0

53. From the above, it is clear that the aforesaid Noticees, have traded in the scrip, neither is it disputed by any of the aforesaid Noticees. Only dispute and contention advanced is that all the above trading is in compliance with the Model Code.

54. Among the various tenets of the Model Code of Conduct for Prevention of Insider Trading for Unitech during 2008, the aforesaid Noticees were required to seek pre-clearance for the trades over 500 shares in a month. Subsequently, the Model Code was modified with effect from January 01, 2009, which raised the bar for pre-clearance to 25000 shares or Rs. 5 lacs in transaction value or 1% paid up share capital whichever is lower in a calendar month.



55. During the investigation in 2014-15, the aforesaid Noticees have made the following submissions with respect to pre-clearance:

Sanjay Bahadur, vide letters dated April 15, 2014 and March 11, 2015, has submitted that *"since the number of shares were small, no pre-clearance was sought and no disclosures were made by me. I have always been a very small shareholder of Unitech Ltd."*

Ravinder vide letters dated November 30, 2015 has stated that *"as the transaction is very old, I am unable to find the pre-clearance approval granted by the Compliance Officer."*

Ravi, vide letter dated March 25, 2015 has stated that *"I had undertaken all transactions in the company's shares in due compliance with the applicable Code of Conduct for Prevention of Insider Trading. However, as a long of period of time has expired, I do not have evidence of the disclosures/pre-clearance applications filed by me for the transactions. I have tried to procure the same from Unitech Ltd. but have been advised that since the law requires the company to retain such records for a period of three years, the company does not have disclosures/pre-clearance applications filed in 2009"*.

With respect to Rana Rajesh, no specific submission with regard to pre-clearance of trades of the Noticee was observed.

56. Unitech vide its letter dated October 20, 2015, submitted that *"as per the requirements of the Securities and Exchange Board of India (Prohibition of Insider Trading) regulations, 1992, as amended from time to time, the company is required to maintain the records of all declarations, given by directors/designated employees/ officers for a period of three years. Since the information sought by your good office relates to the years 2008 and 2009, the said information is not available in the records of the Company"*



57. Unitech, in terms of its Model Code of Conduct is required to maintain the records for a period of three years, which is documented in the 2002 Code as well as the 2009 amended Code, thus there is no document for these compliances on records either during the investigations or during these proceedings.
58. It is observed from the submissions made by the Noticees during the investigations and these proceedings that Ravinder, Ravi and Rana Rajesh have maintained that they have obtained pre-clearance for the trades carried out in the Scrip. However, they failed to maintain a copy of the same, especially after a considerable lapse of time after the event. Thus, it appears to be no way on documents available on record to examine the compliance or not thereof, except the statements and the averments made by the Noticees themselves.
59. It is to be mentioned that with respect to Sanjay, it is an admitted fact that he has not sought pre-clearance. With respect to Ravi and Rana, it is to be mentioned that while they have made the statement that they have sought pre-clearances of all trades, however, as per available record, there is no information/documents in this regard. It is to be seen that the pre-clearance format under the code requires the seeker to provide an undertaking that the seeker has "*not contravened the code of conduct*" and that they have complied with the model code. However, it is on records that these two Noticees have entered into "opposite transaction" within six months of the first transaction.
60. As per the Code only for the trades of the Compliance Officer, pre-clearances were to be sought from the Managing Director. However, it is clear from the trading pattern of Ravi that he has entered into opposite transaction within the six month period of the prior transaction. All these instances indicate that indeed there was no pre-clearance sought as such glaring deficiencies would have been noticed and highlighted at the time of pre-clearance.



61. Considering the above, it is concluded that the Noticees namely Sanjay Bahadur, Ravinder, Ravi and Rana Rajesh have failed to obtain pre-clearance for the trades carried out in the scrip of Unitech. In view of the same, it is to be held that Sanjay Bahadur, Ravinder, Ravi and Rana Rajesh have violated Clause 3.3 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of PIT Regulations, 2015.

Issue G: Whether Sanjay Bahadur, Ravi and Rana Rajesh have violated Clause 4.2 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

62. It is alleged that the Noticees namely Sanjay Bahadur, Ravi and Rana Rajesh have entered into opposite transactions i.e. sell or buy of shares within six months following the prior transactions. As per clause 4.2 of Model Code of Conduct of PIT Regulations, all directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction.

63. It is observed from the trades carried out by Sanjay Bahadur, that he has bought shares on December 02, 2008, December 11, 2008 and March 19, 2009 and within six months of the trades, Sanjay Bahadur has entered into opposite transactions i.e. sold shares on December 23, 2008 and April 16, 2009.

64. From the trade details of Ravi Aiyar and Rana Rajesh, as mentioned in above table, it is observed that they also have entered into opposite transaction within six months of the prior transactions.

65. Further, from the trade details of Ravi Aiyar, it is observed that he has bought shares on October 21, 2008, October 22, 2008, October 28, 2008, December 16, 2008, December



11, 2008, January 01, 2009 and January 29, 2009, Further, within six months of the buy trades, he entered into opposite transactions i.e sold shares on October 21, 2008, October 22, 2008, October 23, 2008, October 28, 2008, October 31, 2008, December 26, 2008 and January 05, 2009.

66. From the trade details of Rana Rajesh, it is observed that he has bought shares on October 08, 2008, October 29, 2008, May 20, 2009, May 26, 2009, June 08, 2009, July 08, 2009, July 16, 2009, August 14, 2009 and August 17, 2009. Further, within six months of the buy trades, he entered into opposite transactions i.e sold shares on November 10, 2008, May 14, 2009, June 04, 2009 and August 05, 2009.

67. In view of the above paragraph, it is concluded that Sanjay Bahadur, Ravi Aiyar and Rana Rajesh have entered into opposite transaction within six months of the prior transactions and hence, the aforesaid Noticees have violated the provisions of Clause 4.2 of Schedule I of Part A of Model Code of Conduct For Prevention of Insider Trading for Listed Companies.

Issue H: Whether Sanjay Bahadur, Ravinder and Ravi have violated Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?

68. The text of the said Provisions are reproduced as under:

PIT Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

Continual Disclosure

13(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.



69. It is alleged that the Noticees namely Sanjay Bahadur, Ravinder and Ravi have failed to disclose the change in their holdings in the Company.

Noticee: Sanjay Bahadur:

70. With respect to the Noticee Sanjay Bahadur, it is observed that the Noticee being an independent director of Unitech, as on October 01, 2008 held 10,000 shares of Unitech. Subsequently, Sanjay bought 10,000 shares each (total 20,000 shares) on December 02, 2008 and December 11, 2008. Thus, Sanjay as on December 11, 2008 held 30,000 shares of Unitech. In terms of Regulation 13(4) of PIT Regulations, 1992, Sanjay is required to file disclosure for the change in holdings since it crossed the minimum threshold limit of 25,000 shares. In this regard, Sanjay during these proceedings has informed that *"necessary disclosures were not made by me purely because of oversight and being unaware that disclosures had to be made to the stock exchanges and to the company"*. Thus, it is an admitted fact that the Noticee Sanjay had failed to disclose the change in holdings in the Scrip to the Company and to Stock Exchanges which is in violation of Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

Noticee: Ravinder Singhania

71. It is observed that the Noticee Ravinder had bought 50,000 shares of Unitech on February 05, 2009. Prior to the said purchase of shares Ravinder held NIL shares in the company. Subsequently, Ravinder sold 50,000 shares of Unitech on August 06, 2009. It is alleged that Ravinder had failed to file disclosure for the sale of 50,000 shares of Unitech to Company and to the stock exchanges.

72. In this regard, Ravinder during these proceedings has informed that *"though Noticee is not aware about the disclosure by Unitech to the Stock exchanges, he is sure about making of disclosure by him to Unitech. Unfortunately, the Noticee is unable to trace a copy thereof, due to shifing of his belongings in view of reconstruction of his house in the year 2012."* Also, with respect to the disclosure for the sale of 50,000 shares of



Unitech, it is observed that the Noticee during the investigation, vide letter dated March 11, 2015 had informed that *"the transaction being old, I'm unable to find documentary information furnished by me to the Company for sale of the same"*.

73. Noticee being a director is required to disclose the change in holdings for the referred transactions to company as well as the exchanges. While the noticee has said it has complied with the disclosure to the Company, he is silent on the disclosure to the stock exchange. Further, BSE and NSE vide email dated November 24, 2015 had confirmed that no disclosure with respect to the sale of 50,000 shares of Unitech has been disclosed to the stock exchanges. Hence, it is concluded that Ravinder Singhanian had failed to comply with Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

Noticee: Ravi Aiyar

74. It is alleged that the Noticee Ravi Aiyar on June 08, 2009 sold 6000 shares of Unitech for a value of Rs. 5,66,175/-. However, the Noticee has failed to disclose the change in holdings in terms of Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015. In this regard, Ravi during these proceedings has informed that *"I had already resigned and left the services of Unitech with effect from April 07, 2009 as mentioned in my reply letter dated March 25, 2014 and consequently, I was not required to give any disclosure or obtain any permission for any transaction in the shares of Unitech on and after 07.04.20-09. Accordingly, no disclosure was required to be filed by me in terms of Regulation 13(4) of PIT Regulations for purchase of 6000 shares on June 08, 2009 (value exceeding Rs. 5 lacs) as wrongly mentioned in the Notice"*. Accordingly, Ravi has provided a copy of resignation letter dated March 09, 2009 submitted to Executive Chairman, Unitech. Also, a copy of letter of Unitech dated April 03, 2009 which inter alia states that the *"resignation of Ravi has been accepted by the management. You will be relieved from the services of the Company from the close of working hours of April 07, 2009"*. Also, Unitech has made an corporate announcement on April 04, 2009 *"Unitech Ltd has informed BSE that Mr. Deepak Jain has been*



appointed as Company Secretary and Compliance Officer of the Company w.e.f April 08, 2009 in place of Mr. S Ravi Aiyar as per the resolution passed by the Board of Directors through circulation".

75. Considering the fact that Ravi has resigned from Unitech prior to the sale transaction which was carried out on June 08, 2009, the allegation that Ravi failed to disclose the change in holdings for the transaction made in June 08, 2009 in the scrip in terms of Regulation 13(4) of PIT Regulations, 1992 does not stand established.

Issue I: Whether Mayfair have violated Regulation 8A(2), 8A(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011; Regulation 13(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015; Regulation 7(1A) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011?

76. The texts of the provisions are reproduced as under:

PIT Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

Continual Disclosure

13(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

SAST Regulations, 1997

7(1A): Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges



where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term ‘acquirer’ shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

Disclosure of pledged shares.

8A.

(1) ----

(2) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company.

(3) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.

Explanation.— For the purposes of sub-regulations (1), (2) and (3) the term “promoter” and “promoter group” shall have the same meaning as is assigned to them under Clause 40A of the Listing Agreement.

SAST Regulations, 2011

Repeal and Savings.

Regulation 35

(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

- (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, 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;
- (b) 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,

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 73 of 85



obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, 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.

77. The shareholding pattern of Unitech for the quarter ended September 2008 to September 2009 are as follows:

(Source : BSE website)

Particular	Quarter Sept 2008			Quarter Dec 2008			Quarter ended March 2009		
	No. of share-holders	No. Of shares	%	No. of share-holders	No. Of shares	%	No. of share-holders	No. Of shares	%
Promoter Holding	38	1,21,03,25,906	74.56	39	10,950,54,375	67.46	38	1,04,73,57,171	64.52
Non Promoter Holding	363463	41,30,49,094	25.44	499508	52,83,20,625	32.54	531583	57,60,17,829	35.48
Total	363501	1,62,33,75,000	100	499547	1,62,33,75,000	100	531621	1,62,33,75,000	100



Particular	Quarter ended June 2009			Quarter ended September 2009		
	No. of share-holders	No. Of shares	%	No. of share-holders	No. Of shares	%
Promoter Holding	37	1,04,73,57,171	51.23	38	1,04,73,59,171	43.84
Non Promoter Holding	605230	99,70,82,764	48.77	532594	1,34,14,41,876	56.16
Total	605267	2,04,44,39,935	100	532632	2,38,88,01,047	100

78. From the above, it is observed that the promoter's shareholding of Unitech has reduced from 67.46% (Dec 2008) to 64.52% (Mar 2009) i.e. a reduction by 2.94%, which is due to change in shareholding of the three Promoters of Unitech namely, Prakausali Investments P Ltd. ('Prakausali'), Mayfair Capital Private Ltd (Mayfair/MCPL) and Mayfair Investments P Ltd. ('MIPL'). The details of reduction of shareholding of MIPL, Mayfair and Prakausali reduced during the period January 2009-March 2009 are as follows:-

Promoter Name	Quarter ended December 2008		Quarter ended March 2009		Change in Shareholding (in absolute terms) during Jan 2009 to March 2009	Reduction in shareholding (in percentage terms) during Jan 2009 to March 2009
	No. of Shares	%	No. of Shares	%	No. of shares	%
MIPL	11,50,24,257	7.09	10,72,29,053	6.61	77,95,204	0.48
Mayfair	2,64,91,270	1.63	1,14,91,270	0.71	1,50,00,000	0.92
Prakausali	58,35,25,938	35.95	55,86,23,938	34.41	2,49,02,000	1.54



79. It is available on record that during the investigation, Unitech, vide letter dated January 11, 2014 has informed that the reduction in shareholdings of MIPL, Mayfair and Prakausali in Unitech was because of the invocation of pledge by the lenders with whom the shares were pledged. Accordingly, Unitech was informed to provide details of shares pledged by MIPL, Mayfair and Prakausali during the period January 01, 2009 to March 31, 2009. In this regard, Unitech, vide letters dated March 24, 2014 and October 20, 2014 have provided the details of shares pledged, which are as follows:

Promoter Name	Shares invoked on NSDL during Jan-March 2009 (Date on which invoked)	Name of the pledgees	Total invocations on both depositories during Jan-March 2009
MIPL	90,00,000 (19/1/2009)	SICOM Ltd.	90,00,000
Mayfair	1,50,00,000 (16/1/2009)	IFCI Ltd.	1,50,00,000
Prakausali	25,00,000 (16/1/2009)	IFCI Ltd.	5,20,54,000
	2,33,84,000 (19/1/2009)	SICOM Ltd.	
	2,61,70,000 (12/3/2009)	Laxminarayan Investments Ltd. (5,22,00,00 shares) Aditya Birla Finance Ltd. (2,09,50,000 shares)	
Total shares invoked by pledgees	7,60,54,000	-	7,60,54,000

80. It is also available on record that Unitech, vide letter dated January 11, 2014 has informed that "during the period October 01, 2008 to March 31, 2009, the Company were facing liquidity crisis which resulted in fall in the share price. Due to this situation, the promoters companies were obliged to pledge more shares with the lenders. There has been no other sale or purchase of shares of Unitech by its promoters, directors (and his/her dependents) and persons acting in concert, through off-market transaction during the period October 01, 2008- March 31, 2009. Since there was no direct sale or purchase

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



of shares by the promoters companies and some lenders even subsequently returned back the pledged shares to the demat account of the promoters companies after repayment of their loans, there was a bona fide belief that no disclosure was required to be filed in terms of PIT Regulations and SAST Regulations. Thus, it is observed that MIPL, Mayfair and Prakausali have pledged their holdings in Unitech which were subsequently invoked by the lenders.

81. It is observed that as per the disclosure filed by Unitech at BSE, dated July 01, 2018 that "pursuant to the Scheme of Amalgamation and Arrangement sanctioned by Hon'ble High Court of Delhi, w.e.f. 28.6.2013, Prakausali and MIPL have amalgamated with MCPL".

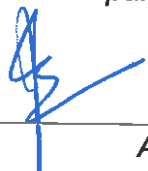
82. During these proceedings, Mayfair have not filed any reply to the SCN and made submissions during the hearing. Thus, these proceedings are continued based on the facts available on record. It is observed that the promoters holdings of Unitech namely Mayfair have been reduced, which was subsequently confirmed by Unitech that reduction in holdings includes invocation of shares pledged by the promoters with the lenders.

83. In terms of Regulation 8A(4) of SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009 that:

"The company shall disclose the information received under sub-regulations (1), (2) and (3) to all the stock exchanges, on which the shares of company are listed, within 7 working days of the receipt thereof, if, during any quarter ending March, June, September and December of any year,:-

(a) aggregate number of pledged shares of a promoter or every person forming part of promoter group taken together with shares already pledged during that quarter by such promoter or persons exceeds twenty five thousand; or

(b) aggregate of total pledged shares of the promoter or every person forming part of promoter group alongwith the shares already pledged during that quarter by such promoter or persons exceeds one per cent. of total shareholding or voting rights of the company, whichever is lower."



Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 77 of 85



84. During the investigation, Unitech was informed to provide the details of disclosures received from Mayfair with respect to the above pledge and invocation of pledges of shares of Unitech. In this regard, it is observed that Unitech have failed to reply and further, during these proceedings, Mayfair have neither filed reply to the SCN nor made submissions during the hearing. Thus, it is admitted fact that Mayfair have failed to disclose the pledge and invocation of pledge and accordingly it is concluded that it had violated Regulations 8A(2) and 8A(3) of SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009.

85. It is also observed during the quarter ended March 2009, the holdings of MIPL, Mayfair and Prakausali in Unitech have reduced which was mainly due to invocation of shares pledged. The details of change in holdings of MIPL, Mayfair and Prakausali and the details are as follows:

Date	Promoters	Reason for reduction in shareholding	No. of shares reduced	% of reduction of shares compared to total shares of the company
16/1/2009	Mayfair	Pledge invocation	1,50,00,000	0.92
16/1/2009	Prakausali	Pledge invocation	25,00,000	0.15
19/1/2009	MIPL	Pledge invocation	90,00,000	0.55
19/1/2009	Prakausali	Pledge invocation	2,33,84,000	1.44
Total reduction in shareholding triggered on 19/1/2009 of PACs – violation of Regulation 7(1A) of SEBI (SAST) Regulations, 1997			4,98,84,000	3.06

86. It is observed that during the quarters ended December 2008 and March 2009, MIPL, Mayfair and Prakausali held more than 15% and less than 55% of the share capital of Unitech. Further, it was alleged that MIPL, Mayfair and Prakausali being Persons Acting in Concert (PACs) were required to disclose the change in holding of 2% and above of the share capital of the company on account of invocation of pledge of their holdings in Unitech to the company and to the stock exchange.



87. As stated earlier, MIPL and Prakausali have been amalgamated with Mayfair and during these proceedings, Mayfair have failed to file to reply to the SCN and submissions during the hearing. Thus, it is evident that Mayfair have failed to disclose the change in holdings of 2% and above of the share capital of Untech to stock exchanges and accordingly, violated Regulation 7(1A) of the SEBI (SAST Regulations), 1997 read with Regulation 35 of SEBI (SAST Regulations), 2011.

88. It is also alleged that Prakausali, promoter of Unitech, had failed to disclose the change in shareholdings and invocation of shares pledged. In this regard, it is observed that Prakausali for the quarter ended December 2008 held 34.50% of the share capital of Unitech and subsequently, the shares held by Prakausali were pledged and invoked or transferred. The details of change in holdings of Prakausali are as follows:

Date	Particulars	No. of shares (Cr)	No. of shares (Dr)	Change as % of company's share capital	Cumulative Change
16/01/2009	Pledge invocation - IFCI		2500000	-0.15	-0.15
19/01/2009	Pledge invocation - SICOM		23384000	-1.44	-1.59
21/01/2009	Transferred from IDBI Trusteeship	23500000		1.45	-0.15
28/01/2009	Transferred to MIPL		800000	-0.05	-0.20
12/03/2009	Pledge invocation - Laxminarayan Investments Ltd. / Aditya Birla Finance Ltd.		26170000	-1.61	-1.81
18/03/2009	Shares returned by SICOM	1782000		0.11	-1.70
02/04/2009	Pledge invocation		71,00,000	-0.44	-2.14

89. From the above, it is observed that Prakausali, held more than 5% shares in the company i.e 34.50% shares for quarter ended December 2008 and was required to disclose the change in holding exceeding 2% (which triggered on 02/04/2009) of the share capital to the company and the invocation of shares pledged by Prakausali to the Company. It is observed that Pursuant to the scheme of amalgamation Prakausali and MIPL have been amalgamated with Mayfair. In this regard, it is observed that no disclosure with respect to the change in holdings and disclosure for invocation of shares pledged has been made. During these proceedings, Mayfair have been given



opportunity to file reply to the SCN and also to appear before me to present the matter. However, Mayfair have failed to reply to SCN and also present the matter before me. Considering the above, it is concluded that Mayfair have failed to disclose the change in holdings and invocation of shares pledged and accordingly violated Regulation 13(3) of PIT Regulations, 1992 and Regulation 8A(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011.

Issue J: Do the violations, if any, on the part of the Noticees attract any penalty under SEBI Act?

90. It has been established in the foregoing paragraphs that the Noticees namely Sanjay Bahadur, Ravinder, Ravi, Rana Rajesh and Mayfair Capital Pvt. Ltd. have violated the provisions of PIT Regulations, 1992 and SAST Regulations 1997. Therefore, present case is a fit case for imposing penalty against the following Noticees:

- a. Sanjay Bahadur, Ravinder, Ravi and Rana Rajesh under Section 15HB of SEBI Act for violating Clause 3.3 of Model Code of Conduct as specified in Schedule I, Part A, read with Regulation 12(1) of the PIT Regulations read with Regulation 12 of PIT Regulations, 2015.
- b. Sanjay Bahadur, Ravi and Rana Rajesh under Section 15HB of SEBI Act for violating Clause 4.2 of Schedule I of Part A of Model Code of Conduct For Prevention of Insider Trading for Listed Companies.
- c. Sanjay Bahadur and Ravinder under Section 15A(b) of SEBI Act for violating Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.
- d. Mayfair under Section 15A(b) of SEBI Act for violating Regulation 7(1A), 8A(2) and 8A(3) of SAST Regulation, 1997 read with Regulation 35 of SEBI SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.



Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 80 of 85



91. In view of the above conclusions drawn in this matter, it now remains to be determined whether the violation attracts the monetary penalty under Sections 15A(b) and 15HB of the SEBI Act. The said provisions are reproduced as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

Penalty for contravention where no separate penalty has been provided.

15HB: 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.

92. Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*"

Issue K: If yes, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

93. For the purpose of adjudication of quantum of penalty it is relevant to mention that under Section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due

Adjudication Order in respect of various entities in the matter of Unitech Ltd.

Page 81 of 85



regard to the factors specified in section 15J. The factors stipulated in Section 15J of the SEBI Act, which reads as follows:-

SEBI Act

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."*

¹[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

94. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. There are no investor complaints on record arising out of failure on the part of the Noticees. From the documents available on record, it is noted that no prior default by the Noticees is on record. Further, the material brought on record shows that the act of the Noticees is a one-off action and hence cannot be considered as repetitive in nature. I also observe that the violation pertains to a period which is more than eleven years old. To such extent, it may be considered as a mitigating factor. However, I am of the view that non-adherence to the laid down obligations under the PIT Regulations and SAST Regulations by the Noticees as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty.

¹ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.



Therefore, taking into consideration the facts / circumstance of the case and above mitigating factors, it is determined that a justifiable penalty needs to be imposed upon Sanjay Bahadur, Ravi Aiyar, Rana Rajesh Kumar Gangahar, Ravinder Singhania and Mayfair Capital Pvt. Ltd.

ORDER

95. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred under section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, the SCN dated November 20, 2017, is disposed of by imposing a monetary penalty upon the Noticees as mentioned in the table below:

Name of the Noticee	Provisions Violated	Penal Provision(s)	Amount of Penalty (in Rs.)
Sanjay Bahadur	Clause 3.3 and 4.2 of Model Code of Conduct as specified in Schedule I, Part A read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15HB of SEBI Act	5,00,000/-
	Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15A(b) of SEBI Act	5,00,000/-
Ravi Aiyar	Clause 3.3 and 4.2 of Model Code of Conduct as specified in Schedule I, Part A read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15HB of SEBI Act	5,00,000/-
Rana Rajesh Kumar Gangahar			6,00,000/-

Adjudication Order in respect of various entities in the matter of Unitech Ltd.



Name of the Noticee	Provisions Violated	Penal Provision(s)	Amount of Penalty (in Rs.)
Ravinder Singhania	Clause 3.3 of Model Code of Conduct as specified in Schedule I, Part A read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15HB of SEBI Act	2,00,000/-
	Regulation 13(4) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15A(b) of SEBI Act	1,00,000/-
Mayfair Capital P Ltd	Regulation 7(1A), 8A(2) and 8A(3) of SAST Regulation, 1997 read with Regulation 35 of SEBI SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015	Section 15A(b) of SEBI Act	3,00,000/-

96. In my view, the penalty amount as mentioned in the table above is commensurate with the violation committed by these aforesaid Noticees in this case.

97. The aforesaid Noticees shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link

98. <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in



99. The Demand Draft or details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties along with order details)	

100. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

101. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the last known address of the Noticees and also to SEBI.

Date: September 30, 2022

Place: Mumbai




Jeevan Sonparote
Adjudicating Officer