BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
{ADJUDICATION ORDER NO: EAD-1/ AO/SBM/JR/ 2021-22/14530}

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

In respect of:

Sl no.	Name of the Noticee	PAN No
1	**Direct Media Distribution Ventures Private Limited** **Address:** **18th Floor, A–Wing, Marathon Futurex,** **N.M Joshi Marg, Lower Parel, Mumbai - 400013**	**PAN: AADCD1940Q**

In the matter of

Trading by certain entities in the scrip of Dish TV India Limited

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FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted an investigation in respect of the trading in the scrip of Dish TV India Limited (hereinafter referred to as '**DTIL'/ 'Company'**) by certain entities during the period January 07, 2019 to February 06, 2019 (hereinafter referred to as the **'investigation period'/ 'relevant period'**). The shares of DTIL are listed on the Bombay Stock Exchange (hereinafter referred to as '**BSE'**) and the National Stock Exchange (hereinafter referred to as '**NSE'**). As per the Annual Report of DTIL, which was submitted to the stock exchanges for the Financial Year ended March 31, 2018, the shareholding of the promoters of DTIL (which comprised of both individual and corporate promoters) was 57,92,74,057 shares, which represented 31.46% of the total share capital of DTIL as on March 31, 2018. As per the Annual Report, the corporate promoters of DTIL were Direct Media Distribution Ventures

Private Limited, Veena Investments Pvt Ltd and World Crest Advisors LLP. Pursuant to the investigation conducted by SEBI, it is alleged that the promoter entity of DTIL *viz.* Direct Media Distribution Ventures Private Limited (hereinafter referred to as '**Noticee'**) had traded in the scrip of DTIL on the basis of unpublished price sensitive information during the above mentioned investigation period. In view of the same, it is alleged that Noticee has violated the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**').

2. During the course of investigations, it was observed that DTIL had made a corporate announcement on February 05, 2019 to the stock exchanges viz. BSE and NSE regarding the approval of its financial results for the nine months and quarter ended December 31, 2018 and also in respect of approval of an investment to be made by DTIL to the tune of Rs 3000 crores in its wholly owned subsidiary viz. Dish Infra Services Private Limited. The above announcements were made by DTIL pursuant to its Board of Directors meeting ('BOD') held on February 05, 2019, which discussed and approved the above decisions/announcements. It is noted that the above corporate announcements that were made by DTIL to the stock exchanges are price sensitive information and before they were published, were unpublished price sensitive information ('**UPSI**') in terms of regulation 2(1) (n) of PIT Regulations.

3. It is alleged that Noticee sold 21,40,000 shares of DTIL through market transactions on January 29, 2019 on the basis of the above mentioned UPSI and therefore, it is alleged that Noticee has violated the provisions of Sections 12 A (d) and (e) of the SEBI Act and Regulation 4 (1) of the PIT Regulations. In view of the same, adjudication proceedings have been initiated against the Noticee under the provisions of section 15 G (i) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Amit Pradhan was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated January 13, 2021 under section 19 of the SEBI Act read with section 15-I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into

and adjudge under the provisions of section 15G (i) of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticee. Subsequently, in view of the deputation of Shri Amit Pradhan to another organisation, the undersigned has been appointed as the AO in the matter, vide communique dated July 7, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice dated February 22, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticee in terms of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on it under the provisions of section 15G (i) of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee. The SCN issued to the Noticee, inter alia, mentioned the following:

   i. *During investigation, SEBI observed that DTIL had made corporate announcement on February 05, 2019 to BSE and NSE regarding the approval of its financial results for the nine months and quarter ended December 31, 2018 and approval of an investment to the tune of Rs. 3,000 crores in its wholly owned subsidiary viz. Dish Infra Services Private Limited. SEBI considered that the corporate announcement made on February 05, 2019 is to be treated as UPSI in terms of Regulation 2(1)(n)(i) & (iv) of the PIT Regulations.*

   ii. *DTIL vide its email dated August 27, 2020 had informed SEBI that the process of preparation of its financial statement for the quarter ended December 31, 2018 was started from January 07, 2019. Accordingly, January 07, 2019 is considered by SEBI as the date when UPSI came into existence.*

   iii. *In this connection, the Promoters of DTIL vide email dated October 27, 2020, have inter-alia intimated SEBI that they have, on one occasion, sold shares of DTIL during the period from January 01, 2019 to February 05, 2019, in order to generate liquidity for the repayment of borrowings. The details of the same are as under:*

Promoters	No. of Shares	Period of Sale

Direct Media Distribution Ventures Private Limited	21,40,000	January 29, 2019

iv. *SEBI observed that the Noticee and DTIL were having their registered office at the same address, which is 18th Floor, A Wing, Marathon Futurex, N M Joshi Marg, Lower Parel, Mumbai 400013. The Noticee was having one common director named as Mr. Basant Sharma and hence, it is alleged that he was associated with DTIL during the UPSI period and thus considered as a "connected person" in terms of Regulation 2(1)(d)(i) read with Note to Regulation 2(1)(d) of the PIT Regulations. Consequently, the Noticee was considered as an "Insider" in terms of regulation 2(1)(g) of the PIT Regulations.*

v. *SEBI also observed that the UPSI was positive in nature as it had a positive impact on the scrip price of DTIL after it became pubic but the shares were sold by the promoters before the UPSI became public during the period of January 25, 2019 to January 29, 2019 and the scrip price was quite low during the period of January 25, 2019 to January 29, 2019 due to some negative news in the media about the company i.e. DTIL. On February 06, 2019, at BSE, the scrip opened at 3.73% higher than the previous day's closing price and closed at 20.43% which was higher than the previous day's closing price. Increase in the volume of shares of DTIL was also observed pursuant to the dissemination of the UPSI to the stock exchanges. Similarly, on February 06, 2019, at NSE, the scrip opened at 1.30% higher than the previous day's closing price and closed at 18.87% higher than the previous day's closing price. Increase in volume was also observed. The details of the same are as under:*

BSE

Date	O	H	L	C	Vol
05.02.2019	23.50	23.95	21.80	22.75	2682624
06.02.2019	23.60	28.40	20.50	27.40	17092592

NSE

Date	O	H	L	C	Vol
05.02.2019	23.40	24.00	21.70	23.05	16844454
06.02.2019	23.35	28.70	20.25	27.40	98297010

vi. *In regard to the above observation, NSE vide email dated October 29, 2020 had confirmed to SEBI about the aforesaid sale transaction of the Noticee on January 29, 2019 i.e. during the UPSI period, which is in violation of the provisions of Sections 12A (d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations.*

6. Vide its letter dated March 19, 2021, Noticee sought inspection of the records/ documents pertaining to the proceedings. In this regard, vide email dated May 14, 2021, Noticee was informed about the fact that the relevant records/documents based on which the charges/allegations have been levelled against it in the SCN were already furnished to the Noticee during the course of the proceeding. In view of the same, Noticee was advised to submit its reply to the SCN by May 28, 2021. Vide email dated May 27, 2021, Noticee sought additional time of two weeks to file its reply / submissions in the matter. Thereafter, vide letter dated June 11, 2021, Noticee made its submissions, *inter alia*, mentioning the following :-

- *The SCN alleges that the Noticee is an insider on the basis that the Noticee and DTIL have a common registered office address and that the Noticee and DTIL have a common director viz., Mr. Basant Sharma; hence, the Noticee is a person associated with DTIL during the UPSI period and accordingly is considered as a "connected person" in terms of regulation 2(1)(d)(i) of the PIT Regulations.*
- *In this regard, it is submitted that the SCN proceeds on an erroneous premise. It is submitted that Mr. Basant Sharma was neither a director of DTIL during the UPSI period i.e., between January 1, 2019 to February 5, 2019 nor has ever been a director of DTIL. DTIL's annual report for F.Y. 2018-19 is relied upon in this regard. It is evident that Mr. Basant Sharma was not a director of DTIL during this time, and accordingly the assertion that the Noticee is an insider as it is a connected person associated with DTIL on the basis of the fact that DTIL and Noticee share a common director, is completely incorrect and unfounded. Moreover, it is submitted that Mr. Basant Sharma was not privy to the information with respect to*

the financial results of DTIL for the quarter ending December 31, 2018 and did not have access to the UPSI during the UPSI period.

- *It is further submitted that the Noticee did not have access to the UPSI during the UPSI period and was not involved in the process of preparing the financial results for the quarter ending December 31, 2018. The details in respect of the UPSI were available only with the top management and employees of DTIL and the Noticee did not have access to the same. Without prejudice, it is submitted that SEBI has failed to produce any material on record to suggest that the Noticee was aware of the UPSI. In fact, the charge has been sought to be supplemented on the basis of an erroneous premise that the Noticee and DTIL had a common director. No other information/ document has been brought on record by SEBI to suggest that the Noticee was in possession of UPSI. As stated above, Mr. Basant Sharma has never been a Director of DTIL and in any event, was not privy to the information in respect of the UPSI.*
- *Furthermore, the Noticee and DTIL having a common registered address is not of consequence to the present proceedings. Apart from merely stating that the Noticee and DTIL have a common address, the SCN rightly does not even attempt to seek to draw any inference from this fact. In any event, it is submitted that the corporate office of DTIL is in Noida, Uttar Pradesh and the financial results of DTIL were prepared under the leadership of DTIL's Chief Financial Officer who operates out of the Noida office. The Noida office of DTIL was also the broadcasting center of DTIL. Therefore, it is reiterated that no adverse inference can be drawn from the fact that the Noticee and DTIL have a common registered address.*
- *Without prejudice to the above contention, it is submitted that the Noticee has dealt in the shares of DTIL in order to generate liquidity for repayment of borrowings, as also recorded in the SCN.*
- *A Debenture Trust Deed dated February 01, 2017 was entered into between ARM Infra and Utilities Private Limited and Catalyst Trusteeship Limited under which Zero Coupon Debentures of ARM Infra and Utilities Private Limited had been subscribed to by DHFL Pramerica Mutual Fund ("debenture Holders"). The Zero Coupon debentures had been secured by pledge of 10,97,000 equity shares of Zee Entertainment Enterprises Limited ("Zee Entertainment") and 1,09,40,000 equity shares of DTIL. To this effect, a Pledge Agreement dated February 1, 2017 was entered into between the Pledgor's and the Debenture trustee i.e., Catalyst Trusteeship Limited.*
- *In terms of the aforesaid agreements, vide letters dated January 25, 2019 and January 28, 2019, the Debenture Holders informed the Debenture Trustee that a trigger event for invocation of pledge, as envisaged under the Debenture Trust*

Deed had occurred and instructed the Debenture Trustee to invoke the pledge for all 1,09,40,000 equity shares of DTIL and 10,97,000 equity shares of Zee Entertainment, to repay the amounts due to the subscribers. In turn, vide its letter dated January 25, 2019 and email dated January 28, 2019, the debenture Trustee informed the Noticee that the debenture Holders had sought to invoke the pledge.

- *To settle the issues in respect of the amounts due to the debenture Holders, the Borrower and security providers (i.e., the Pledgor) entered into a settlement with the debenture Holders and undertook to repay the entire sum due to the debenture Holders not later than January 31, 2019. In terms of the settlement, the Noticee undertook to sell as many equity shares of DTIL and Zee Entertainment as required, to make good the sum of Rs. 469,680,425/- due to the debenture Holders.*
- *Accordingly, to make good on the settlement and the amounts due to the Debenture Holders, the Noticee sold 10,97,000 equity shares of Zee Entertainment and 21,40,000 shares of DTIL on January 29, 2019. As per the terms of the settlement, the contract notes for the aforesaid transactions were provided to the debenture holders, on January 29, 2019 and the remaining shares pledged were sought to be released. Upon receipt of the amounts due, the Debenture Holders also stated that no dues were outstanding and the remaining pledged shares could be released.*
- *In light of the above, it is submitted that the Noticee dealt in the shares of DTIL on January 29, 2019 only to repay its obligations towards the borrowers, and not for any profit or avoidance of loss. In terms of the explanation to Regulation 4(1) of the PIT Regulations, any person who trades in securities while in possession of UPSI is presumed to have been motivated by the knowledge and awareness of such information in his possession charged. However, in terms of the proviso to regulation 4(1) of the PIT Regulations, such person is entitled to prove his innocence by demonstrating the circumstances in which the trades in securities were undertaken. SEBI has issued a guidance note wherein it has clarified that where a pledge is invoked while in possession of UPSI, the pledgee can demonstrate his innocence under the proviso to Regulation 4(1) of the PIT Regulations. It is relevant to note that had the Noticee not entered into a settlement and not sold the shares of DTIL to repay the amounts due, the shares pledged with the debenture Trustee would have been invoked and sold. Such a sale upon invocation would get the benefit of the proviso to Regulation 4(1) of the PIT Regulations in terms of SEBI's own guidance note. In the present case, invocation of the pledged shares would have had a negative impact on the price of the scrip of DTIL, which would have in turn had a negative impact on the interests of the*

shareholders of DTIL, i.e., the investors in the securities market. Hence, the Noticee decided to proactively sell the securities and settle its obligations towards the borrowers. Such sale of securities which was undertaken to settle the bonafide obligations of the Noticee to the borrowers too would get the benefit of the proviso to regulation 4(1) of the PIT regulations and SEBI's guidance notice. It would be incorrect to conclude that merely because the sale of securities was not upon invocation, the benefit of the proviso to regulation 4(1) of the PIT Regulations and SEBI's guidance notice ought not to be available to the Noticee.

7. In terms of the Adjudication Rules and in the interest of natural justice, Noticee was provided with an opportunity of personal hearing in the matter on July 30, 2021 through the online WEBEX platform. Noticee appeared for the hearing on the stipulated date i.e on July 30, 2021 and reiterated the submissions made vide its letter dated June 11, 2021. Pursuant to the hearing, the Noticee was advised to submit certain details/information / clarifications pertaining to the matter, vide email dated August 6, 2021. In this regard, Noticee vide email dated August 27, 2021 made the following additional submissions:

- *The SCN has failed to bring on record any document on the basis of which it can be alleged that the* Noticee *was in possession of UPSI. It is reiterated that the Noticee did not have access to UPSI and the allegation that the Noticee is an insider on the basis that Mr. Basant Sharma is a common director and because the Noticee and DTIL have a common registered address, is an erroneous presumption.*
- *Further, as demonstrated, the Noticee undertook to sell shares of DTIL to repay its obligations towards borrowers. In terms of the settlement entered into with the Debenture Holders, the Noticee undertook to repay the entire sum due no later than January 31, 2019 and was hence constrained to sell shares of DTIL. The Noticee dealt in shares of DTIL to repay amounts due to the borrowers and not for any profit or avoidance of loss and the proceeds from the said sale of shares was transferred to the Debenture Holders to settle its dues. In such circumstances, the Noticee has* demonstrated *its bonafides and it is submitted that the charge of violation of Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations against the Noticee do not stand established. Accordingly, the SCN ought to be disposed of without any adverse remarks or imposition of any monetary penalty.*

- *Dr. Subhash Chandra and Mr. Jawahar Goel, brothers, were originally the promoters of DTIL. Dr. Subhash Chandra (and related entities) were declassified as the promoter of DTIL in January 2018, in accordance with applicable provisions. ARM is a company that is closely held by family members of Dr. Subhash Chandra. ARM and DTIL are separate corporate entities with separate and distinct promoters/ promoter groups.*

8. The Noticee has contended that it sold 21,40,000 shares of DTIL on January 29, 2019 to repay the obligation of the borrowers and in view of the redemption pressure exerted by the debenture holders. In this context, Noticee mentioned that in order to settle the issues in respect of the amounts due to the debenture holders, details of which are discussed elaborately in the pre-paragraphs (at para 6), the borrowers and security providers who had pledged the shares of DTIL (i.e Pledgor) had entered into a settlement with the debenture holders and undertook to repay the entire sum due to the debenture holders not later than January 31, 2019. The Noticee stated that it is in this context that it had to sell the shares of DTIL i.e 21,40,000 shares in the open market on January 29, 2019. In support of the above submissions, Noticee vide email dated August 27, 2021 also furnished copies of the Debenture Trust Deed, Debenture Trustee Agreement, Information Memorandum containing the terms and conditions of the issuance of the debentures, the details of the shares pledged as collateral with the lenders and subsequently released, copies of the pledge agreement, copies of the emails/communication exchanged with the debenture holders and the contract notes w.r.t the shares sold etc.

FINDINGS AND CONSIDERATION OF ISSUES

9. I have carefully perused the allegations levelled against the Noticee in the SCN, the submissions of the Noticee (both oral and written) and the material/documents available on record. It is alleged that Noticee has traded in the shares of DTIL during the UPSI period, which has resulted in the violation of the provisions of sections 12A(d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations.

10. Before moving forward, the relevant provisions of the SEBI Act and the PIT Regulations allegedly violated by the Noticee is mentioned below:-

SEBI Act

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

12A. No person shall directly or indirectly—

(a) …..

(d) engage in insider trading;

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

(f) ….

PIT Regulations

Trading when in possession of unpublished price sensitive information.

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

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

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

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

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

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

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

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

11. The issues that arise for consideration and determination in the present matter are:-
    a. Whether the Noticee is a 'connected person' within the meaning of the PIT Regulations and therefore, whether the Noticee is an 'insider' in terms of the provisions of the PIT Regulations?
    b. Whether there was Unpublished Price Sensitive information ('UPSI'), which existed and whether the UPSI had significant impact on the scrip price of DTIL?
    c. Whether the Noticee has traded in the scrip of DTIL during the UPSI period and in the process, whether the Noticee has violated the applicable provisions of insider trading in terms of the SEBI Act and the PIT Regulations, as alleged in the SCN?
    d. If the answer to the aforesaid question is in affirmative, whether the Noticee is liable for monetary penalty under the provisions of section 15G (i) of the SEBI Act?

12. I now proceed to deal with the issues enumerated above, one by one, and record my findings as under:-

Issue No.1

Whether the Noticee is a 'connected person' within the meaning of the PIT Regulations and whether therefore, the Noticee is an 'insider' in terms of the PIT Regulations?

A. From the investigation report, I note that the three corporate promoters of DTIL viz. Noticee, Veena Investments Private Limited ('Veena') and World Crest Advisors LLP ('World Crest LLP') were functioning from a common registered office address as that of DTIL viz. 18th Floor, A Wing, Marathon Futurex, N M Joshi Marg, Lower Parel, Mumbai - 400 013. Upon examination of the Annual Report of DTIL for the financial year ended March 31, 2018, I note that the total shareholding of the promoters and promoter group of DTIL was mentioned as 57,92,74,057 shares, which constituted 31.46% of the total share capital of DTIL. From the records made available, I find that the Noticee was the single largest promoter shareholder of DTIL as on April 1, 2018. As on the said date, it is observed that Noticee held 45,72,12,260 shares of DTIL, which constituted 24.83% of the total share capital of DTIL. I find that the shareholding of the Noticee in DTIL as on March 31, 2019 was 427,803,288 shares and the same constituted 23.23% of the total share capital of DTIL. It is observed that the other corporate promoters of DTIL viz. Veena and World Crest LLP were also holding substantial stake in DTIL during the relevant period. Therefore, from the above observations, it is amply clear that Noticee was the single largest promoter shareholder of DTIL during the relevant period and in view of the same, Noticee was in a position to exercise significant control over the management and affairs of DTIL during the relevant period along with the other promoter shareholders of DTIL viz. Veena and World Crest LLP.

B. As the single largest promoter shareholder of DTIL, it can be reasonably inferred that Noticee had significant influence and control over the corporate decisions of DTIL and therefore, the Noticee was expected to have access to the material information pertaining to DTIL, including the UPSI in question. The details of the UPSI are discussed in the pre-paragraphs (para 2). Further, as significant promoter shareholders of DTIL, the three promoter entities viz. Noticee, Veena and World Crest LLP were in constant communication with the management of DTIL and the same has not been disputed by the

Noticee. I note that both DTIL and the Noticee were part of the promoters of the Essel group (Mr Jawahar Lal Goel) and therefore, it would be reasonable to conclude that Noticee would also be like other Promoters of the Essel group, involved in the core discussions, deliberations and decisions making process pertaining to the UPSI in question.

C. The investigation report has mentioned that Mr Jawahar Lal Goel, the Managing Director of DTIL ('MD'), who is a 'connected person' within the meaning of the PIT Regulations and was privy to the UPSI in the context of the present proceeding is also a partner in the firm, M/s. JSGG Infra Developers LLP along with his son, Mr Gaurav Goel, who is the other partner. The investigation report has further mentioned that Mr Gaurav Goel is the director of Veena along with Mr Basant Sharma who, as already stated, is the director of both Veena and the Noticee. I find from the investigation report that the three corporate promoters of DTIL viz. Noticee, Veena and World Crest LLP have a common director viz. Mr Basant Sharma. Thus, from the above observations and in terms of regulation 2(1) (f) of the PIT Regulations, I note that Mr Gaurav Goel, is an 'immediate relative' of Mr Jawahar Lal Goel, the MD of DTIL and therefore, a 'person deemed to be connected' within the meaning of the PIT Regulations. Further, he was also associated with Veena as its director along with Mr Basant Sharma, who apart from being the director of the Noticee was also the director of Veena during the relevant period. It is also noted that the promoters of DTIL, including the Noticee have been categorized as 'Designated Persons' as per the Internal Procedures and Code of Conduct for Prohibition of Insider Trading framed by DTIL under the provisions of the PIT Regulations. The observations made above therefore strengthens the belief that Noticee was privy to the UPSI pertaining to the financial results of DTIL and also the investment/expansion plans of DTIL, as discussed above.

D. The findings /allegations made in the investigation report and in the SCN that Mr Basant Sharma was a common director of DTIL and the Noticee during the relevant period is factually incorrect. From the records made available, including the Annual Reports of DTIL, I note that Mr Basant Sharma was not a director of DTIL during the relevant period. In view of the same, I am in agreement with the contentions of the Noticee that Mr Basant

Sharma was not a common director of DTIL and the Noticee during the relevant period. From the investigation report, I observe that, DTIL being the flagship company of the Essel group (of Mr Jawahar Lal Goel), the shares of DTIL were pledged with various lenders to fund the promoter entities/their affiliates. In this regard, it is observed that the shares of DTIL which were held in the account of the three promoters of DTIL, including the shares held by the Noticee were also pledged with various lenders, which were subsequently invoked by the lenders during January 2019. Thus, from the aforesaid, it can be reasonably inferred that the promoters of DTIL (including the Noticee) were in constant communication with the management of DTIL both at the time of the creation of the pledge and at the time of the invocation of the pledge transactions by the lenders and also during the various meetings which were held with the lenders in this regard.

E. In the context of the present proceeding, I also find it very relevant to mention that in the matter of an Open Offer made by World Crest LLP (as the Acquirer) during June 2018 along with the persons acting in concert (PACs) viz Veena (as the PAC 1) and the Noticee (as PAC 2) to acquire upto 50,02,24,893 shares of DTIL (Target Company) at a price of Rs 74 per share, the letter of offer document dated June 20, 2018 ('LoF') filed by World Crest LLP (as the acquirer) along with the PACs viz. Veena and the Noticee before SEBI, *inter alia*, contained the following disclosures:-
    a. World Crest LLP, a promoter entity of DTIL is part of the Essel Group (Mr Jawahar Lal Goel) and is an entity which is promoted by Mr Jawahar Lal Goel, who is also the MD of DTIL. It is mentioned in the LoF that Noticee directly held 99% interest in World Crest LLP and the Noticee is also the single largest shareholder of World Crest LLP.
    b. It is mentioned in the LoF that Veena is a company which is promoted by Mr Jawahar Lal Goel along with Ms Sushila Goel. The LoF has also mentioned that Veena is part of the Essel Group (of Mr Jawahar Lal Goel).
    c. The LoF has mentioned that the directors of Veena as on March 2018 were Mr Basant Sharma (who is the director of the Noticee) along with Mr Gaurav Goel (son of Mr Jawahar Lal Goel, the MD of DTIL)

d. The LoF has mentioned that Mr Gaurav Goel, at the relevant time when the LoF was filed with SEBI in the context of the open offer, was also the President - Business Development & Strategy at DTIL. Thus, Mr Gaurav Goel was directly associated with DTIL during the relevant period of open offer and he along with Mr Basant Sharma were on the Board of Veena as directors during the relevant period, as discussed above.
e. As already mentioned, Mr Gaurav Goel is an 'immediate relative' in terms of Regulation 2 (1) (f) of the PIT Regulations and therefore, he is 'deemed to be connected person' within the meaning of the PIT Regulations.
f. It is mentioned in the LoF that Noticee was part of the Essel group (of Mr Jawahar Lal Goel) and the promoters of the Noticee have been shown as Essel Corporate Resources Private Limited along with one Mr Himanshu Mody.
g. The LoF has mentioned that Veena, which is an entity promoted by Mr Jawahar Lal Goel, the MD of DTIL held 99.63% shareholding in Essel Corporate Resources Private Ltd, which in turn held 99.99% stake in the Noticee. It is further mentioned in the LoF that Essel Corporate Resources Private Ltd is the holding company of the Noticee and DTIL has been mentioned as the associate of Essel Corporate Resources Pvt Ltd (the promoter entity of the Noticee).

F. The term 'connected person' mentioned under Regulation 2(1)(d)(i) of the PIT Regulations read with the note to Regulation 2(1)(d) of the PIT Regulations is reproduced as under:-

"2 (1)(d)(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication *with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access."*

"NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information."

G. Therefore, on a careful reading of the above disclosures made by the promoters of DTIL in the LoF and also based on the overall assessment of the facts mentioned in the investigation report, the Noticee is a 'connected person' within the purview of the PIT Regulations. The above observations / findings also show cross-holding of the shareholding, directly/indirectly, between the promoters of DTIL, Essel Group entities (of Mr Jawahar Lal Goel – the MD of DTIL) and also the common connections of Mr Jawahar Lal Goel with the promoters of DTIL, including the Noticee. I also note that both DTIL and the Noticee come under the same management (Essel Group- Mr Jawahar Lal Goel) and thus, there is sufficient evidence to show that Noticee is a 'connected person' within the meaning of the PIT Regulations. Therefore, in this factual context and in view of the above observations indicating close connection of the Noticee with the Essel Group and the management of DTIL, it can be easily concluded that Noticee is directly associated/connected with DTIL and its management and therefore, Noticee was reasonably expected to have access to the UPSI during the relevant period. In view of the same, I hold that Noticee is a 'connected person' in terms of regulation 2(1)(d) (i) of PIT Regulations and also an 'insider' within the meaning of Regulation 2 (1) (g) of PIT Regulations.

Issue No -2 :

Whether there was Unpublished Price Sensitive information ('UPSI'), which existed and whether the UPSI had a significant impact on the scrip price of DTIL?

H. Pursuant to the Board of Directors meeting of DTIL, which was held on February 05, 2019, it is noted that DTIL made a corporate announcement to the Stock Exchanges viz. BSE and NSE on February 05, 2019 regarding the approval of its financial results for the nine months and for the quarter ended December 31, 2018 and also approval of an investment to the tune of Rs. 3,000 crores in the company's wholly owned subsidiary viz. Dish Infra Services Private Limited. The term 'unpublished price sensitive information' has been defined in Regulation 2 (1) (n) of the PIT Regulations, which includes financial results and such other transactions (merger, de-merger, disposal and expansion of business and such other transactions etc.) of a listed company. Therefore, in the context of the present proceeding, the corporate announcements made by DTIL on February 05, 2019, as mentioned above, have been considered as Unpublished Price Sensitive Information ('UPSI') in terms of the PIT Regulations. In this regard, the chronology of the events which resulted in the dissemination of the above corporate announcements and as submitted by DTIL during the course of the investigation is mentioned below:

TABLE 1

Sl No	Event	Date
1	Preparation and finalization of the Financial Results	January, 7, 2019
2	Discussions w.r.t. investment in the subsidiary viz. Dish Infra Services Pvt Ltd. between CFO and Statutory Auditor	January 13, 2019
3	Preparation and finalization of the Agenda for BOD meeting	January 21, 2019
4	First draft consolidated financials sent to the Statutory Auditor	January 25, 2019
5	Intimation by DTIL pertaining to the closure of the Trading Window to the Stock Exchanges	January 29, 2019
6	Notice of BOD meeting sent to the Board Members and stock exchanges	January 29, 2019
7	Agenda papers sent to the BOD and the Audit Committee members	January 30, 2019
8	Board Meeting held for approval of the financial results of DTIL	February 05, 2019
9	Announcement of financial results and approval of investment in Dish Infra Services Private Limited to stock exchanges (after market hours)	February 05, 2019

I. From the above Table and the observations made therein, it is noted that the price sensitive information pertaining to the financial results of the company (i.e DTIL) and the expansion/investment plans of DTIL in its subsidiary company came into existence w.e.f January 07, 2019. Accordingly, January 07, 2019 is considered as the date when the price sensitive information came into existence. It is observed that the above corporate announcements were made by DTIL to the stock exchanges on February 05, 2019 after the market hours. It is also observed that in the context of the above UPSI, the Trading Window of the company was closed from January 29, 2019 (from the open of the trading hour) to February 07, 2019. The following table mentions the details of the corporate announcements made by DTIL during the relevant period and the impact of the announcements on the scrip price and trading in the shares of DTIL.

TABLE 2

<table>
<tr><th>Sl. No</th><th>Date of Announcement</th><th>Announcements made</th><th>Market Price/
No. of Shares Traded</th><th>Impact on the scrip price and volume</th></tr>
<tr>
<td>1</td>
<td>05.02.2019
At 16:52 hrs</td>
<td>Proceedings of Board Meeting held on February 05, 2019.
The Board of Directors of the Company at the meeting held today i.e. on February 05, 2019 has approved the Unaudited Financial Results of the Company, both standalone and consolidated for the 3rd quarter of financial year 2018-19 and nine months ended on December 31, 2018.

Approved an investment to the tune of Rs. 3,000 crore in the company's wholly owned subsidiary viz. Dish Infra Services Private Limited.</td>
<td>BSE
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol</th></tr>
<tr><td>05.02.2019</td><td>23.50</td><td>23.95</td><td>21.80</td><td>22.75</td><td>2682624</td></tr>
<tr><td>06.02.2019</td><td>23.60</td><td>28.40</td><td>20.50</td><td>27.40</td><td>17092592</td></tr>
</table>
NSE
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol</th></tr>
<tr><td>05.02.2019</td><td>23.40</td><td>24.00</td><td>21.70</td><td>23.05</td><td>16844454</td></tr>
<tr><td>06.02.2019</td><td>23.35</td><td>28.70</td><td>20.25</td><td>27.40</td><td>98297010</td></tr>
</table>
</td>
<td>On February 06, 2019, at BSE, the scrip opened at 3.73% higher than the previous day's closing price and closed at 20.43% higher than the previous day's closing price.
Increase in volume was also observed.

On February 06, 2019, at NSE, the scrip opened at 1.30% higher than the previous day's closing price and closed at 18.87% higher than the previous day's closing price.
Increase in volume was also observed.</td>
</tr>
</table>

J. From the above, it is observed that the scrip of DTIL opened on February 06, 2019 at BSE with an increase of 3.73% higher than the previous day's closing price and closed at 20.43% higher than the previous day's closing price. At NSE, the scrip of DTIL opened at 1.30% higher than the previous day's closing price and closed at 18.87% higher than the previous day's closing price. It was also observed that there was an increase in the volume of shares traded in the scrip of DTIL on February 06, 2019, which was seen both on BSE and NSE. I find that, DTIL made the relevant corporate announcements to the stock exchanges on February 05, 2019 at 16:52 hrs (after the market hours) pursuant to its Board of Directors meeting which was held on the same day. Thus, in the context of the present proceeding, the period from January 07, 2019 to February 05, 2019 is considered as the UPSI period. I also note that the UPSI was directly related to DTIL and further, there is no evidence on record to show that the UPSI i.e the financial results of the company and expansion plans, as discussed above, were generally available to the public prior to February 05, 2019. Further, from the observations made in the above Table, it is noted that the UPSI, upon its dissemination to the stock exchanges on February 05, 2019, had a material impact on the scrip price and volume of DTIL. The same is evident from the increase in the trading volume/price movement observed in the scrip of DTIL on February 06, 2019 i.e the very next trading day after the UPSI was disseminated by the company to the stock exchanges. Therefore, undoubtedly, the above mentioned announcements made by DTIL to the stock exchanges were price sensitive in nature within the meaning of the PIT Regulations and the period i.e from January 07, 2019 to February 05, 2019 is also the UPSI period in the context of the present proceeding.

Issues No.3 & 4

Whether the Noticee has traded in the scrip of DTIL during the UPSI period and in the process, whether the Noticee has violated the applicable provisions of Insider Trading in terms of the PIT Regulations and the SEBI Act, as alleged in the SCN?

If the answer to the aforesaid question is in affirmative, whether the Noticee is liable for monetary penalty under the provisions of section 15G (i) of the SEBI Act?

K. The Noticee has admittedly sold 21,40,000 shares of DTIL on January 29, 2019 through on-market transactions during the UPSI period. The Noticee mentioned that it sold the shares of DTIL in order to generate liquidity for the purpose of repayment of its borrowings and in order to meet the obligations of the borrowers, and not for the purpose of making any profit or avoidance of loss. As the Noticee executed the above mentioned transaction during the UPSI period, it is alleged in the SCN that Noticee has violated the provisions of Regulation 4(1) of the PIT Regulations and sections 12 A (d) & (e) of the SEBI Act.

L. In its submissions, the Noticee mentioned that post IL&FS debacle in September 2018, there was an overall liquidity stress / crisis in the financial sector and the benchmark indexes had corrected by more than 13% in a span of 1.5 months in October 2018. It was mentioned by DTIL that its promoters had pledged substantial quantities of shares of the company with various lenders in view of the liquidity crisis faced by the company and also the stress faced at the promoter level. As per the SCN, it is mentioned that there was negative news about DTIL which was hovering around in the media circles during January/February 2019. It was also mentioned that the financial stress at the promoter level of the company worsened further in January 2019, when the lenders took the extreme step of selling the pledged shares (i.e pledge invocation) and in addition to the sale of the pledged shares by the lenders, the promoters of DTIL had also sold the shares of DTIL in the open market (from their respective BO accounts) in order to assuage their liquidity crisis. From the investigation report, it is observed that the promoters' shareholding in DTIL had changed from 60.83% to 57.99% during Q4 of the F.Y. 2018-19, which was mainly due to the sale of shares of DTIL in the open market by the promoters and also due to the invocation of the pledged shares by the lenders, details of which are discussed in the following two Tables:

TABLE 3

(Source: Annual Report of DTIL for FY 2018-19)

Sl. No.	Date of Transacn	Name of the Promoter entity	Type of the transaction	No. of Shares sold	Change in shareholding (in percentage)	Shareholding in percentage after transaction
1	**25.01.2019**	Veena Investments Private Limited	Pledged shares sold by lenders (highlighted and shown) and also on- market sale by the promoters	**64,90,000**	**0.36**	**4.32**
2	08.02.2019			4,75,000	0.02	4.30
3	**25.01.2019**	Direct Media Distribution Ventures Private Limited		**1,25,62,472**	**0.68**	**24.15**
4	29.01.2019			21,40,000	**0.12**	**24.03**
5	08.02.2019			1,01,95,000	0.55	23.48
6	08.03.2019			27,11,500	0.15	23.33
7	22.03.2019			18,00,000	0.10	23.23
8	**25.01.2019**	World Crest Advisors LLP		**1,27,11,546**	**0.69**	**28.68**
9	**28.01.2019**			**31,55,000**	**0.17**	**28.51**
TOTAL				5,22,40,518		

M. From the above, it is noted that the promoters of DTIL, including the Noticee, sold 5,22,40,518 shares of DTIL, both during the UPSI period and also after the UPSI period. It is also noted that 3,49,19,018 shares (out of the 5,22,40,518 shares of DTIL) that were sold by the promoters of the company were as a result of the lenders selling the shares of DTIL that were pledged with them by the promoters of DTIL (i.e pledge invocation by the lenders). The relevant details in this regard are discussed in the Table below:

TABLE 4

Promoters of DTIL/pledgor	**Lenders who sold shares of DTIL**	**No. of Shares sold by way of pledge invocation**	**Date of Sale**
World Crest Advisors LLP	ECL Finance Limited	1,22,99,546	25th January 2019
World Crest Advisors LLP	Edelweiss Finvest Private Limited	4,12,000	25th January 2019
World Crest Advisors LLP	Hero Fincorp Ltd.	31,55,000	28th January 2019
World Crest Advisors LLP	**Sub Total (A)**	**158,66,546**	
Direct Media Distribution Ventures Private Limited	JM Financial Products Limited	35,78,000	25th January 2019
Direct Media Distribution Ventures Private Limited	IDBI Trusteeship Services Ltd.	89,84,472	25th January 2019
Direct Media Distribution Ventures Private Limited	**Sub Total (B)**	**125,62,472**	
Veena Investments Private Limited	IIFL Wealth Finance Limited **(Sub Total C)**	**64,90,000**	25th January 2019
Grand Total (A + B + C)		3,49,19,018	

N. Therefore, from the above i.e Tables 3 & 4 and the observations made therein, I note the following:-

a) The promoters of DTIL viz. Noticee, Veena and World Crest LLP (as pledgor) pledged substantial quantities of shares of DTIL (3,49,19,018 shares) with the lenders and the lenders had invoked the pledge by selling the shares of DTIL on 25.01.2019 and 28.01. 2019.

b) The shares of DTIL were sold by the lenders on January 25, 2019 and January

28, 2019 by way of pledge invocation and the said transactions involving the pledge invocation took place during the UPSI period in question.

c) The relevant disclosures pertaining to the above pledge invocation were made by the promoters of the company in terms of the PIT Regulations and under SAST Regulations albeit, with a delay of 1 to 3 days from the date of the respective transactions. In this regard, it is noted that SEBI issued administrative warning to the promoters of DTIL for their failure to make the necessary disclosures within the prescribed time.
d) In addition to above, the promoters of DTIL viz. Noticee, Veena and World Crest LLP also sold substantial number of shares of DTIL in the open market from their respective beneficiary accounts (BO accounts). The same is evident from the details of transactions shown in Table 3. It is observed that the promoters of DTIL, including the Noticee, collectively sold 1,73,21,500 shares of DTIL in the open market on various dates viz. 29.1.2019, 8.2.2019, 8.3.2019 & 22.3.2019.
e) The Noticee (as pledgor) had created a pledge of 1,25,62,472 shares of DTIL with J M Financial Products Limited and IDBI Trusteeship Services (Lenders) and the respective lenders had invoked the pledge and sold the shares in the market on January 25, 2019 i.e during the UPSI period.
f) In addition to the above pledge invocation (i.e 1,25,62,472 shares), Noticee also sold 1,68,46,500 shares of DTIL in the open market from its BO account. The aforementioned 1,68,46,500 shares of DTIL were sold by the Noticee in the open market on 29.01.2019, 8.02.2019, 8.03.2019 and 22.03.2019. This also includes the impugned transaction executed by the Noticee on January 29, 2019 (i.e 21,40,000 shares) for which the instant adjudication proceedings have been initiated against the Noticee.
g) DTIL has in its submissions mentioned that the promoters of the company had sold the shares of the company due to the liquidity pressure faced at the promoters' level and also in order to meet the obligations of the borrowers / towards the repayment of the borrowings/obligation towards the debenture holders.
h) It is noted that there was an overall selling pressure that was witnessed in the scrip of DTIL by the promoters of the company, which was mainly observed during the months of January and February 2019.
i) Apart from the sale of shares of DTIL that was observed during January/February 2019, it is noted that the promoters of DTIL had also sold large number of shares of Zee Entertainment Enterprises Ltd (ZEEL) during the relevant period. It is observed that Essel group companies were inherently linked with ZEEL and post the IL&FS debacle, there was general financial stress within the Essel group and also within DTIL and its promoters. In view of the same, it is on record that substantial quantities of shares of ZEEL and DTIL (both listed companies within the Essel group), which were pledged with the lenders by the promoters of ZEEL and DTIL were invoked and sold in the market by the lenders. This apart, the promoters of ZEEL and DTIL also sold large number of shares of DTIL/ZEEL in the open market from their respective BO accounts. It is noted that ZEEL belonged to Dr Subhash Chandra group / Essel group and Dr Subhash Chandra

is the Chairman of ZEEL. He is also the brother of Mr Jawahar Lal Goel (the MD of DTIL). It is pertinently noted that, on January 29, 2019, when the Noticee sold 21,40,000 shares of DTIL in the open market, it had also sold 10,97,000 shares of ZEEL in the market on the same day. The above observations therefore substantiates the fact that there was an overall selling pressure that was witnessed in the scrips of DTIL and ZEEL particularly during the months of January & February 2019.

j) From the above Table (i.e Table 3), it is observed that Noticee sold substantial number of shares of DTIL in the market even after the UPSI period i.e apart from the sale of 21,40,000 shares of DTIL by the Noticee on January 29, 2019, it is observed that Noticee also sold 1,01,95,000 shares of DTIL on 8.2.2019, 27,11,500 shares on 8.3.2019 and 18,00,000 shares on March 22, 2019. The other promoter of DTIL i.e Veena also sold 4,75,000 shares of DTIL on February 8, 2019 i.e after the UPSI period. Therefore, the above observations/findings accentuates the version put forth by the Noticee about the liquidity concerns/crisis faced by DTIL and its promoters and also the overall selling pressure that was witnessed in the scrip of DTIL during the relevant period.

O. In the context of the sale of 21,40,000 shares of DTIL by the Noticee on January 29, 2019 i.e during the UPSI period, the Noticee has vehemently contended that the shares were sold by it in the market in order to generate liquidity towards the repayment of the borrowings, and not for any profit or avoidance of loss. The Noticee mentioned that the shares of DTIL were sold by it in the open market in order to settle the amounts due to the debenture holders and in this regard, the borrowers and the security providers (i.e the Pledgor) had entered into a settlement with the debenture holders and undertook to repay the entire sum due to the debenture holders not later than January 31, 2019. In view of the redemption pressure exerted by the debenture holders and in terms of the settlement entered into with the debenture holders, the Noticee undertook to sell as many shares of DTIL and ZEEL as required, to make good the sum of Rs 469,680,425/-, which was due to the debenture holders. Accordingly, to make good on the settlement and the amounts due to the debenture holders, the Noticee (as one of the pledgor/security provider) mentioned that it sold 10,97,000 shares of Zee Entertainment (ZEEL) and 21,40,000 shares of DTIL on January 29, 2019 by way of on-market sale transaction and the contract notes evidencing the above transactions were also provided to the debenture holders on January 29, 2019.

P. In this regard, the Noticee while making its submissions to the SCN also supplemented the background details /information pertaining to the settlement terms entered into with the debenture holders by the pledgors (including the Noticee), details of which are as follows:

a. A Debenture Trust Deed dated February 01, 2017 was entered into between ARM Infra & Utilities Private Limited ('Borrower'/ 'ARM') and Catalyst Trusteeship Limited ('Debenture Trustee'/ 'Catalyst') under which Zero Coupon Debentures of ARM had been subscribed to by DHFL Pramerica Mutual Fund ('Debenture Holders'). The Zero Coupon Debentures had been secured by the pledge of such numbers of equity shares of ZEEL and 1,09,40,000 equity shares of DTIL. To this effect, a Pledge Agreement dated February 01, 2017 was also entered into between the Pledgors (security providers) and the Debenture Trustee i.e., Catalyst. The borrower i.e ARM is the promoter company of the Essel group (of Dr Subhash Chandra of ZEEL) and the registered office address of ARM was the same as that of DTIL, the Noticee and the other promoters of DTIL. ARM is a company that is closely held by the family members of Dr Subhash Chandra. The security providers/pledgor also included the Noticee and the other promoter entities of DTIL.

b. In terms of the aforesaid pledge agreement, vide letters dated January 25, 2019 and January 28, 2019, the debenture holders informed the Debenture Trustee that a trigger event for the invocation of pledge, as envisaged under the Debenture Trust Deed had occurred and instructed the Debenture Trustee i.e Catalyst to invoke the pledge in respect of 1,09,40,000 equity shares of DTIL and the equity shares of ZEEL that were pledged as security by the pledgors, to repay the amounts due to the subscribers/debenture holders. In turn, vide its letter dated January 25, 2019 and email dated January 28, 2019, Catalyst informed the Noticee that the debenture holders had sought to invoke the pledge. In this regard, a copy of the letters dated January 25, 2019, January 28, 2019 and email dated January 28, 2019 that were exchanged between the Noticee and Catalyst (Debenture Trustee) were also enclosed by the Noticee during the course of the proceeding.

c. Therefore, in order to settle the issues in respect of amounts due to the debenture holders, the Borrower i.e ARM and the security providers (i.e., the Pledgor) entered into a settlement with the debenture holders and undertook to repay the entire sum due to the debenture holders not later than January 31, 2019. In terms of the said settlement, the Noticee undertook to sell as many equity shares of DTIL and ZEEL, as required, to make good the sum of Rs. 469,680,425/- due to the debenture holders.

d. Accordingly, to make good on the settlement and the amounts due to the debenture holders, Noticee sold 10,97,000 equity shares of ZEEL and also sold 21,40,000 shares of DTIL on January 29, 2019. The said sale of shares of ZEEL and DTIL were effected through open market (on-market sales).

e. As per the terms of the settlement, the contract notes for the aforesaid sale transactions were provided to the debenture holders on January 29, 2019 and the remaining shares pledged were sought to be released. The Noticee mentioned that pursuant to a Release of Charge certificate dated February 12, 2019, which was issued by the Debenture Trustee, the remaining shares that were pledged by the securities provider /pledgor (including the Noticee) were released upon full repayment of the debentures on January 31, 2019.

f. Upon receipt of the amounts due and confirmation that no dues were outstanding to the debenture holders, the remaining pledged shares were released to the account of the pledgor (security providers) and the details of shares released were also submitted by the Noticee. In its submissions, the Noticee enclosed a copy of the email dated January 31, 2019 from the debenture holders stating that no dues were outstanding. The Noticee also enclosed a Release of Charge certificate in this regard to validate its submissions.

g. In light of the above, it was submitted by the Noticee that it had dealt in the shares of DTIL on January 29, 2019 i.e during UPSI period only to repay its obligations towards borrowers and not for any profit or avoidance of loss.

h. In terms of the explanation to Regulation 4(1) of the PIT Regulations, any person who trades in securities while in possession of the UPSI is presumed to have been motivated by the knowledge and awareness of such information in his possession. However, in terms of the Notes to Regulation 4(1) of the PIT Regulations, such person is entitled to prove his innocence by demonstrating the circumstances under which the trades in securities were undertaken. Noticee mentioned that, in the present case, the invocation of the pledged shares would have had a negative impact on the scrip price of DTIL, which in turn, would have had a negative impact on the interests of the shareholders of DTIL i.e. the investors in the securities market. Hence, the Noticee contended that it decided to proactively sell the 21,40,000 shares of DTIL and 10,97,000 shares of ZEEL in the open market in order to settle its obligations towards the borrowers/debenture holders. In support of the same, it is observed that the Noticee has adduced the relevant records such as Debenture Trust deed, discharge certificate, contract notes, details of remaining shares released after the payment of dues to debenture holders etc. Therefore, it was the case of the Noticee that such sale of securities which were undertaken to settle the bona fide obligations of the Noticee to the borrowers/debenture holders would not tantamount to Insider Trading under the provisions of the PIT Regulations.

Q. The following observations / findings are therefore very relevant in the context of the present proceeding against the Noticee :-

i) The general trading pattern of the promoters of DTIL, including that of the Noticee showed that there was an overall selling pressure that was witnessed in the scrip of DTIL during the relevant period. Substantial number of shares of DTIL were sold in the market by the promoters of the company, including by the Noticee during the relevant period.

ii) In view of the financial stress/liquidity concerns faced at the promoter level of DTIL, as confirmed by the Noticee in its submissions, substantial number of shares of DTIL that were pledged by the promoters of the company as security with the lenders, including the shares of DTIL pledged by the Noticee were sold in the market by the lenders during January 2019 by way of pledge invocation. As already stated, around the said period, there were also some negative news about DTIL which were hovering around the media circles. There was panic among the lenders (with whom the shares of DTIL were pledged by the promoters as security) and the lenders resorted to pledge invocation and sold large number of shares of DTIL in the market during January 2019, which also coincided with the UPSI period in question.

iii) Due to the financial stress/liquidity concerns faced by DTIL and also at the promoter level, it is on record that the promoters of DTIL resorted to selling large number of shares of DTIL from their respective beneficiary accounts (BO accounts) during the UPSI period. It is observed that the selling trend in the scrip of DTIL was also witnessed immediately after the UPSI period.

iv) Therefore, the trading pattern in DTIL showed that the promoters (including the Noticee) were predominantly selling the shares of the company during the period January/February 2019, which was also the UPSI period. The Noticee sold 21,40,000 shares of DTIL in the market during the UPSI period. Immediately after the UPSI period, it is observed that Noticee continued to sell the shares of DTIL and it sold close to 1.47 crore shares of DTIL in the market.

v) It is observed that the other promoter of DTIL i.e Veena also sold 4.75 lakh shares of DTIL immediately after the UPSI period i.e on 8.2.2019.

vi) Similar trend /trading pattern i.e selling pressure was also witnessed in the scrip of the other listed company viz. ZEEL (of Essel group). In fact, it is observed that when the Noticee sold 21,40,000 shares of DTIL on January 29, 2019, it also sold 10,97,000 shares of ZEEL on the same day in the market.

vii) From the records made available during the course of the proceeding and also from the observations made in the pre-paragraphs, it is evident that Noticee sold 21,40,000 shares of DTIL during the UPSI period only to repay its obligation towards the debenture holders and the said sale of shares of DTIL by the Noticee was not motivated by the knowledge and awareness of the UPSI.

viii) It is observed that Noticee has demonstrated the same by adducing the relevant records in support of its transactions (viz. Debenture Trust deed, copy of the emails exchanged with the debenture holders, contract notes, details of shares released after payment to the debenture holders, discharge certificate after the settlement etc). A perusal of these records showed that Noticee undertook to sell 21,40,000 shares of DTIL and 10,97,000 shares of ZEEL on January 29, 2019 to make good the payment of Rs 469,680,425/- due to the debenture holders (who had exerted redemption pressure). It is noted that the said sale of shares of DTIL and ZEEL were executed by the Noticee in order to honor its settlement terms, which the Noticee had entered into with the debenture holders/debenture trustee to make good the payment before January 31, 2019.

13. In matters of Insider Trading, the facts and circumstances surrounding the events on which the allegation/charges are levelled against an 'insider' has to be seen in totality. One such vital circumstance is the trading pattern/trading behaviour employed by the 'insider' while trading/dealing in the scrip in question. The reasons being that an 'insider' takes the advantage of the information asymmetry and in order to encash that advantage, the 'insider' who is privy to the price sensitive information trades in the scrip in a certain manner/pattern. For eg, if an 'insider' was in possession of a positive UPSI about a company and traded while in possession of such UPSI, he would be expected to buy the shares of the company before such information became public. Once the information became public, since it was positive in nature, it would be expected that the share price of the company would go up and the 'insider' would then sell the shares at such higher price, thereby making a profit using the UPSI. Similarly, if the UPSI happened to be negative, then the 'insider' would be expected to sell the shares of the company at a particular price before the UPSI became public (including short selling if he did not already hold the shares). Once the information became public, since it was negative in nature, it would be expected that the share price of the company would fall and the 'insider' would then buy the shares at such lower price, thereby closing his short selling position at a profit (i.e sold higher and bought back lower), using the UPSI. The aforesaid trading behavior which is executed in the cash segment of the market can also be mirrored in the derivative segment of the market in order to make maximum gains out of the UPSI.

14. In the instant matter, it is noted that the UPSI was positive in nature and the same is evident from the manner in which the scrip of DTIL witnessed upward price movement and also witnessed increase in the trading volume on February 6, 2019 i.e the next trading day after the dissemination of the UPSI to the stock exchanges by the company. The relevant observations in this regard are already made at Table 2 of the pre-paragraphs. From the trading pattern of the Noticee, I find that contrary to the nature of the UPSI, which had a positive impact, the Noticee was continuously selling the shares of DTIL both during the UPSI period and also immediately after the UPSI period. In fact, the records showed that Noticee sold substantial number of shares of DTIL immediately

after the UPSI was disseminated to the stock exchanges i.e the records showed that Noticee sold 1,01,95,000 shares of DTIL on 8.2.2019, sold 27,11,500 shares on 8.3.2019 and 18,00,000 shares on March 22, 2019. As already mentioned above, there was a selling trend that was observed in the scrip of DTIL particularly during the months of January & February 2019 in view of the liquidity concerns faced by DTIL and its promoters. Further, the selling trend was also witnessed in the scrip of the other listed company within the Essel group i.e ZEEL. As already stated, it is noted that when the Noticee executed the impugned transaction w.r.t sale of 21,40,000 shares of DTIL on January 29, 2019, on the same day, it also sold 10,97,000 shares of ZEEL through market transactions. Further, as already discussed, substantial quantities of shares of DTIL were also sold by the lenders with whom the promoters of DTIL, including the Noticee had pledged the shares i.e by way of pledge invocation. The said sale of shares by way of pledge invocation took place on January 25, 2019 and January 28, 2019 (i.e during the UPSI period). Therefore, the trading pattern of the Noticee, as discussed above, does not lead to the conclusion that Noticee's trades in the scrip of DTIL on January 29, 2019 were induced by the UPSI.

15. In this regard, I note that the Hon'ble SAT in the matter of Mrs. Chandrakala vs. SEBI (Order dated 31.01.2012 in Appeal No. 209 of 2011) while deciding an appeal wherein an order passed by adjudicating officer imposing penalty under Section 15G of the SEBI Act for violation of Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992, which is pari *materia* with Regulation 4(1) of the PIT Regulations, 2015, was challenged and held as under:

> "*We are also inclined to accept the argument of the learned counsel for the appellant that where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive. In this case the declaration of financial results, dividend and bonus were positive information but the appellant not only bought but also sold the shares not only during the period when the price sensitive information was unpublished but also prior to and after the information becoming public. A person who is in possession of the unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy the shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the*

shares post the information becoming public. This is not so in the case under consideration. The trading pattern of the appellant, as shown in the chart above, does not lead to the conclusion that the appellant's trades were induced by the unpublished price sensitive information" (Emphasis supplied).

Further, in the same matter, Hon'ble SAT had also held the following:

"................The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations...................."

In another matter of Abhijit Rajan vs. SEBI (Appeal 232 of 2016 decided on 08.11.2019), Hon'ble SAT while deciding an appeal wherein an order passed by SEBI under Section 11 and 11B of the SEBI Act, 1992 for violation of Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992, was challenged by the appellant who was found to be indulged in the insider trading, had held the following:

"............Further, even if it is assumed that the information was is a price sensitive information, still the appellant cannot be blamed of insider trading for the reasons that he did not trade "on the basis of the information". The appellant was able to show his dire need to infuse fund in the entity under the master restructuring agreement to implement a CDR package as detailed supra. He was even required to sell his agricultural land and flat details of which are already given hereinabove. In these circumstances he sold the shares. In the case of Rajiv B. Gandhi on fact this Tribunal held that the appellants therein were able to rebut the presumption that they traded on the basis of UPSI as they had a necessity to sell the shares. Similar is the case of Gujarat NRE Mineral Resources Ltd. and Mrs. Chandrakala decided by this Tribunal................"

16. The ratio of the aforementioned judgments apply with full force in the facts and circumstances of the present case against the Noticee. In terms of Regulation 4(1) of the PIT Regulations read with the proviso and the notes to the said regulation, an insider may prove his innocence by demonstrating the circumstances 'including' those mentioned in the said proviso. Therefore, the circumstances enumerated in the proviso to Regulation 4 (1) to prove innocence, are merely illustrative and not exhaustive and an insider can demonstrate the circumstances other than those mentioned in the said proviso, to prove his innocence. From the above observations/records and also the facts and circumstances surrounding the impugned transaction which resulted in the sale of 21,40,000 shares of DTIL on January 29, 2019, it is clear that Noticee was able to demonstrate its bona fide w.r.t the allegation of insider trading levelled against it in the SCN. Although the policy under the PIT Regulations is to prevent dealing in securities, while in possession of the UPSI, irrespective of whether the UPSI is positive or negative and irrespective of whether profit is made or not, the facts and circumstantial evidence in the present matter, has to be seen in totality. In the instant matter, Noticee was able to demonstrate with sound reasoning the circumstances leading to its execution of the transaction in the scrip of DTIL during the UPSI period. Further, as already stated, it is on record that Noticee was continuously selling the shares of DTIL even after the UPSI period in view of the liquidity concerns faced by the company and its promoters, details of which have already been discussed in the pre-paragraphs. Thus, in the present matter, a benefit of doubt has to be given to the Noticee for its execution of the transactions in DTIL during the UPSI period. Further, on the basis of circumstantial evidence of trading behavior/pattern also, benefit of doubt has to be given to the Noticee w.r.t its impugned trades in DTIL. Therefore, in the facts and circumstances of the case, I find that the sale of 21,40,000 shares of DTIL by the Noticee during the UPSI period was to comply with the redemption pressure invoked by the debenture holders and in order to honor the settlement agreement which the Noticee had entered into with the debenture holders and borrowers. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In the instant matter, I find that the SCN has failed to establish the charge of

Insider Trading in respect of the transactions executed by the Noticee in the scrip of DTIL on January 29, 2019. In view of these findings, I observe that the allegation levelled in the SCN that Noticee has violated the provisions of sections 12A(d) and (e) of the SEBI Act and Regulation 4 (1) of the PIT Regulations is not established against the Noticee.

Issue No 4

If the answer to the aforesaid question is in affirmative, whether the noticee is liable for monetary penalty under the provisions of section 15G (i) of the SEBI Act?

17. Since it is established that Noticee has not violated the provisions of sections 12A(d) and (e) of the SEBI Act and Regulation 4 (1) of the PIT Regulations, Issue no. 4, does not arise.

ORDER

18. After taking into consideration the facts and circumstances of the case, material available on record and the submissions of the Noticee, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, dispose of the SCN dated February 22, 2021 issued to the Noticee without any penalty.
19. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee viz. Direct Media Distribution Ventures Private Limited and also to the Securities and Exchange Board of India.

Place: Mumbai **Suresh B Menon**

Date: December 20, 2021 **ADJUDICATING OFFICER**