**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/ 20862-20863]**

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**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) RULES, 1995**

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In respect of

1. **Mr. Gautham Lokande**
   **[PAN: ABSPL3489K]**
2. **Mr. Ajay Kalia**
   **[PAN: AJEPK2652H]**

In the matter of DLF Limited

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## FACTS OF THE CASE IN BRIEF

1. DLF Ltd. (hereinafter referred to as '**DLF/Company**') is a company having its shares listed on BSE Ltd. (hereinafter referred to as '**BSE'**) and the National Stock Exchange of India Ltd (hereinafter referred to as '**NSE'**). Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted an investigation in the matter of DLF for the period November 01, 2014 to September 30, 2015 (hereinafter referred to as '**Investigation Period/IP'**). Pursuant to the investigation, SEBI observed certain violations of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations'**), by Mr. Gautham Lokande (hereinafter referred to as '**Noticee 1'**) and Mr. Ajay Kalia (hereinafter referred to as '**Noticee 2'**) (both Noticee 1 and Noticee 2 are collectively referred to as '**Noticees'**) who had traded in the scrip of DLF on the basis of unpublished price sensitive information (hereinafter referred to as "**UPSI**"). Therefore, SEBI initiated adjudication proceedings against Noticees under Section 15G(i) of Securities and Exchange Board of India

Act, 1992 (hereinafter referred to as '**SEBI Act**') for the alleged violations of provisions of Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations.

## APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated August 25, 2020, Shri B J Dilip was appointed as Adjudicating Officer under 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 alleged violations of provisions of Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations by Noticees in the matter. Pursuant to the transfer of Shri B J Dilip, Vide order dated December 29, 2020, the undersigned was appointed as the Adjudicating Officer in the matter.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common show-cause notice dated December 03, 2021 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15G(i) of the SEBI Act for the aforesaid violation alleged to have been committed by them.

4. The allegations levelled against Noticees in the SCN are as under:

   a) *Major corporate announcements made by the company during IP, as observed in investigation, are as under:*

***Table1: Corporate Announcements made by company*** *(Source: BSE Website)*

| ***Date*** | ***Announcement*** |
|---|---|
| *13/11/2014* | *Announcement of Quarter-2 results* |
| *22/12/2014* | *BSE sought clarification from DLF with respect to news article appearing in The Times of India on December 22, 2014 titled "DLF Looks to monetize Rs. 3000 cr office space"* |
| *22/12/2014* | *DLF clarified that the said article is not only speculative but also mischievous and no such event or negotiations as published in the article has taken place, there is no event, information or development in the knowledge of the Company.* |

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| *09/02/2015* | *Quarter 3 results announced.* |
| *23/02/2015* | *BSE had sought clarification from DLF with respect to news appeared in Business Standard on February 22, 2015 titled "DLF to sell 50% stakes in 5 projects" and "Showcause to DLF over IT park" on February 23, 2015 respectively.* |
| *26/02/2015* | *DLF replied clarifying that there is no event, information or development which requires disclosure under Clause 36 of Listing Agreement. The Company, during its normal course of business, keeps exploring various opportunities to enhance shareholder value, which includes M&A, divestment of assets and fund raising opportunities. This was also disclosed in the Quarterly Analysts presentation duly uploaded in the Company's website. DLF stated that it would keep exchanges informed in case of any specific developments in this regard.*<br>*With regard to "Show cause to DLF over IT park" in Odisha, DLF submitted that the Company is in the process of seeking legal advice and would submit any further material development to the stock exchanges in this regard."* |
| *09/03/2015* | *Exchange sought clarification from DLF with respect to news article appearing in Financial Chronicle on March 9, 2015 titled "DLF to sell Rs.15,000 cr. properties."* |
| *10/03/2015* | *DLF replied that this information was already discussed in the analyst calls a couple of times. This pertains to the approximate value of total unsold potential in projects which are finished or are under active development. In response to the above reply, Exchange sought further clarification stating that why this material information was provided to a limited set of market participants i.e. analysts and not to the market at large through the Exchange.* |
| *13/03/2015* | *Exchange sought clarification from DLF with respect to news article appeared in The Economic Times on March 13, 2015 titled "Blackstone Looks to Buy up to 40% in DLF's Cybercity."* |
| *16/03/2015* | *DLF replied that it is not in dialogue with Blackstone Group or any other entity with respect to the sale of 40% equity of Gurgaon DLF Cybercity as articulated in the aforesaid article.* |
| *06/04/2015* | *Exchange sought clarification from DLF with respect to news article appeared in Business Line on April 03, 2015 titled "Has DLF sold Pune IT Park 2nd phase to Blackstone?* |
| *08/04/2015* | *DLF replied that it has not done any transaction with Blackstone.* |
| *09/04/2015* | *DLF submitted copy of a Press Release dated April 01, 2015 issued by CRISIL reaffirming the ratings at 'CRISIL A/CRISIL A2+' on the bank facilities and debt instruments.* |
| *28/04/2015* | *DLF submitted copy of Press Release dated April 24, 2015 issued by ICRA reaffirming the rating at 'ICRA A' on the bank facilities and NCD Programme.* |
| *20/05/2015* | *Exchange sought clarification from DLF with respect to news article appeared in Mint on May 20, 2015 titled "PVR close to acquiring DLF's DT Cinemas."* |
| *21/05/2015* | *DLF announced results for the quarter & year ended on March 31, 2015. DLF Board recommended dividend Rs. 2/- per share.* |
| *22/05/2015* | *DLF replied that it has not done any transaction with respect to "DT Cinemas".* |
| *09/06/2015* | *DLF informed exchange that DLF Utilities Limited, a subsidiary DLF, has entered into definitive agreements to sell its cinema exhibition business operated under the brand name* |

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| | *of "DT Cinemas", to PVR Limited, on a slump sale basis for an aggregate consideration of Rs. 500 (Five hundred) crores approx.* |
| *11/06/2015* | *Exchange sought clarification from DLF with respect to news article appeared on CNBC TV 18 on June 11, 2015 titled "DLF may sell 25-30% stake in NCR Proj Capital Greens Phase II for Rs. 800 Cr. to GIC."* |
| *12/06/2015* | *DLF objected to exchange for seeking clarification in each and every news item.* |
| *23/06/2015* | *Exchange sought clarification from DLF with respect to news article appeared on CNBC TV 18 on June 23, 2015 titled "DLF to transfer all its Bengaluru assets to Blackstone. DLF to also give partial stake in Chennai property to Blackstone. DLF still negotiating valuation for Chennai property."* |
| *25/06/2015* | *DLF replied and stated that this is a speculative news.* |
| *30/07/2015* | *Exchange sought clarification from DLF with reference to the news article flashed on CNBC TV 18, July 29 2015 captioned "DLF to sell upto 40-50% stake in holding company Rent Yielding assets. DLF to launch REIT with PE players to raise $2bn from PE players, DLF has around Rs. 20000 crs debt currently"* |
| *30/07/2015* | *DLF replied and stated that this is a speculative news.* |
| *13/08/2015* | *Announced Quarter 1 results.* |
| *02/09/2015* | *DLF informed BSE regarding a Press Release dated titled September 02, 2015. "DLF Home Developers Ltd. and GIC establish joint venture to develop two projects in Central Delhi"* |

b) *During the course of investigation, the chronology of events leading to the corporate announcement on September 02, 2015 was sought by SEBI. GIC Pte Ltd. (hereinafter referred to as '**GIC**') vide email dated March 20, 2020 provided the details, which are given below:*

***Table 2: Chronology of events leading to the corporate announcement on September 02, 2015***

| ***Date*** | ***Discussion/ Meetings/ Approvals /etc.*** | ***Name and Designation of Person Present in the Discussion*** | ***Particulars (Details of Matter Discussed; Conclusions)*** |
|---|---|---|---|
| *03-Nov-14* | *Meeting between GIC and DLF* | ***From GIC:*** *Kishore Gotety (SVP), Arunabh Chaudhuri (AVP).*<br><br>***From DLF:*** *Saurabh Chawla (Sr. ED).* | *GIC made a presentation to DLF on potential partnership opportunities in which GIC recommended that promoters of DLF should consider selling 25-50% of DLF assets. DLF stated that it is considering to sell the entire 40% stake of the promoters in DLF assets to private players. DLF said that they will also be keen to consider other development JVs with GIC.* |

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| *13/14-Nov-14* | *DLF circulated an Analyst Presentation* | ***From GIC:** Kishore Gotety (SVP), Sakar Mawandia (VP), Arunabh Chaudhuri, Amit Mathur (VP), Dinesh Kumar Meel (VP), Monik Kapadia (AVP), Souvik Mukherjee (VP), Kunal Bhansali (VP) and Matteo Busa (AVP).*<br><br>***From DLF:** Rajiv Goel and Kuldeep Yadav* | *Presentation was aimed at the larger analyst community.* |
| *11-Dec-14* | *Discussions on Information Memorandum (IM) and Preliminary Projections* | *From GIC: Kishore Gotety (SVP).*<br><br>*From DLF: Rajiv Goel, Kuldeep Yadav, Saurabh Chawla (Sr. ED), Mr. Surojit Basak (ED-Finance), Mr. Manik Malik* | *Information Memorandum (IM) and Preliminary Financial Projections shared with GIC.* |
| *18-Dec-14* | *Site visit* | ***From GIC:** Sakar Mawandia and Arunabh Chaudhuri (AVP).*<br><br>***From DLF:** Pramod Uniyal, Ajay Kalia and Rajesh Bhatia.* | *Site visit to Capital Greens and SIEL, Delhi by GIC team.* |
| *18-Dec-14* | *Meeting and Discussions* | ***From GIC:** Sakar Mawandia and Arunabh Chaudhuri (AVP).*<br><br>***From DLF:** Manik Malik and Surojit Basak* | *Meeting and discussions between the parties in relation to information memorandum.* |
| *25-Dec-2014* | *Discussion note* | ***From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.*<br><br>***From DLF:** Saurabh Chawla (Sr. ED).* | *Discussion note / preliminary and non – binding terms circulated by GIC, containing the proposals / views of GIC at a nascent stage.* |
| *26-Dec-14* | *Discussion / call between GIC and DLF* | ***From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.*<br><br>***From DLF:** Saurabh Chawla (Sr. ED) and Manik Malik.* | *Discussions / call between GIC and DLF in relation to the above mentioned discussions note / preliminary and non-binding term sheet.* |
| *31-Dec-2014* | *Discussion* | ***From GIC:** Kishore Gotety (SVP), Sakar Mawandia and Anurabh Chaudhuri.*<br><br>***From DLF:** Saurabh Chawla (Sr. ED) and Manik Malik.* | *Discussions between the parties in relation to the discussion note.* |
| *08-Jan-15* | *Site Visit* | ***From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.*<br><br>***From DLF:** Inder Preet Singh, Saurabh Chawla (Sr. ED) and Manik Malik.* | *Site visit by GIC team and meeting at DLF's office thereafter.* |
| *08-Feb-15* | *Proposed structure* | ***From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.*<br><br>***From DLF:** Saurabh Chawla (Sr. ED), Manik Malik and Surojit Basak.* | *DLF circulated a proposed structure for the JV Project.* |

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| *10-Feb-15* | *Financial projections* | ***From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.*<br><br>***From DLF:** Saurabh Chawla (Sr. ED), Manik Malik and Surojit Basak.* | *Updated financial projections in regard to proposed JV at Capital Greens and SIEL Project, circulated by DLF.* |
| *24-Feb-15* | *Site visit* | ***From GIC:** Bernard Phang (MD) and Arunabh Chaudhuri*<br><br>***From DLF:** Mohit Gujral, Surojit Basak, Saurabh Chawla and Kuldeep Yadav.* | *Site visit to Capital Greens Project followed by meeting with DLF representatives.* |
| *25-Feb-15* | *Information sharing* | ***From GIC:** Kishore Gotety, Sakar Mawandia and Kunal Bhansali.*<br><br>***From DLF:** Manik Mailk, Surojit Basak, Saurabh Chawla and Inder Preet Singh.* | *DLF circulated the Investment opportunity, competitive analysis and buyer profile information (who are potential buyers, demand and supply analysis) etc. in relation to the proposed JV Project.* |
| *26-Feb-15* | *Site visit* | ***From GIC:** Kunal Bhansali.*<br><br>***From DLF:** Ajay Kalia* | *Site visit by GIC.* |
| *26-Feb-15* | *Meeting* | ***From GIC:** Goh Kok Huat (MD), Loh Wai Keong (MD), Kishore Gotety and Sakar Mawandia*<br><br>***From DLF:** Rajiv Singh, Saurabh Chawla, Mohit Gujral and Surojit Basak.* | *Meeting between senior GIC and DLF executives to visit the Capital Green site, to discuss various development initiatives being taken by DLF, and to discuss any potential engagements between the organisations.* |
| *04-Mar-15* | *Approval* | *From GIC: Goh Kok Huat, Lee Kok Sun (MD), Christopher Morrish (MD), Bernard Phang (MD), Kwok Wai Keong (MD), Tia Miyamoto (MD)* | *GIC's Real Estate Investment Committee unanimously approved the transaction with respect to Capital Greens Project, subject to due diligence.* |
| *04-Mar-15* | *Layout Plan* | ***From GIC:** Kishore Gotety, Sakar Mawandia and Kunal Bhansali.*<br><br>***From DLF:** Manik Mailk, Surojit Basak, Saurabh Chawla and Inder Preet Singh.* | *DLF circulated the Layout Plan for the Capital Greens Project.* |
| *04-Mar-15* | *IIN Issued* | ***From GIC:** Kishore Gotety, Sakar Mawandia and Monik Kapadia.* | *Inside Information Notification ("IIN") submitted in respect of DLF scrip – thereby restricting trade by Private Markets group of GIC in DLF.* |
| *05-Mar-15* | *IIN Processed* | ***From GIC:** Stacey Cheryl Tan Lin-Yen (VP)* | *GIC's Compliance Department processed the IIN and imposed trading restrictions on the Private Side of GIC's Chinese Wall.* |
| *06-Mar-15* | *Term Sheet agreed.* | ***From GIC:** Kishore Gotety and Sakar Mawandia.*<br><br>***From DLF:** Manik Mailk and Saurabh Chawla.* | *Term Sheet sent by GIC after discussion within GIC Investment Committee.* |
| *07-Mar-15* | *Confidentiality Agreement signed.* | ***From GIC:** Sakar Mawandia.*<br><br>***From DLF:** Saurabh Chawla.* | *Confidentiality Agreement executed & signed.* |

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| *08-Mar-15* | *Property diligence* | ***From GIC:*** *Kishore Gotety and Sakar Mawandia.*<br><br>***From DLF:*** *Manik Mailk, Surojit Basak and Saurabh Chawla.* | *GIC circulated a property diligence check-list.* |
| *10-Mar-15* | *Transaction structure* | ***From GIC:*** *Kishore Gotety and Sakar Mawandia.*<br><br>***From DLF:*** *Manik Mailk, Surojit Basak and Saurabh Chawla.* | *Call between GIC and DLF on structure of the transaction.* |
| *24-Mar-15* | *Legal due-diligence* | ***From GIC:*** *Kishore Gotety and Sakar Mawandia.*<br><br>***From DLF:*** *Manik Mailk, Surojit Basak and Saurabh Chawla.* | *Legal due diligence checklist circulated.* |
| *26-Mar-15* | *Corporate diligence* | ***From GIC:*** *Sakar Mawandia.*<br><br>***From DLF:*** *Manik Mailk and Surojit Basak.* | *GIC circulated the corporate diligence checklist.* |
| *27-Mar-15* | *Draft shareholder subscription and purchase agreement* | ***From GIC:*** *Kishore Gotety, Sakar Mawandia and Woo Chooi Tein (VP).*<br><br>***From DLF:*** *Manik Mailk, Surojit Basak and Saurabh Chawla.* | *GIC circulated drafts of the Shareholder Subscription and Purchase Agreement, Shareholder Agreement and Development Agreement.* |
| *30-Mar-15* | *Meeting* | ***From GIC:*** *Kishore Gotety, Sakar Mawandia and Woo Chooi Tein (VP).*<br><br>***From DLF:*** *Manik Mailk, Surojit Basak and Saurabh Chawla.* | *Meeting between the parties to discuss the drafts of the Shareholder Subscription and Purchase Agreement, Shareholder Agreement, and Development Agreement.* |
| *Apr to Sep-15* | *Various meetings and discussions between GIC and DLF representatives and their respective legal teams to discuss and agree upon the transaction documents.* | | |
| *01-Sep-15* | *Board of Directors Meeting of DLF Home Developers Limited* | *Mr B B Deora, Mr. Ashok Kumar Tyagi, Lt. Gen Aditya Singh (Retd.), Directors. Mr. Saurabh Chawla And Mr. Surojit Basak, invitees. Mr. Ankur Jain, Company Secretary* | *Approval of Execution of Securities Subscription Agreement and other related documents with subsidiaries of GIC, Singapore in relation to DLF Urban Private Limited and DLF Midtown Private Limited, Wholly Owned Subsidiaries of DLF Home Developers Limited.* |
| *01-Sep-15* | *Board of Directors Meeting of DLF Urban Private Limited.* | *Mr. Saurabh Chawla and Mr. Manik Malik, Directors* | *Approval of execution of Securities Subscription Agreement and other related documents with subsidiaries of GIC, Singapore and DLF Home Developers Limited.* |
| *01-Sep-15* | *Board of Directors Meeting of DLF Midtown Private Limited.* | *Mr. Saurabh Chawla And Mr. Manik Malik, Directors* | *Approval of Execution of Securities Subscription Agreement (SSA) and other related documents with subsidiaries of GIC, Singapore and DLF Home Developers Limited.* |
| *02-Sep-15* | *SSA executed and disclosure made at 9:07 AM* | | *Disclosed to the Stock Exchanges* |

c) *It is pertinent to mention here that the term 'price sensitive information' has been defined under Regulation 2(ha) of PIT Regulations which mentions that - "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. Further, the term "unpublished price sensitive information / UPSI" has been defined in Regulation 2(1)(n) of the PIT Regulations which includes financial results etc. of a listed company.*

d) *From the chronology of events, it was observed that UPSI came into existence on November 03, 2014 when discussions began between DLF and GIC for considering Joint Ventures and GIC made presentation to DLF recommending that promoters of DLF should consider to sell 25% to 50% of DLF assets to private players. It was further observed that in the same meeting, Saurabh Chawla (ED-Finance, DLF) said that DLF would be keen to consider other development Joint Ventures with GIC and that for the promoters, GIC was amongst the most preferred partners and long term benefits of partnering with GIC would be significant.*

e) *It was observed that DLF informed BSE and NSE regarding a Press Release dated September 02, 2015 titled "DLF Home Developers Ltd. and GIC establish joint venture to develop two projects in Central Delhi" on September 02, 2015 at 09:07 AM. Therefore, UPSI period was considered from November 03, 2014 to September 01, 2015, in investigation.*

f) *During the course of investigation, it was observed from the submission of Mr. Sanjiv Parikh of M/s BMR Advisors (hereinafter referred to as '**BMR**') vide his email dated October 04, 2019 that BMR was engaged by Reco Greens Pte Ltd. and Reco Moti Pte Ltd. (entities belonging to GIC) to provide tax advisory services in relation to their investment in DHDL in March 2015. It was also submitted by BMR that Noticee 1 was working on the transaction.*

g) *On the basis of information obtained from BMR and in view of the aforesaid findings, it was alleged that Noticee 1, who was an employee of BMR, was in possession of UPSI, i.e., Noticee 1 were aware about the joint venture between DHDL and GIC.*

h) *It was also observed in investigation that Noticee 1, while in possession of UPSI, had traded in the F&O Segment of NSE on August 04, 2015 wherein he bought 30,000 quantity and sold the same. It was observed that the buy value of the said quantity was Rs. 34,08,500 and sell value was Rs. 33,74,000 and by executing the said buy and sell transactions, he incurred a loss of Rs. 34,500.*

***Table :- Relevant extract of trading details of Noticee 1***

| Day Date | Instrument Type | Option Type | Strike Price | Settlement Price for OI | Settlement Price | Expiry Date | Brght Forward Long Quantity | Brght Forward Short Quantity | Days Buy Quantity | Days Sell Quantity | Buy Avg Price | Sell Avg Price | Days Buy Value | Days Sell Value | Assigned Quantity |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 04.08.14 | FUTSTK | FF | 0 | 200.60 | 200.60 | 28.08.14 | 0 | 0 | 10,000 | 10,000 | 199.01 | 198.00 | 19,90,100 | 19,80,000 | 0 |
| 04-08.15 | FUTSTK | FF | 0 | 113.70 | 113.70 | 27.08.15 | 0 | 0 | 30,000 | 30,000 | 113.62 | 112.47 | 34,08,500 | 33,74,000 | 0 |
| 03.09.15 | FUTSTK | FF | 0 | 121.10 | 121.10 | 24.09.15 | 0 | 0 | 4,000 | 4,000 | 119.30 | 121.40 | 4,77,200 | 4,85,600 | 0 |
| 08.09.15 | FUTSTK | FF | 0 | 120.90 | 120.90 | 24.09.15 | 0 | 0 | 30,000 | 30,000 | 122.44 | 123.08 | 36,73,200 | 36,92,300 | 0 |
| 26.11.15 | FUTSTK | FF | 0 | 113.55 | 113.55 | 26.11.15 | 0 | 0 | 10,000 | 10,000 | 112.30 | 114.48 | 11,23,000 | 11,44,750 | 0 |

i) *During investigation, clarification was sought from Noticee 1 w.r.t. his trading in the derivative segment in the scrip of DLF when in possession of UPSI. Vide email dated December 20, 2019, Noticee 1 confirmed that he was part of the team from BMR which advised GIC on the tax implications on its investment in one of the entities belonging to the DLF Group.*

j) *In light of the above findings, investigation alleged that Noticee 1 was an insider in terms of Regulation 2(1)(g) of the PIT Regulations and was privy to the UPSI and being an insider, he trading in the scrip of DLF when in possession of UPSI. Hence, it is alleged that Noticee 1 being an insider and when in possession of UPSI, had traded in the scrip of DLF, thereby violating Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations.*

k) *During the course of investigation, it was observed from the letter dated March 20, 2020 received from GIC that Noticee 2, as Assistant VP (Projects) of DHDL was involved in arranging of site visit of GIC on December 18, 2014 and on February 26, 2015. Thus, it was alleged that Noticee 2 was an insider and was aware about the ongoing discussion* *about the Joint Venture between DHDL and GIC about the Joint Venture entered between, and hence, was in possession of UPSI.*

l) *It was further observed that Noticee 2 had traded in the scrip of DLF wherein he bought 5,100 shares and sold 4,011 shares in the cash market segment of NSE. At F & O Segment of NSE, he bought a call / long option of 6,000 quantity on July 28, 2015 which was carried forward till August 25, 2015. The relevant extract of details of trading done is given below:*

***Table 4: Relevant extract of trading details of Noticee 2 in cash segment***

| *Date* | *Buy Traded Quantity* | *Sell Traded Quantity* | *Buy Traded Value* | *Sell Traded Value* | *Avg. Buy* | *Avg. Sell* |
|---|---|---|---|---|---|---|
| *03.0615* | *1,600.00* | *0.00* | *1,74,400.00* | *0.00* | *109.00* | *0* |
| *25.06.15* | *0.00* | *800.00* | *0.00* | *92,800.00* | *0* | *116.00* |
| *26.06-15* | *0.00* | *800.00* | *0.00* | *97,360.00* | *0* | *121.70* |
| *25.08.15* | *1,000.00* | *1,000.00* | *1,03,689.00* | *1,10,050.00* | *103.69* | *110.05* |
| *26.08.15* | *1,000.00* | *0.00* | *1,10,000.00* | *0.00* | *110.00* | *#DIV/0* |
| *27.08.15* | *0.00* | *1,000.00* | *0.00* | *1,13,250.00* | *0* | *113.25* |
| *28.08.15* | *1,500.00* | *411.00* | *1,76,850.00* | *48,909.00* | *117.90* | *119.00* |

***Table 5: Relevant extract of trading details of Noticee 2 in F& O segment at a strike price of Rs. 80 for the expiry on August 27, 2015***

| *Day Date* | *Settlement Price for OI* | *Settlement Price* | *Brght Forward Long Quantity* | *Days Buy Quantity* | *Days Sell Quantity* | *Buy Avg Price* | *Sell Avg Price* | *Days Buy Value* | *Days Sell Value* | *Notional Day Buy Value* | *Notional Day Sell Value* | *Post Adjusted Long Quantity* |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| *28.07.15* | *95.40* | *1.50* | *0* | *6,000* | *0* | *1.80* | | *10,800* | *0* | *4,90,800* | *0* | *6,000* |
| *29.07.15* | *101.55* | *1.00* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *30.07.15* | *109.70* | *0.40* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *31.07.15* | *115.05* | *0.20* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *03..08.15* | *115.50* | *0.15* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *04.08.15* | *115.05* | *0.15* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *05.08.15* | *122.10* | *0.10* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |

| Day Date | Settlement Price for OI | Settlement Price | Brght Forward Long Quantity | Days Buy Quantity | Days Sell Quantity | Buy Avg Price | Sell Avg Price | Days Buy Value | Days Sell Value | Notional Day Buy Value | Notional Day Sell Value | Post Adjusted Long Quantity |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| *06.08.15* | *122.45* | *0.10* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *07.08.15* | *125.70* | *0.05* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *10.08.15* | *128.30* | *0.00* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *11.08.15* | *124.35* | *0.10* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *12.08.15* | *117.10* | *0.10* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *13.08.15* | *114.25* | *0.15* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *14.08.15* | *135.25* | *0.05* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *17.08.15* | *129.30* | *0.10* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *18.08.15* | *128.05* | *0.00* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *19.08.15* | *126.70* | *0.05* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *20.08.15* | *120.00* | *0.05* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *21.08.15* | *113.95* | *0.25* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *24.08.15* | *96.65* | *0.60* | *6,000* | *0* | *0* | | | *0* | *0* | *0* | *0* | *6,000* |
| *25.08.15* | *112.10* | *0.05* | *6,000* | *0* | *6,000* | | *0.28* | *0* | *1,700* | *0* | *4,81,700* | *0* |

m) *In this regard, comments were sought from Noticee 2. Vide email dated April 15, 2020, Noticee 2 stated that during the period of November 2014 to September 2015, he was working as General Manager "Projects" with DHDL and had never been involved in arranging of site visit of GIC and neither was part of any discussion related to the joint venture talks between DHDL and GIC nor was aware about it. However, he confirmed that GIC being one of the probable buyers, he was asked by his Project In-charge to show the development of the site during the visit of GIC team at site. Accordingly, he had shown the site development and replied to some of their queries.*

n) *In light of the aforesaid findings, it was alleged that since Noticee 2 was involved in arranging of site visit on December 18, 2014 and February 26, 2015 for GIC team and was aware about the joint venture talks going on, he was an insider in accordance with Regulation 2(1)(g) of the PIT Regulations. It was further alleged that being an insider,* *Noticee 2 traded in the scrip of DLF when in possession of UPSI. Therefore, it is alleged that Noticee 2, being an insider and in possession of UPSI, had traded in the scrip of DLF, thereby violating Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations.*

5. The SCN was sent to Noticees through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') on December 04, 2021, and digitally signed emails dated December 06, 2021 and was duly served on Noticees. SCN sent to Noticee 2 was duly served on him through both SPAD and digitally signed email. SCN sent to Noticee 1 was duly served on him through digitally signed email but the SCN sent through SPAD returned undelivered. In this regard, Noticee 1 vide his email dated December 13, 2021 informed the undersigned about the change in his address and requested the SCN along with annexures be sent to him in his new address. In light of the aforementioned request, SCN along with annexures was once sent to Noticee 1 at the address informed by him through SPAD and the same was duly served on him. Noticees were given fifteen (15) days' time from receipt of SCN to make their submissions in respect of the allegations made in the SCN.

6. Subsequent to receipt of SCN, Noticee 2 vide email dated December 18, 2021, requested an extension of period of two weeks to respond to SCN. In this regard, I note that, vide email dated December 29, 2021, Noticee 2 was granted time till January 12, 2022 to file his reply, if any, to the SCN. Noticee 2 vide email dated January 06, 2022, requested a copy of the investigation report of the SEBI and trade logs and order logs in the matter. The aforementioned request was also reiterated by Noticee 2 in its email dated January 24, 2022. In this regard, vide email dated February 02, 2022, it was informed to Noticee 2 that relevant extracts of Investigation Report has already been provided to him as part of SCN. However, In light of the decision of Hon'ble Supreme Court of India in T Takanao v SEBI (Civil Appeal Nos. 487-488 of 2022, Decision dated February 18, 2022), vide email dated May 23, 2022 a copy of investigation report in the matter (redacted with respect to third party information) was provided to Noticee 2. With regard to request for trade log and order log, Noticee 2 was informed vide the email February 02, 2022 that trade details were already provided as part of the SCN but the same was was again provided to Noticee 2. Further, it was informed to

Noticee 2 that order log was not relied upon in the present proceedings. Thereafter, Noticee 2 filed his reply to the SCN vide letter dated March 25, 2022.

7. Vide email dated December 30, 2021, Noticee 1 through his authorized representative informed the undersigned that he had decided to avail settlement proceeding under SEBI (Settlement Proceedings) Regulations, 2018 and requested three weeks' time for filing detailed reply to the SCN. Subsequently, Noticee 1 vide email dated February 17, 2022 filed reply dated February 11, 2022 to the SCN. With regard to settlement application filed by Noticee 1 with SEBI, I note that vide email dated May 23, 2022, Noticee 1 had withdrawn his settlement application.

8. Thereafter, in the interest of natural justice, vide hearing notices dated May 09, 2022, Noticees were granted an opportunity of personal hearing before the undersigned on May 19, 2022. The aforesaid hearing notices were sent to Noticees through SPAD as well as through digitally signed emails on May 09, 2022 and was duly served upon them. On the scheduled date of hearing, Authorised Representatives (ARs) of Noticee 1, Advocate Ravichandra S Hegde and Advocate Mitravinda Chunduru appeared for hearing. The ARs of Noticee 1 reiterated submissions made by Noticee 1 vide his earlier reply dated February 11, 2022. Further, ARs of Noticee 1 submitted that additional submissions shall be filed by them by May 23, 2022. The hearing was conducted through video conference on cisco webex platform. Thereafter, vide email dated May 23, 2022, Noticee 1 filed additional written submissions in the matter.

9. On the scheduled date of hearing i.e. May 19, 2022, Noticee 2 and AR of Noticee 2, Ms Anannya Ghosh appeared for the hearing. AR of Noticee 2 reiterated the earlier submissions made by Noticee 2 vide March 25, 2022. Further, it was submitted that the additional written submissions in the matter shall be filed by May 30, 2022. The ARs of Noticee 2 also requested for copy of investigation report and the same was provided by email dated May 23, 2022. Thereafter, Noticee 2 through his AR filed additional written submissions in the matter vide email dated June 03, 2022.

**<u>Reply of Noticee 1 dated February 11, 2022 and May 23, 2022</u>**

- *Noticee strongly submits that there was no scope for the classification of the Impugned Transaction as UPSI, as none of the essential features of a 'UPSI' are satisfied by the Impugned Transaction. DLF being the largest commercial real estate developer in India, was routinely involved in large real estate and construction projects, whether through joint ventures or otherwise. During the year 2015-16, the Company had 118 subsidiaries and 11 associate companies including joint ventures. Each of these subsidiary and associate companies of DLF were continuously growing and engaged in large scale building and construction projects. A joint venture being entered into – (i) by 1 of the 118 subsidiaries, (ii) in the ordinary course of business – would bear no impact on the price sensitivity of the stocks of the parent Company i.e., DLF. It is a settled position that an event arising out of the ordinary course of business would not be price sensitive information, as laid down by the Hon'ble Securities Appellate Tribunal ("SAT") in the case of Gujarat NRE Mineral Resources Ltd vs. SEBI (18.11.2011).*
- *Since May 2015 itself i.e., 3 months before the Impugned Trades of the Noticee, the media was abuzz with the news regarding the possible investment by GIC in 25-30% stake in DLF's housing project in Delhi, to such an extent that even the stock exchanges had to seek a clarificatory statements from DLF in this regard. Interestingly, the Show Cause Notice itself acknowledges and points out this fact. The Show Cause Notice also points out a previous instance, where a clarification was sought by the stock exchanges re news articles circulating regarding PVR's acquisition of DLF's DT Cinemas, which transaction later came to be announced by DLF.*
- *Accordingly, there was no iota of doubt in the public's mind and the information regarding the Impugned Transaction was no more an 'unpublished' circumstance, since as early as May 2015. In view of the above, it is adequately established that the information regarding Impugned Transaction – (i) was neither 'price sensitive' in view of its ordinary and/or uncertain nature; (ii) nor was it 'unpublished' as a result of the widely published media articles coupled with stock exchange notifications.*
- *As a result of absence of any UPSI, the question of applicability of the PIT Regulations to the present case itself does not arise, and therefore, it is most humbly submitted that the Show Cause Notice ought to be dismissed qua the Noticee on this ground alone.*
- *Even if one was to consider the Impugned Transaction to be any UPSI, there was no scope for the Noticee to gage complete details of it, the commercial negotiations, the*

*timelines involved, and the certainty and closure thereof. The role of the Noticee in BMR allowed him access to only restricted details regarding the GIC entities tax related matters. The Noticee had no vision on the details of the actual Impugned Transaction*

- *It is most humbly submitted that the trades of the Noticee were made in the ordinary course of his trading and based on visible market sentiments and expert recommendations, as can be seen from the submissions made as below –*
    - *The Noticee was a habitual trader in the FNO segment of the stock exchanges since 2014 and he continued to do so even during the relevant period, at which time his total trading volume used to be about Rs. 20-30 crores p.a.*
    - *For the relevant FY 2015-16, the Noticee's total transaction volume in the FNO segment was over Rs. 23.60 crores. The same is not out of the ordinary considering the total transaction volume for the previous FY 2014-15 was over Rs. 30.60 crores and for the subsequent FY 201617 was over Rs. 80 crores.*

- *The Noticee was also a habitual trader in the FNO segment in the DLF scrip. In the period between 2014 to 2017, the Noticee had a total traded volume of more than Rs. 13 crores in DLF. The Noticee therefore, took positions in DLF before and even after the alleged UPSI period.*
- *The Noticee's trades were agnostic to the alleged UPSI, as the Noticee undertook one intra-day FNO trade a month before the date of Announcement. Had the Noticee been privy to any UPSI, the Noticee would have attributed a larger portion of his trading capacity to the Impugned Trades; and held his position until the date of Announcement and tried to derive advantage from the Announcement. The Noticee did not even profit from the Impugned Trades but incurred a loss of Rs. 34,500/- .*
- *Let alone deriving any secret profits / personal gains, the Noticee incurred a loss from it. Even intention to derive profit cannot be established due to the very nature of the Impugned Trades i.e., intra-day FNO trades where the position has to be closed on the same day irrespective of the profitability.*

  *The Noticees trades, including the Impugned Trades, were always inspired by recommendations and daily tips provided on the website of his broker i.e., ICICIDirect.com, platforms such as moneycontrol.com and other stock-brokers viz. Religare Securities and Angel Broking.*

- *The factors stated above would negate any presumption of trading on the basis of UPSI, as upheld by the Hon'ble SAT in the case of Alliance Capital Mutual Fund vs. Securities and Exchange Board of India (15.11.2007).*
- *Similarly, appreciating factors such trading pattern, trade capacity, strategy adopted and trading history, in a recent case dated May 10, 2022, the learned Adjudicating Officer has given the benefit of doubt to a noticee who was even a designated person of a Company who traded during the closure of the trading window.*

- *When trading is not induced by the UPSI but due to legitimate purposes, then as upheld by the Hon'ble SAT time and again, it cannot be concluded that the appellant was guilty of insider trading [Ref: Chandrakala Vs. SEBI (Appeal 209 of 2011); Rajiv Gandhi v. SEBI (decided on May 9, 2008) and Abhijit Rajan v. SEBI (decided on November 8, 2019)].*

- *The present proceedings have already caused irreparable prejudice to the Noticee. On the initiation of the present proceedings, the Noticee had even resigned from his earlier employment, and is till date unemployed. The Noticees future employment prospects are also affected by the outcome of the present proceedings. The career and reputation of an innocent person have been incorrigibly undermined due to the action taken by SEBI merely on the basis of bleak suspicions. In order to salvage his employment and reputation, the Noticee has even tried to make an application under the SEBI (Settlement Proceedings) Regulations, 2018. However, the Noticee is unable to pay the exponential sum that was arrived at through the computation method provided under the said Regulations, and has accordingly withdrawn his application for settlement.*

**<u>Reply of Noticee 2 dated March 25, 2022 and June 03, 2022.</u>**

- *The SCN has admittedly been issued in respect of alleged trading undertaken by the Answering Noticee between the months of June 2015 to August 2015, which took place during the Investigation Period of 1 November 2014 to 30 September 2015. The SCN has now been issued on 3 December 2021 after an inordinate delay of more than six (6) years. There is no explanation in the SCN as to the reason for such delay in the issuance of the SCN. It is trite law that even where the statute does not prescribe a specific time for* *issuance of a show cause notice, the concerned authority should exercise such power within a reasonable time frame. Therefore, while the PIT Regulations do not provide a specific time period within which a show cause notice thereunder is to be issued, the present proceedings are vitiated by the issuance of the SCN, after a period of more than six years. The Noticee in support of his contentions placed reliance on the decision of Hon'ble SAT in Sanjay Jethalal Soni vs SEBI(Appeal No. 102/2019, Decision dated 14 November 2019); Rakesh Kathotia vs SEBI (Appeal No. 7/2016, Decision dated 27 May 2019) and Shriram Insight Share Brokers vs SEBI (Appeal No. 559/2020, Decision dated 4 January 2022), Ashok Rupani vs SEBI (Appeal No. 417/2018, Decision dated 22 August 2018).In the present matter, the Answering Noticee has in fact been prejudiced by the gross and unexplained delay in the issuance of the SCN. The charge which has been levelled upon the Answering Noticee i.e., of having indulged in insider trading, is a serious one. The Answering Noticee, when faced with such a charge, to be able to defend itself, would be required to refer to contemporaneous information from the relevant period including with reference to the circumstances in which the subject transactions were undertaken, other transactions undertaken by it in the securities market, advice which may have been received by the Answering Noticee, communications with intermediaries etc. With more than six (6) years having passed since the subject transactions took place, such information/material may no longer be available and the Noticee's ability to put up an effective defence has been severely impaired. These circumstances were brought to the notice of your goodself, vide email dated 6 January 2022 wherein the Answering Noticee had inter alia informed that it was unable to trace the documents and information necessary to adequately respond to the SCN. It is respectfully submitted that the refusal to supply the Answering Noticee with the Investigation Report is contrary to various decisions of the SAT as also the Supreme Court*

- *Noticee respectfully submits that the period of UPSI considered by SEBI is incorrect. According to the Investigation Report, UPSI came into existence on 3 November 2014. As evident from the Investigation Report itself, on 3 November 2014 there was only a presentation made by GIC to DLF on potential partnership opportunities. Even later, on 25 December 2014, it was only non-binding terms and discussion note that had been circulated by GIC.*

- *According to Noticee, UPSI came into existence only on 4 March 2015 when GIC's Real Estate Investment Committee unanimously approved the transaction with respect to the Capital Greens Project (subject to due diligence). Hence, prior to 4 March 2015, any information regarding the possible Joint Venture between DLF and GIC was mere speculation, was vague and uncertain, and could not qualify as UPSI. The Answering Noticee's involvement with this matter, even as per the Investigation Report, ended with the site visit on 26 February 2015. Additionally, a confidentiality agreement was only signed on 7 March 2015, implying that it was only on this date that there an understanding that the information in question was confidential in nature. Therefore, the Noticee could not have been in possession of any UPSI as his involvement in the matter ended before the UPSI came into existence. Thus, Noticee was not in possession of UPSI and was not an insider within the meaning of Regulation 2(1)(g)(ii) of the PIT Regulations.*

- *The Answering Noticee, at the relevant time was an employee with DHDL in the capacity of 'General Manager, Projects.' In this capacity, the Answering Noticee, who had a purely technical role, was required to ensure execution of construction projects as per construction plans, including procurement of goods and materials for construction, observations of quality parameters and ensuring that timelines in the completion of the construction were met. DHDL, during the said period was engaged in over 10 projects, one of which was 'Capital Greens', the Answering Noticee being involved in the construction of the same. The Answering Noticee was thus not aware of the UPSI in the present matter including any proposed joint venture between DHDL and GIC.As such, the interaction of the Answering Noticee was almost entirely with architects of DHDL, contractors employed for executing construction, suppliers and external consultants. Even as per the sequence of events as narrated in Table 2 of the SCN, the persons involved in discussions pertaining to the proposed Joint Venture from DLF were Senior Executive Directors and Executive Directors of DLF. The Answering Noticee, who was only involved in the supervision of construction was thus not privy to any decisions/discussions in relation to the proposed Joint Venture. It is respectfully submitted that in such circumstances, the Answering Notice did not, and cannot reasonably have been expected to have access to UPSI*

- *On a perusal of the SCN and annexures, it appears that the allegations against have arisen on account of letter dated 20 March 2020 addressed on behalf of GIC ostensibly in response to a request for information from SEBI. It is pertinent to note that the Answering Noticee has only been provided with an incomplete copy of this letter (without Annexures other than a part of Annexure A thereto.) Annexure A to the said letter refers to various meetings and contains names of persons present at the same. In this regard, the only mention of the Answering Noticee is that he was present at Site Visits on 18 December 2014 and 26 February 2015. Thus, solely on the basis of the presence of the Answering Noticee at these Site Visits, the SCN alleges that the Answering Noticee had access to UPSI.*
- *Both as per the SCN and the Investigation Report, the sole basis of the allegations against Noticee is that Noticee was physically present during site visits conducted on 18 December 2014 and 26 February 2015. Besides this, SEBI has failed to produce a single document or substantive proof to show that the Noticee was in possession of UPSI. Upon enquiry from SEBI as to his role in the aforementioned site visits, Noticee explained that his role was purely technical, that he was unaware of the JV between DLFHDL and GIC , and that he had never been involved in any management decisions in this regard. As is clear from para 12.3 of the Investigation Report, the explanation of Noticee was perfectly corroborated by DLF, which also confirmed that the role of Noticee was only technical, including execution of work as per construction plans, observation of quality parameters etc. It was further stated by DLF that since the role of Noticee was technical, he was required to be present on the site most of the time.*

- *The Answering Noticee submits that while he had been instructed by his Project In Charge to show the development of the construction site to representatives from GIC, he was not given any information as to any proposed Joint Venture with GIC or otherwise. In fact, representatives from various companies visited the construction sites from time to time and the Answering Noticee, had been present at such visits and responded to technical queries in relation to the stage of construction, etc. The SCN further incorrectly states that the Answering Noticee was involved in "arranging" the site visit of GIC on 18 December 2014, and his sole activity on the said dates was to show the development of the sites to GIC representatives under the instructions of the Project-In-Charge.*

- *As per Regulation 2(1)(n) of the PIT Regulations, "unpublished price sensitive information" is defined as "any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities…" [emphasis supplied] .To qualify as UPSI, the information in question must be such as is likely to materially affect the price of the securities. The Answering Noticee submits that the limited information with him at the time of the Site Visits in question was too vague and cannot satisfy the requirement of materiality within the meaning of Regulation 2(1)(n). The maximum extent of information available with the Answering Noticee was that GIC was a 'probable buyer'. This information is neither specific, nor certain and is far too vague to be considered as UPSI within the meaning of Regulation 2(1)(n). Since the Answering Noticee on several occasions showed the construction sites to representatives of various companies, it cannot be reasonably expected that the Answering Noticee merely by being present at the Site Visits was aware of the proposed Joint Venture as alleged.*

- *Noticee has explained unequivocally, that given his role in the organization, he could not have accessed any UPSI, and such explanation was corroborated by DLF. Despite this, SEBI, in the absence of any substantive proof or document has proceeded to allege that Noticee has committed violations of the PIT Regulations.*

- *It is submitted that the evidence relied upon by SEBI fails to make out any case against the Answering Noticee. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court in Balram Garg vs Securities & Exchange Board of India 2022 SCC OnLine SC 472 wherein the Court has held as under:*

> *"40…It would be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties. In this context, even the show-cause notices do not allege any communication between the Appellant Balram Garg and the other appellants in C.A. No. 7590 of 2021."*

- *In the Investigation Report and SCN, there is no cogent material which would establish that any communication of UPSI to Noticee has taken place. Without any basis, it has been assumed at para 12.3 (page 16) of the Investigation Report that Noticee "was involved in arranging of site visit on December 18, 2014 and February 26, 2015 for GIC team and was aware about the JV talks going on." Noticee has been accused merely on the basis of his physical presence at a site at a particular time. It is precisely this manner of accusation based on scant evidence that has been held by the Supreme Court to be impermissible in Balram Garg. In view of the aforesaid, the SCN qua the Answering Notice deserves to be withdrawn.*

- *The allegations against Noticee are based on certain transactions carried out by him in the Cash Segment and F & O Segment ("the Subject Transactions") of the National Stock Exchange ("NSE"). The Noticee submits that the trading patterns of the Answering Noticee would lead to the conclusion that the Subject Transactions were not induced by the Answering Noticee being in possession of UPSI. The information in relation to the Joint Venture between DHDL and GIC, since it was positive in nature, would be expected to increase the share price of DLF. Thus, if the Answering Noticee had actually been in possession of UPSI, anticipating a rise in the share price, he would have bought a large number of shares and subsequently sold them at a profit upon publication of the information in question. However, the Noticee bought 5100 shares and sold 4011 shares between 3 June 2015 and 28 August 2015 (i.e., bought as well as sold shares, rather than buying shares before the information became public and selling the same subsequently). Further, while the Answering Noticee purchased a Call Option (6000 quantity) on 28 July 2015, he would have been expected to carry forward the same at least till the publication of the announcement pertaining to the Joint Venture and consequent price rise. However, the Options expired on 27 August 2015 which was prior to the UPSI becoming public and the Answering Noticee in fact incurred a loss.Thus, the trading pattern of the Answering Noticee does not correspond to that of a person acting in possession of UPSI pertaining to a positive development which would be expected to result in a rise in the shares price.*

- *It is submitted that the behaviour of the Noticee in the market was not brought about by UPSI but publicly available information including news articles, some of which are referred to in the Investigation Report and in the SCN. Some of the relevant items in this regard are:*

  i. *Article dated 23 June 2015 titled 'DLF to transfer all its Bengaluru Assets to Blackstone. DLF also to give partial stake in Chennai property to Blackstone' (referred to in Table 4 of the Investigation Report)*

  ii. *Information given by DLF on 9 June 2015 to the exchange that DLF Utilities Limited, a subsidiary of DLF has entered into definitive agreements to sell its cinema exhibition business to PVR Limited (referred to in Table 4 of the Investigation Report).*

- *In addition to the above, there were other news items pertaining to DLF at the relevant time, which have already been relied upon in the Answering Noticee's reply dated 25 March 2022, which are as under:*

  i. *DLF to Divest or opt for project JVs to raise Rs. 3000 Cr. (Article dated 11 February 2015 published in the Business Standard)*

  ii. *DLF may soon close two private equity deals to raise Rs. 1000 Cr. (Article dated 31 May 2015 published in the Deccan Chronicle)*

  iii. *DLF gains after raising Rs. 1000 crores through debentures (Article dated 13 August 2015 published in the Business Standard)*

- *An examination of the Subject Transactions when seen in the context of the price/volume data of the scrip of DLF would show that the Subject Transactions were not attributable to UPSI. The price/volume data as obtained from the website of the NSE is enclosed as ANNEXURE -A. The Subject Transactions were as under:*

  i. *3 June 2015: 1600 shares purchased*
  ii. *25 – 26 June 2015: 1600 shares sold*
  iii. *28 July 2015: Call/long option of 6000 quantity purchased*
  iv. *25 – 28 August 2015: 3500 shares bought and 2411 shares sold*

- *In respect of the transaction carried out on 3 June 2015, it may be seen that on the said date, the volume/number of trades carried out in the scrip was markedly higher than that on the preceding and succeeding dates, indicating general investor interest in the scrip on the said date. Thus the purchase of shares by Noticee is only part of a general trend in the market on that particular date.*

| *Date* | *Open* | *High* | *Low* | *Close* | *Volume* | *No. of Trades* |
|---|---|---|---|---|---|---|
| *1-Jun-15* | *118.95* | *122* | *117.55* | *118.15* | *5768042* | *32767* |
| *2-Jun-15* | *119.2* | *119.35* | *111.2* | *113.1* | *6011361* | *38328* |
| *3-Jun-15* | *114.5* | *115* | *102.8* | *110.55* | *21170190* | *89980* |
| *4-Jun-15* | *111.4* | *112.55* | *106.95* | *111.15* | *14101729* | *54157* |
| *5-Jun-15* | *108.75* | *110.3* | *106.3* | *107.25* | *7193486* | *38673* |

- *As far as the dates of 25-26 June 2015 are concerned, it may be seen that even on those dates, the volume traded was higher than that on preceding and succeeding dates, indicating market activity generally on those dates. The same can also be correlated to the news item dated 23 June 2015 with respect of transfer of DLF's Bengaluru assets.*

| *Date* | *Open* | *High* | *Low* | *Close* | *Volume* | *No. of Trades* |
|---|---|---|---|---|---|---|
| *23-Jun-15* | *116* | *118.5* | *114.6* | *117.5* | *9247220* | *53979* |
| *24-Jun-15* | *117.8* | *117.85* | *113.8* | *114.45* | *3727482* | *19817* |
| *25-Jun-15* | *112.75* | *121* | *112.1* | *118.2* | *11625400* | *43588* |
| *26-Jun-15* | *117.65* | *122.95* | *114.35* | *120* | *9360964* | *46872* |
| *29-Jun-15* | *113.85* | *119* | *113.1* | *117* | *5194257* | *25639* |
| *30-Jun-15* | *116.05* | *118.8* | *115.75* | *116.9* | *4070899* | *20726* |

- *Further, it may also be seen that on 28 July 2015 there was an increase in volume traded when compared to preceding dates, and the volume continued to increase for some dates thereafter.*

| *Date* | *Open* | *High* | *Low* | *Close* | *Volume* | *No. of Trades* |
|---|---|---|---|---|---|---|
| *24-Jul-15* | *107.3* | *108.35* | *102.8* | *103.2* | *5551887* | *27598* |
| *27-Jul-15* | *102.2* | *104.45* | *100.5* | *101.2* | *5861376* | *30232* |

| | | | | | | |
|---|---|---|---|---|---|---|
| *28-Jul-15* | *102* | *102* | *95* | *95.4* | *8686984* | *46501* |
| *29-Jul-15* | *96.8* | *104.4* | *94.2* | *101.55* | *12340725* | *56783* |
| *30-Jul-15* | *102.9* | *110.95* | *102* | *109.7* | *17880156* | *84778* |

- *Again, even the dates of 25-28 August were dates marked by a higher volume traded in comparison to dates preceding and succeeding.*

| *Date* | *Open* | *High* | *Low* | *Close* | *Volume* | *No. of Trades* |
|---|---|---|---|---|---|---|
| *21-Aug-15* | *116.3* | *122.25* | *111.9* | *113.95* | *16794240* | *79448* |
| *24-Aug-15* | *105* | *107.5* | *93.35* | *96.65* | *17825912* | *86987* |
| *25-Aug-15* | *99.8* | *114.1* | *97.1* | *112.1* | *31742998* | *134656* |
| *26-Aug-15* | *111* | *114.3* | *108.3* | *110.6* | *15914583* | *74370* |
| *27-Aug-15* | *115.5* | *116.1* | *108.4* | *114.75* | *19325858* | *77528* |
| *28-Aug-15* | *117.7* | *119.5* | *111.55* | *115.2* | *15818307* | *60102* |
| *31-Aug-15* | *114.1* | *117* | *109.4* | *110.9* | *11098531* | *51832* |
| *1-Sep-15* | *108* | *111.35* | *104.1* | *105.8* | *10905474* | *56668* |

- *On the basis of the aforesaid, it is submitted that the behaviour of Noticee was in line with the activity generally prevalent in the market at the relevant time and cannot be attributed to being in possession of UPSI. It is respectfully submitted that the Subject Transactions simply constituted ordinary commercial decisions and nothing more can be read into them. There is no correlation between the Subject Transactions and alleged possession of UPSI. Thus, nothing in the trading behaviour of Noticee would even remotely suggest any information with him over and above publicly available information.*

- *The organisational hierarchy of DHDL is presented in a flowchart, which is annexed as ANNEXURE B. It is clear from the position of Noticee (who was GM, Projects) in this hierarchy, that it cannot be reasonably expected that he would have access to the UPSI in question. Even as per the chronological events as contained in the Investigation Report, it is clear that any decision making with regard to the proposed joint venture was carried out by persons in managerial roles unlike Noticee whose responsibilities were purely* *technical. Thus, given the position of Noticee in the organizational structure of DHDL there was no possibility of him having access to the UPSI.*

- *The charge of insider trading being an extremely serious one, a higher preponderance of probability is required in establishing the same. In the present SCN, the Answering Noticee is alleged to have undertaken the subject transaction in the possession of UPSI solely based on him being physically present during two Site Visits that took place in the UPSI period. Further, it is not even alleged that any information pertaining to the proposed Joint Venture between GIC and DHDL was either communicated to him or communicated in his presence. It has simply been assumed in the SCN that the Answering Noticee was "aware about the joint venture talks going on" due to his involvement in two Site Visits. It is respectfully submitted that such scant evidence cannot be considered to meet the evidentiary standard required to establish the grave charge of insider trading.*

- *Without prejudice to the foregoing and assuming (though not admitting) that there has been a violation of the PIT Regulations by the Answering Noticee, the facts and circumstances of the present case do not warrant imposition of any penalty on the Noticee. Reliance is placed on the judgment of the Hon'ble Supreme Court in Hindustan Steel Limited vs State of Orissa (1969) 2 SCC 627 wherein the Hon'ble Supreme Court has held as under*

> *"Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty would be justified on refusing to impose penalty, where there is technical or venial breach of provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

- *Thus, in the aforementioned decision, the Hon'ble Supreme Court has held that even where a minimum penalty has been prescribed under the statute, the authority which has* *been vested with the power to impose the penalty would be justified in refusing to impose penalty where there has been a technical/venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the prescribed manner. Further, the Hon'ble Supreme Court in Adjudicating Officer, Securities and Exchange Board of India vs Bhavesh Pabari (2019) 5 SCC 90, while answering the question as to whether power and discretion vested by Section 15-J of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") to decide on the quantum of penalty, stands eclipsed by penalty provisions contained in Section 15-A to Section 15-HA of the SEBI Act held as under:*

> *"5. Insofar as the second question is concerned, if penalty provisions are understood as not admitting any exception or discretion and the penalty as prescribed in Section 15-A to Section 15-HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15-J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15-A(a) to 15-HA have to be read along with Section 15-J in a manner to avoid any inconsistence or repugnance. We must avoid conflict and head-on-clash and construe the said provisions harmoniously. Provision of once section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The Explanation to Section 15-J of SEBI Act added by Act 7 of 2017, quoted above, has clarified and vested in the adjudicating officer a discretion under Section 15-J on the quantum of penalty to be imposed while adjudicating defaults under Section 15-A to 15-HA."*

- *In the facts and circumstances of the present case, SEBI has failed to placed on record any cogent evidence that would even remotely depict that Noticee has traded in the scrip of DLF on the basis of UPSI. Further, even as per the Investigation Report, the alleged overall wrongful gain by Noticee is a mere INR 7,793.30. In fact, Noticee has incurred a loss of INR 9100 as far as the purchase of option is concerned. Even this minimal gain appears to be mere coincidence and not motivated by UPSI. Noticee in the Reply has already taken the stance that had he been in possession of UPSI, he would have been expected to purchase a large number of shares and await the relevant announcement on*

*2 September 2015 before proceeding to sell the shares, thus benefiting from the consequent price rise. Quite to the contrary, Noticee has both sold and purchased shares between June 2015 – September 2015.*

- *Given the extremely small amount of gain if any, it would be grossly disproportionate to subject Noticee to even the minimum penalty of INR 10,00,000 under Section 15G.*

## CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    I. Whether Noticees have violated Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations?

    II. Does the violation, if any, attract monetary penalty under Section 15G(i) of the SEBI Act?

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

### Regulatory Provisions [Existing provisions during the period of investigation]

***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, 2015***

***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.*

**<u>Issue No.I- Whether Noticees have violated Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations?</u>**

11. Before proceeding further, I find it pertinent to deal with preliminary objections raised by Noticee 2 with regard to delay in issuance of SCN in the matter. Noticee 2 in his reply to the SCN has contended that SCN has been issued on 3 December 2021 i.e. after an inordinate delay of more than six (6) years and no explanation was given in the SCN for such delay in the issuance of the SCN. Noticee 2 in his reply to SCN has also contended that he has been prejudiced by the inordinate delay in issuance of SCN. Noticee 2 in support of his contentions has placed reliance on the decisions of Hon'ble SAT in *Sanjay Jethalal Soni vs SEBI(Appeal No. 102/2019, Decision dated 14 November 2019); Rakesh Kathotia vs SEBI (Appeal No. 7/2016, Decision dated 27 May 2019) and Shriram Insight Share Brokers vs SEBI (Appeal No. 559/2020, Decision dated 4 January 2022), Ashok Rupani vs SEBI (Appeal No. 417/2018, Decision dated 22 August 2018).*

12. With regard to the aforementioned contention of Noticee 2, I note that even though SEBI Act nor Regulations had prescribed any period of limitation for issuance of SCN, it has now become well settled that SCN has to be issued within reasonable time period. Hon'ble SAT in many of its cases has held that the reasonable period would depend on the facts and circumstances of each case and that no hard and fast rule can be laid down in this regard. In this context, I find it pertinent to rely on the decision of Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294, wherein the Court held as under:

    "*There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

13. In the present matter, I note from the documents available on record that a preliminary investigation in the matter was conducted on 2016 by Integrated Surveillance Department of SEBI and thereafter, detailed investigation in the matter was initiated on November 20, 2018 by Investigation Department of SEBI. I note from the investigation report that investigation in the matter entailed calling of records from foreign entity like GIC and also from entities such

as DLF, Ernest & Young LLP, L&L Partners, BMR Advisors, RSMS Architects Private Limited, Wadia Gandhy & Co etc. I also I further note that investigation into the matter was not restricted to trading activities of Noticees but also with respect to two other suspected entities. Pursuant to the completion of investigation, adjudication proceedings in the matter was approved on July 29, 2020. Thereafter, Shri B J Dilip was appointed as Adjudicating Officer in the matter vide Order dated August 25, 2020. Thereafter, pursuant to transfer of Shri, B J DIilip, the undersigned was appointed as Adjudicating Officer in the matter vide Order dated December 29, 2020. From the documents available on record, I note that on July 08, 2021, certain clarifications were sought by undersigned from SEBI and the same was received by undersigned on October 2021. Subsequent to receipt of clarifications, SCN was issued to Noticee 2 on December 03, 2021. Considering the aforesaid observations, I find that SCN was issued without undue delay. I observe that Noticee 2 was provided his trading details in the scrip of DLF during the relevant period as Annexures to SCN. I also note that Noticee 2 submitted his reply to SCN vide emails dated March 25, 2022 and June 03, 2022. I also note that Noticee 2 along with his reply had submitted copies of newspaper articles relied by him for his trading in the scrip of DLF, price and volume data of the scrip as obtained from the website of the NSE for the period between 3 November 2014 to 3 November 2015 etc as evidence. Thus, looking at the material available at the disposal of the Noticee 2, I find that Noticee 2 has been provided with all the material that would have been adequate to facilitate recollection of events or collection of relevant data, thereby enabling him to form a definite defense to the charges in the SCN, which Noticee 2 has provided through his reply/ submission. In light of the above, I am of view that prejudice, if any, caused to Noticee 2 due to any delay in issuance of SCN was not to such an extent that it requires disposing of the present adjudication proceedings initiated against Noticee 2 for such a reason.

14. It has been alleged in the SCN that Noticees, being insiders, had traded in the scrip of DLF while in possession of UPSI and thereby violated Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations.

15. I note that in order to determine the issue involved in the present case, there is a need to examine following:

    i. UPSI involved in the case and period of UPSI
    ii. Whether Noticees were Insiders?

iii. Whether the impugned trades were done by Noticees when in possession of UPSI?

16. In the present matter, SCN has considered the information contained in the press release titled "*DLF Home Developers Ltd., wholly owned subsidiary of DLF and GIC established joint venture to develop two projects in Central Delhi*", as UPSI. The said information was made public by DLF by way of corporate announcement to BSE and NSE on September 02, 2015 at 09:07 AM.

17. I note that Regulation 2(1)(n) of PIT Regulations defines UPSI and the same as it stood during the relevant time is reproduced hereunder:

    *(n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:* –

    *(i) financial results;*

    *(ii) dividends;*

    *(iii) change in capital structure;*

    *(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*

    *(v) changes in key managerial personnel*

    *(vi)material events in accordance with the listing agreement*

    *NOTE: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

18. I note from the above that for an information relating to company to be treated as an UPSI, such information upon becoming generally available should have the potential to materially affect the price of securities. In this context, I find it pertinent to refer to the decision of Hon'ble Supreme Court of India in SEBI vs. Abhijit Rajan (Civil Appeal No.563 of 2020, Decision dated September 19, 2022) , wherein the Hon'ble Court while examining price sensitive information has held as under:

*"…………..that the price sensitivity of an information has a correlation directly to the materiality of the impact that it can have on the price of the securities of the company. An information may materially affect the price of the security of a company either positively or negatively. The impact may be beneficial or adverse. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge. The effect can be bullish or bearish. But the effect should be material and not completely insignificant……………………"*

19. I note that Hon'ble SAT in the matter of Anil Harish Vs. SEBI (date of Order-June 22, 2011) has held that whether an information is price sensitive information or not will depend on the facts and circumstances of each case. In the present matter, I note that press release dated September 02, 2015 stated that GIC will invest Rs 1900 crore in the two projects in Delhi to be developed under DLF Home Developers Limited (hereinafter referred to as "**DHDL**"), the wholly owned subsidiary of DLF. I also note that aforementioned press release also hinted at future collaborations between DLF and GIC. The relevant extract of the aforementioned press release is given hereunder:

*Singapore/India, September 2, 2015 – DLF Home Developers Ltd. (DHDL), a wholly-owned subsidiary of DLF Ltd (DLF), and GIC, Singapore's sovereign wealth fund, have entered into a joint venture to invest in two upcoming projects located in Central Delhi.*

*Both projects will be developed under DHDL. GIC will invest a sum of approximately Rs 1990 crore. The JV is expected to benefit from GIC's experience of investing in integrated*

*developments across the globe.*

*"We hope that this investment is a beginning of a new relationship with GIC at the project level. We look forward to working together with GIC in many projects, both residential and commercial", said Saurabh Chawla, Senior Executive Director – Finance of DLF Ltd. "Going forward, such project level investments shall lead to unlocking of embedded value in many of DLF's development projects", he added.*

*"The inflow of patient, long-term capital is vindication and validation of DLF's leadership in the real estate development space. We are excited with the synergy of such capital with DLF's experience in township and integrated development to potentially unleash*

*many more signature developments and herald a new era of smart cities", Mohit Gujral, Chief Executive Officer of DLF Ltd. added.*

*Mr Loh Wai Keong, Managing Director and Co-Head Asia, GIC Real Estate said, "GIC is confident in India's long-term growth potential and we look forward to partnering DLF, a leading real estate developer in India, to tap into the attractive opportunities of India's real estate sector. We hope to leverage our mutual strengths to grow this partnership with DLF and to collaborate on more projects in the future. Globally, we have successfully nurtured longterm partnerships with strong and well-established developers across our key markets, and we hope to do the same with DLF in India."*

20. From the above, I find that aforementioned press release not only informed about the investment of GIC in two real estate projects of DLF but also indicated the possibility of long term collaboration of DLF with GIC.

21. In this regard, Noticee 1 in his submissions has contended that information contained in the press release cannot be considered as an UPSI as the establishment of joint venture was an ordinary business activity. Noticee 1 in its reply has further submitted that DLF being the largest commercial real estate developer in India, was routinely involved in large real estate and construction projects, whether through joint ventures or otherwise and during the year 2015-16, the Company had 118 subsidiaries and 11 associate companies including joint ventures. Noticee 1 in his submissions has thus contended that a joint venture being entered into – (i) by 1 of its 118 subsidiaries, (ii) in the ordinary course of business – would bear no impact on the price sensitivity of the stocks of the parent Company i.e., DLF. In support of his contentions, Noticee 1 has placed reliance on the decisions of Hon'ble SAT in the matters of Gujarat NRE Mineral Resources Ltd vs. SEBI (Appeal No. 207 of 2010; Date of Decision: November 18, 2011) and Anil Harish Vs. SEBI (date of Order-June 22, 2011).

22. With regard to the aforementioned contentions of Noticee 1, I note that GIC, Singapore's sovereign wealth fund, is a leading global investment firm with well over US$100 billion in assets under management and has investments in over 40 countries. I also note that DLF is leading realty firm with a land bank of 300 million sq ft. As mentioned earlier in the Order, the press release dated September 02, 2015 not only informed about investment of Rs 1900 crore by GIC in two upcoming projects of DHDL but also hinted at long term collaboration of DLF

with GIC. Considering that aforementioned press release stated that GIC, a leading global investment firm, had made significant investment in two real estate projects of DHDL and the press release also indicated probability of long term partnership with DLF, I am of view that the information contained in the press release did have the potential to materially impact the price of scrip. Further, the fact that DLF considered investment by GIC in DHDL significant enough to merit press release also shows the information contained in the press release does not relate to ordinary course of events. The fact that GIC had entered into join venture with DHDL led to specific press release which was forward looking shows that it was an important development for DFL .Therefore, I am unable to accept the contention of Noticee 1 that since DHDL was one out of the 118 subsidiaries of DFL, events relating to DHDL did not have the potential to impact the price of scrip of DFL. In light of the above, I am unable to accept the contention of Noticee 1 that information released vide press release dated September 02, 2015 was not price sensitive information.

23. Noticee 1 in its reply has also contended that non-sensitivity of the information released vide press release dated September 02, 2015 is further substantiated from its failure to have any impact over the price-volume movement of the DLF scrip as can be perceived from the data available on the stock exchange website. In this regard, I note from the plain reading of Regulation 2(1)(n) of PIT Regulations that the actual impact on price of scrip is not necessary for considering whether an information is price sensitive information or not, it is the potential to materially impact the price that is relevant. Be that as it may, on analyzing the price movement of scrip, pre and post the press release dated September 02, 2015, I note that there has been upward movement in the price of scrip of DLF post the Announcement. The details of the price movement are as given hereunder:

| Date | Open | High | Low | Close | WAP | No. of Shares | No. of Trades | Total Turnover |
|---|---|---|---|---|---|---|---|---|
| 28/08/15 | 118.00 | 119.50 | 111.90 | 115.05 | 115.86 | 24,12,043 | 14,823 | 27,94,68,274 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 31/08/15 | 115.00 | 116.90 | 109.5 5 | 110. 80 | 113. 11 | 16,29, 004 | 9,79 0 | 18,42,57,509 |
| 1/09/15 | 108.45 | 111.35 | 104.3 5 | 106. 00 | 107. 58 | 13,69, 577 | 9,38 0 | 14,73,38,738 |
| 2/09/15 | 107.20 | 114.30 | 107.2 0 | 109. 60 | 110. 09 | 18,31, 626 | 13,7 81 | 20,16,50,045 |
| 3/09/15 | 112.30 | 122.85 | 112.3 0 | 120. 65 | 119. 39 | 31,84, 015 | 23,9 26 | 38,01,38,000 |
| 4/09/15 | 120.35 | 120.55 | 111.1 0 | 116. 60 | 115. 31 | 26,93, 980 | 18,4 28 | 31,06,48,061 |

24. On analyzing the price movement in the scrip of DLF, I note that on September 02, 2015, the day when UPSI become public, the closing price of the scrip increased by Rs 3.60 from the last closing price i.e. 3.75 per cent higher. I also note that on the very next day of press release, i.e. September 03, 2015, closing price of the scrip increased by Rs 19.05. And on September 04, 2015, the closing price of the scrip fell by Rs 4. Considering the above, I am of view that aforementioned press release had created a positive sign in the market regarding the prospects of DLF and price of the scrip. Therefore, I find that the information contained in the press release dated September 02, 2015 was a price sensitive information.

25. Further, Noticee 1 in his reply to SCN has also contended that information in the press release was not unpublished as the media was abuzz with the news regarding the possible investment by GIC in 25-30% stake in DLF's housing project in Delhi, to such an extent that even the stock exchanges had to seek a clarificatory statements from DLF in this regard. Noticee 1 has further contended that Show Cause Notice also points out a previous instance, where a clarification was sought by the stock exchanges about news articles circulating regarding PVR's acquisition of DLF's DT Cinemas, which transaction later came to be announced by DLF. Accordingly, Noticee 1 submitted that there was no iota of doubt in the public's mind and the information regarding the impugned transaction was no more an 'unpublished' circumstance, since as early as May 2015.

26. I note that the term “unpublished” or “unpublished information” has not been defined in PIT Regulations, 2015. In this regard, I also note that PIT Regulations, 2015 considers whatever is not “generally available information” as “unpublished information”. The term “generally available information” is defined to identify what is not UPSI and to formulate a test based on whether the information in question is accessible to the public on a non-discriminatory basis.

27. Regulation 2(1)(e) of PIT Regulations defines the generally available information as follows:

*2(1)(e)"generally available information" means information that is accessible to the public on a non-discriminatory basis;*

*NOTE: It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive Information published on the website of a stock exchange would ordinarily be considered generally available.*

28. In this context, I also find it pertinent to note that the term “unpublished” was defined in previous PIT Regulations, 1992 and after the formation of new PIT Regulations, the definition of term “unpublished” was left out, instead the term “generally available information” was used in its place. Regulation 2(1)(k) of PIT Regulations, 1992 (as Substituted by the SEBI (Insider Trading) (Amendment) Regulations, 2002, w.e.f. 20-2-2002) read as under:

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

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

29. I note that omission of aforementioned definition of “unpublished” and use of “generally available information” is deliberate. This can be perceived from the “Report of the High Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the chairmanship of Justice N. K. Sodhi. An extract of the aforementioned report dealing with “generally available information” and “unpublished information” are as given hereunder:

*“…Some members of the Committee felt that the Proposed Regulations ought to prescribe specific forums in which publication would be mandatory for information to be regarded as being generally available. Specifically, the suggestion was that unless information is published on the website of the stock exchange, it would not be regarded*

*as generally available and therefore, if price sensitive in nature, it would be regarded as UPSI. The problem with this approach would be that even if large newspapers and television channels were to have published a piece of news and market participants were already factoring in the news in price discovery, an insider who trades when in possession of such news would be regarded as violating the law merely because the stock exchange website does not carry the news. The Committee believes that it would be inappropriate to regard information that is widely available in the public domain as UPSI. On the other hand, some members felt that one could register a newspaper in a remote region in the country, publish news there, and then trade despite the news not truly being publicly accessible. It was felt that such extreme and convoluted structures would be regarded as contrivances and devices to circumvent the Proposed Regulations in terms of Section 12A of the SEBI Act. Moreover, it is settled law that such regulations ought to be purposively construed and if two views were possible, the view that furthers the legislative objective would need to be adopted over a view that makes a mockery of the legal provisions.*

*33. To conclude, whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law. A bright line indicating the types of matters that would ordinarily give rise to UPSI are listed to give illustrative guidance. It could well also be possible that information from such events could be routine in nature and consistent with a long history. Information about the repetition of the same event on predictable lines would not render it to be UPSI unless deviated from."*

30. Therefore, there is a need to determine the information released vide press release titled "*DLF Home Developers Ltd., wholly owned subsidiary of DLF and GIC established joint venture to develop two projects in Central Delhi*" was a generally available information or not. In this regard, I note that BSE on June 11, 2015 had sought clarification from DLF with respect to news which appeared on CNBC TV 18 on June 11, 2015 titled "*DLF may sell 25-30% stake in NCR Project Capital Greens Phase II for Rs. 800 Cr to GIC.*" With respect to the clarification sought, DLF, vide its letter dated June 12, 2015 to Exchanges had stated "*The Company, during its normal course of business, keeps exploring various opportunities to enhance shareholder value, which includes M&A, divestment of assets and fund raising opportunities.*

*We would keep exchanges informed in case of any specific developments and the Company shall continue to do so as part of its obligation under Clause 36 of Listing Agreement*." Thus, I note that DLF in its aforementioned letter had neither confirmed nor denied the information contained in the aforementioned news article.

31. However, I note that the aforementioned news article is different from the information contained in the press release "*DLF Home Developers Ltd., wholly owned subsidiary of DLF and GIC established joint venture to develop two projects in Central Delhi*". I note that news released by CNBC TV 18 on June 11, 2015 did not mention about joint venture between GIC and DLF. The news released by CNBC TV 18 on June 11, 2015 relates to disinvestment of 25-30% stake by DLF in its existing project in Delhi " Project Capital Green- *Phase II*" which is entirely different from the information contained in the press release titled "*DLF Home Developers Ltd., wholly owned subsidiary of DLF and GIC established joint venture to develop two projects in Central Delhi*". Further, Noticee has also placed reliance on the article titled "*India's largest realty firm DLF is looking at closing two private equity deals worth around Rs. 1,000 crore by September to pari-finance its upcoming housing projects in Chennai and Gurgaon dated May 31, 2015*" published in Deccan Chronicle newspaper. However, on perusal of the aforementioned newspaper article, I note that there is no mention about GIC or joint venture in the said article and thus same is also distinct from the information contained in the newspaper article "*DLF Home Developers Ltd., wholly owned subsidiary of DLF and GIC established joint venture to develop two projects in Central Delhi".* Therefore, I am of view that contention of Noticee 1 that information contained in press release titled "*DLF Home Developers Ltd., wholly owned subsidiary of DLF and GIC established joint venture to develop two upcoming projects in Central Delhi*" is not unpublished or is generally available cannot be accepted. In light of the above, I find that the information released vide press release titled "*DLF Home Developers Ltd., wholly owned subsidiary of DLF and GIC established joint venture to develop two projects in Central Delhi*", was a UPSI.

32. I note that SCN has considered that UPSI came into existence on November 03, 2014 when GIC made a presentation to DLF recommending that promoters of DLF should consider to sell 25% to 50% of DLF assets to private players and where DLF had said in it was also be keen to consider other developments/joint ventures with GIC. In this regard, I note that GIC, vide

email dated March 20, 2020, had submitted a chronology of events leading to the corporate announcement on September 02, 2015 to SEBI. The details of the same are as given hereunder:

| Date | Discussion/ Meetings/ Approvals /etc. | Name and Designation of Person Present in the Discussion | Particulars (Details of Matter Discussed; Conclusions) |
|---|---|---|---|
| 03-Nov-14 | Meeting between GIC and DLF | **From GIC:** Kishore Gotety (SVP), Arunabh Chaudhuri (AVP).<br><br>**From DLF:** Saurabh Chawla (Sr. ED). | GIC made a presentation to DLF on potential partnership opportunities in which GIC recommended that promoters of DLF should consider selling 25-50% of DLF assets. DLF stated that it is considering to sell the entire 40% stake of the promoters in DLF assets to private players. DLF said that they will also be keen to consider other development JVs with GIC. |
| 13/14-Nov-14 | DLF circulated an Analyst Presentation | **From GIC:** Kishore Gotety (SVP), Sakar Mawandia (VP), Arunabh Chaudhuri, Amit Mathur (VP), Dinesh Kumar Meel (VP), Monik Kapadia (AVP), Souvik Mukherjee (VP), Kunal Bhansali (VP) and Matteo Busa (AVP).<br><br>**From DLF:** Rajiv Goel and Kuldeep Yadav | Presentation was aimed at the larger analyst community. |
| 11-Dec-14 | Discussions on Information Memorandum (IM) and Preliminary Projections | From GIC: Kishore Gotety (SVP).<br><br>From DLF: Rajiv Goel, Kuldeep Yadav, Saurabh Chawla (Sr. ED), Mr. Surojit Basak (ED-Finance), Mr. Manik Malik | Information Memorandum (IM) and Preliminary Financial Projections shared with GIC. |
| 18-Dec-14 | Site visit | **From GIC:** Sakar Mawandia and Arunabh Chaudhuri (AVP).<br><br>**From DLF:** Pramod Uniyal, Ajay Kalia and Rajesh Bhatia. | Site visit to Capital Greens and SIEL, Delhi by GIC team. |
| 18-Dec-14 | Meeting and Discussions | **From GIC:** Sakar Mawandia and Arunabh Chaudhuri (AVP).<br><br>**From DLF:** Manik Malik and Surojit Basak | Meeting and discussions between the parties in relation to information memorandum. |
| 25-Dec-2014 | Discussion note | **From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.<br><br>**From DLF:** Saurabh Chawla (Sr. ED). | Discussion note / preliminary and non – binding terms circulated by GIC, containing the proposals / views of GIC at a nascent stage. |
| 26-Dec-14 | Discussion / call between GIC and DLF | **From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.<br><br>**From DLF:** Saurabh Chawla (Sr. ED) and Manik Malik. | Discussions / call between GIC and DLF in relation to the above mentioned discussions note / preliminary and non-binding term sheet. |

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| 31-Dec-2014 | Discussion | **From GIC:** Kishore Gotety (SVP), Sakar Mawandia and Anurabh Chaudhuri.<br><br>**From DLF:** Saurabh Chawla (Sr. ED) and Manik Malik. | Discussions between the parties in relation to the discussion note. |
| 08-Jan-15 | Site Visit | **From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.<br><br>**From DLF:** Inder Preet Singh, Saurabh Chawla (Sr. ED) and Manik Malik. | Site visit by GIC team and meeting at DLF's office thereafter. |
| 08-Feb-15 | Proposed structure | **From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.<br><br>**From DLF:** Saurabh Chawla (Sr. ED), Manik Malik and Surojit Basak. | DLF circulated a proposed structure for the JV Project. |
| 10-Feb-15 | Financial projections | **From GIC:** Kishore Gotety (SVP) and Sakar Mawandia.<br><br>**From DLF:** Saurabh Chawla (Sr. ED), Manik Malik and Surojit Basak. | Updated financial projections in regard to proposed JV at Capital Greens and SIEL Project, circulated by DLF. |
| 24-Feb-15 | Site visit | **From GIC:** Bernard Phang (MD) and Arunabh Chaudhuri<br><br>**From DLF:** Mohit Gujral, Surojit Basak, Saurabh Chawla and Kuldeep Yadav. | Site visit to Capital Greens Project followed by meeting with DLF representatives. |
| 25-Feb-15 | Information sharing | **From GIC:** Kishore Gotety, Sakar Mawandia and Kunal Bhansali.<br><br>**From DLF:** Manik Mailk, Surojit Basak, Saurabh Chawla and Inder Preet Singh. | DLF circulated the Investment opportunity, competitive analysis and buyer profile information (who are potential buyers, demand and supply analysis) etc. in relation to the proposed JV Project. |
| 26-Feb-15 | Site visit | **From GIC:** Kunal Bhansali.<br><br>**From DLF:** Ajay Kalia | Site visit by GIC. |
| 26-Feb-15 | Meeting | **From GIC:** Goh Kok Huat (MD), Loh Wai Keong (MD), Kishore Gotety and Sakar Mawandia<br><br>**From DLF:** Rajiv Singh, Saurabh Chawla, Mohit Gujral and Surojit Basak. | Meeting between senior GIC and DLF executives to visit the Capital Green site, to discuss various development initiatives being taken by DLF, and to discuss any potential engagements between the organisations. |
| 04-Mar-15 | Approval | From GIC: Goh Kok Huat, Lee Kok Sun (MD), Christopher Morrish (MD), Bernard Phang (MD), Kwok Wai Keong (MD), Tia Miyamoto (MD) | GIC's Real Estate Investment Committee unanimously approved the transaction with respect to Capital Greens Project, subject to due diligence. |
| 04-Mar-15 | Layout Plan | **From GIC:** Kishore Gotety, Sakar Mawandia and Kunal Bhansali.<br><br>**From DLF:** Manik Mailk, Surojit Basak, Saurabh Chawla and Inder Preet Singh. | DLF circulated the Layout Plan for the Capital Greens Project. |
| 04-Mar-15 | IIN Issued | **From GIC:** Kishore Gotety, Sakar Mawandia and Monik Kapadia. | Inside Information Notification ("IIN") submitted in respect of DLF scrip – thereby restricting trade by Private Markets group of GIC in DLF. |

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| 05-Mar-15 | IIN Processed | **From GIC:** Stacey Cheryl Tan Lin-Yen (VP) | GIC's Compliance Department processed the IIN and imposed trading restrictions on the Private Side of GIC's Chinese Wall. |
| 06-Mar-15 | Term Sheet agreed. | **From GIC:** Kishore Gotety and Sakar Mawandia.<br><br>**From DLF:** Manik Mailk and Saurabh Chawla. | Term Sheet sent by GIC after discussion within GIC Investment Committee. |
| 07-Mar-15 | Confidentiality Agreement signed. | **From GIC:** Sakar Mawandia.<br><br>**From DLF:** Saurabh Chawla. | Confidentiality Agreement executed & signed. |
| 08-Mar-15 | Property diligence | **From GIC:** Kishore Gotety and Sakar Mawandia.<br><br>**From DLF:** Manik Mailk, Surojit Basak and Saurabh Chawla. | GIC circulated a property diligence check-list. |
| 10-Mar-15 | Transaction structure | **From GIC:** Kishore Gotety and Sakar Mawandia.<br><br>**From DLF:** Manik Mailk, Surojit Basak and Saurabh Chawla. | Call between GIC and DLF on structure of the transaction. |
| 24-Mar-15 | Legal due-diligence | **From GIC:** Kishore Gotety and Sakar Mawandia.<br><br>**From DLF:** Manik Mailk, Surojit Basak and Saurabh Chawla. | Legal due diligence checklist circulated. |
| 26-Mar-15 | Corporate diligence | **From GIC:** Sakar Mawandia.<br><br>**From DLF:** Manik Mailk and Surojit Basak. | GIC circulated the corporate diligence checklist. |
| 27-Mar-15 | Draft shareholder subscription and purchase agreement | **From GIC:** Kishore Gotety, Sakar Mawandia and Woo Chooi Tein (VP).<br><br>**From DLF:** Manik Mailk, Surojit Basak and Saurabh Chawla. | GIC circulated drafts of the Shareholder Subscription and Purchase Agreement, Shareholder Agreement and Development Agreement. |
| 30-Mar-15 | Meeting | **From GIC:** Kishore Gotety, Sakar Mawandia and Woo Chooi Tein (VP).<br><br>**From DLF:** Manik Mailk, Surojit Basak and Saurabh Chawla. | Meeting between the parties to discuss the drafts of the Shareholder Subscription and Purchase Agreement, Shareholder Agreement, and Development Agreement. |
| Apr to Sep-15 | Various meetings and discussions between GIC and DLF representatives and their respective legal teams to discuss and agree upon the transaction documents. | | |
| 01-Sep-15 | Board of Directors Meeting of DLF Home Developers Limited | Mr B B Deora, Mr. Ashok Kumar Tyagi, Lt. Gen Aditya Singh (Retd.), Directors. Mr. Saurabh Chawla And Mr. Surojit Basak, invitees. Mr. Ankur Jain, Company Secretary | Approval of Execution of Securities Subscription Agreement and other related documents with subsidiaries of GIC, Singapore in relation to DLF Urban Private Limited and DLF Midtown Private Limited, Wholly Owned Subsidiaries of DLF Home Developers Limited. |
| 01-Sep-15 | Board of Directors Meeting of DLF Urban Private Limited. | Mr. Saurabh Chawla and Mr. Manik Malik, Directors | Approval of execution of Securities Subscription Agreement and other related documents with subsidiaries of GIC, Singapore and DLF Home Developers Limited. |

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| 01-Sep-15 | Board of Directors Meeting of DLF Midtown Private Limited. | Mr. Saurabh Chawla And Mr. Manik Malik, Directors | Approval of Execution of Securities Subscription Agreement (SSA) and other related documents with subsidiaries of GIC, Singapore and DLF Home Developers Limited. |
| 02-Sep-15 | SSA executed and disclosure made at 9:07 AM | | Disclosed to the Stock Exchanges |

33. I note that Noticee 2 in his reply to SCN has contended that the UPSI came into existence only on 4 March 2015, when GIC's Real Estate Investment Committee unanimously approved the transaction with respect to the joint venture (subject to due diligence) and not on November 03, 2014 as alleged in the SCN. From the chronology of events submitted by GIC, I note that in the meeting conducted on November 03, 2014, GIC and DLF were merely exploring potential partnership opportunities and a mere interest was expressed by DLF to enter into joint ventures with GIC. I am of view that the aforementioned meeting was merely a preliminary discussion between GIC and DLF and that no indication could be garnered from this meeting that GIC and DLF would enter into joint venture. I note that even on February 08, 2015, only a proposed structure of joint venture project was floated. Further, on February 26, 2015, there was meeting between senior GIC and DLF executives to visit the Capital Green site, to discuss various development initiatives being taken by DLF, and to discuss any potential engagements between the organisations. Thus, I note that even on February 26, 2015, the joint venture between DFL and GIC was still a possible partnership opportunity being explored by GIC with DLF. On March 04, 2015, only when its Real Estate Investment Committee of GIC unanimously approved the transaction with respect to the joint venture subject to due diligence did GIC consider the possibility of the deal being finalised. Pursuant to the aforementioned approval of Real Estate Investment Committee of GIC, on March 04, 2015, an inside information notification (IIN) was submitted in respect of DLF scrip whereinby trade by Private Markets group of GIC in scrip of DLF was restricted. I find that fact that GIC filed the IIN on March 04, 2015 only after its Real Estate Investment Committee unanimously approved the transaction with respect to joint venture, subject to due diligence shows that GIC considered the joint venture with DLF to have attained finality and considered the same as inside information only after the aforementioned approval. I also note that on March 05, 2015, GIC's Compliance Department processed the IIN and imposed trading restrictions on the Private Side of GIC's Chinese wall. Thereafter, on March 06, 2015, Term Sheet was sent by GIC to DLF after discussion within GIC Investment Committee and same was agreed with by DLF.

34. I note that there exist various stages between the point when the parties to a transaction have opened discussions and the point of final signing of the deal/agreement. Generally, any proposal of this nature would first start with discussions which are exploratory in nature and the information generated at this stage would not translate into a reasonable probability of the transaction going through. Therefore, at this preliminary stage, it cannot be stated with any certainty that the deal would finally materialize and therefore, preliminary stages of discussions cannot be considered as UPSI period. In contrast, only when the discussions have reached a stage of high degree of crystallisation and proceed with a reasonable probability of the transaction going through, can such point in time in the chronology of events be considered to be the stage when the UPSI period has come into existence. In the instant case, the aforesaid chronology of events show that during the period from November 03, 2014 to March 05, 2015, the discussions between DLF and GIC and further developments relating to the aforesaid joint venture were largely in the nature of making presentations, arranging site visits, engaging in preliminary discussions regarding preliminary and non binding term sheet etc. Therefore, I find that it cannot be said with reasonable certainty that at this stage i.e. till March 05, 2015, the joint venture between DLF and GIC would materialize. I note that even on March 04, 2015, when GIC's Real Estate Investment Committee had approved the transaction with respect to the joint venture subject to due diligence, the joint venture between GIC and DLF attained finality only at the end of GIC since the term sheet had not yet been communicated to DLF. I am of view that only when the term sheet was shared by GIC and the same was agreed to by DLF on March 06, 2015, that information that GIC would be entering into joint venture agreement with DLF became a price sensitive information. In light of above, I find that November 03, 2014 cannot be considered as the date when the UPSI came into existence and conclude that UPSI came into existence only on March 06, 2015. I note that DLF informed BSE and NSE regarding a Press Release dated September 02, 2015 titled "*DLF Home Developers Ltd. and GIC establish joint venture to develop two projects in Central Delhi*" on September 02, 2015 at 09:07 AM. Thus, I find that UPSI became public on September 02, 2015 at 09:07 AM. Therefore, I find that UPSI period was from March 06, 2015 to September 01, 2015.

35. It has been alleged in the SCN that Noticee 2 had indulged in the insider trading and thereby violated Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations. I

note that SCN alleges that Noticee 2 was involved in arranging of site visit on December 18, 2014 and February 26, 2015 for GIC team and was aware about the joint venture talks going on and therefore he was an insider in accordance with Regulation 2(1)(g) of the PIT Regulations.

36. Noticee 2 in his reply has contended his involvement in the matter ended with the site visit on February 26, 2015. I note that Noticee 2 in his reply to SCN has contended that the sole basis of the allegations against him is that he was physically present during site visits conducted on December 18, 2014 and February 26, 2015 and besides this, SEBI has failed to produce a single document or substantive proof to show that the Noticee was in possession of UPSI. Noticee 2 also contended that given his role in the organization, he could not have accessed any UPSI, and such explanation was corroborated by DLF and despite this, SEBI, in the absence of any substantive proof or document has proceeded to allege that Noticee 2 has committed violations of the PIT Regulations.

37. I note that it is admitted fact that Noticee 2 was present during site visits of DLF by GIC on December 18, 2014 and February 26, 2015 and there were no site visits during the UPSI period. I note from Noticee 2's email dated April 15, 2020 to SEBI during investigation that Noticee 2 was working as General Manager "Projects" and during the relevant period he was working on the project "Capital Greens" Noticee 2, vide aforementioned email, submitted that GIC being one of the probable buyers, he was asked by his Project In-charge to show the development of the site during the visit of GIC team at site and accordingly, he had shown the site development and replied to some of their queries. Noticee 2 also submitted that he was not involved in "arranging" of site visit of GIC and was not part of any discussion related to the joint venture talks between DHDL and GIC nor was he aware about it. I also note that Noticee 2 had submitted in the aforementioned email that his role on the site was purely technical whereby he was supposed to get the work executed as per the construction plans and quality parameters and timelines for the project. I also note that aforementioned role of Noticee 2 was also confirmed by DFL in its submission to SEBI during the investigation. I observe from the chronology of events submitted by GIC that apart from the aforementioned site visits, Noticee 2 was not part of any meeting or discussion that officials of DLF had with GIC. I also observe that material available on record also does not show that Noticee was a connected person.

38. As UPSI came into existence only on March 06, 2015, I find that Noticee 2 at the time of site visits on December 18, 2014 and February 26, 2015 was not in possession of UPSI. I also note that the material available on record did not indicate any involvement of Noticee 2 in the matter subsequent to February 26, 2015 especially considering Noticee 2's role was technical and was to get the work executed as per the construction plans and quality parameters and timelines for the project. In light of the same, I am inclined to accept the contention of Noticee 2 that he was neither in possession of UPSI nor was he a connected person and was not an insider in terms of Regulation 2(1)(g) of PIT Regulations. Since, Noticee 2 was not an insider at the time of his impugned trades, I am of view that Noticee 2's trade could not be said to have been motivated by UPSI. Therefore, I find that allegation in the SCN that Noticee 2 has violated Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations does not stand established.

39. It has been alleged in the SCN that Noticee 1 had indulged in the insider trading and thereby violated Section 12A (d) & (e) of SEBI Act read with Regulation 4 (1) of PIT Regulations

40. I note that Mr. Sanjiv Parikh of M/s BMR Advisors (hereinafter referred to as '**BMR**') vide his email dated October 04, 2019 had submitted that BMR was engaged by Reco Greens Pte Ltd. and Reco Moti Pte Ltd. (entities belonging to GIC) to provide tax advisory services in relation to their investment in DHDL in March 2015. I note from the aforementioned email that BMR was involved in advising on tax implications on the investment and related matters. The period of aforementioned engagement of BMR with GIC is as given hereunder:

| **Date** | **Event** |
|---|---|
| March 2015 | GIC reached out to BMR for Indian tax advice and assistance in respect of the proposed transaction with DLF |
| April 2015 July / Aug 2015 | Meetings and conference calls were held with GIC / DLF teams / other tax advisors, to discuss the tax im lications on the ro sed investment |

41. I note that vide aforementioned email, BMR had informed that Noticee 1 was working on the assignment. It has already been established that UPSI period was from March 06, 2015 to September 01, 2015. Therefore, I find that Noticee 1's assignment fell within the UPSI period.

I also note that it was stated in email dated October 04, 2019 that "*information received by us in respect of JV between DLF Home Developers Ltd and GIC may qualify as material information in respect of DLF Limited".* I note from the aforementioned email that Noticee 1 was present in meetings that representatives from BMR had with DLF, DHDL, GIC which was conducted in April, July and August 2015. I further, note that Noticee 1 has not disputed the aforementioned fact.

42. In this regard, I note that Noticee 1 was has contended that his role in BMR allowed him access to only restricted details regarding the GIC entities tax related matters and there was no scope for Noticee 1 to gauge complete details of it, the commercial negotiations, the timelines involved, and the certainty and closure thereof. With regard to the aforementioned contention of Noticee 1, I am of the view that even if Noticee 1 may not have known about all the details of investment made by GIC in DHDL like timelines of the transaction, it is an established fact that Noticee 1 was present in the meetings BMR had with DLF, DHDL, GIC in relation to the proposed joint venture. Therefore, I am inclined to take the view that Noticee 1 knew about the proposed investment of GIC in DHDL and was in possession of UPSI and his being unaware of complete details of the deal, as is being claimed by him, is of no relevance. Therefore, I find no merit in the aforementioned contention of Noticee 1.

43. At this juncture, I find it pertinent to note that the term "insider" has been defined in Regulation 2(1)(g) of PIT Regulations and is reproduced hereunder:

(*g)"insider" means any person who is:*

*i) a connected person; or*

*ii) in possession of or having access to unpublished price sensitive information;*

In light of the above, I find that Noticee 1 was an insider in terms of Regulation 2(1)(g) of PIT Regulations.

44. I note from material available on record that Noticee 1, while in possession of UPSI, had traded in the Futures and Option (F&O) Segment of NSE on August 04, 2015, which falls within the period of UPSI. I also note that Noticee 1 had incurred a loss of Rs 34, 500 in the aforementioned transaction. The details of trade done by Noticee 1 in the scrip of DFL during the UPSI period are as given hereunder:

**Table: - Relevant extract of trading details of Noticee 1**

| Day Date | Instrument Type | Option Type | Settlement Price for OI | Settlement Price | Expiry Date | Days Buy Quantity | Days Sell Quantity | Buy Avg Price | Sell Avg Price | Days Buy Value | Days Sell Value | Notional Day Buy Value | Notional Day Sell Value | Post Adjusted Long Quantity | Post Adjusted Long Value |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 04.08.14 | FUTSTK | FF | 200.60 | 200.60 | 28.08.14 | 10,000 | 10,000 | 199.01 | 198.00 | 19,90,100 | 19,80,000 | 19,90,100 | 19,80,000 | 0 | -10,100 |
| 04-08.15 | FUTSTK | FF | 113.70 | 113.70 | 27.08.15 | 30,000 | 30,000 | 113.62 | 112.47 | 34,08,500 | 33,74,000 | 34,08,500 | 33,74,000 | 0 | -34,500 |
| 03.09.15 | FUTSTK | FF | 121.10 | 121.10 | 24.09.15 | 4,000 | 4,000 | 119.30 | 121.40 | 4,77,200 | 4,85,600 | 4,77,200 | 4,85,600 | 0 | 8,400 |
| 08.09.15 | FUTSTK | FF | 120.90 | 120.90 | 24.09.15 | 30,000 | 30,000 | 122.44 | 123.08 | 36,73,200 | 36,92,300 | 36,73,200 | 36,92,300 | 0 | 19,100 |
| 26.11.15 | FUTSTK | FF | 113.55 | 113.55 | 26.11.15 | 10,000 | 10,000 | 112.30 | 114.48 | 11,23,000 | 11,44,750 | 11,23,000 | 11,44,750 | 0 | 21,750 |

45. I note that Noticee 1 in its reply to the SCN has contended that his trades were made in the ordinary course and was based on visible market sentiments and expert recommendations. Noticee 1 in his submissions has submitted that Noticee 1 was a habitual trader in the F&O segment of the stock exchanges since 2014 and for the relevant FY 2015-16, the Noticee's total transaction volume in the F&O segment was over Rs. 23.60 crores. Noticee 1 also submitted that he was a habitual trader in the F&O segment in the DLF scrip and had a total traded volume of more than Rs. 13 crores in DLF and also that he undertook one intra-day F&O trade a month before the date of Announcement. Noticee 1 also contended that had Noticee 1 been privy to any UPSI, he would have attributed a larger portion of his trading capacity to the impugned trades; and held his position until the date of Announcement and tried to derive advantage from the Announcement. Further, Noticee 1 also contended that he did not even profit from the Impugned Trades but incurred a loss of Rs. 34,500/-. I also note that Noticee 1 in support of his contentions has placed reliance on decisions of Hon'ble SAT in Alliance Capital Mutual Fund vs. Securities and Exchange Board of India (15.11.2007), Chandrakala Vs. SEBI (Appeal 209 of 2011); Rajiv Gandhi v. SEBI (decided on May 9, 2008) and Abhijit Rajan v. SEBI (decided on November 8, 2019). Noticee 1 has also placed reliance of the decision of Adjudicating Officer, SEBI on Prateek Sarawgi (dated May 10, 2022).

46. At this juncture, I find it pertinent to refer to Sections 12A(d) & (e) of SEBI Act which prohibit insider trading and trading in securities when in possession of material or non-public information. Regulation 4 (1) of the PIT Regulations prohibits any insider from trading in

securities while in possession of UPSI. The proviso to Regulation 4 of the PIT Regulations however gives a window to the insider to prove his innocence by demonstrating the circumstances under which he has traded. I note that the words “including” under the proviso to Regulation 4 is inclusive and is not exhaustive. It is not confined to the circumstances provided under Clause (i) to (vi) of the proviso to Regulation 4(1) of the PIT Regulations. There could be other circumstances on the basis of which the insider could prove his innocence. It has now become well settled principle of law that the trades being contrary to the nature of UPSI is one of the defenses by which an insider could prove his innocence.

47. In this context, I have perused the submissions and supporting documents placed on record by Noticee 1. In the present case, I note that impugned trade of Noticee 1 in F&O segment which was entered into August 04, 2015 had expiry date on August 27, 2015. As stated by Noticee 1 in his reply to SCN, I note that not only had Noticee 1 bought and sold the securities on the same day i.e. August 04, 2015 but he had also suffered a loss of Rs. 34,500/-. Further, I note from the trading details of Noticee 1 and submissions of Noticee 1 in its reply that Noticee 1 had been a habitual trader in the F&O segment in various scrips and for the relevant financial year 2015-16, total transaction volume in the F&O segment was over Rs 23.60 Crs. I also note from submissions of Noticee 1 that he was also a habitual trader in the F&O segment in the DLF scrip and in the period between 2014 to 2017, the Noticee had a total traded volume of more than Rs. 13 crores in the DLF scrip. I further observe that Noticee 1 had taken positions in DLF before and even after the alleged UPSI period. I am also of view that if Noticee 1’s trade had been motivated by UPSI he would have entered into F&O trades wherein by he could hold the position until the date of press release i.e. when the UPSI came into the public domain when the price of scrip increased and he could reap the benefits of such trade.

48. In view of the above observations and applying law laid down in proviso to Regulation 4 of PIT Regulations and decisions of Hon’ble SAT in Alliance Capital Mutual Fund vs. Securities and Exchange Board of India (15.11.2007), Chandrakala Vs. SEBI (Appeal 209 of 2011); Rajiv Gandhi v. SEBI (decided on May 9, 2008) and Abhijit Rajan v. SEBI (decided on November 8, 2019), I am inclined to accept contention of Noticee 1 that the impugned trades of Noticee 1 were not motivated by UPSI. In light of the same, I find that allegation in the SCN that

Noticee 1 had indulged in the insider trading and thereby violated Section 12A (d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations cannot be sustained.

49. Since the alleged violations against Noticees are not established, I find that the Issues No. II and III require no further consideration.

## ORDER

50. Accordingly, taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15I of SEBI Act read with Rule 5 of the Adjudication Rules, the Adjudication proceedings against Noticees i.e. Mr. Gautham Lokande and Mr. Ajay Kalia initiated vide SCN dated December 03, 2021, stands disposed of without imposition of any penalty.

51. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to Noticees and also to the Securities and Exchange Board of India, Mumbai.

**Place: Mumbai** **SOMA MAJUMDER**

**Date: October 31, 2022** **ADJUDICATING OFFICER**