WTM/MPB/EFD/ 116 /2018

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 READ WITH REGULATION 12 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015.

IN THE MATTER OF INSIDER TRADING IN THE SCRIP OF MULTI COMMODITY EXCHANGE OF INDIA LIMITED IN RESPECT OF:

S. No.	NAME	PAN
1.	SHRI JOSEPH MASSEY	AALPM7937P
2.	SHRI SHREEKANT JAVALGEKAR	AARPJ9648L
3.	SMT ASHA SHREEKANT JAVALGEKAR	ABRPJ2888H
4.	SHRI PARAS AJMERA	AAVPA3506A
5.	SHRI ANJANI SINHA	AJJPS1231P
6.	SMT TEJAL M. SHAH	AOWPS5665M
7.	SHRI MEHMOOD VAID	ACQPV7326Q

1. Securities and Exchange Board of India ("SEBI") conducted an investigation in the scrip of Multi Commodity Exchange of India Limited ("MCX") for the period April 27, 2012–July 31, 2013 (hereinafter referred to as the "Investigation Period").

2. Upon completion of investigation in the matter, SEBI passed an ex-parte interim order dated August 2, 2017 (hereinafter referred to as "*interim order*") against 8 persons namely, Shri Joseph Massey, Shri Shreekant Javalgekar, Smt Asha Shreekant Javalgekar, Shri Paras Ajmera, Shri Anjani Sinha, Smt Tejal M. Shah, Shri Hariharan Vaidyalingam and Shri Mehmood Vaid directing that the loss averted by the said entities while dealing in the scrip of MCX in violation of the provisions of SEBI (Prevention of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") be impounded. SEBI also directed the said

entities not to dispose of or alienate any of their assets/properties/securities, till such time the individual amount of loss averted is credited to an Escrow Account created specifically for the purpose in a Nationalized Bank. It was further directed that the said Escrow Account(s) shall create a lien in favour of SEBI and the monies kept therein shall not be released without permission from SEBI.

3. Vide the *interim order*, the aforesaid entities were also advised to show cause as to why suitable directions under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India ("SEBI Act") and regulation 11 of the PIT Regulations, 1992 read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations, 2015"), should not be taken/imposed against them including directing them to disgorge an amount equivalent to the total loss averted on account of insider trading in the scrip of MCX along with interest thereupon.

4. Subsequent to passing of the *interim order*, certain entities requested SEBI for inspection of documents in the matter. Acceding to the said request, all the entities who had requested for inspection of documents, were provided an opportunity of inspection of the documents relied upon by SEBI for the purpose of passing of the *interim order* i.e. the investigation report along with its annexures.

5. In the meantime, the *interim order* was appealed by Shri Joseph Massey, Shri Shreekant Javalgekar, Smt Asha Shreekant Javalgekar, Shri Paras Ajmera, Shri Anjani Sinha, Smt Tejal M. Shah and Shri Mehmood Vaid (hereinafter collectively referred to as the "Noticees" and individually by their respective names) before the Hon'ble Securities Appellate Tribunal ("SAT"). The appeals were disposed by Hon'ble SAT vide separate orders. A summary of the directions issued by Hon'ble SAT in these appeals is noted in the table below:

S. No.	**APPELLANT'S NAME**	**DATE OF HON'BLE SAT'S ORDER**	**DIRECTIONS OF HON'BLE SAT**
1.	SHRI JOSEPH MASSEY	Aug 16, 2017	SEBI was directed to pass final order as expeditiously as possible and in any event within three months from the date of receiving the objections/representation of the entity. In respect of appeals filed by Shri Shreekant Javalgekar, Smt Asha
2.	SHRI SHREEKANT JAVALGEKAR	Aug 16, 2017	
3.	SMT ASHA SHREEKANT JAVALGEKAR		

4.	SHRI PARAS AJMERA	Aug 08, 2017	Shreekant Javalgekar and Shri Mehmood Vaid, Hon'ble SAT directed the entities to secure the amount of loss averted by way of furnishing / creation of fixed deposits and marking of lien in favour of SEBI. In respect of the appeals filed by Shri Joseph Massey, Shri Paras Ajmera, Shri Anjani Sinha and Smt Tejal M. Shah, Hon'ble SAT directed de-freezing of salary accounts or specific accounts for enabling the entities to meet their day to day expenses.
5.	SHRI ANJANI SINHA	Aug. 18, 2017	
6.	SMT TEJAL M. SHAH	Aug. 10, 2017	
7	SHRI MEHMOOD VAID	Aug. 11, 2017	

6. Pursuant to orders of Hon'ble SAT, the aforesaid appellants filed their respective representations / objections / replies to the *interim order*. All the Noticees, vide their respective representations / objections / replies, requested for an opportunity of personal hearing before the competent authority. Considering the said requests, an opportunity of hearing was provided to all the Noticees on September 13, 2017. In respect of the hearing scheduled on September 13, 2017, all the Noticees except Shri Anjani Sinha requested for adjournment of hearing. The aforesaid request for adjournment was acceded to and the hearing was adjourned to October 4, 2017. Hearing in respect of Shri Anjani Sinha was also re-scheduled to October 4, 2017.

7. In the meantime, certain Noticees who had not availed an opportunity of inspection of documents earlier, made a request in that regard. Acceding to their requests, an opportunity of inspection of documents relied upon by SEBI for the purpose of passing of the *interim order* was provided to them.

8. On the scheduled date of hearing i.e. October 4, 2017, authorized representatives on behalf of Shri Joseph Massey, Shri Shreekant Javalgekar, Shri Paras Ajmera, and Smt Tejal M. Shah appeared and made submissions which are noted in the subsequent paragraphs. On behalf of Shri Joseph Massey and Shri Shreekant Javalgekar, the authorized representative made submissions without prejudice to their request seeking inspection of documents collected or statements recorded or correspondence exchanged by the investigating officer during the course of investigation and which are on record.

9. Shri Anjani Sinha appeared in person and made his submissions. On behalf of Shri Mehmood Vaid, a request for adjournment was made by his authorized representatives for the reason that Shri Mehmood Vaid was not available on October 4, 2017. The authorized representative for Smt. Asha Shreekant Javalgekar appeared and made an application seeking cross-examination of the investigating officer in the matter on the ground that many of the conclusions drawn in the investigation are not borne out by documentary evidence but are assumptions and presumptions drawn by the investigating officer, the basis of which only he can explain.

10. The above named Noticees who made submissions on October 4, 2017 were asked to file their written submissions latest by October 31, 2017. Shri Anjani Sinha submitted during the hearing that he would be filing a signed copy of his reply, an unsigned copy whereof was submitted by him earlier. He submitted that the said reply would be final and he has nothing further to submit. It is noted that written submissions have been received on behalf of Shri Joseph Massey, Shri Shreekant Javalgekar, Shri Paras Ajmera, and Smt Tejal M. Shah. Smt Asha Shreekant Javalgekar has also submitted her written submissions without prejudice to her pending request seeking cross-examination of the investigating officer in the matter.

11. It is noted that in the appeals filed by the Noticees, Hon'ble SAT directed SEBI to pass final orders as expeditiously as possible and in any event within three months from the date of receiving the objections/representation of the respective entity. Accordingly, the timeline for passing of final orders in respect of the Noticees has been calculated as three months from the date of filing of final written submissions/replies/objections/representations by the Noticees.

12. The replies / written submissions / submissions made during the hearing by all the Noticees and their finals submissions are, *inter alia*, as under:

SHRI JOSEPH MASSEY

i) The submissions made under different heads are without prejudice to each other.

Noticee not in possession of alleged Unpublished Price Sensitive Information ("UPSI")

ii) I was a Non- executive director of NSEL and MCX. As a Non- executive director of NSEL, I was not aware of issuance of SCN dated 27-04-12 to NSEL by the

Department of Consumer Affairs, Ministry of Consumer Affairs, Govt. of India ("DCA") and the reply dated May 29, 2012 filed by NSEL to the said SCN. No such information has been made known to me directly or through the Board of Directors of NSEL either in the form of a board note or by way of disclosure, discussion at the Board meeting or in any other way. Therefore, the issue of being in possession of alleged UPSI cannot and does not arise. I have also informed the same to FMC post July, 2013.

iii) SEBI has the power and the authority to summon for all such documents and I believe that SEBI would have summoned or scrutinized all such documents. These documents would reflect that no such information was made known or disclosed or made available to me at the relevant time.

iv) I submit that the first board meeting after the issuance of the SCN dated 27-04-12 to NSEL by DCA was held on May 21, 2012. Further, after the reply on 29 May, 2012 filed by NSEL, the board meeting was held on June 18, 2012. Neither of the said board meetings dated May 21, 2012 & June 18, 2012 of NSEL make any reference to these two events by way of disclosure or otherwise.

v) During the course of hearing I had tendered the letter dated 1st July, 2016 sent by NSEL to the Investigating Authority on response to the Investigating Authority's letter dated 15 July 2016 inter alia stating the information of issuance of SCN by DCA was known only to the following persons viz. Mr. Anjani Sinha, Ms. Pallavi Kapoor, Mr. Santosh Mansingh, Mr. Ritesh Kumar Sahu, Mr. H.B. Mohanty. Thus my aforesaid contention that I was not aware about issuance of SCN to NSEL, is also corroborated by NSEL. Strangely, the said letter of NSEL dated 01-07-16 to SEBI does not find mention in the Investigation Report or the Impugned Order passed by SEBI. Further, the said letter was also not made available to me during the course of inspection granted by SEBI in the matter, raising grave concerns about the credibility of inspection granted to me.

vi) SEBI has not produced any documentary evidence to demonstrate as to, how and when, I was made aware of issuance of SCN dated 27-04-12 to NSEL by DCA. There is no oral statement/testimony to this effect. Thus, such knowledge cannot be imputed to me. Any presumption in law also stands rebutted. In absence of the possession of UPSI, charge of insider trading cannot sustain.

vii) Significantly, it is not in dispute that I was only a Non-Executive Director of NSEL and I was not concerned with the management of the affairs of NSEL. Further, I was not a Key Management Person (KMP) in relation to NSEL. It is submitted that, if in a given case, the information is not shared with a Director (e.g. an Independent Director or Non- Executive Director), it would be patently improper and unfair to draw

presumptions and hold the concerned person guilty, as in the instant case, even though, as a matter of fact the information was never received by me.

Noticee is not an "insider"

viii) For bringing a particular director within the definition of "insider", merely stating that a person is director of a company is not enough. It has also to be additionally demonstrated that the said director is reasonably expected to have access to UPSI in respect of securities of a company.

ix) Regulation 2(e) prescribes two fold conditions and both such conditions must be satisfied as they have to be fulfilled conjunctively. Mere presumption of expectation to have UPSI is not sufficient compliance of the requirement under 2 (e) (i). Regulation 2(e)(ii) is based purely on fact viz. either information has been received or the person concerned has had access to such UPSI. In either case, there must be some proof / evidence of the same which is not borne out by any document on record.

x) The minutes of the Board meetings of NSEL have been scrutinized and do not contain any UPSI. There is no other evidence, statement of any other person to the effect that such information was communicated to or accessed by me. In this context your attention is invited to Order dated 1108-2017 passed by the Hon'b1e Tribunal in the matter of ***SRSR Holdings Private Limited and Ors. vs. Securities and Exchange Board of India*** wherein it has inter alia been observed as follows :

> *"Another significant issue regarding implication of the conjunctive "AND" in the definition of "Insider". In the Impugned Order, the WTM underlines the conjunctive "and" while discussing the definition of an "Insider" (para 30). This suggests that the dual requirement in Regulation 2(e) must be satisfied viz., first, that of being a connected person and second, existence of a reasonable expectation of access to UPSI However, the WTM takes a contrary view in Para 32 of the Impugned Order by holding that a person becomes an insider merely by being a connected person. "*
>
> *".....it is evident from the definition of "Insider" that two categories of insiders have been created by the aforementioned definition. A person will fall into the first category as an insider if he fulfils both the ingredients of the first category cumulatively.*
>
> *For the first category, if a person is a connected person, that itself satisfies half the component of the first category of insiders. However, it is pertinent to note that in order to fall under the first category, the term "connected person" must be read with the second ingredient viz., "reasonably expected to have access to unpublished price sensitive information".* ***Therefore, not only does a person need to be a connected person to be an insider, but there***

must also be some reliable and convincing material to show such a connected person is reasonably expected to have "access" to the UPS!*. The Scheme of PIT Regulations of 1992 makes it evident that these dual requirements need to be satisfied before a person can be called an "insider" under the PIT Regulations of 1992. The conjunctive "And" is, therefore, significant and cannot be ignored.*

As far as the second category of "insider" is concerned (Regulation2(e)(ii)), it clearly refers to a person who "has received or has had access to such unpublished price sensitive information". Thus, to fall under the second category of insiders, one must either have actually received the UPS! or actually had access to such UPS! in any manner without being a connected person. " (Emphasis supplied)

xi) It is submitted that being a director, only raises "*prima facie* presumption", if at all, as to a person being an insider. But once the factum of such "insider" having received information is rebutted it has to be established by evidence satisfying reasonable standard of proof. … once presumption, (if any), is rebutted, there is no question of any conclusions being drawn on the basis of surmises and conjectures.

xii) In this context your attention is invited to following orders passed by the Hon'ble Tribunal:

(i) Order dated 15-10-2004 passed by the Hon'ble Tribunal in the matter of ***Samir C. Arora vs. Securities and Exchange Board of India*** wherein it has inter alia been observed as follows :

"It is thus seen from a reading of this definition of an insider that in the case of a person connected or deemed to be connected and reasonably expected to have access to such information, there could be a prima facie presumption of being an insider once these two conditions are met with because the conjunction between these conditions used in the regulation is "and". Persons not reasonably expected to have such access who are covered after the conjunction 'or' but who have actually received or have had actual access to such information can be treated as insiders only if they have received price sensitive information or have had in fact had such access to such information. ***That means that the fact of such connected or deemed to be connected persons having received information will have to be established by evidence satisfying reasonable standard of proof"*** *(Emphasis supplied)*

xiii) Order dated 07-12-2015 passed by the Hon'ble Tribunal in the matter of ***Reliance Petro Investments Limited vs. Securities and Exchange Board of India*** wherein it has inter alia been observed as follows:

> *".....if an insider trades or deals in securities of a listed company, it would be presumed that he has traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. On perusal of para 9 and 10 of the impugned order it is seen that apart from denying that the Appellant was an insider, Appellant had placed on record* ***various documents to rebut the presumption of being in possession of UPS! at the time of purchasing shares and the Appellant had also made submission to the effect that the price sensitive information itself came into existence after the shares were purchased by the Appellant****. Neither the documents furnished have been considered nor the arguments advanced on behalf of the Appellant have been considered in the impugned order. (Emphasis supplied)*

Alleged information is not price sensitive information

xiv) The information in question was not price sensitive information at all. The SCN and the reply by itself do not make it a price sensitive information. If the consequences of the SCN were imminent, the Government would not have let the business of NSEL continue for more than 15 months from the date of SCN. In fact, the authorities did not find the conduct of NSEL to be *ex-facie* illegal. If the authorities did not think that the business should be shut, how can knowledge thereof be imputed on the entity.

xv) Regulation 2(ha) defines price sensitive information and none of the first 6 factors listed therein cover the information in issue i.e. the SCN and the Reply thereto**.** If at all, the Reply of NSEL to the SCN makes it abundantly clear, that the Company did not envisage any change in its policies, plans or operations.

xvi) The factors listed in the Impugned Order in determination of UPSI are clearly untenable and are nothing else but a bunch of conjectures and surmises. For instance, the Impugned Order refers to triggering a chain of events, whereas the fact remains that :

(a) between April 27, 2012 till October 03, 2012 i.e. for more than span of 6 months there were no events at all.

(b) Similarly, there were no events between October 03, 2012 and July 12, 2013.

(c) The 03rd October newspaper report refers to SCN reply etc., but even that does not trigger any chain of events.

(d) The Order issued by the Director of Marketing Govt. of Maharashtra on December 26, 2012 has no bearing at all so far as the functioning of NSEL as an exchange is concerned.

(e) If that was so, the exchange could not have functioned and would not have been allowed to function till July 2013, as Government and FMC had all the power to take any action by virtue of gazette notification dated June, 2007 and April, 2012/ and the powers bestowed with FMC since August 5, 2011 which was communicated to the industry by DCA and FMC appointing FMC as designated agency for investor protection in spot Exchanges.

xvii) NSEL's press release dated October 03, 2012 (circular), which was not known to me then but I got to know of it later post July, 2013, also reiterates its position of no change in its policies, plans or operations. Therefore, by no stretch of imagination can this information be said to be price sensitive information under Regulation 2 (ha).

xviii) The presumption that discontinuation of alleged irregularities in the functioning of NSEL, i.e. short selling, pairing of contracts and settlement of contracts beyond 11 days was imminent is merely a conjecture, that too contrary to the facts mentioned in the Impugned Order itself which disclose in no uncertain terms that despite FMC's report, comments to DCA in April 2012 and August 2012, neither FMC nor DCA themselves considered any imminent actions, much less cessation of business as alleged.

xix) Needless to add that on the given facts if the cessation of business was a foregone conclusion, the authorities concerned would not have allowed the business of NSEL to have continued. Needless to add that neither is there any past history or incident of cessation of an exchange nor has any Order been passed on the SCN by the DCA till date.

xx) The exemption notification dated 5 June, 2007 issued by the DCA itself indicates that the government had the requisite power in this regard (viz. to withdraw the exemption without assigning any reason in public interest) .

xxi) The next assumption viz. impending payment defaults by members is also completely without any basis. Cessation of business does not necessarily result in payment defaults.

xxii) There is no way one can attribute knowledge of any impending payment default on 27 April, 2012 or 29 May, 2012 or even in the succeeding months. Admittedly, even after suspension of business on 31 July 2013 the first default had occurred only on August 20, 2013 and thereafter the last default occurred in mid-October 2013.

xxiii) Pertinently, even after the newspapers reports which inter alia, referred to the SCN issued to NSEL, the comments of NSEL and the factual controversy on the legality I validity of contracts and the fact that the ministry / minister was to take a decision on further enquiry or not, there seemed to be no impact on the market or on the trading members, in as much as, the trading volumes went up, and not down. Any potential risk of payment defaults much less impending payment defaults was

obviously not in contemplation of any of the concerned persons including the exchange, promoters, trading members or their clients.

(a) Based on the information provided in the present SCN it is evident that the promoters themselves have not sold any shares either in MCX thereby completely dispelling the conjectures and surmises as to 'cessation of business' and 'impending payment default'. Even the shares sold by the family members of Jignesh Shah as indicated in SCN only reflect 0.1 % shares.

(b) Significantly, it may be noted that after 03rct October, 2012 (when the news about SCN issued on 22 April, 2012 became public) there was no effect of the nature surmised in para (B) (iii) of the Impugned Order. On the contrary, the share price of MCX (Closing Price) rose from Rs.1244 to Rs.1594 during the period 03rct October, 2012 to 30th November, 2012.

xxiv) The allegation that the top brass of MCX and NSEL were aware of the alleged UPSI and they have dealt with shares of MCX based on the UPSI stands rebutted/defeated by the conclusions drawn by SEBI itself wherein it is shown that no action is taken against most employees/ top brass of MCX. It is thus submitted that the conclusion in para B (iii) of the Impugned Order, are based on an assumption (as to alleged implication) based on the SCN dated 27th April, 2012 and the further assumptions which are themselves without any basis or foundation as explained above.

Alleged UPSI had become "published" on 3.10.12

xxv) The Impugned Order itself refers to NSEL's press release dated 3rd October, 2012. Hence to suggest that after 3rct October, 2012 the information was unpublished is *ex facie* incorrect and unsustainable.

xxvi) Moreover, the article published in the Economic Times a national daily of repute having wide circulation also seems to have been overlooked. This article contains statements of facts as to:

(a) the issuance of the SCN by DCA to NSEL;
(b) reports of FMC to DCA;
(c) FMC's observations in relation to alleged short selling as also settlement of contracts beyond 11 days;
(d) the detail Is of enquiry conducted so far
(e) the minister I ministry considering whether to take the enquiry forward.

xxvii) Thus the information contained in the news reports contained all the relevant factual aspect including the SCN and the stand taken by NSEL (in response to SCN).

xxviii) The information about such information cannot be considered to be unpublished thereafter particularly keeping in mind the explanation to Regulation 2 (k).

xxix) By no stretch of imagination one could say that the information contained in the said news report was speculative. Thus, in any view of the matter, by 3rct October 2012 the information ceased to be unpublished.

xxx) Significantly, it may be noted that after 03rct October, 2012 (when the news about SCN issued on 27 April, 2012 became public) there was no effect of the nature surmised in para (B) (iii) of the Impugned Order . On the contrary, the share price of MCX (Closing Price) rose from Rs.l244 to Rs.l594 during the period 03rct October, 2012 to 30 November, 2012.

Shares traded (sold) not on the basis of alleged UPSI

xxxi) I had not traded on the basis of alleged UPSI. Nothing has been brought on record to demonstrate the same.

xxxii) The prohibition contained in Regulation 3 applies only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise.

xxxiii) My entire shareholding in MCX, was built up from allotment of shares in my favor by way of ESOPs, prior to listing of MCX. In 2012, when MCX came out with IPO, it was specifically disclosed upfront in the Prospectus dated 28-02-12 that I would be selling 10,000 shares post IPO within 3 months of the IPO. As on 28.2.12, I was holding 31,240 shares of MCX. Pursuant to the said disclosure I had sold a total of 6010 shares (on 24-04-12, 04-05-12 & 01-06-12) within three months of the IPO. Subsequently, I had further sold 5240 shares (on 06-11-2012, 07-11-2012, 25-02-2013 and 28-06-201 3) which is post 03-10-12 (when the UPSI had become "published"). However, even the second tranche of sale post 03-10-12 was also in the spirit of my decision to sell MCX shares to meet my financial needs and had nothing to do with SCN or its publications. It is submitted that I had sold the shares from time to time inter alia based on the personal requirement, in the ordinary course, for meeting personal/family expenses (loan repayment/ College fees/ Charity etc.) and some due to media reports /rumors about imposition of Commodities Transactions Tax ("CTT") in the market. As on date I continue to hold 20,000 shares of MCX from the time of my original allotment of ESOP.

xxxiv) Since my sales were not on the basis of alleged UPSI, therefore no charge can be made against me for violation of Regulation 3 of Insider Trading Regulations. In this context your attention is invited to Order dated 31-01-2012 passed by the Hon'ble Tribunal in the matter of ***Mrs. Chandrakala vs. Securities and Exchange Board of India*** wherein it has inter alia been observed as follows:

*"**The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise.** It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he/ she traded on the basis of unpublished price sensitive information in his/her possession unless contrary to the same is established The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he I she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations. Going by the facts of the present case, we are of the view that appellant in the present case has placed sufficient material on record to show that she has not traded on the basis of unpublished price sensitive information. "(Emphasis supplied)*

Trading pattern incompatible with the charge of Insider Trading

xxxv) Significantly, it may be noted that sales made by me are not in one go. Admittedly, sales are spread over a period of time, with huge time gap, clearly establishing that same had no nexus with the origination of alleged UPSI on 27.4.12.(Dates of Sales 24-04-12, 04-05-12, 01-06-12, 06-1112, 07-11-12, 25-02-13, 28-06-13).

xxxvi) Out of the total of 31240 shares of MCX held by me, I had sold only 11, 240 shares (just one third of my total holding) during the alleged UPSI period and as on date I continue to hold 20,000 shares of MCX. Admittedly, the 11240 shares (two third of my total holding) of MCX sold by me, were not sold showing any sense of urgency or distress, which is typically the case if an insider is privy to negative unpublished price sensitive information. Patently, my said conduct is also totally incompatible with the charge of insider trading.

xxxvii) Retention of shares by me, itself demonstrates that sales made by me during the alleged UPSI period had no nexus with the alleged UPSI. Had it been so, I would have liquidated the entire holding, during the alleged UPSI period which spanned over 1 1/2 years .

xxxviii) In this context your attention is invited to the following Orders passed by the Hon'ble Tribunal :

(i) Order dated 03-10-2012 passed by the Hon'ble Tribunal in the matter of ***Manoj Gaur vs. Securities and Exchange Board of India*** wherein it has inter alia been observed as follows

"We have looked into the trading pattern of Mrs. Urvashi Gaur and Mr. Sameer Gaur. We find that both of them are regularly trading not only in the scrip of the company but in the scrip of other companies as well. Even the trading pattern in respect of trading in the shares of the company shows that only I 000 shares were purchased by Mrs. Urvashi Gaur on October 17, 2008 when she was already holding of 38,985 shares on that date and even thereafter she had been purchasing the shares of the company regularly. As on March 23, 2012, she was holding 59,045 shares of the company. She is the wife of Mr. Manoj Gaur, the Executive Chairman of the company. ***If Mr. Manoj Gaur had passed on UPSI to Mrs. Urvashi Gaur and she traded on the basis of that UPSI she would not have traded in 1000 shares only****. We cannot lose sight of the fact that the company is a widely held listed company with a paid up capital divided into 2,12,64,33,182 equity shares out of which promoter group holds 44.44 per cent. It is a large infrastructure company engaged in highways, cement, power and education sector and the Executive Chairman of such company would not like to risk the reputation of himself and the company for 1000 shares. Similarly, Mr. Sameer Gaur is also a regular trader of shares of the company. Before trading on October 13, 14 and 16, 2008 he was holding 1,10,250 shares of the company. The first sale of 1400 shares was made by him only on May 8, 2009. Till date, he is holding 62,882 shares. Looking at the trading pattern, the number of shares purchased and going by their status, it seems highly improbable that trading was done by them on the basis of UPS!. On the other hand, it is more probable that they traded in the normal course of business.* ***If the intention of Mrs. Urvashi Gaur and Mr. Sameer Gaur had been to capitalize on the UPS/ allegedly communicated by Mr. Manoj Gaur, the quantum of purchase would not have been so small.*** *Both the appellants are financially independent and trade independently which is clear from their trading pattern that they have been buying the shares in similar quantities in the immediate past as well as on later dates".(Emphasis supplied)*

(ii) Order dated 11-08-2017 passed by the Hon'ble Tribunal in the matter of ***SRSR Holdings Private Limited and Ors. vs. Securities and Exchange Board of India*** wherein it has inter alia been observed as follows :

"....the Appellant's trading pattern clearly demonstrates that trades were not undertaken while in possession of UPSI, and that shares were disposed of as and when the Appellant's independent business ventures required an inflow of

capital. This is evident from the SFIO Report. A review of the SFIO Report and the CBI Judgment shows that 2005-06 was a crucial year. By this year all the actual Promoters disposed of their shareholding in Satyam because they were aware of the credit crunch faced by Satyam, which was not reflected in the published financial statements. ***The Appellant was only person who continued to retain a substantial shareholding in the Satyam. I find that this clearly points to the lack of possession of UPS!.*** *The relevant extract of the SFIO Report is extracted below:*

".. As the scrip price [was} dropped in June 2006, it appears that the company in order to boost the sentiment announced bonus issue and issued bonus shares in October 2006. Thereafter, price of the scrip was range bound between Rs. 400- Rs. 520 till September 2008.

... This could be the trigger point to the promoters of SCSL, as almost all members of the promoters group (except Shri B Ramalinga Raju, Smt. B Nandini Raju and Smt. B Radha Raju) sold their entire shareholdings by September 2005 and the company could be facing credit crunch on account of falsified funds to meet their financial obligations by way of sale of shares of SCSL. Through this process all family members exhausted their shareholding. This left only core promoters holding shares of SCSL and they have no-other option other than raising funds by pledging of shares of listing its group company shares..." Para 4.7.27.4.

CSR sold 16,66,356 shares of Satyam during January 2007 to December 2008. The last transaction of sale of shares on 22-12-2008 is significant. As evident from the SFIO Report and the CBI Court Judgment, the Board of Satyam based on representations of former management announced a merger of Satyam with Maytas Infra Ltd. and Maytas Properties Ltd. on 16-12-2008. Both these Maytas entities were promoted and controlled by B. Ramalinga Raju and their family members. However, when the merger was announced, there was an adverse market reaction compelling the Satyam Board to withdraw the merger proposal. Once this news of the announcement of the merger and its subsequent abortion became public, there was hysteria in the market which resulted in a steep drop in the price of the shares of Satyam. There was a wide spread sell off in the shares of Satyam. CSR also disposed of his remaining shareholding at one go on 22-12-2008, along with many other shareholders of Satyam, as a reaction to the news

of the merger falling through. This negates the inference drawn by the WTM that there was a strong probability that there was an "information flow" between B. Ramalinga Raju, B. Rama Raju and CSR,

If there was really an information flow, there was no reason for CSR to retain his shareholding till December 2008, when the actual promoters and the family members of B. Ramalinga Raju and B. Rama Raju sold their entire shareholding by 2005. Therefore, the clear contrast between the trading pattern of the actual promoters of Satyam and that of CSR negatives any suggestion of "information flow".(*Emphasis supplied)*

xxxix) The allegations as to UPSI, are based not merely on the SCN and reply thereto given by NSEL, but more specifically on the assumption that I was aware about imminent closure of the business and consequent default by trading members. If this was known to me, there was no way I would have continued to hold the substantial quantity of 20,000 shares for so long. More importantly, if I had known about the SCN, I would have started interacting with the Board, Management and FMC about the potential risks, preventive measures, consequences of such development and potential corrective measures. I have spent 23 years as Head of Stock or Commodity Exchanges and I have never invested or traded in market to prevent any potential conflict of interest in being an administrator of market and simultaneously being a user of the market. My only holdings are through ESOP.

Calculation of "averted losses" erroneous

xl) Admittedly the impugned sales made by me have taken place over a considerable period of time on multiple dates. In the Impugned Order the anchor date for calculation of losses has been taken as 01-08-13 (wherein the average closing price of the date has been taken). While calculating "averted losses", it has been ignored that share price of MCX was witnessing downward trend due to various other external factors including Introduction of Commodities Transaction Tax etc., in the Budget resulting in a reduction in price from Rs.1995/- to Rs. 854/-per share. Further, I had carried out sales over a period of time, with different average sale prices. Admittedly there are wide fluctuations in the average sale prices, none of which are taken into consideration while calculating the alleged losses averted. My cost of acquisition and holding has also not been considered while computing my alleged gains.

xli) Therefore, taking the closing price on 01-8-13 (i.e. immediately when the Exchanges was temporarily closed under emergency power and not when the alleged UPSI became public on 03-10-12), for calculation of alleged averted losses, would not be fair and proper.

Balancing the probabilities- various factors

xlii) While balancing the probabilities in the instant case, I respectfully submit that the time honoured principle of " presumption of innocence of the person charged till proved guilty" be kept in mind.

xliii) My conduct of over 2 decades in market, no trading history, first transaction of dealing in ESOP allotted shares, that too post announcement upfront in the prospectus, has not been considered. Further, my similar denial of knowing SCN before FMC has not been considered despite the fact that I have been telling this truth ever since the NSEL payment crisis occurred post July, 2013.

xliv) This submission is filed without prejudice to my right to seek and obtain complete inspection of all the documents collected by the Investigating Authority during the course of investigation and to make further submissions in my defence post providing the inspection.

xlv) I reiterate that there is no evidence of alleged insider trading, except for mere surmises and conjectures. It is now well settled that mere suspicions, conjectures and hypothesis cannot take the place of evidence as provided in the Indian Evidence Act. It is respectfully submitted that SEBI has failed to discharge the burden of proof or the standard of proof incumbent upon it to sustain the grave and serious allegations of insider trading, having far reaching adverse civil consequences.

SHRI SHRREKANT JAVALGEKAR.

Shri Shrrekant Javalgekar and Shri Joseph Massey were represented by the same Senior Counsel in the hearing dated October 4, 2017. Submissions advanced by Shri Shrrekant Javalgekar are the same as those of Shri Joseph Massey. Submissions on behalf of Shri Shrrekant Javalgekar, wherever they are different from submissions of Shri Joseph Massey noted above, are summarized in the subsequent paragraphs.

Noticee not in possession of alleged Unpublished Price Sensitive Information ("UPSI")

i) Same as submissions of Shri Joseph Massey.

Noticee is not an "insider"

ii) Same as submissions of Shri Joseph Massey.

Alleged information is not price sensitive information

iii) Same as submissions of Shri Joseph Massey.

Alleged UPSI had become "published" on 3.10.12

iv) Same as submissions of Shri Joseph Massey.

Shares traded (sold) not on the basis of alleged UPSI

v) Nothing has been brought on record to demonstrate that I traded on the basis of UPSI.

vi) The prohibition contained in Regulation 3 applies only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. The reason for my sale of MCX shares, which were made in the ordinary course, were bonafide and the same had no nexus whatsoever with the alleged UPSI.

(a) As explained during the hearing, in light of CIT (at the rate of 0.0 I %) being introduced by the then Finance Minister on February 28, 2013 while presenting the Union Budget, I was of the view that levy of CIT would culminate into an increase in the transaction cost upon persons trading on MCX and this would adversely affect the commodity futures volume which in turn would adversely affect the price of MCX's shares. As such, I decided to sell my shareholding in MCX

(b) Needless to add that if I was to act on the alleged UPSI, I would not have held on to the shares till end of February keeping in mind that according to the charge in the SCN the alleged UPSI and its consequences viz. cessation of business and occurrence of default was allegedly known since April/May 2012.

(c) I had occasion to give certain interview post the budget announcement on February 28, 2013 to certain T.V channels on first week of March 2013. During the interview I had expressed the likely adverse impact on the business on MCX as a result of introduction of CTT.

vii) Since my sales were not on the basis of alleged UPSI, therefore no charge can be made against me for violation of Regulation 3 of Insider Trading Regulations.

viii) In this context, Shri Shrrekant Javalgekar also placed reliance on the observations of Hon'ble SAT in the matter of *Mrs. Chandrakala vs. Securities and Exchange Board of India* noted above in the submissions o Shri Joseph Massey.

Calculation of "averted losses" is erroneous

ix) Admittedly the impugned sales made by me have taken place over a considerable period of time on multiple dates. In the Impugned Order the anchor date for calculation of losses has been taken as 01-08-13 (wherein the average closing price of that date has been taken). While calculating "averted losses", it has been ignored that share price of MCX was witnessing downward trend due to various other external factors including Introduction of Commodities Transaction Tax (CTT) in the Budget resulting in a reduction in price from Rs 1594/- to Rs 854/- per share. Further, I had carried out

sales over a period of time , with different average sale prices. Admittedly there are wide fluctuations in the sale prices, none of which are taken into consideration while calculating the alleged losses averted. My cost of acquisition and holding has also not been considered while computing my alleged gains.

x) Therefore, taking the closing price on 01-8-13 (i.e. immediately when the Exchanges was temporarily closed under emergency power and not when the alleged UPSI became public on 03-10-12), for calculation of alleged averted losses, would not be fair and proper.

xi) This submission is filed without prejudice to my right to seek and obtain complete inspection of all the documents collected by the Investigating Authority during the course of investigation and to make further submissions in my defence post providing the inspection.

SMT. ASHA SHREEKANT JAVALGEKAR

Noticee not an "insider"

i) I was not an "insider" and is not employed with NSEL or MCX in any capacity. Merely because my husband (viz. Shreekant Javalgekar) was associated with MCX, inference has been drawn that I had received or had access to alleged UPSI.

ii) I categorically deny that I had received or had access to any UPSI as alleged. It may be noted that I am financially independent and the impugned sales were carried out by me independently, in the ordinary course.

iii) At Para 2.4.4 (ii) of the Impugned Order, it has been alleged that it can be reasonably expected that she would have received or had access to UPSI in respect of securities MCX. There is no clarity as to how and on what basis it has been alleged that I am reasonably expected to have received or had access to the alleged UPSI. Especially, in light of the fact that I was not employed with NSEL, FTIL or MCX in any capacity. Save and except making a sweeping and bald allegation there is nothing that indicates that I had received or had access to the alleged UPSI.

iv) At Para 2.4.4 (i) of the Impugned Order, it has been further alleged that "when in possession of UPSI, Smt Asha Shreekant Javalgekar sold 200 shares (for Rs. 2,30,000) of MCX." However, there is no clarity as to when I was in possession of UPSI. Save and except making a sweeping and bald allegation there is nothing that indicates that I had sold 200 shares when in possession of UPSI.

v) The inference that I had received or had access to alleged UPSI has been drawn against me on the basis that my husband (viz. Shreekant Javalgekar) was associated with MCX, which is legally untenable. Nothing has been brought on record to substantiate that I had received the alleged UPSI or had access to the alleged UPSI through Mr. Shreekant Javalgekar and the inference is legally untenable and unsustainable. I submit that no UPSI

as alleged was ever communicated by Mr. Shreekant Javalgekar to me. In any event it may be noted that in fact, it is the case of Mr. Shreekant Javalgekar that he himself was not aware of alleged UPSI. Therefore, the issue of I becoming aware of having received any UPSI from Mr. Shreekant Javalgekar cannot and does not arise.

vi) It is obligatory on the part of SEBI, before alleging serious charges of insider trading in the SCN, to clearly show as to how Shreekant Javalgekar himself was aware of alleged UPSI and how through him I became aware of alleged UPSI or had received alleged UPSI. It is submitted that the said burden has not been discharged by SEBI. The issues of: (a) when Shreekant Javalgekar had passed on the alleged UPSI, (b) how Shreekant Javalgekar had passed on the alleged UPSI; are still at large, which makes the allegations vulnerable to the vice of vagueness, in gross violation of principles of natural justice. Therefore, the allegations are legally untenable and unsustainable.

Alleged UPSI had become "published" on 3.10.12

vii) The Impugned Order itself refers to NSEL's press release dated 3rd October, 2012 [Para B(ii)(b)]. Hence to suggest that after 3rd October, 2012 the information was unpublished is ex facie incorrect and unsustainable.

viii) Moreover, the article published in the Economic Times a national daily of repute having wide circulation also seems to have been overlooked. This article contains statements of facts as to:

(a) the issuance of the SCN by DCA to NSEL;
(b) reports of FMC to DCA;
(c) FMC's observations in relation to alleged short selling as also settlement of contracts beyond 11 days;
(d) the details of enquiry conducted so far
(e) the minister / ministry considering whether to take the enquiry forward.

ix) Thus the information contained in the news reports contained all the relevant factual aspect including the SCN and the stand taken by NSEL (in response to SCN).

x) The said information cannot be considered to be unpublished thereafter particularly keeping in mind the explanation to Regulation 2 (k). By no stretch of imagination one could say that the information contained in the said news report was speculative. Thus, in any view of the matter, by 3rd October 2012 the information ceased to be unpublished.

Shares traded (sold) not on the basis of alleged UPSI

xi) I had not traded on the basis of alleged UPSI. Nothing has been brought on record to demonstrate the same.

xii) The prohibition contained in Regulation 3 applies only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise.

The reason for my sale of MCX shares, which were made in the ordinary course, were bonafide and the same had no nexus whatsoever with the alleged UPSI. As explained in my reply, after the budget announcement on February 28, 2013 (wherein imposition of CTT on MCX was announced) as a result of which prices of MCX shares came down to Rs. 854/-. My sales was based on the perception that the trading volume on MCX would go down and affect the market cap and share price of MCX. The same was the basis for my sale.

xiii) Since my sales were not on the basis of alleged UPSI, therefore no charge can be made against me for violation of Regulation 3 of Insider Trading Regulations. In this context the entity placed reliance on the Order dated 31-01-2012 passed by the Hon'ble Tribunal in the matter of *Mrs. Chandrakala vs. Securities and Exchange Board of India.*

Calculation of "averted losses" erroneous

xiv) In the Impugned Order the anchor date for calculation of losses has been taken as 01-08-13 (wherein the average closing price of that date has been taken).While calculating "averted losses", it has been ignored that share price of MCX was witnessing downward trend due to various other external factors including Introduction of Commodities Transaction Tax (CTT) in the Budget resulting in a reduction in price from Rs 1594/- to Rs. 854/- per share. My cost of acquisition and holding has also not been considered while computing my alleged gains.

xv) Therefore, taking the closing price on 01-8-13 (i.e. immediately when the Exchanges was temporarily closed under emergency power and not when the alleged UPSI became public on 03-10-12), for calculation of alleged averted losses, would not be fair and proper .

xvi) I may also point out that the allegation that the top brass of MCX and NSEL were aware of the alleged UPSI and they have dealt with shares of FTIL based on the UPSI stands rebutted/defeated by the conclusions drawn by SEBI itself wherein it is shown that no action is taken against most employees/ top brass of MCX and NSEL..

xvii) I reiterate that there is no evidence of alleged insider trading, except for mere surmises and conjectures. It is now well settled that mere suspicions, conjectures and hypothesis cannot take the place of evidence as provided in the Indian Evidence Act. It is respectfully submitted that SEBI has failed to discharge the burden of proof or the standard of proof incumbent upon it to sustain the grave and serious allegations of insider trading, having far reaching adverse civil consequences.

xviii) This submission is filed without prejudice to my right to seek and obtain cross examination, complete inspection and to make further submissions in my defence post providing the cross examination and complete inspection.

SHRI PARAS AJMERA

Ingredients and legal standard (or adjudicating a charge of insider trading

i) For a charge of insider trading, whether under the 1992 PIT Regulations or generally, the following four ingredients are necessary:
   a. There should have occurred a trade by an insider;
   b. The insider should have been reasonably likely to be in possession of information that is unpublished.
   c. The unpublished information should also be price-sensitive - which is defined to mean that if published, the hitherto unpublished information is likely to cause a material impact on the price of the securities to which the information pertains; and
   d. The nature of the trade (buy or sell) should be consistent with the character of the unpublished price sensitive information (i.e. a purchase before positive information becomes published ; and sale before adverse information becomes published).

ii) An insider who is proven to be in possession of unpublished price sensitive information is presumed to have traded on the basis of the same. The presumption is rebuttable and it is the conduct of the insider as a whole that will inform the inference of what was the insider's state of mind, when he traded. Evidence for insider trading will invariably be circumstantial**.** However, it being a serious charge, even the circumstantial evidence in question must inexorably point to the guilt of the noticee i.e. there should be no conflicting evidence that is incompatible with the finding of guilt. The test is to examine what a reasonable person in the Noticee's position at the relevant time, acting reasonably, would have done. In other words, one would need to demonstrate whether the Noticee's conduct is consistent with the reasonable conduct of a person

("UPSI").

iii) Applying the legal principles set out above to the facts of the present case, the inexorable conclusion is that the Noticee cannot be held guilty of insider trading, for the reasons, articulated below:

Alleged UPS/ has no relevance to MCX / Noticee bought FTIL shares

iv) The SCN charges the Noticee with alleged insider trading by trading in shares of MCX on the premise that the Noticee would have been in possession of the alleged UPSI, which was allegedly adverse to MCX. This is inexplicable in as much as the very same alleged UPS! allegedly in possession of the very same person i.e. the Noticee did not lead to him selling shares of Financial Technologies India Ltd. ("FTIL") - instead, the Noticee, having bought shares in FTIL has been exonerated in the contemporaneous order of the same date as the SCN

v) More importantly, the Noticee is accused of insider trading on the premise that the alleged UPSI in this case is the issuance of a show cause notice dated April 27, 2012 by the Department of Consumer Affairs to NSEL and the implications of such notice to the reputation of the promoters of FTIL, who were also promoters of MCX. Apart from the relevance of such information for MCX being far-fetched, it is also relevant to note that such information would be far more relevant to FTIL because NSEL was nearly wholly-owned by FTIL and FTIL's financial statements consolidate NSEL's financial statements completely. When the alleged UPS! is, if at all, directly relevant to FTIL, the Noticee bought FTIL shares and did not sell them.

vi) The SCN is nothing but an ex-parte order passed without affording any opportunity of being heard. If only SEBI had afforded such an opportunity, it would have become clear that such an order could never have been passed. It is submitted with all respect to SEBI that this is perhaps the reason for such an important matter to be pushed into an ex parte order. Yet, upon reading media reports about SEBI having made up its mind to pass such an order, the Noticee volunteered on his own, detailed explanations for his trades in shares of MCX, vide letter dated July 21, 201 7- none of which have been considered.

Neither is UPSI relevant to MCX nor was Noticee an Insider to NSEL or to MCX

vii) Considering the definition of price sensitive information in Regulation 2(ha) of the PIT Regulations, it is evident that price sensitive information qua NSEL could never have been price sensitive information for MCX. Applying the principles of *ejusdem generis*, the explanation to Regulation 2(ha) clearly elucidates that the price sensitive information is information that pertains to the company in question and not of a group company.

viii) The publication of this alleged UPSI is stated by the SCN to have occurred on October 3, 2012, which was owing to the publication of the said information by NSEL. Therefore, the alleged UPSI emanated from NSEL. The Noticee was never an employee, director or key-managerial person of NSEL during the Relevant Period.

ix) The Noticee, at all relevant times, was the "Director-Operations & HR" of FTIL. The reference to "Director" was a functional designation (akin to "Managing Directors" in merchant banking companies) and the Noticee is not, and was never a member of the Board of Directors of FTIL or a key managerial personnel of FTIL. The SCN and the investigation report ("Investigation Report") has misconstrued the Noticee as a member of the Board of FTI L which is factually inaccurate.

x) The Noticee was a non-executive director of MCX during the Relevant Period. The SCN wrongly records that the Noticee was a managing director and a deputy managing director of MCX, four years prior to the Relevant Period (Para 1.2 D IV at Page 19). Apart from such reference finding being wrong, it is noteworthy that such wrong reference too pertains

to four years prior to the Relevant Period. In any case, such wrong finding ought to have been discarded as irrelevant.

xi) The alleged UPSI was never ever tabled at the Board of Directors of MCX. Therefore, as a non-executive director of MCX, the Noticee does not even fit the definition of the term "insider" of NSEL.

xii) As an employee of FTIL, neither being a key managerial personnel nor being a member of the Board of Directors of FTIL, again, the Noticee had no occasion to be aware of the alleged UPSL Even assuming the Noticee knew about the show cause notice received by NSEL, if the Noticee believed that its implications were adverse to NSEL, the Noticee would not have purchased shares of FTIL, which consolidates the financials of NSEL

xiii) The Noticee has a clear reason and an answer for why MCX shares were sold that would make it clear that there is a clear alibi and a reasoning for the sale of the MCX shares, which was not at all to profit from any alleged possession of the alleged UPSL On the contrary, at the risk of repetition, the Noticee actually bought FTIL shares i.e. shares of the holding company of NSEL, which is inconsistent with the proposition that the Noticee would have wanted to sell shares when in possession of adverse UPSI relating to NSEL and thereby relating to FTIL

Noticee cannot be reasonably be expected to have access to information relating to NSEL

xiv) The SCN and the Investigation Report provided during inspection, makes a sweeping generalization that employees of NSEL, FTIL and MCX were common.

xv) The basis for such a finding in the Investigation Report is on the basis that one Mr. Dilip Tambe, who was part of the PR and communications team of FTIL had an NSEL email address. Mr. Tambe did clarify that he had offered support voluntarily to NSEL since they were having a lot of inquiries over email and phone. However, the statement that the support was voluntary has been discarded.

xvi) Without prejudice, the existence of a common PR function across group companies cannot lead to the conclusion that all employees across the three companies were common. So also, it cannot lead to the conclusion that despite being a non-executive director of MCX the Noticee would have had access to information relating to NSEL's operations.

xvii) It cannot be lightly assumed that in business groups, an employee or director of one group company would ipso facto be an insider relating to all other companies within the group and presumed to have access to UPSI in relation to such companies, absent any relationship with these companies. Such a finding would have absurd and manifestly unjust consequences for the market. For example, by this approach, every employee of Tata Steel would be an insider to Tata Motors, or for that matter, every employee of ICICI

Securities would be an insider to ICICI Bank. Such extreme consequences cannot be inferred by deeming fiction. Indeed, such a consequence can follow if there is evidence or material on record to show receipt of information from other group companies. The Investigation Report is wholly silent in this regard and does not contain even an whisper of a suggestion of such actual receipt of information across companies.

xviii) Indeed, it is for this reason that the definition of "connected person" in Regulation 2(c) envisages the existence of a relationship between the person and the company that affords such person reasonable expectation of access to UPSI relating to "that company" and not for example, to a subsidiary of such company. The words "that company" are significant and point to the legislative intent in restricting the scope of the presumption of access to companies to which the person has a direct and proximate relationship. The very requirement of showing that one is "reasonably expected" to have access would mean that it would be important to show with reason that such access was possible. In the instant case, apart from Mr. Tambe's linkage as a public relations executive, there is nothing at all to bear out an inference that the Noticee could reasonably be expected to have access to UPSI emanating from NSEL. For this purpose it is pertinent to consider SEBI's decision vide order dated March 8, 2016 in the case of ***Reliance Petro investment Limited*** herein the need to prove access to UPSI before an entity / individual can be considered as an insider.

xix) This needs to be proved with cogent evidence and not with bald findings/statements. This principle was recognized way back in the matter of ***Sameer C. Arora v/s. Securities and Exchange Board of India*** as well.

xx) The Investigating Officer ought to have examined whether the functional role of the Noticee as a non-executive director of MCX could have afforded access to information relating to NSEL's operations and whether Chinese Walls, for example, existed, between these companies. Without determination of these fundamental facts, it would be unreasonable to conclude that the Noticee as a non-executive director of MCX could reasonably be expected to have access to information relating to FTIL let alone NSEL.

xxi) In fact, the very same Investigation Report sets out the standard that ought to have been applied to the Noticee despite the unsustainable conjecture of a finding on the basis of Mr. Tambe. The same investigation Report deals with another employee of MCX whom it has exonerated on the very precise ground that such person was not an employee of NSEL or FTIL, absent any independent evidence of their access to the purported UPSI. Dealing with Mr. Sameer Patil (Senior Vice President), an employee of MCX, the Investigation Report has exonerated him in relation to his trades in MCX shares as there was no independent evidence available to conclude that information emanating from NSEL was available to employees of MCX (Para 19.7 at Page 35 of the Investigation Report). Similarly, trades by Mr. Lambertus Rutten occupying the position of a director of

MCX during the Relevant Period and Mr. P. Ramanathan occupying the position of a Company Secretary and therefore a key managerial personnel of MCX during the Relevant Period have been exonerated in respect of MCX shares.

xxii) The very standard applied to Mr. Patil ought to have been applied to the Noticee or for that matter any person who was merely an employee of FTIL. There is nothing in the SCN or in the Investigation Report differentiating between the status of the Notice and Mr. Patil.

xxiii) Similarly, Mr. Mahesh Joshi and Mr. Ramalingam - employees of MCX, were exonerated for trades in the shares of FTIL (See Para 1.2 D of Page 16 of the SCN in the matter of FTIL). If NSEL, FTIL and MCX were companies where all employees can be regarded as being common, as alleged in the Investigation Report, (based solely on Mr. Dilip Tambe having a horizontal role across companies in the group), these employees of MCX could not have been treated differently. Similar to the treatment given to them, should be the treatment given to the Noticee - more so, when it is evident from the record and in the other Ex-Parte Order issued on the same date, the very same Learned Whole Time Member exonerated the noticee from using allegedly adverse information - the very same information - in his dealings in securities.

xxiv) Furthermore, it is pertinent that several "insiders" have been exonerated in respect of trades during the Relevant Period of the shares of MCX as well as FTIL purely on the ground that their trades resulted in net purchases**.** Surely, this ought to have been appreciated by the same investigating officer as this only goes to show that access to the alleged UPSI wasn't a foregone conclusion for these several "insiders". That being the case, it was imperative to prove access of the Noticee with cogent evidence, which obviously is absent in the present case.

xxv) Without prejudice to the foregoing, the Noticee has been penalized purely on the basis of his employment with FTIL. Evidently, the Noticee being a director with MCX has not been the deciding factor while coming to a prima facie conclusion against him. Therefore, he ought to have been covered under Regulation 2(e)(ii) rather than 2(e)(i), once again requiring proof of access.

Purported UPS/ is vague, incoherent and incorrect

xxvi) The SCN fails to explain as to how the implication of a show cause notice is information. In any event, implication of any action initiated, which can be adjudicated either way, cannot be construed as information. It would, therefore, fail in qualifying as price sensitive information as defined under PIT Regulations.

xxvii) The finding that the implication constituted UPSI is erroneous. In crystalizing the Relevant Period or the UPSI period, the SCN concludes that the UPSI Period began on April 27, 2012 upon the issuance of the SCN and ended with the publication of the circular dated July 31, 2013 issued by NSEL suspending contracts (except e-series) and deferring

settlements (See Items 5 to 13 of Table III at Page 4 & 5 of the SCN). Yet, it simply discounts an identical communication issued by the NSEL on October 3, 2012, in response to the article from the Economic Times dated October 2, 2012, informing members of the receipt of the SCN from the DCA and bringing the information into the public domain. No explanation is forthcoming on this dichotomy. Pertinently, both the Economic Times Article and the communication from NSEL are factual in nature and not speculative.

xxviii) The implications of a SCN issued by a regulatory authority i.e. the possible outcome can never constitute information let alone UPSI. A show cause notice is the starting point of an adjudication and it can never be equated with an adjudicatory order. Indeed, a show cause notice, in law, cannot contain any conclusive findings regarding the noticee's guilt as it would render the notice null and void. Therefore, the characterization of the implications of the SCN as UPSI is foundationally untenable.

xxix) It does not even appear from SEBI's case that insiders had a deeper insight into the likelihood of NSEL deferring settlements or that they would have a better assessment of prospects of NSEL succeeding before the DCA. Such a question is moot as the DCA SCN has not been adjudicated till date.

xxx) In any event, the information relating to the SCN from the DCA and its possible outcome was already in the public domain as early as October 2, 2012 with the publication of the article in the Economic Times and in any case by October 3, 2012, upon NSEL issuing a press release, posted on its website, notifying members of the receipt of the SCN from the DCA. The article publishes and describes the full contents of the SCN issued by the DCA and provides full particulars of the view of the Forward Markets Commission along with the proposed action by the Ministry/Minister. Therefore, the article and NSEL's communication are factual and not speculative. Therefore, the alleged UPSI was no longer unpublished. Therefore, as on that date, there is no question of the Noticee having any access to UPSI or asymmetrical access to UPSI, and enjoying an unfair advantage over other investors.

xxxi) Again, on December 3, 2012, in the Rajya Sabha, the Hon'ble Minister for Consumer Affairs, Food and Public Distribution, while replying to a question specifically mentioned that the DCA had issued the SCN to NSEL; this was reported in the newspapers of December 4,2012.

xxxii) It is also relevant to note that there was little impact on the price of the scrip of MCX when NSEL issued the communications/press release on October 3, 2012 or after the news of the Hon'ble Ministers reply in the Rajya Sabha on October 3, 2012 was reported in newspapers i.e. the information relating to the SCN was not price sensitive.

xxxiii) Through a circular dated July 31 , 2013, NSEL suspended trading in all contracts (except e-series contracts) and deferred settlement of all pending contracts. If at all, it

is the implication of the DCA directions that can be said to be price sensitive. Therefore, the actual period when UPSI may be considered to be in existence from the date when the DCA Directions was issued, i.e., July 12, 2013, until the time NSEL gave effect to the DCA Directions by issuing the requisite circulars, the last of which were issued on July 31,2013. Even as per the SCN, all the Noticee's trades took place prior to July 2013.

Noticee's conduct contrary to the adverse character of the alleged UPSI

xxxiv) The Noticee bought shares of FTIL during the Relevant Period. FTIL is the holding company of NSEL. Its balance sheet consolidates and derives value from NSEL's operations. Therefore, any significant change in NSEL's operations could, at the least, be alleged to have a bearing on the financial position of FTIL and consequently on the price of the FTIL scrip.

xxxv) If the alleged UPSI which was admittedly adverse in character had informed Noticee's decision to trade, the Noticee would have sold, not bought, shares of FTIL. No reasonable person acting reasonably and seeking to profit from UPSI, would have bought shares of FTIL. The decision of the Hon'ble Securities Appellate Tribunal in Mrs. Chandrakala & Ors. v SEBI (Appeal No. 209 of 2011, Order dated January 31, 2012) underscores the noticee's submission that trades contrary to the character of the UPSI, negates the presumption that UPSI was the motivation for the trade. (See Para 7 of the Hon'ble SAT's Order)

xxxvi) Indeed, what's worse for SEBI is that the same Learned Whole Time Member who passed the Ex-Parte Order (the SCN), on identical facts and for the identical UPS!, exonerated the Noticee for his trades in the shares of FTIL. (Page 16 of the Ex-parte order dated August 2, 2017 passed by the Whole Time Member of SEBI in the matter of 63 Moons Limited].

xxxvii) Yet, when dealing with the same human mind i.e. the Noticee who admittedly was in possession of the very same alleged UPSI, the Learned Whole Time Member has arrived at divergent conclusion for the Noticee's trades in MCX, which is untenable.

xxxviii) Therefore, the conduct of the Noticee is inconsistent with SEBI's hypothesis of insider trading and on this ground alone the Noticee ought to be discharged.

xxxix) If the UPSI is alleged to be the DCA SCN and its implications, any reasonable person who wanted to take advantage of the adverse character of the UPSI would have sold off their entire stake in both FTIL and MCX, immediately after April 27, 2012, at the first available opportunity and well before the publication of the Economic Times Press Report and the NSEL press release in October 2012. Far from disposing off his entire stake in FTIL, the Noticee bought shares of FTIL, and continues to hold 68,000 shares of FTIL. The Noticee's first trade in MCX was as late as on December 3, 2012 and continued till June 2013 - spread over a six-month period: commencing more than eight months from the date on which the alleged UPSI came into existence and ending almost fourteen months

thereafter. As is evident from the facts already presented, the first tranche of shares was sold in December, 2012 was to pay of the loans taken by the Noticee, the second tranche was sold in February, 2012 when reports were rife that CTT will be imposed on MCX trades and the third tranche was sold close to the final implementation of CTT by the Government.

Noticee's alibi argument not noticed let alone considered

xl) MCX is a commodities derivatives exchange and imposition of CTT was expected to reduce trading volumes on commodity exchanges which would undoubtedly have had an adverse bearing on the business and the market price of MCX shares. The purpose of the sale was to repay loans owed by the Noticee to JM Financial Products Limited and Investmart Financial Limited. Detailed explanations were provided to the Investigating Officer by the Noticee which has not been noticed, let alone considered either in the Investigation Report or in the SCN.

Additional Submissions

xli) During the course of the inspection no order under Regulation 6(2) was provided to the Noticee. The order is relevant and material as the same requires satisfaction of the Board to conduct an investigation without notice to the alleged insider in the interest of investors or in public interest. More so when the complaints of insider trading admittedly did not provide any corroborative evidences in support of their allegations and did not provide any basis for the allegations of insider trading.

Remedial regulatory intervention not warranted

xlii) Lastly, it is noteworthy that these proceedings are under Sections 11 and 11 B of the SEBI Act, which empower issuance of directions in the interests of the securities market. On the basis of the explanations provided above, it would be abundantly clear that, had the Investigating Officer acted reasonably and applied his mind to the Noticee's detailed explanations for his trades, it would become clear that the Noticee's trades were not motivated by UPSI. No regulatory intervention at all was necessitated.

xliii) Having passed the ex-parte order (also, the SCN) imposing draconian restrictions on the Noticee's livelihood and freezing his bank accounts putting the Noticee and his family to hardship, it would only be fair for SEBI to expeditiously conclude and drop these remedial proceedings.

SHRI ANJANI SINHA

i) In May 2013, I was in need of funds. At that time, I was in possession of 31462 shares of MCX, which were held in my demat account. Therefore, I sold 2000 shares of MCX out of total number of 31462 shares held by me, which is less than 10 % of my total holding on

that day. I received sale proceeds for the same in my bank account maintained with HDFC bank. I sold 1000 shares on 13.5.2013 and 1000 shares on 14.5.2013 through stock market transactions. After lapse of more than 4 years from the date of sale of shares by me, on August 2, 2017 SEBI passed an Ad interim ex parte Order allegedly holding me guilty of insider trading in respect of sale of these 2000 shares of MCX

ii) I submit that a Show Cause Notice consists of allegations and charges seeking explanation from the concerned person. Such allegations and charges eventually may be either proved or dismissed, depending upon merits of respective case. Hence, SCN issued to NSEL was not the final verdict from DCA and hence, it did not have any predictable implications. Hence, it does not qualify to be a Price Sensitive Information, neither in letter nor in spirit nor in terms of Regulation 2 (ha) of the SEBI PIT Regulations, 1992.

iii) As evident from SEBI Investigation Report, MCX employees, who had no relationship with NSEL, have been exonerated on the ground that there is no direct relationship between MCX and NSEL.

" It was observed from Para …….above and from reply of Mr…….that he was ……..(employee) of MCX during the UPSI period i.e. he was employee of MCX only during the UPSI period. MCX did not have any stake in NSEL and NSEL also did not have any stake in MCX. The only connection of MCX with NSEL is, these were group companies, with FTIL having 99.99% stake in NSEL and 26% stake in MCX. As mentioned above, Mr……...was employed only in MCX during the UPSI period and was not having any position in FTIL or NSEL. Further, in the absence of independent evidence, it is not reasonably expected that an entity who was employed only in MCX during the UPSI period would have access to UPSI which was emanated from NSEL. In view of above, no adverse inference is drawn for trades of Mr……..."

iv) I submit that during the Investigation period

(i) I was employed only in NSEL;

(ii) I was not having any position in MCX or FTIL; and

(iii) MCX had no stake in NSEL and NSEL had no stake in NSEL.

Therefore, on parity ground, I should also be exonerated from insider trading allegations, just like MCX employees, having no connection with NSEL, have been exonerated for the same.

v) As observed from inspection of documents, SEBI received a complaint in September 2014, which forms the basis for current investigation. On perusal of this complaint letter, it is evident that complainant's actual grievance is not that he suffered loss because of insider trading activities allegedly done by some FTIL- MCX-NSEL connected persons. On the contrary, he has filed the complaint because he used to trade on NSEL and he allegedly did not get his amount due in August 2013. So, in vengeance, he preferred to file complaint

to SEBI against promoters, directors and employees of FTIL/ MCX/ NSEL group. In other words, the complainant has attempted to misuse the administrative machinery of SEBI to serve his personal grudges, emanating from his transactions on NSEL In this connection, I would like to submit that:

(a) NSEL matter is already subject matter of investigation by various agencies such as EOW, ED, CBI, SFIO, etc. In fact, there are also certain investigations by some of these agencies into claimants' genuinely and veracity to examine whether their trades were genuine or they misused the platform of NSEL.

(b) The said complaint was filed in September 2014, but nothing material was observed by SEBI in this case for more than 2 years. This shows that the complaint lacks merit, especially in the context of Insider Trading Regulations. Whatever be his grievance relating his NSEL claim, is already being dealt with by various Government agencies.

(c) In any case, it is established beyond doubt that the genesis of investigation is a complaint, which is filed out of vengeance by a person having vested interest and personal grudge against FTIL/NSEL, and not by a genuine investor having suffered loss due to alleged insider trading.

vi) The entire edifice of the alleged investigation report is based on interpretation of the Investigating Authority that the Show Cause Notice issued by Department of Consumer Affairs to NSEL on April 27, 2012 is Price Sensitive Information with respect to scrip of MCX. Therefore, it is relevant to firstly analyses the definition of Price Sensitive Information, as contained in SEBI (Prohibition of Insider Trading) Regulations, 1992. Under Regulation 2 (ha) of SEBI (Prohibition of Insider Trading) Regulations, 1992, "price sensitive information" is defined as 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. In the instant case, the information pertaining to Show Cause Notice dated April 27, 2012 is not directly or indirectly related with MCX, because the said notice is not issued to MCX. The definition of Price Sensitive Information given in the Regulation does not extend to information pertaining to other companies having common directors or common shareholders or companies under the same management, rather it is exclusively confined to the company itself.

vii) MCX does not hold any stake in NSEL or vice versa. There is no contract between MCX and NSEL. There is no financial transaction between MCX and NSEL during the alleged "Investigation period." The only relationship between MCX and NSEL is that FTIL holds stake in both these companies and so, there are some common directors. But, that does not make "show cause pertaining to NSEL" as information pertaining to MCX under Regulation 2 (ha) of the Regulations. Hence, the Show Cause Notice issued to NSEL is not directly or indirectly related to MCX within the meaning of Regulation 2 (ha) of SEBI (Prohibition of Insider Trading Regulations), 1992.

viii) Regulation 2 (ha) further qualifies that only such information pertaining to the company itself can be construed as " Price Sensitive", which if published is likely to materially affect the price of securities of company. In the instant case, information pertaining to show cause notice issued to NSEL on April 27, 2012 has not materially affected the price of MCX scrip, as evident from the historical prices of MCX during relevant period.

ix) Even when a detailed Article about show cause notice regarding NSEL got published in the leading national daily "Economic Times" on 3rd October, 2012 and NSEL issued Exchange communication to all its members as well as through its website on public domain on the same day, there was no material impact on the prices of MCX.

x) I sold total number of 2000 shares on 13th -14th May, 2013. During that period, I had no fresh information, which was not already in public domain. In fact, there was no fresh development relating to NSEL post October 3, 2012 (when NSEL sent Exchange communication regarding show cause notice) till 14th May, 2013 (when I sold 2000 shares).

xi) There was no price sensitive trigger on 13th and 14th May, 2013, which was supposed to influence price of MCX scrip or, for that matter, to induce me to sale my MCX shares. Hence, the sale of 2000 shares of MCX on 13th-14th May, 2013 by me was not based on any price sensitive information, rather it was just to meet my funds requirement.

xii) The basic premise of SEBI order is based on the fact that DCA issued a Show cause notice on NSEL on April 27, 2012 and this was a price sensitive information with respect to MCX scrip and that this fact about show cause notice was known to me and not to the general public. If, for the sake of argument, it is assumed to be so, I should have sold my 2000 shares (or for that matter I should have sold my entire holding of 31462 shares) in April 2012 itself. There was no reason for me to wait for more than 1 year to sell my shares. In fact, price of MCX scrip at that time was higher, compared to the price ruling on 13th-14th May, 2013.

xiii) It is evident from the historical price data that the only reason for sale of 2000 shares by me on 13th – 14th May, 2013 was not to avert loss, but only to meet my funds requirement.

xiv) In terms of Regulation 2(ha), the show cause notice issued to NSEL does not constitute "price sensitive information" for MCX scrip, because it is neither connected with (i) periodical financial results of MCX; nor with (ii) intended declaration of dividends (both interim and final) by MCX; (iii) issue of securities or buy-back of securities by MCX; (iv) any major expansion plans or execution of new projects by MCX. (v) amalgamation, mergers or takeovers of MCX; (vi) disposal of the whole or substantial part of the undertaking by MCX; (vii) and significant changes in policies, plans or operations of MCX.

xv) In view of analysis of Regulation 2 (ha) vis a vis MCX as quoted above, it is proved beyond doubt that the Show Cause Notice issued by DCA on NSEL and all subsequent developments relating thereto do not constitute "price sensitive information" for MCX..

xvi) Further, Regulation 2(k) of SEBI (Prohibition of Insider Trading Regulations) 1992 defines "unpublished" as "information which is not published by the company or its agents and is not specific in nature." On one hand, show cause notice and its publication is not an information pertaining to MCX and so there is no question of MCX being required to publish or do anything relating to show cause notice issued to NSEL. On the other hand, NSEL has published and widely disseminated information relating to show cause notice issued by DCA, its reply to the same and also the current status of the matter on 3rd October, 2012. Hence, post 3rd October, 2012, by no stretch of imagination, information pertaining to show cause notice issued to NSEL can be construed as "unpublished information" within the meaning of Regulation 2 (k) of the Regulations.

xvii) It is relevant to note here that the "Exchange communication sent by NSEL to all its members and also disseminated through its website in public domain is not a speculative or vague report. The Exchange communication sent by NSEL is very specific, categorical and to the point. Hence, NSEL communication dated 3rd October, 2012 is not speculative is nature and hence not covered by the Explanation to Regulation 2 (k) of the Regulations.

xviii) In the case of ***Hindustan Level Limited – Brooke Bond Lipton India Limited*** case relating to Insider Trading, the Appellate Authority has ruled that prospect of a merger between Hindustan Level and Brooke Bonde was widely known, because it was covered in various media report and hence, it does not constitute to be unpublished price sensitive information.

xix) Further, the Exchange communication sent by NSEL to all its members and posted on its website was well within the knowledge of FMC as well as DCA. In October 2012, FMC was the designated agency to overview the operation of NSEL. FMC, being the regulator of commodity forward market, kept a close watch on NSEL communications, circulars and press release and wherever they found anything objectionable, they used to immediately direct NSEL to modify it. During the period 2011 to 2013, on several occasions FMC had directed NSEL to modify information disseminated on its website. The fact that FMC did not object to the NSEL communication dated 3rd October, 2012, proves beyond doubt that there was nothing wrong in the NSEL communication dated 3rd October**, 2012**. So, the allegation made under para B. (ii) (b) on page 7 and para 2.3.1 (b) on page 24 of the Order, which claims that NSEL press release dated October 3, 2012 was issued to cover up the irregularities, is frivolous.

xx) Moreover, the issue pertaining to SCN issued to NSEL was also discussed in the Rajya Sabha on December 3, 2012. In fact, Press Trust of India in its News Report dated December 3, 2012 specifically mentions that a SCN has been issued by the DCA to NSEL. Hence, the matter pertaining to SCN issued by DCA was a matter of public record, not a UPSI.

xxi) In terms of Section 11 (4) (e) of the SEBI Act, 1992 SEBI cannot attach bank account or accounts of a person without filing an application made for approval by the Judicial Magistrate of the first class having jurisdiction. Therefore, the action taken by SEBI to freeze my bank accounts and demat accounts is bad in Law, as it is taken without any approval of the Judicial Magistrate. The impugned Order attempts to bypass these checks and balances mandated by the Parliament. The impugned Order is in effect a premature unlawful disgorgement Order disguised as a show cause notice.

xxii) Another implication of this Section is that SEBI does not have power to levy interest on the alleged "aversion of loss" amount. The fact that they have levied interest to the tune of around 50 % of the alleged principal amount is beyond jurisdiction intended just to harass me and hence, fit to be set aside forthwith.

xxiii) As per Section 11 B of SEBI Act, 1992, "Order to disgorge an amount equivalent to the wrongful gain made or loss averted" cannot precede the final order yet to be passed by SEBI. SEBI can pass final order holding a person responsible for insider trading or otherwise, only after due consideration of his Reply to the Show cause notice and personal hearing.

xxiv) It is apparent from Explanation to Section 11 B that SEBI has power to order to disgorge an amount equivalent to the alleged wrongful gain made or amount of loss averted after following the process stated above. But, it does not empower SEBI to levy any interest thereon. In any case, the term "interest' is always linked to "deposits', while penalty is always linked to "deterrence". There is no concept of "interest" on any "deterrence". Penalty is levied on a person to deter him from doing something and as such, it is not subject to any interest.

xxv) As a matter of fact, I sold MCX shares in May 2013, but I did not hear anything till February, 2017. The Board has allegedly received a complaint in 2014, but it did not find anything material pertaining to "insider trading" for more than 2 years.

xxvi) It appears that SEBI has initiated action in the matter only in 2017(assumed based on their correspondence in absence of any contrary concrete evidence). In such case, it is not clear what is the sudden cause of action by SEBI to initiate enquiry in February 2017 without providing me any opportunity of hearing, passing an Ad interim Ex parte Order on August 2, 2017 and immediately freezing my bank accounts and demat accounts.

xxvii) Section 32 of the SEBI Act specifies that "Application of other laws not barred". It states that "the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force." Its implication is that provisions of Limitation Act are applicable in this case. Since I have sold the shares in May 2013, the limitation of 3 years has expired in May 2016. Hence, there is no scope for initiating any action in 2017, because it is barred by limitation.

xxviii) The impugned Order dated August 2, 2017 is not in consonance with the provisions of Regulation 11 of the SEBI (Prohibition of Insider Trading) Regulations, 1992, though it claims to be issued exactly under the same Regulation. Regulation 11 does not empower SEBI to issue directions to create "Escrow account in Compliance with SEBI Order". Further, the Regulation does not provide for calculating the difference with the sale price and market price at the end of alleged UPSI for the purpose of adjudicating the unwarranted profit to be impounded. Hence, the SEBI Order is in contradiction to the provisions of Regulation 11 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and so, fit to be set aside forthwith.

xxix) In the instant case, I was neither a director of MCX nor an officer of MCX. I did not have any access to internal information of MCX. Hence, I am not a connected person within the meaning of Regulation 2 (c) of the Regulations.

xxx) I am not a "person deemed to be a connected person" as per Regulation 2 (h) of the SEBI PIT Regulations, 1992.

xxxi) I am neither an Insider, nor a connected person nor a person deemed to be connected person within the meaning of SEBI (Prohibition of Insider Trading) Regulations 1992. I am neither an "insider" within the meaning of SEBI (Prohibition of Insider Trading) Regulations 1992, nor was I in possession of any unpublished price sensitive information pertaining to MCX. Hence, I have not violated any provision relating to Regulation 3 (1).

xxxii) In this case, the Board has not given me any notice as required under Regulation 6 (1) stated above. If the Board has decided not to give prior notice, the same must have been recorded by the Board in writing alongwith reasons therefor. It is also not clear whether such orders are passed in 2014 or in 2017, because the investigating authority has called for information only in February 2017. Hence, in the interest of transparency, a copy of such order should be provided to me.

xxxiii) SEBI should have just forwarded the finding of the Investigating authority to me with a direction to respond to the same, as per provisions of Regulation 9. But, without doing so, passing the ex parte order without waiting for my reply and at the same time, attaching all my bank accounts and demat account, is un-called for and not tenable in Law and therefore, fit to be set aside.

xxxiv) On one hand, the impugned order is termed by SEBI as "Ad interim Ex parte Order (para 3.1 on page 32 of the Order). On the other hand, it results into freezing all my bank accounts, demat account and all movable and immovable properties. If the bank accounts of a person is frozen without even providing any opportunity of hearing, how is he supposed to meet his day to day expenses? How can his family survive during the intervening period till disposal of the matter?

xxxv) The investigating authority has erroneously arrived at the "investigation period" as April 27, 2012 to July 31, 2013. In fact, SCN issued to NSEL does not constitute UPSI for MCX

as per SEBI PIT Regulations. Further, the SCN dated April 2012 was also at an intermediary stage, it was neither the beginning nor the conclusion. SCN takes the shape of finality, having any material impact on the entity only after final order is passed by the regulator in respect thereof, which is still not done by DCA. SCN was neither the beginning, because it was issued after (i) inspection of NSEL by FMC(ii) issuance of show cause by FMC to NSEL(iii) NSEL reply to FMC; and (iv) FMC report to DCA. Hence, the determination of "investigation period" by the investigating authority itself is baseless.

xxxvi) " investigating authority" has further mentioned that "Any material development having an impact on the business of NSEL would have automatically impacted the business of a company under the same management, i.e. MCX", which is absolutely fictional, not supported by facts and figures. MCX had no business relation or cross holding with NSEL and this fact is known to and acknowledged by the Investigating Authority. FMC had issued a direction to MCX not to share its resources with NSEL and also to ensure water tight compartmentalization. Then, how can the business of MCX be automatically impacted by NSEL business? Further, this assumption made by the investigating authority is also not supported by any provision of SEBI Act or SEBI PIT Regulations, because none of the provisions specify that any material development in a group company will constitute UPSI for another company under the same management.

xxxvii) Further, there is no provision for creating Escrow account under SEBI PIT Regulations and therefore, the impugned Order asking for creating an escrow account is illegal.

xxxviii) A matter, which is widely disseminated through Exchange circular, notification through official website of the Exchange and also through publication in the leading national financial daily cannot be construed as Unpublished Information by any stretch of imagination.

xxxix) It is apparent from the chronology of events quoted by SEBI that Department of Consumer Affairs (DCA) issued the Show cause notice in April 2012 and NSEL submitted a detailed reply to the same in May 2012 explaining its detailed operational methodology. In fact, NSEL has submitted further rejoinder to the same in July 2012. But, NSEL did not hear anything from DCA till next 1 year. Hence, the logical assumption was that DCA was satisfied with NSEL submissions and so, they have dropped the proceeding. As a result, NSEL operation continued un- interrupted till June 2013. I sold 2000 shares in May 2013. In May, 2013, there was no indication from FMC/ DCA that they intend to take any action against NSEL, rather the general understanding, based on no communication from DCA for around 1 year, was that the DCA has dropped the proceedings in view of NSEL reply submitted in May 2012 and July 2012.

xl) It is relevant to quote here that even today, neither DCA nor FMC nor SEBI has passed any reasoned order in connection with the Show Cause Notice issued in April 2012 and reply submitted in May 2012. Even letter dated 12th July, 2013 forwarded by DCA to NSEL does

not state that NSEL is held guilty for violating the conditions of exemption. Letter dated 12th July 2013 simply directed NSEL to submit an Undertaking not to launch any fresh contracts and to settle all existing contracts on the due dates. It does not specify that DCA is not satisfied with NSEL submissions in response to Show Cause Notice dated April 2012 or that NSEL is held guilty of violations or anything of that sort.

xli) It is further relevant to mention here that NSEL closed its operation on July 31, 2013, not because the Government ordered it to do so. It was closed not because a show cause notice was issued in April 2012 or that the Government held NSEL guilty of violations or that DCA, vide its letter dated July 12, 2013 asked NSEL to close its operation on July 31, 2013. Letter dated July 12, 2013 forwarded by DCA does not hold NSEL guilty and it does not ask NSEL to close its operation on July 31, 2013. As a matter of fact, NSEL closed its operation on July 31, 2013 because of lack of participation by the members leading to widespread defaults in the market. Therefore, in May 2013, when I sold 2000 shares of MCX, I had no reason to presume that NSEL is going to be closed down on July 31, 2013.

xlii) In fact, the Show Cause Notice dated April 27, 2012 is not at all a price sensitive information, even with respect to NSEL. The show cause notice did not result into any reduction in business of NSEL in April 2012. Even when the same was published in Economic Times and NSEL response was disseminated on October 3, 2012, it did not result into reduction in business on NSEL. Reduction of business of NSEL happened only post letter dated July 12, 2013 of DCA. Hence, if there is any price sensitive information pertaining to NSEL, it is only the letter dated July 12, 2013, and not the show cause notice dated April 27, 2012. Since, sale of 2000 shares is done in May 2013 prior to letter dated July 12, 2013, it has no linkage with any price sensitive information whatsoever.

SHRI MEHMOOD VAID

i) Order is vitiated by gross violation of principles of natural justice, in as much as no opportunity was ever accorded to Shri Vaid to explain his version before the issuance of the said Order. The facts of the matter did not justify passing of such emergent ex parte directions. An ad interim ex parte order is justified if the circumstances so warrant which in the present case is not so.

ii) It's a well settled principle that "A public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably" (*Westminster Corporation v. London and North Western Railway Co.* 1905 AC 426 (G) at p. 430) and SEBI has failed to adhere to the aforesaid principle.

iii) The documents and materials provided by SEBI during the course of inspection are voluminous in nature. Furthermore, some of the relevant documents and records were not furnished to us at the time of inspection though we have sought the same.

iv) He was never a Key Managerial Person in FTIL. Further, in the said order also, there is no mention that Shri Vaid being associated with FTIL during the aforesaid period.

v) By virtue of him being an employee of FTIL (prior to October 2009), he acquired shareholding of MCX by way of ESOP. As per the requirement of ESOP Plan 2006, 3000 MCX shares were allotted to Shri Vaid. Since it was an ESOP, there was a Lock-in period of 1 year from the date of the listing and hence the shares under the ESOP could not be traded. Thereafter, in 2011, pursuant to MCX's decision to issue one bonus share for every four shares, Shri Vaid was further allotted 750 shares. As on March 11, 2013, Shri Vaid was holding a total of 3,750 shares of MCX. Post the Lock-in Period, the said shares became tradable on and from March 11, 2013.

vi) Since, Shri Vaid had no interest in the long term investment in the shares of MCX; he sold all the shares in tranches from March 11, 2013 to June 26, 2013 on both BSE and NSE at the price ranging from Rs. 988.2 per share to Rs. 775.10 per share.

vii) Shri Vaid had his own assessment based on media reports and 2013 budget proposal of Central Government, that the income of MCX as a company would get affected on implementation of Commodity Transaction Tax (CTT). That apart, he generally does not hold shares of any particular company on a long term basis.

viii) Shri Vaid was not an employee of FTIL on the date when Show Cause Notice dated April 27, 2012 came to be issued to National Spot Exchange Limited ("NSEL") and joined the employment of FTIL only on September 3, 2012, whereas the Investigation Period as per said Order started way back to April 2012.

ix) To bring home the charge of insider trading and to conclude that Shri Vaid is an insider and that any potential loss has been averted by Shri Vaid by trading into shares of MCX during the UPSI Period, the following parameters are required to be considered:
   a) Whether alleged UPSI in relation to NSEL becomes UPSI in terms of MCX shares?
   b) Whether Shri Vaid is an insider?
   c) Whether Shri Vaid has dealt in securities while in possession of UPSI?
   d) Whether Shri Vaid has averted any loss on trades in the scrip of MCX?

x) It is submitted that there was no alleged 'unpublished' or 'price sensitive information' which came into existence on April 27, 2012 upon the issuance of the Show Cause Notice to NSEL, by the Department of Consumer Affairs ("DCA") ("SCN") since in fact, the alleged UPSI was already in public domain on October 03, 2012 in view of publication of article in "Economic Times" and an "Exchange Communication" issued by NSEL informing all its members regarding the SCN, its reply and the clarifications on the article. Hence, the above shows complete non application of mind on part of SEBI while passing the said Order.

xi) It is submitted that the main trigger point of arriving at the UPSI period falls apart since the information became available on public domain on October 03, 2012. Therefore,

without admitting that there was any UPSI, the UPSI period should have been from April 27, 2012 to October 03, 2012 and not from April 27, 2012 to July 31, 2013 as wrongly alleged in the said order by SEBI.

xii) It is noteworthy that in Paragraph 1.2(B)(iii) at Page 8 and Paragraph 2.3.5 at Page 26 of the said Order, SEBI has taken a view that UPSI in respect of shares of MCX was therefore the implication of the Show Cause Notice to NSEL i.e. suspension of contracts and deferral of settlement and subsequent payment default made by members of NSEL alongwith loss of reputation of Promoters/ Management of MCX. In the same breath, in Paragraph 1.2(B)(iv) at page 8 and Paragraph 1.2(D)(vii)(a) at Page 22 of the said Order, SEBI has taken a view that UPSI came into existence on April 27, 2012 upon issuance of the Show Cause Notice to NSEL.

xiii) It is submitted that since the alleged UPSI was already available in the public domain since October 03, 2012, Shri Vaid had sold the shares acquired by him as ESOP by virtue of him being an employee of FTIL during the period from March 11, 2013 to June 26, 2013. The said sale of shares took place post the alleged UPSI in public domain and therefore assuming while denying that Shri Vaid was an Insider, the said sale of shares was clear from all embargos of selling.

xiv) The fall in price of shares of MCX was imminent due to the imposition of CTT by the then Finance Minister in the Union Budget for F.Y. 2013-2014. Shri Vaid craves leave to rely upon members of NSEL and loss of reputation of the Promoters! Management of FTIL and MCX cannot be relied upon as the SCN issued to NSEL has not been adjudicated even till date.

xv) Without prejudice to above, it is submitted that even if it is argued that Shri Vaid has averted potential loss, SEBI has erred in arriving at the Average Closing Price from August 1, 2013. It is submitted that as per SEBI, UPSI came to the public domain post the issuance of circular dated July 31, 2013 by which trading on NSEL was suspended. On a closer look of the said order, the Average closing price for August 1, 2013 i.e. Rs. 511.30/- has been considered instead of July 31, 2013 i.e. Rs. 639.1/- for calculation of potential loss averted by Shri Vaid. SEBI ought to have considered the Average Closing Price of July 31, 2013 as opposed to the Average Closing Price of August 1, 2013. There is difference of Rs. 127.8/- among the two average closing prices. It is well settled principle that the disgorgement amount should not exceed the total purported loss avoided as a result of the unlawful activity. Thus, the purported loss that was allegedly averted by Shri Vaid reduces to Rs. 10,31,156/- as opposed to Rs. 15,10,4061-.

xvi) SEBI does not have any right to charge interest as there is no power granted to it under the SEBI Act. Without prejudice to the aforementioned contention, it is contended that even if SEBI had the power to charge interest, the same has to be calculated from the date of completion of investigation and not from the time of commencement of the

investigation proceedings, as any delay in investigation shall not increase the liability of the person being investigated.

xvii) It is submitted that serious allegations of insider trading regulations cannot be alleged on the basis of mere surmises and conjectures as has been done in the instant case by SEBI. With regard to the nature of evidence required to sustain the allegations of violation of provisions of Insider trading as levelled against Shri Vaid, we draw your attention to the order passed in the matter of ***Dilip Pendse vs SEBI*** (SAT Appeal No 80 of 2009) vide which the Hon'ble SAT , in context of Insider trading, has inter alia held that:

The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of Probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability. In Hornal v. Neuberger Products Ltd.(1956) 3 All E.R.970 Hodson, L.J. observed as under.

"Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others, "

We are also tempted to refer to what Denning, L.J. observed in Baler v. Bater (1950) 2 All E.R. 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case. This is what he said.,

"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court,

even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."

In the light of the aforesaid principles on degree of proof, we have carefully gone through the impugned order and the material on the record and find that the whole time member has miserably failed to establish the charge of insider trading against the appellant with the required degree of probability necessary to establish such a serious charge,

xviii) The Ex-Parte Order is in effect a premature attachment order disguised as an impounding order in aid of disgorgement, bringing to a grinding halt, all access to all assets, physical, financial, tangible and intangible - all a gross abuse of the rule of law. It is submitted that rather than passing of the said Order, SEbI ought to have issued a show cause notice to Shri Vaid. If only SEBI had issued a notice and granted Shri Vaid a hearing, it would have become clear to SEBI upon review of the response and after hearing that there is no scope for holding my sale of shares in MCX as being even remotely violative of any securities regulations much less, regulations governing insider trading. The refusal of SEBI to issue a Show Cause Notice to consider Shri Vaid 's submissions before passing such drastic and plenary directions against him, based on a presupposition of his guilt, is arbitrary, erroneous, illegal and ultra vires the SEBI Act.

SMT. TEJAL SHAH

Noticee not an "Insider" at the relevant time of trading ; trading done when not in possession of UPSI:

i) It is respectfully submitted that the primary basis on which the ex-parte impounding order has been passed is that the Noticee is an insider and was in possession of UPSI, namely the notice dated 27th April, 2012 at the time when the transaction in question were undertaken. In other words, the charge is that the show cause notice was not in public domain and was deemed to have been known to the Noticee.

ii) Without prejudice to all other submissions, it is respectfully submitted that the aforesaid premise of the ex parte order is non-existent as, clearly and admittedly, the fact of the show cause notice dated 27th April, 2012 and the contents were put in public domain, inter alia by an article published in Economic Times on 3nJ October, 2012. The said article clearly stated, inter alia, the following:-

- That the Ministry of Consumer Affairs, Food and Public Distribution had issued a show cause notice to NSEL and is probing into alleged discrepancies in contact position of NSEL
- That the Notice is dated 27th April, 2012,

- That the notice, inter alia, states that the government has not granted any exemption to NSEL in respect of NTSD contracts and therefore, all contracts traded on NSEL with a settlement period exceeding 11 days are a violation of Forward Contracts Regulation Act , and
- That the SCN has directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of notification dated 05/06/2007 within 15 days of the receipt of the notice failing which the Department would be compelled to withdraw the exemption granted thereunder without any further communication.
- The press report also notes the reply of NSEL.

iii) From the aforesaid, it is clear that the fact of the show cause notice and its contents ceased to be unpublished at least on and from 3rd October, 2012 and thus any action taken by the Noticee after the said date can, by no stretch of imagination, be treated as based on or while in possession of UPSI.

iv) Without prejudice to the above, it is submitted that since the DCA SCN came to be in public domain on and from October 3, 2012, Tejal Shah ceased to be an insider from that date. Since her trades in the scrip of MCX were pursuant to her ceasing to be an insider, her trades do not violate PIT Regulations.1992. On this short ground alone, the proceedings against the present Noticee is liable to be dropped.

Tcjal Shah is not an Insider:

v) SEBI's view that Tejal Shah is an insider as per Regulation 2(e) of the PIT Regulations is completely incorrect and wrong.

vi) By virtue of Tejal Shah being the wife of one Director (i.e., Mr. Manjay Shah) and sister-in-law of another Director (i.e., Mr. Jignesh Shah) of Financial Technologies India Ltd. ("FTIL") she is 'deemed to be a connected person' in tenns of Regulation 2(h)(viii) of the PIT Regulations, 1992. To be an 'insider' in terms of Regulation 2(e) of the PIT Regulations, in addition to being deemed to be a connected person deemed it necessary that she was reasonably expected to have access to UPSI.

vii) There is no material in the Ex-Parte Impounding Order on the basis of which a view can be taken that Tcjal Shah was reasonably expected to have access to UPSI. The mere relationship of Tejal Shah with the Directors of FTIL is not sufficient to assume that she was reasonably expected to have access to UPSI.

viii) The Ex-parte Impounding Order demonstrates that SEBT completely lost sight of the fact that Tejal Shah is a house wife and not an employee/Director of MCX, FTIL, NSEL or any of its group companies at any point in time and had no access to

UPSI whatsoever pertaining to those companies and could not be reasonably expected to have access to UPSI.

ix) Further, since Tejal Shah was not in possession of UPSI when she traded in the scrip of FTIL she has not been in violation of Regulation 3(i) of the PIT Regulations, 1992.

Inherent Contradictions in what constituted UPSI:

x) In paragraph 1.2(B)(iii) at page 8 and Paragraph 2.3.5 at page 26 of the Ex-Parte Impounding Order, SEBI has taken a view that UPSI in respect of shares of MCX was therefore, the implication of the DCA SCN, i.e., suspension of contracts and deferral of settlements and subsequent payment defaults by Members of NSEL alongwith loss of reputation of Promoters/Management of MCX.

xi) In the same breath, in paragraph 1.2(B)(iv) at page 8 and paragraph 1.2(D)(vii)(a) at page 22 of the Ex-Parte Impounding Order, SEBI has taken a view that UPSI came into existence on April 27, 2012 upon the issuance of the DCA SCN.

xii) The aforesaid clearly demonstrates that SEBI itself is not clear on what constitutes UPSI.

xiii) It is submitted that 'implications' arc not 'information' and as such the 'implications of the DCA SCN' cannot be UPSI. Should the issuance of the DCA SCN be treated as UPSI, then the fact that the same ceased to be UPSI with effect from October2/3, 2012 is explained hereinabove.

There was no impact on the price:

xiv) It should be noted that upon the fact of issuance of DCA SCN coming into the public domain on October 2, 2012, the price of MCX's shares did not fall and in fact increased. Even after the news of the Hon'ble Minister's reply in the Rajya Sabha was reported in newspapers i.e. the information relating to the SCN, there was little impact on the price of the scrip of MCX.

If an Insider, Tcjal Shah's conduct is contrary to abusive assumption:

xv) Tejal Shah sold 3,474 MCX's shares for a bona fide purposes i.e. to secure to her a fixed income by investing the sale proceeds in the debentures of Wadhwa Group holdings Pvt. Ltd.

xvi) In the month of October, 2012, she was advised by JM Financial that there was an investment opportunity available in non-convertible Debentures of Wadhwa Group Holdings Private Limited. Given the circumstances, she thought it fit to sell her 3,474 shares in MCX. Accordingly, Tejal Shah sold 2000 shares of MCX on October 25, 2012 for a price of Rs. 27,87,602/- (Rs. 1393.80 per share) and 1474 shares of MCX on

October 26, 2012 for a price of Rs. 20,55,892 (Rs. 1,394.78 per share). Tejal Shah received an amount of Rs. 48,18,996.10/- post STT and brokerage. On the basis of the advice given by JM Financial to invest the sale proceeds in the non-convertible Debentures of Wadhwa Group Holdings Private Limited, Tejal Shah invested a total amount of Rs. 53,30,136.99/- in the non- convertible Debentures of Wadhwa Group Holdings Private Limited on October 31, 2012, for a better investment opportunity.

xvii) It is pertinent to note that Tejal Shah also held 1704 shares in FTIL during the alleged UPSI period, which she did not sell during the alleged UPSI Period. Moreover, her husband, Mr. Manjay Shah who was a Director of FTIL at the relevant time held more than 70,000 equity shares of FTIL at that time. However, he also did not sell any of his shares in FTIL during the investigation period. Similarly. Tejal Shah's brother-in-law, Mr. Jignesh Shah, who is the single largest shareholder of FTIL, (holding 8,329,585 shares constituting 18.08% stake in FTIL), as also La-Fin which holds 26.7% shares in FTIL, did not sell any of their shares in FTIL during the investigation period.

xviii) Without prejudice to the foregoing, it is therefore submitted that the sale of shares by Tejal Shah cannot be construed as trading while in possession of UPSI as otherwise she and her husband would have sold their shares held in FTIL also. Tejal Shah's trading pattern is inconsistent with the presumption that the purported UPSI was the motivation for her trades. If the UPSI is alleged to be the DCA SCN and its implications, any reasonable person who wanted to take advantage of the adverse character of the UPSI, would have sold off their entire stake in both FTIL and MCX, immediately after April 27, 2012, at the first available opportunity and well before the publication of the Economic Times Press Report and the NSEL press release in October 2012. Tcjal Shah and her husband continue to hold on to their FTIL shares.

xix) Without prejudice to the foregoing, it is submitted that the sale of Tejal Shah's shares in comparison to the total number shares held by the promoter group is miniscule and therefore cannot be construed as trading while in possession of UPSI.

xx) Moreover, SEBI has not produced or relied upon any documentary evidence to demonstrate as to, how and when, Tejal Shah was allegedly made aware of issuance of the DCA SCN to NSEL by DCA by Jignesh Shah and / or Manjay Shah. There is no oral statement/testimony to this effect. Thus, such knowledge cannot be imputed to Tcjal Shah. Any presumption in law also stands rebutted. Absent the possession of UPSI, charge of insider trading cannot sustain.

Procedure under regulation 6 not followed:

xxi) Regulations 5 and 6 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, inter alia, provide for investigation. Regulation 5 specifics the right of the Board to investigate while Regulation 6 prescribes the procedure for

investigation. Once the Board under Regulation 5 decides to investigate, such investigation can be undertaken under Regulation 6(1) by giving reasonable notice to the insider who is sought to be investigated. The exception to the requirement of such a notice stipulated in Regulation 6(2) provides that if the Board is satisfied that in the interests of the investors or in public interest, no such notice should be given, it may by an order in writing direct that the investigation should be taken up without such notice.

xxii) In the present case, the investigation report does not recite the fact of any such order of the Board under Regulation 6(2). The noticee is not aware of the fact whether any such order was passed or not. The Noticee has requested for inspection of the file of SEBI relating to the present investigation but no inspection has been given of any such order that may have been passed under Regulation 6(2). In the absence of such an order being produced, it is respectfully submitted that the entire investigation would be vitiated by not following the principles of natural justice and/or the mandatory provisions of Regulation 6(1).

xxiii) It is submitted that this letter sets out the oral arguments made on behalf of Tejal Shah in brief and should not construed as being exhaustive of all arguments made on her behalf and this submission is filed without prejudice to Tejal Shah's right to seek and obtain complete inspection of all the documents collected by the Investigating Authority during the course of investigation and to make further submissions in defense post providing the inspection.

ISSUES AND CONSIDERATION

13. I have considered the interim order *cum* SCN, oral and written replies/ submissions of the Noticees and other material available on record. Considering the allegations leveled in the *interim order,* arguments advanced by the Noticees in that regard and other material available on record, the following issues arise for consideration:

    A. Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information in respect of MCX?
    B. If the answer to issue A is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?
    C. If the answer to issue B is in the affirmative, which of the Noticees traded in the scrip of MCX during the period when the price sensitive information remained unpublished?
    D. Which of the Noticees violated the provisions of regulation 3(i) and regulation 4 of the PIT Regulations, 1992 and ssection 12A (d) of the SEBI Act when they traded when in possession of UPSI?

14. The consideration of the issues in light of the facts and circumstances of the case and the arguments advanced by the Noticees is discussed in the subsequent paragraphs.

A. Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information in respect of MCX?

15. The first question which arises for consideration is whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL was "price sensitive information" in respect of MCX. To answer the question, it becomes important to analyze the contents of the SCN dated April 27, 2012 and also the backdrop in which the said SCN was issued.

16. The expression "price sensitive information" has been defined under regulation 2(ha) of the PIT Regulations, 1992, which reads as under:

(ha) "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.
Explanation.—The following shall be deemed to be price sensitive information :—
(i) periodical financial results of the company;
(ii) intended declaration of dividends (both interim and final);
(iii) issue of securities or buy-back of securities;
(iv) any major expansion plans or execution of new projects.
(v) amalgamation, mergers or takeovers;
(vi) disposal of the whole or substantial part of the undertaking;
(vii) and significant changes in policies, plans or operations of the company;

17. It is noted that vide Notification S. O. No. 906(E) dated June 5, 2007, the DCA had granted exemption to NSEL from the operation of the Forward Contracts (Regulation) Act, 1952 ("FCRA") for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform, subject to the following conditions –

a. No short sale by Members of the Exchange shall be allowed;
b. All outstanding positions of the trade at the end of the day shall result in delivery;
c. NSEL shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;
d. All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;
e. The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary, and

f. In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.

18. The contents of the SCN dated April 27, 2012 are reproduced as under:

"National Spot Exchange Limited was given exemption from operation of the forward Contracts (Regulation) Act, 1952 for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform in terms of the Department of Consumer Affairs Notification S.0. No. 906 (E) dated 5.6.2007 subject to the conditions mentioned therein. FMC was declared as the `designated agency to call for data from the spot exchanges in accordance with the Department of Consumer Affairs Notification dated 6.02.2012. On the basis of data obtained from National Spot Exchange limited, FMC has reported the following discrepancies:

(I) The NSEL has not made it mandatory for the seller to actually deposit goods in the warehouse before he take a short position through a Member of the Exchange. The Exchange system has no stock check facility which validates the member position. The Exchange allows trading on the Exchange platform without verifying whether the seller member has the stocks with him or not. In this way, the Exchange has violated the conditions stipulated that no short sale for the members of the Exchange shall be allowed,

(II) FMC has also found that out of total contracts, 55 contracts offered for trade by NSEL have settlement period exceeding 11 days. NSEL has agreed that all the contracts traded on the Exchange platform for which settlement period exceed 11 days are N'TSD contracts. NSEL has, however, claimed that Government has granted exemption to the Exchange in respect of these contracts and therefore, trading in these contracts is not violation of the previsions of the FC(R) Act. The claim of NSEL, however, cannot be accepted as the Government has not granted any exemption to NSEL in respect of NT'SD contracts. Therefore, all contracts traded on NSEL with settlement period exceeding I1 days are violation of the provisions of the FC(R) Act.

2. National Spot Exchange Limited are, therefore, directed to explain as to why the action should not be initiated against them for violation of the conditions of the Notification dated 5.6.2007 within 15 days of the receipt of this letter failing which the Department would be compelled to withdraw the exemption granted thereunder without any further communication."

19. On a perusal of the above, it is noted that the possible outcome of the SCN was withdrawal of the exemption granted to NSEL with regard to non-applicability of FCRA to all forward contracts of one day duration for the sale and purchase of commodities traded on the platform of NSEL. It is noted that majority of the contracts being traded on NSEL were in the name of one day forward contracts. Thus, it would be reasonable to conclude that the possible outcome of the SCN would have had significant and serious implications on the functioning and operations of NSEL.

20. It is noted that MCX and NSEL were companies under the same holding company i.e. FTIL. Any adverse impact on the business and operations of NSEL was likely to have a contagion, cascading and materially adverse impact directly on the holding company – FTIL and indirectly on the associate company - MCX. In my view, the possibility of serious challenges to be faced by an associate company (NSEL) under the same management, which is almost wholly owned by the holding company (FTIL) had the potential to materially affect the price of the securities of MCX when disclosed to public. Further, the same would have also led to a loss of reputation and credibility of the promoters and management of MCX. In view of the above, considering the nature, extent and timing of the information relating to issuance of SCN by DCA to NSEL and its possible implications, I find that the said information was a price sensitive information in respect of MCX.

21. It was argued that the price sensitive information as defined under Regulation 2(ha) is information that pertains to the company in question and not of a group company. It has been contended on behalf of the Noticees that the alleged UPSI under the interim order related to NSEL and not to MCX, with regard to whose shares, the allegation of insider trading has been made in the interim order. In this context, I note that the very definition of the expression “price sensitive information” under regulation 2(ha) provides that the information under consideration would be subjected to the test of likelihood of material effect on the price of the securities even if it indirectly relates to the company, which in the present case is MCX. As noted above, any information having an adverse impact on NSEL would have had an indirect adverse effect on MCX, and therefore for reasons discussed in above paragraph, the information as alleged in the interim order was price sensitive information in respect of MCX.

22. Further, it was argued by certain Noticees that the information alleged in the interim order to be “price sensitive information” is not specifically covered in the explanation to definition of “price sensitive information” under regulation 2(ha) of the PIT Regulations, 1992, and therefore, does not qualify as price sensitive information. In this regard, I note that the explanation to regulation 2(ha) only provides for illustrative sets of information which would

be deemed as “price sensitive information”. For any information to be price sensitive, it has only to meet the essential ingredients of regulation 2(ha) and it need not necessarily fall under any of the clauses provided under the explanation to regulation 2(ha). In view thereof, I do not find any merit in the arguments made by the Noticees in this regard.

23. It was also argued that the alleged UPSI was not price sensitive at all which was evidenced by the fact that when the article relating to the SCN dated April 27, 2012 was published in Economic Times on October 3, 2012, the price of the scrip of MCX went up and not down. In this regard, I note that the definition of “price sensitive information” under regulation 2(ha) requires that the information should be such which if published is *likely to* materially affect the price of securities of the company. The actual impact on the price of the securities is not essential to the definition under regulation 2(ha) rather the real test is the *likelihood* of the material effect on the price of the securities of the company. I, therefore do not find any merit in the arguments in this regard and reject the same.

24. Considering the above, I find that the implication of the SCN dated April 27, 2012 as alleged in the *interim order* was “price sensitive information” in respect of MCX.

B. If the answer to issue A is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?

25. Having answered the first issue in the affirmative, the next issue for consideration is whether the “price sensitive information” was unpublished during the period of investigation. In this regard, it is noted that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information relating to the issuance of SCN dated April 27, 2012 to NSEL, majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL’s reply to the SCN. The article also covered the possible action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007.

26. On a careful perusal of the newspaper article dated October 3, 2012, I find that the publication of the said article made the following information public:

- DCA had issued a show cause notice dated April 27, 2012 to NSEL whereby it had found fault with certain types of contracts which were being traded on NSEL.

- There were allegations against NSEL that it was permitting short selling on its platform. It was also alleged that NSEL did not have a stock check facility for validating a member's position.
- SCN also alleged that all contracts traded on NSEL with a settlement period exceeding 11 days were in violation of the provisions of FCRA.
- The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.
- NSEL had filed its reply to the SCN issued by DCA.
- In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication.

27. In my view, a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on part of NSEL to provide a satisfactory explanation to the allegations levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, payment defaults in relation thereto and the eventual loss to the reputation of the promoters / management of NSEL. Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012, and as such ceased to be UPSI from that date. Accordingly, the period during which the period the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012.

C. If the answer to issue B is in the affirmative, which of the Noticees traded in the scrip of MCX during the period when the price sensitive information remained unpublished?

28. As observed above, since the UPSI existed during the period April 27, 2012 to October 3, 2012, the next aspect for examination is who amongst the Noticees traded during the period April 27, 2012 to October 3, 2012.

29. On a perusal of the trades carried out by the Noticees herein, it is noted that only Shri Joseph Massey traded during the period April 27, 2012 to October 3, 2012. It is noted that during the said period, Shri Joseph Massey did not buy any shares of MCX but sold its shares. The relevant details of his sale trades are mentioned in the table below. The same have not been disputed by Shri Joseph Massey.

Trades of Shri Joseph Massey

DATE	NO. OF SHARES SOLD	AMOUNT (IN ₹)
04.05.2012 (NSE)	1000	10,20,000
01.06.2012 (NSE)	5000	47,81,121
TOTAL	**6000**	**58,01,121**

D. Which of the Noticees violated the provisions of Regulation 3(i) and Regulation 4 of the Insider Trading Regulations, 1992 and Section 12A(d) of the SEBI Act when they traded while in possession of UPSI?

30. It is noted that all the Noticees herein except Shri Joseph Massey dealt in the shares of MCX after October 3, 2012 i.e. the date when price sensitive information got published by way of the newspaper article in Economic Times. Consequently, since they (except Shri Joseph Massey) did not trade in the shares of MCX when in possession of UPSI, the violation of regulation 3(i) and 4 of the PIT Regulations, 1992 cannot be established against them.

31. Since, out of the Noticees herein, only Shri Joseph Massey sold shares of MCX during April 27, 2012 to October 3, 2012, the examination relating to alleged violations of Regulation 3(i) and Regulation 4 of the Insider Trading Regulations, 1992 and Section 12A(d) of the SEBI Act narrows down to his trades during the said period.

32. For the purpose of examination of the present issue, I find it relevant to quote the following regulations of the PIT Regulations, 1992:

> ***Regulation 2(e)*** *– "insider" means any person who,*
>
> *i. is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*

ii. *Has received or has had access to such unpublished price sensitive information.*

Regulation 2(c) *– "connected person" means any person who –*

i. *Is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or*

ii. *Occupies the position as an office or an employee of the company or holds a position involving a professional or business relationship between himself and the company (whether temporary or permanent) and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.*

[Explanation:—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;]

Regulation 2(h) *– "person is deemed to be connected person" if such person –*

i. *is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;*

ii. *is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;*

iii. *is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;*

iv. *is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956;*

v. *is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body;*

vi. *is a relative of any of the aforementioned persons;*

vii. *is a banker of the company;*

viii. relatives of the connected person; or

ix. is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest.

33. It is noted that Shri Joseph Massey was non-executive director on the Board of NSEL from 18/05/2005 to 21/10/2013. Further, he was a key managerial person of NSEL from 2005 to 2010. He was also a non-executive director of MCX from 01/06/2009 to 30/09/2013 and previously, he was Deputy Managing Director of MCX from May 2003 to March 2008 and was also the Managing Director of MCX from April 2008 to May 2009. During the period when the price sensitive information remained unpublished (I.e. April 27, 2012 to October 3, 2012), he was on the board of both NSEL and MCX. In this context, the following observations of Hon'ble SAT are noteworthy;

Shri E. Sudhir Reddy v. Securities and Exchange Board of India (SAT order dated December 16, 2011):

"… we find that the appellant being one of the directors of the company, was a connected person with the company and falls within the definition of 'insider' contained in regulation 2(e) of the Insider Trading Regulations."

Appeal No. 451 of 2015 [*Chintalapati Srinivasa Raju v. Securities and Exchange Board of India]* and other connected appeals (majority opinion of Hon'ble SAT in order dated August 11, 2017):

"c) Expression 'insider' is defined under regulation 2(e) of the PIT Regulations to mean any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to UPSI or a person who has actually received or has had access to such UPSI. Expression 'connected person' is defined under regulation 2(c) to mean (one) any person who is a Director or deemed Director under Section 2(13) and Section 307 (10) of the Companies Act, 1956 or (two) an officer/ an employee or any person who holds a position involving a professional or business relationship between himself and the company and who may be reasonably expected to have access to UPSI. It is relevant to note that the concept of 'reasonably expected to have access to UPSI' is not applied to Director/deemed Director, because, unlike other connected persons, Director/ deemed Director constitute

part of the company's board and hence responsible for all the deeds/ acts of the company during the period when they were Director/ deemed Director. Thus, reading regulation 2(e) with regulation 2(c) & 2(h) of the PIT Regulations, it is evident that the expression 'insider' under regulation 2(e) covers the following persons.

i) Director/ deemed Director who is or was connected with the company.
ii) Officer/employee of the company or any person who on account of professional or business relationship with the company is reasonably expected to have access to UPSI.
iii) Deemed to be connected persons who are reasonably expected to have access to UPSI.
iv) Any person who has actually received or has had access to UPSI.

In the present case, admittedly, CSR was a Director of Satyam till 23.01.2003 and therefore, being responsible for all the acts/ deeds of Satyam, the WTM of SEBI was justified in holding that CSR was an insider under the PIT Regulations."

34. In view of the above observations of Hon'ble SAT, a director of a company is a connected person. In such a case there is no requirement of the said director to be reasonably expected to have access to UPSI in terms of regulation 2(e) of the PIT regulations, 1992 in order to identify him as insider. Considering the above mentioned facts and the observations of Hon'ble SAT, I find that being a director of both MCX and its associate company – NSEL (to whom the show cause notice was issued by DCA), Shri Joseph Massey was a connected person to NSEL and MCX. In view of the positions held by him and long association with both the companies as explained above, it can be reasonably inferred that he had access to the UPSI in his capacity in NSEL and MCX. Since Joseph Massey was acting in dual capacity in NSEL and MCX as a connected person having access to UPSI, he was an "insider" within the definition of the term provided in regulation 2(e) of PIT Regulations, 1992.

35. Having observed as above, the next question that emerges for consideration is whether Shri Joseph Massey violated regulation 3(i) read with regulation 4 of the PIT regulations and section 12A(d) of the SEBI Act. For reference, the text of the said regulations and section is reproduced as under:

Prohibition on dealing, communicating or counselling on matters relating to insider trading.
3. No insider shall—

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

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

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.
12A. No person shall directly or indirectly—
…
(d) engage in insider trading;

36. As noted above, Shri Joseph Massey was an "insider" within the meaning of the term under regulation 2(e) of the PIT Regulations 1992 and during the period April 27, 2012 to October 3, 2012, he sold 6,000 shares of MCX. For the purpose of determining whether Shri Joseph Massey violated regulation 3(i) and 4 of PIT Regulations, 1992 and section 12A(d) of the SEBI Act while selling 6,000 shares of MCX, it needs to be ascertained whether he sold the said shares "*when in possession of*" UPSI as required under regulation 3(i).

37. Shri Joseph Massey has made a preliminary submission (without prejudice to his submissions on merit) that he was not provided an inspection of all the documents which were collected by the investigating officer during investigation. In this regard, I note that an opportunity of inspection was provided to Shri Joseph Massey on September 22, 2017 when his authorized representatives took inspection on his behalf. During the said inspection, Shri Massey was provided with an inspection of investigation report along with all its annexures, which have been relied upon by SEBI for the purpose of passing of the *interim order* dated August 2, 2017. No other document, even if collected by the investigating officer during investigation, has been relied upon by the investigating officer for arriving at the conclusions of the investigation, or by the whole time member of SEBI for the purpose of issuance of directions against the Noticees vide the *interim order*. In light thereof, I am of the view that grant of inspection of documents which were collected during investigation but were not relied upon by SEBI would not be necessary as Shri Massey was provided with all the relevant documents which would have enabled him to submit his appropriate defense in the present proceedings. Shri Joseph Massey has also placed reliance on the decision of the Apex Court in case of *SEBI v. Price Waterhouse* (Civil Appeal No. 6003-6004 of 2012 decided on 10.01.2017). However, as regards the

applicability of the said decision of Hon'ble Supreme Court to other cases in general, the following observations of Hon'ble SAT in the case of *Shri B. Ramalinga Raju v. SEBI* (SAT order dated May 12, 2017) are noteworthy:

> *"… Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants."*

Thus, the observations of Hon'ble Supreme Court in the matter of *SEBI v. Price Waterhouse* being case specific in nature, cannot be applied to the facts of the present case. In view of the above facts, circumstances and observations of Hon'ble SAT, I am not inclined to accede to the request of Shri Massey for grant of inspection of all the documents collected by the investigating officer during investigation.

38. Before dealing with the submissions of Shri Joseph Massey on merit, I find it pertinent to refer to the order of Hon'ble SAT in the matter of *Rajiv B. Gandhi and Ors. v. SEBI* (Hon'ble SAT's order dated May 9, 2008) wherein the Hon'ble SAT observed the following:

> *"We are of the considered opinion that if an insider trades or deals in securities of a listed company,* ***it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary****. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established."*

39. The principle of presumption of possession of information by insiders indicated in the case of *Rajiv B. Gandhi and Ors. v. SEBI* by Hon'ble SAT was also recognized later by Hon'ble SAT in another order in the matter of *Reliance Petro Investments Limited v. SEBI* (Hon'ble SAT's order dated December 7, 2015) in the following words:

"On perusal of para 9 and 10 of the impugned order it is seen that apart from denying that the Appellant was an insider, Appellant had placed on record various documents to rebut the presumption of being in possession of UPSI at the time of purchasing shares and the Appellant had also made submission to the effect that the price sensitive information itself came into existence after the shares were purchased by the Appellant."

40. As observed above, Shri Joseph Massey was an "insider" having access to UPSI under regulation 2(e) of the PIT Regulations, 1992 and therefore, there is a presumption that he traded when in possession of the unpublished price sensitive information. Consequently, it becomes necessary to examine whether Shri Joseph Massey has been able to rebut the said presumption in the facts and circumstances of the case.

41. Shri Joseph Massey has submitted that even assuming that the alleged information regarding implications of SCN was price sensitive and unpublished, he was not at all aware of the same. He submitted that he was a non- executive director of NSEL and MCX. Further, as a non- executive director of NSEL, he was not aware of issuance of SCN dated 27-04-12 to NSEL by DCA and NSEL's reply dated May 29, 2012. He also submitted that no such information was made known to him directly or through the Board of Directors of NSEL either in the form of a board note or by way of disclosure, discussion at the Board Meeting or in any other way. Also, as a non-executive director of MCX, he did not become aware of the said SCN either directly or indirectly through the board of MCX as the matter was never discussed in the Board. According to Shri Massey, he got to know about the SCN against NSEL only on October 3, 2012 when the article was published in Economic Times.

42. Mr. Joseph Massey submitted that his shareholding in MCX was built up from allotment of shares by way of ESOPs, prior to listing of MCX. In 2012, when MCX came out with IPO, it was specifically disclosed upfront in the Prospectus dated February 28, 2012 that he would be selling 10,000 shares post IPO within 3 months of the IPO. Pursuant to the said disclosure, he sold a total of 6000 shares within three months of the IPO. Subsequently, he sold 5240 shares of MCX after October 3, 2012 (when the alleged UPSI had become "published"). He further submitted that he had sold the shares from time to time *inter alia* based on his personal requirement, in the ordinary course, for meeting personal/family expenses and some due to media reports /rumors about imposition of CTT in the market. He also submitted that as on date he continues to hold 20,000 shares of MCX.

43. From the above submissions of Shri Joseph Massey, it appears that the sale of 6,000 shares by Shri Joseph Massey was pre-determined and a disclosure in that regard was also made in the prospectus of MCX dated February 28, 2012. The SCN by DCA to NSEL was issued on April 27, 2012 and thus it was an event subsequent to the disclosure of intention by Shri Joseph Massey to sell the shares of MCX. Thus, the presumption under law that as an insider, his trades were carried out when in possession of UPSI stands rebutted. In view of the facts, circumstances and observations discussed above, the violation of regulation 3(i) and 4 of the PIT Regulations, 1992 and section 12A(d) of the SEBI Act does not stand established against Shri Joseph Massey.

44. Coming to certain ancillary issues of the proceedings, it is noted that Shri Mehmood Vaid, was provided opportunities of hearing on September 13, 2017 and October 4, 2017 but the hearing on both the occasions was adjourned upon his request. He had also filed his initial submissions to the *interim order* which have been taken on record. As observed above, Shri Mehmood Vaid sold the shares of MCX after the publication of price sensitive information on October 3, 2017 and therefore his trading cannot be said to have been done *when in possession of UPSI*. Accordingly, the direction against Shri Mehmood Vaid issued vide the *interim order* will have to be revoked. Considering the above, since no prejudice would be caused to Shri Mehmood Vaid by this order, I find that there is no requirement of providing him another opportunity of hearing in adherence to principles of natural justice.

45. It is noted that during the hearing, the authorized representative for Smt. Asha Shreekant Javalgekar appeared and made an application seeking cross-examination of the investigating officer in the matter on the ground that many of the conclusions drawn in the investigation are not borne out by documentary evidence but are assumptions and presumptions drawn by the investigating officer, the basis of which only he can explain. In this regard, I note that the conclusions of the investigating officer in the investigation report have been drawn on the basis of the facts that emerged from the material collected during the investigation. The investigating officer has not brought out any facts in the investigation report or has drawn any conclusions therein from his personal knowledge. An inference drawn by the investigating officer on examination of specific facts and circumstances that were noted by him during the investigation cannot be equated with assumptions and presumptions. Moreover, the conclusions / inferences drawn by the investigating officer in his report are not final in any manner and the Noticee has been given ample opportunity to submit her defense to the allegations levelled against her. Further, the investigation report along with all the annexures, which were relied upon by SEBI for the purpose of passing of the *interim order* were also given to the Noticee during inspection. Considering the above, I do not find any merit in the request of the Noticee for cross-examination of the

investigating authority and reject the application of the Noticee (Smt. Asha Javalgekar) in that regard. Without prejudice to the above findings regarding the request of Smt. Asha Javalgekar for cross-examination, I also find that in any event since the allegations levelled against Smt. Asha Javalgekar in the interim order have not been established, no prejudice would be caused to her if her request for cross-examination is denied.

46. In view of the foregoing, I, in exercise of the powers conferred under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 and regulation 11 of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015, hereby revoke the directions issued against the Noticees herein vide *interim order* dated August 2, 2017. The order dated August 2, 2017 is disposed of accordingly as against the Noticees herein.

47. It is clarified that other than the Noticees herein, the interim order dated August 2, 2017 was also passed against one more entity namely, Shri Hariharan Vaidyalingam, in respect of whom a separate order will be passed by SEBI.

48. This order shall come into force with immediate effect.

49. This Order shall be served on all Recognized Stock Exchanges and Depositories and Banks to ensure necessary compliance.

Sd/-

DATE: January 5, 2018
PLACE: MUMBAI

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA