

BEFORE THE ADJUDICATING OFFICER

**SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AO/BJD /MAS/ EAD/171-176 /2018]**

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND RULE 3 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005, RESPECTIVELY.

In respect of:

New Delhi Television Limited
(PAN-AAACN0865D)

KVL Narayan Rao
(PAN-AAOPR8441C)

Prannoy Roy
(PAN-AAHPR6037K)

Radhika Roy
(PAN-AAHPR6038G))

Vikramaditya Chandra
(PAN-AACPC0870C)

Anoop Singh Juneja
(PAN-AEJP9757L)

In the matter of M/s. **New Delhi Television Limited**

BACKGROUND

Facts of the case in brief

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation based on a complaint received from Quantum Securities Pvt. Ltd. (QSL), a shareholder of NDTV, that NDTV did not disclose the order of Dispute Resolution Panel-II(DRP-II) of the Income Tax Department, within 2 days of receipt of information, to the stock exchanges. There was also allegation that Vice Chairperson of NDTV had engaged in insider trading by selling his shares based on the information about DRP-II order and did not make the required disclosures to the stock exchanges regarding the sale of his shares as required under SEBI (Prohibition of Insider Trading) Regulations. Investigation was carried out to ascertain whether there was any violation of the provisions of SEBI Act, 1992, SCRA 1956 and various Rules and Regulations and Guidelines made there under.

Appointment of Adjudication Officer

2. Based on the findings of the investigation, SEBI initiated Adjudication proceedings under section 15 I of the SEBI Act, 1992 and section 23 I of Securities Contracts (Regulation) Act, 1956 (SCRA) to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, and Section 23 A(a) and 23E of the SCRA.
3. Shri Prasad Jagdale was appointed as the Adjudicating Officer vide order dated August 10, 2015, to inquire into and adjudge the aforesaid violations. Subsequently, the matter was transferred to the undersigned consequent to an inter-departmental transfer and postings vide an order dated May 16, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (SCN) was issued to the Noticees by the erstwhile AO on August 20, 2015. A brief background and the charges alleged in the SCN are as under.

- 4.1. Mr. K V L Narayan Rao, (referred to as **Noticee no.2**) Vice-Chairperson and a director of NDTV, made delayed disclosures under regulation 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations (hereinafter referred as SEBI(PIT) Regulations) to the stock exchanges for cumulative sale value of the transactions more than Rs.5,00,000.
- 4.2. NDTV (referred to as **Noticee no.1**) made delayed disclosures under clause 36 of the Listing Agreement to the stock exchanges regarding the tax demand of Rs. 450 Crore raised against NDTV by the Income Tax Department.
- 4.3. NDTV made delayed disclosures under Regulation 13(6) of SEBI(PIT) Regulations to the stock exchanges regarding the disclosures made by Mr. K V L Narayan Rao on December 20, 2013 & January 16, 2014.
- 4.4. The non-independent directors of NDTV, namely, MR. Prannoy Roy (**Noticee no.3**), Ms. Radhika Roy(**Noticee no.4**), Mr. K V L Narayan Rao, Mr. Vikramaditya Chandra(**Noticee no.5**) and its compliance officer, Mr. Anoop Singh Juneja(**Noticee no.6**) were also liable for the aforesaid infractions, they being the executives in-charge of the company.
- 4.5. NDTV failed to provide price sensitive information in accordance with Clause 2.1, 3.2 & 7.0(ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of SEBI (PIT) Regulations.
- 4.6. Since Mr. K V L Narayan Rao was the director of NDTV, he was bound by the model code of conduct under SEBI (PIT) Regulations. It was noted that the code of conduct adopted by NDTV was as near thereto the Model Code specified in Schedule I of SEBI (PIT) Regulations. NDTV has also provided the details of pre-clearance of trades taken by Mr. K V L Narayan Rao. It was noted that Mr. K V L Narayan Rao has taken pre-clearance of trades before sale of shares of NDTV in the market. Further, it was also noted that the Mr. K V L Narayan Rao had sold

shares during the *validity* period of pre-clearance of trades obtained by him.

- 4.7. It was noted that Mr. KVL Narayan Rao had sold 10515 shares from December 16, 2013 - December 18, 2013. The cumulative sale value of the transaction was more than Rs. 5,00,000. Hence Mr. K V L Narayan Rao was required to make disclosure under Regulation. 13(4) read with Regulation 13(5) of SEBI(PIT) Regulations, to NDTV and to the stock exchanges within 2 working days i.e by December 20, 2013. Further on December 19, 2013, Mr. K V L Narayan Rao sold 25000 shares whose sale value was more than Rs. 5,00,000. Hence Mr. K V L Narayan Rao was required to make disclosure under 13(4) read with Regulation 13(5) to NDTV and stock exchange within 2 working days i.e by December 21, 2013. It was observed that the Mr. K V L Narayan Rao has made required disclosures to NDTV on December 20, 2013.
- 4.8. Similarly, on January 14 & January 15, 2014, Mr.K V L Narayan Rao has sold 15,000 shares and 13,000 shares respectively and the sale value of both the transactions was more than Rs. 5,00,000. Hence Mr. K V L Narayan Rao was required to make disclosure under Regulation 13(4) read with Regulation 13(5) of SEBI(PIT) Regulations, to NDTV and to the stock exchanges within 2 working days i.e by January 16, 2014 & January 17, 2014 respectively. It was observed that the Mr. K V L Narayan Rao has made required disclosures to NDTV on January 16, 2014.
- 4.9. Mr. K V L Narayan Rao stated that vide letters dated December 20, 2013 & January 16, 2014, he informed the stock exchanges of the sale of shares made by him. However, Mr. K V L Narayan Rao didn't provide the proof of submissions made to the stock exchanges. From the replies received from the stock exchanges, it was observed that Mr. K V L Narayan Rao has disclosed the same only on March 27, 2014. Hence, it was alleged that Mr. K V L Narayan Rao has failed to make the required disclosures under 13(4) read with Regulation 13(5) of SEBI(PIT) Regulations, within the stipulated time to the stock exchanges.

- 4.10. It was also noted that NDTV was required to disclose the disclosures made by Mr. K V L Narayan Rao on December 20, 2013 & January 16, 2014 under Regulation 13(6) of SEBI(PIT) Regulations to the stock exchanges within 2 working days of receipt of the same. NDTV stated that vide its letters dated December 20, 2013 & January 16, 2014, it informed BSE of the sale of shares by Mr. KVL Narayan Rao. However, NDTV didn't provide the proof of submissions made to the stock exchanges. From the replies received from the stock exchanges, it was observed that NDTV has disclosed the same only on March 27, 2014. Hence, it was alleged that NDTV failed to make the required disclosure under Regulation 13(6) of SEBI(PIT) Regulations within the stipulated time to the stock exchanges.
- 4.11. In view of the same, both NDTV and Mr. KVL Narayan Rao were liable for monetary penalty for violation of Regulations 13(4) and 13(5) of SEBI(PIT) Regulations.
- 4.12. The Assessment Officer of Income Tax Department passed the final assessment order on February 21, 2014 raising a tax demand of Rs. 450 Crore. Considering that tax demand of Rs. 450 crores raised on NDTV vide Assessment Order dated February 21, 2014, was a price sensitive information, the company was required to disclose the same to both the stock exchanges on an immediate basis under Clause 36 of the Listing Agreement.
- 4.13. As per Regulation 2(ha) of SEBI(PIT) Regulations, "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.
- 4.14. Therefore, the said IT Assessment Order(AO) raising a tax demand of Rs. 450 crore was a price sensitive information because of the following:-
- 4.14.1. AO in its order has assessed the total income of the company and computed tax and interest thereon. Further, it was mentioned in the order that the penalty proceedings would be initiated separately.
- 4.14.2. It was observed that the net sales of NDTV for FY 2013-14 was Rs 349.77 crores and net loss of Rs. 53.56 crs. Considering the same, the tax

demand of Rs. 450 crores raised through the AO order would have had a huge bearing on the profitability of NDTV. Although NDTV has the option of challenging the AO order in Appellate Tribunal which has been done by NDTV in this case, however, the outcome of the same was uncertain.

4.14.3. NDTV in its annual report for FY 2012-2013 & 2013-14 under the head "Contingent Liability" has disclosed the Income tax matters being contested by the company along with management view on the same. However, the same was not done for the tax demand of Rs. 450 crore raised by AO order dated February 21, 2014. Since NDTV has mentioned other matters which were being contested, it should have shown the tax demand of Rs. 450 crore also as Income Tax matter being contested by the court.

4.15. Therefore, the non disclosure of price sensitive information i.e. the tax demand of Rs. 450 crore raised by the IT department on NDTV was a violation of:

- a) Clause 36 of the Listing Agreement; and
 - b) Clause 2.1, 3.2 & 7.0 (ii) of Schedule II for code of corporate disclosure practices for prevention of Insider Trading read with Regulation 12(2) of SEBI (PIT) Regulations;
- and it was alleged that NDTV, its non-independent directors namely Mr. Prannoy Roy, Ms. Radhika Roy, Mr. KVL Narayan Rao, Mr. Vikramaditya Chanda & its compliance officer, Mr. Anoop Singh Juneja were liable as they failed to provide the price sensitive information as per the above provisions.

4.16. In view of the above, the Noticees were called upon to show cause as to why an enquiry should not be held against them in terms of Rule 4 of SEBI (Procedure for holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995

read with sub-section 2 of section 15I of the SEBI Act and Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiring and imposing penalties by Adjudicating Officer) Rules, 2005 read with sub-section 2 of section 23(I) of the SCRA and penalty not be imposed under sections 15A(b) of the SEBI Act and 23A(a) and 23E of SCRA.

REPLY TO THE SCN, PERSONAL HEARING & SUBMISSIONS

5. The Noticee no.1, vide its letter dated September 29, 2015 sought inspection and copy of all documents that have been relied upon in support of the allegations/ findings of the SCN. It was informed to the Noticee that the relevant details of the investigation report pertaining to the Noticee which was relied upon had already been brought out in the show cause notice. Subsequently the advocate of the Noticees vide letter dated December 05, 2015 again requested for inspection of documents and sought a suitable date and time.
6. The Noticees availed inspection of documents on May 18, 2016 at 14:30 hrs and subsequently vide Letter dated May 23, 2016 sought inspection of further documents including complaint received from Quantum Securities Pvt. Ltd. and communication from stock exchanges relating to disclosures made by Noticee no.2, Mr. K V L Rao. Therefore another opportunity for inspection of documents was provided on June 09, 2016 to the Noticees which was availed by them. However, the Noticees did not file a reply to the show cause notice for a considerable time even after carrying out inspection of documents.
7. The noticees then filed a composite settlement application for settlement of the contraventions as alleged in the show cause notice along with an application for condonation of delay. The said condonation application was dismissed by SEBI vide an order dated August 23, 2017.
8. Pursuant to the above, the Noticees were asked to submit their reply to the SCN and they were accorded an opportunity for personal hearing on September 20, 2017.

However, they sought an extension of time till October 20, 2017. Therefore, another opportunity of hearing was accorded on November 11, 2017.

9. During the hearing Mr. Sumit Garg, the counsel for the Noticees submitted that they have filed a writ petition before the Bombay High Court challenging the rejection of their settlement application by SEBI. They have also prayed for a direction to hold the extant Adjudication proceedings under abeyance. On being asked to submit a reply to the SCN, the counsel submitted that they would evaluate the implications of a reply during the pendency of the Writ petition and accordingly file a reply before November 15, 2017.
10. A reminder was sent to the Noticees on December 11, 2017 to file their reply pursuant to which in an email dated December 30, 2017 their counsel informed that the Order of SEBI dated 23.08.2017 dismissing the settlement application of the Noticees was under challenge in Writ Petition (L) No. 3062 of 2017 which was likely to be listed in January 2018. In view of the same, it requested to defer the extant proceedings sine die to await the outcome of the said Writ petition. It also informed that the Noticee Shri K V L Narayan Rao passed away on November 20, 2017. Subsequently a copy of the death certificate was submitted on February 10, 2018.
11. The Noticees filed their reply, vide an email dated February 10, 2018 through their counsel. The submissions made by them are summarised below:
 - 11.1. The Noticees denied that they have violated the provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (“**Insider Trading Regulations**”) or Clause 36 of the Listing Agreement in a manner brought out in the Notice.
 - 11.2. The alleged non-compliance of Regulation 13(6) of the Insider Trading Regulations against NDTV is baseless and ill-founded as NDTV had made timely disclosures as required under Regulation 13(6) of the Insider Trading Regulations to BSE and NSE on 20.12.2013 and 16.01.2014 in respect of sale of certain equity shares of NDTV by Mr. K.V.L. Narayan Rao on 20.12.2013 and 16.01.2014 respectively. It enclosed a copy of the respective covering letters dated 20.12.2013 and 16.01.2014 along

with the disclosures made by NDTV in the prescribed formats and also the courier slips for reference.

11.3. It also mentioned that an adjudication officer of SEBI had commenced adjudication proceedings against the promoters of NDTV alleging certain non-disclosures by the said promoters under Regulation 30(2) read with 30(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. However, the said promoters provided documentary evidence(s), before the relevant adjudication officer of SEBI, in support of the fact that the said disclosures were made to the stock exchanges in a timely manner. The relevant stock exchanges later confirmed that the said disclosures were made by the said promoters in the prescribed timeframe. Based on the above, AO discharged the said promoters vide its order dated 23.10.2017. From the above, it is established that there may be errors on the part of stock exchanges in not displaying the applicable disclosures made by the relevant persons on their respective websites.

11.4. In respect of non-disclosure of a final assessment order dated 21.02.2014 received by NDTV on 27.02.2014 imposing a tax demand aggregating to INR 450,00,00,000 (Four Hundred Fifty Crore Only), it submitted as under:

11.4.1. On the same date on which the alleged tax demand was received by NDTV, i.e., on or around 27.02.2014, NDTV promptly consulted the Chambers of Senior Counsel Mr. C.S. Aggarwal. The Senior Counsel, Mr. C.S. Aggarwal orally expressed his opinion that the alleged tax demand was based on mere non application of mind by the tax authorities and was devoid of any merit in law. The Senior Counsel further opined that NDTV has a strong case and that it should immediately appeal against the alleged tax demand. It enclosed a copy of the written opinion dated 06.05.2014 issued by the Senior Counsel, Mr. C.S. Aggarwal as a follow-up to the oral advice and his confirmation dated 23.06.2015 regarding NDTV approaching him for an opinion on 27.02.2014.

- 11.4.2. Based on the said advice of the Senior Counsel, understanding of the disclosure requirements under the Listing Agreement and the Insider Trading Regulations and implication(s) of the alleged tax demand on the operations of NDTV, Mr. Ajay Mankotia, (erstwhile President Corporate Planning and Operations of NDTV) and Mr. K.V.L. Narayan Rao, (the erstwhile Executive Vice-Chairperson of NDTV) discussed the matter with the management team of NDTV regarding the requirement to disclose the alleged tax demand to the relevant stock exchanges under Clause 36 of the Listing Agreement and arrived at a *bona fide* decision that, since the alleged tax demand was not tenable and therefore did not have a material impact on NDTV's present or future operations or on NDTV's profitability or financials and disclosing it would have rather created a false market for the scrip, NDTV was not required to disclose the alleged tax demand under Clause 36 of the Listing Agreement or Clauses 2.1, 3.2 & 7.0(ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II read with Regulation 12(2) of the Insider trading Regulations.
- 11.4.3. It also submitted that pursuant to a show cause notice dated 12.02.2015 bearing number EAD/PJ/JAK/OW/4640/2015, SEBI has vide its order dated 04.06.2015 already imposed a penalty of INR 25,00,000/- (Twenty Five Lakhs Only) under Section 23A and INR 1,75,00,000/- (One Crore Seventy Five Lakhs Only) under Section 23E of the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") on NDTV for non-disclosure of the said alleged tax demand of INR 450,00,00,000 (Four Hundred Fifty Crore Only) to the stock exchanges under Clause 36 of the Listing Agreement.
- 11.4.4. It further informed that the aforesaid order is already a subject matter of an Appeal before the Hon'ble Securities Appellate Tribunal. It also submitted that the Noticees had filed a Settlement Application dated March 21, 2017 inter alia in respect of the Notice which was dismissed by SEBI vide its order dated 23.08.2017. The said order dated 23.08.2017 is presently under challenge in the Writ Petition (L) No. 3062 of 2017.

11.4.5. In view of the above, the Noticees again requested to defer the present proceedings sine die to await the outcome of the said Writ Petition.

CONSIDERATION OF ISSUES

12. Before proceeding further, I need to deal with the submission that Noticee No. 2, Shri KVL Narayan Rao has expired. Based on the submission of the counsel and perusal of the death certificate, I find that the Noticee, Shri KVL Narayan Rao, expired on November 20, 2017. I note that the Noticees did not reply to the SCN for a considerable time as they have preferred to opt for settlement and subsequently have preferred an appeal against the rejection of the settlement application. In the interim, the Noticee no.2 has deceased and therefore there are no submissions of the Noticee to be relied on for adjudicating the matter.
13. However, I note that as per SCN, it was alleged that Noticee no. 2 had failed to make disclosure to the Stock Exchanges, under Regulation 13(4) read with Regulations 13(5) of SEBI PIT Regulations, with respect to sales of 10,515 share done between December 16, 2013 to December 18, 2013 and sale of 25,000 shares sold on December 19, 2013. Further, he also failed to make disclosure with respect to sale of 15,000 shares done on January 14, 2014 and 13,000 shares on January 15, 2014. With respect to aforesaid sale transactions, I note from the documents available on record that Noticee had disclosed to the company within the stipulated time. Whereas, based on the email confirmation dated July 22, 2014 from Stock Exchanges, I note that Noticee did not make any disclosure Stock Exchanges as required. Further, it is also corroborated from Stock Exchange website that no such disclosure was available in public domain. Thus, I conclude that Noticee had failed to make disclosure to Stock Exchange as required under under Regulation 13(4) read with Regulations 13(5) of SEBI PIT Regulations.
14. However, in view of the submission that the Noticee has deceased, I have to examine whether the present Adjudication proceedings against them would continue or abate.

15. In this context, the Hon'ble Supreme Court has observed in the *Girijanandini Vs. Bijendra Narain* (AIR 1967 SC 2110) that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.
16. The Hon'ble Securities Appellate Tribunal has also held in *Chandravadan J Dalal Vs. SEBI* that “ *The appeal abates since the appellant during the pendency of the appeal died on 29th November, 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates.*”
17. In view of the foregoing, I am of the view that the proceedings against the Noticee shall abate. Therefore, I am not dealing with other charges alleged against Noticee 2 in the following paras.
18. Now, I proceed to examine the remaining issues on merit. The following are the issues before me for consideration:
- 18.1. Whether the Noticee no.-1 has violated the provisions of Regulation 13 (6) of SEBI (PIT) Regulations and Clause 2.1, 3.2 & 7.0(ii) of Code of Corporate Practices for prevention of Insider Trading?
- 18.2. Does the violation, if any, attract monetary penalty under section 15 A(b) of the SEBI Act? If so, what should be the quantum of penalty?
- 18.3. Whether Noticees 3 to 6 have violated Clause 36 of Listing Agreement read with Section 21 of SCRA, 1956 and Clause 2.1, 3.2 & 7.0(ii) of Code of Corporate Practices for prevention of Insider Trading?
- 18.4. Does the violation, if any, attract monetary penalty under section 23A and 23E of the SCRA and section 15 A(b) of SEBI Act? If so, what should be the quantum of penalty?

FINDINGS

ISSUE-1: Whether the Noticee no.1 has violated the provisions of Regulation 13 (6) of SEBI (PIT) Regulations and Clause 2.1, 3.2 & 7.0(ii) of Code of Corporate Practices for prevention of Insider Trading?

19. I observe that the allegation against Noticee No.1 is that it had failed to make timely disclosure as required under Regulation 13(6) of SEBI (PIT) Regulations to the Stock Exchanges, regarding disclosures made by Noticee No.2 to it, with respect to sale of shares as mentioned at para 13 above.

20. Before examining the submissions it is pertinent to refer to Regulation 13(6) of SEBI (PIT) Regulations, which reads as under:

Disclosure by company to stock exchanges.

Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations "(1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

21. The Noticee has submitted that it made the requisite disclosures as mandated under PIT Regulations, to both NSE and BSE. In support of their claim, it has produced copy of the disclosure made Stock Exchange along with courier slip evidencing that the said documents have been dispatched. However, it did not submit the proof of delivery to Stock Exchanges.

22. I have examined the evidences submitted by Noticee and note that there were two letters dated December 20, 2013 addressed one to BSE and another to NSE, informing them of sale of 35,515 equity shares of NDTV by Mr. K V L Narayan Rao. The disclosure in Form D was enclosed bearing signature of Mr. K V L Narayan Rao. The courier slips were addressed to the two exchanges also had sender's signature with the date as December 20, 2013.

23. I have examined the evidences submitted by Noticee and note that there were two letters dated January 16, 2014 addressed one to BSE and another to NSE, informing them of

sale of 28,000 equity shares of NDTV by Mr. K V L Narayan Rao. The disclosure in Form D was enclosed bearing signature of Mr. K V L Narayan Rao. The courier slips were addressed to the two exchanges also had sender's signature with the date as December 20, 2013.

24. From the above, I note that Noticee had submitted only proof of dispatch in support of their claim of having made timely disclosures to Stock Exchanges. However, they did not submit proof of delivery as an evidence of receipt by the Stock Exchanges. Therefore, I felt it necessary to confirm the claim of the Noticee with the Stock Exchange and accordingly sought details of actual date of receipt of the said disclosures, vide email dated March 13, 2018. NSE and BSE, vide their emails dated March 16, 2018, submitted that the disclosures were received by it through fax on March 27, 2014 and enclosed copy of the disclosure made by Noticee in this regard.
25. Upon perusal of disclosure made by Noticee, I find that the letter of Noticee was dated March 27, 2014 which states at para 2 that *"We would like to bring to your notice that, the director and the company have duly disclosed the change in shareholding on two occasions vide their letters dated December 20, 2013 and January 16, 2014, but both the disclosures are not been reflecting on the portal of Stock Exchange"*. Accordingly, it has enclosed the disclosure submitted earlier and requested Stock Exchanges to do the needful.
26. It is evident from the above observations that Noticee was aware that the disclosures claimed to have been made by the Noticee vide letters December 20, 2013 and January 16, 2014 were not in the public domain till March 27, 2014. Thus, it established that information regarding the disclosures made by Noticee 2 was disseminated in the public domain only after delay of 95 days and 68 days respectively. Therefore, it appears that Noticee had not taken any steps to verify and follow up with Stock Exchanges after the dispatch of disclosures whereas after a gap of more than 2 / 3 months, it was able to ascertain that disclosure were not in public domain and accordingly resubmitted the same to Stock Exchanges on March 27, 2014.

27. In light of above, I find that there is no merit in the submission of Noticee that failure to disseminate the disclosure on their website was due to an error on the part of the Stock Exchanges especially when Noticee failed to submit proof of delivery. Incidentally, it is surprising to note that although Noticee had submitted evidence of having dispatched (courier slips) to BSE and NSE, both exchanges have failed to receive and disseminate the same which is highly unlikely and improbable.
28. I am of the view that any listed company should exercise diligence to ensure that all disclosure mandated under SEBI regulations are available in public domain promptly, which if not done will defeat the purpose of disclosure. From records, I note that Noticee did not take any steps to verify whether the claimed disclosure made to Stock Exchange were in indeed disseminated in public domain within the stipulated time. Such a conduct suggests a casual approach towards regulatory compliance which erodes the trust and confidence of investors in a listed company.
29. The regulation states that “ *Every listed Company,... shall disclose to all stock exchanges...*) which casts obligation on the listed company to ensure that disclosures as mandated are available on public domain promptly. Therefore, the obligation of Noticee does not end with mere dispatch of letter, rather ensure its delivery and subsequent dissemination. In this case, I have no doubt that the Noticee failed to make the disclosure as per Regulation 13(6) which deprived the investors of the information regarding sale of shares by an Insider, thereby affecting the interest of investors. Thus I conclude that the Noticee no.1 has violated the provisions of Regulation 13(6) of the SEBI (PIT) Regulations and clause 2.1 and 7.0(ii) of Code of Corporate Practices for prevention of Insider Trading and therefore liable for penalty under Section 15 A(b) of SEBI Act.

ISSUE-2: Does the violation, if any, attract monetary penalty under section 15 A(b) of the SEBI Act? If so, what should be the quantum of penalty?

30. In order to arrive at the quantum of penalty, I have considered the fact that there were two instances of violations as the Noticee 1 failed to disclose the two instances when the Noticee no. 2 made the disclosures to the company. Further, the conduct of Noticee establishes the lack of diligence expected of a listed company which had

resulted in delayed disclosure of 3 months for the first set of sale transactions and delay of 2 months for the second set of sale transaction of Noticee 2.

ISSUE-3: Whether Noticees 3 to 6 have violated Clause 36 of Listing Agreement read with Section 21 of SCRA, 1956 and Clause 2.1, 3.2 & 7.0(ii) of Code of Corporate Practices for prevention of Insider Trading?

31. The charges against Noticee nos 3-6 are that they failed to disclose price sensitive information regarding the tax demand of Rs.450 crore raised by the IT department, to the stock exchanges thereby violating Clause 36 of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956. They also failed to make timely disclosure regarding the change in shareholding of Noticee no.-2 for sale value of more than Rs. 5 lakh in accordance with Clause 2.1, 3.2 & 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12 (2) of SEBI (PIT) Regulations.

32. The provisions of Clause 36 of the Listing Agreement are reproduced hereunder:

Apart from complying with all specific requirements, the Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security- holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to stock exchange(s) on request such information concerning the Issuer as the stock exchange(s) may reasonably require. The material events may be events such as:

- a) Change in the general character or nature of business*
- b) Disruption of operations due to natural calamity*
- c) Commencement of Commercial Production/Commercial Operations*
- d) Developments with respect to pricing/realisation arising out of*

change in the regulatory framework

- e) *Litigation /dispute with a material impact*
- f) *Revision in Ratings*
- g) *Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to;*
 - *Issue of any class of securities.*
 - *Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off of setting divisions of the company, etc.*
 - *Change in market lot of the company's shares, sub-division of equity shares of the company.*
 - *Voluntary delisting by the company from the stock exchange(s).*
 - *Forfeiture of shares.*
 - *Any action which will result in alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.*
 - *Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad.*
 - *Cancellation of dividend/rights/bonus, etc.*

The above information should be made public immediately.

33. From the above clear, it is clear that litigation/ dispute with material impact should be disclosed to public immediately. It is matter of record that Noticee had received tax demand notice from Income Tax Notice for Rs 450 crores on February 27, 2014 but did not disclose the same to the public. In this regard, submitted that on the same day of receipt of Income Tax Notice, it had promptly consulted the Chambers of Senior Counsel, Mr. C S Agarwal, who orally expressed his opinion that the alleged tax demand was based on mere non application of mind by the Tax Authorities and was devoid of any merit in law. It was further opined that NDTV has a strong case and that it should immediately appeal against the alleged tax demand. Based on the legal advice, it was submitted that the management team of NDTV after deliberations arrived at the bona

fide decision that since the alleged tax demand was not tenable and therefore did not have material impact on the NDTV present or future operation or on NDTV's profitability or financials and disclosing it would have rather created a false market for the scrip. Accordingly, it was decided not to disclose under Clause 36 of the Listing Agreement.

34. It is evident from the above submission that Noticee 2, President Corporate Planning and Operations had discussed and deliberated with the management team of NDTV and thereafter decided not to disclose the said information as it would create a false market for the scrip. The very fact that Noticee 1 had apprehended creation of false market in the scrip on disclosure of tax demand itself substantiates that said information was material in nature. Therefore, as per clause 36 of listing agreement, it will be required to be disclosed immediately to the public, which in this case, it had not been done. Further, I note that Noticee 3 to 6 being part of Management of NDTV failed to ensure that all deliberations and discussions were recorded and documented especially when deciding withholding any information on any events which have potential to impact on market. Therefore, it is expected of listed company to demonstrate highest standard of transparency and professionalism in the decision making process while deciding on materiality of events in order to discourage speculation on such events which may affect the interest of investors.

35. I also note that as ICDR Regulations, companies while filing the IPO have to make disclosures on the Risk factors which includes the following provision "*All disputed or contested tax demands and other government claims, along with the disclosures of amount, period for which such demands or claims are outstanding, financial implications and the status of the case.*" This clearly indicates that tax claims even though interim or appealed against are considered as risk factors which have to be disclosed to the prospective investors. Therefore, considering clause 36 of listing agreement and the above provisions of ICDR, I have no doubt that the said event of Income Tax Demand was material fact which was required to be disclosed to the investors immediately.

36. As per clause 36 of listing agreement, the responsibility to disclose has been cast on the company. However, company being artificial person would conduct its operation through

natural person who form the management of the company. In this regard, I take note of Section 27 of the SEBI Act, 1992 states that “where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly”. Further, Section 21 of SCRA reads states that “*Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of listing agreement with that stock exchange*”.

37. From the above, I note that persons in charge of the company or the principal officer would be liable for the compliance of clause 36 of the listing agreement. I note that Noticees nos 3 & 4 were the Executive Co-Chairpersons and Noticee no. 5 was the Group CEO & Executive Director constituting the top management of the company. Noticee no.6 was the Company Secretary and Compliance Officer of the company. These people constitute the management of the company who are responsible for the day-to-day and overall operations of the company. Further, it is an admitted fact that the decision not to disclose the tax demand was a conscious decision taken by the management of NDTV. Therefore, I conclude that Noticees nos 3 & 4 being Executive Co-Chairpersons and Noticee no. 5 being Group CEO & Executive Director and Noticee no.6 was the Company Secretary and Compliance Officer have violated provision of clause 36 of listing agreement and therefore liable for penalty under 23A(a) and 23E of SCRA
38. For the purpose of imposition of penalty against Noticee 3 to 6 under 23A(a) and 23E of SCRA, I take note of the fact that with respect to non-disclosure of said Income Tax Demand, the Noticee no.-1 has been penalised through a different proceeding, with the AO imposing a penalty of Rs.25,00,000/- (Rupees Twenty five Lakhs only) under Section 23A and Rs. 1,75,00,000/- (Rupees One Crore Seventy five Lakhs only) under Section 23E of the SCRA, 1956.
39. I also find that the Noticees 3 to 6 have also been charged with violating the provisions of Clause 2.1, 3.2 & 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices for

Prevention of Insider Trading read with Regulation 12 (2) of SEBI (PIT) Regulations. I have examined the said clauses which have been reproduce below:

Clause 2.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II states that price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

Clause 3.2 of Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II states that this official (designate a senior official such as compliance officer) shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedures.

Clause 7.0(ii) of Code of Corporate Disclosure Practices for Prevention of Insider Trading specified in Schedule II states that corporates shall ensure that disclosure to stock exchanges is made promptly.

Regulation 12(2) of SEBI (PIT) Regulations states that the entities mentioned in sub-regulation (1), shall abide by the Code of Corporate Disclosure Practices as specified in Schedule II of SEBI(PIT) Regulations.

40. I note that Regulation 12 specifies the list of entities who shall abide by the Code of Corporate Disclosure Practices which includes the listed companies. I also observe that clauses 2.1 and 7.0 are applicable to companies and not to individuals. However, clause 3.2 specifies that the designated official such as the compliance officer shall be responsible for ensuring that the company complies with continuous disclosure requirements.

41. In line with the above interpretation, I conclude that the obligation rests solely on the compliance officer given the responsibility cast on the role and therefore Noticee no. 6

has violated clauses 3.2 of Code of Corporate Disclosure Practices for Prevention of Insider Trading and therefore liable for penalty under 15A(b) of the SEBI Act.

ISSUE-4: Does the violation, if any, attract monetary penalty under section 23A(a) and 23E of SCRA and 15A(b) of SEBI Act? If so, what should be the quantum of penalty?

42. For the purpose of imposing penalty, I have taken cognisance of the fact that for the same violation, Noticee no-1 was already penalised and therefore I am inclined to take a lenient view and impose a penalty of Rs 3,00,000/- on each Noticee nos 3 to 5 for violation of Clause 36 of the Listing Agreement under Section 23A(a) and 23E of SCRA. I impose a penalty of Rs. 3,00,000/- on Noticee no. 6 for violations of Clause 36 of the Listing Agreement read with Section 21 of SCRA, 1956 and Clause 3.2 of Schedule II for Code of Corporate Disclosure Practices read with 12(2) of SEBI (PIT) Regulation under Section 15A(b) of SEBI Act, 1992.

ORDER

43. In view of demise of Noticee 2, as explained in para 12 to 16, the proceedings against the Noticee 2 shall abate.

44. After considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the SEBI Act, 1992 and Section 23-I of SCRA read with Rule 5 and Rule 3 of the respective Adjudication rules, I hereby impose the following penalty on the Noticees which will be commensurate with the violations committed by them.

Sl. No.	Name of the Noticees	Regulation Violated	Section under which penalty imposed	Penalty Amount in Rupees
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1.	NDTV	Regulation 13(6) of the SEBI (PIT) Regulations and Clause 2.1 & 7.0 (ii) of Schedule II for Code of Corporate Disclosure Practices read with 12(2) of SEBI (PIT) Regulation	Section 15 A(b) of the SEBI Act, 1992.	Rs. 10,00,000/-
2.	Mr. Prannoy Roy	Clause 36 of the Listing Agreement read with	Section 23A(a) and 23 E of SCRA, 1956.	Rs. 3,00,000/
3.	Ms. Radhika Roy	Section 21 of SCRA, 1956		Rs. 3,00,000/
4.	Mr. Vikramaditya Chandra			Rs. 3,00,000/
5.	Mr. Anoop Singh Juneja	Clause 36 of the Listing Agreement read with Section 21 of SCRA, 1956	Section 23A(a) and 23 E of SCRA, 1956.	Rs. 2,00,000/-
		Clause 3.2 of Schedule II for Code of Corporate Disclosure Practices read with 12(2) of SEBI (PIT) Regulation	Section 15 A(b) of the SEBI Act, 1992.	Rs. 1,00,000/-

45. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

46. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment in the format as given in table below to “ The Division Chief, EFD- DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C-4 A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400051”.

1.	Case Name	
2.	Name of the Payee	
3.	Date of Payment	
4.	Amount Paid	
5.	Transaction No.	
6.	Bank Details in which payment is made	
7.	Payment is made for (like penalty/disgorgement/ recovery/ settlement amount and legal charges)	
8.	Order Reference	

47. In terms of rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and to Securities and Exchange Board of India.

Date: March 16, 2018

Place: Mumbai

Dilip B J

Adjudicating Officer