

SECURITIES AND EXCHANGE BOARD OF INDIA

IMPOUNDING ORDER

UNDER SECTION 19 READ WITH SECTIONS 11(1), 11(4)(d), 11(4A), 11(5) AND SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 10 OF THE SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015 –

IN THE MATTER OF DYNAMATIC TECHNOLOGIES LIMITED.

IN RESPECT OF:

Name of the Entity	PAN
UDAYANT MALHOUTRA	ADKPM5097J

1. Securities and Exchange Board of India (“**SEBI**”) conducted an investigation into the possible insider trading in the shares of Dynamatic Technologies Limited (“**DTL**” / “**Company**”) during the period from August 17, 2016 to November 11, 2016 (“**investigation period**”), on the basis of unpublished price sensitive information (“**UPSI**”), in contravention of the provisions of the SEBI Act, 1992 (“**SEBI Act**”) read with the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”).
2. DTL is a company registered under the Companies Act, 1956 and its shares are listed on BSE Limited (“**BSE**”) and the National Stock Exchange of India Ltd. (“**NSE**”).

3. The Directors and Key Personnel of DTL during the investigation period were as under:

Table-1 Management of the Company			
Director Name	Designation	Date of appointment	Date of Cessation
Govind Manik Mirchandani	Director	June 27, 2008	--
Udayant Malhoutra	Managing Director	October 1, 1989	--
Air Chief Marshal S Krishnaswamy (Retd.)	Director	July 23, 2005	August 13, 2017
Vijay Kapur	Director	January 31, 1992	August 13, 2017
N R Mohanty	Director	September 16, 2006	--
P S Ramesh	Whole Time Director	November 14, 2014	--
Hanuman Kumar Sharma	CFO	November 14, 2014	February 14, 2018
Malavika Jayaram	Director	June 27, 2008	--
Shirish Saraf	Additional Director	November 11, 2016	April 25, 2018

Source: NSE/MCA Website

4. The shareholding pattern of DTL for various quarters prior to, during and subsequent to the Investigation Period are as under:

Table-2 Shareholding Pattern						
Particular	Quarter ending March 2016			Quarter ending June 2016		
	No. of shareh olders	No. Of shares	%	No. of sharehol ders	No. Of shares	%
Promoters	11	32,42,245	51.13	11	32,42,245	51.13
Public	10,180	30,99,198	48.87	9,933	30,99,198	48.87
Total	10,191	63,41,443	100.00	9,944	63,41,443	100.00
Particular	Quarter ending September 2016			Quarter ending December 2016		

	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%
Promoters	11	32,42,245	51.13	10	31,91,245	50.32
Non-Promoters	9,264	30,99,198	48.87	9,701	31,50,198	49.68
Total	10,191	63,41,443	100.00	9,711	63,41,443	100.00
(Source: www.bseindia.com)						

5. On November 11, 2016 (after the trading hours), DTL announced the consolidated financial results for the quarter ended September 30, 2016 wherein it was observed that the consolidated Net Profit after Tax (NPAT) for the quarter had decreased by 37.27% over the previous quarter. The price of the shares of DTL touched a 52 week high of ₹3,655.80 on October 24, 2016, i.e., prior to the announcement of the financial results. The price of the shares of DTL on November 11, 2016 (i.e., on the day when the announcement was made after the trading hours) and on November 15, 2016 (i.e., the succeeding trading day) respectively, were as under:

Table-3 Price Movement in the Shares of DTL						
Exchange	Date	Opening Price (₹)	High Price (₹)	Low Price (₹)	Closing Price (₹)	Number of shares traded
BSE	November 11, 2016	3,111.30	3,299.00	3,066.00	3,227.40	1,006
	November 15, 2016	3,154.40	3,275.00	2,861.00	2,895.10	1,676
NSE	November 11, 2016	3,175.05	3,289.95	3,142.00	3,166.75	3,341
	November 15, 2016	3,200.00	3,200.00	2,865.00	2,899.55	10,306

(Source: www.bseindia.com and www.nseindia.com)

6. From the above, I observe that closing prices of the shares at BSE and NSE were ₹2895.10 and ₹2899.55 respectively on November 15, 2016 as against closing prices of ₹3,227.40 and ₹3,166.75 on November 11, 2016 i.e. a decrease of ₹332.30 and ₹267.20 respectively. SEBI carried out an investigation of the entities who have traded during the investigation period to find any violation of the PIT Regulations.
7. Before I proceed further in the matter, I find it relevant to quote the following Regulations of the PIT Regulations and the findings on the existence of UPSI and the period of its existence:
- a. "Unpublished price sensitive information" has been defined in Regulation 2(n) of the PIT Regulations, which reads as under:
- "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:-*
- (i) financial results;*
 - (ii) dividends;*
 - (iii) change in capital structure;*
 - (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
 - (v) changes in key managerial personal; and*
 - (vi) material events in accordance with the listing agreement.*

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

- b. The consolidated financial results of the company for the quarter ended September 30, 2016 indicated that the consolidated Net Profit after Tax (NPAT) for the quarter had decreased by 37.27% over the previous quarter.
- c. In view of the above, I note that there existed an unpublished price sensitive information – relating to decline in the consolidated profit for the Quarter ended September 2016, till the financial results for the said Quarter were disclosed to the stock exchanges by DTL on November 11, 2016.
- d. Date when UPSI came into existence:

The Company, vide its letter May 02, 2017 confirmed the dates of receipt of standalone financial results for the quarter ended September 30, 2016, from all the subsidiaries for preparation of the consolidated Profit & Loss Account and the Balance Sheet, as under:

Table-4 Chronology of receipt of standalone financial results from subsidiaries		
Sl. No.	Name of the Subsidiary Company	Date of receipt of financials by DTL
1.	JKM Ferrotech Limited, India	October 11, 2016

2.	JKM Erla Automative Limited, India	October 19, 2016
3.	JKM Research Farm, Ltd., India	October 22, 2016
5.	JKM Global Pte Limited, Singapore	October 23, 2016
6.	Dynamatic Ltd., UK	October 18, 2016
7.	Yew Tree Investments Ltd., UK	October 18, 2016
8.	Eisenwerk Erla GmbH, Germany	October 20, 2016
9.	JKM Erla Holdings GmbH, Germany	October 20, 2016
10.	Dynamatic LLC, US	October 18, 2016

- e. Further, the Company, vide email dated May 12, 2017, submitted that the decline in the consolidated revenue for the quarter ended September 30, 2016 when compared with the previous quarter ended June 30, 2016, was majorly attributable to the decline in revenue of Dynamatic Ltd., UK and Eisenwerk Erla GmbH, Germany. This decline in revenue of the aforesaid two subsidiaries resulted in overall decline in EBITDA for the quarter ended September 30, 2016 when compared with the previous quarter ended June 30, 2016. Hence, in the extant matter, the date of receipt of financials from the aforesaid subsidiaries shall be treated as the date when the UPSI came into existence. Accordingly, the date of receipt of the financials from Dynamatic Ltd., UK (i.e., October 18, 2016) and Eisenwerk Erla GmbH, Germany (i.e., October 20, 2016) shall be considered as the relevant date of existence of UPSI. Therefore, the earliest date being October

18, 2016 i.e., the date of receipt financials from Dynamatic Ltd., UK is taken as the date when the UPSI came into existence.

f. Date when UPSI ceased to exist and became public:

Price Sensitive Information i.e., the decline in the consolidated profit for the quarter ended September 30, 2016, ceased to exist and became public when DTL disclosed the its quarterly consolidated financial results, to the stock exchanges on November 11, 2016 (after the trading hours).

g. Therefore, the Period of UPSI has been determined as – from October 18, 2016 to November 11, 2016 (both days inclusive).

8. The announcement regarding decline in the consolidated profit of DTL for the quarter ended September 30, 2016 had a negative impact the share price of DTL, as given below:

Table-5 - Impact of Announcement by DTL on the share price of DTL at BSE & NSE							
Date	Announcement by DTL	Price Impact/Shares Traded					Remarks
November 11, 2016 (after trading hours)	Consolidated quarterly financial results for the quarter ended September 30, 2016	<u>Price Impact</u>					The price of the shares decreased substantially on November 15, 2016 i.e., the next trading day, and touched a low of ₹2,861 in BSE and
		November 11, 2016					
			Open	High	Low	Closing	
		BSE	3111.30	3,299.00	3,066.00	3,227.40	
		NSE	3,175.05	3,289.95	3,142.00	3,160.00	
		November 15, 2016					
			Open	High	Low	Closing	
		BSE	3,154.40	3,275.00	2,861.00	2,861.00	
		NSE	3,200.00	3,200.00	2,865.00	2,899.55	

		<table><tr><th colspan="3"><u>Number of shares traded</u></th></tr><tr><th></th><th colspan="2">No. of shares traded</th></tr><tr><th></th><th>November 11, 2016</th><th>November 15, 2016</th></tr><tr><td><i>BSE</i></td><td>1,006</td><td>1,676</td></tr><tr><td><i>NSE</i></td><td>3,341</td><td>10,306</td></tr></table>	<u>Number of shares traded</u>				No. of shares traded			November 11, 2016	November 15, 2016	<i>BSE</i>	1,006	1,676	<i>NSE</i>	3,341	10,306	<p>₹2,865 in NSE i.e. a fall of ₹366.40 and ₹295 respectively from close of November 11, 2016.</p> <p>Further, volume of the shares increased substantially at both the exchanges. From 1,006 to 1,676 and from 3,341 to 10,306 in BSE and NSE respectively, as compared to volume of November 11, 2016.</p>
<u>Number of shares traded</u>																		
	No. of shares traded																	
	November 11, 2016	November 15, 2016																
<i>BSE</i>	1,006	1,676																
<i>NSE</i>	3,341	10,306																

9. It is observed from above table that the price of the shares decreased substantially on November 15, 2016 touching a low of ₹2,861.00 and ₹2,865.00 in BSE and NSE respectively, i.e. a fall of 11.35% at BSE and 9.34% at NSE, compared to the closing prices on November 11, 2016. Accordingly, I note that the announcement was price sensitive and had a significant influence over the prices of the shares of the company.

10. Insiders and Connected Persons:

The term "**Insider**" as defined in Regulation 2(1)(g) the PIT Regulations is as follows:

"insider" means any person who is:

- (i) a connected person; or*
- (ii) in possession of or having access to unpublished price sensitive information;*

In terms of Regulation 2(1)(d) of the PIT Regulations, "connected person" means:

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

(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -

- (a) an immediate relative of connected persons specified in clause (i); or*
- (b) a holding company or associate company or subsidiary company; or*
- (c) an intermediary as specified in section 12 of the Act or employee or director thereof, or*
- (d) an investment company, trustee company, asset management company or an employee or director thereof; or*
- (e) an official of a stock exchange or of clearing house or corporation; or*
- (f) a member of the board of trustees of a mutual fund and a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or*
- (g) a member of the board of directors or an employee, of a public financial institution as defined in section 2(72) of the Companies Act, 2013, or*
- (h) an official or an employee of a self-regulatory organization recognised or authorized by the Board, or*
- (i) a banker of the company, or*
- (j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or has immediate relative or interest;*

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

11. Udayant Malhoutra, being the CEO & Managing Director of DTL, is connected to the Company and was reasonably expected to have access to the aforesaid UPSI as per Para 7 (b) above. Therefore, prima-facie, Udayant Malhoutra is a "connected person" in terms of Regulation 2(1)(d)(i) of the PIT Regulations and can be considered to be an "insider" in terms of Regulation 2(1)(g) of the PIT Regulations.
12. The investigation also revealed that the said entity viz., Udayant Malhoutra had traded in the shares of DTL during the period of UPSI. The details of the trades carried by Udayant Malhoutra in the shares of DTL during the period of UPSI are given below:

Table-6 – Dealings of Udayant Malhoutra in the shares of DTL				
Date	Buy Qty	Buy value	Sell Qty	Sell Value (₹)
24/10/2016 (BSE)	0	0	23,483	8,01,76,043.75
24/10/2016 (NSE)	0	0	27,517	9,42,46,746.30
TOTAL			51,000	17,44,22,790.05

13. Therefore, Udayant Malhoutra being "insider", has traded in the shares of the company while being in possession of UPSI and has, prima-facie, violated Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) read with 4(2) of the PIT

Regulations by trading in the shares of DTL when in possession of UPSI, thereby indulging in insider trading.

14. The Investigation Report, inter-alia, observed that the contention of Udayant Malhoutra that the sale of shares was executed to comply with the covenants of the agreement entered into with the banks, is not tenable as the sale was not done within the timeline stipulated therein and he could have sold these shares anytime between July 15, 2016 to October 12, 2016.
15. As noted in Para 7 above, the consolidated quarterly financial results of DTL were communicated to the stock exchanges after the trading hours on November 11, 2016. Further, the price of the shares of DTL witnessed fall on the immediately succeeding trading day i.e., November 15, 2016. Thus, Udayant Malhoutra, having traded on the basis of UPSI and during the UPSI period, have avoided loss on account of the fall in price of the shares due to the announcement of the said quarterly consolidated financial results of DTL.
16. The formula for and the computation of notional loss avoided by trading while in possession of UPSI is as given below:

Loss avoided	=	[No. of shares sold while in possession of UPSI (A) x Weighted Average Sell Price (B)]
		Minus (-) [No. of shares sold while in possession of UPSI(A) x Average Closing Price of the shares on the day of UPSI becoming public]

17. Based on the above formula, the notional loss averted by Udayant Malhoutra by selling 51,000 shares of DTL before the announcement of financial results, is calculated at ₹2,66,59,215.05 (Rupees two crore sixty six lakh fifty nine thousand two hundred and fifteen and paise five only) as per Table 7 given below:

Table-7 – Computation of Notional Loss avoided by Udayant Malhoutra						
Exchange	No. of shares sold	Wt. Avg. Selling Price	Avg Closing Price on Nov. 15, 2016	Total Sale Value (As per Trade Log from the Exchanges concerned)	Value of Shares as on Nov. 15, 2016	Loss avoided
	(A)	(B)=(D/A)	(C)	(D)	(E) = (AxC)	(F) = (D-E)
BSE	23,483	3414.22	2897.32	8,01,76,043.75	6,80,37,882.97	1,21,38,160.78
NSE	27,517	3425.04	2897.32	9,42,46,746.30	7,97,25,692.03	1,45,21,054.27
TOTAL	51,000	3420.05	2897.32	17,44,22,790.05	14,77,65,575.00	2,66,59,215.05

18. Factors considered for calculation of notional loss avoided are as given below:

- i. Vide announcement disseminated on November 3, 2016, the trading window in accordance with the PIT Regulations, was closed from November 4, 2016 to November 14, 2016 (both days inclusive).
- ii. As the shares are listed on BSE and NSE and the entity has sold the shares in both the exchanges, average of closing prices on November

15, 2016 is calculated for the purpose {(Average Closing Price = Closing Price at BSE + Closing Price at NSE)/2 = (₹2,895.10 + ₹2899.55)/2 = ₹2,897.325 }.

19. Accordingly, it is, prima-facie, observed that Udayant Malhoutra had avoided the loss of ₹2,66,59,215.05 by selling 51,000 shares of DTL before the declaration of the financial results to the stock exchanges.

20. As the amount of notional loss avoided was pertaining to the period from October 24, 2016, it becomes reasonable and necessary to levy an interest at the rate of 12% simple interest per annum, which has been computed as under:

Table-8 – Computation of Notional Loss avoided by Udayant Malhoutra			
Name of the Entity	Notional Loss avoided (in ₹)	Interest @ 12% per annum* (in ₹)	TOTAL (in ₹)
Udayant Malhoutra	2,66,59,215.05	1,16,57,015.68	3,83,16,230.73
*Interest calculated on notional loss avoided, during the period from the date when the entity traded i.e., on October 24, 2016 to the date of this order, i.e. June 15, 2020.			

21. As observed above, the amount of loss avoided by Udayant Malhoutra in aggregate including interest through trading in the shares of DTL amounted to ₹3,83,16,230.73

(Rupees Three crore eighty three lakh sixteen thousand two hundred and thirty and paise seventy three)

22. With the initiation of quasi-judicial proceedings, it is possible that the entity may divert the notional gain (subject to the adjudication of the allegation on the merits in the final order), which may result in defeating the effective implementation of the direction of disgorgement, if any, to be passed after adjudication on merits. Non-interference by SEBI at this stage would therefore result in irreparable injury to the interest of the securities market and the investors. It is therefore imperative for SEBI to take urgent steps of impounding and retaining the proceeds of notional loss avoided by Udayant Malhoutra, by way of an interim measure.

23. It is also observed that Udayant Malhoutra approached Motilal Oswal Securities Ltd. to sell 60,000 shares on October 24, 2016. However, as per the information submitted by the DTL, Udayant Malhoutra, vide his Application for Pre-Trading Approval dated October 20, 2016, sought approval for sale of 51,000 shares only, which was approved by the Compliance Officer on October 20, 2016. Also, it is observed from the trade logs obtained from the Exchanges, the entity placed two Sell Orders for 26,000 shares each in both BSE and NSE by his trading member Motilal Oswal Securities Ltd. Hence, it is, prima-facie, observed that the Pre-Trading Approval was not taken for the required number of shares for which sale orders were placed. Further, a designated person shall not apply for pre-clearance of any proposed trade if such person is in possession of unpublished price sensitive

information even if the trading window is not closed. Since Udayant Malhoutra was the Managing Director and 'a connected person', he has, prima-facie, violated Sections 12A(d) and (e) of the SEBI Act and Regulation 4(1) read with Regulation 4(2) of PIT Regulations as well as Clause 6 of Schedule B read with Regulation 9(1) of the PIT Regulations.

24. Accordingly, as an interim measure, an *ad-interim ex-parte* Order for impounding such alleged losses avoided, under Sections 11(1) read with 11(4)(d), 11(5) and Section 11B of the SEBI Act read with Regulation 10 of the PIT Regulations needs to be issued against Udayant Malhoutra.

ORDER:

25. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 19 read with Section 11(1), 11(4)(d), 11(5) and Section 11B of the SEBI Act read with Regulation 10 of the PIT Regulations, hereby issue the following directions:

- a. A sum of ₹3,83,16,230.73, being the notional loss avoided on account of trades carried out during the UPSI Period, shall be impounded from Udayant Malhoutra (PAN: ADKPM5097J) with immediate effect.
- b. Udayant Malhoutra is directed to credit the aforesaid amounts to an Escrow Account ("Escrow Account in Compliance with SEBI Order dated June 15, 2020 – A/c Udayant Malhoutra") in a nationalized Bank, by marking a lien over it. Banks are not allowed to transfer the amounts available in the bank accounts of Udayant Malhoutra (PAN: ADKPM5097J) other than to the said Escrow

Account until the amounts as stated above are transferred to the Escrow Account. Credits, if any, into the accounts may be allowed. Depositories are directed that no debit shall be made without the permission of SEBI, in respect of the demat accounts held by the aforesaid person. The Banks and the Depositories are directed to ensure that all the aforementioned directions are strictly enforced.

26. Further, Udayant Malhoutra is directed not to dispose of or alienate any of his assets/properties/securities till such time the amounts are credited to Escrow Account. Further, he is directed to provide, within 7 days of this Order, a full inventory of all his assets and properties and details of all their bank accounts, demat accounts and holdings and holdings of shares/securities, if held in physical form and details of companies in which he holds substantial or controlling interest.

27. The prima-facie observations/findings contained in this Order are made on the basis of the material available on record. In the light of the alleged violations of the provisions of Sections 12A(d) and (e) of the SEBI Act and Regulation 4(1) read with Regulation 4(2) of PIT Regulations as well as Clause 6 of Schedule B read with Regulation 9(1) of the PIT Regulations, by Udayant Malhoutra, this Order shall be treated as a Notice under Section 11(1), 11(4), 11B(1), 11(4A) and 11(5) read with Section 15G and 15HB of the SEBI Act, calling upon him to show cause as to why certain directions shall not be passed against him, as proposed hereunder;

- a. Direction to disgorge an amount equivalent to the loss avoided on account of insider trading in the shares of DTL along with interest;

- b. Direction to restrain him from accessing the securities market and prohibiting him from buying, selling or otherwise dealing in securities for an appropriate period;
 - c. Levying monetary penalty under the provisions of Sections 11(4A) and 11B(2) read with Section 15G and 15HB of the SEBI Act.
28. SEBI shall serve upon the aforementioned person all the relevant documents including the findings of Investigation Report and the annexures therein along with this Order.
29. Udayant Malhoutra against whom this Order has been passed may file his reply along with supporting enclosures and documents to SEBI within 30 days from the date of receipt of this Order and avail an opportunity of personal hearing in the matter, if he so desires.
30. This Order shall come into force with immediate effect and shall be in force till further Orders.
31. A copy of this Order shall be forwarded to the Stock Exchanges, Depositories, Registrar and Transfer Agents of the Company, and Banks to ensure necessary compliance.

Place : Mumbai

Date : June 15, 2020

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA