

## BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

## ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

## IN RESPECT OF:

| Sl. No. | Name of the Entity                   | PAN        |
|---------|--------------------------------------|------------|
| 1.      | Mr. Sanjay Dutt                      | ABPPD3025L |
| 2.      | Mrs. Prenita Dutt                    | ABPPD3026K |
| 3.      | Quantum Securities Private Limited   | AAACQ0160C |
| 4.      | SAL Real Estate Private Limited      | AAICS5136N |
| 5.      | Taj Capital Partners Private Limited | AACCT2750M |

*(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)*

## IN THE MATTER OF NEW DELHI TELEVISION LIMITED.

1. The instant proceedings have emanated from a show cause notice dated August 31, 2018 (hereinafter referred to as "SCN") issued by Securities and Exchange Board of India (hereinafter referred to as "SEBI") alleging violations of section 12A(d) & (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") read with regulations 3(i) and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "PIT Regulations, 1992") by Mr. Sanjay Dutt (alternatively also referred to as "Noticee No. 1"), Mrs. Prenita Dutt (alternatively also referred to as "Noticee No. 2"), Quantum Securities Private Limited (also referred to as "QSPL" or "Noticee No. 3"), SAL Real Estate Private Limited (also referred to as "SREPL" or "Noticee No. 4") and Taj Capital Partners Private Limited (also referred to as "TCPPL" or "Noticee No. 5") in respect of communication/dealing in the shares of New Delhi Television Limited (hereinafter referred to as "NDTV" or "the Company"). Vide the said SCN, the Noticees were called upon to show cause as to why directions under section 11B of the SEBI Act, 1992, including directions for disgorgement of illegal gains against Noticees No. 2 to 5, be not issued against them for the aforementioned alleged violations of the SEBI Act, 1992 and provisions of the PIT Regulations, 1992. The SCN issued to the Noticees, also contained the copies of documents relied upon in the SCN.

2. It is noted that the instant SCN has been issued pursuant to an investigation conducted by SEBI, which got triggered on account of receipt of certain complaints from NDTV on July 16, 2013 (1<sup>st</sup> complaint), December 27, 2013 (2<sup>nd</sup> complaint) and January 9, 2014 (3<sup>rd</sup> complaint) *inter alia* alleging that Mr. Sanjay Dutt and certain related entities viz. QSPL and SREPL were involved in dealing in securities of NDTV in violation of provision of the PIT Regulations, 1992” during the period September 2006 to June 2008 (hereinafter referred to as “Investigation Period”). Facts unearthed during the investigation and iterated in the SCN are enumerated in brief herein below for easy reference:

- (1) During the Investigation Period, the price of NDTV scrip increased from ₹195 to ₹379.55 at NSE, thereby registering an increase in the market price of NDTV scrip by 94.64%. Similar trend was observed at BSE also.
- (2) As per Memorandum of Understanding (MOU) dated September 01, 2006 and Agreement dated July 01, 2007 (collectively referred to as the “*Consultancy Agreements*”) between NDTV and Mr. Sanjay Dutt, *Noticee No. 1* was an “*on call and in house*” advisor/team member of NDTV group.
- (3) In terms of the *Consultancy Agreements*, it was observed that the scope of work of Sanjay Dutt included “*complete responsibility and accountability for the Corporate Finance and Strategic Planning function*” of the *Company* including designing and charting implementation strategies to enhance corporate value, while reducing/ optimizing financial risks, assist internal teams in areas so as to maximize the company's return to capital, assist and implement investment banking and project evaluation decisions.
- (4) Further, his responsibilities included evolving a corporate structure to meet the expansion of the *Company*; raising funds for existing and new business of the *Company*; working as part of the internal strategic group and as a liaison for potential partners and allies.
- (5) The terms of *Consultancy Agreement*, made Mr. Sanjay Dutt to be responsible and accountable for the Corporate Finance and Strategic Planning function of NDTV and brought him within the principle of a connected person in terms of regulation 2(c)(ii) of the PIT Regulations, 1992, by virtue of his engagement with NDTV in terms of the said *Consultancy Agreements*.
- (6) As per the e-mail correspondences submitted by NDTV, Mr. Sanjay Dutt was a part of the strategic team behind the decisions, which were of price sensitive nature and which were unpublished. From the same, it is also noticed that Mr. Sanjay Dutt was directly involved in the discussions pertaining to vital business strategies and business re-

organisation of the *Company*. The investigation also noticed that Mr. Sanjay Dutt used to be a part of a mail group within the *Company* with whom unpublished price sensitive information of the *Company* were being shared, which further showed that Mr. Sanjay Dutt had direct access to and was in possession of unpublished price sensitive information of NDTV during his tenure of association with NDTV. In view of the foregoing, Mr. Sanjay Dutt was falling in the category of an insider in terms of regulation 2(e)(i) and 2(e)(ii) of the PIT Regulations, 1992.

- (7) Further, the remaining four entities, i.e., *Notices No. 2 to 5*, are related to *Notice No. 1* since *Notice No. 2* is wife of *Notice No. 1*, *Notice No. 3* is a company in which *Notice No. 1* is a Director/Promoter, *Notice No. 4* is a company in which *Notice No. 2* is a Director/Promoter and *Notice No. 5* is a company in which *Notice No. 1* is also a Director/Promoter.

**Mrs. Prenita Dutt –**

- (8) *Notice No. 2* is married to *Notice No. 1*. *Notice No. 2* is also a director in *Notice No. 4*. *Notice No. 2* had also traded in the shares of NDTV during the Investigation Period. *Notice No. 2*, being wife of *Notice No. 1*, is a relative of *Notice No. 1* and a ‘connected person’ in terms of regulation 2(h)(viii) of the PIT Regulations, 1992. Further, *Notice No. 2* being wife of *Notice No. 1* was reasonably expected to have access to unpublished price sensitive information. Therefore, *Notice No. 2* was apparently an “insider” in terms of regulation 2(e)(i) of the PIT Regulations, 1992 read with regulation 2(h)(viii) of the PIT Regulations, 1992 during the relevant period.

**QSPL -**

- (9) *Notice No. 1* and his brother are promoters of *Notice No. 3* and are also its directors. As per annual returns filed with MCA by *Notice No. 3*, *Notice No. 1* and his brother were each holding 16.78% of the paid up share capital of *Notice No. 3* during the Investigation Period, details of which are as presented below:

**Table No. 1: Shareholding of Sanjay Dutt in QSPL**

| Particulars  | As per the Annual return filed.<br>Shareholding as on September 30, 2005 |            | As per the Annual return filed.<br>Shareholding as on September 30, 2008 |            | As per the Annual return filed.<br>Shareholding as on September 30, 2009 |            |
|--------------|--|------------|--|------------|--|------------|
|              | Number of shares   | % of Total | Number of shares   | % of Total | Number of shares   | % of Total |
| Sanjay Dutt  | 503400   | 16.78      | 1006800  | 16.78      | 1006800  | 16.78      |
| Sandeep Dutt | 503400   | 16.78      | 1006800  | 16.78      | 1006800  | 16.78      |

| Particulars     | As per the Annual return filed.<br>Shareholding as on September 30, 2005 |            | As per the Annual return filed.<br>Shareholding as on September 30, 2008 |            | As per the Annual return filed.<br>Shareholding as on September 30, 2009 |            |
|-----------------|--|------------|--|------------|--|------------|
|                 | Number of shares   | % of Total | Number of shares   | % of Total | Number of shares   | % of Total |
| Company's total | 3000000  | 100        | 6000000  | 100        | 6000000  | 100        |

- (10) Since *Noticee No. 1* (i.e., the insider as well as connected person) held more than 10% of the shareholding of *Noticee No. 3*, *Noticee No. 3* is deemed to be a connected person in terms of regulation 2(h)(ix) of the PIT Regulations, 1992. Further, *Noticee No. 3* by virtue of its connection with the *Noticee No. 1* (an insider) being its promoter and director, also was reasonably expected to have access to unpublished price sensitive information. Therefore, it appears that *Noticee No. 3* was also an “insider” in terms of regulation 2(e)(i) of the PIT Regulations, 1992 read with regulation 2(h)(ix) of the Regulations during the relevant period.

#### **SREPL –**

- (11) *Noticee No. 2* and Mrs. Neenu Dutt (sister-in-law of *Noticee No. 1*) are promoters and directors of *Noticee No. 4*. As per annual returns filed with MCA by *Noticee No. 4*, *Noticee No. 2* and Mrs. Neenu Dutt each were holding 50% of the paid up share capital of *Noticee No. 4* during the Investigation Period.
- (12) *Noticee No. 2* (i.e., the connected person of *Noticee No.1*) held more than 10% of the shareholding of *Noticee No. 4*, hence *Noticee No. 4* is deemed to be a connected person in terms of regulation 2(h)(ix) of the PIT Regulations, 1992. Further, *Noticee No. 4* was reasonably expected to have access to unpublished price sensitive information since *Noticee No. 2* (an insider) was a promoter and director of *Noticee No. 4*. Therefore, it appears that *Noticee No. 4* was an “insider” in terms of regulation 2(e)(i) of the PIT Regulations, 1992 read with regulation 2(h)(ix) of the Regulations at the given point of time.

#### **TCPPL –**

- (13) *Noticee No. 1* is a promoter and director of *Noticee No. 5*. As per annual returns filed with MCA by *Noticee No. 5*, *Noticee No. 1* was holding from 25% to 50% of the paid up share capital of *Noticee No. 5* during the Investigation Period, the details of which are presented below:

**Table No. 2: Shareholding of Sanjay Dutt in TCPPL**

| Particulars            | As per the Annual return filed.<br>Shareholding as on September 30, 2006 |            | As per the Annual return filed.<br>Shareholding as on September 29, 2007 |            | As per the Annual return filed.<br>Shareholding as on September 15, 2008 |            |
|------------------------|--|------------|--|------------|--|------------|
|                        | Number of shares   | % of Total | Number of shares   | % of Total | Number of shares   | % of Total |
| Sanjay Dutt            | 10000  | 50         | 5000   | 25         | 6667   | 33.34%     |
| <b>Company's total</b> | <b>20000</b>   | <b>100</b> | <b>20000</b>   | <b>100</b> | <b>20000</b>   | <b>100</b> |

- (14) Since *Noticee No. 1* held more than 10% of the shareholding of *Noticee No. 5*, *Noticee No. 5* is deemed to be a connected person in terms of regulation 2(h)(ix) of the PIT Regulations, 1992. *Noticee No. 5* was also reasonably expected to have access to unpublished price sensitive information since *Noticee No. 1* (an insider) was the promoter and director of *Noticee No. 5*. Therefore, *Noticee No. 5* appears to be an “insider” in terms of regulation 2(e)(i) of the PIT Regulations, 1992 read with regulation 2(h)(ix) of the Regulations during the investigation period.
- (15) Keeping the aforesaid factual details and legal provisions, all the *Noticees* apparently fall under the definition of “connected person” and “insider” with respect to NDTV in terms of regulation 2(c) of the PIT Regulations, 1992 and regulation 2(e) of the Regulations, respectively.
- (16) Information pertaining to corporate announcements of NDTV were gathered from NDTV and stock exchanges. As per the disclosure made by the *Company* (NDTV) to the Stock Exchanges and also furnished in their replies to SEBI, there had been six (6) price sensitive information (hereinafter referred to as “PSI”) during the Investigation Period, which are as detailed below:

**Table No. 3: Details of PSI(s)**

| PSI  | Start date of UPSI | Date & time when the PSI was disclosed on exchange website         | UPSI period                       |
|--|--------------------|--|-----------------------------------|
| <b>PSI-1:</b> Expansion of the company in areas beyond news to develop NDTV into a bouquet of channels with entertainment and lifestyle and initiate a major thrust in New Media including the internet. | July 31, 2006      | October 17, 2006 17:58:34 (NSE)<br>October 17, 2006 19:06:47 (BSE) | July 31, 2006 to October 17, 2006 |

| <b>PSI</b>   | <b>Start date of UPSI</b> | <b>Date &amp; time when the PSI was disclosed on exchange website</b> | <b>UPSI period</b>                      |
|--|---------------------------|---|---|
| <b>PSI-2:</b> Strategic alliance with Karan Johar and Dharma Productions Private Limited, for the Company's entertainment business.  | September 21, 2006        | November 29, 2006 09:48:38 (NSE)<br>November 29, 2006 13:49:09 (BSE)  | September 21, 2006 to November 28, 2006 |
| <b>PSI-3:</b> The Company signed an agreement with Comventures VI, L.P, a venture capital fund, for investment of US\$ 20 million from Comventures in of NDTV Network Plc for funding of its non-news businesses.  | November 22, 2006         | March 12, 2007 11:35:08 (NSE)<br>March 12, 2007 11:07:27 (BSE)        | November 22, 2006 to March 11, 2007     |
| <b>PSI-4:</b> Closure of the Bonds transaction, pursuant to which NDTV Network Plc had issued Step up coupon convertible Bonds and raised an amount of US\$ 100 million for funding the operations of its subsidiaries in India.   | March 22, 2007            | May 31, 2007 14:21:48 (NSE)<br>May 31, 2007 13:42:56 (BSE)            | March 22, 2007 to May 30, 2007          |
| <b>PSI-5:</b> Memorandum of Agreement (MOA) signed with NBC Universal, Inc. (NBCU) with respect to NBCU's proposed acquisition of indirect 26% stake in non-news business of NDTV group.   | January 19, 2008          | January 22, 2008 15:41:30 (NSE)<br>January 22, 2008 15:23:54 (BSE)    | January 19, 2008 to January 22, 2008    |
| <b>PSI-6:</b> Board decided to evaluate options for reorganization of the Company, which could include De-merger/ Split of the Company into News related businesses and investments in 'Beyond News' businesses which are currently held through its subsidiary NDTV Networks Plc. | September 07, 2007        | April 16, 2008 16:13:09 (NSE)<br>April 16, 2008 17:45:31 (BSE)        | September 07, 2007 to April 16, 2008    |

- (17) All the above-stated six (6) disclosures by NDTV to the Stock Exchanges during the Investigation Period are deemed to be price sensitive information (hereinafter referred to as **“PSI”**) in terms of regulation 2(ha) of the PIT Regulations, 1992 meaning thereby, if these PSI were published, they were likely to materially affect the price of securities of NDTV.

- (18) The trading details (in both NSE and BSE) of the *Notices* during UPSI periods in NDTV shares are tabulated below:

**Table No. 4: Trading details of the *Notices***

| Name                      | UPSI period pertaining to | Buy Quantity   | Sell Quantity | Buy Value (₹)    | Sell Value (₹)  | Net Buy Quantity | Average Buy Price (₹) based on actuals | Average Sell Price (₹) based on actuals |
|---------------------------|---------------------------|----------------|---------------|------------------|-----------------|------------------|--|---|
|                           |                           | A              | B             | C                | D               | E = A-B          | F = C/A                                | G=D/B                                   |
| Prenita Dutt              | PSI-6                     | 25000          | 0             | 10117773         | 0               | 25000            | 404.71                                 | -                                       |
| <b>Prenita Dutt Total</b> |                           | <b>25000</b>   | <b>0</b>      | <b>10117773</b>  | <b>0</b>        | <b>25000</b>     | <b>404.71</b>                          | <b>-</b>                                |
| QSPL                      | PSI-6                     | 1000           | 0             | 408000           | 0               | 1000             | 408.00                                 | -                                       |
| <b>QSPL Total</b>         |                           | <b>1000</b>    | <b>0</b>      | <b>408000</b>    | <b>0</b>        | <b>1000</b>      | <b>408.00</b>                          | <b>-</b>                                |
| SREPL                     | PSI-1                     | 356533         | 94964         | 68349994         | 19533651        | 261569           | 191.71                                 | 205.70                                  |
|                           | PSI-2                     | 350000         | 0             | 80881473         | 0               | 350000           | 231.09                                 | -                                       |
|                           | PSI-3                     | 240000         | 0             | 57274662         | 0               | 240000           | 238.64                                 | -                                       |
|                           | PSI-4                     | 10000          | 0             | 3049928          | 0               | 10000            | 304.99                                 | -                                       |
|                           | PSI-6                     | 58546          | 10000         | 22195458         | 4025532         | 48546            | 379.11                                 | 402.55                                  |
| <b>SREPL Total</b>        |                           | <b>1015079</b> | <b>104964</b> | <b>231751516</b> | <b>23559183</b> | <b>910115</b>    | <b>228.31</b>                          | <b>224.45</b>                           |
| TCPPL                     | PSI-1                     | 0              | 5000          | 0                | 1115165         | -5000            | -                                      | 223.03                                  |
| <b>TCPPL Total</b>        |                           | <b>0</b>       | <b>5000</b>   | <b>0</b>         | <b>1115165</b>  | <b>-5000</b>     | <b>-</b>                               | <b>223.03</b>                           |
| <b>Grand Total</b>        |                           | <b>1041079</b> | <b>109964</b> | <b>242277288</b> | <b>24674347</b> | <b>931115</b>    | <b>232.72</b>                          | <b>224.39</b>                           |

- (19) As can be seen from the above, during the UPSI period *Notices* No. 2 to 5 have bought 10,41,079 shares and sold 1,09,964 shares only. Hence *Notices* No. 2 to 5 by their act of buying and selling shares of NDTV have “*dealt in securities*” of the *Company* in terms of regulation 2(d) of the PIT Regulations, 1992.
- (20) In view of the fact that *Notice* No. 1 was an insider and *Notices* No. 2 to 5 are “*connected persons*” of the “*insider*” with respect to NDTV in terms of regulation 2(c) and regulation 2(e) of the PIT Regulations, 1992, respectively, *Notices* No. 2 to 5 were reasonably expected to have access to the PSIs during the UPSI period in respect of securities of NDTV.
- (21) Further, the surrounding events and the acts of *Notices* No. 2 to 5 in dealing in NDTV shares during UPSI period pertaining to PSIs 1 to 6 and there also being a substantial increase in the trading quantities of *Notices* No. 2 to 5 in NDTV shares during the association of *Notice* No. 1 with NDTV, indicate that *Notices* No. 2 to 5 were in possession of the unpublished price sensitive information by accessing them

from/through *Noticee No. 1* and that they have dealt in securities of NDTV, during the period, while in possession of those UPSI.

- (22) Regulation 3(i) of the PIT Regulations, 1992, *inter alia*, prohibits an insider, either on his own behalf or on behalf of any other person, from dealing in securities of a company listed on any Stock Exchange, when he is in possession of any UPSI. Further, regulation 3(ii) of the PIT Regulations, 1992, *inter alia*, prohibits an insider from communicating directly or indirectly any UPSI to any person who, while in possession of such UPSI, shall not deal in securities. Further, in terms of regulation 4 of the PIT Regulations, 1992 any insider who deals in securities in contravention of regulation 3 is said to be guilty of insider trading.
- (23) It was observed that *Noticees No. 2 to 5*, by dealing in securities of NDTV while in possession of unpublished price sensitive information, have allegedly violated the provisions of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.
- (24) It is further observed that *Noticee No. 1*, by directly or indirectly communicating unpublished price sensitive information to *Noticees No. 2 to 5*, appears to have violated the provisions of section 12A (d), (e) of the SEBI Act, 1992 read with regulation 3(ii) and regulation 4 of the PIT Regulations, 1992.

#### Calculation of wrongful gains:

- (25) Since *Noticees No. 2 to 5* have traded in the shares of NDTV while in possession of UPSI of the *Company*, the wrongful gains made by them have been calculated for the purpose of disgorgement as follows:

**Table No. 5: Trading details of Net Buyers, i.e., *Noticees No. 2, 3 and 4***

| Name                      | UPSI period pertaining to | Net Buy Quantity | Average Buy Price (₹) based on actuals | Closing Price on the day announcement of PSI at NSE (₹) * | Wrongful gain (₹) # |
|---------------------------|---------------------------|------------------|--|---|---------------------|
|                           |                           | A                | B                                      | C   | D = A x (C-B)       |
| Prenita Dutt              | PSI-6                     | 25000            | 404.71                                 | 411.10  | 1,59,750.00         |
| <b>Prenita Dutt Total</b> |                           | <b>25000</b>     | -                                      | -   | <b>1,59,750.00</b>  |
| QSPL                      | PSI-6                     | 1000             | 408.00                                 | 411.10  | 3,100.00            |
| <b>QSPL Total</b>         |                           | <b>1000</b>      | -                                      | -   | <b>3,100.00</b>     |
| <b>SREPL</b>              | PSI-1                     | 261569           | 191.71                                 | 220.50  | 75,30,571.51        |



| Name               | UPSI period pertaining to | Net Buy Quantity | Average Buy Price (₹) based on actuals | Closing Price on the day announcement of PSI at NSE (₹) * | Wrongful gain (₹) #   |
|--------------------|---------------------------|------------------|--|---|-----------------------|
|                    |                           | A                | B                                      | C   | D = A x (C - B)       |
|                    | PSI-2                     | 350000           | 231.09                                 | 230.35  | (2,59,000.00)         |
|                    | PSI-3                     | 240000           | 238.64                                 | 287.75  | 1,17,86,400.00        |
|                    | PSI-4                     | 10000            | 304.99                                 | 396.90  | 9,19,100.00           |
|                    | PSI-6                     | 48546            | 379.11                                 | 411.10  | 15,52,986.54          |
| <b>SREPL Total</b> |                           | <b>910115</b>    | <b>-</b>                               | <b>-</b>  | <b>2,15,30,058.05</b> |
| <b>Grand Total</b> |                           | <b>931115</b>    | <b>232.72</b>                          |   | <b>2,16,92,908.05</b> |

# **Note:** Wrongful gain has been calculated as per the following method:

Wrongful gain = (Closing price on the day of announcement \* - Average buy price) X Net buy quantity during UPSI period

\* If the announcement was made during the trading day before closing of trading hours, the closing price of the same day is considered. If the announcement was made post trading hours, the closing price of the next trading day is considered.

**Table No. 6: Trading details of Net Sellers, i.e., Noticee No. 5**

| Name               | UPSI period pertaining to | Sell Quantity | Average Sell Price (₹) based on actuals | Opening Price on UPSI period starting day at NSE (₹) | Wrongful gain (₹) @ |
|--------------------|---------------------------|---------------|---|--|---------------------|
|                    |                           | A             | B                                       | C  | D = A x (B - C)     |
| TCPPL              | PSI-1                     | 5000          | 223.03                                  | 155.00   | 340,150.00          |
| <b>TCPPL Total</b> |                           | <b>5000</b>   | <b>-</b>                                | <b>-</b>   | <b>3,40,150.00</b>  |

@ **Note:** Wrongful gain has been calculated as per the following method:

Wrongful gain = (Average Sell Price - Opening Price on UPSI period starting day) X Net sell quantity during UPSI period

- (26) In view of the above, it appears that the aggregate amount of wrongful gains earned by Noticees No. 2 to 5 stood at ₹2.20 crore.

3. I note that based on the aforesaid findings from the investigation, SEBI issued a common SCN to the above named 5 *Notices* on August 31, 2018, *inter alia*, levelling the following allegations against the 5 *Notices*:

**As regards Noticee No. 1-**

- (1) *Noticee No. 1*, by virtue of his engagement with NDTV in terms of the *Consultancy Agreements*, held a position involving a professional and business relationship between himself and NDTV having *complete responsibility and accountability for the Corporate Finance and Strategic Planning function* and as such was reasonably expected to have access to the unpublished price sensitive information in relation to NDTV.
- (2) *Noticee No. 1* is a “connected person” in terms of regulation 2(c)(ii) of the PIT Regulations, 1992.
- (3) *Noticee No. 1* had direct access to and was in possession of unpublished price sensitive information of NDTV during his tenure of association with NDTV.
- (4) *Noticee No. 1* is an “insider” in terms of regulation 2(e)(i) and 2(e)(ii) of the PIT Regulations, 1992.

**As regards Noticee No. 2-**

- (5) *Noticee No. 2*, being the wife of *Noticee No. 1*, is *deemed to be a connected person* in terms of regulation 2(h)(viii) of the PIT Regulations, 1992.
- (6) Further, *Noticee No. 2* being wife of *Noticee No. 1* is reasonably expected to have access to unpublished price sensitive information.
- (7) *Noticee No. 2* is also an “insider” in terms of regulation 2(e)(i) of the PIT Regulations, 1992 read with regulation 2(h)(viii) of the Regulations.

**As regards Noticee No. 3-**

- (8) *Noticee No. 3* is *deemed to be a connected person* in terms of regulation 2(h)(ix) of the PIT Regulations, 1992.
- (9) *Noticee No. 3* is reasonably expected to have access to unpublished price sensitive information since *Noticee No. 1* is promoter and director of *Noticee No. 3*.
- (10) *Noticee No. 3* is an “insider” in terms of regulation 2(e)(i) of the PIT Regulations, 1992 read with regulation 2(h)(ix) of the Regulations.

**As regards Noticee No. 4-**

- (11) *Noticee No. 4* is *deemed to be a connected person* in terms of regulation 2(h)(ix) of the PIT Regulations, 1992.

- (12) *Noticee No. 4* is reasonably expected to have access to unpublished price sensitive information since *Noticee No. 2* is a promoter and director of *Noticee No. 4*.
- (13) *Noticee No. 4* is an “insider” in terms of regulation 2(e)(i) read with regulation 2(h)(ix) of the PIT Regulations, 1992.

**As regards Noticee No. 5–**

- (14) *Noticee No. 5* is deemed to be a connected person in terms of regulation 2(h)(ix) of the PIT Regulations, 1992.
  - (15) *Noticee No. 5* is reasonably expected to have access to unpublished price sensitive information since *Noticee No. 1* is promoter and director of *Noticee No. 5*.
  - (16) *Noticee No. 5* is an “insider” in terms of regulation 2(e)(i) read with regulation 2(h)(ix) of the PIT Regulations, 1992.
  - (17) All the *Notices* fall squarely under the definition of “connected person” and “insider” with respect to NDTV in terms of regulation 2(c) of the PIT Regulations, 1992 and regulation 2(e) of the PIT Regulations, 1992, respectively.
  - (18) All the above-stated six (6) disclosures by NDTV to the Stock Exchanges during the Investigation Period are deemed to be price sensitive information in terms of regulation 2(ha) of the PIT Regulations, 1992 and if any one of such PSI was published, it would have materially affected the price of securities of NDTV.
  - (19) Though some of these *Notices* were trading in NDTV shares even prior to *Noticee No. 1*’s association with NDTV, i.e., prior to July 2006, their buy quantity in NDTV has substantially increased during the period when *Noticee No. 1* remained closely associated with NDTV, i.e., from July 2006 to June 2008.
  - (20) Some of these *Notices* have sold substantial quantities of shares starting from June 2008.
  - (21) *Notices No. 2 to 5*, by dealing in securities of NDTV (a company listed on NSE and BSE) when in possession of unpublished price sensitive information, have violated the provisions of section 12A (d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.
  - (22) *Noticee No. 1*, by directly or indirectly communicating unpublished price sensitive information to *Notices No. 2 to 5*, has violated the provisions of section 12A (d), (e) of the SEBI Act read with regulation 3(ii) and regulation 4 of the PIT Regulations, 1992.
4. Accordingly, the *Notices* were advised to show cause as to why suitable directions under section 11B of the SEBI Act, 1992 including direction for disgorgement of illegal gains be not issued against them for the aforementioned alleged violations of the SEBI Act, 1992 and the PIT

Regulations, 1992. The *Notices* were also advised to submit their replies, if any, within 21 days of the receipt of the SCN failing which it would be construed that the *Notices* have no reply to submit and SEBI would be free to take action against them on the basis of materials available on record in terms of the SEBI Act, 1992 and other laws as applicable.

5. It is worth mentioning here that although the PIT Regulations, 1992 have been repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015, regulation 12 of the new Regulations, 2015, provides as under:

**“Repeal and Savings.**

*12.(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

*(2) Notwithstanding such repeal, —*

*(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed;*

*(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

*(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.”*

6. Thus, any proceedings initiated for any alleged contraventions under the PIT Regulations, 1992 are saved and can be proceeded with under the said repealed PIT Regulations, 1992. Considering the foregoing, the instant proceedings against the *Notices* can be continued as such.
7. I note that all the *Notices* have filed their separate written replies in the matter, the details of which are as under:

| Sl. No. | Noticee         | Date of reply     |
|---------|-----------------|-------------------|
| 1.      | Mr. Sanjay Dutt | December 26, 2018 |

|    |                                |                   |
|----|--------------------------------|-------------------|
| 2. | Mrs. Prenita Dutt              | December 21, 2018 |
| 3. | Quantum Securities Pvt. Ltd.   | December 21, 2018 |
| 4. | SAL Real Estate Pvt. Ltd.      | February 04, 2019 |
| 5. | Taj Capital Partners Pvt. Ltd. | December 21, 2018 |

8. In compliance with the principles of natural justice, these *Notices* were granted opportunity of personal hearing on September 18, 2019 when the counsel from M/s Finsec Law advisors appeared as the common authorized representative (hereinafter referred to as the “AR”) on behalf of the *Notices* and made oral submissions on the lines of the written replies already filed by the respective *Notices* in the matter. During the course of personal hearing, *Notices No. 3* to *5* were asked to provide the copies of their audited balance sheets and profit and loss accounts for the relevant years. The said *Notices* were also asked to submit details of their trades in the scrip of NDTV during the relevant years.
9. Subsequently, vide letter dated October 1, 2019, the AR of the *Notices* submitted some of the documents. The *Notices* also contended that the investigation period being more than 10 years old, they were unable to retrieve the data for the financial year 2007-08 and the same would be submitted as soon as the same is located. Vide the said letter, the *Notices* submitted the following documents:
  - (a) The income tax statements and audited balance sheets of the concerned *Notices* for the financial years 2006-07, 2007-08, 2008-09 in support of their arguments that the said *Notices* had their respective independent source of income; trading in various securities including in the scrip of NDTV, being one such source.
  - (b) The transaction statements of the said *Notices* for the financial years 2006-07 and 2008-09 to prove that NDTV was not the only scrip in which the said *Notices* had traded during the relevant period. The *Notices* claim that the transaction statements also clarify the actual price at which trading was done, the amount of losses that the said *Notices* had incurred and the frequency at which trading in the scrip of NDTV had taken place during the relevant investigation period.
10. With regards to *Noticee No. 3* (QSPL), the AR for *Notices* submitted that there was no trading by the said *Noticee* during the relevant investigation period. It is also contended that one of the clients of the portfolio management division of the said *Noticee* had purchased 1000 shares of NDTV, besides other scrips (details of which were provided in annexure). Hence, with respect to *Noticee No. 3*, the allegations of trading while in possession of confidential information is incorrect. The *Noticee* also reiterated its submissions, as made during the previous personal hearing, stating that in the SCN, the amount of unlawful gains has been calculated at the closing price of NDTV shares during various PSI periods. However, the trading details provided by the *Noticee* clearly shows that during the relevant period, the *Notices* had only purchased a small

number of shares of NDTV and did not sell any shares. Further upon looking into the actual purchase and sell transactions, the *Noticee* had made huge losses on their trading activities in the scrip of NDTV.

11. The *Notices*, vide email dated October 31, 2020, *were* granted one more opportunity to make additional submissions, if any, within ten days of the receipt of the said email. The ARs of the *Notices* vide their email dated November 17, 2020 have submitted a common compilation of submissions already made earlier by them.
12. I have perused the written replies and submissions filed by the *Notices* and also considered the oral presentations made by the ARs on behalf of the *Notices* in response to the allegations made against them in the SCN. Considering that these replies are voluminous and sometimes repetitive and include various case citations and also a substantial part of the replies filed by the *Notices* are on similar lines, for the sake of brevity, I would endeavour to summarize the submissions of each of the *Notices* with due emphasis on their respective individual contentions as under:

**A. Mr. Sanjay Dutt**

**(A) NDTV's complaint is false and baseless, and is filed in retaliation to the proceedings initiated by Quantum Securities Private Limited:-**

- (1) The present complaint filed by NDTV is nothing more than a vindictive and retaliatory measure adopted by NDTV to suppress a whistle blower.
- (2) On December 05, 2010, the Sunday Guardian, a national daily newspaper, published an article alleging that the promoters of NDTV have been committing acts of financial misdemeanors with the funds of NDTV which is a public company. This article was titled '*NDTV juggles funds, shares abroad, avoid tax*'. Thereafter, another article titled '*NDTV juggles funds, shares abroad, avoids tax, violations of Indian tax and corporate laws*' was published on September 25, 2011. Similarly, in August 2011, Moneylife, a web-based publication house published an article stating the erratic financial affairs being conducted in NDTV by its promoters. These articles are available on the websites of these publishers and focuses on the conduct of the promoters of NDTV.
- (3) Thereafter, one of the minority shareholders of NDTV, QSPL (*Noticee No. 3* in the present SCN), through *Noticee No. 1* (being whole-time director in QSPL and designated by QSPL to undertake all matters, including litigations related with NDTV) sent several letters to NDTV requesting it to furnish certain documents relating to the financial affairs of NDTV and its subsidiaries.

- (4) QSPL had sought certain clarifications on the issue of non-disclosure of vital information to the shareholders of NDTV, in relation to certain financial transactions by the promoters of NDTV. However, the requisite documents as well as information were never supplied to QSPL.
- (5) *Noticee No. 1* was approached by NDTV and many meetings were held with the then Executive Vice Chairman of NDTV, also with a member of NDTV's Shareholder Grievance Committee. Post many meetings and discussions, the Vice Chairman of NDTV sent a 'settlement deed' to the *Noticee* drafted by its legal advisors, stating *inter alia* that QSPL and *Noticee No. 1* shall not raise any grievance against NDTV or its promoters. QSPL and *Noticee No. 1* refused to execute any such deed.
- (6) Thereafter, on November 26, 2011 another article titled, '*Media Crooks - Indian Media Watch - Changing the way you Consume News*' was published wherein serious charges of corruption and money laundering were levied against the promoters of NDTV.
- (7) Based on these media reports, QSPL sent letters to the promoters, Compliance officer and Independent directors on the 'Shareholders Grievance Committee' of NDTV, seeking for vital information relating to various acts on the part of the promoters of NDTV. Some of those information sought for included:
- (a) Facts relating to undisclosed 'Benami Transaction' of ₹403.85 crore in RRPR Holdings Private Limited (another entity owned and controlled solely by the two promoters of NDTV) to transfer control of NDTV through multi-layered and complex corporate structures, with a view to create a deceptive, illegal "route/smoke screen" and avoid detection of source of funds and the true owner and benefactor of the said amount.
  - (b) It is important to highlight here that SEBI itself has determined that the control of NDTV was transferred through covert agreements in its order bearing No. WTM/ GM/ EFD/ 31/ 2018- 19, dated June 26, 2018.
  - (c) Facts relating to 'Round Tripping' of funds through a chain of overseas sham transaction by NDTV, with the aid of its subsidiaries.
- (8) However, none of the directors or statutory officers of NDTV gave any satisfactory response to QSPL's letters. Being aggrieved, QSPL filed

complaints with various statutory authorities including SEBI. Thereafter, in 2013, the promoters of NDTV with *mala fide* objective to muzzle QSPL's voice, filed a civil suit for defamation before the Hon'ble High Court of Judicature at Mumbai. The suit is currently pending. NDTV requested the Hon'ble High Court to instruct SEBI to not proceed with any complaint filed by QSPL, pending disposal of this suit. However, the Hon'ble High Court rejected NDTV's plea and through its order dated October 17, 2013 clarified that SEBI was at liberty to proceed on merits with the complaints filed by QSPL.

- (9) In the light of the above background, the *Noticee* has submitted that the instant complaint is merely an attempt to obstruct and prevent QSPL and the *Noticee No. 1* from exercising and invoking their legal rights to espouse issues relating to various misdemeanors being committed by the promoters of NDTV in relation to the affairs of NDTV, which has direct impact on the interest of the minority shareholders of NDTV.
- (10) The *mala fide* and malicious intent of NDTV is further clear by the fact that the *Noticee No. 1* was a consultant with NDTV between 2006-08. Also, during the period of 2011-13 various key officials of NDTV were constantly in discussion with the *Noticee No. 1* regarding various letters sent by QSPL (including the settlement deed mentioned above). However, this fact was not mentioned by NDTV in its complaint. This clearly shows that the complainant has withheld vital facts and chose to conceal these emails, discussions and settlement deed while filing the complaint with SEBI.
- (11) It is a settled law and ethical practice that a complainant must disclose all facts and come with 'clean hands' before an adjudicating authority and not conceal information which is relevant to the matter.
- (12) Further, it is pertinent to state that during this five-year period, i.e., 2008 to 2013, NDTV never found any evidences in support of their allegations of insider trading against the *Noticees* to submit before SEBI. Thus, the fact that they have suddenly come up with a complaint of insider trading after two years of meetings, documents exchange, settlement talks and money being offered itself shows that the present complaint was filed to suppress the facts.

(B) **The Investigation Period is unreasonably old**

- (1) The Investigation Period pertains to the trading activities of the *Noticees* for the year 2006-08. NDTV had filed its complaints in 2013 and 2014.



- (2) It is difficult to understand as to what evidence or information prompted NDTV to file a complaint before SEBI and initiate an action after more than 5 years of the alleged wrong doing for which the SCN does not provides any rationale.
- (3) Interestingly, NDTV's first letter (dated July 16, 2013) was written immediately after QSPL had filed its complaint letter (dated May, 2013) before SEBI, revealing the gross violation of securities law, including insider trading and fraud by NDTV and its promoters and directors. It seems that as a retaliatory measure to QSPL's whistleblowing complaint, the present matter was initiated by NDTV with a view to discourage QSPL from pursuing its complaint further.
- (4) In this regard, it is submitted that no law in the country requires an individual to maintain its trading records, books of accounts, income tax statements, etc. for a period of more than 8 years. Following are examples of certain laws which provides for maintenance of books of accounts and records by the persons whom such laws regulate:
- (a). Companies Act, 2013: A company is required to maintain its books of accounts and other financial records for a period of 8 years, as provided under Section 128(5).
  - (b). Limited Liability Partnership Act, 2009: An entity registered under this act is required to maintain a record of its books of accounts for a period of 8 years from the date on which they are prepared.
  - (c). Income Tax Act, 1961: Any person performing a business or professional activity is required to preserve its records for a period of 6 years from the date of relevant assessment year, as provided under Rule 6F (5) of the Income Tax Rules, 1962.
  - (d). SEBI (Stock-brokers and Sub-brokers) Regulations, 1993: Regulation 18 requires maintenance of books of accounts and other records for 8 years.
- (5) Accordingly, it is submitted that it is unreasonable on the part of SEBI to investigate into a matter dealing with trades undertaken in 2006-08, i.e., more than 12 years back.
- (6) It is a well-established position that allegations of insider trading are very serious charges and should be 'reasonable',

*"52. The fundamental premise on which trading when in possession of UPSI is prohibited is that when an insider is in such possession, he would be assumed to be influenced by the nature of the UPSI in his possession, which others in the market would not have. Such a position would place him at an unfair advantage over the others in the market. However, it is noteworthy that insider trading is not only a tort (a civil wrong) but is also a punishable crime that could lead to an insider being imprisoned for a period of upto 10 years. Therefore, a charge of insider trading should be clear, precise and reasonable."*

**(C) In the absence of any 'communication', allegation of violation of regulation 3(ii) are not sustainable against the Noticee –**

- (1) Under the SCN, it is alleged that the Noticee has communicated PSI(s) to various entities connected with him and has thus, violated regulation 3(ii) read with regulation 4 of the PIT Regulations, 1992. However, the act of 'communication' itself is not prohibited under PIT Regulations, 1992, it is only when the person to whom such UPSI is communicated deals in securities of the company on the basis of such UPSI, then the act of communication is penalized.
- (2) Regulation 4 further states that any person acting in contravention of Regulation 3 shall be considered guilty for insider trading. SEBI has failed to show that the Noticee No. 1 had 'communicated' the PSI(s).
- (3) In paragraph 14 to 21 of the SCN, it is alleged that since other Noticees fell in the category of connected persons, as defined under regulation 2(c) of the PIT Regulations, 1992 therefore, they will also be considered as insiders of NDTV under regulation 2(e) of the Regulations. In this regard, it is submitted that mere act of being an 'insider' is not punishable in itself. What is prohibited under regulation 3 and 4 is the act of dealing in securities while in possession of UPSI and also communication of UPSI leading to dealing in securities by such person who was given access to UPSI.
- (4) SEBI has failed to show any such communication of the alleged PSI(s) by Mr. Sanjay Dutt with other Noticees, in the SCN. Merely because Mr. Sanjay Dutt is associated with other Noticees, does not imply that such information was passed to such other Noticees. In fact, in past SEBI has held that,

*15. To prove the charges of insider trading it is not only essential to prove the relationship/*

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<sup>1</sup> Report of the High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992, formed under the chairmanship of N.K. Sodhi, dated December 07, 2013.

*connection between insiders but also that insider were in possession of UPSI...'<sup>2</sup>*

- (5) It is a well-established position in securities law that the charge of insider trading is a very serious charge and therefore, heavy burden of proof lies on SEBI before holding the alleged wrongdoer liable for the same. A leading authority on this point is *Dilip S. Pendse v. SEBI*, wherein SAT held,

*"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..."*

- (6) To establish a charge of violation of regulation 3(ii), demonstrating 'communication' is must. Regulators often find themselves in a position where they can identify a person with inside information on a particular security, a person who traded in that security, a relationship between the two persons and even evidence of communications between them (such as telephone records). This however may still not be enough, unless there is some evidence of the content of the communication and, in particular, the conveying of price sensitive information that was not generally available. Further, though a circumstantial case for communication may exist, it is usually necessary to establish what was said to identify it as price sensitive information. Also, given the seriousness of such an allegation it is unlikely that evidence of such communication can be inferred from the surrounding circumstances, even on a civil standard of proof. Thus, even though insider trading offences are designated civil penalty provisions and therefore amenable to proof at the civil rather than the criminal standard, that standard will require a measure of exactness in proof.
- (7) The existence of communications between a putative procurer/tipper and a putative procuree/tippee followed by trading by the procuree/tippee is unlikely to be sufficient evidence of the communication of price sensitive information where the both the concerned persons deny being privy to any inside information and communication thereof.

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<sup>2</sup> In the matter of *Navneet Publication India Ltd*, adjudication order no. NP/SJ/A011612016, issued on December 20, 2016.

- (8) In past, SEBI has looked into the telephone records of noticees to determine whether there was any communication of UPSI. In fact, circumstantial evidences such as, exchange of monies between the bank accounts of alleged insider and his connected person, which amount was subsequently used to purchase shares while in possession of UPSI, has also been considered as a corroborative evidence by SEBI. However, in the present matter, SEBI has not done any such investigation and has failed to provide any evidence of actual communication of PSI(s) by the *Noticee No. 1*.
- (9) In accordance with the PIT Regulations, 1992 the other *Noticees* may be deemed to be considered as insiders, however, the onus to prove the charges of violation of regulations 3 and 4 pertaining to communication of UPSI and dealing on the basis of UPSI, lies on SEBI. In this case, SEBI has failed to do so. A detailed discussion on this point was made in the matter of *Sabero Organics Gujarat Limited*, wherein SEBI has stated,

*"... On the basis of the findings of the investigation it is difficult to arrive at a conclusion as to who exactly passed the information to Murugappan and thereby to Gopalakrishnan and Karuppiyah. As stated above, many other entities had also traded in the scrip in an identical fashion during the UPSI period. As many as sixty-nine persons/entities had access to the UPSI during the Investigation Period. In this backdrop, a pertinent question arises as to the channel of communication which resulted in passing the UPSI to the said entities. The SCN alleges Vellayan's connection/relationship with Murugappan as the key evidence to indicate the flow of information from Vellayan to Murugappan and in turn to Karuppiyah and Gopalakrishnan. It is however, observed that the investigation has not adduced any supporting evidence to arrive at the conclusion that the UPSI was passed by Vellayan to Murugappan and by Murugappan to Gopalakrishnan and Karuppiyah-HUF who traded in the shares. Apart from inferences (even if entirely logical), it is equally important that there should at least be some collateral material on record to support the assertion/conclusion.*

x. *In my view, proceeding merely on the basis of available but inadequate evidence on record, without support of any collateral material to arrive at a reasonably conclusive finding that it was indeed only Vellayan who had passed the UPSI to Murugappan, who thereafter passed on the same to Gopalakrishnan and Karuppiyah, may not be just and reasonable. It is also important to arrive at a conclusion regarding the many others who had made money in circumstances exactly identical to Gopalakrishnan and Karuppiyah-HUF.*

xi. *It is also relevant to note the observations made by Hon'ble Securities Appellate*

*Tribunal in Appeal No. 83/2004 - Samir C. Arora vs. SEBI decided on October 15, 2004 that the charge of insider trading should not be made against any person without a deep examination of the issues involved.*

*10.9.3 In this case, I therefore, feel a deeper examination is definitely warranted in view of all that has been discussed earlier.*

*10.9.4 I am therefore of the considered view that unless the investigation dwells deeper and brings out the truth in respect of all the entities, many of the perpetrators of the insider trading in this case may remain undetected forever. It is in the interests of investors that all the perpetrators of insider trading in this case are brought to book and sternly dealt with. As more material facts need to be unearthed to arrive at a clear finding in the matter, I am of the view that this is the fit case of reinvestigation and SEBI should employ all the investigative powers entrusted to it to unearth the entire truth and to find out the role of each of the suspected entities vis-a-vis the persons/entities privy to the UPSI including the Noticees herein.*

*10.9.5 All things considered, I am of the view that this is the fit case of reinvestigation and SEBI should employ all the investigative powers entrusted to it to unearth the entire truth and to find out the role of each of the suspected entities vis-a-vis the persons/entities privy to the UPSI including the Noticees herein."*

- (10) Noticee No. 1 is related with Noticee No. 2 as spouse and with Noticee No. 3 and 5 as shareholder-director. With regard to Noticee No. 4, Noticee No. 1 has no direct relationship. On account of his spouse's shareholding in Noticee No. 4, the said Noticee No. 4 is considered to be a connected person with Noticee No. 1 and hence, an insider of the Company.
- (11) It is submitted that each of these Noticees take their independent investment decisions. There is no evidence on record stating that any of these entities had prior consultation with Noticee No. 1 before trading in securities of NDTV or any other scrip.
- (12) With regard to Noticee No. 3 and 5 where Noticee No. 1 is a director, it is submitted that Noticee No. 1 was not the only director or decision-making authority in these companies. All investment decisions were cumulatively taken by the respective board of directors of these companies. Therefore, merely because the other Noticees are connected with Noticee No. 1, it cannot be assumed that Noticee No. 1 had communicated the PSI(s) to other Noticees.
- (13) The Noticee No. 1 was neither key managerial personnel, nor a statutory officer

or a member of the board of directors of NDTV. He was only a consultant having a wide range of discussion/ correspondences with the complainant (NDTV).

- (14) The job description of the *Noticee No. 1* did not allow him to participate in or take crucial decisions. In no manner, there could be any certainty of possession of any decisive action or any of the information that he is alleged to be privy to, as the final decision/authority vested with the Board of Directors and statutory officers of NDTV on all matters.
- (15) No adverse actions can be taken against the *Noticee No. 1* in the absence of any cogent evidence proving that *Noticee No. 1* had actually communicated or provided access to the PSI(s) to other *Noticees* to enable them to trade. Hence, *Noticee No. 1* cannot be held liable for violation of regulation 3(ii) read with regulation 4 of the PIT Regulations, 1992.
- (16) In any event, the substantive replies filed by the other *Noticees* clearly show that no violation was committed by them. When their trades were not in violation, the charge of communication of UPSI to other *Noticees*, deserve to fail as a matter of fact and law.

(D) **The PSI(s) were not '*price sensitive information*'.**

- (1) For an information to be considered as '*price sensitive information*' under regulation 2(ha)(vii), the information must have an impact on the price of the securities of the company.
- (2) In the matter of *Emami Limited*, the Adjudicating Officer of SEBI has held that law may require disclosure of a number of events, however, every such event which is disclosed may not be price sensitive in terms of the PIT Regulations, 1992. It has been stated in this order that,

*"I note that such information would be UPSI which is not generally available and upon becoming generally available, is likely to materially affect the price of the securities. The Noticees have argued that the listed illustrations in the aforesaid regulation are ordinarily in the nature of UPSI, which also meant they need not be UPSI. They have contended that merely because a particular type of event is listed it would not follow that it would inexorably constitute UPSI regardless of the materiality of its potential price impact. While I agree with the said argument of the Noticee that a particular type of event being listed would not necessarily constitute UPSI regardless of the materiality of its potential price impact, the facts and circumstance of the case will have to be looked into to ascertain the same."*

- (3) Further, SEBI and the Hon'ble SAT have held in their past orders that to determine the price sensitivity of an information, the impact on price of securities of the company should be checked. Reliance has been placed to the observations made by the Hon'ble SAT in the matter of *Rajiv B. Gandhi v. SEBI*. The *Notices* have furnished the market reaction to the announcements of PSI on the scrip of NDTV, in support to justify that announcements were not PSI. Relevant observations of the Hon'ble SAT in the case of *Rajiv B. Gandhi v. SEBI* are as under,

*“Unpublished price sensitive information has been defined in the regulations to mean any information which relates to any of the matters referred to in sub clauses (i) to (viii) of regulation 2(k) and is not generally known or published by the company for general information but which, if published or known, is likely to materially affect the price of the securities of the company in the market. In other words, any information which is not known but, if known, could either way affect the price of the scrip of the company would be unpublished price sensitive in formation.”*

**Table No. 7: Price of the scrip of NDTV**

| Date  | Closing Price (As provided at NSE website) | Percentage Change on relevant date (from previous closing) |
|---|--|--|
| PSI-1 (July 31, 2006 to October 17, 2006)       |  |  |
| 16.10.2006                                      | 240.9                                      | -2.90%   |
| 17.10.2006                                      | 227.15                                     |  |
| <b>18.10.2006*</b>                              | <b>220.5</b>                               |  |
| PSI-2 (September 21, 2006 to November 28, 2006) |  |  |
| 27.11.2006                                      | 236.95                                     | -1.71%   |
| <b>28.11.2006</b>                               | <b>232.9</b>                               |  |
| 29.11.2006                                      | 230.35                                     |  |
| PSI-3 (November 22, 2006 to March 11, 2007)     |  |  |
| 09.03.2007                                      | 283.6                                      | 1.50%  |
| 11.03.2007**                                    | -  |  |
| <b>12.03.2007</b>                               | <b>287.75</b>                              |  |
| PSI-4 (March 22, 2007 to May 30, 2007)          |  |  |
| 29.05.2007                                      | 396.3                                      | -4%  |
| <b>30.05.2007</b>                               | <b>385.05</b>                              |  |
| 31.05.2007                                      | 396.9                                      |  |
| PSI-5 (January 19, 2008 to January 22, 2008)    |  |  |
| 21.01.2008                                      | 391.9                                      | -0.90%   |
| <b>22.01.2008</b>                               | <b>388.4</b>                               |  |
| 23.01.2008                                      | 393.35                                     |  |
| PSI-6 (September 07, 2007 to April 16, 2008)    |  |  |
| 15.04.2008                                      | 401.65                                     | 0.40%  |

|                   |              |  |
|-------------------|--------------|--|
| 16.04.2008        | 409.5        |  |
| <b>17.04.2008</b> | <b>411.1</b> |  |

\* Considering that PSI-I and PSI-6 were disclosed post market hours, therefore the relevant date for change in the price of the scrip would be the next trading day.

\*\*March 11, 2007 being Sunday was a trading holiday, hence the relevant date to check the change in price of the scrip for PSI - 3 will be the next trading day.

- (4) From the above, it can be inferred that post announcement of PSI(s) there was hardly any effect on the price of scrip of NDTV. As per the table above and also detailed in Annexure 2 appended to the SCN, daily change in the range of ₹5-15 per share in the price, was usual for the scrip of NDTV. On disclosure of the PSI(s), similar change of ₹2-12 per share was observed and there was no unusual change in the price of the scrip of NDTV. Hence, it is clear that even on the disclosure of the alleged PSI(s), there was no impact on the price of the scrip, contrary to what has been stated in paragraph 58 of the SCN. Accordingly, announcements cannot be considered as price sensitive information.
- (E) **Trading pattern of the Noticees clearly prove that the trades were not motivated by the PSI(s).**
- (1) To establish the allegations of violation of regulation 3(ii) read with regulation 4, the trades undertaken by the persons to whom the UPSI was allegedly communicated, should be motivated by such communication of UPSI.
- (2) In this regard, it is reiterated that where allegations of insider trading and fraudulent trade practices are concerned, then the “charges must be proved based on cogent materials and in accordance with law.” It is therefore incumbent to examine the materials for and against the alleged wrongdoer in support of each charge very carefully. In another matter: *Mr. Manoj Gaur v. SEBI*, SAT has held that SEBI should look into the trading pattern of a person to determine whether the act of insider trading has been committed or not.
- (3) During the subsistence of PSI(s), the following trades were undertaken by the Noticees:

**Table No. 8: Trading activities of Noticees during Investigation Period**

| UPSI Period                           | Buy (No. of Shares) | Sell (No. of Shares) |
|---------------------------------------|---------------------|----------------------|
| <b>Noticee No.2: Ms. Prenita Dutt</b> |                     |                      |
| PSI-1                                 | -                   | -                    |



|   |          |        |
|---|----------|--------|
| PSI-2   | -        | -      |
| PSI-3   | -        | -      |
| PSI-4   | -        | -      |
| PSI-5   | -        | -      |
| PSI-6   | 25,000   | -      |
| <b>Noticee No.3: Quantum Securities Private Limited</b>   |          |        |
| PSI-1   | -        | -      |
| PSI-2   | -        | -      |
| PSI-3   | -        | -      |
| PSI-4   | -        | -      |
| PSI-5   | -        | -      |
| PSI-6   | 1000     | -      |
| <b>Noticee No.4: SAL Real Estate Private Limited</b>      |          |        |
| PSI-1   | 3,56,533 | 94,964 |
| PSI-2   | 3,50,000 | -      |
| PSI-3   | 2,40,000 | -      |
| PSI-4   | 10,000   | -      |
| PSI-5   | -        | -      |
| PSI- 6  | 58546    | 10,000 |
| <b>Noticee No.5: Taj Capital Partners Private Limited</b> |          |        |
| PSI-1   | -        | 5,000  |
| PSI-2   | -        | -      |
| PSI-3   | -        | -      |
| PSI-4   | -        | -      |
| PSI-5   |          |        |
| PSI-6   |          |        |

- (5) The trading pattern of *Noticees No. 2, 3 and 5* clearly shows that the trades were not motivated by any UPSI. Had the *Noticees* traded on the basis of such UPSI, the quantum and frequency of the trades would have been much more.
- (6) One of the leading precedents on this aspect being *Manoj Gaur case*, wherein on the basis of trading pattern, quantum of shares traded, and frequency of trades, it was held that dealing in securities was not in contravention of the PIT Regulations. With regard to *Noticee No. 4*, it is submitted that trading in the securities of various companies is one of the major sources of revenue for the said *Noticee*. NDTV was not the only *Company* in which the said *Noticee* has actively traded. There are several other companies in which the said *Noticee* has heavily traded. For example, during PSI- 1, the said *Noticee* had traded in more than 21 lakh shares spreading across 28 scrips. Similarly, during PSI-3, the said *Noticee* had traded in approx. 32 lakh shares spreading across 23 scrips. Thus, any trades in the scrip of NDTV by the said *Noticee* cannot be assumed to be motivated by the PSI(s).
- (7) In terms of percentage of shares traded by each of the *Noticees*, *Noticee No. 2*

traded 0.039% of total shares of NDTV in the relevant quarter. Similarly, *Noticee No. 3* and *5* traded 0.002% and 0.008% respectively, out of the total shares of NDTV. With regard to *Noticee No. 4*, it is submitted that at no point of time *Noticee No. 4*'s trades amounted to more than 1% of the total paid-up equity share capital of NDTV. Such factual evidences have always been carefully looked into and accepted by SEBI and by the Hon'ble SAT while determining the charges of insider trading.

- (8) For an act of insider trading, it is important that a connection is established between the information and trade, i.e. dealing in securities should be motivated by the price sensitive information in question. A leading authority in this regard is the order of SAT in the matter of *Mrs. Chandrakala v. Adjudicating Officer, SEBI* wherein it was held that,

"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... 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. It is a matter of record that in April, 2005, disclosure was made by the company to the stock exchange that due to family arrangement Uttam Kumar Kothari, husband of the appellant, has relinquished his interest in the company as promoter. It is also a matter of record that the appellant used to trade regularly in the shares of the company and her trades were genuine transactions carried out by her in the normal course of business. We are also inclined to accept the argument of the learned counsel for the appellant that where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive. In this case declaration of financial results, dividend and bonus were positive information but the appellant not only bought but also sold the shares not only during the period when the price sensitive information was unpublished but also prior to and after the information becoming public.

A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public."

- (9) The alleged PSI(s) pertained to 'major expansion plans' and 'significant change in policies' of the Company and amounts to 'positive' UPSI, i.e., such information which will bring positive sentiments in market and drive the price of the scrip

higher. However, the trading pattern followed by the *Notices* is not consistent with the trades which may be motivated by any UPSI, for establishing the allegations of violation of regulation 3(ii) read with regulation 4 of the PIT Regulations, 1992

- (10) Besides the above submissions, it will be difficult for *Noticee No. 1* to determine as to why each of the *Notices* decided to trade in the scrip of NDTV during the Investigation Period, as the decision to trade was taken independently by these respective *Notices* without involvement of *Noticee No. 1*. Therefore, in this regard, explanations provided by the other *Notices* in their respective replies to the SCN, are incorporated here by way of reference. Further, the fact that all the *Notices* have not traded simultaneously or in a synchronized manner, establishes beyond doubt that no UPSI was passed on by *Noticee No. 1*. Had there been any trading on the same day and at the same time and all the *Notices* were noticed to have indulged in a similar trading pattern coupled with the charge of communication, the charges would have likely be sustained, however, in the absence of the same, the charge of communication and trading while in possession of UPSI would not sustain, in the facts of the matter.

(F) In light of the factual and legal submission made above, it is submitted:

- (a) That the instant matter does not fulfil the basic requirements provided under regulation 3(ii) which may amount to insider trading under regulation 4 of the PIT Regulations, 1992.
- (b) There is no cogent evidence that the *Noticee No. 1* had access to UPSI.
- (c) That the PSI(s) did not amount to price sensitive information, as defined under regulation 2(ha) of the PIT Regulations, 1992 as the said information did not have any impact on the price of the scrip of NDTV, contrary to what has been alleged in the SCN, more specifically paragraph 58 of the SCN.
- (d) That SEBI has not shown that there was any actual communication of PSI(s) by *Noticee No. 1* to other *Notices*. That proving '*communication*' is a prerequisite for establishing charges under regulation 3(ii) and SEBI has failed to show the same.
- (e) That the quantum, pattern and frequency of shares traded by the other *Notices* under the SCN, clearly indicate that the trades were not motivated by any UPSI and the decision to invest in the scrip of NDTV was

independent of possession of any UPSI by the *Notices*. Where the predicate violations show a fact, and a pattern not reflecting trading based on any inside information, the accusation against the *Noticee* must necessarily fail for providing such information to the other *Notices*.

- (f) That in the absence of cogent evidence, SEBI should avoid taking action which is clearly retaliatory against a whistle-blower. Further, it has been proven beyond doubt that there is substance in complaints filed and pursued by the *Noticee* over last 5 years. Based on the cogent evidence and complaints of the *Noticee*, a number of regulatory authorities, such as, Enforcement Directorate, Income Tax Department, CBI and even SEBI have initiated actions against NDTV and its promoters. Hence, it would send a chilling message to other whistle-blowers and embolden fraudsters in pursuing the retaliation.

**B. Ms. Prenita Dutt – Noticee No. 2**

- (1) Trades detailed out in the following table were undertaken by the *Noticee No. 2* throughout the relevant Investigation Period in the scrip of NDTV.

**Table No. 9: Trading by *Noticee No. 2* in the scrip of NDTV during the Investigation Period**

| <b>Date of Trading</b>                       | <b>Number of Shares (Figures in brackets represent number of shares sold)</b> | <b>Average Buy /Sell Price per share</b> |
|--|---|--|
| Opening Balance<br>(ason September 01, 2006) | 0   | -  |
| 11.04.2008                                   | 25,000  | 404.71                                   |
| 22.04.2008                                   | 5,000   | 422.91                                   |
| Closing Balance<br>(as on June 30, 2008)     | 30,000  | -  |

- (2) It is clear from the above table that during the subsistence of PSI-1, PSI-2, PSI-3, PSI-4 and PSI-5, the *Noticee No. 2* had not purchased / sold the shares of NDTV and thus, it is submitted that the enquiry in present SCN should only be limited to whether the *Noticee No. 2* had committed an act of insider trading during the period, when PSI-6 was not generally available.
- (3) The Investigation Period is unreasonably old. In this regard, the submissions made

by *Notice No. 1* have been adopted by *Notice No.2 in toto*.

(4) **PSI-6 was not '*price sensitive information*' -**

- (i) With regard to the *Notice No. 2*, the only allegation is that she has traded in the scrip of NDTV while in possession of PSI-6 (through her spouse, *Notice No.1*), i.e., during the period between September 07, 2007 and April 16, 2008.
- (ii) To establish an allegation of insider trading, it is essential to establish that the information in question was '*price sensitive information*' under regulation 2(ha) of the PIT Regulations, 1992.
- (iii) For an information to be considered as '*price sensitive information*' under Regulation 2(ha)(vii), following are required: (a) the information must constitute a 'significant change' in the policies, plans or operations of such company; (b) the information must have an impact on the price of the securities of the company.
- (iv) With regard to (a) above-
  - The corporate announcement related to reorganization of NDTV's business indicated a "*potential*" reorganization, as opposed to a definitive change in its policy, plan or operation, as required under regulation 2(ha)(vii) of the PIT Regulations, 1992.
  - It was specifically stated that NDTV had decided '*to evaluate options for reorganisation of the Company*' and no decision was taken in the said meeting. It was only on June 30, 2008 that the decision on dividing the business of NDTV into two separate entities was taken.
  - Such division of business into separate entities only amounted to an ordinary change intended towards ease of conducting business activities, and would not change the policy, plan or operations of a company.
  - Further, regulation 2(ha)(vii) is qualified by the word '*significant*' and a potential reorganization by dividing the same business into separate sub-divisions, does not amount to a significant change.
- (v) The criteria to determine the significance of a change is not provided in the PIT Regulations, 1992. However, it is clearly established by SEBI and

the Hon'ble SAT in their previous orders that in order to determine the price sensitivity of an information, the impact on price of the securities of the company should be checked as observed by the Hon'ble SAT in the matter of *Rajiv B. Gandhi v. SEBI*.

- (vi) In fact, in paragraph 58 of the SCN, SEBI has itself stated that if any of the six UPSI were published before disclosure to the stock exchanges, then "*it would materially affect the price of securities of NDTV*". In this regard, it is pertinent to check whether there was any impact on the price of securities of NDTV on disclosure of PSI-6 to the stock exchanges. The following table provides the price of NDTV's securities during the relevant time period:

**Table No. 10: Price of the scrip of NDTV**

| <b>Date</b>   | <b>Closing Price (As provided at NSE website)</b> |
|---|---|
| Announcement regarding evaluation of options for reorganization |   |
| 15.04.2008  | 401.65  |
| <b>16.04.2008</b>   | <b>409.50</b>                                     |
| 17.04.2008  | 411.10  |
| Announcement of division of NDTV's business into two            |   |
| 27.06.2008  | 412.40  |
| <b>30.06.2008</b>   | <b>379.55</b>                                     |
| 01.07.2008  | 372.75  |

- (vii) It can be inferred from the above that post announcement of alleged PSI-6 on April 16, 2008 (after trading hours), there was no impact on the price of share of NDTV. In fact, on the day when it was finally decided that the reorganization will be undertaken in the form of division of NDTV's business into two, there was no reaction from the market and there was no impact on the price of shares of NDTV. Thus, PSI-6 cannot be considered as price sensitive information.
- (viii) In a very recent order in the matter of *Emami Limited*, the Adjudicating Officer of SEBI has held,

*" I note that such information would be UPSI which is not generally available and upon becoming generally available, is likely to materially affect the price of the securities. The Noticees have argued that the listed illustrations in the aforesaid regulation are ordinarily in the nature of UPSI, which also meant they need not be UPSI. They have contended that merely because a particular type of event is listed it would not follow that it would inexorably constitute UPSI regardless of the materiality of its potential price impact. While I agree*

with the said argument of the Noticee that a particular type of event being listed would not necessarily constitute UPSI regardless of the materiality of its potential price impact, the facts and circumstance of the case will have to be looked into to ascertain the same.”

- (ix) In accordance with the above, for an information to be considered as 'price sensitive' under regulation 2(ha) of the PIT Regulations, 1992, it should have an impact on the price of the securities of the company. In the absence of such impact, the information cannot be termed as 'price sensitive'. In the instant matter, since the disclosure of PSI-6 by way of corporate announcement dated April 16, 2008 (and even on June 30, 2008), did not have any effect on the price of the securities of NDTV, therefore, PSI-6 cannot be termed as price sensitive under regulation 2(ha) of the Regulations.

(5) **SEBI has failed to show that the Noticee was in possession of PSI-6 –**

- (i) SEBI has failed to provide specific evidence of actual possession of any such UPSI by the Noticee No. 2. Mere relationship with an alleged insider of NDTV does not automatically make the Noticee No. 2 privy to UPSI. In fact, in past SEBI has held that,

*"15. To prove the charges of insider trading it is not only essential to prove the relationship/connection between insiders but also that insider were in possession of UPSI.. "*<sup>3</sup>

- (ii) The Noticee No. 2 was neither an officer nor an employee of NDTV and had no role to play in the discussions relating to PSI-6. Being an independent person with knowledge and skills of investing in financial markets, Noticee No. 2 has never relied upon other persons for her financial decisions. Noticee No. 2 has her independent income, earned through various activities. Following points will substantiate our submission in this regard:

- Primarily, being an artist (painter) for more than 20 years now, Noticee No. 2's income comes from her artistic works which are usually sold through regular display of her work in exhibitions.
- Noticee No. 2 regularly participates in securities market and frequently purchases/sells scrips of various companies, NDTV being one such scrip in which the Noticee invests. For instance, in 2006-07, her total purchase and sales turnover was approx. ₹1.88 crore and ₹2.71 crore,

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<sup>3</sup> In the matter of *Navneet Publication India Ltd.*, adjudication order no. NP/SJ/AO/16/2016, issued on December 20, 2016

respectively. Similarly, in the year 2008-09 (coinciding with the period of subsistence of PSI-6), her total purchase and sales turnover was approx. ₹31.14 crore and ₹32.30 crore, respectively. Out of the said ₹31.14 crore purchases, NDTV's scrip comprised merely ₹1 crore (approx.).

- (iii) It is, therefore, clear that the *Noticee No. 2* is an individual with independent sources of income and is capable of taking her own financial decisions.
- (iv) It is fallacious to assume that the *Noticee No. 2* was dependent on *Noticee No. 1* or someone else for her investment/financial decisions. It was of utmost important for SEBI to inquire as to whether the *Noticee No. 2*'s trades were actually motivated by certain UPSI, especially when the quantum of trades is meagre and more so when the *Noticee No. 2* has incurred substantial losses on such trades. However, SEBI has failed to provide any material to suggest any actual or real possession of the alleged PSI-6 by the *Noticee*. In the absence of the same, the *Noticee* cannot be held liable for insider trading under the PIT Regulations, 1992.

(6) **Noticee did not trade on the basis of PSI-6**

- (i) SEBI has alleged that the act of '*dealing in securities*' by the *Noticee No. 2*, on the presumption that the *Noticee* possessed PSI-6 by virtue of her relationship with *Noticee No.1*, amounts to insider trading and violation of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(i) and 4 of the PIT Regulations, 1992. It is well-established position that where allegations of insider trading and fraudulent trade practices are concerned, then the "charges must be proved based on cogent materials and in accordance with law."<sup>4</sup> It is therefore incumbent to examine the materials for and against the alleged wrongdoer in support of each charge very carefully.
- (ii) In the instant matter, there exists mere presumption of possession of UPSI with the *Noticee*. The SCN alleges *Noticee No.1*'s connection with the *Noticee No. 2* as the key evidence to indicate the flow of information from *Noticee No.1* to the *Noticee No.2*.
- (iii) It is, however, observed that the investigation has not adduced any

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<sup>4</sup> *Samir Arora v. SEBI*, Appeal No. 83 of 2004, decided on October 15, 2004 (SAT).



supporting evidence to arrive at the conclusion that the UPSI was actually shared by the *Noticee No.1* with the *Noticee No.2* who eventually traded in the shares. There exist no facts that determines that the trade undertaken by the *Noticee* was on the basis of PSI-6.

- (iv) It is important to ensure that sufficient collateral material is placed on record to support the conclusion that the trades were motivated by possession of UPSI.<sup>5</sup> In past, SEBI has found call records between a broker and insider (placing orders on behalf of the alleged wrongdoer)<sup>6</sup>, and exchange of funds between the director and its immediate relatives for trading in securities as evidence to establish the charges of trading. It is submitted that SEBI has failed to show any link between the alleged possession of UPSI by *Noticee No.2* and the trades undertaken by her.
- (v) Even though ‘*relatives*’ are deemed to be connected persons under the PIT Regulations, 1992, however, such a deeming provision is a refutable presumption. In the instant matter, the fact that the *Noticee* has had independent source of income since past 20 years and that she is not dependent on her spouse or other relatives for her financial decisions suggests that her trading decisions are not motivated by any kind of UPSI.
- (vi) Further, the *Noticee No. 2* has regular and not occasional trading activity in scrips of different companies spread across various sectors and her purchase of the scrip of NDTV does not amount to any unusual trading behaviour on her part.
- (vii) For an act of insider trading, it is important that a connection is established between the information and trade, i.e., dealing in securities should be motivated by the price sensitive information under examination as has been held by the Hon’ble SAT in the matter of *Mrs. Chandrakala v. Adjudicating Officer, SEBI*(supra) already discussed earlier in connection with the *Noticee No.1*.
- (viii) In another matter *Mr. Manoj Gaur v. SEBI*<sup>7</sup> the Hon’ble SAT has held that SEBI can look into the trading pattern of a person to determine whether the act of insider trading has been committed or not.

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<sup>5</sup>*In the matter of Mr. A Vellayan* decided on May 12, 2016 (SEBI)

<sup>6</sup>*In the matter of Smt. Bala Kaul* decided on January 04, 2012 (SEBI)

<sup>7</sup> Appeal No. 64 of 2012, decided on October 03, 2012 (SAT)

- (ix) In the instant matter, during the Investigation Period, on April 11, 2008, the *Noticee* had bought 25000 shares of NDTV at the rate of ₹404.71. When PSI-6 became publicly available, the *Noticee* did not sell the shares of NDTV to make any illegal gains out of the said alleged price sensitive information. Rather, on April 22, 2008, the *Noticee* in fact bought further 5000 shares of NDTV.
- (x) This is contrary to the basic principle of insider trading, as laid down in *Chandrakala case*<sup>5</sup> whereby an insider is expected to offload shares on disclosure of such price sensitive information or 'positive news' in public through which the price of the scrip is expected to go up and purchase shares when the price goes down.
- (xi) Assuming that PSI-6 amounted to a '*significant change*' in NDTV's policies and operations, the effect of such reorganization would have a positive impact on the price of the scrip when the information became public. However, the *Noticee No. 2's* behavior was contrary to the said understanding and hence, she cannot be assumed to have traded on the basis of PSI-6.
- (xii) Further, all the shares (30000 shares) were eventually sold at ₹116.061/- per share on September 09, 2010, thereby incurring a loss of (₹291.68/- per share) totaling to ₹87,50,400/- (Rupees eighty-seven lakhs fifty thousand and four hundred).
- (xiii) The intent of undertaking a trade on the basis of certain UPSI is to make illegal gains or avoid wrongful losses. In the present circumstance, neither has happened, as the *Noticee No. 2* has made losses through the alleged inside trades. No insider, acting on the basis of UPSI would incur such huge losses.
- (xiv) During the period of May-June 2008, an open offer at the rate of ₹438.98/- per share was pending for the public shareholders of NDTV.<sup>8</sup> However, the *Noticee No. 2*, even though eligible to sell her shares in the impending open offer, did not sell the same. Had she sold her shares during the open offer, she could have made a gain of ₹31.24/- per share,

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<sup>8</sup> In December 2007, pursuant to certain transactions undertaken by the Promoters of NDTV with General Atlantic Partners, a registered Foreign Institutional Investor, that held close to 8% shares of NDTV, an open offer was triggered. A public announcement for the said open offer was made on December 30, 2007.

instead of incurring such a huge loss of approx. ₹87 lakh. Such trading pattern of the *Noticee* clearly demonstrates that her trading decisions were taken independent of any UPSI which may have existed with regard to the scrip of NDTV.

- (xv) During the subsistence of PSI-6, the total paid-up share capital of NDTV comprised of 62533282 equity shares.<sup>9</sup> The *Noticee No. 2*'s purchase of 25000 shares constituted 0.039% shareholding of NDTV. *Noticee No. 2* traded in the normal course of business, rather than being motivated by some kind of UPSI. If *Noticee No. 2* was acting on the basis of PSI-6 and if her intent was to capitalize on the basis of price sensitive information possessed by *Noticee No.1*, then she would not have purchased such small quantity of shares and instead bought even more shares after disclosure of the so called UPSI. Such factual evidences have always been carefully looked into and accepted by SEBI and SAT to determine the charges of insider trading. One of the leading precedents on this aspect being *Manoj Gaur case*<sup>10</sup> in which the Hon'ble SAT held that dealing in securities was not in violation of the PIT Regulations, 1992.
- (xvi) During the Investigation Period there was merely one instance of purchase of NDTV's shares by the *Noticee No. 2*. This pattern is not consistent with the trades which may be motivated by any UPSI. Therefore, the *Noticee* was not in possession of PSI-6 and has not dealt in the scrip of NDTV on the basis of PSI-6 hence, regulation 3(i) and 4 of the PIT Regulations, 1992 read with section 12A(d), (e) of the SEBI Act, was not violated by the *Noticee*.

### **C. Quantum Securities Private Limited – Noticee No. 3**

- (1) The following trades were undertaken by QSPL during the Investigation Period in the scrip of NDTV.

**Table No. 11: Trading by QSPL in the scrip of NDTV**

| Date of Trading        | Number of Shares* | Average Buy/Sell Price per share |
|------------------------|-------------------|----------------------------------|
| Opening Balance (as on | 0                 | -                                |

<sup>9</sup> Number of equity shares of NDTV as on December 31, 2007.

<sup>10</sup> *Mr. Manoj Gaur v. SEBI*, Appeal No. 64 of 2012, decided on October 03, 2012 (SAT).

|                                       |       |        |
|---------------------------------------|-------|--------|
| September 01, 2006)                   |       |        |
| 23.08.2007                            | 200   | 301.00 |
|                                       | (200) | 298.95 |
| 23.01.2008                            | 1000  | 409.02 |
| Closing Balance (as on June 30, 2008) | 1000  | -      |

*\* Figures in brackets represent number of shares sold.*

- (2) During the subsistence of PSI-1, PSI-2, PSI-3, PSI-4 and PSI-5, QSPL had not purchased/sold the shares of NDTV and thus the enquiry in present SCN should only be limited to whether QSPL had committed the act of insider trading during the period when PSI-6 remained unpublished.
- (3) The Investigation Period is unreasonably old. (The submissions made by *Noticee No. 1* have entirely been adopted by *Noticee No.3* hence the same are not being repeated here).
- (4) PSI-6 was not '*price sensitive information*'. The *Noticee No. 3* has adopted all the arguments made by *Noticee No. 2* in this regard and hence not being repeated here).
- (5) **SEBI has failed to show that the *Noticee* was in possession of PSI-6 –**
  - (a) SEBI has failed to provide specific evidence of actual possession of any such UPSI by the *Noticee No. 3*. Mere relationship with an alleged insider of NDTV does not automatically make the *Noticee No. 3* privy to UPSI.
  - (b) All the investment decisions are taken by the board of directors of QSPL, *Noticee No.1* was only one of the directors out of 4 (four) directors in QSPL (i.e. Mr. Om Arora, Mr. Sandeep Dutt, Mr. Sanjay Dutt and Mr. Neeraj Dewan) and he does not have the sole authority to take financial decisions for QSPL.
  - (c) The total shareholding of the *Noticee No.1* (along with his brother) in QSPL is merely 16.78%. It is clear that the *Noticee No.1* does not hold sufficient shareholding to influence any kind of decisions of QSPL, since his shareholding is far below 51% which is the minimum requirement to pass an ordinary resolution in any company.
  - (d) Mere relationship with an alleged insider of NDTV does not automatically make QSPL privy to UPSI. Further, there is no material provided by SEBI to suggest that there was any actual or real possession of the alleged PSI-6 by QSPL. In the absence of the same, grave charges like that of insider trading under the PIT Regulations, 1992 cannot be levelled against QSPL. (*The Noticee* has adopted the remaining arguments of *Noticee No. 2* in this regard and as

such are not being repeated here).

**(6) Noticee did not trade on the basis of PSI-6** - Apart from adopting the submissions of the *Noticee No. 2* in this regard, the *Noticee* has, *inter alia*, submitted the following:

- (a) In the instant matter, as stated in Table No. 11 above, on January 23, 2008, QSPL had bought 1000 shares of NDTV for the first time during the Investigation Period, at the rate of ₹409.02/- per share.
- (b) When PSI-6 became publicly available, QSPL did not sell the shares of NDTV to make any illegal gains, pursuant to the said public disclosure of the alleged price sensitive information.
- (c) It was only on April 08, 2009 and July 16, 2010 that the shares of NDTV were sold by QSPL, at a price of ₹97.80/- and ₹107.40/- per share, respectively. Pursuant to such sale, QSPL in fact suffered a loss of ₹306.42/- per share aggregating to ₹3,06,420/- (Rupees three lakh six thousand and four twenty only), contrary to what has been alleged in the SCN (i.e. unlawful gains of ₹3,100).
- (d) During the period between May-June 2008, an open offer at the rate of ₹438.98/- per share was pending for the public shareholders of NDTV. However, QSPL, even though eligible to sell its shares in the said open offer, did not sell the same. Had it sold the shares during the open offer, it could have made a gain of at least ₹29.96/- per share, totaling to a profit of ₹29,960/- on the total investments made by QSPL in the scrip of NDTV.
- (e) The trading pattern followed by QSPL clearly demonstrates that the trading decisions of QSPL were independent of any UPSI that may have existed with regard to the scrip of NDTV.
- (f) Another important point to be highlighted here is the quantum/number of shares that were traded by QSPL. During the subsistence of PSI-6, the total paid-up share capital of NDTV comprised of 6,25,33,282 equity shares. QSPL's purchase of 1000 shares constituted 0.002% shareholding of NDTV.
- (g) If QSPL was acting on the basis of PSI-6 and if its intent was to capitalize on the basis of price sensitive information possessed by the *Noticee No. 1*, then it would not have purchased such a small quantity of shares. Such factual evidences have always been carefully looked into and accepted by SEBI and the Hon'ble SAT to determine the charges of insider trading. One of the leading precedents

on this aspect being *Manoj Gaur case* wherein on the basis of trading pattern, quantum of shares traded, etc. it was held that dealing in securities was not in violation of PIT Regulations.

- (h) In accordance with above, it is submitted that during the Investigation Period there was effectively only one instance of purchase of NDTV's shares by QSPL. This trading pattern is not consistent with the trades which may be motivated by any UPSI. Therefore, it is submitted that QSPL was not in possession of PSI-6 and has not dealt in the scrip of NDTV on the basis of PSI-6 hence, Regulation 3(i) and 4 of PIT Regulations read with Section 12A(d), (e) of the SEBI Act was not violated by QSPL.

**D. SAL Real Estate Private Limited – Noticee No. 4**

- (1) The following trades were undertaken by SREPL during the Investigation Period, in the scrip of NDTV:

**Table No. 12: Trading by SREPL in the scrip of NDTV during the Investigation Period**

| UPSI Period | Buy (No. of Shares) | Sell (No. of Shares) | Post announcement of PSI |      |
|-------------|---------------------|----------------------|--------------------------|------|
|             |                     |                      | Buy                      | Sell |
| PSI-1       | 3,56,533            | 94,964               | 1,00,000                 | -    |
| PSI-2       | 3,50,000            | -                    | -                        | -    |
| PSI-3       | 2,40,000            | -                    | -                        | -    |
| PSI-4       | 10,000              | -                    | -                        | -    |
| PSI-5       | -                   | -                    | -                        | -    |
| PSI-6       | 58546               | 10,000               | -                        | -    |

- (2) SREPL had transacted in the scrip of NDTV during the subsistence of PSI- 1, PSI-2, PSI-3, PSI-4 and PSI-6, and not during PSI-5.
- (3) The Investigation Period is unreasonably old. In this regard, the *Noticee* has replied on the lines similar to the one made by *Noticee No. 2*.
- (4) PSI(s) were not '*price sensitive information*' – The *Noticee* has made submissions in this regard on the lines of the submissions made by *Noticee No. 2*. Besides, the *Noticees* has, *inter alia*, submitted the following:

**Table No. 13: Price of the scrip of NDTV**

| Date  | Closing Price (As provided at NSE website) | Percentage Change on relevant date (from previous closing) |
|---|--|--|
| PSI-1 (July 31, 2006 to October 17, 2006)       |  |  |
| 16.10.2006                                      | 240.9                                      | -2.90%   |
| 17.10.2006                                      | 227.15                                     |  |
| 18.10.2006*                                     | 220.5                                      |  |
| PSI-2 (September 21, 2006 to November 28, 2006) |  |  |
| 27.11.2006                                      | 236.95                                     | -1.71%   |
| 29.11.2006                                      | 230.35                                     |  |
| PSI-3 (November 22, 2006 to March 11, 2007)     |  |  |
| 09.03.2007                                      | 283.6                                      | 1.50%  |
| 11.03.2007**                                    | -  |  |
| 12.03.2007                                      | 287.75                                     |  |
| PSI-4 (March 22, 2007 to May 30, 2007)          |  |  |
| 29.05.2007                                      | 396.3                                      | -4%  |
| 30.05.2007                                      | 385.05                                     |  |
| 31.05.2007                                      | 396.9                                      |  |
| PSI-6 (September 07, 2007 to April 16, 2008)    |  |  |
| 15.04.2008                                      | 401.65                                     | 0.40%  |
| 16.04.2008                                      | 409.5                                      |  |
| 17.04.2008                                      | 411.1                                      |  |

*\*Considering that PSI-I and PSI-6 were disclosed post market hours, therefore the relevant date for change in the price of the scrip would be the next trading day.*

*\*\*March 11, 2007 being Sunday was a trading holiday, hence the relevant date to check the change in price of the scrip for PSI-3 will be the next trading day.*

- (a) From the above, it can be inferred that post announcement of various PSI(s), not only there was no impact on the price, the price in fact moved in the opposite direction compared to what the allegations under the SCN is seeking to prove in most of the periods. For the investigation periods, there is no impact on the price (beyond the normal market volatility range of that stock each day by 0.4% and 1.5%).
- (b) In other words, what is being alleged to be misuse of good news was in fact bad news for NDTV, as judged by the investors collectively. As per the table above and also detailed in Annexure 2 appended to the SCN, it is clear that daily change in the range of ₹5- 15 per share in the price was usual for the scrip of NDTV.
- (c) On disclosure of the PSI(s), similar change of ₹2-12 per share was observed

and there was no unusual change in the price of the scrip of NDTV. Merely because an event is disclosed to the stock exchanges does not imply that it is in the nature of 'price-sensitive information'.

- (5) SEBI has failed to show that SREPL was in possession of PSI(s). In this regard, the *Noticee* has adopted/repeated most of the submissions already made by the *Noticee No. 2*. Besides those submissions already dealt with earlier, the *Noticee* has submitted as under:

- (a) *Noticee No.1*, who is alleged to have communicated the PSI(s) to the other *Noticees*, has no direct connection with SREPL. SREPL has two directors, one of whom is *Noticee No.2*, the spouse of *Noticee No.1*. It is important to state that the operational matters of SREPL are handled by another designate who is not connected with either of the *Noticees*.
- (b) In such a circumstance, it is clear that there was no direct communication/possession of PSI(s) with SREPL. The decision to trade in the scrip of NDTV and any other investments to be made by SREPL was not that of *Noticee No.1*. In fact, as clearly shown above in Table No. 13 above, the actions of the *Noticee* were exact opposite of what an insider trader would have done, if in possession of UPSI. This incontrovertibly demonstrates that no inside information was in fact passed on from any of the other *Noticees* to SREPL.
- (c) Mere relationship with an alleged insider of NDTV does not automatically make SREPL privy to UPSI. In the present matter, SEBI has not done any such investigation and has failed to provide any evidence of actual communication of PSI(s) by either *Noticee No. 2* or SREPL. In the absence of the same, grave charges like that of insider trading under the PIT Regulations, 1992 cannot be brought against SREPL. More so, SEBI till the issue of this SCN (12 years after the trades and 5 years after the complaints), did not even make any enquiries or send any communication to SREPL on the matter, before making such serious allegations in the SCN.

- (6) The *Noticee* did not trade in the scrip of NDTV on the basis of PSI(s). The *Noticee* has relied mainly on the lines of the replies submitted by *Noticee No. 2* in this regard. Additionally, the *Noticee* has, *inter alia*, submitted as follows:

- (a) In the instant matter, there exists mere a presumption of possession of UPSI with SREPL. There exist no facts that determines that the trade undertaken by SREPL was on the basis of PSI(s).



- (b) The trading pattern of a person is very important to decide whether the act of insider trading has been committed or not. In a very recent case of *Vasparrr Shelter Limited (In the matter of Vas Infrastructure Limited)* the Adjudicating Officer of SEBI has held that in cases where the trading pattern / behavior of noticee is opposite to the nature of the UPSI, then such noticee cannot be considered to have acted on the basis of such UPSI. The relevant portion of the SEBI order has been quoted as below:

*"19. I note that the Noticee has further contended that the unaudited quarterly results of VIL for the December 2009 quarter was positive in nature and the same is evidenced from the movement of the price of the scrip. The Noticee has submitted that that the weighted average price of VIL was Rs. 26.25 on the day it sold the shares i.e. February 01, 2010, and subsequent to the publication of the result the scrip had increased by more than 53% to Rs. 40.25 on February 08, 2010. The Noticee has argued that since the UPSI was positive in nature, any insider seeking to profit from the same would buy and not sell prior to such information being made public. In this regard, I note that as per the said quarterly results that was published on February 06, 2010, as compared to a loss of Rs. 0.17 crore in the preceding quarter i.e. September 2009, VIL had recorded a profit of Rs. 0.10 crore in the quarter ended December 2009. From the price movement of VIL, I also note that there was positive price movement in the scrip subsequent to the selling by the Noticee and the publication of the quarterly results of December 2009 quarter. In view of the above, I find merit in the contention of the Noticee that the sale transaction was contrary to the positive nature of the information. Accordingly, I find that the trading pattern of the Noticee does not indicate that its trading was on the basis of UPSI. Hence, considering the facts and circumstances of the case, I am inclined to give benefit of doubt to the Noticee, especially considering the fact that the Noticee had sold prior to the positive announcement, and there was positive price movement subsequent to the publication of the quarterly results and also the Noticee's submission that the sale transaction was inter alia for the purpose of meeting the payment liabilities of YCL. Accordingly, I conclude that the alleged violation of Regulations 3(i) and 4 of PIT Regulations, 1992 by the Noticee des not stand established."*

- (c) SREPL has primarily purchased the shares of NDTV (i.e., 10,15,079) during the Investigation Period and has only sold 1,04,964 shares. If SREPL was acting on the basis of PSI(s), which are 'positive news' with an ability to move up the price of the scrip, as stated in paragraph 58 of the SCN, the selling activity of SREPL would be in line to maximize the returns out of the

investments.

- (d) The trading pattern followed by SREPL clearly demonstrates that SREPL has not made any unlawful gains or averted losses by trading in the scrip of NDTV during the Investigation Period. Thus, the trading decisions of SREPL were independent of any PSI that may have existed in regard to the scrip of NDTV.
- (7) The trading pattern of SREPL demonstrates that ‘dealing in securities’ was not on the basis of PSI(s) –
- (a) Trading in the stock market in various listed scrips is the usual business activity of SREPL and the company is authorized to “*carry on the business of trading, investing and buying and selling of listed and unlisted equity shares in India*”. The following table provides a brief snapshot of the trading activities of SREPL during the Investigation Period and the financial years before and after the Investigation Period.

**Table No. 14: Trading Activities of SREPL during the Investigation Period**

| <b>Financial Year</b> | <b>Total No. of Scrips of various listed Cos</b> | <b>Total Quantity of Shares Traded by SREPL of all listed Cos</b> | <b>Total Trading in the scrip of NDTV</b> |
|-----------------------|--|---|---|
| 2005-06               | 133  | 1,86,00,611   | 35,000                                    |
| 2006-07               | 71   | 1,40,61,173   | 17,43,618                                 |
| 2007-08               | 101  | 2,38,28,844   | 2,78,546                                  |
| 2008-09               | 58   | 86,02,203   | 18,87,767                                 |
| 2009-10               | 142  | 4,25,27,983   | 11,87,573                                 |

- (b) As per the trading pattern of SREPL as depicted in the table above, it is clear that SREPL has been undertaking frequent trading activities in various scrips, more importantly in the scrip of NDTV, even before the Investigation Period. NDTV was not the only *Company* in which SREPL has actively traded. There are several other companies in which SREPL has heavily traded. For example, during 2005-06, SREPL has traded in approx. 1.86 crore shares spread across 133 scrips, out of which NDTV was mere 35,000 shares (approx. 0.019%). Similarly, during 2006-07, SREPL had traded in more than 1.4 crore shares spread across 71 scrips. Therefore, it is clear that SREPL had been frequently trading in the scrip of various listed entities, including that of NDTV, irrespective of any direct or indirect

relation with NDTV.

- (c) During the period between May-June 2008, an open offer at the rate of ₹438.98/- per share was pending for the public shareholders of NDTV. As on May 29, 2008 (the date for tendering of shares in open offer), as per available records SREPL alone possessed around 17 lakh shares of NDTV at an average price of approx. ₹240/- per share. Had it sold the shares during the open offer, it could have made a gain of at least ₹199/- per share, totaling to a profit of ₹33.83 crore on the total investments made by SREPL in the scrip of NDTV. However, the *Noticee* even though eligible to sell its shares in the said open offer, did not sell the same. The trading pattern followed by SREPL clearly demonstrates that the trading decisions of SREPL were independent of any UPSI that may have existed with regard to the scrip of NDTV, when in fact none existed.
- (d) Another important point to be highlighted here is the quantum of shares that were traded by SREPL. During the subsistence of PSI(s), at no point of time SREPL's trades amounted to more than 1% of the total paid-up equity share capital of NDTV.
- (e) If SREPL had traded while in possession of and on the basis of any kind of UPSI and if its intent was to capitalize on the basis of any such confidential information possessed by its shareholder, then it would not have traded such a small quantity of shares.
- (f) SREPL's trading activities were ordinary in nature and there were no unusual transactions undertaken by SREPL during the Investigation Period and hence, the allegation that SREPL has traded on the basis of PSI(s) is baseless.

**E. Taj Capital Partners Private Limited – Noticee No. 5**

- (1) The following trades were undertaken by TCPPL during the Investigation Period, in the scrip of NDTV:

**Table No. 15: Trading by TCPPL in the scrip of NDTV during the Investigation Period**

| Date of Trading | Number of Shares<br>(Figures in brackets<br>represent number of<br>shares sold) | Average Buy/ Sell<br>Price per share |
|-----------------|---|--------------------------------------|
|-----------------|---|--------------------------------------|

|  |        |        |
|--|--------|--------|
| Opening balance (as on September 01, 2006) | 10,000 | -      |
| 18.09.2006                                 | (5000) | 223.03 |
| Closing Balance (as on June 30, 2008)      | 5000   | -      |

- (2) The enquiry in present SCN should only be limited to whether TCPPL had committed the act of insider trading during the period when PSI-1 remained unpublished.
- (3) The Investigation Period is unreasonably old. In this regard, the *Noticee* has adopted the submissions made by *Noticee No. 2*.
- (4) PSI-1 was not ‘*price sensitive information*’. Apart from adopting the legal arguments made by the *Noticee No. 2* regarding an information being a price sensitive information, the *Noticee* has additionally submitted the following:
  - (a) As per the SCN, PSI-1 dealt with potential expansion of NDTV. In this regard, paragraph 23 and 28 of the SCN are the relevant paragraphs.
  - (b) Information pertaining to exploring of new non-news ventures pertained to the group entities of NDTV and not NDTV directly. The above stated companies and businesses were being undertaken by various subsidiaries of NDTV Network Plc, U.K. which was a group entity of NDTV, as provided in Annexure 6 to the SCN.
  - (c) Paragraph 58 of the SCN further states that all the six (6) disclosures made by NDTV during the Investigation Period are deemed to be price sensitive information in terms of regulation 2(ha) of the PIT Regulations, 1992 and if any of the six UPSI were published before disclosure to the stock exchanges, then “it would have materially affected the price of securities of NDTV”.
  - (d) Accordingly, it can be safely inferred that PSI-1, when disclosed, had an impact on the price of the securities of NDTV, as per SEBI. Change in price is a factual enquiry and can be easily checked by looking into the trading performance and corresponding price of the scrip. In this regard, the *Noticee* has relied upon the findings of the Hon'ble SAT in the matter of *Rajiv B. Gandhi v. SEBI*.
  - (e) With regard to the impact on price of the securities of NDTV, the following table provides the price of NDTV's securities during the relevant time period:

**Table No. 16: Price of NDTV's securities during the relevant time period**

| Date               | Closing Price (As provided at NSE website) |
|--------------------|--|
| 12.10.2006         | 230.90                                     |
| 13.10.2006         | 239.80                                     |
| 16.10.2006         | 240.90                                     |
| 17.10.2006         | 227.95                                     |
| <b>18.10.2006*</b> | <b>220.50</b>                              |
| 19.10.2006         | 211.40                                     |
| 20.10.2006         | 217.05                                     |

*\*The announcement of PSI-1 was made on October 17, 2006 after market hours.*

- (f) From the above, it is clear that the price of the scrip of NDTV usually fluctuated by approx. ₹10/-. On October 18, 2006, the price of the scrip of NDTV changed to ₹211.40/- from ₹220.50/-, leading to a fall of ₹9.10/-
- (g) Considering that PSI-1 was disclosed at 17:50 hours on October 17, 2006 therefore, October 18, 2006 becomes the relevant day to check the impact of such announcement / disclosure.
- (h) As per the details provided in Annexure 6 to the SCN, i.e., NDTV's letter dated January 29, 2016, it is stated that one of the group entities of NDTV, i.e., NDTV Network Plc, UK had setup subsidiaries in India to venture into non-news channels.
- (i) The alleged PSI-1 pertained to the associated entities of NDTV, and not NDTV directly. Merely because an event is disclosed to the Stock Exchanges does not imply that it is in the nature of '*price sensitive*' information.
- (j) Therefore, the financial market participants did not see the alleged PSI-1 as an event which was significant enough to change their trading decisions.
- (k) It is clear from the price pattern provided above that on disclosure of alleged PSI-1, there was no reaction from the market and there was no impact on the price of shares of NDTV.
- (l) Hence, PSI-1 did not relate with NDTV directly and cannot be considered as price sensitive information, as defined under Regulation 2(ha) or as stated in paragraph 58 of the SCN. (In this regard, the *Noticee* has relied on the order of the Adjudicating Officer of SEBI in the matter of *Emami Limited*). Therefore, every information which is disclosed may not be UPSI and PSI-1 was one such information.

- (m) In order to avoid such confusion, the Committee on Fair Market Conduct<sup>6</sup> has in fact recommended that the material events disclosed to stock exchanges for compliance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, should be removed from the list of '*deemed*' UPSI under the new insider trading norms.
  - (n) In accordance with above, for an information to be considered as '*price sensitive*' under regulation 2(ha), it should have an impact on the price of the securities of the *Company* itself and not its associated entities. In the absence of such impact, the information cannot be termed as '*price sensitive*'.
  - (o) In the instant matter, since the information pertained to the group entities of NDTV, therefore, it was important for NDTV to disclose it to the stock exchanges. However, this does not imply that the information was price-sensitive as it did not have any impact on the price of the securities of NDTV, therefore, PSI-1 cannot be termed as price sensitive under regulation 2(ha).
- (5) SEBI has failed to show that TCPPL was in possession of PSI-1. Apart from adopting and relying on the submissions in this regard made by *Noticee No. 2* which have been discussed earlier in this order, the *Noticee* has, *inter alia*, submitted the following:
- (a) Merely because the *Noticee No.1* is a shareholder and a director in *Noticee No. 5*, it does not imply that such information was passed on to the *Noticee* or that the *Noticee* acted on the basis of its shareholders' knowledge about the UPSI.
  - (b) The decision to trade in the scrip of NDTV and any other investments to be made by TCPPL is taken by the board of directors of TCPPL. *Noticee No.1* is one of the directors and he does not have the sole authority to take financial decisions for TCPPL.
  - (c) Mere relationship with an alleged insider of NDTV does not automatically make TCPPL privy to UPSI. Further, there is no material provided by SEBI to suggest any actual or real possession of the alleged PSI-1 by TCPPL.
  - (d) In the absence of the same, grave charges like that of insider trading under PIT Regulations cannot be levied against TCPPL.
- (6) *Noticee* did not trade in the scrip of NDTV on the basis of PSI-1. In this context apart from adopting and relying on the submissions already made by the *Noticee No. 2*, the *Noticee* has, *inter alia*, made the following additional submissions:

- (a) There exists mere a presumption of possession of UPSI with TCPPL. There exist no facts that determines that the trade undertaken by TCPPL was on the basis of PSI-1. It is further submitted that for an act of insider trading, it is important that a connection is established between the information and trade, i.e., the dealing in securities should be motivated by the price sensitive information in question. A leading authority in this regard is the order of the Hon'ble SAT in the matter of *Mrs. Chandrakala v. Adjudicating Officer*.
- (b) In the instant matter, as stated in Table No. 15 above, on September 18, 2006, TCPPL had sold 5000 shares of NDTV during the Investigation Period, at the rate of ₹223.03/- per share, whereas the price of the scrip of NDTV went as high as ₹241/- per share on October 17, 2006.
- (c) Had TCPPL acted on the basis of the alleged '*price sensitive*' information possessed by its shareholder, it would have waited for an ideal day to maximize the returns out of the investments. Rather, in the instant case TCPPL sold its shares before the disclosure of the alleged price sensitive information.
- (d) The trading pattern followed by TCPPL clearly demonstrates that the trading decisions of TCPPL were independent of any UPSI that may have existed with regard to the scrip of NDTV. As a matter of logic, the *Notices* did the exact opposite of one who would try to misuse the UPSI, i.e., sale before the so-called '*good news*'.
- (e) During the Investigation Period there was merely one instance of sale of NDTV's shares by TCPPL and hence, the allegation that the trading activities of TCPPL in the scrip of NDTV substantially increased during the Investigation Period is baseless.
- (f) As stated above, this trading pattern is not consistent with the trades which may be motivated by any UPSI. Therefore, it is submitted that TCPPL was not in possession of PSI-1 and has not dealt in the scrip of NDTV on the basis of PSI-1 hence, regulation 3(i) and 4 of the PTT Regulations, 1992 read with section 12A(d), (e) of the SEBI Act, 1992 was not violated by TCPPL.

13. Before I proceed to appropriately deal with the replies/submissions of the *Notices* which have been discussed in the foregoing paragraphs, I find it worthwhile to recollect here the charges that have been levelled against the *Notices*. It has been alleged in the SCN that:

- (a) *Noticee No.1*, by directly or indirectly communicating unpublished price sensitive information to *Noticees No. 2 to 5*, has violated the provisions of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(ii) and regulation 4 of the PIT Regulations, 1992.
- (b) *Noticees 2 to 5*, by dealing in securities of NDTV when in possession of unpublished price sensitive information, have violated the provisions of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.

14. In order to appreciate the charges levelled against the *Noticees*, it would be proper and necessary to refer to the above-stated relevant provisions of the SEBI Act, 1992 and the PIT Regulations, 1992 which have a bearing on the allegations made against the *Noticees*. Those relevant provisions of the Act and the Regulations, 1992, as were applicable at the time of the alleged violations, are reproduced hereunder for ease of reference:

**The SEBI Act, 1992 -**

*“12A. No person shall directly or indirectly—*

*.....*

*.....*

*(d) engage in insider trading;*

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

*.....”*

**The PIT Regulations, 1992 –**

**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; or*

*(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:*

*Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.*

*.....”*



### **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.”*

15. I have carefully considered the allegations against the *Notices*, their replies and submissions and the materials available on record. I note that all the *Notices* have put forth somewhat similar or same submissions on legal issues. Even the submissions of the *Notices* on factual issues proceeds on similar lines while iterating the specific facts relevant to each of the *Notices*. I, therefore, deem it useful to deal with the common submissions of the *Notices* at one place.

#### **A. The Investigation Period is unreasonably old**

16. One of the common contentions of the *Notices* is that the Investigation Period is unreasonably old and as such they did not have access to the relevant documents to support the allegations made against them in the SCN.

17. It is an admitted fact that the investigation in the instant matter was initiated in pursuance of a series of complaints received by SEBI from NDTV starting from July 16, 2013 (1<sup>st</sup> complaint) to January 9, 2014 (3<sup>rd</sup> complaint) *inter alia* alleging that certain entities were involved in dealing in securities of NDTV in violation of provision of the PIT Regulations, 1992 during the period September 2006 to June 2008. The *Notices* have however pleaded that there were complaints and counter-complaints between the management of NDTV, represented by Mr. Prannoy Roy and Mrs. Radhika Roy on the one side and the *Notices* herein on the other side and that they have filed various complaints against the misconduct and financial irregularities of Mr. Prannoy Roy and Mrs. Radhika Roy to different enforcement agencies because of which NDTV and Mr. Prannoy Roy and Mrs. Radhika Roy have lodged these complaints of insider trading against them. The *Notices* have stated that the present proceedings against them would amount to sending a wrong message to the whistle-blowers and would deter right minded people in sharing information about corporate misconduct with enforcement agencies. Whatever be the background of the complaints that were received by SEBI from NDTV, there is no dispute that the investigation that has culminated into issuance of the present SCN against the *Notices* and two other similar show cause notices which have been issued to some other entities (including Mr. Prannoy Roy and Mrs. Radhika Roy) on similar charges of insider trading, was conducted consequent to receipt of a series of complaints which had to be investigated by SEBI. Further, in the course of investigation, it is seen that SEBI had exchanged a number of communications with the *Company* and other relevant entities. After completion of the investigation, SEBI initiated proceedings in respect of several entities including the *Notices* in the SCN under consideration. It is a common knowledge that investigation into matters pertaining to allegations of insider trading are significantly complex and requires collating of various types of multiple data and information for analysis and examination. Further, it is a fact

that the investigation into the alleged insider trading in the shares of NDTV involved a host of entities whose status as insiders and specific trades executed by them had to be examined with reference to roles, data and other ancillary information. It is also relevant to iterate here that while the *Notices* expect SEBI to act on their complaints and initiate various proceedings under the SEBI Act and different regulations framed thereunder against Mr. Prannoy Roy and Mrs. Radhika Roy against whom they have admittedly filed various complaints to SEBI and other agencies around the same time when NDTV has filed the afore stated complaints of insider trading against the *Notices*, quite inexplicably, the *Notices* resist similar proceedings against themselves on the ground of delay or by citing other technical reasons. This palpably demonstrates that the arguments put forth on this aspect lack any intrinsic merit and deserve to be cast aside.

18. Undoubtedly there is no provision under the SEBI Act, 1992 or the PIT Regulations, 1992, which prescribes any time limit for taking cognizance of the alleged breach of provisions of the Act, and rules and regulations made thereunder. The Legislature, in its wisdom, did not deem it fit to provide for the same. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in a matter, it is important not to lose sight of the fact that it is the date when the alleged violation came to the notice of SEBI which would be the relevant point and certainly not the date of commission of the said violation. Again, whether a delay in a particular case is justified or not depends on the attending facts and circumstances of that specific case. In this regard, it is relevant to refer here to the findings of the Hon'ble Supreme Court in the matter of *Mahendra Lal Das vs. State of Bihar and Ors.* (2002) 1 SCC 149 also relied upon by the *Notices*, wherein the Hon'ble Apex Court held that “*While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused, witnesses, workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case.*”
19. The aforesaid legal position has also been endorsed by the Hon'ble SAT in *Ravi Mohan & Ors. v. SEBI* (SAT Appeal No. 97 of 2014 decided on December 16, 2015):

“.....Based on decision of this Tribunal in case of *HB Stockholdings Ltd. vs. SEBI* (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of *Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C) has held that *if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the*

adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.....”. (Emphasis supplied)

20. The *ratio* laid down by the Ld. Tribunal in the aforesaid case, was upheld and reiterated by it, in *Kunal Pradip Savla & Ors v. SEBI* (Appeal no. 231 of 2017) decided on April 13, 2018. In my view, complexities encountered during the investigation or for that matter during the proceedings in the instant case far outweigh the delay as wrongly perceived by the *Notices* caused in the initiation of the proceedings. Further, the principles of natural justice have been fully complied with and all the relevant documents have been made available to the *Notices*. Considering the foregoing, I am of the view that no delay has occurred in initiating action in the present matter by SEBI and in any event, no prejudice was caused to the *Notices* on account of non-availability of the relevant documents. Therefore, I do not have any hesitation in rejecting the contention of the *Notices* claiming delay and laches in initiating proceedings against them.
21. I also find that pursuant to completion of investigation in this case, show cause notices(SCNs) were issued to the entities against whom allegations of insider trading have been brought in based on facts and evidences detected during the investigation. It is important to note here that the SCN and the Annexures thereto contain all the factual and legal details based on which the allegations of the violation of the SEBI Act, 1992 and the PIT Regulations, 1992 have been made against the *Notices*. Therefore, taking a plea of non-availability of relevant documents is nothing but an evasive stand adopted by the *Notices*. Moreover, the SCN under consideration does not pertain to failure of the *Notices* to furnish any documents since the *Notices* have been furnished with all the relevant documents so as to enable them to respond to the charges made against them in the SCN. Considering the foregoing, I find that the reliance of the *Notices* on various laws regarding statutory time limits prescribed thereunder for maintenance of documents are misplaced on facts, irrelevant for the instant proceedings and an unreasonable stand that would not come to their help at all.
22. I would now advance to deal with the replies and submissions of the *Notices* on merit. From the submissions of the *Notices* I find that all of them have raised the following common issues in their defense, such as:
- (a) PSI(s) were not ‘*price sensitive information*’
  - (b) In the absence of any ‘*communication*’ having been established, allegation of violation of regulation 3(ii) of the PIT Regulations, 1992 are not sustainable against the *Notices*. SEBI has failed to demonstrate that the *Notices* were in possession of PSI(s).
  - (c) The *Notices* did not trade on the basis of PSI(s); and

- (d) Trading pattern of the *Notices* clearly prove that the trades were not motivated by the PSI(s).
23. In my opinion, in order to determine as to whether the *Notices* have actually contravened the provisions of the PIT Regulations, 1992 in the instant case, the following questions need to be answered:
- (a) Whether during the relevant period the *Notices* were insider in terms of the provisions of the PIT Regulations, 1992?
  - (b) If yes, whether the information available to the *Notices* was price sensitive information as envisaged in regulation 2(ha)(vii) of the PIT Regulations, 1992?
  - (c) If yes, whether during the relevant period the *Notices* had traded in the shares of NDTV?
  - (d) If yes, whether the *Notices* had traded in the shares of NDTV while in possession of price sensitive information, which was unpublished and thereby acted in violation of provisions of the SEBI Act, r/w PIT Regulations, 1992?
  - (e) If yes, whether the *Notices* had made any gain while trading in the shares of NDTV?
24. To start with, the primary question that needs to be ascertained is whether the *Notices* were insider in terms of the provisions of the PIT Regulations, 1992. Regulation 2(e) of the PIT Regulations, 1992, defines “*insider*” as any person who 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 who has received or has had access to such unpublished price sensitive information. As per the SCN, the *Noticee No. 1* is an insider by virtue of being a **connected person** in terms of regulation 2(c)(ii) of the PIT Regulations, 1992.
25. I note that by virtue of regulation 2(c)(ii), a connected person is the one who occupies the position as an officer 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. The Explanation to clause (c) further clarifies that the words “*connected person*” shall also mean any person who is a connected person six months prior to an act of insider trading.
26. I note that the *Noticee No. 1* has contended that he was neither a key managerial personnel, nor a statutory officer or even a member of the Board of Directors of NDTV. He was only a consultant and was engaged in a wide range of discussion/ correspondences with the complainant (NDTV). According to him the job description of the *Noticee No. 1* did not

allow him to participate in or take any crucial decisions. In no manner, could there be any certainty or decisive action on any of the information that he is alleged to be privy to, as the final decision/authority vested with the Board of Directors and statutory officers of NDTV on all matters.

27. Admittedly, in the instant case as can be seen from Annexure-3 to the SCN, the *Noticee No. 1* was an “on call and in house” advisor/team member of NDTV group as per a Memorandum of Understanding (hereinafter referred to as “MOU”) dated September 01, 2006 and also a Consultancy Agreement dated July 01, 2007 signed between NDTV and *Noticee No. 1*. As per the said Consultancy Agreements, the scope of work for the *Noticee No. 1* included “complete responsibility and accountability for the Corporate Finance and Strategic Planning function” of the *Company* including designing and implementing strategies to enhance corporate value, while reducing/ optimizing financial risks, assist internal teams in areas so as to maximize the company's return to capital, assist and implement investment banking and project evaluation decisions. Further, his responsibilities included evolving a corporate structure to meet the expansion of the *Company*, raising funds for existing and new business of the *Company*, working as part of the internal strategic group and as a liaison for potential partners and allies. It is further pertinent to observe that the SCN does not proceed on the premise that the *Noticee No. 1* was the only key person or had the last word in the decision making process at NDTV. The SCN alleges that he was one of the persons, who was privy to the price sensitive information of NDTV, being in the capacity of consultant of high stature having complete responsibility and accountability for the Corporate Finance and Strategic Planning function”. It is further observed from Annexure-5, 7, 8, 9, 10, and 11 to the SCN that the *Noticee No.1* was instrumental in deciding on the business expansion of the *Company* in areas beyond the news as well as on other strategic alliances for the *Company's* entertainment business.

28. In this respect, the *Company* vide its letter dated September 14, 2016 has informed that the *Noticee No. 1* had access to each of the PSIs due to the fact the he was representing NDTV before investors and was part of various negotiations/discussions with the third parties. The *Company* has further averred that he was also responsible for the preparation and finalization of stock exchange disclosures in consultation with the management and had access to all sensitive information. The content of the above mentioned annexures to the SCN clearly show that the *Noticee No. 1* was not only part of most of the important email conversations dealing with highly sensitive and crucial business matters of the *Company*, but also is seen to have actively participated in such emails correspondences with several entities. Considering the foregoing, I am convinced beyond doubt that the *Noticee No. 1* was a connected person by virtue of his association with the *Company* and on the basis of this count itself, in terms of regulation 2(e) of the PIT Regulations, 1992, I find that the *Noticee No. 1* was an ‘insider’ of the *Company* during the relevant period of

time. Notwithstanding the foregoing, copies of the e-mails furnished by NDTV vide its reply dated September 14, 2016, clearly reveal that the *Noticee No. 1* had access to or was part of the communication chain that led to commencement of all the six PSI(s) as mentioned in Table 3 above. The copies of emails forwarded by NDTV in this regard have not been disputed by the *Noticee No.1*. It is also an admitted fact that these six PSI(s) were later on disclosed on the Stock Exchange website by the *Company*. The fact that the PSI(s) were disclosed on the platform of the Stock Exchanges at the relevant time by the *Company* puts to rest any dispute and makes it amply clear that the concerned PSI(s) were very much price sensitive information.

29. I have perused the Annexure 3 to the SCN which, *inter alia*, comprises of an MoU dated September 01, 2006 and an agreement dated July 01, 2007 between the *Company* and the *Noticee No. 1*. It is writ large from those documents that the *Noticee No.1* was assigned with almost entire responsibility and accountability for the corporate finance and strategic planning function, and as per the said agreement, such responsibility, *inter alia*, included the following:

- Designing, evolving and implementing strategies to enhance corporate value while reducing/optimizing the Group's financial risks.
- Recommend and assist the internal team in areas so as to maximize the corporations' return to capital.
- Work in the finance, strategic and other operational areas so as to achieve the financial metrics above Indian/Global standards.
- Assist and supervise the evaluation and implementation of capital investment.
- Work on areas to ensure the balance and management of current assets and current liabilities.
- Assist and implement investment banking and project evaluation decisions.
- Supervision/advise and working with the CFO and other Accounting/Finance personnel.

30. The above-enumerated job profile of the *Noticee No. 1* clearly points out to the fact that the *Noticee* enjoyed unhindered access to the corporate finance and strategic planning activities of the *Company*. It is also a matter of record that the *Noticee* had been a party to all the communications at all stages that led to the germination of the relevant PSI(s). In fact, vide letters dated July 16, 2013 and September 14, 2016, NDTV has submitted the details of the PSI(s), the respective dates when the said PSI(s) came into existence and how the *Noticee No. 1* was aware of the negotiations/deliberations involving crystallizations of those PSI(s). Thus, in my considered opinion, the *Noticee No. 1* being part of the core decision making team of the company by virtue of his high level assignment as evident from the aforementioned MoU and agreement, cannot now

pretend ignorance about the existence of the PSI(s). Considering the foregoing, the posturing of the *Noticee* that his job description did not allow him to participate in or to take crucial decisions in the company is a superfluous stand that is outright unacceptable on the face of glaring evidence from the records that clearly indicate that the *Noticee No.1* was certainly an ‘insider’ of the company during the relevant period.

31. I would now endeavor to examine the relationship of the *Noticee No. 1* with the other remaining *Noticees* in the light of the submissions of each of the *Noticees* so as to determine if the remaining 4 *Noticees* are covered by the definition of the ‘insider’ as enumerated in the PIT Regulations, 1992. It is an admitted fact that Ms. Prenita Dutt (the *Noticee No. 2*) is spouse of the *Noticee No. 1*, who himself is a connected person and as such was an insider to the *Company*. By virtue of being relative of the *Noticee No. 1*, the *Noticee No. 2* is deemed to be a connected person in terms of regulation 2(h)(viii) of the PIT Regulations, 1992 and hence, an insider in terms of regulation 2(e) of the Regulations. Further, as a spouse of a person who had received or has had free access to price sensitive information of the company as observed in the aforesaid paragraphs, the *Noticee No. 2* is reasonably expected to have had access to unpublished price sensitive information in respect of securities of the *Company* (from *Noticee No. 1*) during the relevant period of time.
32. The records before me indicate that *Noticee No. 1* and his brother Mr. Sandeep Dutt are the promoters/directors of Quantum Securities Private Limited (QSPL or *Noticee No. 3*). Further, the shareholding of *Noticee No. 1* and his brother in *Noticee No. 3* (QSPL) was 16.78% each during the relevant period. The fact that the *Noticee No. 1* himself owned 16.78% and along with his brother owned more than 33.5% of the shareholding in QSPL clearly establishes the fact that the *Noticee No. 3* is deemed to be a connected person in terms of regulation 2(h)(ix) of the Regulations. This finding is further bolstered by the fact that the *Noticee No.1* and his brother were promoters/directors in the *Noticee No. 3* during the relevant time. The contention of the *Noticee No. 1* that he was one of the four directors of QSPL and he did not have the sole authority to take any financial decisions for QSPL, does not carry any weight on the face of the hard reality that the *Noticee No. 1* alongwith his brother held significant shareholding in the *Noticee No. 3* and both of them being the promoter/director of QSPL were lawfully wielding significant influence and control over the affairs of the *Company*. Without prejudice to the above, I can notice that the SCN in any case does not dive into the issue nor does it discuss as to whether the *Noticee No. 1* held majority share capital in the *Noticee No. 3* and whether *Noticee No. 3* was always acting under the guidance and instruction of the *Noticee No. 1*. The allegation in the SCN in fact is that *Noticee No. 1* alongwith his brother held more than 33 % in the *Noticee No. 3*, which coupled with the undisputed fact that *Noticee No. 1* was acting as an apex level consultant with NDTV and was having uninhibited access to price sensitive information of the *Company*, leads to strong possibility for *Noticee No.1* to play a pivotal

role in influencing the business decisions including the investment decisions of the *Noticee No. 3*. The *Noticee No. 1* while denying the aforesaid charge has made a very feeble attempt to shield *Noticee No. 3* from being considered as an insider by stating that there were also other directors in *Noticee No. 3* and he alongwith his brother being owners of 33% of shares in the *Noticee No. 3*, the acts of *Noticee No. 3* should be seen as acts done/performed independent of the *Noticee No. 1*.

33. In my view, the submissions of the *Noticee No. 1* cannot be taken on their face value alone, considering the background facts and context of the case which shows that the *Noticee No. 1* being a consultant with the NDTV was undoubtedly wielding an influential position at the highest level in the *Company* and in course of his association with the *Company* he was interacting with third parties on various strategic issues connected with business planning/re-organisation, etc. of the *Company*. Therefore, such a person who was practically part of inner coterie of decision making process of NDTV holding more than 33% shareholding in the *Noticee No. 3* alongwith his brother and serving as promoter/director of the *Noticee No. 3*, cannot escape a *bona fide* assumption based on a highly preponderance of the possibility of having influenced the investment decisions of the *Noticee No. 3* which was legally permissible and possible given the facts and circumstances surrounding the functioning of the *Noticee No. 3*. The *Noticee No. 3* in its reply has also not made any incontrovertible submission refuting the aforesaid allegation about its nexus as a connected person to the *Noticee No. 1*, with any supporting evidences. Therefore, in the facts of the matter, I find that all the factual and legal ingredients have now unfolded before me to hold that the *Noticee No. 3* is an insider in terms of regulation 2(e) read with regulation 2(h)(ix) of the Regulations, 1992. It is trite law to state that a company is a creation of law which lacks both body and mind. It cannot act just like a human being and can act only through some human agency. Therefore, a company acts and does its business primarily through its directors and other key managerial personnel. In the instant matter, the *Noticee No. 1* alongwith his brother undeniably held significant shareholding in QSPL and both were promoters/directors of the *Noticee No. 3*. Since the *Noticee No. 1* has already been held to be an insider of NDTV during the relevant period, it leads to a compelling legal presumption that the *Noticee No. 3* was assuredly expected to have access to unpublished price sensitive information in respect of securities of NDTV during the relevant period of time (through the *Noticee No. 1*). Consequently, I have to hold that in the instant proceedings the *Noticee No. 3* was an ‘insider’ in terms of regulation 2(e) of the Regulations, 1992.
34. As regards SAL Real Estate Private Limited (SREPL or *Noticee No. 4*), admittedly the *Noticee No. 2* and Mrs. Neenu Dutt (sister-in-law of *Noticee No. 1*) were promoters and directors of *Noticee No. 4*. Further, as per annual returns filed with MCA by *Noticee No. 4*, *Noticee No. 2* and Mrs. Neenu Dutt (wife of the brother of the *Noticee No. 1*) each were holding 50% of the



paid up share capital of *Noticee No. 4* during the Investigation Period. The fact that the *Noticee No. 2* has been established to be an insider of NDTV through her husband, i.e., *Noticee No. 1* by virtue regulation 2(h)(viii) of the PIT Regulations, 1992 as discussed above, the *Noticee No. 4* was also deemed to be a connected person in terms of regulation 2(h)(ix) of the PIT Regulations, 1992. Further, by virtue of the undisputed fact that the *Noticee No. 2* was the promoter/director apart from having a significant shareholding in the *Noticee No. 4*, the *Noticee No. 4 ipso facto* was reasonably expected to have access to unpublished price sensitive information of the *Company*. Under the circumstances, I find that the *Noticee No. 4* was an ‘insider’ of the *Company* in terms of regulation 2(e) of the PIT Regulations, 1992 read with regulation 2(h)(ix) of the Regulations.

35. I note from the records that the *Noticee No. 1* was also a promoter/director of Taj Capital Partners Private Limited (TCPPL or the *Noticee No. 5*) and his shareholding in the said company varied between 25% to 50% during the relevant period. The fact that the *Noticee No. 1* is held to be an insider by virtue regulation 2(c)(ii) of the PIT Regulations, 1992 as discussed before, the *Noticee No. 5* becomes a deemed connected person in terms of regulation 2(h)(ix) of the PIT Regulations, 1992. Further, by virtue of the *Noticee No. 1* being the promoter/director of the *Noticee No. 5* apart from holding significant and substantial shareholding in the *Noticee No. 5*, it has to be assumed that TCPPL was reasonably expected to have access to unpublished price sensitive information. In view of the foregoing, I find that the *Noticee No. 5* has to be held as an ‘insider’ in terms of regulation 2(e) of the PIT Regulations, 1992 read with regulation 2(h)(ix) of the Regulations.

36. Having held that all the *Notices* were insiders of NDTV during the investigation period by virtue of their *inter se* connections and in terms of the relevant provisions of the PIT Regulations, 1992, the next short question that arises for my determination is whether the information about the *Company* that were accessible by or made available to the *Notices* were price sensitive information as envisaged in regulation 2(ha)(vii) of the PIT Regulations, 1992. For the purposes of easy reference, the definition of the term ‘*price sensitive information*’ is reproduced herein below:

“(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;”*

37. In the instant case, the relevant six PSI(s) of the *Company* have been presented and highlighted under Table No. 3 in the initial part of this order. It is an admitted fact that these six PSI(s) have been duly disclosed to the stock exchanges by the *Company*. I note from the records before me that the PSI-1 (period - July 31, 2006 to October 17, 2006) pertained to expansion of the *Company* in areas beyond news to develop NDTV into a bouquet of channels with entertainment and lifestyle and initiate a major thrust into New Media including the internet. On the face of it, I find that the announcement made by NDTV is about a major expansion plan proposed by NDTV and hence, qualifies to be held as a PSI in terms of regulation 2(ha)(iv) of the PIT Regulations, 1992. Further, the UPSI period pertaining to PSI-1 also covered the UPSI period connected to the quarterly results to be published for the quarter ended September 30, 2006, which were also coincidentally announced on October 17, 2006 along with the announcement relating to PSI-1. I note that the said proposed expansion plan had later on fructified into tangible actions with NDTV launching various channels, such as NDTV Good Times, NDTV Arabia, Imagine Showbiz, and NDTV Lumiere along with incorporation of various new companies, namely, NDTV Lifestyle Limited, NDTV Labs Limited, NDTV Convergence Limited, Imagine Showbiz Limited, and NDTV Imagine Pictures Limited. The records before me clearly suggest that the *Noticee No. 1* was part of all the e-mail correspondences and internal policy deliberations that had culminated into the creation of PSI-1.
38. As regards PSI-2 (period - September 21, 2006 to November 28, 2006), I note from the records that the same pertained to strategic alliance with Karan Johar and Dharma Productions Private Limited, for the *Company's* entertainment business. As per the Explanation (iv) to regulation 2(ha) of the PIT Regulations, 1992, execution of new projects is deemed to be a price sensitive information. I also note from Annexure 7 to the SCN that the *Noticee No. 1* was part of all the email correspondences and internal discussions that led to commencement of PSI-2. Considering the foregoing, I find that the PSI-2 was a price sensitive information, and the same has also been considered to be a PSI and disclosed so by the *Company* to the Stock Exchanges.
39. I note that PSI-3 (period - November 22, 2006 to March 11, 2007) related to the *Company* signing an agreement with Com Ventures VI, L.P, a venture capital fund, for investment of USD 20 million (from ComVentures) into NDTV Network Plc. for the purpose of funding of its non-news businesses. As per the Explanation (iv) to regulation 2(ha) of the PIT Regulations, 1992, any major expansion plans or execution of new projects is deemed to be a price sensitive information. I also note from Annexure 8 to the SCN that the *Noticee No. 1* was involved in all the internal email correspondences and discussions that pertained to PSI-3. Under the circumstances, I have to hold that the PSI-3 was also a

price sensitive information, as has already been affirmed and disclosed by the *Company* to the Stock Exchanges.

40. As regards PSI-4 (period - March 22, 2007 to May 30, 2007), I note from the records that the said PSI dwelt with the closure of the Bonds transaction, pursuant to which NDTV Network Plc had issued Step up coupon convertible Bonds and raised an amount of USD 100 million for funding the operations of its subsidiaries in India. As pointed out above, in terms of the Explanation (iv) to regulation 2(ha) of the PIT Regulations, 1992, any major expansion plan or execution of new project is deemed to be a price sensitive information. In this regard, the Annexure 9 to the SCN reveals that the *Noticee No. 1* was a part of all the email correspondences that pertained to PSI-4. I, therefore, find that the PSI-4 was a price sensitive information, which has also been confirmed to be a PSI and disclosed to the Stock Exchanges by the *Company*.
41. I note that PSI-5 (period - January 19, 2008 to January 22, 2008) pertained to Memorandum of Agreement (MOA) signed with NBC Universal, Inc. (NBCU) with respect to NBCU's proposed acquisition of indirect 26% stake in non-news business of NDTV group. As per the Explanation (iv) to regulation 2(ha) of the PIT Regulations, 1992, major expansion plan or execution of new project is deemed to be a price sensitive information. From the Annexure 10 to the SCN I find that the *Noticee No. 1* was a part of all the internal email correspondences and deliberations which led to emergence of the PSI-5. I, therefore, find that the PSI-5 was a price sensitive information that has already been admitted to be a PSI and disclosed by the *Company* to the Stock Exchanges.
42. With respect to PSI-6 (period - September 07, 2007 to April 16, 2008) which was about the board of the *Company* deciding to evaluate various options for reorganization of the *Company*, that could include de-merger/split of the *Company* into news related businesses and investments in '*Beyond News*' businesses which were currently (during the relevant time) held through its subsidiary NDTV Networks Plc. As per the Explanation (vii) to regulation 2(ha) of the PIT Regulations, 1992, significant changes in policies, plans or operations of the company is deemed to be a price sensitive information. Further, Annexure 11 to the SCN suggests that the *Noticee No. 1* was actively involved in the internal discussions about the aforesaid proposed re-organisation and was also part of all the email correspondences that culminated into commencement of PSI-6. I, therefore, find that the PSI-6 was a price sensitive information, which has also been self-admitted to be so by the *Company* and the *Company* has accordingly disclosed the said PSI to the Stock Exchanges.
43. Having determined that all the afore-stated six pieces of information of/about the *Company* that were accessible by or made available to the *Noticees* were price sensitive information (PSIs),

the next issue arises for deliberation about the denial by all the *Notices* about possessing any UPSI of the *Company* taking the ground that the six items of information so disclosed by the *Company* to the Stock Exchanges and later on furnished to SEBI the details of which have been highlighted above, should not be actually considered as PSI, since the ultimate disclosure of the aforesaid PSI(s) through the stock exchanges had little or no impact on the market price of the scrip. Thus, the *Notices* have contested and defied the very existence of those six UPSIs, on the ground that those UPSIs, after being published by the *Company* had hardly any impact on the price of the scrip of NDTV. This has been demonstrated by the *Notices* in their respective written replies through price charts showing the movement of the share price of the *Company* (NDTV) on the respective trading dates post publication of those PSIs through the Stock Exchanges.

44. A perusal of the aforesaid definition of '*price sensitive information*' shows that an information pertaining to a company can be termed as price sensitive, which if published, is **likely** to materially affect the price of the securities of the company. It is, therefore, not necessary that an unpublished price sensitive information on being published, would invariably cause only a positive price impact. It can have a negative impact as well, especially in the case of an information containing less than expected or dismal financial results of the company. One can presume that an insider would indulge in insider trading while in possession of an UPSI either for reaping profit or for avoidance of loss. The aforesaid definition also illustrates certain information which are deemed to be price sensitive. The six UPSI involved in the present case as per the SCN, are deemed to be UPSI by virtue Explanation (vii) to regulation 2(ha) of the PIT Regulations, 1992, which adequately demolishes any argument about the price sensitivity of the said information. Thus, the said definition does not in any way provide that where an imputed PSI upon disclosure does not lead to a material change in the price of the securities of the *Company*, the said information would *ipso facto* cease to be price sensitive in nature. As mentioned, an event or information could also be held as price sensitive, which in ordinary sense is **likely** to be capable of materially affecting the prices of securities. Thus, it is the likelihood of material effect on the price of the securities of a company which clothes an information to be called "price sensitive". Consequently, if there was a likelihood of an information to have an impact on the price of the securities of a company, that likelihood itself is capable of characterizing the information a '*price sensitive information*' within the meaning of regulation 2(ha) of the PIT Regulations, 1992. Therefore, the said definition of '*price sensitive information*' does not pre-suppose any certainty about a price rise (or a price fall) to be triggered by such UPSI. Further there cannot be any thumb rule to predict with certainty that a positive or negative PSI, when published in public domain, would decidedly have positive or negative impact on the share price of a company as market price of securities on any given day is also influenced by a host of internal, external including domestic & international factors beyond the realm of affairs or performance of a company. However, one can certainly presume that an insider would indulge in insider trading while in possession of an UPSI either for reaping

profit or for avoidance of loss. Under the circumstances, an issue surrounding determination of a PSI requires examination of the facts of each case to decide as to whether such an event/information has the potential to affect the price or not. The *Notices* have contended that *‘what is being alleged to be misuse of good news was in fact bad news for NDTV, as judged by the investors collectively’* to support their argument that the UPSI of the Company did not have any material impact on the actual price movement of NDTV after publication of those UPSI, hence that information did not qualify to be called as PSI. In my view, such a submission is patently erroneous and against the regulatory intent behind the definition of PSI since the definition of PSI under the PIT Regulations, 1992 does not come with any qualification that a PSI, when published must result into a definite change in the price of the share of a company in order to be called a PSI.

45. In view of the foregoing discussions about the implication of the definition of price sensitive information as enunciated under the PIT Regulations, 1992, the issue of determination of PSI warrants examination of facts of each case so as to decide as to whether a specific incident/information has the potential or is likely to affect the price of the securities and such an incident/information simply cannot cease to be a price sensitive information, merely for the reason that after its publication, it failed to materially affect the price of the securities of the *Company*. Reverting back to the instant case, considering the undisputed fact that the six items of information narrated above pertained to major business expansion plan, substantial investment proposals or business reorganization of the *Company* with an intent to unlock shareholder value, it can be stated with confidence that all of those PSIs prior to their respective publications/disclosures by the *Company* clearly amounted to significant change in policies, plans and operations of the *Company*, thereby bringing all of those PSIs sufficiently within the ambit of regulation 2 (ha) read with Explanation (iv) of the PIT Regulations, 1992. Therefore, all the six pieces of unpublished information discussed aforesaid were undeniably price sensitive information, containing material elements, which upon publication, were likely to impact the price of the scrip of NDTV.

46. I would also like to draw my attention to the findings of the Hon’ble Tribunal in the matter of *V. K. Kaul vs SEBI (Supra)* wherein, it was held that the term price sensitive information used in regulation 2(ha) of the PIT Regulations, 1992 is wide enough to include information relating directly or indirectly to ‘a company’. In view of the foregoing discussions and my observations, the contentions of the *Notices* by refusing to accept those six PSIs of NDTV as PSIs on the ground that those information did not have any impact on the price of NDTV shares upon their publication and also by denying possession of any PSIs while trading in the scrip of NDTV during their respective UPSI period, are liable to be rejected since in terms of their respective contents as well as in terms of the stipulations in the definition of PSI under the PIT Regulations, the imputed UPSI(s) were containing information material enough to have a

likely impact on the share price of the *Company* at the given point in time when these PSIs came into existence.

47. It is also relevant to state here that there are multitude of market factors at play on any given trading day which determine the prices of a stock, be it publishing of a price sensitive information, sectoral performance pertaining to a company, macro and micro economic policies, general market trend in performance of stocks in the stock exchange, international trend, any market sensitive news on that day, etc. For an illustration, I notice that two *Notices* (Mr. Prannoy Roy and Mrs. Radhika Roy) in another proceedings under a separate SCN on this identical issue, have taken a plea justifying their alleged insider trades in the scrip of NDTV during the PSI-6 period, stating that the global financial turmoil (in 2008) that had led to the market price of the NDTV scrip witnessing a sharp fall, had put them to irretrievable financial loss and detriment, hence the trades undertaken by them for mitigating their losses were legitimate and should not be viewed with an objective to take advantage as an insider.
48. As discussed aforesaid, in the instant case all the PSI(s) in question pertained to definitive and determined steps proposed to be taken towards business expansion plan or execution of new projects or changes in plan, policies or operation of the *Company* with a view to unlock the shareholder values. There cannot be any two opinions that that such significant business plan as proposed in the above narrated PSIs of the *Company* at the time of their inception, were certainly likely to have material impact on the price of the scrip. The opposite contentions of the *Notices* in this regard also becomes factually misplaced considering the irrefutable fact that the *Company* itself considered these information as '*price sensitive information*' and disclosed them accordingly to the stock exchanges. In view of the foregoing, whether the said business plans proposed by the *Company* actually affected the price of the securities or not after being published, becomes irrelevant for the purpose of determination of liability of insider trading under PIT Regulations, 1992.
49. Having decided that the imputed PSI(s) in the instant case were indeed '*price sensitive information*' in terms of regulation 2(ha) of the PIT Regulations, 1992 and the *Notices* by virtue of their status as insiders of the *Company* had reasonable access to such PSI prior to their publications/disclosure by the *Company* and hence, were deemed to be possessing those unpublished PSI during the relevant UPSI periods, I now proceed to ascertain as to whether during the relevant periods of UPSI the *Notices* had traded in the shares of NDTV. I note from the records that except for the *Noticee no. 1*, all the remaining four *Notices* have traded in the scrip of the *Company*, the details of which are as under:

**Table No. 17: Trading activities of the *Notices* during Investigation**

**Period**

| UPSI Period  | Buy (No. of Shares) | Sell (No. of Shares) |
|--|---------------------|----------------------|
| <b>Noticee No. 2: Ms. Prenita Dutt</b>                     |                     |                      |
| PSI-6  | 25,000              | -                    |
| <b>Noticee No. 3: Quantum Securities Private Limited</b>   |                     |                      |
| PSI-6  | 1000                | -                    |
| <b>Noticee No. 4: SAL Real Estate Private Limited</b>      |                     |                      |
| PSI-1  | 3,56,533            | 94,964               |
| PSI-2  | 3,50,000            | -                    |
| PSI-3  | 2,40,000            | -                    |
| PSI-4  | 10,000              | -                    |
| PSI-6  | 58546               | 10,000               |
| Total – SREPL  | <b>1015079</b>      | <b>104964</b>        |
| <b>Noticee No. 5: Taj Capital Partners Private Limited</b> |                     |                      |
| PSI-1  | -                   | 5,000                |

50. The next issue that seeks adjudication is whether the *Noticees* had traded in the shares of NDTV while in possession of unpublished price sensitive information. I note that the SCN proceeds on the premise that *Noticee No. 1* was not only a ‘connected person’ but also an ‘insider’ under the PIT Regulations, 1992 and charges have been levelled that *Noticee No. 1* was privy to unpublished price sensitive information (UPSI). The show-cause notice has alleged that the *Noticee No. 1* being privy to the UPSI had passed on the price sensitive information to his wife and also to other *Noticees*, wherein the *Noticee No. 1* in one way or the other was holding substantial stakes. The show-cause notice further alleges that *Noticees no. 2 to 5* had traded in the shares of NDTV and made a profit of ₹2.20 crore by trading in the scrip of NDTV while in possession of the UPSI.

51. The *Noticees* have relentlessly argued that the evidences are not strong enough to proceed and establish charges of communication of UPSI by *Noticee No.1* so as to allege serious violations like insider trading against them. In this regard one has to acknowledge that even if it may not be always possible to find direct evidence to prove beyond doubt a charge of insider trading, in such circumstances, the charge of insider trading can very well be established under the extant laws on the basis of preponderance of probabilities that stem from substantial factual evidence mustered during the investigation duly corroborated by the circumstantial evidence supporting such allegations of insider trading, so as to determine if a noticee is guilty of insider trading. I have already observed that the *Noticees* herein were undoubtedly insiders within the definition of PIT Regulations, 1992 and the *Noticee nos. 2 to 5* were closely connected to the *Company* through *Noticee No. 1*, being an insider, in terms of the PIT Regulations, 1992 who has been found to be privy to all the price sensitive information of the *Company*. Incidentally it is also borne out of records that the *Noticees No. 2 to 5* have bought 10,41,079 shares and sold 1,09,964 shares during the investigation period which shows that these *Noticees* have substantially increased their trading activities in NDTV shares after *Noticee No. 1* got associated

with NDTV as a consultant especially during the existence of the relevant UPSI. Therefore, in the absence of any evidence or justification to the contrary, such increased trading activities in NDTV shares cannot be a mere coincidence but certainly be under the influence of those UPSI which clearly suggests that *Noticee No. 1* has communicated those UPSI to the remaining *Notices*. Thus, the undisputed fact that all the remaining four *Notices*, i.e., *Notices No. 2 to 5* have traded in the scrip during the PSIs period further leads to a compelling inference that the trades were executed by these *Notices* supported by UPSI passed on by the *Noticee No. 1* to them (either directly or indirectly) and therefore, the acts of *Notices* tantamount to be in gross violation of regulation 3 of the PIT Regulations, 1992.

52. The defense put forth by the *Notices* trying to justify that the trades executed by them were independent of any UPSI or any influence of the *Noticee No. 1*, lack in substance and merit when I consider the facts surrounding their close nexus with the *Noticee No.1* who was enjoying a pivotal position as an insider of the *Company* during the relevant period of time. The fact remains beyond repudiation that the *Noticee Nos. 2 to 5* enjoyed a very close connection with the *Noticee No. 1* and the extent to which *Noticee No.1* was personally interested in the *Noticee Nos. 2 to 5*, as borne out from the record were sufficient enough to label them as deemed to be connected as prescribed under regulation 2(h)(viii) read with (ix) of the PIT Regulations, 1992. In the instant case, the *Noticee No. 1* was an undeniably a connected person of the *Company* within the definition of a ‘connected person’, provided under the regulation 2(c) and this very fact itself would rope in him under sub-clause (i) thereof. The *Noticee No. 1* was occupying a very senior level consultant as evident from his MoU and agreement with NDTV and was a part of several such crucial meetings and important correspondences with third parties on vital business policy matters and strategic issues, which in my view are adequate enough to hold that the *Noticee No. 1* was privy to and in possession of the relevant price sensitive information of the *Company*, due to his continuous access to such unpublished price sensitive information. All other *Notices* being closely connected with the *Noticee No. 1*, either by way of personal relationship or by way of his business investment, were also expected to have reasonable access to those PSI which *Noticee No. 1* was possessing during the relevant period.
53. As brought out above, except for the *Noticee No.1*, all other four *Notices* have traded in the scrip of NDTV during the UPSI periods of different PSI as highlighted above in a table. It has already established above that the *Noticee No. 1* was connected person to the *Company* in terms of 2(c)(ii) of the PIT Regulations, 1992 and had access to unpublished price sensitive information. It has also been discussed in detail how the *Notices No. 1* was connected to the remaining *Notices*. With the *Noticee No. 1* being connected to the remaining *Notices* in the manner alleged in the SCN and discussed in the preceding paras, and being in possession of the PSI(s), I do not have any hesitation in holding that the remaining *Notices* by virtue of their overtly close connection with the *Noticee No. 1* too had received or have had access to the



relevant PSI(s) through the *Noticee No. 1*. The reliance of the *Noticee No. 1* on the SEBI order in the matter of *Sabero Organics Gujarat Limited* is misplaced as the proximity of the communicator/tipper to the tippee in the matter of *Sabero Organics Gujarat Limited* is not comparable to the close proximity observed between the *Noticee No.1* and other *Noticees* in the instant case. In the instant case, the tippees, viz. the *Noticees No. 2 to 5* are either controlled/managed by the tipper (*Noticee No. 1*) directly or indirectly, or the tippee (such as *Noticee No. 2*) is in spousal relationship with the tipper. The facts and circumstances of the instant case are too unique to draw any comparison or to rely on the order in the matter of *Sabero Organics Gujarat Limited*. Considering the foregoing, I am of the firm view that the *Noticee No. 1* had indeed communicated the relevant PSI(s) to the *Noticees No. 2 to 5* and these *Noticees* in turn had traded in the scrip of NDTV while in possession of the ‘price sensitive information’ received from the *Noticee No. 1*.

54. Some of the *Noticees* have contended that they had been trading in the shares of the *Company* in the ordinary course of business or their trades in the shares of the *Company* and the quantities of such shares traded by them were too miniscule to attract the charge of insider trading. In fact, with regard to the imputed trades of the *Noticees No. 2*, the *Noticees No. 1* and 2 have contended that the said *Noticee* had her independent sources of income, including the sources from sale of her paintings and trades in the shares. Similarly, for the remaining *Noticees* also it has been pleaded that these *Noticees* were corporate entities and have traded in the shares of the *Company* in the ordinary course of their business. I have also perused the documents submitted by these *Noticees* in support of their contention. However, given the facts and circumstances of the case and the serious nature of the allegations, I cannot take my eyes off the crucial fact that the *Noticee No. 2 to 5* were insiders of the *Company* by virtue of being connected persons and apparently had all the access to the unpublished price sensitive information of the *Company* through the *Noticee No.1* who not only was an insider of NDTV but also had, directly or indirectly, vested interest in the *Noticees No. 2 to 5*.

55. Needless to reiterate that regulation 3 of the PIT Regulations, 1992 proscribes any trade by any insider. If a person is in possession of (or even is deemed to be in possession of) a price sensitive information, the scheme of the Regulations is such that it transposes such person to the category of insider and imposes fiduciary duty to abstain from making use of such information to his own benefit or benefit of persons connected to him either by trading in the shares of the *Company* or communicating/counselling/procuring such information to any person. If any such information is communicated, then the persons in receipt of such information is also prohibited from dealing in the relevant securities of the *Company* concerned during the UPSI period. The scheme of the Regulations does not carve out any exception for any person who may be trading in the ordinary course of business. In fact, possession of unpublished price sensitive information and trading while

in possession of such information is prohibited by the Regulations irrespective of the profession of the concerned entity. The emphatic assertions made by the *Notices* that they were financially independent and employed their own fund while placing the trades in the ordinary course of business and that the quantities of their trades are too miniscule to warrant any charge of insider trading is futile and constitutes no defense to the charge of insider trading. Further, to deal with the highly injurious effect of insider trading, I prefer to refer to and rely on the observations made by the Hon'ble SAT in the matter of *Harish K Vaid vs SEBI* (Appeal No. 63 of 2012 – date of decision October 3, 2012) wherein similar contentions were agitated by the appellants and the Hon'ble SAT held that,

*“The purpose of insider trading regulations is to prohibit trading by which an insider gets advantage by virtue of his access to price sensitive information. The quantum of trading done or the profits earned become immaterial.”*

56. It is further noted that some of the *Notices* have argued to bring home a point that they cannot be alleged to have possessed any UPSI pertaining to the *Company* given the fact that they had incurred losses in their trading transactions involving the shares of NDTV during the relevant period. According to them the fact that they had traded in smaller quantities in the scrip of NDTV itself proves that the trades were not based on the information, which were price sensitive in nature and therefore, the charges made in the SCN would not sustain. In response to such an averment, I would state that the evil of insider trading has been well recognized by our judicial bodies. The purpose of insider trading regulations is to prohibit an insider from trading in securities while in possession of or on the basis of an UPSI of a company, which is not published and he has received it by virtue of his access to such price sensitive information as an insider. Therefore, when evidence come to the fore that trading has been done during the existence and possession of UPSI, there will be a natural as well as persuasive presumption that the trading has been done on the basis of the said UPSI, unless the insider is successful in demonstrating any compelling reason that necessitated such trading during the existence of UPSI. Therefore, an entity having indulged in insider trading has finally incurred loss and has not made any profit, would not be a ground in isolation to grant exoneration from the charge of insider trading. As pointed out above, the object of the law is to impose prohibition on insiders to trade in securities while in possession of UPSI. The law does not couch such trading with any conditions to first consider the actual profit earned or loss avoided if any in the process of executing such trading while in possession of UPSI, so as to declare the imputed trades as insider trades. Therefore, merely because an insider in the process of executing insider trading does not succeed in booking a profit, would not in itself be a ground to seek discharge from the charge of a serious violation like insider trading. Further, unlike the penal proceedings under the SEBI Act, 1992 the instant proceedings are not aimed at determining the quantum of profit made by trading in the shares of the *Company* while in possession of UPSI, by an insider. It would be sufficient to proceed,

in case it is established that an entity is an insider of a company in terms of regulation 2(e) of the PIT Regulations, 1992, the *Company* had in existence a price sensitive information which was not available generally to the public at large while the insider is found to have dealt in the securities, while in possession of the said PSI, before the said PSI was published/disclosed by the *Company* to the public. It is pertinent to note here that the language of the provisions of the PIT Regulations, 1992 are silent to the intent of trading more so when intent of trading has never been considered to be an essential ingredient for charging an insider for violations of provisions of SEBI Act, 1992 and rules and regulations made thereunder. In the matter of *E. Sudhir Reddy vs. SEBI* (Appeal no. 138 of 2011 – Date of decision December 16, 2011) the Hon'ble. Tribunal held as under:

*“.....However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice.” (Emphasis Supplied)*

57. As discussed aforesaid, I have already found that the *Notices* were insiders and were in possession of the price sensitive information, which were not disclosed to the public at large and have also traded in the securities of the *Company*, before the said price sensitive information were made public. Therefore, the submissions that some of them incurred losses by holding the securities for a relatively longer period of time, and also have traded in small quantities of shares of the *Company* would not come to their help, in view of the aforesaid observations of the Hon'ble Tribunal in the matter of *Harish K Vaid (supra)*.
58. It may also be noted that it is a fundamental principle of law that proving of an allegation levelled against a person can be derived either from direct substantive evidence or can be inferred by a logical process of reasoning from the totality of attending facts and circumstances surrounding the allegations made, where finding direct evidence proves to be difficult. In the present proceedings, the strong preponderance of probabilities that emerge out the totality of facts available from records and the circumstantial evidence that can be easily gathered from the supporting factual details available in the records, undoubtedly lead to an overwhelming conclusion that the trades of the four *Notices* were decidedly executed under the influence of

the price sensitive information of the *Company* communicated by the *Noticee No. 1* to those *Noticees*.

59. Having concluded that the *Noticees 2 to 5* had traded in the shares of NDTV when in possession of or having had access to the relevant PSI(s), it now befalls upon me to calculate the wrongful gains made by these *Noticees*. Since these *Noticees* have traded while in possession of UPSI, the total wrongful gains made by them during the relevant period is determined at ₹2.20 crore as follows:

**In case of Net Buyers, i.e., Noticees No. 2, 3, and 4**

| Name                      | UPSI period pertaining to | Net Buy Quantity | Average Buy Price (₹) based on actuals | Closing Price on the day announcement of PSI at NSE (₹) * | Wrongful gain (₹) #   |
|---------------------------|---------------------------|------------------|--|---|-----------------------|
|                           |                           | A                | B                                      | C   | D = A x (C-B)         |
| Prenita Dutt              | PSI-6                     | 25000            | 404.71                                 | 411.10  | 1,59,750.00           |
| <b>Prenita Dutt Total</b> |                           | <b>25000</b>     | <b>-</b>                               | <b>-</b>  | <b>1,59,750.00</b>    |
| QSPL                      | PSI-6                     | 1000             | 408.00                                 | 411.10  | 3,100.00              |
| <b>QSPL Total</b>         |                           | <b>1000</b>      | <b>-</b>                               | <b>-</b>  | <b>3,100.00</b>       |
| <b>SREPL</b>              | PSI-1                     | 261569           | 191.71                                 | 220.50  | 75,30,571.51          |
|                           | PSI-2                     | 350000           | 231.09                                 | 230.35  | (2,59,000.00)         |
|                           | PSI-3                     | 240000           | 238.64                                 | 287.75  | 1,17,86,400.00        |
|                           | PSI-4                     | 10000            | 304.99                                 | 396.90  | 9,19,100.00           |
|                           | PSI-6                     | 48546            | 379.11                                 | 411.10  | 15,52,986.54          |
| <b>SREPL Total</b>        |                           | <b>910115</b>    | <b>-</b>                               | <b>-</b>  | <b>2,15,30,058.05</b> |
| <b>Grand Total</b>        |                           | <b>931115</b>    | <b>232.72</b>                          |   | <b>2,16,92,908.05</b> |

# **Note:** Wrongful gain has been calculated as per the following method:

Wrongful gain = (Closing price on the day of announcement \* - Average buy price) X Net buy quantity during UPSI period

\* If the announcement was made during the trading day before closing of trading hours, the closing price of the same day is considered. If the announcement was made post trading hours, the closing price of the next trading day is considered.

**In case of Net Seller, i.e., Noticee No. 5**

| Name | UPSI period pertaining to | Sell Quantity | Average Sell Price (₹) based | Opening Price on UPSI period starting day at NSE (₹) | Wrongful gain (₹) @ |
|------|---------------------------|---------------|------------------------------|--|---------------------|
|------|---------------------------|---------------|------------------------------|--|---------------------|

|                    |       |              | on<br>actuals |          |                    |
|--------------------|-------|--------------|---------------|----------|--------------------|
|                    |       | A            | B             | C        | D = A x<br>(B - C) |
| TCPPL              | PSI-1 | 5000         | 223.03        | 155.00   | 340,150.00         |
| <b>TCPPL Total</b> |       | <b>25000</b> | <b>-</b>      | <b>-</b> | <b>3,40,150.00</b> |

@ **Note:** Wrongful gain has been calculated as per the following method:

Wrongful gain = (Average Sell Price - Opening Price on UPSI period starting day) X Net sell quantity during UPSI period

60. The vociferous assertions made by the *Notices* that a charge of ‘insider trading’ has to be established by higher degree of probability and necessarily based on clinching and reasonable evidence which is absent in this case, is devoid of any merit. The irrefutable fact that the *Noticee No. 1* was very closely connected to the *Company* is a matter of record. The record also bears the extent of his association or connection with the *Company*. The email correspondences marked to the *Noticee No.1* substantiate the fact that the *Noticee* was privy to all the important communications pertaining to the germination as well as culmination of those PSI(s). The *Noticee* has not challenged the veracity of any of these communications. The connection of the remaining *Notices* with the *Noticee No.1* is well documented and aptly reproduced in the SCN. The imputed PSI(s) were price sensitive is also borne out of various communications of the *Company* with the stock exchanges and with SEBI which have also been shared with the *Notices* as annexure to the SCN. Further the fact that one of the *Notices* (*Noticee No.1*) who has had access to the relevant PSI(s) had communicated those PSI to the remaining *Notices* is borne out of trading by those remaining *Notices* (*Noticee No. 2 to 5*) in the scrip of NDTV during the relevant prohibitory period. Given these facts, I cannot persuade myself about any merit in the contention of the *Notices*. In the matter of *V. K. Kaul vs SEBI (Supra)*, the Hon’ble Tribunal held as under:

*“The measure of proof in civil or criminal cases is not an absolute standard and within each standard, there are degrees and probabilities and in this context reference was also made to what Denning, L.J. observed in Bater v. Bater (1950) 2 All E.R. 458 and we reproduced the same for ease of reference:-*

*“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.”*

61. Thus, the instant case can be said to be imbued with all the undisputed ingredients to prove the charge of insider trading such as; the *Notices* were insiders of the *Company* during the relevant period, of the *Company* which had unpublished price sensitive information in existence during the relevant period, the *Notices* had received or has had access to the relevant PSI(s) and some of these *Notices* had actually traded in the shares of the *Company* while in possession of the unpublished price sensitive information during the UPSI period. All these elements have been found out based on the facts of the case as have been presented by the *Company* itself. In my view, the *Notices* cannot disown these facts now by harping on a far-fetched demand that the charge of ‘insider trading’ has to be established by higher degree of probability based on clinching and reasonable evidence. It is worthy of iteration here the findings of the Hon’ble Tribunal in the matter of *E. Sudhir Reddy vs. SEBI* (Appeal no. 138 of 2011 decided on December 16, 2011) as under:

*“.....However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice.” (Emphasis Supplied).*

In view of the foregoing discussions, such a contention of the *Notices* is divorced from facts, misleading and evasive in nature. Accordingly, it is liable to be rejected in entirety.

62. Having concluded that the *Notices* are insiders, the *Noticee No. 1* was in possession of or has had access to the PSI(s) and had communicated the said PSI to the other remaining *Notices* who, in turn, have traded in the shares of NDTV during the UPSI period, I find that:

- (a) *Noticee No. 1*, by directly or indirectly communicating unpublished price sensitive information to *Noticees No. 2 to 5*, has violated section 12A (d), (e) of the SEBI Act read with regulation 3(ii) and regulation 4 of the PIT Regulations, 1992 and regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015; and
- (b) *Noticees No. 2 to 5*, by dealing in securities of NDTV when in possession of unpublished price sensitive information, have violated section 12A (d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992 and regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

63. It is trite law that the corporate insiders stand in a fiduciary relationship with the shareholders of the *Company* concerned. The insiders invariably have access to the unpublished price sensitive information by virtue of their position in the corporate hierarchy or on account of their official duties. This access creates an information asymmetry between those having access to such information and the multitude of shareholders/ investors who have no access to such information. The protection of investors in the securities market requires that there should not be any information asymmetry between these two classes of stakeholders. The PIT Regulations, 1992, are aimed at addressing the information asymmetry. It prohibits trading in the shares of the company by the insiders while in possession of UPSI. It also requires the listed companies to draw up a code of conduct so that any trading by the insiders remains above board. Such regulation of trades of the insider is necessary to protect the interest of investors in the securities market and also for regulation and development of the market. If insider trading is not contained, prohibited and dealt with firmly, it would hamper and jeopardize the interest of a normal shareholder. Typically, insider traders get an unfair advantage over people with whom they engage in securities transactions and such trades executed by the insiders are, therefore, wrong on grounds of justice and equity. The insider information is available to the insiders on account of their important corporate hierarchical position. Any fiduciary holds a position in trust for others. If the persons like the *Noticees*, who are obligated to observe fiduciary duties while exercising their powers fail to do so and instead use their position to their own advantage pecuniary or otherwise, it constitutes a fraud perpetrated on the common shareholders whose trust reposed in them has been blatantly breached. It is, therefore, of paramount importance that trading by the insiders is monitored and regulated, especially when they are in possession of UPSI. Wherever such trading results in accrual of unlawful gain, such insiders are required to forgo such gain. Considering the foregoing, the following two issues are to be decided:

- (a) Direction to disgorge an amount equivalent to the total gains made on account of insider trading in the scrip of NDTV alongwith interest thereon;

- (b) Direction to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

64. I note from the SCN and have discussed above that the *Notices* 2 to 5 had made a wrongful gain of ₹2.2 crore while trading in the shares of the *Company*. For the reasons enumerated above and in order to protect the interest of investors and the integrity of the securities market, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with section 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue following directions:

- (a) The *Notices* 2 to 5 herein, i.e., shall, jointly or severally, disgorge the amount of wrongful gain of ₹2.2 crore as computed in the show cause notice, along with interest at the rate of 6% per annum from April 17, 2008 till the date of actual payment of disgorgement amount along with interest, within 45 days from the date of coming into force of this order;
- (b) The *Notices* herein, i.e., shall be restrained from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years.

65. It is clarified that during the period of restraint the existing holding of securities, including the units of mutual funds shall remain under freeze in respect of the aforesaid *Notices*.

66. The obligation of the aforesaid *Notices*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Notices* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

67. This Order shall come into force with immediate effect. A copy of this Order shall be served on the *Notices*, recognized Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Mutual Funds to ensure compliance with above directions.

Sd/-

**DATE: NOVEMBER 27, 2020**

**PLACE: MUMBAI**

**S. K. MOHANTY  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**