

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

IN RESPECT OF: RUPESHBHAI KANTILAL SAVLA (PAN: AACPS6257P) IN THE MATTER OF DEEP INDUSTRIES LTD.

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) had conducted an investigation into the possible violation of insider trading in the scrip of Deep Industries Limited (hereinafter referred to as “DIL / the *Company*”) for the period from July 17, 2015 to October, 14, 2015 (“Investigation Period”). The investigation had, *inter alia*, revealed that:
 - (a) During the investigation period, DIL had made two announcements with respect to receipt of Notification of Award of three contracts from ONGC.
 - (b) The price and volume data just before and after these two announcements showing the impact on the price of the scrip is tabulated below:

Sr. No	Date & Time of display on Exchange Website	News Body	Price Impact	Remarks
1.	NSE 03-Sep-2015 15:01 hours	Deep Industries Ltd has informed Exchanges that: 1. The Company has received Notification of Award for charter hiring of 01 No. of 1000HP Mobile Drilling Rig for	02-Sep-2015 (NSE) Open High Low Close 140.70 145.25 129.00 136.40 Volume: 6,66,536 shares 03-Sep-2015 (NSE) Open High Low Close 137.75 144.00 136.25 141.60 Volume: 4,10,200 shares	On September 03, 2015, the price of the scrip closed at Rs.141.60 i.e. 3.81% rise against the previous day's closing price.

Sr. No	Date & Time of display on Exchange Website	News Body	Price Impact	Remarks
	BSE 03-Sep-2015 15:12 hours	Ahmedabad Asset of ONGC for a period of Three years, the total value of the said award is of US\$ 12.99 Mn. 2. The Company has also received Notification of Award for charter hiring of 01 No. of Work Over Rig for Ahmedabad Asset for a period of One year, the total value of the said award is of INR 2.72 Cr.	02-Sep-2015 (BSE) Open High Low Close 141.20 145.00 128.70 136.20 Volume: 2,42,239 shares 03-Sep-2015 (BSE) Open High Low Close 138.00 143.90 136.50 141.50 Volume: 1,26,979 shares	On September 03, 2015, the price of the scrip closed at Rs.141.50 i.e. 3.89% rise against the previous day's closing price.
2	NSE 14-Oct-2015 10:55 hours	3. Deep Industries Limited has informed the Exchange that the Company has received Notification of Award of contract for charter hiring of No. 1 of 1000HP Mobile Drilling Rig for Tripura Asset of ONGC for a	13-Oct-2015 (NSE) Open High Low Close 189.00 194.40 180.65 191.75 Volume: 4,98,052 shares 14-Oct-2015 (NSE) Open High Low Close 190.75 201.90 189.15 195.95 Volume: 14,02,594 shares	On October 14, 2015, the price of the scrip closed at Rs.195.95 i.e. 2.19% rise against the previous day's closing price.
	BSE 14-Oct-2015 10:47		13-Oct-2015 (BSE) Open High Low Close 187.20 194.00 184.00 191.70 Volume: 1,92,214 shares	On October 14, 2015, the price of the scrip closed

Sr. No	Date & Time of display on Exchange Website	News Body	Price Impact	Remarks
	hours	period of three years. The total value of the said award is of US \$ 14 Mn, i.e., approx. Rs. 90.33 crore.	14-Oct-2015 (BSE) Open High Low Close 190.80 202.00 189.40 195.50 Volume: 4,76,706 shares	at Rs.195.55 i.e. 1.98% rise against the previous day's closing price.

(c) As observed from the table above, both the corporate announcements made by DIL had a positive impact on the price of the scrip.

(d) For the purpose of analysis:

- The contract for charter hiring of 01 no. of 1000HP Mobile Drilling Rig for Ahmedabad Asset of ONGC for a period of three years, valued at US\$ 12.99 million (INR 86.03 crores approx. as on September 03, 2015) is referred to as “**first contract**”;
- The contract for charter hiring of 01 No. of Work Over Rig for Ahmedabad Asset for a period of One year, valued at INR 2.72 crores is referred to as “**second contract**”;
- The contract for charter hiring of No. 1 of 1000HP Mobile Drilling Rig for Tripura Asset of ONGC for a period of three years valued at INR 90.33 crores is referred to as “**third contract**”.

(e) As per the information furnished by DIL, the chronology of events leading to the aforesaid two corporate announcements was as under:

Particulars	First Contract	Second Contract	Third Contract
Date of Release of Tender for Work Contract by ONGC Ltd	14/04/2015	03/03/2015	19/08/2014
Submission of Bids on ONGC's tender Website	05/05/2015	19/05/2015 [#]	08/05/2015

Declaration of L-1 Bidder/Matching to EDR of L-1 Bidder	17/07/2015	18/08/2015	27/07/2015
Date of award	02/09/2015	28/08/2015	13/10/2015
Date of receipt of Notification of Awards of Work Contracts	02/09/2015	29/08/2015	13/10/2015
Date of communication by company to Exchange	03/09/2015	03/09/2015	14/10/2015
Date of Announcement by Exchange to Public	03/09/2015	03/09/2015	14/10/2015

(#DIL vide its letter dated January 24, 2017 has mentioned May 19, 2015 as date on which DIL submitted Bid on ONGC's tender website, however from the correspondences between DIL and ONGC submitted by DIL vide letter dated February 22, 2017, it was observed that the bid was actually submitted on ONGC's tender website on March 12, 2015)

(f) As may be seen from the table above:

- **First contract:** E-price bids submitted by the bidders including DIL was opened on July 17, 2015 at 1500 hours and DIL was declared the lowest bidder (also referred to as "**L-1 bidder**").
- **Second contract:** E-price bids submitted by the bidders including DIL was opened on July 01, 2015 at 1500 hours and Mr. Anish Shah, duly authorized by the *Company*, was present at the time of opening of the price bid. However, the *Company* was not L-1 bidder. Subsequently, on August 17, 2015, ONGC requested DIL to match Evaluated Day Rate (hereinafter referred to as "**EDR**") of L-1 bidder. DIL submitted the revised bid matching EDR with that of L-1 bidder on August 18, 2015.
- **Third contract:** E-price bids submitted by the bidders including DIL was opened on Monday, July 27, 2015 at 1500 hours, DIL was declared L-1 bidder and Mr. Dharen Savla and Mr. Tushar Tiwari duly authorized by the company were present at the time of opening of the price bid.

- (g) In case of first and third contracts, the stage at which the company was declared as L-1 bidder is the stage at which the tendering process is complete and only the award of contract remained pending.
- (h) In case of second contract, DIL was not declared L-1 bidder but subsequently on August 17, 2015, ONGC requested DIL to match EDR of L-1 bidder, in response to which DIL submitted the revised bid matching EDR with that of L-1 bidder on August 18, 2015. This is the stage where DIL was more likely to get the award.
- (i) The value of the first and second contracts, for which the announcement was made on September 03, 2015, constituted a substantial 52.47% of the annual turnover of the company for the FY 2015-16 and 87.65% of the annual turnover for the FY 2014-15, i.e., immediately preceding financial year.
- (j) Similarly, the value of the third contract, for which announcement was made on October 14, 2015, constituted a substantial 53.40% of the annual turnover of the company for the FY 2015-16 and 89.21% of the annual turnover for the FY 2014-15, i.e., immediately preceding financial year.
- (k) Considering the magnitude of the value of these three orders, the information relating to bagging of these orders by DIL constituted price sensitive information and the same was likely to materially impact the share price of the company, once published.
- (l) Further, the information in this regard was not available to public and was published only on September 03, 2015 and October 14, 2015, pursuant to which the price of the scrip witnessed an increase. Therefore, the receipt of Notification of Award of the three contracts from ONGC by DIL constituted unpublished price sensitive information till the time of its dissemination to public by DIL.
- (m) Mr. Rupeshbhai Kantilal Savla (hereinafter referred to as “**Rupesh**”), who was the Managing Director of DIL since June 01, 2009 and was also a promoter of the *Company* during the period July 17, 2015 to October, 14, 2015 and as such was an insider in terms of regulation 2(1)(g) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, (hereinafter referred to as “**PIT Regulations, 2015**”) had bought 1,79,510 shares in DIL during July 17, 2015 to October 14, 2015, the unpublished price sensitive information period (UPSI period). It was also observed that he had not traded in any other scrip during the UPSI period. Further, he had also not traded in any scrip including the scrip of DIL three months before and after the UPSI period.
- (n) Sujay Ajitkumar Hamalai (hereinafter referred to as “**Sujay**”) was associated with the *Company* in the capacity of social interaction with *Rupesh*. *Sujay* was associated with DIL by

virtue of frequent communication with *Rupesh*. By virtue of this association and frequent communication, *Sujay* was reasonably expected to have access to the UPSI of DIL at the relevant period. Therefore, as per the provisions of Regulations 2(1)(d)(i) and 2(1)(g) of the PIT Regulations, 2015, *Sujay* is a connected person and consequently is insider with respect to DIL.

- (o) *Sujay* bought 17,000 shares during the UPSI period and sold the entire shares after UPSI period. It was also observed that *Sujay* was not holding any shares of DIL prior to UPSI period. Further, he had not traded in any other scrip during the UPSI period and he had also not traded in the scrip of DIL three months prior to UPSI period. The sale value of 17,000 shares of DIL after UPSI period constituted 63.44% of the total value of shares sold by him across the market.
 - (p) V-Techweb India Private Limited (hereinafter referred to as “**VTIPL**”) is a private company based in Mumbai and is into real estate business. Ajay Ajitkumar Hamlai, *Sujay* and Vasant R Jadhav are the directors of the *VTIPL*. Ajay Ajitkumar Hamlai and *Sujay* were holding 50 percent shareholding each in *VTIPL* during the investigation period. *VTIPL* and *Sujay* had traded in the scrip during the investigation period.
 - (q) *VTIPL* had bought 69,000 shares during the UPSI period and sold the entire shares after UPSI period. It was also observed that *VTIPL* was not holding any shares of DIL prior to UPSI period. Further, it had not traded in any other scrip during the UPSI period and it has also not traded in any other scrip including the scrip of DIL three months prior to UPSI period. The sale value of 69,000 shares of DIL after UPSI period constituted 91.96% of the total value of shares sold by it across the market.
2. Considering the trading pattern of *Rupesh*, *Sujay* and *VTIPL* in DIL and considering that they were insiders, these three entities were alleged to have indulged in the act of insider trading by trading in the scrip of DIL while in possession of UPSI relating to the award of three contracts to the *Company* from ONGC. In view of the same, the said entities were alleged to have violated the provision of sections 12A (d) and (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**the SEBI Act, 1992**”) read with Regulation 4(1) of the PIT Regulations, 2015.
 3. Accordingly, SEBI passed an *ad interim ex parte* order dated April 16, 2018 (hereinafter referred to as the “*interim order*”) in the matter of DIL in respect of the three entities, namely, *Rupesh*, *Sujay* and *VTIPL* whereby, *inter alia*, the unlawful gains made by the aforementioned three entities were also impounded. For purposes of easy reference, the extracts of directions in the *interim order* is reproduced hereinbelow:

“37. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, issue the following directions –

(a) I hereby impound the aforesaid gains made by the following persons:

Sl. No.	Name	PAN	Gains made (₹)	Interest @ 12% p.a. (₹)	Total (₹)
1	Rupeshbbhai Kantilal Savla	AACPS6257P	1,34,20,604	40,37,212	1,74,57,816
2	Sujay Ajitkumar Hamlai	ABIPH4273M	13,98,893	4,20,818	18,19,711
3	V Techweb India Pvt. Ltd.	AABCV8267A	36,79,411	11,06,847	47,86,258

(b) The persons at paragraph 37(a) are directed that individual amount of gains made along with interest is credited to an interest bearing Escrow Account [“Escrow Account in Compliance with SEBI Order dated April 16, 2018 – A/c (in the name of the respective person)”] created specifically for the purpose in a Nationalized Bank. The Escrow Account(s) shall create a lien in favour of SEBI and the monies kept therein shall not be released without permission from SEBI.

(c) Banks are directed that no debits shall be made, without permission of SEBI, in respect of the bank accounts held jointly or severally by the persons at paragraph 37(a), except for the purposes of transfer of funds to the Escrow Account. Further, the Depositories are also directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held by the aforesaid persons. However, credits, if any, into the accounts maybe allowed. Banks and the Depositories are directed to ensure that all the aforesaid directions are strictly enforced. Further, debits may also be allowed for amounts available in the account in excess of the amount to be impounded. Banks are allowed to debit the accounts for the purpose of complying with this Order.

(d) The persons at paragraph 37(a) are directed not to dispose of or alienate any of their assets/properties/ securities, till such time the individual amount of gains made along with interest is credited to an Escrow Account except with the prior permission of SEBI.

(e) On production of proof by the persons at paragraph 37(a) that the individual amount of gains made along with interest has been deposited in the Escrow Account, SEBI shall communicate to the Banks and Depositories to defreeze their respective accounts.

(f) The aforesaid entities and persons are directed to provide a full inventory of all their assets whether movable or immovable, or any interest or investment or charge in any of such assets, including property, details of all

their bank accounts, demat accounts and mutual fund investments immediately but not later than 7 working days from the date of receipt of these directions.

(g) The above directions shall come into force with immediate effect and shall be in force till further Orders.”

4. Further, the findings against the said entities in the said order was to be treated as allegations against the respective entities for the purpose to serve a show cause to them and accordingly, the said three entities were advised to show cause as to why suitable directions including the following should not be taken/imposed against them under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 for the alleged violations of regulation 4(1) of the PIT Regulations, 2015 and sections 12A(d) & (e) of the Act, 1992:
 - (i) directing the said three entities to disgorge an amount equivalent to the total gains made on account of insider trading in the scrip of DIL along with interest;
 - (ii) directing the said three entities to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
5. Pursuant to the said order a personal hearing was granted to the aforesaid three entities on October 16, 2018 when Mr. Lokesh Aidsaini (Adv.) appeared on behalf of *Rupesh* and sought adjournment in the matter on the grounds of the non-availability of the arguing counsel. I note from the records that no one appeared on behalf of the remaining two entities, namely, *Sujay* and *VTIPL*.
6. I note that vide letter dated October 30, 2018, *Rupesh* filed his reply to the allegations/findings *qua* him in the *interim order*. It is also seen from the records before me that *Sujay* and *VTIPL* have since then filed applications for settlement of the proceedings initiated *qua* them vide the *interim order* and the same were pending for disposal. In compliance with the principle of natural justice, opportunities of personal hearing were granted to all the three noticees on December 18, 2018 and thereafter on March 19, 2019. On both these occasions, citing pendency of their settlement applications, *Sujay* and *VTIPL* sought adjournment in the matter while *Rupesh* appeared and made submission through his authorized representative on March 19, 2019 on the lines of his written submission filed vide letter dated October 30, 2018. Thereafter, vide letter dated April 16, 2019, *Rupesh* further submitted short written submission mainly reiterating submission made by him earlier. It has now been brought to my notice that the proceedings initiated *qua* *Sujay* and *VTIPL* have been settled vide Settlement Order no. SO/EFD-2/SD/298/AUG/2019 dated August 14, 2019. Considering the foregoing, I am inclined to take up the submission of *Rupesh* separately in respect of allegations *qua* him vide the *interim order*.

7. As mentioned above, an opportunity of personal hearing was granted to *Rupesh* on March 19, 2019 when he appeared through his authorised representatives before me and made submissions. The replies/submissions of *Rupesh* are summarized, *inter alia*, as under:

- (1) The premise and approach of the *interim order* is fundamentally flawed for the following reasons:
 - (a) Each of the contracts was received in the ordinary course of business. None of them was material or price-sensitive.
 - (b) The fundamental flaw lies in comparing the size of each contract with the annual turnover of just the year in which the contract was signed although no income from the said contracts was expected in that year.
 - (c) An inflated sense of scale and size of the significance and proportion of the contract has been perceived - an approach that is a departure from SEBI's approach to compare assets with assets and revenues with revenues. The inflated sense of scale is so acute that by the analysis adopted by SEBI, just two contracts account for more than 100% of the total annual turnover of that year, even while nothing was earned in that year.
 - (d) The 1st contract (for ₹86.03 crores) and the 3rd Contract (for ₹90.33 crores) were three-year contracts and there was expected to be no revenue from these contracts for the financial years 2014-15 and 2015-16. Yet, revenues that were meant to be earned over three years thereafter, were compared with just the turnover of the year 2014-15, i.e., the year in which the contract was signed.
 - (e) Since the purported information in the possession of the insider was not at all price-sensitive, the conclusions in the investigation are totally wrong.
- (2) If SEBI desires to assess the value of any particular contract for its materiality to the earnings of DIL, the appropriate approach would be to compare it with the total size of all contracts. Doing so would reflect the materiality of a particular contract as part of the larger order book of contracts bagged by a company. This is a time-tested and well accepted approach and in all past cases, this is how SEBI has rightly assessed the materiality of any contract in the context of UPSI.
- (3) If SEBI desires to assess the value of revenues from a contract and see if it is material for any particular year, it should compare the revenues from a contract in a year, with the total revenues in that year. Doing so would reflect the materiality or the lack of it for the revenues in that year, from a contract.
- (4) Instead, in the instant case, SEBI has taken the total value of a contract spread over three years, and compared it with the turnover of the year in which the contracts were signed and the year preceding to it. This has led to an unreasonable and arbitrary assessment of

a contract from which no revenues were to be earned in a given year, with the total turnover of the company in that year, and returned a flawed perception that the contracts were material for DIL. Thereby, a contract of about ₹90 crores gets compared with the total turnover of about ₹170 crores to arrive at a finding that the contract represented more than half the turnover of the year, when in fact, nothing was to be earned from that contract in that year.

(5) The *interim order* makes the following arbitrary conclusions:-

(a) the value of the two contracts for which the announcement was made on September 03, 2015, constituted a substantial 52.47% of the annual turnover of the company for the FY 2015-16 and 87.65% of the annual turnover for the FY 2014-15, i.e., immediately preceding financial year; and

(b) the value of the single contract for which announcement was made on October 14, 2015 constituted a substantial 53.40% of the annual turnover of the company for the FY 2015-16 and 89.21% of the annual turnover for the FY 2014-15, i.e., immediately preceding financial year.

(6) In a nutshell, the total contract value and revenue from the said lines of businesses during the years in question as submitted by the Noticee is given below:

Contracts Value:

<u>Business Line</u>	<u>Contract Value (in ₹Crore)</u>
Drilling and Workover Rigs	329.52
Gas Compression	320.18
Gas Dehydration	524.16
Total	1173.86

(7) Therefore, as a percentage of the total contract size of ₹1,173.86 crores, 1st Contract of ₹86.03 crores (to be executed and earned upon over the next three years) would constitute a miniscule 7.32% while 3rd Contract of ₹90.33 crores would constitute a miniscule 7.69%.

(8) When annual revenue from the contracts in question is compared with the annual revenue of DIL, the percentage contribution of the three contracts to the total revenue for the financial years 2014-2015 and 2015-2016 is way **below 1%** for each of the financial years, respectively.

- (9) Each of these contracts was publicly tendered contracts. When DIL was found as L-1 bidder, i.e., the lowest bidder, seen from one angle, there was still no finality as to whether the contract would indeed be awarded, while seen from another angle, every other bidder too knew that DIL, a listed company had been found to be the L-1 bidder. In each of the contracts, there was an element of post-bidding negotiations, rendering the bagging of the contracts uncertain. Even if it is assumed that being found as L-1 bidder would bring in higher certainty, this fact being well known to all the other bidders, did not lead to the reasonable expectation that others too would be buying shares of DIL, leading to a spurt in volumes. These facets only lead to the inexorable conclusion that there is nothing in opening of bids for these contracts or in their negotiation that led to UPSI being in possession of *Rupesh*.
- (10) A typical feature in every insider trading case involving an announcement of a new development is a flurry of trading activity before the material announcement is made and a significant impact after the announcement is made on both price and volumes. In the instant case, there is no such flurry of trading activity at all before the announcement and there is no material price impact after the announcement.
- (11) Revenue generation from the 1st Contract and 3rd Contract were to start from financial year 2016-17, only after completion of mobilization period of 90 and 180 days, i.e., on or after December 01, 2015 and April 10, 2016, respectively, as mentioned in the Notice of Announcements. In fact, the actual operations started subsequent to such dates.
- (12) The *interim order* makes a reference to the decision of the Ld. Securities Appellate Tribunal (hereinafter referred to as “the Tribunal”) in order dated July 26, 2016 in the case of *Man Industries Ltd.* In this case, the size of the contracts in question when trading took place was 65% - what is pertinent to note is that in that case, the comparison of the contract in question was made to the total contracts, and that was 65%, which indeed made it material and therefore, price-sensitive. Therefore, there is no question of treating an arbitrary change in comparison metric to a skewed approach on par with the right approach in *Man Industries*.
- (13) The marginal decline of share prices of DIL, on days succeeding the announcements relating to ONGC Contracts, negates the allegations in the *interim order* - the contracts were therefore, demonstrably irrelevant for DIL.
- (14) Upon considering the facts of the present case as well as the applicable laws, under no circumstance the award of contracts in question can be considered as UPSI.
- (15) Moreover, it is well-settled in law that a bidder, who is found/declared as the 'lowest bidder' does not acquire any enforceable right, and that since it does not guarantee award

of contract, there is no scope to treat any such declaration as UPSI. The Hon'ble Supreme Court in *Asia Foundation & Construction Ltd. versus Trafalgar House Construction (I) Ltd. and Ors.* (1997) 1SCC 738 held that "*As in our view in the matter of a lowest bidder may not claim an enforceable right to get the contract ...*"

- (16) In fact, this principle was also applied by the Hon'ble Securities Appellate Tribunal in the case of *Mr. Anil Harish versus Securities and Exchange Board of India* dated June 22, 2012, that,

"It needs to be appreciated that the projects relating to Arunachal Pradesh were awarded after a long drawn up tendering process keeping in view the transparency norms to be followed by the government departments/public sector undertakings and the persons participating in the tendering process knew about the developments which took place at each and every stage of the tendering process. Opening of tenders is done in the presence of bidders where the bidders came to know the lowest bidder who is likely to get the award usually, there is a long time gap between the date when the lowest bidder is declared and the contract is actually awarded to the lowest bidder. During all this period, the information with regard to the lowest bidder and processing of the award of contract in his favour is known to all the participants. Under such circumstances, award of the contract to an infrastructure company cannot be said to be a price sensitive information.

- (17) Buying of securities by promoters by way of creeping acquisitions, is an activity recognized within the relevant regulatory framework, i.e., the PIT Regulations, 2015, read with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "the Takeover Regulations"), and is not capable of being viewed in isolation from material elements concerning the purchase and holding of such securities. Therefore, the purchase of securities by promoters, held over a long duration, inherently subject to market vagaries and related fluctuations, as will be evident from *Rupesh's* shareholding pattern, is not a matter capable of being disregarded. The purchase of a miniscule 0.62% shareholding in DIL, and that too when nothing material was taking place, and during the quarter ended September 30, 2015, was part of a long-term investment strategy.
- (18) SEBI has itself taken legislative notice of the fact that every single announcement of a development under the listing agreement would not mean that the content of what was disclosed constitutes UPSI. With effect from April 1, 2019, an amendment has been made to Regulation 2(1)(n) of the PIT Regulations, 2015, i.e., omission of, "(vi) material events in accordance with the listing agreement.", to this effect - a conscious recognition that merely because an announcement of a development has been made, every trade made before the announcement should not be violative of insider trading i.e. trading when in possession of UPSI. One would still need to see whether the information announced was

in fact price-sensitive, and it is obvious in the facts of this case that the information about the award of the contracts was not at all price sensitive.

- (19) The allegations about trading by a Facebook Friend are totally untenable and without substance. Such an approach would have far-reaching consequences.
 - (20) The allegation of sharing alleged UPSI with *Sujay* is not based on any reasonable ground or evidence, and is categorically denied.
 - (21) *Rupesh* had met Mr. Ajay Ajitkumar Hamlai (hereinafter referred to as "*Ajay*") during the course of his under graduation education when both were studying in Ahmedabad and were introduced to each other through a common friend. *Ajay* is a citizen of Oman who had come to India for his education and went back after completing the same. Subsequent to *Ajay* returning to Oman, there was no contact between the two. Only after several years, when Facebook became a popular online social media and social networking service, *Rupesh* became Facebook friends with *Ajay* and his wife, who is also from Ahmedabad.
 - (22) There is no other fact and no other circumstance that otherwise gets bolstered by reason of someone being a Facebook Friend. In the absence of any such facet, it would be totally irrelevant that any person who is a "Facebook Friend" traded.
 - (23) In an erroneous attempt to draw a relationship/connection, it has also been alleged that one of the promoters of DIL viz., Mita Manoj Savla is registered with the trading member Philip Capital (India) Pvt. Ltd. which is the same trading member through which *Sujay* and *VTIPL* traded in the scrip of DIL. Pertinently, there are a total of twenty promoters of DIL, *Sujay* and *VTIPL* having the same trading member with any one of the twenty promoter's does not substantiate the allegation.
 - (24) The *interim order* seeks to quantify alleged notional gain in relation to share purchases, quantified in the value of ₹1,74,57,816/-, based on treating October 14, 2015 as the relevant date for reckoning gain. There is no specific discernible basis for deployment of the date October 14, 2015, in order to compute the alleged notional gain.
8. I have carefully considered the *interim order* (which is a show cause notice as well), the replies/written submissions of *Rupesh* and the relevant material available on record. I note that the *interim order* proceeds on the following aspects –
- (a) trading in the shares of DIL by *Rupesh* during the UPSI period;
 - (b) sharing of UPSI by *Rupesh* to *Sujay* and *VTIPL*; and
 - (c) trading in the shares of DIL by *Sujay* and *VTIPL* on the basis of UPSI shared by *Rupesh*.

9. As mentioned above, in the instant case, only *Rupesh* has appeared and made submissions and the remaining two noticees, i.e., *Sujay* and *VTIPL* have sought settlement of the proceedings *qua* them. As per the records brought before me, proceedings initiated *qua* *Sujay* and *VTIPL* vide the *interim order* have since been settled by SEBI vide settlement order dated August 14, 2019. Considering the foregoing, the allegation at para 8(c) above in respect of *Sujay* and *VTIPL* has attained otiosity and therefore, in my view, does not need any deliberation as such in this Order.
10. In order to determine as to whether *Rupesh* has violated the provisions of the PIT Regulations, the following questions need to be determined:
- Whether during the relevant period *Rupesh* was an insider in terms of the provisions of the PIT Regulations, 2015?
 - If yes, whether during the relevant period *Rupesh* had traded in the shares of DIL?
 - If yes, whether the information available to *Rupesh* was likely to materially affect the price of shares of DIL, as envisaged in regulation 2(1)(n) of the PIT Regulations, 2015?
 - If yes, whether *Rupesh* traded while in possession of unpublished price sensitive information in violation of provisions of the PIT Regulations, 2015?
11. It is an admitted fact that during the relevant period *Rupesh* was the Managing Director of DIL since June 01, 2009 and was also promoter of the *Company* during the investigation period (July 17, 2015 to October, 14, 2015) and as such was insider in terms of regulation 2(1)(g) of the PIT Regulations, 2015. It is also an admitted fact that *Rupesh* had traded during the said period (i.e., July 17, 2015 to October, 14, 2015) on three occasions, as enumerated hereinbelow:

Sl. No.	Trade Date	No. of shares bought		
		BSE	NSE	Total
1.	25/08/2015	-	1,04,000	1,04,000
2.	08/09/2015	25,010	40,500	65,510
3.	09/09/2015	10,000	-	10,000
	Total	35,010	1,44,500	1,79,510

12. I note that the aforesaid factors have also been cited in the *interim order* and *Rupesh* has not contested these facts, and as such answer to the first two queries at 10(a) and (b) above are in the affirmative. I, therefore, now proceed to examine the remaining two queries at 10(c) and (d) above and deal with the submission of *Rupesh* in that regard. Before I delve into the issue as to whether in the instant case, the information constituted price sensitive information or not, I find it useful to elucidate herein below the definition of the term “*unpublished price sensitive information*” as enumerated in regulation 2(1)(n) of the PIT Regulation, 2015 as was applicable on the date of the alleged contravention.

“2(1)(n) *"unpublished price sensitive information"* means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- (i) *financial results;*
- (ii) *dividends;*
- (iii) *change in capital structure;*
- (iv) *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
- (v) *changes in key managerial personnel.*
- (vi) *material events in accordance with the listing agreement.*

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

13. As regards issue at para 10(c) above, I note from replies and submission of *Rupesh* that his contention is two pronged: (i) the value and nature of the said contracts was not likely to materially affect the price of shares of DIL and as such the information regarding award of these contracts was not price sensitive; and (ii) during the UPSI period, as alleged in the *interim order*, the said contracts were not finally awarded to DIL and only a declaration of L-1 bidder/matching to EDR of L-1 Bidder was made. In order to deal with the contentions of *Rupesh*, it would be desirable to deal with the two legs of the contentions separately though not exclusively.

14. As regards the first contention of *Rupesh*, the *interim order*, *inter alia*, finds that:

- (a) the value of the two contracts (i.e., 1st Contract and 2nd Contract) for which the announcement was made on September 03, 2015, constituted a substantial 52.47% of the annual turnover of the company for the FY 2015-16 and 87.65% of the annual turnover for the FY 2014-15 i.e. immediately preceding financial year.
- (b) Similarly, the value of the single contract (i.e., 3rd Contract) for which announcement was made on October 14, 2015 constituted a substantial 53.40% of the annual turnover of the company for the FY 2015-16 and 89.21% of the annual turnover for the FY 2014-15, i.e., immediately preceding financial year.
- (c) Considering the magnitude of the value of these three orders, the information relating to bagging of these orders by DIL constituted price sensitive information and the same was likely to materially affect the share price of the company, once published.

15. I have perused the reply of *Rupesh* in this regard. While on the one hand *Rupesh* has contended that the premise and approach of the *interim order* is fundamentally flawed as information about the value and nature of these three contracts could not have been considered to materially affect the price of shares of DIL, on the other hand, as noted in the *interim order*, DIL has itself communicated to the stock exchanges disclosing the receipt of these contracts, as discussed in the beginning of this Order, the relevant extracts of which are reproduced hereinbelow:

	1 st Contract	2 nd Contract	3 rd Contract
Date of award	02/09/2015	28/08/2015	13/10/2015
Date of receipt of Notification of Awards of Work Contracts	02/09/2015	29/08/2015	13/10/2015
Date of communication by company to Exchange	03/09/2015	03/09/2015	14/10/2015

16. I note from the table above that disclosures were made to the stock exchange regarding the award of 1st Contract and the 3rd Contract the next day after the receipt of notification of award of work contracts, with regard to the 2nd Contract, disclosure was made to the stock exchanges after a gap of around 3 days after the receipt of notification of award of work contracts. The common thread running around these three contracts is that the award of these contracts were informed to the stock exchanges for disclosure. Thus, the contention of the *Noticee* that the value and the nature of these contracts could not have been considered as a price sensitive information is dichotomous and stands belied. From a perusal of the definition of the term UPSI as defined under regulation 2(1)(n) of the PIT Regulations, 2015, it is noted that the definition does not provide for any classification based on the quantum of amount involved in a contract, rather it provides an inclusive definition of unpublished price sensitive information which covers, *inter alia*, all the events that are material as per the listing agreement. It is not disputed that the *Company* has furnished such material information about receipt of notification of award of contracts to the stock exchange for dissemination in term of the listing agreement. The very fact of providing such information to the stock exchange for further dissemination, entails that the information was price sensitive.
17. As stated above, the definition of UPSI is not based on the value and nature of contracts. Without prejudice to the same, I find no reason to disagree with the findings observed in the *interim order* where the award of the said three contract was found to be price sensitive. This is self-evident from the fact that the award of the contracts was disclosed by the *Company* on the platform of stock exchange as the *Company* believed them to be to be material events in

accordance with the listing agreement and as such were price sensitive events and rightly so disclosed to the stock exchanges. Further, the *interim order* very clearly demonstrates the rise in share prices of DIL as soon as the disclosure regarding award of contracts was made to the stock exchanges. In fact, to put it succinctly, after the disclosure regarding award of contract was made by DIL to the stock exchanges, its shares witnessed a price rise of around 3.81% – 3.89% (in case of disclosure of 1st Contract and 3rd Contract) and 1.98% - 2.19% (in case of disclosure of 2nd Contract). This rise in share prices within minutes of disclosure to the stock exchanges regarding award of the contracts firmly rebuts the claim of *Rupesh* that the share prices of DIL had witnessed a fall after the disclosures of award of contract was made. I further observe that definition of UPSI under regulation 2(1)(n) of the PIT Regulations, 2015 enlists any information, relating to a company or its securities, directly or indirectly, that is likely to materially affect the price of the securities. The definition does not pre-suppose any certainty in price rise (or price fall) which necessarily has to be triggered by such UPSI. Therefore, the issue requires examination from the facts of each case to decide as to whether the incidents/information have potential to likely affect the price or not. In the instant case, considering the undisputed fact that the amount involved in the contracts awarded to DIL was amounting to a substantial with reference to part of its turnover for the relevant year, in my view, the same was definitely containing material elements, which upon publication, was likely to impact the price of the scrip of DIL.

18. Without prejudice to the above, I have to summarily reject the contention of *Rupesh* that there is a flaw in the methodology adopted by SEBI to determine the impact of award of contract on the share price. The methodology suggested by *Rupesh* is devoid of any logic as it is not possible to predict the exact quantitative impact of award of contracts on the turnover of a company in the forthcoming years during which the contracts were scheduled to be executed. At the time of bagging of a contract, it will never be possible for a company to disclose the likely revenue to be earned, more particularly year-wise impact on the revenue of the company in the future years. However, that would in no way undermine the pecuniary importance or the commercial implications of the contracts on the future turnover or cash flow of the company. Receipt of award of a contract of a substantial size, as was received by DIL in this case, was bound to be perceived by the masses as a landmark commercial achievement and was bound to evoke a strong positive sentiment towards the scrip of the *Company*. Therefore, a company earning a contract for an amount equivalent to a substantial portion of its turnover for the current year in itself would be a material price sensitive information. The submission of *Rupesh* may weigh, in case it is demonstrated that these are small types of contracts and DIL had been bagging much bigger contracts in the past and the revenue likely to be generated out of such small contracts would be very small or negligible, compared to the normal revenue of the *Company* in past years. In that case, only presenting the contract values in terms of the current years turnover could have been called fallacious, and may be, the information about such small contracts can be called not price sensitive. However, in this case, the sheer size of

the contract values were self-evident of their price sensitiveness. The *Noticee* herein (*Rupesh*) has not furnished any documents to show as to how the year-wise revenue likely to be generated in future out of such awarded contracts, could be disclosed in the current year for the consumption of the investors of the securities market without treating them as having potential to materially impact its price. Considering the foregoing, I find that the information available about the declaration of L-1 bidder and further awarding of the contracts were price sensitive information and *Rupesh* being the Managing Director had full access to all the updated information about each and every development on the likelihood of bagging the aforesaid contracts. I, therefore, hold that the information even about declaration of L-1 bidder had all the necessary ingredients to materially affect the price of shares of DIL, as envisaged in regulation 2(1)(n) of the PIT Regulations and more so, considering the value and nature of the said contracts, the information regarding award of these contracts was positively price sensitive.

19. *Rupesh* has also contended that SEBI has itself taken legislative notice of the fact that every single announcement of a development under the listing agreement would not mean that the content of what was disclosed constitutes UPSI and with effect from April 1, 2019, an amendment has been effected to regulation 2(1)(n) of the PIT Regulations, 2015, i.e., resulting in the omission of clause (vi) of the said regulation which provided for inclusion of material events in accordance with the listing agreement. It has been argued that a conscious recognition has been made vide the aforesaid amendment that merely because an announcement of a development has been made, every trade made before the announcement should not be violative of insider trading, i.e., trading when in possession of UPSI. I summarily reject this contention of *Rupesh*. It is an undisputed fact that the alleged contravention on the part of *Rupesh* had occurred when the unamended provisions of section 2(1)(n) were applicable. The contention of *Rupesh* that the definition of “*unpublished price sensitive information*” have been amended with effect from April 01, 2019 so as to suit or benefit his case, in my view, is misplaced and, at best, an argument of convenience. If such amendments (that have come into effect after almost three years of the alleged contravention committed by *Rupesh*) and interpretation thereto are retrospectively applied, it would invariably put the regulatory compliance in disarray. It is trite to state that a statutory provision binds the regulator as well as the regulated entity in the same manner. It is an admitted fact that on the date of the alleged contravention the un-amended definition of “*unpublished price sensitive information*” was applicable. I, therefore, do not find this contention of *Rupesh* maintainable in law and reject the same. Moreover, the *Company* had itself disclosed the information pertaining the receipt of award of the said contracts to the stock exchanges not merely as part of its regular disclosure obligation the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 but under full conviction that the said information contained substantial materiality and were of price sensitive in nature. Therefore, it is not open to the *Noticee* to now state that the disclosure of such information was not a disclosure of price

sensitive information by *ex post facto* linking their contentions to an amendment which did not exist at the time when such disclosure was made.

20. I also note from the submission of *Rupesh* that the imputed acquisition of shares is being passed off under the garb creeping acquisition under the Takeover Regulations and the incremental acquisitions under the PIT Regulations, 2015. It is pertinent to bear in mind that creeping acquisition and acquisition pursuant to UPSI are two diametrically opposite actions. The instant case does not pertain to alleged failure to disclose under the PIT Regulations, 2015 for any incremental acquisition of shares which might have been similar to creeping acquisition, but on the contrary, pertains to allegation of acquisition by an insider on the basis of UPSI. Any acquisition by an insider on the basis of UPSI cannot be doused or camouflaged as a creeping acquisition. The fact that the insider is privy to an UPSI in the instant case and has acquired shares, in my opinion, is enough to put to rest the claim of *Rupesh* that the imputed acquisition of shares was in the nature of creeping acquisition.
21. The second leg of the contention of *Rupesh* is that during the UPSI period, as alleged in the *interim order*, the said contracts were not actually awarded to DIL but only a declaration of L-1 and declaration of bidder/matching to EDR of L-1 bidder was made. *Rupesh* has also contended in this regard that when DIL was adjudged as L-1, i.e., the lowest bidder, seen from one angle, there was still no finality as to whether the contract would indeed be awarded to DIL, while seen from another angle, every other bidder too knew that DIL, a listed *Company* had been found as L-1. To buttress his contention, *Rupesh* has placed reliance on the findings by the Ld. Tribunal in the case of *Mr. Anil Harish (supra)*. I have perused the contentions of *Rupesh* and the findings of the Ld. Tribunal as well in the matter of *Anil Harish*. It is an admitted fact that in the instant case, DIL was L-1 bidder, i.e., the lowest bidder with respect to two of the awarded contracts, i.e., 1st Contract and 3rd Contract and was asked to match EDR of the L-1 bidder in respect of the 2nd Contract. I note that the facts of the instant case are different from that of *Anil Harish* case. It is observed that in the matter of *Anil Harish*, the noticee therein had followed a consistent practice of informing to the stock exchange as and when it bagged orders of about ₹100 crore or more are received and the information which it did not disclose for contracts worth were less than ₹100 crore. In the present case, however, there was no such practice followed by DIL or any argument of that nature taken by *Rupesh*. Further, award of these contracts were disclosed by DIL to the stock exchanges after the receipt of notification of award and, as iterated above, information of such contract constituted price sensitive information. Therefore, in the facts and circumstances of present case, reliance on the decision rendered by the Ld. Tribunal in case of *Anil Harish (supra)* is misplaced on facts and is not correct to contend that entering into the contracts in question did not constitute a price sensitive information. It is also pertinent to be reminded at this stage that the decision rendered by the Ld. Tribunal in *Anil Harish* case (*supra*) has been assailed by SEBI by way of an appeal filed before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court was pleased to

issue notice and the same is pending for adjudication. As regard to the issue whether the award of contract is price sensitive information or not, it is felt appropriate to refer the observation of the Hon'ble SAT in the matter of *Hindustan Dorr Oliver Limited vs SEBI - Appeal No. 107 of 2011* (Date of decision: 19.10.2011), wherein while dealing with the issue the Hon'ble SAT has observed that "The information relating to award of contract is price sensitive and the same was furnished to the stock exchanges is also not in dispute."

22. The issue that arises for determination now is whether being considered as L-1 bidder, i.e., lowest bidder for the said three contracts should have been disclosed as such to the stock exchanges or not. I note that in case of 1st Contract and 3rd Contract, the stage at which DIL was declared as L-1 bidder is the stage at which the tendering process was complete and only the award of contract remained pending. In case of 2nd Contract, DIL was not declared L-1 bidder but subsequently on August 17, 2015, ONGC requested DIL to match EDR of L-1 bidder, in response to which DIL submitted the revised bid matching EDR with that of L-1 bidder on August 18, 2015. This is the stage where an L-1 bidder company hardly faces any further obstruction, unless a *force majeure* happens, from getting the award of the contracts for onward execution. However, the *Noticee* has contended that being L-1 bidder does not necessarily mean award of contract and has relied upon judgment of the Hon'ble Supreme Court in the matter of *Asia Foundation & Construction Ltd. versus Trafalgar House Construction (I) Ltd. and Ors.*, which was in turn relied upon by the appellant in the matter of *Anil Harish (supra)* before the Ld. Tribunal.
23. I have perused the judgment relied upon by the *Noticee* and note that the facts of *Asia Foundation & Construction Ltd. versus Trafalgar House Construction (I) Ltd. and Ors.* are entirely different from those of the instant case. In the matter of *Asia Foundation*, the issue pending before the Hon'ble Supreme Court was whether the High Court was justified, in the facts and circumstances of the case, to interfere with the award of contract in favour of the appellant therein (*Asia Foundation*) and whether such interference would subserve any public interest for which the Court purports to have exercised its power of judicial review. In the said case, the basic issue was to determine the lowest bidder – the one considered so by Asian Development Bank (the financier of the contract) or a consultant appointed in that regard, and after relying on the charter of Asian Development Bank, the Hon'ble Supreme Court ruled *Asia Foundation* to be the lowest bidder and hence affirmed the award of contract to it. However, not to lose sight of the issue in the instant case, where it is not the case of the *Noticee* that despite DIL being lowest bidder there were other bidders who were called for matching its bid. On the contrary, in respect of 2nd Contract, it is an admitted position that only DIL was asked to match the bid of the lowest bidder making it further a self-evident that DIL enjoyed preferred empaneled status in ONGC. I would also like to draw the attention to the findings of the Ld. Tribunal in the matter of *V. K. Kaul vs SEBI* (Appeal no. 55 of 2012) whereby it, *inter alia*, was held that the term price sensitive information used in regulation 2(ha) of the Securities and Exchange

Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **“the PIT Regulations, 1992”**) is wide enough to include information relating directly or indirectly to ‘a company’. In view of the foregoing, I reject the contention of the *Noticee* and find that DIL being considered as L-1 bidder, i.e., lowest bidder for the said three contracts was information material enough to have an impact on the share price of DIL. In fact, I do not see the instant matter as a case of non-disclosure, rather the allegations pertain to trading by an insider during the period the *price sensitive information* was not disclosed.

24. DIL being the adjudged lowest bidder was very well known to *Rupesh* and during the same time, *Rupesh* along with *Sujay* and *VTIPL* had traded in the shares of DIL. It is also to be noted that none of them had traded in the shares of DIL before the UPSI period or after the UPSI period. The circumstances surrounding that trading clearly point to the fact of existence of UPSI and that the said UPSI was shared by *Rupesh* with others.

25. I further note that the issue as to whether bagging of award of contract was itself a material and price sensitive information or not, has come up for considerations before the Hon’ble SAT in the matter of *Man Industries (supra)*, and the observations of the Hon’ble SAT is as under;

“14. We find no merit in the arguments advanced by the Counsel for the Appellants. Their contention that the orders bagged by the Company became price sensitive only on the date of receiving the advance cannot be sustained in view of the fact that the orders constituted about 65% of the annual order book of the Company; share prices did increase by 4.74% on the date of announcement i.e. 29th April, 2009; the Company itself felt that the information is important enough to be disclosed and hence it was aware of the fact that this information was price sensitive and liable to be disclosed.....
.....”

17. In the context of the present case, Counsel for the Appellants relied on the decisions of this Tribunal in the case of Gujarat NRE Mineral Resources Ltd. v/s SEBI (Appeal No. 207 of 2010 decided on 18.11.2011) and Mr. Anil Harish v/s SEBI (Appeal No. 217 of 2011 decided on 22.06.2012) and submitted that earning profits by manufacture and sale of goods being the normal activity of the company, mere entering into contracts for sale of goods could not be said to be a price sensitive information so as to disclose the same immediately on entering into such contracts. It is submitted that apart from the fact that the contracts were subjected to further negotiation which resulted in reduction of the quantum of sale and also amendment of the contract disclosures were made immediately on deposit of initial amount of -13- US \$ 1.5 million and therefore, in the facts of present case, no penalty ought to have been imposed against the Appellants.

18. We see no merit in the above contentions. As rightly contended by learned Counsel for SEBI, in the present case, the contracts in question (even after amendment) were for Rs.1340 crores, whereas, the total

contracts for which the Company had orders for the entire year were to the extent of Rs. 2,000 crores. Since the value of two contracts in question constituted nearly 65% of the total order book of the Company during the year, it is abundantly clear that entering into such contracts constituted a price sensitive information which ought to have been disclosed under Scheduled II of regulation 12(1) of the PIT Regulations.....”

26. Based on the above observations of the Hon’ble SAT in the matter of *Man Industries (supra)*, I find that the issue under consideration in the instant proceedings is squarely covered by the aforesaid observations of the Hon’ble SAT. In the instant proceedings also, the amount involved in the contracts that were awarded to DIL as an L-1 bidder constituted a substantial portion of turnover of the company and further the award of these contracts were also duly disclosed on stock exchange for the consumption of the investors or shareholders of the *Company* to take the informed decision to invest in the shares of DIL. The information had potential to materially affect the price which was demonstrated by actual positive movement seen in the price of the scrip of the *Company*. Therefore, it is not open to the Noticee to contend that bagging of award is not *price sensitive information* within the realm of regulation 2 (1) (n) of the PIT Regulations, 2015.
27. As regards the issue raised at para 10(d) above, I note that the *interim order* alleges that the *Noticee* had traded only in the shares of DIL during the UPSI period (i.e., July 17, 2015 to October 14, 2015) and purchased **1,79,510** shares of DIL during the said period. It is also relevant to note that *Rupesh* had not traded in the shares of DIL or any other scrip during the pre-UPSI period (i.e., April 01, 2015 to July 16, 2015) or post-UPSI period (i.e., October 15, 2015 to January 31, 2016). This fact has never been disputed by *Rupesh* in his submissions. *Rupesh* has also not taken the plea that these transactions in the shares of DIL were in pursuance of a pre-envisaged trade plan as envisaged under regulation 5 of the PIT Regulations, 2015. Considering the foregoing, I find that *Rupesh* had traded in the shares of DIL while in possession of *unpublished price sensitive information*.
28. I would like to rely on the findings of the Ld. Tribunal in the matter of *Chandrakala vs. SEBI* (Appeal No. 209 of 2011 - Date of Decision: January 31, 2012) wherein it was held that the prohibition contained in Regulation 3 of the PIT Regulations, 1992 apply only when an insider trades or deals in securities on the basis of / motivated by, any UPSI and not otherwise. However, if an insider trades or deals in securities of a listed company, it may be presumed that he has traded on the basis of / motivated by, UPSI unless the contrary is established by the insider. In the instant case, *Rupesh* being an insider has not brought forth any justifiable explanation to establish that his trade in shares of DIL during the UPSI period had nothing to do with the UPSI of DIL in respect to the award of three contracts. It would be worthwhile to iterate here the findings of the Hon’ble District Court Southern District of New York in the

matter of *United States of America V Raj Rajaratnam* 09 Cr. 1184 (RJH) decided on August 11, 2011 which is reproduced hereinbelow:

“...Moreover, several other Courts of Appeals have sustained insider trading convictions based on circumstantial evidence in considering such factors as “(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contact between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee.” United States v. Larrabee, 240 F.3d 18, 21-22 (1st Cir. 2001).”

29. The instant matter fully fits into the four corners of an insider trading case as observed in the matter of Rajaratnam. The evil of insider trading has been well recognized by our judicial bodies. The purpose of insider trading regulations is to prohibit trading which an insider gets advantage by virtue of his access to price sensitive information. In the matter of *E. Sudhir Reddy vs. SEBI* (Appeal no. 138 of 2011 decided on 16/12/2011) the Ld. Tribunal has observed 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.”

30. It has also been argued by the *Noticee* that in order to assess the value of any particular contract for its materiality, the appropriate approach would be to compare it with the total size of all contracts, which would reflect the materiality of a particular contract as part of the larger order book of contracts bagged by a company and while assessing the value of revenues from a contract for any particular year, it is just and proper to compare the revenues from a contract in a year, with the total revenues in that year. Doing so would further reflect the materiality or the lack of it for the revenues in that year from a contract. Whereas, in the instant case, SEBI has taken the total value of a contract spread over three years, and compared it with the turnover of the year in which the contracts were signed and the year preceding to it. This has led to an unreasonable and arbitrary assessment of a contract from which no revenues were to be earned in the year in which the contracts were awarded, with the total turnover of the

Company in that year. I find that the aforesaid submissions have no basis. Nothing has been furnished in support of the said submissions to suggest as to how the information (bagging of contracts) can be excluded from being called *price sensitive information* when the revenue likely to be generated out of the same contracts in the subsequent years would actually become *price sensitive information* for the respective subsequent years. There is nothing on record to estimate or ascertain the minimum revenue likely to be generated year-wise over the three years period during which the said contracts were likely to be executed and therefore, in the absence of the same, the submissions of the *Noticee* is found to be not tenable. As held in earlier paragraph of this Order, the very nature of the information pertaining to award of high value contracts from ONGC *suo moto* propels the information to the realm of being labelled as *price sensitive information* by the sheer impact of these contracts on the future revenues of the *Company*. The comparison of the contracts, in terms of the turnover of the *Company* during the year in which the contracts were awarded, in the *interim order* was meant to indicate the potential impact of the contracts on the business of the *Company* and not to incorporate them *per se*, in the actual turnover of the year.

31. It is an admitted fact that *Rupesh* was the Managing Director of DIL during the UPSI period and was well aware of all day-to-day developments in respect of three major contracts being awarded to DIL. Further, the trading pattern of *Rupesh* in the shares of DIL combined with the then attending circumstances clearly spelt out the intent behind trading in the scrip during the period when the details of award of contract were not available to public at large.
32. Having concluded that *Rupesh* had traded in the shares of DIL during the UPSI period in violation of the provisions of the PIT Regulations 2015, it now falls upon me to decide the following two issues:
 - (a) Direction to disgorge an amount equivalent to the total gains made on account of insider trading in the scrip of DIL along with interest,
 - (b) Direction to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
33. I note from the *interim order* that *Rupesh* had made a gain of ₹1,34,20,604. The gains made by *Rupesh* is calculated as difference between number of shares bought valued at closing price on which UPSI became public and the value at which shares were bought, increased by the dividend amount received by *Rupesh* in respect of those shares. As the gains made by *Rupesh* were achieved during the period from July 17, 2015 to October, 14, 2015, the *interim order* levied an interest at the rate of 12% simple interest per annum computed from the date when UPSI ceased to exist i.e. October, 14, 2015 till the date of the *interim order*. In exercise of the powers conferred in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, the *interim order* impounded ₹1,74,57,816/- from *Rupesh*. I also note from the submissions

of *Rupesh* that in compliance with the *interim order* on June 12, 2018 a sum of ₹1,74,57,816/- was deposited in an interest bearing fixed deposit account bearing number “09330300046262”, under lien in favour of SEBI with Bank of Baroda, Usmanpura Branch, Ahmedabad.

34. 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, hereby issue following directions:

(a) The *Noticee* herein, Mr. Rupeshbhai Kantilal Savla (PAN: AACPS6257P) shall disgorge the amount of wrongful gain of ₹1,74,57,816/-, as computed in the *interim order qua* the *Noticee* and lying deposited in the escrow account;

(b) The *Noticee* herein, Mr. Rupeshbhai Kantilal Savla (PAN: AACPS6257P) 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 **six months** for the alleged violations of Regulation 4(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 and Sections 12A(d) and (e) of the SEBI Act, 1992. It is clarified that during the period of restraint, the existing holding of securities including units of mutual funds, of the *Noticee* shall remain frozen.

35. This Order shall come into force with immediate effect. A copy of this Order shall be served on the *Noticee* Mr. Rupeshbhai Kantilal Savla, recognized Stock Exchanges, depositories, Registrar and Share Transfer Agents and mutual funds to ensure compliance with above directions.

-Sd/-

DATE: SEPTEMBER 30, 2019

PLACE: MUMBAI

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