

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/9611-9612]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Nitin Ajage [PAN: AJAPA2374A]

Rashmi Ajage [PAN: APMPG2398L]

In the matter of Dynamatic Technologies Ltd

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted investigation in the matter of suspected insider trading activities of certain entities in the scrip of Dynamatic Technologies Ltd (*hereinafter referred to as “DTL”*) for the period from August 17, 2016 to November 11, 2016 (*hereinafter referred to as “IP”*). Pursuant to the investigation, SEBI noted that entities Nitin Ajage (*hereinafter referred to as “Noticee 1”*) and Rashmi Ajage (*hereinafter referred to as “Noticee 2”*) traded in the scrip of DTL while in possession of Unpublished Price Sensitive Information (*hereinafter referred to as “UPSI”*), leading to alleged violation of Section 12A(d) and (e) of the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as “SEBI Act, 1992”*) and Regulation 4(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as “PIT Regulations, 2015”*). Further, it is alleged that Noticee 1 has violated Regulation 7(2)(a) of the PIT Regulations, 2015 and clause 6 of schedule B read with sub-

Regulation (1) and sub-Regulation (2) of Regulation 9 of the PIT Regulations, 2015 read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL, by Noticee 1.

APPOINTMENT OF ADJUDICATING OFFICER

2. In this regard, SEBI initiated Adjudication Proceedings against the Noticees and appointed undersigned as Adjudicating Officer, conveyed vide communique dated August 06, 2020, under Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as "Adjudication Rules, 1995"*) to inquire into and adjudge under Section 15G of the SEBI Act, 1992, the alleged violations of provisions of Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) of the PIT Regulations, 2015 by the Noticees, under Section 15A(b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 7(2)(a) of the PIT Regulations, 2015 by Noticee 1, and under Section 15HB of the SEBI Act, 1992, the alleged violation of provisions of clause 6 of schedule B read with sub-Regulation (1) and sub-Regulation (2) of Regulation 9 of the PIT Regulations, 2015 read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL, by Noticee 1.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice EAD-7/ADJ/KS/AE/OW/15065-15066/2020 dated September 11, 2020 (*hereinafter referred to as 'SCN'*) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty under Section 15G of the SEBI Act, 1992 be not imposed on the Noticees, and penalty under Section 15A(b) and 15HB be not imposed on Noticee 1. The SCN was sent through speed post with acknowledgement due (SPAD) and also through digitally signed email dated September 18, 2020. The SCNs sent through SPAD were returned undelivered. Copy of email dated September 18, 2020 is on record.
4. The allegations in the SCN are given below in brief:

It was observed that DTL on November 11, 2016 (after the trading hours) announced the consolidated financial results for the quarter ended September 30, 2016 wherein it was observed that the consolidated Net Profit after Tax for the Quarter had decreased by 37.27% when compared to the previous quarter. The price of the Company's share, touched a 52 week high of Rs. 3,655.80 on October 24, 2016 i.e., prior to the announcement of the financial results. The price of the scrip of DTL on November 11, 2016 (i.e., on the day when the announcement was made after the trading hours) and on November 15, 2016 (i.e., the succeeding trading day) respectively, are as follows:

Exchange	Date	Opening Price(Rs.)	High Price(Rs.)	Low Price(Rs.)	Closing Price(Rs.)	Number of shares traded
BSE	Nov 11, 2016	3,111.30	3,299.00	3,066.00	3,227.40	1,006
	Nov 15, 2016	3,154.40	3,275.00	2,861.00	2,895.10	1,676
NSE	Nov 11, 2016	3,175.05	3,289.95	3,142.00	3,166.75	3,341
	Nov 15, 2016	3,200.00	3,200.00	2,865.00	2,899.55	10,306

From the details submitted by DTL vide their letter dated June 14, 2019 to SEBI (**Annexure 2**), following chronology of events that lead to announcement of the financials for the Quarter ended September 30, 2016 was observed:

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
Aug 10, 2016	The Board in its meeting held on that day, scheduled the next Board meeting between November 10, 2016 to November 14, 2016 for the quarter and half year	1. Vijay Kapur 2. Govind Manik Mirchandani 3. Nalini Ranjan Mohanty 4. Malavika Jayaram	None

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
	ended September 30, 2016. (The Company clarified that the actual financial results were not discussed at that stage)	5.Dietmar Hahn 6.James Tucker 7.Raymond Keith Lawton 8.P.S.Ramesh 9.Hanuman Kumar Sharma 10.Udayant Malhoutra 11.Aditya Kumar Jain	
Aug 31, 2016	Email Dispatch of notice convening the meeting of the BoD and the audit & risk management committee on November 11, 2016. (The Company clarified that the actual financial results were not disclosed at that stage).	The said email was sent by Mr.Naveen Chandra to: 1 Vijay Kapur 2 ACM S Krishnaswamy (Retd) 3 Govind Manik Mirchandani 4. Malavika Jayaram 5 Nalini Ranjan Mohanty 6. Raymond Keith Lawton 7 Dietmar Hahn 8 Hanuman Kumar Sharma 9 James Tucker	Statutory Auditors; Internal Auditors

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
		10 P S Ramesh 11 Toby, CEO & MD 12 Rita Gururaj 13 Srinivas M K	
Oct 11, 2016	Draft financials received by email from JKM Ferrotech Limited, a subsidiary of the Co.	The said email was sent by Asit Sabat to: 1 Nitin Radhakishan Ajage; 2 Lakshmi Kamath	None
Oct 17, 2016	First cut draft standalone financials shared with auditors by email	The mail was sent by Nitin Ajage to: 1 Aravinda S 2 Vivekananda Rao 3 Jayagopal Gajendra 4 Chalapathi P 5 Vignesh V	Auditors of BSR Affiliates 1 Nagaraj Bhat 2 Honey Agarwal 3 Dipak Agarwal 4 Apporv Gairola 5 Ravuri Srinadh 6 Shivakumar G Venkatasubba 7 Saurabh Choraria 8 Kiren Kumar K 9 Bhavika Jalan

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
October 18, 2016	Financials received from Dynamatic Ltd., UK, a subsidiary of the Co., by email	The email was sent by David Goodfellow to: 1 Nitin Ajage 2 Ray Lawton 3 James Tucker 4 Hanuman Kumar Sharma	--
October 19, 2016	Received financials of JKM Erla Automotive Ltd., and revised financials of JKM Ferrotech Ltd., subsidiaries of the Co., by email	The mails were sent by Manjunath Reddy & Asit Sabat to : 1 Aravinda S 2 Chalapathi P 3 Nitin Ajage 4 Lakshmi Kamath	Auditors of BSR Affiliates: 1 Dipak Agarwal 2 Ravuri Srinadh 3 Saurabh Choraria 4 Bhavika Jalan
October 20, 2016	Received by email financials from Eisenwerk Erla GmbH and JKM Erla Homding GmbH, the subsidiaries of the Co.	The mail was sent by Enrico Fischer to: 1 Chalapathi P 2 Nitin Ajage	--
October 22, 2016	Received by email financials from JKM Research Farm, a subsidiary of the Co.	The mail was sent by Ganapati Hegde to: 1 Aravinda S 2 Chalapathi P 3 Nitin Ajage	--

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
		4 Manjunatha Reddy P.O.	
October 25, 2016	Updated version of standalone financials shared with auditors by email	The mail was sent by Nitin Ajage to: 1 Chalapathi P	Auditors of BSR Affiliates: 1 Honey Agarwal 2 Dipak Agarwal 3 Apoorv Gairoria 4 Shivakumar G Venkatasubba 5 Saurabh Choraria 6 Bhavika Jalan
October 25, 2016	First cut consolidated financials shared with auditors by email	The mails were sent by Nitin Ajage to: 1 Chalapathi P	Auditors of BSR Affiliates: 1 Honey Agarwal 2 Dipak Agarwal 3 Apoorv Gairoria 4 Shivakumar G Venkatasubba 5 Saurabh Choraria 6 Bhavika Jalan
November 3, 2016	A letter was sent to stock exchanges informing that the BoD meeting, to approve the unaudited financial results of the	Letter dated November 3, 2016 addressed to both the exchanges was signed by Naveen Chandra P	--

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
	Company for the quarter and half year ended September 30, 2016, will be held on November 11, 2016 <u>and the trading window would remain closed from November 4, 2016 to November 14, 2016.</u> A newspaper advertisement intimating the Notice for postal ballot and closure of trading window was also published.		
November 4, 2016	Detailed Agenda was circulated to the BoD containing the underlying documents (Company also informed that the unaudited financial results for the quarter and half year ended September 30, 2016 was not circulated as the same was unpublished price sensitive information and not required to be circulated pursuant to Secretarial Standards-1)	The mail was sent by Naveen Chandra to: 1 Vijai Kapur 2 ACM S Krishnaswamy (Retd) 3 Govind Mirchandani 4 N R Mohanty 5 Malavika Jayaram 6 Dietmar Hahn 7 James Tucker 8 Ray Lawton 9 P S Ramesh	--

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
		10 Hanuman Kumar Sharma 11 Udayant Malhoutra 12 Srinivas MK	
November 7, 2018	Book closed	N/A	N/A
November 8, 2016	Unaudited financial results were finalized by the audit team in co-ordination with the statutory auditors for approval and adoption in the meeting of the BoD to be held on Nov 11, 2016	1 Nitin Ajage 2 Hanuman Kumar Sharma 3 Chalapathi P 4 Umang Banka	Auditors of BSR Affiliates: 1 Honey Agarwal 2 Dipak Agarwal 3 Shivakumar G Venkatasubba 4 Saurabh Choraria 5 Bhavika Jalan 6 Kiren Kumar K
November 11, 2016	Meeting of the BoD was held at Germany and the unaudited results to quarter ended September 30, 2016	1 Naveen Chandra 2 ACM S Krishnaswamy (Retd) 3 Govind Manik Mirchandani 4 Nalini Ranjan Mohanty 5 Shirish Saraf 6 Dietmar Hahn 7 James Tucker	--

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
		8 Raymond Keith Lawton 9 P S Ramesh 10 Hanuman Kumar Sharma 11 Udayant Malhoutra	
November 11, 2016	Informed the outcome of the meeting of the BoD held on November 11, 2016 to the stock exchanges, i.e., approval of the consolidated as well as standalone unaudited financial results for the quarter and half year ended 30 th September 2016 and appointment of additional director.	The letter to the exchanges was signed by Naveen Chandra P	--

Further, it was observed that in addition to the above, DTL has also informed the chronology of events that happened simultaneously on the Internal and statutory Audits processes relating to the financials for the quarter/half-year ended September 30, 2016, as follows –

Internal Audit:

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
October 28, 2016	Emails/discussions were sent/held on the inventory	1.Pradeep Shankar	1 Gaurav Mullic

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
	<i>issue tracker from internal audit team</i>	2 Aravinda S 3 Pavan Salikar	2 Raghavendra KR 3 Anant Sancheti
November 2, 2016	<i>Email was sent on the updated inventory issue tracker Internal Audit Team</i>	4 Ravindranath A 5 Prashant Bendigeri 6 Nitin Ajage	4 Shandrashekar Rao Of Earns & Young LLP, Bengaluru
November 3, 2016	<i>Discussion on updated inventory issue tracker received from Internal Audit Team</i>	7 Hanuman Kumar Sharma 8 Arvind Mishra	
November 5, 2016	<i>Emails/discussions were sent/held on First draft internal audit report from Internal Auditor</i>	9 P S Ramesh	
November 7, 2016	<i>Emails/discussions were sent/held on Second draft internal audit report from internal auditor for process owner comments</i>		
November 10, 2016	<i>Final internal audit report from internal auditor</i>		

Statutory Audit:

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
November 2, 2016	<i>Email Clarification on management fees for Dynamatic Ltd., UK</i>	1 Manjunatha Reddy 2 Aravinda S	1 Dipak Agarwal 2 Saurabh Choraria

Date	Particulars	Names of persons party to the event	
		Internal participants	External participants
November 5, 2016	Updated version of Standlore financials shared with auditors after reclass of net provision for income tax and reclass of advances from debtors and FCMITD	3 Ramesh Akkem 4 Nitin Ajage 5 Chalapathi P 6 Hanuman Kumar Sharma	3 Shivakumar G Venkatasubba 4 Honey Agarwal 5 Bhavika Agarwal 6 Apoorv Gairola
November 5, 2016	Email on updated version of consolidated financials shared with auditors after reclass of net provision for income tax and reclass of advances from debtors and FCMITD	7 Arun Dongre	7 Kiren Kumar 8 Umang Banka - Of Earns & Young LLP, Bengaluru
November 7, 2016	Email on final draft publication and audit committee presentation for CFO review		
November 8, 2016	Internal Discussion – Nitin Ajage, Chalapathi P and Hanuman Kumar Sharma		
November 8, 2016	Email on final publication and audit committee presentation from Auditor		

It was observed that DTL, vide letter dated May 02, 2017 (**Annexure 3**), informed that there were no major adjustments that led to decrease in the consolidated profit for the quarter ended September 2016 as compared to June 2016. However, the following aspects have impacted the consolidated profit:

- Decline in Revenue by 3.2% during the quarter ended September 2016 as compared to the quarter ended June 2016;
- Decrease in average exchange rates that they use to translate results of overseas subsidiaries resulted in lower Revenue and profitability by some extent;

c. During the quarter ended September 2016, there was a marginal increase in material consumption by 1% due to change in product mix when compared to the quarter ended June 2016.

Therefore, it was observed that there existed an unpublished price sensitive information – relating to decline in the consolidated profit for the Quarter ended September 2016, till the financials for the said Quarter were disclosed to the stock exchanges by DTL on November 11, 2016.

It was observed that DTL vide its letter May 2, 2017 (**Annexure 3**), confirmed the dates of receipt of standalone financial results for the quarter ended September 30, 2016, from all the subsidiaries for preparation of the consolidated Profit & Loss Account and the Balance Sheet, as given below:

Name of the Subsidiary Company	Date of receipt of financials by DTL
JKM Ferrotech Limited, India	October 11, 2016
JKM Erla Automative Limited, India	October 19, 2016
JKM Research Farm, Ltd., India	October 22, 2016
JKM Global Pte Limited, Singapore	October 23, 2016
Dynamatic Ltd., UK	October 18, 2016
Yew Tree Investments Ltd., UK	October 18, 2016
Eisenwerk Erla GmbH, Germany	October 20, 2016
JKM Erla Holdings GmbH, Germany	October 20, 2016
Dynamatic LLC, US	October 18, 2016

Further, DTL, vide email dated May 12, 2017 (**Annexure 4**) to SEBI, submitted that the decline in the consolidated revenue as at 30th September, 2016 when compared with 30th June 2016, is majorly attributable to the decline in revenue of Dynamatic Ltd., UK and Eisenwerk Erla GmbH, Germany. This decline in revenue of the aforesaid two subsidiaries resulted in overall decline in EBITDA as at 30th September 2016 when compared with 30th June 2016. Hence, the date of receipt of financials from the aforesaid subsidiaries viz. Dynamatic Ltd., UK (i.e., October 18, 2016) and Eisenwerk Erla GmbH, Germany (October 20, 2016) are treated as the date when the UPSI came into existence. Therefore, the earliest date being October 18, 2016 i.e., the date of receipt of financials from Dynamatic Ltd., UK is the date when the UPSI came into existence.

It was observed that the aforesaid Price Sensitive Information i.e., the decline in the consolidate profit for the quarter ended September 30, 2016 ceased to exist and became public when DTL disclosed the financial results to the stock exchanges on November 11, 2016 (after the trading hours). Therefore, the Period of UPSI has been determined as – from October 18, 2016 to November 11, 2016 (both days inclusive).

It was observed that the announcement regarding decline in the consolidated profit of DTL for the quarter ended September 30, 2016 was a negative announcement that had a negative impact the share price of DTL.

Impact of Announcement by DTL on the share price of DTL at BSE & NSE, as per the Investigation Report:

It was observed that the price of the scrip decreased substantially on November 15, 2016 touching a low of Rs. 2,861.00 and Rs. 2,865.00 in BSE and NSE respectively, i.e. a fall of 11.35% in BSE and 9.34% in NSE, compared to the closing price on November 11, 2016.

It was observed that Noticee 1 was the General Manager (Corporate Accounting) of DTL during the period from October 1, 2012 and May 14, 2019. Accordingly, he is an insider in terms of Regulation 2 (1) (g) read with Regulation 2 (1) (d) (i) of the PIT Regulations, 2015.

Noticee 2 is the spouse of Noticee 1. Accordingly, she is an insider in terms of Regulation 2 (1) (g) read with Regulation 2 (1) (d) (ii) (a) and Regulation 2 (1) (f) of the PIT Regulations, 2015.

The dealings in the scrip of DTL by Noticee 1 and 2 during the period of UPSI is tabulated below:

Name of the Entity	Date	Buy Qty	Buy value	Sell Qty	Sell Value
Nitin Ajage	24/10/2016	15	52,500.00	15	51,000.00
Rashmi Ajage	02/11/2016	5	15,840.00	0	0.00
Total		20	68,340.00	15	51,000.00

The aforesaid trades were done on NSE.

From the chronology of discussions/events leading to announcement of finance results for the quarter ended September 30, 2016, it was observed that Noticee 1 was in possession of the UPSI. Thus, it was observed that the above trades of Noticee 1 and 2 were carried out during the period of existence of UPSI. It was observed that Noticee 1 and 2 have dealt in the scrip of DTL while in possession of UPSI.

In view of the above, Noticee 1 and 2 are alleged to have violated Section 12A(d) and (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015.

It is further observed that Noticee 1, vide his letter dated December 4, 2019 (**Annexure 5**) to SEBI, informed that he had made the following transactions during the period from August 17, 2016 to November 11, 2016:

Date	Nature of dealings	Qty	Value of the Trade	Name of the buyer/seller/pledge	Reason/ Rational for the transaction
18-Aug-2016	Purchase	81	217,546.75	Rashmi Ajage	Investment purpose
18-Aug-2016	Sale	81	221,785.05	Rashmi Ajage	Investing into other shares
19-Aug-2016	Purchase	20	56,080.00	Self	Investment purpose
19-Aug-2016	Sale	20	56,320.05	Self	Investing into other shares
19-Aug-2016	Purchase	5	14,025.00	Rashmi Ajage	Investment purpose
19-Aug-2016	Sale	34	95,522.75	Rashmi Ajage	Investing into other shares
22-Aug-2016	Purchase	69	201,622.40	Self	Investment purpose
22-Aug-2016	Sale	39	116,076.05	Self	Investing into other shares
22-Aug-2016	Purchase	5	14,950.00	Rashmi Ajage	Investment purpose
22-Aug-2016	Sale	5	14,875.00	Rashmi Ajage	Investing into other shares
23-Aug-2016	Purchase	83	243,920.80	Self	Investment purpose
23-Aug-2016	Sale	89	266,260.00	Self	Investing into other shares
24-Aug-2016	Purpose	61	184,620.00	Self	Investment purpose
24-Aug-2016	Sale	61	183,348.10	Self	Investing into other shares
25-Aug-2016	Sale	24	69,661.80	Self	Investing into other shares
26-Aug-2016	Purchase	10	28,930.00	Self	Investment purpose
26-Aug-2016	Sale	10	28,559.25	Self	Investing into other shares

28-Aug-2016	Purchase	8	24,864.00	Self	Investment purpose
28-Sep-2016	Sale	8	24,728.00	Self	Investing into other shares
28-Sep-2016	Purchase	5	15,425.00	Self	Investment purpose
29-Sep-2016	Purchase	10	28,625.00	Rashmi Ajage	Investment purpose
30-Sep-2016	Sale	10	30,600.00	Rashmi Ajage	Investing into other shares
03-Oct-2016	Sale	5	15,200.00	Self	Investing into other shares
05-Oct-2016	Purchase	15	48,300	Self	Investment purpose
05-Oct-2016	Sale	15	47,700.00	Self	Investing into other shares
24-Oct-2016	Purchase	15	52,500	Self	Investment purpose
24-Oct-2016	Sale	15	51,000.40	Self	Investing into other shares
02-Nov-2016	Purchase	5	15,840.00	Rashmi Ajage	Investment purpose

The aforesaid transactions of Noticee 1 and 2 require disclosures by Noticee 1 to DTL under Regulation 7(2)(a) of PIT Regulations, 2015. It was observed that vide his aforesaid letter, Noticee 1 informed that he made a disclosure to the legal and compliance officer of DTL in the year 2016 regarding his trades in the scrip. However, it was observed that Noticee 1 has neither submitted any details of the disclosures nor copies of the same.

*In this regard, the Compliance Officer of DTL, vide his email dated December 4, 2019 (**Annexure 6**) informed that, on verification of the records of the Company, there were no pre-clearances obtained from the Company or any disclosures made to the Company by Noticee 1, in respect of the traded transactions during the investigation period. In view of the above, it is alleged that Noticee 1 did not file the requisite disclosures under Regulation 7(2)(a) of PIT Regulations, 2015, and thus violated the aforesaid provisions.*

From Table above, it was observed that Noticee 1 bought 251 shares and sold 243 shares of DTL during the month of August 2016 and bought 30 and sold 35 shares of DTL during the month of October 2016. It was observed that the number of shares traded by the Noticee 1 exceeded 50 shares in the month of August and September. It may be noted that Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B read with Regulation 9(1) and (2) of PIT Regulations, 2015 states the following -

“When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.”

*Further, Clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL (**Annexure 7**) states as follows –*

“6. Pre-clearance of Trades

6.1 Every Designated Person who intends to trade in the securities of the Company above 50 shares of the Company in a calendar month shall obtain pre-trading approval as per the procedure prescribed hereunder”

Investigations has observed that based on the pattern of trading by Noticee 1, it appears that he had been trading in the scrip frequently and in insignificant quantities that did not reflect any dealing in the nature of avoiding loss. It was observed that Noticee 1 has not obtained any pre-clearance from DTL/its compliance officer for his aforesaid trades. In view of the above, Noticee 1 is alleged to have violated Clause 6 of Schedule B read with Sub-Regulation (1) and Sub-Regulation (2) of Regulation 9 of the PIT Regulations, 2015 read with Clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL.

5. Vide letters dated September 22, 2020, the Noticees submitted a common reply to the SCN. Vide email dated September 25, 2020, Noticees were given opportunity of personal hearing on October 08, 2020. Vide email dated October 05, 2020, Noticees confirmed name of the Authorized Representative for the hearing, and presented authorization letters in this regard. Vide email dated October 07, 2020, Noticees confirmed their appearance for the personal hearing via video conferencing, and made additional reply to the SCN. The AR appeared for personal hearing held on October 08, 2020 through video conference mode using webex platform. The AR reiterated submissions made vide replies dated September 22, 2020 and October 07, 2020 and confirmed that trades of Noticee 2 were carried by Noticee 1. Hearing minutes are on record.
6. Replies submitted by Noticees are summarized hereunder:

Reply dated September 22, 2020:

"I hereby submit that it was an inadvertent error from my part to trade in the shares of my company. I was ignorant about SEBI Insider Trading Regulations. The error was completely unintentional without any malafide intensions. I humbly accept the findings of the fact and conclusions of the law; I wish to settle the defaults with SEBI. I request your goodself to levy minimum penalty as the number of shares traded are negligible without any significant benefit. In this regard, kindly let me know the necessary formalities to be completed in order to pay the settlement charges"

Reply dated October 07, 2020:

"I, Mr. Nitin Ajage, was the General Manager (Corporate Accounting) of Dynamatic Technologies Limited, hereinafter referred to as "the Company" (at the time of the transaction period), would like to inform you that the it was an inadvertent error from my part to trade in the shares of the Company and it was purely unintentional. I was not aware of the SEBI Insider Trading Regulation.

Noticee conveyed chronology of events as stated in the SCN.

Details of trade done by me during the investigation period from 17th August, 2016 to 11th November, 2016 are as follows:

Date of transaction	Nature of transaction	Quantity	Value in Rs
19.08.2016	Purchase	20	56,080.00
	Sale	20	56,320.05
22.08.2016	Purchase	69	2,01,622.40
	Sale	39	1,16,076.05
23.08.2016	Purchase	83	2,43,920.80
	Sale	89	2,66,260.00
24.08.2016	Purchase	61	1,84,620.00
	Sale	61	1,83,348.10
25.08.2016	Sale	24	69,661.80
26.08.2016	Purchase	10	28,930.00
	Sale	10	28,559.25
28.08.2016	Purchase	8	24,864.00
28.09.2016	Sale	8	24,728.00
	Purchase	5	15,425.00
03.10.2016	Sale	5	15,200.00
05.10.2016	Purchase	15	48,300.00
	Sale	15	47,700.00
24.10.2016	Purchase	15	52,500.00
	Sale	15	51,000.40

From the above table, it is very clear that I have traded in the scrip frequently and in insignificant quantities and it does not reflect any dealing in the nature of avoiding loss or to make super profits on the basis of any Unpublished Price Sensitive Information.

Details of trade executed by my wife during the investigation period are as follows:

Date of Transaction	Nature of Transaction	Quantity	Value in Rs.
18.08.2016	Purchase	81	2,17,546.75
	Sale	81	2,21,785.05
19.08.2016	Purchase	5	14,025.00
	Sale	34	95,522.75
22.08.2016	Purchase	5	14,950.00
	Sale	5	14,875.00
29.09.2016	Purchase	10	28,625.00
30.09.2016	Sale	10	30,600.00
02.11.2016	Purchase	5	15,840.00

I admit the fact that I had bought 15 shares on 24th October 2016 amounting to Rs. 52,509 and sold 15 shares amounting to Rs. 50,984 on the same day. My wife had also bought 5 shares amounting to Rs. 15,840 on 2nd November 2016. But this was done inadvertently as I was unaware of the SEBI Insider Trading Regulations and SEBI Act, that I cannot trade when I am in possession of Unpublished Price Sensitive Information (UPSI).

As per the SEBI notice, I have violated Section 12 A(d) and (e) of SEBI Act, 1992 and Regulation 4(1) of SEBI (PIT) Regulations, 2015 due to trading when in possession of UPSI. Further, I have failed to disclose the Company about my trades as per Regulation 7(2)(a) of SEBI (PIT) Regulations, 2015. Further, I had violated Clause 6 of Schedule B read with Regulation 9(1) and (2) of PIT Regulations, 2015 and Clause 6.1 of Code of conduct for prevention of insider trading by Dynamatic Technologies Limited, as I have not taken pre-clearance for the those trades exceeding 50 shares in a calendar month. I hereby submit that it was an inadvertent and unintentional mistake which has occurred and there was no malafide intension behind it. I shall ensure compliance in future.

The profit which I had made from the above trades is just Rs. 13,275 during the investigation period. Hence, I humbly request you to take a lenient view and impose minimum penalty as I was unaware of the Insider Trading Regulations. The above be also considered as a reply from my wife for the shares traded on her behalf.”

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the allegations levelled in the SCN, material available on record, and submissions made by the Noticees. The issues that arise for consideration in the present case are:

- (a) What is UPSI and whether UPSI was existing at the time of trading by Noticees?**
- (b) Whether the Noticees are “insider” of DTL in terms of the PIT Regulations, 2015?**
- (c) If yes, then, whether trading by ‘insiders’ during UPSI period as alleged in the SCN, is in violation of Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) of the PIT Regulations, 2015? If yes, then, whether the Noticees are liable for monetary penalty under Section 15G of the SEBI Act, 1992?**
- (d) Whether Noticee 1 has violated the provisions of Regulation 7(2)(a) of the PIT Regulations, 2015? If yes, then, whether Noticee 1 is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?**
- (e) Whether Noticee 1 has violated the provisions of sub-Regulation (1) and sub-Regulation (2) of Regulation 9 of the PIT Regulations, 2015 read with clause 6 of schedule B and further read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL? If yes, then, whether Noticee 1 is liable for monetary penalty under Section 15HB of the SEBI Act, 1992?**
- (f) What would be the monetary penalty that can be imposed upon Noticee 1 under Section 15G, 15A(b) and 15HB of the SEBI Act, 1992 and upon Noticee 2 under Section 15G of the SEBI Act, 1992, taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992?**

FINDINGS

8. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees and the same are reproduced below:

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;

PIT Regulations, 2015

4(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information

.....

7(2)(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified

9(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these Regulations, adopting the minimum standards set out in Schedule B and Schedule C to these Regulations, without diluting the provisions of these Regulations in any manner

9(2) Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these Regulations, adopting the minimum standards set out in Schedule B to these Regulations, without diluting the provisions of these Regulations in any manner.

Schedule B

6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-

clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

9. **Issue (a) What is UPSI and whether UPSI was existing at the time of trading by Noticees?**

- a. Quarterly financial results for the quarter ending September 2016 are considered to be UPSI in instant matter. I note that DTL announced the consolidated financial results for the quarter ended September 30, 2016 on November 11, 2016, wherein it was reported that consolidated profit after tax of DTL had decreased by 37.27% compared to the previous quarter. In this regard, I note that as per Regulation 2(n) of the PIT Regulations, 2015, periodical financial results of a company *per se* are deemed to be price sensitive information.
- b. I note from the Investigation report (*hereinafter referred to as “IR”*) which bears a reference to *email of DTL dated May 12, 2017* that the decline in revenue of DTL for the quarter ended September 30, 2016 was mainly attributable to decline in revenue of two subsidiaries of DTL, namely Dynamatic Ltd, UK and Eisenwerk Erla GmbH, Germany. I note from the chronology of events submitted by DTL vide their letter dated June 14, 2019 that financials were received from Dynamatic Ltd, UK on October 18, 2016 and from Eisenwerk Erla GmbH on October 20, 2016. Thereby, I am of the view that the information regarding possible decrease in profit of DTL for the quarter ending September 31, 2016 existed since October 18, 2016, when the financials of Dynamatic Ltd, UK were received. The information became public, with the declaration of financial results by DTL on November 11, 2016.
- c. As mentioned above, the information regarding decrease in profit after tax of DTL was technically a UPSI which existed since October 18, 2016 when financials of Dynamatic Ltd, UK were received, till the declaration financial results on November 11, 2016 (*hereinafter referred to as “UPSI period”*). In this regard, I note that the definition of 'price sensitive information' is broad enough to cover within its ambit any information which if published is likely to materially affect the price of securities of a company. In this regard, what is relevant to be seen is that (i) whether the information directly or

indirectly related to the company and (ii) whether the information, if published, is likely to materially affect the price of securities of a company. If the answers to these two questions are in affirmative, then the information has to be construed as price sensitive information irrespective of actual price witnessed post disclosure of the information.

10. **Issue (b) Whether the Noticees are “insider” of DTL in terms of the PIT Regulations, 2015?**

- a. I note that violation of Regulation 4(1) of PIT Regulations, 2015 can only be committed by an insider. Regulation 2(1)(g) of the PIT Regulations, 2015 states, “*insider*” means any person who is:

(i) a connected person; or

(ii) in possession of or having access to unpublished price sensitive information;”

- b. Arising out from the definition of insider mentioned above, a “connected person” as per Regulation 2(1)(d) of the PIT Regulations, 2015 means:

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

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

an immediate relative of connected persons specified in clause (i);

.....

- c. Further, Regulation 2(1)(f) of PIT Regulations, 2015 defines an immediate relative of connected person as, *“immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;”*.
- d. Based on definitions brought out above, I now examine whether Noticees fall under the definition of ‘insider’. It is alleged in the SCN, and has not been disputed by Noticee 1, that he was General Manager (Corporate Accounting) of DTL at the time of alleged trading. Regulation 2(1)(d) of PIT Regulations, 2015 reads that a connected person is *“person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by being a director, officer or an employee of the company”*.
- e. Therefore, on a bare perusal of Regulation 2(1)(d), I am of the opinion that Noticee 1, being an ‘officer’ in DTL, is a ‘connected person’ with the company. Further, I note from the chronology of events conveyed by DTL vide letter dated June 14, 2019 that the financials received from Dynamatic Ltd, Germany and Eiserwerk Erla GmbH were conveyed to Noticee 1 on October 18, 2016 and October 20, 2016 respectively on a need to know basis, by virtue of his position as General Manager (Corporate Accounting) in DTL. I note that decline in revenue of DTL for the quarter ended September 30, 2016 has been mainly attributed to decline in revenue of two subsidiaries of DTL, namely Dynamatic Ltd, UK and Eisenwerk Erla GmbH, Germany as per the records, and thereby, Noticee 1 was in possession of UPSI in the matter since its inception on October 18, 2016.
- f. Thus, I am of the view that Noticee 1 was a connected person, and had the possession of UPSI since its inception, and thereby, he was an insider in DTL, by virtue of satisfying both the conditions of being an insider, as per the definition stated in Regulation 2(1)(d) of PIT Regulations, 2015.

g. Further, it is undisputed that Noticee 2 is spouse of Noticee 1, who has been established to be an 'insider', and that Noticee 1 admittedly carried out trades on behalf of Noticee 2. Regulation 2(1)(f) of PIT Regulations, 2015, as mentioned above states that a spouse is an "immediate relative" of a connected person for the considerations under PIT Regulations, 2015. Regulation 2(1)(d) (ii) of the PIT Regulations, 2015 states that immediate relative of connected person is a 'deemed connected person unless the contrary is established'. Therefore, I am of the view that Noticee 2 was a connected person for the purposes of considerations under PIT Regulations, 2015 in the instant matter.

11. Issue (c) If yes, then, whether trading by 'insiders' during unpublished price sensitive information (UPSI) period as alleged in the SCN, is in violation of Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) of the PIT Regulations, 2015?

- a. Since it is established that Noticees were 'insider' within the meaning of PIT Regulations, 2015, next issue to be examined is whether their trading during UPSI period is in violation of Section 12A(d) and (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015.
- b. It is alleged in the SCN that Noticees traded in the scrip of DTL during UPSI period in the following manner:

Name of the Entity	Date	Buy Qty	Buy value (Rs)	Sell Qty	Sell Value (Rs)
Nitin Ajage/ Noticee 1	24/10/2016	15	52,500.00	15	51,000.00
Rashmi Ajage/ Noticee 2	02/11/2016	5	15,840.00	0	0.00
Total		20	68,340.00	15	51,000.00

From the above table, I note that Noticee 1 bought 15 shares and sold 15 shares on October 24, 2016, and Noticee 2 bought 5 shares on November 02, 2016. Noticees

have not disputed their trading in scrip of DTL during UPSI period, and have accepted it as an inadvertent error.

- c. At the same time, Noticees have also contended that they traded in the scrip of DTL frequently and in insignificant quantities, and that their trading does not reflect any dealing in nature of avoiding losses or making high profits on the basis of UPSI. Details of trades done by Noticees as per the record are:

Details of trading by Noticee 1

Date of transaction	Nature of transaction	Quantity	Value in Rs
19.08.2016	Purchase	20	56,080.00
	Sale	20	56,320.05
22.08.2016	Purchase	69	2,01,622.40
	Sale	39	1,16,076.05
23.08.2016	Purchase	83	2,43,920.80
	Sale	89	2,66,260.00
24.08.2016	Purchase	61	1,84,620.00
	Sale	61	1,83,348.10
25.08.2016	Sale	24	69,661.80
26.08.2016	Purchase	10	28,930.00
	Sale	10	28,559.25
28.08.2016	Purchase	8	24,864.00
28.09.2016	Sale	8	24,728.00
	Purchase	5	15,425.00
03.10.2016	Sale	5	15,200.00
05.10.2016	Purchase	15	48,300.00
	Sale	15	47,700.00
24.10.2016	Purchase	15	52,500.00
	Sale	15	51,000.40

Details of trading by Noticee 2

Date of transaction	Nature of Transaction	Quantity	Value in Rs.
18.08.2016	Purchase	81	2,17,546.75
	Sale	81	2,21,785.05
19.08.2016	Purchase	5	14,025.00

	Sale	34	95,522.75
22.08.2016	Purchase	5	14,950.00
	Sale	5	14,875.00
29.09.2016	Purchase	10	28,625.00
30.09.2016	Sale	10	30,600.00
02.11.2016	Purchase	5	15,840.00

I note that both the Noticees had been trading in the scrip of DTL on a continuous basis even prior to start of UPSI period on October 18, 2016.

- d. In this regard, I find it relevant to quote judgement of Hon'ble Securities Appellate Tribunal in Chandrakala vs The Adjudicating Officer, SEBI dated January 31, 2012, *"The prohibition contained in Regulation 3 of the Regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider.....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"*
- e. In the instant matter, I am of the view that Noticees, though traded in the scrip of DTL in UPSI period, but considering the continuous trading in the past, the pattern of trading cannot be construed to be motivated by the information in possession of the Noticees. I find the balance of convenience to be in favour of the Noticees. Therefore, I find it difficult to hold that Noticees indulged in insider trading on the 'basis of UPSI'.
- f. Further, I am of the view that the whole intention behind framing of PIT Regulations is that the person, who is in possession of UPSI, should not benefit by using it in comparison to a general investor. In view of the totality of the matter, as the alleged violations have not been established on records, no penalty under Section 15G can be imposed on the Noticees.

12. **Issue (d) Whether Noticee 1 has violated the provisions of Regulation 7(2)(a) of the PIT Regulations, 2015?**

- a. I now consider the allegation of violation of Regulation 7(2)(a) of the PIT Regulations, 2015 by Noticee 1 brought out in the SCN. Regulation 7(2)(a) of the PIT Regulations, 2015 states –

“7(2)(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

Explanation-It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2)”

- b. I further note that Regulation 6(2) of PIT Regulations, 2015 states as follows:

6(2) The disclosures to be made by any person under this Chapter shall include those relating to trading by such person’s immediate relatives, and by any other person for whom such person takes trading decisions.

NOTE: *It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions. These Regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.*

- c. I note that Noticee 1 vide his letter dated December 04, 2019 to SEBI had informed the following transactions during the IP:

Date	Nature of dealings	Qty	Value of the Trade (Rs)	Name of the buyer/seller/pledge	Reason/ Rational for the transaction
18-Aug-2016	Purchase	81	217,546.75	Rashmi Ajage	Investment purpose
18-Aug-2016	Sale	81	221,785.05	Rashmi Ajage	Investing into other shares
19-Aug-2016	Purchase	20	56,080.00	Self	Investment purpose
19-Aug-2016	Sale	20	56,320.05	Self	Investing into other shares
19-Aug-2016	Purchase	5	14,025.00	Rashmi Ajage	Investment purpose
19-Aug-2016	Sale	34	95,522.75	Rashmi Ajage	Investing into other shares
22-Aug-2016	Purchase	69	201,622.40	Self	Investment purpose
22-Aug-2016	Sale	39	116,076.05	Self	Investing into other shares
22-Aug-2016	Purchase	5	14,950.00	Rashmi Ajage	Investment purpose
22-Aug-2016	Sale	5	14,875.00	Rashmi Ajage	Investing into other shares
23-Aug-2016	Purchase	83	243,920.80	Self	Investment purpose
23-Aug-2016	Sale	89	266,260.00	Self	Investing into other shares
24-Aug-2016	Purpose	61	184,620.00	Self	Investment purpose
24-Aug-2016	Sale	61	183,348.10	Self	Investing into other shares
25-Aug-2016	Sale	24	69,661.80	Self	Investing into other shares
26-Aug-2016	Purchase	10	28,930.00	Self	Investment purpose
26-Aug-2016	Sale	10	28,559.25	Self	Investing into other shares
28-Aug-2016	Purchase	8	24,864.00	Self	Investment purpose
28-Sep-2016	Sale	8	24,728.00	Self	Investing into other shares
28-Sep-2016	Purchase	5	15,425.00	Self	Investment purpose
29-Sep-2016	Purchase	10	28,625.00	Rashmi Ajage	Investment purpose

Date	Nature of dealings	Qty	Value of the Trade (Rs)	Name of the buyer/seller/pledge	Reason/ Rational for the transaction
30-Sep-2016	Sale	10	30,600.00	Rashmi Ajage	Investing into other shares
03-Oct-2016	Sale	5	15,200.00	Self	Investing into other shares
05-Oct-2016	Purchase	15	48,300	Self	Investment purpose
05-Oct-2016	Sale	15	47,700.00	Self	Investing into other shares
24-Oct-2016	Purchase	15	52,500	Self	Investment purpose
24-Oct-2016	Sale	5	51,000.40	Self	Investing into other shares
02-Nov-2016	Purchase	5	15,840.00	Rashmi Ajage	Investment purpose

From the above I note that the cumulative traded value by Noticee 1 and Noticee 2 exceeded Rs 10 Lakhs twice viz. on August 22, 2016 and August 26, 2016. Bare perusal of Regulation 7(2) (a) of PIT Regulations stated above indicates that this triggered requirement of disclosure within 2 days of such trading by Noticee 1 to DTL on the above two occasions in quarter ending September 31, 2016.

- d. In this regard, I note that Compliance Officer of DTL, vide his *email dated December 4, 2019 inter alia* informed that, on verification of the records of DTL, there were no disclosures made to DTL by Noticee 1, in respect of the aforementioned transactions by Noticee 1 during IP. Further, Noticee 1 has not disputed the allegation in replies made to the SCN.
- e. I thereby hold that Noticee 1 traded in more than Rs 10 Lakh as per the available records in the quarter ending September 2016, which required a disclosure to be made to DTL as per provisions of Regulation 7(2)(a) of PIT Regulations, 2015. However, Noticee 1 admittedly failed in making the aforementioned disclosure, thereby violating Regulation 7(2)(a) of the PIT Regulations, 2015. Thus, I hold that Noticee 1 is eligible for imposition of monetary penalty under Section 15A(b) of the SEBI Act, 1992.

13. **Issue (e) Whether Noticee 1 has violated the provisions of clause 6 of Schedule B read with sub-Regulation (1) and sub-Regulation (2) of Regulation 9 of the PIT Regulations, 2015 read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL? If yes, then, whether the Noticees are liable for monetary penalty under Section 15HB of SEBI Act?**

a. I consider the allegation of violation of clause 6 of schedule B read with Regulation 9 (1) and 9(2) of the PIT Regulations, 2015, read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL, by Noticee 1. I note from the trading details stated in para 21 that Noticee 1 bought 251 shares and sold 243 shares of DTL during the month of August 2016 and bought 30 and sold 35 shares of DTL during the month of October 2016. Thus, Noticee 1 traded in 494 shares in August 2016 and in 65 shares in October 2016.

b. In this regard, clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B read with Regulation 9(1) and (2) of PIT Regulations, 2015 states the following -

“When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.”

As per the records, clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL states as follows –

“6. Pre-clearance of Trades

6.1 Every Designated Person who intends to trade in the securities of the Company above 50 shares of the Company in a calendar month shall obtain pre-trading approval as per the procedure prescribed hereunder”

c. I note the definition of designated person from clause 2(f) of the Code of Conduct for Prevention of Insider Trading framed by DTL as following:

“Designated persons shall consist of, connected persons who are:

.....

iii. Executive Officers of the Company and its subsidiaries (Employees in the cadre of General Manager and above);

Thus, I observe that Noticee 1, being General Manager (Corporate Accounting) was a designated person in DTL in the IP.

- d. I note from clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under schedule B read with Regulation 9(1) and (2) of PIT Regulations, 2015 that Noticee 1 was obligated to obtain preclearance from compliance officer of DTL, for trading in scrip of DTL when trading window was open and the volume of shares traded was more than threshold as stipulated by the board of directors of DTL. In this regard, clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL states aforementioned threshold to be 50. Further, as per the provision, designated person, i.e. Noticee 1 in instant case, shall not apply for preclearance if he is in possession of UPSI.
- e. In the instant case, I note that Noticee 1 was in possession of UPSI since October 18, 2016, and that prior to October 18, 2016, trades of only 35 shares were undertaken by Noticee 1 in the month of October 2016. I note from the code of conduct of DTL that there was no requirement for obtaining pre-clearance of trades if the number of traded shares was upto 50. Since, Noticee 1 had traded in only 35 shares prior to October 18, 2016, there was no pre-clearance requirement. Regarding the balance number of shares traded by the Noticee from October 18, 2016, i.e. when in possession of UPSI, the said clause 6 of Model code of conduct prescribed in Schedule B to the PIT Regulation, 2015 prescribed under Regulation 9 of the PIT Regulations, 2015, the stipulation is that the designated persons shall not even apply for pre-clearance of trades. (emphasis supplied). Thus, I note that as far as the balance 30 shares traded in the month of October 2016 are concerned, the obligation on Noticee 1 was not even to obtain pre-clearance when in possession of UPSI. However, in the present matter the charge is for not obtaining pre-clearance from the compliance officer. Thus, I note the allegation technically not fitting the provisions of law invoked.

- f. However, in the month of August 2016, Noticee 1 was not in possession of UPSI, and thus, was under the obligation of taking pre-clearance before trading in more than 50 shares. As per the records, no preclearance was taken by Noticee 1 in respect of his trades in the IP, which exceeded 50 shares in August 2016.
 - g. Thus, I hold that Noticee 1 traded in more than 50 shares in August 2016 in the scrip of DTL, which required pre-trading approval to be taken from DTL as per provisions of clause 6 of schedule B read with Regulation 9(1) and (2) of the PIT Regulations, 2015 read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL. However, Noticee 1 failed in taking the aforementioned approval, thereby violating clause 6 of schedule B read with Regulation 9(1) and (2) of the PIT Regulations, 2015 read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL. Thus, I hold that Noticee 1 is eligible for imposition of monetary penalty under Section 15HB of the SEBI Act, 1992.
14. **Issue (f) What would be the monetary penalty that can be imposed upon Noticee 1 under Section 15G, 15A(b) and 15HB of the SEBI Act, 1992 and upon Noticee 2 under Section 15G of the SEBI Act, 1992, taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992?**
- a. While determining the quantum of penalty under Section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which read as under: -

SEBI Act, 1992

15J *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*

- (a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
 - (b) *the amount of loss caused to an investor or group of investors as a result of the default;*
 - (c) *the repetitive nature of the default.*
- b. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the losses, if any, suffered by the investors due to such violations on the part of the said Noticees. Further, material available on record does not show that the said failure is repetitive.

- c. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee 1 is liable for a monetary penalty of Rs 200,000/- (Rupees two lakhs only) for violating the provisions of Regulation 7(2)(a) of the PIT Regulations, 2015 and a monetary penalty of Rs 100,000/- (Rupees one lakh only) for violating the provisions of clause 6 of schedule B read with Regulation 9(1) and (2) of the PIT Regulations, 2015 read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL.

ORDER

15. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under Section 15A(b) and 15 HB of the SEBI Act, 1992 on Noticee 1:

Name of the Noticee	Violation and penalty provisions	Penalty (Rs)
Nitin Ajage PAN: AJAPA2374A	Regulation 7(2)(a) of the PIT Regulations, 2015 Penalty under Section 15A(b) of the SEBI Act, 1992.	Rs 2,00,000/- (Rs Two lakh only)
	Clause 6 of Schedule B read with Regulation 9(1) and (2) of the PIT Regulations, 2015 read with clause 6.1 of the Code of Conduct for Prevention of Insider Trading framed by DTL Penalty under Section 15HB of the SEBI Act, 1992	Rs 1,00,000/- (Rs One lakh only)

16. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

17. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - DRA-1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:
- a) Name and PAN of the Noticee
 - b) Name of the case / matter
 - c) Purpose of Payment – Payment of penalty under AO proceedings
 - d) Bank Name and Account Number
 - e) Transaction Number
18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
19. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: November 23, 2020

Place: Mumbai

**K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**