

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA****CORAM: S. K. MOHANTY, WHOLE TIME MEMBER****ORDER****UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.****IN RESPECT OF:**

<b>Sl. No.</b>	<b>Name of the Entity</b>	<b>PAN</b>
<b>1.</b>	Mr. Vikramaditya Chandra	AACPC0870C
<b>2.</b>	Mr. Ishwari Prasad Bajpai	AAAPB1043L
<b>3.</b>	Mr. Saurav Banerjee	AFBPP0095C

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

**IN THE MATTER OF NEW DELHI TELEVISION LIMITED.**

1. The instant proceedings have been initiated against the above named three Noticees with the issuance of a Show Cause Notice dated August 31, 2018 (hereinafter referred to as “SCN”) by Securities and Exchange Board of India (hereinafter referred to as “SEBI”) alleging therein violations of section 12A(d) & (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) read with regulations 3(i) and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the “PIT Regulations, 1992”) by Mr. Vikramaditya Chandra (alternatively also referred to as “*Noticee No. 1*”), Ms. Ishwari Bajpai (also referred to as “*Noticee No. 2*”) and Mr. Saurav Banerjee (also referred to as “*Noticee No. 3*”) in respect of their dealing in the shares of New Delhi Television Limited (hereinafter referred to as “NDTV” or “the *Company*”).
2. The aforesaid *Noticees* were called upon vide the said SCN, to show cause as to why directions under section 11B of the SEBI Act, 1992, (including directions for disgorgement of illegal gains against *Noticee No. 1* and *Noticee No. 2*), be not issued against them for the aforementioned alleged violations of the SEBI Act, 1992 and the PIT Regulations, 1992. The SCN issued to the *Noticees*, also contained the copies of documents that have been relied upon in the SCN.
3. The genesis of the SCN lies in the fact that SEBI had received certain complaints from NDTV on July 16, 2013 (1<sup>st</sup> complaint), December 27, 2013 (2<sup>nd</sup> complaint) and January 9, 2014 (3<sup>rd</sup> complaint), *inter alia*, alleging that one Mr. Sanjay Dutt and certain entities associated with him

viz. Quantum Securities Private Limited (hereinafter referred to as “QSPL”) and SAL Real Estate Private Limited (hereinafter referred to as “SREPL”) were involved in dealing in securities of NDTV in violation of provision of the PIT Regulations, 1992 during the period September 2006 to June 2008. Pursuant to the receipt of the above noted complaints from NDTV, SEBI conducted an investigation into the suspected insider trading in the scrip of NDTV during the period of September 01, 2006 to June 30, 2008 (hereinafter referred to as "Investigation Period") in course of which the following facts and findings were observed:

- (1) The equity shares of NDTV were listed on National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) and BSE Limited (hereinafter referred to as “**BSE**”). During the Investigation Period, the price of NDTV scrip increased from ₹195 to ₹379.55 at NSE, thereby registering an increase in the market price of NDTV scrip by 94.64%. Similar trend was also observed at BSE.
- (2) During the relevant time, Mr. Vikramaditya Chandra was the Group Chief Executive Officer & Executive Director, Mr. Ishwari Prasad Bajpai was the Senior Advisor, Editorial and Projects and Mr. Saurav Banerjee was the Director Finance & Group Chief Financial Officer in NDTV.
- (3) In the course of investigation, information pertaining to various corporate announcements made by NDTV as gathered from the *Company* and stock exchanges were perused from which it was revealed that the *Company* had filed six (6) price sensitive information (herein after referred to as “**PSI**”) during the Investigation Period. The details of those price sensitive events and the respective periods of unpublished price sensitive information (hereinafter referred to as “**UPSI**”) as gathered from the disclosures made by the Company and furnished to SEBI in the course of investigation with regard to each of those PSI are depicted in the following table:

**Table No. 1: Details of PSI(s)**

<b>PSI</b>	<b>Start date of UPSI</b>	<b>Date &amp; time when the PSI was disclosed on exchange website</b>	<b>UPSI period</b>
<b>PSI-1:</b> Expansion of the company in areas beyond news to develop NDTV into a bouquet of channels with entertainment and lifestyle and initiate a major thrust in New Media including the internet.	July 31, 2006	October 17, 2006 17:58:34 (NSE) October 17, 2006 19:06:47 (BSE)	July 31, 2006 to October 17, 2006
<b>PSI-2:</b> Strategic alliance with Karan Johar and Dharma Productions Private Limited, for the Company’s entertainment business.	September 21, 2006	November 29, 2006 09:48:38 (NSE)	September 21, 2006 to

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

- (4) All the above-stated six (6) disclosures made by NDTV to the stock exchanges during the Investigation Period are deemed to be price sensitive information (hereinafter referred to as "PSI") in terms of regulation 2(ha) of the PIT Regulations, 1992 and if such PSI was published, it was likely to materially affect the price of securities of NDTV.
- (5) As per the letter dated October 12, 2015 (**Annexure-10** to the SCN) received from NDTV, seven (7) entities, including the *Notices* herein were involved in the discussions pertaining to PSIs.
- (6) It was observed that the *Notices* herein did not buy any shares during the Investigation Period. However, certain shares (in tranches) were allotted to them by NDTV as ESOPs. NDTV in its reply dated October 12, 2015 has submitted the details of such ESOP allotment made during the Investigation Period. Copy of the NDTV's reply

dated October 12, 2015 which contains the details of ESOP allotment during the Investigation Period is furnished as **Annexure-10 to the SCN**. The details of ESOPs allotment made by NDTV during the investigation period to the above noted 3 (three) *Notices* are as under:

**Table No. 2: Details of shares allotted pursuant to ESOP**

Sl. No.	Noticee Name	Date of Allotment	Number of Shares Allotted
1	Mr. Vikramaditya Chandra	30/09/2006	1500
2		13/10/2006	15000
3		01/12/2006	3750
4		20/04/2007	18750
5		22/01/2008	18750
	<b>Total</b>		<b>57750</b>
6	Mr. Saurav Banerjee	21/09/2006	3500
7		13/10/2006	875
8		18/04/2007	4375
9		04/06/2007	1800
	<b>Total</b>		<b>10550</b>
10	Mr. Ishwari Prasad Bajpai	08/08/2006	15000
11		13/10/2006	3750
12		18/04/2007	18750
	<b>Total</b>		<b>37500</b>

- (7) The trading details of the *Notices* (in both NSE and BSE) during the Investigation Period as presented in the SCN at Table No. 10 are as under:

**Table No. 3**

Name	Trade Date	UPSI period pertaining to	Buy Quantity 'A'	Sell Quantity 'B'	Buy Value 'C'	Sell Value 'D'	Average Buy Price (₹) F = C/A	Average Sell Price (₹) G=D/B
Vikramaditya Chandra	19/02/2007	PSI-3	0	2500	0	825455	0.00	330.61
	20/11/2007	PSI-6	0	3000	0	1143913.55	0.00	381.07
	23/01/2008	PSI-6	0	2000	0	819695	0.00	409.60
	28/01/2008	PSI-6	0	1500	0	610562.8	0.00	406.83
	11/02/2008	PSI-6	0	3000	0	1227101.35	0.00	409.38
	12/02/2008	PSI-6	0	3000	0	1182538.65	0.00	394.23
	10/03/2008	PSI-6	0	2000	0	764530.7	0.00	381.43
	11/03/2008	PSI-6	0	1000	0	391744.5	0.00	391.51
	17/03/2008	PSI-6	0	500	0	190000	0.00	380.00
	21/04/2008	-	0	4000	0	1664825.9	0.00	416.19

	22/04/2008	-	0	2000	0	838904.5	0.00	419.24
	29/05/2008	-	0	5000	0	2118000.25	0.00	423.38
	09/06/2008	-	0	1500	0	593000	0.00	394.80
	11/06/2008	-	0	500	0	197500	0.00	395.00
	12/06/2008	-	0	3000	0	1176000	0.00	392.00
	13/06/2008	-	0	750	0	302251.4	0.00	403.03
	23/06/2008	-	0	500	0	209750	0.00	419.50
<b>Vikramaditya Chandra Total</b>			<b>0</b>	<b>39000</b>	<b>0</b>	<b>15319117.45</b>	<b>0.00</b>	<b>389.98</b>
Ishwari Bajpai	29/01/2007	PSI-3	0	10000	0	3302779.8	0.00	330.25
	10/06/2008	-	0	20000	0	7707565.75	0.00	385.39
<b>Ishwari Bajpai Total</b>			<b>0</b>	<b>30000</b>	<b>0</b>	<b>11010345.55</b>	<b>0.00</b>	<b>356.07</b>
Banerjee Saurav	29/10/2007	PSI-6	0	500	0	191000	0.00	382.00
	06/11/2007	PSI-6	0	200	0	71200	0.00	356.00
	13/11/2007	PSI-6	0	1000	0	352500	0.00	352.78
	14/11/2007	PSI-6	0	300	0	108300	0.00	361.00
<b>Saurav Banerjee Total</b>			<b>0</b>	<b>2000</b>	<b>0</b>	<b>723000</b>	<b>0.00</b>	<b>362.63</b>

- (8) The summary of trade details of the *Notices* during the UPSI periods as per the Table No. 11 in SCN is as below:

**Table No. 4: Trades details of the *Notices* during the UPSI Period**

Name	UPSI period pertaining to	Buy Quantity	Sell Quantity	Buy Value (₹)	Sell Value (₹)	Average Sell Price (₹) based on actuals
Vikramaditya Chandra	PSI-3	0	5750	0	1888798.85	328.49
	PSI-6	0	16000	0	6330086.55	395.63
<b>Vikramaditya Chandra Total</b>		<b>0</b>	<b>21750</b>	<b>0</b>	<b>8218885.40</b>	<b>377.88</b>
Ishwari Bajpai	PSI-3	0	10000	0	3302779.80	330.28
<b>Ishwari Bajpai Total</b>		<b>0</b>	<b>10000</b>	<b>0</b>	<b>3302779.80</b>	<b>330.28</b>
Banerjee Saurav	PSI-6	0	2000	0	723000.00	361.50
<b>Banerjee Saurav Total</b>		<b>0</b>	<b>2000</b>	<b>0</b>	<b>723000.00</b>	<b>361.50</b>

- (9) It is seen from the SCN that although the *Notice No. 1* has traded in 5750 shares of NDTV during the existence of PSI-3 as depicted in Table no. 4 above, (corresponding Table No. 11 of the SCN), the details of trade presented in the previous Table No. 3 (corresponding Table No. 10 of the SCN) does not inadvertently take into account a sale of 3250 shares by the *Notice No. 1* made on February 09, 2007. Although the SCN mentions about this trade of 3250 shares elsewhere in the contents and also the said

trade executed by *Noticee No.1* figures in the trade details furnished to the *Notices* in Annexures No. 10 and 11 of the SCN, the Table No. 3 referred to above has inadvertently excluded this trade of the *Noticee No. 1*. However, the undeniable fact remains in record that the *Noticee* has traded in an aggregate number of 5270 shares of NDTV during the existence of PSI-3.

- (10) From an analysis of the details of trades executed by the *Notices* as enumerated above and the ESOP allotments made to them, it appears that the *Notices* were selling the shares which were allotted to them in ESOPs during the investigation period.
- (11) The copies of the emails submitted by NDTV vide letter dated September 14, 2016 shows that the *Notices* herein, amongst others, were actively involved in the internal deliberations including various email conversations that led to crystallization of PSI-3 and PSI-6. The particulars of the emails received by the *Notices* pertaining to the relevant PSI(s) during the existence of which the *Notices* executed their respective sales of NDTV shares, are indicated below:

**Table No. 5: Details of the relevant communications**

<i>Noticee No.</i>	PSI	Date of email	Subject of the Email	Contents of the Email
1	PSI-3	November 22, 2006	Fw Presentation and Draft Term Sheet	Confidentiality agreement between ComVentures and NDTV
			Re Presentation and Draft Term Sheet	Conversation with Keyur on NDA
	PSI-6	September 07, 2007	News Re Organization KPMG Checklist - Information requirements	Checklist from KPMG on reorg
2	PSI-3	December 12, 2006	Re ComVentures Term Sheet	Discussion on term sheet
3	PSI-6	September 07, 2007	News Re Organization KPMG Checklist - Information requirements	Checklist from KPMG on reorg

- (12) *Notices No. 1* and *2* were found to be involved in the process of crystallization of PSI-3 and had direct access to UPSI pertaining to PSI-3. Further, *Notices No. 1* and *3* were found to be involved in the process of crystallization of PSI-6 hence had direct access to UPSI pertaining to PSI-3. Therefore, the *Notices* are alleged to be “insiders” in terms of regulation 2(e) (ii) of PIT Regulations, 1992.
- (13) In view of the fact that the *Notices* were “insiders” with respect to NDTV in terms of regulation 2(e) of the PIT Regulations, 1992 all the surrounding events and most notably

the act of the *Notices* having traded in NDTV shares during UPSI period suggest that the *Notices* have dealt in securities of NDTV while in possession of UPSI.

- (14) Regulation 3(i) of the PIT Regulations, 1992 amongst others, prohibits an insider, either on his own behalf or on behalf of any other person, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI. In terms of regulation 4 of the PIT Regulations, 1992 any insider who deals in securities in contravention of regulation 3 of the PIT Regulations, 1992 is said to be guilty of insider trading.
- (15) It was, therefore, observed that the *Notices*, by dealing in securities of NDTV while in possession of unpublished price sensitive information of the *Company*, have apparently violated the provisions of section 12A(d) and (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.

#### Calculation of wrongful gains:

- (16) Since the *Notices* have traded while in possession of UPSI, the wrongful gains made by them have been calculated as follows:

**Table No. 6: The wrongful gains made by the *Notices***

Name	UPSI period pertaining to	Sell Quantity	Average Sell Price (₹) based on actuals	Opening Price on UPSI period starting day at NSE (₹)	Wrongful gain (₹) @
		A	B	C	D = A x (B - C)
Vikramaditya Chandra	PSI-3	5750	328.49	242.00	497,298.85
	PSI-6	16000	395.63	385.00	170,086.55
<b>Vikramaditya Chandra Total</b>		<b>21750</b>	<b>-</b>	<b>-</b>	<b>667385.40</b>
Ishwari Bajpai	PSI-3	10000	330.28	242.00	882,779.80
<b>Ishwari Bajpai Total</b>		<b>10000</b>	<b>-</b>	<b>-</b>	<b>882,779.80</b>
Banerjee Saurav	PSI-6	2000	361.50	385.00	(47,000.00)
<b>Saurav Banerjee Total</b>		<b>2000</b>	<b>361.50</b>		<b>(47,000.00)</b>

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

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

- (17) Based on the above stated computation, it has been alleged that the total amount of wrongful gains made by the *Noticee No. 1* and *Noticee No. 2* is ₹6.67 lakhs and ₹8.82 lakhs, respectively while *Noticee No. 3* incurred a loss of ₹0.47 lakhs.
4. I note that based on the findings of investigation, as briefly highlighted above, SEBI issued the instant SCN dated August 31, 2018, alleging, *inter alia*, that:

- (1) The *Notices No. 1* and *2* were involved in the process of crystallization of PSI-3 and had direct access to the UPSI pertaining to PSI-3.
  - (2) The *Notices No. 1* and *3* were involved in the process of crystallization of PSI-6 and had direct access to the UPSI pertaining to PSI-3.
  - (3) All the *Notices* clearly fall within the ambit of the definition of “*insider*” with respect to NDTV in terms of regulation 2(e) of the PIT Regulations, 1992.
  - (4) All the above-stated six (6) disclosures made by NDTV to the stock exchanges during the Investigation Period are *deemed to be price sensitive information* in terms of regulation 2(ha) of the PIT Regulations, 1992 and consequently, if such PSI was published, it was likely to have materially affected the price of securities of NDTV.
  - (5) The *Notices*, by dealing in securities of NDTV (a company listed on NSE and BSE) while in possession of unpublished price sensitive information, have violated the provisions of section 12A (d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.
5. In view of the aforesaid findings, in the SCN the *Notices* were advised to show cause as to why suitable directions under section 11B of the SEBI Act, 1992 be not issued against them for the aforementioned alleged violations of the SEBI Act, 1992 and the PIT Regulations, 1992. The *Notices No. 1* and *2* were additionally advised to show cause as to why direction for disgorgement of illegal gains earned by them be not issued against them for the aforementioned alleged violations of the SEBI Act, 1992 and the PIT Regulations, 1992. The *Notices* were also advised to submit their reply, if any, within 21 days of the receipt of the SCN failing which it would be construed that the *Notices* have no reply to submit and SEBI would be free to take action against them on the basis of materials available on record in terms of the SEBI Act, 1992 and other laws as applicable.
6. It is worth mentioning here that the PIT Regulations, 1992 have been repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015. Regulation 12 of the Regulations, 2015, provides as under:

**“Repeal and Savings.**

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

*(2) Notwithstanding such repeal, —*

*(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any*



*such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed;*

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

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

7. As a result, any proceedings initiated for alleged contraventions of provisions of the PIT Regulations, 1992 are saved and, hence, can be proceeded with under the said PIT Regulations, 1992. Considering the foregoing, the instant proceedings initiated against the *Notices* for their alleged violations of provisions of the PIT Regulations, 1992 can very well be continued as such.
8. I note from the SCN that the *Notices* herein are not connected to each other and the only commonality noticed amongst them is that they were in the employment of the *Company* during the relevant period and are alleged to have been in possession of the relevant PSI(s) before they were published/disclosed by the *Company* to the Stock Exchanges. Thus each of the *Notices* is unique in himself hence, has submitted separate written replies and submissions independent of the other *Notices*. However, I note that the *Noticee No. 3* (Saurav Banerjee) has raised various preliminary objections to the validity of the SCN and has advanced certain other explanations commonly with Mr. Prannoy Roy and Mrs. Radhika Roy who are also noticees before me in another SCN on the same issue for their alleged insider trading in the scrip of NDTV. Since I have already dealt with those common objections and arguments in my order passed in case of Mr. Prannoy Roy and Mrs. Radhika Roy being issued simultaneously today with this Order, for the sake of brevity, I would rather desist myself from discussing all over again, those common objections/ arguments taken by *Noticee No. 3* in this proceedings and instead would like to rely upon and adopt the discussions and observations already made by me on those common points/objections in the order referred to above, also with respect to the *Noticee No. 3*. Therefore, instead of resorting to an *ad verbatim* reproduction of those preliminary objections raised by the *Notices No. 3* commonly with Mr. Prannoy Roy and Mrs. Radhika Roy, I would endeavor to discuss the main highlights of the explanations offered by the said *Noticee No. 3* during the proceedings before me.

9. I note that all the three *Notices* herein have filed their separate written replies in the matter, the details of which are as under:

**Table No. 7: Details of Replies Filed by the *Notices***

Sl. No.	Noticee	Date of reply
1.	Mr. Vikramaditya Chandra	20/12/2018 10/10/2019 09/11/2020
2.	Mr. Ishwari Prasad Bajpai	21/12/2018 10/11/2020
3.	Mr. Saurav Banerjee	31/07/2019 03/01/2020 11/03/2020 09/11/2020

10. Further, some of these *Notices* had sought inspection of the relevant original documents. Accordingly, in compliance with principles of natural justice, these *Notices* were granted opportunity of inspection of those documents that have been relied upon in the SCN on October 30, 2018. Additionally, the *Noticee No. 3* was afforded one more opportunity of inspection on September 27, 2019 as well. The *Notices* were also granted opportunity of personal hearing before me on various dates as indicated in the table given below:

**Table No. 8: Details of Personal Hearing**

Sl. No.	Noticee Name	Date of Personal Hearing
1.	Vikramaditya Chandra	26/09/2019
2.	Ishwari Prasad Bajpai	26/09/2019
3.	Saurav Banerjee	10/07/2019 26/09/2019 13/12/2019 03/01/2020 08/01/2020

11. The *Notices* appeared before me through their respective authorized representatives on the afore-stated dates and all of them were heard at length. I have perused the written replies and submissions of the *Notices* filed before me in response to the SCN. Considering that these replies are quite voluminous and on many issues repetitive in nature and also include a number of case citations, my endeavor would be to summarize their submissions and to present hereunder the highlights of their averments for the sake of brevity and ease of dealing with all of their submissions. Further, I find that a substantial portions of the replies filed by the *Notices* have proceeded on similar lines raising various common issues and objections. It will be appropriate therefore to segregate the common replies from specific replies of each of the *Notices*. Accordingly, the replies and submissions made by each of the *Notices* are discussed as under:

**A. Noticee No. 1 -**

- (1) During the time of executing the relevant trades, the *Noticee* was an employee of NDTV. In course of the *Noticee's* employment with NDTV, and as a result of his commitment and performance in the organization, he was granted ESOPs, in the normal course, and had been vested with 75,000 stock options under the NDTV Employee Stock Option Plan - ESOP 2004. All the relevant trades executed by the *Noticee* were sale transactions, and were undertaken to legitimately monetize the ESOPs granted to him.
- (2) The ComVentures transaction (PSI-3) pertains to an investment of USD 20 million by ComVentures, a venture capital fund, in NDTV's subsidiary NDTV Networks Plc UK, for the purpose of funding its non-news businesses.
- (3) NDTV's letter dated October 12, 2015 ("NDTV October Letter"), enclosed as Annexure 10 to the SCN, stated that preliminary discussions around this proposal were initiated within NDTV in January, 2007. That said, in its letter dated September 14, 2016, enclosed as Annexure 6 to the SCN, NDTV stated that the negotiations and discussions had started on November 22, 2006. Therefore, it is abundantly clear that the discussions around this time were purely exploratory.
- (4) Subsequently, and after multiple rounds of negotiations between the parties, a non-binding term sheet was executed between ComVentures and NDTV, as an expression of interest, which did not create a legal relationship or a binding agreement between the parties. Consequently, NDTV issued a stock exchange announcement on March 12, 2007, wherein it was stated that NDTV had entered into a definitive agreement with ComVentures.
- (5) Based on the information provided in the SCN and the annexures enclosed thereto, a chronology of events involving *Noticee's* transactions in NDTV share during the existence of PSI-3 is set out as below:

**Table No. 9: Chronology of events involving *Noticee's* transactions in NDTV share during the existence of PSI-3**

Date and Time of Event / Correspondence	Nature of Event/ Correspondence
22/11/2006; 05:45	Email correspondence between representatives of NDTV and ComVentures, as applicable, in relation to the ComVenture Transaction
22/11/2006; 06:03	
24/11/2006; 15:38	
28/11/2006; 08:05	
28/11/2006; 10:57	
09/12/2006; 10:42	

12/12/2006; 11:34	
14/12/2006; 08:03	
28/12/2006; 04:20	
07/01/2007; 17:56	
19/01/2007; 17:59	
19/02/2007	Sale of 2,500 shares in the NDTV scrip by the <i>Noticee</i>
28/02/2007; 12:55	Email correspondence between representatives of NDTV and ComVentures, as applicable, in relation to the ComVenture Transaction
02/03/2007; 09:10	
10/03/2007; 12:08	
12/03/2007; 15:50	
12/03/2007	Stock exchange announcement by NDTV
31/08/2018	Issuance of the SCN

- (6) The proposed business reorganization pertains to NDTV's decision to evaluate options for reorganization of NDTV with the objective of unlocking shareholder value and to promote focused growth of its various businesses, including demerger/split into news related businesses and investments in '*beyond news*' businesses (PSI-6).
- (7) In this regard, and as stated in the NDTV October Letter, this was a subject of preliminary discussions among certain persons within NDTV and there was no date identified therein to suggest on which the discussions pertaining to the proposed reorganization were started. It was much later that NDTV issued a stock exchange announcement on April 16, 2008, wherein it was stated that the board of NDTV had decided to evaluate options for the reorganization, including demerger/split of NDTV and for this purpose, a committee had been constituted to evaluate such options.
- (8) Based on the information provided in the SCN and the annexures enclosed thereto, a chronology of events surrounding the *Noticees* transactions in NDTV shares during the existence of PSI-6 is set out below:

**Table No. 10: Chronology of events surrounding the *Noticees* transactions in NDTV shares during the existence of PSI-6**

Date and Time of Event / Correspondence	Nature of Event/ Correspondence/Transaction
07/09/2007; 20:12	Internal email correspondence between NDTV representatives, as applicable, in relation to the proposed reorganization
12/11/2007; 18:23	
20/11/2007	Sale of 3,000 NDTV shares by the <i>Noticee</i>
23/01/2008	Sale of 2,000 NDTV shares by the <i>Noticee</i>
28/01/2008	Sale of 1,500 NDTV shares by the <i>Noticee</i>
11/02/2008	Sale of 3,000 NDTV shares by the <i>Noticee</i>
12/02/2008	Sale of 3,000 NDTV shares by the <i>Noticee</i>
10/03/2020	Sale of 2,000 NDTV shares by the <i>Noticee</i>
11/03/2008	Sale of 1,000 NDTV shares by the <i>Noticee</i>

17/03/2008	Sale of 500 NDTV shares by the <i>Noticee</i>
12/04/2008; 12:43	
15/04/2008; 16:55	Internal email correspondence between NDTV representatives, as applicable, in relation to the proposed reorganization
17/04/2008; 18:26	
16/04/2008	Stock exchange announcement by NDTV
28/04/2008; 18:26	Internal email correspondence between NDTV representatives, as applicable, in relation to the proposed reorganization
31/08/2018	Issuance of the SCN

- (9) **Prevailing market conditions during 2006-2008** - During the time of relevant trades, i.e., in 2006-2008, the conditions of the Indian securities market were very volatile. As mentioned in the Annual Reports issued by SEBI during 2006-2008, India was the third most volatile market in the world. In such market situations, based on the advice of his financial advisors to diversify/reallocate the assets to mitigate the risk, the *Noticee* decided to undertake the relevant trades by selling the shares of NDTV received through ESOPs.

(10) **Delay in Initiating Proceedings -**

- (a) The allegation relates to the trades which were undertaken more than 10 years ago. The SCN is the first instance that any proceedings have been initiated against the *Noticee* since the time of and in connection with the relevant trades, and there is nothing on record to indicate the reason for the unexplained and unnatural delay in initiating the proceedings.
- (b) The initiation of proceedings by SEBI after such a long delay, severely prejudices the *Noticee's* ability to adequately respond to the SCN in the light of the dated nature of facts surrounding the relevant trades and the fact that the *Noticee* has ceased to be associated with NDTV or in its employment with effect from October, 2016.
- (c) The *Noticee* does not have access to the underlying documents relating to the relevant trades and due to the passage of time and his resignation from NDTV, he is constrained from coherently recollecting the entire factual background of the transactions relating to the UPSI period.
- (d) In this regard, it is an established judicial principle that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time<sup>1</sup>.

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<sup>1</sup> *Ram Chand vs Union of India (1994) SCC 44*

- (e) The Hon'ble Securities Appellate Tribunal (**"the Hon'ble SAT"**) has also taken note of this principle on several occasions; for instance, in the matter of *HB Stockholdings Ltd. v. SEBI*<sup>2</sup> the SAT set aside an order holding the appellants guilty of violating the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (**"PFUTP Regulations"**) *inter alia* on the grounds of "*unconscionable and unexplained delay of more than 12 years in initiating and completing the proceedings against the three Appellants in question*".
- (f) The Hon'ble SAT had made similar observations in the matter of *Sbri Ashok K. Chaudhary v. SEBI*<sup>3</sup>, when it delved into the inordinate delay of six years in issuing the show cause notice, and observed that "*Long delays in issuing show cause notices to the delinquents will not subserve the purpose for which the Board has been set up. It would rather act against the interest of the securities market. Delays do not help anyone and besides depriving sometimes the delinquents of their right to defend themselves against the action sought to be taken against them, defeat the very purpose for which such notices are issued.*"
- (g) Consequently, the delay in issuance of the SCN, after more than 10 years have lapsed since the relevant trades, is a grave violation of the principles of natural justice since it severely impedes the *Noticee's* ability to defence himself.

(11) **Inspection of Documents -**

- (a) In view of the significant delay in initiation of proceedings against the *Noticee*, an opportunity to avail full and complete inspection of all relevant documents/information is of critical importance to enable the *Noticee* to examine the evidentiary basis of the allegations made against him and appropriately respond to the same.
- (b) However, the inspection did not serve this purpose since none of the information requested was provided for review.
- (c) Specifically, despite his request, no copy of the investigation report (in part or full), order/ notice appointing the investigating authority, or documentary evidence relied upon by the investigating authority was made available at the time of the inspection.
- (d) Towards this, an oral clarification by the SEBI officials present at the inspection

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<sup>2</sup> Order of the Hon'ble SAT dated August 27, 2013

<sup>3</sup> Order of the Hon'ble SAT dated November 5, 2008

suggested that such documents are not being shared with noticees, due to SEBI's internal policies as well as confidentiality concerns with respect to other noticees and the on-going proceedings. However, no written order/direction/circular recording such decision of SEBI was furnished to corroborate this statement.

- (e) In addition, while a request was made to review: (i) certain missing pages in Annexure 1 to the SCN, as well as (ii) other documents and correspondence referred in the Annexures to the SCN which had not been provided for Inspection, the SEBI officials clarified that they are not relevant to the allegations made against the *Noticee* in the SCN and therefore, would not be made available at the Inspection.
  - (f) A fundamental principle of natural justice that squarely applies in quasi-judicial proceedings, such as the present matter, is that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilised has been apprised of it.<sup>4</sup>
  - (g) As such, the *Noticee* is entitled to a fair opportunity to defend himself and such an opportunity includes the ability to review all the relevant underlying documents and supporting evidence, access to factual assertions/ data, and all materials relied upon and referred to by SEBI to frame its allegations.
  - (h) The right to examine the investigation report is particularly important since that typically contains the evidence which has been considered and the underlying rationale for the allegations being made. In quasi - judicial proceedings, the investigation report effectively plays the role of the prosecution as it posits the charge that a noticee is required to challenge.
  - (i) Therefore, in the absence of a full and complete opportunity to verify and inspect all relevant documents, including the investigation report, the trade details enclosed as Annexure 11 to the SCN, etc., the *Noticee's* right and ability to defend himself has been gravely prejudiced.
- (12) **Absence of grounds for issuing SCN under sections 11 and 11B of the SEBI Act, 1992 -**
- (a) The facts and circumstances as set out in the SCN do not constitute a suitable case for issuance of directions under sections 11 and 11B of the SEBI Act, 1992. It has been held in a number of cases by the Hon'ble

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<sup>4</sup> *Mysore Capfin Pvt. Ltd. vs SEBI*, Order of the Hon'ble SAT dated March 30, 2012

SAT that directions issued under section 11B of the SEBI Act should be remedial and/or preventive in nature.<sup>5</sup>

- (b) Given that the relevant trades were executed more than 10 years ago, it is evident that the facts of the present situation do not, in any manner, constitute an '*emergent situation*' or present an '*impending danger*' which would necessitate a remedial or preventive direction to be issued by SEBI. As such, the facts do not, in any manner, justify the issuance of the SCN under sections 11 and 11B of the SEBI Act, 1992.

**(13) Due process was followed in respect of the relevant trades -**

- (a) The *Noticee* had complied with all internal steps prescribed under the extant Code of Conduct for Prevention of Insider Trading adopted by NDTV ("NDTV PIT Code"), prior to undertaking each of the relevant trades.
- (b) As per the NDTV PIT Code, the designated employees proposing to acquire/sell more than 5,000 shares of the *Company*, in a calendar month, were required to make an application to the compliance officer stating the intention to deal in the company's securities. In due accordance with this provision as well as the PIT Regulations, 1992 the *Noticee* had submitted applications (along with all relevant details) setting out the number of shares that he proposed to sell ("Pre-Clearance Applications") prior to each of the relevant trades.
- (c) Pursuant to these Pre-Clearance applications, the *Noticee* was granted an approval for each of the relevant trades by the then compliance officer of NDTV, permitting the *Noticee* to sell the specified number of shares of NDTV ("*Trading Approvals*").
- (d) It is pertinent to note that while NDTV had closed its trading window for the periods mentioned above on account of finalisation of the financial results for the respective quarter, the trading window of NDTV was open at the time of each of the relevant trades. In fact, in keeping with his commitment to adhere to the market regulations, the *Noticee* had specifically sought to time his trades such that they were undertaken during the open trading window period.
- (e) In the NDTV October Letter, it was stated that: "*no formal trading window was closed for events mentioned in Annexure -1, since the discussions/ negotiations were in their preliminary stage and any disclosure by formal closure of trading window could have been*

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<sup>5</sup> *Sterlite Industries Ltd. vs SEBI*, Order of the Hon'ble dated October 22, 2001. Also *Roopram Sharma vs SEBI*, Order of the Hon'ble SAT dated September 19, 2002.



*premature.*” Further, the NDTV October Letter clarified that “*in terms of the Model Code of Conduct of the Company, the key employees of the Company involved in the crystallization of PSI were prohibited from dealing in the securities while in possession of PSI* Further, the management verbally instructed all these persons not to deal in the shares of the Company. This is also evident from the fact that *none of the other employees dealt in the shares of the Company while in possession of the PSI.*” (Emphasis Supplied)

- (f) In view of these specific statements made by NDTV, it is evident that the Trading Approvals would not have been granted to the *Noticee*, if the then compliance officer of NDTV believed that the *Noticee* was reasonably expected to have access to any UPSI at the time he made each of the Pre-Clearance Applications. In fact, since the NDTV October Letter confirms that employees were prohibited from dealing in shares while in possession of price sensitive information, it is manifestly clear that the Trading Approvals were granted to the *Noticee*, since he did not have any information which was considered to be UPSI.
- (g) As such, the issuance of the Trading Approvals to the *Noticee* is in itself clear evidence that he did not possess or have access to any UPSI, at the time of each of the relevant trades, and therefore, the allegation of insider trading stands wholly negated.

(14) **Violation of *Noticee*’s right to privacy on account of dissemination of personal information -**

- (a) The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, defines ‘*personal information*’ to “*mean any information that relates to a natural person, which, either directly or indirectly, in combination with other information, available or likely to be available with a body corporate, is capable of identifying such person.*”
- (b) The SCN includes personal details/information of the *Noticee*, including his PAN and details of the trades undertaken by him in the scrip of NDTV. Given that this SCN has been issued to other individuals as well, such disclosure of personal information pertaining to the *Noticee* without his prior consent or approval having been obtained, has resulted in violation of the *Noticee*’s fundamental right to privacy. In addition, this action has also caused damage to the *Noticee*’s reputation and standing, given the seriousness of the allegation made in the SCN copying other individuals.
- (c) The right to privacy has been held to be a constitutionally protected

fundamental right in a number of Supreme Court decisions<sup>6</sup>, including the recent Supreme Court judgement in the matter of *K S. Puttawamy and Ors. v. Union of India*<sup>7</sup> which noted that the right to control dissemination of personal information would form part of an individual's right to privacy.

### Specific Responses to the Allegations

**(15) With respect to the ComVentures transaction: No UPSI existed at the time of the relevant trade - 1**

- (a) It is not in dispute that foraying into this new space beyond the news business was a 'major expansion plan or execution of new projects' in terms of the PIT Regulations, 1992 and appropriately disclosed by NDTV on October 17, 2006.
- (b) As indicated in Annexure 10 to the SCN, the alleged PSI- 3 related to an investment by ComVentures in NDTV Networks Plc for '*the funding of its non-news businesses*'. The ComVentures Transaction was, therefore, merely an extension of the PSI-1 proposal, and a step towards the implementation of the expansion plan; hence, it could not, in itself, be termed as a '*major expansion plan or execution of new project*' as contemplated in the SCN and was not in the nature of UPSI.

**(c) In the matter of *Polaris Software Lab Limited (presently known as Polaris Consulting and Services Limited)*<sup>8</sup> SEBI had considered the issue of when UPSI was made public, and factually observed that:**

*"The company had disclosed in a press release and Investor Conference on April 23, 2008 its decision to constitute a Committee to make a study on the real estate investments made by the company so as to maximise shareholders returns. The same indicates that the company's intentions about foraying into real estate business had already come into public domain."*  
(emphasis supplied)

- (d) While the decision to expand beyond new business may be treated as UPSI, a subsequent event (being the investment by ComVentures) towards execution of such proposal that had already been publicly disclosed, cannot constitute UPSI.
- (e) It is also relevant to note the important distinction between UPSI and '*material*

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<sup>6</sup> *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295: (1963) 2 Cri. LJ 329, *R. Rajagopal v. State of T.N.*, (1994) 6 sec 632, *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301

<sup>7</sup> (2017) 10 SCC 1

<sup>8</sup> SEBI Order dated March 23, 2018

information' for a listed company. While information that falls in the latter category may be disclosed to the stock exchanges as a matter of good governance, such information may not always be price sensitive in nature.

- (f) In fact, material information/ event has been always distinguished from price sensitive information. For instance, clause 36 of the equity listing agreement, which was in force prior to the introduction of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations, 2015"), specifically required entities to inform the exchanges of *"all the events, which will have bearing on the performance/ operations of the company as well as price sensitive information"*, indicating the separation between the categories of information to be disclosed. Similarly, regulation 68 of the LODR Regulations, 2015 which provides for disclosure of material events or information states that:

*"Disclosure of material events or information.*

*The listed entity shall promptly inform to the stock exchange(s) of all events which are material, all information which is price sensitive and/ or have bearing on performance/ operation of the listed entity."* (emphasis supplied)

This is also evidenced in the Report of the SEBI Committee on Fair Market Conduct dated August 8, 2018, which discusses this distinction, as follows:

*"The definition of 'unpublished price sensitive information' (UPSI) under regulation 2(l)(n) of the Insider Trading Regulations is an inclusive definition and currently 'material events in accordance with the listing agreement' are deemed to be UPSI. The Committee noted that the provision related to 'material events' as stated in Regulation 68 of the LODR Regulations is as follows:*

*"Disclosure of material events or information.*

*The listed entity shall promptly inform to the stock exchange(s) of all events which are material, all information which is price sensitive and/ or have bearing on performance/ operation of the listed entity."*

*The Committee noted that the aforesaid regulation requires disclosures of material events or information which may or may not be price sensitive. Accordingly, the Committee is of the view that all material events which are required to be disclosed as per the Regulation 68 of the LODR Regulations may not necessarily be UPSI under the PIT Regulations."* (emphasis supplied)

- (g) In the present context, while the ComVentures Transaction may arguably be termed as material information (and was therefore disclosed to the stock

exchanges), it cannot be deemed to be UPSI, since the actual price sensitive information, viz., that NDTV had decided to '*expand further in the news and beyond news to develop NDTV*' was already publicly available.

- (h) Further, it is also pertinent to consider whether information relating to the ComVentures Transaction had any material impact of the price of the NDTV scrip. Details of the price movement of NDTV scrip before and after the announcement on March 12, 2007 ("ComVentures Announcement") as available in Annexure 2 of the SCN, are set out below:

**Table No. 11: Details of the price movement of NDTV scrip before and after the announcement on March 12, 2007**

Date		NSE			BSE		
		Opening Price	Closing Price	Average Price	Opening Price	Closing Price	Average Price
Week prior the ComVentures Announcement	05/03/2007	314.9	298.1	304.78	310	297.65	301.68
	06/03/2007	305	293.8	297.44	304	293.8	298.5
	07/03/2007	295.25	272.7	290.1	299.7	272.75	286.31
	08/03/2007	278	290.8	282.65	276.9	291.4	283.3
	09/03/2007	294	283.6	288.78	294	283.55	289.55
Week post the ComVentures Announcement	12/03/2007	293	287.75	288.03	285	288.25	287.81
	13/03/2007	278.65	301.5	294.56	288.5	300.8	295.51
	14/03/2007	300	289.9	290.39	297	289.7	290.51
	15/03/2007	290	292.7	298.92	294.9	292.6	299.28
	16/03/2007	299	288.45	289.85	295.55	288.75	289.77

- (i) As is evident from the above data, the ComVentures Announcement did not have any significant or material impact on the price of the NDTV scrip, since the price movement in the following week was negligible. In fact, a perusal of the price movement of the NDTV scrip during this time indicates that the price of the scrip was subject to some degree of fluctuation and volatility. Therefore, the fact that the ComVentures Announcement did not have any material bearing on the price of the scrip, further indicates that the ComVentures Transaction was ultimately, not price sensitive in any manner.
- (j) Without prejudice to the averments made above, it is also submitted that no UPSI pertaining to the ComVentures Transaction could be said to have existed, at the time of the Relevant Trade-I, given the nature of information existing at that time.
- (k) As with all other corporate entities, NDTV would constantly explore

strategic corporate restructuring for overall growth of the organization and value addition to its shareholders. Every discussion relating to such strategic corporate restructuring does not itself become price sensitive information during the early stages of discussion, until there exists a certain degree of finality in relation to the negotiations.

- (l) The NDTV October Letter specifically noted that: “*no formal trading window was closed since the discussions/negotiations were in their preliminary stages and any disclosure by formal closure of trading window could have been premature*”. Therefore, in the absence of any specific decision being arrived in connection with the CornVentures Transaction at the time of the Relevant Trade-I and since the trading window of NDTV was also not closed, no UPSI could be said to have been in existence at such time.

**(16) With respect to the proposed reorganization: no UPSI existed at the time of the Relevant Trade - II**

- (a) Details of the price movement with respect to the NDTV scrip before and after the announcement on April 16, 2008 (“Reorganization Announcement”) as available in Annexure 2 of the SCN, are set out below:

**Table No. 12: Details of the price movement of NDTV scrip before and after the announcement on April 16, 2008**

Date		NSE			BSE		
		Opening Price	Closing Price	Average Price	Opening Price	Closing Price	Average Price
Week prior the Reorganisation Announcement	08/04/2008	384	386.25	385.02	382	383.3	383.5
	09/04/2008	390	394.3	393.35	380	393.05	391.48
	10/04/2008	398	393.95	396.04	399	393.85	395.15
	11/04/2008	399.95	404.35	405.23	398	401.75	406.15
	15/04/2008	405	401.65	404.18	395	403.1	404.01
Week post the Reorganisation Announcement	17/04/2008	409.5	412	411.1	414	412.7	434.14
	21/04/2008	411.1	415	416.75	419.9	417	416.02
	22/04/2008	416.75	419.1	417.8	417.9	415.9	419.21
	23/04/2008	417.8	420	419.2	419.75	420.75	422.32
	24/04/2008	419.2	418	418.85	423.85	416.5	416.62

- (b) Based on the data set out above, it is evident that the Reorganization Announcement did not have any significant or material impact on the price of the NDTV scrip, since the price movement in the week following the announcement on April 15, 2008 was only a negligible upward move which may have been triggered by general market conditions.

- (c) Without prejudice to the above, it is also important to note that as per the information provided in the SCN, there had literally been two emails exchanged (on September 7, 2007 and November 12, 2007) on the subject matter of the proposed reorganization, prior to the Relevant Trade- I. A bare perusal of these aforementioned emails makes it amply clear that these were purely in the nature of preliminary, exploratory discussions, which are undertaken within a listed company on a routine basis.
- (d) In fact, after November 12, 2007, the discussions around the proposed reorganization only re-started in April, 2007. Incidentally, the Relevant Trade - II were executed within this time period, i.e., prior to April, 2007. This 5-month gap clearly demonstrates that no aspect of the discussions pertaining to the proposed reorganization undertaken in 2007 were significant, material or price sensitive at the time of the execution of the Relevant Trade - II.
- (e) Further, it may be noted that the Proposed Reorganization, though announced to the stock exchanges, was not implemented or executed during the *Noticée's* employment tenure with NDTV.
- (f) In this context, and as highlighted above, it is also relevant to note that the NDTV October Letter specifically noted that: *"no formal trading window was closed since the discussions/ negotiations were in their preliminary stages and any disclosure by formal closure of trading window could have been premature"*. Therefore, in the absence of any specific decision being arrived in connection with the proposed reorganization at the time of the Relevant Trade - II and since the trading window of NDTV was also not closed, no UPSI could be said to have been in existence at such time.

(17) ***Bona fide rationale for undertaking the relevant trades -***

- (a) As stated above, the relevant trades were all sale of shares that were obtained by the *Noticée* through exercise of the ESOPs vested to him, during his employment with NDTV. Since ESOPs are categorized as part of the individual's wealth, he is at liberty to exercise his options and utilize the resulting income from sale of such shares for any purpose.
- (b) In the present context, in light of the market conditions the *Noticée* was strongly advised by his financial advisors to diversify his wealth, a disproportionate percentage of which was in the form of stock. Based on this advice, and with an intention to diversify his investments, the *Noticée* exercised his ESOPs and sold the

shares of NDTV (through the Relevant Trades). In fact, the *Noticee* did not purchase any share of NDTV in the secondary market.

- (c) The Hon'ble SAT has, in the matter of *Rajiv Gandhi v. SEBI*<sup>9</sup>, while evaluating the relevancy of motive behind trades involving allegation of insider trading, held that:

*“The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading.”* (emphasis supplied)

- (d) In light of the aforesaid decision, it is submitted that each of the relevant trades were *bona fide* sale transactions, triggered by certain personal needs for which the *Noticee* was compelled to liquidate his shares at that stage.

**(18) Relevant trades contrary to the nature of price sensitive information held**

- (a) Even if one were to assume that the ComVentures Transaction and proposed reorganization were UPSI, the SCN is liable to be wholly set aside since the relevant trades were *prima facie* contrary to the nature of the alleged price sensitive information.
- (b) Both the ComVentures Transaction as well as the proposed reorganization were positive developments. In such situations, it is reasonable for a person (who has access to the purported UPSI) to purchase shares of the relevant entity as opposed to selling shares, knowing that the publication of such UPSI at a later date may result in a positive price movement.
- (c) In fact, the Hon'ble SAT decision in the matter of *Chandrakala v. SEBI*<sup>10</sup> (“*Chandrakala*”), is squarely relevant since the SAT had considered a similar fact situation and held that: “*A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the*

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<sup>9</sup> [2008] 84 SCL 192 (SAT)

<sup>10</sup> [2012] 111 SCL 703 (SAT)

*scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public.”*

- (d) Similar observations have been made by SEBI in respect of *M/s Vasparr Shelter Ltd. in the matter of Vas Infrastructure Ltd.*<sup>11</sup> where the SEBI adjudicating officer, while setting aside the alleged violations of the PIT Regulations, has held that:

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

- (e) It is, therefore, evident that the relevant trades, involving sale of ESOP allotted shares, was not prompted by the ComVentures Transaction or the proposed reorganization, in any manner.
- (f) Had the Noticee held any *mala fide* intention to earn wrongful gains, he would have undertaken corresponding buy and sell transactions prior and after the dissemination of price sensitive information in order to effectively leverage on UPSI, instead of simply selling shares that were part of his ESOP entitlement.

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<sup>11</sup> Adjudication Order No. EAD-5/DS/AO/144/2017-18 dated March 28, 2018



(19) **Incorrect calculation of wrongful gains -**

- (a) Certain information with respect to the relevant trades as set out in Table 10 and Table 11 of the SCN, appear to be inconsistent and therefore, the calculation of wrongful gain as set out in the SCN cannot be relied upon. Specifically, these inconsistencies and discrepancies have been identified below:

**Table No. 13: Details of the price movement with respect to the NDTV scrip before and after the announcement on April 16, 2008**

Sl. No.	Trade Date	Description of inconsistencies in average price in Table 10 of the SCN (₹)	Correct calculation (₹)
1.	19/02/2017	330.61	330.19
2.	20/11/2007	381.07	381.30
3.	23/01/2008	409.60	409.85
4.	28/01/2008	406.83	407.04
5.	11/02/2008	409.38	409.03
6.	12/02/2008	394.23	394.18
7.	10/03/2008	381.43	382.27
8.	11/03/2008	391.51	391.74

- (b) As a consequence of the above discrepancies in calculation, the resultant inconsistencies in Table 11 of the SCN has been set out below:

**Table No. 14: Discrepancy in the SCN regarding allegation of quantity of shares sold**

Sl. No.	Alleged PSI	Description of inconsistencies in Table 11 of the SCN	Correct Quantity
1.	PSI-3	Sell quantity states '5750' shares	2,500 shares
2.	PSI-3	Sell value set out for the states ₹1888798.85	Sell value as indicated at column D of Table 10 of the SCN is ₹825455
3.	PSI-3	Average sell price (based on actuals) specified at Table 11 of the SCN is ₹328.49	Average price is equivalent to ₹330.19.
4.	PSI-3	Average sell price (based on actuals) specified at Table 11 is ₹395.63	Average sell price is ₹394.43

- (c) Accordingly, in light of the abovementioned inconsistencies, the calculation of wrongful gains set out at Table 12 of the SCN suffers from the following contradictions:

**Table No. 15: Description of Discrepancy in the SCN regarding allegation of quantity of shares sold**

Sr. No.	Alleged PSI	Description of Inconsistencies in Table 12 of the SCN
1.	PSI - 3	The details pertaining to the sell quantity, and the average sell price computed on the basis of information set out in Table 10 and Table 11, respectively, are incorrect. As highlighted above, the sell quantity has been wrongly specified as '5750' and the average sell price has also been wrongly indicated as 'INR 328.49', contrary to the information set out in the SCN.
2.	PSI - 6	The details pertaining to the average sell price computed on the basis of information set out in Table 10 and Table 11, respectively, is incorrect. As highlighted above, the average sell price has also been wrongly indicated as 'INR395.63', contrary to the information set out in the SCN.

- (d) In addition to the factual errors and inconsistencies identified above, even the manner in which the alleged wrongful gains of the *Noticee* has been calculated in paragraph 57 of the SCN, is incorrect. The alleged wrongful gain has been calculated as per the following method:

$$\text{Wrongful gain} = (\text{Average Sell Price} - \text{Opening Price on UPSI period starting day}) \\ * \text{Net sell quantity during UPSI period}$$

- (e) Effectively, the calculation maps the price difference between the purported start of UPSI period and the date on which the Relevant Trades were executed. In order to effectively calculate the gains made by a person who leverages on UPSI available with him/her to trade in securities, it would be necessary to map the price movement between: (i) the time when the impugned trades are undertaken, and (ii) the time when the concerned UPSI has been disclosed and assimilated by the market.
- (f) This method of calculation has previously been adopted by SEBI as well, in the matter of insider trading in the scrip of *Deep Industries Limited*<sup>12</sup> wherein the unlawful gains have been computed on the basis of the notional sale value on the date when the UPSI ceased to exist based on the average closing price on NSE and BSE.
- (g) In this regard, it is also relevant to note that, typically, markets take some time to react to information disclosures and price movement may not occur immediately. It is precisely to address this phenomenon that Clause 3.2-4 of Schedule I of the PIT Regulations stipulated that trading window of listed companies should be opened 24

<sup>12</sup> WTM Order dated April 16, 2018 (SEBI /WTM /MPB/IVD/ID- 6/162/2018)

hours after any UPSI is made public, so that sufficient time is provided for the market price to settle post disclosure. As such, for the calculation of the alleged wrongful gains as well, the marker may be set at 24 hours subsequent to the disclosure of the concerned UPSI. Therefore, in light of the above, it is respectfully submitted that the alleged wrongful gains should be calculated as follows:

*(Average Sell Price - Closing price on date being 24 hours after Announcement) \* Net sell quantity*

- (h) By applying the above formula, it is clear that no wrongful gains were earned by the *Noticee*, since the price of the NDTV scrip actually rose post the Reorganization Announcement. As such, by executing the Relevant Trades, the *Noticee* had, in fact, foregone the profits he could have earned had he sold the shares subsequent to disclosure of the UPSI. This further demonstrates that the Relevant Trades were *bona fide* transactions which were not motivated by any UPSI, and should therefore not be considered to be in violation of the PIT Regulations, as per the ruling of the Hon'ble SAT in *Chandrakala*.

**B. Mr. Ishwari Prasad Bajpai - *Noticee No. 2***

I note that most of the contentions of the *Noticee No. 2* are same as the ones made by the *Noticee No. 1*. I, therefore, do not deem it necessary to repeat the common submissions. However, I find it necessary to summarise the specific contentions made by the *Noticee* with respect to his transactions which are highlighted as under:

- (1) The *Noticee* is a senior journalist and has been associated with NDTV since 1996. During the time of the impugned trade, the *Noticee* was designated as the Senior Advisor - Editorial of NDTV, which designation he held from 1996 to 2007. Thereafter, he was designated as the Senior Advisor- Editorial and Projects from October 1, 2007 to December 2017.
- (2) Throughout his association with NDTV, the *Noticee* was primarily in charge of editorial matters and operational management at NDTV. In fact, the NDTV Annual Report for financial year 2006-2007 (being the time of the relevant period), did not even identify the *Noticee* as a key management personnel of NDTV.
- (3) In lieu of the *Noticee's* contribution to the growth of NDTV during his employment tenure, he had been granted ESOPs under the Employee Stock Option Plan 2004. Consequently, he was vested with ESOPs amounting to 75,000 shares of NDTV equally over a period of 4 years from the time they were granted. In line with standard corporate practice, the ESOPs granted to the *Noticee* were a component of his compensation package, and were intended to be monetized through sale of the resultant shares.

- (4) During the period in which the impugned trade was undertaken by the *Noticee*, he was not involved in taking any strategic decisions concerning NDTV. This is also evidenced by the fact that NDTV had not identified the *Noticee* as a key managerial personnel in its annual report disclosure for financial year 2006 - 2007.
- (5) With respect to the impugned transaction itself, the *Noticee* was not, at any point in time, involved in the decision making process resulting in the execution or finalization of business transactions or even engaged in negotiations pertaining to such transaction. In fact, the Annexures to the SCN (specifically, Annexure 6), clearly shows that the *Noticee* was only intermittently marked copies of certain preliminary emails discussing the proposed business transaction but was not regularly marked copies of all emails relating to the same. For instance, the *Noticee* was not marked a copy of the e-mail dated January 19, 2007 sharing the non-binding term sheet between NDTV and ComVentures or even the email dated March 10, 2007. Additionally, the Annexures to the SCN indicate that the *Noticee* had not sent any email discussing or advising on the transaction, at any point in time whatsoever.
- (6) The statements made by SEBI at paragraph 53 of the SCN that the *Noticee* was involved in the process of crystallization of 'PSI - 3' (i.e., the transaction) and had direct access to UPSI are wholly fallacious and incorrect. The *Noticee* was, in fact, not aware of the status and details of the transaction at the time he executed the impugned trade.
- (7) In addition to the fact that the *Noticee* was not closely involved in discussions pertaining to the transaction, it is submitted that the said transaction did not constitute UPSI, in any case.

### **C. Mr. Saurav Banerjee – *Noticee No. 3***

As stated earlier, most of the preliminary submissions of this *Noticee* are identical to the ones filed by Mr. Prannoy Roy and Mrs. Radhika Roy in another proceeding before me arising out of the same investigation. In fact, the *Noticee No. 3* and Mr. Prannoy Roy and Mrs. Radhika Roy are also represented by a common authorised representative/counsel who has filed written replies on behalf of this *Noticee* as well as on behalf of Mr. Prannoy Roy and Mrs. Radhika Roy vide a common cover letter dated March 11, 2020. The common issues/points and objections to the SCN on which the *Noticee No. 3* has joined hands with Mr. Prannoy Roy and Mrs. Radhika Roy, which I have extensively dealt with in my order with respect to the proceedings *qua* Mr. Prannoy Roy and Mrs. Radhika Roy, are listed out as under:

- (1) Inordinate laches in initiating purported adjudicatory proceedings vitiates the adjudication process rendering the SCN null, void and/or otiose.

- (2) Denial of full and fair inspection of documents to the *Noticee*, a direct violation of principles of natural justice.
- (3) Rife procedural irregularities permeating the SCN render it ultra vires.
- (4) Absent existence of jurisdictional fact, which is a sine qua non for exercise of power by statutory authority, adjudicatory proceedings are rendered illegal.
- (5) Charge of 'insider trading' to be established by higher degree of probability and necessarily based on clinching and reasonable evidence, absent in this case.
- (6) UPSI-6 period extending from September 7, 2007, upon receipt of check-list from advisors on re-organisation, upto April 16, 2008, i.e., when committee appointed by NDTV to evaluate options for re-organisation of NDTV, is a stretched argument.
- (7) UPSI must cause positive impact, and resultantly persons in possession of UPSI purchase shares as against selling shares.
- (8) The SCN fails to enunciate the action proposed to be taken, thus vitiating its validity.
- (9) Powers under section 11B of the SEBI Act, 1992 are remedial and not punitive in nature and disgorgement cannot arise for alleged violation prior to July 18, 2013.
- (10) Disgorgement is an equitable remedy, rendering essential that a violator is enriched at the expense of a victim, while disgorgement takes the colour of penal sanction.
- (11) In absence of deliberate or contumacious defiance of law, where technical or venial breach, coupled with bona fide belief and absence of *mens rea*, discretion to be exercised to not impose any penalty in pursuance of powers under section 15J.

As stated before, I have already discussed at length each of the afore stated issues and have recorded my observations thereon under the same heads/categories as have been paraphrased by the *Noticee No. 3* in his submission in the present proceedings, in my order issued with respect to Mr. Prannoy Roy and Mrs. Radhika Roy under a separate proceeding. Therefore, to avoid repetitions and the burden of being verbose, I would prefer to adopt my discussions and observations made in the order *qua* Mr. Prannoy Roy and Mrs. Radhika Roy in this order too, in response to the aforesaid issues and objections raised by the *Noticee No. 3*. I will now turn on to the other submissions of the *Noticee No. 3* based on the merit of his case.

(12) **Submission on merit:**

- (a) During the alleged PSI-6, the *Noticee* was merely an employee of NDTV and was neither a director nor the compliance officer of NDTV. As an employee, he was issued certain shares of NDTV under the 'employee stock option' scheme of NDTV.
- (b) Owing to a requirement of funds for purposes of purchase of a house, he was constrained to sell a small portion of his shareholding at a time when the trading

window was not closed and therefore there was no embargo to sell the shares. The relevant period of the impugned trade during the alleged PSI-6, is set forth hereunder:

**Table No. 16: Details of trade by the *Noticee* during the relevant period**

Date of sale	Number of shares sold
29/10/2007	500
06/11/2007	200
13/11/2007	1000
14/11/2007	300
<b>Total</b>	<b>2000</b>

- (c) The sale of shares was for an average sell price of ₹361.50, i.e., lower than the alleged opening price at the time of alleged commencement of the purported PSI-6. Therefore, through the impugned trade, the *Noticee* suffered a net loss of ₹47,000/- (Rupees Forty-Seven Thousand), which is recorded in the SCN.
- (d) The *Noticee* acting *bona fide* immediately upon receipt of the SCN offered to settle the allegations contained therein, through filing a Settlement Application dated December 5, 2018. In response, the SEBI vide its letter dated May 15, 2019, rejected the offer by the *Noticee* for payment of ₹3,20,000/- (Rupees Three Lakhs Twenty Thousand) towards settlement terms in pursuance of the settlement application dated December 5, 2018, holding that the Internal Committee had calculated the monetary terms payable by the *Noticee* towards settlement at ₹1,00,98,000/- (Rupees One Crore Ninety-Eight Lakhs), consequently leading to the settlement application being rejected. No documents in relation to the basis of purported penal computation by the Internal Committee have been provided until the time of these submissions.
- (e) The rejection of the settlement terms offered by the *Noticee* notwithstanding having suffered a loss and further computing the settlement terms at more than 30 times the amount offered by the *Noticee* was an abuse of the settlement process by the SEBI. The settled law in *Chintalapati Srinivasa Raju & Ors. v. SEBI* (2018) 7 SCC 443; and *Mrs. Chandrakala v. SEBI* [SAT Appeal No. 209 of 2011 – January 31, 2012] squarely apply in the case of the *Noticee*.

12. Before I proceed to appropriately deal with the replies/submissions of the *Notices* as highlighted above, I find it worthwhile to recollect here the charges that have been levelled against the *Notices*. It has been alleged in the SCN that the *Notices*, by dealing in securities of NDTV when in possession of unpublished price sensitive information, have violated the

provisions of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992.

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

**The SEBI Act, 1992 -**

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

*.....*

*.....*

*(d) engage in insider trading;*

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

*.....”*

**The PIT Regulations, 1992 –**

**Prohibition on dealing, communicating or counselling on matters relating to insider trading.**

*“3. No insider shall—*

*(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or*

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

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

*.....”*

**Violation of provisions relating to insider trading.**

*“4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.”*

14. I have carefully considered the allegations levelled in the SCN against the *Notices*, their replies and submissions; both oral and written, and the materials available on record. Broadly speaking, the *Notices* have responded to the charges in two segments, viz.: first by raising certain preliminary objections and then by offering their explanations on merit. As I have stated earlier, the *Notices* have raised some preliminary objections to the SCN some of which are overlapping and interconnected to each other challenging the *bona fide* of the SCN and questioning the very foundation and jurisdictional competency of the instant proceedings.
15. For ease of dealing with these objections, I would deal with them under the respective sub-categories/heads as have been used by the *Notices* to the extent possible. Considering the fact that some of the submissions made by the *Notices* are not relevant to the present case, it would be appropriate for me to avoid this order being unnecessarily burdened with verbosity of issues not relevant to the adjudication of the real issues involved in the matter and therefore I would confine my findings with regard to the submissions of the *Notices* that are germane and central to the issues demanding consideration in the instant case. As discussed in preceding paragraphs, all the preliminary objections/ contentions that have been exclusively raised by the *Noticee No. 3* have already been dealt with in detail in the order pertaining to Mr. Prannoy Roy and Mrs. Radhika Roy, which are not being discussed in this Order all over again and I rely on my observations and findings on those preliminary/technical objections as recorded in the order pertaining to Mr. Prannoy Roy and Mrs. Radhika Roy. In addition to those preliminary objections, I find the other two *Notices* have also raised primarily three types of preliminary objections to the validity and jurisdictional maintainability of the present proceedings that are similar to some of the objections raised by the *Noticee No. 3* which have been discussed by me in the Order *qua* Mr. Prannoy Roy and Mrs. Radhika Roy. Nevertheless, these common preliminary objections having been agitated by all the three *Notices* in their respective submissions, they deserve to be discussed hereunder for better clarity and understanding.

**A. Delay in Initiating Proceedings –**

16. I note that the *Notices* have vehemently emphasized on delay on the part of SEBI in initiation of the present proceedings which according to them, has vitiated the validity of the SCN. In this regard, the *Notices* have relied upon and cited various decisions of the Hon'ble SAT, most notably in the matter of *Libord Finance Ltd. v. SEBI* (2008 SCC OnLine SAT 46); *Subhkam Securities Pvt. Ltd. v. SEBI* (2012 SAT 112) and *HB Stockholdings Limited v. SEBI* (2013 SCC OnLine SAT 56). The *Notices* have also stated that since their imputed trades are very old they do not have access to the relevant supportive documents.
17. I have perused the contentions of the *Notices* in this regard and also the judicial decisions relied upon in support of this contention. It goes without saying that the facts and attendant circumstances of each cited case have to be taken into consideration while deciding as to



whether any inordinate delay has been made in initiating a particular proceeding. As discussed initially in this Order, the investigation in the instant matter was initiated in pursuance of a number of complaints received by SEBI from NDTV starting from July 16, 2013 (1<sup>st</sup> complaint) to January 9, 2014 (3<sup>rd</sup> complaint), *inter alia*, alleging that certain entities associated/connected with NDTV and their associates (*viz.*: Mr. Sanjay Dutt and his associated entities such as QSPL and SREPL) were involved in dealing in securities of NDTV in violation of provision of the PIT Regulations, 1992 during the period September 2006 to June 2008. Pursuant to the receipt of the complaints, investigation was instituted by SEBI and in the course of such investigation, SEBI had exchanged a series of communications with the *Company* and other relevant entities. Evidently, only after the completion of investigation and on an evaluation of results obtaining therefrom could the present proceedings in respect of several entities who were found to have indulged in insider trading including the two *Notices* in the SCN, be initiated by SEBI.

18. It is a common knowledge that investigation into matters pertaining to allegations of insider trading are significantly complex and requires collating of various types of data and information for analysis and examination. Further, it is a fact that the investigation into the alleged insider trading in the shares of NDTV involved a host of entities whose status as insiders and specific trades executed by them had to be examined with reference to various data and other ancillary information.
19. I find the conduct of some of the *Notices* during the instant proceedings debunking the findings of investigations and the allegations in the SCN with respect to their insider trades as perplexing since these were undisputedly contemporaneous to the trades executed by the other entities in respect of which, the *Company* had itself filed complaint with SEBI. Thus, the *Notices* cannot possibly seek shelter behind the façade of delay when the initial complaint regarding the alleged insider trading in the shares of NDTV was filed by their employer *Company* after approximately 6 years following the execution of their impugned trades. This fact strongly repudiates the reliance by the *Notices* upon Schedule I, Part A, Clause 5(2) to the PIT Regulations, 1992, regarding time limitation of three years to preserve supporting records by a listed company. It is worth mentioning that the said clause mandates the Compliance Officer to maintain records of all the declarations in the appropriate form given by the directors/officers/designated employees for a minimum period of three years. Had the instant proceedings been about allegations pertaining to any declarations made by the directors/officers /designated employees or for that matter relating to the maintenance of internal records or non-submission of such records by the *Company*, the provisions of Schedule I, Part A, Clause 5(2) to the PIT Regulations, 1992 would have borne some relevance. In the instant case, however, there is no allegation connected to any declarations made by the directors/officers /designated employees or non-submission of the information pertaining to such declaration. Therefore, in my opinion, the reference to the said clause by the *Notices* has

no relevance whatsoever. In view of the foregoing, the *Notices* cannot fallaciously insist upon the requirements of Schedule I, Part A, Clause 5(2) to the PIT Regulations, 1992, to contend that there was inordinate delay/laches in initiating the instant proceedings.

20. It is on record that the instant proceedings have emanated from the complaints filed by the *Company* against its consultant, Mr. Sanjay Dutt and his associated entities bringing allegations of insider trading against them as well as various counter complaints lodged by the said consultant Mr. Sanjay Dutt, making allegations against Mr. Prannoy Roy and NDTV for indulging in activities in violations of provisions of the SEBI Act, 1992 and rules and regulations made thereunder. As noted above, the said complaints were filed with SEBI from the year 2013 onwards, which had to be investigated by SEBI. Further, in the course of investigation, it is seen that SEBI had exchanged a series of communications with the *Company* and other relevant entities. After completion of the investigation, SEBI initiated proceedings in respect of several entities including the *Notices* in the SCN under consideration.
21. The investigation so conducted by SEBI exposed that certain entities had carried out trades in the shares of NDTV while in possession of UPSI and that finding led to the issuance of notices against such entities. It is apparent that the complainant (NDTV) was fully aware about the alleged acts of the entities and the period during which those prohibited acts were committed, however, while making complaints to SEBI, no such factors of inordinate delay were brought up by them. Therefore, after having received the complaints about violations as serious as insider trading, SEBI had to initiate investigation into them and the consequent proceedings ensued thereafter. Hence, the *Notices* who themselves were insiders and were occupying senior positions in the management of the *Company* cannot now oppose to the proceedings under the garb of inordinate delay. Under the circumstances, the objection of the *Notices* taking the ground of delay has no merit and deserves outright rejection.
22. It is important to note here that the SCN and the Annexures thereto contain all the factual details and legal provisions based on which the allegations of the violation of the SEBI Act, 1992 and the PIT Regulations, 1992 have been made against the *Notices*. Therefore, raising a plea of non-availability of relevant documents is nothing but an evasive device adopted by the *Notices*. Undoubtedly there is no provision under the SEBI Act, 1992 or the PIT Regulations, 1992, which prescribes any time limit for taking cognizance of the alleged breach of provisions of the Act, and rules and regulations made thereunder. The Legislature, in its wisdom, did not deem it fit to provide for the same. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in a matter, it is important not to lose sight of the fact that it is the date when the alleged violation came to the notice of SEBI which would be the relevant point and certainly not the date of commission of the said violation. Again, whether a delay in a particular case is justified or not depends on the attending facts and

circumstances of that specific case. In this regard, it is relevant to refer here to the findings of the Hon'ble Supreme Court in the matter of *Mahendra Lal Das vs. State of Bihar and Ors.* (2002) 1 SCC 149 also relied upon by the *Notices*, wherein the Hon'ble Apex Court held that “*While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused, witnesses, workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case.*” In fact, in almost all the cases cited by the *Notices*, it has been invariably held that each case has to be decided on its merit while taking into consideration the surrounding facts and circumstances.

23. The aforesaid legal position has also been endorsed by the Hon'ble SAT in *Ravi Mohan & Ors. v. SEBI* (SAT Appeal No. 97 of 2014 decided on December 16, 2015):

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

24. The *ratio* laid down by the Ld. Tribunal in the aforesaid case, was upheld and reiterated by it, in *Kunal Pradip Savla & Ors v. SEBI* (Appeal no. 231 of 2017) decided on April 13, 2018. In my view, complexities encountered during the investigation or for that matter during the proceedings in the instant case far outweigh the delay as wrongly perceived by the *Notices* caused in the initiation of the proceedings. Further, the principles of natural justice have been fully complied with and all the relevant documents have been made available to the *Notices*. Considering the foregoing, I am of the view that no delay has occurred in initiating action in the present matter by SEBI and in any event, no prejudice was caused to the *Notices* on account of non-availability of the relevant documents. Therefore, I do not have any hesitation in rejecting the contention of the *Notices* claiming delay and laches in initiating proceedings against them.

## B. Inspection of Documents.

25. I have recorded earlier that pursuant to the issuance of the SCN, the authorized representatives of the *Notices* had sought inspection of relevant documents relied upon in the SCN in the present proceedings. Accordingly, inspection of the relevant documents was

granted to the authorized representative of the *Notices* on different dates. In case of the *Notice* No. 3, the inspection of documents was conducted on two occasions, i.e., on October 30, 2018 and September 27, 2019.

26. There cannot be two opinions that investigation is a painstaking process of finding of facts and an investigation report is typically a compilation of all the findings crystallizing during the investigation process which are documented comprehensibly. The materials relied upon during investigation or the relevant extracts thereof are usually incorporated as part of the investigation report - either in the body of the report or as annexures. Thus, the materials collected during investigation and relied upon in the investigation report are incorporated in the SCN and duly communicated to the *Notice* either in the body of the SCN or in the form of annexures thereto. In the instant matter I find the SCN to be a discerningly speaking one and self-explanatory. It contains the relevant details pertaining to the activities of the *Notices* and incorporates all relevant testimonies, documentary evidences, etc., that have been relied upon therein to frame charges against the *Notices*. The *Notices* are entitled to inspect as well as to have copies of all the documents relied upon or referred to in the SCN so as to be able to rebut the allegations.
27. However, under the garb of inspection of documents, it is not open to the *Notices* to conduct a roving and a fishing enquiry in the office records, file noting meant for internal administrative utilization of SEBI, or those parts of the investigation report which have neither been relied upon in the SCN nor are relevant to their case. This is because had those records/documents been relevant, they would have been certainly deployed and used as evidence against the *Notices*. There is no averment made by the *Notices* that inspection of one or more evidence that has been adversely used against them, has been denied to them. This being the uncontroverted position, the request of the Authorized Representatives for allowing inspection of irrelevant or extraneous documents (like entire investigation report, file noting, statements recorded from persons, if any) is excessive, unreasonable and have little purpose except to unnecessarily delay the proceedings.
28. With regards to the *Notice* No. 3's insistence on having a copy of the complete Investigation Report, it was explained to him that it covers the examination and findings about the allegation of insider trading in the shares of the *Company* by various other entities also during the period September 2006 to June 2008. Hence, the *Notice* No. 3 was lawfully entitled to only the portions of the investigation report which relate to him containing, without exception, all the documents/information relied upon in the SCN. In any case, the said *Notice* has been granted permission on two occasions for inspection of the documents and annexures relied upon in the SCN and the relevant parts of the Investigation Report alongwith the relevant annexures thereof. The parts of the Investigation Report that did not pertain to the *Notice* were redacted

to maintain confidentiality of details *qua* those other entities and the same was duly conveyed to the *Noticee*.

29. The records before me bear that the *Noticee* No. 3 was first granted opportunity of inspection on October 30, 2018 and on the aforesaid date the authorized representatives of the *Noticee* had inspected original documents relied upon in the SCN including the originals of the annexures attached to the SCN. After nearly eleven months, the Authorized Representatives of the *Noticee* again sought inspection in the course of the second personal hearing held on September 26, 2019. All this while, i.e., for approximately eleven months, the *Noticee* did not raise any objection nor did he express any grievance with the earlier inspection taken by him on October 30, 2018, nor even requested for another inspection of documents. However, in the interest of principles of natural justice, request for another round of inspection of documents was nevertheless granted to the *Noticee* taking into cognizance the observations made in the order dated August 29, 2018 passed by the Hon'ble Delhi High Court in a Writ Petition No. 9114/2018 filed by the promoters of NDTV (*supra*). In the aforesaid order, the Hon'ble Delhi High Court had observed as under:

*“...The SEBI shall insure the inspection of materials that have been investigated pertaining to the show cause notice, which is the subject matter of investigation, is provided. However, if there is any confidential material concerning a third party, which too might be under investigation or other confidential material, which the SEBI feels would be prejudicial, it is open to it segregate or detag such material while complying with the order.”*

30. In compliance with and as guided by the aforesaid order of the Hon'ble Delhi High Court, the said *Noticee* was granted inspection of all the documents relied upon by SEBI in the SCN issued to him. The records before me indicate that the authorized representatives of the *Noticee* have inspected the Investigation Report containing those portions and the details that are connected to the *Noticee* and have also received a copy of the Investigation Report as well as the copies of Annexure 4, Annexure 10 and Annexure 16 to the Investigation Report. As per the records before me, the parts of the Investigation Report which do not pertain to the *Noticee* were redacted and inspection of the remaining relevant parts of the Investigation Report was granted to the *Notices*. This view has also been upheld by the Hon'ble Tribunal in the matter of *Manoj Gaur v. SEBI (Supra)* wherein it was held that:

*“20. We may now take note of some other arguments which were advanced on behalf of the appellants. It was alleged that the principles of natural justice were violated on the ground that copy of investigation report was not provided to the appellants which has resulted in denial of fair hearing to them. It was also alleged that entirely a new case has been made out by the adjudicating officer while holding that the UPSI existed from October 11, 2008 whereas in the show cause notice, it was alleged that the information about the financial results etc. of the company was UPSI with effect from October 12,*

*2008. We are inclined to agree with the submissions made by learned Advocate General on behalf of the Board that there is no violation of the principles of natural justice on any of these counts. Regulation 9(i) of the Regulations specifically provides that only the findings of the investigation report are to be communicated to a person suspected of insider trading. Such findings were furnished to the appellants. The investigation report is not the evidence on which reliance was placed by the adjudicating officer. Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants. Learned counsel for the parties have relied on certain case law relating to principles of natural justice. We do not consider it necessary to refer to all those details in view of the fact that regulation 9 of the Regulations makes it obligatory to communicate the findings in the investigation report and not the whole report. It is nobody's case that such findings were not made available. If the procedure laid down in the regulations has been followed by the adjudicating officer, the grievance of violation of principles of natural justice is without any foundation.....”*

31. I may recall here that during the personal hearing on September 26, 2019, the Authorized Representatives of the *Noticee No. 3* was advised to file additional reply, if any, by October 25, 2019. Accordingly, the next personal hearing was scheduled on November 13, 2019. However, vide email dated October 24, 2019, the Authorized Representatives requested for extension of time for filing reply by approximately two weeks in view of the Diwali holidays, and also requested for shifting the date of hearing date from November 13, 2019 to some other date and time as per mutual convenience owing to the overseas engagement of the counsel appearing on behalf of the *Noticee*. That request was also acceded to and the personal hearing *qua* the *Noticee No. 3* was scheduled on November 25, 2019 with the consent of his Authorized Representatives. However, vide email dated November 5, 2019 the Authorized Representatives again sought extension of time to file additional reply in the matter. At this juncture, they also raised the inexplicable plea of incomplete inspection and demanded that a full and fair inspection of all documents and/or material collected by SEBI during the course of investigation be granted, including but not limited to internal file notings, orders/directions and statements recorded, if any, after which only, the *Noticees* would file additional reply. Such a request for inspection of non-relevant or extraneous documents was nothing short of a highly untenable demand made as a condition precedent to filing of additional reply, more so after a period eleven months of the first inspection and when two rounds of personal hearing of the *Noticees* had already elapsed. Hence, the same, deserved outright rejection which was categorically conveyed to the Authorized Representatives on that day itself. Accordingly, such a request was not acceded to for the reasons explained earlier in this Order and the final round of personal hearing was fixed on December 13, 2019.

32. On December 13, 2019, the Authorized Representatives appearing on behalf of the *Noticee No. 3* informed that Mr. Prannoy Roy and Mrs. Radhika Roy against whom similar proceedings have been initiated, arising out of the investigation into the same matter of insider trading in

the shares of NDTV, have filed a Writ Petition before the Hon'ble Bombay High Court (*Supra*) challenging the SCN issued to them. Since, the outcome of the said writ petition would have similar implication on the proceedings in the case of *Noticee No. 3*, the Authorized Representatives requested that a short adjournment may be granted. The Authorized Representatives of the said *Noticee* were reminded of the number of adjournments sought in the matter by them on one pretext or the other, but as a last and final opportunity, the personal hearing was adjourned and with the consent of the Authorized Representatives, hearing was re-fixed on January 3, 2020.

33. I note that vide their order dated January 6, 2020, the Hon'ble Bombay High Court dismissed the abovementioned Writ Petition filed by Mr. Prannoy Roy and Mrs. Radhika Roy with the following observations:

*“9. We do not think that we should allow the petition to be prosecuted as its obvious purpose is to delay the adjudication of the show-cause notice. It is not as if the petitioners cannot appear before SEBI without prejudice to their rights and contentions and complaint that they were not provided full, free and unhindered inspection of the relevant records and documents. The petitioners can participate in the hearing or adjudication of the show-cause notice without prejudice to all their rights and contentions including on the above point. They can very well substantiate their primary contention that on the face of it, the show-cause notice is time barred. We do not think that we should interfere with the show cause notice as that relief could have been claimed but advisedly not claimed earlier. It may be that the Writ Petition filed before the Hon'ble High Court of Delhi is filed by another entity and not the petitioner. Secondly, when that High Court passed the order, the present petitioners were not served with the show-cause notice. However, even that High Court expressed its reluctance to interfere with the investigations by SEBI. Pertinently, Ms. Sethna does not seek the relief of quashing of the show-cause notice. We fail to understand the reluctance of the petitioner to appear before SEBI reserving its rights and contentions.*

*10. The Writ Petition before this Court with virtually the same complaint should not be entertained as that would mean that this Court can be approached challenging such a show-cause notice, when the petitioners were aware that they first approached through their promoter group, the High Court of Delhi. The grievance being more or less the same, we do not think that this Petition should be entertained only on the ground of alleged lack of inspection. We do not think that the petitioners cannot properly defend themselves. The petitioners can participate in the adjudication or the hearing and in the event any adverse order is passed, while challenging the same, the petitioners can highlight all the grievances and grounds projected in the petition before the High Court of Delhi and this High Court. They can very well complain that no inspection of the records or documents, which have been relied upon to render an adverse finding, was provided and, therefore, there is a gross violation of the principles of natural justice and the adjudication is unfair, arbitrary and discriminatory. Once all such courses are open and can be taken recourse to, all the more, we are disinclined to entertain this Writ Petition.*” (Emphasis supplied)

34. The aforesaid observations made by the Hon'ble High Court speaks volumes about the unremitting dilatory intentions and reluctance on the part of Mr. Prannoy Roy and Mrs. Radhika Roy to cooperate with the present proceedings due to which they have been deliberately delaying the proceedings on one pretext or another. I find that the Authorised Representatives of the *Noticee No. 3* have also unnecessarily prolonged the proceedings *qua* the *Noticee No. 3* by linking the case of the *Noticee No. 3* with the case of Mr. Prannoy Roy and Mrs. Radhika Roy and have been requesting for adjournment of personal hearing on one ground or the other for no apparent *bona fide* reason. I also note that the *Noticee* has also relied upon the minority judgment of the Hon'ble Tribunal in the matter of *PWC vs. SEBI* (Appeal No. 08 of 2011) which was upheld by the Hon'ble Supreme Court in appeal by PWC (Civil Appeals No. 6003 - 6004 of 2012 & 6000 - 6001 of 2012) directing SEBI to provide all the documents collected during the course of investigation. In this regard, I note that the Hon'ble Tribunal in the matter of *Shri B. Ramalinga Raju vs. SEBI* (Appeal No. 286 of 2014) has observed as follows:

*“21. ....Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants.”*

35. In my view, the findings of the Hon'ble Tribunal in the matter of *Anant R. Sathe vs SEBI* (Appeal no. 150/2020 – Date of decision July 17, 2020) is also relevant which deserve a reference as under:

*“7. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by the decision of this Tribunal in Shruti Vora's (supra) wherein the Tribunal held that:*

*“In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence.”*

*8. The said principle elucidated in Shruti Vora's judgement is squarely applicable in the instant case. The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence.*

*9. In **Natwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255** the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie*



*unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.*

*10. In the light of the aforesaid, the request of the Appellant for supply of documents which are in possession of the authority is misconceived and cannot be accepted. ....”*

36. In this regard, I note that the Hon’ble Tribunal, in the matter of *Reliance Commodities Ltd vs. NSDL and SEBI*, in its order dated July 23, 2019, has observed as under:

*“2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.*

*3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant. The appeal is accordingly disposed of. Misc. Application No.189 of 2019 is also disposed of.”*

37. In the light of the foregoing, I note that the relentless insistence of the Noticee No. 3 for inspection of documents like statements, notings and orders, etc. which do not have any bearings on the findings of the investigations or the allegations in the SCN issued to him, is nothing but a tactic to delay the proceedings for reasons best known to him. As per the records before me, no statements have been recorded or relied upon by SEBI while issuing the SCN. Further, the internal noting in the file, which are not part of the Investigation Report, have been done only for the consumption of the officials of SEBI solely for internal administrative purpose and have not been referred to anywhere in the SCN. In this light, the demand for inspection of internal office file noting is bereft of a tangible rationale and is, therefore, not maintainable.

38. I note that the aforesaid issues raised by the Noticee before me also came up for consideration of the Hon’ble SAT in the matter of *M/s Shreeyash Industries Limited vs. SEBI* (decided on 06/03/2018 in Appeal No 368/2017), wherein the Hon’ble SAT has observed:

*“5. We find no merit in the arguments advanced by the Learned Counsel for appellants. Submission that investigation of SEBI was initiated on a complaint received from one Mr. Anil Kumar Sharma, copy of which was not given to the appellants was prejudicial to appellants has no merit since SEBI did a full investigation and the impugned order has been passed after following the due process like issue of show cause notice to the appellants and providing opportunity for reply and personal hearing etc.”*

39. In view of the above cited observations, in my opinion, the cardinal rule that requires adherence is affording a fair opportunity which was adequately and satisfactorily complied with by granting the *Noticee No. 3* opportunity of two rounds of inspection of the relevant parts of the Investigation Report and the relevant documents relied upon in the SCN. Even after grant of inspection of the relevant documents for a second time, the Authorized Representatives have demanded unjustifiably that the redacted part of the Investigation Report given to the *Noticee* should be certified only by an officer of SEBI and has to be vetted by a superior authority. As per the established procedure in SEBI for grant of inspection during a quasi-judicial proceeding, such vetting of any copies of documents handed over to the *Noticees* by any superior authority is not required as the *Noticees* take copies of those documents after conducting inspection of originals of those documents. This demand, therefore, was wholly ill-conceived and requires no further discussion. Considering the foregoing, I do not find any substance in the objections raised by the *Noticees* with regard to inspection granted to them and dismiss the same unhesitatingly.

**C. Absence of grounds for issuing SCN under sections 11 and 11B of the SEBI Act, 1992 - Powers under section 11B of the SEBI Act, 1992 are remedial and not punitive in nature and disgorgement cannot arise for alleged violation prior to July 18, 2013.**

40. In this regard, I have perused the contention of the *Noticees* and various judgments/orders relied upon by the *Noticees*. Before I deal with the afore-said contention, it would be appropriate to refer to the provisions of section 11B of the SEBI Act, 1992 as they were applicable to the matter at hand herein below.

***“Power to issue directions***

*11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—*

- (i) in the interest of investors, or orderly development of securities market; or*
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or*
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,—*
  - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or*
  - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.*

*Explanation. — For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.*

41. A plain reading of the provisions of section 11B of the Act makes it apparent that the section vests in the Board the power to issue directions to achieve the objectives for which the SEBI is established. The preamble of the SEBI Act, 1992 proclaims the objectives for the establishment of the Board, *inter alia*, to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Thus, section 11B in a sense is more specific and action oriented. The power of SEBI to issue directions under section 11B of the SEBI Act, 1992 has often been subject matter for deliberation by the courts, including the Apex Court on a number of occasions and the Courts have unanimously reposed faith in the wordings of the said provision and the legislative intent behind those wordings while deciding on the question as to whether the powers vested in SEBI under section 11B are punitive or remedial.
42. The Hon'ble Gujarat High Court had examined the scope of section 11 and section 11B of the Act while deciding an appeal against the Single Judge's order in Alka Synthetics Case (*SEBI Vs. Alka Synthetics Ltd. (1999(9) SCL-460*). The basic issue for consideration before the Division Bench in the said appeal was whether SEBI had the authority to issue an order under section 11B of the Act for impounding or forfeiting the money received by stock exchange as per the concluded transactions under its procedure, until final decision is made. While negating the views of the Single Judge, and upholding the Respondent's power to issue such a direction under section 11B the Hon'ble Court observed as under:

*"The SEBI Act is an Act of remedial nature and, therefore, the present cases could not be compared with the cases relating to the fiscal or taxing statutes or other penal Statutes for the purposes of collection of levy, taxes, etc. As and when new problems arise, the call for new solutions and the whole context in which the SEBI had to take a decision, on the basis of which impugned orders were passed, cannot be said to be without authority of law in the fact of the provisions contained in section 11 and section 11B. As the language of section 11(1) itself shows and as the matters for which the measures can be taken are provided in sub-section (2) of section 11. It is clearly made out by the plain reading of the language of the section itself that the SEBI has to protect the interests of the investor in Securities and has to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section (2) of section 11 and in the discharge of his duty cast upon the SEBI as a part of its statutory function, it has been invested with the powers to issue directions under section 11B. .... Thus, so far as the authority of law in the SEBI to issue such directions is concerned, such authority to take measures as it thinks fit is clearly discernible on the basis of the provisions contained in section 11 read with section 11B of the SEBI Act.... We have to therefore consider and interpret the power of SEBI under the provisions so as to see that the objects sought to be achieved by Act is fully served, rather than being defeated on the basis of any technicality. The duty and function had been entrusted to take such measures as it thinks fit and in order to discharge this duty, the power is vested under section 11B. .. The authority has*

*been give under the law to take appropriate measures as it thinks fit and that by itself is sufficient to cloth the SEBI with the authority of law".*

43. I would also like to rely on the findings of the Hon'ble Supreme Court in the matter of *District Mining Officer vs. Tata Iron and Steel Co.* [2001 7 SCC 5] wherein the Hon'ble Court has held that *a statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature*". The Apex Court further observed as under:-

*"The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."*

.....

.....

*"Most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility."*

44. It is also relevant here to mention the case of *Karry Stock Broking Ltd. v. SEBI* 2007 73 SCL 261 SAT, wherein the Hon'ble Tribunal, *inter alia*, held the following:

*"Parliament by Act 9 of 1995 introduced Section 11B with effect from 25.1.1995. This section enables the Board to issue directions to any intermediary of the securities market or any other person associated therewith if it thinks it is necessary in the interests of investors or orderly development of securities market or to prevent the affairs of any intermediary or any other person referred to in Section 12 from being conducted in a manner detrimental to the interests of investors or securities market or to secure the proper management of any such intermediary. For regulating the securities market and with a view to protect the same, the Board started issuing interim orders/directions under this newly added provision to keep the erring intermediaries or other delinquents associated therewith out of the market. The exercise of this power was challenged in different courts and even though the same was upheld, Parliament thought that the provisions of the Act were inadequate and in its wisdom amended Section 11 by introducing Sub section (4) therein with effect from 29.10.2002 and gave specific power to the Board to pass interim as well as final orders in the interests of investors or the securities market."*

45. Further, in the case of *Libord Finance Ltd. v. SEBI* 2008 86 SCL 72 SAT, the Hon'ble Tribunal has clearly observed that the preventive and remedial measures under section 11/ 11B of the Act may also have penal consequences and the actions of SEBI do not get imputations for the reason that by exercising such power and issuance of directions, which though had the colour of penal in nature but, in effect and in substance, it does not take away and alter the remedial nature of such measures enshrined in it. The relevant observations of the Hon'ble Tribunal in the case are as follow:

*"When such directions are issued, the object is not to punish the delinquent but to protect and safeguard the market and the interest of the investors which is the primary duty cast on the Board under the Act. The directions may result in penal consequences to the entity to whom those are issued but that would be only incidental. The purpose or the basis of the order or the directions would nevertheless be to protect the securities market and the interest of the investors."* (Emphasis supplied)

46. The essence of the decisions of the Apex Court and the Hon'ble Tribunal as referred to above is that any direction under section 11B of Act would satisfy the test of a remedial measure, if it is intended to restore confidence in the integrity of the securities market. I note that the SCN in the instant case is also issued in exercise of SEBI's powers under section 11(4) of the SEBI Act, 1992 and, therefore, it would not be necessary to specify the exact nature of the proposed directions, the only test being the safeguarding the interest of investors in the securities market. The Hon'ble Supreme Court in the matter of *SEBI v. Pan Asia Advisors* (AIR 2015 SC 2782) has held as under:

*"Under Section 11(4)(a) and (b) apart from and without prejudice to the provisions contained in Sub-section (1), (2) (2A) and (3) as well as Section 11B, SEBI can by an order, for reasons to be recorded in writing, in the interest of investors of securities market either by way of interim measure or by way of a final order after an enquiry, suspend the trading of any security in any recognized stock exchange, restrain persons from accessing the securities market and prohibiting any person associated with securities market to buy, sell or deal in securities. On a careful reading of Section 11(4)(b), we find that the power invested with SEBI for passing such orders of restraint, the same can even be exercised against "any person". Under Section 11B, SEBI has been invested with powers in the interest of investors or orderly development of the securities market or to prevent the affairs of any intermediary or other persons referred to in Section 11 in themselves conducting in a manner detrimental to the interest of investors of securities market and also to secure proper management of any such intermediary or person. ... The paramount duty cast upon the Board, as stated earlier, is protection of interests of investors in securities and securities market. In exercise of its powers, it can pass orders of restraint to carry out the said purpose by restraining any person. Section 12A of the SEBI Act, 1992 creates a clear prohibition of manipulating and deceptive devices, insider trading and acquisition of securities. .... By virtue of such clear cut prohibition set out in Section 12A of the Act, in exercise of powers under Section 11 referred to above, as well as 11B of the SEBI Act, it must*

*be stated that the Board is fully empowered to pass appropriate orders to protect the interest of investors in securities and securities market and such orders can be passed by means of interim measure or final order as against all those specified in the above referred to provisions, as well as against any person."* (Emphasis supplied)

47. The vital importance of curbing manipulative practices in the securities market has been stressed upon by the Hon'ble Supreme Court while delivering its judgments in various matters. The Hon'ble Supreme Court in the matter of N. Narayanan v. SEBI [(2013) 12 SCC 152] held and observed as under:

***"A word of caution:***

*43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity."*

48. Considering the settled position of law set out in the aforementioned judgments pertaining to SEBI's powers to issue directions under section 11/11B of the SEBI Act, 1992 so as to take appropriate preventive and remedial measures to protect the interest of investors and interest of the securities market, irrespective of whether the exercise of such powers may have penal consequences, the contentions of the *Notices* against the disgorgement proposed in the SCN cannot hold ground, hence deserves to be rejected.
49. After having dealt with the preliminary objections raised by the *Notices* in the preceding paras, I now advert to deal with the replies and submissions of the *Notices* on merit of their respective individual submissions. I find that the three *Notices* in the instant proceedings have put forth their defenses mainly around the following points:
- (a) PSI(s) were not '*price sensitive information*',
  - (b) No UPSI existed at the time of the imputed trade,
  - (c) Due process was followed in respect of the relevant trades,

- (d) *Bona fide* rationale for undertaking the relevant trades,
- (e) Relevant trades contrary to the nature of price sensitive information held, and
- (f) Incorrect calculation of wrongful gains.

50. In my opinion, in order to determine as to whether the *Notices* in the instant case, have contravened the provisions of the PIT Regulations, 1992 while considering the submissions made by them covering the aforesaid points, the following issues need to be determined:

- (a) Whether during the relevant period the *Notices* were insider in terms of the provisions of the PIT Regulations, 1992?
- (b) If yes, whether the information available to the *Notices* was likely to materially affect the price of shares of NDTV, as envisaged in regulation 2(ha)(vii) of the PIT Regulations, 1992?
- (c) If yes, whether during the relevant period the *Notices* had traded in the shares of NDTV?
- (d) If yes, whether the *Notices* had traded in the shares of NDTV while in possession of unpublished price sensitive information in violation of provisions of the PIT Regulations, 1992?
- (e) If yes, whether the *Notices* had made any gain while trading in the shares of NDTV?

51. Thus, the primary and foremost question that needs to be ascertained is whether the three *Notices* were insider in terms of the provisions of the PIT Regulations, 1992. Regulation 2(e) of the PIT Regulations, 1992, defines “insider” as any person who is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information. Regulation 2(c) defines “connected person”, *inter alia*, to mean any person who occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company. In the instant case, it is a matter of record and a fact admitted by the *Notices* that they were employees of the *Company* holding senior positions of responsibilities during the relevant period. Mr. Vikramaditya Chandra (*Noticee No. 1*) was the Group Chief Executive Officer & Executive Director, Mr. Ishwari Prasad Bajpai (*Noticee No. 2*) was the Senior Advisor, Editorial and Projects and Mr. Saurav Banerjee (*Noticee No. 3*) was the Director Finance & Group Chief

Financial Officer in NDTV. Further, as per the SCN and as discussed in the beginning of this Order, these *Notices* had undeniably received or at least had access to the unpublished price sensitive information of the *Company*. Considering the foregoing, I do not have any iota of doubt that in terms of regulation 2(e) of the PIT Regulations, 1992, the *Notices* are ‘insider’.

52. Having held that all the three *Notices* were insiders, the next short question that arises for my determination is whether the unpublished information available to the *Notices* was price sensitive, i.e., was likely to materially affect the price of shares of NDTV, as envisaged in regulation 2(ha)(vii) of the PIT Regulations, 1992. For the purposes of easy reference, the definition of the term ‘price sensitive information’ prescribed under PIT Regulations is reproduced herein below:

“(ha) “price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

*Explanation.—The following shall be deemed to be price sensitive information:—*

- (i) periodical financial results of the company;*
- (ii) intended declaration of dividends (both interim and final);*
- (iii) issue of securities or buy-back of securities;*
- (iv) any major expansion plans or execution of new projects.*
- (v) amalgamation, mergers or takeovers;*
- (vi) disposal of the whole or substantial part of the undertaking;*
- (vii) and significant changes in policies, plans or operations of the company;”*

53. I note that the imputed information in the instant case (i.e., PSI -3 and PSI-6) respectively pertained to the *Company* (NDTV) signing an agreement with ComVentures VI, L.P, a venture capital fund, for investment of US\$ 20 million from ComVentures in NDTV Network Plc for funding of its non-news businesses, and evaluation of options for reorganisation of the *Company* with the objective of unlocking shareholders’ value and to promote focused growth of its various businesses. With respect to PSI-3, NDTV vide announcement dated March 12, 2007 informed the stock exchanges that “*NDTV has signed definitive agreements with Com Ventures V.I., L.P. for investment of USD 20 million in its subsidiary NDTV Networks Plc UK.*” The announcement made by NDTV regarding agreements with ComVentures for investment of USD 20 million was certainly a major business expansion plan of NDTV. As per regulation 2(ha) of the PIT Regulations, 1992, *any major expansion plans or execution of new projects shall be deemed to be “price sensitive information”*. Considering the foregoing, I am of the view that such an information regarding investment, if published was likely to materially affect the price of securities of the *Company*. For determining the UPSI period pertaining to PSI-3, the chronological events from the starting date of UPSI till the date of announcement were sought from NDTV. NDTV in its reply dated September 14, 2016



has, *inter alia*, has submitted the e-mail correspondences in relation to the chronology of events. Accordingly, the chronological events leading to crystallization of PSI-3 are tabulated below:

**Table No. 17: Chronological events leading to Crystallization of PSI-3**

S. No.	Date and time	Subject of the e-mail	Content of the e-mail in brief
1	22/11/2006 5:45	Fw Presentation and Draft Term Sheet	Confidentiality agreement between ComVentures and NDTV
2	22/11/2006 06:03	Re Presentation and Draft Term Sheet	Conversation with Keyur on NDA
3	24/11/2006 15:38	Re NDTV Networks Presentation (Version with More details)	Conversation with Keyur on public ranking of site
4	28/11/2006 08:05	Re Term Sheet	Draft term sheet
5	28/11/2006 10:57	Re FW Term Sheet	Points on term sheet
6	09/12/2006 10:42	ComVentures - Keyur Patel	Terms for closure of deal
7	12/12/2006 11:34	If ok with all can i mail this to Keyur	Terms for closure of deal
8	14/12/2006 08:03	Partnership with Comventures	Final terms sheet received for signature of Dr. Pranay Roy
9	28/12/2006 04:20	Re Comventures Term Sheet	Discussion on term sheet
10	07/01/2007 17:56	Keyur call	Points for conclusion of deal
11	19/01/2007 17:59	Comventures term sheet	Signed term sheet
12	28/02/2007 12:55	Update on comventures	Update
13	02/03/2007 09:10	Final term sheet	Meeting for signing of term sheet,
14	10/03/2007 06:47	Congratulations to You Guys	Congratulations for the efforts put in by the personnel
15	10/03/2007 21:08	Re Statutory release from NDTV Ltd	Announcement on stock exchange
16	12/03/2007 15:50	FYI Statutory announcement -	Link for intimation on exchanges

54. I note from the above that the discussions pertaining to agreements with ComVentures (PSI-3) had germinated on November 22, 2006 when the email regarding “*Presentation and Draft Term Sheet*” was circulated to the concerned persons in NDTV. Thereafter, the disclosure was made to the stock exchanges on March 12, 2007. I, therefore, find that the UPSI period for PSI-3 commenced from November 22, 2006 to March 11, 2007. I also note that the UPSI period pertaining to PSI-3 also covered the UPSI period pertaining to quarterly results for the quarter ended December 31, 2006, which were announced on January 17, 2007.

55. As regards PSI-6, the information filed by the *Company* with the Stock Exchanges clearly indicated that the proposed reorganisation could include de-merger/split of the *Company* into

news related businesses and investments in ‘*Beyond News*’ businesses which were at that point of time held through its subsidiary NDTV Networks Plc. As per regulation 2(ha) of the PIT Regulations, 1992, *significant changes in policies, plans or operations of the company shall be deemed to be “price sensitive information”*. Moreover, the stated objective of reorganisation of the *Company* was to unlock the shareholder value. Considering the foregoing, I am of the firm view that such an information regarding the proposed evaluation of options for reorganisation of NDTV, if published was likely to materially affect the price of securities of the *Company*. In terms of regulation 2(ha) of the PIT Regulations, 1992 the test to determine whether a particular information is price sensitive or not is that of “**likely material affect**” which means that such an information must be considered by an ordinary investor to be the one which may affect the price of the securities of a company, if published. The requirement cannot be couched with the actual movement in the price of the scrip and in reality such information may or may not have any such definite impact on the market price of the shares. Thus, while applying the said test, the aforesaid information pertaining to the proposed re-organization of business of NDTV deserves to be termed as price sensitive information. As per the records available before me, annexure 4 to the SCN entails various communications with regard to the proposed business reorganisation of the *Company*. It is noticed that the first credible communication with regard to the proposal for reorganisation of the *Company* had commenced on September 7, 2007 and the said information (PSI-6) culminated in filing of the said disclosure with the stock exchanges on April 16, 2008.

56. As per the copies of the e-mail correspondences provided by NDTV vide its reply dated October 12, 2015 and September 14, 2016, it is clearly discernible that the *Noticees* had access to or were party to the relevant PSI(s). The copies of emails forwarded by NDTV in this regard have not been disputed by the *Noticees*. It is also an admitted fact that these PSI(s) were later on disclosed on the exchange website as such by the *Company*. The fact that the PSI(s) were disclosed on the platform of the stock exchanges at the relevant time by the *Company* puts to rest all disputes and confirms that the concerned PSI(s) were price sensitive information in terms of the PIT Regulations, 1992.
57. The *Noticees* have argued that the disclosure of the aforesaid PSI(s) on stock exchanges had little or no effect on the price of the scrip. As observed above, the definition of ‘*price sensitive information*’ under the PIT Regulations, 1992 postulates that an information pertaining to a company can be termed as price sensitive, which if published is **likely** to materially affect the price of the securities of the company. It is, therefore, not necessary that an unpublished price sensitive information on being published would invariably cause only a positive price impact. It can have a negative impact as well, especially in the case of an information containing less than expected or dismal financial results of the company. Further there cannot be any thumb rule to predict with certainty that a positive or negative PSI, when published in public domain, would decidedly have positive or negative impact on the share price of a company as

market price of securities on any given day is also influenced by a host of internal, external including domestic & international factors beyond the realm of affairs or performance of a company. However, one can certainly presume that an insider would indulge in insider trading while in possession of an UPSI either for reaping profit or for avoidance of loss.

58. The aforesaid definition of '*price sensitive information*' under the PIT Regulations, 1992 also illustrates certain types of information which are deemed to be price sensitive. As mentioned, an event or information could also be held as price sensitive, which in ordinary sense is likely to be capable of materially affecting the prices of securities. Thus, it is the likelihood of material effect on the price of the securities of a company which clothes an information to be called "price sensitive". Consequently, if there was a likelihood of an information to have an impact on the price of the securities of a company, that likelihood itself is capable of characterizing the information a '*price sensitive information*' within the meaning of regulation 2(ha) of the PIT Regulations, 1992. Therefore, the said definition of '*price sensitive information*' does not pre-suppose any certainty about a price rise (or a price fall) to be triggered by such UPSI. Under the circumstances, an issue surrounding determination of a PSI requires examination of the facts of each case to decide as to whether such an event/information has the potential to affect the price or not. In the instant case, considering the undisputed fact that the two information in question (PSI-3 and PSI-6) pertained respectively to a proposal for business expansions with fresh capital investment and business reorganization of the *Company* with an intent to unlock value for the shareholders, the same undoubtedly amounted to a significant change in business policies, plans and operations of the *Company*. Hence, in my view, both the information were definitely containing material elements, which upon publication, were likely to impact the price of the scrip of NDTV.

59. I would also like to refer to the findings of the Ld. Tribunal in the matter of *V. K. Kaul vs SEBI* (*Supra*) whereby *inter alia*, it was held that the term price sensitive information used in regulation 2(ha) of the PIT Regulations, 1992 is wide enough to include information relating directly or indirectly to 'a company'. In view of the foregoing, I reject the contention of the *Noticees* and reiterate that the imputed PSI(s) were information material enough to have an impact on the share price of the *Company*.

60. As observed by me above, there are always a multitude of factors at play on given day which determine the prices of a stock, be it publishing of a price sensitive information or otherwise, sectorial performance, macro and micro economic policies, general trend in performance of the stock exchange, international trend, any relevant news, etc. In the instant case, the imputed PSI(s) were indicative of definite and tangible measures proposed by the *Company* towards changes in its business plan, policies and operation with a view to unlock shareholder value. Whether the said information containing such business plan, after being published by the company actually impacted the price of its securities or not, becomes irrelevant for the

determination of liability of insider trading. It is, therefore, justified to state that the aforesaid business plans of the *Company* were likely to have material impact on the price of the scrip. The contention of the *Notices* opposing the above noted information (PSI-3 and PSI-6) to be christened as price sensitive information is grossly misplaced considering the very fact that the *Company* itself has considered these information as '*price sensitive information*' and accordingly has disclosed them (treating them as PSI) to the stock exchanges. In view of the foregoing, whether the aforesaid business expansion and re-organisation plans, after being published by the *Company* actually affected the price of the securities or not becomes irrelevant for the determination of liability of insider trading on the part of the *Notices*.

61. Having decided that the imputed PSI(s) in the instant case were indeed '*price sensitive information*' in terms of regulation 2(ha) of the PIT Regulations, 1992, I now proceed to ascertain as to whether during the relevant period the *Notices* had traded in the shares of NDTV. In this regard, as per the SCN, the trading details of the three *Notices* are as under:

**Table No. 18: Trading activities of the *Notices* during Investigation Period**

Name	Trade Date	UPSI period pertaining to	Buy Quantity	Sell Quantity
Vikramaditya Chandra	19/02/2007	PSI-3	0	2500
	20/11/2007	PSI-6	0	3000
	23/01/2008	PSI-6	0	2000
	28/01/2008	PSI-6	0	1500
	11/02/2008	PSI-6	0	3000
	12/02/2008	PSI-6	0	3000
	10/03/2008	PSI-6	0	2000
	11/03/2008	PSI-6	0	1000
	17/03/2008	PSI-6	0	500
<b>Vikramaditya Chandra Total</b>			<b>0</b>	<b>18500</b>
<b>Ishwari Bajpai</b>	29/01/2007	PSI-3	0	<b>10000</b>
Saurav Banerjee	29/10/2007	PSI-6	0	500
	06/11/2007	PSI-6	0	200
	13/11/2007	PSI-6	0	1000
	14/11/2007	PSI-6	0	300
<b>Saurav Banerjee Total</b>			<b>0</b>	<b>2000</b>

62. It is a matter of record that none of the *Notices* has disputed his trading in the shares of NDTV during imputed period when the relevant PSI were not published and disclosed to the Stock Exchanges. Only the *Noticee No. 1* has disputed the quantity of shares traded by him as ascribed to him in Table No. 11 of the SCN for the purpose of computation of disgorgement proposed in the SCN. The *Noticee No. 1* has contended that Table No. 10 of the SCN ascribes to him having traded in 2500 shares of NDTV during PSI-3 whereas Table 11 attributes to him a trade of 5750 shares during the PSI-3. He has further contended that while calculating the wrongful gain at the Table 12 in the SCN, SEBI has erroneously taken 5750 shares as the sell quantity. Based on the aforesaid discrepancy in

the figures of sell quantity, the said *Noticee* has asserted that the SCN has alleged incorrect wrongful gain *qua* his trades.

63. I have perused the contention of the *Noticee No.1* and observe that the Table No. 10 of the SCN gives the trading details of the *Notices* (in both NSE and BSE) during the Investigation Period while the Table No. 11 of the SCN presents a summary of the imputed trades executed by the *Notices* during the relevant period and Table No. 12 provides the basis for calculation of wrongful gains allegedly made by the *Notices*. The discrepancy in the quantity of shares traded by the *Noticee No. 1* during the existence of PSI-3 has already been explained and clarified by me at para no. (9) of this order, where I have pointed out that the Table No. 10 of the SCN has apparently and inadvertently missed out mentioning about the trade of 3250 shares executed by the *Noticee No. 1* on February 9, 2007 as a result of which the quantity of total number of shares sold by the *Noticee No. 1* in the said table remains understated by 3250 shares. However, the Table No. 11 of the SCN which gives a summary of trades of the *Notices* during the UPSI period has correctly shown a sell of 5750 shares by *Noticee No. 1* during PSI-3 and sell of 16000 shares during PSI-6. In addition to the above, the details of all the trades executed by the *Notices* have been provided to the *Notices* as annexures to the SCN. Since it a matter of indelible record that the *Noticee No. 1* has indeed sold 3250 on February 9, 2007 which has not been included in the Table No. 10 of SCN by an unintended error, it cannot cause any prejudice to the said *Noticee*. In these circumstances, the insistence by the *Noticee No.1* to consider only 2500 shares as his sell quantity during PSI-3 for the purpose of computation of disgorgement is patently misleading and is an attempt to misguide the proceedings. Considering the foregoing, I do not find any merit in the contention of the *Noticee No. 1* with regard to his claim of wrongful data as far as sell quantity is concerned.

64. I also note that some of the *Notices* have contended that they had been trading in the shares of the *Company* in the ordinary course of business or their trades in the shares of the *Company* was too miniscule to attract the charge of insider trading. As discussed above, the *Notices* are insiders by virtue of being deemed to be connected person and having received or having had access to the unpublished price sensitive information of the *Company*. It is common knowledge that regulation 3 of the PIT Regulations, 1992 proscribes any trade by any insider. If a person is in possession of (or even is deemed to be in possession of) a price sensitive information, the scheme of the Regulations is such that it transposes such person to the category of insider and imposes fiduciary duty to abstain from making use of such information to his own benefit or benefit of persons connected to him either by trading in the shares of the *Company* or communicating /counselling / procuring such information to any person. If any such information is communicated, then the persons in receipt of such information is also prohibited from dealing in the relevant securities of the *Company* concerned. The scheme of the Regulations does not carve out any exception for any person who may be trading in the

ordinary course of business. In fact, possession of unpublished price sensitive information and trading while in possession of such information is prohibited by the Regulations irrespective of the profession of the concerned entity.

65. It is to be noted that the scheme of the PIT Regulations, 1992 imposes strict liability on the insiders for any trading done by them while in possession of the UPSI. Subsequently, the PIT Regulations of 2015 did provide certain exemptions for trading in the shares of a company by insider when in possession of UPSI as enumerated under regulation 4 of the PIT Regulations, 2015. However, those exemptions are not available to the insider trading which attracts application of the provisions of the PIT Regulations, 1992. Moreover, in the instant case, the pleas of exemptions sought by the *Notices* do not even fit into the scheme of exceptions contemplated under the PIT Regulations, 2015. I note that the *Noticee No. 1* has relied on the observations made by the Tribunal in the matter of *Rajiv B Gandhi* to justify his insider trades. I have gone through the submissions so advanced by him and am of the view that the *Noticee* has not been able to show any emergency situation that was beyond his control that compelled him trade in the shares of NDTV during the UPSI period so as to justify his indulgence in execution of those trades. His only argument was that he took a decision to trade in the shares of the *Company* as the market was very volatile, but on the contrary the said ground of market volatility can go on to strengthen the charges made in the SCN against him and question the urgency of his trading during that UPSI period when market according to him was very volatile, and perhaps was not the right time to trade in those shares during that period. Thus, the sense of acute urgency to deal in the shares of the *Company* during the UPSI period is grossly missing to render his trades worthy of considering as exceptional trades executed under compulsion or any duress. It would also be against the objective and purpose of the PIT Regulations even to justify indulgence in trades by insiders aimed at insulating from likely commercial loss. Further, the contention of some of the *Notices* that the quantity of trade is too miniscule to warrant any charge of insider trading is also misplaced and not a meritorious plea to be considered favorably. In this regard, I would like to rely on the findings of the Hon'ble SAT in the matter of *Harish K Vaid vs SEBI* (Appeal No. 63 of 2012 – date of decision October 3, 2012) wherein it was held,

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

66. Some of the *Notices* have raised an indefensible argument that due process was followed by them in respect of their relevant trades executed during the UPSI period. It has been pointed out to me that pre-clearance from the *Company* was also taken prior to executing those imputed trades. These *Notices* have also contended that there

was a *bona fide* rationale behind undertaking the imputed trades. In this regard, I note from NDTV letter dated October 12, 2015 that pre-clearance was given in case of the *Notices No. 1* and *2*, however, what was the rationale or basis for seeking such pre-clearance to the *Company* has not been brought to my knowledge by the concerned *Notices* nor by the *Company*. Further, I notice that even though as per the Code of Conduct of the *Company* pre-clearance was mandated only when the designated employees proposed to trade in a quantity of more than 5000 shares, for inexplicable reasons *Notices No. 1* and *2* have obtained pre-clearance for smaller quantities of trades which were far below the threshold limit under the Model Code of Conduct of the *Company*. It is also interesting to note that in case of each such trades the pre-clearance was obtained/given just a day prior to execution of such trades. The *Notices* being senior managerial personnel of the *Company* (Vikramaditya Chandra – Group CEO & Executive Director, Ishwari Prasad Bajpai – Senior Advisor, Editorial and Projects and Mr. Saurav Banerjee – Director Finance & Group CFO) it is highly unlikely that they required to sell shares acquired pursuant to ESOP within a short span of allotment unless, either they had some very specific information regarding affairs of the *Company*, or as the insiders the *Notices* met with some emergent situation that left with no option but to sell their shares, even while in possession of some information, which were not available to others. Be that as it may, as discussed above, the scheme of the PIT Regulations, 1992 strictly forbids any trade by an insider when in possession of UPSI. Considering the foregoing, I do not find any merit in these contentions of the *Notices*.

67. The evil of insider trading has been well recognized by our esteemed judicial authorities. The regulatory 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 – Date of decision December 16, 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.” (Emphasis Supplied)

68. Having established that the *Notices* had traded in the shares of NDTV when in possession of or having access to the relevant PSI(s), it now befalls upon me to calculate the wrongful gains made by these *Notices* through those imputed insider trades. I note from the SCN that the *Noticee No. 1* is alleged to have made wrongful gain of ₹667385.4/- on sale of total 21750 shares, the *Noticee No. 2* is alleged to have made a wrongful gain of ₹882779.8/- on the sale of 10000 shares, while the *Noticee No. 3* is found to have incurred a loss of ₹47000/- on sale of 2000 shares of NDTV. Accordingly, the *Notices No. 1* and 2 have been called upon to show cause as to why directions for disgorgement of illegal gains be not issued against them. The total wrongful gains made by them have been calculated in the SCN as follows:

**Table No. 19: Total wrongful gains made by the *Notices* as calculated in the SCN**

Name	UPSI period pertaining to	Sell Quantity	Average Sell Price (₹) based on actuals	Opening Price on UPSI period starting day at NSE (₹)	Wrongful gain (₹) @
		A	B	C	D = A x (B - C)
Vikramaditya Chandra	PSI-3	5750	328.49	242.00	497,298.85
	PSI-6	16000	395.63	385.00	170,086.55
<b>Vikramaditya Chandra Total</b>		<b>21750</b>	<b>-</b>	<b>-</b>	<b>667385.40</b>
Ishwari Bajpai	PSI-3	10000	330.28	242.00	882,779.80
<b>Ishwari Bajpai Total</b>		<b>10000</b>	<b>-</b>	<b>-</b>	<b>882,779.80</b>
Banerjee Saurav	PSI-6	2000	361.50	385.00	(47,000.00)
<b>Banerjee Saurav Total</b>		<b>2000</b>	<b>361.50</b>		<b>(47,000.00)</b>

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

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

69. I note that the *Notices* have disputed the disgorgement amount on the basis of – (a) wrong sell quantities; (b) wrong calculation of average sell price; and (c) adoption of wrong methodology. I find that it is only *Noticee No. 1* who has complained about adoption of wrong sell quantity and wrong determination of average sell price. I have already discussed in the earlier parts of this Order as to how, in the case of the *Noticee No. 1* the sell quantity relevant for PSI-3 was correctly taken as 5750 shares hence, the same point does not require any further elucidation here. As regards the contention of the *Noticee* about wrong calculation of average sell price, I have verified the calculation from the records and do not find merit in the said contention of the *Noticee No. 1*. For the purpose of elucidation, the average sell price of the said *Noticee* has been calculated as under:



**Table No. 20: Calculation of average sale price for the *Noticee No. 1***

Name	Trade Date	UPSI period pertaining to	Buy Quantity	Sell Quantity	Sell Value (₹)	Average Sell Price (₹)
Vikramaditya Chandra	08/02/2007	PSI-3	0	3250	1063343.85	327.18
	19/02/2007	PSI-3	0	2500	825455	330.18
	20/11/2007	PSI-6	0	3000	1143913.55	381.3
	23/01/2008	PSI-6	0	2000	819695	409.85
	28/01/2008	PSI-6	0	1500	610562.8	407.04
	11/02/2008	PSI-6	0	3000	1227101.35	409.03
	12/02/2008	PSI-6	0	3000	1182538.65	394.17
	10/03/2008	PSI-6	0	2000	764530.7	382.27
	11/03/2008	PSI-6	0	1000	391744.5	391.74
	17/03/2008	PSI-6	0	500	190000	380
<b>Vikramaditya Chandra Total</b>			0	<b>21750</b>		

70. The third contention which is common to the *Noticees 1* and 2 is with regard to adoption of inappropriate methodology for calculation of wrongful gain in the SCN. In this regard, these *Noticees* have relied upon the calculation methodology adopted by SEBI in the matter of Deep Industries Ltd. I have perused the said SEBI order and the methodology adopted therein. However, I find that the facts of the said case which necessitated adoption of a particular methodology for computation of wrongful gains are different from the facts involving the trading by the *Noticees* in the instant case. In the matter of Deep Industries Ltd., the noticees therein had purchased shares during the UPSI period while in possession of UPSI and continued to hold those shares till the relevant UPSI was made public. Therefore, in order to calculate the notional wrongful gain, closing price of the scrip on the day when the UPSI was made public was taken into consideration in the case of Deep Industries proceedings by SEBI. However, contrary to the case of Deep Industries, the allegation in the instant case pertains to selling of shares during the UPSI period. Therefore, for calculation of the wrongful gains, if any, either the actual price at which such shares were acquired by the *Noticees* must be made available to SEBI or the opening price at the start of UPSI period needs to be considered. In the instant case, it is a matter of record that the shares under considered which were sold during the UPSI period, were acquired by the *Noticees* pursuant to allotment under ESOPs. It is a common knowledge that shares are issued under ESOP either at a discount or for free of cost depending on the ESOP policy of a company hence, the acquisition price of shares of a company allotted under ESOP cannot be compared to the prevalent market price of the shares of the said company. Further, illegal gain is nothing but the difference between selling price and buying price of a share. In the present matter, it is clear that the shares sold were acquired under ESOP hence, the *Noticee No. 3*, while raising his finger at the error in calculations of amount proposed to be disgorged, should have furnished the actual price incurred if any, by him towards the allotment of shares under ESOP if he wanted to avoid adoption of any notional purchase value which according to him, was erroneously adopted in the SCN for calculation of wrongful gains. Considering the foregoing observations, I find that the methodology for calculation of wrongful gain as adopted in the matter of Deep Industries Ltd. will not have any relevance to the facts of the instant case, hence I do not find any merit in the contention of the *Noticees 1* and 2 and do not wish to interfere with the methodology adopted

in the SCN. In view of the foregoing, the calculation of wrongful gain accrued to the *Notices* No. 1 and 2 following the method as adopted in the SCN, are as under:

**Table No. 21: Calculation of wrongful gain accrued to the *Notices* No. 1 and 2**

Name	UPSI period pertaining to	Sell Quantity	Average Sell Price (₹) based on actuals	Opening Price on UPSI period starting day at NSE (₹)	Wrongful gain (₹) @
		A	B	C	D = A x (B - C)
Vikramaditya Chandra	PSI-3	5750	328.68	242.00	498410
	PSI-6	16000	394.43	385.00	150880
<b>Vikramaditya Chandra Total</b>		<b>21750</b>	<b>-</b>	<b>-</b>	<b>667385.4</b>
Ishwari Bajpai	PSI-3	10000	330.28	242.00	882,779.80
<b>Ishwari Bajpai Total</b>		<b>10000</b>	<b>-</b>	<b>-</b>	<b>882779.80</b>

71. Another vehement assertion made by the *Notices* that a charge of ‘insider trading’ has to be established by higher degree of probability and necessarily based on clinching and reasonable evidence which is absent in this case, is devoid of any merit. The irrefutable fact that the *Notices* were closely connected to the *Company* is a matter of record. The record also bears the extent of their association or connection with the *Company*. The copies of email correspondences (marked to the *Notices* by the *Company*) pertaining to the PSI and the copy of NDTV letter dated October 12, 2015 addressed to SEBI which has been furnished to the *Notices*, substantiate the fact that the *Notices* were privy to communications pertaining to germination and crystallization of the relevant PSI(s). The *Notices* have not challenged the veracity of any of these communications. Thus, the imputed PSI(s) were price sensitive, is also borne out of various communications of the *Company* with the stock exchanges as well as with SEBI which have also been furnished to the *Notices* as annexure to the SCN. Given these facts, I cannot persuade myself about any merit in the contention of the *Notices*. In the matter of *V. K. Kaul vs SEBI (Supra)*, the Hon’ble Tribunal held as under:

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

*“It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a*

*criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.”*

72. Without prejudice to the foregoing, the instant case has all the ingredients to establish the charge of insider trading against the *Notices* herein, such as; the *Notices* were insiders of the *Company* during the relevant period, the *Notices* had received or has had access to the relevant PSI(s) and these *Notices* had actually traded in the shares of the *Company* while in possession of the unpublished price sensitive information during the UPSI period. All these elements have been found out based on the facts of the case as have been presented by the *Company* itself. In my view, the *Notices* cannot turn their back to these facts while harping on a ludicrous proposition that the charge of ‘insider trading’ needs to be established by higher degree of probability and that clinching and reasonable evidence is absent in this case. In view of the foregoing, such contention of the *Notices* being grossly unfounded on facts have to be rejected. it is worthy of iteration here the findings of the Ld. Tribunal in the matter of *E. Sudhir Reddy vs. SEBI* (Appeal no. 138 of 2011 decided on December 16, 2011) as under:

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

73. Having concluded that the *Notices* were insiders and had traded in the shares of NDTV during the UPSI period, I find that the *Notices* by dealing in securities of NDTV when in possession of unpublished price sensitive information, have violated section 12A (d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992 and regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

74. It is trite law that the corporate insiders stand in a fiduciary relationship with the shareholders of the company concerned. The insiders invariably have access to the unpublished price sensitive information by virtue of their position in the corporate hierarchy or on account of their official duties. This access creates an information asymmetry between those having access to such information and the multitude of shareholders/investors who have no access to such information. The protection of investors in the securities market requires that there should not be any information asymmetry between these two classes of stakeholders. The PIT Regulations, 1992, are aimed at addressing the information asymmetry. It prohibits trading in

the shares of the company by the insiders while in possession of UPSI. It also requires the listed companies to draw up a code of conduct so that any trading by the insiders remains above board. Such regulation of trades of the insider is necessary to protect the interest of investors in the securities market and also for regulation and development of the market. If insider trading is not contained, prohibited and dealt with firmly, it would hamper and jeopardize the interest of a normal shareholder. Typically, insider traders get an unfair advantage over people with whom they engage in securities transactions and such trades executed by the insiders are, therefore, wrong on grounds of justice and equity and therefore, the law proscribes trading of any kind/nature by such insider, except as recognized or exempted under the law.

75. The insider information is available to the insiders on account of their important corporate hierarchical position. Any fiduciary holds a position in trust for others. If persons like the *Notices*, who are obligated to observe fiduciary duties while exercising their powers fail to do so and instead use their position to their own advantage pecuniary or otherwise, it constitutes a fraud perpetrated on the common shareholders whose trust reposed in them has been blatantly breached. It is, therefore, of paramount importance that trading by the insiders is monitored and regulated, especially when they are in possession of UPSI. Wherever such trading results in accrual of unlawful gain, such insiders are required to forgo such gains. It would also amount to defeating the objects of law, in case insiders are exonerated merely for the reason that trades executed by them are in smaller quantities and/or executed with permissions of the company which owes a statutory obligation to prevent insiders from trading while in possession of UPSI. Moreover, looking at the pattern of trades executed by the *Notices*, especially, the *Noticee No. 1* who has sold quite frequently in smaller quantities during the existence of the UPSI in a very habitual manner while in possession of UPSI, if such trades are considered for exoneration merely because such trades have been executed with pre-clearance from the *Company* it would not only amount to granting a legitimacy to such trading pattern adopted by an insider apparently with a clever intention to circumvent the restrictions imposed by the PIT Regulations, 1992 on an insider.

76. Considering the foregoing discussions, it now falls upon me to decide the following two issues:

- (a) Direction to disgorge an amount equivalent to the wrongful gains made on account of insider trading in the scrip of NDTV along with interest thereon;
- (b) Direction to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

77. I note from the SCN and have already discussed above that the *Notices 1* and *2* have made a wrongful gain by trading in the shares of the *Company* while in possession of UPSI in contravention of the PIT Regulations, 1992 and the provisions of the SEBI Act, 1992. For the

reasons enumerated above and in order to protect the interest of investors and the integrity of the securities market, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with section 11, 11(4) and 11B of the SEBI Act, 1992 hereby issue following directions:

- (a) The *Noticee No. 1* shall disgorge the amount of wrongful gain of ₹667385/- as computed in the show cause notice, alongwith interest at the rate of 6% per annum from April 17, 2008 till the date of actual payment of disgorgement amount alongwith interest, within 45 days from the date of coming into force of this order;
- (b) The *Noticee No. 2* shall disgorge the amount of wrongful gain of ₹882780/- as computed in the show cause notice, alongwith interest at the rate of 6% per annum from March 12, 2007 till the date of actual payment of disgorgement amount alongwith interest, within 45 days from the date of coming into force of this order;
- (c) All the *Noticees* herein, i.e., *Noticee No. 1*, *Noticee No. 2* and *Noticee No. 3* shall be restrained from accessing the securities market and are hereby further prohibited 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 1 year.

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

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

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

Sd/-

**DATE: NOVEMBER 27, 2020**

**PLACE: MUMBAI**

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