

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/9666]

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

In respect of:

Mr. Amit Ramesh Sawhney

(PAN: AQAPS5172R)

In the matter of Dewan Housing Finance Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation in to the trading in the scrip of Dewan Housing Finance Limited (**‘DHFL’/‘Company’**) for the period January 15, 2019 to January 29, 2019 (hereinafter referred to as **‘Investigation Period’/‘IP’**). DHFL is a housing finance company which deals in providing easy access to affordable housing finance to individuals, cooperative societies, corporate bodies etc. and leasing of commercial and residential premises. The Company is listed on the Bombay Stock Exchange Ltd. (BSE) as well as the National Stock Exchange of India Ltd. (NSE). As per BSE website, the registered office of the company is "Warden House, 2nd Floor, Sir P M Road, Fort, Mumbai-400001.
 2. It was observed that an online investigative journal by the name of Cobrapost.com (hereinafter referred to as **‘Cobrapost’**), on January 26, 2019, tweeted regarding a
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press conference on "The Anatomy of India's Biggest Financial Scam" to be scheduled at 3:00 PM on January 29, 2019. However, the name of the company was not announced. Further in this regard, on January 29, 2019, Cobrapost sent an email around 08:27AM to DHFL at their designated email id with a set of 64 questions and asked them to reply before 3PM on the same day. Thereafter, around 10:33 AM on January 29, 2019, Cobrapost sent a reminder email to DHFL with a copy to Kapil Wadhawan, Managing Director of DHFL and Niti Arya, Company Secretary of DHFL. Thereafter, on January 29, 2019 during market hours around 3 PM, Cobrapost conducted a press conference. During the said press conference, Cobrapost alleged that DHFL had siphoned off Rs.31,000 crores into promoter companies to create private wealth through a network of shell companies. The said allegation, being serious in nature, was a price sensitive information which led to fall in the price of the scrip by 8.22% on January 29, 2019.

3. Based on investigation, it was alleged that Mr. Amit Ramesh Sawhney (hereinafter referred to as '**Noticee**') was a "connected person" in terms of Regulation 2(1)(d)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') and he was reasonably expected to have access to the UPSI and hence an "insider" as per Regulation 2(1)(g)(i) of PIT Regulations. It was observed that the Noticee had sold his entire holding in DHFL i.e. 12,497 shares on NSE for a total sell value of Rs. 21,48,457.20 during 13:13 PM to 13:14 PM on January 29, 2019, i.e. prior to press conference of Cobrapost. In view of the above, it was alleged that the Noticee, being an insider, traded in the scrip of DHFL during the period of Unpublished Price Sensitive Information (UPSI) and, thus, violated the provisions of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide Communiqué dated December 19, 2019 under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), read with Rule 3 of the SEBI

(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Rules**”) to inquire into and adjudge under Section 15G of SEBI Act, 1992 the alleged violation of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of PIT Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice No. SEBI/HO/EAD-8/KS/VC/10773/2020 dated June 05, 2020 (hereinafter referred to as “**SCN**”) was issued to the Noticee under Rule 4 of the Rules to show-cause as to why an inquiry should not be initiated against the Noticee and penalty be not imposed upon him under Section 15G of SEBI Act for the alleged violation of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of PIT Regulations as specified in the said SCN. The main allegations in the SCN issued to the Noticee are as follows –

- i. It is observed from the Annual Report of DHFL for the Financial Year 2018-19 that the following persons were holding the position of directors during the investigation period:

Table 1

S. No.	Name of the Director	Designation	Appointment Date	Cessation Date
1.	Kapil Wadhawan	Managing Director	04/10/2010	-
2.	Dheeraj Wadhawan	Director	12/05/2008	-
3.	Vijay Kumar Chopra	Director	12/05/2008	-
4.	Harshil Rajnikant Mehta	Director	01/09/2017	-
5.	Guru Prasad Kohli	Director	23/05/2001	-
6.	Venugopal Mannil	Director	25/02/2013	-

Hereinafter Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan are being referred to as ‘**Wadhawan Brothers**’ in the SCN.

- ii. It is observed that an online investigative journal by the name of Cobrapost.com (hereinafter referred to as ‘**Cobrapost**’), on January 26, 2019, tweeted regarding a press conference on "The Anatomy of India's Biggest

Financial Scam" to be scheduled at 3:00 PM on January 29, 2019. However, the name of the company was not announced.

- iii. Thereafter, on January 29, 2019 during market hours around 3 PM, Cobrapost conducted a press conference. During the said press conference, Cobrapost alleged that DHFL had siphoned off Rs.31,000 crores into promoter companies to create private wealth through a network of shell companies. The said allegation, being serious in nature, was a price sensitive information which led to fall in the price of the scrip by 8.22% on January 29, 2019.
- iv. Since the allegations made by Cobrapost were price sensitive, NSE conducted a preliminary analysis in the scrip of DHFL to identify entities, if any, whose trading pattern pointed trading on the basis of unpublished information on January 29, 2019. NSE forwarded the report to SEBI.
- v. In this regard, it was observed by SEBI that the said Price Sensitive Information (**PSI**) had emanated from actions of an outside entity viz. Cobrapost and not by any action of DHFL. Accordingly, SEBI enquired with Cobrapost regarding the details of the press conference including the chronology of the events in relation to the press conference dated January 29, 2019 wherein the PSI was made public. Vide letter dated May 13, 2019 (**Annexure 2**), Cobrapost submitted a chronology of events in relations to the said press conference which reads as follows:

Table 2

Date	Event
23/01/2019	Banner upload on Website and facebook COMING SOON "THE ANATOMY OF INDIA'S BIGGEST FINANCIAL SCAM"
24/01/2019	Conference Hall booked for press conference on 29/01/2019 at Press Club of India, New Delhi
26/01/2019	Invitation uploaded on twitter for Press Conference on 29/01/2019
29/01/2019	Booking of projector for press conference

- vi. Thereafter, on January 29, 2019, Cobrapost sent an email around 08:27AM to DHFL at their designated email id nodalofficer@dhfl.com with a set of 64 questions and asked them to reply before 3PM on the same day (details given in **Annexure 2**). In the said email, Cobrapost also mentioned that they were going to break a story which would show that DHFL's promoters Kapil Wadhawan, Aruna Wadhawan and Dheeraj Wadhawan, along with their associates, had been responsible for a scam of around Rs. 31,000 crore. Cobrapost also enclosed the story in the email which they were proposing to release to the public at 3PM on the same day.
- vii. Thereafter, around 10:33 AM on January 29, 2019, Cobrapost sent a reminder email to DHFL with a copy to Kapil Wadhawan, Managing Director of DHFL and Niti Arya, Company Secretary of DHFL. Accordingly, around 2:32 PM, DHFL sent its reply to Cobrapost (**Annexure 3**). In its reply, DHFL stated that *"We received your captioned email at 8:27 AM today, with a follow up reminder one hour later, seeking answers on 64 detailed questions containing not only false but also wholly unjustified innuendos and allegations."*
- Around 3 PM on January 29, 2019, Cobrapost, during a press conference, alleged DHFL had siphoned off Rs.31,000 crores into promoter companies to create private wealth through a network of shell companies.
- viii. In light of this, as the information regarding the allegation of scam of Rs. 31,000 crores by the promoters of DHFL was disseminated during the press conference dated January 29, 2019 at 03.00 PM by Cobrapost, it is alleged that the said information had materially affected the price of DHFL and, therefore, was an unpublished price sensitive information (**UPSI**) as per Regulation 2(1)(n) of PIT Regulations. In this regard, it is noted from letter dated May 13, 2019 of Cobrapost to SEBI (**Annexure 2**) and Email dated May 27, 2019 of DHFL to SEBI (**Annexure 4**) that the UPSI was shared with DHFL for the first time on January 29, 2019. Therefore, it is alleged that the said UPSI came into existence for the directors/key managerial persons of DHFL
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on January 29, 2019. Thereafter the UPSI became public at 03.00 PM on January 29, 2019. Thereafter, SEBI sought information from DHFL with respect to the details of all persons including promoters/directors/employees and/or any other person(s) who were having access to and/or in possession of the information pertaining to the email sent by Cobrapost dated January 29, 2019.

- ix. It is noted from the Email of DHFL dated May 27, 2019 to SEBI (**Annexure 4**) that the following persons were having access to and/or in possession of the UPSI:

Table 3

S.No.	PAN	Name	Designation
1.	AAOPW6145L	Kapil wadhwan	CMD
2.	AAGPM7486E	Harshil Mehta	Joint MD & CEO
3.	AHDPD9627P	Santosh Nair	Chief Business Officer
4.	AVPPK6847D	Vivek Kan nan	Chief Operating Officer
5.	AHTPS6176R	Govindan Srinivasan	Senior VP and EA to Chairman
6.	AALPS6811L	Santosh Sharma	Chief Financial Officer
7.	AGTPA6598C	Niti Arya	Company Secretary
8.	AFEPG7561H	Sanjiv Gyani	Vice President - Operations
9.	AMOPS1835M	Ancy Dmello	Head- Customer Service
10.	AAIPS4776K	Pradeep A. Sawant	Executive Vice President, Legal
11.	AHSPD3298A	Ms. Shakuntala Devnani	Executive Secretary, CMD

In this regard, it is observed that Shakuntala M Devnani is the executive secretary of Kapil Wadhawan, who was the Chairman & Managing Director of DHFL during the investigation period. As submitted by Shakuntala Devnani during the course of recording of statement on August 20, 2019, she had access to the email id kapil.wadhawan@dhfl.com (Email Id of Kapil Wadhawan). She has also submitted that she had access to the aforesaid email id even when she was outside office (**Annexure 5**).

- x. It is observed that the Noticee, vide his Email dated July 04, 2019 (**Annexure 6**), has stated that "*I was never related/associated/connected in any capacity whatsoever with DHFL or its KMPs or Directors.*" and "*one of the promoters*

of DHFL i.e. Mr. Dheeraj Wadhawan is my acquaintance". Further, it is also noted that the Noticee, during statement recording with SEBI on August 13, 2019 (**Annexure 7**), made the following submissions:

- During year 2009-10, he was working as a Vice President, Sales at R K W Developer Pvt. Ltd. for around 1 month where Wadhawan Brothers were directors.
- After that, he started as a freelancer consultant in real estate.
- He had known Mr. Dheeraj Wadhawan, promoter & Director, DHFL, Mr. Kapil Wadhawan, promoter & CMD of DHFL, and Mrs. Aruna Wadhawan, promoter of DHFL (hereinafter collectively referred to as '**Promoters of DHFL**'), through real estate business and he has been in frequent communication with Dheeraj Wadhawan only.
- For funding of projects of other developers, he sometimes talk to Govindan Srinivasan, Senior VP and EA to CMD.
- He had known Kapil Wadhawan and Aruna Wadhawan through Dheeraj Wadhawan and had both professional and personal relations with the Promoters of DHFL.

- xi. It is noted from the Call Data Records (**CDR**) for the period August 01, 2018 to January 31, 2019 of mobile no. 9821809525(Vodafone), which belongs to the Noticee, (**Annexure 8**) it is observed that he was in frequent communication with promoters of DHFL. There were frequent calls (to and fro) between the promoters of the DHFL and the Noticee. In this regard, a summary of the calls between the Noticee and promoters of DHFL for the period August 01, 2018 to January 31, 2019 is given below:

Table 4

Name of the promoter of DHFL	No. of calls	Numbers
Kapil Wadhwan	4	9819600999
Aruna Wadhwan	22	2266006902
Dheeraj wadhawan	236	2266369185, 9820621000, 9967002944

- xii. It was also observed from the CDR that the Noticee was also in constant touch with the employees of DHFL, who were directly reporting to Mr. Kapil Wadhawan, CMD of DHFL and were having access to price sensitive information. Summary of the calls during the period August 01, 2018 to January 31, 2019 (6 months) is given below:

Table 5

Name of the employee of DHFL	Designation	No. of calls
S. Govindan	Senior VP and EA to Chairman	26
Shakuntala Devnani	Executive Secretary to Chairman	67

- xiii. It is also noted that there were 5 calls (to and fro) between Shakuntala Devnani and the Noticee on January 29, 2019, out of which 3 calls were made before 3 PM on the same day. In this regard, the Noticee, during the course of statement recording dated August 13, 2019, submitted that Shakuntala Devnani generally calls on behalf of Mr. Dheeraj Wadhawan, Promoter & Director of DHFL.
- xiv. Further, during statement recording on August 20, 2019 (**Annexure 5**), Shakuntala Devnani submitted that she was not in office on January 29, 2019 as she had left for Goa on January 26, 2019 and returned on February 02, 2019. Further, Shakuntala Devnani stated that "*generally, Mr. Kapil Wadhawan or Mr. Dheeraj Wadhawan ask me to call Amit Ramesh Sawhney for their own work*". As regards the calls made to and from on January 29, 2019, Shakuntala Devnani stated that she wasn't able to recall exactly. However, she stated that the Noticee might have called her to find out about Mr. Kapil Wadhawan.
- xv. In this regard, Kapil Wadhawan vide email dated October 3, 2019 stated that he was unable to recollect whether he had any conversation with the Noticee on January 29, 2019 (**Annexure 9**).

- xvi. Further, it is noted from the details of directorship of the Noticee, Kapil Wadhawan and Dheeraj Wadhawan, as obtained from the website of Ministry of Corporate Affairs (**MCA**), that there were instances when Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan had taken over the directorship of companies as and when the Noticee left directorship in those companies (**Annexure 10**). The instances are given below:

Table 6

Company Name: LIMONIUM REALTORS PRIVATE LIMITED			
DIN No.	Name	Date of Appointment	Date of Cessation
2622339	Amit Ramesh Sawhney	31 October 2013	30 January 2014
28528	Kapil Wadhawan	30 January 2014	04 July 2014
96026	Dheeraj Rajeshkumar Wadhawan	30 January 2014	14 November 2014

Table 7

Company Name: SHISHIR REALTY PRIVATE LIMITED			
DIN No.	Name	Date of Appointment	Date of Cessation
2622339	Amit Ramesh Sawhney	31 March 2010	04 August 2010
28528	Kapil Wadhawan	04 August 2010	25 July 2011
96026	Dheeraj Rajeshkumar Wadhawan	04 August 2010	23 October 2013

In view of the above pattern of substitution of directorships in companies between the Noticee and Wadhawan brothers, it is alleged that the Noticee shared a close relationship with the Wadhawan Brothers.

- xvii. From further analysis of the directorship of the Noticee in various companies, it is observed from the Memorandum of Association of the following companies mentioned in table no. 8 that the Noticee was an initial subscriber and director in the companies mentioned below. In this regard, the email id of the Noticee submitted at the time of registration of these companies is fredrick.pinto@whpl.co.in.

Table 8

Name of the company	Date of appointment as director	Date of cessation as director
Revolution Realty Private Limited	29-03-2011	10-12-2014
Lookout Realty Private Limited	29-03-2011	10-11-2017
Soberano Trading Private Limited	21-02-2014	10-12-2014

Serenity Media Private Limited	15-03-2014	10-12-2014
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Further, the email id of the other initial subscriber viz. Mr. Sunny Suresh Bathija in all the above companies as mentioned in the above table is also fredrick.pinto@whpl.co.in.

In this regard, it is noted that the domain of email id fredrick.pinto@whpl.co.in is whpl.co.in which belongs to Wadhawan Holdings Private Limited (**WHPL**). It is noted that one of the initial subscribers of WHPL was Kapil Wadhawan. Thereafter, Dheeraj Wadhawan also became a director in WHPL from December 10, 2007. It is also noted that both the Wadhawan Brothers were directors of WHPL till March 16, 2015.

- xviii. It was also observed that in some companies where the Noticee was a director, the initial subscribers (as per Memorandum of Association- **Annexure 11**) were directly/indirectly related to DHFL on the basis of contact numbers and email ids which were submitted by these initial subscribers at the times of registration of these companies. The details of the initial subscribers along with the email ids and contact numbers are given below:

Table 9

Company Name	Details of Initial Subscriber		
	Name	Phone No.	Email ID
Hemisphere Infrastructure India Pvt. Ltd.	Krishna Kumar Ponniah	26583333	pkumar@dhfl.com
Victor Infratech Pvt. Ltd.	Krishna Kumar Ponniah	26583333	pkumar@dhfl.com
Outlook Landmark Pvt. Ltd.	Mahesh Tahilram Menghrajani	-	jitendra.kadam@whpl.co.in
	Sunny Suresh Bathija		
Panorama Land Pvt. Ltd.	Mahesh Tahilram Menghrajani	-	jitendra.kadam@whpl.co.in
	Sunny Suresh Bathija		fredrick.pinto@whpl.co.in

Period of directorship of Noticee in the above companies are given below:

Table 10

Name of the Company	Date of Appointment	Date of Cessation
Hemisphere Infrastructure India Pvt. Ltd.	25-07-2011	14-03-2018
Victor Infratech Pvt. Ltd.	01-01-2010	28-09-2010
Outlook Landmark Pvt. Ltd.	01-12-2010	10-11-2017
Panorama Landmark Pvt. Ltd.	01-12-2010	10-11-2017

- xix. It is observed from Memorandum of Association of Hemisphere Infrastructure India Pvt. Ltd. (**Hemisphere**) that its initial subscribers were Krishna Kumar Ponniah and Balakrishna Madhur. The contact number (022-26583333) submitted by both initial subscribers at the time of registration of Hemisphere belongs to DHFL. Further, the email id of Krishna Kumar Ponniah given at the time of registration of Hemisphere was pkkumar@dhfl.com which contains domain name of DHFL. The Memorandum of Association of Hemisphere is attached at **Annexure 11**.
- xx. Similarly, as per the Memorandum of Association of Victor Infratech Pvt. Ltd. (**Annexure 11**), Krishna Kumar Ponniah was one of the initial subscribers and it is observed that the same aforesaid email id and telephone number of Mr. Krishna Kumar Ponniah, as mentioned in the previous paragraph, was given at the time of registration of Victor Infratech Pvt. Ltd.
- xxi. Further, the initial subscribers of Outlook Landmark Pvt. Ltd. and Panorama Landmark Pvt. Ltd. were Mahesh Tahilram Menghrajani and Sunny Suresh Bathija respectively. The email ids of these initial subscribers at the time of registration of these two companies were jitendra.kadam@whpl.co.in and fredrick.pinto@whpl.co.in respectively, both of which contain the domain name "whpl".
- xxii. It is also observed from the bank statement of Axis Bank Account No. 028010200017693 of Hemisphere (**Annexure 12**) that during the directorship

of the Noticee in Hemisphere, DHFL had made two fund transfers to Hemisphere as given below:

Table 11

Date of transaction	Amount (Rs.)	Debit/Credit
27/07/2017	32153334.00	credit
01/11/2017	32153334.00	credit

- xxiii. In view of the details mentioned above, it is alleged that the Noticee was in constant touch and had frequent communication with Promoters of DHFL as well as the Key Managerial persons of DHFL, who were in possession of UPSI. The Noticee was allegedly in professional and personal relationship with the Promoters/directors of DHFL. Further, as per the pattern of substitution of directorships in companies between him and Wadhawan brothers, it is alleged that the Noticee was having a close relationship with Wadhawan Brothers.
- xxiv. Further, it is also alleged that the Noticee was initial subscriber and director in various companies where he/other initial subscribers/directors have domain IDs/telephone numbers of DHFL/associate company.
- xxv. Therefore, in view of the above, it is alleged that the Noticee is a “connected person” in terms of Regulation 2(1)(d)(i) of PIT Regulations and he was reasonably expected to have access to the UPSI and hence an “insider” as per Regulation 2(1)(g)(i) of PIT Regulations.
- xxvi. It is noted that the Noticee was holding 12,497 shares of DHFL as on the End of Day, January 28, 2019. He sold his entire holding of 12,497 shares of DHFL on January 29, 2019, prior to the press conference of Cobrapost. It is also observed that the Noticee had not traded on BSE during the UPSI period. He had traded only in cash segment of NSE (**Annexure 13**), the details are given below:

Table 12

Date	Sell Qty	Wt. Avg Sell Price (in Rs.)	Total Sell Value (Rs.)
29/01/2019	12497	171.92	21,48,457.20

xxvii. Upon inquiry, the Noticee, vide emails dated July 04, 2019 (**Annexure 6**), July 29, 2019 (**Annexure 14**) and August 26, 2019 (**Annexure 15**), has, *inter-alia*, made the following submissions:

- In the month of January 2019, the NBFCs in the market were in crisis because of IL&FS issue and the market sentiments towards stocks were negative. The price of DHFL shares had fallen by almost 15% between 1st January, 2019 and 25th January, 2019. Further, between 25th January 2019 and 28th January 2019, the share price fell by 11% (approx.). *"In view thereof and in order to cut my losses, I decided to sell the shares on 29th January 2019"*.
- Vide letter dated July 04, 2019 the Noticee contended that he was never related/associated/connected in any capacity whatsoever with DHFL or its KMPs or Directors. However, one of the promoters of DHFL i.e. Mr. Dheeraj Wadhawan is his acquaintance.

xxviii. However, it is observed that the Noticee had sold his entire holding in DHFL i.e. 12497 shares on January 29, 2019, prior to press conference of Cobrapost. Prior to January 29, 2019, the last trade executed by the Noticee in the scrip of DHFL was on November 29, 2018 where the Noticee had purchased 2000 shares. Thereafter, he did not trade in the scrip of DHFL for at least three months after January 29, 2019.

xxix. Further, from the trade details of the Noticee, it is observed that the Noticee had 100% concentration in the scrip of DHFL during the UPSI period and sold his entire holding in DHFL i.e. 12497 shares during 13:13 PM to 13:14 PM on January 29, 2019 i.e. prior to the press conference of Cobrapost and thus avoided loss. Further, the Noticee has not traded in any other scrip during January 01, 2019 to February 15, 2019. In this regard, the details of trades of the Noticee regarding his concentration are as below:

Table 13

	DHFL	Other Scrips
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Period	Gross Traded Value (GTV)	% Activity in this scrip to GTV	Gross Traded Value (GTV)	% Activity in other scrips to GTV	No. of Scrips
01/01/2019 to 14/01/2019	-	-	-	-	-
15/01/2019 to 28/01/2019	-	-	-	-	-
29/01/2019	12497	100%	-	-	-
30/01/2019 to 15/02/2019	-	-	-	-	-

xxx. In this regard, it is observed that the closing price of the scrip of DHFL on the day of UPSI becoming public i.e. January 29, 2019 was Rs.169.70. In this regard, it is alleged that the Noticee, by selling shares of DHFL during the UPSI period, has avoided the loss of Rs. 27,716.30. The said amount was calculated as below:

Shares sold by the entity during UPSI period: 12497

Sale proceeds by selling of shares: Rs. 21,48,457.20

Unlawful Loss avoided= Sale proceeds - (No. of shares sold* closing price)

= Rs. 21,48,457.20 - Rs. 21,20,741

= Rs. 27,716.30

Basis of Calculation -

* "Unlawful loss avoided = (No. of shares sold while in possession of UPSI * Weighted average sale price) Less (No. of shares sold while in possession of UPSI * Closing price on the trading day of announcement i.e. January 29, 2019)

xxxi. In view of the above, it is alleged that the Noticee, being an insider, traded in the scrip of DHFL during the period of UPSI and, thus, violated the provisions of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of PIT Regulations. It may be noted that, in terms of Regulation 4(2) of PIT Regulations, in case of a connected person, the onus of not being in possession of UPSI is on the connected person.

xxxii. The aforesaid alleged violations of SEBI Act and PIT Regulations by the Noticee, if proved, makes him liable for monetary penalty under the provisions of Section 15G of the SEBI Act.

6. Vide email dated July 10, 2020, the Noticee acknowledged receipt of the SCN and *inter alia* stated that he was trying to access relevant data and further that he would

shortly respond to the SCN. Accordingly, vide letter dated July 13, 2020, the Noticee was granted time till July 20, 2020 to file his reply to the SCN.

7. Vide letter dated July 21, 2020, the authorized representative (**AR**) of the Noticee filed reply to the SCN, and the main submissions made therein are reproduced as follows

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1. *This has reference to the Show Cause Notice dated 5th June, 2020 bearing No. SEBI/HO/EAD-8/KS/VC/10773/2020 (hereinafter referred to as “the SCN”), in the scrip of Dewan Housing Finance Limited (hereinafter referred to as the “DHFL”) vide which your goodself has called upon the Noticee to show cause as to why an inquiry should not be held against the Noticee in terms of Rule 4 of Adjudicating Rules, 1995 read with Section 15-I(1) of the SEBI Act and why penalty, if any, should not be imposed on him under the provisions of Section 15G of the SEBI Act.*
2. *The SCN erroneously categorizes the Noticee a ‘connected person’ in terms of Regulation 2(1)(d)(i) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (‘PIT Regulations’) and was reasonably expected to have access to unpublished price sensitive information (‘UPSI’). It is further alleged that the Noticee was hence an ‘insider’ as per Regulation 2(1)(g)(i) of the PIT Regulations and had executed trades in the scrip of DHFL on 29th January, 2019, while the Noticee was allegedly in possession of the UPSI. In view of these allegations, it is alleged that the Noticee violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, read with Regulation 4(1) of the PIT Regulations.*
3. *At the outset, the Noticee vehemently denies each and every allegation levied against him. Nothing stated in the SCN shall be deemed to have been admitted by the Noticee merely on account of specific non-traverse and unless the same is specifically admitted by them herein.*

4. *At the further outset, it is submitted that the present matter involves an alleged loss avoided of Rs.27,716.30 by the Noticee. The Investigation Report submitted by your office that has led to the present SCN records that the shares traded by the Noticee are 'negligible' and the 'considering the cost and resources involved for disgorgement of minimal amount of Rs.27,716/-, separate quasi-judicial proceedings u/s. 11B for disgorgement of unlawful loss avoided by Amit Ramesh Sawhney may result in non-fruitful utilization of time and resources'. After having arrived at the conclusion that the loss avoided is minimal as compared to the time and resources that would have to be employed to initiate proceedings against the Noticee, there is no reasonable or rational explanation for the commencement of the present adjudication proceedings against the Noticee. On this basis alone, the SCN is liable to be recalled and further proceedings against the Noticee ought not to be continued.*
5. *At the further outset, it is submitted that in order to sustain such serious charges levied against the Noticee under the subject Notice, it is essential to demonstrate two key aspects i.e., that the Noticee was a 'connected person', as defined in the PIT Regulations and that the Noticee was in possession of the UPSI on the basis of which the trade in the scrip of DHFL was executed. However, the SCN fails to substantiate and prove these allegations and in fact is devoid of any merit and baseless. The same is clear from the following:*
- 5.1. *It is a settled position of law and is borne out of a bare reading of the PIT Regulations that the onus of showing that a certain person was in possession of or had access to the alleged UPSI at the time of trading would be on the person who is levelling the charge i.e., on your goodself. However, a bare perusal of the SCN makes it clear that the same merely relies on conjectures, surmises and assumptions:*
- 5.1.1. *The SCN merely alleges that the Noticee is a 'connected person' in terms of Regulation 2(1)(d)(i) of PIT Regulations and was hence*
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'reasonably expected to have access' to the UPSI. There is no explanation as to the manner in which this conclusion has been drawn.

5.1.2. The Investigation Report, annexed as Annexure – 15 to the SCN, states that Cobrapost, vide an e-mail dated 24th May, 2019, informed you that even prior to the press conference held on 29th January, 2019, some invitees had been informed about the story on DHFL, ranging to a few days/ weeks prior to the conference. However, there is no reference in the SCN to this e-mail of 24th May, 2019 nor have any details of these invitees who had knowledge of the alleged price sensitive information, been provided. In this view of the matter and as the SCN proceeds on the erroneous basis that only certain persons in DHFL had access to and/ or were in possession of the UPSI through whom the Noticee allegedly came in possession of the UPSI, there is a major lacuna in the investigation carried out by your office. Further, the investigation carried out as well as the SCN fails to take into account that if certain persons had access to the alleged price sensitive information, which has failed to been traced by this office, the information itself would cease to be a UPSI, as the same was already in the public domain and in the knowledge of persons other than Cobrapost and DHFL.

5.1.3. Further, the SCN produces a list of 11 persons set out in Table 3 of the SCN, from DHFL, who had access to and/ or were in possession of the UPSI. As per the SCN, the details of these 11 persons has been obtained by an e-mail dated 27th May, 2019 from the DHFL. However, the e-mail dated 27th May, 2019 from DHFL to this office, as annexed to the SCN, only has the names of the first seven (7) persons in the table. The manner in which your office obtained information that the persons at Sr. Nos. 8 to 11 of Table 3 were also

in possession of the UPSI, is absent. In any event, it is not your case, in the SCN, that the Noticee had any communication with any of these 11 persons, apart from one Ms. Shakuntala Devnani, the executive secretary of Mr. Kapil Wadhawan, (at Sr. No. 11 of Table 3 in the SCN) from the time these persons came in possession of the UPSI till the UPSI became public.

5.1.4. Hence, the SCN relies on the statement of Ms. Shakuntala Devnani, in order to show that the Noticee was in possession of the UPSI. The SCN relies on the fact that Ms. Shakuntala Devnani had access to Mr. Kapil Wadhawan's e-mail id kapil.wadhawan@dhfl.com and that 3 calls (to and fro) were exchanged between Ms. Shakuntala Devnani and the Noticee on 29th January, 2019 before the UPSI became public. However, the following answers from the statement given by Ms. Shakuntala Devnani are of prime importance:

"Q. 10. Do you read the emails of email id xkapil.wadhawan@dhfl.com

A.10. I don't read the contents. I go by the subject line and delete the junk emails.

Q 12 Did you read/ access email sent by Cobrapost to Mr. Kapil Wadhawan, CMD (kapil.wadhawan@dhfl.com) on January 29, 2019 at around 10:33AM, wherein Cobrapost alleged DHFL's promoters, Kapil Wadhawan, Aruna Wadhawan and Dheeraj Wadhawan, along with their associates, have been responsible for a scam of around Rs.31,000 crores?

A. 12. I was not aware

Q 17. From the CDR data of Amit Ramesh Sawhney, it is observed that on January 29, 2019, you and Amit Ramesh Sawhney made 3 calls to each other before 2 PM. What were these calls about?

A 17. I can't recall exactly. Though I was on leave but I did not inform it to Mr. Amit Ramesh Sawhney. So he may have called me to find out about Mr. Kapil Wadhawan"

A perusal of the above extracts from the statement of Ms. Shakuntala Devnani demonstrate that the SCN has failed to establish that Ms.

Shakuntala Devnani herself was aware of the UPSI, let alone that she informed the Noticee of the same. Merely showing that she had access to her e-mail while being out of office, without establishing that she herself had received, read and was aware of the contents of the e-mails from Cobrapost on 29th January, 2019, would be of no avail. Pertinently, the phone records relied upon in the SCN offer no explanation whatsoever as to how the UPSI was communicated to Noticee. Further, even the duration of the calls have been completely ignored. The fact that Ms. Shakuntala was not privy to the contents of emails and that no emails had been forwarded to the Noticee has been completely ignored in the investigation. In any event, without establishing and attributing purported knowledge of the UPSI to Ms. Shakuntala Devnani, the calls between the Noticee and Ms. Shakuntala Devnani do not, in any manner, further the case sought to be brought out in the SCN.

5.1.5. In light of the above, it is submitted that the SCN has failed to demonstrate and prove that the Noticee was in possession of and/or had any knowledge of the UPSI on 29th January, 2019 before the UPSI became public.

5.2. It is humbly submitted that the SCN also fails to bring out any direct evidence that the Noticee is a 'connected person', as defined in the PIT Regulations and has merely relied on circumstantial and far-fetched connections to arrive at this conclusion:

5.2.1. The Noticee has, in his statement and reply to the investigation being carried out by this office, informed your goodself that during the year 2009-10, the Noticee was working as a Vice President, Sales at RKW Developers Pvt. Ltd., where Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan were directors, for about a month. Thereafter, the Noticee was working as consultant in real estate and was in contact

with Mr. Dheeraj Wadhawan and Mr. Govind Srinivasan, VP of DHFL, for funding of certain real estate projects. The same in no manner establishes any of allegations levelled against Noticee as or in the manner alleged. The same merely demonstrates that the Noticee was in contact with the said persons in the course of his business. In this view of the matter, the reliance in the SCN to the call records between the Noticee and Mr. Kapil Wadhawan, Mr. Dheeraj Wadhawan and Mrs. Aruna Wadhawan (being the promoters of DHFL) are completely misconceived and the same has no relevance to the purported conclusion sought to be arrived at in the SCN. To the contrary, the call records only demonstrate that the Noticee was in contact with the promoters of DHFL, Mr. S. Govindan and Ms. Shakuntala Devnani, in the ordinary course of his consultancy business and nothing further.

5.2.2. Further, the SCN in paragraph 17 relies on the Noticee's past directorship in certain companies to show instances when Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan had taken over directorship of companies as and when the Noticee left the directorship in those companies. However, the reliance in the SCN on such data can, in no manner, demonstrate any relation between the Noticee and Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan, so as to make the Noticee a 'connected person' under the Regulations.

5.2.3. It is further submitted that the SCN attempts to draw a vague and indirect connection between the Noticee and DHFL and for this purpose has set out details of companies where the Noticee has been an initial subscriber and/ or director by relying on an e-mail id, i.e. Fredrick.pinto@whpl.co.in It is submitted that Mr. Fredrick Pinto was a Company Secretary. It is usual business practice for private companies to provide the e-mail id of the Company Secretary in place of that of the directors, to ensure compliance of Company law and

regulation. However, none of the companies of which the Noticee has been a director is a DHFL company or its associate. Merely because certain persons related to DHFL were directors (at some point of time)/ initial subscribers in these companies, is not sufficient to hold that the Noticee was a 'connected person' under the Regulations. It is not even alleged in the SCN that such persons and the Noticee were directors in the same company at the same time.

5.2.4. Further, a reliance on a mere fund transfer from DHFL to Hemisphere Infrastructure Pvt. Ltd., in which the Noticee was a Director without any particulars of transaction, is completely misplaced to infer Noticee being a "connected person" under the said Regulations as or in the manner alleged. Further, the Noticee was not involved in the day to day operations of Hemisphere Infrastructure Pvt. Ltd. and is unable to recall the purpose of such a transfer. The Noticee resigned as a Director of Hemisphere with effect from 14th March, 2018, and is unaware of the details of any such transfer made by DHFL and unable to access records in this regard.

5.2.5. More pertinently, the reliance on the directorships of the Noticee to show a connection between the Noticee and DHFL, is for the period ranging from 2010 to 2014 i.e., more than 5 years prior to the trade in question. As per the very definition of 'connected person' under Regulation 2(1)(d) of the PIT Regulations, 2015, the Noticee ought to have been shown as connected with the affairs of DHFL 'during six months prior to the concerned act.' In this view of the matter, the investigations into the directorships and subscriptions of the Noticee are irrelevant and inconclusive.

5.2.6. In this view of the matter, it is submitted that the Noticee has not, for the period six months prior to the alleged act or during the period of six months preceding the concerned act, has been associated with

DHFL, in any capacity whatsoever, which has allowed the Noticee to have access to UPSI or be reasonable expected to be allowed such access. As submitted above, the relationship has been restricted to a formal business relation, to the extent required by the Noticee to carry on its real estate consultancy business effectively. There has never been any contractual, fiduciary or employment relation between the Noticee and DHFL and neither has the Noticee been a director, officer or employee of DHFL. In view of the above, it is submitted that the SCN fails to prove that the Noticee is a 'connected person' within its definition under Regulation 2(1)(d) of the PIT Regulations, 2015.

6. It is further pertinent to note that under the PIT Regulations, 2015, for any information to qualify as a UPSI, it must be one which is likely to "materially" affect the price of the securities. In common parlance, the word 'materially' is used to denote a significant or considerable change in circumstances. An analysis of the price of the scrip of DHFL demonstrates the following:

6.1. On 29th January, 2019, the scrip of DHFL opened at Rs. 182.85/-. The alleged UPSI was published on 29th January, 2019 at 3:00 p.m. On close of trading on 29th January, 2019, the scrip of DHFL closed at Rs. 169.70/- . The price of the share hence fell approx. by Rs. 13/- i.e., 7.10%;

6.2. It is pertinent to note that on the previous day itself i.e., 28th January, 2019, the scrip of DHFL opened at Rs. 203/- and closed at Rs. 184.90/- i.e., with a fall of approx. Rs. 19 i.e., 9.35%. The percentage in fall in price of the scrip even before the alleged UPSI was brought within the knowledge of DHFL is greater than after the fall in the price even after the publishing of the alleged UPSI;

6.3. Further, even after the alleged UPSI became public i.e., at 3 PM on 29th January, 2019, on the next day i.e., 30th January, 2019, the price of the

scrip of DHFL only further fell from Rs. 169.70/- to Rs. 161.45/- i.e., only about 4% decrease.

6.4. On the alleged trading day i.e., 29th January, 2019 itself, even before the publishing of the alleged UPSI, the price in the scrip of DHFL fell from Rs. 182.85/- to Rs. 171.92/- i.e., the rate at which the Noticee sold his shares.

6.5. Hence, the decrease in the price of the scrip of DHFL after the publishing of the alleged UPSI is substantially lower than the fall in the price of the scrip even two to three before the publishing of the UPSI. In any event, a 4% decrease cannot, by any stretch of imagination, be construed as a 'material' change in the price of the securities;

*6.6. In view of the above, it is submitted that the SCN is also lacking in material particulars as to the manner in which the alleged UPSI "materially" affected the price of the shares in DHFL and that the decrease in the value of the shares can be attributed solely to the alleged UPSI set out in the SCN. This especially in view of the fact that, as demonstrated above, even in the absence of the publication of the UPSI, there was a consistent and greater decrease in its share price. A copy of the printout showing the price in the scrip of DHFL for the month of January, 2019, is annexed hereto as **Exhibit 'A'**.*

7. In order to further belie the allegations made in the SCN, it is submitted that the Noticee is an individual, working in the real estate market, as a consultant, since the past 10 years. The Noticee personally takes decisions pertaining to trading of securities, through two separate trading accounts, one with Axis Securities and the other with Angel Broking. The Noticee trades in such securities, on the strength of his own funds. It is further submitted that as stated in the SCN, the Noticee held a total of 12,497 shares of DHFL, from which 8138 shares were held in the Axis Securities account and the balance 4359 shares were held with Angel Broking. The Noticee traded in the shares

of DHFL from the period October, 2017 till November, 2018. The shares held by the Noticee on 29th January, 2019, were purchased during this period.

8. *It is submitted that on or about October, 2018 - December, 2018, the liquidity crisis in IL&FS came to light. This led to a loss of faith by the investors in NBFCs, which had a 11 direct effect on the scrip of DHFL, insofar as the price of DHFL shares on 1st January, 2019 was Rs. 246.35/-, which fell to Rs. 209.10/- by 25th January, 2020 i.e., by almost 15%. Further between 25th January, 2018 and 28th January, 2018 (at close of trading), the price further fell to Rs. 184.90/- i.e., by another 11%. Further, following the announcement by Cobrapost on 23rd January, 2019 (as set out in the SCN at Table 2) that it was to disclose a “financial scam worth over Rs. 33,000 crores” on 29th January, 2019, upto the days leading up to such disclosure, the price in the scrip of DHFL fell from Rs. 206/- to Rs. 182.85/- (opening on 29th January, 2019). This was widely published through various media articles and updates on stock related websites. The fall of over 10% of the share value, itself, was the reason for a major spike of upto 6 times of the usual trading volume, in the scrip of DHFL. This increase in the trading volume in the scrip of DHFL also finds reference in the Investigation Report (at e 15 to the SCN). However, the SCN itself, fails to take into consideration the market conditions and the information available in the public domain, leading to the execution of trade by the Noticee. In view of the above and the continued fall in the price of the securities, the Noticee decided to sell his shares on 29th January, 2019 at an average selling rate of Rs. 171.92/-. It is pertinent to note that while trading in the scrip of DHFL, from October, 2017 till 29th January, 2019, the Noticee has made an over-all loss of Rs.15,34,087/-. The Noticee craves leave to refer to and rely upon the documents in support of the aforesaid. In this view of the matter and on an analysis of the market conditions, the Noticee executed the trades on 29th January, 2019. Copies of the newspaper reports and articles*

circulating from 23rd January, 2019 to 28th January, 2019 are annexed hereto as **Exhibit 'B' colly**.

9. *In view of all that is stated hereinabove, the SCN hopelessly and without application of mind attempts to derive connections by making insinuations of access to the UPSI while completely ignoring the information available in the public domain.*
 10. *I will now proceed to deal paragraph-wise with the contents of the SCN:*
 11. *With reference to paragraph 1 of the SCN, it is submitted that the same is a matter of record and does not warrant a comment except to the extent that the Investigation Period has been mentioned as from 15th January, 2019 to 29th January, 2019. The SCN only deals with the investigation in the scrip of DHFL on 29th January, 2019. It was incumbent upon your goodself to investigate and consider the fall in the price in the scrip of DHFL during the entire Investigation Period mentioned in the SCN and not only 29th January, 2019. This would have demonstrated a continued decrease in the price of DHFL's share from the beginning of the Investigation Period itself, unaffected by the alleged UPSI.*
 12. *With reference to paragraphs 2 and 3 of the SCN, it is submitted that the same is merely a reproduction of data relating to DHFL available in the public domain and does not warrant a comment.*
 13. *With reference to paragraphs 4 and 5 of the SCN, it is denied that the allegation made by Cobrapost was price sensitive information. It is reiterated that the price in the scrip of DHFL was continually falling since the start of January, 2019 and the fall of 8.22% on 29th January, 2019 was lower than the fall in the price in DHFL's scrip, prior to 29th January, 2019.*
 14. *With reference to paragraphs 6 to 9 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary*
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thereto in the paragraphs under reply. It is denied that the allegations made by Cobrapost were price sensitive. The remaining contents of the paragraphs under reply are a matter of record and do not warrant a reply.

15. With reference to paragraph 10 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary thereto in the paragraph under reply. It is denied that the information published by Cobrapost materially affected the price in the scrip of DHFL. It is further denied that the said information was an UPSI. As already submitted above, the price in the scrip of DHFL was continually falling for the entire month of January, 2019, which a higher percentage decrease in the share price, than caused after the publishing of the alleged UPSI.

16. With reference to paragraph 11 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary thereto in the paragraph under reply. A perusal of the e-mail dated 27th May, 2019 from DHFL to your office, as annexed to the SCN, demonstrates that the e-mail only has the names of the first seven (7) persons in the table. The manner in which your office obtained information that the persons at Sr. Nos. 8 to 11 of Table 3 were also in possession of the UPSI, is absent. This qualifies as a grave lacuna in the investigation carried out by your good office, especially in view of the fact that the Noticee has been alleged to have come in possession of the alleged UPSI through the person listed at Sr. No. 11 of the said Table 3 i.e., Ms. Shakuntala Devnani, whose name is absent in the information provided by DHFL. In this view of the matter, it is submitted that this office has failed to show the linkage on the basis of which the investigation was carried out and the charge was framed against the Noticee. On this ground alone, the charge against the Noticee must fail.

17. *With reference to paragraphs 12 to 14 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary thereto in the paragraphs under reply.*
18. *With reference to paragraphs 15 and 16 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary thereto in the paragraphs under reply. It is reiterated that this office has failed to demonstrate and prove, on the basis of the statement of Ms. Shakuntala Devnani, that the Noticee obtained knowledge of the alleged UPSI. The statement of Ms. Shakuntala Devnani reflects that she herself was unaware of the e-mail received from Cobrapost, let alone having read the contents of the same. In that view of the matter, the manner in which she could have conveyed the information, alleged to be an UPSI, to the Noticee is wholly absent in the SCN. Hence, the Noticee cannot be held to be in possession of the alleged UPSI through Ms. Shakuntala Devnani. Further, it is not even this office's case in the SCN that the Noticee obtained knowledge of the alleged UPSI from Mr. Kapil Wadhawan. No call data records or other information has been relied on for this purpose. Accordingly, the SCN fails to prove that the Noticee was in possession of the UPSI. On this basis alone, the charge brought against the Noticee, must fail.*
19. *With reference to paragraphs 17 to 24 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary thereto in the paragraphs under reply. Merely for the fact of being in constant touch and/ or in frequent communication with the Promoters of DHFL and/ or the Key Managerial Persons of DHFL does not and cannot in any manner justify classification of Noticee as a "connected person". Infact, the SCN hopelessly fails to bring out any such personal connection between the Noticee and the promoters/ directors of DHFL to infer Noticee as a "connected person" as or in the manner alleged and has merely relied on assumptions and conjectures. It is denied that there has been any substitution of*
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directorships between the Noticee and the Wadhawan brothers. Infact, the Noticee and the Wadhawan brothers were not directors in the same company at the same time and it is denied that any alleged substitution in directorships proves that the Noticee enjoyed such a close relationship with the Wadhawan brothers to categorize the Noticee as “connected person” as or in the manner alleged. It is further denied that the Noticee had knowledge of and/ or was in possession of the UPSI. It is not your office’s case in the SCN that the Noticee has ever been a director/ initial subscriber in DHFL/ any of its associate companies. The far-fetched, distinct and isolated instances of connections sought to be brought out in the SCN do not further the charge sought to be brought against the Noticee, any further. Further, the SCN makes further assumptions to the extent that the Noticee was ‘reasonably expected’ to have access to the UPSI. The SCN fails to prove that the Noticee is a ‘connected person’ or an ‘insider’.

- 20. With reference to paragraphs 25 and 26 of the SCN, the same is a matter of record and does not warrant a reply. It is however denied that the sale of shares by the Noticee was in any manner related to and/ or connected to and/ or depended on the press conference held by Cobrapost, on that day.*
- 21. With reference to paragraphs 27 and 28 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary thereto in the paragraphs under reply. It is once again denied that the sale of shares by the Noticee was in any manner related to and/ or connected to and/ or depended on the press conference held by Cobrapost, on that day. It is further denied that the Noticee sold 12,497 shares on 29th January, 2019 prior to the Cobrapost press conference, to avoid any alleged loss due to the press conference. As stated above, the trades were executed/ authorized by the Noticee bearing in mind the market conditions and the continued decrease in the price in the scrip of DHFL. Further, the trading history sought to be relied on in the SCN, do not aid this office to draw any conclusions.*
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22. *With reference to paragraph 29 of the SCN, the Noticee repeats and reiterates the contents of the present Reply and denies everything contrary thereto in the paragraphs under reply. It is denied that the Noticee avoided any loss by selling shares during the UPSI period. The Noticee has incurred an over-all loss of Rs. Rs.15,34,087/-, whilst trading in the scrip of DHFL, which is completely unrelated and unconnected to the alleged UPSI that became public on 29th January, 2019 at 3:00 P.M. Without prejudice to the rights and contentions of the Noticee, had any person come in possession of this UPSI and while ignoring the facts already being reported in the public domain alongwith the parallel fall in share price, any person would have taken advantage of this fact to profiteer himself by selling even more shares and other available trading options rather than merely avoiding losses in his account. This fact has been conveniently ignored while issuing this SCN and relying upon the fact that the Noticee has, in possession of this UPSI, avoided a paltry sum of about Rs. 27,000/-. It would be abhorrent to read and interpret the PIT Regulations in the current set of facts and in the manner as done in the SCN.*

23. *With reference to paragraph 20, it is denied that the Noticee violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992 read with Regulation 4(1) of the PIT Regulations. In this context, it is submitted that:*

24. *(i) The Noticee has, neither directly or indirectly, engaged in insider trading;*

25. *(ii) The Noticee has, neither directly or indirectly, dealt in securities while in possession of any material or non-public information or communicated such material or non public information to any other person, in a manner which is in contravention of the provisions of the SEBI Act or the rules or the regulations made thereunder.*

26. *(iii) The Noticee was not a 'connected person' or an 'insider' as defined under the PIT Regulations;*

27. (iv) *The Noticee has not traded in securities listed on the stock exchange while in possession of unpublished price sensitive information.*

28. (v) *The Noticee traded in the securities of DHFL on 29th January, 2019, on the basis of a pre-determined intention to trade in the securities, on the basis of the prevailing market conditions.*

29. *With reference to paragraph 31 of the SCN, it is denied that the Noticee violated any provisions of the SEBI Act and the PIT Regulations. It is further denied that the Noticee is liable for any monetary penalty under the provisions of Section 15G of the SEBI Act. Without prejudice, it is submitted that the loss alleged to be avoided by the Noticee in the present SCN is Rs.27,716.30, which is too miniscule and paltry in proportion to the penalty prescribed under Section 15G for the alleged act.*

30. *Accordingly, in light of the above, the SCN against the Noticee for the violation of securities law is completely arbitrary, unfair, unjust and illegal and cannot be sustained. The SCN issued by SEBI is liable to be withdrawn.*

31. *Due to the current pandemic, the Noticee has been unable to access all documents and information pertaining to the subject matter of the SCN and the Noticee craves leave to and reserves its right to modify and add additional grounds in these submissions. It is respectfully submitted that the allegations in the SCN are without any basis and therefore, cannot be legally sustained to warrant any penalty against the Noticee. Therefore, it is humbly prayed that the SCN be withdrawn and all the charges as levelled against the Noticee be dropped.*

8. An opportunity of personal hearing was granted to the Noticee on August 04, 2020. However, vide email dated July 30, 2020, the AR of the Noticee *inter alia* requested for inspection of documents in the matter. Accordingly, vide letter dated July 30, 2020, it was informed to the Noticee that the aforesaid request has been acceded to and the

Noticee was advised to contact SEBI in this regard within 15 days from the date of receipt of the said letter. Further, in this regard, it was also informed to the Noticee that inspection and copies of only those documents which have been relied upon in the matter, shall be provided. From the available records, I note that inspection of documents was carried out and the relevant documents were provided to the Noticee on September 09, 2020. Subsequently, vide email dated September 16, 2020, the Noticee was granted opportunity of personal hearing on September 22, 2020. However, the AR of the Noticee vide email dated September 18, 2020 informed that that the files sent vide email dated September 09, 2020 seemed to be in an inaccessible format and requested to be provided the same, and further requested for postponement of the personal hearing scheduled on September 22, 2020 to a later date and not prior to October 15, 2020. Accordingly, the personal hearing in the matter was scheduled on October 16, 2020.

9. Vide letter dated October 15, 2020, the AR of the Noticee made further submissions to the SCN. The main contentions made therein are reproduced below -

1. *This has reference to the Show Cause Notice dated 5th June, 2020 bearing No. SEBI/HO/EAD-8/KS/VC/10773/2020 (hereinafter referred to as "the SCN"), in the scrip of Dewan Housing Finance Limited (hereinafter referred to as the "DHFL") and is in furtherance to the Reply dated 21st July, 2020 ("Reply"), filed on behalf of the Noticee, whereby the Noticee reserved its right to add/ modify and make additional submissions with regard to the allegations made in the SCN.*
2. *In addition to the defence raised by the Noticee in the Reply, the Noticee submits that the present adjudication proceedings against the Noticee are liable to be dismissed in limine and without any further reference to the Noticee on the ground that this Authority has not adhered to the basic principles of natural justice and fair procedure concerning the manner in which the proceedings have been conducted till date. The Noticee has been denied*

the right to rely upon the documents offered for inspection by the Authority which form part of the record of the purported investigation carried out by this Authority against the Noticee and confirm the contentions of the Noticee as stated in the Reply. In order to substantiate the above, the chronology of events pursuant to the filing of the Reply is being set out hereinunder:

- 2.1. On 21st July, 2020, the Noticee filed its Reply to the SCN. By an email dated 24th July, 2020, the Noticee was served with a Notice granting an opportunity of hearing in the matter on 4th August, 2020. However, by an e-mail dated 30th July, 2020, the Noticee sought for an adjournment of the hearing scheduled inter alia on the basis that the Noticee was "desirous of seeking inspection from your office of the entire record relating to the investigation carried out by you, including the complete Investigation Report and all documents/ emails referred to in such Investigation Report." A copy of the Noticee's e-mail dated 30th July, 2020 is annexed hereto as **Exhibit 'A'**;*
- 2.2. By your letter dated 30th July, 2020, the Noticee's request for inspection was acceded to and was forwarded to the Enforcement Directorate, SEBI for further action;*
- 2.3. Pursuant to correspondence exchanged between the Noticee and the Enforcement Directorate, the appointment for inspection for fixed on 14th August, 2020;*
- 2.4. Accordingly, the Noticee's representative attended your office on 14th August, 2020 at which time, two files containing the entire record of the investigation carried out by this office against the Noticee, was offered for inspection without any limitations. The Noticee's representative was thereafter informed that an e-mail be addressed to your office specifying the documents from the box files provided, copies of which were required*

by the Noticee, as it was not possible to provide the same immediately. An acknowledgment to that effect was signed and retained by your office.

2.5. In compliance thereto, on 3rd September, 2020, the Noticee addressed an email to your office listing down the documents of which copies were required. For ease of reference, the documents sought are being listed hereunder:

- a. Summons dated 6th May 2019 issued to Cobrapost;*
- b. Annexures to the Cobrapost response dated 13th May 2019;*
- c. NSE's preliminary examination report dated 29th January 2019;*
- d. ISD Examination Report;*
- e. Cobrapost's emails dated 24th and 26th May 2019;*
- f. Investigation Report alongwith all entries referred to at Page 7 of Annexure 15 of the SCN;*
- g. Statements of all persons interrogated in the matter;*
- h. Page 1 to 7 of Volume – I i.e. Email dated 10th February 2019, chain of emails and attachments;*
- i. Page 42 and 43 of Volume I i.e. newspaper articles;*
- j. Page 45 to 56 of Volume I i.e. letter dated 6th May 2019 and its attachments;*
- k. Volume II – Trade logs in the Scrip of DHFL (BSE) and (NSE) from 1st August 2018 till 4th February 2019*
- l. Trade log of NSE of 29th January 2019 in the scrip of DHFL.*

*A mere perusal of the documents listed above demonstrates that the documents sought formed a part of the investigation carried out by your office against the Noticee and were primarily referred to in the Investigation Report (relevant paragraphs of which have been annexed as Annexure 15 to the SCN), the findings of which, led to the institution of the present SCN against the Noticee. A copy of the email dated 3rd September, 2020 is annexed hereto as **Exhibit 'B'**.*

2.6. *In reply to the Noticee's email dated 3rd September, 2020, by an e-mail dated 9th September, 2020, your office attached a file containing the list of documents relied on in the SCN and stated that 'As per the policy, pursuant to inspection only the documents relied in the SCN have to be provided'. However, the file attached to the email was in a format that was inaccessible to the Noticee and the Noticee was unable to ascertain whether all the documents sought by its email dated 3rd September, 2020 had been provided. A copy of the e-mail dated 9th September, 2020 is annexed hereto as **Exhibit 'C'**.*

2.7. *Before the Noticee could respond to the above email dated 9th September, 2020, your office fixed a fresh date of hearing of the SCN on 22nd September, 2020. Accordingly, by an email dated 18th September, 2020, the Noticee responded to both of your above emails and once again called upon your office to adjourn the hearing and provide copies of the documents sought by the e-mail dated 3rd September, 2020 in a '.zip' or other accessible format. A copy of the Noticee's email dated 18th September, 2020 is annexed hereto as **Exhibit 'D'**.*

2.8. *By an email dated 21st September, 2020, your office objected to the adjournment sought by the Noticee and surprisingly sought further reasons justifying the adjournment of the personal hearing. Accordingly, by an email dated 21st September, 2020, the Noticee once again explained the chronology of events as set out hereinabove and reiterated its request for an adjournment. Accordingly, your office allowed the adjournment and scheduled the next date of hearing on 16th October, 2020 at 11:00 a.m. Copies of the emails, both dated 21st September, 2020, are annexed hereto as **Exhibits 'E' and 'F'**, respectively.*

2.9. *It is submitted that the adjournment was sought on the specific basis and understanding that the Noticee be granted time to peruse the documents*

*inspected, copies of which were yet to be provided, and file an additional reply, on perusal and examination thereof. However, to the surprise of the Noticee, by an email dated 21st September, 2020, your office, in purported compliance of our repeated requests, merely provided the Noticee with the pdf formats of the 15 annexures that form part of the SCN and stated that 'These documents were already provided to you along with the SCNs'. No explanation or reasoning for not providing copies of the documents that have been inspected and/ or that form part of the investigation carried out by this office against the Noticee, was provided. A copy of the email dated 21st September, 2020 is annexed hereto as **Exhibit 'H'**.*

2.10. Accordingly, by an email dated 5th October, 2020, the Noticee responded to the above email dated 21st September, 2020 and while reiterating its request to be provided with copies of the documents set out in its email dated 3rd September, 2020, stated the following:

"2. My client has not been provided copies of the documents that were inspected on 14th August, 2020 and requested for by my email dated 3rd September, 2020. The documents requested form part of the purported investigation initiated against my client and are being referred to and/or relied upon in your SCN dated 5th June, 2020. In addition to the aforesaid, my client is entitled to have copies of documents, which were produced for inspection, as recorded in my email dated 3rd September, 2020. You would appreciate that the same would alone be in consonance with principles of natural justice.

3. In this background, you are once again requested to provide copies of the documents, as requested. You are also requested to provide a copy of the purported policy being relied upon by you to deny my client's requests for copies of documents, of which inspection was provided."

*A copy of the Noticee's email dated 5th October, 2020 is annexed hereto as **Exhibit 'I'**.*

*2.11. Ultimately, by an email dated 13th October, 2020, your office informed the Noticee that 'Please note that all the relied upon documents in the present matter have already been provided to you'. It is also surprising to note that the purported 'policy' referred to previously, was neither provided nor further relied upon. A copy of the email dated 13th October, 2020 is annexed hereto as **Exhibit 'J'**.*

- 3. In light of the above, it is submitted that despite repeated requests, documents forming part of the investigation carried out by your office against the Noticee, have not been provided by this office. Apart from documents forming part of the SCN, this office has also failed to provide the Noticee with copies of documents which have been relied upon in the documents provided with the SCN and that were inspected, without any reasoning or explanation. It is submitted that this office is a quasi-judicial body and is bound to follow the principles of natural justice. The standards of transparency and observance of settled principles of natural justice are required to be adhered to by regulators performing quasijudicial functions to repose its image of faith and impartiality in the public. In that view of the matter, the adjudication of the present SCN, without affording an opportunity to the Noticee to rely upon the entirety of the documents and record that were referred to and/ or relied upon while carrying out the investigation against the Noticee and that ultimately, led to the framing of the purported charge against the Noticee, is in clear breach and violation of the principles of natural justice.*
- 4. It is further submitted that your office has sought to rely on a 'policy' that restricts disclosure only to the documents relied on in the SCN and purportedly permits the nondisclosure of the documents sought. However, once again, a copy of such policy that would allow such gross injustice, has*
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not been provided to the Noticee. It is submitted that this office, carrying out a dual role of investigation as well as adjudication, is bound to produce and rely on only on the 'best evidence' that would support and prove the charge framed against the Noticee. However, in the course of investigation, there are numerous documents discovered and disclosures made, which though not relied on in the SCN, form part of the investigation and would demonstrate a contrary view to the one sought to be projected in the SCN. Hence, the Noticee, whilst responding to the charge, is entitled to the benefit of and to inspect, examine and assess the entire record of the investigation carried out by your office. In the absence of such disclosure, the Noticee is put at a disadvantageous and prejudicial position of only having the 'best evidence' that has been put forth in the SCN and being deprived of a full disclosure of documents discovered and investigated, merely because it may dilute the charge framed against the Noticee.

5. *In the view of the above, the Noticee humbly prays as under –*

- a. that this office be directed to withdraw the SCN in limine;*
- b. that the submissions made herein be considered and decided as a preliminary issue without adverting to the merits of the matter;*
- c. the Enforcement Directorate, SEBI be directed to furnish copies of the documents sought in my email dated 3rd September, 2020; and*
- d. the Noticee be granted leave to file a further response, on examination and assessment of the documents furnished.*

10. The personal hearing in the matter was conducted on October 16, 2020. In the said hearing, the AR of the Noticee reiterated the submissions made by the Noticee vide replies dated July 21, 2020 and October 15, 2020. Further, the AR was apprised about the documents demanded by her vide email dated September 03, 2020 and it was conveyed during the hearing that the documents relied upon in the proceeding have been shared with the Noticee. The AR requested time to make post hearing

submissions in the matter, and accordingly, the AR was granted time till October 19, 2020 for the same.

11. Vide email dated October 22, 2020, the AR of the Noticee filed additional written submissions in the matter. The main submissions made therein are reproduced below

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I. INTRODUCTION:

1. *By the Show Cause Notice dated 5th June, 2020 bearing No. SEBI/HO/EAD-8/KS/VC/10773/2020 (hereinafter referred to as “the SCN”), the following allegations have been made against the Noticee:*

(i) On 29th January, 2019 at 3:00 p.m., Cobrapost, an online investigative journal, held a press conference and alleged that Dewan Housing Finance Limited (hereinafter referred to as “DHFL”) had siphoned off Rs.31,000 crores. It is further alleged that the allegations made by Cobrapost were price-sensitive and materially affected the price of the scrip of DHFL, which fell by 8.22% and this information was an unpublished price sensitive information (“UPSI”);

(ii) After inquiry with Cobrapost and on the basis of information received from them [Ann. 2 to the SCN], it is alleged that the UPSI came into existence for the directors/ key managerial persons of DHFL on 29th January, 2019 at 8:32 a.m. and the UPSI became public at 3:00 p.m.;

(iii) On further inquiry, it was alleged that 11 persons at DHFL had access to the email dated 8:32 a.m. sent by Cobrapost to DHFL [Para 11 of SCN r/w Ann. 4 to SCN], one such person being Mrs. Shakuntala Devnani, executive secretary of Mr. Kapil Wadhawan, Chairman and Managing Director of DHFL. Relying on the Statement of Mrs. Shakuntala Devnani [Ann. 5 to SCN], the Call Data Records [Ann. 8 to SCN] between Mrs. Shakuntala Devnani, the statements given by the Noticee [Anns. 6 and 7 to SCN] and the details of the past directorships held by the Noticee as obtained from the website of the Ministry of Corporate Affairs, it was alleged that the Noticee was in constant

*touch and frequent communication with the promoters and key managerial persons of DHFL, who were in possession of the UPSI. In view of the above, it was alleged that the Noticee is a 'connected person' in terms of Regulation 2(1)(d)(i) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ('**PIT Regulations**') and was reasonably expected to have access to unpublished price sensitive information ('**UPSI**') and hence an 'insider' as per Regulation 2(1)(g)(i) of the PIT Regulations;*

(iv) The Noticee, who held 12,497 shares of DHFL sold his entire holding on 29th January, 2019, prior to the press conference held by Cobrapost, during the period of UPSI and has therefore, avoided the loss of Rs.27,716.30/-, in violation of Section 12A(d) and (e) of the SEBI Act, 1992 read with Regulation 4(1) of PIT Regulations, leading to the issuance of the present proceedings for the Noticee to show cause why penalty, if any, should not be imposed upon him under Section 15G of the SEBI Act.

- 2. In reply to the allegations made in the SCN, the Noticee has filed a Reply dated 21st July, 2020 ('**1st Reply**'); an additional Reply dated 15th October, 2020 ('**2nd Reply**') and appeared for a personal hearing, through his Authorized representative on 16th October, 2020. The Noticee repeats, reiterates and confirms the contents of the 1st Reply and 2nd Reply. Further to the leave granted, the Noticee is filing the present brief Written Submissions, to encapsulate the submissions of the Noticee, which are in the alterative and without prejudice to one another.*

II. SUBMISSIONS ON BEHALF OF THE NOTICEE:

A. Preliminary Submission:

- 3. At the outset, the Noticee submits that the present adjudication proceedings against the Noticee are liable to be dismissed in limine as there has been a breach of the basic principles of natural justice and fair procedure concerning the manner in which the proceedings have been conducted till date. The*

Noticee has been denied the right to rely upon the documents offered for inspection which form part of the record of the purported investigation carried out by this Authority against the Noticee and confirm the contentions of the Noticee as stated in the 1st Reply. This is demonstrable from the following:

(i) Following the filing of the 1st Reply, the Noticee sought inspection of the “entire record relating to the investigation carried out by you, including the complete Investigation Report and all documents/ emails referred to in such Investigation Report” [Exh. A to 2nd Reply];

(ii) The inspection was granted and taken on 14th August, 2020 by the Noticee’s representative, at which time, two files containing the entire record of the investigation carried out by this office against the Noticee, was offered for inspection, without any limitations. The Noticee’s representative was thereafter informed that an e-mail be addressed to your office specifying the documents from the box files provided, copies of which were required by the Noticee, as it was not possible to provide the same immediately. An acknowledgment to that effect was signed and retained by your office;

(iii) In compliance thereto, on 3rd September, 2020, the Noticee addressed an email to your office listing down the documents of which copies were required. For ease of reference, the documents sought are being listed hereunder:

- a. Summons dated 6th May 2019 issued to Cobrapost;*
- b. Annexures to the Cobrapost response dated 13th May 2019;*
- c. NSE’s preliminary examination report dated 29th January 2019;*
- d. ISD Examination Report;*
- e. Cobrapost’s emails dated 24th and 26th May 2019;*
- f. Investigation Report alongwith all entries referred to at Page 7 of Annexure 15 of the SCN;*
- g. Statements of all persons interrogated in the matter;*

- h. Page 1 to 7 of Volume – I i.e. Email dated 10th February 2019, chain of emails and attachments;*
- i. Page 42 and 43 of Volume I i.e. newspaper articles;*
- j. Page 45 to 56 of Volume I i.e. letter dated 6th May 2019 and its attachments;*
- k. Volume II – Trade logs in the Scrip of DHFL (BSE) and (NSE) from 1st August 2018 till 4th February 2019*
- l. Trade log of NSE of 29th January 2019 in the scrip of DHFL.*

A mere perusal of the documents listed above demonstrates that the documents sought formed a part of the investigation carried out by your office against the Noticee and were primarily referred to in the Investigation Report (relevant paragraphs of which have been annexed as Annexure 15 to the SCN), the findings of which, led to the institution of the present SCN against the Noticee;

(iv) Thereafter, despite repeated requests and emails for copies of the documents inspected, the same were not provided while citing a purported policy, whereby pursuant to inspection, only documents relied in the SCN were to be provided. Requests for copies of the purported policy were also not honoured. [Exhs. C, H, I and J to 2nd Reply].

- 4. In the light of the above, it is submitted that this office is a quasi-judicial body and is bound to follow the principles of natural justice. The standards of transparency and observance of settled principles of natural justice are required to be adhered to by regulators performing quasi-judicial functions to repose its image of faith and impartiality in the public. In that view of the matter, the adjudication of the present SCN, without affording an opportunity to the Noticee to rely upon the entirety of the documents and record that were referred to and/ or relied upon while carrying out the investigation against the Noticee and that ultimately, led to the framing of the purported charge against the Noticee, is in clear breach and violation of the principles of natural justice.*

5. *It is further submitted that your office has sought to rely on a 'policy' that restricts disclosure only to the documents relied on in the SCN and purportedly permits the non-disclosure of the documents sought. However, once again, a copy of such policy that would allow such gross injustice, has not been provided to the Noticee. It is submitted that this office, carrying out a dual role of investigation as well as adjudication, is bound to produce and rely on only on the 'best evidence' that would support and prove the charge framed against the Noticee. However, in the course of investigation, there are numerous documents discovered and disclosures made, which though not relied on in the SCN, form part of the investigation and would demonstrate a contrary view to the one sought to be projected in the SCN. Hence, the Noticee, whilst responding to the charge, is entitled to the benefit of and to inspect, examine and assess the entire record of the investigation carried out by your office. In the absence of such disclosure, the Noticee is put at a disadvantageous and prejudicial position of only having the 'best evidence' that has been put forth in the SCN and being deprived of a full disclosure of documents discovered and investigated, merely because it may dilute the charge framed against the Noticee.*

6. *In this regard, the Hon'ble Supreme Court in the matter of Natwar Singh v Director of Enforcement [reported in (2010) 13 SCC 255] held as under:*

"31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose

of the statute.”

(emphasis supplied)

7. *In another matter of Kashinath Dikshita v Union of India & Ors [reported in (1986) 3 SCC 229], the Hon'ble Supreme Court has held as under:*

“12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.”

(emphasis supplied)

8. *This view has been ascribed to by the Hon'ble Securities Appellate Tribunal and in the case of Ms. Smitaben N. Shah v Securities and Exchange Board of India [Order dated 30th July, 2010 in Appeal No. 37 of 2010], where documents not relied on in the SCN were sought in order to prepare a comprehensive defence to the charges levied in the SCN, the Hon'ble Tribunal has held as under:*

“7. We may now deal with the contentions raised by the learned counsel for the appellant. The first argument of Shri P.N. Modi Advocate is that the principles of natural justice had been violated in as much as the appellant had not been furnished with the trade and order logs repeatedly asked for by her which formed the basis of the charges levelled against her. There is merit in this contention. As already noticed, the primary charge against the appellant is that she alongwith other buyers who also had a similar pattern of trading, had devised a scheme to allow the QIB an exit route to offload their shares on the first day of trading. In support of this charge, the Board in the show cause notice had given to the appellant charts containing some selective data culled out from the trade and order logs of the exchange pertaining only to trades of the so called connected buyers including the appellant. We do not think that this data was enough. On the first available opportunity, that is, in response to the ex-parte order dated January 17, 2007, the appellant demanded from the Board complete trading history of the

scrip on BSE and NSE for December 29, 2006 and January 2, 2007 and more particularly such data that was prevalent at the time when she executed her trades/transactions. Again, in her reply to the show cause notice she demanded the trade and order logs and stated “....it is pertinent to note that SEBI is yet to furnish me with copies of the trade and order logs based on which the tables in paragraphs 4, 6 and 7 are based. Thereby, SEBI has denied me an opportunity to submit complete and comprehensive replies to the allegations made against me.” She asked for this material because, according to her, she was not a connected buyer and wanted to know whether she and the alleged connected buyers were the only ones who had similar trading pattern or whether there were other buy and sell orders as well on the trading screen which showed a similar pattern of modification of orders. This information could come only from the trade and order logs which were not supplied to the appellant. It was legitimate for her to know how many other orders were there on the screen and at what rate and how many of those orders were modified and to what extent and how many of those resulted in trades. If this information had been favourable to her it could have changed the fate of the case. The learned counsel for the respondent Board contended that the trade and order logs pertaining to the two days of trades were voluminous and, therefore, it was not feasible to furnish the same to the appellant. We cannot accept this plea. If the records asked for were voluminous, the appellant should have been allowed inspection and since they were in the electronic form, she could have been furnished with a soft copy at her own expense. We may hasten to add that trade and order logs asked for by the appellant are on the records of the stock exchanges as well as with the Board and there is nothing confidential about them. The grievance that the appellant had not been supplied with the trade and order logs was also made before the whole time member and he rejected this contention with his observations in paragraph 8 of the impugned order and this is what he said:

“There is absolutely no dispute about the facts — the order timing and the transaction values. The trade log and order log are relevant if there is dispute about the trades/orders placed by the noticees. In any case, SEBI is not under obligation to arrange and provide all the records and documents that the accused may need and even may not need to defend itself. The tests of natural justice are met if the records relied upon are provided and I find that the same has been provided.”

We do not agree with the whole time member. If the documents asked for are relevant and may help the delinquent to prepare his/her defence they have to be furnished and it is not correct to say that only the documents relied upon in the show cause notice alone are to be supplied to meet the ends of justice. Let us not forget that the details in the charts relied upon in the show cause notice have been culled out from the trade and order logs and, in the circumstances of the case, it was not only relevant but even necessary that the appellant be furnished with those trade and order logs so that she could possibly make out a case based on other orders punched into the system. The appellant had repeatedly pointed out the relevance of these documents to prepare her defence. We are, therefore,

satisfied that non furnishing of the trade and order logs to the appellant in the circumstances of this case resulted in the violation of the principles of natural justice. In this view of the matter, we were inclined to remand the case to the Board for a fresh enquiry.....”

(emphasis supplied)

9. In another case in the matter of Price Waterhouse v Securities and Exchange Board of India [Order dated 1st June, 2011 in Appeal No. 8 of 2011] against an Order wherein this Office held that they were not entitled to provide any documents to the Noticee apart from the documents relied on in the SCN, setting aside the Order and following the above ratio of the Hon’ble Supreme Court of India, the Hon’ble Tribunal held as under:

“10.....The above observations of Hon'ble Supreme Court squarely apply to the facts and circumstances of the case under consideration. Non-disclosure of documents and refusing cross-examination of the witnesses whose statements are being relied upon causes prejudice to the case of the appellants and is a clear denial of reasonable opportunity to submit plausible and effective rebuttal to the charges being enquired into.

(emphasis supplied)

10. In the view of the above and the ratio led down by binding judgments of the Hon’ble Supreme Court of India and the Hon’ble Securities Appellate Tribunal, it is submitted that the Adjudicating Authority is bound to follow the principles of natural justice and provide the Noticee with copies of all the documents forming part of the Investigation carried out, in order to enable the Noticee to prepare his defence to the charges framed. Failure to provide the documents, as sought, is a breach of the principles of natural justice and ought not to be countenanced.

11. The Noticee prays that on this basis alone, the SCN issued against the Noicee be withdrawn and in the alternative thereto, copies of the documents as sought, may be furnished and the Noticee be granted an opportunity to address the Adjudicating Officer, on assessment of the documents. The

Noticee is making all further submissions on the merits of the matter without prejudice to the Noticee's preliminary submission, as stated above.

B. The press conference by Cobrapost and allegations made against DHFL therein did not qualify as a 'UPSI':

12. Under Regulation 2(1)(n) of the PIT Regulations, 2015, 'unpublished price sensitive information' has been defined as under:

'unpublished price sensitive information means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities.....'

(emphasis supplied)

On the basis of the above definition, it is clear that in order to classify as a 'UPSI', the information relating to the company ought not to be 'generally available' and it ought to 'materially affect' the price of the securities.

13. It is submitted that the information sought to be classified as a UPSI was 'generally available', much prior to the press conference held by Cobrapost on 29th January, 2019 at 3:00 p.m, which is demonstrable from the following:

(i) On or about 23rd January, 2019, Cobrapost uploaded a Banner on its website and Facebook page titled 'The Anatomy of India's Biggest Financial Scam';

(ii) In response to the Summons issued to Cobrapost, by a letter dated 13th May,

2019 [**Ann. 2 to the SCN**], Cobrapost informed this office that apart from persons in its office, several persons were aware, even prior to the press conference that the Company referred to therein was DHFL and provided a list of 16 persons, which included reporters, and journalists and market experts [**@ Pg. 7 of Ann. 2/ SCN**];

(iii) Further, the Investigation Report prepared by your office [extracts of which are at Ann. 15 to the SCN] refers to an email dated 24th May, 2019 vide which

Cobrapost informed that there some invitees whom Cobrapost had informed prior to the press conference that the Company referenced was DHFL and these persons were informed about the story on DHFL on or before 29th January, 2019 ranging from the same day i.e., 29th January, 2019 to few days/ weeks back.

[Note: A copy of Cobrapost's email dated 24th May, 2019, though sought for repeatedly by the Noticee, has not been provided].

(iv) The above, coupled with the fact that at the time of inspection, the Noticee's representative was shown Newspaper articles dated 27th January, 2019 and 28th January, 2019 i.e., prior to the press conference, which specifically reported that the Company referenced in the banner and advertisements by Cobrapost were in reference to DHFL.

[Note: Once again, despite repeated requests, copies of the newspaper articles have not been provided to the Noticee and the said articles are not available online]

In the light of the above, it is submitted that the information pertaining to the alleged fraud by DHFL of an amount of Rs. 31,000 crores, which has been alleged to have become public on 29th January, 2019 at 3:00 p.m. at the press conference held by Cobrapost, was in the public domain much prior to 29th January, 2019. This is demonstrable from the emails addressed by Cobrapost dated 13th May, 2019 [Ann 2 to the SCN] and 24th May, 2019 [@ Pg. 7 of Ann. 15] and the newspaper articles shown at the time of inspection. In that view of the matter, it was irrelevant to consider when the alleged UPSI first came to the knowledge of the promoters and key managerial persons of DHFL, as the same was already generally available in the public domain.

- 14. Further, in order to classify as a UPSI, an information ought to "materially" affect the price of the securities. In common parlance, the word 'materially' is used to denote a significant or considerable change in circumstances.*

However, an analysis of the price of the scrip of DHFL demonstrates the following:

(i) On 29th January, 2019, the scrip of DHFL opened at Rs. 182.85/-. The alleged UPSI was published on 29th January, 2019 at 3:00 p.m. On close of trading on 29th January, 2019, the scrip of DHFL closed at Rs. 169.70 i.e., with a fall of approx. Rs. 13.15/- i.e., 7.10%;

(ii) It is pertinent to note that on the previous day itself i.e., 28th January, 2019, the scrip of DHFL opened at Rs. 203/- and closed at Rs. 184.90/- i.e., with a fall of approx. Rs. 19 i.e., 9.35 % i.e., more than on 29th January, 2019, when the alleged UPSI was purportedly published. The percentage in fall in price of the scrip even before the alleged UPSI was brought within the knowledge of DHFL is greater than after the fall in the price even after the publishing of the alleged UPSI;

(iii) Further, even after the alleged UPSI became public i.e., at 3 PM on 29th January, 2019, on the next day i.e., 30th January, 2019, the price of the scrip of DHFL only further fell from Rs. 169.70 to Rs. 161.45 i.e., only about 4 % decrease.

(iv) On the alleged trading day i.e., 29th January, 2019 itself, even before the publishing of the alleged UPSI, the price in the scrip of DHFL fell from Rs.182.85/- to Rs. 171.92/- i.e., the rate at which the Noticee sold his shares, by more than Rs. 11. This demonstrates that after the purported publication of the alleged UPSI, the price in the scrip of DHFL only fell by Rs.2/-.

(v) Hence, it is clear that the decrease in the price of the scrip of DHFL after the publishing of the alleged UPSI is substantially lower than the fall in the price of the scrip even 2/3 days before the publishing of the alleged UPSI.

In view of the above, it is submitted that the decrease in the price of the scrip of DHFL, after the purported publication of the alleged UPSI cannot be said to have “materially” affected the price of the shares in DHFL, especially having

regard to the fact that the price of the scrip of DHFL fell by almost double only 2-3 days prior to 29th January, 2019.

15. In the light of the above, it is submitted that the information released by Cobrapost at its press conference held on 29th January, 2019, at 3:00 p.m. did not classify as a UPSI.

C. The Noticee executed its trades on the basis of ‘generally available information’:

16. As more particularly stated in the Noticee’s email dated 4th July, 2019 [Ann. 6 to the SCN], the Noticee traded in the shares of DHFL on 29th January, 2019 on the basis of the following information which was ‘generally available’ in the public domain:
- (i) On or about October, 2018 - December, 2018, the liquidity crisis in IL&FS came to light;
 - (ii) This led to a loss of faith by the investors in NBFCs, which had a direct effect on the scrip of DHFL, insofar as the price of DHFL shares on 1st January, 2019 was at Rs. 246.35/-, which fell to Rs. 209.10/- by 25th January, 2020 i.e., by almost 15%;
 - (iii) Further between 25th January, 2018 and 28th January, 2018 (at close of trading), the price further fell to Rs. 184.90/- i.e., by another 11%;
 - (iv) Following the announcement by Cobrapost on 23rd January, 2019 (as set out in the SCN at Table 2) that it was to disclose a “financial scam worth over Rs. 33,000 crores” on 29th January, 2019, upto the days leading up to such disclosure, the price in the scrip of DHFL fell from Rs. 206/- to Rs. 182.85/- (opening on 29th January, 2019);
 - (v) The nervousness in the stock related markets was demonstrable by a major spike of upto 6 times of the usual trading volume, in the scrip of DHFL. This increase in the trading volume in the scrip of DHFL also finds reference in the Investigation Report [**@ Pg. 6 of Ann. 15 to the SCN**].
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17. In view of the above and the continued fall in the price of the securities and on an analysis of the market conditions, which were widely published [**Exh. B to 1st Reply**], the Noticee decided to sell his shares on 29th January, 2019 at an average selling rate of Rs. 171.92/-.

D. The Noticee does not classify as a 'connected person' under Regulation 2(1)(d)(i) or an 'insider' under Regulation 2(1)(g)(i) of the PIT Regulations:

18. Regulation 2(1)(d)(i) of the PIT Regulations defines 'connected person' as under:

"(d) connected person" means, -

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

(emphasis supplied)

19. The onus of proving that the Noticee is a 'connected person' undisputedly lies on this office. However, the SCN fails to bring out any direct evidence that the Noticee is a 'connected person':

(i) The Noticee has, in his statement and reply [**Anns. 6 and 7 to SCN**] to the investigation being carried out by this office, stated that during the year 2009-10, the Noticee was working as a Vice President, Sales at RKW Developers Pvt. Ltd., where Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan were directors, for about a month. Thereafter, the Noticee was working as consultant in real estate and was in contact with Mr. Dheeraj Wadhawan and Mr. Govind Srinivasan, VP of DHFL, for funding of certain real estate projects. The same merely demonstrates

that the Noticee was in contact with the said persons in the course of his business. In this view of the matter, the reliance in the SCN to the call records between the Noticee and Mr. Kapil Wadhawan, Mr. Dheeraj Wadhawan and Mrs. Aruna Wadhawan (being the promoters of DHFL) are completely misconceived and the same has no relevance to the purported conclusion sought to be arrived at in the SCN. To the contrary, the call records only demonstrate that the Noticee was in contact with the promoters of DHFL, Mr. S. Govindan and Ms. Shakuntala Devnani, in the ordinary course of his consultancy business and nothing further;

(ii) Further, the SCN in paragraph 17 relies on the Noticee's past directorship in certain companies to show instances when Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan had taken over directorship of companies as and when the Noticee left the directorship in those companies. However, the reliance in the SCN on such data can, in no manner, demonstrate any relation between the Noticee and Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan, so as to make the Noticee a 'connected person' under the Regulations.

(iii) It is further submitted that the SCN attempts to draw a vague and indirect connection between the Noticee and DHFL and for this purpose has set out details of companies where the Noticee has been an initial subscriber and/ or director by relying on an e-mail id, i.e. Fredrick.pinto@whpl.co.in It is submitted that Mr. Fredrick Pinto was a Company Secretary. It is usual business practice for private companies to provide the e-mail id of the Company Secretary in place of that of the directors, to ensure compliance of Company law and regulation. However, none of the companies of which the Noticee has been a director is a DHFL company or its associate. Merely because certain persons related to DHFL were directors (at some point of time)/ initial subscribers in these companies, is not sufficient to hold that the Noticee was a 'connected person' under the Regulations. It is not even alleged in the SCN that such persons and the Noticee were directors in the same company at the same time;

(v) More pertinently, the reliance on the directorships of the Noticee to show a connection between the Noticee and DHFL, is for the period ranging from 2010 to 2014 i.e., more than 5 years prior to the trade in question. As per the very definition of 'connected person' under Regulation 2(1)(d) of the PIT Regulations, 2015, the Noticee ought to have been shown as connected with the affairs of DHFL 'during six months prior to the concerned act.' In this view of the matter, the investigations into the directorships and subscriptions of the Noticee are irrelevant and inconclusive.

20. In this view of the matter, it is submitted that the Noticee has not, for the period six months prior to the alleged act or during the period of six months preceding the concerned act, been associated with DHFL, in any capacity whatsoever. As submitted above, the relationship has been restricted to a formal business relation, to the extent required by the Noticee to carry on its real estate consultancy business effectively. There has never been any contractual, fiduciary or employment relation between the Noticee and DHFL and neither has the Noticee been a director, officer or employee of DHFL. In view of the above, it is submitted that the SCN fails to prove that the Noticee is a 'connected person' within its definition under Regulation 2(1)(d) of the PIT Regulations, 2015.

21. Further, it is a settled position in law that for the purposes of Regulation 2(1)(d) of the PIT Regulations, 2015, it is for this office to independently prove that the Noticee 'directly or indirectly' had access to unpublished price sensitive or was 'reasonably expected' to have such access.

22. The Hon'ble Securities Appellate Tribunal in the case of SRSR Holdings Private Limited v. Securities and Exchange Board of India [Order dated 11th August, 2017 in Appeal No. 463 of 2015], in the context of the definition of 'insider', has held as under:

“56.....In the Impugned Order, the WTM underlines the conjunctive “and” while discussing the definition of an “Insider” (para 30). This suggests that the dual requirement in Regulation 2(e) must be satisfied viz., first, that of being a connected person and second, existence of a reasonable expectation of access to UPSI. However, the WTM takes a contrary view in Para 32 of the Impugned Order by holding that a person becomes an insider merely by being a connected person.

59. For the first category, if a person is a connected person, that itself satisfies half the component of the first category of insiders. However, it is pertinent to note that in order to fall under the first category, the term “connected person” must be read with the second ingredient viz., “reasonably expected to have access to unpublished price sensitive information”. Therefore, not only does a person need to be a connected person to be an insider, but there must also be some reliable and convincing material to show such a connected person is reasonably expected to have “access” to the UPSI. The Scheme of PIT Regulations of 1992 makes it evident that these dual requirements need to be satisfied before a person can be called an “insider” under the PIT Regulations of 1992.”

23. This view of the Hon’ble Tribunal has been affirmed by the Hon’ble Supreme Court of India in *Chintapalati Shrinivasu Raju v. SEBI* [reported in (2018) 7 SCC 443]

“18. Further, under the second part of Regulation 2(e)(i), the connected person must be “reasonably expected” to have access to unpublished price sensitive information. The expression “reasonably expected” cannot be a mere ipse dixit — there must be material to show that such person can reasonably be so expected to have access to unpublished price sensitive information.

24. Pertinently, the above judgments were in relation to the PIT Regulations, 1992. However, in the PIT Regulations, the very definition of ‘connected person’ under Regulation 2(1)(d)(i) includes the words ‘that allows such person, directly or indirectly, access to unpublished price sensitive or is reasonably expected to allow such access.’ It is submitted that in view of the ratios laid down above by the Hon’ble Supreme Court of India and the Hon’ble Securities Appellate Tribunal, it is to be tested whether any material has been produced in the SCN to show that the Noticee had access to the alleged UPSI.

25. On this basis, it has also been by the Hon'ble Securities Appellate Tribunal in the case of *Manoj Gaur v. Securities and Exchange Board of India* [Order dated 3rd October, 2012 in Appeal No. 64 of 2012] that having regard to the gravity of charge of insider trading, higher degree of preponderance of possibilities is needed to bring home the charge:

19. It may be noted that the trading has not been done by Mr. Manoj Gaur who is not supposed to trade during the closure of trading window. The trading is done by his wife and brother. No doubt, being deemed to be connected persons to Mr. Manoj Gaur, they were insiders. But no evidence has been brought on record, direct or circumstantial, to show that they were in possession of UPSI about the financial results of the company for the quarter ending September 30, 2008. As we have observed earlier, having regard to the gravity of charge of insider trading, higher degree of preponderance of probabilities is needed to bring home the charge. The adjudicating officer has not brought any material on record to show that they were in possession of UPSI.

21. To summarise, we are of the considered view that the trial balances for the quarter ending September 2008, which were available with the company by October 11, 2008, was price sensitive information within the meaning of regulation 2(ha) of the Regulations and was unpublished till the collated and finalised accounts were placed before the Board on October 21, 2008. Mr. Manoj Gaur became privy to it when trial balances were considered on October 11, 2008 and therefore, he was in possession of UPSI on that date. However, the Board has not brought any evidence on record, direct or circumstantial, to show that he had passed on this information to either Mrs. Urvashi Gaur or Mr. Sameer Gaur or that the trading done by Mrs. Urvashi Gaur on October 13, 2008 or Mr. Sameer Gaur on October 13, 14 and 16, 2008 was based on UPSI.

We, therefore, set aside the impugned order and allow all the three appeals with no order also to costs.

26. In the view of the above judgments, it is submitted that there is no such basis to prove that the Noticee had direct and/ or indirect access or was reasonably expected to have access to the alleged UPSI in the SCN, which is evident from the following:

(i) The SCN relies on a list of 11 persons set out in Table 3 of the SCN, from DHFL, who had access to the e-mail times 8:32 am sent by Cobrapost to DHFL. As per the SCN, the details of these 11 persons has been obtained by

an e-mail dated 27th May, 2019 from the DHFL [**Ann. 4 to SCN**]. However, the e-mail dated 27th May, 2019 from DHFL to this office, as annexed to the SCN, only has the names of the first seven (7) persons in the table. The manner in which this office obtained information that the persons at Sr. Nos. 8 to 11 of Table 3, including Mrs. Shakuntala Devnani, were also in possession of the UPSI, is absent;

(ii) The SCN then relies on the statement of Mrs. Shakuntala Devnani [**Ann. 5 to the SCN**], in order to show that the Noticee was in possession of the UPSI. The SCN relies on the fact that Mrs. Shakuntala Devnani had access to Mr. Kapil Wadhawan's e-mail id kapil.wadhawan@dhfl.com and that 3 calls (to and fro) were exchanged between Mrs. Shakuntala Devnani and the Noticee on 29th January, 2019 [**Ann. 8 to the SCN**] before the UPSI became public. However, the following answers from the statement given by Ms. Shakuntala Devnani are important:

“Q. 10. Do you read the emails of email id kapil.wadhawan@dhfl.com

A.10. I don't read the contents. I go by the subject line and delete the junk emails.

Q 12 Did you read/ access email sent by Cobrapost to Mr. Kapil Wadhawan, CMD (kapil.wadhawan@dhfl.com) on January 29, 2019 at around 10:33AM, wherein Cobrapost alleged DHFL's promoters, Kapil Wadhawan, Aruna Wadhawan and Dheeraj Wadhawan, along with their associates, have been responsible for a scam of around Rs.31,000 crores?

A. 12. I was not aware

Q 17. From the CDR data of Amit Ramesh Sawhney, it is observed that on January 29, 2019, you and Amit Ramesh Sawhney made 3 calls to each other before 2 PM. What were these calls about?

A 17. I can't recall exactly. Though I was on leave but I did not inform it to Mr. Amit Ramesh Sawhney. So he may have called me to find out about Mr. Kapil Wadhawan”

(iii) A perusal of the above extracts from the statement of Mrs. Shakuntala Devnani demonstrates that Mrs. Shakuntala Devnani herself was unaware of the UPSI, let alone her having informed the Noticee of the same. Merely showing that she had access to her e-mail while being out of office, without establishing that she herself had received, read and was aware of the

contents of the e-mails from Cobrapost on 29th January, 2019, would be of no avail. Pertinently, the phone records relied upon in the SCN offer no explanation whatsoever as to how the UPSI was communicated to Noticee. Further, even the duration of the calls have been completely ignored. The fact that Ms. Shakuntala was not privy to the contents of emails and that no emails had been forwarded to the Noticee has been completely ignored in the investigation. In any event, without establishing and attributing purported knowledge of the UPSI to Mrs. Shakuntala Devnani, the calls between the Noticee and Ms. Shakuntala Devnani do not, in any manner, further the case sought to be brought out in the SCN.

(iv) Further, Mr. Kapil Wadhawan by his email dated 3rd October, 2019 [**Ann. 9 to SCN**] has also stated that he did not have any conversation with the Noticee on 29th January, 2019;

(v) The SCN does not allege the Noticee's communication with any persons in DHFL apart from Mrs. Shakuntala Devnani and Mr. Kapil Wadhawan.

In the light of the above, it is submitted that the SCN ought to have had some basis, which ought to be higher than a mere preponderance of possibilities, to show that the Noticee was in possession of the UPSI. However, on the basis of the allegations made in the SCN, there is a reasonable basis to doubt and counter the allegations made therein and the SCN is sorely lacking in attributing knowledge to the Noticee of the alleged UPSI. Hence, the SCN fails to prove that the Noticee had direct and/ or indirect or was reasonably expected to have access to the alleged UPSI, so as to prove that the Noticee was a 'connected person'.

E. The Noticee has not violated the provisions of Sections 12(A)(d) and (e) of the SEBI Act, 1992 read with Regulation 4(1) of the PIT Regulations:

27. In view of the above, it is submitted that:

(i) The Noticee has, neither directly or indirectly, engaged in insider trading;

- (ii) The Noticee has, neither directly or indirectly, dealt in securities while in possession of any material or non-public information or communicated such material or non-public information to any other person, in a manner which is in contravention of the provisions of the SEBI Act or the rules or the regulations made thereunder;*
- (iii) The Noticee is not a 'connected person' or an 'insider' as defined under the PIT Regulations;*
- (iv) The Noticee has not traded in securities listed on the stock exchange while in possession of unpublished price sensitive information.*
- (v) The Noticee traded in the securities of DHFL on 29th January, 2019, on the basis of a pre-determined intention to trade in the securities, on the basis of the prevailing market conditions.*

F. Factors to be considered while deciding penalty under Section 15G:

28. Under Section 15J of the SEBI Act, 1992, the following factors ought to be taken into consideration when adjudicating the quantum of penalty:

- (i) The amount of disproportionate gain or unfair advantage made as a result of the default;*
- (ii) The amount of loss caused to an investor or group of investors as a result of the default; and*
- (iii) The repetitive nature of the default.*

29. With respect to each of the above factors, the following is submitted:

- (i) The Noticee traded in the scrip of DHFL from October, 2017 till January, 2019. The 12,497 shares of DHFL were purchased by the Noticee when the price in the scrip of DHFL was at its highest. However, on selling the shares on 29th January, 2019, the Noticee has incurred an over-all loss of Rs.15,34,087/-. Accordingly, there is no disproportionate gain and/ or advantage made by the Noticee as a result of the alleged act;*

(ii) Further, had the Noticee had any knowledge of the alleged UPSI as has been alleged in the SCN, on the basis of mere reason and logic, the same would have been utilized by the Noticee in a manner so as to take advantage of the same and make a profit for himself. On this basis, there is reasonable probability that the trades were carried out by the Noticee on his own volition. In this regard, the findings rendered by the Hon'ble Securities Appellate Tribunal in the case of Manoj Gaur (supra) are relevant:

"17. We have looked into the trading pattern of Mrs. Urvashi Gaur and Mr. Sameer Gaur. We find that both of them are regularly trading not only in the scrip of the company but in the scrip of other companies as well. Even the trading pattern in respect of trading in the shares of the company shows that only 1000 shares were purchased by Mrs. Urvashi Gaur on October 17, 2008 when she was already holding of 38,985 shares on that date and even thereafter she had been purchasing the shares of the company regularly. As on March 23, 2012, she was holding 59,045 shares of the company. She is the wife of Mr. Manoj Gaur, the Executive Chairman of the company. If Mr. Manoj Gaur had passed on UPSI to Mrs. Urvashi Gaur and she traded on the basis of that UPSI she would not have traded in 1000 shares only. We cannot lose sight of the fact that the company is a widely held listed company with a paid up capital divided into 212,64,33,182 equity shares out of which promoter group holds 44.44 per cent. It is a large infrastructure company engaged in highways, cement, power and education sector and the Executive Chairman of such company would not like to risk the reputation of himself and the company for 1000 shares. Similarly, Mr. Sameer Gaur is also a regular trader of shares of the company. Before trading on October 13, 14 and 16, 2008 he was holding 1,10,250 shares of the company. The first sale of 1400 shares was made by him only on May 8, 2009. Till date, he is holding 62,882 shares. Looking at the trading pattern, the number of shares purchased and going by their status, it seems highly improbable that trading was done by them on the basis of UPSI. On the other hand, it is more probable that they traded in the normal course of business. If the intention of Mrs. Urvashi Gaur and Mr.

Sameer Gaur had been to capitalize on the UPSI allegedly communicated by Mr. Manoj Gaur, the quantum of purchase would not have been so small. Both the appellants are financially independent and trade independently which is clear from their trading pattern that they have been buying the shares in similar quantities in the immediate past as well as on later dates.

(iii) Further, the present matter involves an alleged loss avoided of merely Rs.27,716.30/-. It is not even a case where a person, being in possession of the alleged UPSI, has traded so as to unfair advantage of such information and make an undue profit for himself. Infact, the Investigation Report [**@ Pg. 20 of Ann. 15 to SCN**] also records that the shares traded by the Noticee are 'negligible' and the 'considering the cost and resources involved for disgorgement of minimal amount of Rs.27,716/0, separate quasi-judicial proceedings u/s. 11B for disgorgement of unlawful loss avoided by Amit Ramesh Sawhney may result in nonfruitful utilization of time and resources'. In that view of the matter, there is no disproportionate gain and/ or advantage made by the Noticee as a result of the alleged act;

(iv) Further, in the present matter, there has been no loss caused to any investor or group of investors as a result of the alleged act;

(v) It is also submitted that the Noticee is an individual, working in the real estate market as a consultant, since the past 10 years. He personally takes decisions pertaining to the trading of his securities, on the strength of his own funds. Infact, the Noticee trades sparingly and in the past 2 years, these trades in DHFL are the only trades executed by him. This is the first instance of an SCN having been issued against him. In that view of the matter, there is no question of this being a repeated default.

Having regard to these circumstances, it is submitted that the most lenient and indulgent approach be taken in the manner of imposition of penalty, if any.

III. CONCLUSION

30. *In light of all that is stated hereinabove, it is prayed that the present SCN be withdrawn and all the charges as levelled against the Noticee be dropped..”*

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :
- a) Whether there was UPSI in the matter of DHFL?
 - b) Whether Noticee was an insider?
 - c) Whether Noticee has traded while in possession of UPSI and thus violated provisions of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of PIT Regulations?
 - d) If yes, then do the violations on the part of the Noticee attract any monetary penalty under Section 15G of the SEBI Act?
 - e) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Rules?

FINDINGS

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

SEBI Act

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(d) engage in insider trading;

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

PIT Regulations

2. Definitions.

(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:—

(d) "connected person" means, -

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

(g) "insider" means any person who is:

i) a connected person; or

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

Trading when in possession of unpublished price sensitive information.

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

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

- (i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.*
- (ii) in the case of non-individual insiders: –*
 - (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and*
 - (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;*
- (iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.*

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the

circumstances mentioned in the proviso, failing which he would have violated the prohibition.

(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

14. Before going into the merits of the case, I would like to deal with the preliminary contention raised by the Noticee with regard to supply of documents. The Noticee has contended that he had sought the entire record relating to the investigation carried out by SEBI, including the complete Investigation Report and all documents/emails referred to in such Investigation Report. The Noticee has further contended that the list of documents sought by him vide email dated September 03, 2020 were not provided to him. In this regard, the Noticee has quoted the judgements of the Hon'ble Supreme Court in the matter of *Natwar Singh v Director of Enforcement*, and *Pricewaterhouse v Securities and Exchange Board of India*, and also Hon'ble Securities Appellate Tribunal (SAT) in the case of *Ms. Smitaben N. Shah v Securities and Exchange Board of India* (Order dated July 30, 2010). In the present matter, the said SCN *inter alia* contains the allegation that the Noticee, being an insider, traded in the scrip of DHFL during the period of UPSI and, thus, violated the provisions of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of PIT Regulation. I note that the allegations against the Noticee are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticee as enclosures to the SCN. Further, in this regard, I note that the SCN provided the relevant parts of the Investigation Report to the Noticee as annexure to the SCN. Further, the letters/emails from Cobrapost and DHFL, statements and emails of the Noticee, statement of Ms. Shakuntala Devnani, Call Data Records (CDR) of the Noticee for the relevant period, Details of directorships from MCA database, Form 32 and Memorandum of Association of several companies where the Noticee was a director, Bank statement of one such company, and details of trades carried out by the Noticee were provided as annexures to the SCN. With regard to the list of documents
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sought by the Noticee vide email dated September 03, 2020, I note that the Noticee had once again been provided with the trade data, however he did not make any submissions in this regard. I note that in the present proceeding reliance is being placed on only those documents, which have been provided to the Noticee. Further, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter of *Shruti Vora vs. SEBI* had made the following observations: "*Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied*".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and hat said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there

is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.”

15. Further, the Hon'ble SAT in the matter of *Anant R Sathe Vs SEBI* (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which was reproduced herein above and ruled that *“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”*.
16. In view of the above, since all the documents which are relevant and relied upon in the instant proceedings have been provided to the Noticee, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice in filing reply has been caused to the Noticee.

Issue a) Whether there was UPSI in the matter of DHFL?

17. From the material available, I note that Cobrapost on January 26, 2019, had tweeted regarding a press conference on "The Anatomy of India's Biggest Financial Scam" to be scheduled at 3:00 PM on January 29, 2019. However, the name of the company was not announced (emphasis supplied). Thereafter, on January 29, 2019 during market hours around 3:00 PM, Cobrapost conducted a press conference. During the said press conference, Cobrapost alleged that DHFL had siphoned off Rs.31,000 crores into promoter companies to create private wealth through a network of shell companies (emphasis supplied). The said allegation, being serious in nature, was a price sensitive information which led to fall in the price of the scrip by 8.22% on January 29, 2019.
 18. In this regard, I note that the said Price Sensitive Information (**PSI**) had emanated from actions of an outside entity viz. Cobrapost and not by any action of DHFL. From the material available, I note that vide letter dated May 13, 2019, Cobrapost submitted a chronology of events in relations to the said press conference which reads as follows:
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Date	Event
23/01/2019	Banner upload on Website and facebook COMING SOON "THE ANATOMY OF INDIA'S BIGGEST FINANCIAL SCAM"
24/01/2019	Conference Hall booked for press conference on 29/01/2019 at Press Club of India, New Delhi
26/01/2019	Invitation uploaded on twitter for Press Conference on 29/01/2019
29/01/2019	Booking of projector for press conference

19. I note that on January 29, 2019, Cobrapost sent an email around 08:27AM to DHFL at their designated email id nodalofficer@dhfl.com with a set of 64 questions and asked them to reply before 3:00 PM on the same day. I note that in the said email, Cobrapost also mentioned that they were going to break a story which would show that DHFL's promoters Kapil Wadhawan, Aruna Wadhawan and Dheeraj Wadhawan, along with their associates, had been responsible for a scam of around Rs. 31,000 crore. Cobrapost also mentioned that they were enclosing the story in the email which they were proposing to release to the public at 3:00 PM on the same day. Thereafter, on January 29, 2019, Cobrapost sent a reminder email to DHFL with a copy to Kapil Wadhawan, Managing Director of DHFL and Niti Arya, Company Secretary of DHFL. I note that around 2:32 PM, DHFL sent its reply to Cobrapost wherein DHFL *inter alia* stated that "*We received your captioned email at 8:27 AM today, with a follow up reminder one hour later, seeking answers on 64 detailed questions containing not only false but also wholly unjustified innuendos and allegations.*"
20. Subsequently, around 3:00 PM on January 29, 2019, Cobrapost, during a press conference, alleged that DHFL had siphoned off Rs.31,000 crores into promoter companies to create private wealth through a network of shell companies. The said information had materially affected the price of DHFL and, therefore, was an unpublished price sensitive information (**UPSI**) as per Regulation 2(1)(n) of PIT Regulations

21. The Noticee has contended that even prior to the press conference held on January 29, 2019 by Cobrapost, some invitees had been informed about the story on DHFL, ranging to a few days/weeks prior to the conference. Accordingly, it has been contended that the information itself had ceased to be a UPSI, as the same was already in the public domain and in the knowledge of persons other than Cobrapost and DHFL.
22. In this regard, I note that the posts of Cobrapost on its website, Facebook and its tweets prior to the press conference did not reveal the name of the Company i.e. DHFL (emphasis supplied). The story regarding the scam perpetrated by the DHFL's promoters was made public only in the press conference held at 03:00 PM on January 29, 2019. I further note that the UPSI was shared with DHFL for the first time on January 29, 2019 and thus came into existence for the directors/key managerial persons of DHFL on January 29, 2019. Therefore, I do not find any merit in the Noticee's aforesaid submission that the information had ceased to be a UPSI prior to the press conference and was already in the public domain.
23. I note from records, that the Noticee has demanded copies of emails dated May 24, 2019 and May 26, 2019 from Cobrapost. In this regard, I note that the said email of May 24, 2019 received from the advocate to Mr. Aniruddha Bahal of Cobrapost, is in reply to SEBI's email dated May 22, 2019 seeking *inter alia* certain details about the persons who were aware of the press conference, date-time and mode of intimation to them. In this regard, I note from the investigation report that no adverse inference has been drawn against the entities who were directly/indirectly associated with Cobrapost as they had not done trades. Further, the knowledge related to the scam prior to the Cobrapost press conference by few select invitees and volunteers/employees of Cobrapost cannot by any stretch be construed as being "generally available", more so when the whole market was unaware of the UPSI. This view assumes more relevance in light of the fact that no adverse findings have been noted against the invitees and volunteers/employees of Cobrapost in the investigation report. Thus, I note the said emails are not relevant for the present proceedings as the same have not been relied

upon in investigation report. Thus, I find the arguments of the Noticee in this regard are without any basis.

24. With regard to the Noticee's contention that the press conference by Cobrapost and the allegations made against DHFL was not UPSI, the Noticee has inter alia stated it was not provided with copies of newspaper articles sought during inspection. On perusal of Noticee's email dated September 03, 2020, I note that the request for newspaper is referenced as "*i. Page 42 and 43 of Volume I i.e. newspaper articles*". In this regard, I note that both the said articles viz. "Time to review checks in MF Sector, set new ones" in Mint, and "Late Reaction" in The Hindu Business Line, are articles published on February 05, 2019 i.e. much after the outburst of Cobrapost revelation on January 29, 2019. I note that the article published in Business Line cited *supra* carries a reference regarding DHFL and the Cobrapost episode. However, I have not been produced with any evidence to suggest that the Cobrapost expose on DHFL was doing rounds in social media even before January 29, 2019. I note that a mere newspaper article without any supporting evidence for its contents cannot be relied upon. The other news article also refers to DHFL and got published on February 05, 2019. However, the second article is a thematic one with mutual fund as a theme. Therefore, I don't find any evidence arising out of the said article. Further, I note that the articles referred to by the Noticee have not been considered by SEBI and are not relied upon for the present proceedings.
 25. At the same time, I also note that the Noticee has not submitted any evidence in respect of its claim that the name of DHFL was revealed to the public much prior to Cobrapost's press conference on January 29, 2019.
 26. I note that the Noticee has further contended that the decrease in the price of the scrip of DHFL, after the purported publication of the alleged UPSI cannot be said to have "materially" affected the price of the shares in DHFL, especially having regard to the fact that the price of the scrip of DHFL fell by almost double only 2-3 days prior to 29th January, 2019. In this regard, I note that the definition of 'price sensitive information' is broad enough to cover within its ambit any information which if published is likely to
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materially affect the price of securities of a company. In this regard, what is relevant to be seen is that (i) whether the information directly or indirectly related to the company and (ii) whether the information, if published, is likely to materially affect the price of securities of a company. If the answers to these two questions are in affirmative, then the information has to be construed as price sensitive information irrespective of actual price witnessed post disclosure of the information. I also note that the Noticee has contended that even before the publishing of the alleged UPSI, the price in the scrip of DHFL had fallen and had witnessed spike in the trading volume. In this regard, I note that the said price fall/trading volume cannot be attributed to the UPSI in the present proceedings and therefore I do not find any merits in the argument.

27. The Noticee has contended that following the announcement by Cobrapost on January 23, 2019 that it was to disclose a “financial scam worth over Rs. 33,0000 crores” on January 29, 2019, upto the days leading up to such disclosure, the price in the scrip of DHFL fell from Rs. 206/- to Rs. 182.85/-. The Noticee has further submitted that the same was widely published through various media articles and updates on stock related websites, and in support of his contention, has enclosed copies of newspaper reports and articles circulating from January 23, 2019 to January 28, 2019. The Noticee has contended that the SCN failed to take consideration the market conditions and the information available in the public domain, leading to the execution of trade by the Noticee, and has rather attempted to derive connections by making insinuations of access to the UPSI while completely ignoring the information available in the public domain. On perusal of the newspaper reports and articles submitted by the Noticee it is observed that i) Article dated January 28, 2019 published on “The Hindu Business Line” *inter alia* mentions about the Cobrapost’s upcoming story on the exposure of a financial scam without naming any particular company (emphasis supplied); ii) Article dated June 28, 2019 on “The Financial Express” *inter alia* mentions about the fall of DHFL shares by 11 per cent on June 28, 2019 after DHFL deferred announcing its financial results for the Jan-Mar quarter of the last fiscal by two weeks, and further that DHFL was scheduled to announce its results on June 29, 2019. From the above, I note

that the first article doesn't make any reference to DHFL, and further the second article only pertains to news about DHFL as on June 28, 2019 and that too about announcement of financial results. However, I note that in the present proceedings the UPSI is not the financial results as discussed in the news item submitted by the Noticee. Thus, I find that the Noticee has not demonstrated that he sold the shares based on the contents of the aforesaid two articles, and accordingly, I do not find any merits in the aforesaid contentions of the Noticee.

Issue b) Whether Noticee was an insider?

28. From the Investigation Report, I note that the following persons from DHFL were having access to and/or in possession of the UPSI:

S. No.	PAN	Name	Designation
1.	AAOPW6145L	Kapil wadhwan	CMD
2.	AAGPM7486E	Harshil Mehta	Joint MD & CEO
3.	AHDPD9627P	Santosh Nair	Chief Business Officer
4.	AVPPK6847D	Vivek Kannan	Chief Operating Officer
5.	AHTPS6176R	Govindan Srinivasan	Senior VP and EA to Chairman
6.	AALPS6811L	Santosh Sharma	Chief Financial Officer
7.	AGTPA6598C	Niti Arya	Company Secretary
8.	AFEPG7561H	Sanjiv Gyani	Vice President - Operations
9.	AMOPS1835M	Ancy Dmello	Head- Customer Service
10.	AAIPS4776K	Pradeep A. Sawant	Executive Vice President, Legal
11.	AHSPD3298A	Ms. Shakuntala Devnani	Executive Secretary, CMD

29. The Noticee has contended that as per the SCN, there was a list of 11 persons from DHFL who had access to and/or in possession of UPSI and that the same was obtained by SEBI from DHFL's email dated May 27, 2019, however, the said email only has names of 7 persons (Sl. Nos. 1 to 7 in the table above). From the reply of the Noticee I find that though the Noticee had raised this query but at the same time had accepted that the SCN did not allege any communication with any of the 11 persons other than Ms. Shakuntala Devnani. Thus, I note the argument of the Noticee in this regard is not pertinent and has no relevance.

30. The Noticee has contended that the SCN has failed to establish that Ms. Shakuntala Devnani herself was aware of the UPSI, let alone she informed Noticee of the same. The Noticee has further contended that merely showing that Ms. Shakuntala Devnani had access to her e-mail while being out of office, without establishing that she herself had received, read, and was aware of the contents of the e-mails from Cobrapost on January 29, 2019 would be of no avail, and further that the phone records relied upon in the SCN offer no explanation as to how the UPSI was communicated to the Noticee.
31. I note that in cases like insider trading, direct substantive evidence will not always be present. For instance, the direct substantial evidence for ascertaining communication of the UPSI would be call transcripts. But in the absence of the same, one has to infer the exchange of the UPSI, based on the immediate and proximate facts and circumstances surrounding the events on which the charges / allegations are founded. Here, I would like to refer to the observations of Hon'ble SC in the matter of *SEBI vs Kishore R Ajmera* decided on February 23, 2016 wherein the Hon'ble Court observed as follows:

"...It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

32. Based on the aforesaid observation by the Hon'ble Apex Court, I note that the attending circumstances in the case need to be considered. In this regard, I note that in the present case, Ms. Shakuntala Devnani had access to the email id of Mr. Kapil

Wadhwan viz. kapil.wadhwan@dhfl.com wherein Cobrapost's email was sent informing that they would be breaking a story regarding the scam perpetrated by DHFL's promoters and their associates, and that the said story was proposed to be released to the public at 3 pm on January 29, 2019. It is also noted that on January 29, 2019 the Noticee spoke twice to Ms. Shakuntala Devnani, post cobrapost's email to kapil.wadhwan@dhfl.com, and has subsequently liquidated his entire holding of DHFL's shares on the NSE prior to the breaking of the story by Cobrapost. Further, it is also noted that the Noticee had not traded in DHFL for around two months prior to January 29, 2019. The Noticee is also observed to have not traded in any other scrips in the month of January 2019, and further the Noticee had last traded in DHFL on November 29, 2018. Therefore, I do not find merit in the aforesaid contentions of the Noticee.

33. The Noticee has inter alia contended that the SCN also fails to bring out any direct evidence that the Noticee is a 'connected person', as defined in the PIT Regulations and has merely relied on circumstantial and far-fetched connections to arrive at the said conclusion.
34. The Noticee has contended that he was working as consultant in real estate and was in contact with Mr. Dheeraj Wadhwan and Mr. Govind Srinivasan, VP of DHFL for funding of certain real estate projects. It was further contended that the call records only demonstrate that the Noticee was in contact with the promoters of DHFL, Mr. S Govindan and Ms. Shakuntala Devnani in the ordinary course of his consultancy business and nothing further. I note that "connected person" has been defined in Regulation 2(d)(i) of PIT Regulations as – *"any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to*

unpublished price sensitive information or is reasonably expected to allow such access". In the present case, it is not in dispute that the Noticee was in frequent communication with the promoters of DHFL including the Wadhwan Brothers who were the promoter directors of DHFL, as well as with other employees of DHFL including Mr. S Govindan, and Ms. Shakuntala Devnani.

35. I further note from the Call Data Records (**CDR**) for the period August 01, 2018 to January 31, 2019 of mobile no. 9821809525(Vodafone), which belongs to the Noticee, that he was in frequent communication with promoters of DHFL. There were frequent calls (to and fro) between the promoters of the DHFL and the Noticee. In this regard, a summary of the calls between the Noticee and promoters of DHFL for the period August 01, 2018 to January 31, 2019 is given below:

Name of the promoter of DHFL	No. of calls	Numbers
Kapil Wadhwan	4	9819600999
Aruna Wadhwan	22	2266006902
Dheeraj wadhawan	236	2266369185, 9820621000, 9967002944

36. It was also observed from the CDR that the Noticee was also in constant touch with the employees of DHFL, who were directly reporting to Mr. Kapil Wadhawan, CMD of DHFL and were having access to price sensitive information. Summary of the calls during the period August 01, 2018 to January 31, 2019 (6 months) is given below:

Name of the employee of DHFL	Designation	No. of calls
S. Govindan	Senior VP and EA to Chairman	26
Shakuntala Devnani	Executive Secretary to Chairman	67

37. I note that there were 5 calls (to and fro) between Ms. Shakuntala Devnani and the Noticee on January 29, 2019, out of which 3 calls were made before 3 PM on the same day. However, I note that the first call made by the Noticee to Ms. Devnani was at 10:11:02 AM. However, I note that the email from Cobrapost to Mr. Kapil Wadhawan's
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email ID was received later. Therefore, to this extent I do not find the first call as referenced above to be relevant for the present proceedings. In this regard, the Noticee, during the course of statement recording dated August 13, 2019, submitted that Shakuntala Devnani generally calls on behalf of Mr. Dheeraj Wadhawan, Promoter & Director of DHFL.

38. I would like to refer to the order of Hon'ble SAT in the matter of *V K Kaul vs. Adjudicating Officer* vide order dated October 08, 2012 wherein it was held that, "We are also of the view that the adjudicating officer has rightly relied on the observations of U. S. Court in *Rajaratnam* case (*supra*) on the relevance of circumstantial evidence in para 38 of the impugned order which reads as under :- "38. Regarding the issue of relevance of circumstantial evidence, the Hon'ble District Court Southern District of New York in the matter of *United States of America V Raj Rajaratnam* 09 Cr. 1184 (RJH) decided on 11.08.2011 has observed as follows: 14 "...Moreover, several other Courts of Appeals have sustained insider trading convictions based on circumstantial evidence in considering such factors as (1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contact between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee." *United States v. Larrabee*, 240 F.3d 18, 21-22 (1st Cir. 2001)..." The above principles are not in conflict with the regulatory framework prescribed by the Board and can be looked into while deciding case of insider trading under the Indian regulatory framework."
39. The Noticee has contended that the reliance in the SCN on such data as Noticee's past directorship in certain companies to show instances when Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan had taken over directorship of companies as and when the Noticee left the directorship in those companies, cannot demonstrate any relation between the Noticee and Mr. Kapil Wadhawan and Mr. Dheeraj Wadhawan, so as to make the Noticee a 'connected person' under the Regulations. In this regard, I note that the Noticee was well known and closely connected to the Wadhwan Brothers, i.e. the promoter-directors of DHFL. In this regard, I note that in the company Limonium

Realtors Private Limited, Noticee left the directorship on January 30, 2014, and on the same day both the Wadhwan Brothers were appointed as directors in the said company. Similarly, Noticee left the directorship of Shishir Realty Private Limited on August 04, 2010, and on the same day both the Wadhwan Brothers were appointed as directors in the said company.

40. Further, the Noticee has contended that Mr. Fredrick Pinto was a Company Secretary, and it is usual business practice for private companies to provide the e-mail id of the Company Secretary (viz. fredrick.pinto@whpl.co.in) in place of that of the directors, to ensure compliance of Company law and regulation, however, none of the companies of which the Noticee has been a director is a DHFL company or its associate. In this regard, I note that the domain of the aforesaid email id belongs to Wadhwan Holding Private Limited, where the Wadhwan Brothers had been directors in the past, and where Mr. Kapil Wadhwan was the initial subscriber. I note from the available records, that the Noticee had submitted the aforesaid email id viz. fredrick.pinto@whpl.co.in on his account, in as many as 4 companies (Revolution Realty Pvt Ltd, Lookout Realty Pvt Ltd, Soberano Trading Pvt Ltd, and Serenity Media Pvt Ltd, as shown in Table 8 of the SCN) where he was an initial subscriber and director. I note that the same also demonstrates the close connection of the Noticee with the Wadhwan Brothers.
41. The Noticee has also contended that merely because certain persons related to DHFL were directors (at some point of time)/ initial subscribers in these companies, is not sufficient to hold that the Noticee was a 'connected person' under the Regulations, and further that it is not even alleged in the SCN that such persons and the Noticee were directors in the same company at the same time. In this regard, I note that it is not necessary for such persons (related to DHFL) who were the initial subscribers in certain companies viz. to be directors along with the Noticee at the same time. At the same time SEBI has brought out evidences shared with the Noticee along with the SCN to demonstrate the relationship between the persons related to DHFL. Thus, I note that the Noticee had connection with persons related to DHFL.

42. Regarding the observation of fund transfer between Hemisphere Infrastructure India Pvt Ltd and DHFL, the Noticee has submitted that he was not involved in the day to day operations of Hemisphere Infrastructure Pvt. Ltd. and is unable to recall the purpose of such a transfer. The Noticee has submitted that he resigned as a Director of Hemisphere with effect from 14th March, 2018, and was unaware of the details of any such transfer made by DHFL and unable to access records. In this regard, I note from the Investigation Report that the fund transfers from DHFL to Hemisphere had happened in the year 2017, which is prior to the resignation of the Noticee as director of Hemisphere.
43. The Noticee has submitted that as per the very definition of 'connected person' under Regulation 2(1)(d) of the PIT Regulations, 2015, the Noticee ought to have been shown as connected with the affairs of DHFL 'during six months prior to the concerned act.', and in this view of the matter, the investigations into the directorships and subscriptions of the Noticee are irrelevant and inconclusive. The Noticee has further submitted that he has not, for the period six months prior to the alleged act or during the period of six months preceding the concerned act, has been associated with DHFL, in any capacity whatsoever, which has allowed him to have access to UPSI or be reasonable expected to be allowed such access. In this regard, I note that there were phone calls made on the very same day when the Noticee traded between him and the secretary of Mr. Kapil Wadhwani, who had access to the email from Cobrapost.
44. The Noticee has contended that the reliance on the directorship of the Noticee to show a connection between the Noticee and DHFL, is for the period ranging from 2010 to 2014 i.e. more than 5 years prior to the trade in question. At the same time, the Noticee has stated in his reply to the SCN that the relationship has been restricted to a formal business relation, to the extent required by the Noticee to carry on its real estate consultancy business effectively. In this regard, I note from the replies / statement of the Noticee (shared along with the SCN) that the Noticee admittedly has a business, professional and personal relationship with the promoter-directors of DHFL who are also in the real estate business.

45. The Noticee has contended that there has never been any contractual, fiduciary or employment relation between the Noticee and DHFL and neither has the Noticee been a director, officer or employee of DHFL. However, as discussed previously, I note that the Noticee was in frequent business communication with the promoter directors and other employees of DHFL. Thus, I do not find any merit in the aforesaid submissions of the Noticee.
46. In view of the details mentioned above, I note that the Noticee was in constant touch and had frequent communication with Promoters of DHFL as well as the Key Managerial persons of DHFL, who were in possession of UPSI. The Noticee was observed to be in professional and personal relationship with the Promoters/directors of DHFL. Further, as per the pattern of substitution of directorships in companies between him and Wadhawan brothers, I note that the Noticee was having a close relationship with Wadhawan Brothers. Further, it is also observed that the Noticee was initial subscriber and director in various companies where he/other initial subscribers/directors have domain IDs/telephone numbers of DHFL/associate company.
47. Therefore, in view of the above, I note that the Noticee is a “connected person” in terms of Regulation 2(1)(d)(i) of PIT Regulations and is reasonably expected to have access to the UPSI and hence an “insider” as per Regulation 2(1)(g)(i) of PIT Regulations.

Issue c) Whether Noticee has traded while in possession of UPSI and thus violated the provisions of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of PIT Regulations?

48. I note that the Noticee was holding 12,497 shares of DHFL as on the End of Day, January 28, 2019. He sold his entire holding of 12,497 shares of DHFL on January 29, 2019 on NSE, prior to the press conference of Cobrapost.
49. From the material available on record, I note that the Noticee has stated on oath his rationale behind selling DHFL shares on January 29, 2019 during the course of statement recording before the Investigating Authority (shared with the Noticee as
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Annexure 7 to the SCN) wherein he had stated that *“there was a rumour in the market at that time dated around January 24 – 25, 2019 that there is some financial company (emphasis supplied) which is going to default on payment.”* In this regard, I find it pertinent to note that the Noticee’s own statement reveals that some rumour was floating in the market even before the rumour getting concretized and it pertained to “some financial company”. Thus, I find It relevant and important to note that the name of the company i.e., “DHFL” was admittedly not known to the public during the time the rumour was floating. I am of the view that having sensed a rumour of the nature mentioned above, it would be natural for a prudent investor to sell his holdings at that time itself. However, I note that the Noticee had not made any attempt to sell DHFL shares on or around January 24- 25, 2019 and prior to January 29, 2019 even though he had an opportunity to sell. This conduct of the Noticee, i.e., not selling during the time of rumour and selling during the period with the UPSI was in vogue and before the rumour was made public indicates to me that the Noticee had wanted to be even sure about the company to which the rumour pertains to before deciding to off load his entire holding.

50. Upon a deeper analysis of the trading activities of the Noticee, I note that the Noticee had sold his entire holding in DHFL i.e. 12497 shares on January 29, 2019 at a weighted average price of Rs.171.92 per share (approx.), prior to press conference of Cobrapost and post his two phone calls with the secretary to the Chairman and MD of DHFL, who also admittedly had access to the email from Cobrapost. Prior to January 29, 2019, the last trade executed by the Noticee in the scrip of DHFL was on November 29, 2018 where the Noticee had purchased 2000 shares. Further, from the trade details of the Noticee, it is observed that the Noticee had 100% concentration in the scrip of DHFL during the UPSI period and sold his entire holding in DHFL i.e. 12497 shares during 13:13 PM to 13:14 PM on January 29, 2019 i.e. prior to the press conference of Cobrapost and thus avoided loss. The trade log of the Noticee for his aforesaid trades was shared with the Noticee, and I note that in this regard, the aforesaid trades have not been disputed by the Noticee. Further, the Noticee has not traded in any other scrip

during January 01, 2019 to February 15, 2019. In this regard, the details of trades of the Noticee regarding his concentration are as below:

Period	DHFL		Other Scrips		
	Gross Traded Volume (GTV)	% Activity in this scrip to GTV	Gross Traded Volume (GTV)	% Activity in other scrips to GTV	No. of Scrips
01/01/2019	-	-	-	-	-
14/01/2019	-	-	-	-	-
15/01/2019	-	-	-	-	-
28/01/2019	-	-	-	-	-
29/01/2019	12497	100%	-	-	-
30/01/2019	-	-	-	-	-
15/02/2019	-	-	-	-	-

51. It is observed that the closing price of the scrip of DHFL on the day of UPSI becoming public i.e. January 29, 2019 was Rs.169.70. In this regard, it is observed that the Noticee, by selling shares of DHFL during the UPSI period, has avoided the loss of Rs. 27,716.30. The said amount was calculated as below:

Shares sold by the entity during UPSI period: 12497

Sale proceeds by selling of shares: Rs. 21,48,457.20

Unlawful Loss avoided= Sale proceeds - (No. of shares sold* closing price)

= Rs. 21,48,457.20 - Rs. 21,20,741

= Rs. 27,716.30 (approx.)

Basis of Calculation -

* "Unlawful loss avoided = (No. of shares sold while in possession of UPSI * Weighted average sale price) Less (No. of shares sold while in possession of UPSI * Closing price on the trading day of announcement i.e. January 29, 2019).

At this juncture I do not agree with the argument of the Noticee that he had incurred an overall loss of investment in the scrip of DHFL, reckoned based on the purchase price of the shares in the year 2017 onwards. The issue to be considered here is the opportunity loss avoided or opportunity gain made based on UPSI and the original purchase price cannot form a basis for calculation of loss as has been contended by the Noticee.

52. The Noticee has cited reference to a noting in the investigation report which records that considering the number of shares involved, cost and resources involved for

disgorgement of minimal amount of Rs.27,716/-, separate quasi- judicial proceedings u/s. 11B for disgorgement of unlawful loss avoided by the Noticee may result in non – fruitful utilization of time and resources. Keeping the above noting in mind, the Noticee has contended that there is no reasonable or rational explanation for the commencement of the present Adjudication Proceedings against the Noticee. In this regard, I note that proceedings under section 11B and the current proceedings are independent and are meant to serve different purposes. A case that may warrant an adjudication proceeding need not necessarily call for any action under section 11B. Therefore, the contention of the Noticee that SEBI's decision not to proceed under section 11B leaves no rationale for the present proceedings is not acceptable and is devoid of any merits.

53. In view of the above, I note that the Noticee being an insider, traded in the scrip of DHFL during the period of UPSI and, thus, violated the provisions of Section 12A(d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations.
54. Further, it is pertinent to refer to the judgements of the Hon'ble SAT in the matter of Utsav Pathak vs. SEBI decision dated 12.06.2020 (Misc. Application No.138 of 2020 And Appeal No.430 of 2019) wherein it was held that -

“19. The contention of the learned counsel for the appellant that the inference of providing sensitive information by the appellant to the Tippees was not inferred from any foundational facts is patently erroneous. In this regard, we may note that it is a fundamental principle of law that proving of an allegation levelled against a person can be derived either from direct substantive evidence or can be inferred by a logical process of reasoning from the totality of attending facts and circumstances surrounding the allegations made and levelled. The Supreme Court in SEBI vs. Kishore Ajmera (2016) 6 SCC 368 held that in the absence of direct evidence, the court cannot become helpless and that the court can take notice of immediate and proximate facts and circumstances surrounding the events and reach to a reasonable conclusion. The Supreme Court held that the test would always be as to what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.

20. In this regard, the decision in *Raj Ratnam's* case is relevant wherein the relevance of circumstantial evidence relating to an insider has been culled out as under:-
“...Moreover, several other Courts of Appeals have sustained insider trading convictions based on circumstantial evidence in considering such factors as “(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contact between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee.” *United States v. Larrabee*, 240 F.3d 18, 21-22 (1st Cir. 2001)...”

21. Taking a cue from the decision in *Ajmera's* case and *Raj Ratnam's* case, we find the foundational facts as under:- A. The appellant was a connected person and was an insider as per the PIT Regulations and was privy to the price sensitive information and was directly involved with the activities pertaining to the open offer. B. The appellant had close relationship with the Tippees. C. During the investigation, the appellant made attempts to conceal his relationship with the Tippees, as well as tried to dilute his role in the open offer process. D. The trading pattern of the Tippees makes it apparently clear that the Tippees had prior information with regard to the open offer. To elaborate, we find that the Tippee-1 i.e., the sister of the appellant purchased 4000 shares of CRISIL on 31/5/2013 and sold it on the day when the open offer announcement was made on 3/6/2013. Similarly, Tippee-2 purchased 15000 shares on 14/5/2013, 20/5/2013, 21/5/2013 and 24/5/2013 and sold it on 4/6/2013. E. The Tippees only traded in the shares of CRISIL and did not trade in any other shares. F. Tippee 2 had borrowed large amount [Rs. 1 cr] and sold off existing holdings etc to finance the buy orders of CRISIL shares thereby effectively putting all her eggs in one basket which is a highly abnormal investment behavior. G. Purchase of large chunks of shares and selling it immediately after announcement of the open offer without any plausible cause is suspicious. H. The Tippees were also charged for insider trading and violation of the PIT Regulations...."

22. From the aforesaid foundational facts, the circumstantial evidence or on a preponderance of probability by a logical process of reasoning from the totality of the

attending facts and circumstances as stated aforesaid, an irresistible inference can be drawn that the appellant had passed on the price sensitive information regarding the open offer to the Tippees. Such inference taken from the immediate and proximate facts and circumstances surrounding the events is reasonable and logical which any prudent man would arrive at such a conclusion. The Supreme Court in Kanhaiyalal Patel (supra) held that an inferential conclusion from proved and admitted facts would be permissible and legally justified so long as the same is reasonable.”

Issue d) If yes, then do the violations on the part of the Noticee attract any monetary penalty under Section 15G of the SEBI Act?

55. In view of the foregoing, based on the preponderance of probability, it has been established that Noticee has violated provisions of Section 12A(d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations. Therefore, after taking into account the aforesaid entire facts/ circumstances of the case and material available on record, I am of the view that the above said violations attract imposition of monetary penalty under section 15G of SEBI Act. The relevant provision in this regard is as under:

SEBI Act

Penalty for insider trading.

15G. If any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Issue e) If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act r/w rule 5(2) of the AO Rules?

56. I note that the provisions of Section 15J of the SEBI Act read with Rule 5 of the Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely:
- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
 - (b) the amount of loss caused to an investor or group of investors as a result of the default;
 - (c) the repetitive nature of the default.
57. From the available records, I note that the Noticee by selling shares by of DHFL during the UPSI period, has avoided the loss of Rs. 27,716.30. From the material available on record, I note that the violations are not repetitive.
58. A basic premise that underlines the integrity of securities market is that persons connected with the market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich himself/herself by way of wrongful or ill-gotten gains or avoidance of potential loss made on account of such activity. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon SEBI under the securities laws. The PIT Regulations have put in place a framework for prohibition of insider trading in
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securities. The prohibitions provided in the Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market; thus avoiding trades based on information asymmetry.

ORDER

59. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of Rs.10,00,000 (Rupees Ten Lakh Only) under Section 15G of SEBI Act for violation of Section 12A(d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations on the Noticee viz. Mr. Amit Ramesh Sawhney which is commensurate the violation.
60. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

61. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:
- a) Name and PAN of the Noticee
 - b) Name of the case / matter
 - c) Purpose of Payment – Payment of penalty under AO proceedings
 - d) Bank Name and Account Number
 - e) Transaction Number

62. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
63. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 25, 2020

Place: Mumbai

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