

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2023-24/28944-28946]**

**UNDER SECTION 15-I OF 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:

Noticee	Name
1	Haresh Parmanand Jashnani (PAN: AAJPJ7020L)
2	Poonam Haresh Jashnani (PAN: ADUPJ8724H)
3	Varun Haresh Jashnani (PAN: AIGPJ8710L)

In the matter insider trading in the scrip of United Spirits Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter being referred to as “SEBI”) had passed Adjudication Orders in the matter of insider trading activity of certain activities in the scrip of United Spirits Limited (hereinafter referred to as “**USL**” / “**the company**”) with order numbers Order/PM/NK/2020-21/8081, Order/PM/NK/2020-21/8082 and Order/PM/NK/2020-21/8083 dated June 30, 2020 against Mr Haresh Parmanand Jashnani (hereinafter referred to as “**Noticee 1**” / “**Haresh**”), Ms Poonam Haresh Jashnani (hereinafter referred to as “**Noticee 2**” / “**Poonam**”) and Mr Varun Haresh Jashnani (hereinafter referred to as “**Noticee 3**” / “**Varun**”) respectively, imposing monetary penalties of ₹93,24,057 on Noticee 1, ₹1,31,92,893 on Noticee 2 and ₹80,76,375 on Noticee 3 under Section 15G of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) for violation of provisions of Regulations 3(i) & 4 of SEBI PIT Regulations,

Adjudication Order in respect of 3 entities in the matter of insider trading in the scrip of United Spirits Limited

1992 (hereinafter referred to as “**SEBI PIT Regulations, 1992**”) and Section 12A(d) and (e) of SEBI Act, 1992 read with Regulation 12 of SEBI PIT Regulations, 2015 (hereinafter referred to as “**SEBI PIT Regulations, 2015**”). The Noticees appealed to the Hon’ble SAT against the orders passed by SEBI Adjudicating Officer imposing monetary penalty.

2. Hon’ble Securities Appellate Tribunal (SAT), vide Order dated November 30, 2022, in appeals no. 249, 251, 252 and 255 of 2020, while setting aside the Adjudication Orders dated June 30, 2020 remanded the case to Adjudicating Officer. The Hon’ble SAT inter-alia observed that:

“For the reasons stated aforesaid, the impugned order passed by the WTM and Adjudicating Officer cannot be sustained on the ground of violation of principles of natural justice and are set aside. The matters are remitted to the authorities who are directed to supply the documents as requested in Exhibit “W1” in Appeal No. 255 of 2020 and, upon supply of the documents and, after giving an opportunity to rebut the same and file additional reply, and after giving an opportunity of hearing, a fresh order would be passed. In this regard, the appellants will appear before the authorities on December 09, 2022 on which date the documents would be supplied as prayed for. Thereafter the authorities will grant three weeks’ time to the appellants to rebut those documents and file documents if so required. The matters would be heard thereafter and authorities will pass a fresh order within three months from the date of conclusion of hearing. The misc. application is disposed of accordingly.”

APPOINTMENT OF ADJUDICATING OFFICER

3. In compliance with the aforementioned directions of Hon’ble SAT, the undersigned was appointed as Adjudicating Officer (hereinafter referred to as “**AO**”) on

Adjudication Order in respect of 3 entities in the matter of insider trading in the scrip of United Spirits Limited

December 05, 2022 to enquire into and adjudge under Section 15G of the SEBI Act, the aforementioned violations against Noticees 1, 2 and 3.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common SCN with reference no. EAD-2/DSR/RG/6258/2/2017 dated March 22, 2017 was issued to Noticees 1 to 3 by erstwhile AO to show cause as to why an enquiry should not be held against them in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) read with section 15-I of the SEBI Act and penalty be not imposed under section 15G of SEBI Act for the alleged violation of the provisions of SEBI Act, SEBI PIT Regulations, 1992 and SEBI PIT Regulations, 2015.
5. The observations made under the investigation conducted in the matter of insider trading activity of certain entities in the scrip of USL for the period January 01, 2014 to April 17, 2014.
- 6) It was alleged in the SCN that on April 15, 2014, before market opened, Relay B.V (“**Relay**”) together with Diageo Plc (“**Diageo**”) as the Person Acting in Concert (“**PAC**”) made public announcement to acquire upto 3,77,85,214 fully paid up equity shares of USL at a price of Rs. 3,030/- per share. After the public announcement, price of the scrip surged from Rs. 2,557 (previous close price - April 11, 2014) to Rs. 2,853 (closing price on April 15, 2014) in a single trading day registering an increase of 11.57%. The Open Offer was announced on April 15, 2014 by the managers to the offer, viz. JM Financial Institutional Securities Limited (“**JMFL**”) and HSBC Securities & Capital Markets (India) Private Limited (“**HSCI**”), for and on behalf of the Acquirer (Relay B.V.) and the PAC (Diageo PLC) to the public equity shareholders of the target company, viz. USL. The Acquirer and the PAC had made the open offer to acquire up to 3,77,85,214 fully paid up equity

shares of face value of Rs. 10/- each of USL, constituting 26% of the total fully diluted voting equity share capital of USL at a price of Rs. 3,030/- per share offered, aggregating to total consideration of Rs.1,14,48,91,98,420 (approx. Rs. 11.44 thousand crore). It was further observed that in addition to the equity shares representing 25.02% of the Voting Share Capital acquired, in aggregate under the earlier open offer (which was completed on May 13, 2013), under a preferential allotment agreement dated November 09, 2012 between the Acquirer and the PAC with the Target Company (which was completed on May 27, 2013) and under a share purchase agreement dated November 09, 2012 between the Acquirer and the PAC with the selling shareholders (which was completed on July 04, 2013), the Acquirer had acquired 3.76% of the Voting Share Capital during the financial year from April 01, 2013 to March 31, 2014. Thus, as a result, on the date of the Public Announcement, the Acquirer held 28.78% of the Voting Share Capital of the Target Company.

- 7) The SCN alleged that the open offer announcement by Relay and the PAC on April 15, 2014 to acquire up to 3,77,85,214 fully paid up equity shares of USL constituting 26% of the total fully diluted voting equity share capital of USL at a price of Rs. 3,030/- was considered as price sensitive information (hereinafter referred to as “**PSI**”) in terms of PIT Regulations, 1992. It was alleged that from chronology of the events as submitted by the Manager to the Offer, HSCI and JMFL, Relay and Platinum Partners (Diageo’s Indian legal counsel), it was noted that the PSI related to the Open Offer had come into existence on March 12, 2014 after Platinum Partners received preliminary instructions from Diageo regarding the Open Offer. The PSI was published when the corporate announcement of the Open Offer was made to the Exchanges on April 15, 2014 before the market opened. Thus, it was alleged that the period of Unpublished PSI (“**UPSI**”) was from March 12, 2014 to April 14, 2014.

- 8) As per the replies to the SEBI queries, Managers to the open offer, Relay, USL and Platinum Partners (Indian Legal Counsel of Diageo) submitted that Mr. Nishat Gupte, Global Business Development Manager of Diageo, among others was privy to the information about the open offer till the date of its Public Announcement / was involved in the discussions with the Manager(s) to the open offer / was aware of the open offer till the date of the open offer or till the date of its public announcement / was in possession of the PSI prior to the public announcement. Therefore he was in possession of the price sensitive information prior to its public announcement and therefore an insider in terms of Regulation 2(e) of the SEBI PIT Regulations, 1992. The SCN further alleged that Mr. Nishat Gupte was related to Noticees 1, 2 and 3. Mr. Nishat Gupte (an insider), husband of Mrs. Menka Haresh Jashnani (hereinafter referred to as Mrs. Menka Jashnani/Mrs. Menka), is the son-in-law of Noticees 1 and 2 and brother-in-law of Noticee 3. Thus, Noticees 1, 2 and 3 are deemed connected persons in terms of Regulation 2(h)(vi) of PIT Regulations, 1992. Therefore, Noticees 1, 2 and 3 were alleged to be insiders in terms of Regulation 2(e)(ii) of SEBI PIT Regulations, 1992 by virtue of them being deemed to have been connected with the company (through Mr. Nishat Gupte, Global Business Development Manager of Diageo) and were reasonably expected to have access to the UPSI in respect of securities of USL.
- 9) The SCN further alleged that Mr Nishat Gupte had communicated the aforesaid UPSI to Noticees 1, 2 and 3, who had traded in the scrip of USL based on the alleged communication of the UPSI, thereby making unfair gains. It was alleged that during the UPSI period, Noticees 1, 2 and 3, had traded only in 2 symbols on NSE, viz. McDowell –N and NIFTY. Prior to the UPSI period, i.e. from January 01, 2014 to March 12, 2014, the trades of the Noticees were observed only on 2 days, viz. March 10 & 11, 2014, in the symbol of McDowell – N and the traded quantity

was insignificant in comparison to their trades during the UPSI period. Further, the traded quantity post UPSI was also insignificant in comparison to the trades during the UPSI period. The Noticees have not traded in F & O segment of BSE during the investigation period. Further, the Noticees did not trade in the cash or F&O segment during the period April 2012 to March 10, 2014. Also, the holding period of the option contracts were barely 3 weeks (during the UPSI period) for majority of the contracts. It was also alleged that the part of the unfair gains made by the Noticees from the aforesaid trades were transferred to Mr. Nishat Gupte indirectly through the bank account of Mrs. Menka (Wife of Mr. Nishat Gupte). It was alleged that Noticee 2 (A/c No. 016200100012532, Saraswat Bank) transferred funds (Rs.18.40 lakh) received from Religare Securities Limited as part of the futures settlement proceeds pertaining to the trades in the symbol of McDowell-N to Noticee 1 (A/c No. 016200100012563, Saraswat Bank) on May 09, 2014. After receipt of the said funds, Noticee 1 transferred the entire funds to the bank account of his daughter Mrs. Menka Haresh Jashnani, wife of Mr. Nishat Gupte. In view of all of the above and on the basis of the connection with the insider, trading pattern and fund flow, it was alleged that Noticees 1, 2 and 3 have indulged in insider trading activity in the shares of USL on the basis of UPSI relating to the open offer for acquisition of shares of USL by Relay together with Diageo as PAC communicated by Mr. Nishat Gupte. In view of the aforesaid, it was alleged that the Noticee had violated the provisions of Regulation 3 (i) and Regulation 4 of the SEBI PIT Regulations, 1992 read with Regulation 12 of the SEBI PIT Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992.

10. Pursuant to the restoration of the case to the AO, in accordance with Hon'ble SAT directions, Noticees were advised vide mail dated December 07, 2022, to appear before the undersigned for inspection of documents. Noticee 1 appeared on his

own behalf and on behalf of Noticees 2 and 3. Following documents were provided to Noticee 1 for inspection.

- 10.1. SEBI advise to Diageo vide letter dated June 14, 2019
- 10.2. SEBI advise to lead managers vide letter dated June 18, 2019
- 10.3. Relay's letter dated June 25, 2019 to SEBI
- 10.4. HSBC's letter dated June 28, 2019 to SEBI along with annexed email exchanged dated September 16, 2013 and September 30, 2013 between HSBC and client team
- 10.5. JMFL letter dated July 24, 2019 to SEBI along with annexed copies of email dated September 03, 2013 and Annexure IV
- 10.6. JMFL letter dated July 05, 2019 to SEBI
- 10.7. JMFL letter dated July 12, 2019 to SEBI
- 10.8. JMFL letter dated July 24, 2019 to SEBI
- 10.9. Mr Nishat Gupte email dated July 31, 2013 to JMFL
- 10.10. JMFL email dated August 02, 2013 to Mr Nishat Gupte
- 10.11. JMFL presentation dated September 03, 2013

11. Vide mail dated December 12, 2022, Noticee 1 requested for provision and inspection of following documents, which were not provided during the inspection on December 09, 2022.

- 11.1. Copy of attachments to the letter of JMFL dated July 05, 2019 to SEBI (Sr. No.6 of Exh "W1")
- 11.2. SEBI advise to JMFL dated July 9, 2019. (Mentioned in JMFL letter dt July 12, 2019 @Sr. No.7 of Exh "W1")
- 11.3. SEBI advice to JMFL dated July 18, 2019. (Mentioned in JMFL letter dt July 24, 2019 @ Sr. No.8 of Exh "W1")

12. Vide email dated December 21, 2022, Noticee 1 was advised to be present for inspection of requested documents on December 23, 2022. Vide email dated December 22, 2022, Noticee 1 requested for rescheduling of the inspection. The request for rescheduling of inspection of documents was acceded to by the undersigned and vide email dated December 22, 2022, Noticee 1 was advised to be present for inspection on December 29, 2022. Noticee 1 appeared and inspected the requested documents and copies of the same were also provided to him.
13. Vide email dated December 29, 2022, Noticee 1 requested for three weeks' time to submit replies on behalf of Noticees 1, 2 and 3. The request was considered by the undersigned and he was advised to make submissions by January 20, 2023. Vide email dated January 18, 2023, Noticee 1 requested for additional time to make submissions by January 26, 2023, which was granted by the undersigned. Vide letters dated January 20, 2023, Noticees 1, 2 and 3 made detailed submissions to the SCN.
14. In the interest of natural justice and as directed by Hon'ble SAT in its Order dated November 30, 2022, an opportunity of personal hearing was provided to the Noticees. Vide notice dated March 06, 2023, they were advised to appear for hearing on April 10, 2023. Noticee 1, on behalf of all the Noticees, requested for adjournment of hearing vide letter dated April 03, 2023. Noticee 1 requested to reschedule the hearing on a date after April 28, 2023. The request was acceded to by the undersigned and vide email dated April 10, 2023, Noticee 1 was informed that the hearing was rescheduled to May 03, 2023. Noticee 1 appeared for hearing on behalf of all the Noticees on the scheduled date and time and reiterated the submissions already made vide letters dated January 20, 2023. Noticee 1 also requested for time till May 25, 2023 to make additional submissions, which was

granted by the undersigned. Hearing was concluded with receipt of additional submissions made by the Noticees vide letter dated May 25, 2023.

15. Certain similar submissions were made by Noticees 1, 2 and 3 vide letters dated January 20, 2023 and May 25, 2023, which are summarized hereunder.

15.1. *Total brought forward long quantity as on April 14, 2014 in the SCN is erroneous. Further, in paragraph 14 of the SCN, the strike price of the contracts for the dates March 25, 2014 to April 11, 2014 are shown as ₹5700 to ₹5900. However, the option contracts of McDowell-N never had these strike prices.*

15.2. *The public announcement regarding open offer was displayed on the Exchange on April 15, 2014 at 8.40 AM and hence SEBI has taken UPSI period as March 12, 2014 to April 14, 2014. However, in the table in paragraph 14 of the SCN, trades executed on and after April 15, 2014 have been erroneously included as trades during the UPSI period.*

15.3. *Some particulars of Noticees' trades are missing, as it is not shown whether the contracts are of futures or options and whether they are call or put options.*

15.4. *Even if it is assumed that UPSI period begins from March 12, 2014 (as per the SCN), Noticees' trades of March 10 and 11, 2014 have also been included.*

15.5. *There has been inordinate delay on SEBI's part to make such an investigation, as the transaction in question are of the period March and April, 2014.*

15.6. *Around the year 2006, several insolvency petitions were filed against Noticee 1, due to which he could not open a demat trading account, until dismissal of insolvency petitions till July, 2008. Noticee 1 opened a trading account in December, 2012, and was trading scarecely till March, 2013 as he was involved in the court proceedings of the suits filed against him. After*

settlement/ completion of these proceedings, Noticee 1 was able to resume trading in March, 2014.

15.7. *Noticee 2 has submitted that she had opened trading account in March, 2009 and all orders were placed through the internet. Noticee opened a trading account in October, 2007, which he later closed and opened another account in April, 2010.*

15.8. *From the Order dated February 26, 2013 of the Competition Commission of India, it is evident that Relay/ Diageo had committed to acquire majority shareholding in United Spirits. Paragraph 9 has been quoted for reference below.*

15.8.1. *“Further, it has also been stated in the reply dated 4th February, 2013 by the parties that if following the acquisition of the preferential shares, sale shares and the offer shares, the Acquirer is not able to acquire up to 50.1 per cent of the share capital of USL, it would like to increase its economic exposure in USL and take its holding to at least 50.1 per cent over a period of 4 to 5 years.”*

15.9. *However, in May, 2013, first open offer was completed, through which Diageo could garner only 0.04% of the stake in United Spirits, as against 26% stake intended to be bought through the open offer.*

15.10. *The acquisition of USL by Diageo / Relay was substantially covered by the media. It was expected in the beginning of the year 2014 that Diageo/ Relay will acquire more stake in USL through another open offer or by way of whole or creeping acquisition. In this regard, news articles were enclosed by the Noticee.*

15.11. *Further, various market reports favoured open offer over creeping acquisition as creeping acquisition would take a lot of years (if 5% stake is acquired each year) to acquire majority stake of 53%. Noticee also referred to Diageo’s earnings conference call on January 30, 2014, wherein the CEO of*

Diageo had indicated the company's intention to complete the acquisition by July, 2014. Hence, the open offer in April, 2014 was not a surprise to anyone who was conversant with the developments relating to the acquisition.

15.12. *Noticees purchased March, 2014 and April, 2014 options by paying premium and other costs. If they were in possession of UPSI, they would have purchased only April options and not March options since out of the money contracts have only time value, and their intrinsic value is zero, and the time value declines with time, due to which such options are called depreciating assets. For this reason, the March, 2014 contracts of strike price 2700 CE and 2800 CE expired worthless. Copy of price volume data of 2700 CE and 2800 CE March 2014 expiry option contracts was enclosed by the Noticee in support of its contention.*

15.13. *Noticees submitted that their purchase of the aforesaid options contracts was based on sound and tested trading strategies that were rooted in the basic principles of options trading-*

15.13.1. *Out of the Money options are significantly cheaper to purchase than in the money or at the money option contracts, and they offer better leverage to a trader as and when they exhibit volatility.*

15.13.2. *Extrinsic value of a contract consists of time value of a contract and implied volatility (also called Vega). Volatility is minimal when there is more time to expiry. Maximum impact of volatility is there during midway between the start and expiry of the contracts. Volatility was expected in the price of the USL scrip on account of market reports relating to daily new developments. It was one of the few scrips in F&O segment which had true range of ₹410, i.e. around 18%, consistently month on month.*

15.13.3. *Noticees had bought the contracts beginning from March 10, 2014, which was almost midway between the start and end of the March, 2014 contracts.*

- 15.13.4. *The scrip of USL was to be included in the Nifty 50 index from March 28, 2014. This would result in index based funds to rebalance their portfolio, to track the updated index. As there was very less free float in the scrip of USL, any major buying by Index funds can result in increasing of stock prices exponentially.*
- 15.14. *The Noticees had sufficient finances in the form of ledger credit with the broker, which they could have used to buy larger quantity of options of USL, so as to take advantage of the UPSI, had they been in possession of the same.*
- 15.15. *The content of the mail dated March 12, 2014 by Mr Nishat Gupte is reproduced below.*
- "Gentlemen,*
- This is to introduce you formally in the context of the above project. I have spoken to the lead in each firm on respective roles etc, my immediate request is that collectively you catch up soonest to ensure that Sunil/ Amit are familiarized with some of the challenging regulatory issues that we have discussed over the recent weeks. Going forward, Sunil/ Amit will join us on regular calls dealing with regulatory/legal matters."*
- 15.16. *Noticees submitted that it is an introductory email referring one set of advisors to familiarize the other with challenging regulatory issues and asking all concerned to join regular calls going forward dealing with legal/regulatory matters only. Admittedly, there is no reference in this email to any solutions found with respect to any challenging regulatory issues, confirmation that feasibility of open offer has been ascertained, details of the offer, timing and the offer price being available, etc*
- 15.17. *SCN has failed to explain how verbal discussions that are being referred to in the said email specifically and only regarding challenging regulatory issues among a group of people who are not decision makers leads to the conclusion that UPSI came into existence on March 12, 2014.*

- 15.18. SEBI has failed to establish that the concrete and creditable details that construe the PSI were in existence on March 12, 2014. Undisputedly, as on March 12, 2014, even the Relay/ Diageo (Acquirer/PAC) had not taken a decision on any of the said issues.
- 15.19. SEBI has produced no documentary evidence, other than the 12 March 2014 email, that could show that a decision had crystallized on this date. Admittedly the information is in a fluid state and not crystallized yet.
- 15.20. SEBI has also rejected the version of three entities viz. merchant bankers HSCI / JMFL & the acquirer Relay, as to the date of arising of alleged UPSI, and conveniently picked the date stated by Platinum Partners, the legal representatives of Diageo, who in their statement, have categorically stated that the information is based on "best of their recollection". SEBI has completely ignored and overlooked that while response from entities like HSCI, JMFL was sought four months after the announcement of open offer in 2014 and Relay in 2015, whereas the response from Platinum Partners was only sought in 2016 that is almost two years after the event.
- 15.21. Relay has submitted that that it was only on April 13-14, 2014, that it had discussions with financial advisors just prior to the public announcement. They have further stated that the decision to launch an open offer was taken in a meeting of the transaction committee held on April 14, 2014. This information has been confirmed by the Merchant Bankers i.e., HSBC Securities and Capital Markets India Pvt. Ltd and J M Financial Institutional Securities Limited in their respective letters addressed to SEBI. However, the same has not been appreciated by SEBI. Thus, the details of the Open Offer, i.e. price, quantity etc. were decided by the transaction committee of the Board of Relay only on April 14, 2014.
- 15.22. Noticees submitted that the actual UPSI period was from April 14, 2014 to April 15, 2014 (8:01 AM IST) before the market hours.

15.23. *The Noticees are not relatives of Mr Nishat Gupte, who was Global Business Development Manager of Diageo at the relevant time, by virtue of his marriage to Ms Menka Jashnani, who is daughter of Noticees 1 and 2 and sister of Noticee 3. Noticees further submitted that the term 'relative' has been defined under Regulation 2(i) of PIT Regulations to mean a person as defined under Section 6 of Companies Act, 1956, which defines relatives as members of HUF, husband or wife and list of relatives in Schedule IA. The list includes daughter's husband and sister's husband, but does not include wife's parents or wife's brother. Hence, Noticees 1 and 2 being Mr Nishat Gupte's wife's parents and Noticee 3 being Mr Nishat Gupte's wife's brother are not relatives under PIT Regulations. In this regard, the Noticees relied and quoted from the SEBI WTM's Order in the matter of Bank of Rajasthan, Order No. WTM/GM/EFD/74/2017-18 dated November 22, 2017 and Adjudication Order in the matter of Bank of Rajasthan, Order No. AA/AR/2020-21/7796-7802 dated May 29, 2020.*

15.24. *Noticees submitted that that they cannot be roped in as Insiders as per the regulation 2 (e)(ii) which clearly refers to a person who "has received or has had access to such unpublished price sensitive information". Thus, to fall under this category of insiders, one must either have actually received the UPSI or actually had access to such UPSI in any manner. Burden of proof is on SEBI to establish that there was communication of UPSI by placing on record cogent evidence. In this regard, the Noticees relied and quoted from the judgement of Hon'ble Supreme Court in the matter of BALRAM GARG VS SEBI, IN CIVIL APPEAL NO. 7054 OF 2021.*

15.25. *There is not only buying, but consistent selling of option contracts of McDowell-N during the alleged UPSI period by the Noticees. On many days, buying and selling are on same days. The selling started as early as March 18, 2014, i.e. long time before the crystallization or publication of the UPSI. Had*

they been in possession of UPSI, they wouldn't have liquidated their positions much before the event begun to take shape. Thus, Noticees' sell trades were inconsistent with the awareness of positive UPSI. In this regard, Noticees relied upon and quoted from the judgement of Hon'ble SAT in the matter of Mrs Chandrakala in Appeal No. 209 of 2011 dated 31/01/2012.

15.26. *The summary of trading activity of the Noticees during the UPSI period demonstrates that the trading was predominantly concentrated in Nifty 50. Had they been in possession of UPSI, they would have focused on McDowell-N instead.*

15.27. *the open offer opened on June 06, 2014 and closed on June 19, 2014 and the price movements of the underlying script scarcely moved as can be seen from the following: -*

15.27.1. *April 2014 Expiry price Rs.2,818.25*

15.27.2. *May 2014 Expiry price Rs.2,826.70*

15.27.3. *June 5, 2014 price Rs.2850.90*

15.27.4. *June 6, 2014 price Rs.2852.35*

15.27.5. *June 18, 2014 price Rs.2,802.40*

15.27.6. *June 19, 2014 price Rs.2601.20*

15.27.7. *June 25, 2014 price Rs 2,642.30*

15.28. *There was a significant discount in the pricing of Futures contracts compared to spot prices of USL which converged to the futures rate on closing of tendering of open offer shares on June 19, 2014. Trading in Out-of-the-Money Options during this period would not have been fruitful as the intrinsic value is "0" of the said contracts and it would not have changed until the open offer closed; hence volatility of the contracts would have been low and the time decay would have eroded the option premium day by day till it rendered the option worthless on expiry. Thus, trading in these contracts in these circumstances will not usually be rewarding. The open*

offer period was from 6.6.2014 to 19.6.2014 - during this period prices fell sharply and they were expected to fall further yet, Noticees traded in June and July expiry contracts long after the Public Announcement. In view of the above, it is erroneous to draw any adverse inference against the Noticees on account of his alleged insignificant trades in options of USL during the said "Post UPSI" period.

15.29. There was significant credit balance in the account of the Noticees with their respective brokers on the day prior to publication of the PSI. Had they been aware of the UPSI, they would have utilized the credit balances to purchase many more stock options in the scrip of USL, which they didn't.

15.30. Noticees' trades on March 12, 2014 are included in the "UPSI Period", even though the email conversation took place in the evening (i.e. after market hours), while the trades were executed only in the market hours. Hence, the same is erroneous.

15.31. PSI was published on April 15, 2014 before market hours. However, Noticees' trades on April 15, 2014 have been considered as pertaining to "UPSI Period"

15.32. Option contracts purchased by the Noticee in March, 2014 had March 27, 2014 as their expiry date. As these contracts had expired before the publishing of the PSI, they cannot be considered to be pertaining to "UPSI Period".

15.33. If Noticees had knowledge of the UPSI, they would have bought options of expiry date April 24, 2014 and not March 27, 2014, since the PSI would be published in April, 2014, and by that time, March, 2014 contracts would no longer be in existence.

15.34. All the options with strike price ₹2700 and ₹2800 of March, 2014 had expired, resulting in loss of premium. Further, Noticees could have rolled over the premium to April, 2014, which they didn't.

15.35. Also, if he were in possession of UPSI, , Noticee 1 would have bought ITM or ATM option contracts in April, 2014 at and around the underlying scrip's price, i.e. at strike price of ₹2600 and ₹2700, since the price of the scrip was ₹2655.85

15.36. Diageo/ Relay were coming out with an open offer for purchase of shares at a price of ₹3030, he should have purchased April 2014 contracts with expiry around ₹3030 strike price to maximize its gains. However, he purchased contracts at strike prices between ₹2700 and ₹2900. Further, his trades resulted in loss of premium on contracts with strike price ₹2800 and contracts with strike price of ₹2900 expired worthless.

16. Apart from the common submissions, Noticee 1 has made following submissions.

16.1. One of the aspects of the Noticee 1's position is delta analysis of the trading by the Noticee. "Delta" is used by the market and traders to monitor their overall net position across all their trades/ positions. In this regard, he submitted the details of his outstanding positions on March 20, 2014 (which was 22478 shares) and on April 11, 2014 (4623 shares) and submitted that his net position had reduced between the aforesaid dates by 79%, even before the announcement of the PSI. Following details were submitted by Noticee 1.

Table No. 1

Notices No 2: Haresh Jashnani's Delta position as on 20th March 2014 in McDowell-N

Contracts	Expiry Date	Buy/ Sell	Delta*	No of shares	Total Delta
		(1)	(2)	(3)	(4)=(1)*(2)*(3)
2700CE	27-Mar-2014	Buy (+1)	0.3958	37,750	14,941
2800CE	27-Mar-2014	Buy (+1)	0.2523	28,750	7,537
				Total Delta	22,478

Table No. 2

Haresh Jashnani's Delta position as on 11th April 2014 in McDowell-N

Contracts	Expiry Date	Buy/ Sell	Delta*	No of shares	Total Delta
		(1)	(2)	(3)	(4)=(1)*(2)*(3)
2700CE	24-Apr-2014	Buy (+1)	0.3055	6,250	1,909
2750CE	24-Apr-2014	Buy (+1)	0.2433	4,375	1,064
2800CE	24-Apr-2014	Buy (+1)	0.1811	8,375	1,517
2900CE	24-Apr-2014	Buy (+1)	0.0968	1,375	133
				Total Delta	4,623

(-79%)

* Delta as recorded at the end of the day.

- 16.2. Prior to UPSI period, net purchase quantity of Noticee 1 in McDowell-N option contracts was 39250 contracts. However, during the alleged UPSI period, Noticee 1 had net sales quantity of 18875 contracts. Had he been in possession of the UPSI, he would be having net buy quantity. Further, on many instances, he was buying and selling on the same day.
- 16.3. Also, Noticee 1's trading was mainly concentrated in NIFTY 50 option contracts during the alleged UPSI period. In this regard, following details were submitted by Noticee 1.

			McDowell-N			Other Scripts		
	Gross Buy Val in Rs.	Gross Buy value in %	Gross Sales Val in Rs	Gross Sales value in %	Gross Buy Val in Rs.	Gross Buy value in %	Gross Sales Val in Rs	Gross Sales value in %
<u>Before UPSI Period</u>	1,95,925	100.00%	0.00	0.00%	0	0.00%	0	0.00%
<u>During UPSI Period</u>	15,20,556	9.93%	27,43,369	16.58%	1,37,95,133	90.07%	1,37,98,183	83.42%
<u>After UPSI Period</u>	36,43,038	63.27%	54,95,845	72.81%	21,14,607	36.73%	20,52,025	27.19%

- 16.4. *Regarding movement of funds, Noticee 1 submitted that Noticee 1 was the head of the family, and operated the bank accounts of his wife, Noticee 2. Funds were transferred between bank accounts of family members as and when required.*
- 16.5. *₹15.70 lakh were transferred from the bank account of Noticee 1 to Noticee 2 between April 04, 2014 and April 09, 2014. These amounts were transferred before the publishing of PSI on April 15, 2014. Hence, it cannot be said that these were ill gotten gains which were transferred by Noticee 1 to Noticee 2.*
- 16.6. *Later, on May 09, 2014, Noticee 2 returned the said amount by transferring ₹18.40 lakh. Therefore, only ₹2.70 lakh is transfer credit of Noticee 2 and not ₹18.40 lakh, as projected in the SCN.*
- 16.7. *Regarding fund transfer by Noticee 1 to his daughter, Ms Menka Jashnani on May 09, 2014, Noticee 1 submitted that he and Noticee 2 were planning to visit their daughter in London on the occasion of their grandson's first birthday on May 22, 2014. The air tickets to London were booked on May 07, 2014 and the ₹19 lakh were transferred to Ms Menka Jashnani on May 09, 2014. Since Noticees 1 and 2 were not having an internationally accepted credit card at that time and since they were travelling alone, he had transferred the funds to Ms Menka Jashnani to compensate for the expenses incurred on their behalf while in London. They had incurred expenses equivalent to ₹824000 on their shopping for their son's wedding, and expenditure equivalent to 7500 pounds (eq to ₹772500) was towards, living, food, conveyance and travel expenses, as they had stayed in London for almost 52 days.*
- 16.8. *Noticee 1 also submitted credit card statements of Ms Menka Jashnani and the VAT refund claimed by Noticees 1 and 2, based on the receipts of the shopped goods. Thus, the amount of ₹19 lakh transferred by Noticee 1 to Ms*

Menka Jashnani was for bonafide purpose of meeting their expenses while in the UK.

17. Apart from the common submissions, Noticee 2 has made following submissions.

17.1. *Noticee 2 submitted the details of her outstanding positions on March 20, 2014 (which was 23205 shares) and on April 11, 2014 (8332 shares) and submitted that his net position had reduced between the aforesaid dates by 64%, even before the announcement of the PSI.*

17.2. *Prior to UPSI period, net purchase quantity of Noticee 2 in McDowell-N option contracts was 37000 contracts. However, during the alleged UPSI period, Noticee 2 had net sales quantity of 2125 contracts. Had she been in possession of the UPSI, she would be having net buy quantity. Further, on many instances, she was buying and selling on the same day.*

17.3. *Also, Noticee 2's trading was mainly concentrated in NIFTY 50 option contracts during the alleged UPSI period. This suggests that instead of diverting the funds to USL options, Noticee 2 traded based on the available market knowledge.*

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

18. After perusal of the material available on record, I have the following issues for consideration.

Issue I: Whether the Noticees were in receipt of the Unpublished Price Sensitive Information (UPSI)? If yes, whether they being Insiders had traded on the basis of the said UPSI and made unfair gains? Whether by the above, the Noticees violated the provisions of Regulation 3(i) and Regulation 4 of the SEBI PIT Regulations, 1992 read with Regulation 12 of SEBI PIT Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992?

Issue II: Does the violation, if any, on part of the Noticees attract penalty under Section 15G of the SEBI Act?

Issue III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

19. The relevant erstwhile provisions of SEBI Act, PIT Regulations read as under:

SEBI Act, 1992:

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 there under;

SEBI PIT Regulations, 1992:

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

3. No insider shall-

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

(ii) ----- :

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

Violation of provisions relating to insider trading.

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

SEBI PIT Regulations, 2015:

Repeal and Savings.

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

(2) Notwithstanding such repeal,—

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

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

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

FINDINGS

20. Before moving forward, I note that the Noticees have raised preliminary issue of inordinate delay in the present proceedings, which ought to be addressed, before proceeding with the merits of the matter. Noticees have contended that there has

been inordinate delay on part of SEBI to make such an investigation, as the transactions pertain to March and April, 2014. It is observed that investigation was completed on December 14, 2016 and recommended actions were approved on January 27, 2017. Consequently, first AO was appointed by the competent authority vide order dated January 30, 2017. Show Cause Notice dated March 22, 2017 was issued to the Noticees, inspection of documents was granted to the Noticee and hearing was conducted in the present matter on January 05, 2018 by the erstwhile AO. Upon transfer of the erstwhile AO, CGM Mr Prasanta Mahapatra was appointed as AO by the competent authority. Thereafter, another opportunity of personal hearing was granted to the Noticee on February 28, 2020. The Noticees requested for adjournment of the hearing and another opportunity of hearing was given to them on March 13, 2020. The Noticees expressed their wish not to appear personally and requested two weeks' time to make submissions, which was acceded to. Vide email dated May 05, 2020, Noticees again requested for time till May 25, 2020 in view of the extension of the lockdown period. Noticees made various requests for extension of time, till June 18, 2020 and made the submissions vide letter dated June 19, 2020. After consideration of the facts and evidences, the AO had passed orders dated June 30, 2020 against Noticees 1 to 3. The said orders were challenged before the Hon'ble SAT by the Noticees and vide order dated November 30, 2022, Hon'ble SAT restored the file to the AO and directed the matter to be start afresh after provision of certain specified documents. Consequently, the undersigned was appointed as AO vide Order dated December 05, 2022. Inspection was provided to the Noticees and thereafter hearing was conducted in the matter. Additional submissions were received from the Noticees vide letter dated May 25, 2023. It may be noted that Noticees were provided sufficient opportunities at their request, as described previously, for submitting reply and personal hearing in the matter. Hence, no such delay has occurred in the proceedings, in the way it has been contended in their submissions.

21. Further, I would like to rely upon the judgement of Hon'ble SAT in the case of Ravi Mohan & Ors. vs. SEBI (SAT Appeal No. 97 of 2014, DoD 16/12/2015) wherein it was held that : -

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

22. Further, the Noticees have also not mentioned how they are prejudiced despite being aware of the actions initiated against them by SEBI.

23. Now, I proceed to deal with the merits of the matter.

Issue I: Whether the Noticees were in receipt of the Unpublished Price Sensitive Information (UPSI)? If yes, whether they being Insiders had traded on the basis of the said UPSI and made unfair gains? Whether by the above, the Noticees violated the provisions of Regulation 3(i) and Regulation 4 of the SEBI PIT Regulations, 1992 read with Regulation 12 of SEBI PIT Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992?

24. I find from material available on record that the Noticees had allegedly received UPSI pertaining to the open offer by Relay and its PAC Diageo to acquire shares of USL from their relative and based on which they had traded in the scrip of USL

and made unfair gains. It is also alleged that the above acts of the Noticees were in violation of the provisions of Regulation 3(i) and Regulation 4 of the SEBI PIT Regulations, 1992 read with Regulation 12 of the SEBI PIT Regulations, 2015 and section 12A (d) and (e) of SEBI Act, 1992. I note that to conclude the above allegation following needs to be considered:

- *Whether there was a price sensitive information (PSI), which was unpublished? If yes, what was the unpublished PSI (UPSI) and what was the period when the PSI remained unpublished or the UPSI Period?*
- *Whether the Noticees were "Insider" in terms of SEBI PIT Regulations, 1992 and had traded based on the UPSI?*

Price Sensitive Information

25. I find from material /documents available on record that the Public Announcement dated April 15, 2014 contained the relevant information regarding open offer size, timing and price amongst other information as mandated under Regulation 15 (1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The Noticees have submitted that the market was already aware about the possibility of an open offer, and hence this information cannot be considered as PSI. It was the details of the offer, i.e. the offer price, quantity and date of announcement of the offer, which could have been considered as PSI.

Regulation 2 (ha) of SEBI PIT Regulations, 1992 reads as under:

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

26. As on the date of the public announcement, the Acquirer was holding 28.78% of the voting share capital of the Target Company. The public announcement was

made pursuant to the decision and intention of the Acquirer and the PAC to increase the shareholding of the Acquirer in the Target Company by additionally acquiring up to 26% of the total fully diluted voting equity share capital of USL at a price of ₹3030/- per share under the open offer, which together with the existing shareholding of the Acquirer in the Target Company, would result in the Acquirer holding up to 54.78% of the voting share capital. From this, the Acquirer was expected to hold a majority stake in the Target Company, i.e. USL. Hence, this is a material information relating to the Target Company.

27. BSE Ltd. had disseminated the public announcement on its platform on April 15, 2014 at 08:01:13 AM. Further, the following is noted from the trading in the scrip of the Target Company:

Date	Open (₹)	High (₹)	Low (₹)	Close (₹)	No. of Shares	No. of trades
11/04/2014	2604.95	2604.95	2537.35	2557.00	67793	9919
15/04/2014	2812.70	2940.55	2812.70	2853.15	267559	30307

28. From the above table, it is noted that on April 15, 2014, the scrip opened at 10% higher price of ₹ 2,812.70 from the previous day closing price of ₹ 2,557.00, and reached a high of Rs. 2,940.55 and closed at Rs. 2,853.15, which is 11.57% higher in comparison to the previous closing price. Further, the number of trades executed in the scrip also increased by 205.54%. From the above, it is observed that not only the information of the Acquirer acquiring a majority stake in the Target Company (USL) is a material information, the announcement had also materially affected the price of the securities of the Target Company.

29. I note that the Noticees submitted that possibility of an open offer / information that an open offer was to be made would not per se be a PSI. The SCN states that “the

open offer announcement of HSCI & JMFL on behalf of Relay and the PAC on April 15, 2014 is considered as PSI in terms of Regulation 2(ha) of the SEBI PIT Regulations”.

30. The definition of “price sensitive information” as per regulation 2(ha) of the SEBI PIT Regulations, 1992 is given as under-

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

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

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

31. I note that announcement of open offer falls under point (v) *amalgamation, mergers and takeover* of the Explanation under the above definition. Hence, open offer announcement is deemed to be a price sensitive information. Upon perusal of the open offer announcement, I find that the acquirer made an announcement of its decision to acquire 3,77,85,214 fully paid equity shares of USL at a price of ₹3,030/- per share.

32. It has already been shown in the preceding paragraphs that the open offer announcement resulted in the share price of USL closing 11.57% higher than the previous closing price.

33. In view of the above, it is concluded that the open offer announcement issued by HSCI and JMFL on behalf of Relay and Diageo on April 15, 2014 was PSI in terms of Regulation 2 (ha) of SEBI PIT Regulations.

34. Having concluded that there was a PSI, the next issue to consider is whether the aforesaid PSI was unpublished? If yes, what was the period when the PSI remained unpublished or the UPSI Period?

Period of UPSI

35. I find that the Noticees have submitted that it was anticipated and widely reported in media (national and international) that another open offer would be in the offing soon. Thus, the prospect and possibility of an open offer was already in public domain and cannot in itself be considered an UPSI. In this regard, it would be relevant to refer to the definition of “unpublished” as defined under SEBI PIT Regulations. Regulation 2(k) of SEBI PIT Regulations defines “unpublished” to mean “*information which is not published by the company or its agents and is not specific in nature. Explanation.— Speculative reports in print or electronic media shall not be considered as published information.*” As seen from the definition of “unpublished”, media reports are speculative in nature. Hence, all the media reports regarding the open offer, which were made before the formal announcement by the USL/ Relay/ Diageo cannot be considered as “published” if they were not specific, but speculative in nature. Noticees have themselves submitted that there was greater possibility of announcement of open offer, than that of creeping acquisition. Further, upon the perusal of media reports, it is

observed that there was no mention of the price at which the shares would be bought by the acquirer in the open offer. The announcement of the open offer price of ₹3,030/- was made for the first time and subsequent to which, there was an impact in the closing price of the equity share of USL by 11.57%. Also, if the media reports were specific, the price impact of the information would have already been factored into the price and there would not have been 11.57% increase in the closing price of the scrip of USL, upon open offer announcement on April 15, 2014. The media reports were therefore not specific, but speculative in nature, and hence, cannot be considered as “published”. Thus, the information was “unpublished”. Therefore, the submission of the Noticees that PSI was in public domain and cannot in itself be considered an UPSI, is not acceptable.

36. I find from the material available on record that the PSI related to open offer had come into existence on March 12, 2014 after Platinum Partners received preliminary instructions from Diageo regarding the open offer. Accordingly, the period of UPSI would be March 12, 2014 to April 14, 2014, considering the corporate announcement of the open offer was made to the Exchanges on April 15, 2014.

37. I note that the Noticees have stated that the SCN is silent on when Mr. Nishat became aware of the alleged UPSI. Noticees have also submitted that the Investigation had conveniently cherry picked the date stated by Platinum Partners in its letter, which too was only based on the recollection of the signing partner and rejected the version of three entities viz. HSCI/JMFL/Relay, as to the date of arising of alleged UPSI.

38. I note that the SCN has laid down the chronology to establish the period when the PSI came into existence and when it was published. Further, based on the

response of JMFL, HSCI, Relay, USL and Platinum Partners, who all have submitted that Mr. Nishat, Global Business Development Manager of Diageo among others was privy to the open offer till the date of its Public Announcement / was involved in the discussions with the Manager(s) to the open offer / was aware of the open offer till the date of the open offer or till the date of the public announcement / was in possession of the PSI prior to the public announcement.

39. Moreover, from the email correspondences available on record, following is noted:

- Email dated August 30, 2013 from Mr. Nishat to JMFL and Platinum Partners – On perusal of the said email, it is noted that Mr. Nishat is outlining the agenda for the meeting to be held in the week of 9th September. The topics which Mr. Nishat advised the Manager to the Offer and to the Legal Counsel to address were overall recommendation for share consolidation, value implications of price range, share price sensitivity, division of responsibility amongst teams, legal form of the proposed structure including a detailed step plan / timing for the activities to be carried out and Q&A (Question & Answer) for Investor Relations purposes. Thus, it can be seen that Mr. Nishat was leading and guiding a team of experts / professionals which was exploring in detail the viability of various options from all perspectives (price, sensitivity and legal) to consolidate the shareholding of the Acquirer in the Target Company. In response to the aforesaid email, JMFL vide its email dated September 3, 2013 had sent a working draft of the consolidated presentation on Plan B for review to Mr. Nishat.
- Subsequent to the aforesaid emails, email correspondences dated September 20, 22 and 30, 2013 with HSCI, the other Manager to the Offer to which Mr. Nishat was also a party / privy shows that discussions were taking place on valuation, shareholder analysis and various options including tender offer available to Diageo.

- It is noted from Mr. Nishat's submission that the various discussions that took place subsequent to the failure of first open offer, lead to creeping acquisitions on November 28, 2013 and February 4, 2014.

40. I note from the above discussions that Mr. Nishat was part of the core team that was representing Diageo / PAC in the transaction to consolidate shareholding of the Acquirer in the Target Company and was guiding the team since the beginning of the transaction lifecycle which led to creeping acquisitions and thereafter, the open offer. Moreover, from the email dated March 12, 2014 it is noted that there is a strong preponderance of probability that in the weeks leading up to March 12, 2014, the strategy of launching another open offer was gaining momentum and a team "Project Cape" was formally put together in place to delineate each firm's respective role and to consider various regulatory / legal issues. The various events prior to March 12, 2014 were in fact giving more and more certainty and the nature of discussions moved towards the crystallisation of the UPSI on March 12, 2014. I note that the email was sent by Mr. Vinay Tanna (Corporate Finance M&A Director, Diageo) on March 12, 2014 at 6:39 PM to various officials of Platinum Partners, HSCI, JMFL and copy marked to Diageo officials including Mr Nishat, wherein Mr Vinay Tanna asked to coordinate with each other to discuss the legal and regulatory feasibility of a potential tender offer. Therefore, it can be safely said that as on March 12, 2014, the UPSI had come into existence. Mr. Nishat, being part of the core team of "Project Cape", was in possession of information at various stages and was in possession of UPSI from March 12, 2014 onwards till its public announcement.

41. The following is noted from the extract of the meeting of the Board of Directors of the Acquirer dated March 19, 2014:

“IT WAS NOTED THAT discussions have been ongoing in relation to certain potential transactions to be entered into by the Company to acquire equity shares in United Spirits Limited...

IT WAS RESOLVED to approve to proceed with the strategy outlined in the pre-circulated paper in relation to the potential transactions and consistent with that strategy provide to ... (the “Transaction Committee”) the delegated powers and authority (with the ability to sub-delegate), to consider and approve executing the steps set out below:

To consider and if thought appropriate, to approve or to delegate authority (with the authority to sub-delegate), the Company, together with Diageo plc and any other Diageo group companies acting as parties in concert, launching a potential open offer to the public shareholders of United Spirits Limited (“Open Offer”), in terms of the Securities & Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended (“SEBI (SAST) Regulations”). The Open Offer price would be set in accordance with the SEBI (SAST) Regulations. ...

To consider and if thought appropriate, to approve or to delegate authority (with the authority to sub-delegate), RBV making further purchases of equity shares in United Spirits Limited during the period of the Open Offer, apart from and in addition to any equity shares tendered by public shareholders and acquired by RBV in the Open Offer”.

- From the aforesaid minutes, it is noted that discussions with respect to the acquisition of shares of USL were ongoing i.e. even before March 19, 2014 and based on that a paper was pre-circulated before the said Board Meeting on the strategy. Further, the subsequent paragraph lays emphasis on acquiring the shares through open offer in terms of SEBI (SAST) Regulations and acquisition of shares by the Acquirer during the period of open offer. To take the crystalized strategy forward in conformity with the

legal requirements / obligations under SEBI (SAST) Regulations, the PAC had approached its Indian legal counsel, Platinum Partners. The same is also in line with the submission of Platinum Partners. I note that at this stage, the discussions with legal counsel have to be with respect to the various obligations of the Acquirer and the PAC under SEBI (SAST) Regulations in the matters of open offer.

42. In view of the aforesaid discussion, I am of the considered view that the submission of Platinum Partners that preliminary instructions and discussions were initiated with PAC from March 12, 2014 onwards, is credible. The same as discussed in preceding paragraphs is very specific in nature pertaining to the consolidation of the shareholding of the Acquirer in the Target Company via open offer route and the said discussion was held with Diageo / PAC.

43. I note from material / documents available on record that the PSI was published when the public announcement of the open offer was made to the Stock Exchanges by JMFL and HSCI on behalf of the Acquirer and PAC, on April 15, 2014, before the market opened.

44. In view of the discussions in the foregoing paragraphs, I am of the considered view that the price sensitive information (PSI) came into existence on March 12, 2014 and the same was disclosed to the public through Stock Exchanges on April 15, 2014 before the start of business hours (market hours). Therefore, the UPSI period is from March 12, 2014 to April 14, 2014.

Insider

45. The next issue for consideration is whether Mr Nishat Gupte was "Insider" in terms of SEBI PIT Regulations, 1992? I find that the statutory provisions in respect of the above is as under:

2 (e) "insider" means any person who,

(i) is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information.

2 (c) "connected person" means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

Explanation :—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading.

46. From the aforesaid provision, it is clear that in order to be termed as an insider as stipulated under Regulation 2(e) of the SEBI PIT Regulations, one has to satisfy either of the sub-clauses. In the extant matter as noted from the material /documents available on record, the Acquirer and the Managers to the Offer have stated that Mr. Nishat, was one of the employees of the PAC who was aware of

the offer till the date of public announcement Further, it has already been concluded in the preceding paragraphs that post February 4, 2014, the strategy for consolidation of shareholding of the Acquirer in the Target Company was increasingly crystallised in favour of open offer and by March 12, 2014, UPSI had come into existence and that Mr. Nishat was a part of the core team from the beginning of the transaction cycle, till the public announcement that was working on the consolidation of shareholding of the Acquirer and PAC in the Target Company on behalf of PAC. This leads to the conclusion that he had access to UPSI.

47. In case where the acquisition is through agreement between the Promoters/shareholders of the Target Company and the Acquirers, the fact of acquisition is known to the Acquirers as well as the Target Company. Therefore, in such a scenario, insider would also include those connected with the Target Company and those who are or were connected with the Acquiring company/PAC or are deemed to have been connected with the Acquiring company/PAC. In the present case Mr. Nishat, is not only an officer of Diageo but was also the Global Business Development Manager (M&A) of the PAC. The fact that he was Global Business Development Manager (M&A) puts him in the position where he is reasonably expected to have access to unpublished price sensitive information (UPSI) in relation to the acquisition of shares in the Target Company. Therefore, Mr. Nishat falls within the definition of insider by virtue of being connected person on this score alone.

48. Alternatively, it can be argued that considering Diageo / PAC along with the Acquirer was consolidating its shareholding in USL and by virtue of this fact, they had a temporary business relationship with USL. I note that Diageo / PAC is a juristic entity, the discussions on its behalf as noted in preceding paragraphs were

led by the core team which included Mr. Nishat Gupte since the very beginning, post the failure of first open offer. Mr. Nishat was intricately involved in the entire transaction life cycle of consolidation of shareholding of the Acquirer and PAC in the Target Company. Thus, he also had a temporary business relationship with USL in respect of the said open offer. The term “business relationship” has to be interpreted broadly. It is a well-recognized rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. A construction should be adopted that advances rather than suppresses this object. The purpose of insider trading regulations is to prohibit trading by which an insider gets advantage by virtue of his access to price sensitive information as the same distorts the level playing field for the investors transacting in the market and undermines investors’ confidence. Business relationship from a particular transaction point of view (in the given case, consolidation of shareholding of the Acquirer in the Target Company) means connection that exists among all the entities involved in the transaction. In the instant matter, a team by name of “Project Cape” was specifically formed for the acquisition of shares in the Target Company (USL) which indicates that the said team had a temporary business relationship with the Target Company.

49. It has already been established that Mr. Nishat had access to the UPSI. Therefore, in terms of Regulation 2 (e) (i) of SEBI PIT Regulations, it is concluded that Mr. Nishat is an insider as he was connected with the company, Diageo and was reasonably expected to have access to the UPSI pertaining to the proposed acquisition of majority stake in USL by Relay B.V. and Diageo.

50. Noticees have denied that they are “relatives” of Mr Nishat, as alleged. Noticees have contended that they do not fall within the definition of ‘relative’ as prescribed under the SEBI PIT Regulations. From the material on record, I note that the

Noticees were having cordial relationship with Mr Nishat Gupte, being their daughter's husband, as Noticees 1 and 2 had subsequently visited their daughter's family in London on the occasion of her son's first birthday, as submitted by the Noticees themselves.

51. The term "relative" has been defined under Regulation 2(i) of SEBI PIT Regulations to mean "*a person, as defined under Section 6 of the Companies Act, 1956*". Noticees have contended that since they do not fall within the definition of "relative" as contemplated under SEBI PIT Regulations, they cannot be "deemed connected persons" in terms of Regulation 2(h)(vi) of SEBI PIT Regulations, as alleged. Further, Noticees also cannot be insiders under Regulation 2(e)(i) as alleged, as they are not deemed connected persons - which is the basis of treating them as insiders.

52. The definition given in Section 2(i) of the PIT Regulations, 1992 as mentioned above depends on the definition of 'relative' as provided in Section 6 of the Companies Act, 1956, which reads as under:-

6. MEANING OF "RELATIVE"

A person shall be deemed to be a relative of another, if, and only if,

(a) they are members of a Hindu undivided family ; or

(b) they are husband and wife ; or

(c) the one is related to the other in the manner indicated in Schedule IA

SCHEDULE IA

[See section 6(c)]

LIST OF RELATIVES

1. Father.

2. Mother (including step-mother).

3. Son (including step-son).

4. Son's wife.

5. Daughter (including step-daughter).

6. *Father's father.*
7. *Father's mother.*
8. *Mother's mother.*
9. *Mother's father.*
10. *Son's son.*
11. *Son's son's wife.*
12. *Son's daughter.*
13. *Son's daughter's husband.*
14. *Daughter's husband.*
15. *Daughter's son.*
16. *Daughter's son's wife.*
17. *Daughter's daughter.*
18. *Daughter's daughter's husband.*
19. *Brother (including step-brothers).*
20. *Brother's wife.*
21. *Sister (including step-sister).*
22. *Sister's husband*

53. The definition of “relative” in the Companies Act, 1956 provides for a person who can be deemed to be a “relative” and states that if and only if, any person falls under the ‘List of Relatives’ in Schedule IA of Section 6 (c), only then he can be treated as a “relative”. It is understood that section 6(c) of the Companies Act does not cover reciprocal relationships, i.e. in the reverse direction. Thus, although ‘daughter’s husband’ is a relative as far as daughter’s parents are concerned, ‘wife’s father or mother’ are not explicitly included as a relative. In the present case, although Mr Nishat Gupte is Noticees 1 and 2’s ‘daughter’s husband’. However, for Mr Nishat Gupte, Noticees 1 and 2 are ‘wife’s father and mother’, which are not included as relative in Schedule I-A.

54. Similarly, although ‘sister’s husband’ is a relative as far as a brother is concerned under the definition, ‘wife’s brother’ is not explicitly included as a relative of the husband. In the present case, although Mr Nishat Gupte is Noticee 3’s ‘sister’s

husband'. However, for Mr Nishat Gupte, Noticee 3 is 'wife's brother', which is not explicitly included as relative in Schedule I-A.

55. In this regard, I find it relevant to rely on the SEBI WTM's Order in the matter of Bank of Rajasthan, Order No. WTM/GM/EFD/74/2017-18 dated November 22, wherein, the Ld. WTM *inter-alia* observed that

"17.I have considered the SCN and the submissions of the noticee. The definition of "relative" in the Companies Act, 1956 provides for a person who can be deemed to be a "relative" of another and states that if and only if, any person falls under the 'List of Relatives' in Schedule IA of Section 6 (c), only then he can be treated as a "relative". I note that on a reference made by Indian Banks' Association as regards the scope of the relationship listed in Schedule IA, the Department of Company Affairs, stated that "S 6(c) of the Companies Act does not cover reciprocal relationships in the reverse direction." Therefore, though the 'sister's husband' is a relative as far as a brother is concerned under the definition, 'wife's brother' is not explicitly included as a relative of the husband."

56. Thus, the relations for establishing someone as 'deemed to be connected persons' are to be seen from the perspective of the insider, with whom other persons are deemed to be connected. Therefore, I conclude that Noticees 1, 2 and 3 cannot be considered as "relative" as defined under the Companies Act, 2013. Consequently, they cannot be considered as deemed to be connected persons in terms of regulation 2(e)(i) of SEBI PIT Regulations, 1992.

57. Therefore, once it is established that Noticees 1, 2 and 3 cannot be considered as insiders by way of their connection with Mr Nishat Gupte, it is to be tested whether Noticees 1, 2 and 3 can be considered as insiders under regulation 2(e)(ii) of the SEBI PIT Regulations, 1992. It is noted from the Regulation 2 (e) (ii) of the SEBI

PIT Regulations, 1992 that even though a person is not connected or deemed to be connected with the company, still he can be an insider if he “*has received or has had access to such unpublished price sensitive information*”. Thus, it has to be seen whether Noticees 1, 2 and 3 had received or has had access to the UPSI or not.

Trading behaviour of the Noticees and Communication of UPSI

58. To arrive at a finding as to whether Mr Haresh (Noticee 1), Mrs Poonam (Noticee 2) and Mr Varun (Noticee 3) had received the UPSI or had access to it, the trading behaviour of Noticees 1, 2 and 3 has been considered.

59. The details of trades executed by Noticees 1, 2 and 3 are provided below.

Trade Data in Call options contracts of McDowell-N

NOTICEE 1 - HARESH JASHNANI

Pre-UPSI Period: January 01, 2012 – March 11, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
10-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2466.6	8,000	0	13.05	
11-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2467.7	9,000	0	10.17	

UPSI Period: March 12, 2014 – April 14, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
12-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2469.2	19,625	0	7.77	
12-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2469.2	2,625	0	3.98	
14-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2466.8	11,000	0	7.42	
14-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2466.8	1,500	0	4.35	
18-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2486.05	8,000	8,000	9.50	9.28

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
18-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2486.05	3,000	0	4.90	
19-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2557.8	0	14,000		12.52
20-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2619.6	13,000	8,875	16.55	15.68
20-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2619.6	21,625	0	16.42	
21-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2648.4	0	37,750		47.05
21-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2648.4	0	28,750		20.12
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2557.25	6,250	0	40.55	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2750	2557.25	4,375	0	31.19	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2557.25	8,375	0	23.87	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2900	2557.25	1,375	0	13.69	

Post UPSI Period: April 15, 2014 – June 30, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2853.95	0	1,625		156.57
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2750	2853.95	0	1,375		109.81
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2853.95	0	625		72.96
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2900	2853.95	2,750	4,125	16.75	20.43
16-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2871.8	0	4,625		167.26
16-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2750	2871.8	0	2,250		121.72
16-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2871.8	0	250		74.00
17-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2750	2853.4	0	250		111.00
21-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2847.3	0	1,375		47.28
21-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2850	2847.3	0	2,250		11.99
22-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2833.1	0	3,250		37.73
22-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2850	2833.1	0	1,000		13.00

Adjudication Order in respect of 3 entities in the matter of insider trading in the scrip of United Spirits Limited

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
02-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2848.85	0	750		2,823.50
02-Jun-2014	MCDOWELL-N PE OPTSTK 2014-06-26 2800	2848.85	0	750		94.20
03-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2841.1	0	500		2,796.75
03-Jun-2014	MCDOWELL-N PE OPTSTK 2014-06-26 2800	2841.1	0	500		105.13
24-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2607.55	1,250	0	2,596.74	
24-Jun-2014	MCDOWELL-N PE OPTSTK 2014-06-26 2800	2607.55	1,250	0	203.40	
25-Jun-2014	MCDOWELL-N PE OPTSTK 2014-07-31 2400	2642.3	500	0	101.80	
26-Jun-2014	MCDOWELL-N PE OPTSTK 2014-07-31 2400	2576.25	500	0	91.81	

NOTICEE 2 – POONAM HARESH JASHNANI

Pre-UPSI Period: January 01, 2012 – March 11, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
10-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2466.6	8,000	0	12.66	
11-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2467.7	8,000	0	11.27	

UPSI Period: March 12, 2014 – April 14, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
12-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2469.2	14,000	0	7.93	
12-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2469.2	7,000	0	4.27	
14-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2466.8	9,000	0	7.97	
18-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2486.05	10,500	2,625	9.95	9.15
18-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2486.05	4,000	0	5.02	
19-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2557.8	1,250	14,375	10.99	12.75
20-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2619.6	8,875	7,000	16.20	16.68
20-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2619.6	24,375	0	14.26	
21-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2648.4	0	35,625		52.79

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
21-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2648.4	0	35,375		21.72
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2557.25	9,250	0	42.59	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2750	2557.25	4,750	0	30.73	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2557.25	21,375	0	24.44	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2900	2557.25	1,000	0	12.63	

Post UPSI Period: April 15, 2014 – June 30, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2853.95	125	1,625	154.40	153.23
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2750	2853.95	0	1,500		106.18
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2853.95	0	9,375		72.57
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2850	2853.95	0	2,750		40.95
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2900	2853.95	2,750	3,750	17.15	19.39
16-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2871.8	0	7,750		165.34
16-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2750	2871.8	0	3,250		113.77
16-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2871.8	0	8,750		76.86
17-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2853.4	0	2,250		63.58
21-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2847.3	0	1,000		52.16
21-Apr-2014	NIFTY FF FUTIDX 2014-04-24 0	6817.65	150	150	6,811.07	6,836.00

NOTICEE 3 – VARUN HARESH JASHNANI

Pre-UPSI Period: January 01, 2012 – March 11, 2014 – NIL

UPSI Period: March 12, 2014 – April 14, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
13-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2495.3	16,375	0	8.29	
13-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2495.3	8,000	0	4.83	
18-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2486.05	7,625	7,625	9.09	7.65
18-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2486.05	21,125	0	4.95	
19-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2557.8	0	625		12.00
19-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2557.8	0	3,750		5.16
20-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2619.6	2,500	0	22.90	
20-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2619.6	20,250	0	10.89	
21-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2700	2648.4	0	18,250		48.69
21-Mar-2014	MCDOWELL-N CE OPTSTK 2014-03-27 2800	2648.4	0	45,625		23.20
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2557.25	3,750	0	42.18	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2557.25	17,625	0	25.81	
11-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2900	2557.25	33,125	0	14.58	

Post UPSI Period: April 15, 2014 – June 30, 2014

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2853.95	0	11,250		72.50
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2900	2853.95	0	33,125		18.49
15-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 3000	2853.95	0	3,750		7.30
16-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2700	2871.8	0	1,250		169.20
17-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2853.4	0	2,000		68.66
21-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2800	2847.3	0	2,625		51.42
21-Apr-2014	MCDOWELL-N CE OPTSTK 2014-04-24 2850	2847.3	0	3,875		12.56
06-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2852.35	0	1,500		2,773.52
06-Jun-2014	MCDOWELL-N PE OPTSTK 2014-06-26 2800	2852.35	0	1,500		104.88

Date	Contract	Spot Close Price	Days Buy Quantity	Days Sell Quantity	Buy Avg Price	Sell Avg Price
09-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2863.5	0	125		2,808.35
09-Jun-2014	MCDOWELL-N CE OPTSTK 2014-06-26 2800	2863.5	0	125		108.15
10-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2851.35	125	125	2,777.20	2,779.75
10-Jun-2014	MCDOWELL-N CE OPTSTK 2014-06-26 2800	2851.35	125	0	98.35	
10-Jun-2014	MCDOWELL-N PE OPTSTK 2014-06-26 2800	2851.35	0	125		122.00
23-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2594.95	875	0	2,586.16	
23-Jun-2014	MCDOWELL-N PE OPTSTK 2014-06-26 2800	2594.95	875	0	214.86	
24-Jun-2014	MCDOWELL-N FF FUTSTK 2014-06-26 0	2607.55	750	0	2,601.20	
24-Jun-2014	MCDOWELL-N PE OPTSTK 2014-06-26 2800	2607.55	750	0	198.67	
25-Jun-2014	MCDOWELL-N PE OPTSTK 2014-07-31 2400	2642.3	1,500	0	96.53	
25-Jun-2014	NIFTY CE OPTIDX 2014-07-31 7200	7569.25	300	0	448.65	
25-Jun-2014	NIFTY CE OPTIDX 2014-07-31 7300	7569.25	0	300		370.67
30-Jun-2014	MCDOWELL-N PE OPTSTK 2014-07-31 2400	2396.05	500	0	72.00	

60. From the above trades, Noticees 1, 2 and 3 made the following profits:

NOTICEE 1 – HARESH JASHNANI

IOA Ind	Strike Price (in ₹)	Expiry Date	Settlement Price (₹)	Buy Qty	Sell Qty	Avg Buy Price (₹)	Avg Sell Price (₹)	Long Qty	Short Qty	Sqrd Off PL (₹)	Settled PL (₹)	Call PL (₹)	Long Short PL (₹)	Total Profit / Loss (₹)
OTM	2,700	3/27/2014	2,656	68,625	68,625	10.51	31.55	0	0	1,433,681	-	-	-	1,443,681
OTM	2,800	3/27/2014	2,656	28,750	28,750	13.45	20.12	0	0	191,831	-	-	-	191,831
ITM	2,700	4/24/2014	2,818	6,250	6,250	40.55	164.48	0	0	774,556	-	-	-	774,556
ITM	2,750	4/24/2014	2,818	4,375	3,875	31.19	116.80	500	-500	-	331,740	18,529	-	350,269
ITM	2,800	4/24/2014	2,818	8,375	5,500	23.87	45.77	2875	-2875	-	120,460	(16,153.64)	-	104,306
OTM	2,850	4/24/2014	2,818	-	3,250	0.00	12.30	-3250	3250	-	-	-	39,981	39,981
OTM	2,900	4/24/2014	2,818	4,125	4,125	15.73	20.43	0	0	19,406	-	-	-	19,406
TOTAL										2,429,475	452,200	2,375	39,981	2,924,031

NOTICEE 2 – POONAM HARESH JASHNANI

IOA Ind	Strike Price (in ₹)	Expiry Date	Settlement Price (₹)	Buy Qty	Sell Qty	Avg Buy Price (₹)	Avg Sell Price (₹)	Long Qty	Short Qty	Sqrd Off PL (₹)	Settled PL (₹)	Call Long PL (₹)	Call Short PL (₹)	Total Profit / Loss (₹)
OTM	2,700	3/27/2014	2,656.85	59,625	59,625	10.67	36.98	0	0	1,568,431	-	-	-	1,568,431
OTM	2,800	3/27/2014	2,656.85	35,375	35,375	11.24	21.72	0	0	370,856	-	-	-	370,856
ITM	2,700	4/24/2014	2,818.25	9,375	9,375	44.08	163.24	0	0	1,117,144	-	-	-	1,117,144
ITM	2,750	4/24/2014	2,818.25	4,750	4,750	30.73	111.37	0	0	383,044	-	-	-	383,044
ITM	2,800	4/24/2014	2,818.25	21,375	21,375	24.44	72.42	0	0	1,025,750	-	-	-	1,025,750
OTM	2,850	4/24/2014	2,818.25	2,750	2,750	16.66	40.95	0	0	66,800	-	-	-	66,800
OTM	2,900	4/24/2014	2,818.25	3,750	3,750	15.94	19.39	0	0	12,919	-	-	-	12,919
TOTAL										4,544,944	-	-	-	4,544,944

NOTICEE 3 – VARUN HARESH JASHNANI

IOA Ind	Strike Price (in ₹)	Expiry Date	Settlement Price (₹)	Buy Qty	Sell Qty	Avg Buy Price (₹)	Avg Sell Price (₹)	Long Qty	Short Qty	Sqrd Off PL (₹)	Settled PL (₹)	Call Long PL (₹)	Call Short PL (₹)	Total Profit / Loss (₹)
OTM	2,600	3/27/2014	2,656	3,000	3,000	11.25	17.78	0	0	19,594	-	-	-	19,594
OTM	2,700	3/27/2014	2,656	26,500	26,500	9.90	36.02	0	0	692,144	-	-	-	692,144
ITM	2,800	3/27/2014	2,656	49,375	49,375	7.37	21.83	0	0	714,138	-	-	-	714,138
ITM	2,700	4/24/2014	2,818	3,750	1,250	42.18	169.20	2500	-2500	-	158773	190171	-	348944
ITM	2,800	4/24/2014	2,818	17,625	15,875	25.81	68.53	1750	-1750	-	678173	(13235)	-	664938
OTM	2,850	4/24/2014	2,818	-	3,875	0.00	12.56	-3875	3875	-	-	-	48669	48669
OTM	2,900	4/24/2014	2,818	33,125	33,125	14.58	18.49	0	0	129,575	-	-	-	129,575
TOTAL										1,555,450	836,946	176,935	48,669	2,618,000

61. From the trade data of the Noticees, I note peculiar trading patterns and observations, which cannot be considered as being executed in the normal course of trading. Some of the observations are summarised below and detailed in the forthcoming paragraphs.

61.1. Noticees have not traded for a long duration of time before beginning to trade in option contracts of McDowell-N since March 10, 2014. The trades have been executed in far 'out of money' contracts, which means that the strike price of the option contracts was substantially higher than the prevailing stock price.

61.2. Noticees have traded heavily on April 11, 2014, which is the immediately preceding trading day from the day of announcement of the open offer, i.e. April 15, 2014. Since the expiry of March, 2014 options, Noticees did not begin

taking OTM positions in the April, 2014 expiry contracts until April 11, 2014, and buying the option contracts just before increase in the underlying share's price resulted in huge gains at the time of selling the said option contracts, as can be seen from the tables provided above.

61.3. I note that the trades executed by the Noticees during the UPSI period in the option contracts of McDowell-N are very different from the trades executed by them in Nifty Index futures and options, as the positions taken in Nifty Index were comfortably 'in-the-money', while the positions taken in McDowell-N were far 'out of the money'. In this regard, Noticees' explanation and trading rationale fall short to objectively convince, as to what nudged the Noticees in taking enormous risk by taking OTM positions in McDowell-N, which they have not done in any other scrip or contract at any point of time in the two years beginning April 01, 2013 till March 31, 2015.

61.4. I observe that another scrip TECHM was included in Nifty50 Index on March 28, 2014, along with McDowell-N. However, Noticees have not traded in the scrip. In fact, during the period beginning April 01, 2013 till March 31, 2015, 8 scrips were included in and 8 other scrips were excluded from Nifty50. However, Noticees have not demonstrated their application of the similar trading rationale, and have not traded in any of the scrips in the manner they have traded in McDowell-N.

61.5. Noticees 1, 2 and 3 have taken similar positions in the same options contract. Noticee 1 has submitted that due to the insolvency petitions and court cases, that he started trading since March 10, 2014. However, Noticees 2 and 3 have not provided any explanation for not trading between April 01, 2013 and March 09, 2014, and then suddenly trading heavily since March 10, 2014. Further, apart from Nifty Index F&O, their trading was concentrated in the option contracts of the scrip of USL (i.e. McDowell-N), which was in the process of being acquired by Relay PLC and Diageo, in which Mr Nishat Gupte, who

was the son-in-law of Noticees 1 and 2, and brother-in-law of Noticee 3, and was working as Global Business Development Manager and heading the acquisition process. Though they cannot be considered as 'relatives' in terms of SEBI PIT Regulations, 1992, it has been observed that the Noticees were having cordial relationship with Mr Nishat Gupte.

61.6. Noticees 1, 2 and 3 have collectively gained more than ₹96.59 lakh from trading in option contracts in the scrip of McDowell-N of March and April, 2014 expiry. As also mentioned earlier, the Noticees have traded in far OTM in the said options contract. However, Noticees 1, 2 and 3 have collectively lost around ₹70,827 while trading in Index options of Nifty50 of March and April, 2014 expiry, even though the positions were comfortably in-the-money.

62. Noticees have contended that if they had access to UPSI they would have traded either in the equity shares or future contracts or in option contracts where option premium is to be paid. I understand that trading in options gives more exposure to the trader at a lower investment than trading in equity and therefore the profit earned by trading in options is more in comparison to the trading in equity shares. I note that in the instant matter, the Noticees bought 'Out of the Money' Options at a much lesser premium than the equity shares which enabled them to have more exposure leading them to make much more profit as a percentage of their investment than by trading in equity shares, for the same increase in the underlying asset. To illustrate, it is noted from the price data for McDowell call option during the period March 3, 2014 to March 27, 2014 that the settlement price on March 10, 2014 when the Noticees have bought the call option was Rs. 10.75 for the strike price of Rs. 2,700 when the underlying value was Rs. 2,466.60. The said call option when the Noticee sold on March 21, 2014 had a settlement price of Rs. 56.75 when the underlying value was Rs. 2648.40. Thus, the profit while trading in options increased by 428%, while the same would have been 7.3% if the trading was done

in equity shares. Similarly for Future Contracts, the settlement price for the underlying value of Rs. 2,466.60 on March 10, 2014 was Rs. 2482.60. The settlement price had increased to Rs. 2659.16 on March 21, 2014 when the underlying had increased to Rs. 2648.40. Thus, it can be seen that proportionate increase in profit is almost equivalent while trading in Futures and Equity and is much less than the Options trading. I understand that the fact that the Noticees preferred to buy 'out of the money options' is a strong circumstantial evidence to indicate that the Noticee had confidence and believed that the price of the underlying asset will be close/equivalent to the strike price.

63. I note that another argument is that if they had inside information / UPSI, the Noticees would have bought April Expiry contracts and not March expiry contracts since the open offer would have been announced in April 2014. I understand that the premium is dependent on the duration of time to expiry of the contract. If there is more time to expiry then the premium will be more and the same will reduce with reduction in the time to expiry. Therefore, since there is more time available for the April Expiry contracts compared to March Expiry contracts, April Expiry contracts have more time value and hence more expensive than March Expiry contracts. Further, the liquidity / no. of contracts available for April Expiry in the first couple of weeks of March would generally be lower than liquidity for March Expiry. Thus, investing in March Expiry Options would also be a logical and viable strategy when one is in possession of UPSI. I note that this is another significant circumstantial evidence that the Noticees were in possession of the UPSI, else they would not have had the confidence that in all probability the value of the underlying would reach near the open offer price of Rs. 3,030 in April and thus would not have had the confidence to buy options with strike price range of Rs. 2,600 to Rs. 3,000 in March. As the settlement price of the March Expiry contracts towards expiry had

increased manifold from the time of purchase of the options, the Noticees booked profits in the said contracts right away.

64. It is noted that trades in the stock options of McDowell has been attributed to volatility in the price of the underlying asset by Noticee and not to any UPSI. On perusal of material /documents available on record I note that during the two financial years i.e., 2013-2014 and 2014-2015, apart from derivative trading in NIFTY and McDowell, the Noticees have bought stock options in four other scrip and sold stock options in 3 scrip. All the buying and selling in the options have been executed on the same day i.e. intraday trades, except in the scrip of State Bank of India (buy transactions was executed on 3 days and sell transactions was executed on 4 days) and number of transactions executed in a day was not more than 8 instances. In view of the aforesaid, I note that from a bucket of approximately 200 stock options, the trades were mainly concentrated in only one scrip (USL/McDowell) in which their son-in-law / brother-in-law was an Insider.

65. I note that the Noticees have not demonstrated any trading strategy employed while trading in the stock options of McDowell or in any other scrip's stock options. Moreover, they were buying the stock options of McDowell at the strike price range of Rs. 2,600 – Rs. 2,900 and the open offer price announced on April 15, 2014 was Rs. 3,030. I find that if the same is viewed/examined in the light of the price of the underlying in the preceding two months when there was a fall in the price from Rs. 2,608.05 on January 1, 2014 to Rs. 2387.25 on February 28, 2014 which inter alia is indicative of the fact that performance of the stock was not very good. I note that even if it is accepted that one of the reasons for his trade in stock options of McDowell was volatility, the same is not substantiated by their trading in any other stock options with similar volatility and even when the price of the underlying was falling, still the Noticees were bullish that the value of the underlying would reach

around Rs. 2,900. I find that the circumstances of the extant matter point towards the inference that the Noticees would have received the UPSI and they were trading in the scrip which gave them the reason/ confidence to deal in "Out of Money" stock options of McDowell.

66. It has also been argued that the April 2014 contracts with strike price 2800CE expired at a loss of the premium and April 2014 contracts with strike price 29000E and 3000CE expired "worthless". With respect to April 2014 contracts with strike price 2800CE, it is noted that Noticee 1 had bought 8,375 stock options of April 24, 2014 expiry with strike price 2800CE on April 11, 2014 at Rs. 23.87. He had sold 5,500 of the said contracts during the period April 15 - 22, 2014 at an average price of Rs. 57.99. Thus, based on the above trading details, it is noted that he has earned profits while dealing in the April 2014 contracts with strike price 2800CE. Further, though some of the contracts bought by him expired worthless, but looking holistically at the trading done by him in the April 2014 contracts with strike price 2800CE, strike price 29000E and 3000CE, he has earned substantial profits. The circumstance that he has incurred losses because of the expiry of the contract is outweighed by the multiple circumstances wherein he has reaped profits. Therefore, the circumstance of 'loss' given the weightage of the multiple circumstance of the 'profits' cannot have a leading effect on the conclusion that the trades were not in possession of UPSI. Thus, in this context, the fact that some of the options expired worthless is irrelevant, as the Noticees had reaped profits out of the other positions without waiting for the expiry date / rollover.

67. It has been argued that in terms of value, trades in NIFTY futures and options exceeded those in the symbol of McDowell-N which does not negate the fact that apart from NIFTY, Noticees have singled out option contracts in McDowell-N to trade in out of 200 possible option contracts, have dealt in strike price which was

away from the price of the underlying asset and with an increased frequency from March 12, 2014 onwards. Such kind of focused and concentrated trading in the option contract of McDowell-N is also not backed by their normal trading behaviour / pattern as discussed in preceding paragraphs.

68. The reasons for which Noticees' explanations are not acceptable, as explained in preceding paragraphs, are summarised hereunder:

- Proximity of their trades in the stock options of USL vis-a-vis the UPSI period. Also, Noticees were trading heavily in the April, 2014 expiry contracts, immediately before the date of announcement of the open offer, which was UPSI.
- Insignificant trading in the stock options of other scrips.
- The trading in NIFTY can be explained based on their own submission that USL was going to be included in the NSE index. Consistent buying and selling in the stock option of USL during the UPSI period and not in any other stock option during that period. Even in NIFTY futures and options, the positions taken were comfortably in-the-money on majority of the occasions.
- No plausible explanation as to why when the price of the underlying asset was falling, the Noticees were bullish about buying the stock options of USL at the strike prices of Rs. 2,700, Rs. 2,800 and Rs. 2,900.
- Family relationship of the Noticees with Mr. Nishat and the access of Mr. Nishat to the UPSI being part of the core team member of Project Cape and being involved from the beginning of transaction life cycle to consolidate the shareholding of the Acquirer and PAC in the Target Company.

69. Thus, the trading pattern of the Noticees is highly suspicious and points to the insider trading activities in the scrip of USL. However, one of the important elements is communication of UPSI by the insider, i.e. Mr Nishat Gupte to Noticees

1, 2 and 3, which would establish the Noticees' access to the UPSI. While there are circumstantial evidence through the trading pattern as detailed above to show that they had access to the UPSI, however, there is no evidence on record to show that there was communication of information between Mr Nishat Gupte and the Noticees. It is more important in view of the recent judgement of Hon'ble Supreme Court in Balram Garg vs. SEBI (Civil Appeal No. 7054 of 2021) dated April 19, 2022, wherein it was observed that

“given the fact that the entire case against the appellants for the offence of insider trading was based on the nature of close relationship between the parties, once it has been rightly held by the WTM that the appellants are neither “connected persons” within the meaning of Regulation 2(1)(d) nor “immediate relatives” within the meaning of Regulation 2(1)(f) of PIT Regulation, the question of ipso facto relying on the nature of relationship between the parties to come to the conclusion that they were “in possession of or having access to UPSI” while trading with the shares of the company is legally unsustainable.”

“the onus was actually on SEBI to prove that the appellants were in possession of or having access to UPSI. The legislative note to Regulation 2(1)(g) makes the above position of law explicitly clear. It states that:

“... The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.”

“We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading

pattern of the appellants in C.A. No.7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A.No.7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties. In this context, even the show-cause notices do not allege any communication between the Appellant Balram Garg and the other appellants in C.A. No.7590 of 2021.”

70. Thus, in the absence of cogent evidence available on record to show as to how the UPSI was communicated to Noticees 1, 2 and 3 and taking note of the aforementioned judgement of the Hon’ble Supreme Court, the charges levelled in the show cause notice cannot be sustained and accordingly, the SCN dated March 22, 2017 is disposed of.

71. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 25, 2023

Place: Mumbai

**BARNALI MUKHERJEE
ADJUDICATING OFFICER**