

WTM/AB/IVD/ID15/11511/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Noticee no.	Noticee Name	PAN
1	Mr. Suresh Shetty	ABBPS1631D
2	M/s. Suresh Shetty (HUF)	AAJHS7270M
3	M/s. Emerging Securities Private Limited	AAACE0195R
4	Mrs. Reetha Shetty	AADPS5018B
5	M/s. Vanijya Investment and Trading	AAKFV4482F
6	Ms. Shruti Shetty	AOBPS4348L

(The aforesaid entities are hereinafter referred to by their respective names / noticee numbers or collectively as “the Noticees”)

In the matter of Suprajit Engineering Ltd.

1. Present proceedings have emanated from show cause notice dated July 06, 2020 (hereinafter referred to as “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the aforesaid Noticees for the alleged violations of Section 12A(d) & (e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations, 1992**”) (Since repealed) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”). The SCN came to be issued to the Noticees as SEBI had conducted an investigation into the allegations of insider trading by certain entities in the scrip of Suprajit Engineering Limited (hereinafter to be referred as “**the Company**” / “**SEL**”) for the periods from October 28, 2014 to May 31, 2015 and April 01, 2016 to May 31, 2016.

2. The key findings of the investigation as contained in the SCN and the allegations levelled therein against the Noticees, in brief, are reproduced hereunder:

- a. SEL is a company having its shares listed at BSE and NSE since November 28, 2003.
- b. On May 06, 2015, SEL informed stock exchanges about a proposal of acquiring 51% to 61.88% in the equity capital of Phoenix Lamps Limited (hereinafter referred to as “**PLL**”) from Argon India Limited, Mauritius & Argon South Asia Limited, Mauritius at an agreed price of Rs. 89/- (Rupees Eighty Nine) per share for each share having face value of Rs. 10/- each. Stock Exchanges were also informed about an open offer to acquire 72,85,018 shares of face value of Rs. 10/- each aggregating to 26% of the Equity Capital of PLL at Rs. 100 (Rupees One Hundred) per share. This information before its announcement made to the stock exchanges on May 06, 2015, has been considered by the SCN as Unpublished Price Sensitive Information (hereinafter referred to as “**UPSI-1**”).
- c. Subsequently, on April 18, 2016, SEL issued a press release to the stock exchanges announcing merger of PLL (Subsidiary of SEL) with SEL and this announcement prior to its disclosure to stock exchanges on April 18, 2016, has also been considered by the SCN as Unpublished Price Sensitive Information (hereinafter referred to as “**UPSI-2**”).
- d. In relation to proposal of acquiring 51% to 61.88% shares of PLL (UPSI-1), from chronology of events provided by the Company, it was noticed that the discussion on proposal started from March 30, 2015. However, Grant Thornton vide email dated April 08, 2019 submitted that it had signed engagement letter with SEL on October 28, 2014 with reference to transaction support services in relation to the proposed acquisition of controlling stake by SEL in PLL. Hence, the Investigation Period for the said announcement has been considered from October 28, 2014 to May 31, 2015 (hereinafter referred to as ‘**Investigation Period -1**’).

- e. With respect to merger of PLL with SEL i.e. UPSI 2, from chronology of events provided by the Company, it was noticed that the first discussion related to merger started in first week of April 2016. On the basis of submissions made by SEL and others, investigation found that discussion related to merger started in the first week of April 2016. Therefore, Investigation Period for UPSI 2 has been considered from April 01, 2016 to May 31, 2016 (hereinafter referred to as '**Investigation Period -2**'). Hence, investigation has been conducted for two different periods, relating to two separate events which were announced by the Company. Details of these events and their impact of the price of SEL is as follows:

Announcement relating to acquisition of stake in PLL by SEL:

- f. Announcements made by SEL to stock exchanges on May 06, 2015 pertaining to acquisition of stake in PLL and its impact on the price of SEL is as below.

Table-A

Investigation Period-1 (October 28, 2014 to May 31, 2015)																																		
Sr. No.	Date & Time	Announcement	Price Impact/Shares Traded	Remarks																														
1	06/05/2015 11:06:31 (Wednesday)	SEL had informed exchanges that the BoDs in its meeting held on May 06, 2015, has approved the "Proposal of acquiring 51% to 61.88% in the equity capital of PLL from Argon India Limited, Mauritius & Argon South Asia Limited, Mauritius at an agreed price of Rs. 89/- per share of Rs. 10/- each and signed a Share Purchase Agreement on May 06, 2015". 2. Open offer to acquire 72,85,018 shares of Rs. 10/- each aggregating to 26% of the equity capital of PLL at Rs. 100 per share	05-May-2015 (Tuesday) <table> <tr> <th>Exc h.</th><th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>BS E</td><td>119.40</td><td>122.50</td><td>116.40</td><td>120.60</td></tr> <tr> <td>NS E</td><td>117.10</td><td>122.2</td><td>116.30</td><td>120.55</td></tr> </table> No. of shares traded: BSE: 6890 NSE: 56868 06-May-2015 (Wednesday) <table> <tr> <th>Exch .</th><th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>BSE</td><td>120.60</td><td>126.70</td><td>118.10</td><td>120.10</td></tr> <tr> <td>NSE</td><td>120.00</td><td>126.50</td><td>118.05</td><td>119.20</td></tr> </table> No. of shares traded: BSE: 23251 NSE:226298	Exc h.	O	H	L	C	BS E	119.40	122.50	116.40	120.60	NS E	117.10	122.2	116.30	120.55	Exch .	O	H	L	C	BSE	120.60	126.70	118.10	120.10	NSE	120.00	126.50	118.05	119.20	On May 06, 2015 price of the scrip increased by 5.05% of closing price on May 05, 2015. Announcement made by the company had a positive impact on the price of the scrip.
Exc h.	O	H	L	C																														
BS E	119.40	122.50	116.40	120.60																														
NS E	117.10	122.2	116.30	120.55																														
Exch .	O	H	L	C																														
BSE	120.60	126.70	118.10	120.10																														
NSE	120.00	126.50	118.05	119.20																														

Announcement relating to merger of PLL with SEL:

g. Impact of announcement of merger of PLL into SEL is as below:

Table-B

Investigation Period-2 (April 01, 2016 to May 31, 2016)																																		
Sr. No.	Date & Time	Announcement	Price Impact/Shares Traded	Remarks																														
1	18/04/2016 09:26:18 (Monday)	SEL had informed exchanges that the BoDs at its meeting held on April 18, 2016, has transacted various items of business; - Approved the draft scheme of amalgamation of PLL, a Subsidiary of SEL.	13-April-2016 (Wednesday): <table border="1"> <tr> <th>Exch.</th><th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>BSE</td><td>136.90</td><td>137.20</td><td>136.6</td><td>136.80</td></tr> <tr> <td>NSE</td><td>135.95</td><td>138</td><td>135.10</td><td>136.60</td></tr> </table> No. of shares traded: BSE:960 NSE:43355 18-April-2016 (Monday): <table border="1"> <tr> <th>Exch.</th><th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>BSE</td><td>138</td><td>156.60</td><td>138</td><td>146.80</td></tr> <tr> <td>NSE</td><td>137.95</td><td>157.05</td><td>136</td><td>147.45</td></tr> </table> No. of shares traded: BSE: 57781 NSE:386075	Exch.	O	H	L	C	BSE	136.90	137.20	136.6	136.80	NSE	135.95	138	135.10	136.60	Exch.	O	H	L	C	BSE	138	156.60	138	146.80	NSE	137.95	157.05	136	147.45	On April 18, 2016 price of the scrip has increased by 14.47% from the closing price of April 13, 2016. Announcement made by the company has a positive impact on the price of the scrip.
Exch.	O	H	L	C																														
BSE	136.90	137.20	136.6	136.80																														
NSE	135.95	138	135.10	136.60																														
Exch.	O	H	L	C																														
BSE	138	156.60	138	146.80																														
NSE	137.95	157.05	136	147.45																														

h. From the chronology of events provided by the SEL, UPSI-1 came into existence on March 30, 2015 i.e. the day when draft share purchase agreement was prepared. However, Grant Thornton in its reply stated that engagement letter was signed on October 28, 2014 by N.S Mohan president of SEL to provide transaction support services in relation to proposed acquisition of controlling stake in PLL (named project Lumen) by SEL. The term project Lumen was also discussed in board meeting held on February 03, 2015. Further, during statement recording in the course of investigation on May 07, 2019 Medappa Gowda, Compliance Officer of SEL has stated that informal discussion was started around in the month of October 2014 for considering the preliminary project. Hence, it has been concluded that the information of acquisition of controlling stake in PLL by SEL was already under discussion/consideration of management of SEL, at least since October 28,

2014. Therefore, UPSI-1 came into existence on October 28, 2014 i.e. the day when engagement letter was signed by N.S. Mohan president of SEL. Based on the above, UPSI Period-1 is considered from October 28, 2014 to May 05, 2015.

- i. Regarding UPSI-2, SEL had informed to the stock exchanges that the Board of Directors in meeting held on April 18, 2016 approved the draft Scheme of amalgamation of PLL with SEL. From the chronology of events provided by SEL, UPSI-1 came into existence in first week of April 2016 when internal discussion on proposal of draft scheme of amalgamation of PLL with SEL was initiated.
- j. Based on the chronology of events provided by the Company and as a result of investigation, UPSI Period - 2 was considered from April 01, 2016 to April 17, 2016.

Identification of Noticees as Insiders:

- k. Based on the applicability of provisions of PIT Regulations, 2015 and PIT Regulations, 1992 (since repealed), Noticees were found to be connected/ deemed to be connected persons as per the Regulation 2(c) and 2(h) of PIT Regulations, 1992 and 2(1)(d) of PIT Regulations, 2015, of SEL. Thus, these connected/deemed to be connected persons of SEL, have been considered as 'insiders' in accordance with Regulation 2(e) PIT Regulations, 1992 and 2(1)(g) of PIT Regulations, 2015. List of the insiders of SEL are as below:

Table-C

S. No.	Name of the Noticee	Connection	Applicability of Regulations
1	Noticee No. 1 (Suresh Shetty)	Held directorship in SEL and PLL	As per Regulation 2(c)(i) of PIT Regulations, 1992 and 2(1)(d)(i) of PIT Regulations, 2015.
2	Noticee No. 4 (Reetha Shetty)	Spouse of Noticee No.1 (Suresh Shetty)	Relative / immediate relative of Suresh Shetty (Noticee No. 1) as specified in Regulation 2(h)(viii) of PIT Regulations, 1992 and Regulation 2(1)(d)(ii)(a) r/w Regulation 2 (f) of PIT Regulation, 2015.
3	Noticee No. 6 (Shruti Shetty)	Daughter of Noticee No.1	
4	Noticee No. 3 (Emerging Securities Private Limited)	Noticee No. 1 and Noticee No. 4 are only directors in ESPL and entire share-holding of ESPL is held by Noticee No. 1 and his family members.	Deemed to be connected person as specified in Regulation 2(h)(ix) of PIT Regulations, 1992 and Regulation 2(1)(d)(ii)(j) of PIT Regulations, 2015.
5	Noticee No. 5 (M/s Vanijya	Noticee No. 1 and Noticee No. 4 are equal partners of	

	Investment and Trading)	M/s Vanijya Investment and Trading.
6	Noticee No. 2 (Suresh Shetty (HUF))	Noticee No. 1 is Karta of (Suresh Shetty (HUF))

- I. **Trading by Noticees/Insiders during UPSI periods:** UPSI wise trading details of all the Noticees are as below:

UPSI Period-1 (October 28, 2014 to May 05, 2015):

Table-D

S. No	Name of the Noticee	Date	Buy	Sell
1	Noticee No.2 (Suresh Shetty (HUF))	15-04-2015	12,117	Nil
2	Noticee No.3 (Emerging Securities Private Limited)	26-03-2015	9,197	Nil
		10-04-2015	20,803	Nil

During UPSI Period -1 only two Noticees viz. no. 2 & 3 [Suresh Shetty (HUF) and Emerging Securities Private Limited ('ESPL')] traded in the scrip of SEL.

UPSI Period-2 (April 01, 2016 to April 17, 2016):

Table-E

S. No	Name of the Noticee	Date	Buy	Sell
1	Notice No.1 (Suresh Shetty)	01/04/2016	4,500	Nil
2	Notice No.2 (Suresh Shetty (HUF))	01/04/2016	8,000	Nil
3	Notice No.3 (Emerging Securities Pvt Ltd.)	01-04-2016 to 05-04-2016	55,697	260
4	Notice No.4 (Reetha Shetty)	04/04/2016	9,363	Nil
5	Notice No.6 (Shruti Shetty)	01/04/2016	4,500	Nil
6	Notice No.5 (M/s Vanijya Investment and Trading)	01/04/2016	200	Nil

During UPSI Period-2, all six Noticees viz. Suresh Shetty, Suresh Shetty (HUF), ESPL, Reetha Shetty, Shruti Shetty and M/s Vanijya Investment and Trading, traded in the scrip of SEL.

- m. **Date wise analysis of trading activity of Noticees during UPSI Period-1:**

- a) **Analysis of trading in SEL:**

Table-F

Period	Name of Noticee	Trade date	Buy	Buy Value	Sell Quant ity	Sell Value (Rs.)
			Quantit y	(Rs.)		
Pre-UPSI Period-1 January 01, 2014 to October 27, 2014	Noticee No.3 (ESPL)	23.01.2014	1,192	66,732	1,192	66518
	Noticee No.3 (ESPL)	24.03.2014	11000	6,79,837	0	0
	Total		12,192	7,46,569	1,192	66,518
During UPSI Period-1 (October 28, 2014 to May 05, 2015)	Noticee No.3 (ESPL)	26.03.2015	9,197	10,72,570	0	0
	Noticee No.3 (ESPL)	10.04.2015	20,803	25,57,466	0	0
	Noticee No.2 [Suresh Shetty (HUF)]	15.04.2015	12,117	14,71,894	0	0
	Total		42,117	51,01,930	0	0
Post-UPSI Period -1 (May 06,2015 to May 31,2015)	No trading observed from 16.04.2015 to 06.01.2016					

During UPSI Period-1, it has been noticed that two Noticees viz. Noticee No. 2 and Noticee No. 3 traded during UPSI Period-1. No trading was noticed after the UPSI Period-1. Noticee No.1, being an Independent Director of SEL, Member of Investment Committee of SEL and Chairman of Audit Committee of PLL was aware about the announcement, therefore, these Noticee no. 2 and 3 purchased shares during UPSI Period-1 on the basis of UPSI-1 received from Noticee no. 1.

b) Analysis of trading of Noticees across the market and concentration in SEL during UPSI Period-1.

Table-G

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	SEL	%	Total	SEL	%	Total	SEL	%
Pre-UPSI Period-1 (January 01, 2014 to October 27, 2014)	1,03,21,07,011.95	7,46,569.05	0.07%	53,11,22,305.70	66,518	0.01%	1,56,32,29,317.65	8,13,087.25	0.05%
During UPSI Period -1 (October 28, 2014 to May 05, 2015)	7,87,91,745.98	51,01,930.65	6.48%	8,23,55,012.00	0	0%	16,11,46,757.98	51,01,930.65	3.17%
Post-UPSI Period -1 (May 06 , 2015 to May 31, 2015)	2,85,07,057.10	-	0.0%	2,73,19,875.05	0	0%	5,58,26,932.15	-	0%

Total	1,13,94,05, 815.03	58,48,499. 70	0.5 1%	64,07,97,192 .75	66,51 8	0.0 1%	1,78,02,03,00 7.78	59,15,017 .90	0.3 3%
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As per above table, buying of Noticees during UPSI Period-1 was higher in comparison to pre-UPSI Period-1. Role of these Noticees in brief is as below:

Noticee No.2 (Suresh Shetty (HUF)): Noticee No.1 (Suresh Shetty) is an Independent Director of SEL is an “insider” as stated under Regulation 2(e) of the PIT Regulations, 1992. Noticee No. 2 had purchased 12,117 shares valuing Rs. 14,71,894/- on April 15, 2015 through broker Escorts Securities Limited. No trading of Noticee No. 2 was noticed prior to April 15, 2015 in the scrip of SEL. Noticee No. 2 is a deemed to be connected person as specified in Regulation 2(h)(ix) of PIT Regulations,1992.

Noticee No.3 [Emerging Securities Private Limited]: Noticee No. 3 had bought 30,000 shares on March 26, 2015 and April 10, 2015 during the UPSI Period-1 valuing Rs. 36,30,037/-. It is to be noted that Noticee No. 1 and his wife Noticee No. 4 (Reetha Shetty) are only directors of Noticee No. 3. Hence, in terms of Regulation 2(h)(ix) of PIT Regulation 1992, Noticee No. 3 is Connected Person, thus, an insider within the meaning of Regulation 2(e) of PIT Regulations, 1992.

It was noticed from the analysis of trade data that during UPSI Period-1, Noticee No. 2 and Noticee No. 3 viz. Suresh Shetty (HUF) and Noticee no. 3 had bought 42,117 shares. During pre-UPSI Period-1 also, Noticee No. 3 had bought 12,192 shares. No trading by Noticee No. 2 and 3 was observed after the UPSI Period-1 i.e. till January 06, 2016. On analysing trading of Noticees across market, it was also noticed that during pre-UPSI Period-1, the concentration of Noticees in the scrip of SEL was only 0.07%. However, during UPSI Period-1, buying concentration of Noticees in the scrip of SEL had increased to 6.48% in comparison to 0.07% during pre-UPSI Period-1. Further, no trading was observed during post UPSI Period-1.

Considering the trading pattern of Noticees No. 2 & 3, it revealed from Investigation that both these Noticees had traded in the scrip of SEL when in possession of UPSI-1 which was communicated to them by Noticee No. 1. The said act of Noticees No. 2 & 3 is alleged to be in violation of Section 12A (d) & (e) of SEBI Act, 1992, Regulation 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015. Noticee No. 3 is also in violation of Regulation 3A of PIT Regulations, 1992. By communicating UPSI-1 to Noticees No. 2 & 3, Noticee No. 1 is alleged to have violated the Section 12 A (d) & (e) of SEBI Act, 1992 and Regulation 3 (ii) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

n. Date wise analysis of trading activity of Noticees in UPSI Period-2:

a) Analysis of trading in SEL:

Table-H

Period	Name of client	Trade date	Buy	Buy Value	Sel I Qu ant ity	Sell Value (Rs.)
			Quantity	(Rs.)		
Pre-UPSI Period-2 (January 07, 2016 to March 31, 2016)	Noticee No. 1, Noticee No. 3, Noticee No. 4, Noticee No. 5 and Noticee No. 6 traded at NSE	Details attached as Annexure-V.	1,35,546	1,83,49,308	6	840
	Noticee No. 3 traded at BSE	Details attached as Annexure-V.	7,300	9,61,909.9	0	0
			1,42,846	1,93,11,218	6	840
During UPSI Period-2 (April 01, 2016 to April 17, 2016)	Noticee No. 1, Noticee No. 2, Noticee No. 3, Noticee No. 4, Noticee No. 5 and Noticee No. 6 traded at NSE	Details attached as Annexure-V.	81,760	1,08,68,021	260	34,691
	Noticee No. 3 traded at BSE	Details attached as Annexure-V.	500	66,522	0	0
			82,260	1,09,34,543	260	34,691
Post-UPSI Period-2 (April 18, 2016 to May 31, 2016)	No trading observed from April 06,2016 to May 31,2016					

During UPSI Period-2, Noticee No.1 and his connected entities viz. Noticee No.2 to 6 bought shares during the pre-UPSI Period-2 and during the UPSI Period-2.

Post UPSI Period-2, neither him nor entities connected to him had bought any shares in the scrip of SEL.

b) Analysis of trading of Noticees across the market and concentration in SEL during UPSI Period-2:

Table-I

Period	Buy Value			Sell Value			Gross Traded Value		
	Total	SEL	%	Total	SEL	%	Total	SEL	%
Pre-UPSI Period -2 (January 07, 2016 to March 31, 2016)	8,94,26,314.55	1,93,11,217.90	21.59 %	8,00,45,595	840	0.00 %	16,94,71,909	1,93,12,058	11.40 %
During UPSI Period -2 (April 01, 2016 to April 17, 2016)	1,09,34,543.55	1,09,34,543.55	100.00 %	68,86,191	34,691	0.50 %	1,78,20,735	1,09,69,235	61.55 %
Post-UPSI Period -2 (April 18, 2016 to May 31, 2016)	12,35,59,503.25	0	0.00 %	23,85,31,946.70	0	0.00 %	36,20,91,450	-	0.00 %
Total	22,39,20,361.35	3,02,45,761.45	13.51 %	32,54,63,732.65	35,531	0.01 %	54,93,84,094	3,02,81,292.75	5.51 %

During UPSI Period-2, Noticees have bought shares of SEL only and during the pre-UPSI Period-2, their concentration in SEL was 21.59% of total buying across all the scrips. Role of these Noticees is as below:

Noticee No.1 (Suresh Shetty): Noticee No.1 being an Independent Director in SEL is a connected person as per Regulation 2(1)(d) of the PIT Regulations, 2015 and therefore is an “insider” as stated under Regulation 2(1)(g) of the PIT Regulations, 2015. He purchased 4,500 shares on April 01, 2016 of SEL by trading through the broker Escorts Securities Limited. The value of his purchase of shares was Rs. 5,95,264/-. Noticee No.1 traded in the scrip of SEL during the UPSI Period-2 i.e. April 01, 2016 to April 17, 2016 when he was in possession of UPSI-2.

Noticee No.2 [Suresh Shetty (HUF)]: The Karta of Noticee No. 2 is Noticee No.1 (Suresh Shetty) who is Director of SEL and is an “insider” as stated under

Regulation 2(1)(g) of the PIT Regulations, 2015. Noticee No. 2 is deemed to be a connected person in accordance with Regulation 2(1)(d)(ii)(j) of PIT Regulations, 2015. Noticee No. 2 had traded in the scrip of SEL and purchased 8,000 shares on April 01, 2016 valuing Rs.10,59,952/-.

Noticee No.3 [Emerging Securities Private Limited]: Noticee No. 3 had bought 500 shares at BSE and 55,197 shares at NSE from April 01, 2016 to April 05, 2016. These shares were purchased during the UPSI Period-2, and the value of shares purchased by Noticee no. 3 was Rs. 74,16,018/-. Noticee No. 1 (Suresh Shetty) and his wife, Noticee No. 4 (Reetha Shetty) are directors in Noticee No. 3 and Noticee No. 3 is under the category of deemed to be connected person as specified under Regulation 2(1)(d)(ii)(j) of PIT Regulations, 2015. Shareholding of Noticee No. 3 is entirely held by Noticee No. 1 and his family members detail of which is as below:

Table-J

S. No.	Name	No of Shares held	% of holding
1	Suresh Shetty	12,95,900	66.58
2	Reetha Shetty	2,87,619	14.78
3	Suresh Shetty (HUF)	1,76,420	9.06
4	Siddarth Shetty	61,192	3.14
5	Shruti Shetty	1,25,275	6.44
	Total	19,46,406	100.00

Noticee No.4 (Reetha Shetty): Noticee No. 4 is wife of Noticee No. 1 and deemed to be connected person in accordance with Regulation 2(1)(d)(ii)(a) read with Regulation 2(f) of PIT Regulation, 2015. Noticee No. 4 had bought 9,363 shares valuing Rs. 12,40,598 of SEL on April 04, 2016 during the UPSI Period-2 i.e. April 01, 2016 to April 17, 2016.

Noticee No.5 (M/s Vanijya Investment and Trading): Noticee No.5 is a Partnership Firm and its partners are Noticee No.1 (Suresh Shetty) and his wife (Reetha Shetty) Noticee No. 4. Noticee No. 5 is under the category of deemed to be connected persons as per Regulation 2(1)(d)(ii)(j) of PIT Regulations,

2015. It was noticed that Noticee No. 5 have bought 200 shares of SEL valuing Rs. 26,475/- on April 01, 2016 during the UPSI Period-2.

Noticee No.6 (Shruti Shetty): Noticee No. 6 is daughter of Noticee No. 1 and is a deemed to be connected person in accordance with Regulation 2(1)(d)(ii)(a) read with Regulation 2(f) of PIT Regulation, 2015. She had bought 4,500 shares of SEL on April 01, 2016, valuing Rs. 5,96,237/- during the UPSI Period-2.

During UPSI Period-2, Noticee Nos.1 to 6 had bought 82,260 shares and no trading was observed by any Noticee during post UPSI Period-2 viz. April 18, 2016 to May 31, 2016. Investigation revealed that trading of Noticees across market during pre-UPSI Period-2 in the scrip of SEL was only 21.59% in comparison to their trading in other scrips. However, during UPSI Period-2 purchase concentration of Noticees in the scrip of SEL had increased to 100% in comparison to 21.59% during pre-UPSI Period-2. Further, no trading by the Noticees was observed during post UPSI Period-2 in the scrip of SEL.

Based on the above trading pattern of Noticee Nos. 1 to 6, it has been concluded from the investigation that the Noticee nos. 1 to 6 traded in the scrip of SEL while in possession of UPSI-2. The said act of Noticees is alleged to be in violation of Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015. Noticee No.1 is also allegedly to be in violation of Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015 for communicating the UPSI-2 to Noticees No. 2 to 5.

- O. As per the submissions made by SEL and upon analyzing the minutes of the meeting of the Board of Directors of the SEL, dated February 03, 2015, it was noticed that SEL has passed the resolution, read as under “*RESOLVED THAT the investment committee consisting of Ajith Kumar Rai (Chairman), Ian Williamson (Member) and Suresh Shetty (Member) are hereby authorized to review various acquisition proposals, investment opportunities and access the projects, risk factors involved with such acquisition proposals and sign various non-disclosure agreement, agreements, share purchase agreement, appoint agencies,*

consultants, advisors, merchant bankers to manage such investment proposals, implement such investment plans for and on behalf of the Board”.

- p. SEL informed vide email dated May 14, 2019, that Noticee No. 1 (Suresh Shetty) has been a member of Investment Committee since its formation on October 30, 2014. As per extract of minute given by SEL vide this email *“investment committee be and hereby authorized to review various acquisition proposals, investment opportunities and access the projects, risk factors involved with such acquisition proposals and recommend the appropriate proposal to the board from time to time.”*
- q. As per information submitted by SEL, it was observed that after acquisition of shares of PLL, PLL become subsidiary of SEL and Noticee No.1 (Suresh Shetty) was also appointed as director in the Board of PLL and was given Chairmanship of Audit Committee of PLL. Noticee No.1 being an Independent Director of SEL, PLL, Chairman of Audit Committee of PLL and Member of Investment Committee of SEL, was handling significant responsibilities in the affairs of SEL. Therefore, SCN alleges that Noticee No.1 was aware of all day to day operations of SEL including amalgamation plan of PLL with SEL. SCN further alleges that, inspite of having important positions in SEL, Noticee No.1 traded in the scrip of SEL during the UPSI periods in his own name and in the name of other entities related to him viz. Noticee No. 2 [Suresh Shetty (HUF)], Noticee No.3 (ESPL), Noticee No.4 (Reetha Shetty), and Noticee No.5 (M/s Vanjiya Investment and Trading) and Noticee No.6 (Shruti Shetty). Noticee No.1 during recording of statement on April 26, 2019 confirmed that he used to place orders for and on behalf of Suresh Shetty (HUF), ESPL, Reetha Shetty, Shruti Shetty and M/s Vanjiya Investment and Trading through Anil Thukral who was employee of ESPL.
- r. In view of the findings of investigation, SCN states that Noticee No. 1 (Suresh Shetty) is associated with SEL since January 31, 2011, appointed as member of Investment Committee of SEL on October 30, 2014, appointed as director of PLL in June 2015 and also appointed Chairman of the Audit Committee of PLL on June 18, 2015. Noticee No.1 (Suresh Shetty) alongwith entities connected to him (Noticees No. 2 – 6) was having significant holding in SEL i.e. 29,18,200 shares

(2.22%) as on March 31, 2016. Moreover, he has participated in the Board Meetings in which acquisition proposal and merger of PLL with SEL was discussed though he claimed that he came to know during the Board Meetings only. Noticee No.1 (Suresh Shetty) also stated that he was holding shares prior to becoming director of SEL and every year continued to add further shares. However, Noticee No.1 (Suresh Shetty), being an Independent Director of SEL since 2011, Member of Investment Committee and Chairman of Audit Committee of PLL was holding important positions in SEL.

Applicability of Code of Conduct as per PIT Regulations, 1992 for trading during UPSI Period-1 (Investigation Period-1):

- s. Para No. 12 C(i). of Code of Conduct of SEL dated January 31, 2014 states that, *“Directors Officers / Designated Employees and their relatives of the Company intending to deal in the shares of the Company in case of 9(b) collectively at any time in a year shall inform such trades to Compliance Officer”*.
- t. Para 9(b) of Code of Conduct of SEL dated January 31, 2014 states that, *“As and when there is change in holding exceeding by value Rs. 10 lakhs or 25,000 shares or 1% of the shareholding / voting rights whichever is lower”*.
- u. As per aforesaid table, Noticee No. 3 bought 30,000 shares (9,197 shares on March 26, 2015 and 20,803 shares on April 10, 2015) and Noticee No. 2 (Suresh Shetty, HUF) bought 12,117 shares on April 15, 2015, for which no pre-clearance was sought. Suresh Shetty has confirmed that he has placed the orders for Noticee no. 3 for purchase of shares. As per Para No. 12 C i read with Para 9(b) of Code of Conduct of SEL dated January 31, 2014, the SCN alleges that Suresh Shetty before buying the shares of SEL should have applied for pre-clearance of trades, however he did not seek pre-clearance and purchased 30,000 shares (valuing Rs. 36,30,036/-) for Noticee no. 3 and 12,117 shares (valuing Rs. 14,71,894/-) for Noticee no. 2. These transactions executed by Suresh Shetty in the account of Noticee no. 3 and 2, were in excess of threshold prescribed by SEL as stated above.

- V. Therefore, the above transactions executed by Suresh Shetty in the trading account of ESPL and Suresh Shetty (HUF) without seeking pre-clearance from the Company were allegedly in contravention of Clause 3.3.1, 3.3.2 and 3.3.3 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies given under Schedule-I read with Regulation 12(1) of PIT Regulations, 1992.

Applicability of Code of Conduct prescribed under SEBI (PIT) Regulations, 2015:

- W. SEL framed and implemented new Code of Conduct w.e.f. May 29, 2015 pursuant to PIT Regulations, 2015. Clause 3.1 of the said Code of Conduct states that, *“All designated persons, who intend to deal in the securities of the Company directly or indirectly or through their immediate relatives when the trading window is opened should take pre-clearances of the transactions from the Compliance Officer”*.
- X. SEL vide its reply dated March 24, 2017 and March 01, 2019, inter alia, stated that the Company/Compliance Officer did not receive any pre-clearance application during the period January 01, 2015 to June 30, 2016.
- Y. For pre-clearance of trades, SEL has not defined any threshold hence all the trades executed by the designated persons shall be subject to pre-clearance of trades. However, SCN alleges that, Noticee No. 1 (designated person of SEL) traded directly / indirectly (through noticees no. 2 to 6) and did not seek pre-clearances which is alleged to be in contravention of Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B read with Regulation 9(1) of PIT Regulations, 2015.
- Z. During statement recording of Noticee No. 1 (Suresh Shetty), he was asked to state whether he has taken pre clearances or not. In reply to this, he has *inter-alia* stated that he has not bought any share during the book closure period and during the UPSI period and sought the pre-clearance for purchase of share as per Company’s Code of Conduct. Vide email dated May 03, 2019, Suresh Shetty reiterated that all purchase of shares has been done after pre-clearance and his

group of entities had given details of shares purchased to SEL and sought the pre clearances. He stated that he submitted details of purchase of shares to SEL, but SEL replied to him that no reporting is required in this regard to stock exchanges. Upon perusal of e-mail of Suresh Shetty to SEL, it was observed that e-mail was sent to SEL after purchase of shares asking about the reporting of transactions to NSE and BSE and not relating to seeking of pre-clearances. Hence, SCN alleges that no pre clearance was sought by Suresh Shetty from SEL.

aa. Noticee No. 1 (Suresh Shetty) placed the orders on his own behalf and on behalf of other Noticees viz. Suresh Shetty (HUF), Reetha Shetty (Wife), Shruti Shetty (Daughter), ESPL & M/s Vanijya Investment and Trading and it was his responsibility to seek pre-clearance while trading on his own behalf and on behalf of other Noticees viz. Suresh Shetty (HUF), Reetha Shetty (Wife), Shruti Shetty (Daughter), Noticee no. 3 & M/s Vanijya Investment and Trading. By not seeking pre-clearance, Noticee No. 1 is alleged to have violated the Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B read with Regulation 9(1) of PIT Regulations, 2015.

Wrongful Gain by Insiders (Noticee No.1-6):

bb. The Noticees viz. Suresh Shetty, Suresh Shetty (HUF), ESPL, Reetha Shetty, Vanijya Investment and Trading and Shruti Shetty did not sell the shares during investigation periods and were holding 30,18,280 shares as on February 01, 2019. Therefore, the wrongful gain made by the entities have been arrived by the SCN on notional basis which is given as below in tabular form:

During UPSI Period-2:

Table-K

S. No.	Name	No. of Shares Bought	(Weighted Average Purchase Price)	Total Buy Value (in ₹)	Notional sale value as on April 18, 2016 based on closing price (in Rs.)*	Wrongful Gain made (in Rs.)

			A	B	C=(A*B)	D=A*147.45 (NSE) =A*146.80 (BSE)	E=D-C
1	Suresh Shetty (Noticee No.1)	NSE	4,500	132.28	5,95,260	6,63,525	68,265
2	Emerging Securities Private Limited (Noticee No.3)	NSE	55,197	133.15	7,349,481	81,38,798	7,89,317
		BSE	500	133.04	66,520	73,400	6,880
3	Vanijya Investment and Trading (Noticee No.5)	NSE	200	132.38	26,476	29,490	3,014
4	Reetha Shetty (Noticee No.4)	NSE	9,363	132.50	12,40,598	13,80,574	1,39,977
5	Shruti Shetty (Noticee No.6)	NSE	4,500	132.50	5,96,250	6,63,525	67,275
6	Suresh Shetty (HUF) (Noticee No.2)	NSE	8,000	132.49	10,59,920	11,79,600	1,19,680
Total					1,09,34,505	1,21,28,912	11,94,408

*Closing price of NSE and BSE on April 18, 2016

Unlawful gain= {No. of shares bought while in possession of UPSI X Closing price on the day UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange} – {No. of shares bought while in possession of UPSI X weighted average purchases price}.

The SCN alleges that during UPSI Period-2, the aforesaid six Noticees mentioned in above table have made a total wrongful notional gain of Rs. 11,94,408/-.

cc. In view of the above, the SCN alleges that Suresh Shetty (Noticee No.1) by communicating the UPSI-1 to Suresh Shetty (HUF) (Noticee No. 2) and ESPL (Noticee No. 3) violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 3(ii) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015. By not seeking pre-clearance, the SCN also alleges that Noticee No. 1 had violated the Clause 3.3.1, 3.3.2 and 3.3.3 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies given under Schedule-I read with Regulation 12(1) of PIT Regulations, 1992.

dd. The SCN further alleges that Suresh Shetty (HUF) (Noticee No.2) and ESPL (Noticee No.3) had traded in the scrip of SEL while in possession of UPSI-1 and violated Section 12A(d) & (e) of SEBI Act, 1992 and Regulation 3(i) and 4 of PIT

Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015. Additionally, ESPL (Noticee No.3) is also alleged to be in violation of Regulation 3A of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

- ee. The SCN further alleges that Suresh Shetty (Noticee No.1) by communicating the UPSI-2 to Suresh Shetty (HUF) (Noticee No.2), ESPL (Noticee No.3), Reetha Shetty (Noticee No.4), Vanijya Investment and Trading (Noticee No.5) and Shruti Shetty (Noticee No.6) violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015. The SCN further alleges that Noticee No. 1 also violated Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B read with Regulation 9(1) of PIT Regulations, 2015 by not seeking pre-clearance for trading on his own behalf and on behalf of other Noticees.
- ff. The SCN also alleges that Suresh Shetty (Noticee No.1) (Director of SEL), Suresh Shetty (HUF) (Noticee No.2), ESPL (Noticee No.3), Reetha Shetty (Noticee No.4), Vanijya Investment and Trading (Noticee No.5) and Shruti Shetty (Noticee No.6) had traded in the scrip of SEL while in possession of UPSI-2 and violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015.
- gg. In view of above, Noticee No. 1 has been called upon by the SCN to show cause as to why suitable directions and monetary penalty under Sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) read with Section 15G (i), 15G (ii) and 15HB of SEBI Act, 1992, including disgorgement of wrongful gains made should not be issued, and Noticees No. 2 to 6 have been called upon to show cause as to why suitable directions and monetary penalty under Sections 11(1), 11(4), 11(4A), 11B(1), 11B(2) read with Section 15G (i) of SEBI Act, 1992, including disgorgement of wrongful gains made should not be issued, against them.
3. On the basis of their request, the authorized representatives of the Noticees were granted the inspection of documents relied upon in the SCN, on August 20, 2020. Noticee no. 1 and 2 filed their reply dated September 21, 2020. I note that Noticee no. 3 to 6, vide their letters dated September 21, 2020, have conveyed that they would adopt the reply dated September 21, 2020, as filed by Noticee no. 1. An

opportunity of hearing was granted to the Noticees on December 8, 2020, on which date the Advocate representing all the Noticees was heard. After the personal hearing in the matter, the Noticees filed written submissions dated December 18, 2020 and additional submissions dated December 28, 2020. The Noticee no. 1 has raised the following key contentions to the allegations levelled in the SCN:

My investments in SEL:

- a) I was already an investor in SEL as early as from 2003. As on 2011, my family and I held 21,74,500 shares of SEL and thereafter every year added more as it was a good dividend paying company. At the end of the year 2015, my family held 27,40,440 shares of SEL. I was planning to raise the quantity to nearly 30 lakh shares to enhance my family's portfolio. My family and I had an overall stock portfolio aggregating 723 crores during 2015-2016 of which the investment in SEL constituted 5.28%. The purchases in question were therefore towards this bona fide purpose and not to take advantage of any purported UPSI.

About UPSI-1:

- b) A meeting of the Board of Directors of SEL was called on May 6, 2015. It was only then that I became aware of SEL's acquisition of 51% stake in PLL. I had no prior knowledge of even the agenda about the acquisition of the PLL. I become aware of the decision only at the board meeting. I was not aware of the appointment of Grant Thornton as consultants to review the acquisition as the appointment of the Grant Thornton was done by the management and not by the Board of SEL.
- c) The proposal of acquisition of PLL by SEL came to the investment Committee of SEL only on May 29, 2015 much after being approved by the Board of SEL and being disclosed to the public on May 6, 2015. Further, the proposed acquisition of PLL and merger of PLL with SEL were never referred to or discussed in the audit committee. It is pertinent to point out that the audit committee only reviews internal and external auditors report, quarterly and annual final accounts and remuneration and appointment of auditors. Decisions about mergers and acquisition are not within the preview of the audit committee.

- d) Assuming while denying that there did exist any information about the potential acquisition of PLL by SEL, the same was not certain until the finalisation of the same as it was subject to due diligence and negotiations. There was a distinct possibility, until May 6, 2015, for the potential acquisition to not happen. It is settled law that mere proposals cannot be considered as UPSI and there ought to be a concrete decision to qualify as UPSI as observed by the Whole Time Member of SEBI in the case of Polaris Software Lab Limited with respect to Arun Jain [WTM/GM/EFD/109/2017-18].
- e) The most important aspect demonstrating that the transaction did not fructify until May 6, 2015 is apparent from the fact that the open offer in relation to the acquisition in PLL was made on May 6, 2015. It is apparent that there is no agreement on part of SEL to acquire the shares in PLL until May 6, 2015 when the Share Purchase Agreement was signed. The acquisition of 51% by itself triggers the applicability of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2013 (“**SAST Regulations**”). In the event that the acquisition was effected earlier, the public announcement ought to have been made earlier and SEBI would not have allowed the open offer to proceed without appropriate directions. However, the fact that SEBI did not raise any objections to the date of the public announcement demonstrates that even according to SEBI the date on which the public announcement was made was the date on which the acquisition was agreed.
- f) Further, at the Board meeting on February 3, 2015, there was a broad discussion about Project Lumen without there being any specific reference to PLL. As stated earlier, this was a general process at SEL where many proposed acquisitions were discussed without any particular target being named.
- g) From the Statements of Mr. Gowda, the Compliance Officer of SEL, which is relied upon by SEBI also to support the charges in the SCN clearly corroborates the following:
 - i. Apart from being an independent director and attending board meetings, I had no role to play in the working of SEL.

- ii. The investment committee did not discuss the proposal of acquisition of shares of PLL by SEL.
- iii. The name of PLL as the target was not revealed in the Board meeting on February 3, 2015.
- iv. There was no approval of the Board of SEL for appointment of Grant Thornton. This means that the appointment of Grant Thornton was also not to my knowledge. The appointment was made by the management of SEL without my knowledge or involvement.
- v. That I was not aware of the announcement in relation to the acquisition of shares of PLL by SEL.

About UPSI-2:

- h) The Proposed Merger was never discussed or brought to the notice of any of the committees of SEL of which I was a part. The SCN also does not point out any communication or meeting pursuant to which I could have been provided with such information. It was only on April 15, 2016 when the Chairman and Managing Director of SEL, Mr. Ajit Rai emailed us with the details of the Proposed Merger. The email was the first time that I got to know of the Proposed Merger.
- i) The SCN relies upon the submission of SEL regarding the date on which the talks about the Proposed Merger commenced. SEL has not indicated any date when such talks commenced. There is a generic reference to first week of April 2016. However, this cannot mean that the talks commenced on April 1, 2016 which was a Friday. It is a mere *ipse dixit*, in the absence of any specification about the exact date on which such talks commenced, to assume that the talk commenced on April 1, 2016.

Incorrect reliance on trading pattern:

- j) The SCN contends that since my trading during the alleged UPSI period was higher than my trading in the non-UPSI period – I was in possession of UPSI. This is an incorrect assumption as demonstrated above. In any case, it is submitted that I had steadily been increasing my holdings in SEL on account of my own research of the stock. I have relied upon publicly available information about SEL for this purpose. That - coupled with the fact that there is nothing to demonstrate the passing of any alleged UPSI (if it existed) at the time when I traded in the scrip of SEL - demonstrates clearly that there was no co-relation between my trading and the availability of any alleged UPSI pertaining to the UPSI-1 when the trading was effected.

Alleged communication of the UPSI:

- k) One of the allegations against me is that of alleged communication of the UPSI. This allegation is belied from the above factors that demonstrate that there was no UPSI or there was no UPSI in my possession at the time when the trades were effected. This important aspect has not been demonstrated in the SCN. Therefore, in the absence of any demonstration of possession of UPSI by me, the allegation about passing of such UPSI cannot be sustained.

Pre-clearance of trades:

- l) I submit that on September 7, 2019, prior to the issuance of the SCN, SEL had written to me stating that there was no pre-clearance taken by me in relation to my trading. I had responded to the same pointing out that:
- i. *“...While I note that there has been a technical error in compliance, I would request you to consider the following submissions:*
 - ii. *I have been holding and accumulating the shares of your company since a long time. The trades which are mentioned have been executed in normal course of my business and depending on my requirements;*
 - iii. *The trading was not done during the closure of the trading window. I had not received any intimation of trading window closure while I executed the trades;*

- iv. *The non-compliance was unintentional and due to ignorance and not a willful default.*
 - v. *Trading was done without any intention to gain unlawfully; and*
 - vi. *During the trading I was not having any insider information/ price sensitive information.*
 - vii. *Further, I wish to state that I will abide by the disciplinary action taken by the Chairman of the Company for this non-compliance in line with the Code of Conduct of the Company. However, I urge the compliance officer and the management to not take this as a serious breach for reasons mentioned above....”.*
- m) SEL had, after considering my submissions above, directed me remit an amount of Rs. 2 lakhs to SEL’s CSR initiative. I did remit the amount by a cheque dated January 19, 2019. I submit therefore that an appropriate penalty has already been imposed upon me for the lapse. I will indeed be more careful about such issues in the future and request a reasonable approach on the same.
- n) In any case, I had, filed a suo motu application with SEBI seeking settlement of the disclosure related under the PIT Regulations issues pertaining to my acquisitions of shares of SEL. I have already paid a substantial amount of Rs. 29,54,738/- pursuant thereto. I submit that this fact may be considered as one of the mitigating factors and no further penalty be imposed upon me for not seeking the pre-clearance.
- o) In light of the above, I submit that the proceedings pursuant to the SCN be dropped without any adverse order or direction against me I have deposited an amount of Rs. 11,94,408/- with SEBI as collateral in lieu of the alleged gains made by me I request that the same be returned to me.
4. I have considered the allegations made in the SCN, the reply of the Noticees to those allegations, submissions made during the hearing and the written submissions filed by the Noticees. I note that violation alleged against the Noticees are as follows:

(i) Violations alleged with respect to UPSI-1:

- a. Allegation of violation of Section 12 A (d) & (e) of SEBI Act, 1992 and Regulation 3 (ii) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 by Noticee no. 1;
- b. Allegation of violation of Section 12A (d) & (e) of SEBI Act, 1992, Regulation 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 by Noticee no. 2 and 3;
- c. Allegation of violation of Regulation 3A of PIT Regulations, 1992 readwith Regulation 12 of PIT Regulations, 2015 by Noticee no. 3; and
- d. Allegation of violation of Clauses 3.3.1, 3.3.2 and 3.3.3 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies given under Schedule-I read with Regulation 12(1) of PIT Regulations, 1992 readwith Regulation 12 of PIT Regulations 2015 by Noticee no. 1.

(ii) Violations alleged with respect to UPSI-2:

- a. Allegation of violation of Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations, 2015 by Noticee no. 1 to 6;
- b. Allegation of violation of Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015 by Noticee no. 1; and
- c. Allegation of violation of Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B read with Regulation 9(1) of PIT Regulations, 2015 by Noticee no. 1.

5. For proper determination of allegations made in the SCN, The allegations made against the Noticees in the SCN have been dealt in this order under the following heads:

- (i) Violations alleged with respect to UPSI-1
- (ii) Violations alleged with respect to UPSI-2

6. Before dealing with the violations alleged with respect to alleged UPSI-1 and UPSI-2, it would be appropriate to refer to the provisions of SEBI Act, 1992 which are relevant for determining the said violations. The relevant extract of these provisions is as under:

Relevant extract of the provisions of SEBI Act, 1992:

“Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(a).....

(b).....

.

(g) prohibiting insider trading in securities;

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

12A. No person shall directly or indirectly—

(a)....

(b).....

(c).....

(d) engage in insider trading;

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

(f).....”

(i) Violations alleged with respect to UPSI-1:

7. Violations alleged with respect to UPSI -1 had been alleged to have taken place at the time when PIT Regulations, 1992 was in force. PIT Regulations, 1992 stands repealed by PIT Regulations, 2015. In this regard, Regulation 12 of PIT Regulations, 2015 provides as under:

“.....Repeal and Savings.

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

(2) Notwithstanding such repeal,—

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

.....”

Therefore, in terms of Regulation 12(2) of PIT Regulations, 2015, actions for violations of PIT Regulations, 1992 are not affected by the repeal of PIT Regulations, 1992 and can be dealt even now.

8. The relevant extract of the provisions of the PIT Regulations, 1992 which are involved in the matter is as under:

Relevant extract of the provisions of PIT Regulations, 1992:

“Definitions.

2. In these regulations, unless the context otherwise requires: —

(a).....

(b).....

(c) “connected person” means any person who—

- (iii) 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
- (iv) 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;

.....

(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 is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or
- (ii) has received or has had access to such unpublished price sensitive information;
.....
- (h) "person is deemed to be a connected person", if such person—
 - (i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or
 - (ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;
 - (iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;
 - (iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or
 - (v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body; or
 - (vi) is a relative of any of the aforementioned persons;
 - (vii) is a banker of the company.
 - (viii) relatives of the connected person; or
 - (ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest

(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;

(i) "relative" means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956);
.....

(k) "unpublished" means 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.
.....

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

3. No insider shall—

- (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or
- (ii) (communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

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

3A. No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

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

.....”

Re: Whether the information about proposed acquisition of controlling stake in PLL by SEL was UPSI-1?

9. SCN alleges that on May 06, 2015, SEL informed stock exchanges about a proposal of acquiring 51% to 61.88% in the equity capital of PLL from Argon India Limited, Mauritius & Argon South Asia Limited, Mauritius at an agreed price of Rs. 89/- (Rupees Eighty Nine) per share for each share having face value of Rs. 10/- each. Stock Exchanges were also informed about an open offer to acquire 72,85,018 shares of face value of Rs. 10/- each aggregating to 26% of the Equity Capital of PLL at Rs. 100/- (Rupees One Hundred) per share. SCN alleges that this information before its announcement made to the stock exchanges on May 06, 2015, was UPSI -1. SCN further alleges that said UPSI-1 i.e. proposal of acquiring 51% to 61.88% shares of PLL came into existence on October 28, 2014 when SEL signed engagement letter with Grant Thornton on October 28, 2014 with reference to transaction support services in relation to the proposed acquisition of controlling stake by SEL in PLL. From the definitions of “price sensitive information” and “unpublished”, as quoted above, I find that 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, is price sensitive information and if such an information is not published by the company or its agent and is not specific in nature than such an information is termed as unpublished price sensitive information. The definition

of “price sensitive information” makes it clear that it is the “likelihood” of materially affecting the price of the securities of company which makes the information price sensitive. Therefore, the test to determine price sensitivity of an information is the perception of a reasonable investor about the likelihood of information affecting the price of the securities of the company. I note that in terms of Explanation (v) appended to Regulation 2(ha), event of “takeovers” is treated as one of the deemed price sensitive information. In the present case also, as per allegation made in the SCN, corporate announcement made by SEL to the stock exchanges on May 06, 2015 regarding acquisition of 51% to 61.88% percent stake in PLL by SEL, has been considered as UPSI-1, prior to its publication to stock exchanges on May 06, 2015. Therefore, I find that corporate announcement made by SEL to stock exchange on May 06, 2015 was price sensitive information and prior to its disclosure to stock exchanges, it was UPSI-1. Further, the information about signing of the engagement letter on October 28, 2014 between SEL and Grant Thornton for availing transaction support services for the proposed acquisition of controlling stake in PLL which ultimately resulted in a public announcement of an open offer on May 06, 2015, is considered as starting point of UPSI-1 by the SCN. I find that, having regard to its nature, such information regarding engagement of Grant Thornton for proposed acquisition of PLL by SEL would also have been perceived by the reasonable investor as an information which upon its publication would likely to materially impact the price of the shares of SEL and this information till its development into final event of acquisition of stake in PLL by SEL, as disclosed by SEL to stock exchanges on May 06, 2015 was unpublished price sensitive information. Signing of the engagement letter may not be undertaken without some preceeding internal discussions on the proposed acquisition and shortlisting of the prospective consultants, to be engaged for this purpose. Thus, the said information pertaining to UPSI-1 may have come into existence at a date, even prior to the date on which the engagement letter was signed. Be that as it may, in the absence of any corroborating material on record, I note that it may not be appropriate to consider any other date prior to October 28, 2014, as the point of origination of UPSI-1. Therefore, on the basis of material available on record, I find that UPSI-1 came into existence on October 28, 2014 when SEL and Grant Thornton signed engagement letter for support services for the proposed acquisition of controlling stake in PLL by SEL.

10. Regarding identification of coming into existence of UPSI-1 in the SCN, Noticees have contended that the information about proposed acquisition of controlling stake in PLL by SEL, was merely a proposal and not a final decision. According to the Noticees, there was a distinct possibility, until May 6, 2015, for the potential acquisition to not happen. According to the Noticees, the proposed acquisition did not fructify until May 6, 2015, is apparent from the fact that the open offer in relation to the acquisition in PLL was made on May 6, 2015. It is the case of the Noticees that mere proposals cannot be considered as UPSI and there ought to be a concrete decision to qualify as UPSI. In this regard, I note that the SCN has identified the originating point of UPSI-1 to be the date (October 28, 2014) when the engagement letter was signed by SEL with Grant Thornton for availing transaction support services for the proposed acquisition of controlling stake in PLL. As noted in the previous para, the said information was sufficient to raise a perception in the mind of reasonable investor that such information would likely materially affect the price of the shares of the Company. Therefore, I find that the contention of the Noticees that it was mere a proposal and not unpublished price sensitive information is not tenable. It is the case of the Noticees that, since the public announcement for the open offer in relation to the acquisition in PLL was made on May 6, 2015, thus, all events prior to the said public announcement were mere inconclusive proposals and not UPSI. I note that, the parity sought to be drawn by the Noticees between the trigger point for open offer under SAST Regulations, 2011 and the trigger point for considering an information as UPSI under the PIT Regulations, 1992, is incorrect. The purpose and object of both the regulations is fundamentally different. While the former intends to provide for an exit opportunity to public shareholders if there is substantial acquisition of shares or control in a company, the later intends to curb the menace of insider trading in the securities market. It is under this backdrop, the events have to be examined. I note that, the mere likelihood that certain information, if made public, will materially affect the price of shares of a company is sufficient to identify the said information as UPSI, even if such information may not crystalize into an obligation to make an open offer under the SAST Regulations, 2011. Therefore, I find that the argument presented by the Noticees for not identifying UPSI-1 as unpublished price sensitive information, is untenable.

Re: Whether Noticee no. 1, 2 and 3 are Insiders for UPSI-1 ?

11. I note that Noticee no. 1 was an independent director of SEL during UPSI Period-1. Therefore, I find that Noticee no. 1 was a 'connected person' in accordance with Regulation 2(c)(i) of PIT Regulations, 1992 for UPSI Period-1. I also note that Noticee no. 1 was a member of the board of directors of SEL since January 31, 2011, a member of the Investment Committee of SEL since October 30, 2014 and member of the Audit Committee of SEL during FY 2014-15 and FY 2015-16, therefore, I find that Noticee no. 1 was reasonably expected to have access to UPSI-1. In view of the above, I find that Noticee no. 1 was an 'insider' for UPSI Period-1 in accordance with Regulation 2(e)(i) of PIT Regulations, 1992. I note that Noticee no. 1 has not disputed its identification as an 'insider' for UPSI-1 by the SCN.
12. I note that Noticee no. 2 is the Hindu Undivided Family of which Noticee no. 1 is the Karta. Thus, I find that Noticee no. 2 was a 'deemed to be connected person' in accordance with Regulation 2(h)(ix) of PIT Regulations, 1992 for UPSI Period-1. Noticee no. 1 being the Karta of Noticee no. 2 and Noticee no. 1 being the member of, board of directors of SEL, Investment Committee of SEL, Audit Committee of SEL, Noticee no. 2 was reasonably expected to have access to UPSI-1. In view of the above, I find that Noticee no. 2 was an 'insider' for UPSI Period-1 in accordance with Regulation 2(e)(i) of PIT Regulations, 1992. I note that Noticee no. 2 has not disputed its identification as an 'insider' for UPSI-1 by the SCN.
13. I note that Noticee no. 3 is a company whose 66.58% shareholding is held by Noticee no. 1 and the remaining shareholding is held by his immediate relatives. Thus, I find that Noticee no. 3 is a 'deemed to be connected person' in accordance with Regulation 2(h)(ix) of PIT Regulations, 1992 for UPSI Period-1. Having regard to the fact that Noticee no. 1 being the member of, board of directors of SEL, Investment Committee of SEL, Audit Committee of SEL, during the UPSI Period-1 and Noticee no. 1 being the controlling shareholder of Noticee no. 3 and Noticee no. 1 and 2 being the only directors of Noticee no. 3, I find that, Noticee no. 3 was also reasonably expected to have access to UPSI-1. In view of the above, I find that

Noticee no. 3 was an 'insider' for UPSI Period-1 in accordance with Regulation 2(e)(i) of PIT Regulations, 1992. I note that Noticee no. 3 has not disputed its identification as an 'insider' for UPSI-1 by the SCN.

Re: Whether the Noticees have indulged in the act of Insider trading during UPSI Period-1:

14. I note that the SCN states that Noticee no. 1 during the statement recordings before the Investigating Authority of SEBI, on April 26, 2019, had confirmed that he used to place orders for and on behalf of Noticee no. 2 to 6 through Mr. Anil Thukral who was employee of Noticee no. 3. I also note that Noticee no. 3 has also not disputed this submission by Noticee no. 1. Therefore, I find that the impugned trades by Noticee no. 2 and 3 during UPSI Period-1, were carried out by Noticee no. 1 with the free consent and implied authority of Noticee no. 2 and 3 during UPSI Period-1.
15. I also note that Noticee no. 1, 2 or 3, have not disputed the trades executed in their accounts during UPSI Period-1 in the shares of SEL as mentioned in Table D of the SCN (also reproduced in the pre-paras),
16. I note that Noticee no. 1, 2 and 3, have outrightly denied having access to UPSI-1 during UPSI Period-1. Noticee no. 1 has submitted that he came to know about the acquisition of PLL by SEL during the board meeting held on May 6, 2015. I also note that, considering the important positions being held by Noticee no. 1 in SEL and PLL, the trading pattern of the Noticees during UPSI Period-1, the significant shareholding of 2.22 %, being held by the Noticees in SEL, the SCN has concluded that Noticee no. 1 had possession of and access to UPSI-1. I note that Noticee no. 1 has denied having any knowledge about UPSI-1 before the board meeting of SEL held on May 6, 2015, in which the decision to acquire controlling stake in PLL was approved. To prove his point, Noticee no. 1 has relied upon the Statement recordings dated May 07, 2019 (Annexure III to the SCN) of Mr. Medappa Gowda, Compliance Officer of SEL, to show that: 1) He only used to attend board meetings and not participate in any other workings of SEL, 2) The Investment Committee did not discuss the proposal of acquisition of shares of PLL by SEL, 3) the name of PLL

as the target was not revealed in the Board meeting on February 3, 2015, 4) the appointment of Grant Thornton was made by the management of SEL without his knowledge or involvement. I do not agree with the aforesaid contentions raised by Noticee no. 1 for the following reasons:

- i. From the minutes of the meeting held on February 3, 2015 of the board of directors of SEL (which were also provided to the Noticees during inspection of documents), the following extracts are worth noting:

"09. REVIEW OF CURRENT OPERATIONS

.....
Project – Lumen:

Mr. Mohan N S recalled the discussions held at the previous meeting and further briefed about the new business update and progress on Lumen for proposed acquisition.

It was reported that:

Enterprise Value increased from 280 to 300 crores (verbal). Actis rejected the offer. Alternate offer made: 5.5 Multiples of 12 months trailing (TTM) Sustainable EBITDA. Ian Williamson visited EU subsidiaries

Company's offer price 67 per share (Ent. Val 313 Crores)

Actis expects price at 96 per share (Ent. Val 365 Crores)

TTM EBITDA contested by us.

"Sustainable" being addressed

Actis wants "As is where is" with no reps/warranties.

Potential issues, offer substantially lower than Market price, Mauritius route etc., were discussed.

Current market Cap:395 Crores

Deal Structuring: Keep the min free float and Do not delist:

49% of Actis share to be bought at agreed price.

26% Open offer to other shareholders at SEBI mandated price (@130/Share)

Actis sells the unsubscribed portion of Open offer to us at Agreed price.

Offer to Actis is "all Cash"

Open Offer can be a mix of Cash + Suprajit Shares (with a necessary 100% Cash Option)

Assuming highest cash outflow scenario:

To Actis for 49% @ 85/Share: 117 Crores

To Others for 26% @ 130/Share: 95 Crores

Total 213 Crores

After deliberations, Board authorized the Chairman & Managing Director to pursue the discussions with the Target Company and advisors of the Target Company and also to appoint investment Bankers/advisors at an appropriate time and other advisors if necessary, to review the proposal and take necessary action based upon the report from time to time.'

.....
27. EMPOWERING INVESTMENT COMMITTEE:

Chairman recalled the discussions held at the previous board meeting held on 30th October 2014, regarding the role of the investment committee of Board of Directors, constituted for

the purpose of reviewing various investments/acquisition proposals, new projects, new investment opportunities from time to time.

He also informed the board that the company is receiving the various investment proposals directly from the promoters of the seller target companies and also from various investment bankers, consultants regularly. He also informed the board that, the company seriously pursuing various investment opportunities as part of its inorganic growth plans and in view of this he requested the board to empower the investment committee to review investment proposals, consider and approve any such investments proposals and convene meetings of the investment committee if necessary from time to time.

After deliberations the following resolution was passed unanimously:

“RESOLVED THAT the investment Committee consisting of Mr. K. Ajith Kumar Rai Chairman, Mr. Ian Williamson – Member and Mr. Suresh Shetty – Member be and are hereby authorized to review various acquisition proposals, Investment opportunities and assess the projects, risk factors involved with such acquisition proposals and sign various Non Disclosure agreements, agreements, share purchase agreements, appoint agencies, consultants, advisors, merchant bankers to manage such investment proposals, implement such investment plans for and on behalf of the Boards.

FURTHER RESOLVED That, the Committee be and is hereby authorized to convene meetings and take and appropriate decision on investment proposals from time to time for and behalf of the Board”.

From the aforesaid extract of the minutes of the meeting of the board held on February 3, 2015, which was also attended by Noticee no. 1, I observe that a detailed discussion had indeed transpired in respect of price to be paid to the prospective seller (Actis) for acquisition of shares of the Target Company. I understand that the discussion was not only limited to the price to be paid but it also involved discussion around the Open Offer price as per SAST Regulations, the deal structure, discussion whether to delist the target company or not, the total cash outgo if the deal is sealed, the minimum free float, etc. Thus, from the extract of the minutes of the meeting, I find that a detailed discussion has happened in the board meeting held on February 3, 2015, in respect of the proposed acquisition of PLL by SEL. I note that it was not merely a discussion, but rather the members of the board of directors present in that meeting had also authorised the Chairman and MD to pursue further discussion with the Target Company and also to appoint investment Bankers/advisors at an appropriate time and other advisors if necessary, to review the proposal and take necessary action based upon the report from time to time.

I note that Noticee no. 1 has contended that the name of the Target Company i.e. PLL was never disclosed in the board meeting. Noticee no. 1 claims that

the Board of SEL, at its meetings would deliberate various proposals of acquisition and merger without disclosing the names of the target company. According to Noticee no. 1, these discussions entailed deliberations about broad factors without going into the specifics of any particular target company. However, I do not find merit in these arguments. As noted in the previous paragraph, the discussion in the impugned meeting was not general but very specific which talked about SEL's offer price of Rs. 67 per share to Actis, Actis's expected price of Rs. 96 per share, Actis willing to sell shares on 'as is where is' basis without any reps/ warranties, deal structure, possible open offer price of Rs. 130/- per share by SEL to the public shareholders of PLL according to SAST Regulations, 2011, discussion whether to delist the target company or not, the total cash outgo if the deal is sealed, the minimum free float, etc. I find it incomprehensible to believe the contention of Noticee no. 1, that such a detailed and comprehensive discussion with such specific details of the proposed acquisition could have been undertaken without knowing the name of the Target Company. I note that though the minutes of the impugned meeting did not mention the name of the Target Company, but it is also to be noted that not all discussion that take place in a board meeting are recorded verbatim in the minutes. The minutes are a summary record of the business that takes place in the board meeting. The minutes are not meant to be a verbatim transcript of the discussion. Further, I note that the impugned minutes of the meeting itself state that a discussion on Project Lumen has already happened in the previous board meetings. Furthermore, if I were to believe the contention of Noticee no. 1 that he never knew the name of the Target Company, then I am absolutely surprised as to how would the members of the board (including Noticee no. 1), agree to authorize the Chairman cum MD of SEL to – *"pursue the discussions with the Target Company and advisors of the Target Company and also to appoint investment Bankers/advisors at an appropriate time and other advisors if necessary, to review the proposal and take necessary action based upon the report from time to time."* From the minutes of the board meeting, I also find that the name of the seller – Actis is clearly mentioned therein. I note that Actis is a private equity firm, who through its affiliate Argon India Ltd. and Argon South Asia Ltd., held a controlling stake in PLL. Assuming that Noticee no. 1 never acquired the knowledge about who the reference

Target Company was, but I am still not convinced to accept the proposition that a qualified Chartered Accountant like Noticee no. 1 was unable to figure out the name of the Target Company even after mention about the name of the seller of shares – i.e. Actis – in the impugned board meeting.

Notwithstanding, the aforesaid observations, even if I were to accept the contention of Noticee no. 1 that he never knew the name of the target company while attending the board meeting on February 3, 2015, I still find that the mere information about 'the prospective acquisition worth Rs. 213 Crores for a controlling stake in a Target Company, being considered at the advanced level by SEL', was itself an Unpublished Price Sensitive Information in the hands of Noticee no. 1 and Noticee no. 1 was prohibited from trading in the shares of SEL while in possession of such an UPSI. Noticee no. 1 would have been eligible to trade in the shares of SEL only after the information about the proposed acquisition of the Target Company by SEL was made public.

- ii. I note that, both, Noticee no. 1 as well as the SCN, have relied upon the Statement Recordings dated May 07, 2019 of Mr. Medappa Gowda, Compliance Officer of SEL. While the SCN has relied upon the said statement recordings to confirm the time of origin of UPIS-1, Noticee no. 1 on the other hand, has relied upon the said statement recordings to show that: 1) he only used to attend board meetings and not participate in any other workings of SEL, 2) The investment committee did not discuss the proposal of acquisition of shares of PLL by SEL, 3) the name of PLL as the target was not revealed in the Board meeting on February 3, 2015, and 4) the appointment of Grant Thornton was made by the management of SEL without his knowledge or involvement.

I find that the Statement of Mr. Medappa Gowda, dated May 07, 2019, given before the Investigating Authority of SEBI, as not a reliable in so far it relates to exhibiting the ignorance of Noticee no. 1 regarding knowledge of UPSI-1. I find that Mr. Medappa Gowda in his Statement has stated (Reply to Q. no.18) that the acquisition of PLL by SEL and the merger of PLL with SEL, was never discussed in the investment committee meetings of SEL. Upon being asked

as to why the investment committee never discussed these major investment decision, Mr. Medappa Gowda has replied that since the board meetings were already convened for this purpose, hence, the proposals were not discussed by the investment committee of SEL. However, from the reply dated September 21, 2020 of Noticee no. 1, I find that the acquisition of PLL by SEL was indeed discussed in the investment committee meeting on May 29, 2015, albeit after the announcement of UPSI-1. In another instance, Mr. Medappa Gowda while replying to Q. no. 29, during the Statement Recording has unequivocally confirmed that Noticee no. 1 was not in possession of UPSI-1 and UPSI-2. However, as discussed in the pre-paras, from the minutes of the meeting of the board of directors dated February 3, 2015, it is apparently clear that Noticee no. 1 was seized with UPSI-1 at least on February 3, 2015 during the meeting of board of SEL, which was much before it was made public on May 6, 2015. In view of the above, I find that the statement of Mr. Medappa Gowda dated May 07, 2019, are not reliable in so far it relates to exhibiting the ignorance of Noticee no. 1 regarding knowledge of UPSI-1. Therefore, I find that the claims of Noticee no. 1, relying on the statement of Mr. Medappa Gowda, are unsustainable.

- iii. Noticee no. 1 has submitted that the proposal for acquisition of controlling stake in PLL by SEL, never came to be discussed in the meeting of the investment committee of SEL, prior to the public announcement of UPSI-1. To substantiate his claim, he has also placed reliance on the statement of Mr. Medappa Gowda which were annexed as Annexure III to the SCN. In this regard, as noted in the previous paragraph, the statement of Mr. Medappa Gowda, is not reliable, in so far it relates to exhibiting the ignorance of Noticee no. 1 regarding knowledge of UPSI-1. From the minutes of the meeting held on February 3, 2015 of the Board of directors of SEL, I find that the investment committee of SEL was constituted in October 2014, with Mr. Mr. K. Ajith Kumar Rai, Mr. Ian Williamson and Noticee no. 1, as its members. I also find that the investment committee was specifically authorised by the board of directors to “review various acquisition proposals, Investment opportunities and assess the projects, risk factors involved with such acquisition proposals and sign various Non-Disclosure agreements, agreements, share purchase

agreements, appoint agencies, consultants, advisors, merchant bankers to manage such investment proposals, implement such investment plans for and on behalf of the Boards.” I find it unconvincing that the investment committee with such a specific mandate and authorization by the board of directors, to review prospective investment/ acquisitions proposals, never reviewed the acquisition proposal of PLL, prior to its approval by the board on May 6, 2015. It is the case of Noticee no. 1 that the proposal only came to be discussed by the Investment Committee on May 29, 2015 i.e. after the proposal was approved by the board of directors. Regarding this contention, I note that Noticees have not disputed the fact that he was a member of the investment committee and the scope of the work of investment committee is also not disputed. The review of proposal of acquisition of PLL by SEL was within the scope of work of investment committee is corroborated by the submissions of the Noticee no. 1 himself, wherein he has submitted that the said acquisition was discussed in the investment committee meeting held on May 29, 2015. The acquisition of PLL being important matter, review of which fell under the scope of the work of the investment committee, was thus, required to be discussed amongst the members of the committee. It is not necessary that such a discussion must happen only in a formal meeting.

- iv. The Noticees have contested that, had they intended to take any advantage of UPSI-1, they would have sold the shares of SEL so acquired by them during UPSI Period-1, immediately, after the UPSI-1 became public. It is their case that their investment in the shares of SEL was part of their long term plan to increase their holdings in SEL and not pursuant to any UPSI. I note that the prohibition envisaged in Regulation 3(i) of PIT Regulations, 1992 is very unambiguous and the said prohibition does not require that only those trades are prohibited which result in profit to the insider. In other words, Regulation 3(i) of PIT Regulations, 1992, imposes a complete ban on trading in securities of the company by an insider while in possession of UPSI, regardless of the fact that whether such trade result in profit to the insider or not. I note that the fact that the Noticees continue to hold the shares does not mean that the trading by the Noticees was not with the possession/basis of UPSI. Therefore, the contention of the Noticees in this regard is untenable.

17. In view of the above, I find that Noticee no. 1 was seized with UPSI-1 at the board meeting on February 3, 2015 itself. I note that Noticee no. 2 and 3 have traded in the shares of SEL between March 26, 2015 and April 15, 2015 i.e. before the UPSI-1 became public. I note that Noticee no. 2 is the HUF of which Noticee no. 1 is the Karta and Noticee no. 3 is a company whose entire shareholding is held by Noticee no. 1 and his immediate family members. Thus, on the basis of preponderance of probabilities, I find that UPSI-1 came to be communicated by Noticee no. 1 to Noticee no. 2 and 3. Pursuant to such communication of UPSI-1, trades came to be executed from the account of Noticee no. 2 and 3, even before UPSI-1 became public. Noticee no. 1 was authorised to place the orders for these trades on behalf of Noticee no. 2 and 3. Therefore, I find that Noticee no. 1 being an insider, has communicated UPSI-1 to Noticee no. 2 and 3 and thus has violated the provision of Reg. 3(ii) of PIT Regulations, 1992 and is guilty of insider trading in terms of Reg. 4 of PIT Regulations, 1992. By authorising the execution of the impugned trades during UPSI Period-1 while being in possession of UPSI-1, Noticee no. 2 and 3 who were insiders, have violated provision of Reg. 3(i) of PIT Regulations, 1992. and are guilty of insider trading in terms of Reg. 4 of PIT Regulations, 1992.. Additionally, I also find that Noticee no. 3, being a company, has also violated Regulation 3A of PIT Regulations, 1992 and is therefore guilty of insider trading in terms of Reg 4 of PIT Regulations, 1992
18. it is noted that Section 12A(d) of SEBI Act, 1992, provides that no person shall directly or indirectly indulge in insider trading. The word 'indulge' is of wide import. This clause seeks to prohibit any principal as well as incidental acts to the wrong of insider trading. In the instant case, Noticee no. 1 has been found to have communicated the UPSI-1 to Noticee no. 2 and 3. Therefore I find that Noticee no. 1 has indulged in the act of insider trading. I note that Noticee no. 2 and 3 have been found to have indirectly, indulged in the act of insider trading by authorizing Noticee no. 1 to execute the trades on their behalf while themselves being in possession of UPSI-1. Thus, I find that Noticee no. 1, 2 and 3 have violated the provision of Section 12(d) of SEBI Act, 1992. Section 12A(e) of SEBI Act, 1992 provides that no person shall directly or indirectly 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 the SEBI Act, 1992 or the rules or the regulations made thereunder. In the instant case, Noticee no. 1 has been found to communicate UPSI-1 to Noticee no. 2 and 3 in violation of Reg. 3(ii) of PIT Regulations, 1992. And Noticee no. 2 and 3 have been found to be dealing in securities while in possession of UPSI-1, in violation of Reg. 3(i) of PIT Regulations, 1992. Thus, I find that Noticee no. 1, 2 and 3 have violated the provision of Section 12A(e) of SEBI Act, 1992.

Re: Violation of Code of Conduct as per PIT Regulations, 1992 for trading during UPSI Period-1:

19. The SCN alleges that the Noticee no. 2 and 3 have failed to obtain the pre-clearance for the buy trades that were executed by them in the scrip of SEL during UPSI Period-1, as was mandated by the Company's 'Code of Conduct for Prevention of Insider Trading' dated January 31, 2014, if *there is change in holding exceeding by value Rs. 10 lakhs or 25,000 shares or 1% of the shareholding / voting rights whichever is lower*. I note that the "Code of Conduct for Prevention of Insider Trading" is framed by SEL pursuant to the minimum standards that are laid down in Schedule 1 of the PIT Regulations, 1992, read with Regulation 12(1) of PIT Regulations, 1992. The relevant extracts of the provisions of PIT Regulations, 1992 are reproduced as under:

CHAPTER IV

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

Code of internal procedures and conduct for listed companies and other entities

12. (1) All listed companies and organisations associated with securities markets including:

.....
shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same

SCHEDULE 1

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

3.3 Pre-clearance of trades

3.3.1 All directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company above a minimum threshold limit to

be decided by the company should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable :

- (a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.
- (b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.
- (c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.
- (d) That he/she has made a full and true disclosure in the matter.

20. I note that the 'Code of Conduct for Prevention of Insider Trading' as framed by SEL had provided for obtaining pre-clearance of trade by a designated employee if the value of the trades being executed by him results in *change in holding exceeding by value Rs. 10 lakhs or 25,000 shares or 1% of the shareholding / voting rights whichever is lower*. I also note that the Noticee no. 1 was a Designated employee at SEL and he has traded through the accounts of Noticee no. 2 and 3 during UPSI Period-1. However, from a reading of Clause 3.3.3(a) of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies" as reproduced above, I find that the requirement to obtain pre-clearance of trade would have been applicable to Noticee no. 1, 2 and 3, only when they were not in possession of UPSI-1. In other words, the question of pre-clearance of trades does not arise when the designated person is in possession of unpublished price sensitive information because when in possession of unpublished price sensitive information, the designated person is otherwise prohibited from trading in the scrip of the company by virtue of Regulation 3(i) of PIT Regulations, 1992. In the instant case, the Noticee no. 1, 2 and 3 have been found to have violated Regulation 3(i) of PIT Regulations, 1992 for trading in the scrip of SEL when in possession of UPSI-1. Thus, the question of obtaining pre-clearance for the impugned trades does not arise. Hence, I find that the allegation in the SCN for violation of Clause 3.3.1, 3.3.2 and 3.3.3 of Model Code of Conduct

for Prevention of Insider Trading for Listed Companies as contained in Schedule-I of PIT Regulations, 1992, against the Noticee no. 1, 2 and 3, is not sustainable.

(ii) Violations alleged with respect to UPSI-2:

21. SCN alleges violation of the provisions of PIT Regulations, 2015 in respect of UPSI-

2. The relevant extract of the provisions of PIT Regulation, 2015 which are involved in the matter, are as under:

Relevant extract of provisions of PIT Regulations, 2015:

“Definitions.

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

(d) "connected person" means,-

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

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

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

(b). a holding company or associate company or subsidiary company; or

(c). an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d). an investment company, trustee company, asset management company or an employee or director thereof; or

(e). an official of a stock exchange or of clearing house or corporation; or

(f). a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or

(h). an official or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i). a banker of the company; or

(j). a concern, firm, trust, Hindu undivided family, company or association of persons where in a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and

is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

(f) "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

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

- i) a connected person; or
- ii) in possession of or having access to unpublished price sensitive information;

NOTE: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. 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 or he couldnot access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

Communication or procurement of unpublished price sensitive information.

3. (1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

.....

Trading when in possession of unpublished price sensitive information.

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

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

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

Re: Whether the information about proposed merger of PLL with SEL, was UPSI:

22. The information in respect of proposed merger of PLL with SEL has been identified by the SCN as UPSI-2. I note that Regulation 2(1)(n) of PIT Regulations, 2015 defines ‘unpublished price sensitive information’ as under:

Definitions.

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

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

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

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

23. From the above extract, I note that the information about proposed merger of PLL with SEL was unpublished price sensitive information within the meaning of

Regulation 2(1)(n)(iv) of PIT Regulations, 2015. I also note that the said UPSI-2 was not generally available until April 18, 2016, on which date it was disclosed by SEL to the stock exchanges. With regards, to UPSI-2, I note that the Noticees have not disputed the identification of the said information as UPSI-2.

Re: Whether Noticee nos. 1 to 6, are Insiders for UPSI-2:

24. I note that Noticee no. 1 was an independent director of SEL during UPSI Period-2. I find that Noticee no. 1 was a 'connected person' in accordance with Regulation 2(1)(d)(i) of PIT Regulations, 2015, as extracted above. I also note that Noticee no. 1 was a member of the board of directors of SEL since 2011 and also a member of the Investment Committee of SEL since October 30, 2014 and member of the Audit Committee of SEL during FY 2014-15 and FY 2015-16. I also find that by being the 'connected person' during UPSI Period-2, the Noticee no. 1 was also an 'insider' for UPSI Period-2 in accordance with Regulation 2(1)(g)(i) of PIT Regulations, 2015. I note that Noticee no. 1 has not disputed its identification as an 'insider' for UPSI-2, by the SCN.
25. I note that Noticee no. 2 is the Hindu Undivided Family of which Noticee no. 1 is the Karta. Thus, I find that Noticee no. 2 was 'deemed to be connected person' in accordance with Regulation 2(1)(d)(j) of PIT Regulations, 2015, as extracted above. I also find that by being the 'connected person' during UPSI Period-2, the Noticee no. 2 was also an 'insider' for UPSI Period-2 in accordance with Regulation 2(1)(g)(i) of PIT Regulations, 2015. I note that Noticee no. 2 has not disputed its identification as an 'insider' for UPSI-2, by the SCN.
26. I note that Noticee no. 3 is a company whose 66.58% shareholding is held by Noticee no. 1 and the remaining shareholding is held by his immediate relatives. Thus, I find that Noticee no. 3 is 'deemed to be connected person' in accordance with Regulation 2(1)(d)(j) of PIT Regulations, 2015, as extracted above. I also note that Noticee no. 1 being the member of - board of directors of SEL, Investment Committee of SEL, Audit Committee of SEL, during the UPSI Period-2 and Noticee no. 1 being the controlling shareholder of Noticee no. 3 and Noticee no. 1 and 2 being the only directors of Noticee no. 3, hence, Noticee no. 3 was also reasonably

- expected to have access to UPSI-2. I also find that by being the 'connected person' during UPSI Period-2, the Noticee no. 3 was also an 'insider' for UPSI Period-2 in accordance with Regulation 2(1)(g)(i) of PIT Regulations, 2015. I note that Noticee no. 3 has not disputed its identification as an 'insider' for UPSI-2, by the SCN.
27. I note that Noticee no. 4 is the spouse of Noticee no. 1. I also note that Noticee no. 1 during the statement recordings before the Investigating Authority of SEBI, on April 26, 2019, had confirmed that he used to place orders for and on behalf of Noticee no. 4 through Mr. Anil Thukral who was employee of Noticee no. 3. Therefore, I find that Noticee no. 4 used to rely on Noticee no. 1 for financial consultation and Noticee no. 4 used to give free consent to Noticee no. 1 for operating her trading account. Thus, I find that Noticee no. 4 is a 'deemed to be connected person' in accordance with Regulation 2(1)(d)(ii)(a) of PIT Regulations, 2015 for UPSI Period-2, as extracted above. I also find that by being the 'connected person' during UPSI Period-2, the Noticee no. 4 was also an 'insider' for UPSI Period-2 in accordance with Regulation 2(1)(g)(i) of PIT Regulations, 2015. I note that Noticee no. 4 has not disputed its identification as an 'insider' for UPSI-2 by the SCN.
28. I note that Noticee no. 5 is a partnership firm whose partners are Noticee no. 1 and Noticee no. 4. Thus, I find that Noticee no. 5 is a 'deemed to be connected person' in accordance with Regulation 2(1) (d) (ii) (j) of PIT Regulations, 2015, as extracted above. I also find that by being the 'connected person' during UPSI Period-2, the Noticee no. 5 was also an 'insider' for UPSI Period-2 in accordance with Regulation 2(1)(g)(i) of PIT Regulations, 2015. I note that Noticee no. 5 has not disputed its identification as an 'insider' for UPSI-2 by the SCN.
29. I note that Noticee no. 6 is the daughter of Noticee no. 1 and Noticee no. 4. I also note that Noticee no. 1 during the statement recordings before the Investigating Authority of SEBI, on April 26, 2019, had confirmed that he used to place orders for and on behalf of Noticee no. 6 through Mr. Anil Thukral who was employee of Noticee no. 3. Therefore, I find that Noticee no. 6 used to rely on Noticee no. 1 for financial consultation and Noticee no. 6 used to give free consent to Noticee no. 1 for operating her trading account. Thus, I find that Noticee no. 6 is a 'deemed to be

connected person' in accordance with Regulation 2(1)(d)(ii)(a) of PIT Regulations, 2015 for UPSI Period-2. I also find that by being the 'connected person' during UPSI Period-2, the Noticee no. 6 was also an 'insider' for UPSI Period-2 in accordance with Regulation 2(1)(g)(i) of PIT Regulations, 2015. I note that Noticee no. 6 has not disputed its identification as an 'insider' for UPSI-2 by the SCN.

Re: Whether the Noticees have indulged in the act of Insider trading during UPSI Period-2:

30. I note that the SCN states that Noticee no. 1 during the statement recordings before the Investigating Authority of SEBI, on April 26, 2019, had confirmed that he used to place orders for and on behalf of Noticee no. 2 to 6 through Mr. Anil Thukral who was employee of Noticee no. 3. I also note that Noticee no. 2 to 6 have also not disputed this submission by Noticee no. 1. Therefore, I find that the impugned trades by Noticee 2 to 6 during UPSI Period – 2, were carried out by Noticee no. 1 with the free consent and implied authority of Noticee 2 to 6 during UPSI Period – 2.
31. I also note that none of the Noticees have disputed the trades executed in their accounts during UPSI Period-2, as mentioned in Table E of the SCN (also reproduced in the pre-paras),
32. With regards to UPSI-2, the Noticees have contended the following:
- i. The SCN relies upon the submission of SEL regarding the date on which the talks about the proposed merger commenced. SEL has not indicated any date when such talks commenced. There is a generic reference to first week of April 2016. However, this cannot mean that the talks commenced on April 1, 2016 which was a Friday. It is a mere *ipse dixit*, in the absence of any specification about the exact date on which such talks commenced, to assume that the talks commenced on April 1, 2016 is not correct. It is humbly submitted that this is a very significant shortcoming in the Show Cause Notice as the exact date of commencement of the UPSI period is of outmost importance to

bringing a serious charge of insider trading. Such a serious charge cannot be brought based in a flippant, vague and arbitrary manner.

- ii. Noticee no. 1 has also outrightly denied having any knowledge about UPSI-2 before April 15, 2016 when the Chairman and Managing Director of SEL Mr. Ajit Rai emailed Noticee no. 1, with the details of the proposed merger of PLL with SEL.

33. I note that the SCN on the basis of the chronology of events provided by SEL, stated that UPSI-2 came into existence in first week of April 2016 when internal discussion on proposal of amalgamation of PLL with SEL was initiated and thus, proceeds to infer April 01, 2016, as the date of coming into existence of UPSI-2. In this regard, the Noticees have contended that while SEL has stated that UPSI-2 came into existence in first week of April, the SCN has erroneously and abruptly identified April 1, 2016 as the date of origination of UPSI-2 merely because the Noticees have traded in the shares of SEL between April 1, 2016 and April 5, 2016. I note that such a contention of the Noticees is not tenable for the reasons given in the ensuing paras. As noted in the pre-paras, all the Noticees have been found to be connected person in terms of Reg. 2(1)(d) of PIT Regulations, 2015. I note that, in accordance with Reg. 4(2) of PIT Regulations, 2015, it is the burden of the connected person to prove that he did not have possession of UPSI.

34. I note that, evidence in insider trading cases can either be direct or circumstantial. Noticee no. 1 is found to be connected with the Company as a member of its board of directors since January 31, 2011. He was the member of the Audit Committee of SEL during FY 2014-15, FY 2015-16 and FY 2016-17. He was appointed as member of Investment Committee of SEL since October 30, 2014. He became director of PLL on June 18, 2015 and was also appointed Chairman of the Audit Committee of PLL on June 18, 2015. Thus, considering all the aforementioned important positions being held by Noticee no. 1 and consequently also being found to be 'connected person' in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015, I note that, Noticee no. 1 was reasonably expected to have possession of/ access to UPSI-2.

35. It is pertinent to note that according to the reply dated March 24, 2017 of SEL and the Statement recordings dated May 7, 2019 of the then Compliance Officer of SEL, before the Investigating Authority of SEBI, the internal discussions on the proposed merger of PLL with SEL, commenced in the first week of April 2016 - a fact which has also not been disputed by Noticee no. 1. It is also pertinent to note that, incidentally, the impugned trades of the Noticees in the scrip of SEL during UPSI Period-2, were also executed in the first week of April 2016 i.e. precisely from April 1, 2016 to April 5, 2016 (with April 2 and April 3, being public/trading holidays), the details of which are reproduced as under:

36. Table-E

S. No	Name of the Noticee	Date	Buy	Sell
1	Notice No.1 (Suresh Shetty)	01/04/2016	4,500	Nil
2	Notice No.2 (Suresh Shetty (HUF))	01/04/2016	8,000	Nil
3	Notice No.3 (Emerging Securities Pvt Ltd.)	01-04-2016 to 05-04-2016	55,697	260
4	Notice No.4 (Reetha Shetty)	04/04/2016	9,363	Nil
5	Notice No.6 (Shruti Shetty)	01/04/2016	4,500	Nil
6	Notice No.5 (M/s Vanijya Investment and Trading)	01/04/2016	200	Nil

37. Thus, I note that the mere reasonable expectation of having possession of UPSI-2 by Noticee no. 1, is fortified by the fact that the impugned trades were executed by the Noticees at the same time when UPSI-2 came into existence .i.e. first week of April 2016.
38. In its defence, Noticee no. 1 has submitted that he acquired knowledge about UPSI-2 for the first time only on April 15, 2016, when the Managing Director of SEL wrote an email to him with the details of the proposed merger. However, I note that such an email only indicates that there was a discussion on UPSI-2 with Noticee no. 1 by the Managing Director of SEL on April 15, 2016 but it does not indicate that Noticee no. 1 came to know about UPSI-2 for the first time on April 15, 2016 only, and it also does not show that Noticee no. 1 did not have possession of UPSI-2 prior to April 15, 2016.
39. On the other hand, the material available on record shows that the impugned trades were executed by Noticee no. 1 at the same time when UPSI-2 came into existence.

As noted in the preceding paras, Noticee no. 1 was also holding important positions in SEL as well as PLL. Thus, on the basis of high degree of preponderance of probabilities, I find that Noticee no. 1, being the connected person with respect to SEL, had possession of UPSI-2 and yet indulged in the act of trading in the shares of SEL in complete disregard of the prohibition imposed under Reg. 4(1) of PIT Regulations, 2015. Further, I note that, in terms of Reg. 4(2) of PIT Regulations, 2015, it was the obligation of Noticee no. 1 to show that he was not in possession of UPSI-2 while executing the impugned trades, which I find, he has failed to successfully discharge.

40. I note that Noticee no. 2 to 6 have authorised Noticee no. 1 to execute the impugned trades on their behalf. I find that the trades in the account of Noticee no. 2 to 6 were executed at the same time when UPSI-2 originated. I note that Noticee no. 2 is the HUF whose Karta is Noticee no. 1, Noticee no. 3 is a company whose entire shareholding is held by Noticee no. 1 and his immediate family relatives, Noticee no. 4 is the wife of Noticee no. 1, Noticee no. 5 is a partnership firm of which Noticee no. 1 and 4 are partners and Noticee no. 6 is the daughter of Noticee no. 1. In view of the aforesaid factual evidence, I find that Noticee no. 2 to 6 were also in possession of UPSI-2 and the same came to be communicated to them through Noticee no. 1. Therefore, I find that Noticee no. 1 has violated the provision of Reg.3(1) of PIT Regulations, 2015, which explicitly prohibits the communication of any UPSI by an Insider, except if it is in furtherance of some legitimate purpose or in discharge of any legal obligation.
41. In view of the above and on the basis of high degree of preponderance of probabilities, I also find that Noticee no. 1, and Noticee no. 2 to 6 through Noticee no. 1, all being the connected person with respect to SEL, had possession of UPSI-2 and yet indulged in the act of trading in the shares of SEL in complete disregard of the prohibition imposed under Reg. 4(1) of PIT Regulations, 2015. Thus, I find that Noticee no. 1 by trading in the shares of SEL while being in possession of UPSI-2 has violated provisions of Reg. 4(1) of PIT Regulation, 2015 and Noticee no. 2 to 6 by authorizing Noticee no. 1 to execute the trades on their behalf despite themselves being in possession of UPSI-2 from Noticee no. 1, have also violated the provisions of Reg. 4(1) of PIT Regulations, 2015. it is noted that Section 12A(d)

of SEBI Act, 1992, provides that no person shall directly or indirectly indulge in insider trading. In the instant case, Noticee no. 1 to 6 have been found to have indulged in the act of insider trading. Thus, I find that Noticee no. 1 to 6 have violated the provision of Section 12(d) of SEBI Act, 1992. Section 12A(e) of SEBI Act, 1992 provides that no person shall directly or indirectly 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 the SEBI Act, 1992 or the rules or the regulations made thereunder. In the instant case, Noticee no. 1 to 6 have been found to have violated Reg. 4(1) of PIT Regulations, 2015 which prohibits dealing in securities while in possession of UPSI-2. Thus, I find that by trading in the shares of SEL during UPSI Period-2 while being in possession of UPSI-2 in contravention of Reg. 4(1) of PIT Regulations, 2015, Noticee no. 1 to 6 have violated the provision of Section 12A(e) of SEBI Act, 1992.

42. It is the case of Noticee no. 1, that he being the independent director on the board of SEL was not involved in the day to day management and affairs of SEL and his knowledge about the working of SEL was only limited to the matters discussed in the board meetings. I do not agree with the aforesaid argument of Noticee no. 1. In fact, from the material available on record, I find that Noticee no. 1 was not even eligible to be appointed as an independent director in SEL since it fails to meet the eligibility criteria as stipulated in section 149(6)(e)(iii) of the Companies Act, 2013. The said provision reads as under:

Company to have Board of Directors

149 (1).....
(6) *An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—*
(a).....
(e) *who, neither himself nor any of his relatives—*
(i).....
(iii) *holds together with his relatives two per cent. or more of the total voting power of the company; or*

43. The SCN has observed that Noticee no. 1 alongwith Noticee no. 2 to 6, were holding 2.22% share capital of SEL as on March 31, 2016. I note that Noticee no. 1 has not disputed this observation in the SCN. I note that Noticee no. 2 is the HUF whose

Karta is Noticee no. 1, Noticee no. 3 is a company whose entire shareholding is held by Noticee no. 1 and his immediate family relatives, Noticee no. 4 is the wife of Noticee no. 1, Noticee no. 5 is a partnership firm of which only Noticee no. 1 and 4 are partners and Noticee no. 6 is the daughter of Noticee no. 1. Thus, I find that the beneficial interest of Noticee no. 1 in SEL (including the interest of Noticee no. 2 to 6) exceeds 2%, which makes Noticee no. 1 ineligible to be appointed as the independent director on the board of SEL since the criteria stipulated in section 149(6)(e)(iii) of the Companies Act, 2013 is not met in spirit of the law. Be that as it may, for the purpose of these proceedings, I find that the reliance being drawn by Noticee no. 1 upon his status as the independent director of SEL may not be satisfactory.

44. I note that the SCN has alleged that the Noticees while trading in the shares of SEL during UPSI Period-2 while being in possession of UPSI-2 have made a total notional gain of Rs. 11,94,408/-.

Table-K

S. No.	Name	No. of Shares Bought		(Weighted Average Purchase Price)	Total Buy Value (in ₹)	Notional sale value as on April 18, 2016 based on closing price (in Rs.)*	Wrongful Gain made (in Rs.)
			A	B	C=(A*B)	D=A*147.45 (NSE) =A*146.80 (BSE)	E=D-C
1	Suresh Shetty (Noticee No.1)	NSE	4,500	132.28	5,95,260	6,63,525	68,265
2	Emerging Securities Private Limited (Noticee No.3)	NSE	55,197	133.15	7,349,481	81,38,798	7,89,317
		BSE	500	133.04	66,520	73,400	6,880
3	Vanijya Investment and Trading (Noticee No.5)	NSE	200	132.38	26,476	29,490	3,014
4	Reetha Shetty (Noticee No.4)	NSE	9,363	132.50	12,40,598	13,80,574	1,39,977
5	Shruti Shetty (Noticee No.6)	NSE	4,500	132.50	5,96,250	6,63,525	67,275
6	Suresh Shetty (HUF) (Noticee No.2)	NSE	8,000	132.49	10,59,920	11,79,600	1,19,680
Total					1,09,34,505	1,21,28,912	11,94,408

*Closing price of NSE and BSE on April 18, 2016

45. The notional gain made by each of the Noticees have been brought out at Table K of the SCN (and also reproduced in the preceding para). The notional gain has been arrived at by applying the following formula:

Unlawful gain= {No. of shares bought while in possession of UPSI X Closing price on the day UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange} – {No. of shares bought while in possession of UPSI X weighted average purchases price}.

I note that neither have the Noticees disputed the method of calculation of notional gain by the SCN, nor have they disputed the amount so arrived by the SCN after applying the aforesaid formula.

Re: Violation of Code of Conduct as per PIT Regulations, 2015 for trading during UPSI Period-2:

46. The SCN alleges that the Noticee no. 1 while trading directly and indirectly through the accounts of Noticee no. 2 to 6, has failed to obtain the pre-clearance for the buy trades that were executed by him in the scrip of SEL during UPSI Period-2, as was mandated by the Company's 'Code of Conduct for Prevention of Insider Trading' dated May 29, 2015. I note that the "Code of Conduct for Prevention of Insider Trading" is framed by SEL pursuant to the minimum standards that are laid down in Schedule B of the PIT Regulations, 2015, read with Regulation 9(1) of PIT Regulations, 2015. The relevant extracts of the provisions of PIT Regulations, 2015 are reproduced as under:

Code of Conduct.

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

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.

SCHEDULE B

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

1.
6. *When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.*

47. I note that the 'Code of Conduct for Prevention of Insider Trading' as framed by SEL had provided for obtaining pre-clearance of trade by a designated employee for any value of his trades either conducted directly or indirectly. I also note that the Noticee no. 1 was a Designated employee at SEL and he has traded through the accounts of Noticee no. 2 to 6 indirectly during UPSI Period-1. However, from a reading of Clause 6 of the "*Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders*" as contained in Schedule B of PIT Regulations, 2015 and also as reproduced above, I find that the requirement to obtain pre-clearance of trade would have been applicable to Noticee no. 1, only when he was not in possession of UPSI-1. In other words, the question of pre-clearance of trades does not arise when the designated person is in possession of unpublished price sensitive information because when in possession of unpublished price sensitive information, the designated person is otherwise prohibited from trading in the scrip of the company by virtue of Regulation 4(1) of PIT Regulations, 2015. In the instant case, the Noticee no. 1 has been found to have violated Regulation 4(1) of PIT Regulations, 2015 for trading in the scrip of SEL when in possession of UPSI-2. Thus, the question of obtaining pre-clearance for the impugned trades does not arise. Hence, I find that the allegation in the SCN for violation of Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B read with Regulation 9(1) of PIT Regulations, 2015, against Noticee no. 1, is not sustainable.

48. In view of the aforesaid findings, for the UPSI-1, Noticee no. 2 and 3, have been found to have violated the provisions of Regulation 3(i) of PIT Regulations, 1992 and Noticee no. 1 is found to have violated Regulation 3(ii) of PIT Regulations, 1992. For the aforesaid violations, Noticee no. 1, 2 and 3 are guilty of indulging in the act of insider trading in accordance with Regulation 4 of PIT Regulations, 1992. Noticee no. 1, 2 and 3 have also been found to have violated provisions of Section

12A(d) and (e) of SEBI Act, 1992. Additionally, it is also found that Noticee no. 3, being a company, has also violated Regulation 3A of PIT Regulations, 1992. With regards to UPSI-2, the charge of violation of Regulation 3(1) of PIT Regulations, 2015 by Noticee no. 1, and Regulation 4(1) of PIT Regulations, 2015 and Section 12A(d) and (e) of SEBI Act, 1992 by Noticee no. 1 to 6, has been established. For the violation of Code of Conduct prescribed under Schedule 1 of PIT Regulations, 1992 and for the violation of Code of Conduct as prescribed in Schedule B of PIT Regulations, 2015, no case is found to have been made out by the SCN.

49. In view of the above findings with regard to UPSI-1 by Noticee no. 1, 2 and 3, and with regard to UPSI-2 by Noticee no. 1 to 6, I find that the said Noticees are liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities, and liable for issuance of appropriate directions for disgorgement, under Section 11B(1) of SEBI Act, 1992 and for imposition of appropriate penalty under Section 11B(2) read with Section 15G of SEBI Act, 1992, which provides as under:

SEBI Act, 1992:

“Penalty for insider trading.

15G. If any insider who,—

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

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

“Power to issue directions and levy penalty.

11B(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,—

- (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
- (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

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

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”

50. I note that in terms of Section 15J of the SEBI Act, 1992, while determining the quantum of penalty under Section 15J of SEBI Act, 1992, Board is required to have due regard to the following factors, namely: -

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

51. In the instant case, I find that, the SCN has not alleged any unlawful gain or unlawful loss avoided by Noticee no. 1, 2 and 3 because of their impugned trades during UPSI Period-1. However, for the unlawful gains made by Noticee no. 1 to 6, for their impugned trades during UPSI Period-2 appropriate directions of disgorgement along with penal interest are being issued. I note that material available on record does not bring out any loss caused to any specific investor or a group of investors, as a result of violations committed by Noticee no. 1, 2 and 3 with respect to UPSI-1 or Noticee no. 1 to 6 with respect to UPSI-2. I note that Noticee no. 1 was found to have communicated UPSI-1 as well as UPSI-2 without any underlying legal obligation or any legitimate purpose, I also note that Noticee no. 2 and 3 have been found to have indulged in the act of insider trading while in possession of UPSI-1 as well as UPSI-2. Thus, I note that the violations committed by Noticee no. 1, 2 and 3, are repetitive in nature. I note that there is no material available on record to

indicate that the violations committed by Noticee no. 4, 5 and 6 are repetitive in nature.

Directions:

52. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby direct as under:

- (i) Noticee no. 1, 2 and 3 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two (2) year, from the date of this order;
- (ii) Noticee no. 4, 5 and 6 are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of this order;
- (iii) Noticee no. 1, 2 and 3, are restrained from buying, selling or dealing in the securities of Suprajit Engineering Ltd. (SEL), directly or indirectly, in any manner whatsoever, for a period of three (3) years;
- (iv) Noticee no. 4, 5 and 6, are restrained from buying, selling or dealing in the securities of Suprajit Engineering Ltd. (SEL), directly or indirectly, in any manner whatsoever, for a period of two (2) years;
- (v) The Noticee no. 1 to 6 are directed to disgorge the amount as indicated in the following Table against their respective names, within 45 days from the date of receipt of this order:

Noticee no.	Name of the Noticee	Wrongful Gain in Rs.
1	Suresh Shetty	68,265
2	Suresh Shetty (HUF)	1,19,680
3	Emerging Securities Private Limited	7,96,197
4	Reetha Shetty	1,39,977
5	Vanijya Investment and Trading	3,014
6	Shruti Shetty	67,275

The amount shall be remitted by the Noticees alongwith interest at the rate of 12% per annum from April 18, 2016 till the date of actual payment, to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992. The demand draft for the payment of disgorgement amount with interest, should be sent to "The Division Chief, IVD-ID7, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051". While remitting the disgorgement amount alongwith interest, the Noticees are allowed to set-off the amount already paid/deposited by them with SEBI.

- (vi) \Noticee no.1, Noticee no. 2 and Noticee no. 3, are hereby imposed with penalty of Rs. Thirty (30) Lakhs each, under Section 15G of the SEBI Act, 1992, and are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order;
- (vii) \Noticee no.4, Noticee no. 5 and Noticee no. 6, are hereby imposed with penalty of Rs. Ten (10) Lakhs each, under Section 15G of the SEBI Act, 1992, and are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order;

The Noticees shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the

payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD-ID7, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

53. The restraints/ prohibition imposed in para 52 (i) & (iii) upon Noticee no. 1, 2 and 3, shall run, concurrently. The restraints/ prohibition imposed in para 52 (ii) & (iv) upon Noticee no. 4, 5 and 6, shall run, concurrently. The obligation of the Noticees, restrained prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/ prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/ prohibited in the present Order, in the F & O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/ prohibition imposed by this Order.

54. This order comes into force with immediate effect.

55. A copy of this Order shall be served on the Noticee, recognized Stock Exchanges, Depositories, Registrar and Share Transfer Agents of Mutual Funds to ensure compliance with the above directions.

Sd/-

Date: April 27, 2021

Place: Mumbai

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**