

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992- IN THE SCRIP OF NIIT TECHNOLOGIES LIMITED

In respect of

Sl. No.	Name of the Noticee	PAN	
1.	Ms. Pratibha Advani	ACOPA4171A	Disposed of vide settlement order dated November 12, 2020
2.	Mr. Ashok Arora	AAAPA0564F	
3.	Mr. Arvind Mehrotra	AHQPM7475A	

BACKGROUND

1. NIIT Technologies Limited (hereinafter referred to as “**NIIT/ Company**”) is a global IT solutions organization, serving clients across Americas, Europe, Asia, and Australia. The shares of the *Company* are listed on the BSE Ltd. (hereinafter referred to as “**BSE**”) and the National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) and BSE and NSE are collectively referred to as “**Stock Exchanges**”.
2. On March 23, 2015 the *Company* (aftermarket hours), made a corporate announcement on the floor of the Stock Exchanges and informed the following:
“a dispute has arisen between one of the Company’s subsidiary & its client in the APAC region which may result in claims and counter claims. The Company also informed that it is

exploring various options to resolve the dispute. However, in terms of its accounting policy, the company shall be providing to a value of US\$ 10mn, towards unbilled revenue, during the current quarter”

3. Pursuant to the aforesaid announcement by the *Company*, the NSE conducted a detailed analysis of trading in the scrip of the *Company* and forwarded its report to the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”). Subsequently, SEBI conducted investigation into the trading activities of certain entities in the scrip of the *Company* during the period from December 22, 2014 to March 23, 2015 (hereinafter referred to as “**Investigation Period**”) to ascertain the possible violations of the provisions of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations, 1992**”)
4. Based on the facts as revealed and findings made during the course of the investigation by SEBI, a Show Cause Notice dated July 12, 2019 (hereinafter referred to as “**SCN**”) was issued to Ms. Pratibha Advani, Mr. Ashok Arora and Mr. Arvind Mehrotra (hereinafter individually referred to by their corresponding names/numbers and collectively referred to as “**Noticees**”) asking them to show cause as to why suitable directions under sections 11B(1), 11(4) and 11(1) of the SEBI Act should not be issued against them for their alleged violations of Section 12A(d) & (e) of the SEBI Act, 1992 and regulation 3(i) of the PIT Regulations, 1992 read with regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations, 2015**”).
5. Later on additional observations and allegations have been communicated to the *Noticees* vide a Supplementary Show Cause Notice dated August 06, 2020 (hereinafter referred to as “**SSCN**”) asking them to show cause as to why an inquiry should not be conducted against them in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Rules, 1995**”) read with section 11(4A) and 11B(2) of the SEBI Act and penalty be not imposed under section 15G of the SEBI Act for the violations as alleged against them in the SCN. In addition to the above, the SSCN

called upon the *Noticee no. 3* to show cause as to why penalty be not imposed upon him under Section 15A(b) and 15HB read with Section 11(4A) and 11B(2) of the SEBI Act for violation of regulation 13(4) and (5) of the PIT Regulations, 1992 and of Clause 3.3.1 under Schedule I-Part A of Model Code of Conduct for prevention of insider trading for listed companies read with regulation 12(1) of the PIT Regulations, 1992 as well as regulation 12 of the PIT Regulations, 2015, respectively.

6. I note that during pendency of the proceedings, the *Noticee no. 1* had applied for the settlement of aforesaid proceedings vide Settlement Application No. 4040 of 2019, which has been accepted by SEBI and the proceedings qua her got disposed of vide a settlement order dated November 12, 2020. Accordingly, the present proceedings are now being continued with respect to the remaining two noticees i.e., the *Noticee nos. 2 and 3*.
7. The brief findings of the investigation and the allegations made on the basis of such findings of investigation, as contained in the SCN and SSCN, are as under:
 - (a) Mr. Ashok Arora (hereinafter referred to as “**Ashok/Noticee no. 2**”) is the Group Financial Officer and Mr. Arvind Mehrotra (hereinafter referred to as “**Arvind/Noticee no. 3**”) is the business Head Asia & Australia with title as President- Infrastructure Management Services (IMS), of the *Company*.
 - (b) NIIT Technologies Pty Limited, Australia (hereinafter referred to as “**NTPL Australia**”), is a step down subsidiary of NIIT through NTPL Singapore, a wholly owned subsidiary of NIIT. Tenix Solutions IMES Pty. Limited (hereinafter referred to as “**TSIPL**”) executed an agreement dated July 22, 2010 (hereinafter referred to as “**Agreement**”) with NTPL Australia *inter-alia* for information technology design and support services for the State of Victoria, Australia.
 - (c) Due to delay in the performance of the Agreement, TSIPL had informed NTPL Australia that no payment will be made to them until NTPL Australia replaces or amends the performance bonds in the manner requested by

TSIPL. NIIT and NTPL Australia were constantly engaged in deliberations and discussions with TSIPL to resolve the issues and NTPL Australia also sought advice from its advisors including lawyers i.e., Gadens Lawyers Sydney Pty Limited (hereinafter referred to as “**Gadens**”) in this regard.

- (d) Gadens vide email dated December 22, 2014 advised the *Company* to commercially resolve the issue via the dispute resolution process. Further, Gadens vide email dated January 05, 2015, *inter alia* informed NIIT that the issue is likely to escalate and if so, then NIIT is likely to be placed in a more difficult position. Later, approval was sought and obtained from the Board of Directors (hereinafter referred to as “**BoD**”) of the *Company* in its meeting dated January 14, 2015 (which was attended by the *Notices nos. 1* and *2*) to raise around USD 10 Million equivalent to the unbilled revenue from the project and equivalent to the disputed amount. From further correspondence, it has been observed that USD 10 Million was needed to be raised for infusion of equity amounting to USD 10 Million into NTPL, Singapore, a wholly owned subsidiary of NIIT (NTPL Australia is the step down subsidiary of NIIT through NTPL Singapore) for onward investment in NTPL, Australia in order to meet its fund requirement which had arisen due to change in scope and timelines of TSIPL Agreement.
- (e) TSIPL vide letter dated March 06, 2015 issued a draft default notice to NTPL, Australia. Subsequently, final notice was issued by TSIPL to NTPL, Australia on March 13, 2015 claiming damage and loss amounting to AUD 20,404,890 (around USD 15.5 Million). NTPL, Australia responded to the said notice on March 16, 2015. Thereafter, on March 22, 2015, an agreement was arrived at consenting that all activities relating to the Agreement/project will be suspended. In terms of clause 49(V) of the Listing Agreement, the BoD of the *Company* was apprised of the dispute on March 23 2015 and intimation was made to the Stock Exchanges on the same day.
- (f) In terms of regulation 2(ha) of the PIT Regulations, 1992, the aforesaid corporate announcement by the *Company* relating to the dispute between the

Company's subsidiary and its client was viewed as a Price Sensitive Information (hereinafter referred to as “**PSI**”) and the said PSI was Unpublished PSI (hereinafter referred to as “**UPSI**”) until it was disclosed to the stock exchanges on March 23, 2015 (after-market hours). Further, as noted above, NIIT was aware of the severity of the situation from December 22, 2014 (when the email from Gadens was received by the *Company*). Therefore, the date of the email from Gadens to NIIT i.e., December 22, 2014 can be said to be the date when UPSI came in to existence and consequently the period of the UPSI becomes December 22, 2014 to March 23, 2015 (before it was disclosed to the Stock Exchanges after-market hours on March 23, 2015) (hereinafter referred to as “**UPSI Period**”)

- (g) Based on the aforesaid information *inter alia* furnished by the *Company* vide its letters dated August 29, 2016 and August 21, 2018, the *Notices* have been alleged to be insiders in terms of regulation 2(e) of the PIT Regulations, 1992 and further have been alleged to have had access to the said UPSI. Prior to its disclosure of the PSI to the Stock Exchanges on March 23, 2015, it was noticed that the *Notices* had traded in the scrip of the *Company* hence, the trading in the scrip of the *Company* has been alleged to be while in possession of the UPSI.
- (h) As per the Code of Conduct for prevention of insider trading and disclosure requirements in terms of the PIT Regulations, 1992 adopted and approved by the *Company* in its meeting held on January 14, 2009 for the relevant period, it is *inter alia* noted that, all the designated persons/directors of the *Company* and their dependents who intend to deal in its securities from and above 1500 shares in quantity were required to get their transaction pre-cleared from the *Company*. However, it is observed that the *Noticee no. 3* failed to take pre-clearance for selling 2000 shares of the *Company* on November 14, 2014. Further, the *Noticee no. 3* did not disclose the details of the aforesaid transaction dated November 14, 2014 (which was more than INR 5 Lakh in value) to the *Company* as well as to the Stock Exchanges.

(i) Accordingly, the above acts of the *Notices* of indulging in trading in the scrip of the *Company* while in possession of UPSI prior to disclosure of the said PSI on the Stock Exchanges are alleged to be in violation of Section 12A (d) & (e) of the SEBI Act, 1992 and regulation 3(i) of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015. Further, the failure on the part of the *Noticee no. 3* to take pre-clearance and failure to make disclosure in respect of his transaction dated November 14, 2014 has allegedly led to the violations of Clause 3.3.1 under Schedule I-Part A of Model Code of Conduct for prevention of insider trading for listed companies read with regulation 12(1) of the PIT Regulations, 1992 and regulation 13(4) and regulation 13(5) of the PIT Regulations, 1992 read with regulation 12 of PIT Regulations, 2015.

8. I note from the record that the SCN and SSCN have been duly served on the *Notices*.

REPLY, PERSONAL HEARING AND SUBMISSIONS

9. In response to the SCN and SSCN, the *Noticee no. 2* replied vide letters dated September 16, 2019, November 03, 2020 & November 27, 2021 and the *Noticee no. 3* filed his replies vide letter dated July 31, 2019. Further, the *Noticee no. 3* appeared in person for the personal hearing held through Video Conferencing on November 11, 2021 and made oral submissions on the lines of his aforesaid reply dated July 31, 2019. The *Noticee no. 2* appeared through his Authorized Representative for the personal hearing held through Video Conferencing on November 29, 2021 and made submissions in lines with his earlier replies dated September 16, 2019, November 03, 2020 and November 27, 2021. Subsequently, the *Noticee nos. 2* and *3* filed their post hearing submissions vide their letters dated December 06, 2021 and email dated November 22, 2021, respectively. Further, the *Noticee no. 2* has made additional submissions vide his letter dated May 31, 2022. The replies/post hearing submissions of the *Noticee nos. 2* and *3* are summarized as under:

NOTICEE NO. 2

- i. The observation/allegation made in the SCN that the *Noticee no. 2* was a person privy to the UPSI based on the *Company's* submissions made vide letters dated August 29, 2016 and August 21, 2018 is erroneous as the letter dated August 29, 2016 (under query no. 3) categorically deals only with the Default Notice dated March 13, 2015 issued by TSIPL to NTPL, Australia and the person privy to said Default Notice, whereas the date of transaction of sale of shares by the *Noticee no. 2* is March 10, 2015 (i.e., prior to the receipt of the said Default Notice and receipt of any information thereon). Further, the letter dated August 21, 2018 (which enlists names of persons privy to the UPSI) does not mention the name of the *Noticee no. 2* in it. In addition to the aforesaid, the letter dated January 12, 2017 received from the *Company* also does not enlist the *Noticee no. 2* as person privy to the UPSI.
- ii. As per the resolution passed in the Board Meeting held on January 14, 2015, the approval to remit funds to NTPL, Singapore was for ongoing projects in Singapore as well as its Australian subsidiary (NTPL, Australia) and not only for NTPL, Australia. Also the funds were required by Australian subsidiary i.e. NTPL, Australia to reduce the loan amount and increase equity share with a purpose to gain tax benefit. There was no mention of any dispute or any discussion with the lawyers etc. in the Board Meeting.
- iii. The *Noticee no. 2* recalls that the usage by NTPL, Australia, of the funds so remitted to it was to pay off the bank loans and reduce debt, however he has no means to obtain any documentary evidence in this regard due to change in the control of NIIT.
- iv. Mere seeking advisory from the advisor/lawyer by the *Company*, when the fate or conclusion is not known yet, cannot be treated as UPSI.
- v. The *Noticee no. 2* does not trade in the securities market in general and has almost all his investment kept in the form of mutual funds. The shares sold on March 10, 2015 by him were allotted to the *Noticee no. 2* pursuant to ESOP of the *Company* way back in the year 2010-11.

- vi. Merely for the reason that the *Noticee no. 2* was a connected person, he cannot be presumed to be having access to UPSI. It requires to be proved that the *Noticee no. 2* had access to the UPSI and he traded based upon such UPSI. To support the above submission, reliance is placed by him on judgment/order of *Chintalapati Srinivasa Raju and Ors. vs. SEBI*(AIR 2018 SC 2411) and *SRSR Holdings Private Limited and Ors vs. SEBI*, decided by Hon'ble SAT on August 11, 2017 etc.
- vii. There is nothing else on record (like emails or any other communications) to show that the *Noticee no. 2* had access to the UPSI. Even the SCN records that the *Noticee no. 2* is not a KMP and is not involved in day to day management of the *Company*.
- viii. The sale of shares was done with the *bona-fide* intent for the purpose of discharging personal obligation and trades in the shares of the *Company* was not at all motivated by UPSI and therefore alleged violation of regulation 3(i) of the PIT Regulations, 1992 is misplaced. Reliance is placed on the decision of the Hon'ble Tribunal in the matter of *Mrs. Chandrakala vs. SEBI*, dated January 31, 2015.

NOTICEE NO. 3

- i. The *Noticee no. 3* was part of NIIT Group since January 16, 1995 till January 19, 2019 during which he was Head Asia & Australia with title as President-IMS of the *Company* from period April 01, 2011 to March 31, 2014. Till March 31, 2014, the *Noticee no. 3* was handling the operational and commercial issues arising out of the Agreement between NTPL, Australia and TSIPL where he had handled two settlement and amendment deeds dated October 11, 2011 and August 02, 2012 between NTPL, Australia and TSIPL.
- ii. On February 21, 2015 (at 6:15 am), the *Noticee no. 3* was directed by Mr. Arvind Thakur, CEO and Joint Managing Director (JMD) of the *Company* to provide support to the team involved in dispute resolution since the historical information (as he was involved in getting two settlement deeds

signed in 2011 and 2012) was known to the *Noticee no. 3*. Subsequently, vide another email dated February 21, 2015 (at 11:17 AM) Mr. Arvind Thakur informed that the dispute resolution team would be led by the *Noticee no. 3* in the backend and that he would put together the checklist of activities to drive the process.

- iii. Subsequently, the *Noticee no. 3* received an email dated February 27, 2015 (at 1:00 PM) from Mr. Arvind Thakur stating that the matter related to dispute resolution is PSI and should stay within the said team only.
- iv. The *Noticee no. 3* was not privy to the UPSI.
- v. The *Noticee no. 3* was not involved in day to day management or review of price sensitive subject until February 27, 2015.
- vi. The *Noticee no. 3* through his secretary Mr. Brijesh Joshi and secretary of the *Noticee no. 1* had informed the Compliance Officer Mr. Onkarnath Banerjee of the planned sale of 2000 shares of the *Company* on November 14, 2004. The redemption of shares was done to start rebuilding of the house in Noida to which he shifted in April 2016.
- vii. Since the *Noticee no. 3* did not have any wrong intent and neither was attempting to gain or avoid loss, the SCN need to disposed of *sans* any direction.

CONSIDERATION

10. I have considered the allegations levelled against the *Noticees* in the SCN, written replies received from the *Noticees*, submissions made by the *Noticees* during the personal hearing, the written submissions filed post the personal hearing and the materials available on record. Before dealing with the submissions made by the *Noticees*, it would be apposite to refer to the relevant provisions of law pertaining to the matter, extract whereof is reproduced below:

The SEBI ACT, 1992

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

12A. No person shall directly or indirectly—

(d) engage in insider trading;

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

The SEBI (PIT) Regulation, 1992

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

3. No insider shall—

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

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

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

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

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

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

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.

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be.*

Continual disclosure.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

SCHEDULE I

[Under regulation 12(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.

The SEBI (PIT) Regulations, 2015

Repeal and Savings.

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

(2) *Notwithstanding such repeal,—*

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

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

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

11. I note from the SCN and SSCN that the main allegation against the *Noticee nos. 2 and 3* is that they being “insiders” have traded in the shares of the *Company* while in possession of UPSI and therefore have acted in violation of Section 12A (d) & (e) of the SEBI Act, 1992 and regulation 3(i) of the PIT Regulations, 1992 read with regulation 12 of PIT Regulations, 2015. It is further alleged that the *Noticee no. 3* did not take pre-clearance for selling 2000 shares of the *Company* on November 14, 2014 and thereby has violated Clause 3.3.1 under Schedule I-Part A of Model Code of Conduct for prevention of insider trading for listed companies read with regulation 12(1) of the PIT Regulations, 1992 and read with regulation 12 of PIT Regulations, 2015. There is another allegation that *Noticee no. 3* has failed to disclose details of the aforesaid transaction (i.e., sell of 2000 shares of NIIT for a sum of more than INR 5 Lakh on November 14, 2014) to

the *Company* and the Stock Exchanges, which is in violation of the provisions of regulation 13(4) and 13(5) of the PIT Regulations, 1992 read with the regulation 12 of the PIT Regulations, 2015. While attributing the aforesaid charges, the SCN also allegedly records that the corporate announcement made by the *Company* on March 23, 2015 relating to dispute between the *Company's* subsidiary & its client and subsequent provision of USD 10 Million towards the same, prior to its disclosure to the Stock Exchanges on March 23, 2015, was an UPSI and accordingly the period of UPSI was observed to be starting from December 22, 2014 to March 23, 2015, consequently, the trades executed in the scrip of the *Company* by the *Notices* while they are reasonably expected to have possession of the UPSI during the above UPSI period are allegedly in violation of the provisions as stated in the SCN.

12. I note that the PIT Regulations have been formulated under Section 30 read with Section 11(2) (g) and Sections 12A (d) and (e) of the SEBI Act, 1992. Therefore, to ascertain as to whether the *Notices* have violated the provisions, as alleged in the SCN, it has to be determined whether the *Notices* have violated regulation 3(i) of the PIT Regulations, 1992 and if it is so, it will also amount to violation of Section 12A(d) and (e) of the SEBI Act, 1992.
13. As noted above, a perusal of the provisions governing insider trading activities reveals that regulation 3(i) of the PIT Regulations, 1992 pre-supposes the following essential ingredients to be present and to be satisfied to allege and establish the allegation of insider trading. These essential ingredients or pre-conditions are as under:
 - a. Noticee must be insider;
 - b. There must be an UPSI in existence;
 - c. The insider must have traded in the securities of the company when in possession of such UPSI.

However, proviso to regulation 3(i) envisages certain special circumstances wherein despite the presence of all the aforesaid ingredients, an insider may be able to prove his/her innocence and seek exemptions from the rigors of

allegations of insider trading by demonstrating that he/she had acquired the communication in the ordinary course of business or profession or employment or under any law, failing which he/she would be deemed to have violated the prohibitions mandated for the insiders in terms of the provisions of the said regulation.

14. Noticee need to be an insider:

14.1 The first ingredient of regulation 3(i) is that the *Noticee* must be an “insider”. In this regard, the term “insider” has been defined in regulation 2(e) of the PIT Regulation, 1992, as follows:

- (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 a company, or*
- (ii) has received or has had access to such unpublished price sensitive information;*

14.2 As per the aforesaid definition, a person can be an insider if he

- (a) is connected with the company and is reasonably expected to have access to UPSI, or
- (b) is in possession of or is having access to the UPSI.

Therefore, in order to hold that the *Noticee nos. 2 and 3* are insiders it becomes imperative to find out as to whether the *Noticee nos. 2 and 3* have received or have had access to UPSI. In this regard, I note that the SCN records that the *Company* vide its letters dated August 29, 2016 and August 21, 2018 has informed that the *Noticee nos. 2 and 3* were privy to the PSI. The perusal of the said letters reveals as under:

Letter dated August 29, 2016

- i. In response to Query 3 (as asked by SEBI vide summons dated August 19, 2016), the *Company* stated that the Default Notice was

received by NTPL, Australia on March 13, 2015 and not on March 10, 2015 as stated in the summons sent by SEBI.

- ii. Further, the *Company* has provided details of persons who had access to the communication with respect to the said Default Notice in Annexure B to the letter.
- iii. The names of the *Notices no. 2* and *3* figure at serial number 3 and 5, respectively of the Annexure B to the said letter.

Letter dated August 21, 2018

- i. In response to Query no. 1, the *Company inter alia* submitted that NTPL, Australia intended to resolve the dispute it had with TSIPL in the similar manner in which earlier two disputes were resolved between them and was expecting to enter into Third Amendment Agreement with TSIPL.
- ii. The details of the persons who were privy to the aforesaid information/development are provided in Annexure B to the said letter.
- iii. The name of the *Notice no. 3* appears at serial no. 2 of the said Annexure B whereas the name of the *Notice no. 2* is not listed in the said list.

14.3 The examination of both the above stated letters confirms that the name of the *Notice no. 3* figures in both the said letters and nothing has been brought by the *Notice no. 3* on record to either dispute the said letters or his involvement in the dispute resolution process and in fact, the records show that it was under his supervision, the first two amendments to the Agreement happened. Thus, the above records ostensibly suggest that the *Notice no. 3* was in possession of the UPSI, consequently rendering him an insider under regulation 2(e) of the PIT Regulation, 1992.

14.4 I further note that perusal of the records show that the name of the *Notice no. 2* is not found to be listed in the letter dated August 21, 2018 vide which the *Company* had provided the details of persons who were privy or

expected to have the information/development regarding dispute between NTPL, Australia and TSIPL. The *Company* vide its letter dated August 29, 2016 has submitted that the *Noticee no. 2* was aware about the Default Notice dated March 13, 2015 received by the *Company* on March 13, 2015. Further, vide letter dated January 12, 2017, the *Company* had once again provided the details of persons who were privy to the information/development regarding dispute between NTPL, Australia and TSIPL however, the said letter does not contain the name of the *Noticee no. 2*. Under the circumstances, in the absence of evidence to the contrary, it is difficult to hold that the *Noticee no. 2* was privy to the UPSI.

- 14.5 Having examined the aforesaid replies/letters of the *Company*, I now move on to examine the minutes of the board meeting of the *Company* held on January 14, 2015 on the basis of which the SCN also alleges that the *Noticee no. 2* was in possession of the UPSI. In this context, I note that the SCN records that approval was sought from the Board of the *Company* in its meeting held on January 14, 2015 to raise around USD 10 Million i.e. equivalent to the unbilled revenue from the project and equivalent to the disputed amount disclosed to the Stock Exchanges on March 23, 2015 and the said meeting was *inter alia* attended by the *Noticee no. 2*. In this regard, it would be apposite to refer to the minutes of board meeting for better appreciation and the same reads as under:

“15. CONSIDERATION AND APPROVAL OF INFUSION OF AN AMOUNT NOT EXCEEDING USD 10 MN IN NIIT TECHNOLOGIES PTE. LTD., SINGAPORE WHOLLY OWNED SUBSIDIARY OF THE COMPANY

The Board has approved that NTL Australia is the step down subsidiary of NTL India through NTL Singapore. In 2010, NTL Australia entered into a contract with Tenix for AUD 18.18 Million. Over a period of time due to scope creep the value of the contract enhanced to AUD 25.08 Million. This also led to increase in effort and time to complete thereby, eroding the profitability in this program.

The Company has decided to infuse capital in Singapore entity with a view to finance the ongoing projects in Singapore and also to finance its subsidiaries as and when required.

Singapore entity currently is not equipped to infuse the equity directly into Australia as cash balance available with the entity is USD 945K.

Australian regulation of thin capital is applicable with the current capital of AUD 1 Million and borrowings of AUD 14.99 Million. We are unable to leverage tax benefit against the interest expenses.

NTL India has sufficient free cash of INR1000 Mn to infuse equity into Singapore entity.

The Board granted in principle approval for infusion of equity into Singapore entity, subject to all regulatory compliances thereof & passed the following resolution in this regard:

RESOLVED THAT subject to the provisions of Section 186(1) of the Companies Act, 2013 & Foreign Exchange Management Act, 1999 and any amendment therein and all other applicable provisions, if any and subject to the approval from Authorised Dealer/ Bankers, Reserve Bank of India, Government of India or any other authorities, if any the unanimous consent of the Board of Directors be and is hereby accorded for infusion of Equity Share Capital upto an amount not exceeding USD 10 Mn in NIIT Technologies Pte. Ltd. Singapore, wholly owned subsidiary of the Company, in one or more tranches.

RESOLVED FURTHER THAT any of the following Director/ Officials of the Company.

Mr. Rajendra S Pawar

Mr. Arvind Thakur

Ms. Pratibha K. Advani

Mr. Natranjan M

Mr. Anil Narang

Be and are hereby severally authorized on behalf of the Company to execute and sign relevant documents and papers as may be required for the purpose and further

authorized on behalf of the Company to sign, file and submit necessary returns, reports with the Authorized Dealers/Bankers, Reserve Bank of India, Government of India or any other authorities, if any and to do all the necessary acts, deeds and things related there to.

RESOLVED FURTHER THAT a copy of the aforesaid resolution certified to be true signed by any Director of the Company or Company Secretary be furnished to the concerned authorities for necessary action.”

- 14.6 I note that a bare reading of the aforesaid resolution reveals that the Board of the *Company* accorded its approval for infusion of capital into the Singapore entity (NTPL, Singapore) with a view to finance the ongoing projects in Singapore and also to finance its subsidiary (NTPL, Australia) as and when required. The above resolution shows that the approval for remittance of funds to NTPL, Singapore was for its ongoing projects in Singapore as well as to its Australian subsidiary (NTPL, Australia) and not exclusively for NTPL, Australia or to say the least to address the dispute which arose with TSIPL. Further, a simple perusal of the above referred resolution also reveals that though there is a reference of the Agreement between NTPL, Australia and TSIPL and enhancement of the contract value from AUD 18.18 Million to AUD 25.08 Million over a period of time on account of scope creep however, there is no mention or reference to any dispute or any discussion with the lawyers etc. in the said board meeting. Further, I note that the reference to “*provisioning of up to a value of USD 10 mn towards unbilled revenue*” as mentioned in the corporate announcement made by the *Company* to the Stock Exchanges on March 23, 2015 is also conspicuously absent in the above cited minutes of the board meeting. It is noted that the said resolution *inter alia* records that “*.....Australian regulation of thin capital is applicable with the current capital of AUD 1 Million and borrowings of AUD 14.99 Million. We are unable to leverage tax benefit against the interest expenses.*” The said clause indicates that NTPL, Australia would be in need of funds perhaps to reduce the loan amount

and increase equity share with a purpose to gain tax benefit. In view of the aforesaid deliberation that happened in the board meeting referred to above, I note that the *Noticee no. 2* cannot be strictly said to be privy to the UPSI on the basis of his attendance in the said board meeting. Thus, considering a holistic evaluation of the *Company's* letters and the minutes of the said board meeting referred to above, I find merit in his contention that the aforesaid replies of the *Company* to SEBI i.e., letters dated August 29, 2016 and August 21, 2018 did not name him as a person who was privy to the price sensitive information/development pertaining to the dispute between the NTPL, Australia and TSIPL of Australia and for the reason that he was named as a person aware of the Default Notice which was admittedly received by the *Company* only on March 13, 2015(i.e., after he had already sold his shares on March 10, 2015), it would not be sufficient to bring home the charge of holding the *Noticee no. 2* an insider based on the above piece of evidence. In view of the aforesaid discussion, I find that on the strength of the aforesaid replies/letters and the details of subject matter of the board meeting of the *Company*, and in the absence of any other material available on record indicating that the *Noticee no. 2* was privy to the said price sensitive information when he sold his shares, he cannot be said to be a person privy to the UPSI and consequently cannot be said to be an insider under regulation 2(e) of the PIT Regulation, 1992 for the purpose of holding him guilty of indulging into insider trading while in possession of the above stated UPSI.

15. There must be an UPSI:

- 15.1 The next ingredient of regulation 3(i) is that there must be an UPSI. In this regard, I note that PSI has been defined under regulation 2 (ha) of the PIT Regulations, 1992 as under:

“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:—
(vii) and significant changes in policies, plans or operations of the company”*

Further, regulation 2(k) of the PIT Regulations, 1992 states that the term “unpublished” means *information which is not published by the company or its agents and is not specific in nature.”*

The conjoint reading of the above two provisions *inter alia* provides that UPSI means any information, relating to a company, directly or indirectly, that is not published by the company or its agents and is not specific in nature and which, if published is likely to materially affect the price of securities of company and shall be including *inter alia*, information relating to significant changes in policies, plans or operations of the company.

- 15.2 In this regard, I note that the SCN states that the following corporate announcement was made by the *Company* on the Stock Exchanges on March 23, 2015:

BSE:

S. No	Date and Time	Announcement / News	Price Impact/Shares Traded (BSE)	Remarks																
1.	March 23, 2015 (Monday After Market Hours)	NIIT Technologies Ltd has informed BSE that a dispute has arisen between one of the Company's subsidiaries & its client in the APAC region which may result in claims and counter claims. The Company is exploring various options to resolve the	23/03/2015 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>377.95</td><td>377.95</td><td>368.2</td><td>374.6</td></tr></table> No. of shares traded: 5019 24/03/2015 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>367.1</td><td>367.1</td><td>340</td><td>350.75</td></tr></table> No. of shares traded: 41318	O	H	L	C	377.95	377.95	368.2	374.6	O	H	L	C	367.1	367.1	340	350.75	The price of scrip had decreased on 24/03/2015 by 6.37% from previous day close price. The trading volume increased by 723.23% as compared to
O	H	L	C																	
377.95	377.95	368.2	374.6																	
O	H	L	C																	
367.1	367.1	340	350.75																	

		dispute. In line with the Company's accounting policy, the Company shall be providing up to a value of 10 mn., towards the unbilled revenue, during the current quarter.		the previous day.
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NSE:

S. No	Date and Time	Announcement / News	Price Impact/Shares Traded (BSE)	Remarks																
1.	March 23, 2015 (Monday After Market Hours)	NIIT Technologies Ltd has informed the Exchange that a dispute has arisen between one of the Company's subsidiaries & its client in the APAC region which may result in claims and counter claims. The Company is exploring various options to resolve the dispute. In line with the Company's accounting policy, the Company shall be providing up to a value of 10 mn., towards the unbilled	23/03/2015 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>375</td><td>379</td><td>368</td><td>374.4</td></tr></table> No. of shares traded: 27525 24/03/2015 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>351</td><td>360</td><td>341</td><td>352.1</td></tr></table> No. of shares traded: 264438	O	H	L	C	375	379	368	374.4	O	H	L	C	351	360	341	352.1	The price of scrip had decreased on 24/03/2015 by 5.96% from previous day close price. The trading volume increased by 860.72% as compared to the previous day.
O	H	L	C																	
375	379	368	374.4																	
O	H	L	C																	
351	360	341	352.1																	

		revenue, during the current quarter.		
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15.3 It is noted that the *Company* in its annual report for the FY. 2014-15 stated the following:

“During the financial year under review, revenues increased 3% on a consolidated basis, from R.s. 23,050 million in FY2014 to Rs. 23,725 million in FY2015. The consolidated Profit (PAT) for the year was Rs. 1,141 million, representing a decline from the preceding financial year mainly due to exceptional items relating to the settlement of a dispute between one of the Company's subsidiaries and its client in the Asia-Pacific region, with a total impact of Rs. 800 million.”

It is further observed that the total impact of the above mentioned dispute was 3.47% of the consolidated revenue for the F.Y. 2014-15, which is a significant change in the operation of the *Company*.

15.4 Thus, the aforesaid corporate announcement made by the *Company* prior to its disclosure to the Stock Exchanges on March 23, 2015 relating to a dispute between one of *Company's* subsidiaries (i.e., NTPL, Australia) and its client in the APAC region (i.e., TSIPL), satisfies the prescribed ingredients to be held as an UPSI within the realm of regulations 2 (ha) and 2 (k) of the PIT Regulations, 1992. I also note that scrip price of the *Company* witnessed a fall by 6.37% on the BSE and by 5.96% on the NSE on March 24, 2015 i.e., the trading day after the said PSI relating to the said dispute was disseminated to the Stock Exchanges. The chronological events as recorded in the SCN, right from the time of advice of Gadens on December 22, 2014 to the *Company* up to the date of public announcement of the aforesaid UPSI on March 23, 2015, are as follows:

Sr. No.	Date	Event
1.	December 22, 2014	Gadens (Law Firm) advising MIT and NTPL to commercially resolve the issue via the dispute resolution process.

2.	January 05, 2015	Gadens informing NIIT that the issue is likely to escalate and if so, then NIIT is likely to be placed in a more difficult position.
3.	January 14, 2015	Board meeting of NIIT where it was approved to raise USD 10M for NTPL, Singapore to finance the projects in Singapore and its other subsidiaries
4.	January 21, 2015	NIIT issued notice to TSIPL under the dispute resolution process
5.	March 02, 2015	NIIT issuing without prejudice notice to TSIPL for dispute resolution process
6.	March 06, 2015	TSIPL issued draft default notice to NIIT alleging breach of delivery under the agreement dated July 22, 2010 (amended on October 11, 2011 and August 02, 2012) and further claims for its entitlement to liquidated damages under the aforesaid agreement.
7.	March 13, 2015	NTPL received three default notices from TSIPL in respect of the agreement between NTPL and TSIPL dated July 22, 2010.
8.	March 13, 2015	NTPL immediately informs the management of NIIT about the default notices received by NTPL.
9.	March 16, 2015	The validity of the claims raised by TSIPL vide the aforesaid default notices refuted by NTPL. NTPL and TSIPL engage in a dialogue process.
10.	March 22, 2015	Pursuant to the dialogue process, NTPL and TSIPL enter in to a standstill agreement whereby both the parties consent to suspend all activities relating to the project, including any claims, counter claims.
11.	March 23, 2015	A meeting of the Board of Directors was held on March 23, 2015 (13:00 hrs.) to apprise them about the dispute between NTPL and TSIPL and the requirement to make provision to the tune of US\$10mn.
12.	March 23, 2015	The information with respect to the dispute between the company's subsidiary and its client and the provision of US\$10mn towards the same was informed to BSE (17:22) and NSE 17:27

15.5 From the above, I find that the information relating to a dispute between NTPL, Australia and its client in the APAC region i.e., TSIPL was indeed

an UPSI within the meaning of regulation 2 (ha) and 2(k) of the PIT Regulations, 1992 which came into existence for the first time on December 22, 2014, when Gadens advised the *Company* and NTPL, Australia to commercially resolve the issue through Dispute Resolution Process (DRP). It can be very well observed from above that the said UPSI continued to be in existence till March 23, 2015 (after market hrs.) i.e., the date and time of public disclosure of the said corporate announcement through the Stock Exchanges.

- 15.6 Undisputedly, I note from the response of the *Company* furnished vide its letter dated August 21, 2018 that when the *Company* was asked as to when was the idea of issuance of the Notice dated March 02, 2015 titled '*Notice issued pursuant to Clause 73*' first mooted, the *Company inter alia* clarified that the option of issuance of the Notice under Clause 73 of the Agreement was part of the Advice received in relation to the Agreement, provided by Gadens vide its email dated December 22, 2014 (hereinafter referred to as "**Advice**"), whereby it advised on the possible options available with the *Company* to resolve the outstanding issues between NTPL, Australia and TSIPL. Further, I note from the Advice that Gadens was instructed by the *Company* that "*NIIT has approached Tenix with the view to entering into a further deed that agrees new time lines due to changes in the law, revises the time lines and the payment schedules under the Contract and waives any entitlement that Tenix may have to liquidated damages. Tenix has stated that it is not presently in a position to consider the request.*" Thus, it becomes abundantly evident that the *Company* was fully convinced and was aware about the severity of the dispute as TSIPL had declined the request of NIIT regarding the possible third Amendment Deed and the *Company* decided to issue the said Notice. Therefore, in the absence of any justifiable explanation with any verifiable supporting evidence to the contrary, I hold that the said information relating to the said dispute was certainly a PSI in terms of the PIT Regulations with the corresponding period i.e., December 22, 2014 to

March 23, 2015 (till the disclosure on the BSE at 17:22) being the UPSI period.

16. Insider must have traded in the securities of the company when in possession of such UPSI.

16.1 The next pre-condition of regulation 3(i) is that an insider must have traded in the securities of the company when in possession of UPSI. In this regard, the SCN alleges that the *Noticee nos. 2* sold 7037 shares of the *Company* on March 10, 2015 and the *Noticee no. 3* sold a total of 2500 shares of the *Company* on January 05, 2015 (1000 shares) and on February 24, 2015 (1500 shares) during the UPSI period. I note that the fact of selling shares on the aforesaid dates has not been disputed by the *Noticee nos. 2* and *3*.

16.2 To attract violation of regulation 3(i), it needs to be established that entities are insiders and were in possession of UPSI when they traded in the shares of the *Company* before the disclosure of the UPSI. In this respect, the SCN alleges that the *Noticee nos. 2* and *3*, being insiders, have traded in the scrip of the *Company* when in possession of UPSI. In this context, I have already held that the *Noticee no. 2* has not been found to be in possession of the UPSI and consequently is not an insider in terms of regulation 2(e) of the PIT Regulations, 1992. In this respect, admittedly, TSIPL had issued the draft Default Notice to NIIT on March 06, 2015 alleging breach of delivery and further claims for its entitlement for liquidated damages under the Agreement. However, I note that the details/material available on record do not indicate that the *Noticee no. 2* was aware about the receipt of the said draft Default Notice by the *Company* on March 06, 2015. Further, as noted above, the *Noticee no. 2* had sold 7037 shares of the *Company* on March 10, 2015 which is prior to receipt of the final Default Notice by the *Company* on March 13, 2015.

- 16.3 It is argued before me that during the Investigation Period, the *Noticee no. 2* was 59 years old, was not in full time employment but was acting as part time adviser to the *Company w.e.f.* October 01, 2014 and was not involved in the day to day running and management of the *Company*. Also, he does not trade in securities market in general and almost all his investment is in the form of mutual funds. The shares so sold were allotted to him pursuant to the ESOP of the *Company* way back in the year 2010 and 2011 and were held by him for more than 3.5 years before its sale on March 10, 2015. The *Noticee no. 2* also fervently stressed that the said shares were sold by him for meeting out personal financial exigency. In respect of aforesaid submissions of the *Noticee no. 2*, I note from the Annual Report for FY 2014-2015 of the *Company* as referred to and recorded in the SCN that he was not part of Board of Directors and Key Managerial Personnel of the *Company* during the Investigation Period. Further, undisputedly the *Noticee no. 2* had received shares of the *Company* in ESOP which he later sold on March 10, 2015. As noted above, I have already held that it is not feasible to hold the *Noticee no. 2* as insider on the foundation of evidences such as *Company's* two letters referred to earlier and minutes of board meeting held on January 14, 2015. Further, the SCN and SSCN have also not brought any additional material other than the those letters and minutes to suggest that the *Noticee no. 2* was in possession of the UPSI so as to hold his trades having been motivated and influenced by the possession of the UPSI. Therefore, in view of the aforesaid factual deficiencies and inadequate evidence available on record, I cannot hold with certainty that the *Noticee no. 2* has traded on the basis of UPSI in his possession at the time of selling his shares.
- 16.4 As regards the *Noticee no. 3*, I have already held above that the *Noticee no. 3* satisfies the requirement to be held an insider of the *Company* in terms of regulation 2 (e) of the PIT Regulations, 1992. Notwithstanding the afore-stated acknowledged facts on records, the *Noticee no. 3* has however

contested that he was not privy to the UPSI until he received an email dated February 27, 2015 (at 1:00 PM) from Mr. Arvind Thakur, CEO and Joint Managing Director (JMD) of the *Company* stating *inter alia* that the matter related to dispute resolution is PSI. I find that such a contention not only defies the undisputed facts already recorded and established above pertaining to the existence of UPSI but also suffers from too many contradictions to be taken up for consideration at all. I find that admittedly, the *Noticee no. 3* was part of NIIT Group since January 16, 1995 till January 19, 2019 during which he was Head Asia & Australia with a designation of President-IMS of the *Company* from period April 01, 2011 to March 31, 2014. Till March 31, 2014, the *Noticee no. 3* was handling the operational and commercial issues arising out of the Agreement between NTPL, Australia and TSIPL where he had already handled two settlement and amendment deeds dated October 11, 2011 and August 02, 2012 between NTPL, Australia and TSIPL. Further, as noted above, the *Company* has confirmed vide its letters dated August 29, 2016, January 12, 2017 and August 21, 2018 that the *Noticee no. 3* was privy to the information/developments regarding the dispute between NTPL, Australia and TSIPL and the said confirmation has not been categorically denied or disputed by the *Noticee no. 3* either on facts or by placing any evidence to the contrary. Further, there is also no dispute to the fact that the *Noticee no. 3* was directed by Mr. Arvind Thakur, CEO and JMD of the *Company* on February 21, 2015 (at 6:15 AM), *inter alia* to provide support to the team involved in dispute resolution since the historical information (as the *Noticee no. 3* was involved in getting two settlement deeds signed in 2011 and 2012) about the dealing/Agreement with TSIPL was known to the *Noticee no. 3*. In response to the aforesaid email from Mr. Arvind Thakur, the *Noticee no. 3* acknowledged the receipt of the said mail and replied vide his email dated February 21, 2015(at 8:53 AM) as under:

“On Feb 21, 2015, at 8:53 AM, “Arvind Mebrotra” Arvind.Mebrotra@NIIT-Tech.com wrote:

Arvind,

Sure I will support the process, **I have give brief to Sanjay last week.**

Will speak to deepak.

Arvind

Deepak: do let me know what is good time to speak tomorrow.

Sent from my iPhone” (emphasis supplied)

Subsequently, vide another email dated February 21, 2015 (at 11:17 AM) Mr. Arvind Thakur, CEO and JMD of the *Company inter alia* informed/confirmed that the dispute resolution team would be led by the *Noticee no. 3* where he would put together the checklist of activities to drive the process.

- 16.5 From the contents of the aforesaid emails *inter alia* exchanged between Mr. Arvind Thakur, CEO and JMD of the *Company* and the *Noticee no. 3*, it can be safely held that the *Noticee no. 3* was aware about the said dispute well before February 21, 2015 when he has admitted to have given a brief to Mr. Sanjay Mal who was part of the dispute resolution team which was led by the *Noticee no. 3* only. Thus, there is no quarrel to the fact that the *Noticee no. 3* had discussed the process to be adopted pertaining to the said dispute resolution and hence was very much in possession of all the information relating to the said dispute well before February 21, 2015 which was a PSI as well as the UPSI since December 22, 2014 until the same was disclosed to the Stock Exchanges on March 23, 2015. In view the aforesaid findings, I am not inclined to accept the submission of the *Noticee no. 3* made in this regard to claim that he was not privy to the UPSI.

17. The *Noticee no. 3* has further contended that his trades of 2500 shares were not influenced by the possession of alleged UPSI and it was a redemption of shares

done by him to collect pool money to start rebuilding of the house to which he shifted in April 2016. In support of the said contention, the *Noticee no. 3* has submitted certain documentary evidences like photos of construction, delivery challan of material delivered at the address of the said house etc. Having gone through the said contention and said evidences, I find that such a contention may appear to be appealing on its face, however, on an examination of the same, the defense put forward by the *Noticee no. 3* is found to be grossly untenable and lacks merit to be accepted. It has been observed from the perusal of Delivery Challan of material related to modular kitchen parts & accessories delivered at the address of the reconstruction project that the said Challan was issued in the name of one 'Tina Mehrotra' and not in the name of the *Noticee no. 3*. Further, there is no evidence adduced by the *Noticee no. 3* as to what was the cost of the said material or that the payment to the said vendor was made by the *Noticee no. 3*.

18. In addition to the above, it is noted that the definition of insider trading requires the satisfaction of above mentioned three ingredients. The said definition further envisages certain exception/special circumstances wherein despite the presence of all the aforesaid ingredients, an insider may be able to prove his/her innocence and seek exemptions from the rigors of allegations of insider trading by demonstrating that he/she had acquired the UPSI in the ordinary course of business or profession or employment or under any law failing which he/she would be deemed to have violated the prohibitions mandated for the insiders in terms of the provisions of the said regulation. In this regard, I note that the *Noticee no. 3* has not contended that his case falls within the ambit of the said proviso to the regulation 3(i). It is also an admitted position that Mr. Arvind Thakur, CEO and JMD of the *Company* vide his emails dated February 21 and 27, 2015 directed the *Noticee no. 3* to provide support to the team involved in dispute resolution, also to take lead in the said dispute resolution and use his historical experience/information in this regard. Therefore, keeping into view the fact that earlier he had handled two such dispute resolutions which resulted into two successful amendments to the Agreement in 2011 and 2012, the *Noticee no. 3* was

directed to be involved and to take lead in the said dispute resolution vide aforesaid specific emails, which goes on to show that he did not acquire the PSI relating to the dispute in the ordinary course of business. In view of the above deliberations, I find that the justification provided by the *Noticee no. 3* is not found to be falling in the exception clause or can be read as falling in the exclusion so provided under the law, rather it goes on to show that he was in possession of UPSI when he traded in the shares of the *Company* during UPSI period. Hence, in the absence of any supporting document produced by the *Noticee no. 3* to demonstrate that his case is a fit case to be qualified under the proviso to regulation 3(i) of the PIT Regulations, 1992, I find that the said proviso also does not come to his aid in this regard.

19. The aforesaid justification provided by the *Noticee no. 3* is further found to be lacking in sufficient evidences, to demonstrate that he was constrained to sell the shares for the reason beyond his control. There is no evidence brought on record to even suggest that he had no other source or having exhausted all possible resources, he was left with no other option but to engage in disposing of the shares to meet the financial obligation towards construction of the house. He has also not brought on record the bank statement to show that the money so realized after sell of shares was utilized towards the purpose so stated and put forth by the *Noticee no. 3*. Therefore, considering the law governing the insider trading, the explanation furnished by the *Noticee no. 3*, I see no reason to accept the same and therefore, am constrained to record that the explanation of the *Noticee no. 3* does not succeed in refuting the insider trading charge against him.
20. Under the circumstances, I find that the *Noticee no. 3* has therefore for reasons best known to him, sold his shares quite consciously on a date as per his choice knowing very well that he was on that date, in possession of an UPSI which eventually has to be disclosed to the public. As noted above, I note that scrip price of the *Company* witnessed a fall of 6.37% on the BSE and 5.96% on the NSE on March 24, 2015 i.e., the trading day after the said PSI relating to the said dispute was disseminated to the Stock Exchanges on March 23, 2015. In this

regard, I note from the SCN that the *Noticee no. 3* avoided loss to the tune of INR 1,03,185/- by selling 2500 shares of the *Company* during the UPSI period. Therefore, the contention of the *Noticee no. 3* that he sold shares to pool money to meet the rebuilding of his house is nothing but an afterthought stand taken in the hindsight to justify his insider trades which on the face of overwhelming facts and circumstances impinging on the culpability of the *Noticee no. 3*, cannot be accepted. I find that the present proceedings against the *Noticee no. 3* have been initiated on strong tangible evidences such as letters received from the *Company* confirming that the *Noticee no. 3* was privy to the UPSI, emails exchanged between Mr. Arvind Thakur, CEO and JMD of the *Company* and the *Noticee no. 3*, followed by sale of shares while in possession of said UPSI pertaining to the dispute between NTPL, Australia and TSIPL and thereafter disclosure of the said UPSI to the Stock Exchanges on March 23, 2015. Having found that the *Noticee no.3* has satisfied all the three ingredients required under regulation 3(i) of the PIT Regulations, 1992 and the *Noticee no.3* has not been successful in showing that his case falls in the exceptions carved out under the proviso to regulation 3(i) and also in the absence of any material produced by the *Noticee no. 3* to discredit the charges levelled against him, I find from the consideration of all the facts and materials available on record that the *Noticee no. 3* has indulged in trading in securities while in possession of UPSI, when the *Noticee no. 3* sold a total of 2500 shares of the *Company* during UPSI period.

21. Having held that the *Noticee no. 3* has indulged in trading in securities under the influence of the UPSI and thus has violated provisions of regulation 3(i) the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015 and Section 12A (d) and (e) of the SEBI Act, 1992, I now move on to examine the allegations made against him in the SCN and SSCN, that he has given incorrect declaration regarding non possession of UPSI for the purpose of obtaining pre-clearance from the *Company* in respect of his trades of 2500 shares of the *Company* carried out during the period of UPSI. In the context of the said allegation, I note from the SCN that he had taken preclearance from Compliance Officer of the

Company on January 05, 2015 (for 1000 shares) and on February 24, 2015 (for 1500 shares) and for this purpose, it was *inter-alia* declared by him that he was not in possession of or otherwise privy to any UPSI. I have already dealt with in the preceding paragraphs, and after appreciation of facts and evidences at length I have held that the *Noticee no. 3* was in fact in possession of the UPSI on the aforesaid days when he traded in the shares of the *Company* during the period of UPSI. Under the circumstances, the *Noticee no. 3* is liable to be held guilty for misrepresentation of facts before the Compliance Officer for the purpose of obtaining preclearance on January 05, 2015 and February 24, 2015 for his proposed trades in an illegal manner.

22. It is further alleged that the *Noticee no. 3* did not take pre-clearance for selling 2000 shares of the *Company* on November 14, 2014 and failed to disclose details of the said transaction (i.e., sell of 2000 shares of NIIT for a sum of more than INR 5 Lakh on November 14, 2014) to the *Company* and to the Stock Exchanges. In this regard, I observe from the SCN that the *Company* vide its letter dated January 12, 2017 had forwarded the Code of Conduct for prevention of insider trading and disclosure requirements in terms of the PIT Regulations, 1992 (hereinafter also referred to as “**Code**”) as adopted and approved by the *Company* in its meeting held on January 14, 2009 for the relevant period. It is *inter alia* noted in the said Code that, all the designated persons/directors of the *Company* and their dependents who intend to deal in its securities above a threshold i.e., 1500 shares and above, were required to get their transaction pre-cleared from the *Company*.

23. Undisputedly, the *Noticee no. 3* falls within the category of Designated Persons, and he has not offered any arguments with duly supporting document to contradict the same. As regards the sale of 2000 shares on November 14, 2014, I note that the *Noticee no. 3* has submitted that he, through his secretary Mr. Brijesh Joshi had *informed* Compliance Officer Mr. Banerjee of the *planned* sale of 2000 shares of the *Company* on November 14, 2004. In support of his submission the *Noticee no. 3* also has submitted an email dated November 14, 2014 which

reads as “*Just sold the shares had informed Pratibha and Ambrish*”. From the perusal of the aforesaid submission and the said email, it is evident that the *Noticee no. 3* never sought pre-clearance, rather only has informed the Compliance Officer of the *Company* post his act of sale of 2000 shares of NIIT on November 14, 2004. This fact also gets fortified when I observe that the *Noticee no. 3* had written an email dated January 05, 2015 to Mr. Banerjee therein categorically seeking approval for sale of 1000 shares of the *Company* on January 05, 2015 and in response to the same he was permitted by Mr. Onkarnath Banerjee to sale those shares on January 05, 2015. Thus, I find it interesting that on January 05, 2015 when he sold 1000 shares of the *Company* (when he was not required to seek pre-clearance as the number of shares was less than 1500 shares) he sought and received specific approval from the Compliance Officer whereas on November 14, 2014, he only informed the Compliance Officer after selling the shares. He has not produced any evidence to suggest if any specific approval was sought and received by him from the Compliance Officer in this regard before effecting the sale of shares.

24. In any case, I note that Clause 14 of the Code *inter alia* mandates that an application in the prescribed form shall be made to the Compliance Officer of the *Company* for pre-clearance of trades whereas the *Noticee no. 3* is unable to show if he had complied with the said requirement of the Code by seeking pre clearance in the prescribed form. Subsequently, the *Company* vide emails dated December 12, 2018 and December 14, 2018 submitted its response on compliance of the Code of Conduct adopted by the *Company* in terms of PIT Regulations, 1992 for transactions in the scrip of NIIT by designated persons. From the perusal of the aforesaid emails, it is observed that the *Noticee no. 3* had failed to take pre-clearance for selling 2000 shares of the *Company* on November 14, 2014. Further, the *Noticee no. 3* did not disclose the details of the aforesaid transaction dated November 14, 2014 (which was more than INR 5 Lakh in value) to the *Company* as well as to the Stock Exchanges.

25. In this regard, I note that the *Noticee no. 3* has failed to bring any documentary evidence to prove that he had disclosed the details of the aforesaid transaction dated November 14, 2014 (which was involving more than INR 5 Lakh in value) to the *Company* as well as to the Stock Exchanges. In view of the aforesaid deliberations and also in the absence of any material refuting the aforesaid charges/allegations I hold that the *Noticee no. 3* has failed to obtain pre-clearance for his trade of 2000 shares on November 14, 2014 and has given incorrect declaration regarding obtaining preclearance on January 05, 2015 and February 24, 2015 for their proposed trades and thereby has violated Clause 3.3.1 under Schedule I-Part A of Model Code of Conduct for prevention of insider trading for listed companies read with regulation 12(1) of the PIT Regulations, 1992 and also read with regulation 12 of PIT Regulations, 2015. The *Noticee no. 3* has also failed to disclose details of the aforesaid transaction (i.e., sell of 2000 shares of NIIT for a sum of more than INR 5 Lakh on November 14, 2014) to the *Company* and the Stock Exchanges, which is again, in violation of the provisions of regulation 13(4) and 13(5) of the PIT Regulations, 1992 read with the regulation 12 of the PIT Regulations, 2015.
26. There is no second view that indulgence in insider trading is considered a very serious charge *inter alia* for the reason that it creates an advantageous position to a person who is an insider and is connected to a company so as to be aware of the true and correctness of information vis-à-vis others, who have no connection with the company and thereby are deprived of any inside information. Knowing inside information creates opportunities to take advantage, as the person who is aware of such inside information cannot claim to be enjoying level playing field as far as the person not having connection with the company is concerned. Knowing more than anybody else about a company being an insider further creates opportunity to indulge in fraudulent activities.
27. To sum up, the discussions and factual appreciation of the case on the basis of factual evidence available on record I find that there is no clinching evidence to hold that the *Noticee no. 2* was in possession of the UPSI when the trades in the

scrip of the *Company* was executed in his demat and trading account. Whereas, there cannot be two opinions that the *Noticee no. 3* being the IMS-President of the *Company*, who had earlier successfully completed two amendments to the Agreement with TSIPL and had also taken lead in dispute resolution between NTPL, Australia and TSIPL, was privy to the UPSI. Further, while in possession of the relevant UPSI, the *Noticee no. 3* has traded and executed sale of 2500 shares of the *Company* on January 05, 2015 (1000 shares) and February 24, 2015 (1500 shares) during the period of UPSI. Consideration of materials on record clearly and unequivocally suggest that the information pertaining to the dispute between NTPL, Australia and TSIPL was a PSI in terms of the PIT Regulations which was very much known to and possessed by the *Noticee no. 3* during the UPSI period, he being connected with the *Company*. The fact that the *Noticee no. 3* has not been able to convincingly justify his indulgence in selling of shares of the *Company* in terms of any of the exceptions permitted under the proviso to regulation 3(i) of the PIT Regulations, 1992, leads to an irresistible conclusion that the trades were executed under the influence of and/or possession of that UPSI. Having found that the *Noticee no. 3* was in possession of the relevant UPSI at the time of effecting sale of 2500 shares during UPSI period and that he furnished incorrect declaration regarding sell of those shares; that he failed to obtain pre-clearance for the sale of 2000 shares on November 14, 2014 and also failed to disclose the said sale of shares to the *Company* as well as to the Stock Exchanges, I find that no documents have been submitted by the *Noticee no. 3*, to rebut the aforesaid allegation of providing false and incorrect declaration to the Compliance Officer of the *Company* while seeking pre clearance for his proposed sale of shares., Keeping the aforesaid evidences in view, I find that the charge of acting in violation of the Code of Conduct framed under regulation 12 of the PIT Regulations, 1992 stands established against the *Noticee no. 3*. In view of the aforesaid discussions and observations on various allegations in the preceding paragraphs of this order I conclude that:

- a) The allegations against the *Noticee no. 2* that he being insider, traded in the shares of NIIT while in possession of UPSI, do not get established.
- b) The *Noticee no. 3*, being an insider has traded in the shares of the *Company* when in possession of UPSI and thereby has violated Section 12A (d) & (e) of the SEBI Act, 1992 and regulation 3(i) of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015.
- c) The *Noticee no. 3* has also violated Clause 3.3.1 under Schedule I-Part A of Model Code of Conduct for prevention of insider trading for listed companies read with regulation 12(1) of the PIT Regulations, 1992 further read with regulation 12 of PIT Regulations, 2015 by applying for pre-clearance of trades in the scrip of the *Company* claiming falsely that he is not in possession of UPSI even though he was in possession of UPSI.
- d) The *Noticee no. 3* has further violated regulation 13(4) and 13(5) of the PIT Regulations, 1992 read with the regulation 12 of the PIT Regulations, 2015 by failing to disclose the details of sell of 2000 shares of NIIT (for a sum of more than INR 5 Lakh) on November 14, 2014 to the *Company* and the Stock Exchanges.

28. I further note that the SSCN calls upon to show cause *inter alia* as to why penalty under Section 15G of the SEBI Act, 1992 should not be imposed for the violations of Section 12A(d) & (e) of the SEBI Act, 1992 and regulation 3(i) of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015 as alleged against in the SCN. Additionally, the SSCN calls upon the *Noticee no. 3* to show cause *inter alia* as to why penalty under 15A(b) and 15HB read with Sections 11(4A) and 11B(2) of the SEBI Act should not be imposed for the violations of regulation 13(4) and 13(5) of the PIT Regulations, 1992 and Clause 3.3.1 under Schedule I-Part A of Model Code of Conduct for prevention of insider trading for listed companies read with regulation 12(1) of the PIT Regulations, 1992 and also read with regulation 12 of the PIT Regulations, 2015. I note that the power vested under Section 11B(2) is without prejudice to the power to issue directions under Sections 11(1), 11(4A) and 11B(1) of the SEBI

Act, 1992. In this regard, I note that Sections 15A(b), 15G and 15HB of the SEBI Act, 1992 provide as under:

“Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder-

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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.

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

29. Keeping in view my categorical observation made at paragraph 27 above, and having considered materials available on record and the submissions advanced by the *Noticee no. 3*, I hold that the charges against the *Noticee no. 3* relating to indulgence in insider trading are found to be substantially established, thereby attracting levy of penalty under Section 15A(b), 15G and 15HB of the SEBI Act, 1992.

ORDER

30. In view of the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) and further read with Sections 15A(b), 15G and 15HB of the SEBI Act, 1992 and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby issue the following directions and impose the following penalty:

- i. The SCN dated July 12, 2019 and SSCN dated August 06, 2020 issued against the Noticee no. 2 i.e., Mr. Ashok Arora is disposed of without any direction in terms of findings made in paragraph 27 above.
- ii. The Noticee no. 3 i.e., Mr. Arvind Mehrotra is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever for a period of 06 months from the date of this order.
- iii. The Noticee no. 3 shall disgorge the loss avoided by him i.e. ₹ 1,03,185 along with simple interest @ 9% per annum from February 24, 2015 till the date of actual payment. The aforesaid loss avoided along with interest shall be remitted by the Noticee no. 3 to Investor Protection and Education Fund (IPEF) as referred to in Section 11(5) of the SEBI Act, 1992, within 45 (forty five) days from the date of this order and intimation may be forwarded to “Division Chief, Enforcement Department-1, DRA-4, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051”.

- iv. The Noticee no. 3 i.e., Mr. Arvind Mehrotra is further directed to pay a penalty as detailed below within 45 (forty five) days from the date of service of this order by way of crossed demand draft drawn in favour of “SEBI– Penalties remittable to Government of India”, payable at Mumbai, or the online payment facility available on the website of SEBI: www.sebi.gov.in on the following path, by clicking on the payment link /ENFORCEMENT → Orders → Orders of Chairman/Members → PAY NOW or at the link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>.

Entity	Provisions of law violated	Penalty levied under section	Quantum of penalty payable
Mr. Arvind Mehrotra	Regulations 3(i) the SEBI (PIT) Regulations, 1992 read with regulation 12 of the SEBI (PIT) Regulations, 2015 and Section 12A (d) & (e) of the SEBI Act, 1992	15G	10,00,000
Mr. Arvind Mehrotra	Regulation 13(4) and 13(5) of the SEBI (PIT) Regulations, 1992 read with regulation 12 of the SEBI (PIT) Regulations, 2015	15A(b)	1,00,000

Mr. Arvind Mehrotra	Clauses 3.3.1 under Schedule I-Part A of Model Code of Conduct for prevention of insider trading for listed companies read with regulation 12(1) of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015	15HB	1,00,000
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- v. The Noticee no. 3 is directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, individually or jointly, including money lying in bank accounts except with the prior permission of SEBI until the disgorged amount at sub para (iii) and penalty amount at sub-para (iv) are deposited with SEBI.
- vi. The Noticee no. 3 is directed to provide a full inventory of all assets held in his name, individually or jointly, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, within two weeks from the date of receipt of this order.

31. Obligation of the Noticee no. 3, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized Stock Exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the Noticee no. 3 in the F & O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
32. This Order shall come into force with immediate effect.
33. A copy of this Order shall be served upon the recognized Stock Exchanges, the Registrar and Transfer Agents and the Depositories, for necessary compliance.

-Sd/-

DATE: JUNE 9, 2022

PLACE: MUMBAI

S. K. MOHANTY

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA