WTM/SM/IVD/ID2/9711/2020-21

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

IN RESPECT OF:

Sl. No.	Name of the Entity	PAN
1.	Mr. Prannoy Roy	AAHPR6037K
2.	Mrs. Radhika Roy	AAHPR6038G

IN THE MATTER OF NEW DELHI TELEVISION LIMITED.

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") had received certain complaints from New Delhi Television Limited (hereinafter referred to as "NDTV") on July 16, 2013 (1st complaint), December 27, 2013 (2nd complaint) and January 9, 2014 (3rd complaint) *inter alia* alleging that Mr. Sanjay Dutt and certain other entities, viz. Quantum Securities Private Limited (hereinafter referred to as "QSPL") and SAL Real Estates Private Limited (hereinafter referred to as "SREPL") were involved in dealing in securities of NDTV in violation of provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "the PIT Regulations, 1992") during the period September 2006 to June 2008.

2. Pursuant to the receipt of the complaints from NDTV, SEBI conducted an investigation into the suspected insider trading in the scrip of NDTV (hereinafter referred to as "the *Company"*) during the period starting from September 01, 2006 to June 30, 2008 (hereinafter referred to as "Investigation Period"). While the investigation conducted into the matter, *inter alia*, revealed that Mr. Sanjay Dutt and his associated entities had indulged in insider trading in the scrip of NDTV (for which separate proceedings have been initiated) at the same time, the investigation also concurrently detected that the two *Noticees* in the instant proceedings, namely, Mr. Prannoy Roy and Mrs. Radhika Roy have carried out insider trading in the scrip of NDTV during the Investigation Period. The findings arising from the investigation with respect to the two *Noticees* in the present proceedings have been highlighted hereunder:

(1) As per NDTV's Annual Reports for the financial years 2006-07, 2007-08 and 2008-09, Mr. Prannoy Roy, apart from being one of the promoters, was also the Chairman and Whole Time Director of NDTV during the investigation period. Further, Mrs. Radhika Roy, who is the spouse of Mr. Prannoy Roy, was also one of the promoters and also served as the Managing Director of NDTV.

(2) The equity shares of NDTV were listed on National Stock Exchange of India Limited (hereinafter referred to as "NSE") and BSE Limited (hereinafter referred to as "BSE"). In the course of investigation, information pertaining to various corporate announcements made by NDTV as gathered from the *Company* and stock exchanges were perused from which it was revealed that the *Company* had filed six (6) price sensitive information (hereinafter referred to as "PSI") for disclosure during the Investigation Period. The details of those price sensitive events and the respective periods of unpublished price sensitive information (hereinafter referred to as "UPSI") with regard to each of those PSIs are depicted in the following table:

PSI	**Start date of UPSI**	**Date & time when the PSI was disclosed on exchange website**	**UPSI period**
PSI-1: Expansion of the *Company* in areas beyond news to develop NDTV into a bouquet of channels with entertainment and lifestyle and initiate a major thrust in New Media including the internet.	July 31, 2006	October 17, 2006 17:58:34 (NSE) October 17, 2006 19:06:47 (BSE)	July 31, 2006 to October 17, 2006
PSI-2: Strategic alliance with Karan Johar and Dharma Productions Private Limited, for the *Company's* entertainment business.	Septem ber 21, 2006	November 29, 2006 09:48:38 (NSE) November 29, 2006 13:49:09 (BSE)	September 21, 2006 to November 28, 2006
PSI-3: The *Company* signed an agreement with Com ventures VI, L.P, a venture capital fund, for investment of US$ 20 million from Com ventures in of NDTV Network Plc for funding of its non-news businesses.	Novem ber 22, 2006	March 12, 2007 11:35:08 (NSE) March 12, 2007 11:07:27 (BSE)	November 22, 2006 to March 11, 2007
PSI-4: Closure of the Bond transaction, pursuant to which NDTV Network Plc had issued Step up coupon convertible Bonds and raised an amount of US$ 100 million for funding the operations of its subsidiaries in India.	March 22, 2007	May 31, 2007 14:21:48 (NSE) May 31, 2007 13:42:56 (BSE)	March 22, 2007 to May 30, 2007

PSI	Start date of UPSI	Date & time when the PSI was disclosed on exchange website	UPSI period
PSI-5: Memorandum of Agreement (MOA) signed with NBC Universal, Inc. (NBCU) with respect to NBCU's proposed acquisition of indirect 26% stake in non-news business of NDTV group.	January 19, 2008	January 22, 2008 15:41:30 (NSE) January 22, 2008 15:23:54 (BSE)	January 19, 2008 to January 22, 2008
PSI-6: The Board of the *Company* decided to evaluate options for reorganization of the *Company*, which could include de-merger/ split of the *Company* into News related businesses and investments in 'Beyond News' businesses which are currently held through its subsidiary, NDTV Networks Plc.	September 07, 2007	April 16, 2008 16:13:09 (NSE) April 16, 2008 17:45:31 (BSE)	September 07, 2007 to April 16, 2008

(3) Out of the aforesaid, PSI-6 which pertained to the proposed reorganisation of the *Company* holds crucial relevance for the proceedings at hand. Accordingly, PSI-6 merits further elaboration as under:

(a) NDTV, vide an announcement dated April 16, 2008, informed the stock exchanges that:

(i) the Board of Directors at their meeting held on April 16, 2008, decided to evaluate options for reorganisation of the *Company* with the objective of unlocking shareholder value and to promote focused growth of its various businesses. The aforesaid reorganisation of NDTV could include de-merger /split of the *Company* into:

- News related businesses; and
- investments in 'Beyond News' businesses which are currently held through its subsidiary NDTV Networks Plc.

(ii) The creation of focused entities would also enable bringing in strategic and financial partners who have been in discussions with the *Company* from time to time. To give effect to the above, the Board has decided to constitute a Committee to evaluate various options keeping in view interest of all stakeholders and take appropriate steps including appointment of financial and legal advisors, etc. The above reorganisation plan would be subject to requisite statutory process and approvals.

(b) The announcement made by NDTV regarding its decision to evaluate options for reorganisation of the *Company* with the objective of unlocking shareholder value and to promote focused growth was certainly a significant change in the business plans and operations of the *Company* and, hence, it was a price sensitive information in terms of regulation 2(ha)(vii) of the PIT Regulations, 1992.

(c) Some of the pertinent events/correspondences preceding to the filing of PSI-6 in Stock Exchanges and thereafter, are indicated in the table below:

S.No.	Date and Time	Subject of the e-mail /Event	Contents in brief
1.	07/09/2007 20:12 hrs	News Re Organization KPMG Checklist - Information	Checklist from KPMG on reorg
2.	12/11/2007 18:23 hrs	Re NDTV Ltd re organization preliminary views on an alternative structure	Meeting for reorg
3.	12/04/2008 12:43 hrs	Re Indian Demerger	Discussion on announcement on exchanges
4.	15/04/2008 16:55 hrs	Resolution Stock Exchange Release for Demerger (Vertical Splits)	Announcement on exchanges
5.	16/04/2008	Disclosure of PSI-6 by the *Company* to the Stock Exchanges	
6.	17/04/2008 18:26 hrs	Fw Structures discussed yesterday	Discussion on freezing of final structure
7.	28/04/2008 21:34 hrs	Fw restructuring	Mail from NBCU regarding restructuring

(d) The table above indicates that the discussions pertaining to reorganisation of the *Company* which are germane to the creation of PSI-6 started on September 07, 2007. Thereafter, the disclosure was made by the *Company* to the Stock Exchanges on April 16, 2008. The Stock Exchanges disseminated the disclosure to the public on April 16, 2008 (at 16:13:09 on NSE and at 17:45:31 on BSE). Hence, the UPSI period for PSI-6 is to be taken as commencing from September 07, 2007 to April 16, 2008.

(e) Incidentally, the UPSI period pertaining to PSI-6 also covers the UPSI period pertaining to the quarterly financial results announcements by the *Company* for the quarters ending on September 30, 2007, December 31, 2007 and March 31, 2008.

(4) Considering the afore-stated contents, corporate objectives, focus and implication of the PSI-6 for the business plan of the *Company*, if the said PSI-6 was published before

its disclosure to the stock exchanges, it would have materially affected the market price of the securities of NDTV.

(5) NDTV vide its reply dated October 12, 2015, has submitted a list of seven entities/persons who were involved in the discussions connected to the six PSIs. It is noted therefrom that Mr. Prannoy Roy and Mrs. Radhika Roy were involved in the discussions pertaining all the PSIs, including PSI-6, which undeniably bring Mr. Prannoy Roy and Mrs. Radhika Roy within the fold of 'insiders' in terms of regulation 2(e) of the PIT Regulations, 1992.

(6) As per the information received from the stock exchanges, the trading pattern and trading details of Mr. Prannoy Roy and Mrs. Radhika Roy (in both NSE and BSE) during the Investigation Period are tabulated as below:

Name	Trade Date	UPSI period pertaining to	Buy Quantity	Sell Quantity	Buy Value (₹)	Sell Value (₹)	Average Buy Price (₹)	Average Sell Price (₹)
			A	B	C	D	F = C/A	G=D/B
Prannoy Roy	26/12/2007	PSI-6	4835850	0	1934340000	0	400.00	0.00
	17/04/2008	-	0	2410417	0	1048772437	0.00	435.10
	03/06/2008	-	0	150	0	65265	0.00	435.10
	19/06/2008	-	0	1250000	0	565312500	0.00	452.25
Prannoy Roy Total			**4835850**	**3660567**	**1934340000**	**1614150202**	**400.00**	**440.82**
Radhika Roy	17/04/2008	-	0	2503259	0	1089167991	0.00	435.10
Radhika Roy Total			**0**	**2503259**	**0**	**1089167991**	**0.00**	**435.10**

(7) The table above reveals that Mr. Prannoy Roy had bought 48,35,850 shares of NDTV on December 26, 2007. It is observed that 48,35,850 shares were credited on December 28, 2007 to a DP Account (DP id: 12029900 & Client id: 05474471) held jointly by Mr. Prannoy Roy and Mrs. Radhika Roy. Thus, Mr. Prannoy Roy and Mrs. Radhika Roy had together bought 48,35,850 shares of NDTV on December 26, 2007.

(8) The PSI-6 had come into existence on September 07, 2007 and it was published post trading hours on April 16, 2008. Mr. Prannoy Roy and Mrs. Radhika Roy, being insiders, had traded on December 26, 2007 by buying in NDTV shares during the UPSI period relevant to PSI-6.

(9) Mr. Prannoy Roy and Mrs. Radhika Roy had together bought 48,35,850 NDTV shares on December 26, 2007 at the rate of ₹400 per share. Subsequently, Mr. Prannoy Roy and Mrs. Radhika Roy had sold 24,10,417 and 25,03,259 shares respectively on April 17, 2008 at 10:26:42 at the rate of ₹435.10 per share. The gain made by Mr. Prannoy Roy and Mrs. Radhika Roy on the total number of shares jointly purchased by them during the UPSI period has been determined as below:

Name	Buy Quantity during UPSI period pertaining to PSI-6	Actual sell price on April 17, 2008 (₹)	Actual buy price on December 26, 2007 (₹)	Gain (₹) #
	A	B	C	(B-C) x A
Prannoy Roy and Radhika Roy	4835850	435.1	400	169738335

Gain = (Actual sell price - Actual buy price) x Number of shares bought during UPSI period

(10) Therefore, by making the aforesaid sales of *Company's* shares held by them, Mr. Prannoy Roy and Mrs. Radhika Roy have together received a gain of ₹16.97 crores for themselves.

(11) Regulation 12(1) of the PIT Regulations, 1992 mandates all listed companies to frame a code of internal procedures and conduct in alignment with the Model Code specified in Schedule I of the PIT Regulations, 1992 [without diluting the regulations in any manner and ensuring compliance with the same]. Regulation 12(2) of the PIT Regulations, 1992 warrants that all listed companies shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(12) NDTV, in its reply dated June 22, 2015 has submitted the 'Code of conduct for Prevention of Insider Trading' (Code of conduct) as adopted by NDTV in terms of the above stated model code specified in Schedule I of the PIT Regulations, 1992 that was in force during the Investigation Period. It is observed that as per the clause 3.2.2 and clause 3.2.4 of the Model Code specified in the Schedule I of the PIT Regulations, 1992, when trading window is closed, employees/ directors shall not trade in company's shares and the trading window shall be opened 24 hours after the UPSI was made public. NDTV in its own code of conduct had also specified an identical stipulation for its employees and insiders.

(13) In the instant matter, the PSI-6 was published post trading hours on April 16, 2008, by way of disclosure to the stock exchange. Consequently, the trading window was required to be closed upto April 17, 2008 (till 24 hours after the UPSI was made public). NDTV in its reply dated October 12, 2015, has also submitted that the trading window for April 16, 2008 announcement was closed upto April 17, 2008.

(14) The announcement pertaining to PSI-6 was published post trading hours on April 16, 2008 at 16:13:09 on NSE and at 17:45:31 on BSE. However, Mr. Prannoy Roy and Mrs. Radhika Roy sold 24,10,417 and 25,03,259 shares, respectively on April 17, 2007 at 10:26:42. Therefore, Mr. Prannoy Roy and Mrs. Radhika Roy executed the aforesaid sale

on April 17, 2008, during the period when the trading window for them was closed, i.e., within 24 hours of the public announcement pertaining to PSI-6 on April 16, 2008.

3. On the basis of the afore-stated findings from the investigation, a common show cause notice (hereinafter referred to as "SCN") dated August 31, 2018 was issued to Mr. Prannoy Roy and Mrs. Radhika Roy (hereinafter individually referred to by their respective names and collectively referred to as "*Noticees*"). The salient aspects thereof are as under:

(a) That Mr. Prannoy Roy and Mrs. Radhika Roy were insiders in terms of regulation 2(e) of the PIT Regulations, 1992;

(b) That Mr. Prannoy Roy and Mrs. Radhika Roy indulged in the act of insider trading by trading in the scrip of NDTV while in possession of UPSI relating to the proposed reorganization of the *Company*, which included a possible de-merger/ split of the *Company* into News related businesses and investments in 'Beyond News' businesses with an objective of unlocking shareholder value and to promote focused growth of *Company's* various businesses and therefore, have violated the provision of sections 12A(d) and (e) of the SEBI Act, 1992 read with regulations 3(i) and 4 of the PIT Regulations, 1992.

(c) That Mr. Prannoy Roy and Mrs. Radhika Roy sold their shares of NDTV on April 17, 2008, during trading window closure period, i.e., within 24 hours of the public announcement pertaining to PSI-6 on April 16, 2008 and as such have violated NDTV's Code of Conduct and the provisions of regulation 12(2) read with regulation 12(1) of the PIT Regulations, 1992.

(d) That Mr. Prannoy Roy and Mrs. Radhika Roy together have made a wrongful gain of ₹16.97 crores by trading in the shares NDTV while in possession of UPSI relating to the reorganization of the *Company*.

4. Accordingly, the *Noticees* were advised to show cause as to why suitable directions undersection 11(1), 11(4) and 11B of the SEBI Act, 1992, including direction for disgorgement of illegal gains, be not issued to them in view of the aforementioned alleged violations of the SEBI Act, 1992 and the PIT Regulations, 1992. The *Noticees* were also advised to submit their reply, if any, within 21 days of the receipt of the SCN failing which it would be construed that the *Noticees* have no reply to submit and SEBI would be free to take action against them on the basis of material available on record, in terms of the SEBI Act, 1992 and other laws as applicable.

5. It is worth mentioning here that the PIT Regulations, 1992, have been repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015. Regulation 12 of the Regulations, 2015, provides as under:

"**Repeal and Savings.**

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

(2) Notwithstanding such repeal, —

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

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

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

6. As a result, any proceedings initiated for contraventions of provisions of the PIT Regulations, 1992 are saved and, hence, can be proceeded with under the said PIT Regulations, 1992. Considering the foregoing, the instant proceedings initiated against the *Noticees* for their alleged violations of provisions of the PIT Regulations, 1992 can very well be continued as such.

7. I note from the records that the *Noticees* did not file any reply to the SCN within the time prescribed therein. In fact, after receiving the SCN, the *Noticees* had sought inspection of documents and in compliance with the principles of natural justice, inspection of all the documents pertaining to and relied upon in the SCN were provided to the *Noticees* on October 30, 2018. Thereafter, an opportunity of personal hearing was granted to the *Noticees* on July 10, 2019. On that day, Mr. Pawan Sharma (Advocate) from M/s DMD Advocates, appeared before me as the Authorized Representative of the *Noticees* and sought an adjournment in the matter citing some misunderstanding/communication on his part

with their Senior Counsel. His request for an adjournment of the proceedings was considered. Mr. Pawan Sharma was advised to file a reply on behalf of the *Noticees* in response to the SCN as the same had not been filed even after completing inspection of documents 8 months ago. The said Authorized Representative of the *Noticees* assured that the requisite reply would be filed within two weeks from the date of the said personal hearing, i.e., July 10, 2019. Thereafter, vide a letter dated July 31, 2019, a written reply to the SCN was filed by M/s DMD Advocates on behalf of the *Noticees* who sought liberty to make further submissions on facts and law at the time of next personal hearing. The *Noticees* also undertook to file separately the copies of documents relied upon in support of their case.

8. Accordingly, another opportunity of personal hearing was granted to the *Noticees* on September 26, 2019. On the said date, advocates Ms. Fereshte Sethna, alongwith Mr. Adhiraj Malhotra from M/s DMD Advocates, appeared as the Ld. Authorized Representatives of the *Noticees* and submitted a letter seeking, *inter alia*, another inspection of documents. It is worthwhile to mention here that no such objection or request for inspection was made by/on behalf of the *Noticees* on the previous date of hearing, i.e., July 10, 2019. Nevertheless, in the interest of principles of natural justice, the request for a 2nd round inspection of documents was granted to the *Noticees*. While allowing inspection of documents, I was guided by the order dated August 29, 2018, passed by the Hon'ble Delhi High Court in Writ Petition No. 9114/2018 - *RRPR Holdings Pvt. Ltd. vs. SEBI*- filed by one of the promoters of NDTV (RRPR Holdings Ltd. is jointly promoted by the *Noticees* herein) in respect of another matter pending before SEBI. In the aforesaid order, on the issue of inspection of documents, the Hon'ble Delhi High Court had observed as under:

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

9. The Ld. Authorized Representatives were, accordingly, advised to confine their inspection of documents as per the directions of the Hon'ble High Court. Accordingly, they undertook to take the inspection on September 27, 2019. The Ld. Authorized Representatives were also asked to file additional reply, if any, by October 25, 2019 and with their consent, the personal hearing was rescheduled on November 13, 2019. From a perusal of the records before me, I note that the Ld. Authorized Representatives of the *Noticees* inspected the relevant documents on the scheduled date, however, vide email dated October 24, 2019, they requested for an extension of time for filing their additional reply by approximately two more weeks in view of the *Diwali* holidays. It was also requested by

them to reschedule the personal hearing date from November 13, 2019 to November 22, 2019 or to some other date as per mutual convenience owing to some overseas engagement of their Counsel appearing on behalf of the *Noticees*. Considering the foregoing requests, personal hearing *qua* the *Noticees* was again shifted to November 25, 2019 and the same was duly communicated to them.

10. However, vide email dated November 05, 2019, the Ld. Authorized Representatives of the *Noticees* again sought extension of time to file additional reply in the matter. They contended that inspection of documents remained incomplete and that full and fair inspection of all documents and/or material collected by SEBI during the course of investigation be granted to them, including but not limited to internal file noting, orders/directions and statements recorded, if any, after which the *Noticees* would file an additional reply. The Ld. Authorized Representatives requested to schedule the remainder inspection at the earliest.

11. I note from the records before me that inspection of all the annexures to the SCN and documents relevant to the *Noticees* as well as relied upon in the SCN issued to them, had already been given to the *Noticees* on October 30, 2018, itself when they conducted their first inspection and only after completion of inspection of the documents, personal hearing was granted to the *Noticees* on July 10, 2019. As stated earlier, on the said date of personal hearing the Ld. Authorized Representative of the *Noticees* appeared and sought adjournment in the matter on account of some misunderstanding/communication gap between him and their Counsel briefed in the matter. He did not raise any objection or put forth any issues regarding deficiency in the inspection that had already been completed on behalf of the *Noticees* on October 30, 2018. Accordingly, the request made by the Counsel was considered sympathetically and the personal hearing was adjourned to a mutually convenient date. Again on the next date of personal hearing, i.e., September 26, 2019, the Ld. Authorized Representatives sought inspection of documents, i.e., nearly 11 months after the 1st inspection of documents was conducted by them. However, respecting the principles of natural justice, one more opportunity to conduct inspection was granted on September 27, 2019 and in conformity with the order of the Hon'ble Delhi High Court (*supra)*, the Ld. Authorized Representatives were permitted to inspect the relevant parts of the Investigation Report which are relevant to the case of the *Noticees* and documents that have been relied upon by SEBI in the SCN. They were also provided with the copies of those relevant parts of the Investigation Report including the annexures to the SCN.

12. In this regard, it needs to be noted that the investigation report is nothing but a compilation of all the factual findings made during the investigation which are comprehensively reproduced. The materials relied upon during investigation or the relevant extracts thereof are incorporated into the investigation report either in the body of the report or as annexures thereto. In the present case, relevant extracts of the investigation report

pertaining to the *Noticees* alongwith all the annexures thereof have been provided to the *Noticees* alongwith the SCN. Considering the same, the request of the Ld. Authorized Representatives seeking inspection of various non-relevant and extraneous documents (internal file noting, orders/directions and statements recorded if any, etc.), that have not been relied upon in the SCN for framing charges against the *Noticees* and again, after eleven months of conducting their first inspection and one month after conducting the second round of inspection, in my opinion, has to be perceived as nothing but a delaying tactic which cannot be entertained. After having inspected and received the copies of all the documents that have been relied upon in the SCN in support of the allegations made therein and in the absence of any plausible explanation as to how non-inspection of those documents/materials which have no bearing with the allegations made in the SCN (i.e. non-relevant portions of investigation report, internal file noting or statements of third parties recorded, if any, which have not been referred to in the SCN) would prejudice the case of the *Noticees* in the present proceedings, it was not possible to accede to such untenable demands for inspection. Therefore, the next date for personal hearing was fixed on December 13, 2019.

13. On December 13, 2019, the Ld. Authorized Representatives appeared and informed that the *Noticees* had filed a Writ Petition bearing number 3581/2019 ('Dr. Prannoy Roy & Anr. vs SEBI & Anr.') before the Hon'ble Bombay High Court challenging the SCN and, therefore, a short adjournment may be granted. It was conveyed to the Ld. Authorized Representatives of the *Noticees* that the SCN in the instant case was issued on August 31, 2018 and since then, the proceedings have been progressing at a very slow pace due to frequent adjournments of personal hearing granted to them especially between July 2019 to December 2019. Even on the last occasion, it was quite clearly conveyed to the *Noticees* that no further adjournment would be granted in the matter and after consulting them a final hearing was fixed for final hearing on December 13, 2019. However, the Ld. Authorized Representatives persisted with their request. It was clarified to them that mere filing of a writ petition cannot be a ground for further postponement of the proceedings/hearing unless directed by the Hon'ble High Court. Nevertheless, looking at their emphatic requests, the personal hearing had to be adjourned and with the consent of the Ld. Authorized Representatives the same was scheduled finally on January 03, 2020.

14. On January 03, 2020, the Ld. Authorized Representatives of the *Noticees* appeared and apart from making a detailed oral submission before me, tendered a copy of their written submission in the matter to me. After hearing them personally and after a careful perusal of their written submission, I would now summarize the explanations offered and arguments advanced by the *Noticees* as under:

(a) On October 30, 2018 inspection of the documents and records, pertaining to the SCN was provided. However, as recorded in the Minutes pertaining thereto, inspection of the Investigation Report, internal notings and orders, etc. was not provided.

(b) On September 26, 2019, the requirement for grant of full and fair inspection of all material including the Investigation Report, statements, notings and orders, etc. was reiterated on the basis of which another inspection was granted on September 27, 2019, during which a heavily redacted investigation report was provided to them.

(c) The adjudication in this case is being conducted, *inter alia,* under the PIT Regulations, 1992 and the materials required to sustain such an adjudication for which grant of inspection is imperative, are:

(i) Copy of notice that was required to be provided to the *Noticees* in compliance of regulation 6(1) of the Regulations failing which the adjudication proceedings would be unsustainable by virtue of being vitiated by fundamental procedural irregularity; or

(ii) Copy of an order in terms of regulation 6(2) of the Regulations, if any, in the event a notice under regulation 6(1) was not issued.

(iii) Copy of the investigation report in terms of regulation 9(1) of the Regulations.

(d) With the delivery of a heavily redacted investigation report, it is evident that the material information is being withheld from the *Noticees.* It is also significant that such a heavily redacted report was furnished thirteen months after the SCN was issued.

(e) It is the case of the *Noticees* that no gain was made, much less wrongful gain, in relation to the transaction of sale of NDTV shares on April 17, 2008. The *Noticees* had availed a loan and purchased 48,35,850 equity shares from GA Global Investments Ltd. (at an average price of ₹400/- per equity share) on December 26, 2007.

(f) Following the purchase transactions with GA Global Investments Ltd. which triggered an open offer, the *Noticees* were constrained to substantially avail loans to fulfill their obligations under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "the Takeover Regulations, 1997"). The Public Announcements, Letter of Offer and Post Offer Public Announcement, establish *inter alia* the basis on which the price of ₹438.98/- per share was arrived at. The *Noticees* then purchased 1,26,90,257 equity shares of NDTV in the Open Offer.

(g) Further, the shares purchased from GA Global Investments Ltd. on December 26, 2007 were not subjected to sale on April 17, 2008. The shares which were sold by the *Noticees* on April 17, 2008 were separate set of shares in connection with which, the price negotiations with Goldman Sachs Investments (Mauritius) Limited ("GS")had been concluded on March 7, 2008 and had duly been factored into the Letter of Offer issued by the *Noticees*.

(h) After the lapse of over ten years since their transactions, the *Noticees* are not in a position to retrieve all of the relevant documents and records. The exculpatory evidence of compliance by the *Noticees* is bound to be available with SEBI and the relevant stock exchanges. By way of abundant caution, the *Noticees* have written to the stock exchanges, in relation to matters concerning disclosures under the PIT Regulations, 1992. Separately, it is apparent from the Letter of Offer dated May 22, 2008 that SEBI had issued a letter in terms of proviso to regulation 18(2) of the Takeover Regulations which is also hereby requisitioned for inspection alongwith the entire files concerning the Open Offer.

(i) In the light of the factual matrix set forth in the foregoing, the request for full and fair inspection of all documents and/or material available on the files of SEBI, whether preceding the investigation, during the course of investigation and/or following the investigation, including but not limited to file notings, orders/directions and statements recorded, is hereby reiterated.

(j) The *Noticees* are appearing in the personal hearing under protest and reserve all rights, remedies, contentions, including as to the legality of the SCN.

15. On January 03, 2020 the Ld. Authorized Representatives of the *Noticees* argued on various aspects of the case at length but towards the end, requested for a short adjournment stating that they had to travel out of city on that day and they had some more points to cover in their presentation. Accepting their request, the personal hearing was rescheduled for January 08, 2020.

16. On January 08, 2020, the Ld. Authorized Representatives of the *Noticees* appeared and were again heard at length. They also submitted another written submission in the matter. During the course of hearing they reiterated various technical/procedural issues involving regulations 5, 6, 7, 8 and 9 of the PIT Regulations, 1992. The personal hearing *qua* these *Noticees* was concluded and their request for grant of 4 weeks' time to file another written submission in the matter was also accepted.

17. Subsequently vide email dated February 04, 2020, I find that the Ld. Authorized Representatives of the *Noticees* have, *inter alia,* submitted that:

(a) The Order and judgment of the Hon'ble Bombay High Court dated January 6, 2020 in *Dr. Prannoy Roy vs SEBI (supra)* specifically grants liberty to the *Noticees* to participate in the hearing or adjudication of the show cause notice, without prejudice to their rights and contentions. The said Order preserves the *Noticees' "primary contention that on the face of it, the show-cause notice is time barred".*

(b) That preserving of this primary contention that SCN is time barred tantamount to grant of permission to agitate jurisdictional issue in relation to the maintainability of the show-cause notice, which is liable to be considered prior to proceeding ahead with arguments on merits.

(c) In the circumstances, a jurisdictional hearing is now liable to be fixed as a preliminary or primary threshold issue in the matter.

(d) The *Noticees* have been granted liberty to file written submissions within a period of four weeks (on January 08, 2020). However, during the course of earlier personal hearing held on September 27, 2019, oral directions were issued to SEBI *inter alia* to provide the *Noticees'* legal representatives with certain details pertaining to the redacted investigation report furnished to them during the inspection, particularly - (i) the date of the investigation report; and (ii) a certification that matters redacted did not pertain to the *Noticees* in any form whatsoever.

(e) In relation to direction (ii) above, the *Noticees* have specifically reserved their position, submitting that an unilateral certification (by the Dealing Officer of SEBI) will not meet the ends of justice, in the absence of a superior authority vetting the redacted sections and affirming that such redacted portions have no bearing whatsoever on the case being advanced on behalf of the *Noticees*.

(f) Until the directions are complied with, it would be premature to file written submissions on behalf of the *Noticees*, and in any event, no such written submissions on merits are liable to be filed until such time as there is a jurisdictional determination, as aforesaid.

(g) In the event that SEBI should determine that additional portions of the redacted investigation report are liable to be furnished to the *Noticees*, then it would be just, fair and proper to permit the *Noticees* to consider such portions of additional material, and advance additional arguments thereon at a hearing to be scheduled for such purpose.

(h) Accordingly, until the threshold jurisdictional issue of SCN being time-barred is heard and determined, and pending compliance with the oral directions issued by the Learned

Whole-Time Member, the *Noticees* seek extension of four weeks' time (to commence from the date of compliance), for the filing of written submissions, in relation to the captioned SCN.

18. The aforesaid e-mail representation of the *Noticees* was brought to my notice. I note that the case has already been heard at length in two sittings (on 4th and 8th January 2020) covering all the points raised by the Ld. Authorized Representatives, including the procedural and technical issues raised in the email dated February 04, 2020 referred to above. Considering the same, I do not deem it necessary to hear the *Noticees* again. Further, post their personal hearing, the *Noticees* were advised to reiterate in detail all their preliminary as well as procedural objections including objections pertaining to inspection of documents and all the issues so raised would be duly considered and dealt with in the order. The *Noticees* were again granted two more weeks to file their written submission. Accordingly, the *Noticees* have filed detailed a written submission in the matter vide letter dated March 11, 2020. Therefore, the question of affording further opportunity of hearing does not survive.

19. After receiving the post hearing written submission from the *Noticees* dated March 11, 2020, the Order in the case was under finalization but due to the onset of pandemic Covid-19 causing large scale disruptions in the functioning of the office of SEBI for several months the finalization of the Orders arising out of the investigation in the instant matter suffered a delay. Nevertheless, before finalizing the Orders it was thought proper to afford one more opportunity of to the *Noticees* to make additional submissions, if any, and vide email dated October 31, 2020, the *Noticees* were requested to make such submissions within a period of ten days. However, in response, I am in receipt of a letter dated November 09, 2020 from the *Noticees* requesting a re-hearing of the case citing delay in the finalization of the Order as a reason and reliance upon a number of citations of cases has been made to support their request. After carefully considering the contents of the said letter, I find that the *Noticees,* instead of making a sincere use of the opportunity being given to them for making additional submissions/explanations to strengthen their case, are trying to disrupt the proceedings by unnecessarily resorting to delaying tactics. The case laws cited by them will also be of no help since neither the finalization of the Order in the instant matter has been inordinately delayed nor any one of those judicial decisions cited by the *Noticees* has been passed in the context of any extraordinary situation arising out of a pandemic which has disrupted activities of all the organisations in the country over last nine months. Therefore, the request of the *Noticees* for re-hearing deserves to be ignored as the *Noticees* have been granted repeated opportunities for inspection of documents and personal hearing as well as for filing their submissions and, in my view, no prejudice has been caused to the *Noticees* in this regard.

20. The replies and submissions filed by the *Noticees* during the proceedings and thereafter, viz., the letters dated July 31, 2019, January 08, 2020 and March 11, 2020, have been read carefully and considered. Considering the fact that these replies are voluminous, often repetitive and also include several case citations, in the fitness of things, I would prefer to summarize the contentions of these replies and submissions for the sake of brevity and purposeful deliberation in this order. Accordingly, the main relevant points made in these replies and submissions are stated as under:

Objections to maintainability:

(1) It is the case of the *Noticees* that the SCN is unsustainable in law and is liable to be revoked and/or withdrawn and/or discharged, on the threshold ground of limitation, and failure to abide by the principles of natural justice, as already raised in the Writ Petition. The order of the Bombay High Court expressly grants the *Noticees* the right to raise threshold objections as to the maintainability of the SCN. Accordingly, the following **eleven preliminary objections** have been raised by the *Noticees* with respect to the maintainability of the SCN, which are liable to be adjudicated at the threshold, entirely independent of the case on merits:

A. Inordinate laches in initiating purported adjudicatory proceedings vitiates the adjudication process rendering the SCN null, void and/or otiose :

(2) The unreasonable delay in initiation of the SCN vitiates their validity, and constitutes a jurisdictional excess, thus tantamount to gross abuse of process and goes to the root of jurisdiction to issue the SCN itself. Binding decisions of the Securities Appellate Tribunal (hereinafter referred to as "the Hon'ble SAT") have consistently held that unreasonable delay must vitiate proceedings. Failure to justify the delay is thus fatal to maintainability of the SCN, and betrays irrational excesses and tantamount to arbitrariness by SEBI, and will lead to serious detriment and prejudice to the *Noticees*.

(3) The SCN admittedly pertains to sale of shares in April 2008, i.e., ten years prior to the issuance of the SCN, further exacerbated by material procedural and other irregularities.

(4) The SCN lacks valid justification or explanation for the inordinate ten-year duration preceding their issuance, leading to the inescapable conclusion that no legitimate explanation is available for initiation of the SCN nearly ten/eleven years after the sale of shares by the *Noticee*.

(5) The lack of a statutorily prescribed period of limitation in relation to conducting of investigations and/or issuance of show cause notices under the SEBI Act, 1992

notwithstanding, SEBI is bound to exercise statutory powers within a reasonable period of time, in aid of settled jurisprudence that statutory authorities are enjoined to perform duties within a reasonable period of time. Such remit must include exercising powers of investigation and/or issuance of show cause notices. *(Government of India v. The Citedal Fine Pharmaceuticals, Madras, (1989) 3 SCC 483; Cambata Industries Pvt. Ltd. v. Additional Director of Enforcement, Mumbai & Anr. (2010) 2 Mh. L.J. 628; Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim (1997) 6 SCC 71; Abdul Rehman Antulay v. R.S. Nayak (1992) 1 SCC 225; Ram Chand v. Union of India (1994) 1 SCC 44; State of Punjab v. Chaman Lal (1995) 2 SCC 570; State of Andhra Pradesh v. N. Radhakishan (1998) 4 SCC 154; and P.V. Mahadevan v. Managing Director, T.N. Housing Board (2005) 6 SCC 636.)*

(6) Inordinate delay in adopting action or proceedings, has been held to defeat the purpose of proceedings, and thus renders such proceedings unsustainable. (*Ashok Shivlal Rupani & Anr. v. SEBI [SAT Appeal No.417 of 2018 - 22 August 2019]; Sanjay Jethlal Soni & Ors. v. SEBI [SAT Appeal No.102 of 2019 - 14 November 2019])* No statutorily conferred empowerment exists for investigating agencies availing endless latitude of conducting a protracted investigation without any limits of time. (*Mahendra Lal Das v. State of Bihar (2002) 1 SCC 149*)

(7) Reliance is placed upon judgments of the Hon'ble SAT, opining that SEBI must ensure expeditious disposal of proceedings, since inevitably, serious hardship, detriment, grave prejudice and harm is bound to be caused to the *Noticees*, in circumstances of initiating stale proceedings, including through loss of records available contemporaneously to the *Noticees*. (*Libord Finance Ltd. v. SEBI 2008 SCC OnLine SAT 46; Subhkam Securities Pvt. Ltd. v. SEBI [2012] SAT 112; HB Stockholdings Limited v. SEBI 2013 SCC OnLine SAT 56; Shirish Harshavadan Shah v. Deputy Director, E.D. 2010 SCC OnLine Bom 2133; Bhagwandas S. Tolani v. B.C. Aggarwal & Ors. 1982 SCC OnLine Bom 453)*

(8) In the circumstances where the law (Schedule I, Part A, Clause 5(2) to the PIT Regulations, 1992), stipulates information and records concerning compliances thereunder shall be maintained for three years, it is entirely reasonable for valuable exculpatory evidence to be potentially lost beyond such period, thus warranting proscribing the exercise of statutory powers beyond such duration. Such three-year period to maintain records by the *Company*, which expired in the present case in the year 2011 (in relation to the April 2008 share sale by the promoters), is liable to be construed as the law of limitation, and must operate to preclude proceedings from being brought beyond three years from the date of trade, much less after a lapse of over ten years, where contemporaneous records are unlikely to be available to a noticee and/or the relevant authorities, including the relevant stock exchange(s).

(9) It is not open to SEBI to pursue the present SCN proceedings after unexplained inordinate delay, where SEBI has overlooked potential adverse consequences of such delay, in discharging statutory functions, and is acting beyond its statutory remit. (*M/s. HCG Stock & Share Brokers Ltd. v. SEBI & Anr. [SAT Appeal No.120 of 2018 - 16 January 2019]*)

(10) The direct adverse ramifications concerning the inordinate delay in the present case, in initiation of the SCN, is apparent from the factual matrix set forth below:

(a) The promoters have relied upon the fact of pre-trade clearances obtained by the promoters from the Compliance Officer of the *Company*, which is significantly undisputed in the SCN.

(b) The case of the promoters as to securing such pre-trade clearances supports the promoters in establishing that there was no violation of the regulatory framework by the promoters.

(c) No effort is visible on the part of SEBI to secure relevant contemporaneous information from the stock exchanges concerning the promoters' April 2008 sale transactions.

(d) It would be fair to assume that SEBI was acting in knowledge of the fact that the stock exchanges do not have available a decade later, on their records, material information pertaining to the year 2008.

(e) If, on the contrary, SEBI has initiated enquiries with the stock exchanges, then the fact of initiating and the outcome of such enquiries with the stock exchanges has been suppressed from the *Noticees*, to their detriment and prejudice.

(f) Since SEBI has not claimed to have made any enquiries with the stock exchanges, and indeed, no material has been provided to the *Noticees*, in this regard; thus, in the overall circumstances, it will be safe to conclude that no such efforts were made by SEBI.

(g) The promoters, nevertheless, for good order, issued legal notices dated January 3, 2020 to the stock exchanges, enquiring into the status of record-keeping concerning 2008 to which unsurprisingly, no response was received by the lawyers of the promoters.

(h) In effect, therefore, it is established that exculpatory material (beyond that already filed on merits by the promoters, at the hearings of January 3, 2020 and January 8, 2020, accompanied by written filings/responses in relation to the case) are thus unavailable

to the *Noticees*, whose interests are at risk of standing compromised, for reasons of delay in pursuit of the proceedings.

B. Denial of full and fair inspection of documents to the *Noticees*, a direct violation of principles of natural justice :

(11) The elementary principles of fairness, which is a mandatory prerequisite to adjudication, demand that the entire material collected during the course of investigations shall be made available for inspection to a person whose conduct is (purportedly) in question. It is irrelevant whether such material helps a noticee or not, or whether the authority is relying upon it. Every enquiry must conform to the basic rules of natural justice, and one of the elementary principles is that every action must be fair, just and reasonable, viz. an alleged delinquent must be provided an opportunity to use all such material in support of his case.

(12) Withholding evidence, whether exculpatory or incriminatory is neither fair nor just, and must, by itself, without more, vitiate the proceedings. (*Price Waterhouse v. SEBI [SAT Appeal No.8 of 2011 - 1 June 2011]*)

(13) It is not open to SEBI to state that only the documents relied upon in the SCN alone are to be supplied to meet the ends of justice. (*Ms. Smitaben N. Shah v. SEBI 2010 SCC OnLine SAT 243*)

(14) In the facts of the present case, SEBI's failure to provide full and fair inspection to the *Noticees* has violated settled principles of natural justice, thereby denying the *Noticees* of reasonable opportunity to exonerate themselves. (*Kashinath Dikshita v. Union of India & Ors. (1986) 3 SCC 229)*

(15) In reliance upon the settled legal position in relation to matters of inspection, viz. that the SEBI shall provide inspection of all documents collected during the investigation, on September 28, 2018, inspection was sought of: "…*all the documents/ records, including internal file notings, relevant to or supporting or adverse to the charges or facts made in the notice*…". (*SEBI v. Price Waterhouse [Civil Appeal 6003-6004 of 2012 - 10 January 2017]*)

(16) On October 30, 2018, a circumscribed inspection followed, significantly omitting grant of inspection of the complete investigation report, or internal notings, or orders, to the authorized representatives of the *Noticees*; in effect, therefore, tantamount to violation of rights of the *Noticees* to full, fair and unfettered inspection.

(17) Following the issuance of formal directions on September 26, 2019 by the Ld. Whole Time Member, in recognition of the entitlement to inspection, that inspection shall be granted on lines analogous to the order of the Hon'ble Delhi High Court dated August 29, 2018, the *Noticees* were granted inspection of a heavily redacted investigation report on September 27, 2019, which was objected to by the *Noticees*; significantly, no inspection of statements, notings, orders or other material purportedly culminating in the SCN, were provided to the *Noticees*.

(18) From the Investigation Report, for which the date of March 28, 2018 came to be intimated belatedly vide email dated February 24, 2020 after repeated requests by the *Noticees*, despite a formal order of which there is willful disregard and material non-compliance, it is apparent that SEBI investigation against the promoters was conducted on the basis of a complaint filed by the *Company* against QSPL and SREPL, both entities controlled by one Mr. Sanjay Dutt and his relatives.

(19) In effect, it is apparent that this Investigation Report does not pertain to any information obtained or complaint made against the promoters until after NDTV filed a complaint against QSPL and SREPL, and as such the SCN is a 'counter-blast'.

(20) In fact, the Investigation Report betrays that no separate distinct Investigation Report is in existence, but rather that in the course of investigating the complaint made by NDTV against QSPL and SREPL certain alleged statements were made by those under investigation, which have culminated in the present SCN, which in fact provides a pointer to or explains the circumstances in which no copies of such statements are forthcoming to the *Noticees*. SEBI has knowledge of the personal vendetta wreaked by the promoters of QSPL and SREPL, i.e., Mr. Sanjay Dutt and his associates, which is the subject-matter of a series of litigations to the knowledge of SEBI *(i) Appeal No.393 of 2019 before Securities Appellate Tribunal (pending); (ii) Appeal Nos.294,295 & 296 of 2019 before Securities Appellate Tribunal (pending); (iii) Appeal No.358 of 2015 before Securities Appellate Tribunal (disposed); Appeal No.343 of 2019 before Securities Appellate Tribunal (disposed); (iv) Appeal No.150 of 2018 before Securities Appellate Tribunal (disposed); and (v) Show Cause Notices dated 20 August 2018 and 5 September 2018 under adjudication before SEBI (pending))*

(21) Significantly, however, no inspection of the statements of certain individuals which are bound to have been recorded in aid of the Investigation Report, has been offered to the *Noticees*, much less opportunity of cross-examination, or access to material gathered by SEBI in the course of recording statements, is in utter violation of the valuable rights of the *Noticees*, including principles of natural justice.

(22) The internal notings pertaining to the purported investigation also assume enormous importance, and orders made thereon are key to the validity of the SCN.

(23) On November 5, 2019, the *Noticees* once again persevered in their requisition for full and fair inspection of all documents and/or material collected by SEBI during the course of investigation, including but not limited to internal file notings, orders/ directions and statements recorded, seeking liberty to file an additional reply, after full and fair inspection was granted by the SEBI.

(24) On January 3, 2020, the request for full and fair inspection of all documents and/or material available on the files of SEBI, whether preceding the investigation, during the course of investigation and/or following the investigation, including but not limited to internal file notings, orders/directions and statements recorded, was reiterated; however, SEBI refused to acknowledge and/or reply to the request made by the *Noticees*.

C. Rife procedural irregularities permeating the SCN render it *ultra vires*:

(25) The framework of the PIT Regulations, 1992 sets forth a procedural framework in **Chapter III**, which is prescribed in order to insulate a noticee from risk of procedural lacunae and/or irregularities, in an endeavour to ensure that the rights of the noticee are preserved, in aid of a free and fair trial and adjudication, in accordance with law.

(26) In view of the redacted Investigation Report rendering apparent to the *Noticees* that no separate or distinct investigation conducted in relation to alleged statutory and/or regulatory violations by the *Noticees*, independent of the investigation conducted at the behest of NDTV against QSPL and SREPL, which culminated into the afore-referred Investigation Report, at a hearing held on January 3, 2020, a specific confirmation was sought in relation to compliance by SEBI with regulations 4A and/or 5 and/or 6(1) or 6(2) of the PIT Regulations, 1992 including whether or not any such independent investigation had been initiated and/or conducted.

(27) In response, the officers of SEBI in attendance at the hearing (specifically in response to submissions made on behalf of the *Noticees* dated January 3, 2020) submitted that no record exists in relation to any such compliance of the regulatory framework by the SEBI.

(28) The Ld. Whole-Time Member was pleased to direct the *Noticees* to proceed on the footing that such regulatory framework envisaged in the PIT Regulations, 1992 was not complied with as a precursor to the SCN, and that as a consequence, it was

available to the *Noticees* to proceed on the footing that no material underlying any such compliance was available in the present case.

(29) This admission by the officers of SEBI constitutes a critical acknowledgement of grave procedural irregularity and lacunae in the SCN, which has the legal effect of rendering the SCN otiose and *non-est*.

(30) The *modus operandi* leading up to the SCN despite being specifically prescribed by the PIT Regulations, 1992 has been significantly departed from, in egregious violation of the regulatory framework, beyond powers of SEBI, betraying whim, caprice and arbitrariness, in what is liable to be dubbed as a failed colourable exercise of power by SEBI.

(31) First, regulation 4A of the Regulations, 1992 confers the power to make inquiries and conduct inspection, specifically requiring that the Board shall "*form a prima facie opinion as to whether there is any violation of these regulations*".

(32) No material has been provided to the *Noticees*, and indeed, none is available on record to establish that such a *prima facie* opinion was formed by the SEBI as to "*violation*".

(33) Next, regulation 5(1) stipulates that where the Board has formed a *prima facie* opinion that it is "*necessary to investigate*", it may appoint an "*investigating authority*".

(34) Further, regulation 5(2) stipulates that the Board may act to investigate either *suo motu*, or into a complaint received either from investors, intermediaries or any other person on any matter having bearing on the allegations of insider trading.

(35) No material has been provided to the *Noticees*, and indeed, none is available on record to establish that such a *prima facie* opinion was formed by the SEBI as to "*necessary to investigate*".

(36) No material is available on record to establish whether such a *prima facie* opinion was formed *suo motu*, or into a complaint received either from investors, intermediaries or any other person on any matter having bearing on the allegations of insider trading.

(37) Apart from the fact that no material is available on record to establish that an "*investigating authority*" was appointed to look into the allegations of insider trading against the *Noticees*, in any event conclusively establishes that no investigating authority was appointed to look into such a purported '*prima facie opinion'*, which constitutes a grave and egregious error and omission on the part of SEBI.

(38) In circumstances of non-adherence to regulation 5 of the Regulations, 1992, no scope for compliance with regulation 6(1) existed, which stipulated the requirement of a mandatory ("*shall*") pre-investigation notice to a "*insider*".

(39) While regulation 6(2) permits that in certain circumstances a regulation 6(1) notice may be dispensed with, in such circumstances, it becomes imperative for the Board to issue "*an order in writing*" that "*the investigation be taken up without such notice*".

(40) Again, the concession of January 3, 2020 conclusively establishes that no such order in writing was issued by the Board to permit the taking up of an investigation without notice to the *Noticees*.

(41) In circumstances where regulations 5 and 6 remained non-complied with, no scope remained for regulation 7 bearing relevance.

(42) Under regulation 8, the "*investigating authority*" so appointed was liable to "*within reasonable time of the conclusion of the investigation*" submit an investigation report to the Board.

(43) In the absence of appointment of an "*investigating authority*" no such investigation report was submitted to the Board, in the manner as contemplated by regulation 8.

(44) The requirement of a SCN preceded by a requirement for the Board to consider such investigation report, is imperative, under regulation 9, which again was not the case in the circumstances where no "*investigating authority*" was appointed, and as a consequence, no such investigation report was made specific to the *Noticees*, and in the circumstances, no such report was capable of being considered by the Board.

(45) The entire process envisaged under Chapter III of the PIT Regulations, 1992 has been compromised, through material procedural irregularities that vitiate the SCN, and strike at the very root of the jurisdiction of SEBI to initiate such SCN, in circumstances where no "*investigation report*" concerning the "*insider*" was available with SEBI.

D. Absent existence of jurisdictional fact, which is a *sine qua non* for exercise of power by statutory authority, adjudicatory proceedings are rendered illegal:

(46) The SCN constitute a jurisdictional error, in circumstances where neither deliberate nor contumacious defiance of law is established, much less fulfilment of the mandate of the regulatory framework *qua* the *Noticees*, in terms of recording a '*prima facie* opinion' within the ambit of regulation 4A of the Regulations, 1992.

(47) The charge of '*insider trading*' cannot be legitimately pursued without following the strict requirements of law, both procedural and substantive.

(48) The SCN has completely overlooked that the transaction of April 2008 in contention was the subject-matter of a Bulk Deal implemented with full disclosure, in terms of the extant regime contained within the scope and ambit of SEBI Circulars No. SEBI/MRD/SE/Cir-7/2004 dated 14 January 2004 and implemented by the relevant stock exchange through following the relevant Guidelines for execution of Block Deals, issued by the SEBI bearing MRD/DoP/SE/Cir-19/05, dated September 02, 2005.

(49) The promoters have filed material documentation contemporaneously available on the files of SEBI in relation to the April 2008 transaction, and it is the case of the promoters, as established through a slew of documentation already on the files of SEBI, but which has been conveniently overlooked in the SCN, that the transactions of April 2008 were in consonance with all disclosure requirements on the files of SEBI itself; further, that all mandatory promoter and company disclosures were made to the relevant stock exchanges and to SEBI, and therefore, the jurisdictional facts to sustain an allegation, much less a '*charge'* of '*insider trading*' is unsustainable.

(50) The law is well-settled by the Supreme Court of India that it is a mockery to purport to confer jurisdiction through mis-construction of facts and/or based on stretched and untenable interpretations of records pertaining to transactions in issue. (*Arun Kumar & Ors. v. Union of India & Ors. (2007) 1 SCC 732*)

(51) The jurisdictional threshold that SEBI must fulfil as a precursor to issuance of a show cause notice is to establish that UPSI-6 was a price sensitive event; which SEBI has miserably failed to establish.

(52) It is a matter of record that the announcements made by the *Company* following the board meeting of April 16, 2008, were eventually not implemented by the *Company*. The language of the announcement(s) fails to point to '*Price Sensitive Information*'. Such contention in the SCN is plainly erroneous and unavailing.

(53) Such an allegation that UPSI-6 was a price sensitive event is incapable of being established in circumstances where a material distinction is liable to be drawn in relation to "*significant change in policies, plans or operations of the company*", from "*intended*" restructuring, apparent from a comparison between the language used in *regulation 2(ha)(ii) juxtaposed against Regulation 2(ha)(vii) of the PIT Regulations, 1992*.

(54) The former (2(ha)(ii)) deploys the word "*intended*", whereas in the latter, the term "*intended*" is conspicuous by its absence.

(55) Any such announcement of intention to restructure by a listed company can at best provide *indicia* of matters considered worthy of evaluation for the *Company* by its board of directors, subject to legal or commercial advice that it may receive from nominated advisors, and would not qualify as a '*price sensitive information*' within the definition contained in regulation 2(ha) of the PIT Regulations, 1992.

(56) The ramifications of each '*intention'* or '*announcement of intention*' to consider a particular course of action by a listed company, who may be entitled to evaluate restructuring, and considers such restructuring but does not eventually implement such 'intention', being treated as '*price sensitive information*' can prove absolutely lethal for all promoters/directors/officers and persons deemed '*connected'* within the ambit of the regulatory framework, and could result in exposure of all such persons to the harsh and unwarranted consequences of the PIT Regulations, 1992 without legal justification.

(57) The fact that the promoters have no trading history in any securities beyond NDTV has been overlooked in the SCN; indeed, the promoters do not hold any other stocks or securities, and do not actively trade on the stock exchange.

(58) The April 2008 sale transactions (i.e., sale of 24,10,417and 25,03,259 equity shares, respectively) entered into with a view to raise monies to meet Open Offer obligations, when examined against the preceding December 2007 acquisition (purchase of 4,835,850 equity shares by the promoters) which triggered the Open Offer, must of itself be considered as justified to meet an exigency that the promoters were faced with, and which for want of proper advice had put the promoters into financial predicament, with the 2008 global financial crisis having its own additional detrimental impact on the promoters.

(59) The promoters, at the material time, held equity shares beyond those which had been purchased in December 2007, but even assuming (without admitting) that the December 2007 acquisition was at all a relevant consideration, then in any event, under Regulation 4.1 of the Takeover Regulations, 1997 in force at the material time, holding investments in securities by directors/ officers/ designated employees for a minimum period of 30 days, fulfilled the requirement of such securities being considered "held for investment purposes". The December 2007 Acquisition, therefore, qualified as an 'investment', with no other trades were executed by the promoters within thirty days. The entire shareholding was credited to the joint account of the promoters. The position of the promoters is fortified by the fact that

as against the December 2007 Acquisition, the April 2008 Sale occurred from separate and distinct accounts held singly by the promoters (this is not in dispute, in paragraph 52 of the Show Cause Notice).

(60) There is sufficient evidentiary basis relied upon by the promoters to establish that the April 2008 Sale was a culmination of requirements to discharge existing loan commitments, and meet the dire financial burden and ancillary exigencies of the Open Offer triggered in relation to the December 2007 Acquisition on the anvil of the global financial crisis of 2008.

E. Charge of '*insider trading*' to be established by higher degree of probability and necessarily based on clinching and reasonable evidence, absent in this case :

(61) It is not open to SEBI to level allegations in the SCN without relying on reasonable and/or clinching evidence, and SEBI is duty bound to examine and conclusively establish the wrongdoings and the charge of insider trading. (*Piramal Enterprises Limited v. SEBI 2019 SCC OnLine SAT 134; Samir C. Arora v. SEBI [2005] 59 SCL 96 (SAT)*)

(62) The framework of SEBI is to delegate the task of monitoring '*insider trading*' to the relevant stock exchange which was bound to have filed the requisite reports in connection with the April 2008 Sale, in aid of the afore-referred surveillance activity in relation to transactions on stock exchanges.

(63) No evidence of the outcome of any enquiry directed to the relevant stock exchanges by SEBI for information or documentation, as a precursor to the issuance of the SCN has been furnished to the *Noticees*.

(64) In fact, no such allegation could have been made by the Stock Exchanges in circumstances where SEBI was actively engaged in correspondence with the *Company's* Merchant Bankers in relation to fund raising to meet Open Offer obligations of the promoters triggered on account of the December 2007 Acquisition.

(65) In the absence of documentation to support the issuance of the SCN, the *Noticees* are entitled to proceed on the footing that no explanation was sought by SEBI from the stock exchanges, because none was warranted, for any such explanations would turn up material adverse to the flawed SCN.

(66) The promoters have, in any event, produced a slew of documentary compliances in relation to the April 2008 transactions, with none of that contemporaneous evidentiary material coming to be contested by SEBI, and which has evidently been

deliberately overlooked at the time of issuance of the SCN, including correspondence that is bound to exist on the files of SEBI and disclosures filed with the relevant stock exchanges, which manifest active knowledge of and acquiescence to the April 2008 transactions by SEBI with parallel active monitoring by the relevant stock exchange in relation to the April 17, 2008 transaction.

(67) The sale of promoters' shareholding, amidst global financial turmoil that had led to the traded price of the scrip witnessing a sharp fall, had put the promoters to risk of irretrievable financial loss and detriment, and steps for mitigating losses were legitimately adopted.

(68) The law pertaining to insider trading and disgorgement recognizes that allegations of the nature in issue are serious, and the evidentiary threshold with corollary degree of proof required is extremely high.

(69) The April 2008 Sale was carried out by the promoters in order to overcome an exigency, and the promoters did not enjoy wrongful gain as a consequence of the impugned trades, and there can be no scope for any direction for disgorgement, which would in fact tantamount to imposition of a punitive measure and take the colour of a penalty.

(70) Disgorgement is an equitable remedy, not capable of being ordered against the promoters, in circumstances where the SCN fails to establish that the promoters were enriched at all, much less at the expense of the investors.

(71) It is settled law that the charge of insider trading is the most serious charge in relation to the securities market, and having regard to the gravity of the wrongdoing, the preponderance of probabilities is extremely high to establishing such a charge. (*Manoj Gaur v. SEBI [SAT Appeal No.64 of 2012 - 3 October 2012]; Dilip Pendse v. SEBI 2009 SCC OnLine SAT 177*)

(72) SEBI has failed to examine the trading patterns of the *Noticees* before issuance of the SCN, and thereby overlooked the elementary exculpatory material that would have served to ensure that no such allegation of insider trading was sustainable against the *Noticees*. (*In Re: Insider Trading in the scrip of 63 Moons Technologies Limited [Before SEBI - 31 January 2018]*)

F. UPSI-6 period extending from September 7, 2007, upon receipt of check-list from advisors on re-organisation, upto April 16, 2008, i.e., when committee appointed by NDTV to evaluate options for re-organisation of NDTV, is a stretched argument:

(73) The allegation that the UPSI-6 period commenced on September 7, 2007 and ran through until April 16, 2008 defies logic.

(74) The basis on which UPSI is alleged to have commenced based on the mere receipt of a check-list from advisors, if at all held to be the commencement of a UPSI, will carry fatal consequences for all listed companies that receive any form of advice or check-lists.

(75) Equally, the completion of the UPSI on April 16, 2008 when a committee to evaluate re-organization was constituted, is again entirely flawed, in circumstances where a mere intention to proceed in a certain direction was considered worthy of pursuit, and therefore announced, but was eventually never implemented by the *Company*.

(76) The mere receipt of advisory information by the *Company* cannot bring about the commencement of a UPSI. The consideration by the *Company* of such proposed re-organization, from September 2007 continued past the quarter ended September 30, 2007, and also the quarter ended December 31, 2007, and finally past the quarter ended March 31, 2008. The effect of tagging the entire duration as UPSI suggests that for a minimum of two if not three board meetings the UPSI remained under consideration by the *Company* but was not announced by the board.

(77) There is a fundamental flaw in asserting that a UPSI can be staggered across over seven months, merely because a proposal for re-organization was announced at the end of seven months following the receipt of an advisory checklist.

(78) There was no material impact on price directly or indirectly of the announcement on April 17, 2018, in circumstances where the price of the promoters' sale of shareholding to a third party was already the subject-matter of a signed binding term sheet executed on March 7, 2008, and such a sale had been preceded with by a due diligence, which was bound to have factored in all elements relevant to determining the negotiated price.

(79) It is clear from the April 2008 Sale transaction particulars that the price at which the transaction took place was not the traded price on the date of the sale, but rather arrived at under a formula set forth in contemporaneous documents executed with the purchaser, which have been filed under cover of letter dated January 8, 2020. Separately, on January 8, 2020 documents pertaining to the imminent hostile takeover and the traded price of the NDTV scrip on April 17, 2008, were filed.

G. UPSI must cause positive impact, and resultantly persons in possession of UPSI purchase shares as against selling shares :

(80) The present case concerns the sale of shares by the promoters in April 2008, allegedly on the basis of UPSI, overlooking that such a contention is utterly illogical, for an insider privy to UPSI is unlikely to sell shares, but rather than to purchase shares where a positive information is announced potentially triggering significant price advantage. (*Chintalapati Srinivasa Raju & Ors. v. SEBI (2018) 7 SCC 443; Mrs. Chandrakala v. SEBI [SAT Appeal No.209 of 2011 - 31 January 2012]*).

H. The SCN fails to enunciate the action proposed to be taken, thus vitiating its validity:

(81) SEBI has in a significant omission of legal requirements of a show cause notice, failed to enunciate the action proposed to be undertaken in exercise of statutory powers purportedly exercised in the garb of the illegal Show Cause Notices. Paragraph 65 of the SCN is at best obfuscatory. It states:

> *"The Noticees are therefore called upon to show cause as to why directions under Section 11B of the SEBI Act, 1992, including directions for disgorgement of illegal gains, be not issued against them for the aforementioned alleged violations of SEBI Act and PIT Regulations."*

(82) Section 11B is relied upon to issue wide ranging directions, purporting to act in the interests of the investors and the securities market, and it is incumbent upon SEBI to provide notice as to the specific direction or measure proposed to be adopted, in order to allow the *Noticees* to present their defense suitably. The SCN is bound to contain the exact nature of the measures that it proposes to take, failing which, the order passed would be a nullity and violative of the principles of natural justice. (*Gorkha Security Services v. Govt of NCT of Delhi & Ors. (2014) 9 SCC 105; Royal Twinkle Star Club Private Ltd. v. SEBI 2016 SCC OnLine SAT 16*)

(83) It is trite law, that in order to fulfil the requirements of the principles of natural justice, a show cause notice ought to meet the twin requirements, set forth hereinbelow:

(a) The material/grounds to be stated, which according to the department necessitates action; and
(b) Particular penalty/action proposed to be taken.

(84) SEBI has failed to meet the second requirement, rendering the SCN liable to be revoked *in limine*.

(85) A duty is cast upon SEBI to protect not just investors and the securities market, but also to protect promoters who are targets of personal vendetta, as is particularly apparent in the facts of the present case, and within the knowledge of SEBI, from the multitude of proceedings to which SEBI is arrayed as party. SEBI is cast with a duty to ensure the healthy growth of a Company associated with the securities market, whereby SEBI must tread carefully acting as a 'watchdog' with fairness, integrity and transparency, rather than mechanically imposing penalties and issuing directions akin to a 'bulldog'. *(SEBI v. Rakhi Trading (P) Ltd. (2018) 13 SCC 753; Piramal Enterprises Limited v. SEBI 2019 SCC OnLine SAT 134)*

(86) In circumstances where allegations pertaining to insider trading are made, without clinching or direct evidence, fairness, integrity and transparency warrant application, *inter alia,* of the doctrine of proportionality, and generic formulae have no application in the absence of establishing a '*Price Sensitive Event*' arose, much less wrongful gain. (*Dev Singh v. Punjab Tourism Development Corpn. Ltd. & Anr. (2003) 8 SCC 9; Teri Oat Estates (P) Ltd. v. U.T., Chandigarh & Ors. (2004) 2 SCC 130; Management of Coimbatore District Central Co-operative Bank v. Secretary, Coimbatore District Central Co-operative Bank Employees Association & Anr. (2007) 4 SCC 669; Chairman cum Managing Director, Coal India Limited &Anr. v. Mukul Kumar Choudhuri & Ors. (2009) 15 SCC 620; Almondz Global Securities Ltd. v. SEBI 2016 SCC OnLine SAT 219*)

I. Powers under section 11B of the SEBI Act, 1992 are remedial and not punitive in nature and disgorgement cannot arise for alleged violation prior to July 18, 2013 :

(87) The legislative intent of section 11B of the SEBI Act, 1992 is remedial in nature, and not punitive. The settled canons of construction of statutes stipulate that neither pecuniary liability can be imposed nor an offence can be created by mere implication. *(Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra (1975) 2 SCC 22; Videocon International Ltd. v. SEBI [2002] SAT 18; BPL Limited v. SEBI 2002 SCC OnLine SAT 15; G.M. Bosu & Co. Pvt. Ltd. v. SEBI & Ors. [2011] SAT 31; Price Waterhouse & Co. v. SEBI 2019 SCC OnLine SAT 165)*

(88) The legislative intent of section 11B, as it stood on April 17, 2008, cannot be defeated through bringing within its sweep proposed actions of disgorgement, which tantamount to penal sanctions with monetary ramifications.

(89) The 'Explanation' introduced by the Securities Laws (Amendment) Act, 2014, was *ex-post* facto, and not merely clarificatory or curative in nature, and in fact has expanded the scope of powers of the Board. The Explanation records that it shall have retrospective operation with effect from July 18, 2013, and in the circumstances, the power to issue

directions of disgorgement cannot be exercised in relation to transactions of April 2008.

(90) Independent of the Explanation having no application to the facts and circumstances of the case, it is not merely procedural, but substantive in nature, and therefore cannot be treated as merely clarificatory.

(91) The Explanation shall be liable to construal also in the light of the regulatory framework that was in force at the time of the April 2008 Sale transaction, which has since been superseded.

(92) In the circumstances, the amendment inserted by the Securities Laws (Amendment) Act, 2014, with retrospective effect from July 18, 2013, to section 11B of the SEBI Act, 1992, cannot be extended (through any process of reverse engineering) to April 17, 2008. It is settled law that no person shall be convicted of an offence except for violation of a law in force at the time of commission of the act charged as an offence. It is also trite law that a statute promulgated by Parliament is deemed to have prospective operation unless by express legislation it is given a retrospective operation. Statutes which affect substantial rights are to be construed to have prospective application unless retrospective application is expressly conferred. (*T. Barai v. Henry Ah Hoe & Anr. (1983) 1 SCC 177; State v. Gian Singh (1999) 9 SCC 312; Superintendent, Narcotic Control Bureau v. Parash Singh (2008) 13 SCC 499[The position in SEBI v Ajay Agarwal (2010) 3 SCC 765 is distinguishable on grounds that it pertained to a challenge to an order restraining for a period of five years access to the securities market, which was held not to be a penalty. In fact, the judgment supports the Noticees, in that it reiterates that "The right of a person of not being convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence and not to be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence, is a fundamental right guaranteed under our Constitution only in a case where a person is charged of having committed an "offence" and is subjected to a "penalty". Indisputably, orders of disgorgement are penal in nature, and therefore, no scope for s11B being invoked to order disgorgement can arise, in the instant case (in the event of adverse finding to the Noticees).]; Govind Das & Ors. v. ITO & Anr. (1976) 1 SCC 906; Soni Devrajbhai Babubhai v. State of Gujarat & Ors. (1991) 4 SCC 298; Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602; Purbanchal Cables and Conductors Pvt. Ltd. v. Assam State Electricity Board & Anr. (2012) 7 SCC 462)*

(93) The *Noticees* reserve liberty to challenge the *vires* of the Explanation, in the event that a conclusion were reached that resort can be had by SEBI to the Explanation to section 11B of the Act notwithstanding the facts and circumstances of the case clearly warranting that it cannot be invoked at all.

(94) In the absence of unlawful gain, in any event, neither penal nor monetary sanctions can be foisted through resort to section 11B, or otherwise, particularly since pecuniary liability, which takes the form of a penalty or fine for breach of a legal obligation, is not capable of being relegated to the regime of mere procedure.

J. Disgorgement is an equitable remedy, rendering essential that a violator is enriched at the expense of a victim, while disgorgement takes the colour of penal sanction:

(95) In circumstances where the promoters have not enjoyed wrongful gain as a result of the impugned sale of shares in April 2008, and any direction for disgorgement would be tantamount to levying penal consequences upon the promoters, where no direct evidence exists in support of violation of the statutory regulations framed by SEBI or unlawful gain, the imposition of directions for disgorgement by SEBI, if made, upon the promoters, will bear the hallmarks of a penalty imposed as a consequence of allegedly violation of a public law which is intended to deter, rather than to compensate a victim. Absent enrichment to the promoters any order of disgorgement in the present case would not be considered as an equitable remedy and would not simply restore status quo, but on the contrary would take the colour of a punitive sanction upon the promoters. *(Kokesh v. SEC 2017 SCC OnLine US SC 58)*

K. In absence of deliberate or contumacious defiance of law, where technical or venial breach, coupled with bona fide belief and absence of *mens rea*, discretion to be exercised to not impose any penalty in pursuance of powers under section 15J:

(96) The ordinary rule that penalty is attracted as soon as contravention of a statutory obligation is established, rendering the intention of the parties committing such violation irrelevant, has no application where a statutory discretion is conferred upon the adjudicatory authority.

(97) In the present case, as set forth hereinabove, the adjudicatory authority is conferred with statutory discretion under section 15J.

(98) In the instant case, the promoters have acted *bona fide* in selling equity shares with full disclosure, in aid of meeting financial obligations incurred towards the Open Offer. (*Sundaram Finance Ltd. v. SEBI 2003 SCC OnLine SAT 3; SEBI v. Cabot International Ltd. 2004 SCC OnLine Bom. 180;Reliance Industries Limited v. SEBI [2004] SAT 68*)

(99) Rigours of section 15J enable the Whole Time Member to take into consideration a multitude of circumstances, and in the present case, the facts set forth hereinabove as a whole.

(100) Section 15J, stipulates factors to be taken into account while adjudging quantum of penalty:

> *15J. While adjudging quantum of penalty under section 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b)the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default…"*

(101) The SCN was bound to set forth the alleged amount of loss caused to an investor or group of investors, the repetitive nature of default and the amount of disproportionate gain or unfair advantage as a result of the alleged default, in order to then lay down parameters for exercise of discretion under section 15J of the SEBI Act, 1992 which in any event is not exhaustive, with the adjudicating officer empowered to consider circumstances beyond those enumerated thereunder, in aid of justice. (*Siddharth Chaturvedi v. SEBI (2016) 12 SCC 119; Adjudicating Officer, SEBI v. Bhavesh Pabari (2019) 5 SCC 90)*

(102) The absence of *mens rea* is also liable to be factored into the exercise of discretion vested under section 15J of the SEBI Act, 1992. By necessary implication, the statutory authority may not levy penalty; if it has the discretion not to levy penalty, existence of *mens rea* becomes a relevant factor. (*Hindustan Steel Limited v. State of Orissa (1969) 2 SCC 627; Bharjatiya Steel Industries v. Commissioner, Sales Tax, Uttar Pradesh (2008) 11 SCC 617; Rakesh Aggarwal v. SEBI 2003 SCC OnLine SAT 38)*

(103) Absence of disproportionate gain or unfair advantage to the *Noticees* and/or the factor of the loss cumulatively suffered by the promoters in relation to the December 2007 Acquisition which would culminate in the April 2008 transaction has not even been enquired into prior to issuance of the SCN - this is a direct consequence of the failure to abide by the requirements of Chapter III of the Regulations.

(104) The fact that no loss has been caused to any investor or group of investors; rather in meeting the obligations of the Open Offer, the promoters have acted to sell their shares in a manner that ensured honouring of liabilities to investors in the scrip, has again been lost consideration of, at the time of issuance of the SCN.

(105) Importantly, this is not a case where the promoters determined unilaterally the date of sale of the shares in order to time the market for unlawful gain, but rather the timing of the sale was determined by the purchaser. The sale in April 2008 was not driven by the market price prevalent on the date of sale, but rather occurred on a date chosen by the purchaser for the entire convenience of the purchaser, which would inevitably encompass fund mobilization, documentary readiness for completion of a transaction where terms were agreed on March 7, 2008, and recorded in a binding terms sheet, with contemporaneous computations reflecting the understanding also available under cover of letter dated January 8, 2020.

(106) In the circumstances, no violation can be found in respect of the promoters by virtue of completion of the transaction immediately following the announcement in issue during a period when the trading window was closed.

(107) Even assuming without admitting that a restriction that operated in relation to the transaction being conducted on the date of sale, this was a matter that SEBI would have pointed out in 2008, as would the stock exchanges, rather than waiting for ten years to bring up this alleged violation. In fact, with SEBI having been actively in the loop and having complete knowledge of the transaction, the significance of SEBI not taking any objection to the timing of the transaction back in 2008, cannot be lost sight of in the year 2020.

(108) The principles of fairness demand that reasonable benefit of doubt shall be afforded to the *Noticees*, in circumstances where no mala fide intent existed on the part of the *Noticees*. The fact that the promoters were acting in compliance with the requirements of the purchaser, without being alerted to the trading window restrictions, and in aid of meeting Open Offer obligations under SEBI framework, is a relevant criterion that the SCN has failed to address. (*Piramal Enterprises Limited v. SEBI 2019 SCC OnLine SAT 134)*

(109) Noteworthy, that both the purchasers and the promoters were represented by leading law firms fully acquainted with the Securities Regulations, neither of whom pointed out any restriction or violation by the *Noticee* in complying with the sale obligations on the date of completion, and accordingly, the promoters proceeded in good faith to honour sale obligations, and corollary funding requirements for the Open Offer were put into place, accordingly.

L. On Merits of their case, the Noticees have submitted as under:

(110) The shares purchased on December 26, 2007 (December 2007 Acquisition), were purchased jointly by the promoters, through their joint account, and not in their individual accounts.

(111) Prior to the purchase of shares of NDTV on December 26, 2007, the promoters held shares in individual account and no shares whatsoever were held by the promoters jointly.

(112) Prior to the sale transactions of April 17, 2008 alleged to constitute 'insider trading', the promoters transferred shares held by them individually to their joint account, as set forth in the table below:

Date of transfer (from individual to joint account)	**Name of Transferor**	**Number of shares transferred**
22/01/2008	Mr. Prannoy Roy	475,500
22/01/2008	Mrs. Radhika Roy	475,500
17/03/2008	Mr. Prannoy Roy	150,000
17/03/2008	Mrs. Radhika Roy	150,000
TOTAL		1,251,000

(113) The fallacy replete across the SCN is that a certain sale of shareholding by the promoters on April 17, 2008 ("**April 2008 Sale**"), is juxtaposed against a certain purchase of promoter shareholding on December 26, 2007 ("**December 2007 Acquisition**"), on the premise of alleged trading by the promoters in the course of an alleged UPSI event.

(114) The sale of promoter-shareholding on April 17, 2008 came to be effectuated in pursuance of a Binding Term Sheet dated March 7, 2008 ("Binding Term Sheet") entered into by the promoters with Goldman Sachs Investments (Mauritius) Limited ("GS").

(115) The Binding Term Sheet recorded *inter alia* that GS may purchase up to 14.99% equity share capital in the *Company* at a mutually agreeable price per equity share, subject to applicable regulations governing transactions on stock exchanges in India.

(116) The legal ramifications of the December 2007 Acquisition under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("the Takeover Regulations, 1997"), i.e. the Open Offer, concluded in July 2008, with the full knowledge of and the acquiescence by SEBI.

(117) If the purported "*significant changes in policies, plans or operations of the company*" announced at the board meeting of the *Company* held on April 16, 2008, were in fact capable of constituting '*Price Sensitive Information*', the course of action that should have followed was for a ramp-up of equity ownership interests in anticipation of gains, rather than sale of equity shares by the persons alleged to be engaged in 'insider trading'.

(118) The date of April 17, 2008, in connection with the April 2008 Sale, was determined by the purchaser in pursuance of a Binding Term Sheet dated March 7, 2008, rather than being scheduled by the seller. The date was determined *inter alia* by a slew of regulatory compliances, documentary requirements, etc. to be fulfilled in aid of the transaction by the purchaser.

(119) No gain was made on the April 2008 Sale, in the circumstances where a loan stood availed for the December 2007 Acquisition, and price negotiations were concluded in manner that factored in all such costs, fees, charges, expenses concerning both the December 2007 Acquisition and the Open Offer (including sums to Merchant Banker, lawyers, newspaper advertisements, fees to SEBI, etc.) obliterating scope for any form of gain.

(120) The 17 April 2008 Sale, concluded on the Bombay Stock Exchange ("BSE"), as a 'Bulk Deal', which was bound to have been monitored by the BSE (in pursuance of the SEBI directives to stock exchanges), with a reporting to SEBI bound to have occurred by the BSE in the ordinary course. (*SEBI Circular No. IEMI/LKS/MI/2990/95 dated August 8, 1995; SEBI Circular No. IEMI/MID/4567/95 dated December 6, 1995 and SEBI Circular dated May 25, 2000, on the heels of the meeting of the Inter-Exchange Market Surveillance Group.*)

(121) Separately, mandatory compliances under the Takeover Regulations, 1997 and the PIT Regulations, 1992 were fulfilled by the promoters and the *Company*, in support of which the promoters have filed all documentation in relation to disclosures.

(122) The price negotiations with GS had concluded in an in-principle agreement that the price payable per equity share will be the cost of shares purchased by the promoters in the December 2007 Acquisition, to be arrived at through factoring in-

(a) existing loan arrangements (three loans availed, at the material time - the first for the December 2007 Acquisition in the sum of ₹200 crores, the second for the Escrow with the Merchant Banker in relation to the Open Offer in the sum of ₹4.63 crores, and the third in relation to payment of SEBI fees in the sum of ₹2.82 crores);

(b) Merchant Banker fees associated with the Open Offer; and

(c) all other costs associated with the Open Offer (including publishing of notices in newspapers, printing and dispatch of notices to shareholders, brokerage, lawyers, etc.).

(123) From a draft of the term sheet under discussion circulated on February 28, 2008, it is apparent that the price sought to be fixed for purchase of shares by Goldman Sachs was ₹433.90 per equity share.

(124) It is apparent from an email dated April 4, 2008 that a SEBI sub-account approval permission had been sought by Goldman Sachs (India) Securities Private Limited, in aid of execution of the trade, and permission was awaited. Documents liable to be executed by the promoters were returned on April 7, 2008.

(125) On April 16, 2008, details of the securities account to which the stock was liable to be transferred as margin, in anticipation of the trade, was relayed by Goldman Sachs (India) Securities Private Limited to the promoters.

(126) In anticipation that the purchase (by Goldman Sachs) in pursuance of the Binding Term Sheet will occur on April 17, 2008, a re-run of calculations was carried out, in anticipation of loan repayment on 23 April 2008.

(127) After verification and revision of figures by an email of 1608 hrs, at 1929 hrs a final calculation sheet was agreed by the purchaser.

(128) It is, therefore, apparent that the sole and absolute discretion as to the 'timing' for the purchase of NDTV shareholding lay within the sole dominion of GS, and the price paid per equity share to the promoters was determined by considerations conclusively set down by GS, in turn compliant with the Takeover Regulations, 1997.

(129) The fact of the sale of shareholding to GS being inextricably interlinked with, and undertaken with the sole purpose of facilitating funding requirements of the promoters for the Open Offer triggered in December 2007 was a matter within the knowledge of both GS and SEBI.

(130) On April 17, 2008, the BSE Bulk Reporting specifically captured the trades in issue, as recorded in an email exchange of that day.

(131) Later that day, the draft letter for disclosure by promoters to the relevant stock exchanges on which the scrip of the *Company* was trading was circulated to the Merchant Banker.

(132) None of the leading law firms advising on the transaction of April 17, 2008 or other advisors alerted the promoters to any risks for proceeding ahead with the purchase by Goldman Sachs Investments (Mauritius) Limited on that date.

(133) The legal advice appears to have been correctly justified on the premise that a Bulk Trade, in compliance with the SEBI and BSE regulatory framework was underway.

(134) If the transaction had culminated two days earlier or two days later, the commercial understanding reflected **through the in-principle agreement to** meet the costs incurred by the promoters would have resulted in a slight change of the price to reflect the adjustment in the borrowing costs, but no further.

(135) The promoters, in aid of funding arrangements in the region of over ₹550 crores, based on obligations incurred under the Takeover Regulations to acquire 20% equity shareholding in NDTV Limited, were actively engaging with SEBI, through the accredited Merchant Banker.

(136) By letter dated April 21, 2008, SEBI wrote to the Merchant Banker, recording it had noted, from the Merchant Banker's letter of April 9, 2008 (copy not available with the promoters, although unsuccessful efforts to secure a copy from the Merchant Banker were made prior to the hearing), that "*it has been submitted that the Acquirer had made suitable arrangements with the lenders for the offer but due to extra-ordinary turmoil in the credit markets it is taking longer than anticipated to finalize the borrowing arrangements. Further that the Acquirer has made good progress in this regard and expects to tie up the funds by the end of this month or so*".

(137) Amongst the steps outlined to SEBI for the financial arrangements underway, in the course of engagement, Mr. Prannoy Roy emphasized that the transaction of April 17, 2008 had **aided in garnering sums against the sale of 49,13,676** equity shares ("Sale Shares"), but that monetary obligations under the SAST Regulations, 1997 imposed liability on the promoters in excess of ₹550 crores, which in circumstances where the 2008 global financial turmoil had led the stock markets to witness sharp falls in prices of equities generally, was putting the promoters to risk of serious loss and detriment.

(138) Corporate announcements pertaining to all disclosures, recording the purchase of 7.85% stake in the *Company* by Goldman Sachs, were duly reflected on BSE and NSE portals.

(139) On April 29, 2008, a Commitment Letter for a Facility of "Up to INR 5.4 billion", was issued by Indiabulls Financial Services Limited, as lender to the promoters, stipulating 18% interest payable quarterly, a stringent repayment schedule, covenant for cash top-up obligations in case of steep fall in share price, anti-dilution obligations, 2.5% upfront non-refundable commitment fee, etc.

(140) On May 1, 2008, the Merchant Banker wrote to SEBI, in the matter of funding arrangements through the Commitment Letter of April 29, 2008, which was in turn endorsed by Mr. Prannoy Roy to the Chairman of SEBI, in furtherance of a meeting held on April 30, 2008.

(141) On May 14, 2008, SEBI responded to the draft letter of offer submitted by the Merchant Banker under letter dated January 7, 2008, *inter alia,* stipulating compliances concerning 'Financial Arrangements'.

(142) On May 21, 2008, the promoters wrote to the Merchant Banker with regard to a Facility Agreement, Pledge Agreement, Powers of Attorney and Promissory Note, notifying a pledge of 78,36,000 Equity Shares and 2,10,79,700 Equity Shares under a Power of Attorney with Indiabulls, notifying compliance with all conditions precedent to the disbursement of loan from Indiabulls in terms of the Commitment Letter.

(143) On May 23, 2008, again, a series of cost workings were circulated, in relation to the Open Offer, to determine the details of draw-down, payment for shares subscribed in the Open Offer.

(144) After the close of the Open Offer, a 45-Day Report bearing the date July 3, 2008 was filed with SEBI by the Merchant Banker, under cover of letter dated July 3, 2008, which establishes that the transaction of sale of promoter shares was, once again, specifically brought to the attention of SEBI, in writing.

(145) At item 9.6 of the 45-Day Report, it was recorded that the imputed Sale of Shares, i.e., 4,913,676 Equity Shares, constituting a 7.85% stake in the *Company*, were sold after the Public Announcement (of 30 December 2007) on April 17, 2008.

(146) At item 12 of the 45-Day Report, the market price of shares of the *Company* on material dates was recorded, rendering it apparent that the average traded price (on BSE) of the scrip was ₹412.22 per share during the "offer period".

(147) At item 9.3 of the 45-Day Report, the "*Shares acquired in the open offer*" were recorded at 12,690,257 equity shares, constituting a 20.28% stake in the *Company*, which at the

offer price of ₹438.98, translated into a minimum loss of ₹33.95 crores to the promoters, at ₹26.76 per equity share.

(148) Based on the loan draw-down by the promoters, HDFC Bank Limited on June 24, 2008 confirmed a credit of ₹557.07 crores "*for the purposes of making payment to the shareholders of NDTV whose Equity Shares have been accepted in the Open Offer.*"

(149) The December 2007 Acquisition constituted an attempt to stave off an imminent (perceived) threat of hostile takeover, where a corporate group was found to be displaying increasingly mounting interest in the *Company*, which had been rendered apparent through certain purchases by mutual funds who appeared to be engaged in 'creeping acquisition'.

(150) Thus, while the SCN purports to juxtapose the December 2007 Acquisition against the April 2008 Sale, in an attempt to conclude that wrongful gain was made by the promoters, these two transactions are incapable of being viewed in isolation.

(151) The 45-Day Report establishes that the average traded price (on the NSE) on the date of the Public Announcement was ₹471.40, against the average traded price (on BSE) of the scrip at ₹412.22 per share during the "offer period".

(152) Despite the price of the scrip witnessing a sharp fall of about ₹60 per equity share (as against the traded price on the date of the Public Announcement) owing to the ongoing turmoil in the global markets, the promoters were bound to, and proceeded to honour their obligations under the Takeover Regulations, 1997 to the public shareholders, at considerable loss and detriment to themselves.

21. Before I proceed to appropriately deal with the aforementioned replies/submissions of the *Noticees* captioned under different heads/titles, I find it worthwhile to recapitulate the charges that have been levelled against the *Noticees* in the SCN alleging that they have violated the provisions of section 12A(d), (e) of the SEBI Act, 1992 read with regulation 3(i) and regulation 4 of the PIT Regulations, 1992, as well as NDTV's Code of Conduct and regulation 12(2) read with 12(1)of the PIT Regulations, 1992. In order to appreciate the import and gravity thereof, it would be relevant at this point to refer to the underlying provisions of the SEBI Act, 1992 and the PIT Regulations, 1992 which have a bearing on the allegations made against the *Noticees*. These are reproduced hereunder for convenience and ready reference:

The SEBI Act, 1992 -

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

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

The PIT Regulations, 1992 –

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

"*3. No insider shall—*

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

Violation of provisions relating to insider trading.

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

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 45.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations."

22. I have carefully considered the allegations levelled in the SCN against the *Noticees*, their replies and submissions; both oral and written, and the materials available on record. Broadly speaking, the response of the *Noticees* have two clearly demarcated components. Firstly, they have mounted various preliminary objections and secondly, arguments have been offered on merit. I find that the *Noticees* have raised about 11 preliminary objections to the SCN some of which are overlapping and interconnected to each other. To begin with, I address the preliminary objections raised by the *Noticees* challenging the *bona fides* of the SCN and questioning the foundation and jurisdictional competency of the instant proceedings. For ease, I would deal with them under the respective sub-categories/heads as have been para-phrased by the *Noticees* to the extent possible. Considering the fact that some of the submissions made by the *Noticees* are not relevant to the present case, it would be appropriate to omit them in the interest of not unnecessarily burdening this order. With this objective, I propose to confine my findings to the submissions of the *Noticees* that are germane and central to the issues deserving consideration in the instant case.

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

23. I note that the *Noticees* have vehemently emphasized on the delay on the part of SEBI in initiating the present proceedings. This according to them, has vitiated the validity of the SCN, and constitutes a jurisdictional excess, as also tantamount to gross abuse of process. The *Noticees*, thus, go to the root of jurisdiction to issue the SCN itself. In this regard, the *Noticees* have relied upon and cited various decisions of the Hon'ble SAT, most notably in the matter of *Libord Finance Ltd. v. SEBI (2008 SCC OnLine SAT 46); Subhkam Securities Pvt. Ltd. v. SEBI (2012 SAT 112) and HB Stockholdings Limited v. SEBI (2013 SCC OnLine SAT 56).* The *Noticees* have also stated that since their imputed trades were very old, they do not have access to the relevant supporting documents.

24. I have perused the contention of the *Noticees* in this regard and also the judicial decisions relied upon in support of this contention. It goes without saying that the facts and attending circumstances of each cited case have to be taken into consideration while deciding as to whether any inordinate delay has been made in initiating a particular proceeding. As discussed initially in this Order, the investigation in the instant matter was initiated in pursuance of a number of complaints received by SEBI from NDTV starting from July 16, 2013 (1st complaint) to January 9, 2014 (3rd complaint) *inter alia* alleging that certain entities associated/connected with NDTV and their associates (viz.: Mr. Sanjay Dutt and his associated entities such as QSPL and SREPL) were involved in dealing in securities of NDTV in violation of provision of the PIT Regulations, 1992 during the period September 2006 to June 2008. Pursuant to the receipt of the complaints, investigation was instituted by SEBI and in the course of such investigation, SEBI had exchanged a series of

communications with the *Company* and other relevant entities. Evidently, it can only be after the completion of investigation and on an evaluation of results obtaining therefrom and not anterior to it, that the present proceedings in respect of several entities who were found to have indulged in insider trading including the two *Noticees* in the SCN, could be initiated by SEBI.

25. It is a common knowledge that investigation into matters pertaining to allegations of insider trading are significantly complex and requires collating of various types of multiple data and information for analysis and examination. Further, it is a fact that the investigation into the alleged insider trading in the shares of NDTV involved a host of entities whose status as insiders and specific trades executed by them had to be examined with reference to roles, data and other ancillary information. It is also relevant to note that while the *Noticees* and the *Company* expected SEBI to initiate proceedings in respect of the entities against whom the complaints were filed by them after about 6 years of the alleged insider trading done by entities related to Mr. Sanjay Dutt, quite inexplicably, the *Noticees* resist similar proceedings against themselves on the ground of delay or by citing other technical reasons. This palpably demonstrates that the arguments put forth on this aspect lack any intrinsic merit and deserve to be cast aside.

26. I find the conduct of the *Noticees* during the instant proceedings debunking the findings of investigations and the allegations in the SCN with respect to their insider trades as perplexing since these were undisputedly contemporaneous to the trades executed by the other entities in respect of which, the *Company* promoted and managed by them had filed complaint with SEBI. It is also a matter of record as to how the *Noticees* have tried to seek frequent adjournments on insufficient grounds constraining me to enter an observation on the dilatory tactics adopted by the *Noticees* in the records of the proceedings. In fact, the *Noticees'* attempt to digress from the present proceedings was also underlined by the Hon'ble Bombay High Court while disposing the writ petition filed by them - as manifest from the observations of the Hon'ble High Court discussed subsequently. Thus, the *Noticees* cannot possibly seek shelter behind the façade of delay when the initial complaint regarding the alleged insider trading in the shares of NDTV was filed by the *Company* promoted/managed by the *Noticees* after approximately 6 years following the execution of those trades. This fact strongly repudiates the reliance by the *Noticees* upon Schedule I, Part A, Clause 5(2) to the PIT Regulations, 1992, regarding time limitation of three years to preserve supporting records by a listed company. It is worth mentioning that the said clause mandates the Compliance Officer to maintain records of <u>all the declarations</u> in the appropriate form given by <u>the directors/officers/designated employees</u> for a minimum period of three years. Had the instant proceedings been about allegations pertaining to any declarations made by the directors/officers /designated employees or for that matter relating to the maintenance of internal records or non-submission of such

records by the *Company,* the provisions of Schedule I, Part A, Clause 5(2) to the PIT Regulations, 1992 would have borne some relevance. In the instant case, however, there is no allegation connected to any declarations made by the directors/officers /designated employees or non-submission of the information pertaining to such declaration. Therefore, in my opinion, the reference to the said clause by the *Noticees* has no relevance whatsoever. In view of the foregoing, the *Noticees* cannot fallaciously insist upon the requirements of Schedule I, Part A, Clause 5(2) to the PIT Regulations, 1992, to contend that there was inordinate delay/latches in initiating the instant proceedings.

27. It is important to note here that the SCN and the Annexures thereto contain all the factual and legal details based on which the allegations of the violation of the SEBI Act, 1992 and the PIT Regulations, 1992 have been made against the *Noticees*. Therefore, raising a plea of non-availability of relevant documents is nothing but an evasive device adopted by the *Noticees.* Undoubtedly there is no provision under the SEBI Act, 1992 or the PIT Regulations, 1992, which prescribes any time limit for taking cognizance of the alleged breach of provisions of the Act, and rules and regulations made thereunder. The Legislature, in its wisdom, did not deem it fit to provide for the same. Notwithstanding the above, in order to ascertain as to whether there has been actually any delay in a matter, it is important not to lose sight of the fact that it is the date when the alleged violation came to the notice of SEBI which would be the relevant point and certainly not the date of commission of the said violation. Again, whether a delay in a particular case is justified or not depends on the attending facts and circumstances of that specific case. In this regard, it is relevant to refer here to the findings of the Hon'ble Supreme Court in the matter of *Mahendra Lal Das vs. State of Bihar and Ors. (2002) I SCC 149* also relied upon by the *Noticees,* wherein the Hon'ble Apex Court held that "*While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused, witnesses, workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case."* In fact, in almost all the cases cited by the *Noticees,* it has been invariably held that each case has to be decided on its merit while taking into consideration the surrounding facts and circumstances..

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

> *".....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. <u>There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that</u>*

delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....." (**Emphasis supplied**)

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

B. Denial of full and fair inspection of documents to the *Noticees*, a direct violation of principles of natural justice.

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

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

31. In compliance to and as guided by the aforesaid order of the Hon'ble Delhi High Court, the *Noticees* were granted inspection of all the documents relied upon by SEBI in the SCN issued to the *Noticees*. The records before me indicate that the Ld. Authorized Representatives inspected the Investigation Report containing those portions and the details that are connected to the *Noticees* and also received a copy of such portions of the Investigation Report as well as the copies of Annexure 4, Annexure 10 and Annexure 16 to the Investigation Report. As per the records before me, the parts of the Investigation Report which do not pertain to the *Noticees* were redacted and inspection of the remaining relevant parts of the Investigation Report was duly granted to the *Noticees*.

32. I may recall here that during the personal hearing on September 26, 2019, the Ld. Authorized Representatives of the *Noticees* were advised to file additional reply, if any, by October 25, 2019. Accordingly, the next personal hearing was scheduled on November 13, 2019. However, vide email dated October 24, 2019, the Ld. Authorized Representatives requested for extension of time for filing reply by approximately two weeks in view of the Diwali holidays, and also requested for shifting the date of hearing date from November 13, 2019 to some other date and time as per mutual convenience owing to the overseas engagement of the counsel appearing on behalf of the *Noticees*. That request was also acceded to and the personal hearing *qua* the *Noticees* was scheduled on November 25, 2019 with their consent. However, vide email dated November 5, 2019 the Ld. Authorized Representatives again sought extension of time to file additional reply in the matter. At this juncture, they also raised the inexplicable plea of incomplete inspection and demanded that a full and fair inspection of all documents and/or material collected by SEBI during the course of investigation be granted, including but not limited to internal file notings, orders/directions and statements recorded, if any, after which only, the *Noticees* would file additional reply. Such a request for inspection of non-relevant or extraneous documents was nothing short of a highly untenable demand made as a condition precedent to filing of additional reply, more so after a period eleven months of the first inspection and when two rounds of personal hearing of the *Noticees* had already elapsed. Hence, the same deserved outright rejection which was categorically conveyed to the Ld. Authorized Representatives on that day itself. Accordingly such a request was not acceded to for the reasons explained earlier in this Order and the final round of personal hearing was fixed on December 13, 2019.

33. On December 13, 2019, the Ld. Authorized Representatives informed that the *Noticees* had filed a Writ Petition before the Hon'ble Bombay High Court (*supra*) challenging the SCN and, therefore, a short adjournment may be granted. The Ld. Authorized Representatives were reminded of the number of adjournments already sought in the matter, but as a last and final opportunity, the personal hearing was adjourned and with the consent of the Ld. Authorized Representatives, re-fixed on January 3, 2020.

34. I note that vide their order dated January 6, 2020, the Hon'ble Bombay High Court dismissed the Writ Petition filed by the *Noticees* with the following observations:

> *"9. We do not think that we should allow the petition to be prosecuted as its obvious purpose is to delay the adjudication of the show-cause notice. It is not as if the petitioners cannot appear before SEBI without prejudice to their rights and contentions and complaint that they were not provided full, free and unhindered inspection of the relevant records and documents. The petitioners can participate in the hearing or adjudication of the show-cause notice without prejudice to all their rights and contentions including on the above point. They can very well substantiate their primary contention that on the face of it, the show-cause notice is time barred. We do not think that we should interfere with the show cause notice as that relief could have been claimed but advisedly not claimed earlier. It may be that the Writ Petition filed before the Hon'ble High Court of Delhi is filed by another entity and not the petitioner. Secondly, when that High Court passed the order, the present petitioners were not served with the show-cause notice. However, even that High Court expressed its reluctance to interfere with the investigations by SEBI. Pertinently, Ms. Sethna does not seek the relief of quashing of the show-cause notice. We fail to understand the reluctance of the petitioner to appear before SEBI reserving its rights and contentions.*
>
> *10. The Writ Petition before this Court with virtually the same complaint should not be entertained as that would mean that this Court can be approached challenging such a show-cause notice, when the petitioners were aware that they first approached through their promoter group, the High Court of Delhi. The grievance being more or less the same, we do not think that this Petition should be entertained only on the ground of alleged lack of inspection. We do not think that the petitioners cannot properly defend themselves. The petitioners can participate in the adjudication or the hearing and in the event any adverse order is passed, while challenging the same, the petitioners can highlight all the grievances and grounds projected in the petition before the High Court of Delhi and this High Court. They can very well complain that no inspection of the records or documents, which have been relied upon to render an adverse finding, was provided and, therefore, there is a gross violation of the principles of natural justice and the adjudication is unfair, arbitrary and discriminatory. Once all such courses are open and can be taken recourse to, all the more, we are disinclined to entertain this Writ Petition."* (**Emphasis supplied**)

35. The aforesaid observations made by the Hon'ble High Court speaks volumes about the unremitting dilatory intentions and reluctance on the part of the *Noticees* to cooperate with the present proceedings due to which they have been deliberately delaying the proceedings on one pretext or another. I note that the *Noticees* have also relied upon the minority judgment of the Hon'ble Tribunal in the matter of *PWC vs. SEBI* (Appeal No. 08 of 2011) which was upheld by the Hon'ble Supreme Court in appeal by PWC (Civil Appeals No. 6003 - 6004 of 2012 & 6000 - 6001 of 2012) directing SEBI to provide all the documents collected during the course of investigation. In this regard, I note that the Hon'ble Tribunal in the matter of *Shri B. Ramalinga Raju vs. SEBI* (Appeal No. 286 of 2014) observed as follows:

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

36. In my view, the findings of the Hon'ble Tribunal in the matter of *Anant R. Sathe vs SEBI* (Appeal no. 150/2020 – Date of decision July 17, 2020) is apposite and, thus, merits a reference as under:

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

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

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

9. In ***Natwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255*** *the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to*

be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.

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

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

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

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

38. I have observed earlier that investigation is a painstaking process of finding of facts and an investigation report is typically a compilation of all the findings crystallizing during the investigation process which are documented comprehensibly. The materials relied upon during investigation or the relevant extracts thereof are usually incorporated as part of the investigation report - either in the body of the report or as annexures. Thus, the material collected during investigation and relied upon in the investigation report are incorporated in the SCN and duly communicated to the *Noticee* either in the body of the SCN or in the form of annexures thereto. I find the SCN to be a discerningly speaking one and self-explanatory. It contains the relevant details pertaining to the activities of the *Noticees* and incorporates all relevant testimonies, documentary evidences, etc., that have been relied upon therein to frame charges against the *Noticees*. The *Noticees* are entitled to inspect as well as to have copies of all the documents relied upon or referred to in the SCN so as to be able to rebut the allegations.

39. However, under the garb of inspection of documents, it is not open to the *Noticees* to conduct a roving and a fishing enquiry in the office records, file noting meant for internal administrative utilization of SEBI, or those parts of the investigation report which have neither been relied upon in the SCN nor are relevant to their case. This is because had those records/documents been relevant, they would have been certainly deployed and used as evidence against the *Noticees*. There is no averment made by the *Noticees* that inspection of one or more evidence that has been adversely used against them, has been denied to them. This being the uncontroverted position, the vehement request of the Ld. Authorized Representatives for allowing inspection of irrelevant or extraneous documents (like entire

investigation report, file noting, statements recorded from persons, if any) after a passage of eleven months from the first inspection and one month after conducting the second round inspection, is excessive, unreasonable, contrary to the judicial observations cited above and have little purpose except to unnecessarily delay the proceedings. With regards to the *Noticees* insistence on having a copy of the complete Investigation Report, it was explained to them, that it covers the examination and findings about the allegation of insider trading in the shares of the *Company* by various other entities also, during the period September 2006 to June 2008. Hence, the *Noticees* were lawfully entitled to only the portions of the investigation report which relate to them containing, without exception, and all the documents/information relied upon in the SCN. Moreover, the said investigation was initiated on the basis of the complaints filed by the *Company* which is promoted/managed/run, *inter alia*, by the *Noticees* themselves. In any case, the *Noticees* have been granted permission on two occasions for inspection of the documents and annexures relied upon in the SCN and the relevant parts of the Investigation Report alongwith the relevant annexures thereof. The parts of the Investigation Report that did not pertain to the *Noticees* were redacted to maintain confidentiality of details *qua* those other entities and the same was duly conveyed to the *Noticees*. This view has also been upheld by the Hon'ble Tribunal in the matter of *Manoj Gaur v. SEBI (Supra)* wherein it was held that:

> *"20. We may now take note of some other arguments which were advanced on behalf of the appellants. It was alleged that the principles of natural justice were violated on the ground that copy of investigation report was not provided to the appellants which has resulted in denial of fair hearing to them. It was also alleged that entirely a new case has been made out by the adjudicating officer while holding that the UPSI existed from October 11, 2008 whereas in the show cause notice, it was alleged that the information about the financial results etc. of the company was UPSI with effect from October 12, 2008. We are inclined to agree with the submissions made by learned Advocate General on behalf of the Board that there is no violation of the principles of natural justice on any of these counts. Regulation 9(i) of the Regulations specifically provides that only the findings of the investigation report are to be communicated to a person suspected of insider trading. Such findings were furnished to the appellants. The investigation report is not the evidence on which reliance was placed by the adjudicating officer. Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants. Learned counsel for the parties have relied on certain case law relating to principles of natural justice. We do not consider it necessary to refer to all those details in view of the fact that regulation 9 of the Regulations makes it obligatory to communicate the findings in the investigation report and not the whole report. It is nobody's case that such findings were not made available. If the procedure laid down in the regulations has been followed by the adjudicating officer, the grievance of violation of principles of natural justice is without any foundation……"*

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

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

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

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

C. Procedural irregularities permeating the SCN render it *ultra vires.*

43. The *Noticees* have contended that the framework of the PIT Regulations, 1992 sets forth a procedural framework in Chapter III, which is prescribed in order to insulate a noticee from the risk of procedural lacunae and/or irregularities, in an endeavour to ensure that the rights of the noticee are preserved, in aid of a free and fair trial and adjudication, in accordance with law. The *Noticees* have contended that since they have been provided with a redacted version of the Investigation Report, it is apparent to them that no separate or distinct investigation was conducted in relation to the alleged statutory and/or regulatory violations by the *Noticees*, independent of the investigation conducted at the behest of NDTV against QSPL and SREPL, which culminated into preparation of the afore-referred Investigation Report. The *Noticees* have further pointed out that during the personal hearing held on January 03, 2020, a specific confirmation was sought by them with respect to compliance by SEBI with regulations 4A and/or 5 and/or 6(1) or 6(2) of the PIT Regulations, 1992 in response to which the officers of SEBI in attendance at the hearing submitted that the records available with them (at that time), did not indicate the existence of any such compliances of the aforesaid procedural regulatory framework by the SEBI. Thereafter, the *Noticees* were directed by me to proceed with their arguments and presentations on the footing that such regulatory framework as envisaged in the PIT Regulations, 1992 has not been complied with as a precursor to the issuance of the SCN, and that as a consequence, it was open to the *Noticees* to proceed on the presumption that no material underlying any such compliance was available in the present case.

44. Before I deal with the requirements of Chapter III of the PIT Regulations, I deem it necessary to put certain things in proper and correct perspectives. In order to do so, it is relevant to reproduce hereunder the said provisions of the PIT Regulations, 1992:

"Power to make inquiries and inspection.

4A. *(1) If the Board suspects that any person has violated any provision of these regulations, it may make inquiries with such persons or any other person as mentioned in clause (i) of sub-section (2) of section 11 as deemed fit, to form a prima facie opinion as to whether there is any violation of these regulations.*

(2) The Board may appoint one or more officers to inspect the books and records of insider(s) or any other persons as mentioned in clause (i) of sub-section (2) of section 11 for the purpose of sub-regulation (1).

Board's right to investigate.

5. *(1) Where the Board, is of prima facie opinion that it is necessary to investigate and inspect the books of account, either records and documents of an insider or any other person mentioned in clause (i) of sub-section (1) of section 11 of the Act for any of the purposes specified in sub-regulation (2), it may appoint an investigating authority for the said purpose.*

(2) The purpose referred to in sub-regulation (1) may be as follows:
(a) to investigate into the complaints received from investors, intermediaries or any other person on any matter having a bearing on the allegations of insider trading; and
(b) to investigate suo-motu upon its own knowledge or information in its possession to protect the interest of investors in securities against breach of these regulations.

Procedure for investigation.
6. *(1) Before undertaking any investigation under regulation 5, the Board shall give a reasonable notice to insider for that purpose.*
(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of investors or in public interest no such notice should be given, it may by an order in writing direct that the investigation be taken up without such notice.
(3) On being empowered by the Board, the investigation authority shall undertake the investigation and inspection of books of account and the insider against whom an investigation is being carried out an insider or any other person mentioned in clause (i) of sub-section (1) of section 11 of the Act shall be bound to discharge his obligations as provided in regulation 7."

45. I note that the issue of procedural infirmity has been raised by the *Noticees* in furtherance of their contention made during their personal hearing held on January 03, 2020, (which was the fourth opportunity of personal hearing) by stating that they have not been granted complete inspection of all the documents. There is no denying the fact that the aforesaid provisions provide for different procedural compliances and the same are invariably followed by the Board. However, in my opinion, power of the Board to carry out investigation in a matter is aimed at achieving the undeniably a much larger objective of preservation of integrity of the market and investor protection, apart from development and regulation of the securities market. Hence, hyper-technical objections, hair-splitting and imaginary procedural lacuna, ostensibly derived from PIT Regulations, 1992, cannot be raised as valid challenges to defeat the aforementioned statutory mandate of SEBI as also to defeat the substantial, significant transgression in law by the defaulters. Such challenges raised from time to time serve only to obfuscate and delay the determination of the dispute on merits. Accordingly, the preliminary objections pressed by the *Noticees* do not survive for any serious consideration.

46. Further, whether inspection of documents evidencing certain procedural compliances spelt out in Chapter III of the PIT Regulations, 1992 is required to be granted, is not substantive by any reckoning, more particularly, when the SCN has been issued on the basis of the outcome of a detailed investigation that was conducted strictly as per provisions of section 11C of the SEBI Act, 1992 read with the relevant provisions of the PIT Regulations, 1992. In the instant case, I have illustrated earlier how the *Noticees* had sought adjournment of the proceedings on one ground or the other on various dates. On January 03, 2020 when during their personal hearing the Ld. Authorised Representatives of the *Noticees* sought inspection of documents so as to be satisfied about SEBI's compliance with regulations 4A and/or 5 and/or 6(1) or 6(2) of the PIT Regulations, 1992, the SEBI officials present in the hearing chamber informed that such documents were not readily available with them at that time. Considering that the Ld. Authorised Representatives were exhibiting a marked reluctance to argue on merits and with the aim to take the hearing to a logical conclusion expeditiously, it was not desirable to grant further adjournment on the plea of lack of information about SEBI's compliance with the afore mentioned procedural regulations, which in any case, was a matter of record verifiable later. Accordingly, the *Noticees* were advised to continue with their arguments, assuming for the time being, that such regulatory framework as envisaged in the PIT Regulations, 1992, was not complied with as a precursor to the SCN. Accordingly, they proceeded with their presentation covering all the technical and procedural aspects and also dwelt on merit in detail. Thus, they were heard at length on the said day. The Ld. Authorised Representatives seem to have needlessly attempted to distort the events that transpired during the hearing on January 03, 2020 by raising the spectre of an imaginary confession from SEBI that the aforesaid procedural regulations have not been complied with. However, in reality, my advise was to proceed with arguing the case on merits by assuming for the time being that the aforesaid procedural regulations have not been complied with. An assumption for ensuring continuity of arguments cannot be converted into a fact. This aspect was merely set aside for the time being with the objective of not derailing once again, the ongoing arguments on merits on a long-lingering matter and to dissuade the *Noticees* to press another prayer for adjournment.

47. Having put the aforesaid facts in the proper perspective, I would now deal with the requirements of regulations 4A and/or 5 and/or 6(1) or 6(2) of the PIT Regulations, 1992. As can be seen from the provisions quoted above, regulation 4A of the Regulations deals with the power to make inquiries and inspection while regulation 5 deals with the Board's right to investigate. The authority of the Board under these regulations can be interpreted to be co-existential as well as independent of each other depending on the circumstances at hand. Further, from the wordings of regulation 4A and regulation 5, it can safely be presumed that the purport of these regulations are

essentially directory in nature since both these regulations contain "*may*" in contradistinction to regulation 6 where the word "*shall*" has been deployed. In my opinion, considering the gravity of allegation associated with the insider trading charges, the requirements of regulations 4A and/or 5 and/or 6(1) or 6(2) of the PIT Regulations, 1992 empower the Board to proceed step-wise by making inquiries and inspection, and then by resorting to investigation. However, it is not necessary that every investigation into the allegation of insider trading has to mandatorily pass through a provision of regulation 4A of the PIT Regulations, 1992 as a condition precedent for conducting investigation in terms of regulation 5 of the Regulations. As stated earlier, the aforesaid provisions of Chapter III are co-existential as well as independent of each other. Hence, if the complaints on insider trading are self-speaking enough to evoke a *prima facie* opinion about the alleged ground, the Board can order investigation into the complaints in terms of regulation 5 of the PIT Regulations, 1992 under the governing provisions of section 11C of the SEBI Act, 1992.

48. Thus, the aforesaid regulations 4A, 5 and 6, accordingly, lay down the procedure to be followed by SEBI while initiating or conducting any investigation against any entity. Moreover, the requirement of the said provisions, specially, regulation 6 of the PIT Regulations, 1992 are largely intended for standardization of the system and procedures of investigation under these Regulations. There are catena of judgments of the Hon'ble Supreme Court and Hon'ble High Courts for the fundamental proposition in law that that a mandatory enactment must be strictly obeyed or fulfilled the way it has been prescribed under law, while non-compliance with a directory provision has been held in many cases as not affecting or being fatal to the validity of the regulatory act done or decision taken in breach thereof. In this regard, I place reliance on the following two judgments of the Hon'ble Supreme Court with regard to the requirement of compliance of mandatory *vis-à-vis* directory provisions of the statutes:

(a) *Ram Deen Maurya (Dr.) v. State of U.P., (2009) 6 SCC 735, [DB]*

"*42. Having examined the Rules and the principles evolved by the Courts, let us now examine whether non-compliance with one of the facets of Rule 4(6) of the Rules would be fatal to the application filed by Dr. Madhu Tandon.*

43. To answer this issue, it is necessary to find out, whether the Rule is directory or mandatory. If it is mandatory, then it is settled rule of interpretation, it must be strictly construed and followed and an act done in breach thereof will be invalid. But if it is directory, the act will be valid although the non-compliance may give rise to some other penalty if provided by the statute. It is often said that a mandatory enactment must be obeyed or fulfilled exactly, but, a directory provision non-compliance

with it, has been held in many cases as not affecting the validity of the act done in breach thereof (see Principles of Statutory Interpretation, 11th Edn. 2008 by Justice G.P. Singh).

…..

…..

52. While considering the non-compliance with procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and furthers its ends and, therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory."

(b) *State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, (DB)* –

"66. The question is whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.

67. In Maxwell on the Interpretation of Statutes, 10th Edn. at p. 381, it is stated thus: "On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

(H) After introduction of Part IX-A - 'The Municipalities' in the Constitution of India by way of 74th Amendment w.e.f. 01-06- 1993, under Article 243ZG strict bar to interference by courts in electoral matters has been placed. The provision begins with a non-obstante clause thereby providing in mandatory terms that an election to any municipality ought not to be interfered with while exercising supervisory jurisdiction in a Writ Petition filed under Article 226/ 227 except in very exceptional cases."

49. In the instant matter, pursuant to the above narrated personal hearing during which the *Noticees* had raised the issue of supposedly non-compliance by SEBI with the regulations 4A and/or 5 and/or 6(1) or 6(2) of the Regulations, 1992, the records relating to the initiation of investigation in this matter were examined. I have perused those records and I note that the procedural compliances as mandated under the provisions of regulation 5 and 6(1) or 6(2) of the PIT Regulations, 1992, have been duly met at the time of appointment of an Investigating Authority to investigate into the trades of certain entities in the scrip of NDTV. The competent authority has in writing, waived off the requirement to give any notice in this regard to the entities concerned in terms of regulation 6(2) of the PIT Regulations. Therefore, the internal

records unambiguously indicate that there were no infirmities whatsoever, in complying with the procedures as specified in the PIT Regulations while initiating investigation into the complaints received by SEBI.

50. Considering the foregoing, I am of the firm view that the requirements of regulations 4A and/or 5 and/or 6(1) or 6(2) of the PIT Regulations, 1992 have been adequately complied with and non-furnishing of such details pertaining to such procedural compliances to the *Noticees* does not cause any prejudice to their rights as a *Noticees* and as such, does not at all vitiate or affect the legality of the instant proceedings.

51. It will be fully in context to note that regulation 6(2) of the PIT Regulations, 1992, itself provides a mechanism to dispense with the requirement of issuance of notice to the insider before undertaking investigation under the PIT Regulations, 1992. Further, it has to be appreciated that the investigation conducted by SEBI in this matter was conducted in terms of provisions of section 11C of the SEBI Act, 1992 which do not envisage a mandatory prior notice to the *Noticee* suspected to have indulged in insider trading. The existence of 'reasonable ground' is sufficient to order for investigation under section 11C of the SEBI Act, 1992 and the order for initiation of investigation cannot be validly questioned on the sufficiency of reasonable grounds. As per the provisions quoted above, regulation 6(2) of the PIT regulations, 1992 is "*notwithstanding*" regulation 6(1). Thus, Board is empowered to initiate investigation under regulation 6(2) without giving any notice which is a requirement under regulation 6(1) only. The order appointing an investigating authority under section 11C of the SEBI Act, 1992 in the present case does not mention about giving any prior notice, hence, by necessary and only implication, the said section permits for undertaking of investigation without such a prior notice. I note that the order appointing investigating authority does not specifically refer to regulation 6(2), however, non-mentioning of a provision of a regulation, over which the authority concerned held power at the relevant time, will not be inimical to the proceedings. Moreover, as is clear from the caption of regulation 6, it contains only the "*procedure*" of initiating investigation, while the actual investigation was conducted in terms of section 11C of the SEBI Act, 1992 which is a substantive provision governing the conduct of investigation under the SEBI Act, 1992. Besides being procedural, the requirement of giving a prior notice or dispensing with requirement of giving a prior notice, has to be also viewed in the light of the fact that in the present case, the complaint with a prayer to take action was made by the *Company* (NDTV) itself of which *Noticees* are the promoters who, at the relevant point in time were the director and managing director of the *Company*.

52. As pointed out above, the primary requirement to initiate an investigation under the SEBI Act, 1992 (section 11C) is to have a '*reasonable ground*'. In this case, pursuant to series of complaints received from the *Company* itself about insider trading in the shares of NDTV, I do not find any worthwhile reason to doubt the existence of a reasonable ground that necessitated the investigation into the matter. Therefore, to argue that the issuance of a prior notice to the entity before undertaking investigation under the PIT Regulations, 1992 is a *sine qua non,* is not tenable for the reason that investigation is only a fact finding exercise and the SCN has not been issued on the basis of presumptive reasonable grounds, but is based on the factual evidences unearthed during the investigation. A similar issue was raised in *Bhorukha Financial Services Ltd. Vs. SEBI* (order dated May 10, 2006 in SAT Appeal No. 18 of 2006), wherein the Hon'ble Tribunal, while rejecting the contention has observed that "*It is not the requirement of Section 11C that opportunity of hearing is to be afforded to any intermediary of the market before ordering such investigation. The reason is obvious. Investigation by itself does not adversely affect any person or intermediary and no civil consequences flow from such an order.*"

53. Nonetheless without prejudice to my observations in the foregoing paragraphs, I have seen and noted from the records that in the present proceedings waiver of issuance of any such prior notice has been duly obtained under regulation 6(2) of the PIT Regulations, 1992. In view of the above, the objections raised by the *Noticees* taking shelter under procedural lapses so as to vitiate the entire proceedings involving grave charges of insider trading by invoking those procedural grounds is devoid of merit and thus, cannot be of any assistance to the *Noticees*.

D. Absent existence of jurisdictional fact, which is a *sine qua non* for exercise of power by statutory authority, adjudicatory proceedings are rendered illegal.

54. The *Noticees* have contended that the SCN constitutes a jurisdictional error, in the circumstances where neither deliberate nor contumacious defiance of law is established (in the SCN), much less the fulfillment of the mandate of the regulatory framework *qua* the *Noticees*, in terms of recording at least a '*prima facie* opinion' within the ambit of regulation 4A of the PIT Regulations, 1992. Here, it would be apt to once again clarify that regulation 4A of the PIT Regulations, 1992 grants power to the Board to make inquiries and inspection, if the Board suspects that any person has violated any provision of these regulations. In such cases, the Board **may** make inquiries in respect of persons enumerated in section 11(2)(i) of the SEBI Act, 1992. In terms of section 11(2)(g) of the SEBI Act, 1992, prohibition of insider trading in securities is one of the statutory functions vested with the Board. Further, section 12A(d) & (e) of the SEBI Act, 1992 prohibit insider trading and trading on the basis of material non-public information. In the instant case, the *Noticees* are alleged to have

indulged in insider trading in the shares of NDTV Ltd., a listed company. It is, therefore, not clear as to how the *Noticees* contend that there is absence of jurisdiction in the instant case just because according to them provisions of regulation 4A has not been complied with by SEBI which in fact has been substantially complied with as discussed at length in the preceding paragraphs.

55. Trading in the shares of a listed company comes under the regulatory purview of SEBI. It is an admitted fact that the *Noticees* were, apart from being the promoters of the *Company,* were also managing the affairs of the *Company* (Mr. Prannoy Roy was also the Chairman and Whole Time Director and Mrs. Radhika Roy was also the Managing Director of NDTV). They were in possession of UPSI on December 26, 2007, at the time of their trading in the shares of NDTV Ltd. Hence, the *Noticees* were well covered under the definition of "*insider*" on the relevant date in the listed company (NDTV). This fact has never been disputed by the *Noticees.* I may state here that the evil of insider trading has been well recognized by the esteemed judicial authorities. The regulatory purpose of insider trading regulations is to prohibit those trading from which an insider gets an unfair advantage by virtue of his exclusive access to price sensitive information. In the matter of *E. Sudhir Reddy vs. SEBI* (Appeal no. 138 of 2011 decided on 16/12/2011) the Hon'ble Tribunal observed as under:

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

56. Next, the *Noticees* have contended that their transaction of 17th April 2008, was the subject matter of a bulk deal and was implemented with full disclosure in terms of the SEBI Circulars dated January 14, 2004 and September 02, 2005, dealing with bulk deals. I have perused the said Circulars issued by SEBI and find the contention of the *Noticees* to be devoid of any merit. The instant proceedings have been initiated against the alleged trading by insiders when the UPSI was in existence - and not for any

violation of Circulars pertaining to bulk deals. In fact, the *Company* itself has, in its disclosures to the stock exchanges on April 16, 2008, made announcement with regard to recommendation for dividend and evaluation of options for reorganization of the *Company*, which could include a de-merger/split of the *Company*. The mere fact that the said sale deal was executed in compliance with the above referred Circulars relating to bulk deals, would not *ipso facto* grant an immunity from the serious charge of insider trading. The *Noticees* have raised an indefensible argument that compliance with these Circulars can ameliorate by affording a shield from the requirements of regulations 3 of the PIT Regulations, 1992 which strictly prohibits trading in the securities by insiders while in possession of unpublished price sensitive information. It is nobody's case that the *Noticees* while in possession of UPSI, were prohibited in terms of regulation 3 of the PIT Regulations, 1992, from trading in the shares of NDTV Ltd. Thus, taking a ground that they executed their trades in compliance with the aforesaid Circulars is futile and constitutes no defense to the charge of insider trading. Further, to deal with the highly injurious effect of insider trading, I prefer to rely on the observations made by the Hon'ble Tribunal in the case of *Mr. Harish K Vaid vs The Adjudicating officer* (Date of decision - 03/10/2012), wherein the Hon'ble Tribunal while upholding the order passed by the Adjudicating Officer made the following observations: "*The evil of insider trading is well recognized. The purpose of the insider trading regulations is to prohibit trading to which an insider gets advantage by virtue of his access to price sensitive information. The appellant is the Company Secretary and Compliance Officer of the company who was involved in the finalization of quarterly financial results and was fully aware of the regulatory framework and code of conduct of the company. Under such circumstances, when there is a total prohibition on an insider to deal in the shares of the company while in possession of UPSI, the quantity of shares traded by him becomes immaterial."*

57. It is also a matter of record that the *Company* and its management had started work in the direction of fulfilling the purpose of PSI-6 with effect from at least September 07, 2007 as can be inferred from the email dated September 07, 2007 regarding *"News Re Organization KPMG Checklist - Information requirements"* which, *inter alia*, contained "*Checklist from KPMG on reorganisation*". In my opinion, even a plain and literal reading of the provisions of regulation 2(ha) of the PIT Regulations, 1992, would suggest that **significant changes in policies, plans or operations of the company fall in the ambit definition of "*price sensitive information*" of the Regulations, 1992.** As already discussed, the management of the *Company* was mulling over the proposal and discussing about the reorganization of the *Company* into different entities, atleast since September 07, 2007 and had made an announcement to this effect to the stock exchanges on April 16, 2008. As per the said announcement, creation of focused entities would also enable in bringing in strategic and financial partners who have been in discussions with the *Company* from time to time. Having made an announcement

to this effect, it can never be the case of the *Noticees* or of the *Company* that the said information did not constitute "*price sensitive information"*. It is also an admitted fact that the *Noticees* had traded in the shares of the *Company* on April 17, 2008. Thus, the trades of the *Noticees* in the shares of the *Company* are automatically covered under the regulatory purview of PIT Regulations of SEBI. In the matter of *V. K. Kaul vs SEBI* (Appeal No. 55/2012 – Date of Decision – 8/10/2012), the Hon'ble Tribunal has held that *"We are, therefore, of the view that the term price sensitive information used in regulation 2(ha) is wide enough to include information relating directly or indirectly to 'a company'*. In the instant case, the information in question related directly to the *Company*. Considering the foregoing, the argument of the *Noticees* regarding absence of jurisdiction for exercise of power by SEBI in the present case is grossly erroneous, defies logic and fails completely.

E. Charge of '*insider trading*' to be established by higher degree of probability and necessarily based on clinching and reasonable evidence, absent in this case.

58. Another argument advanced by the *Noticees* that a charge of '*insider trading*' is liable to be established by a higher degree of probability and has to be necessarily based on clinching and reasonable evidence which is absent in this case. In the matter of *V. K. Kaul vs SEBI* (*Supra*), the Hon'ble Tribunal has held as under:

> *"The measure of proof in civil or criminal cases is not an absolute standard and within each standard, there are degrees and probabilities and in this context reference was also made to what Denning, L.J. observed in Bater v. Bater (1950) 2 All E.R. 458 and we reproduced the same for ease of reference:-*
>
> > *"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."*

59. Notwithstanding the foregoing, as discussed in the preceding paras on the merit of the SCN, the instant case can be said to be imbued with all the undisputed ingredients to prove the charge of insider trading. The *Noticees* were insiders during the relevant period, that there was an unpublished price sensitive information (PSI-6) in existence during the period from September 07, 2007 to April 16, 2008, that the *Noticees* were active participants in the making of the said unpublished price sensitive information and that the *Noticees* had undeniably traded in the shares of the *Company* while in possession of the said unpublished price sensitive information during the UPSI period as well as during the closure period of trading window in the *Company*. All these ingredients have been found out from the facts and analysis presented by the *Company* itself during the investigation conducted by SEBI. The *Noticees* being promoter/ Chairman and promoter/Managing Director respectively of the *Company* have had always the access to all these facts. In my view, the *Noticces* cannot disown these facts now by harping on a far-fetched demand that the charge of '*insider trading*' has to be established by higher degree of probability based on clinching and reasonable evidence. I also note that *Noticees* have relied on the observations of the Hon'ble SAT in the matter of *Manoj Gaur (supra)* to contend higher degree of evidences to establish the charge of insider trading. In this respect, it is observed that the observations made in the above case are factually distinguishable from the instant case. In the case of *Manoj Gaur*, the charge was of communication, whereas in the instant proceedings, the *Noticees* are charged for trading while in possession of UPSI, hence reliance on the observations of the Hon'ble Tribunal would not come to help the *Noticees*.

60. In view of the foregoing discussions, such a contention of the *Noticees* is divorced from facts, misleading and evasive in nature. Accordingly, it is liable to be rejected in entirety. The *Noticees* have attempted to persuade me with their submissions that there were attempts of a hostile takeover of NDTV which in addition to various other constraining factors, had caused the *Noticees* to acquire the large quantities of shares in December 2007, to consolidate their position and defend the *Company*. The aforesaid submissions are *sans* any merit as the same cannot be a legally tenable defence to act as a shield from the serious charges like insider trading. Even assuming purely for the sake of argument that the above submissions are correct, the charges made in the SCN get established in the face of the admission made that they had decided to purchase more shares ostensibly to consolidate their holding in the *Company* and, thereby, ward off hostile takeover attempts. In my considered view, the provisions of insider trading do not envisage any such defence so as to justify insider trading under the pretext of preventing a hostile takeover, more so when the errant *Noticees* are seen to be off-loading their shareholding substantially within a few months of purchasing huge quantities of shares of their *Company* while in possession of

UPSI. The serious and specific transgression of law does not get obliterated by claims of purported business interests.

F. UPSI-6 period extending from September 7, 2007, upon receipt of check-list from advisors on re-organisation, until 16 April 2008, i.e., when committee appointed by NDTV to evaluate options for re-organisation of NDTV, is a stretched argument.

61. I have already discussed this argument of the *Noticees* in the preceding paras and would again point out the fact that the *Company*, vide its letter dated October 12, 2015, while submitting information regarding the alleged insider trading by one Mr. Sanjay Dutt and his connected entities, had submitted details of various price sensitive information, including the information as to when each of those six(6) price sensitive information was crystallized and who were the entities privy to such information. The information submitted by the *Company* itself clearly identified the UPSI period from September 07, 2007 to April 16, 2008, with regard to the PSI-6 that dealt with the proposed reorganization/demerger of the *Company*. The records before me divulge that the first communication regarding reorganization of the *Company* had emanated on September 07, 2007 when an email in this regard was sent by KPMG, to which several entities, including the *Noticees* herein were privy. Therefore, PSI-6 commenced as an unpublished price sensitive information with effect from September 07, 2007 and continued upto April 16, 2008 when the said PSI was disclosed to the Stock Exchanges.

62. It cannot be the case of the *Noticees* that the very same information that was undisputedly price sensitive for one set of insiders was not to be treated as a PSI for another set of insiders, i.e., the *Noticees*. Notwithstanding the foregoing, persons such as the *Noticees* who occupied the most important positions in the managerial hierarchy of the *Company,* are entrusted to act in a fiduciary capacity and as trustees for other shareholders, more particularly the small investors. They are expected to be more cautious while dealing in the securities of their own company. I cannot ignore the fact that the *Noticees's* holding in the *Company,* i.e., NDTV was substantial during the relevant period and information furnished by the *Company* with respect to the price sensitivity of the information was well within the control of the *Noticees* herein, who were admittedly occupying the apex seats for not only managing the affairs of the *Company,* but were also responsible for all acts of omission if any, by the *Company*. In my considered view, the act of the *Noticees* undoubtedly breached the trust and fiduciary duties that they were obligated to uphold at all times by virtue of their positions in the *Company*. The *Noticees* cannot conceivably apply differing standards to same set of UPSI, i.e., one for the entities against whom NDTV had complained of insider trading while in possession of the said UPSI and one for themselves by

resorting to the unacceptable argument stating that the PSI-6 period was too overstretched to call it a UPSI. In view of the foregoing, I do not have any hesitation in summarily dismissing this contention canvassed by the *Noticees* for not treating the PSI-6 as a UPSI.

G. UPSI must cause positive impact, and resultantly persons in possession of UPSI purchase shares as against selling shares.

63. Before I deal with this argument of the *Noticees,* it would be relevant here to refer to the definition of the terms "*price sensitive information*" and "*unpublished*". The terms "*Price Sensitive Information*" and "*unpublished*" have been defined under regulations 2(ha) and (k) of PIT Regulation, 1992, as under:

"(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.
Explanation. —
The following shall be deemed to be price sensitive information:—
(i) periodical financial results of the company;
(ii) intended declaration of dividends (both interim and final);
(iii) issue of securities or buy-back of securities;
(iv) any major expansion plans or execution of new projects.
(v) amalgamation, mergers or takeovers;
(vi) disposal of the whole or substantial part of the undertaking;
(vii) and significant changes in policies, plans or operations of the company;"

"(k) "unpublished" means information which is not published by the company or its agents and is not specific in nature."

64. A perusal of the aforesaid definition of 'price sensitive information' shows that an information pertaining to a company can be termed as price sensitive, which if published, is **likely** to materially affect the price of the securities of the company. It is, therefore, not necessary that an unpublished price sensitive information on being published, would invariably cause only a positive price impact. It can have a negative impact as well, especially in the case of an information containing less than expected or dismal financial results of the *Company*. One can presume that an insider would indulge in insider trading while in possession of an UPSI either for reaping profit or for avoidance of loss. The aforesaid definition also illustrates certain information which are deemed to be price sensitive. The UPSI involved in the present case as per the SCN, is deemed to be an UPSI by virtue Explanation (vii) to regulation 2(ha) of the PIT Regulations, 1992, which adequately demolishes any argument about the price sensitivity of the said information. As mentioned, an event or information could also be held as price sensitive, which in ordinary sense is **likely** to be capable of materially affecting the prices of securities. Thus, it is the likelihood

of material effect on the price of the securities of a company which clothes an information to be called "price sensitive". Consequently, if there was a likelihood of an information to have an impact on the price of the securities of a company, that likelihood itself is capable of characterizing the information a '*price sensitive information*' within the meaning of regulation 2(ha) of the PIT Regulations, 1992. Therefore, the said definition of '*price sensitive information*' does not pre-suppose any certainty about a price rise (or a price fall) to be triggered by such UPSI. Further there cannot be any thumb rule to predict with certainty that a positive or negative PSI, when published in public domain, would decidedly have positive or negative impact on the share price of a company as market price of securities on any given day is also influenced by a host of internal, external including domestic & international factors beyond the realm of affairs or performance of a company. However, one can certainly presume that an insider would indulge in insider trading while in possession of an UPSI either for reaping profit or for avoidance of loss. Under the circumstances, an issue surrounding determination of a PSI requires examination of the facts of each case to decide as to whether such an event/information has the potential to affect the price or not. In the instant case, considering the undisputed fact that the information in question (PSI-6) pertained to a proposal for reorganization of the *Company* with an intent to unlock value for the shareholders, the same undoubtedly amounted to a significant change in business policies, plans and operations of the *Company*. Hence, in my view, the same was definitely containing material elements, which upon publication, was likely to impact the price of the scrip of NDTV.

65. I would like to draw the attention to the findings of the Hon'ble Tribunal in the matter of *V. K. Kaul vs SEBI* (*Supra*) wherein it was, *inter alia*, held that the term price sensitive information used in regulation 2(ha) of the PIT Regulations, 1992 is wide enough to include information relating directly or indirectly to 'a company'. Keeping the foregoing discussions and observations in view, I reject the contentions of the *Noticees* and hold that the PSI-6 was indeed a price sensitive information material enough to create an impact on the share price of the *Company*.

66. It is relevant here to observe that there are always multitude of factors at play on a given day which determine the prices of a stock, be it publishing of a price sensitive information or otherwise, sectorial performance, macro and micro economic policies, general trend in performance of the stock exchange, international trend, any relevant news, etc. As discussed above, the PSI-6 was indicative of definite and tangible measures proposed by the *Company* towards changes in its business plan, policies and operation with a view to unlock shareholder value. Whether the said information containing such business plan, after being published by the *Company* actually impacted the price of its securities or not, becomes irrelevant for the determination of liability of insider trading. It is also a matter of record that PSI-6 covered the UPSI period connected with the quarterly financial

results announcements of the *Company* for the quarters ending September 30, 2007, December 31, 2007 and March 31, 2008. It is also undisputed fact that the *Noticees* had purchased 4835850 shares of NDTV on December 26, 2007 while in possession of the PSI-6 and had sold 2410417 (Mr. Prannoy Roy) and 2503259 (Mrs. Radhika Roy) shares within 24 hours of the said UPSI being disclosed to the stock exchanges on April 16, 2008. In the process, the *Noticees* have together booked a profit of ₹16,97,38,335/-. I, therefore, reject this contention of the *Noticees* that as insiders in possession of the positive UPSI they would not have sold, rather would have only purchased the shares of the *Company*. The same is wholly misconceived since the *Noticees* through their trading comprising both purchase and sale, while in possession of UPSI, have already demonstrated that their insider trading strategy has proved to be rather profitable.

H. The SCN fails to enunciate the action proposed to be taken, thus vitiating its validity.

67. I have perused the various orders that the *Noticees* have relied upon in canvassing that the SCN fails to enunciate actions proposed to be taken. As discussed earlier, the SCN clearly delineates all the allegations against the *Noticees,* substantiates all the allegations levelled therein including the allegations that the *Noticees* were the insiders who possessed the price sensitive information (PSI-6) regarding steps proposed for business reorganisation of the *Company* into various units so as to unlock the shareholders' value that came into existence on September 07, 2007 and the allegation of insider trading undertaken by them while in possession of the aforesaid PSI till it was published on April 16, 2008. The allegations levelled in the SCN are duly supported by direct and clinching evidence as well as circumstantial evidence which support and validate the charges with higher degree of preponderance of probabilities, in consonance with the observations made in various orders of the Hon'ble Tribunal.

68. The *Noticees* have also relied on the judgments, rendered in *Gorkha Security Services Vs. Govt. (NCT of Delhi) (2014) 9 SCC 105,* to contend that the SCN nowhere makes out any specific case against the *Noticees* and in no manner provides an opportunity or details of any allegations that the *Noticees* have to meet. It is contended that the SCN is general and vague in nature and that the SCN fails to enunciate the action proposed to be taken, thus, vitiating its validity. I have perused the said judgment in *Gorkha Security Services* referred to by the *Noticees*. I find that the SCN makes out a specific and categorical case of insider trading against the *Noticees*. Further, the SCN articulates details of each allegation levelled against the *Noticees* as have been dealt with by me in the foregoing paras alongwith the factual basis and documents relied upon for making such allegations. Further, the SCN has indicated in concrete terms the actions proposed against the *Noticees* and the relevant charging section for such proposed actions. Also, the SCN has made it explicitly clear to

the *Noticees* that an amount of ₹16,97,38,335/- has been determined as the amount of *notional* profits that was wrongfully earned by the *Noticees* by engaging in the alleged insider trading in the shares of *NDTV* in violation of regulation 3(i) of the PIT Regulations, 1992 which is liable to be disgorged from them. The said notional profit earned out of the alleged insider trading was arrived at as a difference between the average price of purchase of shares of *NDTV* by the *Noticees* on December 26, 2007 and the average selling price of the shares sold by the *Noticees* on April 17, 2008. Thus, the SCN has clearly spelt out the allegations, the actions proposed, as well as the methodology adopted to calculate the amount of proposed disgorgement very succinctly. As such, I do not find any ambiguity in the SCN as speciously contended by the *Noticees*. Moreover, from the detailed replies and submissions filed by the *Noticees* responding to the allegations made in the SCN after conducting inspection of the relevant documents twice, I find this claim of the *Noticees* as being devoid of merit. Without prejudice to the above, in my view, the reliance on the *Gorkha Security(supra)*is itself misplaced as the factual and legal background of the said case do not apply to the facts of the present case at all. In the *Gorkha Security*, the observations were made while dealing with the issues which were commercial in nature, whereas, the proceedings at hand are related to civil actions contemplated by a regulator for violations of statutory provisions, once the charges made in the SCN stand established upon consideration of materials on record.

I. Powers under section 11B of the SEBI Act, 1992 are remedial and not punitive in nature and disgorgement cannot arise for alleged violation prior 18 July 2013.

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

> *"**Power to issue directions***
> *11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—*
> *(i) in the interest of investors, or orderly development of securities market; or*
> *(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or*
> *(iii) to secure the proper management of any such intermediary or person, it may issue such directions,—*
> *(a) to any person or class of persons referred to in section 12, or associated with the securities market; or*
> *(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.*
>
> *Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted*

loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

70. A plain reading of the provisions of section 11B of the Act makes it apparent that the section vests with the Board the power to issue directions to achieve the objectives for which SEBI is established. The preamble of the SEBI Act, 1992 proclaims the objectives for the establishment of the Board, of which a primary one is to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for connected matters. Thus, section 11B is more specific and oriented towards affirmative action. The power of SEBI to issue directions under section 11B of the SEBI Act has been the subject matter for deliberation by the courts, including the Hon'ble Apex Court as to whether the powers vested under section 11B are punitive or remedial. The Hon'ble Gujarat High Court, while deciding an appeal against the Learned Single Judge's order in Alka Synthetics Case (*SEBI Vs. Alka Synthetics Ltd. (1999(9) SCL-460*) had an occasion to decide as to whether SEBI had the authority to issue an order under section 11B of the Act for impounding or forfeiting the money received by stock exchange as per the concluded transactions under its procedure, until final decision is made. While reversing the decision of the Learned Single Judge, and upholding the Respondent's power to issue such a direction under section 11B, the Hon'ble High Court held and observed as under:

> *"The SEBI Act is an Act of remedial nature and, therefore, the present cases could not be compared with the cases relating to the fiscal or taxing statutes or other penal Statutes for the purposes of collection of levy, taxes, etc. As and when new problems arise, the call for new solutions and the whole context in which the SEBI had to take a decision, on the basis of which impugned orders were passed, cannot be said to be without authority of law in the fact of the provisions contained in section 11 and section 11B. As the language of section 11(1) itself shows and as the matters for which the measures can be taken are provided in sub-section (2) of section 11. It is clearly made out by the plain reading of the language of the section itself that the SEBI has to protect the interests of the investor in Securities and has to regulate the securities market by such measures as it things fir and such measures may be for any or all of the matters provided in sub-section (2) of section 11 and in the discharge of his duty cast upon the SEBI as a part of its statutory function, it has been invested with the powers to issue directions under section11B. …….. Thus, so far as the authority of law in the SEBI to issue such directions is concerned, such authority to take measures as it thinks fit is clearly discernible on the basis of the provisions contained in section 11 read with section 11B of the SEBI Act.... We have to therefore consider and interpret the power of SEBI under the provisions so as to see that the objects sought to be achieved by Act is fully served, rather than being defeated on the basis of any technicality. The duty and function had been entrusted to take such measures as it thinks fit and in order to discharge this duty, the power is vested under section 11B. .. The authority has been give under the law to take appropriate measures as it thinks fit and that by itself is sufficient to cloth the SEBI with the authority of law".*

71. I would also like to rely on the findings of the Hon'ble Supreme Court in the matter of *District Mining Officer vs. Tata Iron And Steel Co. [2001 7 SCC 5]* wherein it was held that *a*

statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature". The Hon'ble Apex Court further observed as under:-

> *"The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."*
>
> …….
>
> …….
>
> *"Most fair and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication. But the whole of what is enacted "by necessary implication" can hardly be determined without keeping in mind the purpose or object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility."*

72. It is also relevant here to mention the case of *Karvy Stock Broking Ltd. v. SEBI 2007 73 SCL 261 SAT*, wherein the Hon'ble Tribunal held as under:

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

73. Further, in the case of *Libord Finance Ltd. v. SEBI 2008 86 SCL 72 SAT*, the Hon'ble Tribunal observed that the preventive and remedial measures under section 11/ 11B of the Act might also have penal consequences, but in substance, it does not take away and alter the remedial nature of such measures enshrined in it. The relevant observations of the Hon'ble Tribunal in the case are as follow:

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

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

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

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

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

76. Considering the settled position of law as enunciated in the aforementioned judgments pertaining to SEBI's powers to issue directions under section 11/11B of the SEBI Act, 1992, so as to take appropriate preventive/remedial measures to protect the interest of investors as well as the interest of the securities market, irrespective of whether the exercise of such powers may have penal consequences, the contentions of the *Noticees* against the disgorgement proposed in the SCN cannot hold ground. Consequently, the same deserves to be rejected.

J. Disgorgement is an equitable remedy, rendering essential that a violator is enriched at the expense of a victim, while disgorgement takes the colour of penal sanction.

77. The *Noticees* have stated that in the absence of proven enrichment of the promoters, any order of disgorgement as proposed in the present case would not be considered as an equitable remedy and would not simply restore *status quo*, but on the contrary would take the colour of a punitive sanction against the promoters. In this regard, the *Noticees* have relied upon findings in *Kokesh v. SEC 2017 (supra).*

78. I note that the Black's Law Dictionary defines disgorgement as '*the act of giving up something (such as profits illegally obtained) on demand or by legal compulsion*.' The primary objective of disgorgement is to serve as deterrence against violations of securities laws by depriving the violators of their ill-gotten gains. To disgorge means to deprive a person of the value by which he has been unjustly enriched. Unjust enrichment, in turn, refers to the retention of certain benefits, which is not legally justifiable. Therefore, disgorgement as a remedial measure in securities law involves a wrongdoer being stripped of the unlawful profits or wrongful gains made by him. The underlying idea and purpose behind this remedial

measure is that no person should be permitted any opportunity to profit from his wrongdoing. Therefore, even before any punishment or penalty is levied, it is essential to deprive a wrongdoer of the fruits of his misconduct or wrongdoing. The Hon'ble Tribunal has further clarified that since the primary purpose of disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, the disgorgement amount should not exceed the total profits realised as a result of the said unlawful activity. In *Dushyant Dalal & Anr. vs SEBI* (*Appeal No. 182 of 2009 - Date of decision: November 12, 2010*), the Hon'ble Tribunal dwelt at length on the issue of disgorgement as a remedy as under:

"9. The question whether the Board has the power to direct a delinquent to disgorge the ill-gotten gains made by his unlawful acts came up for the consideration of this Tribunal in Karvy Stock Broking Ltd. Vs. Securities and Exchange Board of India Appeal no.6 of 2007 decided on May 2, 2008 and this is what was held:

> *"5. Before we deal with the contentions of the parties, it is necessary to understand what disgorgement is. It is a common term in developed markets across the world though it is new to the securities market in India. Black's Law Dictionary defines disgorgement as "The act of giving up something (such as profits illegally obtained) on demand or by legal compulsion." In commercial terms, disgorgement is the forced giving up of profits obtained by illegal or unethical acts. It is a repayment of ill-gotten gains that is imposed on wrongdoers by the courts. Disgorgement is a monetary equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of his illegal conduct. It is not a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct. Disgorgement of ill-gotten gains may be ordered against one who has violated the securities laws/regulations but it is not every violator who could be asked to disgorge. Only such wrongdoers who have made gains as a result of their illegal acts(s) could be asked to do so. Since the chief purpose of ordering disgorgement is to make sure that the wrongdoers do not profit from their wrongdoing, it would follow that the disgorgement amount should not exceed the total profits realized as the result of the unlawful activity. In a disgorgement action, the burden of showing that the amount sought to be disgorged reasonably approximates the amount of unjust enrichment is on the Board."*

A similar view was taken by this Tribunal in Dhaval Mehta vs. Securities and Exchange Board of India Appeal no. 155 of 2008 decided on September 8, 2009 which was also a case that had arisen out of the IPO scam. Since disgorgement is not a punishment but only a monetary equitable remedy meant to prevent a wrong doer from unjustly enriching himself as a result of his illegal conduct, we are of the view that there need be no specific provision in the Act in this regard and this power to order disgorgement inheres in the Board. We cannot, therefore, agree with the learned senior counsel that the Board had no power to issue a direction for disgorgement."

79. In fact, the aforesaid judgments pertain to those orders of SEBI that were passed when there was no express provision for disgorgement in SEBI Act, since the Explanation to section 11B was inserted vide the Securities Laws (Amendment) Act, 2014, w.r.e.f. July 18, 2013. While inserting the said Explanation, it was clarified 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. This legislative clarification relates back to the date of insertion of section 11B in the SEBI Act, 1992, implying that the power of disgorgement always existed in section 11B all along and that this was merely clarified on July 18, 2013. Thus, the Securities Laws (Amendment) Act, 2014, provided a retrospective effect to the said Explanation which was inserted on July 18, 2013 to ensure the continuity of exercise of power to order disgorgement under section 11B of the SEBI Act. Therefore, the assertion made by the *Noticees* that the power of disgorgement must be considered to have come into existence only with effect from July 18, 2013 is an erroneous interpretation of law and, hence, is not maintainable. I find that contentions similar as to the arguments being advanced by the *Noticees* fell for the consideration of the Hon'ble Supreme Court in the case of *SEBI vs. Ajay Agarwal* (2010) 3 SCC 764. The relevant observations are as under:

> *"37. Even if penalty is imposed after an adjudicatory proceeding, persons on whom such penalty is imposed cannot be called an accused. It has been held that proceedings under Section 23(1A) of Foreign Exchange Regulation Act, 1947 are adjudicatory in character and not criminal proceedings (See Director of Enforcement v. M.C.T.M. Corporation Pvt. Ltd. and others, (1996) 2 SCC 471). Persons who are subjected to such penalties are also not entitled to the protection under Article 20(1) of the Constitution.*
>
> *38. Following the aforesaid ratio, this Court cannot hold that protection under Article 20(1) of the Constitution in respect of ex-post facto laws is available to the respondent in this case.*
>
> *39. If we look at the legislative intent for enacting the said Act, it transpires that the same was enacted to achieve the twin purposes of promoting orderly and healthy growth of securities market and for protecting the interest of the investors. The requirement of such an enactment was felt in view of substantial growth in the capital market by increasing participation of the investors. In fact such enactment was necessary in order to ensure the confidence of the investors in the capital market by giving them some protection.*
>
> *40.The said Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors.*

41. It is a well known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it.

42. Keeping this principle in mind if we analyse some of the provisions of the Act it appears that the Board has been established under Section 3 as a body corporate and the powers and functions of the Board have been clearly stated in Chapter IV and under Section 11 of the said Act.

43. A perusal of Section 11, Sub-Section 2(a) of the said Act makes it clear that the primary function of the Board is to regulate the business in stock exchanges and any other securities markets and in order to do so it has been entrusted with various powers.

44. Section 11 had to be amended on several occasions to keep pace with the 'felt necessities of time'. One such amendment was made in Sub Section (4) of Section 11 of the said Act, which gives the Board the power to restrain persons from accessing the securities market and to prohibit such persons from being associated with securities market to buy and sell or deal in securities. Such an amendment came in 2002.

……

……

*48. As noted above, there is no challenge to those provisions which came by way of amendment. In the absence of any challenge to those provisions, it cannot be said that even though Board is statutorily empowered to exercise functions in accordance with the amended law, its power to act under the law, as amended, will stand frozen in respect of any violation which might have taken place prior to the enactment of those provisions. It is nobody's case that Board has exercised those powers in respect of a proceeding which was initiated prior to the enactment of those provisions. In fact Board has issued the show cause notice in terms of Section 11-B and considered the reply of the respondent. In such a situation, there has no infraction in the procedure." (**Emphasis Supplied**)*

80. In the instant matter, the SCN clearly narrates the methodology adopted for the quantification of ill-gotten gains by the *Noticees*. I note from the records that the *Noticees* had together bought 48,35,850 shares of NDTV on December 26, 2007 at ₹400 per share. Thereafter, Mr. Prannoy Roy and Mrs. Radhika Roy had sold 24,10,417 and 25,03,259 shares, respectively on April 17, 2007 at 10:26:42 at ₹435.10 per share. The trading in the shares of NDTV was done by the *Noticees* while in possession of UPSI (purchase on December 26, 2007) and within 24 hours of disclosing the price sensitive information to the stock exchanges (sale on April 17, 2008), thereby, making a wrongful gain of ₹16,97,38,335/-. Under the circumstances, the argument advanced by the *Noticees* that the relevant trades pertained to the year 2008 while the power to disgorge was inserted in section 11B in the year 2013 and, therefore, power to disgorge cannot be invoked

retrospectively is a grossly flawed one and suffers from a complete disregard of the clarificatory nature and true import of the said amendment. Hence, the same is untenable in law. Considering the foregoing, I reject the aforesaid contention of the *Noticees* challenging the power of SEBI to issue directions for disgorgement of the ill-gotten gains earned by the *Noticees*.

81. The *Noticees* have placed reliance on the findings of the Supreme Court of the United States of America in *Kokesh vs. SEC*, but I note that while discussing the power of the Board to issue directions regarding disgorgement, the Ld. Tribunal in *Gagan Rastogi vs SEBI* (Misc. Application No. 206 of 2017 and Misc. Application No. 318 of 2017 and Appeal No. 91 of 2015) have, *inter alia*, held as under:

> *"24. Order on Kokesh (Supra) also does not come to the help of the appellants on several grounds. Firstly, in the Indian context disgorgement is treated as an equitable remedy and not as a penal provision and there are no limitations to the application of provisions under SEBI Act. Secondly, in the instant appeals it is clearly evident that the gain or unjust enrichment made by the appellants only has been directed to be disgorged. As such what is directed to be disgorged is a direct gain to the appellants and no indirect gains are involved. Thirdly, Kokesh was issued by applying limitation treating it as a criminal penalty in the facts of that matter and this ratio is not universally followed thereafter. This is evident when the second circuit issued a Summary Order on August 29, 2017 in Securities and Exchange Commission v. Metter (No. 16-526, 2017 WL 3708084 (2d Cir. Aug, 29, 2017) just a few months after Supreme Court's order dated June 05, 2017 in Kokesh (Supra). This clearly shows that Kokesh (Supra), even in the US is inconclusive and clearly the spirit of Contorinis (Supra) still prevails….." (**Emphasis Supplied**)*

82. In view of the foregoing, I do not find any substance in the contention of the *Noticees* resisting disgorgement as proposed in the SCN.

K. In the absence of deliberate or contumacious defiance of law, where technical or venial breach coupled with *bona fide* belief and absence of *mens rea*, discretion should be exercised to not impose any penalty in pursuance of powers under section 15J.

83. In the foregoing paras I have deliberated on the power of the Board under the SEBI Act, 1992, with special reference to power to issue directions under section 11B of the Act, including the direction for disgorgement. I have also held after detailed discussion that the power to issue directions under section 11B, including direction to disgorge, is remedial and not punitive in nature. This position has been upheld by the Hon'ble Courts and the Hon'ble Tribunal. Since the direction to disgorge is not a penalty and the factors that have been enumerated for discretionary consideration under section 15J are relevant only in the

cases involving imposition of penalty, in my view, section 15J has no application in the present case. For better understanding, I find it necessary to reproduce herein below the provision of section 15J as was applicable to the instant matter involving the imputed insider trading carried out by the *Noticees*.

*"**Factors to be taken into account by the adjudicating officer.***

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:—

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

84. A plain reading of provision of section 15J of the SEBI Act, 1992 suggests that the factors enumerated therein are available for discretionary consideration only in those cases where a penalty is proposed be imposed. Whereas, for the purpose of calculating the disgorgement amount, the guiding parameters have already been enshrined in the Explanation to section 11B itself which provides that the disgorgement amount can be equivalent to the wrongful gain made or loss averted by contravention of securities laws. In the instant case, the SCN does not propose imposition of any penalty. The SCN has called upon the *Noticees* to show cause as to why directions under section 11B the SEBI Act, 1992, including directions for disgorgement of illegal gains, be not issued against them for the alleged violations of the SEBI Act and the PIT Regulations, 1992. In view of the above, contentions pressed by the *Noticees* that their matter being a matter of technical and venial breach *sans* any *mens rea* should be decided by invoking the discretion vested in terms of section 15J of the SEBI Act, 1992 and no penalty should be imposed, is factually erroneous and statutorily infirm. Accordingly, the same cannot be accepted.

85. Notwithstanding the foregoing observations and even otherwise, I find the contention of the *Noticees* regarding absence of *mens rea* in the instant case to be superfluous. The *Noticees* have relied upon the judgment of the Hon'ble Supreme Court in the matter of *Hindustan Steel Ltd. vs. State of Orissa (1969) 2 SCC 627*, and contended that even if minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a **technical** or **venial breach** of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute. In this regard, I find it necessary to mention that the Hon'ble Bombay High Court in *SEBI Vs. Cabot International Capital Ltd. (2004) 2 CompLJ 363 (Bom)* has observed as under:

> "……*This was a case under the Sales Tax Act, 1947 and penalty provision was in addition to the failure to register itself as a dealer. The observations of the Supreme Court that penalty for failure to carry out a statutory obligation would not be, ordinarily, imposed unless the delinquent party acted deliberately or was guilty of contumacious conduct or dishonest or in conscious disregard of its obligation is based on the proceeding being quasi-criminal proceeding. Obviously the said conservations shall not be applicable as it is, if the imposition of the penalty is for the breach of civil obligation. Moreover, the Supreme Court has held that imposition of the penalty is a matter of discretion of the authority to be exercised judiciously and on a consideration of all the relevant facts……"*

86. The aforesaid judgment in Cabot International case (*supra*) was quoted with approval by the Hon'ble Supreme Court in the *Chairman, SEBI Vs. Sriram Mutual Funds (2006) 5 SCC 361,* wherein the Hon'ble Supreme Court held as under:

> *"……..The Tribunal has erroneously relied on the judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa, AIR 1970 SC 253 which pertained to criminal/quasi-criminal proceeding. That Section 25 of the Orissa Sales Tax Act which was in question in the said case imposed a punishment of imprisonment up to six months and fine for the offences under the Act. The said case has no application in the present case which relates to imposition of civil liabilities under the SEBI Act and Regulations and is not a criminal/quasi-criminal proceeding……"*

87. Considering the foregoing, the insistence by the *Noticees* that in absence of deliberate or contumacious defiance of law on their part, where there is a technical or venial breach coupled with a *bona fide* belief and absence of *mens rea*, discretion should be exercised to not impose any penalty in pursuance of powers under section 15J, is based on an incorrect interpretation of the applicable provision of law having no bearing with the directions proposed in the SCN under section 11B of SEBI Act, 1992.

88. Having dealt with the preliminary objections raised by the *Noticees* in the preceding paras questioning the validity and jurisdictional competencies of the present proceedings on various technical and procedural grounds, I would now proceed to deal with the replies and submissions of the *Noticees* on merit. To begin with, in order to determine as to whether the *Noticees* have actually contravened the provisions of the PIT Regulations, 1992, the following key questions need to be answered:

(a) Whether during the relevant period the *Noticees* were insiders in terms of the provisions of the PIT Regulations, 1992?

(b) If yes, whether the information available to the *Noticees* was a price sensitive information, likely to materially affect the price of shares of NDTV, as envisaged in

regulation 2(ha)(vii) of the PIT Regulations, 1992 and the said price sensitive information were unpublished?

(c) If yes, whether during the relevant period the *Noticees* had traded in the shares of NDTV?

(d) If yes, whether the *Noticees* had traded in the shares of NDTV while in possession of unpublished price sensitive information in violation of provisions of the PIT Regulations, 1992?

(e) If yes, whether the *Noticees* had made any gain while trading in the shares of NDTV?

89. I proceed on the undisputed fact that the two *Noticees,* i.e., Mr. Prannoy Roy was the Chairman and Whole Time Director, and Mrs. Radhika Roy was the Managing Director of NDTV. Further, these *Noticees* were also the promoters of the *Company*. Hence, there cannot be any doubt that the *Noticees* are squarely covered by the definition of '*insider*' in terms of regulation 2(e) read with 2(c) of the PIT Regulations, 1992. This, therefore, affirmatively answers the first question set out at (a) above.

90. Adverting to the second question, I note that the information in the instant case (i.e., PSI-6) pertained to evaluation of options for reorganisation of the *Company* with the objective of unlocking shareholder value and to promote focused growth of its various businesses. As per the information filed by the *Company* with the Stock Exchanges, the proposed reorganisation could include de-merger/split of the *Company* into News related businesses and investments in '*Beyond News*' businesses which are currently held through its subsidiary NDTV Networks Plc. As per regulation 2(ha) of the PIT Regulations, 1992, *significant changes in policies, plans or operations of the company shall be deemed to be "price sensitive information*". Moreover, the stated objective of reorganisation of the *Company* was to unlock the shareholder value. Considering the foregoing, I am of the firm view that such an information regarding the proposed evaluation of options for reorganisation of NDTV, if published was likely to materially affect the price of securities of the *Company*. In terms of regulation 2(ha) the test to determine whether a particular information is price sensitive or not is that of "**likely material affect**" which means that such an information must be considered by an ordinary investor to be the one which may affect the price of the securities of a company, if published. The requirement cannot be paired and be in step with the actual movement in the price of the scrip. In reality, the information in question may or may not have any such impact on the market price of the shares. Thus, while applying the said test, the aforesaid information pertaining to the proposed re-organization of business of NDTV deserves to be termed categorically as price sensitive information. As per the records available before me, Annexure 4 to the SCN entails various communications with regard

to the proposal for reorganisation. It is noticed that the first credible communication in this regard commenced on September 07, 2007 and culminated in the filing of the said information with the stock exchanges by the *Company* on April 16, 2008.

91. I also intend to rely on the letter dated October 12, 2015 (Annexure 3 to the SCN) whereby NDTV had furnished certain information in response to the SEBI's summons dated October 5, 2015. I notice from the said letter that:

(a) NDTV had submitted a list of seven (7) entities who were involved in the discussions pertaining to the said price sensitive information (PSI-6).
(b) The *Noticees* were a part of this list and were also involved in the discussions pertaining to the said price sensitive information.
(c) The *Company* has stated that discussions regarding launch of *NDTV Good Times* were being held within the group and the persons involved in the formation of the said price sensitive information included the *Noticees* herein.
(d) The said discussion crystallized into price sensitive information in September 2007.
(e) The scheme of demerger approved by the *Company's* Board, whereby, its various businesses were proposed to be demerged into separate entities, was categorised as price sensitive information. Accordingly April 16, 2008, was the date when the said price sensitive information had crystallised.
(f) The said price sensitive information had been placed in the public domain through a disclosure made to the stock exchange on April 16, 2008.

92. In my considered view, these submissions by the *Company* itself - which is promoted/ managed/ run by the *Noticees,* preclude any merit whatsoever in the contention of the *Noticees* that the imputed information was not a price sensitive information because of the long duration during which it remained unpublished. The *Company* canvasses one fact in its written submission before SEBI, while the persons (*Noticees*) who were ultimately responsible for managing/ running the enterprise are propounding another claim to the contrary. As a principle, if one set of information is presented by the company as price sensitive for a certain set of entities against which it has complained, then it invariably would equally be a price sensitive information for other entities as well, more so for the similarly placed entities. This would be so even if the complaint omitted their names. In the instant case, the *Company* has categorised the PSI-6 as a UPSI relevant for one Mr. Sanjay Dutt and his connected entities, while leaving out the same for the *Noticees* herein who were similarly placed (if not better placed), as far as their trading in the shares of NDTV is concerned. In view of the foregoing, I find that the information pertaining to reorganisation of the *Company* was, without an iota of doubt, an unpublished price sensitive information (UPSI) that commenced from September 07, 2007, when it was being discussed within the group till its disclosure to the stock exchange on April 16, 2008. Thus,

the second question about the existence of UPSI set out at (b) above also gets answered in the affirmative.

93. This finding is further reinforced by the announcement dated June 30, 2008, whereby, NDTV informed the stock exchanges about the outcome of its Board meeting held on June 30, 2008. Since, this announcement was in continuation to the earlier announcement dated April 16, 2008, with respect to reorganization of the *Company*, the same has not been treated as a separate price sensitive information and is, therefore, included within the ambit of the imputed PSI-6. It may be noted that vide the said announcement, the *Company* had, *inter alia*, informed the stock exchanges that:

(a) The Board of Directors of the *Company* had, at their meeting held on April 16, 2008, constituted a committee of the Board to evaluate the need and options for reorganization of the *Company* with the objective of unlocking shareholder value and to promote growth of various businesses of the *Company*.

(b) The Committee has been in the process of evaluating various options for reorganization of the *Company* (having regard to successful achievement of the strategic objectives, various regulatory and contractual constraints and the interests of all stakeholders) and recommended separation of the *Company's* businesses into separate entities principally divided along 'news-plus' and 'entertainment-plus' lines.

94. Moving on to the third, fourth and fifth queries set out at (c), (d) and (e) above, they are taken up for consideration together as they are interlinked. I note from the SCN that Mr. Prannoy Roy had bought 48,35,850 shares of NDTV on December 26, 2007. It is observed from the copy of the statement of holdings received from CDSL that 48,35,850 shares were credited on December 28, 2007 to an account (DP id: 12029900 and Client id: 05474471) held jointly by the two *Noticees*. Considering the same, the SCN alleges that the two *Noticees* had together bought 48,35,850 shares of the *Company* on December 26, 2007, for a value of ₹19,34,34,000. This fact has not been disputed by the *Noticees*. In view of the foregoing, I do not have any doubt that the *Noticees,* being the "insiders" with respect to NDTV in terms of regulation 2(e) of the PIT Regulations, 1992, have traded in NDTV shares during UPSI period pertaining to PSI-6, while in possession of the UPSI. Regulation 3(i) of the PIT Regulations, 1992, *inter alia*, prohibits an insider, either on his own behalf or on behalf of any other person, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI. Further, in terms of regulation 4 of the PIT Regulations, 1992, any insider who deals in securities in contravention of regulation 3 is said to be guilty of insider trading. In view of the aforesaid discussions and factual findings, I find that, in the instant case, the *Noticees*, by dealing in shares of NDTV on December 26, 2007, while in possession of unpublished price sensitive information (PSI-

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

95. It is further noted that the *Noticees* have proceeded to deal in the securities of NDTV during the closure of trading window *qua* them. In this respect, regulation 12(1) of the PIT Regulations, 1992, require that *all listed companies and organisations associated with securities markets 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.* Further, regulation 12(2) of the PIT Regulations 1992, stipulates that the entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations. I note that para 3.0 of Clause 'A' of Schedule I of the PIT Regulations, 1992, prescribes measures for prevention of misuse of price sensitive information. Para 3.1 obligates all directors/officers and designated employees to follow the trading window restrictions. Para 3.2.4 requires that the trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public. Para 3.2.5 mandates that all directors/officers/designated employees of the company shall conduct all their dealings in the securities of the company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the company from time to time.

96. I have perused the 'Code of Conduct for Prevention of Insider Trading' (Code of Conduct) adopted by NDTV during the Investigation Period as submitted by the Company vide its letter dated June 22, 2015. As per the Model Code specified in Schedule I of PIT Regulations, 1992 (Clause 3.2.2 & 3.2.4), when trading window is closed, employees/directors shall not trade in company's shares and the trading window shall be opened 24 hours after the UPSI was made public. NDTV in its own code of conduct also has specified similar stipulations. In the instant case, however, I note from the records that the unpublished price sensitive information (UPSI) regarding reorganization of business of NDTV came into existence on September 07, 2007 and was disclosed to the stock exchanges on April 16, 2008 at 16:13:09 (NSE) at 17:45:31 (BSE). Therefore, as per the requirements of para 3.2.5 read with para 3.2.4 of the Code of Conduct, the *Noticees* were absolutely prohibited from trading at least till 24 hours after the information was disclosed to the stock exchanges, i.e., till April 17, 2008. On the contrary, as per the records before me, Mr. Prannoy Roy had sold 2,410,417 shares and Mrs. Radhika Roy had sold 2503259 shares of the *Company* on April 17, 2008 itself. Therefore, it is an undisputed fact that the *Noticees* had traded in the shares of the *Company* on April 17, 2008 at 10:26:42, i.e., within 24 hours of the announcement pertaining to PSI-6 on April 16, 2008 in violation of the Code of Conduct of NDTV.

97. Considering the foregoing factual details, it is evident that the *Noticees* had traded in the shares of the *Company* during the operation of prohibition on them (closing of trading window). Hence, such conduct on the part of the *Noticees* is not in compliance with Code of Conduct of NDTV and regulation 12(2) read with 12(1) of the PIT Regulations, 1992, as it was impermissible for them to trade in the shares of the *Company* within 24 hours of disclosure of the price sensitive information by the *Company* to the stock exchange. The above conduct of the *Noticees* reinforces the charge of insider trading given the fact that the *Noticees* purchased the shares of NDTV during the operation of UPSI in contravention of law and also sold shares of NDTV when the trading window was closed for them. Considering that the *Noticees* held top management positions in the *Company* and were being actively assisted by legal advisors/professionals, the explanations offered by them to justify such acts are far from satisfactory. The *Noticee No. 1* had bought 4835850 shares of NDTV on December 26, 2007 as reflected in his joint demat account held with *Noticee No. 2* and again both the *Noticees* together sold 4913676 shares within 24 hours of the said UPSI being disclosed to the stock exchanges. In the process, they have made a wrongful gain of ₹16,97,38,335/- which is liable to be disgorged from the *Noticees*. The near similar quantity of shares traded on the two occasions establish the inseparable relationship between the first and the second violation. In view of the foregoing, I am of the considered view that the *Noticees* have failed to comply with the requirements of Code of Conduct of NDTV read with regulation 12(2) read with 12(1) of the PIT Regulations, 1992. The aforesaid compelling facts imply that the answers to the last three queries set out above at (c), (d)and (e) are also in the affirmative.

98. The *Noticees* have attributed full knowledge of all their tainted trades to SEBI and the stock exchanges and have also argued that none of the leading law firms advising them on their transactions ever alerted them on possible infraction of the PIT Regulations, 1992, in respect of any of these transactions. According to the *Noticees,* the purchases of shares of NDTV were made on December 16, 2007, with an intention to avert a hostile takeover of the *Company*, while the sale of shares on April 16, 2008, were made as part of a prior agreement with the buyer to raise funds to meet their open offer obligations that were triggered by their purchases made on December 16, 2007.

99. These arguments have also been considered and I do not find them to be exculpatory in nature. No provision exists (and none have been brought to my notice) pertaining to any of the regulations under the PIT Regulations, 1992, under which the relevant trades executed by the *Noticees* are exempted from its purview. As regards the acquisition of shares by the *Noticees* on December 26, 2007, I note that:

(1) Mr. Prannoy Roy and Mrs. Radhika Roy had purchased 48,35,850 shares on December 26, 2007, which constituted 7.73% of the share capital of the company.

(2) As per the exchange (BSE) disclosures made on December 27 and 28, 2007 by Mr. Prannoy Roy, Mrs. Radhika Roy and NDTV under the Takeover Regulations, 1997 and the PIT Regulations, 1992, it is observed that Mr. Prannoy Roy and Mrs. Radhika Roy had bought 2,417,925 shares each (total 48,35,850 shares) on December 26, 2007.

(3) On December 31, 2007, NDTV has, *inter-alia*, informed exchanges that the promoters, Mr. Prannoy Roy and Mrs. Radhika Roy have acquired further stake of 7.73% (48,35,850 equity shares) in NDTV.

(4) Further, on December 31, 2007, Mr. Prannoy Roy and Mrs. Radhika Roy (Acquirers) and RRPR Holdings Pvt. Ltd. (Person Acting in Concert) have made a Public Announcement (Open Offer) to the equity shareholders of NDTV, as required under the Takeovers Regulations, 1997.

100. It is claimed that the *Noticees* and NDTV had made disclosures / public announcement as required under the Takeover Regulations, 1997 and the PIT Regulations, 1992 upon/after acquisition of 48,35,850 shares on December 26, 2007. The *Noticees* have also stated that pursuant to the acquisition of shares by them on December 26, 2007, they have triggered an open offer and were constrained to avail large amount of loan funds to fulfill obligations under the Takeover Regulations, 1997. Subsequently, the *Noticees* have purchased 1,26,90,257 equity shares of NDTV, in the Open Offer. The *Noticees* have contended that SEBI and stock exchanges were privy to all these transactions.

101. I have perused the records and find that the *Noticees* have filed some disclosures under the Takeover Regulations, 1997 and the PIT Regulations, 1992. However, these disclosures dealt exclusively with the abrupt increase in the shareholding of the promoters in the *Company*. These disclosures did not take into account the unpublished price sensitive information that was in existence at that point in time. It needs no elaboration that disclosure regarding change in shareholding of the promoters in the company and disclosure about trading in the shares of a company by the Company's insiders, operate on two entirely different spheres and footing. The contention of the *Noticees* that pursuant to their disclosures about enhancement of their shareholding by 7.73% of the share capital of the company, SEBI and the stock exchanges were automatically made aware of their transactions is a totally misplaced argument and a fallacious one. The trading in the shares of the *Company* is characterized as insider trading only when the same is considered on the anvil of unpublished price sensitive information. Any public disclosure of change in shareholding in complete disregard of the existence of an unpublished price sensitive information that has been violated in the process of increasing the shareholding of a

company, cannot be deemed to be a disclosure to SEBI/stock exchange about the insider trading indulged in by the *Noticees*. From the submission of the *Noticees* it is quite clear that the acquisition of shares while in possession of UPSI is being wrongfully cloaked as a creeping acquisition under the Takeover Regulations, 1997 and as an incremental acquisition under the PIT Regulations, 1992.

102. It is pertinent to bear in mind that creeping acquisition and acquisition pursuant to possession of UPSI are diametrically opposite actions. The instant case does not pertain to and is in no manner concerned with the disclosure under the PIT Regulations, 1992 or the Takeover Regulations, 1997, for an incremental acquisition of shares which might have been similar to creeping acquisition. On the contrary, it deals with a grave allegation of dealing in shares by an insider while in possession of UPSI (PSI-6). Any acquisition by an insider on the basis of an UPSI cannot be camouflaged as a creeping acquisition for seeking of immunity from such a serious violation. The fact that the insider was privy to an UPSI in the instant case and has acquired shares while in possession of such UPSI, in my opinion, is more than adequate to negate the claims put forth by the *Noticees* to justify their acquisition of shares. These arguments, therefore, do not succeed. It is inexplicable that the *Noticees* after having invoked 'hostile takeover' as a ground to justify their purchase of shares amounting to 7.73 % of the total issued capital of the *Company* while in possession of the UPSI on December 16,2007, have at the same time, vehemently argued to justify their decision to sell their shares on April 17, 2008, resulting in substantial dilution of their shareholding , so as to obtain funds to comply with the open offer obligation triggered by the purchase of shares on December 16, 2007,while in possession of UPSI. Such a peculiar defense is wholly untenable in law. Under no circumstances can an insider be permitted to take such a flawed defense to justify purchasing of shares in large quantities, while in possession of an unpublished price sensitive information under the guise of a business compulsion. Considering the foregoing discussions, the claims of the *Noticees* attributing prior knowledge to SEBI and Stock Exchanges about the imputed insider trading is not meritorious and, hence, cannot be accepted.

103. As regards the transaction of sale of shares by the *Noticees* on April 17, 2008, I note that the *Noticees,* i.e., Mr. Prannoy Roy and Mrs. Radhika Roy sold 24,10,417 shares (3.85% of the share capital) and 25,03,259 shares (4.00% of the share capital), respectively on April 17, 2008. As per the stock exchange (BSE) disclosures on April 19, 2008 and April 22, 2008, it is observed that the *Noticees* herein and NDTV had made the requisite disclosures under the Takeover Regulations, 1997 and the PIT Regulations, 1992. The *Noticees* have contended that the SCN has overlooked that the transaction of April 2008, was the subject-matter of a Bulk Deal implemented with full disclosure, in terms of the extant regulatory framework contained within the scope and ambit of SEBI Circulars No. SEBI/MRD/SE/Cir-7/2004 dated 14 January 2004 and MRD/DoP/SE/Cir-19/05,

dated September 02, 2005. The *Noticees* have further submitted that there was no material impact of the announcement made on April 17, 2018, on the price of the share of the *Company* either directly or indirectly. Further, the price of the promoters' sale of shareholding to a third party was already the subject-matter of a binding term sheet signed and executed on March 07, 2008, and such a sale had been preceded by a process of due diligence that had factored in all the elements relevant to determination of the negotiated price..

104. The argument has been considered. It is noted that the copy of the binding agreement has not been submitted. As far as the Circulars cited are concerned, they exclusively deal *with "Disclosure of Trade Details of Bulk Deals*" and "*Guidelines for execution of block deals on the stock exchanges*". Thus, a disclosure made pursuant to these Circulars cannot be relied upon to claim that substantial compliance was made to the provisions of the PIT Regulations, 1992. In my view, the requirements of compliance with the provisions of the PIT Regulations, 1992, stand on a higher footing than the afore-referred Circulars on bulk deal. The PIT Regulations, 1992, *inter alia*, enumerate the conditions as to when an insider can trade and cannot trade. By any stretch of imagination, the Regulations do not exempt any trade executed by an insider much less a trade executed through bulk deals pursuant to a prior agreement to carry out such trade. The contention of the *Noticees* that the shares acquired during December acquisition were not subject matter of April sale, also does not merit any consideration as shares are fungible assets and it cannot be determined as to which shares were bought in a particular transaction and which were sold in another transaction, since the PIT Regulations do not carve out any exceptions for such trades. Moreover, the *Noticees* in their submissions have averred that the December 2007 acquisition and April 2008 sale are incapable of being viewed in isolation which reinforces the fact that the purchases and sale made by the *Noticees* in the shares of NDTV have to be considered together for the purpose of applicability of the PIT Regulations, 1992.

105. The case laws that the *Noticees* have relied upon to justify their trade in the shares of the *Company* do not come to their aid as the facts of the instant case are clearly distinguishable from the facts obtaining in those case laws. For example, the reliance of the *Noticees* on the decision of the Hon'ble Tribunal in *Piramal Enterprises Ltd. vs SEBI (supra)* is not relevant. In the aforesaid matter, the allegations pertained to failure to close the trading window during the UPSI period and for failure to handle the price sensitive information relating to sale of the domestic healthcare business on a 'need to know' basis etc. As distinguished from the same, the instant matter pertains to the trading in the shares of the *Company* by the insiders while in possession of the UPSI. It is also noteworthy to state here that in the *Piramal* matter, the Hon'ble Tribunal held as under:

"*24. Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty. Other factors should be considered including those stated in Section 23J of the Act which apparently was not considered.*"

106. The foregoing discussions establish that the *Noticees* violated the provisions of the PIT Regulations, 1992, for which the instant proceedings have been initiated as remedial in nature. Thus, the plea taken by the *Noticees* that their imputed insider trades should be considered in the light of a compulsion to avoid hostile takeover as well as to meet the financial obligations under open offer, and that the purchases were made through bulk deals under disclosure to Stock Exchanges, are conjectural statements which can in no way justify or mitigate their misconduct under the PIT Regulations, 1992.

107. In the matter of *E. Sudhir Reddy vs. SEBI* (Appeal no. 138 of 2011 decided on December 16, 2011) the Hon'ble Tribunal observed that:

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

108. The *Noticees,* apart from insisting on the disclosures made by them about their transactions in the shares of the *Company* to SEBI and Stock Exchanges under the Takeover Regulations, 1997 and bulk deal mechanism, have also stressed that they have executed the imputed trades after having pre-clearance from the *Company* and were not influenced by any UPSI while executing those trades. However, the *Noticees* have ignored the fact that the charges herein against them are not related to any non-disclosure or trading without obtaining pre-clearance. Rather, the SCN has a serious charge of insider trading against the *Noticees*, who have traded in securities while in possession of the UPSI. So far as the claims of obtaining

a pre-clearance and indulging in bulk or block deals are concerned, it is relevant to note that bulk or block deal is a methods of dealing in securities permitted by the Regulator subject to applicable laws/regulations. Hence, they do not, *ipso facto* grant any immunity from violations committed under the PIT Regulations. 1992 while executing such trades. Similarly, the Code of Conduct applies to listed companies for the purpose of regulating, monitoring and reporting by the insiders of their dealing in securities as insiders, as specified under the provisions of PIT Regulations. The above stated mechanism only prescribes the mode and manner in which an insider is expected to act while dealing in securities. It cannot be contemplated that the regulatory regime under the PIT Regulations read with the Code of Conduct can envisage of a situation in which the Company can give pre-clearance to anybody to engage in insider trading in violation of the PIT Regulations, 1992. Therefore, compliances relating to disclosure (under the Takeover Regulations, etc.) and obtaining a pre clearance from the *Company* before indulging in such activities would not legitimize any insider trades executed in violations of the statutory provisions governing the same. In other words, any pre clearance without disclosure by the designated person that he is in possession of unpublished price sensitive information even if the trading window is not closed, would amount to violations of regulations 3 and 4 of the PIT Regulations, 1992, since the requirement of pre-clearance of trade has been mandated as a preventive measure to contain insider trading and certainly not to abate, mitigate or facilitate insider trading. Under the circumstances, if an insider trades in the shares of his company when in possession of UPSI, he irrefutably indulges in insider trading, notwithstanding any pre-clearance obtained to execute such trades or resorting to block or bulk deals during the existence of UPSI period. Therefore, the attempt of the *Noticees* to seek shelter under the plea of having obtained pre-clearance for carrying out the insider trading, cannot possibly be upheld by any yardstick, be it under the SEBI Act or under the provisions of the PIT Regulations, 1992.

109. It is a fact on record that Mr. Prannoy Roy was the Managing Director/Promoter and Mrs. Radhika Roy was the Chairman/Promoter of NDTV during the UPSI period and were in possession of the UPSI (PSI-6). That the *Noticees* have purchased 4835850 shares of NDTV while in possession of an UPSI-6 during the UPSI period and have sold shares of NDTV within 24 hours of public disclosure of the said price sensitive information (PSI) to the stock exchanges is borne out of undisputed facts. But for their purchases of those 4835850 shares on December 16, 2007, while in possession of UPSI, which triggered the obligation of open offer, there would not have been any necessity for the *Noticees* to enter into the sale transaction of NDTV shares on April 17, 2008. Thus, unquestionably the imputed insider trading of December 16, 2007 had a direct link with the sale transaction of April 17, 2008 (pursuant to a trigger of open offer under the Takeover Regulations, 1992) as those purchases of shares of NDTV made on December 16, 2007, led to the consequent sale of shares on April 17, 2008. Admittedly, the *Noticees* had traded only in the shares of NDTV

during the UPSI period (i.e., September 7, 2007 to April 16, 2008) and were part of the decision making chain that had led to crystallization of the UPSI (PSI-6) on September 07, 2007. Under the circumstances, the plea taken by the *Noticees* - first by arguing that the PSI-6 pertaining to reorganization of the *Company* did not fall within the ambit of regulation 2(ha)(ii) of the PIT Regulations, 1992, and then by asserting that various disclosures were made by them while complying with their open offer obligations on their insider trades, are futile. They do not serve to assist or exonerate the *Noticees* from their liabilities as insiders under the PIT Regulations. I, therefore, find that the *Noticees* have unambiguously contravened:

(a) Regulation 3(i) and regulation 4 of the PIT Regulations, 1992 read with regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 and section 12A(d) and (e) of the SEBI Act, 1992; and

(b) NDTV's Code of Conduct and regulation 12(2) read with 12(1) of the PIT Regulations, 1992.

110. It is trite law that the corporate insiders stand in a fiduciary relationship with the shareholders of the company concerned. The insiders invariably have access to the unpublished price sensitive information by virtue of their position in the corporate hierarchy or on account of their official duties. This access creates an information asymmetry between those having access to such information and the multitude of shareholders/ investors who have no access to such information. The protection of investors in the securities market requires that there should not be any information asymmetry between these two classes of stakeholders. The PIT Regulations, 1992, are aimed at addressing the information asymmetry. It prohibits trading in the shares of the company by the insiders while in possession of UPSI. It also requires the listed companies to draw up a code of conduct so that any trading by the insiders remains above board. Such regulation of trades of the insider is necessary to protect the interest of investors in the securities market and also for regulation and development of the market. If insider trading is not contained, prohibited and dealt with firmly, it would hamper and jeopardize the interest of a normal shareholder. Typically, insider traders get an unfair advantage over people with whom they engage in securities transactions and such trades executed by the insiders are, therefore, wrong on grounds of justice and equity. The insider information is available to the insiders on account of their important corporate hierarchical position. Any fiduciary holds a position in trust for others. If the persons like the *Noticees*, who are obligated to observe fiduciary duties while exercising their powers fail to do so and instead use their position to their own advantage pecuniary or otherwise, it constitutes a fraud perpetrated on the common shareholders whose trust reposed in them has been blatantly breached. It is, therefore, of paramount importance that trading by the insiders is

monitored and regulated, especially when they are in possession of UPSI. Wherever such trading results in accrual of unlawful gain, such insiders are required to forgo such gain. Considering the foregoing, the following two issues are to be decided:

(a) Direction to disgorge an amount equivalent to the wrongful gains made on account of insider trading in the scrip of NDTV along with interest thereon;

(b) Direction to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

111. I note from the SCN and have already pointed out earlier in this order that the *Noticees* had made a wrongful gain of ₹16,97,38,335 while trading in the shares of the *Company*. The gains made by the *Noticees* have been calculated as the difference between actual sell price (i.e., ₹435.1) received and actual buy price (i.e., ₹400) of 4835850 shares of NDTV incurred by the *Noticees*. For the reasons enumerated above and in order to protect the interest of investors and the integrity of the securities market, I, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992, read with section 11, 11(4) and 11B of the SEBI Act, 1992, hereby issue the following directions:

(a) The *Noticees* herein, namely, Mr. Prannoy Roy (PAN: AAHPR6037K) and Mrs. Radhika Roy (PAN: AAHPR6038G) shall, jointly or severally, disgorge the amount of wrongful gain of ₹16,97,38,335/- as computed in the show cause notice, alongwith interest at the rate of 6% per annum from April 17, 2008, till the date of actual payment of disgorgement amount alongwith interest, within 45 days from the date of coming into force of this order; and

(b) The *Noticees* herein, i.e., Mr. Prannoy Roy (PAN: AAHPR6037K) and Mrs. Radhika Roy (PAN: AAHPR6038G) shall be restrained from accessing the securities market and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years.

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

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

stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

Sd/-

DATE: NOVEMBER 27, 2020
PLACE: MUMBAI

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