WTM/MPB/EFD-DRA-3/ 33 /2018

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992 READ WITH REGULATION 12 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015.

***IN RE* INSIDER TRADING IN THE SCRIP OF MULTI COMMODITY EXCHANGE OF INDIA LIMITED**

IN RESPECT OF

S. No.	Name of the entity	PAN
1	SHRI HARIHARAN VAIDYALINGAM	AABPV4103E

1. Securities and Exchange Board of India ("SEBI") conducted an investigation in the scrip of Multi Commodity Exchange of India Limited ("MCX") for the period April 27, 2012–July 31, 2013 (hereinafter referred to as the "Investigation Period").

2. Upon completion of investigation in the matter, SEBI passed an ex-parte interim order dated August 2, 2017 (hereinafter referred to as "*interim order*") against 8 persons namely, Shri Joseph Massey, Shri Shreekant Javalgekar, Smt Asha Shreekant Javalgekar, Shri Paras Ajmera, Shri Anjani Sinha, Smt Tejal M. Shah, Shri Mehmood Vaid and Shri Hariharan Vaidyalingam directing that the loss averted by them while dealing in the scrip of MCX in violation of the provisions of SEBI (Prevention of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") be impounded. SEBI also directed the said entities not to dispose of or alienate any of their assets/properties/securities, till such time the individual amount of loss averted is credited to an Escrow Account created specifically for the purpose in a Nationalized Bank. It was further directed that the said Escrow Account(s) shall create a lien in favour of SEBI and the monies kept therein shall not be released without permission from SEBI.

3. Vide the *interim order*, the aforesaid entities were also advised to show cause as to why suitable directions under sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India ("SEBI Act") and regulation 11 of the PIT Regulations, 1992 read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations, 2015"), should not be taken/imposed against them including directing them to disgorge an amount equivalent to the total loss averted on account of insider trading in the scrip of MCX along with interest thereupon.

4. In the meantime, the *interim order* was appealed by all the entities except Shri Hariharan Vaidyalingam before the Hon'ble Securities Appellate Tribunal ("SAT"). The appeals were disposed by Hon'ble SAT vide separate orders, *inter alia*, directing Sebi was directed to pass final order as expeditiously as possible and in any event within three months from date of receiving the objections/representation of the entities.

5. Pursuant to orders of Hon'ble SAT the aforesaid entities (who had filed appeals) filed their respective representations / objections/ replies to the *interim order*.

6. Shri Hariharan Vaidyalingam (hereinafter referred to as "the Noticee") also filed his reply vide letter dated September 12, 2017, *inter alia*, submitting as under:

   The said Order is in violation of principles of natural justice as no notice was issued, no copy of the complaint or the investigation report was provided to me and/or any clarifications were sought from me before passing the said Order. By the said Order, the Securities and Exchange Board of India (SEBI) has *inter alia* computed a convoluted sum to the tune of Rs.31, 18,45,914/- as "loss averted", and computed interest thereon @ 12% constituting Rs. 14,96,86,039/- until the date of the said Order, i.e. a total amount of Rs.46,15,31,953/-. By the said Order, SEBI has *inter alia* directed that I should not dispose of or alienate any of my assets/properties/securities, till the allegedly wrongfully "averted losses" are credited by me to an Escrow Account and freezing all my bank accounts and demat accounts.

   A. The facts set out hereafter would demonstrate that I was neither in position to know nor was I privy to the said Show Cause Notice until it was-available in the public domain. I say that –

      a) I ceased to be a director on the board of NSEL on December 20, 2011, which is 4 months prior to the issuance of the Show Cause Notice dated April 27, 2012;

      b) I ceased to be a director [nominee of FTIL] in MCX on June 28, 2012;

c) I did not attend (from June 1, 2011 to June 28, 2012) any of the board meetings of MCX either when the said Show Cause Notice dated April 27, 2012 was issued or prior thereto and

d) I have been out of India, stationed in Singapore since May 2011 initially for SMX and thereafter as consultant.

B. The said Order has been passed on the presumption that I was in possession of the USPI, without any material to support it. I say that while the said Order makes reference to the fact that I ceased to be the Non-Executive Non-Independent Director (nominated by FTIL) of NSEL from December 20, 2011, the said Order has failed to take into account the fact that I had resigned from the Directorship of MCX (refer to letter dated July 31, 2011) on July 31, 2011 with immediate effect. The said Order also records that my employment with FTIL came to an end in June 20, 2011. In view of these facts, it is inconceivable that I could have been in possession of the purported UPSI, when I was not a director in either of these entities viz. FTIL NSEL and MC during the Investigation

C. The said Order also alleges that I have averted potential loss in the scrip of MCX amounting to Rs. 31,18,45,914/-. MCX was listed on the stock exchanges on March 9, 2012. I say that after receipt of the said Order, I have gone through the historical data pertaining to value of MCX scrip during the period April 2012 to December 2012 (I sold shares of MCX during July - August 2012), available on the NSE website. It is evident that during the period May 2012 to September 2012, there was not much of movement in the price of the MCX scrip and the average scrip price remained approximately Rs. 1,089/-.

D. The allegation of SEBI is that mere issuance of SCN to NSEL is the beginning point of UPSI and had the news of issuance of SCN to NSEL broke out, the same would have had material impact on the MCX scrip. Admittedly, the news of issuance of SCN broke out on October 3, 2012 in various newspapers and if SEBI's allegation above is accepted to be true, the price of MCX scrip ought to have fallen. However, this allegation of SEBI stands belied by the fact that the average price of MCX scrip, which was Rs. 1260.78/- on October 3, 2012 increased to Rs. 1583.07/- on November 30, 2012, and till December 2012 it remained much above the average price of Rs. 1086.34/- at which I sold the shares. Without prejudice to my contentions and without admitting any of the allegations of SEBI in the said Order, I say that contrary to SEBI's allegation that I averted loss by dealing in MCX scrip while in possession of UPSI, I have made losses on sale of MCX shares, when compared with my sale price, to the price of the said shares even during the period under investigation.

E. Without prejudice to the contention that I was not privy to the SCN until it was widely published, I say that the said Order records (on page 30) that *"FTIL was the holding company of NSEL, it is reasonably expected that Directors, etc. of FTIL and NSEL had*

access to UPST". The Investigation Period determined by SEBI for its investigation in the present matter is from `April 27, 2012 to July 31, 2013'. Admittedly, I was not a Director either in FTIL or in NSEL during the Investigation Period. Further SEBI in its Investigation Report had discharged various persons at the investigation stage on a finding that *"MCX did not have any stake in NSEL and NSEL also did not have any stake in MCX. The only connection of MCX with NSEL is, these were group companies, with FTIL having 99.99% stake in NSEL and 26% stake in MCX. Further, in the absence of independent evidence, it is not reasonably expected that an entity who was employed only in MCX during the UPSI period would have access to UPSI which was emanated from NSEL* ". Therefore, the said Order is factually and legally incorrect and deserves to be recalled against me.

F. It is pertinent to note that SEBI admits in paragraph B (viii) (page 9 of said Order) that the price of the scrip of MCX decreased substantially only after the announcement of suspension if trading by NSEL was made on July 31, 2013. Admittedly, I sold shares of MCX much prior to the said announcement.

G. It is submitted that SEBI's action of passing an *ex-parte ad interim* order cum show cause notice dated August 2, 2017 in respect of sale of shares that took place more than 4.5 years ago and imposing plenary and oppressive restrictions on my enjoyment of legitimacy acquired property (including funds lying in my bank accounts), thus preventing me from meeting even the day to day requirements of my life and the needs of my family, without establishing any urgency or pressing need for the same and without considering any of the clarifications or explanations provided by me in the course of investigation, is bad in law and contrary to principles of natural justice.

H. It is submitted that the Ld. Whole Time Member in the said Order cum Show Cause Notice at paragraph 2.3.3 and 2.3.4 has admitted that it was not the issuance of the Show Cause Notice but the implication thereof i.e. suspension of contracts and publication thereof on July 31, 2013 was the UPSI. As stated above the scrips of MCX were dealt with much prior thereto and therefore, cannot by any stretch of imagination be construed to have dealt with the same while in possession of UPSI. In view thereof, it is submitted that the findings recorded by the Ld. Whole Time Member at paragraph no.2.4.5 are incorrect and have been made without taking into consideration the aforesaid facts.

I. I was associated with (FTIL) as an employee from January 1, 2001 to June 20, 2011. During my tenure with FTIL, I was appointed as "Chief Technology Officer" until March, 2005 and was assigned the role of technology product development, which includes within its scope the designing, development and implementation of various software products of FTIL. From April, 2005, onwards I acted as the "Director -Strategy (non-Board)" of FTIL, wherein I was involved in the strategies relating to design of next

generation software products of FTIL. Further, during the course of my association with FTIL, from April 19, 2002 to June 28, 2012 I was appointed as the Non-Executive Director (a nominee of FTIL) on the board of Multi Commodity Exchange (hereinafter referred as "MCX"), an independent listed company, whose shares are listed on BSE and traded on both the NSE and BSE. During the investigation period referred to in the said Order i.e. April 27, 2012 to July 31, 2013 ("Investigation Period"), FTIL held 26% of the total paid-up equity share capital of MCX and was the promoter of MCX.

J. I permanently shifted to Singapore from May 2011 onwards and I am currently residing and working in Singapore. On June 21, 2011, I was appointed as an interim CEO of Singapore Mercantile Exchange Pte Ltd. ("SMX"), a multi asset exchange, for a period of 6 months starting from June 21, 2011.

K. On December 21, 2011, I was confirmed as the CEO of SMX. Additionally, I was appointed as the CEO of SMX Clearing Corporation Pte Ltd. Copies of the Letter dated December 8, 2011 issued by MAS to Mr. Ang Swee Tian (Chairman - SMX) confirming my appointment as the CEO of SMX and letter dated December 29, 2011 issued by MAS to Mr. Tan Tock Siong (Chief Regulatory Officer- SMX Clearing Corporation Pte Ltd,) confirming my appointment as the CEO of SMX Clearing Corporation Pte Ltd. are enclosed. I continued to act as the CEO of both SMX and SMX Clearing Corporation Pte Ltd. till February 03, 2014.

L. From February, 2014 to date, I have been acting as an advisory to various Corporate Companies in Singapore and USA. During the Investigation Period, I was *inter alia* acting as the Non-Executive director, (nominee of FTIL) on the board of MCX. As the non-executive director, I did not play any role whatsoever in the day to day functioning of MCX and the same was being taken care of by the MCX Executives, team management headed by the MD and CEO. Further, I used to attend MCX board meetings, when the same were held in Mumbai that too till May 2011 only. It is pertinent to note that I have not attended any board meetings of MCX, since I have shifted to Singapore i.e. from June 2011 onwards. It is pertinent to note that I was not privy to the Show Cause Notice dated April 27, 2012, assuming that the Show Cause Notice was discussed at any of the board meeting of MCX, held during the period from June, 2011 to June 28, 2012. It is a fact that MCX is an independent listed company and issuance of a Show Cause Notice April 27, 2012 to a separate company viz. National Spot Exchange Ltd., cannot be construed to be within the knowledge of the Board of MCX, merely for a reason that the promoter of NSEL and MCX were common. It also cannot be treated as a price sensitive information relating to MCX or its securities. In any event, as stated above, I did not attend any board meetings of MCX from June 2011. Therefore, assuming whilst denying for want of knowledge, that if at any point in time

MCX Board had discussed the matter pertaining to SCN issued to NSEL, I was not aware of the same.

M. In addition to the above, from May 18, 2005 to December 20, 2011, I was appointed as a Non - Executive Director on the board of NSEL. I ceased to be a director of NSEL from December 20, 2011. I say that the SCN was issued 4 months after I ceased to be a director on the board of NSEL. Additionally, even after resigning from the directorship of NSEL on December 20, 2011, I was never associated with NSEL in any manner whatsoever namely as an employee, director and/ or consultant. Therefore, I am not an insider within the meaning of PIT Regulations. I am neither a connected person nor deemed to be connected person. Accordingly, I could not have and was never privy to the said Show Cause Notice until it was published on October 3, 2012.

N. It is pertinent to state that MCX does not hold any shares in NSEL and accordingly, MCX did not have any directors on the Board of NSEL.

O. It is pertinent to note that the shareholding of MCX was acquired by me only from Employee Stock Option Plans ("ESOPs").

P. As on July 22, 2011, I was holding a total of 5,41,032 shares of MCX and paid a total consideration of Rs.6,53,19,114/-, mobilized from my savings and finances availed. It is pertinent to note that on reconciliation of my trading account on August 28, 2012, I noticed that my stock broker namely IFCI Financial Services Limited (stock broker), had made an error of accidentally purchasing 450 shares of MCX on August 28, 2012 at 14:53:54 (Trade Time) and 14:54:25 (Trade Time) and accordingly, on my instructions, my stock broker squared off the erroneous purchase transaction immediately between 15:07:32 (Trade Time) and 15:15:13 (Trade Time) on the same day.

Q. In view of what is stated by me herein above it is observed that it has been wrongly mentioned in the order dated August 2, 2017 at Serial No.7 in the Tabular charts on Page Nos. 15 and 17 that I had sold 5,41,482 shares of MCX and further it is observed that it has been wrongly mentioned in the Tabular charts on Page 21 and 23 of the order dated August 2, 2017 that I had sold 5,41,482 shares of MCX for Rs. 58,87,05,661/-. It is pertinent to note that it is erroneously mentioned in Paragraph vi , Page 30 of the order dated August 2, 2017 that I sold 5,41,482 shares of MCX for Rs 58,87,05,661/-. Accordingly, it is submitted by me that I had sold 5,41,032 shares of MCX during the period from July 3, 2012 to August 30, 2012 for Rs.58,82,08,468/- and not 5,41,482 shares of MCX during the aforesaid period for Rs.58,87,05,661/-.

R. As mentioned hereinabove, I moved to Singapore on or about May 2011 and was appointed by SMX as its Interim CEO from June 21, 2011, for a period of 6 months and was later confirmed as CEO of SMX and CEO of SMX Clearing Corporation Pte Ltd. from December 21, 2011. Pursuant to the appointment as an Interim CEO of SMX, I

resigned from the boards of all companies in India wherever I was a director or employee on or about June 20, 2011. I had also sent a letter dated July 31, 2011 to the Board of MCX, stating that I was resigning as the Non-Executive director (nominee of FTIL) of MCX with immediate effect and ready to complete the required formalities. Hence, I did not attend any board meetings of MCX from June 2011. From enquiries made by me with MCX after receipt of the said Order, I was informed by MCX that my resignation as the Non- Executive director (nominee of FTIL) of MCX was accepted by the Board of MCX on June 28, 2012.

S. Since I had shifted to Singapore I was no longer interested to pursue any business association and/or commercial interest in India and decided to sell my shares in MCX and other entities. Accordingly, I sold all 5,41,032 shares of MCX on BSE and NSE from July 3, 2012 to August 30, 2012. The sale proceeds received by me from sale of the MCX shares was Rs.58,82,08,468/. After the payment of Brokerage and Securities Transaction Tax the net amount credited to my account was Rs. 58,68,74,087.49. The shares of MCX were sold by me to reduce my outstanding liabilities, which I had incurred on account of financial assistance availed from different banks /financial institutions buying MCX ESOPs, Housing repairs, Educational loan and expenses of my daughter's education in USA etc. I crave leave to refer to and rely upon the documents, including the bank statement evidencing utilization of sale proceeds of MCX shares, if required.

T. Thereafter, SEBI vide its email dated March 8, 2017, sought certain information from me in relation to my family members declared to MCX. The said email was replied to by me vide my email of same date and the necessary particulars were provided. Despite receipt of the relevant information and being aware of the facts stated herein above, SEBI passed the said Order. As stated above, no explanation nor clarification was sought from me. No personal hearing was granted and as such the said Order is bad in law and facts.

U. I have ceased to be the Director of NSEL and MCX. I have not even been in employment of MCX or as Director of MCX when the shares were sold, clearly showing that I could in no way have access to any information whatsoever much less any price sensitive information at a point of time when I sold the aforesaid shares. I have deliberately been termed as a "Non-Executive Director" for the purpose of attracting the said Insider Trading Regulations, 1992.

V. The whole theory of averting loss is baseless and contrary to factual position on record. It is submitted that the whole calculation is erroneous, ignoring the cost price of the shares, etc. I have been provided with a copy of the Investigation Report and the Complaint, no copies of internal notes and memos prepared to arrive at the said Order

have been provided. I say that in absence of such vital documents relied upon by SEBI to arrive at the said Order, it is difficult for me to respond to the said Order in its entirety.

W. It may be noted that MCX and NSEL were and continue to be separate and independently run companies; neither of them hold shares in the other. The events at NSEL have no nexus with MCX and as such cannot trigger any event at MCX.

X. With reference to the observations of Hon'ble SAT in the matter of *Rajiv B. Gandhi & Others Vs. SEBI*, it is be noted that the reference to the same is totally inapposite and shows non application of mind. It has been ignored that Regulation 2(k) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992 was amended on February 20, 2002. In the Rajiv B. Gandhi case, Hon'ble Tribunal had dealt with the un-amended Regulation 2(k), which is not applicable in the facts and circumstances of the case.

Y. Since the alleged UPSI is issuance of SCN by DCA to NSEL, the date of its publication has to be taken as October 3, 2012 when the article regarding the same appeared in The Economic Times and also NSEL gave its clarifications, etc. to the said report on its website. Admittedly, consequent to the said publication there was no adverse impact on the price of the scrip of MCX. On the contrary, as stated herein above, the average sale price of the MCX shares remained much higher, then the value at which I sold the MCX shares. This also shows that I did not avert any loss and in fact incurred loss by selling the shares at a particular price.

Z. It may be appreciated that NSEL Circular dated July 31, 2013 was an offshoot of DCA's directions issued on July 12, 2013 wherein it had directed NSEL to give an undertaking that no further/fresh contracts shall be launched and that the existing contracts shall be settled on the due dates. As on April 27, 2012 when the SCN was issued by DCA, nobody could have visualized or imagined that such kind of direction would be issued by DCA more than 1 year down the line. Same was never in anybody's contemplation. Even the similarly placed exchanges (who had also committed similar violations) were also not given any such direction as in the case of NSEL. Therefore, if at all, any information regarding possibility of suspension of contracts etc. arose only on July 12, 2013, which finally culminated in NSEL issuing the Circular on July 31, 2013. Admittedly, I have not traded at all during the said period (i.e. July 12, 2013 to July 3, 2013). It is reiterated that it is erroneous to treat the whole period commencing from April 27, 2012 to July 31, 2013 as the UPSI period, since the information that existed at different points of time was different and was not comparable. For instance, the information as it existed on April 27, 2012 was vastly different from information, as it existed on July 12, 2013. It cannot be put in the same basket in order to draw adverse inferences.

AA. The alleged UPSI pertaining to NSEL cannot be treated as UPSI pertaining to MCX (whose shares I have traded). It may be appreciated that MCX does not hold any shares in NSEL. Further, MCX and NSEL are not the companies under the same management as contemplated. For levelling the charge of insider trading the "Insider", the "UPSI", the "Trading" are relatable to the same company. It cannot be that for the purpose of determining "Insider", 'UPSI" there is one company and for determining "Trading" there is another company. "Insider" and "UPSI" perforce should relate to the company whose shares are being traded by the "Insider". In the instant case, based on purported UPSI relating to NSEL, which is a totally independent company from MCX, trading in the scrip of MCX cannot be alleged to be tainted by insider trading.

BB. It is evident that the factum of issuance of SCN by DCA to NSEL and the implications flowing therefrom were all in public domain, part of public record and part of generally available information to all and sundry during the Investigation Period. Post the aforesaid publications, which were non-speculative, nothing remained "unpublished" about the issuance of SCN and its implications. Strangely, SEBI has totally ignored and overlooked the same, despite acknowledging and recording about the publication of article in Economic Times and Communication issued by NSEL, in order to arrive at preconceived conclusions. Admittedly, the publications of article in Economic Times, etc. have not been alleged to be speculative

CC. The sales made by me were genuine and bonafide and made transparently and with full disclosures and the gains arising therefrom are legitimate gains.

DD. There is nothing in the said Order to even remotely indicate as to where was the need to impound the amount of alleged losses averted at this juncture, since the Show Cause Notice is yet to be issued. No reasoning has been spelled out for passing the draconian direction of impounding the alleged losses averted and freezing the bank account and demat account.

EE. The direction to Banks to not to allow any debit in the bank accounts till such time the alleged averted losses and interest thereon are deposited in the Escrow Account is completely without jurisdiction, non-est, null and void ab initio. The said direction circumvents the provisions of Section 11(4)(e) of the SEBI Act, by in effect purporting to attach the bank and demat accounts without following the mandatory provisions and process of Section I] (4)(e).

FF. The said Order purports to levy the rate of interest at the rate of 12% per annum without any basis or justification whatsoever. SEBI has no such power to levy any interest and that too by an ad interim ex-parte order.

GG. SEBI has power to impound and retain the proceeds of securities that are under investigation only. Once the investigation is completed the said powers cannot be exercised.

7. The Noticee and all other entities, vide their respective representations/objections/replies, requested for an opportunity of personal hearing before the competent authority. Considering the said requests, an opportunity of hearing was provided to the Noticee and all other entities on September 19, 2017. However, at the request of the Noticee and other entities, the hearing scheduled on September 19, 2017 was adjourned to October 4, 2017.

8. On the scheduled date of hearing i.e. October 4, 2017, the authorized representatives on behalf of the Noticee requested for an adjournment on the ground of non-availability of the Counsel engaged in the matter. Hearing in respect of all other entities (except the Noticee and one other entity) was concluded on the said date.

9. Thereafter, hearing in respect of the Noticee was scheduled on December 5, 2017. However, vide an email dated November 29, 2017, the Noticee requested that because of non-availability of Counsel in the matter, the hearing scheduled on December 5, 2017 be adjourned to any date out of December 13, 14, 19, 20 or 21. Acceding to the said request, the hearing was adjourned to December 13, 2017. But, on the said date also, the Noticee made a request for an adjournment on account of demise of a family member of his authorized representative. Considering the same, hearing in respect of the Noticee was scheduled on December 19, 2017.

10. On December 19, 2017, the authorized representatives of the Noticee appeared and made their submissions in line with the reply of the Noticee on record. During the hearing, the authorized representatives were asked to provide information/documents and furnish the response of the Noticee on the following points:

    i) Why the Noticee did not attend any board meeting of NSEL during his entire period of directorship with NSEL as submitted by the representatives during the hearing.
    ii) Whether the resignation letter of the Noticee to MCX dated July 31, 2011 was acknowledged by MCX.
    iii) What was the compensation structure of the Noticee during his period of directorship / employment with MCX and FTIL.
    iv) If the Noticee did not perform any executive role in MCX, how was he given the ESOPs of MCX.
    v) The Noticee shall provide quantified profits in respect of his sales of shares of MCX during the investigation period. The Noticee shall also provide the exercise price of the ESOPs granted to him.

vi) The Noticee shall also provide a breakup of the loans he repaid (as claimed) out of the proceeds of the sale of shares of MCX.

vii) The Noticee shall provide details of utilization of proceeds of sale of shares of MCX highlighting the relevant entries in his bank statement(s).

viii) Pages of passport of the Noticee showing that he travelled in and out of India during the period May 2011 onwards as claimed by him.

ix) The communication address, e-mail ID and contact no. of the Noticee.

x) Supporting documents for the above.

A letter and an e-mail communicating the aforesaid points for information was also sent to the Noticee on December 22, 2017. The Noticee was given time till January 1, 2018 to submit the said information / documents / response.

11. Vide an e-mail dated December 22, 2017, the authorized representative on behalf of the Noticee sought extension for submitting the above mentioned information / response till January 15, 2018 for the reason that during that period, Christmas Holidays were ongoing in Singapore (where the Noticee is located) and the Noticee was travelling. Considering the reasons submitted vide the said mail, the request made on behalf of the Noticee was acceded to and extension was granted till January 15, 2017. At the same time, the Noticee was also informed that he shall treat this extension as the last and final opportunity to file his written submissions / information / documents, and that no further extension shall be provided hereafter.

12. In the meantime, in compliance with the directions of Hon'ble SAT in the appeals filed by the 7 entities as mentioned earlier, SEBI passed an order on January 5, 2018 disposing off the proceedings in respect of those 7 entities.

13. Vide letter dated January 16, 2018, the Noticee submitted his response to the queries that were posed to him during the hearing dated December 19, 2017. Along with the said letter, the Noticee also submitted his written submissions in the matter. The written submissions submitted by the Noticee after the hearing vide letter dated January 16, 2018 are, *inter alia*, as under:

1. Noticee is not an "insider" or a "connected person" or a "deemed to be a connected person" as defined in Regulation 2(c), 2(e) or 2(h) of the Insider Trading Regulations, 1992.

1.1. The factual matrix disclosed hereunder shows that the Noticee is not an *"Insider"* or a *"Connected Person"* or a *"deemed to be a connected person".* The same is detailed as under:

(a)The investigation period covered by the aforesaid Show Cause Notice is 27th April, 2012 to 31St July, 2013. The Noticee was associated with FTIL as an employee from 1St January, 2001 to 20th June, 2011. During his tenure with FTIL, the Noticee was appointed as "Chief Technology Officer" of FTIL until 31st March, 2005 and was assigned the role of technology product development, which includes within its scope designing, development and implementation of various software products of FTIL. During the course of Noticee's association with FTIL, from 19th April. 2002 to 20th June, 2011, the Noticee was appointed as a Non-Executive Director (a Nominee of FTIL) on the Board of MCX, an independent listed company, whose shares are listed on BSE and traded on both BSE and NSE. During the period of investigation, FTIL held 26% of the total paid-up equity share Capital of MCX and was the Promoter of MCX.

(b) On 20th June, 2011, the Noticee was appointed as the interim chief executive officer (CEO) of Singapore Mercantile Exchange Pte Ltd. ("SMX") and thereafter on 12th December, 2011 was confirmed as the CEO of SMX till 3rd February, 2014. Additionally, the Noticee was appointed as the CEO of SMX Clearing Corporation Pte Ltd. from 1St January, 2012 till 3rd February, 2014.

(c) From February 2014 till date, the Noticee has been acting as an Advisory to various corporate companies in Singapore and the USA. Being a Non-Executive Director, the Noticee did not have any role to play in the day to day functioning of MCX. The Noticee attended the Board meetings of MCX only when they were held in Mumbai and that too till May, 2011. The Noticee has not attended any Board meeting of MCX from June, 2011 onwards i.e. when the Noticee shifted to Singapore. The Noticee was not privy to the Show Cause Notice dated 27th April, 2012 (SCN) issued by the DCA, Ministry of Consumer Affairs, Government of India to NSEL, assuming that the said SCN was discussed at any of the Board meetings of MCX, held during the period June, 2011 to 28th June, 2012. MCX is an independent listed company and issuance of the SCN to a separate company viz. NSEL cannot be construed to be within the knowledge of the Board of MCX, merely for a reason that the Promoters of NSEL and MCX were common. SEBI in its Investigation Report in the scrip of MCX whilst dropping the proceedings against the other Executive Directors and senior managerial staff of MCX (e.g. Mr. Lambretus Rutten, Mr. P.K. Singhal, Dr. Raghavendra Prasad, etc.), has held that *"... was employee of MCX only during the UPSI period. MCX did not have any stake in NSEL and NSEL also did not have any stake in MCX. The only connection of MCX with NSEL is, these were group companies, with*

FTIL having 99.99% stake in NSEL and 26% stake in MCX. As mentioned above. .. was employed only in MCX during the UPSI period and was not having any position in FTIL or NSEL. Further, in the absence of independent evidence, it is not reasonably expected that an entity who was employed only in MCX during the UPSI period would have access to UPSI which was emanated from NSEL. In view of above, no adverse inference is drawn for traded of ... . ". In view of the said finding of SEBI the same shall be applicable to the case of the Noticee in hand as the Noticee was not even employee of MCX and was merely a Non-Executive Director and applying the grounds of parity with the other Non-Executive Directors and Senior Managerial staff of MCX as set out above, the same yard stick has to be applied and no adverse inference can be drawn against the Noticee as the Noticee was not an employee of FTIL or on the board of NSEL during the alleged UPSI period. Hence, the Noticee has adequately rebutted the prima facie presumption of the Noticee being an insider beyond all reasonable standard of proofs.

(d) Regulation 2(e) of the said Insider Trading Regulations, 1992 prescribes two fold conditions and both such conditions must be satisfied as they have to be fulfilled conjunctively. Mere presumption of expectation to have UPSI is not sufficient compliance of the requirement under Regulation 2(e)(i). Regulation 2(e)(ii) is based purely on fact viz. either information has been received or the person concerned has had access to such UPSI. In either case there must be some proof / evidence of the same which is not borne out by any document on record. The minutes of the Board meetings of NSEL have been scrutinized and do not contain any UPSI. There is no other evidence / statement of any other person to the effect that such information was communicated to or accessed by the Noticee.
Case law in support thereof SRSR Holdings Private Limited Vs SEBI ; Securities Appellate Tribunal, Mumbai -Majority View - Paragraph 11 (c) @ Page 27, Minority View- Paragraph 55, 56, 57 and 58 @ Page 71 and 72.

(e)In view of the aforesaid, the Noticee cannot be termed as an "insider" or a "connected person" or a "deemed to be connected person" as defined in Regulation 2(c), 2(e) or 2(h) of said Insider Trading Regulations, 1992.

2. Noticee was never in possession of any alleged UPSI:
2.1. …

2.2. The Noticee alleges that the SCN issued by DCA to NSEL constitutes Price Sensitive Information. The Noticee had resigned from the board of MCX on 31" July 2011, however there is no acknowledgment to the resignation letter available with the Noticee. Without

prejudice to the rights and contentions available under the law, if it is to be admitted that the resignation of the Noticee at MCX is to be treated with effect from 28th June, 2012, the Noticee would still not fall under the alleged offence of Insider Trading and that the Noticee had knowledge of UPSI as

(a) The Noticee had resigned from the services as employee of FTIL and ceased to be employee of FTIL from 20th June, 2011;
(b) Noticee had resigned from the board of NSEL as Non-Executive Director with effect 20th December, 2011;
(c) SEBI in its Investigation Report in the scrip of MCX whilst dropping the proceedings against the other Executive Directors and senior managerial staff of MCX (e.g. Mr. Lambretus Rutten, Mr. P.K. Singhal, Dr. Raghavendra Prasad, etc.), has held that *"... was employee of MCX only during the UPSI period. MCX did not have any stake in NSEL and NSEL also did not have any stake in MCX. The only connection of MCX with NSEL is, these were group companies, with FTIL having 99.99% stake in NSEL and 26% stake in MCX. As mentioned above. .. was employed only in MCX during the UPSI period and was not having any position in FTIL or NSEL. Further, in the absence of independent evidence, it is not reasonably expected that an entity who was employed only in MCX during the UPSI period would have access to UPSI which was emanated from NSEL. In view of above, no adverse inference is drawn for traded of …"*

The Noticee was not even an employee of MCX and was merely a Non-Executive Director and applying the grounds of parity with the other Non-Executive Directors and Senior Managerial staff of MCX as set out above, the same yard stick has to be applied and no adverse inference can be drawn against Noticee qua (a) and (b) as the Noticee was not an employee of FTIL or on the board of NSEL during the alleged UPSI period.

(d) Further, Monetary Authority of Singapore (MAS), while granting approval to Singapore Mercantile Exchange Pte Ltd (SMX) as an approved exchange, vide its letter dated August 11, 2010, (said letter), set out the approval conditions under Annexure A in the said letter and as per condition No.6, the Chief Executive Officer (CEO) of SMX was to be ordinarily resident in Singapore. For ready reference Condition No.6 is reproduced herein- *"6. SAM shall ensure that its Chief Executive Officer is ordinarily resident in Singapore ".*

The Noticee was appointed as CEO of SMX with effect from 12th December 2011. Since the Noticee had to comply with the said condition of MAS, the Noticee resigned from all the companies with effect 20"' June 2011.

The Noticee was a Director in a non-executive capacity of MCX, which is an independent company and which never had any occasion to discuss the said SCN on its Board as is apparent from the Board meetings of MCX. There is no evidence or suggestion that on account of the Noticee being on the Board of MCX, the Noticee was privy to any alleged UPSI.

2.3. No independent evidence or proof is borne out from any document on record of SEBI to show that the Noticee was privy to any alleged UPSI.

The relevant case laws in support of the aforesaid submissions are (i) Samir C. Arora Vs. SEBI; 2004 SCC Online SAT 90: [2004] SAT 89; Paragraph 56 @ Page-29 and (ii) Reliance Petroinvestments Ltd. Vs SEBI; 2015 SCC Online SAT 105; Paragraphs 3 and 4 @ Page 1.

3. The alleged information is not Price Sensitive Information.

3.1. Regulation 2(ha) of the Insider Trading Regulations, 1992 defines "price sensitive information" and gives seven explanations as to the factors which would be deemed to be Price Sensitive Information. The allegation contained in the said Show Cause Notice as well as the impugned Order do not fall within any of the seven explanations set out in Regulation 2(ha). The issuance of the Show Cause Notice dated 27th April, 2012 therefore, would not amount to "Price Sensitive Information".

3.2. A brief factual matrix set out herein below would show that the allegation that the issuance of the said SCN is price sensitive, is totally misconceived:

(a) Between 27th April, 2012 and 3rd October, 2012 i.e. for a span of 6 months, there is no event set out in the said Show Cause Notice/Impugned Order;
(b) There are no events set out between 3rd October, 2012 and 12th July, 2013;
(c) The Order issued by the Director- Marketing, Government of Maharashtra on 26th December, 2012 also has no bearing at all in respect of functioning of NSEL;
(d) If that was so, the Exchange could not have functioned and would not have been allowed to function till July, 2013.

3.3. It is a matter of record that NSEL issued a Press Release on 3rd October, 2012 (circular) which reiterates NSEL's position of there being no change in its policies, plans or operations. Hence, mere issuance of the SCN or the Press Release Article in The Economic Times on 3rd October, 2012 cannot be termed as Price Sensitive Information under Regulation 2(ha) of the Insider Trading Regulations, 1992.

3.4. Despite Forward Markets Commission (FMC's) Report/comments to DCA in April, 2012 and August 2012, neither FMC, nor DCA considered any imminent actions, much less cessation of business of NSEL which is reiterated in the impugned Order itself. Hence, the presumption that discontinuation of alleged irregularities of NSEL i.e. short selling, pairing of contracts and settlement of contracts beyond 11 days set out in the impugned Order is contradictory to the reiteration in the impugned Order that the authorities (FMC/DCA) did not consider imminent actions, would result in cessation of business of NSEL.

3.5. If the authorities had concluded that there would be a cessation of business of NSEL, the authorities themselves would not have allowed the business of NSEL to continue after issuance of the Show Cause Notice dated 27th April, 2012.

3.6. Even after newspaper reports which refer to the aforesaid SCN issued by DCA to NSEL, the comments of NSEL and the factual controversy on legality/validity of contracts and the fact that the ministry/minister was to take a decision on further enquiry or not, there seems to be no impact on market or on trading members, in as much as, the trading volumes went up, and not down after the aforesaid events. Any potential risk of payments of defaults much less impending defaults was obviously not in contemplation of any of the concerned persons, including the exchange, promoters, trading members or their clients.

3.7. The conclusion in paragraph B (iii) of the impugned Order reflects that the conclusions are based on assumptions (implications) based on the SCN and further assumptions are without any basis or foundation.

4. Alleged unpublished price sensitive information (UPSI) became published on 3rd October, 2012.

4.1. As stated above, as a Non-Executive Director of NSEL, the Noticee was not involved in day-to-day affairs and management of NSEL. In the year May 2011. Noticee left for Singapore for good, therefore there was no opportunity for him to attend the board meetings of NSEL post May 2011. In any event, the alleged SCN is dated April 27, 2012 i.e. much after the Noticee left for Singapore and ceased to be a Director on the board of NSEL, therefore there is no reason that the alleged SCN could have ever been discussed during any Board Meeting till May 2011. The Noticee ceased to be a director of NSEL from 20th December, 2011 and employee of FTIL from 20th June 2011. It is not in dispute that

the SCN was issued 4 months after the Noticee ceased to be a director on the board of NSEL.

Additionally, after resigning from the directorship of NSEL on December 20, 2011, the Noticee was never associated with NSEL in any manner whatsoever namely as an employee, director and/ or consultant. Accordingly, the Noticee could not have and was never privy to the said SCN until it was published on October 3, 2012 and as the Noticee was not aware of the issuance of the said SCN, the issue of him being in possession of the alleged UPSI does not arise …

As stated hereinabove, the Noticee was not even employee of MCX and was merely a Non-Executive Director and applying the grounds of parity with the other Non-Executive Directors and Senior Managerial staff of MCX as set out above, the same yard stick has to be applied and no adverse inference can be drawn against the Noticee as the Noticee was not an employee of FTIL or on the board of NSEL during the alleged UPSI period. As stated herein above, the Noticee had left India in May 2011 and was no longer associated with either FTIL, NSEL or MCX. Hence, the Noticee has adequately rebutted the *prima facie* presumption of the Noticee being an insider beyond all reasonable standard of proofs.

4.2. Without prejudice to the above contention that the Noticee at no point was privy to the fact of issuance of SCN to NSEL, it is submitted that the impugned Order itself refers to the Press Article appearing in "The Economic Times" on 3rd October, 2012 whereby the issuance of the SCN was made public. It is only at this juncture, the Noticee became aware of the SCN. Hence, after 3rd October 2012, the information (even if assumed to be price sensitive) was published and could not be termed as unpublished as is sought to be done in the impugned Order.

4.3. The aforesaid News Article dated 3rd October, 2012 published in The Economic Times", (said news article) a national daily relating to business news, has wide circulation and the same is referred to in the impugned Order. The said news article contains the following statements of facts:

(a) The issuance of the said Show Cause Notice dated 27th April, 2012 by the DCA to NSEL;
(b) Reports of FMC to DCA.
(c) FMC's observations in relation to alleged short selling as also settlement of contracts beyond 11 days.
(d) The details of enquiry conducted so far.
(e) The minister/ministry considering whether to take the enquiry forward.

Hence, the information contained in the news reports had all the factual aspects, including the issuance of the said SCN and the stand taken by NSEL in its reply dated 29th May,2012 in response thereto. In view of the aforesaid, such information cannot be considered to be unpublished price sensitive information especially keeping in mind the explanation to Regulation 2(k) of the said Insider Trading Regulations, 1992.

4.4. In any event, by 3rd October 2012, the information alleged to be unpublished price sensitive information ceased to be unpublished.

5. Sale of shares by Noticee cannot, in any event, be termed to be on the basis of alleged unpublished price sensitive information (UPSI).

5.1. The allegation contained in the said Show Cause Notice as well as the impugned Order shows that the Noticee has sold shares of MCX on the basis of alleged UPSI being the said Show Cause Notice dated 27th April, 2012 issued by DCA to NSEL. The Noticee has sold the 5,41,032 shares of MCX at Bombay Stock Exchange (BSE) from 3rd July, 2012 to 30th August, 2012 and at the National Stock Exchange of India Limited ("NSE") from 3rd July, 2012 to 28th August, 2012, to reduce various liabilities of the Noticee. It is pertinent to note that at the relevant time, the Noticee had already left for Singapore in May, 2011 and had nothing to do with MCX, also that the Noticee had ceased to be the employee of FTIL from 20th June, 2011 and also ceased to be a Non- Executive director on the board of NSEL with effect from 20th December, 2011, hence the Noticee cannot be termed either as an insider or could not by any stretch of imagination be privy to any alleged UPSI.

5.2. As per the historical data pertaining to value of MCX scrip during the period April 2012 to December 2012 (the Noticee sold shares of MCX during July - August 2012), available on the NSE website, it is evident that during the period May 2012 to September 2012, there was not much of movement in the price of the MCX scrip and the average scrip price remained approximately Rs. 1,089/-. I say that the allegation of SEBI is that mere issuance of SCN to NSEL is the beginning point of UPSI and had the news of issuance of SCN to NSEL broke out, the same would have had material impact on the MCX scrip. Admittedly, the news of issuance of SCN broke out on October 3, 2012 in various newspapers and if SEBI's allegation above is accepted to be true, the price of MCX scrip ought to have fallen after 3rd October 2012. However, this allegation of SEBI stands belied by the fact that the average price of MCX scrip, which was Rs. 1260.78/- on October 3, 2012 increased to Rs. 1583.07/- on November 30, 2012, and till December 2012 it remained much above the

average price of Rs. 1086.34/- at which the Noticee sold his MCX shares. Without prejudice to the contentions and without admitting any of the allegations of SEBI in the said Order, it is submitted that contrary to SEBI's allegation that the Noticee averted loss by dealing in MCX scrip while in possession of UPSI, the Noticee has made losses on sale of MCX shares, when compared with the Noticee's MCX share sale price to the price of the said shares even during the period under investigation.

5.3. The prohibition contained in Regulation 3 of the said Insider Trading Regulations, 1992 applies only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. As stated above, the Noticee was never privy to the issuance of SCN to NSEL, until it was published on 3rd October 2012. No independent evidence is on record to show that Noticee had access to the alleged UPSI and basis such alleged UPSI, the Noticee has dealt with his MCX scrips.

The relevant case laws in support thereof are enclosed - Mrs. Chandrakala Vs The Adjudicating Officer, SEBI; 2012 SCC Online SAT 21: [20121 SAT 21; Paragraph 6 and?@Pages 4&5.

6. Calculation of "averted losses" erroneous.

The said Impugned Order alleges that the Noticee has averted potential loss in the scrip of MCX amounting to Rs. 31,18,45,914/-. It is pertinent to note that MCX was listed on the stock exchanges on March 9, 2012 and that after receipt of the said Impugned Order. on analyzing the historical data pertaining to value of MCX scrip during the period April 2012 to December 2012 (the Noticee sold shares of MCX during July - August 2012), available on the NSE website, it is evident that during the period May 2012 to September 2012, there was not much of movement in the price of the MCX scrip and the average scrip price remained approximately Rs. 1,089/-. Hence the allegation of SEBI that mere issuance of SCN to NSEL is the beginning point of UPSI and had the news of issuance of SCN to NSEL broke out, the same would have had material impact on the MCX scrip. Admittedly, the news of issuance of SCN broke out on October 3, 2012 in various newspapers and if SEBI's allegation above is accepted to be true, the price of MCX scrip ought to have fallen. However, this allegation of SEBI stands belied by the fact that the average price of MCX scrip, which was Rs. 1260.78/- on October 3, 2012 increased to Rs. 1583.07/- on November 30, 2012, and till December 2012 it remained much above the average price of Rs. 1086.34/- at which the Noticee sold the shares. It is pertinent to note that contrary to SEBI's allegation that the Noticee averted loss by dealing in MCX scrip while in possession of UPSI, the Noticee has made losses on sale of MCX shares, when compared with sale

price of the Noticee's shares to the price of the said shares even during the period under investigation.

Period (2012)	Average Price (Sale of MCX Shares)
April	1239.10
May	971.17
June	1022.08
July	1095.10

7. It is therefore, prayed that no case is made out against the Noticee for being (i) an insider; (ii) in possession of alleged UPSI; (iii) dealt with or sold 5,41,032 shares of MCX from 3rd July 2012 to 30th August 2012, while in possession of such alleged UPSI.

14. The response submitted by the Noticee to the queries raised during the hearing and communicated vide letter/e-mail dated December 22, 2017 is as under:

1. Why the Noticee did not attend any board meeting of NSEL during his entire period of directorship with NSEL as submitted by the representatives during the hearing?

At present, I do not have any record to state as to how many Board Meetings I may have attended from May 2005 to May 2011. In the year May 2011, I left for Singapore for good, therefore, there was no opportunity for me to attend the board meetings post May 2011. In any event the alleged SCN is dated April 27, 2012 i.e. much after I left for Singapore and ceased to be a Director on the board of NSEL. Therefore there is no reason that the alleged SCN could have ever been discussed during any Board Meeting till May 2011.

2. Whether the resignation letter of the Noticee to MCX dated July 31, 2011 was acknowledged by MCX?

I have not received any acknowledgement from MCX for the resignation letter though submitted on July 31, 2011. I say that without prejudice to my rights and contentions available under the law, if it is to be admitted that my resignation is to be treated with effect from June 28, 2012 at MCX, I would still not fall under the alleged offence of Insider Trading and that I had knowledge of unpublished price sensitive information (UPSI) as –

(a) I had resigned from my services as employee at Financial Technologies (lndia) Limited (FTIL) and ceased to be employee of FTIL from June 20, 2011;

(b) Had resigned from the board of NSEL as Non-Executive Director with effect from December 20, 2011. Copy of Form 32 filed by NSEL with the Registrar of Companies is annexed.
(c) SEBI in its Investigation Report in the scrip of MCX whilst dropping the proceedings against the other Executive Directors and senior managerial staff of MCX (e.g. Mr. Lambretus Rutten, Mr. P.K. Singhal, Dr. Raghavendra Prasad, etc.), has held that *"he was employee of MCX only during the UPSI period. MCX did not have any stake in NSEL and NSEL also did not have any stake in MCX. The only connection of MCX with NSEL is, these were group companies, with FTIL having 99.99% stake in NSEL and 26% stake in MCX. As mentioned above... was employed only in MC'X during the UPSI period and was not having any position in FTIL or NSEL. Further, in the absence of independent evidence, it is not reasonably expected that an entity who was employed only in MCX during the UPSI period would have access to UPSI which was emanated from NSEL. In view of above, no adverse inference is drawn for traded of ... "*

I say that I was not even employee of MCX, was merely a Non-Executive Director and applying the grounds of parity with the other Non-Executive Directors and Senior Managerial staff of MCX as set out above, the same yardstick has to be applied and no adverse inference can be drawn against me qua (a) and (b) as I was not employee of FTIL or on the board of NSEL during the alleged UPSI period.

(d) I further say that Monetary Authority of Singapore (MAS), while granting approval to Singapore Mercantile Exchange Pte Ltd. (SMX) as an approved exchange, vide its letter dated August 11, 2010 (said letter), set out the approval conditions under Annexure A in the said letter and as per condition No.6, the Chief Executive Officer (CEO) of SMX was to be ordinarily resident in Singapore. For ready reference Condition No.6 is reproduced herein -
"6. SMX shall ensure that its Chief Executive Officer is ordinarily resident in Singapore".

I was appointed as Interim CEO of SMX for a period of 6 months with effect from June 20, 2011 and was approved as CEO of SMX with effect from December 12, 2011. Copies of the letter dated August 11, 2010 addressed by MAS, to Mr. Thomas McMahon [CEO-SMX], letter dated June 20, 2011 addressed by MAS, to Mr. Ang Swee Tian [Chairman- SMX], letter dated December 08. 2011 addressed by MAS to Mr. Ang Swee Tian [Chairman- SMX] and letter dated December 12, 2011 addressed by SMX to Mr. Leo Mun Wai [Assistant Managing Director- Capital Markets Group- MAS] are annexed … Since I had to comply with the said condition of MAS, I resigned from all the companies with effect June 20. 2011.

3. What was the compensation structure of the Noticee during his period of directorship/employment with MCX and FTIL?

No compensation was received for the directorship of MCX. As an employee non-board member and non-Key Managerial Personnel of FTIL. I received salary as per the employee agreement. Copy of the Employer's Certificate dated October 27, 2010 issued by FTIL is annexed.

4. If the Noticee did not perform any executive role in MCX, how was he given the ESOPs of MCX?

MCX compensation committee allocated the ESOPs as per the MCX ESOP Schemes of 2006 & 2008. Copies of ESOP grant letter dated July 2, 2008 addressed by MCX ESOP Trust is annexed … and certificate dated March 28, 2016 issued by MCX confirming the allocation of ESOPs as per the ESOP Scheme 2006 is annexed … The said allotments of ESOPs were duly approved by the Board of MCX, certified by Statutory Auditors and subsequently by the shareholders also. It was also duly disclosed in draft red herring prospectus (DRIP) / red herring prospectus (RHP), which was approved by the Lead Managers, Book Runners, their lawyers and SEBI also.

5. Quantified profits in respect of his sales of shares of MCX during the investigation period. The Noticee shall also provide the exercise price of the ESOPs granted to him?

Scheme	%	Date	No. of Shares (FV 5)	Face value 10	Exercise Price	ESOP Cost	Sale Proceeds	Quantified profit
2006	20	31/l/07	33130	16565	14/-	463820		
2006	30	16/1/08	49695	24848	14/-	695730		
2006	50	16/2/09	82826	41413	14/-	1159564		
2008	30	27/7/09	210000	105000	90/-	18900000		
2008	30	30/8/10	210000	105000	90/-	18900000		
		15/3/11	Bonus	73206				
2008	40	22/7/11		175000	144/-	25200000		
				541,032		65319114	588208468	522889354

6. Breakup of the loans Noticee repaid (as claimed) out of the proceeds of the sale of shares of MCX?

Sr.No.	Entity	Loan repaid	Date	PAN No
1	Bhavesh R Raichura HUF	94,20,056.18	26/7/12	AAHHB4415M
2	Mahendra V Raval HUF	83,73,389.18	26/7/12	AALHM0782J
3	Upendra V Raval HUF	83,73,389.18	26/7/12	AAAHU8442C
4	SuperfineAgroplast Limited	30,00,056.18	27/7/12	AAACS5770J
5	Renaissance Fincon Private Limited	6,90,00,056.18	1/8/12	AAECA0453A
6	*Renaissance Fincon Private Limited*	*2,79,57,437.18*	*6/8/12*	*AAECA0453A*
7	Fastflow Health Care Private Limited	1,30,00,056.18	6/8/12	AAACF8245M
8	*Khoobsurat Tie Up Private Limited*	*1,26,45,056.18*	*29/8/12*	*AACCK7293G*
9	Fastflow Health Care Private Limited	9.138,327.18	29/8/12	AAACF8245M
10	EBusiness Services (India) Private Limited	3,02,98,833.18	5/9/12	AAACE9638B
11	Fastflow Health Care Private Limited	70,005.62	14/9/12	AAACF8245M
12	Education Loan of Daughter Paid to Indian Bank	20,30,000.00	7/9/12	
	TOTAL	**19,33,06,662.42**		

I say that the aforesaid details are being furnished to SEBI being a Regulator and in compliance of the directions passed. However, it is prayed that the said details being contractual obligations between the said Financial Institutions and myself, the same has social reputation.

7. Details of utilization of proceeds of sale of shares of MCX highlighting the relevant entries in his bank statement(s)?

Copies of the Bank statements are annexed hereto … highlighting the relevant entries regarding the utilization of proceeds of sale of shares of MCX.

8. Pages of passport of the Noticee showing that he travelled in and out of India during the period May 2011 onwards as claimed by him?

Copies of the Passport pages are annexed hereto … The noticee visited India only once in the year December 2013 to attend his daughter's wedding.

9. The communication address, email ID and contact number of the Noticee?

Local Address: Plot 104B, 503-4 Dosti Elite, Sion East, Mumbai 400022.
Overseas address: 100 Christopher Columbus, 906. Jersey City, NJ, USA 07 302
Email: vaidya.hariharan99@gmail.com
Contact number: +1(201)492-4556

10. Supporting documents for the above?
The same are annexed herein as mentioned above in the relevant paragraphs.

ISSUES AND CONSIDERATION

15. I have considered the *interim order* cum SCN, oral and written replies/ submissions of the Noticee and other material available on record. Before dealing with the issues for consideration in the present proceedings, I note that the Noticee has made a preliminary submission that the *interim order* has been passed in disregard of the principles of natural justice as no notice was issued to him, no copy of the complaint or investigation report was provided to him nor was any clarification sought from him before passing the *interim order*. He also submitted that there was no urgency or pressing need for passing the interim order. In this regard, I note that the *interim order* has been passed on the basis of findings observed during the investigation undertaken by SEBI. The facts, circumstances and the reasons necessitating issuance of directions by the *interim order* have been examined and dealt with in the said *interim order.* The *interim order* has also been issued in the nature of a show cause notice affording the Noticee a post decisional opportunity of hearing. I also note that the power of SEBI to pass interim orders flows from sections 11 and 11B of the SEBI Act, which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the

Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other* (1984) 3 SCC 465 are noteworthy:-

> *"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-*interim order*s may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the* interim order*s do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "*

16. Thus, considering the facts and circumstances of a particular case, an *ad-interim ex-parte order* may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the *interim order* in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that *"Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned*". Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an *interim order* is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathi & Others Vs. SEBI* (2002) 2 Bom CR 403, has held as under:

> *"Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."*

17. Further, the Hon'ble High Court of Rajasthan at Jaipur in the matter of *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors* (D.B. Civil WP No. 5135/2010 Raj HC) has held that:

"…Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the impugned order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim order*s are passed by the Court, Tribunal and Quasi Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also…"*

18. In view of the above, I find that the *interim order* passed by SEBI was in compliance with the principles of natural justice since, reasons for passing the *interim order* have been clearly stated in the *interim order* and, in accordance with the settled law, the Noticee was afforded a post-decisional opportunity to file his reply and avail an opportunity of personal hearing. I, therefore, reject the contention of the Noticee in this regard.

19. Now coming to the merits of the case, considering the allegations leveled in the *interim order* cum SCN*,* arguments advanced by the Noticee in that regard and other material available on record, the following issues arise for consideration:

    A. Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information?
    B. If the answer to issue A is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?

C. If the answer to issue B is in the affirmative, whether the Noticee traded in the scrip of MCX during the period when the price sensitive information remained unpublished?
D. If the answer to issue C is in the affirmative, whether the Noticee traded when in possession of UPSI and violated the provisions of regulation 3(i) and 4 of the PIT Regulations, 1992 and section 12A (d) of the SEBI Act?
E. If the answer to issue D is in the affirmative, what directions need to be issued against the Noticee?

20. Consideration of the issues in light of the facts and circumstances of the case and the arguments advanced by the Noticee is discussed in the subsequent paragraphs.

A. Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information?

21. The first question which arises for consideration is whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL was "price sensitive information" in respect of MCX. To answer the question, it becomes important to analyze the contents of the SCN dated April 27, 2012 and also the backdrop in which the said SCN was issued.

22. The expression "price sensitive information" has been defined under regulation 2(ha) of the PIT Regulations, 1992, which reads as under:

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

23. It is noted that vide Notification S. O. No. 906(E) dated June 5, 2007, the DCA had granted exemption to NSEL from the operation of the Forward Contracts (Regulation) Act, 1952 ("FCRA") for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform, subject to the following conditions –

a. No short sale by Members of the Exchange shall be allowed;
b. All outstanding positions of the trade at the end of the day shall result in delivery;
c. NSEL shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;
d. All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;
e. The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary, and
f. In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.

24. The contents of the SCN dated April 27, 2012 are reproduced as under:

"National Spot Exchange Limited was given exemption from operation of the forward Contracts (Regulation) Act, 1952 for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform in terms of the Department of Consumer Affairs Notification S.0. No. 906 (E) dated 5.6.2007 subject to the conditions mentioned therein. FMC was declared as the `designated agency to call for data from the spot exchanges in accordance with the Department of Consumer Affairs Notification dated 6.02.2012. On the basis of data obtained from National Spot Exchange Limited, FMC has reported the following discrepancies:

(I) The NSEL has not made it mandatory for the seller to actually deposit goods in the warehouse before he takes a short position through a Member of the Exchange. The Exchange system has no stock check facility which validates the member position. The Exchange allows trading on the Exchange platform without verifying whether the seller member has the stocks with him or not. In this way, the Exchange has violated the conditions stipulated that no short sale for the members of the Exchange shall be allowed,

(II) FMC has also found that out of total contracts, 55 contracts offered for trade by NSEL have settlement period exceeding 11 days. NSEL has agreed that all the contracts traded on the Exchange platform for which settlement period exceed 11 days are N'TSD contracts. NSEL has, however, claimed that Government has granted exemption to the Exchange in respect of these contracts and therefore, trading in these contracts is not violation of the previsions of the FC(R) Act. The claim of NSEL, however, cannot be accepted as the Government has not granted any exemption to NSEL in respect of NT'SD contracts. Therefore, all

contracts traded on NSEL with settlement period exceeding 11 days are violation of the provisions of the FC(R) Act.

2. National Spot Exchange Limited are, therefore, directed to explain as to why the action should not be initiated against them for violation of the conditions of the Notification dated 5.6.2007 within 15 days of the receipt of this letter failing which the Department would be compelled to withdraw the exemption granted thereunder without any further communication."

25. On a perusal of the above, it is noted that the possible outcome of the SCN was withdrawal of the exemption granted to NSEL. Thus, it would be reasonable to conclude that the possible outcome of the SCN would have had significant and serious implications on the functioning and operations of NSEL.

26. It is noted that MCX and NSEL were companies under the same holding company i.e. FTIL. Any adverse impact on the business and operations of NSEL was likely to have a contagion, cascading and materially adverse impact directly on the holding company – FTIL and indirectly on the associate company - MCX. In my view, the possibility of serious challenges to be faced by an associate company (NSEL) under the same management, which is almost wholly owned by the holding company (FTIL) had the potential to materially affect the price of the securities of MCX when disclosed to public. Thus, the information relating to issuance of SCN by DCA to NSEL and its possible implications would have had an adverse impact on the business and operations of NSEL and is likely to have a contagion, cascading and materially adverse impact directly on the holding company – FTIL and indirectly on the associate company – MCX and price of its securities. The same would have led to a loss of reputation and credibility of the promoters and management of MCX. In view of the above, considering the nature, extent and timing of the information relating to issuance of SCN by DCA to NSEL and its possible implications, I find that the said information was price sensitive information in respect of MCX.

27. It has been argued by the Noticee that the price sensitive information as defined under Regulation 2(ha) is information that pertains to the company in question and not of a group company. It has been contended on behalf of the Noticee that the alleged UPSI under the interim order related to a separate company - NSEL and not to MCX, with regard to whose shares, the allegation of insider trading has been made in the interim order. In this context, I note that regulation 2(ha) defines *"price sensitive information"* as "*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".* Thus, that the very definition of the expression

"*price sensitive information*" provides that the information under consideration would be subjected to the test of likelihood of material effect on the price of the securities even if it indirectly relates to the company, which in the present case is MCX. As discussed in the earlier paragraphs, any information having a material adverse impact on NSEL was likely to have an indirect adverse effect on MCX and the price of its securities, and therefore, for reasons discussed in above paragraphs, the information as alleged in the interim order was price sensitive information in respect of MCX.

28. Further, it was argued by the Noticee that the information, alleged in the interim order as "price sensitive information", is not specifically covered in the explanation to definition of "price sensitive information" under regulation 2(ha) of the PIT Regulations, 1992, and therefore, it does not qualify as price sensitive information. In this regard, I note that the explanation to regulation 2(ha) only provides for illustrative sets of information which would be deemed as "price sensitive information". For any information to be price sensitive, it has to only meet the essential ingredients of regulation 2(ha) and it need not necessarily fall under any of the clauses provided under the explanation to regulation 2(ha). In view thereof, I do not find any merit in the arguments made by the Noticee in this regard.

29. It was submitted by the Noticee that as on April 27, 2012 when the SCN was issued by DCA, nobody could have visualized or imagined that such kind of direction would be issued by DCA more than 1 year down the line. The same was never in anybody's contemplation. It was also argued that the alleged UPSI was not price sensitive at all which was evidenced by the fact that when the article relating to the SCN dated April 27, 2012 was published in Economic Times on October 3, 2012, the price of the scrip of MCX went up and not down. In this regard, I note that the definition of "price sensitive information" under regulation 2(ha) requires that the information should be such which if published is *likely to* materially affect the price of securities of the company. The actual impact on the price of the securities is not essential to the definition under regulation 2(ha) rather the real test is the *likelihood* of the material effect on the price of the securities of the company. Accordingly, an information is price sensitive because it is *likely* to materially affect the price. It is not that the information *must* affect the price of the scrip. This is so because there are many factors which affect the price of the scrip and It is not always possible to decipher whether a particular information materially affected the price of the scrip. The legal requirement of only the likelihood of the material effect on the price of the securities of the company is in consonance with the objective of prevention of insider trading, as an insider is prevented from trading *while in position of unpublished price sensitive information.* The regulatory objective of refraining from insider trading cannot be achieved if such insider is permitted to take advantage of the actual impact of price

which happens only after the UPSI becomes public. I, therefore do not find any merit in the arguments in this regard and reject the same.

30. With reference to the observations of Hon'ble SAT in the matter of *Rajiv B. Gandhi & Others Vs. SEBI*, it has been submitted by the Noticee that *the reference to the same in the interim order is totally inapposite and shows non-application of mind. Further, it has been ignored that Regulation 2(k) of the PIT Regulations 1992 was amended on February 20, 2002. In the Rajiv B. Gandhi case, Hon'ble Tribunal had dealt with the un-amended Regulation 2(k), which is not applicable in the facts and circumstances of the case*. In this context, I note that the reference to the order of Hon'ble SAT in the *Rajiv B. Gandhi* matter is in the specific context of explanation of the term "*unpublished price sensitive information",* which prior to the amendment in 2002 was defined under regulation 2(k) of PIT Regulations, 1992. Regulation 2(k) after the 2002 amendment defined the term "unpublished", but the reference to the *Rajiv B. Gandhi* order in the interim order does not appear to be in the context of discussion on the meaning of "unpublished". Thus, I do not find any infirmity in the reference to the said observations of Hon'ble SAT in the interim order.

31. Considering the above, I find that the implication of the SCN dated April 27, 2012 as alleged in the *interim order* was "price sensitive information" in respect of MCX.

B. If the answer to issue A is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?

32. Having answered the first issue in the affirmative, the next issue for consideration is whether the "price sensitive information" was unpublished during the period of investigation.

33. Without prejudice to his other arguments, the Noticee has submitted that he was at no point privy to the fact of issuance of SCN to NSEL. Further, the impugned Order itself refers to the Press Article appearing in "The Economic Times" on 3rd October, 2012 whereby the issuance of the SCN was made public and it is only at this juncture, the Noticee became aware of the SCN. Hence, after 3rd October 2012, the information (even if assumed to be price sensitive) was published and could not be termed as unpublished as is sought to be done in the impugned Order.

34. With regard to the above, it is noted that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information

relating to the issuance of SCN dated April 27, 2012 to NSEL, a majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL's reply to the SCN. The article also covered the possible action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007.

35. On a careful perusal of the newspaper article dated October 3, 2012, I find that the publication of the said article made the following information public:

- DCA had issued a show cause notice dated April 27, 2012 to NSEL whereby it had found fault with certain types of contracts which were being traded on NSEL.
- There were allegations against NSEL that it was permitting short selling on its platform. It was also alleged that NSEL did not have a stock check facility for validating a member's position.
- SCN also alleged that all contracts traded on NSEL with a settlement period exceeding 11 days were in violation of the provisions of FCRA.
- The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.
- NSEL had filed its reply to the SCN issued by DCA.
- In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication.

36. In my view, a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on part of NSEL to provide a satisfactory explanation for the allegations levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, possible payment defaults in relation thereto and the consequential loss of reputation of the promoters / management of NSEL. Also, on the same day i.e. October 3, 2012, through an '*Exchange Communication*', NSEL informed all its Members regarding SCN dated April 27, 2012, its reply to the SCN and also offered

clarifications on the article in '*The Economic Times*'. Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012, and as such ceased to be UPSI from that date. Accordingly, the period during which the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012.

C. If the answer to issue B is in the affirmative, whether the Noticee traded in the scrip of MCX during the period when the price sensitive information remained unpublished?

37. As observed above, since the UPSI existed during the period April 27, 2012 to October 3, 2012, the next aspect for examination is whether the Noticee traded during the period April 27, 2012 to October 3, 2012.

38. On a perusal of the trades carried out by the Noticee which have also been mentioned in the *interim order*, the Noticee traded during the period April 27, 2012 to October 3, 2012. The relevant details of the trades are mentioned in the table below:

DATE	NO. OF SHARES SOLD	AMOUNT (IN ₹)
AT BSE		
03/07/2012	2,500	26,70,288
04/07/2012	2,347	24,92,953
05/07/2012	600	6,32,740
06/07/2012	1,255	13,17,756
19/07/2012	1,500	17,01,583
20/07/2012	17,500	1,93,35,004
23/07/2012	20,000	2,18,46,203
24/07/2012	26,491	2,86,75,175
25/07/2012	1,40,000	14,77,83,902
26/07/2012	12,009	1,28,54,513
27/07/2012	67,556	7,11,97,418
31/07/2012	3,640	37,63,307
01/08/2012	35,280	3,70,27,491
21/08/2012	23,114	2,69,61,594
22/08/2012	19,917	2,32,31,618
23/08/2012	20,893	2,44,32,918
24/08/2012	7,855	91,50,046
27/08/2012	27,181	3,08,72,672

DATE	NO. OF SHARES SOLD	AMOUNT (IN ₹)
AT BSE		
28/08/2012	35,604	3,95,26,180
29/08/2012	37,436	4,14,62,339
30/08/2012	556	6,23,323
TOTAL (BSE)	**5,03,234**	**54,75,59,023**
AT NSE		
03.07.2012	12,500	1,33,59,816
04.07.2012	8,000	84,69,978
05.07.2012	1,400	14,78,876
06.07.2012	3,398	35,76,639
20.07.2012	12,500	1,37,64,136
28.08.2012	450	4,97,193
TOTAL (NSE)	**38,248**	**4,11,46,638**
TOTAL (NSE+BSE)	**5,41,482**	**58,87,05,661**

39. It has been submitted by the Noticee that on reconciliation of his trading account on August 28, 2012, he noticed that his stock broker namely IFCI Financial Services Limited, had made an error of accidentally purchasing 450 shares of MCX on August 28, 2012 at 14:53:54 (Trade Time) and 14:54:25 (Trade Time) and accordingly, on his instructions, his stock broker squared off the erroneous purchase transaction immediately between 15:07:32 (Trade Time) and 15:15:13 (Trade Time) on the same day. Accordingly, it is submitted by the Noticee that he had sold 5,41,032 shares of MCX during the period from July 3, 2012 to August 30, 2012 for Rs.58,82,08,468/- and not 5,41,482 shares of MCX during the aforesaid period for Rs.58,87,05,661/-. In this regard, I note from the record that there was a purchase of 450 shares of MCX on August 28, 2012 in the account of the Noticee. In view thereof, I find that for the purpose of these proceedings, the number of shares sold by the Noticee stands corrected to 5,41,032.

D. If the answer to issue C is in the affirmative, whether the Noticee traded when in possession of UPSI and violated the provisions of regulation 3(i) and 4 of the PIT Regulations, 1992 and section 12A (d) of the SEBI Act?

40. As noted above, the Noticee sold 5,41,032 shares of MCX during the period when the price sensitive information remained unpublished (i.e. April 27, 2012 to October 3, 2012). Now, the issue that needs examination is whether the Noticee violated the provisions of Regulation 3(i) and Regulation 4 of the Insider Trading Regulations, 1992 and Section 12A(d) of the SEBI Act when he sold the shares of MCX during the said period.

41. The Noticee submitted that regulation 2(e) of the Insider Trading Regulations, 1992 prescribes two fold conditions and both such conditions must be satisfied as they have to be fulfilled conjunctively. Mere presumption of expectation to have UPSI is not sufficient compliance of the requirement under Regulation 2(e)(i). Regulation 2(e)(ii) is based purely on fact viz. either information has been received or the person concerned has had access to such UPSI. In either case there must be some proof / evidence of the same which is not borne out by any document on record. He also submitted that the minutes of the Board meetings of NSEL have been scrutinized and do not contain any UPSI. Further there is no other evidence / statement of any other person to the effect that such information was communicated to or accessed by the Noticee.

42. For the purpose of examination of the present issue and the above submissions of the Noticee, I find it relevant to quote the following regulations of the PIT Regulations, 1992:

Regulation 2(e) *– "insider" means any person who,*

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

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

Regulation 2(c) *– "connected person" means any person who –*

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

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

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

Regulation 2(h) *– "person is deemed to be connected person" if such person –*

i. is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section

2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;

ii. *is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;*

iii. *is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;*

iv. *is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956;*

v. *is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body;*

vi. *is a relative of any of the aforementioned persons;*

vii. *is a banker of the company;*

viii. *relatives of the connected person; or*

ix. *is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest.*

43. It is noted that the Noticee was the Nominee Director of FTIL on the board of MCX for the period April 19, 2002 to June 28, 2012 i.e. more than 10 years. However, the Noticee contended that he had tendered his resignation to MCX vide letter dated July 31, 2011. He was given an opportunity to provide evidence by way of any acknowledgement by MCX to prove the receipt of the said resignation letter by MCX. However, the Noticee has not provided any copy of acknowledgement or proof of delivery to MCX to the effect that his resignation will take effect from July 31, 2011 as stated in his letter. Therefore, the Noticee has not provided any material to contradict the MCA record which shows his date of resignation as June 28, 2012. Hence, the Noticee was the Nominee Director of FTIL on the board of MCX for the period April 19, 2002 to June 28, 2012. It would be apposite to point out the fact that the Noticee himself admitted that his resignation from MCX is to be treated with effect from June 28, 2012 without prejudice to rights and contentions available under the law.

44. Further, the Noticee was an employee of FTIL from January 01, 2001 to June 20, 2011 i.e. for more than 10 years. He was appointed as "Chief Technology Officer" of FTIL until March, 2005. From April, 2005 onwards he acted as the "Director -Strategy (non-Board)" of FTIL. He was also the non-executive non-independent director of NSEL since its inception from May 18, 2005 to December 20, 2011 i.e. for more than 6.5 years. This indicates that the Noticee was holding a position of significant responsibility in all the three companies for a very long period. Further from FMC's order dated December 17, 2013, it was observed that the Noticee was a KMP of NSEL for the year 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 and was member of "Audit Committee" and "Membership Committee" of NSEL. As per Noticee's submission, he permanently shifted to Singapore from May 2011 onwards and is currently working in Singapore. Further, he was appointed as an interim CEO of SMX on June 21, 2011. It is relevant to mention here that SMX was an entity promoted by FTIL itself and Shri Jignesh Shah was its Vice-Chairman. It is noted from the annual report of FTIL for 2011 that it held 100% stake in SMX. Thus, it is evident from these facts that the Noticee's association with the FTIL's group continued even when he had shifted to Singapore.

45. As noted above, the Noticee had a decade long association with the FTIL group and he held significant positions in MCX, FTIL and NSEL. He was also a KMP of NSEL for several years and a member of its audit committee and membership committee. It is noteworthy that the Noticee was one of the biggest recipients of ESOPs given by MCX in its schemes in 2006 and 2008. Thus, he was surely performing certain significant and valuable functions for MCX or FTIL or NSEL (since he was a nominee director of FTIL and was also a director of NSEL) because of which he received substantially more ESOPs than other recipients. Thereafter, even when he resigned form NSEL and FTIL, and left for Singapore, he was made the CEO of SMX (a global exchange set up by the FTIL group). These facts go on to show that the Noticee was and continued to be a core member of the FTIL group at all times during the period under consideration.

46. During the period when the price sensitive information remained unpublished (I.e. April 27, 2012 to October 3, 2012), the Noticee was on the board of MCX. In this context, the following observations of Hon'ble SAT are noteworthy;

Shri E. Sudhir Reddy v. Securities and Exchange Board of India (SAT order dated December 16, 2011):

> *"… we find that the appellant being one of the directors of the company, was a connected person with the company and falls within the definition of 'insider' contained in regulation 2(e) of the Insider Trading Regulations."*

Appeal No. 451 of 2015 [*Chintalapati Srinivasa Raju v. Securities and Exchange Board of India]* and other connected appeals (majority opinion of Hon'ble SAT in order dated August 11, 2017):

"c) Expression 'insider' is defined under regulation 2(e) of the PIT Regulations to mean any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to UPSI or a person who has actually received or has had access to such UPSI. Expression 'connected person' is defined under regulation 2(c) to mean (one) any person who is a Director or deemed Director under Section 2(13) and Section 307 (10) of the Companies Act, 1956 or (two) an officer/ an employee or any person who holds a position involving a professional or business relationship between himself and the company and who may be reasonably expected to have access to UPSI. It is relevant to note that the concept of 'reasonably expected to have access to UPSI' is not applied to Director/deemed Director, because, unlike other connected persons, Director/ deemed Director constitute part of the company's board and hence responsible for all the deeds/ acts of the company during the period when they were Director/ deemed Director. Thus, reading regulation 2(e) with regulation 2(c) & 2(h) of the PIT Regulations, it is evident that the expression 'insider' under regulation 2(e) covers the following persons.

i) Director/ deemed Director who is or was connected with the company.
ii) Officer/employee of the company or any person who on account of professional or business relationship with the company is reasonably expected to have access to UPSI.
iii) Deemed to be connected persons who are reasonably expected to have access to UPSI.
iv) Any person who has actually received or has had access to UPSI.

In the present case, admittedly, CSR was a Director of Satyam till 23.01.2003 and therefore, being responsible for all the acts/ deeds of Satyam, the WTM of SEBI was justified in holding that CSR was an insider under the PIT Regulations."

47. In view of the above observations of Hon'ble SAT, a director of a company is a connected person. In such a case, there is no requirement that the said director be reasonably expected to have access to UPSI in terms of regulation 2(e) of the PIT regulations, 1992 in order to identify him as insider. Considering the above mentioned facts and the observations of Hon'ble SAT, I find that being a director of MCX, the Noticee was a connected person to MCX. Further, in the present case, as elaborated in the following

paragraphs, there are circumstantial evidences pointing to the fact that the Noticee was having access to the UPSI. It is noted that significant positions were held by him in MCX, its promoter company (FITL) and FTIL's majority held subsidiary (NSEL) and he had more than a decade long association with these companies as mentioned above. Further, the Noticee was a KMP of NSEL during the period when the trading in paired contracts had started on NSEL and continued as its KMP till FY 2009-2010. Later, he continued his association with NSEL and acted as its director till December 20, 2011 i.e. a few months prior to the issuance of SCN by DCA. Till December 20. 2011, the Noticee was acting in dual capacity i.e. a director of NSEL and MCX. Even after moving to Singapore, the Noticee worked as CEO of SMX (a wholly owned entity of FTIL). In view of the above facts, it can be reasonably inferred that the Noticee was a core member of the FTIL group and had access to the UPSI (noted above). Considering the above, I find that as a connected person having access to UPSI, the Noticee was an "insider" within the definition of the term provided in regulation 2(e) of PIT Regulations, 1992.

48. Having observed as above, the next question that emerges for consideration is whether the Noticee violated regulation 3(i) read with regulation 4 of the PIT regulations and section 12A(d) of the SEBI Act. For reference, the text of the said regulations and section is reproduced as under:

> ***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;*
>
> ***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.*
>
> ***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***
> *12A. No person shall directly or indirectly—*
> *…*
> *(d) engage in insider trading;*

49. As noted above, the Noticee was an "insider" within the meaning of the term under regulation 2(e) of the PIT Regulations 1992 and during the period April 27, 2012 to October 3, 2012, he sold 5,41,032 shares of MCX. For the purpose of determining whether the Noticee violated regulation 3(i) and 4 of PIT Regulations, 1992 and section 12A(d) of the SEBI Act while selling 5,41,032 shares of MCX, it needs to be ascertained whether he sold the said shares "*when in possession of*" UPSI as required under regulation 3(i). This issue needs to be answered in light of the submissions made by the Noticee in his reply/written submissions, which are discussed in the subsequent paragraphs.

50. Before dealing with the submissions of the Noticee in this regard on merit, I find it pertinent to refer to the order of Hon'ble SAT in the matter of *Rajiv B. Gandhi and Ors. v. SEBI* (Hon'ble SAT's order dated May 9, 2008) wherein the Hon'ble SAT observed the following:

> *"We are of the considered opinion that if an insider trades or deals in securities of a listed company,* ***it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary****. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established."*

51. The principle of presumption of possession of information by insiders indicated in the case of *Rajiv B. Gandhi and Ors. v. SEBI* by Hon'ble SAT was also recognized later by Hon'ble SAT in another order in the matter of *Reliance Petro Investments Limited v. SEBI* (Hon'ble SAT's order dated December 7, 2015) in the following words:

> *"On perusal of para 9 and 10 of the impugned order it is seen that apart from denying that the Appellant was an insider, Appellant had placed on record various documents to rebut the presumption of being in possession of UPSI at the time of purchasing shares and the Appellant had also made submission to the effect that the price sensitive information itself came into existence after the shares were purchased by the Appellant."*

52. As observed earlier, the Noticee was an "insider" having access to UPSI under regulation 2(e) of the PIT Regulations, 1992 and therefore in light of the above observations of

Hon'ble SAT, there is a presumption that he traded *when in possession of* the unpublished price sensitive information. Consequently, it becomes necessary to decide whether the Noticee has submitted adequate material to refute the said presumption.

53. The Noticee has stated that *even assuming that the alleged information regarding implications of SCN was price sensitive and unpublished, he was not at all aware of the same. He submitted that he was a non- executive director of MCX and had no role in its day to day affairs. He also submitted that no such information was made known to me directly or through the Board of Directors of MCX either in the form of a board note or by way of disclosure, discussion at the Board meeting or in any other way. Further, he had resigned as a non- executive director of NSEL on December 20, 2011 and was not aware of issuance of SCN dated 27-04-12 to NSEL by DCA.* In this regard, I note that in the *interim order*, the allegation that the Noticee sold shares in violation of regulation 3(i) and 4 has been levelled on the basis of his prior long association and directorship / employment with NSEL and FTIL, and also his directorship in MCX. The interim order records, *inter alia*, the following findings in relation to the allegations against the Noticee:

> *"c. ... As noted in the chronology of events, paired contracts were being run on NSEL since September 2009 and default had started in 2011–12. Shri Hariharan Vaidyalingam was a Director during the aforesaid period.*
> *d. Since, FTIL was the holding company of NSEL, it is reasonably expected that Directors, etc. of FTIL and NSEL had access to UPSI which was emanated from NSEL. It is therefore, reasonably expected that Shri Hariharan Vaidyalingam had access to the aforesaid UPSI."*

As can be seen from the above findings of the interim order, the allegations against the Noticee are not based solely on the basis of his directorship with MCX. Rather, his long association with FTIL and NSEL and the significant positions held by him in these companies, together with his directorship in MCX, have been considered for levelling the allegations against him. For the same reason, the investigation has distinguished the case of the Noticee from the other directors / employees of MCX (Mr. Lambretus Rutten, Mr. P.K. Singhal, Dr. Raghavendra Prasad, etc.) against whom the present proceedings have not been initiated. Thus, the genesis of the allegation against the Noticee lies in the fact that the Noticee was NSEL's director since its inception till December 20, 2011, NSEL's KMP from FY 2005-06 to 2009-10, FTIL's director (non-board) from 2005 to 2011 and was associated with FTIL and MCX for more than a decade. It is relevant to mention that the Noticee was acting as a nominee director for FTIL in MCX. A nominee director is appointed on the board of a company to protect the interest of nominating institution and to generally

see that the company is being run without affecting the interests of the nominating institution. The strategic decision making by the nominee director is therefore, to be done taking into account not only the inputs from the company to which he/she is nominated, but also the inputs from the company by which he/she has been nominated. Therefore, as a nominee director for FTIL on the board of MCX, the Noticee had to take inputs and information from FTIL for discharge of his functions. It may be noted that the FTIL was holding 99.9% in NSEL, and FTIL being its promoter had access to the information of the SCN dated April 27, 2012 issued by DCA and its possible implications. Apart from this, the Noticee was also acting as non-executive director of NSEL having information about all strategic policy decisions of NSEL. Though he resigned as director of NSEL in December 2011, he continued as nominee director for FTIL on the board of MCX. Thus, by virtue of being a nominee director for such long years, and also at the time of issuance of SCN by DCA, the preponderance of probability is that the Noticee had access to the UPSI and was in possession of the same. Further, continuation of the Noticee with the FTIL group, by virtue of his appointment as CEO of SMX, also points in the same direction. In view of the above, I find that the submissions of the Noticee in this regard, including that he was not aware of the issuance of SCN by DCA to NSEL cannot be accepted.

54. In addition to the above, I find it relevant to mention that as per the submission of the Noticee, his shareholding in MCX was built up from allotment of shares by way of ESOPs, prior to listing of MCX. It is noteworthy that the Noticee was one of the biggest recipients of ESOPs given by MCX in its schemes in 2006 and 2008. Thus, while his designation in MCX might have been “Non-executive director”, he was a core member of the FTIL group and was surely performing certain significant and valuable functions for MCX or FTIL or NSEL (since he was a nominee director of FTIL and was also a director of NSEL) because of which he received ESOPs substantially more than other recipients. The fact that the Notices was only a non-executive director and yet he was offered a large portion as ESOPs goes on to indicate that the incentives in the form of ESOPs were meant for compensating his significant role and functions in MCX and FTIL, and also for ensuring his role for protecting the interest and objectives of FTIL.

55. The Noticee submitted that since he had shifted to Singapore he was no longer interested to pursue any business association and/or commercial interest in India, and decided to sell his shares in MCX and other entities. According to him, the shares of MCX were sold by him to reduce his outstanding liabilities, which he had incurred on account of financial assistance availed from different banks/financial institutions for buying MCX ESOPs, Housing repairs, Educational loan and expenses of his daughter's education in USA, etc**.**

In this regard, during the personal hearing, the Noticee was asked to provide the quantified profits from sale of shares of MCX (considering his exercise price) and also the breakup of the loans that he repaid from the proceeds of the sale. In his response, the Noticee submitted that he had paid Rs. 6,53,19,114 towards the exercise of his ESOPs and the quantified profits from the sale of shares of MCX were Rs. 52,28,89,354. Regarding the repayment of loans from the said profits, the Noticee could provide utilization of only Rs. 19,33,06,662. No cogent explanation was provided by him as to why additional shares worth Rs.33 crore (approx.) were sold by him while as per his submission the sale was done to reduce the outstanding liabilities. The fact that the Noticee has not been able to provide any explanation as to why additional shares worth approximately Rs.33 crore was sold shows that the Noticee has not established his case that he has sold the shares to reduce the outstanding liabilities. The fact that the Noticee had shifted to Singapore cannot be accepted as a plausible explanation for liquidating the entire shareholding in MCX which fetched him more than Rs. 58 crore since there is no bar on continued holding of shares in such circumstances. Also, the Noticee did not sell shares of all the scrips he held during that period. As per Noticee's own submission he sold the shares of MCX and other entities during the period July 3, 2012 to August 30, 2012. However, it is noted from the holding statement of the Noticee as on August 31, 2012 that the Noticee in his portfolio had shares of FTIL, Indian Overseas Bank and Rural Electrification Corporation Ltd. The above facts belie the claim of the Noticee that he sold the shares of MCX for reducing his outstanding liabilities, and indicate that he had sold the shares because he was in possession of UPSI relating to the implications of the SCN issued to NSEL by DCA.

56. From the observations in the previous paragraphs, *inter alia*, the following points emerge:

i) The implication of the SCN dated April 27, 2012 issued by DCA to NSEL as alleged in the *interim order* was "price sensitive information" in respect of MCX.

ii) The period during which the price sensitive information remained unpublished was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012.

iii) Admittedly, the Noticee sold 5,41,032 shares of MCX during the period July 03, 2012 to August 30, 2012, which is covered within the period when the price sensitive information remained unpublished.

iv) He sold all his shares of MCX during the period when the price sensitive information remained unpublished. Contrary to his claim, he did not sell shares of certain other companies, other than MCX.

v) The Noticee was a director of NSEL when the paired contracts started trading on NSEL and also when defaults in relation thereto had started in 2011–12.

vi) He was a core member of the FTIL group. He had a long association of more than 10 years with MCX, its promoter (FTIL) and FTIL's majority held NSEL, and even when he resigned from FTIL and NSEL, his association continued since he was a director of MCX till June 28, 2012 and had also joined as CEO of SMX, which was a company promoted by FTIL with Shri Jignesh Shah as its Vice- Chairman.

vii) He was an insider in MCX and being a director, was presumed to have been in possession of UPSI when he traded in the scrip of MCX. In view of the circumstantial evidence discussed in paragraphs 53 to 55, the preponderance of probability is that the Noticee was in possession of UPSI.

viii) The Noticee has not been able to refute the presumption of possession of UPSI. Further, the arguments advanced by the Noticee and the material submitted by him do not substantiate his claim that he sold the shares of MCX for specific reasons which include reducing his outstanding liabilities, and not because he was in possession of UPSI.

57. In view of the facts, circumstances and observations discussed above, I find that the Noticee being an insider sold the shares of MCX *when in possession of UPSI* and thereby violated the provisions of regulation 3(i) and 4 of the PIT Regulations, 1992 and section 12A(d) of the SEBI Act.

E. If the answer to issue D is in the affirmative, what directions need to be issued against the Noticee?

58. As observed above, the price sensitive information remained unpublished during the period April 27, 2012 to October 03, 2012. By virtue of the article that appeared in Economic Times and the exchange communication issued by NSEL, the price sensitive information became published on October 3, 2012. However, in the interim order, the computation of loss averted by the Noticee has been done taking into consideration that the UPSI was published eventually on July 31, 2013. Therefore, the profit made/ loss

averted by the Noticee, if any, needs to be re-computed taking October 3, 2012 as the date of publication of the price sensitive information.

59. It is noted that on October 4, 2012 i.e. the day after publication of the price sensitive information, the closing price of the scrip of MCX was Rs. 1,294.65 on BSE and Rs. 1,293.05 on NSE. As mentioned in the interim order, the average sale price of the Noticee for his sale transactions was Rs. 1087.21. Thus, in light of the fact that the average sale price of the Noticee was less than the closing price of the scrip of MCX after the date of publication of the price sensitive information, it cannot be said that the Noticee made profit or averted loss on account of his transactions.

60. However, at the same time, it has been established in the present case that the Noticee being an insider sold the shares of MCX when in possession of UPSI and violated the provisions of PIT Regulations and SEBI Act. The charge of insider trading, in my view, is independent of the final outcome of the transactions. The rationale lies in the fact that the person indulging in insider trading cannot always predict the possible impact of the publication of the price sensitive information, and also that he does not have the benefit of hindsight. Thus, it becomes irrelevant whether the person indulging in insider trading makes any profit / averts loss on account of his transactions or not.

61. Insider trading is a serious violation and can cause severe damage to public confidence in the securities market. An act of insider trading, therefore, has to be viewed strictly irrespective of its ultimate outcome for the person indulging in the same. In the facts and circumstances of the present case discussed above, it becomes imperative that appropriate action in accordance with law is taken against the Noticee who indulged in insider trading, irrespective of the fact that he did not make any profit / avert loss on account of such insider trading.

Order

62. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with section 19 thereof and regulation 11 of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015 hereby restrain the Noticee from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever for a period of seven (7) years from the date of this order.

63. This order shall come into force with immediate effect.

64. The directions issued against the Noticee vide the interim order dated August 2, 2017 are accordingly, disposed of.

65. This Order shall be served on all recognized Stock Exchanges, Depositories and Registrar and Transfer Agents to ensure necessary compliance. Further, in terms of section 11(2)(ib) of the SEBI Act, 1992, a copy of this order shall be forwarded to :

    i) Monetary Authority of Singapore as the Noticee is currently working in Singapore.
    ii) U. S. Securities and Exchange Commission since the Noticee is currently residing in United States of America.

Sd/-

DATE: August 29, 2018
PLACE: MUMBAI

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA