BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/PM/VC/2020-21/9416-9419]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

Gopal Vittal
(PAN– AAAPV5759P)
Bharti Telecom Limited
(PAN- AAACB1456G)
Rohit Kishan Puri
(PAN- AOLPP8519G)
Sunil Bharti Mittal
(PAN- ABBPM8878J)

In the matter of

Trading by certain entities in the scrip of Bharti Airtel Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as, *"***SEBI***"*) conducted investigation in respect of trading of certain entities in the scrip of Bharti Airtel Limited (hereinafter referred to as '**BAL**'/'**Company**'). On the basis of the said investigation, SEBI initiated adjudication proceedings under Section 15G of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") against Mr. Gopal Vittal (hereinafter referred to as *"***Noticee 1**") and Bharti Telecom Ltd. (hereinafter referred to as "**BTL**"/"**Noticee 2**") for the alleged violations of Section 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") and against Rohit Krishan Puri (hereinafter referred to as "**Noticee 3**") and Sunil Bharti Mittal (hereinafter referred to as "**Noticee 4**")

under section 15HB of the SEBI Act for the alleged violation of clause 8 of Schedule B under Regulation 9(1) of PIT Regulations, in respect of the dealings of Noticees 1 & 2 in the scrip of BAL. Noticees 1, 2, 3 and 4 are hereinafter collectively referred to as "**Noticees**".

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned has been appointed as Adjudicating Officer (hereinafter referred to as "**AO**") vide order dated July 01, 2020, under section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire and adjudge against Noticees 1 & 2 under section 15G and against Noticees 3 & 4 under section 15HB of the SEBI Act, for the aforesaid alleged violations of law. The appointment of the AO was communicated to the undersigned vide communique dated July 2, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Four separate Show Cause Notices dated July 17, 2020 (hereinafter be referred to as "**SCN**") were issued to the respective Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against and penalty be not imposed upon Noticees 1 & 2 under Section 15G of the SEBI Act, for the alleged violations of Section 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of PIT Regulations and against Noticees 3 & 4 under Section 15HB of the SEBI Act, for alleged violations of Clause 8 of Schedule B read with Regulation 9(1) of PIT Regulations. Vide emails dated July 17, 2020, digitally signed copies of the respective SCNs were sent to all the Noticees.
4. The SCNs had levelled the following allegations against the Noticees:
   i. SEBI conducted an investigation in the matter during June 01, 2017 to November 10, 2017 (hereinafter referred to as "Investigation Period") in order to ascertain whether trading in the scrip of Bharti by certain entities was in violation of provisions of SEBI Act and PIT Regulations, 2015. During the investigation period, it was observed that Noticee 1 was Director, Noticee 2

was Promoter, Noticee 3 was Compliance Officer and Noticee 4 was Chairman of the Company.

ii. *The company made following corporate announcement on October 12, 2017 at 16.05 pm (i.e. after market hours):*

"Proceedings of Board Meeting held on October 12, 2017: The Board of Directors of the Company at the meeting held today i.e. on October 12, 2017 has unanimously approved the proposed acquisition of the Consumer Mobile Business of Tata Teleservices Limited ("TTSL") and Tata Teleservices Maharashtra Limited ("TTML") by the company"

iii. *Impact of the above announcement on share price of Company at NSE and BSE was as below:*

BSE

Date	Open	High	Low	Close	Vol
12.10.2017	404.00	405.00	396.05	400.50	86,561
13.10.2017	425.00	436.00	421.00	431.60	35,45,078

NSE

Date	O	H	L	C	Vol
12.10.2018	403.20	404.80	395.70	400.25	36,26,106
13.10.2018	430.00	437.00	420.80	430.90	4,14,21,808

iv. *From the tables above, it can be observed that on October 13, 2017, at BSE, the scrip opened at 6.18% higher than the previous day's closing price and closed at 7.76% higher than the previous day's closing price. Increase in volume was also observed at BSE. At NSE, the scrip opened at 7.43% higher than the previous day's closing price and closed at 7.66% higher than the previous day's closing price. Increase in volume was also observed at NSE.*

v. *Considering the impact of the above announcement on the share price of the company, the information pertaining to the announcement made by the Company on October 12, 2017 regarding the proposed acquisition of the Consumer Mobile Business of TTSL and TTML has been considered as Unpublished Price Sensitive Information (UPSI) in terms of Regulation 2(1)(n)(i) of SEBI (PIT) Regulations, 2015.*

vi. *Information regarding chronology of events w.r.t. the said corporate announcement, were obtained from the Company and TTML which is summarized below:*

Sl. No.	Event	Date
1	Preliminary discussion between Bharti and Tata Entities initiated	June 03, 2017 to June 23, 2017
2	Signing and execution of non-disclosure agreement between Bharti and Tata entities.	
3	Misc. discussion between Bharti and Tata entities on the construct of proposed transaction, draft term sheet etc.	
4	Engagement of EY (Ernst &Young) for advise on valuation and structuring	
5	Singapore Telecommunications Limited (Deemed promoter of Bharti Limited) was informed about the proposed transaction	
6	Discussion between Bharti, Tata entities and Goldman Sachs (Advisors) regarding finalization of Term Sheet, due diligence etc.	July 04, 2017 to July 10, 2017 (No major development thereafter till October 06, 2017)
7	Review of term sheet and other documents by AZB (Legal Counsels)	
8	Meeting of Bharti and Tata entities to discuss and principally agreement on the deal construct	October 07, 2017
9	Multiple rounds of discussions on finalization of Term sheet and press release.	October 09, 2017 to October 12, 2017
10	Board meeting of Bharti and Tata entities for approval of the transaction and execution of term sheet.	

vii. *As per the above chronology of events, the initial discussion about the proposed acquisition was held from June 03, 2017 to June 23, 2017. Accordingly, June 03, 2017 was considered as the date when UPSI came into existence. Further, the said UPSI became public with the corporate announcement made by the Company on October 12, 2017 after market hours. Therefore, the period of UPSI was during June 03, 2017 to October 12, 2017.*

viii. *From the information obtained from the Company, TTML and other connected entities regarding persons who had access to and/or in possession of the UPSI, it was observed that there were 47 entities who were privy to the UPSI. The said list of insiders included Noticee 1, Noticee 3 and Noticee 4.*

ix. *The trade details of the insiders, if any, in the share of the Company during the UPSI period were sought from the exchanges. From the submissions of*

the exchanges, it was observed by SEBI, Investigation that on August 10, 2017, there had been a block deal between promoter i.e. Noticee 2 and director i.e. Noticee 1 wherein Noticee 1 had transferred 1,21,000 shares to Noticee 2. Details of the said transaction is given below:

Date	***Client Name***	***Designation***	***Buy Quantity***	***Sell Quantity***
10.08.2017	*Bharti Telecom Limited (Noticee 2)*	*Promoter*	*121000*	
10.08.2017	*Gopal Vittal (Noticee 1)*	*Director*		*121000*

The said transaction between Noticee 1 and Noticee 2 took place during the UPSI period as specified under para 7 above.

x. *With regard to the above transaction, further analysis was carried out to determine if the above transaction was in the nature of insider trading in terms of SEBI (PIT) Regulations, 2015. Observations of SEBI, investigation are as under:*
   a. *During investigation period, Noticee 2 was one of the promoters of the Company with 45.45% shareholding and had significant influence as on August 10, 2017.*
   b. *With regard to the block deal with Noticee 1, Noticee 2 had submitted that its principal business is investment in Bharti and it keeps on investing in the shares of Bharti as and when its management deems proper. Further, in this particular instance, Noticee 2 had acquired the shares of Bharti from Noticee 1 pursuant to an authorization by the Board resolution dated October 25, 2015 and same was undertaken on separate block trade window to ensure transparency and avoid any misperception.*
   c. *In this regard, on perusal of the said Board resolution dated October 25, 2015, it was observed that Board of Noticee 2 had inter-alia authorized further acquisitions by it in Bharti up to a specified limit from Indian Continent Investments Ltd. (a Bharti group company) or any other shareholder of Bharti or through open market purchases.*
   d. *The broker to trades of Noticee 2 i.e. Kotak Securities had confirmed that the block deal was entered based on an order placed by Mr Ashish*

Sardana, one of the authorized persons of the Noticee 2. In this regard, Mr Sardana had further confirmed that he acted as authorised signatory to execute the trade on behalf of the Noticee 2 under the instructions of Mr. Devendra Khanna, Managing Director of Noticee 2 and did not consult anyone else in this regard. Vide email dated February 24, 2020, Bharti had confirmed that Noticee 2 was not aware about the proposed acquisition i.e. UPSI.

e. *Notwithstanding the above, it was observed that Noticee 2 was associated with Bharti through common directors viz. Sunil Bharti Mittal (Noticee 4) and Chua Sock Koong and a common employee viz. Mr. Rohit Puri (Noticee 3), who held designation of Deputy Company Secretary & Compliance Officer in Bharti and Company Secretary in Noticee 2. Further, from the submissions of Bharti, it was observed that Noticee 4 and Noticee 3 were privy to the UPSI.*

xi. *In view of the aforesaid observations, SEBI, Investigation concluded that the Noticee 2 was associated with Bharti during the UPSI period and thus a "connected person" in terms of Regulation 2(1)(d)(i) read with Note to Regulation 2(1)(d) of the SEBI (PIT) Regulations, 2015. Consequently, Noticee 2 was an Insider in terms of regulation 2(1)(g) of the SEBI (PIT) Regulations, 2015.*

xii. *In view of the above, Noticee 2 dealt in the shares of the Company on August 10, 2017 while in possession of UPSI. Therefore, it has been alleged that Noticee 2 has violated the provisions of Sections 12A (d) & (e) of the SEBI Act, 1992 and Regulation 4(1) of the SEBI (PIT) Regulations, 2015.*

xiii. *From the submissions of the Company dated June 21, 2019, it was observed that Noticee 1, Managing Director and CEO of the Company, was also privy to the UPSI. The same was further clarified by the Company vide its e-mail dated February 24, 2020, wherein the following submissions were made with respect to trades carried out by Noticee 1 in the shares of the Company during UPSI period.*

a. *Noticee 1 attended the top leadership meeting held on October 07, 2017 w.r.t. the subject matter of acquisition of TTML's and TTSL's Consumer*

Mobile Businesses ("TTML and TTSL Acquisition"). Also, the said TTML and TTSL Acquisition was discussed and approved by the Board of Directors of the Company in its meeting held on October 12, 2017, which was attended by Noticee 1 as a member of the Board of Directors of the Company.

b. *Further, Noticee 1 had sold 1,21,000 equity shares (received pursuant to the ESOP Scheme of the Company) to Noticee 2 on stock exchange's block trade window in August 2017 i.e. during the period when he was not a part of discussion w.r.t. aforesaid acquisition.*

xiv. *With regard to the above, Noticee 1 vide email dated February 28, 2020 submitted the following:*

a. *1,21,000 shares of Bharti were a part of ESOPs granted to him under the ESOP Scheme and formed part of his remuneration as approved by the Board of Directors on the recommendation of HR Committee.*

b. *His objective of selling shares was to generate liquidity.*

c. *Given the disruption in the Indian telecom industry at that time and high quantity of shares involved, the transaction was deliberately undertaken with Noticee 2 whose main business was to invest in the shares of Bharti and on the separate block trade window under controlled price mechanism, in order to avoid unnecessary misperception in the market. The transaction was pursuant to requisite approvals from the company and the said transaction was reported to the stock exchanges.*

xv. *Notwithstanding the above and submissions made by the company that Noticee 1 was part of discussions regarding UPSI only w.e.f. October 07, 2017, it is observed that by virtue of his position and designation (i.e. Managing Director & CEO (India & South Asia) in Bharti, Noticee 1 was directly associated/connected with Bharti and was thus reasonably expected to have had access to the UPSI which pertained to a significant corporate development w.r.t. Bharti. The said proposed merger was expected to be beneficial for Bharti which was looking to consolidate its operations through Merger and Acquisitions transaction in telecom industry. In view of the*

above, SEBI, investigation concluded that Noticee 1 was a "connected person" in terms of Regulation 2(1)(d)(i) of the PIT Regulations, 2015.

xvi. *Consequently, Noticee 1 was an Insider in terms of regulation 2(1)(g) of the PIT Regulations, 2015.*

xvii. *From the above observations, SEBI, Investigation concluded that Noticee 1 dealt in the shares of the Company on August 10, 2017 while in possession of UPSI. Therefore, it has been alleged that Noticee 1 has violated the provisions of Sections 12A (d) & (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations, 2015.*

xviii. *With respect to compliance with Code of Conduct under PIT Regulations, 2015, SEBI, Investigation observed the following:*

a. *Both the company and Mr. Gopal Vittal had stated that trades by Mr Gopal Vittal were undertaken after seeking requisite approvals from the Compliance Officer of the company under their internal Code of Conduct.*
b. *In this regard, on perusal of the copy of Code of Conduct as forwarded by the company, it was observed that pre-clearance of trades exceeding 50,000 securities needed to be approved in consultation with the chairman of the company.*
c. *In the instant case, it was confirmed by the Compliance Office i.e. Noticee 3 that as the shares sold by Noticee 1 were more than 50000 shares, a pre-clearance for the sale of same was given after consultation with Noticee 4.*
d. *Noticee 4 was privy to the UPSI and Noticee 1 was a connected person and an insider. Therefore, SEBI, investigation concluded that the Compliance Officer (Noticee 3) and Chairman of the Company (Noticee 4) by giving pre-clearance to trades of Mr Gopal Vittal (Noticee 1) during the UPSI period had violated the provisions of Code of Conduct under (PIT) Regulations, 2015.*

xix. *In view of the above, it has been alleged that Noticee 3 and Noticee 4 have violated the provisions of Clause 8 of Schedule B under Regulation 9(1) of the PIT Regulations, 2015.*

5. Noticee 2 through its representative Sh. Puneet Tandon, vide email dated July 31, 2020, sought additional time of two weeks to furnish reply by August 14, 2020. The request was acceded to and two weeks extension was provided to Noticee 2 to submit its reply. In the meanwhile, Noticee 2, through its said representative's email dated August 05, 2020, sought inspection of documents and information based on which allegations and charges have been framed. On the same line, Noticee 3, vide his email dated August 03, 2020 on his own behalf and on behalf of Noticee 1 and 4, also sought inspection of documents, information and evidence considered during the investigation and in issuing SCN. Due to Covid-19 pandemic situation prevailing in the country, online inspection of documents was provided to all the Noticees and relied upon documents were scanned and provided to all the Noticees by the concerned department of SEBI vide email dated August 20, 2020. In the meanwhile, Noticee 3 vide email dated August 14, 2020, submitted his preliminary reply to the SCN. Further, vide separate Emails dated August 14, 2020, Noticee 3 also forwarded the replies of Noticees 1 and 4 to the SCN and sought opportunity to be heard in person and make submissions. Sh. Puneet Tandon, on behalf of Noticee 2, submitted preliminary reply vide his email dated August 14, 2020 and sought opportunity to be heard in person and make submissions.
6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, and also as requested by all the Noticees, vide hearing Notices dated August 31, 2020, opportunity to be heard was provided to Noticees 1 and 2 on September 14, 2020 and to Noticees 3 and 4 on September 15, 2020 The said hearing was granted through videoconferencing on the Webex platform in view of the difficulties faced due to Covid-19 pandemic. However as Authorized representatives (ARs) of all the Noticees were same, the personal hearing was taken up on September 14, 2020 for all the Noticees upon the request of the ARs. The ARs reiterated the submissions made by the Noticees vide their respective replies dated August 14, 2020. Further, the ARs requested for time of five days to file additional submissions on behalf of the Noticees which was acceded to. Subsequently, a consolidated final reply for all the Noticees was filed on September 19, 2020.

7. Thus, separate but identical preliminary replies were filed by all the Noticees on August 14, 2020 and a consolidated final reply for all the Noticees was filed on September 19, 2020. The contentions raised by the Noticees in their respective preliminary replies and in the consolidated final reply are summarised below:
   a. *The basis of the show cause notice dated July 17, 2020 ("SCN") is to treat as 'unpublished price-sensitive information' ("UPSI") the preliminary discussions between Bharti Airtel Limited ("Airtel") and Tata Teleservices Limited ("TTL") and Tata Teleservices Maharashtra Limited ("TTML") with respect to a proposed transaction ("Proposed Transaction"), including but not limited to the period between June 3, 2017 and August 10, 2017. This information was, in fact, in the nature of generally available information. It was widely reported in print (including but not limited to detailed articles in Economic Times and Money Control) and electronic (including but not limited to being telecasted on multiple occasions on the news channels CNBC, Zee Business, ET News) media. This information was generally accessible to the public on a non-discriminatory basis.*
   b. *The information first became public in the first week of July 2017 following elaborate coverage in the media, which included several news articles and live TV coverage during July 2017 to first week of August 2017. Given that the application for the trade was made by Noticee 1 only on August 7, 2017, i.e. well after the fact of the preliminary discussions became public, the said trade cannot be said to be done while in possession of any UPSI in connection with the Proposed Transaction, much less on the basis of UPSI.*

      Immunity under SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations")
   c. *Regulation 4(1)(ii) of PIT regulations: Without prejudice to the fact that there was no UPSI at all and assuming without admitting that Bharti Telecom Limited ("BTL"/ Noticee 2) & Mr. Gopal Vittal (Noticee 1) were in possession of UPSI as alleged in the SCN (i.e., the same UPSI), a trade inter-se between BTL and Gopal Vittal would be exempt from being considered as Insider Trading under Regulation 4(1)(ii) of the PIT Regulations. Regulation 4(1)(ii) exempts a transaction done through block deal window mechanism*

between persons who are in possession of the same UPSI, which is the exact case brought out in the SCN. Paragraphs 14 and 17 of the SCN attribute possession of the same UPSI to Mr. Gopal Vittal (seller) and BTL (buyer) as on the date of the transaction.

d. *Regulation 4(1)(v): Additionally, the trade carried out by BTL is also exempted from being considered as Insider Trading in terms of Regulation 4(1)(v) of the PIT Regulations which provides exemption to a corporate entity in case where the individuals taking trading decisions were not in possession of the UPSI, and were different from the persons alleged to be in possession of the UPSI. The only basis for the SCN to allege possession of UPSI by BTL is on the basis of the facts that BTL was a promoter of Airtel, and that there was a commonality of two Directors and an employee between BTL and Airtel. The SCN fails to establish any manner in which BTL had access to UPSI. BTL is not associated with Airtel (directly or indirectly), in any manner that allows BTL (directly or indirectly), access to UPSI. As has been brought out in detail in the Reply on behalf of Noticee 2 to the SCN, the individuals in BTL who were authorized to carry out the trade were distinct from the common Directors/ employees between Airtel and BTL. Further, the authorized individuals were neither required to nor actually contacted any of the common Directors/ employee for any approval/ permission prior to making the trade. Accordingly, the individuals who acted on behalf of BTL while making the trade were not in possession of any UPSI. BTL and Airtel are independent corporate entities.*

Mr. Gopal Vittal ("Noticee 1") was not in possession of UPSI

e. *Due to clear segregation of responsibility within Airtel, leadership of Mergers & Acquisition function does not fall under Mr. Vittal's domain. This segregation of responsibility is also recorded on a year-on-year basis by the HR and Nomination Committee ("HR Committee") constituted by the Board of Directors. He was therefore generally not involved in the preliminary discussions with respect to any transaction, including the Proposed Transaction. This fact is further recognized in the SCN itself, which does not allege the actual knowledge of UPSI by Mr. Vittal but only deems that UPSI*

would be available to him on the basis of his designation. In a given case, by virtue of his position and stature, it cannot be disputed that a Managing Director may generally be aware of important developments / transactions that take place in the company. However, given the segregation of powers between a Managing Director and Chairman within Airtel, Mr. Vittal's knowledge about the Proposed Transaction (which he could have had by virtue of his position) was at best similar or equivalent to what was already generally available information in public domain due to widespread media coverage of the preliminary discussions w.r.t. Proposed Transaction.

The trade pattern clearly establishes that it is not a case of insider trading

f. *Gopal Vittal - The trade pattern of the said Trade does not show any use of UPSI by Mr. Vittal. He sold the shares on August 10, 2017 much prior to the announcement in October, 2017. The SCN itself states that the Tata transaction was a positive development and the price of shares went up post the announcement. If a person was to trade on the basis of UPSI, logically, such a person would buy shares or he would offload shares post the announcement of the transaction. The Hon'ble SAT has held that if the trade pattern is contrary to the nature of information, it would not amount to insider trading.*

g. *BTL - The principal objective of BTL is investing in the shares of Airtel. It keeps on investing in the shares of Airtel as and when deemed proper. It has bought significant quantities of shares in the year 2016, 2017 & 2018. Further, BTL did not sell shares of Airtel post announcement of the Tata transaction. It is therefore clear that acquisition of a minuscule quantity of shares from Mr. Vittal was a trade in the normal course of business and it was not influenced or motivated by the alleged information.*

h. *It may be pertinent to note that in terms of Section 15G of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") penalty for insider trading is provided for in the event a particular trade is "on the basis of" UPSI. As has been evidenced hereinabove, in addition to there being no UPSI in existence, or the Noticee Nos. 1 and 2 not being in possession of any UPSI,*

the said Noticees did not trade on the basis of any UPSI. Therefore, no penalty ought to be imposed under Section 15G of the SEBI Act.

The information regarding preliminary discussions cannot be considered as UPSI as the available information was not material information:

i. *The information regarding preliminary discussions cannot be considered material. There was nothing concrete and definitive – no binding term sheet / no MOU / no board or committee approval. Accordingly, the information was not material and therefore not price sensitive.*

The Compliance Officer and the Chairman had acted in conformity with law

j. *Mr. Rohit Puri (Noticee 3) is the Compliance Officer of Airtel. He took the requisite declarations from Mr. Vittal, considered the information and declaration provided by Mr. Vittal and diligently adhered to established process for approval of trades. His role and job responsibilities do not give him any access or visibility to M&A transactions unless they are placed before the board or board committee. His name does not figure in the chronology of events prepared by Tata which is relied upon by SEBI. In fact, the SCN does not allege that Mr. Puri had access or could have had access, to the alleged UPSI. The allegation is factually incorrect as the Noticee 3 has already placed the requisite declaration required under Clause 8 of Schedule B, and his consideration of the same, on record along with his Reply.*

k. *The Chairman, Mr. Sunil Bharti Mittal (Noticee 4) himself leads the M&A function. Accordingly, he was aware that Mr. Vittal was not in possession of the UPSI. Therefore, he acted in compliance with both the letter and spirit of law while approving the application of Mr. Vittal pursuant to the declaration made by Mr. Vittal. The allegation against Mr. Sunil Bharti Mittal, like against Mr. Puri, is merely of an alleged violation of Clause 8 of Schedule B to the PIT Regulations. There is no allegation in the SCN that Mr. Mittal knew that Mr. Gopal Vittal was in possession of the alleged UPSI (which is in any event denied). As has already been established in the*

Reply, Mr. Mittal was in due compliance of his obligations. Further, Clause 8 of Schedule B does not impose any obligation on Mr. Mittal, therefore, there cannot be any question of violation of the same by him.

l. Each of the aforesaid submissions is without prejudice to the others.

DETAILED SUBMISSIONS

I. The alleged information was not UPSI: As the alleged information was not "unpublished"

m. As is clear from a bare perusal of the SCN and the chronology provided therein, prior to the trade between Noticee Nos. 1 and 2 on August 10, 2017 and the pre-clearance for the same requested by Noticee 1 on August 7, 2017 and granted on August 8, 2017, the nature of information considered as UPSI is the preliminary discussions between the parties. Additionally, the SCN recognizes that there was no major development between July 10, 2017 and October 6, 2017.

n. It is significant that the alleged UPSI, as set out in the SCN with respect to the Proposed Transaction, had already become generally available information much prior to the trade on August 10, 2017 or even the request for pre-clearance for the same on August 7, 2017. The said information was in public domain and was widely reported and published in several prominent national news dailies, available to the public on a non-discriminatory manner by virtue of the following articles

- *Article titled 'Tatas, Bharti on a call to explore joint front in telecom and DTH' published in the Economic Times on its online edition dated July 7, 2017 (@Pg. 38 of the Reply on behalf of Mr. Gopal Vittal)*
- *Article titled 'Merger with Tata to help Bharti Airtel close gap with Vodafone-Idea' published in the Economic Times on its online edition dated July 11, 2017; (@Pg. 43 of the Reply on behalf of Mr. Gopal Vittal) Article titled 'Bharti Enterprises disconnects call on mega telecom alliance with Tata Group' published in the Economic Times on its online edition dated August 4, 2017; (@Pg. 47 of the Reply on behalf of Mr. Gopal Vittal)*

- *Article titled 'Deals Buzz: Bharti Enterprise drops plan to form alliance with Tata Group' published on Live Mint in its online edition dated August 4, 2017. (@Pg. 50 of the Reply on behalf of Mr. Gopal Vittal)*

o. *In addition to newspaper reports, the alleged UPSI was also widely reported by various news channels. Links to some of the news channel reports can be found on YouTube and are currently available on the below web pages:*

- *https://www.youtube.com/watch?v=bEkULfrsfFQ&t=26s - Zee Business, July 7, 2017*
- *https://www.youtube.com/watch?v=dR4JNK9dK9o&t=93s– Zee Business, July 7, 2017*
- *https://www.youtube.com/watch?v=0Tsb6LAWo4I – ET Now, July 7, 2017*
- *https://www.youtube.com/watch?v=bPD2dUc7U0U&t=65s – CNBC TV18 , July 31, 2017*
- *https://www.youtube.com/watch?v=aMjvLPbNWdE&t=66s – CNBC TV18, August 1, 2017*

p. *The above references to the newspaper articles and media reports on news channels clearly establishes without any doubt that the alleged UPSI being in the public domain was 'generally available information' and not as UPSI under the PIT Regulations. Accordingly, the said Trade, was not in violation of the PIT Regulations and SEBI Act.*

II. Clear Immunity under the PIT Regulations

q. *Without prejudice to the aforesaid, the said Trade is exempted under Regulation 4(1)(ii) and Regulation 4(1)(v) of the PIT Regulations and is not in contravention of the PIT Regulations.*

Regulation 4(1)(ii) of the PIT Regulations

r. *Regulation 4(1)(ii) of the PIT regulations, relied upon and cited by SEBI in its SCN, clearly exempts transactions carried out through the block deal window between persons who were in possession of UPSI. The list of defences set out in Regulation 4(1) is only illustrative and not meant to be exhaustive. The underlying principle behind granting exemption is parity of information and to permit persons to trade in securities of a listed company, in the absence of any asymmetrical access to UPSI.*

s. *Assuming without admitting that BTL & Mr. Gopal Vittal were in possession of UPSI as alleged in the SCN (i.e. the same UPSI), a trade inter-se between BTL and Mr. Gopal Vittal is exempted from being considered as Insider Trading under Regulation 4(1(ii) of the PIT Regulations. Paragraphs 14 and 17 of the SCN allege that Mr. Gopal Vittal and BTL were respectively in possession of the same UPSI at the time of the trade.*

t. *In light of the aforesaid, the said Trade ought to be considered as being exempted under Regulation 4(1)(ii) of the PIT Regulations.*

Regulation 4(1)(v) of the PIT Regulations

u. *Further, BTL ought to be granted exemption under Regulation 4(1)(v) of the PIT Regulations. Even as per the SCN, the Directors/ employees of BTL who are alleged to be in possession of such UPSI (i.e., Mr. Sunil Bharti Mittal, Ms. Chua Sock Koong or Mr. Rohit Puri) are different from the individuals taking trading decisions on behalf of BTL with regard to the Trade (i.e. Mr. Sardana, the Authorised Signatory or Mr. Devendra Khanna). It is humbly submitted that neither Mr. Sardana nor Mr. Devendra Khanna were in possession of any UPSI in relation to Airtel when they took the decision with respect to the Trade. The SCN does not seem to suggest anything to the contrary and SEBI has not attributed any knowledge of the UPSI to either Mr. Khanna or Mr. Sardana and through them to BTL. The said Trade by Mr. Sardana on behalf of BTL was in the normal course of business of BTL. Accordingly, the said trade cannot be said to be influenced in any manner, either directly or indirectly, by any alleged UPSI in connection with Airtel.*

v. *Knowledge of the common directors of any UPSI relating to Airtel cannot be presumed to be the knowledge of BTL. Even the assumption that BTL was in possession of the alleged UPSI at the material time has no significance or bearing on the said trade. The decision makers with regard to the said trade were different from the individuals/persons, who were alleged to be in possession of the UPSI. Regulation 4(1)(v) of the PIT Regulations specifically grants exemption in cases where decision makers in a corporate entity with regard to any trade are different from the individuals/persons,*

who were alleged to be in possession of the UPSI. This exemption squarely applies in the case of BTL.

III. Parties to the said Trade were not in possession of any UPSI at the material time.

w. As per section the note to Regulation 2(1)(g) of the PIT Regulations, "the onus of showingthat a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the chargeafter which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."

Mr. Gopal Vittal

x. Airtel has a specialized and empowered HR Committee constituted by the Board of Directors. The terms of reference of HR Committee inter-alia includes finalizing the performance targets of the Chairman and Managing Director. It may be pertinent to note that well ahead of regulatory mandate from SEBI, Airtel had clearly and categorically segregated the roles and responsibilities of the Executive Chairman and the Managing Director & CEO. The segregation of the roles and responsibilities are real, clearly divisible and transparent in nature.

y. The key responsibility areas and leadership roles of both Managing Director and the Chairman are clearly defined and demarcated. The M&A function of Airtel is not led by the Managing Director, his involvement is need based and at the appropriate time when his inputs/contribution is required. Accordingly, he ordinarily does not get involved in all exploratory/preliminary discussions at the inception stage. Even in the present case, Mr. Vittal did not partake in the discussions in June–July, i.e. at the time when the preliminary discussions were ensuing. The chronology of events shared with SEBI on June 21, 2017 contains the names of individuals who had taken part in the discussions from June 3, 2017 to July 10, 2017 and that

list does not include Mr. Vittal's name. This is also corroborated by the chronology of events provided by TTML to SEBI on October 25, 2019 and relied upon by the AO while preparing the SCN. In fact, the first time Mr. Vittal participated in the discussions, was as late as on October 7, 2017.

z. *In light of the aforesaid, it is clear that Mr. Gopal Vittal, was not a part of the team involved in the preliminary discussions in June-July, 2017. By virtue of his position and stature, it cannot be disputed that a person in his position would generally be aware of important developments / transactions that take place in the company. In this regard, it may be categorically reiterated that at the relevant point in time only preliminary discussions had taken place which too had been suspended. There was no UPSI that existed with regard to the said transaction. At the time of carrying out the Trade (on August 10, 2017) and seeking the pre-clearance for the same (on August 7, 2017), Mr. Vittal's knowledge about the transaction, was at best similar or equivalent to the information already available in public domain. There is no document/ information on record to the contrary, which can even indicate, much less establish, that Mr. Vittal was in possession of the alleged UPSI at the time of carrying out the Trade. Accordingly, it is clear that Mr. Vittal was not in possession of the alleged UPSI at the material time.*

<u>BTL</u>

aa. *Assuming without admitting that (i) BTL was an insider, and (ii) the information related to the Proposed Transaction qualified as UPSI as of the date of the said Trade, it will still need to be established that BTL was in fact in possession of such UPSI at the time of the said Trade.*

bb. *BTL is a promoter of Airtel and one of its principal businesses is to invest in Airtel. BTL continues to invest into Airtel as an when it deems fit.*

cc. *For a person to be a 'connected person', it is required that such person should be associated with a company (directly or indirectly), in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship that allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access. Accordingly, for a person to be 'connected person' to a*

listed company, it is not only necessary for there to be an association in the manner set out above but such association should allow such person, either directly or indirectly, access to UPSI of the listed company or is reasonably expected to allow such access.

dd. *Since BTL is not associated with Airtel (directly or indirectly), in any manner, that allows BTL (directly or indirectly), access to UPSI or is reasonably expected to allow such access in Airtel, BTL cannot be regarded as a connected person of Airtel. Airtel is a legal and distinct entity from BTL, whose management and day to day affairs are under the overall supervision of its board of directors. Other than being a promoter of Airtel, BTL has no frequent communication, contractual or other arrangements in place with Airtel that gives BTL the ability to access any UPSI of Airtel, or is reasonably expected to allow such access.*

ee. *Further, as explained above, assuming without admitting that the two common directors and the common employee had knowledge of these matters, that knowledge cannot be imputed to BTL. BTL is not associated with Airtel and the fact that there are two common directors, by itself does not cause such an association. Both Mr. Sunil Bharti Mittal and Ms. Chua Sock Kung, as directors of Airtel and Mr. Rohit Puri as a compliance officer of Airtel, have a fiduciary duty towards Airtel which is independent of their fiduciary duty towards BTL. Additionally, the said Directors/ employees of BTL who are alleged to be in possession of such UPSI are different from the individuals taking decisions on behalf of BTL with regard to the Trade (i.e. Mr. Sardana, the Authorised Signatory or Mr. Devendra Khanna). It is humbly submitted that neither Mr. Sardana nor Mr. Devendra Khanna was in possession of any UPSI in relation to Airtel when they took the decision with respect to the Trade. The SCN does not suggest anything to the contrary and SEBI has not attributed any knowledge of the UPSI to either Mr. Khanna or Mr. Sardana and through them to BTL. The said Trade by Mr. Sardana on behalf of BTL was in the normal course of business of BTL. Accordingly, the said trade cannot be said to be influenced in any manner, either directly or indirectly, by any alleged UPSI in connection with Airtel.*

Their knowledge of any UPSI relating to Airtel cannot be presumed to be the knowledge of the entire Board and management of BTL and therefore make BTL a connected person of Airtel.

ff. The decision of the Board of Directors of BTL authorising the trade in the shares of Airtel was taken as far back as on October 25, 2015, i.e. approx. 2 years prior to the said Trade. It was an independent decision with no nexus whatsoever with alleged UPSI. Accordingly, it cannot be stated that the said decision by the board of directors of BTL was in any manner influenced by or related to the alleged UPSI.

IV. <u>The trade pattern clearly establishes bonafide and no case of insider trading.</u>

<u>With respect to the Noticee 1 (Mr. Gopal Vittal)</u>

gg. Mr. Gopal Vittal sold the shares much prior to the announcement of the Proposed Transaction when the price was stable and there was no major variation in such price on account of an impending transaction. The SCN itself states that the Tata transaction was a positive development and goes on to state that the price of shares went up post the announcement. If a person was in possession of UPSI and his trade was motivated by the said UPSI, logically, such a person would buy shares or he would offload shares post the announcement of the transaction. If Mr. Vittal's decision to carry out the trade was driven by the alleged UPSI, he would have bought (instead of selling) more shares in anticipation of a positive impact that the Proposed Transaction would make on the share price after it was announced and sold them immediately after the Proposed Transaction was announced when the price increased significantly.

hh. The aforesaid fact makes it clear that neither was there any intention nor was there actual trade based on any UPSI, much less the UPSI alleged in the SCN.

<u>With respect to Noticee 2 (BTL)</u>

ii. The fact pattern in the present case itself indicates that there has been no insider trading by BTL. In this regard, a bare perusal of the history of

transaction conducted by BTL in the scrip of Airtel would clearly bring out the same.

jj. *It may be pertinent to note that as on April 1, 2015 BTL owned approximately 174.75 crore shares of Airtel. Thereafter, in the year 2015, BTL acquired approximately 1 crore shares of Airtel at a price range between INR 325.42 – INR 388.00 per share. Further, in the year 2016 BTL acquired approximately 6 crores shares at the price range between approximately INR 311.39 and INR 323.24 per share. Subsequently, in the year 2017, BTL acquired approximately 18.5 crore shares at a price between INR 416.05 and INR 544.20 per share.*

kk. *It may be pertinent to note that out of the above purchases only 1,21,000 shares were purchased by BTL from Mr. Gopal Vittal in the concerned transaction. This is a miniscule amount of the total shares purchased by BTL during the said period. Further, BTL had not sold any share of Airtel either during the said period or after the announcement.*

ll. *The above fact pattern clearly shows that in the event BTL was desirous of misusing any UPSI available to it, it would not have restricted itself to such a miniscule purchase. It would have bought more shares or it would have offloaded shares post the announcement. It did neither. In fact, in consonance with its objective of investing in the shares of Airtel, BTL has consistently bought shares of Airtel from time to time. The said fact pattern and BTL's conduct prior and post the said trade, unequivocally establishes that the said trade was not motivated or influenced by the alleged UPSI in any manner.*

mm. *In light of the aforesaid, the AO must consider that there was no information available with BTL which could have been termed as UPSI. The trade was in compliance with letter and spirit of the law.*

nn. *It may be pertinent to note that in terms of Section 15G of the SEBI Act penalty for insider trading is provided for in the event a particular trade is "on the basis of" UPSI. As has been evidenced hereinabove, in addition to there being no UPSI in existence, or the Noticee Nos. 1 and 2 being in possession of any UPSI, the said Noticees did not trade on the basis of any*

UPSI. Therefore, no penalty ought to be imposed under Section 15G of the SEBI Act. As has been evidenced hereinabove, there is no UPSI in existence, nor were the Noticee Nos. 1 and 2 in possession of any UPSI. Therefore, the question of imposing any form of penalty under Section 15G does not arise. There is no evidence on record to support the allegations raised in the SCN.

oo. *In this regard, reference may be placed on the decision of the Hon'ble Securities Appellate Tribunal in Jubilant Stock Holding Pvt. Ltd v. SEBI, Appeal No.174 of 2018, Decided on 07.11.2019 [Para 43, Page 217, Judgment Compilation]*

"43. It has been now established by the catena of cases that even if the penalty would be imposed only when the trading is done "on the basis of" any unpublished price sensitive information, the person against whom the charges are levelled will have to show that the trading was not done on the basis of the information but for other reasons, since the explanation would be especially within his own knowledge. In the present case, the appellant provided the explanation which remained uncorroborated.'

pp. *The Noticees humbly submit that there has been no change in the language of Section 15G of the SEBI Act since the above determination and SEBI Act being the parent statute, all delegated legislation thereunder, including SEBI Regulations must be interpreted in accordance therewith.*

qq. *In light of the aforesaid, the Noticees humbly submit that the AO ought to also consider the fact pattern surrounding the Trade on behalf of both, Noticee1 and the Noticee 2.*

V. <u>The alleged information was not an UPSI: As the information alleged was non-material at the time of the Trade:</u>

rr. *SEBI has incorrectly considered the period of UPSI. It is further submitted that mere preliminary discussions, which too were discontinued prior to the Trade, cannot be considered as UPSI at the relevant time as the information. The said information was not material and could not give rise to UPSI.*

ss. *The definition of UPSI provided under Regulation 2(1)(n) of the PIT Regulations suggests that there should be certainty or decisiveness in the information to materially affect the price of securities of the listed company. Admittedly, there was no concrete decision by the parties, much less a binding term sheet/binding agreement/binding MoU/binding commitment/ board approval/committee approval regarding the proposed transaction until October, 2017. As is indicated by the chronology provided by the AO in the SCN itself, the discussions that had taken place prior to the Trade on August 10, 2017 were merely preliminary in nature without any concrete decision or discussions on the Proposed Transaction between Airtel and the Tata Entities. Further, as can be seen from the news reports, the preliminary discussions between Airtel and the Tata entities with regard to the Proposed Transaction were also suspended considerably prior to the Trade. This further establishes the lack of any concrete decision/ understanding between Airtel and the Tata Entities with regard to the Proposed Transaction. Therefore, it is clear that the preliminary discussions between Airtel and the Tata Entities were not material enough to give rise to any UPSI.*

VI. No violation of Clause 8 of Schedule B under Regulation 9(1) of the PIT Regulations/ Airtel Code of Conduct by Noticee 3 and Noticee 4

tt. *Clause 8 of Schedule B under Regulation 9(1) of the PIT Regulations, provides:*

"8. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

Accordingly, the case against the Noticee 3 is limited to whether (a) the Noticee 3, compliance officer had sought appropriate declarations from Noticee 1 while granting the pre-clearance for the said Trade; and (b) The Noticee 3 had given regard to such declaration.

Further, with respect to the Noticee 4, Clause 8 does not provide for any obligation on the part of the Chairman of a company. The involvement of the Chairman was not due to any requirement under the Model Code of Conduct provided in the PIT Regulations but was done by the Compliance Officer in line with Airtel's internal Code of Conduct.

Appropriate declarations were sought for from Noticee 1 while granting the pre-clearance for the said Trade

uu. The Noticee 3 has, in its reply dated August 14, 2020 has filed a form dated August 7, 2017 which provided all relevant details of the trade proposed by Noticee 1 and also an express and specific declaration in line with the requirement of Clause 8 of Schedule B. The declaration by the Noticee 1 to the Noticee 3 provided that he was not in possession of or knowledge of any information that could be construed as UPSI and that he has made full and true disclosure in the matter.

Noticee 3 and Noticee 4 had given due regard to the declaration given by Noticee1

vv. It may be pertinent to note that the Noticee 3 himself was not privy to any information much less any alleged UPSI in connection with the proposed transaction. Further, Paragraph 8 of the Airtel Code of Conduct, provides that the trading window shall be closed for all or select Designated Persons when they can reasonably be expected to have possession of UPSI. Therefore, in the event Noticee3 reasonably expected that Mr. Vittal would be in possession of any UPSI, he would have closed the trading window for the Noticee 1. There was no reason at the material time for Noticee 3 and Noticee 4 to expect that Mr. Vittal had possession of UPSI.

ww. The Noticee 3 had also consulted with the Chairman prior to granting pre-clearance of the said Trade to Noticee 1. This also clearly shows that due consideration was given to the FORM PCT filed by Noticee 1 on August 7, 2017 including the requisite declaration thereunder.

xx. With respect to the Noticee 4, it may be pertinent to note that while Noticee 4 may have been privy to information with regard to the preliminary discussion of the proposed transaction, his knowledge of such information

did not and ought not to have colored his views on the pre-clearance being granted to Noticee 1. In fact, being himself involved in the preliminary discussion, the Noticee 4 was well aware that the Noticee 1 was not involved in the preliminary discussions with respect to the proposed transaction. Therefore, at the time of consultation with the Noticee 3, the Noticee 4 correctly gave his views on the pre-clearance and consented to the same. There was no reason at the material time for Noticee 3 and Noticee 4 to expect that Mr. Vittal had possession of UPSI.

yy. Without prejudice to the aforesaid, Regulation 9(1) of the PIT Regulations, read with Clause 8 of Schedule B thereof, does not require any compliance by the Chairman. The requirement identified under the same is only for an undertaking to be obtained by the Compliance Officer, which too was obtained. Accordingly, it is humbly submitted that ex-facie no provision for violation by Noticee 4 has been identified in the SCN, much less has made out against Noticee 4 in the SCN.

zz. In view of the above, Noticee 3 and Noticee 4 had complied with all requirements under Clause 8 of Schedule B under Regulation 9(1) of the SEBI (PIT) Regulations, 2015. The law does not provide any other preconditions to be satisfied for the Compliance Officer or the Chairman to grant such approval. SEBI has failed to provide any rationale for holding the Noticee 3 or Noticee 4 violative of the said provisions.

CONSIDERATION OF ISSUES AND FINDINGS

8. I note that the allegations against Noticees 1 and 2 are of violation of provisions of 12A(d) & (e) of the SEBI Act read with Regulation 4 (1) of PIT Regulations. Further, the allegations against the Noticees 3 & 4 are of violation of provisions of Clause 8 of Schedule B under Regulation 9 (1) of PIT Regulations

9. After considering allegations and replies of the Noticees 1, 2, 3 and 4, I observe that sustenance of charges against Noticee 3 and 4 would depend on the sustenance of charges against Noticee 1 and 2. Therefore, the issues under consideration for examining the charges against Noticee 1 and 2 are:

Issue No. I Whether the Noticee 1 and 2 had traded on the basis of Unpublished Price Sensitive Information or not?

Issue No. II Whether the Noticee 3 & 4 have violated the provisions of Clause 8 of Schedule B under Regulation 9(1) of the PIT Regulations?

Issue No. III If the answers to the above issues are in affirmative then, whether the failure, on the part of the Noticees would attract monetary penalty under Sections 15G & 15HB of the SEBI Act?

Issue No. IV If yes, what would be the quantum of penalty to be imposed on the Noticees?

10. Before moving forward, the text of the relevant provisions of law are being reproduced below:

SEBI Act

12A. "No person shall directly or indirectly—

(d) engage in insider trading;

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

PIT Regulations

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

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

(i)……..

(ii)…….

……"

Code of Conduct.

9.(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in

Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

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

Schedule B

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

8. Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate."

11. I note that Noticee 1 was Managing Director and Chief Executive Officer (India & South Asia) of the company, Noticee 2 was Promoter of the company, Noticee 3 was Compliance Officer of the company and Noticee 4 was Chairman of the Company at the relevant time. Noticee 1 had sold 1,21,000 shares of the company to Noticee 2 on August 10, 2017 by way of a Block Deal trading window mechanism on the stock exchange system.

12. I further note from the material available on record that the Company had announced acquisition of Consumer Mobile Business of Tata Teleservices Limited (**TTSL**) and Tata Teleservices Maharashtra Ltd. (**TTML**) on October 12, 2017 after market hours. The said announcement had led to price rise of the scrip of the Company. As per the chronology of events, as available on record, the preliminary discussions for the abovementioned acquisition had initiated between the Company and TTSL & TTML on June 03, 2017. Therefore, it is alleged that the information regarding the acquisition was an UPSI from June 03, 2017 to October 12, 2017. Therefore, it is alleged that Noticees 1 & 2 had dealt in shares of the Company while in possession of UPSI and, therefore,

Noticees 1 & 2 have violated the provisions of Section 12A(d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations.

13. Before moving ahead, it is necessary to determine if Noticee 1 and Noticee 2 were ‘insiders’. In this regard, Regulation 2(1)(g) of PIT Regulations defines "insider" as below:

2(1)*(g) "insider" means any person who is:*

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

Further, Regulation 2(1)(d) of PIT Regulations define "connected person" as below:

2(1)*(d) "connected person" means: -*

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

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

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

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

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

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

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

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

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

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

(i) a banker of the company; or

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

***NOTE:** It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.*

14. I note that SEBI, during the course of Investigation, sought information from the Company, TTML and other connected entities regarding persons who had access to and/or in possession of the UPSI and it was observed that there were

47 entities who were privy to the UPSI. The said list of insiders included Noticees 1, 3 and 4. At the same time, Noticee 2 was one of the promoters of the Company with 45.45% shareholding and had significant influence as on August 10, 2017.

15. However, from the replies of the Noticees, I note that it has been argued at the stage of adjudication that Noticee 1 was not involved with the merger and acquisition undertaken by BAL and the said responsibility would fall under the domain of Chairman i.e. Noticee 4. Therefore, he was not in possession of UPSI. Further, Noticee 2, being a promoter, had no direct role in the company and, therefore, it was also not having possession of UPSI. At the same time, Noticee 3 was also not involved with the discussions related to acquisition and, thus, he also was not aware of the UPSI.

16. I note that Noticee 1 was the Managing Director of the Company at the relevant time. In terms of Section 2(1)(54) of Companies Act, 2013, the Managing Director has been defined as following:

(54) —managing director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

Therefore, in terms of the above definition, Noticee 1, by virtue of his position, was entrusted with "*substantial powers of management of the affairs of the*

company". In this regard, I note that the Noticees have contended that, as per the division of powers, Noticee 1 was not involved in the acquisition of Tata Telecom. However, as per the definition of insider trading under Regulation 2(1)(g) of PIT Regulations, I note that the requirement of PIT Regulation is the possession or access to such UPSI. In this regard, I am unable to accept the submission that Noticee 1, who was Managing Director of the Company and was in control of substantial powers of management of the affairs of the company, was not aware of such an important transaction going on in the company. In fact, I note from the submissions of the Noticees that they have fairly conceded that a person in his position would generally be aware of important developments/transactions that take place in the company. Therefore, even taking the arguments of the Noticees on the face of it that only a preliminary discussion had taken place at the time of the transactions, I cannot accept that Noticee 1 was not aware of the said development.

I also note that the requirement of PIT Regulations to prove Insider Trading is that the person is aware of UPSI and it is not necessary for him to be directly involved with the said UPSI. Therefore, as has also been conceded by the Noticees, I hold that Noticee 1 was aware of the said development taking place in the company.

17. Further, as per the list of persons in possession of UPSI, submitted by the company during the course of investigation, Noticees 1, 3 and 4 were shown as having possession of UPSI. Therefore, it is not open to the Noticees at this stage to contend that Noticee 1 or Noticee 3 were not in possession of UPSI.

18. Further, I note that the Company and BTL had two common directors viz. Noticee 4 and one Ms. Chua Sock Koong. I also note that Noticee 3, who was Deputy Company Secretary and Compliance Officer of the Company, was also the company secretary of Noticee 2.

19. Further, I note from the submissions of the Noticees that they have admittedly mentioned that Noticee 4, who was the Chairman of the Company, was in charge of the acquisition. Therefore, as per the admission of the Noticees during the present adjudication proceedings, Noticee 4 was clearly in

possession of UPSI. I further note from the list of persons having possession of UPSI, as submitted by the company during the course of investigation, that Noticee 3 was having possession of UPSI.

20. In this regard, I note from the material available on record that the principal business of BTL is to invest in BAL and, therefore, I am of the view that it is an investment company with primary business as investment in BAL. In terms of this, I hold that Noticee 2 was a deemed insider in terms of Regulation 2(1)(d)(ii)(d) of PIT Regulations. Further, in any case, by virtue of common directors and common company secretary, Noticee 2 was reasonably expected to be in possession of UPSI. At this juncture, it is important to note that it was Noticee 4, Chairman of the Company and director of Noticee 2, who had given prior approval to Noticee 1 to enter into block deal.

21. At this moment, I find it relevant to draw attention to the fact that SEBI had set up a committee in the Chairmanship of Retd. Justice N K Sodhi to review SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**Sodhi Committee**'). While discussing the defences against the allegation of insider trading, the committee had made the following observations:

"*The Committee believes that in situations where both the buyer and the seller of securities are in possession of identical information, the trade by itself should not be rendered violative. Such a transaction between two identifiable persons who have identical access to UPSI ought not to be outlawed. Had the information in question been generally available and the trade had been in the open market, there would have been no room for alleging insider trading. Likewise, where the counterparty to the trade is clearly identifiable and in a bilateral trade the counterparty was indeed privy to the very same UPSI, the trade should be held to have wronged no one*." (Emphasis supplied)

I note that the said defence was incorporated only in respect of off-market *inter-se* transfer of shares among the promoters in possession of the same UPSI at Proviso (i) of Regulation 4(1) of PIT Regulations at the time of incorporation of PIT Regulations. However, Noticee 1 and 2 had traded in a block deal window on stock exchange mechanism. Therefore, the said defence was not available

at the time of the transactions of Noticee 1 & 2. However, subsequently, vide Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019) wherein the following provision was inserted in Regulation 4(1) of PIT Regulations:

(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

While the said defence was not available to Noticee 1 & 2 at the time of transaction, nevertheless I cannot completely ignore the subsequent amendment of law as the same is based on the principle accepted by Sodhi Committee and subsequently SEBI had incorporated some of the defences under Proviso to the Regulation 4(1)(i) of PIT Regulations.

22. Further, the Noticees have vehemently argued that the said information regarding acquisition of consumer mobile business of TTSL and TTML was not an UPSI and the said information was a generally available information.

23. However, before deciding the issue of the abovementioned price sensitive information being unpublished or not, I note that the Noticees have submitted that the trading patterns of Noticee 1 and 2 do not confirm with the kind of UPSI available with them. In this regard, I note the following observations of Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of Mrs. Chandrakala vs. The Adjudicating Officer, Securities and Exchange Board of India in its order dated January 31, 2012:

"We are also inclined to accept the argument of the learned counsel for the appellant that where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive. In this case declaration of financial results, dividend and bonus were positive information but the appellant not only bought but also sold the shares not only

during the period when the price sensitive information was unpublished but also prior to and after the information becoming public. A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public. This is not so in the case under consideration. The trading pattern of the appellant, as shown in the chart above, does not lead to the conclusion that the appellant's trades were induced by the unpublished price sensitive information."(Emphasis supplied)

I note that Noticee 1, being in possession of UPSI, which is a positive development, should have been holding the shares and sell the same subsequent to publication of the said information. However, Noticee 1 sold the share much before the said UPSI was made public by the company. Therefore, I note that the trading pattern of the Noticee 1 at the time of selling of shares in block deal to Noticee 2 does not confirm with the UPSI as he doesn't seem to have made any kind of profit or avoided any loss out of the said sale of shares as discussed above.

24. I further note from the replies of the Noticees that Noticee 2 was continuously acquiring shares of BAL. The Noticees have submitted that, as on April 1, 2015, BTL owned approximately 174.75 crore shares of BAL. Thereafter, in the year 2015, BTL acquired approximately 1 crore shares of BAL at a price range between Rs. 325.42–Rs. 388.00 per share. Further, in the year 2016 BTL acquired approximately 6 crores shares at the price range between approximately Rs. 311.39 and Rs. 323.24 per share. Subsequently, in the year 2017, BTL acquired approximately 18.5 crore shares at a price between Rs. 416.05 and Rs. 544.20 per share.

25. I also note that out of the above purchases only 1,21,000 shares were purchased by BTL from Noticee 1 in the concerned transaction. This is a miniscule amount of the total shares purchased by BTL during the said period. Further, BTL had not sold any share of BAL either during the said period or after the announcement.

26. In this regard, I am of the view that, as also mentioned in the Investigation Report, the said acquisition was a positive development. Therefore, an insider entity would try to purchase maximum possible share and sell the same after the said UPSI has been disclosed to public leading to price rise in the scrip. However, I note that the continuous acquisition of shares of BAL by BTL in last three years and no corresponding sale of shares subsequent to the publication of the said price sensitive information, doesn't fit in the trading pattern of an entity which would try to gain benefit out of an UPSI. In view of the same, it is difficult to infer that the said trade was done by Noticee 2 'on the basis of' the said UPSI. On the similar line, it doesn't make any sense for Noticee 1 to sell his share in the middle of UPSI period, if he wanted to gain benefit out of UPSI.

27. Now, I deal with the argument of the Noticees that the information was not a UPSI and was a generally available information. The term "unpublished price sensitive information" has been defined in Regulation 2(1)(n) of PIT Regulations as under:

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

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel.

(vi) material events in accordance with the listing agreement

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

information have been listed above to give illustrative guidance of unpublished price sensitive information".

28. First of all, there cannot be an argument regarding price sensitive nature of the information and the same can be seen from the impact of the above announcement on share price of Company at NSE and BSE on October 13, 2017. The scrip of BAL, at BSE, opened at 6.18% higher than the previous day's closing price and closed at 7.76% higher than the previous day's closing price. At NSE, the scrip opened at 7.43% higher than the previous day's closing price and closed at 7.66% higher than the previous day's closing price. At the same time, increase in volume in the scrip at both the exchanges was also observed. Therefore, I am of the view that the said announcement dated October 12, 2017 was a price sensitive information.

29. As per the chronology of events, the initial discussion about the proposed acquisition was held from June 03, 2017 to June 23, 2017. Accordingly, it is alleged that June 03, 2017 was the date when UPSI came into existence and it became public on October 12, 2017. Therefore, the UPSI period was alleged to be from June 03, 2017 to October 12, 2017.

30. I note that Noticees have submitted that the information regarding the acquisition, which is alleged to be UPSI and, therefore, the basis of the alleged insider trading in the instant matter, was generally available even before the date when the alleged transaction was done by Noticees 1 & 2 on August 10, 2017. It, therefore, becomes imperative to examine whether the information regarding the acquisition in the matter was generally available or not prior to the date of the transaction between Noticees 1& 2.

31. Regulation 2(1)(e) of PIT Regulations defines the generally available information as follows:

2(1)(e)"generally available information" means information that is accessible to the public on a non-discriminatory basis;

NOTE: It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive

information is. Information published on the website of a stock exchange would ordinarily be considered generally available.

32. It is noted that the Noticees have submitted number of news articles/items published in number of widely distributed news papers and broadcasted on widely watched business news channels. Number of news articles published in newspapers and submitted by the Noticees are as follows:

    a. Article titled '*Tatas, Bharti on a call to explore joint front in telecom and DTH*' published in the Economic Times on its online edition dated July 7, 2017
    b. Article titled '*Merger with Tata to help Bharti Airtel close gap with Vodafone-Idea*' published in the Economic Times on its online edition dated July 11, 2017;
    c. Article titled '*Bharti Enterprises disconnects call on mega telecom alliance with Tata Group*' published in the Economic Times on its online edition dated August 4, 2017;
    d. Article titled '*Deals Buzz: Bharti Enterprise drops plan to form alliance with Tata Group*' published on Live Mint in its online edition dated August 4, 2017.

33. In addition to the above newspaper reports, Noticees have submitted links to some of the clippings shown on news channel/Youtube, where report on the proposed acquisition was broadcasted, which are as follows:

    a. https://www.youtube.com/watch?v=bEkULfrsfFQ&t=26s -Zee Business, July 7, 2017
    b. https://www.youtube.com/watch?v=dR4JNK9dK9o&t=93s -Zee Business, July 7, 2017
    c. https://www.youtube.com/watch?v=0Tsb6LAWo4I –ET Now, July 7, 2017
    d. https://www.youtube.com/watch?v=bPD2dUc7U0U&t=65s –CNBC TV18, July 31, 2017
    e. https://www.youtube.com/watch?v=aMjvLPbNWdE&t=66s –CNBC TV18, August 1, 2017

34. From the above, it is noted that information related to the announcement made by the Company on October 12, 2017 on the proposed acquisition of the Consumer Mobile Business of TTSL and TTML by the company, was already in public domain by way of publication of articles in Economic Times and Live Mint, two newspapers with fairly large subscription. Further, news regarding the said acquisition was also relayed on mainstream business news channels like Zee Business, ET Now and CNBC TV18, all of which have very wide viewership. This clearly make the information regarding acquisition of consumer telecom business of TTSL and TTML by BAL as generally available information in the public domain on a non-discriminatory basis. The above references to the newspaper articles and media reports on news channels establishes that the alleged UPSI was 'generally available information' and not an ***unpublished*** price sensitive information under the PIT Regulations.

35. Further, in continuance with the observations mentioned at para 26 above, even if I take note of the news articles and media reports regarding cancellation of deal between the parties, I note that the said negative news had come at-least 9 days prior to the transaction between Noticees 1 & 2. Therefore, if the aim of Noticee 1 was to avoid loss, enough time had passed since the publication of the said news for him to avoid any kind of loss. Further, if it is presumed that, contrary to the said news articles, the Noticee 1 was aware about the said transaction going forward, the sale of shares still doesn't make any sense if the purpose of the Noticee was to gain profit out of his knowledge of the acquisition going forward. A reasonable man would try to wait till the correct information to get public and the price of the scrip jump before selling his shares. Therefore, It seemed more prudent for Noticee 1 to wait till the announcement and sell thereafter. Therefore, I note that, in any circumstance, the trading pattern of Noticee 1 is completely contrary to the nature of UPSI.

36. At this stage, it is pertinent to note the observation made by the Whole Time Member of SEBI in the matter of 63 Moons Technologies Limited [erstwhile Financial Technologies (India) Limited] while dealing with the "Unpublished Price Sensitive Information":

"…….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."

In respect of the above cited case, I have noted the contention of the Noticees that there was only one news article in the said matter, on the basis of which the information was deemed to be generally available and not an UPSI. On the other hand, in the present matter, there have been several news articles/clips, as listed in pre-paragraphs, published in almost all the widely read news papers and widely viewed business news channels.

37. Moresoever, in a similar matter, the issue has been elaborately discussed and decided by Hon'ble Appellate Authority for Industrial and Financial Reconstruction, New Delhi, the then appellate authority in respect to SEBI orders, in its order July 14, 1998 in the matter of Hindustan Levers Limited v. Securities and Exchange Board of India, wherein the Hon'ble Appellate Authority made the following observations:

"14. On the issue of whether the information was not generally known, the appellants have cited a large number of press reports to establish that the information about the intended merger was widely reported and cannot thus be said to be not generally known. A total of 21 press reports that appeared during the period 30 January, 1994, to 21 June, 1994, have been filed by the appellants……..In the face of a large number of press reports indicating market speculation on the merger during that period, there are strong reasons to believe that the impending merger, though not "formally acknowledged or published, was in one sense generally known and UTI's denial of knowledge cannot be implied to mean that market in general had no information in this regard. At the same time, it would have been desirable if at the time of the purchase of shares, HLL had informed UTI that the core committee is considering the proposal of amalgamation."

Therefore, in view of the above observations of Hon'ble WTM as well as Hon'ble Appellate Authority for Industrial and Financial Reconstruction, New Delhi as well as the news articles and media reports cited by the Noticees in their replies, I hold that the said information regarding the acquisition of consumer mobile business of TTSL and TTML was a publicly available information and the same cannot be treated as UPSI.

38. From the information submitted by the Noticees, I note that the earliest news report/article in respect of the acquisition being undertaken by BAL was published on July 07, 2017. Therefore, in light of all the above discussions, I hold that the UPSI period in the instant matter is from June 03, 2017 to July 07, 2017 (date when the information regarding the proposed acquisition got published in the media). Accordingly, the trade done by the Noticees 1 & 2 on August 10, 2017 do not fall under the UPSI period.

39. In continuation with the above observations, I note that the allegation against Noticees 3 & 4 is that they had given pre-clearance to trades of Noticee 1 during the UPSI period and, therefore, had violated the provisions of Clause 8 of Code of Conduct of Schedule B under Regulation 9(1) under PIT Regulations.

40. I note that the application for pre-clearance of the trade was made by Noticee 1 on August 7, 2017. The UPSI period, as determined above, was from June 03, 2017 to July 07, 2017. The application made for pre-clearance was clearly well after the fact of the preliminary discussions becoming public. It is also noted that as per the Code of Conduct as forwarded by the Company, as an additional precaution, the pre-clearance of trades exceeding 50,000 securities was required to be approved by compliance officer in consultation with the Chairman of the Company. In the instant case, it is confirmed by the Compliance Officer i.e. Noticee 3 that as the shares sold by Noticee 1 were more than 50000 shares, a preclearance for the sale of same was granted after consultation with the chairman of the company i.e. Noticee 4.

41. In this regard, I note from the definition of compliance officer, as given in Regulation 2(1)(c) of PIT Regulations, and Clause 1 of Model Code of Conduct for Listed Companies, as mentioned in Schedule B of PIT Regulations, that

compliance officer of a company reports to and works under the supervision of Board of Directors of a company.

42. In the present matter, since the pre-clearance was sought by Noticee 1 along with the declaration that he was not in possession of UPSI. At the same time, as an additional measure of caution, Noticee 3 also discussed the same with Noticee 4 before granting pre-clearance to Noticee 1 regarding his trades. Therefore, I am of the view that enough precautions had been taken by Noticee 3 before granting pre-clearance to Noticee 1 for his trades.

43. Further, it is seen that no responsibility is mentioned of the Chairman of a company under Clause 8 of Model Code of Conduct. Therefore, Noticee 4 cannot be held liable for the violation of Clause 8 of Model Code of Conduct.

44. In any case, I note that the UPSI, regarding the proposed acquisition of Consumer Mobile Business of TTSL and TTML by the company, alleged to be in possession of Noticee 1 & 2 while executing trade on August 10, 2017, was already a generally available information, as discussed above in pre-paragraphs and the same cannot be held to be an ***unpublished*** price sensitive information at the time when the aforesaid trade was executed. As already mentioned previously, the said information had actually become public first on July 07, 2017 and thereafter it continued to remain in circulation in public domain. Further, the application for pre-clearance of the trade was made by Noticee 1 on August 7, 2017, which was well after the UPSI period i.e. June 03, 2017 to July 07, 2017. Therefore, in the absence of any UPSI, the charges against the Noticees 3 & 4 cannot sustain and Noticees 3 & 4 cannot be held liable for the violation of provisions of Clause 8 of Code of Conduct of Schedule B under Regulation 9(1) under PIT Regulations.

Order

45. After taking into consideration the facts and circumstances of the case, material available on record and also the submissions of the Noticees, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, dispose of the SCN issued to the Noticees.

46. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticees viz. Mr. Gopal Vittal, Bharti Telecom Limited, Mr. Rohit Krishan Puri and Mr. Sunil Bharti Mittal and also to the Securities and Exchange Board of India.

DATE: OCTOBER 22, 2020 **PRASANTA MAHAPATRA**

PLACE: MUMBAI **ADJUDICATING OFFICER**