

## GNLUMSIL 2017 | CLARIFICATIONS

1. In Paragraph 2 of the moot proposition, it has been stated in the 2nd line that he held about 38% of the total equity share capital, whereas subsequently in the 6th line, it was mentioned that he held about 30% of shares. Kindly resolve this inconsistency.

**Reply: 38% is a typographical error. The line should be read as,**

*“In 1991, Mr. Victor Molly decided to take advantage of the housing boom in India and make a foray into the enormously profitable paints business and purchased about 30% of the total equity share capital of Burger Paints Limited (“BPL”).”*

2. Relating to shares owned: Paragraph 2 of the Moot problem states that ‘Pursuant to the acquisition of 30% of the total equity share capital of BPL from the erstwhile promoters of BPL, Mr. Victor Molly and his relatives were categorized as promoters of BPL’. Whether the later mentioned 30% of the shares are in addition to the first mentioned 38% of the purchased shares capital of BPL which were initially bought by Mr. Victor Molly?

**Reply: Refer to the reply to clarification no. 1.**

3. With respect to Paragraph 2, in the face of two inconsistent figures of 30% and 38% given simultaneously, kindly clarify the shares held by Mr. Molly in BPL’s total equity share capital.

**Reply: Refer to the reply to clarification no. 1.**

4. Whether acquisition of 30% of total equity share capital of BPL inclusive of the total 38% in Paragraph 3 or is this a typographical error?

**Reply: Refer to the reply to clarification no. 1.**

5. The *ex parte* order was passed in the year 2014 and Mr. Molly preferred an appeal against the said order. Therefore, in the cause title, do we have to mention the current year or 2014?

**Reply: Clarification not required.**

6. Which year is the case being argued in, 2014 or 2017 since the order passed by the Whole Time Member is in 2014?

**Reply: Refer to the reply to clarification no. 5**

7. SEBI had *prima facie* concluded that Molly has manipulated the books of account of BPL, TCL, VSL and FAL. But what exactly is the manipulation done by him and why is he found guilty under FUTP Regulations? In the proposition, it was mentioned that VSL, BPL and TCL had lent a sum of Rs. 1500 crores and 750 crores respectively to its distributors. The said transaction would be mentioned in the books of accounts of the respected company. Subsequently, the funds were diverted from the distributors to CSPL (company incorporated in UK). So, these two are different transactions taken place at different times and therefore it is not plausible that these would be mentioned in the books of accounts.

**Reply: Clarification not required.**

8. A case of manipulation would arise only if the price of the shares is inflated with an intent to deceive the investors, and so on. But, in the moot proposition, no such instance is mentioned.

**Reply: Clarification not required.**

9. Mr. Molly is alleged to have entered into an arrangement with Mr. Chaddha and with the help of him, funds were diverted from VSL to CSPL and similar *modus operandi* was adopted for diversion of funds from TCL, BPL. Should this be considered a proved statement or is it just an assumption without proof?

**Reply: Clarification not required.**

10. Again in Paragraph 23(3), Molly is alleged to have violated Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulation, 1992 for having dealt with securities of BPL while in possession of unpublished price sensitive information. (Unpublished Price Sensitive Information – Molly had advanced 750 crores to the distributors which were diverted to CSPL).

11. On September 23 2010 Mr. Molly pledged his shares to Aam Janta Bank, later on only the said transaction of 750 crores took place, i.e, Molly was in possession of UPSI only on November 25, 2010 but he pledged his shares in September 23, 2010 itself.
12. So, the whole allegation would become infructuous because subsequent to the possession of UPSI, Molly had not dealt with shares in any manner.

**Reply: [To clarification no. 10, 11 and 12 – since they are part of the same question] Clarification not required.**

13. In the proposition SEBI has accused Mr. Molly for having violated the provisions of PIT Regulation 1992 but the said regulation has been repealed subsequent to the enactment of 2015 Regulation.

**Reply: Clarification not required.**

14. In Paragraph 23(3) SEBI accused Mr. Molly for having violated the Regulation 3(i) of PIT 1992 but he was accused as an insider of TCL for having dealt with the shares of BPL while in possession of UPSI relation to BPL. Is he an insider of TCL or BPL in Paragraph 23(3)?

**Reply: The third point in Paragraph 23 refers to BPL. The first part of the paragraph should be read as,**

*“Violation of Regulation 3(i) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations”) by Mr. Molly, who was determined to be an “insider” of **BPL** under the PIT Regulations and for having dealt with the shares of BPL on September 23, 2010 while in possession of “unpublished price sensitive information”.*

15. Clause 36 of which listing agreement?

**Reply: For the purposes of the problem, MSE and DSE have similar equity listing agreements as that of Bombay Stock Exchange (BSE) Ltd.**

16. Relating to Name: Paragraph 8 of the problem states “Calcutta Spices Private Limited (“CSPL”), a company incorporated in the UK and whose entire share capital was

owned by 'Mrs. Victor Molly'. Whether Mrs. Victor Molly in the said Paragraph refers to wife of Mr. Molly or is it merely a misprint?

**Reply: Mrs. Victor Molly refers to the wife of Mr. Victor Molly.**

17. On page 3, Paragraph 8 line 9 which says that the entire share capital was owned by Mrs. Victor Molly, so whether Mrs. Victor Molly is a typographical error and Mr. Victor Molly should be there?

**Reply: Refer to the reply to clarification no. 16**

18. In Paragraph 8, line 9, whether it should be Mr. or Mrs. Molly who incorporated the company in UK under the name of Calcutta Spices Private Limited ("CSPL")?

**Reply: Refer to the reply to clarification no. 16**

19. Relating to inconsistency in dates: In Paragraph 23 of the problem which deals with the order of the whole time member of SEBI, the third allegation which is in relation to the violation of regulation of 3(i) of SEBI (PIT) regulations 1992, states that Mr. Molly dealt in shares on the basis of unpublished price sensitive information i.e. the advances of 750 crores which were made from BPL to its distributors on the date 'September 23, 2017', whereas in Paragraph 11 of the problem it's mentioned that the advances were made on 'November 25, 2010'.

**Reply: Refer to the reply to clarification nos. 10, 11 and 12.**

20. In Paragraph 23 of the problem, the second line reads "... Mr. Molly who was determined to be an insider of TCL under PIT regulations and for having dealt with the shares of BPL on..." There seems to be a misprint in the names of the companies as the second allegation in the same Paragraph already deals with the dealing in shares of TCL.

**Reply: Refer to the reply to clarification no. 14**

21. In Paragraph 13, as mentioned "Mr Molly on November 28, 2011" should it be November 28, 2010, instead?

**Reply: This is a typographical error. It should be read as follows;**

*“On November 27, 2011, SBV demanded that he repay the loan of Rs. 1,000 crores availed by Mr. Molly on November 28, 2010.”*

22. In Paragraph 15 when Bank sold all 5,00,00,000 shares of BPL to HIPL, then how there is still “REST”, as written, “the rest to mutual funds, financial institutions and FPIs”?

**Reply: This line should be read as,**

*“When no payment was made by FAL after the declaration of the event of default, Aam Janta Bank on September 28, 2012, invoked the pledge on the shares of BPL and sold 5,00,00,000 equity shares of BPL to Hummus Indian Paints Limited (“HIPL”), a competitor of BPL, and mutual funds, financial institutions and FPIs at an average price of Rs. 180 per equity share.”*

23. In Paragraph 17, as written “On April 28, 2013, VSL completed its open offer obligations.....”. Should it be JR instead of VSL?

**Reply: The line should be read as follows;**

*“On April 28, 2013, Jacky Runner completed its open offer obligations and became the majority shareholder in VSL with a total shareholding of 53% of the total share capital of VSL.”*

24. Whether the matter has been posted for the final hearing or at the first stage of hearing?

**Reply: Clarification not required.**

25. On page 8 Paragraph, 23 last charge on the page:

*“Violation of Regulation 3(i) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“PIT Regulations”) by Mr. Molly, who was determined to be an “insider” of TCL under the PIT Regulations and for having dealt with the shares of BPL on September 23, 2010 while in possession of “unpublished price sensitive information”. The unpublished price sensitive information that Mr. Molly was in possession of was the fact that BPL had advanced Rs. 750 crores to its distributors, but the same was*

*never going to be utilized in connection with BPL's business, and it was instead used to make advances to CSPL in London;"*

The point is whether the word "TCL" is a typographical error and BPL should be there instead?

**Reply: Refer to the reply to clarification no. 14**

26. Are the Securities Contracts (Regulation) Adjudication Rules, 1956 mentioned in the order the same as Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 or the Securities Contracts (Regulation) Rules, 1957?

**Reply: Paragraph 24 (point 3) refers to Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005. Therefore, the line should be read as;**

*"Directed SEBI to appoint an adjudicating officer to begin penalty proceedings against Mr. Molly under Section 23I of the Securities Contracts (Regulation) Act, 1956("SCRA") and Rule 5 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 for violation of Section 23A, Section 23E and Section 24 of the SCRA read with Clause 36 of the Equity Listing Agreement."*

27. How can Aam Janta Bank sell shares to mutual funds, FIs and FPIs etc. after selling 5,00,00,000 shares to HIPL in the event of default, as the total pledged shares were 5,00,00,000 only? (Reference: Paragraph 15, Page 5)

**Reply: Refer to the reply to clarification no. 22**

28. What does DSE and MSE stand for? Is it the same BSE and NSE for the purpose of listing agreement?

**Reply: Refer to the reply to clarification no. 15**

29. What Equity Listing Agreements are to be referred to MSE, DSE or the Calcutta Stock Exchange?

**Reply: Refer to the reply to clarification no. 15**

30. In Paragraph 14, in which month did the stock markets suspend trading activities in FAL's shares? Is it May or March?

**Reply: This should be read as March 2013 and not March 2012.**

31. Kindly provide Clarification with respect to the Months stated in Paragraph 14 which starts by stating that “By May 2012, FAL was doing worse than ever”. However, 5th line from below, in Paragraph 14 it has been stated that, “The market price of FAL’s shares went into a nose dive and the stock markets suspended trading activities in FAL’s shares in MARCH 2012”.

**Reply: Refer to the reply to clarification no. 30**

32. With respect to Paragraph 14, Line 16, “March 2012” contradicts the time frame set at “May 2012”, in Paragraph 14, Line 1, as the date on which the financial conditions of FAL worsened. Kindly clarify the inconsistency.

**Reply: Refer to the reply to clarification no. 30**

33. In Paragraph 17, isn't it supposed to be Jacky Runner who completed its open offer obligations in place of VSL?

**Reply: Refer to the reply to clarification no. 23**

34. In page 8, Paragraph 23, violation number 3, Is Victor Molly determined to be the insider of BPL or TCL?

**Reply: Refer to the reply to clarification no. 14**

35. What format of the listing agreement should we follow for MSE and DSE? If there is no such format, can we follow the format of the Equity Listing Agreement of the Bombay Stock Exchange?

**Reply: Refer to the reply to clarification no. 15**

36. With relation to Paragraph 9, were the CS and CO aware of the actual utilisation of the fund?

**Reply: Clarification not required**

37. With relation to Paragraph 9, did Mr. Molly ask the CS and CO to reveal the actual disclosure or he just directed them to 'disclose' with no additional details?

**Reply: Clarification not required.**

38. With relation to Paragraph 14, how can trading in FAL's share be suspended in March 2012 when the Paragraph starts with a fact scenario of the airlines operating although at its worst in May 2012?

**Reply: Refer to the reply to clarification no. 30**

39. With relation to Paragraph 22, violation 3 alleges Mr. Molly for insider trading for having dealt with the shares of BPL in September 2010, however the advances to distributors were made in November. How can he be alleged to have dealt with UPSI when the said UPSI did not exist on the said date?

**Reply: Clarification not required.**

40. What is the date of hearing? Is PIT 2015 applicable to the present case?

**Reply: Clarification not required.**

41. Which Companies Act is applicable: The Companies Act, 1956 or The Companies Act, 2013?

**Reply: Clarification not required.**

42. With respect to Paragraph 1, Line 6, should the term "nationwide terminals" be interpreted to mean "nationwide branches"?

**Reply: Clarification not required.**

43. With respect to Paragraph 8, Line 8, since the entity CSPL has been registered as a company in the UK, shouldn't the nomenclature include the term PLC, as per the law of UK?

**Reply: Clarification not required.**



44. With respect to Paragraph 13, Line 2, the date mentioned, i.e. “November 28, 2011” contradicts the date mentioned in Paragraph 11, Line 3, as the date on which said loan was availed. Is the same to be construed as a typographical error, meaning thereby, that the date mentioned in Paragraph 11, Line 3 shall prevail?

**Reply: Refer to the reply to clarification no. 21**

45. With respect to Paragraph 16, Line 15, how is Regulation 3(1) (which deals with a mandatory offer) applicable in the present case when Line 14 clearly states that it is a voluntary offer with Regulation 6 (which deals with a voluntary open offer) being made applicable?

**Reply: Clarification not required.**

46. With respect to Paragraph 23, Point 3, Line 3, since the violation(s) with respect to TCL has already been enumerated in Paragraph 23, Point 2, can it be assumed that the term “TCL” appears due to a typographical error and the same shall be construed as “BPL”?

**Reply: Refer to the reply to clarification no. 14**

47. With respect to Paragraph 24, Point 3, the Securities Contracts (Regulations) Adjudication Rules, 1956, mentioned therein, do not exist. Kindly clarify the correct position.

**Reply: Refer to the reply to clarification no. 26**

48. With respect to Paragraph 18, Line 7, what is the nature of the “few other irregularities” found in the financial statements of VSL?

**Reply: Clarification not required.**

49. With respect to Paragraph 22, Line 1, “other investigating and enforcement agencies” refers to which agencies?

**Reply: It refers to various investigating and enforcement agencies, as appointed by the Central Government of India.**

50. With respect to Paragraph 25, on which date did Mr. Molly file for an appeal against the order given by the Whole Time Member of SEBI before the Securities Appellate Tribunal (SAT)?

**Reply: Refer to the reply to clarification no. 05**

51. With respect to Paragraph 18, what was the response of VSL to the clarifications sought from it by SEBI?

**Reply: Clarification not required.**

52. With respect to Paragraph 10, Line 5, what is the true nature of the “entities” mentioned?

**Reply: Clarification not required.**

53. With respect to the various loans that have been availed and defaulted upon by the debtor, whether the said loans were taken by the respective Company through Mr. Molly or were they taken by Mr. Molly in his personal capacity?

**Reply: Clarification not required.**

54. With respect to the violation of Insider Trading Regulations, 1992 against Mr. Molly in relation to the dealing of shares of BPL, kindly confirm whether the concerned “dealing” mentioned took place on September 23, 2010 and that the alleged “unpublished price sensitive information” (as mentioned in Paragraph 23 Point 3) was created on November 25, 2010 (as mentioned in Paragraph 11, Line 3).

**Reply: Refer to the reply to clarification nos. 10, 11 and 12.**

55. Is there a typographical error in the third line of the bullet point 3 of Paragraph 23 of the moot problem?

**Reply: Refer to the reply to clarification no. 14**

56. Does Paragraph 23 of the moot problem imply that the delay of 2.5 years in filing an appeal against the *ex parte* ad interim order of the whole time member was condoned?

**Reply: It was filed within the time period as prescribed by law.**

57. Paragraph 10 of the moot problem mentions that the funds advanced by VSL to the distributors were lent to CSPL, but was the same recorded in the financial statements of CSPL? If yes, what was the nature of such entry?

**Reply: Clarification not required.**

58. Whether the loans advanced to the distributors of VSL, BPL and TCL were properly entered in the financial statements?

**Reply: Clarification not required.**

59. Are the stock exchanges MSE and DSE (Please refer to Paragraph 1), are abbreviations that stand for Madras Stock Exchange and Delhi Stock Exchange, respectively?

**Reply: No. Refer to the reply to clarification no. 15**

60. Mr. Sahoo conducted investigations into the affairs of VSL, BPL and TCL. But the SEBI order has been passed against four companies, including FAL. It is unclear as to whether SEBI conducted investigations into the affairs of FAL. Please clarify.

**Reply: Clarification not required.**

61. Mr. Molly has been accused of insider trading with respect to the shares of BPL, that he pledged from the Aam Janta Bank, on September 23, 2010. However, BPL made certain advances to certain entities on the behest of Mr. Molly, on November 25th, 2010. This transaction has been termed as the price sensitive information, on the basis of which he has been accused of trading shares. Please, clarify on this discrepancy.

**Reply: Refer to the reply to clarification nos. 10, 11 and 12.**

62. Total shareholding of Jacky Runner in VSL is 53% however as per the calculations it is coming out to be 65%. Kindly provide the breakup of the shares of VSL post acquisition by JR to clear the same.

**Reply: Clarification not required.**

63. In Paragraph 7, the alleged trading of shares of BPL by Mr. Molly has taken place on September 23, 2010. However, the alleged UPSI mentioned in Paragraph 11 has taken

place after such trading. So can this even qualify as trading on the basis/while in possession of information when the requisite information occurred only after the trading?

**Reply: Refer to the reply to clarification no. 10, 11 and 12.**

64. What is the business of CSPL? Is CSPL also involved aviation industry?

**Reply: Clarification not required.**

65. Was the alleged “UPSI” ever made know to the public? And if yes was there any drop in prices of shares based on that information?

**Reply: Clarification not required.**

66. Paragraph 16 as per the terms of the SHA, what is the role of Victor Molly as chairman emeritus of VSL?

**Reply: Clarification not required.**

67. Could you please clarify the shareholding of all parties as on April 28, 2013 as stated in Paragraph 17 of the moot proposition?

**Reply: Clarification not required.**