

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. AO/SG-AS/EAD/15/2016**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,  
1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND  
IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of:

**Reliance Petroinvestments Ltd.**

9<sup>th</sup> Floor, Maker Chambers IV

222, Nariman Point

Mumbai- 400021

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**In the matter of Indian Petrochemicals Corporation Ltd.**

**BACKGROUND**

1. Surveillance alerts were generated at the stock exchanges on March 2, 2007 and March 07, 2007 for news in the shares of Indian Petrochemicals Corporation Ltd (hereinafter referred to as '**IPCL / Company**'). The scrip also witnessed sudden rise in its share price and trading volume on March 8, 2007. The company made an announcement on March 2, 2007 to the stock exchanges about its intention to declare interim dividend and on March 7, 2007 it announced (on Stock Exchange after market hours) that it was going to consider and recommend amalgamation of the company with Reliance Industries Limited (hereinafter referred to as '**RIL**'). Based on the above news and alert generated at the exchanges, analysis of dealing in shares of IPCL was carried out by BSE Ltd. (hereinafter referred to as '**BSE**') and National Stock Exchange of India Ltd. (hereinafter referred to as '**NSE**') for the period February 22, 2007 to March 08, 2007 wherein it was observed that certain entities had bought large quantities of IPCL shares before aforesaid announcements.

2. The price and volume data at BSE and NSE for the period February 22, 2007 to March 09, 2007 is given below:

Date	NSE		BSE			SENSEX	SENSEX % change from prev. close
	Close Price	Total Trd Qty	Close Price	% change from prev. close	Total Trd Qty		
22-Feb-07	259.9	1833225	262.7	0.00	304470	14021.3	0.00
23-Feb-07	256.35	266739	256.65	-2.36	277112	13632.5	-2.85
26-Feb-07	259.15	230630	259.35	1.04	97684	13649.5	0.12
27-Feb-07	260.35	1185382	260.7	0.52	179809	13478.8	-1.27
28-Feb-07	260.7	883844	259.25	-0.56	206326	12938.1	-4.18
1-Mar-07	260.5	2006261	260.4	0.44	215421	13159.6	1.68
2-Mar-07	256.6	1929109	256.7	-1.44	165530	12886.1	-2.12
5-Mar-07	237.35	424400	237.4	-8.13	243760	12415	-3.79
6-Mar-07	232.95	999269	233.85	-1.52	309412	12697.1	2.22
7-Mar-07	231	575816	231.65	-0.95	254617	12579.8	-0.93
8-Mar-07	260.5	7686890	259.8	10.84	3525768	13049.4	3.60
9-Mar-07	268.85	11580625	268.6	3.28	3823511	12885	-1.28

3. It is seen from the above that share price of IPCL had more or less moved in sync with the SENSEX movement as observed in their respective declines on March 5, 2007 subsequent to the announcement of the dividend by the company. In fact on March 5, 2007 scrip declined by 8.13% on BSE when the SENSEX declined by 3.79%. But in a divergence from the index, the scrip witnessed substantial price gain on March 8, 2007 and March 9, 2007 subsequent to the important announcement of amalgamation of IPCL with RIL. *"This absence of correlation and upward movement continued during the period March 2007 to July 2007 as seen from trading prices as at the end of each month:*

<b>Month</b>	<b>Closing price at BSE (₹)</b>
<i>March 30, 2007</i>	<i>271.10</i>
<i>April 30, 2007</i>	<i>310.85</i>
<i>May 31, 2007</i>	<i>353.20</i>
<i>June 30, 2007</i>	<i>343.95</i>
<i>July 31, 2007</i>	<i>373.95</i>
<i>August 31, 2007</i>	<i>387.05</i>

<b>Month</b>	<b>Closing price at BSE (₹)</b>
<i>Sept 30, 2007</i>	<i>458.00</i>
<i>Oct 04, 2007</i>	<i>478.94</i>

...

4. In view of the above findings of the preliminary examination by the exchanges, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') ordered an investigation, vide order dated June 26, 2007 into the matter relating to buying, selling or dealing in shares of IPCL in order to ascertain whether any provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') or Rules and regulations made thereunder have been violated.

#### **APPOINTMENT OF PREVIOUS ADJUDICATING OFFICERS**

5. On conclusion of investigation, Shri Parag Basu was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') vide order dated 23.04.2010 to inquire and adjudge under Section 15G of the SEBI Act, the alleged violations of the provisions of Regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') by Reliance Petroinvestments Ltd. (hereinafter referred to as '**RPIL / Noticee**') as observed pursuant to the investigation. Subsequent to the transfer of Shri Parag Basu, Shri D Ravikumar was appointed as AO and the same was communicated vide proceedings of appointing Adjudicating Officer dated 16.08.2012.

#### **SHOW CAUSE NOTICE, HEARING & REPLY**

6. A show cause notice (hereinafter referred to as '**SCN**') dated 31.01.2011 in terms of the provisions of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') was served on the Noticee by previous AO, Shri Parag Basu, calling upon the Noticee to show cause as to why an inquiry should not be held against it under Rule 4 of the Adjudication Rules read with Section 15I of the SEBI Act and penalty be not imposed under Section 15G of SEBI Act. The SCN issued to the Noticee *inter alia* mentioned the following :

- a. The following announcements made by IPCL on March 02, 2007 and on March 07, 2007 are price sensitive information as per the provisions of regulation 2(ha) of PIT Regulations, the details of which are as under:

<b>Date/Time</b>	<b>Announcement</b>
02-Mar-2007 <b>14:28</b>	To consider, inter alia, declaration of Interim Dividend on equity shares of the Company. The Company further informed the Exchange that the Company has fixed March 22, 2007 as 'Record Date' to determine the equity shareholders who would be eligible to receive the Interim Dividend if declared by the Board at its meeting scheduled on March 10, 2007. In the event of the Board deciding to pay Interim Dividend, the Company shall commence dispatch of the Dividend Warrants on and from March 23, 2007.
07-Mar-2007 <b>17:15</b> (after market hours)	To consider, inter alia, declaration of Interim Dividend on equity shares of the Company. The Company has now informed the Exchange that the Board will also consider and recommend amalgamation of the Company with Reliance Industries Limited (RIL).

- b. The definition of price sensitive information (hereinafter referred to as '**PSI**') covers the information about "intended declaration of dividends (with interim and final)" and "amalgamation, mergers or takeovers" therefore, announcements of declaration of the interim dividend and amalgamation of IPCL with RIL constitute price sensitive information.
- c. Relationship between RIL and RPIL

As per the Annual Report of RIL for the year 2005-06, RPIL is shown as an "associate companies and joint ventures". As per the information submitted by RPIL, Reliance Ventures Ltd (hereinafter referred to as '**RVL**') holds 50% of the paid-up capital of RPIL, Reliance Pharmaceuticals (India) Pvt. Ltd. (hereinafter referred to as '**RPPL**') holds 25% of RPIL and Reliance Nutraceuticals Pvt. Ltd. (hereinafter referred to as '**RNPL**') holds the balance 25% of RPIL. RVL is wholly-owned subsidiary of RIL. Reliance Strategic Investments Ltd (hereinafter referred to as '**RSIL**'), which is also a wholly-owned subsidiary of RIL, holds 40% of the paid-up capital of Reliance Pharmaceuticals (India) Pvt. Ltd. and 30% of the paid-up capital of Reliance Nutraceuticals Pvt. Ltd. with the balance holding in each of these two companies cross held by them. In effect, it is observed that RSIL holds 50% shares of RPIL, when shorn of the intricacy of cross

holdings. Therefore, RIL holds 100% share of RPIL since it is the holding company of both RSIL and RVL.

- d. The details of trading in the scrip of IPCL by RPIL during the period from May 2006 to March 2007 is as under:

S.No.	Date	Scrip	Broker	Exch.	Qty. of shares bought
1	22-May-06	IPCL	Sonal Share and Stock Brokers Ltd	NSE	300927
2	23-May-06	IPCL	Sonal Share and Stock Brokers Ltd	NSE	64625
3	25-May-06	IPCL	Sonal Share and Stock Brokers Ltd	NSE	35284
4	02-Jun-06	IPCL	Sonal Share and Stock Brokers Ltd	NSE	126359
5	02-Jun-06	IPCL	Shriyam Broking Intermediary Ltd	NSE	79441
6	02-Jun-06	IPCL	Shriyam Broking Intermediary Ltd	NSE	90649
7	07-Jun-06	IPCL	Sonal Share and Stock Brokers Ltd	NSE	200000
8	08-Jun-06	IPCL	Sonal Share and Stock Brokers Ltd	NSE	301172
12	27-Feb-07	IPCL	Sonal Share and Stock Brokers Ltd	NSE	588485
13	27-Feb-07	IPCL	Shriyam Broking Intermediary Ltd	BSE	1640
14	28-Feb-07	IPCL	Sonal Share and Stock Brokers Ltd	NSE	289396
15	28-Feb-07	IPCL	Shriyam Broking Intermediary Ltd	NSE	91395
16	28-Feb-07	IPCL	Shriyam Broking Intermediary Ltd	BSE	32854
17	28-Feb-07	IPCL	SSM Securities Pvt. Ltd	NSE	23357
18	01-Mar-07	IPCL	Sonal Share and Stock Brokers Ltd	NSE	749314
19	01-Mar-07	IPCL	Shriyam Broking Intermediary Ltd	NSE	163898
20	01-Mar-07	IPCL	Shriyam Broking Intermediary Ltd	BSE	94334
21	02-Mar-07	IPCL	Sonal Share and Stock Brokers Ltd	NSE	98280

- e. It is alleged that during the period from February 27, 2007 to March 2, 2007, RPIL bought 21,32,953 shares of IPCL for ₹ 55,50,86,211.80 at an average rate of ₹ 259.42 prior to announcement of declaration of interim dividend and amalgamation of IPCL with RIL, i.e. when the price sensitive information remained unpublished. It is alleged that RPIL did not sell any shares of RIL till March, 31, 2007 and received the dividend of ₹ 6 per share amounting to ₹ 1,27,97,718.00. Pursuant to record date for merger of IPCL with RIL on October 18, 2007, RPIL received 4,26,590 shares of RIL as against 21,32,953 shares of IPCL acquired prior to the dissemination of the price sensitive information.
- f. RPIL and RIL are considered as '**insider**' on the basis of following:
- As per the disclosures made by IPCL under Regulation 8 (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**') as on March 31,

2006, RPIL is named as a ***“promoter having control over the company”***. Further, RIL has been shown as a ***“person(s) acting in concert”*** with RPIL. In addition following directors, who are on the board of RIL are also shown as ***“person(s) acting in concert”*** with RPIL:

- i. Shri M P Modi
- ii. Shri M L Bhakta
- iii. Shri Y P Trivedi
- iv. Shri Ramniklal H Ambani

- Mr Mukesh Ambani is the Chairman of IPCL and Chairman and Managing Director of RIL, therefore, in terms of clause (i) of Sub-section (1B) of section 370, of Companies Act, 1956, IPCL and RIL are deemed to be under the same management.
  - RPIL holds more than one-third of the total voting power of IPCL therefore, in terms of clause (iii) of Sub-section (1B) of section 370, of Companies Act, 1956, IPCL and RIL are deemed to be under the same management.
  - RIL holds the entire share capital of RPIL through two of its wholly own subsidiaries, therefore, in terms of clause (iii) of Sub-section (1B) of section 370, of Companies Act, 1956, RPIL and RIL are deemed to be under the same management.
  - In view of above it is concluded that RPIL and RIL are deemed to be a connected persons in terms of Regulation 2(h) of PIT Regulations and therefore RPIL and RIL are 'insider' in terms of provisions of regulation 2(e) of PIT Regulations.
- g. It is alleged that Noticee was in possession of unpublished price sensitive information (hereinafter referred to as '**UPSI**') on the following grounds, while trading in 21,32,953 shares of IPCL:
- i. RPIL is a deemed to be connected person and therefore it is an 'insider'.
  - ii. Mr. K Sethuraman, Group Company Secretary of RIL, represented on behalf of RPIL. Mr K Sethuraman, while making submission to SEBI on behalf of RPIL mentioned that RPIL was not in possession of above mentioned price sensitive information at the time of buying the shares of IPCL. It is pertinent to mention that

Mr K Sethuraman represented on behalf of RPIL and the orders for buying the shares of IPCL were placed by one Mr Ashok C Jain, who is an employee of RIL. Therefore, it is clear that RIL was having the entire control over RPIL and the employees of RIL were making investment decisions on behalf of RPIL. It is also pertinent to mention that Mr K Sethuraman was the contact person on behalf of RIL for interacting with the legal advisor, valuers, financial advisors, etc. in the matter of merger of RIL with IPCL. Therefore, by virtue of close proximity of RPIL and RIL employees as explained above, it is alleged that RPIL was having access to the unpublished price sensitive information prior to its investments in the shares of IPCL.

- iii. The purchase of shares of IPCL by RPIL was financed by RVL through an interest free loan. RVL is a wholly owned subsidiary of RIL.
- iv. It was stated that RPIL was conceived by the management of RIL for the sole purpose of acquiring shares at the time of disinvestment by the Government in favour of RIL. Further, it is observed that during the period June 9, 2006 to February 26, 2007 RPIL has not dealt in the shares of IPCL but all of sudden started buying the shares of IPCL from February 27, 2007 i.e. just before the major announcement of declaration of the interim dividend and amalgamation of IPCL with RIL.
- h. In view of the aforesaid, it is alleged that RPIL was in possession of UPSI while trading in the scrip of IPCL prior to announcement of declaration of interim dividend and amalgamation of IPCL with RIL which resulted in violation of regulation 3 of PIT Regulations. The provisions of regulation 3 of PIT Regulations are reproduced hereunder:-

*"No insider shall-*

- (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or*
- (ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities;*

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

7. Noticee vide its letter dated 14.02.2011 sought an opportunity of inspection of all documents and information relied upon in the SCN. Vide office note dated 30.08.2011, Noticee's request was forwarded to the concerned department, which vide its office note dated 30.09.2011 scheduled the inspection of documents by the Noticee on 19.10.2011. Noticee was informed about the inspection date vide letter dated 04.10.2011 and was also advised to furnish a list of documents which the Noticee felt are some evidence which have been relied upon by SEBI and form the basis of charge in the SCN and the Noticee wanted to inspect. Noticee vide its letter dated 12.10.2011 furnished a list of documents that it wanted to inspect. Noticee vide its letter dated 08.11.2011 informed the previous AO, Shri Parag Basu that it has filed consent application with SEBI in the given matter.
8. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Adjudication Rules, Shri D Ravikumar, issued a hearing notice dated 24.09.2012 to the Noticee advising the Noticee to submit its reply to the SCN on or before 15.10.2012 and attend the hearing in the matter on 22.10.2012 at SEBI Bhavan, Mumbai. Noticee vide its letter dated 22.10.2012 stated that it has filed a consent application with SEBI on 08.11.2011 and the same was accordingly intimated to the AO on 08.11.2011. Since it has not heard either from the AO or any other SEBI authority in the matter, it would request the AO not to proceed in the matter in any manner without giving it an opportunity of hearing. Vide hearing notice dated 25.10.2012 the Noticee was granted another opportunity of hearing on 16.11.2012 at SEBI Bhavan, Mumbai. Further, the Noticee was granted time till 09.11.2012 to submit a reply to the SCN.
9. Vide its letter dated 05.11.2012, Noticee replied to the SCN and *inter alia* made the following submissions:

"...



- a) 13. Till date, SEBI has not provided RPIL with the relevant documents / information upon which it has relied for the purpose of the allegation made in the SCN. This demonstrates either that SEBI has no relevant or cogent information or material on the basis of which the allegations contained in the SCN have been made against RPIL or that the material (if any) in possession of SEBI does not support SEBI's case. The above principal was laid down by the Supreme Court in *Narayan Govind v State of Maharashtra and Ors* in the context of Section 106 of the Indian Evidence Act, 1872, where the Supreme court observed that "If some evidence is shown to exist on a question in issue, but the party which has it, within its power to produce it, does not, despite notice to do so, produce it, **the natural presumption is that it would, if produced, have gone against it.** Similarly a presumption arises from a failure to discharge a special or particular onus."
- b) 14. It is humbly submitted that as SEBI has failed to produce the documents / evidence upon which it has based its statement in paragraph 10 of the SCN, an adverse inference must be drawn against SEBI to the effect that, had the same been placed on record, the same would have destroyed the case of insider trading, put forth by SEBI.
- c) 15. Without prejudice to the foregoing, RPIL submits that the Securities Appellate Tribunal, in *Samir Arora v SEBI* (2005) 59 SCL 96 (SAT) has held that where activities like insider trading and fraudulent trade practices are concerned, "charges must be proved based on cogent materials and in accordance with law." The SCN, apart from mere surmises and conjectures, has not furnished any cogent material to support the allegations of insider trading against RPIL.
- d) 16. The Supreme Court, in the case of *Anil Gilurker Vs Bilaspur Raipur Kshetria Gramin Bank and Anr* [2011(10)SCALE 465] has held that if a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly by projecting his own imagination, discover all the facts and circumstances

*that may be in the contemplation of the authorities to be established against him.*

*e) 17. In the case of Dilip S. Pendse vs. Securities and Exchange Board of India (Appeal no. 80 of 2009 decided on November 19, 2009), the Securities Appellate Tribunal ("SAT") has held that "the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing higher must be the preponderance of probabilities in establishing the same."*

*f) 18. In another case of market manipulation (the seriousness of which is akin to a charge of insider trading), being Nirmal Bang Securities (P) Ltd. v SEBI, [2004] 49 SCL 421, the SAT has held as follows:*

*"241. Market manipulation being a serious charge, the consequences that would visit the manipulation on proving the charge is quite harsh, reasonably convincing evidence need be brought in to establish the charge. Surmises and conjectures are not enough."*

*g) 19. RPIL will also refer to the following judgments in support of the above contentions:*

*(i) BPL Ltd. v. Securities and Exchange Board of India ([2002] 38 SCL 310 (SAT), wherein the SAT has held that the allegations of a serious nature and cannot be based on surmises and conjectures.*

*(ii) Videocon International v Securities and Exchange Board of India ([2002] 4 Comp. LJ 402 (SAT-Mum), where it has been held that SEBI must adduce sufficient evidence as a result of which a reasonable person acting reasonably and objectively may arrive at a finding upholding the alleged charges.*

*(iii) Sterilite Industries (India) Limited v SEBI ((2001) 34 SCL 485 (SAT-MUM), SAT has held that evidence based on probabilities and endeavours to prove the fact on the basis of preponderance of probabilities is not sufficient to establish such a serious offence of market manipulation.*

*h) 20. Further, paragraph 10 of the SCN contains mere conjectures regarding the possession of unpublished price sensitive information by RPIL.*

- i) 20.1 The mere fact that Mr. K Sethuraman, Group Company Secretary of RIL (who was the contact person on behalf of RIL for interacting with legal advisors, valuers and advisors for merger of IPCL with RIL) made a representation to SEBI on behalf of RPIL when SEBI initiated enquiry into the Impugned Trades is no proof that RPIL would have had access to the First Alleged UPSI and Second Alleged UPSI. Mr. K Sethuraman was responsible for regulatory matters of all RIL group companies.
- j) 20.2 That RPIL was conceived by the management of RIL for the sole purpose of acquiring IPCL shares at the time of disinvestment by the Government is no material or reason to conclude that RPIL was in possession of First Alleged UPSI and the Second Alleged UPSI.
- k) 20.3 It was commonly known that RIL acquired IPCL and RPIL was the entity through which the acquisition was undertaken. It is only natural that RIL or its wholly owned subsidiary will fund RPIL for its business needs including monies required for creeping acquisition of IPCL shares. The funding of RPIL by RIL can in no way be treated as evidence (direct or circumstantial) to conclude that RPIL was in possession of First Alleged UPSI and the Second Alleged UPSI.
- l) 20.4 Mr. Ashok Jain, an employee of RIL, was the "Principal Officer" of RPIL under RBI's NBFC Regulations. A certified copy of the extracts of board minutes of RPIL dated 25th April, 2006, in this regard is annexed hereto and marked as "**Annexure 2**". As Principal Officer, Mr. Ashok Jain was primarily responsible for the affairs of RPIL and was authorized to take decisions on behalf of RPIL. Although Mr. Ashok Jain was an employee of RIL, his roles and responsibilities was limited to dealing with the affairs of RPIL and some other RIL group companies namely Reliance Chemicals Private Limited, Reliance Polyolefins Private Limited, Reliance Industrial Investments and Holding Limited, Reliance Ventures Limited etc. Under such circumstances, it is inconceivable that Mr. Ashok Jain would have been privy or to be reasonably expected to have knowledge of First Alleged UPSI and Second Alleged UPSI which are corporate decisions taken at the highest management level of IPCL and RIL. Mr. Ashok Jain was authorised

by the Board of RPIL to make investments upto the limits allowed under the Board resolution from time to time. On 25<sup>th</sup>, April 2006, Mr. Jain was specifically authorised by a resolution of the board of directors of RPIL to invest up to ₹30 crores in the equity shares of IPCL. The minutes of this board meeting clearly indicate that RPIL had made a decision to commence creeping acquisition of IPCL shares. Annexed hereto and marked as “**Annexure 3**” is a copy of the extract of board minutes dated 25<sup>th</sup> April 2006. This limit was almost exhausted in June 2006. Thereafter on 4<sup>th</sup> January 2007, the Board of RPIL once again resolved to further acquire IPCL shares up to additional ₹100 crores. Annexed hereto and marked as “**Annexure 4**” is a copy of the extract of board minutes dated 4<sup>th</sup> January, 2007. Thus, it can be seen that RPIL commenced acquiring IPCL shares, in accordance with the Takeover Regulations, upto the limits permitted therein, In such circumstances, it is submitted that the subsequent trading in the shares of IPCL by RPIL in February / March 2007, was implementation of the aforementioned decision, evidenced through clear board resolutions, which decision was taken much in advance prior to the existence of the First Alleged UPSI or the Second Alleged UPSI. Therefore, in such circumstances, it cannot be contended that merely because RPIL traded in close proximity to the dates for announcement of declaration or a merger of IPCL, RPIL traded on the basis of unpublished price sensitive information.

- m) 20.5 Mr. Ashok Jain from time to time took decisions to purchase shares of IPCL. It was after these resolutions in April 2006 and January, 2007 that Mr. Ashok Jain started purchasing shares of IPCL from May 2006 and thereafter in February /March, 2007. It is again reiterated that Mr. Ashok Jain at no time had access to any unpublished price sensitive information and the purchases of IPCL by him for and on behalf of RPIL were for the purpose of creeping acquisitions, which acquisition decisions were taken by the board of directors of RPIL in April, 2006 and January, 2007. The mere fact that Ashok Jain was an employee of RIL cannot in anyway

*substantiate the charge that RPIL was in possession of First Alleged UPSI and the Second Alleged UPSI.*

- n) 20.6... *It is submitted that during the period May – June 2006, RPIL purchased about 12 lakhs shares of IPCL at prices at around ₹ 205 to ₹ 220 per share. Thereafter the share prices of IPCL started increasing and it touched even ₹ 325 per share. Thereafter, the price starting witnessing a downward trend and settled at around ₹ 250 to ₹ 260 per share. Between July, 2006 to February, 2007, the price was in the range of ₹ 255 to ₹ 325. It was only in the third week of February, 2007, the price witnessed a fall to around ₹ 250, and it was decided to purchase further quantity towards creeping acquisition. Share price movement showing the above details is annexed hereto marked as “Annexure 5”. As can be seen it was not for the first time that RPIL purchased the shares of IPCL on 27<sup>th</sup> February 2007. The decision to commence Purchase of IPCL shares in February, 2007 was because of the aforementioned reasons and this act cannot lead one to believe or allege that RPIL was in possession of the First Alleged UPSI and the Second Alleged UPSI.*
- o) 21. *It is submitted that no inference of the nature sought to be drawn in the SCN from the facts specified therein can be drawn. The SCN fails to provide any material to establish the fact that RPIL obtained any so-called UPSI from RIL, or any other person. The burden falls squarely on SEBI to establish that the unpublished price sensitive information was relied upon by RPIL to execute the Relevant Trades.*
- p) 22. *RPIL submits that the acquisition of shares in IPCL was a part of creeping acquisition of IPCL which was under its control and that there is absolutely no basis for the allegations set out in the SCN. RPIL acquired shares under the creeping limits prescribed by the erstwhile Takeover Regulations, not only in the impugned period but also during May – June, 2006, in order to consolidate its holding in IPCL.*
- ...
- q) 25. *The Securities Appellate Tribunal, in Samir Arora V SEBI (2005) 59 SCL 96 (SAT), has held that there could be a prima facie presumption of*

being an 'insider' once both the conditions in the definition of 'insider' are met with. Thus, persons can be treated as insiders only if they have received price sensitive information or have had in fact, access to such information. It was also held that "the fact of such connected or deemed to be connected persons having received information will have to be established by evidence satisfying reasonable standard of proof."

r) 26. Further, it is submitted that the SCN has not placed any material on record to prove the allegations made against RPIL even by using a lower quality of evidence to satisfy the standard of a preponderance of probabilities.

- Dastane v. Dastane – AIR 1975 SC 1534 at page 1539, para 24
- Hansraj Gupta v. Dehra Dun – Mussoorie Electric Tramway Co. Ltd. – AIR 1940 PC 98 at page 99, para C2
- Imperial Corporation Financial Services Pvt. Ltd. v SEBI – Appeal No. 56/2003- Date of decision: July 30, 2004 at page 7, para 21

...

s) 28. Accordingly, it is submitted that SEBI has failed to discharge the burden of proof or the standard of proof incumbent upon it in order to sustain a charge of insider trading. Thus, it is submitted that RPIL is not and cannot be said to have violated Regulation 3 of the PIT Regulations, as alleged or otherwise. In the circumstances, RPIL submits that the SCN and all proceedings against RPIL emanating therefrom are liable to be dropped.

t) 29. **FIRST ALLEGED UPSI NOT IN EXISTENCE AT THE TIME OF RELEVANT TRADES:**

u) 29.1. RPIL has ascertained the following facts:

(i) On 28<sup>th</sup> February 2007, the Union Budget contained a proposal to enhance the dividend distribution tax from 12.5% to 15% for dividends payable on and from 1<sup>st</sup> April 2007.

(ii) In view of the above, proposal to declare and pay interim dividend by IPCL was mooted by Mr. S. K Anand, Wholetime Director of IPCL on 2<sup>nd</sup> March 2007;

(iii) Accordingly, Mr. K Sethuraman, Vice President – Corporate Secretarial of RIL, informed the stock exchanges about the proposed board meeting on 10<sup>th</sup> March, 2007 for consideration of payment of interim dividend.

(iv) The information regarding proposed declaration of interim dividend by IPCL was known only to Mr. Mukesh Ambani, Mr. K Sethuraman and Mr. S.K Anad and Ms.Sasikala Rao and was not known to anyone else prior to the notification to stock exchange by IPCL on 2<sup>nd</sup> March 2007.

v) 29.2 IPCL closed its trading window as per its Insider Trading Code, only on 2<sup>nd</sup> March 2007 which closure, continued till 24 hours after 10<sup>th</sup> March 2007 (date of Board Meeting of IPCL declaring interim dividend and approving the amalgamation of IPCL and RIL). Given that the trading window had got shut on 2<sup>nd</sup> March 2007 when the UPSI being the proposal for interim dividend came into existence, there was no requirement to shut the trading window again for the second UPSI being the proposed merger. This fact clearly demonstrates that even according to IPCL, no unpublished price sensitive information regarding declaration of interim dividends existed prior to the corporate announcement made on 2<sup>nd</sup> March, 2007.

w) 29.3. The aforesaid facts clearly prove that the First Alleged UPSI was not in existence on February 2007 and 1<sup>st</sup> March 2007.

x) 29.4. **It is submitted that**

- i. The First Alleged UPSI came into existence only on 2nd March 2007;**
- ii. The persons responsible and who were involved in the process have affirmed that the First Alleged UPSI was treated as confidential and was known only to select people connected therewith; No connection has been drawn in the SCN between such persons and the relevant person at RPIL who executed the trades in IPCL.**

- iii. *There is no question of the relevant person at RPIL having knowledge of or being in possession of the First Alleged UPSI while carrying out the Relevant Trades.*

...

y) 31. **SECOND ALLEGED UPSI NOT IN EXISTENCE AT THE TIME OF RELEVANT TRADES:**

z) 31.1. *RPIL has ascertained the following facts:*

- (i) *The proposal for the merger of IPCL with RIL was for the first time considered only on 4<sup>th</sup> March 2007:*
- (ii) *The proposal was known to only select top executives of IPCL and RIL and was kept confidential:*
- (iii) *The valuers' and financial advisors were appointed only on or after 5<sup>th</sup> March 2007: (Please find annexed copies of engagement letters issued by IPCL and RIL to the valuers / advisors, marked collectively as "Annexure 6".*

aa) 31.2 *The aforesaid facts clearly prove that the Second Alleged UPSI was not in existence while carrying out the Relevant Trades.*

bb) 31.3 *It is submitted that:*

- i. *The Second Alleged UPSI came into existence only on 4th/5th March 2007;*
- ii. *The persons responsible and who were involved in the process have affirmed that the Second Alleged UPSI was treated as confidential and was known only to select people connected therewith;*
- iii. *There is no question of the relevant persons at RPIL who made the investment decision to acquire IPCL shares, having knowledge of or being in possession of the Second Alleged UPSI while carrying out the Relevant Trades.*

...

cc) 33. *Accordingly, contrary to the allegations in the SCN, the relevant person at RPIL who made the investment decisions could not have conceivably*



*been in possession of the First Alleged UPSI and Second Alleged UPSI while carrying out the Relevant Trades.*

*...*

*dd) 36. It is expressly declared that RPIL and IPCL are not companies deemed to be under the same management as per Section 370 (1B) of the Companies Act, 1956. It is submitted that the allegations against RPIL in this regard set forth in the SCN are incorrect and deserve to be rejected for the following reasons which are all in the alternative and without prejudice to each other:*

*ee) 37. Two bodies corporate are deemed to be under the same management under sub clause (i) (a) of Section 370 (1B), of the Companies Act, 1956, if the managing agent, secretaries and treasurers, managing director or manager of one body is the same as that of the other. In this case, Mr. Mukesh Ambani is the Managing Director only of RIL, and does not occupy any of the above mentioned positions in IPCL. He was a non- executive chairman of IPCL. However, the SCN sets out that Mr. Mukesh Ambani is the Chairman of both IPCL and RIL. In this regard, it is important to note that this Section will not be attracted in an instance where the position of Chairman of the two bodies corporate is occupied by the same person. It is thus abundantly clear that the SCN has failed to establish that Mr. Mukesh Ambani occupies any of the statutorily enumerated positions, as per Section 370 (1B) (i) (a) of the Companies Act, 1956 in both IPCL and RIL. Therefore, the condition in Section 370 (1B) (i) (a) of the Companies Act, 1956, IPCL and RIL cannot be said to be under the same management on this ground.*

*ff) 38. Two bodies corporate are deemed to be under the same management under sub clause (ii) of Section 370 (1B) of the Companies Act, 1956,, if within the six months immediately preceding, the directors of one body constitute a majority on the board of the other body. It is submitted that the Board of Directors of RIL for the financial years 2006-07 and 2007-08 comprised of the following individuals respectively;*

*Director of RPIL during 2006-07*

1. Jyotindra H. Thacker
  2. Arjun Vasant Betkekar
  3. Venkatachalam Subramaniam
- Director of RPIL during 2007-08

1. Jyotindra H. Thacker
2. Arjun Vasant Betkekar
3. Venkatachalam Subramaniam
4. P.M.S Prasad (appointed on 24.03.2008)
5. B.K Gangopadhyay (appointed on 24.03.2008)

*None of the Directors of RPIL were on the Board of IPCL during the F.Y. 2006-07 and 2007-08.*

*Thus, it is evident that the directors of RIPL did not constitute a majority on the board of IPCL or vice versa, as there was no overlap in the directorships of the two companies.*

*gg) 39. Two bodies corporate are deemed to be under the same management under sub clause (iii) of Section 370 (1B), if not less than one-third of the total voting power relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate. For this condition to be satisfied, it is not sufficient to allege that one body corporate merely holds more than one third of the total voting power in another body corporate. It is imperative to establish that the same individual or body corporate holds more than a third of the voting rights with the respect to both the companies being examined for the purposes of this clause.*

*hh) 40. In this case, the only SCN alleges the following:*

- First, that IPCL and RIL are deemed to be under the same management because RPIL holds more than one –third of the total voting power of IPCL.*
- Second, that RIL and RPIL are deemed to be under the same management because RIL holds the entire share capital of RPIL through two of its wholly owned subsidiaries.*

*ii) 41. At no point is the SCN able to establish a connection between RPIL and IPCL by way of a common individual or body corporate holding more than one third of the voting rights in both the companies. Thus, given the*

*requirements under sub clause (iii) of Section 370 (1B), the allegation is incorrect and in no way prove that RPIL and IPCL are under the same management.*

*jj) 42. Two bodies corporate are deemed to be under the same management under sub clause (iv) of Section 370 (1B) if the holding company of one body corporate is under the same management as the other, within the purview of sub clauses (i), (ii) or (iii) of Section 370 (1B). In light of the above mentioned submissions RPIL is not under the same management as IPCL.*

*...*

*kk) 47. It is submitted that Regulation 3 and 3A of the PIT Regulations seek to prohibit the same offence. Whilst, Regulation 3 of the PIT Regulations prohibits "insiders", Regulation 3A of the PIT Regulations, prohibits companies in possession of UPSI. It is submitted that all companies in possession of UPSI are in fact "insiders" and therefore, irrespective of the charge being under Regulation 3 or Regulation 3A of the PIT Regulations, the defences under Regulation 3B of the PIT Regulation are available to RPIL.*

*ll) 48. Clauses 1 and 2 of Regulation 3B of the PIT Regulations provide defences to a company referred to under Regulation 3A. It is submitted that since the scope of the prohibition under Regulation 3 and Regulation 3A is the same, when a company (in this case, RPIL) is charged with the offence of insider trading under Regulation 3 (instead of Regulation 3A), the defences available under Regulation 3B of the PIT Regulations are also available to such company.*

*mm) 49. Without prejudice to the contention above that the First Alleged UPSI and Second Alleged UPSI did not exist at the time of the Relevant Trades, it is submitted that assuming for the sake of argument that the UPSI did exist, the defence available under Regulation 3B (1) of the PIT Regulations is available to RPIL.*

*nn) 50. In the present case, as stated above, it is submitted that the decision to execute the Relevant Trades was taken by Mr. Ashok Jain with the only*

*objective of acquiring IPCL shares under creeping route to increase the holding in IPCL which was already under the control of RPIL, for which he was duly authorized by the board of directors. As the Minutes of the Board Meeting would justify, the authority for investments in equity and other securities was provided to Mr. Ashok Jain primarily for creeping acquisition of IPCL shares. The persons who were part of the decisions making process and who were privy regarding the information with respect of interim dividend and merger of IPCL with RIL had no interaction with Mr. Ashok Jain who took the decision in the normal course for creeping acquisition IPCL shares.*

*...*

*oo) 52. It is submitted that RPIL was a registered non-banking finance company and RIL does not control the day-to-day operations, business strategies or business or policy decisions of RPIL. Neither did the concerned person within RPIL who executed the relevant trades, receive information or updates regarding the day-to-day business decision and plans of IPCL. Thus, concerned persons within RPIL who executed the Relevant Trades did not have any access to nor could reasonably be expected to have access to the unpublished price sensitive information in relation to the proposed amalgamation of the Company.*

*pp) 53. From the above, it is evident that the person who took the decision on behalf of RPIL to execute the Impugned Trades, had no access to the UPSI nor could reasonably be expected to have access to the UPSI. The SCN does not provide any material, other than surmises and conjectures, to establish the contrary.*

*...*

*qq) 56. Without prejudice to the contention above that the First Alleged UPSI and Second Alleged UPSI did not exist at the time of the Relevant Trades, it is submitted that the acquisition of IPCL shares by RPIL was as per the erstwhile Takeover Regulations under the creeping route, applicable to "promoters and persons acting in concert" and within the limits prescribed therein.*

rr) 57. In view of the defence available under Regulation 3B(2) of the PIT Regulations, without prejudice to any of the other contentions in these submissions, RPIL cannot be held guilty of violation of insider trading regulations.

ss) 58. As stated hereinabove, RPIL has made the impugned investments with a view to increase its holding in IPCL and no other ulterior motive as suggested by SEBI. The Relevant Trades were in furtherance of the acquisition plan in the normal course of business and were not executed on the basis of any unpublished price sensitive information, as alleged or otherwise. In fact, the impugned investments were not disposed off before the record date for the merger and RIL shares were received post-merger by RPIL. RPIL thereafter, has transferred these shares to another company within Reliance Group.

...

tt) 60. Thus, RPIL purchased 1,198,457 shares of IPCL during the period of May – June 2006. Further acquisitions of 21,32,953 shares of IPCL were completed during February-March 2007, which were again motivated by the intent of creeping acquisition and could not have been based on any unpublished price sensitive information.

uu) 61. The Securities Appellate Tribunal, in a recent order passed on January 31, 2012 in the case of Mrs. Chandrakala v SEBI, has held in paragraph 7 that the pre-requisite of insider trading is trading or dealing in securities on the basis of unpublished price sensitive information, i.e. “the trades executed should be motivated by the information in the possession of the insider or that the information in possession of the insider should be the factor or circumstance that has induced him to trade in the scrip of the company. It is only then that RPIL will be said to have dealt with or traded **“on the basis of”** that information.

...

vv) 64. Thus, RPIL submits that it has not violated Regulation 3 of the PIT Regulations.

...”

10. Noticee vide its letter dated 05.11.2012 requested to prepone the date of hearing to 08.11.2012 due to unavailability of its counsel on 16.11.2012. Noticee vide letter dated 06.11.2012 authorised Shri Janak Dwarkadas, Senior Advocate, Shri K.R. Raja and Shri Shuva Mandal, Partner- AZB & Partners (Advocates and Solicitors) to appear as Authorised Representatives (hereinafter referred to as '**ARs**') on its behalf for the personal hearing.

11. Personal hearing in the matter was conducted on November 8, 2012 by previous AO Shri D Ravikumar wherein ARs denied all the allegations made in the SCN and reiterated the submissions made in their reply dated 05.11.2012. The ARs submitted that the alleged UPSI was not in existence prior to 02.03.2007 02:01 pm and SCN does not contain anything to show the existence of UPSI before 02.03.2007. ARs further stated that there was no commonality between IPCL and RIL and that Shri Mukesh Ambani was non-executive chairman of IPCL. When queried as to whether the company IPCL does not fall under the same group, the ARs stated that this point was not raised in the SCN and therefore the ARs will give a separate submission in this regard. ARs further submitted that IPCL and RPIL do not fall under Section 370 (1B) of the Companies Act and therefore it is not applicable. ARs further clarified that RPIL bought only 0.54% shares of IPCL by creeping acquisition. Shri Ashok C Jain was authorized to make the creeping acquisition by IPCL. ARs further submitted that the proposal of merger was first discussed on 04.03.2007 and the valuers were appointed on 05.03.2007. ARs submitted that the swap ratio by valuers was discussed in the board meeting held on 10.03.2007. It was clarified as to when RPIL borrowed the amount. ARs stated that they will submit the documents pertaining to borrowing. The Noticee produced following additional documents in support of its arguemnts-

- Affidavit undertaken by Mr. Mukesh Ambani, Chairman and Managing Director of RIL.
- Affidavit undertaken by Mr. Alok Agarwal, Chief Financial Officer of RIL.
- Affidavit undertaken by Mr. L.V. Merchant, Controller-Accounts of RIL.

- Affidavit undertaken by Mr. Bimal Tanna, Executive Director with Pricewaterhouse Coopers Pvt. Ltd.
- Affidavit undertaken by Mr. S.K. Anand, the then Whole-Time Director of IPCL.
- Affidavit undertaken by Mr. Sanjiv Agarwal, Partner in charge of valuations practice at Ernst & Young Pvt. Ltd. during 2007.
- Affidavit undertaken by Mr. K. Sethuraman, Company Secretary of RIL.
- Affidavit undertaken by Mr. Adi Patel, Co-CEO, Investment banking of JM Financial Institutional Services Private Ltd.
- Letter dated November 2, 2012 from BoAML.

With respect to paragraphs no. 21, 24, 34 of the reply dated 05.11.2012, it was asked whether any more documents are required to be provided by SEBI. ARs stated that no more documents are needed to be given now, for the purpose of passing the adjudicating order. The ARs undertook to submit the documents mentioned in the abovementioned paragraphs and any additional submission by 19.11.2012.

12. Noticee vide its letter dated 19.11.2012 made additional written submissions wherein *inter alia* it made the following submissions:

“...

- a) 5. *We submit that RPIL and IPCL are not companies under the same group as per the definition of “Group” under the Monopolies and Restrictive Trade Practices Act, 1969. As per the definition of “Group”, two bodies corporate are deemed to be under the same group if both the bodies corporate exercise or is established to be in a position to exercise control, directly or indirectly, over any body corporate, firm or trust i.e. a third entity. It is submitted that RPIL and IPCL do not collectively exercise any direct or indirect control over a third entity. Therefore, RPIL and IPCL are not companies under the same “Group” as per the definition under Monopolies and Restrictive Trade Practices Act, 1969. Therefore, it follows that RPIL is not “a deemed connected person” to IPCL.*

b) 6. Without prejudice to the above explanation, we reiterate (i) that there is no allegation in the Show Cause Notice that RPIL is a deemed connected person under Regulation 2(h)(i) of the PIT Regulations due to the fact that RPIL and IPCL are companies under the same group as per Monopolies and Restrictive Trade Practices Act, 1969 and (ii) that SEBI, at this stage of the proceedings cannot bring a new allegation. It is submitted that at the belated stage of a personal hearing in the matter, SEBI cannot be permitted to raise any fresh allegations, and the same is clearly in violation of well settled principles of law and the principles of natural justice.

...

c) 9. In this situation, it is unfair to expect RPIL to advance arguments and defend itself against additional grounds raised only at the time of hearing because such a practice by SEBI is a violation of principles of natural justice and prevents RPIL from being given a fair trial...

..."

#### **PREVIOUS ADJUDICATION ORDER AND ORDER BY HON'BLE SECURITIES APPELLATE TRIBUNAL**

13. An adjudication order dated 02.05.2013 was passed in the matter by the previous AO, Shri D Ravikumar. The said order was challenged by the Noticee before Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'). In the appeal no 122 of 2013, Hon'ble SAT vide its Order dated 07.12.2015 has, *interalia* observed as follows:

"... 4. On perusal of para 9 and 10 of the impugned order it is seen that apart from denying that the Appellant was an insider, Appellant had placed on record various documents to rebut the presumption of being in possession of UPSI at the time of purchasing shares and the Appellant had also made submission to the effect that the price sensitive information itself came into existence after the shares were purchased by the Appellant. Neither the documents furnished have been considered nor the arguments advanced on behalf of the Appellant have been considered in the impugned order.



*5. Since the impugned order is passed merely on the basis of presumption without considering the arguments advanced on behalf of the Appellant to rebut the presumption, the impugned order is quashed and set aside and the matter is restored to the file of Adjudicating Officer of SEBI for passing fresh order on merits and in accordance with law.*

*6. Since the Appellant has already deposited the amount of penalty with SEBI, Adjudicating Officer of SEBI is directed to hear the Appellant and pass fresh order on merits in accordance with law within 3 months from today. All contentions are kept open. The amount of penalty deposited will be subject to the result of the fresh order that is to be passed by SEBI..”*

#### **CURRENT ADJUDICATION PROCEEDINGS**

14. Pursuant to the said Order of Hon’ble SAT, the Competent Authority appointed the undersigned as AO by appointment order dated 28.12.2015. The matter was referred to the AO on 05.01.2016.

15. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Adjudication Rules, the undersigned issued a hearing notice dated 15.01.2016 to the Noticee granting it time till 25.01.2016 to submit additional reply / documents, if any and attend the hearing on 01.02.2016 at SEBI Bhavan, Mumbai. A copy of the appointment order of undersigned as AO and a list of Noticee’s all previous correspondences in the current adjudication proceedings were enclosed along with the hearing notice.

16. In response to the aforementioned hearing notice, Noticee vide its letter dated 25.01.2016 authorised the following persons to appear on its behalf: Shri. Janak Dwarkadas, Senior Advocate, Shri. Rohan Rajadhyaksha, Advocate, Shri. Rajendra Barot from AZB & Partners, Advocates & Solicitors, Shri. Divij Kishore from AZB & Partners, Advocates & Solicitors, Ms. Ramya Mahidhara from AZB & Partners, Advocates & Solicitors, Shri. Amey Nabar from A. S. Dayal & Associates, Shri. K Sethuraman, Shri K. R Raja, Shri Ramesh Kumar Damani, Ms. Geeta Fulwadaya, Shri. Deepak Kabra and Shri. Vishal

Jhaveri. Noticee vide its letter dated 29.01.2016 once again authorized the aforesaid persons and Ms. Komal Chhapru to appear on its behalf.

17. At the time of hearing, the following representatives were present: Shri. Janak Dwarkadas, Shri. Rohan Rajadhyaksha, Shri. Rajendra Barot, Shri. Divij Kishore, Ms. Ramya Mahidhara, Shri. Amey Nabar, Shri K. R Raja, Shri. Deepak Kabra and Ms. Komal Chhapru, Shri. Vishal Jhaveri (hereinafter collectively referred to as '**Representatives**'). At the time of the hearing the Representatives were explained the charges leveled against the Noticee. The representatives reiterated the submissions made in the replies dated 05.11.2012 and 19.11.2012. The representatives at the time of hearing also submitted a "list of dates and events" & verbally mentioned the timings of the various events mentioned therein. Since the representatives verbally mentioned the timings of various events and item at serial no. 9 of the list did not specify the name of the Company to which the Board meeting & interim dividend pertained to, the representatives were asked to put the timings of various events & name of the Company on record. The representatives undertook to submit the aforesaid information & written submissions on or before 05.02.2016. Although the representatives undertook to submit the aforesaid information on or before 05.02.2016, Noticee vide its letter dated 04.02.2016 stated that it will submit the written submissions by 08.02.2016 as the advocates representing the Noticee had to urgently travel out of Mumbai due to their professional exigency.

18. Noticee vide letter dated 08.02.2016, made additional written submissions wherein it reiterated its submissions made in its replies dated 05.11.2012 and 19.11.2012 and *inter alia* made the following submissions:

"...

**B. Facts:**

*18.1 (3) A brief summary of the facts in the above matter is as under:*

*(a) Pursuant to a Share Purchase Agreement dated May 21, 2002 with the Government of India, RPIL acquired 6,45,38,662 shares of IPCL from Government of India, constituting 26% of the total voting capital of IPCL.*

*Thereafter, on 24<sup>th</sup> July 2002,. RPIL made an open cash offer to the existing shareholders of IPCL (in compliance with the then applicable SEBI (substantial Acquisition of shares and Takeover) Regulations, 1997) to acquire upto a further stake of 20% of the shareholding of IPCL. Upon the close of the said open offer, RPIL held 46% stake in IPCL.*

*(b) RPIL passed a resolution dated April 25, 2006 authorising Mr. A.V Betkekar, Mr. Jyotindra Thacker and Mr. Subramaniam, Directors of RPIL and Mr. Ashok C. Jain, Authorized Signatory of RPIL to invest ₹ 30 crores by acquiring equity shares of IPCL. This was a commercial decision taken by RPIL, which already held a major stake in the shareholding of IPCL since 2002.*

*...*

*(e) On January 4, 2007, in line with its commercial decision to invest in IPCL , RPIL passed another resolution authorizing the aforesaid persons to make additional investments upto ₹100 Crore in the equity shares of IPCL.*

*(f) On February 22, 2007, the price of the shares of IPCL fell from ₹270.30 to ₹262.70, thereby bringing the shares into the price range at which RPIL was agreeable to invest more money into IPCL.*

*...*

*(k) On March 2, 2007, Mr. S.K. Anand, a whole-time director of IPCL, advised Ms. Shashikala Rao (Company Secretary of IPCL) and Mr. Sethuraman to call a board meeting of IPCL to consider declaration of interim dividend. As per recollection of Mr. Sethuraman, Mr. S. K Anand's advice to convene a board meeting for considering declaration of interim dividend was acted upon and was intimated to stock exchanges within a couple of hours.*

*(l) At this stage, we may clarify that Mr. K. Sethuraman, was the Vice President, Corporate Secretarial for RIL. In performance of his duties in RIL, Mr. Sethuraman also oversaw the secretarial activities of the subsidiaries and associate companies of RIL.*

*...*

*(n) in this regard, we may point out the following:*

*(i) The orders to purchase 98,280 shares of IPCL were placed by RPIL at 10:24 am on March 2, 2007;*

*(ii) The corporate announcement of the board meeting of IPCL to consider the declaration of interim dividend was made at 2:28 pm on March 2, 2007 and had been made within a couple of hours after the discussion between Mr. S.K. Anand and Mr. Sethuraman, in accordance with the requirements of Clause 36 of the Listing Agreement. The said board meeting was scheduled to take place on March 10, 2007:*

*...*

*(o) The Proposal for a possible merger of RIL and IPCL was considered and discussed for the first time in a meeting among Mr. Mukesh Ambani, Mr. Alok Agarwal, RIL Chief Financial Officer and Mr. L.V Merchant, RIL Controller Accounts on March 4, 2007.*

*(p) On March 5, 2007, the steps for initiating the discussion regarding the proposed merger were taken. In line with the same.*

*(i) JM Morgan Stanley were appointed as a financial advisor by way of an engagement letter dated March 5, 2007:*

*(ii) PricewaterhouseCoopers ("PwC") were appointed as an independent valuer for the proposed amalgamation by way of an engagement letter dated March 5, 2007: and*

*(iii) Ernst & Young ("E&Y") were appointed as joint valuers for the proposed amalgamation by way of an engagement letter dated March 5, 2007.*

*(q) On March 7, 2007, IPCL made a corporate announcement at 5:15 pm stating that it will consider and recommend amalgamation of IPCL with RIL at the upcoming board meeting on March 10, 2007.*

*(r) DSP Merrill Lynch were appointed as the joint financial advisor for the proposed amalgamation on March 5, 2007.*

*(s) At the meeting of the board of directors of IPCL on March 10, 2007, the proposal for declaration of interim dividend was considered and approved by the board of directors of IPCL.*

*(t) A joint meeting of the boards of directors of RIL and IPCL also took place on March 10, 2007, where a joint report of E&Y and PwC was submitted setting out the recommendation of a swap ratio in the event that a merger took place between RIL and IPCL. The joint financial advisers also presented their views on the proposed merger. In view of the same, the boards of directors of RIL and IPCL approved the merger at their respective Board meetings.*

**C. Rationale for Relevant Trades:**

*18.2 (4). RPIL had invested into the shares of IPCL in 2002 as a commercial decision. In line with that decision, RPIL was investing further into IPCL by purchasing its shares on the stock market on a creeping basis, in accordance with the provisions of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations ('Takeover Regulations') applicable at the time. However, commercially, RPIL was only willing to invest into the shares of IPCL as long as they were at a certain price.*

*18.3 (5). It is for this reason that at the meeting of the board of directors of RPIL on April 25, 2006, the board authorized Mr. A. V Betkekar, Mr. Jyotindra Thacker and Mr. Subramaniam, Directors of RPIL and Mr. Ashok C. Jain, authorized signatory of RPIL to invest ₹30 crores by acquiring equity shares of IPCL. The minutes of this board meeting clearly indicate that RPIL had made a decision to commence creeping acquisition of IPCL shares. Annexed hereto and marked as "Annexure 4" is a copy of the extract of board minutes dated April 25, 2006. Thereafter, RPIL purchased approximately 12 lakh shares of IPCL at ₹205- Rs.220 per share between May to June of 2006. The investment limit agreed to in the board meeting on April 25, 2006, was almost exhausted in June 2006. Thereafter, the share prices of IPCL started increasing and it even touched ₹325 per share, as a result of which further shares were not purchased.*

*18.4 (6). From July 2006 to February 2007, the price of the shares of IPCL was in the range of ₹255 to ₹325. Meanwhile, the board of directors of RPIL in its meeting on January 4, 2007, once again resolved to invest a further sum of ₹ 100 Crore to purchase the share of IPCL on a creeping basis. In the third*

week of February, the price of the shares of IPCL fell to approximately ₹250, thereby bringing the shares into the price range at which RPIL was agreeable to invest. Annexed hereto and marked as “**Annexure 5**” is a copy of the extract of board minutes dated January 4, 2007. The share price movement of IPCL showing the above details is annexed hereto and marked as “**Annexure 6**”.

18.5 (7). It is therefore submitted that the Relevant Trades did not take place abruptly, but the shares in question were purchased on the basis of the price of the shares of IPCL and in line with the commercial decision taken by RPIL.

18.6 (8). It is submitted that the past trading pattern of RPIL in the shares of IPCL ought to have been taken into consideration by the SEBI in considering whether the Relevant Trades were conducted on the basis of UPSI. In this context, the case of *Manoj Gaur v. SEBI* (Appeal No. 64 of 2012) decided on October 3, 2012, may be taken into consideration, where the trading pattern was analysed by the Securities Appellate Tribunal in reaching a finding that it was highly improbable that trading was done on the basis of UPSI.

**D. Non Existence of UPSI:**

18.7 (9). It is pertinent to take note of the following:

(a) The SCN does not specify that

- i. the First Alleged UPSI existed any time prior to March 2, 2007 and
- ii. the Second Alleged UPSI existed any time prior to March 4, 2007.

(b) SEBI has not produced any material to show when the First Alleged UPSI or the Second Alleged UPSI came into existence.

(c) As against this, there is voluminous evidence, including in the form of affidavits, to show that the First Alleged UPSI was not in existence prior to March 2, 2007 and that the Second Alleged UPSI was not in existence prior to March 4, 2007. It is submitted that the First Alleged UPSI and the Second Alleged UPSI were not in existence at the time of the Relevant Trades.

...  
18.8 (12) Without prejudice to the above, assuming without admitting that the First Alleged UPSI and/or Second Alleged UPSI have been in existence prior to any of the Relevant Trades, it is submitted that Mr. Ashok C. Jain, who was executing RPIL’s decision to purchase the shares of IPCL, could not have

been aware of the alleged UPSI. The discussion in respect of the First Alleged UPSI and/or Second Alleged UPSI took place only amongst the senior most executives of IPCL and RIL and was not disclosed to any person in RPIL, as has been stated in the affidavits forming part of Annexure 7 and Annexure 8.

18.9 (13) Without further prejudice to the above, RPIL states that there is nothing on record to establish or even indicate that the First Alleged UPSI and/or Second Alleged UPSI were in existence prior to the execution of the Relevant Trades and if so, there is also nothing on record to show that RPIL entered into the Relevant Trades in the shares of IPCL on the basis of the First Alleged UPSI and/or Second Alleged UPSI.

18.10 (14) In its order passed in *Mrs. Chandrakala v SEBI* on January 31, 2012, the Securities Appellate Tribunal found that the pre-requisite to a charge of insider trading is to show that trading took place on the basis of unpublished price sensitive information, i.e., that the trades took place on the basis of or being motivated by the information in the possession of the insider. In the present case, it has been demonstrated and established that the First Alleged UPSI and/or Second Alleged UPSI were not in existence at the time of the execution of the Relevant Trades and without prejudice to the same, should the UPSI have been in existence, it could not have been in the possession of Mr. Ashok C. Jain, who placed the trades on behalf of RPIL.

**E. RPIL is not an “Insider”:**

18.11 (15) RPIL is not an “insider” as defined in Regulation 2(e) of PIT Regulations. Regulation 2(e) of the PIT Regulations stipulate that an ‘insider’ is a person who:

(a) is or was connected with the company or is deemed to have been connected with the company

**AND**

is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company; **OR**

(b) has received or has had access to such unpublished price sensitive information.

***RPIL is not a person 'deemed to be connected' within the meaning of Regulation 2(h) of the PIT Regulations.***

...

18.12 (c) **Section 370(1B) (iii) of the companies Act, 1956:** Two bodies corporate are deemed to be under the same management under sub-clause (iii) of section 370(1B) of the Companies Act, 1956, if not less than one-third of the total voting power relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate. For this condition to be satisfied, it is not sufficient to allege that one body corporate merely holds more than one third of the total voting power in another body corporate. On the other hand, it is imperative to establish that the same individual or body corporate holds more than a third of the voting rights with respect to both the companies being examined for the purposes of this clause. In this regard, it is submitted that:

- i. RIL did not exercise any voting power in RPIL directly, as is evident from the shareholding pattern of RPIL during the financial year 2006-07, which has been annexed hereto and marked as “Annexure 9”.
- ii. Further the Ministry of Corporate Affairs Department Circular No.15 (31)-CL-VI/62, dated July 20, 1962 (“MCA Circular”), deals with the interpretation of the expression “the same individual or body corporate” occurring in clause (iii) of sub-section (1B) of section 370 of the Companies Act, 1956, and lays down that this expression implies singular number only and not plural. As is evident from the shareholding pattern set out in Annexure 9, RIL as a single entity did not directly hold the requisite one-third shares in RPIL, as the shareholding of RPIL was cross-held by a number of subsidiaries. The one-third voting right in RPIL were exercised by RVL and not by RIL.
- iii. To summarise,  
1st. for the requirement to be satisfied, a triangular corporate structure is contemplated, where one entity, namely “A” should



*hold shares in two entities, namely “B” and “C”, for “B” and “C” to be “companies under the same management”.*

*2nd. “A and c” or “A and B” are never “companies under the same management”, in absence of any other relationship contemplated under section 370 (1B) of the Companies Act, 1956.*

*3rd. admittedly, RIL does not even hold shares in RPIL and does not fulfil requirement of triangular structure.*

*4th. there is no single entity which holds shares in the other two entities.*

*iv Further, the composition of the board of directors of the intermediary companies was also different, which establishes that all the companies were being managed by distinct and separate entities. The composition of the board of directors during 2006-07 of all the intermediary companies is annexed hereto and marked as “Annexure 10”, collectively. From Annexures 9 and 10, it is clear that neither did any single entity have the right to control the board of directors of RPIL nor did it exercise or control more than half of the total voting power of RPIL. Consequently, RPIL was not a subsidiary of RIL. Therefore the allegation that IPCL and RPIL were “companies under the same management” is factually and legally incorrect.*

*(v) Further, IPCL is a separate legal entity with its own independent management and this is evident from the composition of the boards of RIL and IPCL. At the relevant time, out of a board of ten members of IPCL, only two board members were common with RIL being Mr. Mukesh Ambani and Mr. Nikhil Meswani, and the same cannot be said to constitute control over 50% of the board of IPCL.*

*(vi) **Since RIL did not exercise or control at least one-third voting power of RPIL and IPCL, RPIL and IPCL cannot be deemed to be under the same management, as defined under Section 370 (1B) (iii) of the Companies Act, 1956.***

...

**F. Without prejudice, RPIL could not have violated the PIT Regulations:**

.....

18.13. Therefore, as per the decision in *Rajiv Gandhi's Case (Supra)*, the presumption of being in possession of UPSI is rebuttable on the basis that an insider is able to show that he did not trade on the basis of UPSI.

Assuming without admitting that RPIL is a an insider, it has established by cogent evidence that

- i. the Relevant Trades were undertaken pursuant to the decision in 2006 and 2007 to invest further in IPCL on a creeping basis as long as the price of the shares of IPCL were below a certain price.
- ii. UPSI was not in existence at the time of the undertaking of the Relevant Trades,
- iii. Assuming (without admitting) that the alleged UPSI was in existence, the discussions in respect of the UPSI took place at the level of the senior most management of RIL and IPCL, while the trading of RPIL was being conducted by Mr. Ashok C. Jain, who had no access whatsoever to the UPSI.

Thus, without prejudice to the submission that the alleged UPSI was not in existence at the time that the Relevant Trades were executed, it is submitted that RPIL has rebutted the presumption of being in possession of the alleged UPSI at the time of executing the Relevant Trades. There is also nothing on record or in the SCN to say otherwise. In view of the same the aforementioned presumption must not and cannot be made against RPIL. In any event RPIL is not an insider.

.....”

19. Vide office note (hereinafter also referred to as “**ON / office note**”) dated 27.01.2016, certain information / documentary evidence were sought from the concerned department (hereinafter referred to as “**OD**”). OD vide its office note dated 01.02.2016 replied to the aforesaid office note dated 27.01.2016

along with copies of documents in the matter. However, after perusal of its reply, it was noted that certain information / documents which were sought were not furnished. Hence the same were once again sought from OD on 02.02.2016. In response to the same, OD vide its office note dated 03.02.2016 provided certain documents in the matter. The documents and comments of OD have been referred in the subsequent part of this order.

### **ISSUES FOR CONSIDERATION**

20. After perusal of the material available on record, I have the following issues for consideration, viz.,

- A. Whether the two announcements made by IPCL were Price Sensitive Information (hereinafter referred to as '**PSI**')?
- B. When were the aforesaid two announcements made public by IPCL?
- C. If the aforesaid two announcements were PSI, when did they come into existence?
- D. Whether the Noticee and RIL are 'insider' as per Regulation 2(e) of PIT Regulations?
- E. If the answer to the aforesaid question is in affirmative, whether the Noticee has violated provisions of Regulation 3 of PIT Regulations?
- F. If the answer to the aforesaid question is in affirmative, whether the Noticee is liable for monetary penalty under Section 15G of the SEBI Act?
- G. What quantum of monetary penalty should be imposed on the Noticee, if the Noticee is liable for monetary penalty under Section 15G of the SEBI Act?

### **FINDINGS**

21. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

#### ***ISSUE A: Whether the two announcements made by IPCL were PSI?***

22. According to the investigation report (hereinafter referred to as '**IR**'), Noticee made the following two announcements:

<b>Date/ Time</b>	<b>Announcement</b>
02-Mar-2007 <b>14:28</b>	To consider, inter alia, declaration of Interim Dividend on equity shares of the Company. The Company further informed the Exchange that the Company has fixed March 22, 2007 as 'Record Date' to determine the equity shareholders who would be eligible to receive the Interim Dividend if declared by the Board at its meeting scheduled on March 10, 2007. In the event of the Board deciding to pay Interim Dividend, the Company shall commence dispatch of the Dividend Warrants on and from March 23, 2007.
07-Mar-2007 <b>17:15</b>	To consider, inter alia, declaration of Interim Dividend on equity shares of the Company. The Company has now informed the Exchange that the Board will also consider and recommend amalgamation of the Company with Reliance Industries Limited.

23. Regulation 2 (ha) of PIT Regulations read as under:

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

Explanation.—The following shall be deemed to be price sensitive information: —

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects.
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) and significant changes in policies, plans or operations of the company;

24. On a perusal of explanation to Regulation 2 (ha) of PIT Regulations which defines “deemed price sensitive information”, it is noted that ‘intended declaration of dividends (both interim and final)’ and ‘amalgamation, mergers or takeovers’ are deemed PSI.

25. From the IR, I note that after IPCL made announcement of its board meeting to consider the declaration of interim dividend on 02.03.2007, the price of IPCL share on that day on BSE closed at ₹ 256.70 from the previous close of

₹ 260.40 on 01.03.2007. Further, the price of the share closed at ₹ 237.40 on 05.03.2007.

26. I also note from the IR that IPCL made announcement of consideration and recommendation of amalgamation of IPCL with RIL on 07.03.2007 (after the close of trading hours). The price of IPCL share on BSE closed at ₹259.80 on 08.03.2007 from the previous close of ₹ 231.65 on 07.03.2007.

27. I also note from the IR that, *“ It is seen from the above that share price of IPCL has more or less moved in sync with the sensex movement as observed in their respective declines on March 5, 2007 subsequent to the announcement of the dividend by the company. In fact on March 5, 2007 scrip declines by 8.13% on BSE when the SENSEX declined by 3.79%. But in a divergence from the index, the scrip witnessed substantial price gain on March 8, 2007 and March 9, 2007 subsequent to the important announcement of amalgamation of IPCL with RIL.”*

28. It is noted from the IR that the price of IPCL shares declined subsequent to the announcement in connection with the interim dividend and that the same has more or less moved in sync with the SENSEX movement. However, the IR has attributed to the rise in the price of IPCL shares on 08.03.2007 and 09.03.2007 to the announcement of amalgamation of IPCL with RIL. Noticee on the other hand has not disputed that the aforesaid two announcements were PSI. In view of the same and on the basis of explanation to Regulation 2 (ha) of PIT Regulations, it is concluded that the aforesaid two announcements in connection with ‘declaration of interim dividend’ and ‘amalgamation of IPCL with RIL’ were ‘deemed PSI’ (hereinafter referred to as ‘**1<sup>st</sup> PSI**’ and ‘**2<sup>nd</sup> PSI**’, respectively)”.

***ISSUE B: When were the aforesaid two announcements made public by IPCL?***

29. According to the IR and as per the submissions of the Noticee vide its letter dated 08.02.2016, the announcement regarding declaration of interim dividend was made public by IPCL on 02.03.2007 at 14:28 hrs. When OD was

asked to provide the supporting documents in connection with this announcement mentioned in the IR, it provided a copy of the announcement archives for the period October 12, 2006 – March 07, 2007 from the BSE website (referred by it as Flag A) and first 4 pages of analysis report of stock exchanges (referred at para 1 of this order) along with a copy of an email dated 19.02.2013 from BSE (referred by it as Flag B) clarifying that the first announcement made by IPCL was received at BSE at 13:52 hrs on 02.03.2007 and was disseminated on BSE website at 14:01 hrs. Further, the announcement time 14.28 hrs stated in analysis report was the dissemination time at NSE as the report was combined by NSE. I note from the records that during the hearing before previous AO, the Noticee has submitted that the time of announcement at BSE is 14:01 hrs. Further, as per the copy of announcement dated 02.03.2007 submitted by the Noticee as Annexure I to its reply dated 08.02.2016, the time of this announcement at BSE is 14:01 hrs.

30. In view of the above, it can be concluded that the 1<sup>st</sup> PSI w.r.t. declaration of interim dividend was made public by IPCL on 02.03.2007 at 14:01 hrs.

31. It is noted from the material made available on record that the 2<sup>nd</sup> PSI w.r.t. amalgamation of IPCL with RIL was made public on 07.03.2007 at 17:15 hrs.

***ISSUE C: If the aforesaid two announcements were PSI, when did they come into existence?***

**1<sup>st</sup> PSI**

32. The Noticee's submissions w.r.t. existence of the 1<sup>st</sup> PSI vide its replies dated 05.11.2012, 08.02.2016 and at the time of hearings before the previous AO and the undersigned have been considered. In short, it is Noticee's submission that the first announcement was made on 02.03.2007 within a couple of hours after the discussion between Shri S K Ananad and Shri Sethuraman on the said date.

33. On a perusal of IR, it is observed that the IR is silent on the issue as to when the 1<sup>st</sup> PSI came into existence. When a clarification was sought from the OD regarding the same, it replied as follows: *"With respect to observations at paras 12.4 and 12.5 of the IR, EFD has no comments to offer. The material available on record for this purpose have been already provided (please refer to para 3 (xiii) of the ON dated February 01, 2016)."* The ON summed up that *"It is submitted that on further examination by EFD, apart from the information already provided in ON dated February 01, 2016, no additional information could be gathered."*
34. I now proceed to record my findings on the issue based on material available on record.
35. The Noticee has submitted that since the Union Budget on 28.02.2007, contained a proposal to enhance the dividend distribution tax, Shri S.K. Anand (Wholtime Director of IPCL) on 02.03.2007 advised Ms. Shashikala Rao (Company Secretary of IPCL) and Shri K Sethuraman (Vice President, Corporate Secretarial of RIL, who also oversaw secretarial activities of the subsidiaries and associate companies of RIL) to call a board meeting of IPCL to consider declaration of interim dividend. While no records of these communications have been submitted by the Noticee, it has submitted affidavits of Shri K Sethuraman, Shri S.K. Anand and Shri Mukesh Ambani in support of its submissions.
36. As regards Noticee's contention about "announcement was made on 02.03.2007 within a couple of hours after the discussion between...", I note that at the time of the hearing on 01.02.2016, the representatives had submitted a 'list of dates and events' & verbally mentioned the timings of the various events mentioned therein. Since the representatives verbally mentioned the timings of various events they were asked to put the timings of various events on record. Although the representatives undertook to submit the aforesaid information, they have not furnished specific time of the discussion.

37. With respect to the Noticee's submission that it has ascertained that IPCL closed its trading window on 02.03.2007 when the 1<sup>st</sup> PSI came into existence, it is noted that supporting documents have not been submitted by the Noticee to substantiate its claim.

38. Thus, in absence of any material in IR and in the absence of any other direct or circumstantial evidence to indicate the existence of 1<sup>st</sup> PSI before 02.03.2007, I have no material based on which I can differ from the Noticee's contention that the 1<sup>st</sup> PSI came into existence on 02.03.2007.

### **2<sup>nd</sup> PSI**

39. On a perusal of IR, it is observed that the IR is silent on the issue as to when the 2<sup>nd</sup> PSI came into existence. As per the IR the *'information with regard to above mentioned announcement was available with the company much before the same was communicated to the stock exchanges'* based on the following observations:

- As per the information collected from various intermediaries, which were involved in the process of deciding the merger ratio between RIL and IPCL, the process started on March 5, 2007.
- The company did not make any announcement to stock exchange on March 5, 2007. This indicates that the decision to appoint the intermediaries was apparently taken before the 5<sup>th</sup> of March.
- It is also felt that the valuation process for arriving at a merger ratio between these two companies would require analysis of substantial information and taking into account that the valuers arrived at the merger ratio within the period 5<sup>th</sup> March to 10<sup>th</sup> March, therefore, on the basis of facts and circumstances available currently and subject to entity's replies, there seems no reason to assume that the process of assembling of data for providing the same to the valuers must have not started well before the date of 5<sup>th</sup> March 2007.

40. To a query seeking documentary evidence with regard to the aforesaid assumption, OD vide its ON dated 01.02.2016 informed that *"The above-mentioned statement appears to be a conclusion drawn by the Investigating Officer based on the material on record and EFD has no comments to offer in the matter"*.



41. The IR has observed that process of deciding the merger ratio between RIL and IPCL started on 05.03.2007. Further, the IR has observed that the decision to appoint the intermediaries was apparently taken before 05.03.2007. IR has not provided any material or a specific date 'before 05.03.2007' for this inference. IR has stated that the information was available with the company much before the same was communicated to the stock exchanges. But it has not stated how much before the information was available with the company. On a perusal of the letter of engagement of various intermediaries involved in the merger process, it is noted that all the letters are dated on or after 05.03.2007. IR has observed that based on facts and circumstances and subject to entity's replies process of data collection must have started before 05.03.2007. It has not been mentioned in the IR as to which entity's reply it is referring to. Further, no direct or circumstantial evidence has been put forth in IR to show that the data collection started before 05.03.2007 or the date on which the data was provided to the valuers. Thus, the observation made in the IR that the 2<sup>nd</sup> PSI came into existence 'much before 05.03.2007' is not supported by any documents relied upon by the IR for such inference nor any specific date 'before 05.03.2007' is mentioned .

42. The Noticee on the other hand has submitted that on 04.03.2007 there was a meeting among Shri Mukesh Ambani, Shri Alok Agarwal, RIL Chief Financial Officer and Shri L.V Merchant, RIL Controller Accounts for a possible merger between RIL and IPCL. However, except for the affidavits of the aforesaid persons, the Noticee has not submitted any Minutes of the said meeting or any other records of the meeting to substantiate its claim.

43. In this regard, Hon'ble SAT in the matter of *Dilip S. Pendse Vs. SEBI* (Appeal No. 80 of 2009) has observed as follows:

*"... the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing higher must be the preponderance of probabilities in establishing the same..."*

44. In view of the above and in absence of any indication in IR as to when the 2<sup>nd</sup> PSI came into existence and in absence of any evidence (direct or circumstantial) by the Investigating Authority to establish the existence of PSI before 05.03.2007, I have no material based on which I can differ from the Noticee's contention that the 2<sup>nd</sup> PSI came into existence on 04.03.2007.

**ISSUE D: Whether the Noticee and RIL are 'insider' as per Regulation 2(e) of PIT Regulations?**

45. The provision of Regulation 2 (e) of PIT Regulations is as under:

(e) insider" means any person who, is or was connected with the company or is deemed to have been connected with the company, **and** who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information.

46. The provision of Regulation 2 (h) of PIT Regulations is as under:

"person is deemed to be a connected person", if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

47. The allegation in the SCN that Noticee and RIL are deemed to be connected persons in terms of Regulation 2(h) of PIT Regulations have been detailed at para 6(f) of this order. Further, the allegation in the SCN that Noticee was in possession of UPSI has been detailed at para 6(g) of this order. Also the allegation in the SCN that the Noticee and RIL are considered as 'insider' has been detailed at para 6(f) of this order. The submissions of the Noticee with respect to the same have also been detailed at pre-pages in this order.

48. It is alleged in the SCN that Shri Mukesh Ambani is the Chairman of IPCL and Chairman and Managing Director of RIL, therefore, in terms of clause (i) of Sub-section (1B) of section 370, of Companies Act, 1956, IPCL and RIL are

deemed to be under the same management. The requirement under the applicable provision i.e. Section 370 (1B) (i) (a) of Companies Act, 1956 is that the managing agent, secretaries and treasurers, managing director or manager of the one body corporate should be the same as that of the other body corporate. I note from the Annual Report of RIL for the year 2005-2006 as made available by the OD that Shri Mukesh Ambani was the Chairman of IPCL and was also the Chairman and Managing Director of RIL. Since, the provision of Section 370 (1B) (i) (a) of Companies Act, 1956 has not been fulfilled, IPCL and RIL cannot be deemed to be under the same management in terms of the provisions of Section 370 (1B) (i) (a) of Companies Act, 1956.

49. SCN has alleged that IPCL and RIL are deemed to be under the same management in terms of clause (iii) of Sub-section (1B) of Section 370 of Companies Act, 1956, as RPIL holds more than one-third of the total voting power of IPCL. Further, the SCN has also alleged that since RIL holds the entire share capital of RPIL through two of its wholly own subsidiaries, therefore, in terms of clause (iii) of Sub-section (1B) of Section 370, of Companies Act, 1956, RPIL and RIL are deemed to be under the same management.

50. Section 370(1B) (iii) of the Companies Act, 1956 reads as under:

(1B) For the purposes of sub- sections (1) and (1A)] two bodies corporate shall be deemed to be under the same management-

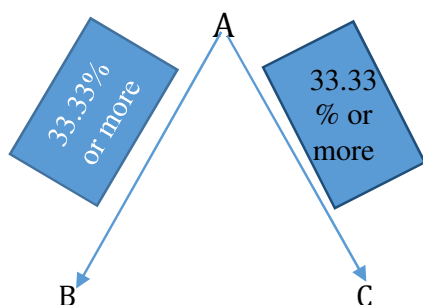
...

(iii) if not less than one- third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate; or

51. On a perusal of the aforesaid section, it is noted that the section envisages a triangular structure where one individual or body corporate has to exercise one-third or more total voting power over each of the two body corporates to be considered as companies under same management.

52. As per material available on record including IR there is no single entity or individual who is common to IPCL and RIL which exercises one-third or more

voting power over both the entities (IPCL and RIL). Thus, the requirement under Section 370(1B) (iii) of the Companies Act, 1956 of a triangular structure is not fulfilled.



53. Since the requirement of Section 370(1B) (iii) of the Companies Act, 1956 is not fulfilled in the given facts and circumstances, IPCL and RIL cannot be deemed to be under the same management in terms of Section 370(1B) (iii) of the Companies Act, 1956.

54. Similarly, there is no single entity or individual who is common to RPIL and RIL who holds one-third or more voting power over both the entities. Since the requirement of Section 370(1B) (iii) of the Companies Act, 1956 is not fulfilled in the given facts and circumstances, RPIL and RIL cannot be deemed to be under the same management in terms of Section 370(1B) (iii) of the Companies Act, 1956.

55. As regards to the Noticee's submission that RPIL and IPCL are not deemed to be under the same management of RIL in terms of Section 370 (1B) (iii) of Companies Act, 1956, I note from the IR that RIL holds the entire share capital of RPIL through two of its wholly owned subsidiaries. As per the information submitted by RPIL, RVL holds 50% of the paid-up capital of RPIL, RPPL holds 25% of the RPIL and RNPL holds the balance 25% of RPIL. RVL is wholly-owned subsidiary of RIL. RSIL which is also a wholly-owned subsidiary of RIL, holds 40% of the paid-up capital of RPPL and 30% of the paid-up capital of RNPL with the balance holding in each of these two companies cross held by them. In effect, it is observed that RSIL holds 50% shares of RPIL, when shorn

of the intricacy of cross holdings. Therefore, RIL holds 100% share capital of RPIL since it is the holding company of both RSIL and RVL.

56. It is noted from material available on record that the Noticee held 46% of share capital in IPCL as on 31.03.2006. As per the disclosures made by IPCL under Regulation 8 (3) of SAST Regulations as on 31.03.2006, RPIL is named as a “*promoter having control over the company*”. Further, RIL has been shown as a “*person(s) acting in concert*” with RPIL. As stated above, RIL holds 100% share capital of RPIL through its various subsidiaries.

57. The Noticee has submitted that RIL as a single entity did not directly hold the requisite one-third shares in RPIL, as the shareholding of RPIL was cross-held by a number of subsidiaries. On a perusal of Section 370 (1B) (iii) of Companies Act, 1956, it is noted that the provision states that not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate has to be exercised or controlled by the same individual or body corporate. The provisions do not mention that those voting rights have to be necessarily exercised directly.

58. Further, the Noticee has submitted that the expression “the same individual or body corporate” occurring in Section 370 (1B) (iii) of Companies Act, 1956 implies singular number only and not plural, as per Ministry of Corporate Affairs Department Circular No. 15 (31)-CL-VI/62 dated 20.07.1962. In the instant matter, more than one-third voting power in RPIL is exercised by RIL through a number of subsidiaries.

59. In view of the aforesaid findings at paras 55-56, I note that RIL exercises more than one-third voting power in both the companies (RPIL and IPCL). Therefore, I do not find any merit in the submission of the Noticee that RPIL and IPCL are not deemed to be under the same management of RIL in terms of Section 370 (1B) (iii) of Companies Act, 1956. Hence RIL, RPIL and IPCL are deemed to be connected.

**Was the Noticee in possession of the UPSI?**

60. According to IR based on the following factors, it can be reasonably said that the Noticee had access to UPSI:

- By virtue of control over IPCL.
- Shri K Sethuraman represented on behalf of RPIL and the orders for buying the shares of IPCL were placed by one Shri Ashok C Jain, who is an employee of RIL. Therefore, it is clear that RIL was having the entire control over RPIL and the employees of RIL were making investment decisions on behalf of RPIL. It is also pertinent to mention that Shri K Sethuraman was the contact person on behalf of RIL for interacting with the legal advisor, valuers, financial advisors, etc. in the matter of merger of RIL with IPCL. Therefore, by virtue of close proximity of RPIL and RIL employees as explained above, it is believed that RPIL had access to UPSI.
- The purchase of shares of IPCL by RPIL was financed by RVL through an interest free loan. RVL is a wholly owned subsidiary of RIL.
- It is observed that during the period June 9, 2006 to February 26, 2007 the Noticee had not dealt in the shares of IPCL but all of sudden started buying the shares of IPCL from February 27, 2007 i.e. just before the major announcement of declaration of the interim dividend and amalgamation of IPCL with RIL.

61. The IR does not bring out the name(s) of the person(s) of the Noticee who was believed to be reasonably expected to have access to UPSI and the name(s) of the person(s) from whom the Noticee was believed to be reasonably expected to have access to UPSI or any documentary evidence in this regard. Further, I note that although IR has 'believed' that RPIL was having access to UPSI prior to its investments and observed that Shri Ashok C Jain was placing the orders for IPCL shares on behalf of RPIL, it is silent whether he was having any access to UPSI and if so, how.

62. When documentary evidence w.r.t. access of UPSI by Noticee alongwith the name of the person(s) was sought from the OD, it replied as follows;

*“...The observation at para 12.6 appears to be a conclusion drawn by the Investigating Officer based on observations at paras 12.4 and 12.5. EFD has no comments to offer on the same. The material available on record for this purpose are inter alia the following:*

- a. Correspondence between SEBI and intermediaries which were involved in the process of deciding the merger ratio between RIL and IPCL (enclosed at Flag E)*
- b. Statement of K. Sethuraman (enclosed at Flag G)*
- c. Correspondence between RPIL and SEBI ( Flag D and F)..”*

63. It is noted from disclosures under Regulation 8 (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as on March 31, 2006, Noticee is named as a **“promoter having control over the company”** with the total shareholding of 46% of IPCL.

64. The Noticee on the other hand, has given the names of officials who discussed on 02.03.2007 about calling the Board meeting to consider declaration of interim dividend. It is observed that Shri K Sethuraman who was the Vice President, Corporate Secretarial for RIL and in performance of his duties in RIL, also oversaw the secretarial activities of the subsidiaries and associate companies of RIL, which includes the Noticee, was involved in the said process.

65. IR has further observed that Shri Ashok C Jain, who is an employee of RIL was placing the orders to buy shares of IPCL, which the Noticee has not disputed. The Noticee has submitted that Shri Ashok C Jain is not reasonably expected to access to PSIs which are taken at the highest management level. I note that Noticee has stated that Shri Ashok Jain was the “Principal Officer” of RPIL under RBI’s NBFC Regulations and enclosed an extract of board minutes of RPIL dated 25.04.2006 in this regard. Further, the Noticee has stated that Shri Ashok Jain was authorized by the Board of RPIL to make investments upto

the limits allowed under the Board resolutions from time to time which was a commercial decision. To substantiate its claim the Noticee has submitted documentary evidence in the form of minutes of Board Meeting held on 25.04.2006 and 04.01.2007.

66. I note from the minutes of the aforesaid Board meeting held on 04.01.2007 i.e. more than a month earlier to the date when the 1<sup>st</sup> PSI came into existence that Directors of RPIL and Shri Ashok C Jain were authorized by the Board of RPIL to invest on its behalf in the shares of IPCL upto a limit of ₹ 100 crore.

67. IR has also observed that the Noticee has not dealt in the shares of IPCL during the period June 09, 2006 to February 26, 2007 but all of a sudden started buying the shares of IPCL from February 27, 2007 i.e. just before both the announcements. The Noticee has submitted that pursuant to a Share Purchase Agreement and open offer, it held 46% shares in IPCL. It has regularly done creeping acquisitions in the shares of IPCL post 2002. It has purchased about 12 lakh shares of IPCL during the period May-June 2006. Thereafter the share prices started increasing and even touched ₹ 325 per share. It was only in the third week of February 2007, the price witnessed a fall to around ₹ 250 and it was decided to purchase further quantity.

68. I note that Noticee has purchased shares of IPCL during 2006. Further vide Board Meeting held on 04.01.2007, Noticee was further authorised by its Board to invest in the shares of IPCL. Such authorization was given earlier also as can be seen from the minutes of the Board Meeting of RPIL held on 25.04.2006. I note from the data furnished by the Noticee that the price of IPCL shares has broadly moved in the direction claimed by the Noticee.

69. IR has observed that the purchase of shares of IPCL by RPIL was financed by RVL through an interest free loan. RVL is a wholly owned subsidiary of RIL. The said fact has not been disputed by the Noticee. The Noticee has submitted that RIL acquired IPCL, and RPIL was the entity through which the acquisition was undertaken. It is only natural that RIL or its wholly owned subsidiary will



fund RPIL for its business needs including monies required for creeping acquisition of IPCL shares. In support of its claim the Noticee vide its letter dated 19.11.2012 has furnished a copy of ledger account of RVL in the books of RPIL for the period 01.04.2006 to 31.03.2007 showing the details of all unsecured loans taken and returned back and the balance outstanding as on 31.03.2007. On perusal of the said record, I note that during the period 01.04.2006 to 31.03.2007, the Noticee has received a sum of ₹ 732.17 crore as unsecured loans in 22 tranches from RVL and has paid back a sum of ₹ 62.80 crore to RVL.

70. In view of the above and in absence of any evidence by the Investigating Authority to establish the access of UPSI to the Noticee, it can be concluded that the Noticee did not have access to UPSI while trading in the scrip of IPCL. Hence, it can be concluded that the Noticee and RIL are not 'insider' as alleged in the SCN in terms of provisions of Regulation 2(e) of PIT Regulations.

***ISSUE E: If the answer to the aforesaid question is in affirmative, whether the Noticee has violated provisions of Regulation 3 of PIT Regulations?***

71. In view of the finding at para 70, it can be concluded that the Noticee has not violated provisions of Regulation 3 of PIT Regulations.

***ISSUE F: If the answer to the aforesaid question is in affirmative, whether the Noticee is liable for monetary penalty under Section 15G of the SEBI Act?***

72. In view of the finding at para 71, the Noticee is not liable for monetary penalty under Section 15G of the SEBI Act.

***ISSUE G: What quantum of monetary penalty should be imposed on the Noticee, if the Noticee is liable for monetary penalty under Section 15G of the SEBI Act?***

73. Since, the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

## **ORDER**

74. .In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against Reliance Petroinvestments Ltd. vide SCN dated 31.01.2011.

75. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy each of this Order is being sent to Reliance Petroinvestments Ltd and also to Securities and Exchange Board of India.

**Date: 08.03.2016**

**Place: Mumbai**

**Suresh Gupta**

**Adjudicating Officer**