

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ISD/IPCL/Alaska/AO/DRK-CS/EAD-3/390/56-13]

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

Against:

Alaska Mercantile Co. Pvt. Ltd.
002, Gulmohar Complex,
Opp. Anupam Cinema,
Aaray Road, Goregaon (E)
Mumbai – 400 006
PAN No.- AAFC A3446A

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation in the trading of the scrip of Indian Petrochemicals Corporation Ltd. (hereinafter referred to as “IPCL/ Company”) during the period from February 22, 2007 to March 08, 2007 (hereinafter referred to as “Investigation Period”). 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	SENS EX % chan ge from prev. close
	Close Price	Total Traded Qty	Close Price	Total Traded Qty	% change from prev. close		
22.02.07	259.9	1833225	262.7	304470	0.00	14021.3	0.00
23.02.07	256.35	266739	256.65	277112	-2.36	13632.5	-2.85
26.02.07	259.15	230630	259.35	97684	1.04	13649.5	0.12
27.02.07	260.35	1185382	260.7	179809	0.52	13478.8	-1.27
28.02.07	260.7	883844	259.25	206326	-0.56	12938.1	-4.18
1.03.07	260.5	2006261	260.4	215421	0.44	13159.6	1.68
2.03.07	256.6	1929109	256.7	165530	-1.44	12886.1	-2.12
5.03.07	237.35	424400	237.4	243760	-8.13	12415	-3.79
6.03.07	232.95	999269	233.85	309412	-1.52	12697.1	2.22
7.03.07	231	575816	231.65	254617	-0.95	12579.8	-0.93
8.03.07	260.5	7686890	259.8	352576	10.84	13049.4	3.60
9.03.07	268.85	11580625	268.6	382351	3.28	12885	-1.28

2. It was observed from the above table that share price of IPCL had more or less moved in sync with the sensex movement as observed on March 5, 2007 the scrip declined by 8.13% at BSE when the sensex declined by 3.79%. It is pertinent to add that the price of the scrip declined even after the announcement of the interim dividend by IPCL. However, in a divergence from the index, the scrip witnessed substantial price gain on March 8, 2007 and March 9, 2007 subsequent to the announcement of amalgamation of IPCL with Reliance Industries Ltd. (hereinafter referred to as "*RIL*").
3. It was further observed that Alaska Mercantile Pvt. Co. Ltd. (hereinafter referred to as "*Alaska*"/"*Noticee*"/"*You*") bought 5,09,997 shares of IPCL from February 27, 2007 to March 2, 2007 and sold all the shares of IPCL in the month of March 2007.

APPOINTMENT OF ADJUDICATING OFFICER

4. Consequent to transfer of previous Adjudicating Officer, the undersigned was appointed as Adjudicating Officer and the same was communicated vide proceedings of appointing Adjudicating Officer dated August 16, 2012 to inquire into and adjudge under section 15G of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "*SEBI Act*") for the violation of regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "*PIT Regulations*").

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice No. EAD/PB/SS/3647/2011 dated January 31, 2011 (hereinafter referred to as "*SCN*") was served on the Noticee by "Hand Delivery" in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under Section 15G of the SEBI Act. In the said SCN, it was stated/ alleged that:
 - i. 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 the PIT Regulations, the details of which are as under:

Date/Time	Announcements
02-Mar-	To consider, inter alia, declaration of Interim Dividend on equity shares

Date/Time	Announcements
2007 14:28	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 17:15 (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).

- ii. The details of trading by the Noticee in the shares of various companies including IPCL, during the period from April 01, 2006 to March 31, 2007 is as under:

Sr.No.	Scrip Name	Quantity Bought	Remark
1	Dalmia Cement	1,75,215	Market Purchases
2	Development Credit Bank	1,33,968	IPO Allotment
3	Global Broadcasting News	25,174	IPO Allotment
4	Idea Cellular Ltd	6,16,418	IPO Allotment
5	IPCL	51,43,059	Market Purchases
6	Power Finance Corp Ltd	3,73,616	IPO Allotment
7	Reliance Industries Ltd	50,000	Market Purchases
8	Reliance Petroleum Ltd	2,88,216	IPO Allotment
		28877045	Market Purchases
9	Shobha Developers Ltd	42,212	IPO Allotment

- iii. It is seen from the above table that during the period April 01, 2006 to March 31, 2007 Alaska bought shares mainly in IPOs except for the shares of IPCL, Dalmia Cement/ Reliance Petroleum Ltd. It is further observed with regard to shares acquired in IPOs all the shares, except Reliance Petroleum Ltd, were sold within a month of allotment.

- iv. It was alleged that :

- The Noticee had purchased 51,43,059 shares of IPCL for ₹ 14,228.58 lacs during the year 2006-07.
- During the period from February 27, 2007 to March 2, 2007, the Noticee had purchased 5,09,997 shares of IPCL amounting to ₹1311.70 lacs at an average rate of ₹ 257.25 prior to announcement of declaration of interim

dividend and amalgamation of IPCL with RIL, i.e when the price sensitive information remained unpublished.

- During the period March 7, 2007 to March 13, 2007 (i.e. after the announcement of merger between RIL and IPCL), the Noticee had sold 51,43,059 shares of IPCL amounting to ₹ 136,54,39,262 at an average rate of ₹265.35/- per share.
- By selling 5,09,997 shares, which were purchased just before the aforesaid important announcements by IPCL, at an average price of ₹ 265.35/-, the Noticee had made profit of approximately ₹ 41.30 lacs (i.e. cost of acquisition of 5,09,997 shares less sale proceedings of 5,09,997 shares). The details of shares of IPCL purchased and sold by the Noticee during the period from April 01, 2006 to March 31, 2007 are as follows:

Date	Scrip	Stock Broker	Exch	Buy Qty	Buy Value	Sell qty	Sell value
5.12.06	IPCL	Sonal	NSE	100000	28752183		
5.12.06	IPCL	Shriyam	NSE	150000	43086976		
5.12.06	IPCL	Shriyam	BSE	133411	38300396		
6.12.06	IPCL	Shriyam	NSE	90000	25807689		
6.12.06	IPCL	Shriyam	BSE	110000	31511419		
6.12.06	IPCL	SSM	NSE	150000	42789442		
6.12.06	IPCL	Sonal	NSE	100000	28572119		
8.12.06	IPCL	Sonal	NSE	50000	14136224		
11.12.06	IPCL	Shriyam	NSE	50000	13697891		
11.12.06	IPCL	Shriyam	BSE	55000	15044229		
11.12.06	IPCL	Sonal	NSE	50000	13513163		
12.12.06	IPCL	Pace Financia I	NSE	85000	21820803		
12.12.06	IPCL	Pace Stock	BSE	15000	3854387		
12.12.06	IPCL	Shriyam	NSE	78000	20657448		
12.12.06	IPCL	Shriyam	BSE	122000	31890839		
13.12.06	IPCL	SSM	NSE	100000	26495789		
13.12.06	IPCL	Shriyam	BSE	100000	26400144		
13.12.06	IPCL	Shriyam	NSE	100000	26416345		
13.12.06	IPCL	Pace Financia I	NSE	56611	15062123		
13.12.06	IPCL	Pace Stock	BSE	45000	11978730		
15.12.06	IPCL	Shriyam	NSE	332058	92897497		
15.12.06	IPCL	Shriyam	BSE	572425	159397263		
15.12.06	IPCL	Sonal	NSE	200000	55364852		
15.12.06	IPCL	SSM	NSE	269314	75305139		
18.12.06	IPCL	Shriyam	BSE	20722	5665926		
18.12.06	IPCL	Sonal	NSE	3961	1091156		
18.12.06	IPCL	Shriyam	NSE	32925	8962636		
19.12.06	IPCL	Shriyam	NSE	190889	52082684		
19.12.06	IPCL	Shriyam	BSE	108409	29581267		
20.12.06	IPCL	SSM	NSE	50000	13785663		
20.12.06	IPCL	Shriyam	BSE	36460	10041214		
20.12.06	IPCL	Shriyam	NSE	116235	32005703		
21.12.06	IPCL	Shriyam	NSE	165777	46437912		

Date	Scrip	Stock Broker	Exch	Buy Qty	Buy Value	Sell qty	Sell value
21.12.06	IPCL	Shriyam	BSE	141860	39675347		
27.12.06	IPCL	Pace Financia I	NSE	202950	59563155		
27.12.06	IPCL	Pace Stock	BSE	97050	28463402		
27.12.06	IPCL	Shriyam	BSE	70276	20445020		
27.12.06	IPCL	Shriyam	NSE	140909	41000655		
28.12.06	IPCL	SSM	NSE	32215	9240411		
9.01.07	IPCL	Shriyam	NSE	232	65824		
9.01.07	IPCL	Shriyam	BSE	2364	670725		
10.01.07	IPCL	Shriyam	BSE	29009	8223985		
10.01.07	IPCL	Shriyam	NSE	77000	21839407		
2.03.07	IPCL	Sonal	NSE	282762	72873046		
2.03.07	IPCL	Shriyam	NSE	182188	46799443		
2.03.07	IPCL	Shriyam	BSE	45047	11590611		
8.03.07	IPCL	Shriyam	NSE			206730	54845582
8.03.07	IPCL	Shriyam	BSE			28095	7439184
9.03.07	IPCL	Pace	NSE			420000	111761561
9.03.07	IPCL	SSM	NSE			500000	133564136
9.03.07	IPCL	Pace	BSE			580000	154898679
9.03.07	IPCL	Sonal	NSE			775724	207730063
9.03.07	IPCL	Shriyam	BSE			335155	88390151
9.03.07	IPCL	Shriyam	NSE			990555	260859254
12.03.07	IPCL	Sonal	NSE			677100	179165058
12.03.07	IPCL	Shriyam	BSE			336748	89148104
12.03.07	IPCL	Shriyam	NSE			145447	38571702
13.03.07	IPCL	Sonal	NSE			100000	26477992
13.03.07	IPCL	Shriyam	BSE			47505	12587796
TOTAL				51,43,059	142,28,58,282	51,43,059	1,36,54,39,262

v. Alaska is considered as "insider" on the basis of following:

- Alaska was incorporated on August 24, 2006 and its share capital was only ₹1.00 lac. Shri Padam Jain is a major shareholder of Alaska holding 9,990 shares out of the total 10,000 shares.
- Alaska's major and only business activity is investment in shares and nearly its entire funding is received/ has come from Dharti Investments and Holdings Pvt. Ltd. (hereinafter referred to as "Dharti").
- Major source of funds for Dharti is Mumbai SEZ Ltd. (hereinafter referred to as "MSL"), Navi Mumbai SEZ Ltd. (hereinafter referred to as "NMSL") and Rewas Ports Ltd. (hereinafter referred to as "RSL"). All these three companies MSL, NMSL and Rewas belong to RIL group. In addition, Dharti has also received funds from Reliance Strategic Investments Ltd. (hereinafter referred to as "RSIL"), which is in turn a wholly owned subsidiary of RIL.

- As per the information available in the Know Your Client (KYC) form with the banks, Dharti shares the address of its office with MSL and NMSL and also following directors of Dharti are also on the board of MSL and/or NMSL:

- a) Shri Sanjay Punkhia
- b) Shri Parag Parikh
- c) Shri Rohti Shah
- d) Shri Vinay Bansal
- e) Shri Armesh Shah
- f) Shri Gautam Kothari
- g) Shri Ajit Warti
- h) Shri Anant Ravi

Therefore, Dharti, was closely connected to RIL.

- Alaska has received nearly all its funds from Dharti, which receives the majority of its funds from the entities connected to RIL.
- In view of the above, it was concluded that Alaska has a business relationship with RIL and more importantly its funding is controlled by the latter. RIL and IPCL are under the same management, therefore, Alaska is a connected person in terms of regulation 2 (c) (ii) of PIT Regulations and therefore Alaska is an 'insider' in terms of provisions of regulation 2(e) of PIT Regulations.

vi. It was alleged that the Noticee was in possession of unpublished price sensitive information (hereinafter referred to as “*UPSI*”) on the following grounds, while trading in 5,09,997 shares of IPCL:

- (a.) Alaska is a deemed to be connected person and therefore it is an ‘insider’.
- (b.) Alaska was incorporated on August 24, 2006 and the share capital is only ₹ 1.00 lac. Its major and only business activity is investment in shares and nearly entire funding is received from Dharti, in turn the major source of funds for Dharti is MSL, NMSL and Rewas. It is understood that, all these three companies viz MSL, NMSL and Rewas belong to the RIL group. In addition to the above, the bank statement of Dharti also reveals that they have received funds from RSIL, which is a wholly owned subsidiary of RIL. All the investments in shares by the Noticee including in the shares of IPCL, are made on behalf of RIL.
- (c.) During the year 2006-07, out of total loans given by Dharti amounting to ₹1265.04 Crores, around 57% (₹717.94 Crores) loan was given only to the Noticee.

- (d.) The huge amount of funds lent by Dharti to the Noticee was merely on the basis of an agreement and promissory note exchanged between the two parties. The magnitude of the funds lent to an entity with a meager share capital of only ₹ 1.00 lac, and with such inadequate security suggests that the Noticee was merely acting as a front entity to RIL.
 - (e.) Noticee's trading pattern reveals that the Noticee dealt only in shares of IPOs or entities associated with the RIL group, except for the scrip of Dalmia Cement Ltd. This singular exception is also not without reason since Dharti held a 4% stake in Dalmia Cements Ltd. during the period of purchase by the Noticee.
 - (f.) The majority of dealing in the shares by the Noticee was carried out through the stock broker Sonal Share & Stock Brokers Pvt. Ltd.(SSSB) and Shriyam Broking Intermediary Ltd,. (Shriyam). Coincidentally, SSSB and Shriyam were also brokers for Dharti and RPIL, which was under control of RIL.
6. Noticee vide letter dated February 14, 2011 sought an opportunity for inspection of all documents/information relied upon to issue the SCN. Accordingly, vide letter dated October 4, 2011 an opportunity for inspection of documents was granted to the Noticee by the Investigating Authority (IA) on October 18, 2011. Subsequently, Noticee vide its letter dated October 13, 2011 set out the list of documents for inspections. Shri Jeet Shroff, AZB & Partners, Authorized Representative of the Noticee carried out the inspection of documents on October 18, 2011. Noticee, subsequently, vide its letter dated November 5, 2011 informed that it has filed consent application to seek consent order in the matter. Noticee vide its letter dated November 18, 2011 informed that it has filed a revised consent application. However, the consent application was subsequently rejected and the same was communicated to the Noticee vide letter dated November 1, 2012.
7. It was observed from the records that in spite of lapse of more than one and half years no reply was received from the Noticee. However, an opportunity of personal hearing was granted to the Noticee vide hearing notice dated September 24, 2012 to appear on October 22, 2012 at 02:30 P.M. at SEBI Bhavan, Mumbai and was also advised to submit its reply by October 15, 2012. In response to the same, Noticee vide its letter dated October 16, 2012 sought short extension of time upto October 26, 2012 to submit its reply to the SCN and also sought adjournment of personal hearing. While acceding to the request of the Noticee another opportunity

of personal hearing vide hearing notice dated October 17, 2012 was granted to the Noticee to appear on November 8, 2012 at 12:00 noon at SEBI Bhavan, Mumbai.

8. Noticee submitted its reply dated October 25, 2012 which *interalia* states as follows:
- a) *The allegation that AMCPL was in possession of the dividend UPSI when it purchased 5,09,997 shares of the company on March 2, 2007 can not be true in light of the facts stated below:*
 - a. *While the SCN alleges that the corporate announcement regarding the Dividend UPSI was made at 14:28 hours, on 2nd March, 2007, the BSE archive indicates that the corporate announcement was made at 14:01 hours on 2nd March, 2007.*
 - b. *Thus the information relating to the payment of interim dividend by the company was already in public domain at 14.01 hrs. on March 02, 2007.*
 - c. *The contract notes of both the brokers namely Sonal Share and Stock Brokers Private Ltd. and Shriyam Intermediary Ltd. through whom the impugned trades was executed by AMCPL show that the earliest order for the purchase of the shares of the company were placed by the broker in the trading platform only at 14:33 hours i.e. a full 32 minutes after the dividend UPSI was in the public domain,*
 - b) *Dharti is a Non-Banking Financial Company (NBFC) registered with the Reserve Bank of India, whose principal business was investment and lending. During the relevant period in March 2007, Alaska received funds from Dharti by way of inter-corporate deposits, which loans were granted at an interest rate of 9.20% per annum.*
 - c) *The transactions between Dharti and Alaska were regular loan transactions in the ordinary course of business in the nature of inter-corporate deposits.*
 - d) *The only allegations contained in the SCN are that (i) Alaska is being funded by companies which are allegedly related to RIL and therefore is 'merely acting as front entity of RIL' and (2) RIL and IPCL are under the same management.*
 - e) *The SCN has failed to prove that the alleged funding received by Alaska, through DHIL or any company associated with RIL is sufficient material to reach a conclusion that Alaska had a 'business relationship' with RIL and through this kind of business relationship is reasonably be expected to have an access to unpublished price sensitive information and therefore, a 'connected person' with RIL.*

- f) *A person will be a “deemed connected person” only if the person is within the purview of any of Regulation 2(h) (i) to 2(h)(ix) of the PIT Regulations.*
- g) *The only fact that has been relied upon by SEBI in its attempt to implicate Alaska is that it received loans from Dharti. The SCN does not provide for any facts or evidence (direct or circumstantial) which would remotely indicate that: (i) Alaska is reasonably expected to have access to unpublished price sensitive information. Thus, as submitted earlier, Alaska does not satisfy any of the conditions under Regulation 2(e) (i) or (ii) of the PIT Regulations. Accordingly, Alaska does not satisfy the test of being an “insider”*
9. Further the Noticee vide its letter dated November 5, 2012 sought to postpone the personal hearing to November 16, 2012 due to unavailability of its counsel. Acceding to Noticee's request, final opportunity of personal hearing was granted to the Noticee vide letter dated November 9, 2012 to appear on November 21, 2012 at 11:00 A.M. at SEBI Bhavan, Mumbai. Noticee vide letter dated November 16, 2012 authorised Mr. P.N. Modi, Senior Counsel , Mr. Ranjit Bhonsale, Counsel, Mr. Sharad Abhyankar, Senior Partner, Khaitan & Co. and others to appear as Authorised Representatives (ARs) on its behalf for the personal hearing. During the course of the personal hearing ARs reiterated the submissions made vide reply dated October 25, 2012 and have submitted that:
- *The alleged UPSI was not in existence prior to 2:01 pm on 2/03/2007 and SCN does not contain anything to show the existence of UPSI before 2:01 pm. Further, Noticee placed order on and after 2:33 pm on 2/03/2007 when the information was in public domain.*
 - *The loan taken by the Noticee was not a lump sum but was received in parts. ARs had submitted agreement entered into by Dharti with the Noticee along with the letter indicating repayments made. Noticee had undertaken to submit bank statement to support the repayments made to Dharti.*
 - *Trading pattern shows that the Noticee traded not only during investigation period but from 2006 onwards. The Noticee did not have any business relationship with IPCL. Further, the allegation that RIL and IPCL are under the same management therefore Alaska is connected person in terms of 2(c) (ii) of PIT Regulations is beyond the purview of the regulation 2(c) (ii). ARs further stated that Noticee does not fall under the definition of deemed to be connected person as per regulation 2(h) of the PIT Regulations.*

- *Noticee was not aware of the fact that the SSSB and Shriyam were also stock brokers for Dharti and RPIL.*
- *ARs further submitted that no evidence has been provided to show that Mr. Padam Jain and Mrs. Shashi Jain were acting as front entity to RIL.*
- *Noticee further submitted that they have incurred a loss of more than five crores in the their total transaction for the year 2006-07.*

10. Noticee submitted its additional reply dated December 3, 2012, wherein it enclosed copies of relevant bank statements showing repayment of loans to Dharti, brief note on background of Mr. Padam Jain, copies of know your client document of the Noticee from its stock broker etc.

CONSIDERATION OF EVIDENCE AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegations in the present matter are that the Noticee was in possession of UPSI i.e., announcement of declaration of interim dividend of IPCL and amalgamation of IPCL with RIL while trading in the scrip of IPCL.

12. It is noted from the IR that the Noticee was buying the shares during December-March in the financial year 2006-07 on various dates and not only on March 2, 2007. On March 2, 2007 Noticee bought 5,09,997 shares amounting to ₹1311.70 lacs while during the financial year 2006-07 the Noticee had purchased 51,43,059 shares of IPCL amounting to ₹ 14,228.58 lacs (including the purchase of March 2, 2007). It is observed from the trading details as given in the table at pre page 4-5, Noticee did not trade in the scrip of IPCL from January 11, 2007 till March 1, 2007. Noticee bought on March 2, 2007 that too after the information was made public.

13. Noticee in its reply dated October 25, 2012 and also during the personal hearing has vehemently emphasized that the announcement regarding interim dividend was disseminated on BSE website at 14:01 hrs. itself on March 2, 2007, whereas, it had placed its first order only at 14:33 hrs. when the information was already in public domain. In support of this contention Noticee has submitted a BSE Archive indicating that the said announcement was made at 14:01 hrs. on March 2, 2007.

14. In view of the above contentions/ submissions of the Noticee, comments were sought from the concerned department vide notes dated December 21, 2012 and September 16, 2013. In response to the same, the department vide note dated April

1, 2013 informed that the time 14:28 hrs. as noted in the investigation report (IR) has been taken from joint investigation report submitted by NSE & BSE to SEBI on March 20, 2007. Subsequently vide note dated September 19, 2013 the department informed that the announcement of interim dividend was published on BSE website at 14:01 hrs. and vide note dated October 8, 2013 has produced a copy of email of BSE dated February 19, 2013 wherein BSE has confirmed that the announcement regarding meeting to consider interim dividend was disseminated on the BSE website at 14:01 hrs. on March 2, 2007.

15. The IR/ SCN mentioned that the aforesaid announcement was published at 14:28hrs. on March 2, 2007. Even if this time is taken into consideration, as per the contract notes the Noticee placed its first order only at 14:33 hrs. i.e. five minutes after the corporate announcement was in public domain. Thereby, the aforesaid corporate announcement does not remain a UPSI as per PIT Regulations after 14:28 hrs. Further as confirmed, records received from BSE, as stated in pre-para this announcement was made public at 14:01 hrs itself.
16. Though based on the findings of IR, SCN alleged that Alaska is a connected person as per regulation 2 (c)(ii) of the PIT Regulations, and thus an insider in terms of regulation 2(e) of the PIT Regulations and violated regulation 3 of the PIT Regulations, since the trading is not based on UPSI or done when in possession of UPSI as discussed above, it is difficult to establish the charge of violation of regulation 3 against the Noticee.
17. Therefore, from the available records it can be easily construed that the Noticee did not trade when in possession of the UPSI (i.e., announcement of declaration of interim dividend of IPCL) but traded when the corporate announcement was already in public domain (after more than thirty minutes). Therefore, the trades carried out by the Noticee would not fall under the insider trading in terms of regulation 3 of the PIT Regulations. One of the significant elements of regulation 3 is that the insider should have dealt in securities when in possession of UPSI, however the same is missing in the present case.
18. The second announcement i.e. amalgamation of IPCL with RIL was published on March 7, 2007 at 17:15 hrs. at BSE i.e. after the market hours. It is observed from the IR that the Noticee did not trade in the scrip from March 3, 2007 to March 7, 2007. The Noticee subsequently sold the shares from March 8, 2007 till March 13, 2007, when the second announcement was also already in the public domain.

19. It was alleged in the SCN that Alaska is an insider as stated in para 5 (v) at page 6 in terms of provisions of regulation 2(e) of PIT Regulations, being a connected person in terms of regulation 2(c) (ii) of PIT Regulations and therefore was alleged to have violated regulation 3 of PIT Regulations. The text of the Regulation 3 of the PIT Regulations has been reproduced below for reference:

3.-“No insider shall-

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

20. In view of the aforesaid discussions it can be concluded that, the Noticee has not dealt when in possession of UPSI in the scrip of IPCL on both the occasions i.e. on March 2, 2007- to consider declaration of interim dividend and March 7, 2007- to consider and recommend the amalgamation of the company IPCL with RIL. Thus, it is clear that the Noticee did not deal in the shares of IPCL when in possession of the UPSI. Noticee has referred to various court cases/ judgments to support its contentions including the order passed by the Hon'ble SAT in *Manoj Gaur vs SEBI* (Appeal no. 64 of 2012 decided on October 3, 2012) wherein, Hon'ble SAT has held that:

"16. We had an occasion to deal with a similar situation in the case of Mrs. Chandrakala Vs. SEBI [Appeal no. 209 of 2011 decided on January 21, 2012] where we have held that the prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he/ she traded on the basis of unpublished price sensitive information in his/ her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he/ she cannot be said to have violated the provisions of regulation 3 of the regulations."

21. It was alleged in the SCN that Alaska is an insider as stated in para 5 (v) at page 6 in terms of provisions of regulation 2(e) of PIT Regulations, being a connected person in terms of regulation 2(c) (ii) of PIT Regulations and therefore was alleged to have violated regulation 3 of PIT Regulations. It was alleged that:
- Alaska has received nearly all its funds from Dharti, which receives the majority of its funds from the entities connected to RIL,
 - Alaska has a business relationship with RIL and more importantly its funding was controlled by the latter,
 - RIL and IPCL are under the same management,
- therefore, Alaska is a connected person in terms of regulation 2 (c) (ii) of PIT Regulations and therefore an 'insider' in terms of provisions of regulation 2(e) of PIT Regulations. However, as per regulation 2 (c) (ii) of the PIT Regulations the Noticee should have business or professional relationship with the company i.e. IPCL. In the present case, Noticee had business or professional relationship with Dharti not with IPCL.
22. Further Noticee may not be said to be reasonably expected to have access to the information of IPCL merely on the basis that it had taken huge amount of loan from the entities connected to RIL. The taking of loan from Dharti cannot be the exclusive proof of any link or knowledge of UPSI of the IPCL. Therefore, in the absence of direct/ indirect evidence it is difficult to construe that the Noticee was reasonably expected to have access to the UPSI of IPCL and thus an insider as per regulation 2(e) of the PIT Regulations.
23. The Noticee in its reply have relied upon *Samir Arora v SEBI [2005] 59 SCL 96 (SAT)*, "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." Noticee has further quoted *Sterlite Industries (India) Ltd. vs. SEBI [2001] 34 SCL 485*, wherein SAT has held that "in the absence of reasonable strong evidence, even in civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjecture, or suspicion cannot sustain the finding of guilt". Noticee has also submitted that the SAT has held in a plethora of cases including *BPL Ltd. vs. SEBI [2002] 38 SCL 310*, *Videocon International Ltd. vs. SEBI [2002] 4 Comp. LJ 402*, *Nirmal Bang Securities Pvt. Ltd. vs. SEBI [2004] 49 SCL 421*, where activities like insider trading and fraudulent trade practices are concerned, the charge must be proved based on cogent materials and cannot be based on surmises and conjectures.

24. Thus, in the light of the above observations/ discussions/ conclusions the alleged violation of regulation 3 of PIT Regulations by the Noticee could not be established. Therefore, I am of the view that the trading done by the Noticee in the scrip of IPCL during the investigation period is not in violation of regulation 3 of PIT Regulations.

ORDER

25. In view of the foregoing, considering the facts and circumstances of the case and available records, the alleged violation of the provisions of regulation 3 of PIT Regulations as specified in the SCN dated January 31, 2011 against Alaska Mercantile Co. Pvt. Ltd. does not stand established and the matter is, accordingly, disposed of.

26. In terms of rule 6 of the Rules, copies of this order are being sent to Alaska Mercantile Company Pvt. Ltd., Registered Office at Gulmohar Complex, Opp. Anupam Cinema, Aaray Road, Goregaon (E) Mumbai –400 006 and to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: October 25, 2013

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**