BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AK/AO/44/2013]

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

N R Mercantiles Private Limited

(PAN. No. AAACN8734B)

In the matter of M/s Ramsarup Industries Limited

FACTS OF THE CASE IN BRIEF

1. SEBI conducted an investigation into the affairs relating to buying, selling and dealing in the shares of M/s Ramsarup Industries Limited (hereinafter referred to as **"RIL/Company"**). The shares of RIL were listed on National Stock Exchange (hereinafter referred to as **"NSE"**), Bombay Stock Exchange (hereinafter referred to as **"BSE"**) and Calcutta Stock Exchange (hereinafter referred to as **"CSE"**). The investigation covered the period from July 01, 2010 to August 31, 2010 (hereinafter referred as **'Investigation Period'**).

2. The findings of the investigation led to the allegation that M/s N R Mercantiles Private Limited (hereinafter referred to as **"Noticee"/ "NRM"**) had violated sections 12A(d) & 12A(e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI**

Act") and regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) and therefore, liable for monetary penalty under section 15G of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated April 16, 2012 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) to inquire into and adjudge under section 15G of SEBI Act, the alleged violation of provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-5/PG/TT/12097/2012 dated June 04, 2012 (hereinafter referred to as **"SCN"**) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of SEBI Act for the alleged violations specified in the said SCN.

5. During the investigation period, the scrip was traded with an average price of `89.96 with an average daily volume of 49,362 shares. Three months prior to the investigation period, the scrip traded with an average price of `77 with an average daily market volume of 37,413 shares. Three months after investigation period the scrip traded with an average price of `48.42 with an average daily market volume of 63,345 shares. The open, high, low and close price of the scrip at NSE during investigation period is given below:

Particulars	Price(`)
Open	78.5 (July 01, 2010)
Period High	119 (July 23, 2010)
Period Low	61.5 (August 31, 2010)
Close	61.5 (August 31, 2010)

6. Investigation revealed that from July 01, 2010 till July 15, 2010 the price of the scrip was more or less constant within a range of `77 to `80. However, from July 16, 2010 the share price started rising gradually from `85 a share and reached its all time high of `119 on July 23, 2010. By August 13, 2010 the price had fallen down to `87 a share and reached a low of `61.5 a share on August 31, 2010. The volumes of the scrip remained more or less constant till July 15, 2010 within the range of 20,000 to 40,000. However, in tandem with rise in share price from July 16, 2010, the trading volume of the scrip too jumped to the range of 60,000 to 3,00,000 thereafter. By the end of August 2010, the volume had come down to 59,682 shares.

7. During investigation period, RIL had come out with two corporate announcements dated July 28, 2010 and August 13, 2010. The relevant details of corporate announcements on NSE and their impact on price & volume are as follows:

<table>
<tr><th>Date & Time of display on NSE Website</th><th>Particulars</th><th>Price impact/shares traded</th><th>Remarks</th></tr>
<tr><td>July 28,
2010.
3:19 PM</td><td>Ramsarup Industries Ltd has informed NSE that a meeting of the Board of Directors of the Company will be held on August 13, 2010, inter alia, to consider and take on record the followings:

1. The Un-audited Financial results for the 1st quarter ended on June 30, 2010.

2. Raising of Long Term resources by:

a. Issue of Equity Shares / warrants /</td><td>July 28, 2010
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>106.9</td><td>107.35</td><td>103.05</td><td>104.95</td></tr></table>4,72,099 shares

July 29, 2010
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>105</td><td>106.3</td><td>103.1</td><td>104.1</td></tr></table></td><td>At 3:19 PM the scrip was trading at `.105.05.The opening price on July 29 increased by 0.04 % from the previous day’s close price. However, trading volume has decreased by 30.9 % from previous day volume.</td></tr>
</table>

<table>
<tr>
<td></td>
<td>Securities Convertible in Equity Shares / ADRs / GDRs / FCCBs / and / or such other Convertible Instruments on preferential basis or otherwise and / or
b. Issue of Equity Shares / Securities Convertible into Equity Shares, to eligible Qualified Institutional Buyers (QIBs) in one or more tranches through Qualified Institutional Placement (QIP)</td>
<td>3,25,978 shares</td>
<td></td>
</tr>
<tr>
<td>August 13, 2010.
5:31PM</td>
<td>Ramsarup Industries Ltd has informed NSE about the Financial Results for the Quarter ended June 30, 2010.

Ramsarup Industries Ltd has informed NSE that the Board of Directors of the Company at its meeting held on August 13, 2010, inter alia, has approved the following:

1. Issuance of FCCB and / or other convertible instruments to the extent of US$ 250 Million / `. 1150 Crores.<br><br>2. Issuance of 35,00,000 fully convertible Warrant of the Company, each convertible into 1 (one) equity share of the face value of `.10/- each on a preferential basis to the constituents of Promoter / Promoter Group and to Non Promoters / Strategic investors, representing not more than 10% of the Equity Share Capital of the Company at a price not less than the price to be determined as per the relevant provisions of the SEBI (ICDR) Regulations, 2009 as amended.</td>
<td>August 12, 2010
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>109</td><td>112.3</td><td>107.5</td><td>108.4</td></tr></table>8,07,527 shares

August 13, 2010
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>109.2</td><td>109.8</td><td>86.75</td><td>87.75</td></tr></table>37,05,199 shares

August 16, 2010
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>87.5</td><td>93.45</td><td>85.05</td><td>89.65</td></tr></table>13,19,008 shares</td>
<td>On August 13, 2010 the RIL share price opened at `.109.20 and touched a high of `. 109.80. Subsequent to the declaration of quarterly results the share price fell and touched a low of `.86.75 before closing at `.87.75.

The opening price on August 16 decreased by 0.28% from the previous day's close price and trading volume also decreased by 64%</td>
</tr>
</table>

8. It was alleged in the SCN that declaration of the financial results for quarter ended June 2010 on August 13, 2010 was a Price Sensitive Information (hereinafter referred to as **"PSI"**) as per regulation 2(ha) of PIT Regulations. Further, RIL vide letter dated March 13, 2012 stated that information about quarterly financial results came into existence on August 10, 2010. RIL vide letter dated August 26, 2011 submitted a certified copy of its notice dated August 06, 2010 regarding Notice of closure of the Trading Window. The notice dated August 06. 2010 *inter alia* stated that the trading window will remain closed from August 7, 2010 till upto 24 hours after the Board Meeting on August 13, 2010. As per clause 3.2.1 read with 3.2.3 of Code of

Conduct under schedule - I of regulation 12(1) of PIT Regulations, the period of closure of trading window is decided by the company being a period during which, in the opinion of the company, price sensitive information (PSI) such as financial results are available but unpublished. As per investigation report, unpublished price sensitive information (hereinafter referred to as **"UPSI"**) period was the period identified by RIL for closure of trading window as per their notice dated August 06, 2010 i.e., from August 07, 2010 till up to 24 hours after board meeting on August 13, 2010.

9. RIL vide letters dated September 13, 2011 and October 20, 2011, *inter alia,* stated that the persons privy to finalization of accounts & financial results for quarter ended April-June 2010 i.e. persons privy to UPSI were as under:

Name	**Designation**
Ashish Jhunjhunwala	Chairman & Managing Director
Naveen Gupta	Whole Time Director & CFO
Gajendra Kumar Singh	Company Secretary
Vikash Ladia	Chief Commercial Officer
Bimal Kumar Jhunjhunwala	Independent Director & Chairman Audit Committee
L M Chatterjee	Independent Director & Member Audit Committee
P K Lilha	Statutory Auditor

10. Thus, it was alleged that Mr. Ashish Jhunjhunwala (hereinafter referred to as **"Ashish"**) is an insider as per regulation 2(e) of PIT Regulations.

11. Further, as per shareholding disclosure available in NSE website and submissions made by Noticee vide its letter dated September 17, 2011 it is observed that Noticee was part of the promoter group of RIL. The relationship of Noticee with Ashish is as under:

Name	Shareholders	Address	Details of the directors
N R Mercantiles Pvt Ltd	Neerza Jhunjhunwala(63.52%); Ashish Jhunjhunwala(5%); M/s Rav Dravya Pvt Ltd (31.48%)	7 C Kiran Sankar Roy Road, Hastings Chamber, 1st Floor, Kolkata, West Bengal, India,	1. Ashish Jhunjhunwala (Address: 10/4, Alipore Park Place, Kolkata, 700027, West Bengal, India) 2. Naveen Gupta (Address: Regent Sagar, Block - B, 5th Floor,, Flat No. 505, Raghu Nathpur, Kolkata, 700059, West Bengal, India)

12. From the above, it is observed that NRM is majorly held by Ashish and his wife Neerza Jhunjhunwala along with promoter entity M/s Rav Dravya Pvt. Ltd. Ashish and Naveen Gupta are directors in both RIL as well as NRM. Further, NRM is controlled by only these two persons as directors.

13. It was alleged that Noticee had traded during the UPSI period when it sold 75,000 shares of RIL on August 12, 2010. Day-wise trade details of Noticee during the months of July and August 2010 is as under:

Client Name	Client PAN	Trade Date	Buy Volume	Sell Volume	Avg Buy Price	Avg Sell Price	Net Qty	% to mkt gross	% to mkt net
N R Mercantiles Pvt Ltd	AAACN8734B	11-May-10	0	1650		72.97	1650	5.50	24.34
		30-Jul-10	0	77500	0.00	107.45	77500	4.51	26.13
		12-Aug-10	0	75000	0.00	109.33	75000	4.64	27.50

14. Noticee had sold shares of RIL before financial results for quarter ending June 2010 were announced by RIL on August 13, 2010 and executed trades during UPSI period. Further, Noticee's broker Ortem Securities Limited vide its letter dated October 14, 2011 had submitted that Ashish placed orders verbally on behalf of Noticee.

15. As per regulation 2h(i) of PIT Regulations, Noticee is deemed to be a connected person to RIL as it is a company under control of the same management. In addition to this, address of the Noticee is same as the registered address of RIL. In light of Noticee's close proximity with RIL and Ashish as being brought out above, it was alleged that Noticee was an Insider as per PIT Regulations.

16. During the period May to August 2010, Noticee sold 1,54,150 shares of RIL as detailed above. During the UPSI period, Noticee had sold 75,000 shares @`108.24. Taking into account the average share price of RIL shares of `90.67 on August 16, 2010 i.e. next trading day after corporate announcement, it was alleged that potential loss avoided by Noticee was `13,17,750/-. As Noticee and Ashish were connected, it was alleged that Noticee was reasonably expected to have access to the UPSI relating to RIL. Thus by dealing in the shares of RIL during the UPSI period, it was alleged that Noticee had violated sections 12A (d) & 12A(e) of SEBI Act, 1992 and regulation 3(i) of the PIT Regulations.

17. The Noticee vide letter dated July 16, 2012 submitted its reply to the SCN and the major submissions are as under :-

- *In the year 2009 the promoter shareholding in the Company was around 83.4 %. Pursuant to the directions of the stock exchanges and also in consonance with the provisions Clause 40A Listing Agreement the promoters of the Company were required to bring down their shareholding to 75% in the Company. In compliance with the said requirement, the promoters have been selling the shareholding in the Company from time to time. During November 2009 to August 2010 the promoters had sold shares held by them, inter alia to bring it down in consonance with the provisions Clause 40A Listing Agreement. During the relevant period apart from sale by the promoters, even the banks/ financial institutions had also sold the shares pledged with them by the*

promoters. As a result of the same the shareholding of promoters had come down to around 50%.

- *From time to time, the Company has been in the ordinary course of business, raising loans from different entities for meeting its funds requirements from various lenders.*
- *The Lenders were pressing the Company for repayment of their outstanding loan amounts. Since the Company did not have funds/finances it approached its promoters including us seeking funds in order to get over pressing repayment obligations. It was in these peculiar circumstances, in order to avoid any default on the part of the Company in meeting its repayment obligations, we as one of the promoter had agreed to provide funds to the Company. The funds to be provided to the Company were proposed to be raised by us by selling our existing shareholding in the Company which would apart from fetching money would also enable Company to achieve minimum public shareholding required in terms of provisions of Clause 40 A Listing Agreement. It was in these circumstances we had sold shares on market (during May- August 2010) over a period of time as follows:*

Day Date	*Buy Volume**
11-May-10	*1650*
30-Jul-10	*77500*
12-Aug-10	*75000*

*(*- sales wrongly mentioned as buy volume)*

- *All the said shares were sold transparently with the requisite disclosures under Takeover Regulations and PIT Regulations. Further for the sale of shares we had also obtained pre- clearance from the Compliance Officer of the Company as mandated under PIT Regulations. At the relevant time, the factum of sale of shares by promoter (i.e. us) was known to the world at large, including the shareholders/ investors, since the requisite disclosures were made religiously and the information was in public domain. Thus, the sales were not carried out surreptitiously or by suppressing or hiding any information or by keeping the shareholders in dark. On the contrary sales were made transparently with full disclosures.*
- *It may be noted that post the sale of shares on market and on receipt of pay out from the broker, the respective amounts were remitted by us to the Company. The Company had in turn remitted the amounts so received from us to the Lenders towards meeting the repayment obligations.*
- *Thus the entire sale consideration amount was remitted by us to the Company in order to enable the Company to tide over its pressing*

repayment obligations. Further, admittedly the sale consideration amounts as remitted by us have infact been utilized by the Company for clearing its repayment obligations including mounting interest burden on the Company which in turn would benefit the all the stakeholders at large.

- *We may also point out that our Director Mr. Ashish Jhunjhunwala was not involved in finalization of financial results. Same was being looked into by the finance Department of the Company headed by Chief Financial Officer Mr. Naveen Gupta. We have given to understand by our director Ashish Jhunjhunwala that, the financial result were put before Audit Committee on August 12, 2010 in its meeting held on 4:00 pm on the same day. Our Director Mr. Ashish Jhunjhunwala became aware about the crystallized financial result only on August 12, 2010 i.e. prior to the Audit Committee meeting on the same day. Prior to the aforesaid, our Directors Mr. Ashish Jhunjhunwala was not aware about the crystallized results.*
- *It is submitted that the sales had no nexus with:*
    - *The date of notice calling the Board meeting issued by the Company on July 28, 2010.*
    - *The dated of finalization of financial results i.e. August 10, 2010;*

  In fact our sales, were solely guided by the objective of making funds available to the Company to meet its pressing repayment obligations and to achieve the minimum public shareholding.

- *We being part of promoter group of the Company and details of our shareholding pattern and our directors are a matter of record.*
- *The fact of our sales on July 30, 2010 & August 12, 2010 is also a matter of record. The same were made in the ordinary course. Orders for the sales were placed by Mr. Ashish Jhunjhunwala. The said sales had nothing to do with the announcements made by the Company or the alleged UPSI. In fact our director Mr. Ashish Jhunjhunwala became aware about the crystallized financial results only prior to convening of Audit Committee meeting held on August 12, 2010. Prior to the aforesaid, he was not at all aware about the crystallized financial results.*
- *The allegation of avoiding potential losses of `. 13,17,750/- is misplaced, devoid of any basis and completely contrary to factual position on record. Admittedly, the sales were motivated by desire to raise finance for enabling the Company to meet its pressing repayment obligations. Sales were not motivated by possession of alleged UPSI (which our director Mr. Ashish Jhunjhunwala became aware only on August 12, 2010). Further, the sale consideration amounts remitted by us to the Company have actually been utilized by the Company to reply its lenders. Merely because*

the price of the shares has fallen subsequently in normal course, theory of "potential losses avoided" is being alleged. Admittedly, it is nobody's case that we had any role to play in the price movement of the scrip.

- *It is denied that we had any access to any alleged UPSI. The question of our having access to or being in possession of alleged UPSI can only arise only if our director Mr Ashish Jhunjhunwala himself was aware of the alleged UPSI, since knowledge of the alleged UPSI has been attributed to us through our director Mr Ashish Jhunjhunwala. As stated hereinbefore, our director Mr Ashish Jhunjhunwala became aware only on August 12, 2010.*
- *It is denied that we have either directly or indirectly engaged in insider trading as alleged or dealt in securities while in possession of material or non-public information or communicated such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder as alleged. It is denied that we had either on our own behalf or on behalf of any other person, dealt in securities of the Company when in possession of any unpublished price sensitive information as alleged.*
- *It is denied that we are liable for any penalty under section 15 G of the SEBI Act.*
- *It is reiterated that the shares were sold during the period under reference at the then prevailing market price. The said sales were not based on any price sensitive information which was not in public domain and sufficient disclosures of the said sales were made to the Stock Exchanges and the Company. These were carried out in order to enable the Company to fulfill its repayment obligations and definitely not with the information to make any unlawful gains.*
- *Any person who indulges in insider trading, indulges in the same surreptitiously without any disclosures. In the matter under reference, sales have been made transparently following the applicable procedures and with full disclosures to the stock exchanges. Same completely destroys the allegation of alleged insider trading.*
- *In this context your attention is invited to the decision of the Hon'ble Securities Appellate Tribunal in the matter of Rakesh Agarwal v. SEBI (2004) 1 Comp LJ 193 wherein the Hon'ble Tribunal has inter alia held that the Insider Trading Regulations, if read with the objective of prohibiting insider trading, make clear that motive is built into the regulation and that insider trading without establishing a motive is not punishable. The Hon'ble Tribunal further held that what is sought to be prohibited is gaining unfair advantage by indulged in insider trading.*

Thus, if is established that the person who had indulged in insider trading had no intention of gaining any unfair advantage, the charge of insider trading warranting penalty cannot be sustained against him. As explained above, the only intention behind the sales was to remit the funds to the Company so as to enable it to pay off its creditors and not to gain any unfair advantage, as alleged or at all. Hence there has been no unfair gain. Accordingly, it is submitted that no penalty is warranted as there is no contravention as alleged or at all. It is reiterated that the transactions were undertaken dehors sinister/ fraudulent/ manipulative inter or design.

- *It is submitted that there is no direct evidence to show that trades were carried on the basis of alleged unpublished price sensitive information. The entire case rests solely on circumstantial evidence, based on the erroneous assumption that Mr Ashish Jhunjhunwala was in possession of alleged UPSI when the sales were being carried out. It is reiterated that Mr Ashish Jhunjhunwala became aware about the crystallized financial results only post convening of Audit Committee meeting held on August 12, 2010 and prior to the aforesaid, he was not at all aware about the crystallized financial results. With regard to circumstantial evidence, Hon'ble Courts have consistently laid down that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstance are found to be incompatible with the innocence of the accused or the guilt of any other person. the circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt an have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. in the matter under reference, nothing of the sort is there, entire allegations are based on surmises and conjectures.*
- *Serious allegations of insider trading cannot be alleged on the basis of mere surmises and conjectures as has been done in the instant case. in this context attention is invited to the case of in Dilip S Pendse vs. SEBI (SAT Appeal No. 80 of 2009), wherein, the Hon'ble Tribunal has inter alia 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. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the supreme Court in the context of the administration of criminal justice observed that, 'it is also a settled principle of criminal*

jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.' This principle applies to civil case as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability. In Hornal v. Neuberger Products Ltd. (1956) 3 All E.R.970 Hodson, L.J. observed as under:

> *"Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others"*

We are also tempted to refer to what Denning, L.J. observed in Bater v. Bater (1950) 2 All E.R. 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case. This is what he said:

> *"It is true that by our law there is a higher standard of proof in criminal cases that in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."*

In the light of the aforesaid principles on degree of proof, we have carefully gone through the impugned order and the material on the record and find that the whole time member has miserably failed to establish the charge of insider trading against the appellant with

the required degree of probability necessary to establish such a serious charge.'

- *We have a clean track record in terms of compliance. Never in the past has any action been taken against us by any regulatory authority including SEBI.*

18. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticee was granted an opportunity of personal hearing on July 20, 2012 vide notice dated June 29, 2012 at SEBI, Eastern Regional Office, Kolkata. Noticee vide letter dated July 11, 2012 requested for change of place of hearing from Kolkata to Mumbai. Acceding to the request of the Noticee, vide notice dated July 16, 2012, another opportunity of personal hearing was granted at SEBI Head Office, Mumbai on July 24, 2012. Mr. Vinay Chauhan and Prashant Ingle, Advocates, Corporate Law Chamber India, Authorized Representative of the Noticee (hereinafter referred to as **"AR"**) appeared for hearing on July 23, 2012 stating *inter alia* as under:

"……..

- *We reiterate the submissions made vide our replies to the Show Cause Notice dated June 4, 2012. Further, we seek liberty to file further submissions and documents within two weeks.*
- *We also want to submit that we will be filing our consent applications shortly. ……."*

19. Further, Noticee vide letter dated July 30, 2012 submitted additional written submissions in the matter and the major submissions are as under:

- *It is denied that we have sold the shares in violation of provisions of Sections 12 A (d) & (e) of SEBI Act 1992 and Regulation 3(i) of PIT Regulations as alleged.*
- *It is submitted that we are one of the Promoters of Ramsarup Industries Ltd **("Company").**Our day to day affairs are run by our director Mr. Ashish Jhunjhunwala.*

- *Its common knowledge that the entire steel sector since 2008 onwards, not only in India but all across the globe, was reeling under business stress as a result of global meltdown in the sector. The Company had, in the ordinary course of business raised loans from various Banks and Financial Institutions for its business purpose and working capital requirements. ….. At the relevant time repayment obligations of the loans earlier raised by the Company had already been triggered. Due to poor financial conditions coupled with slow down in the business activities of the Company, the Company was finding it difficult to meet its repayment obligations towards its lenders and for its business expenses.*
- *In the said circumstances, the promoters, including us, had during July-August 2010, sold the shares of the Company in order to enable Company to meet its repayment obligations to various lenders and/or for meeting its business liabilities etc. Objective/ motive behind sale of shares was not to derive any kind of unfair or illegitimate gains vis a vis other shareholders or to avoid alleged "potential losses" as insinuated. Sales were motivated by the genuine and pious desire of the promoters to enable the Company, by ploughing in the sale consideration amounts into the Company, to tide over its financial difficulties and not end up in defaulting in fulfilling its financial obligations.*
- *In order to substantiate the submission that monies generated as a result of sale of shares during the period, including the alleged UPSI period, have been ploughed into the Company, a Compilation (which was also tendered during the course of hearing) inter alia setting out the receipt of consideration by the promoters, the date of transfer to Company, the manner of utilization of the amount by the Company with supporting documents/evidence is enclosed as* ***Annexure B*** *along with supporting affidavit of Mr Naveen Gupta Chief Financial Officer of the Company at* ***Annexure C,*** *& a Certificate from M/s RSAP & ASSOCIATES (Chartered Accountants) inter alia conforming that the entire amount of `.* ***5464983*** *(generated by sale of shares by promoters during the relevant period) has been ploughed back into the Company at* ***Annexure D.***
- *In this context, your attention is also invited to the Order dated 9.5.2008 passed by the Hon'ble Securities Appellate Tribunal (in SAT Appeal no 50 of 2007- Rajiv Gandhi vs SEBI), wherein it has inter alia observed that:*

  > ***"****We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he established to the contrary. Fact necessary to establish the contrary being*

especially within the knowledge of the insider, the burden of proving those Facts is upon him. ***The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established.*** *Let us illustrated to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact,* ***it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency."*** *(emphasis supplied)*

- *In the matter under reference, if it is presumed that we were in possession of unpublished price sensitive information at the relevant time, (which we are vehemently disputing since our director Ashish Jhunjhunwala became aware of the financial results only on August 12, 2010 when the results were being put before Audit Committee), it is submitted that the reason for our sales was to plough back the money into the Company (which was in a state of financial shambles) in order to enable it to meet its repayment obligations/ business expenses. It is reiterated that the motive for the sales was not to avoid alleged potential losses but to extend financial help to the Company. Un the circumstances we cannot be alleged to have indulged in insider trading in violation of provisions of Regulation 3 of PIT Regulations or the provisions of SEBI Act.*
- *Our director Ashish Jhunjhunwala became aware of the alleged UPSI only on August 12, 2010. The statement of the Company, vide its letter dated March 13, 2012 (Annexure 3 to the Notice), setting out the name of "person who were all privy to the unaudited financial result for the quarter ended April-June 2010 till it was deliberated at the Board Meeting" may not be construed to mean that our director was all along aware about the alleged UPSI (i.e. from August 7, 2010). Our director Ashish Jhunjhunwala became aware of the alleged UPSI, before it became public i.e. only on August 12, 2010 and not before that.*
- *The motive behind sale of shares during the alleged UPSI period was not with a view to avoid potential losses. The solitary motive was to assist the Company in meeting its financial obligations by ploughing the entire sale consideration money into the Company. Motive behind sale of shares was thus bonafide and genuine.*

- *Admittedly, all the sales were carried out transparently with full disclosures as mandated under PIT Regulations and Takeover Regulations. Further, sales had commenced much prior to the alleged UPSI period and had no nexus with the UPSI.*
- *We have a impeccable track record in terms of compliance and we have not made any disproportionate gains or gained any unfair advantage and we have also not caused loss to investors or anybody.*

20. Noticee had filed consent application in the matter. As the consent application filed by the Noticee was rejected by the High Powered Advisory Committee of SEBI in its meeting held on March 08, 2013, the said rejection was communicated to the Noticee. In the interest of natural justice the Noticee was granted a final opportunity of personal hearing on April 09, 2013 at SEBI, Head Office, Mumbai, vide Notice dated April 02, 2013. AR appeared for hearing and stated as under:

> *"We reiterate the submissions made vide our earlier letters dated July 16, 2012 and July 30, 2012. Further, we want to submit that RIL has made a reference dated November 06, 2012 to BIFR u/s 15(1) of Sick Industrial Companies (Special Provisions) Act 1985. The BIFR has registered the said reference as case no. 67 of 2012. In support of the same, we are tendering letter dated November 21, 2012 and order dated December 24, 2012 passed by BIFR in the matter"*

CONSIDERATION OF ISSUES AND FINDINGS

21. I have carefully perused the written and oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

a. Whether Noticee is insider in terms of regulation 2(e) of PIT Regulations?
b. Whether Noticee had violated sections 12A (d) & 12A(e) of SEBI Act and regulations 3 (i) of PIT Regulations ?

c. Do the above mentioned violations, if any, attract monetary penalty under sections 15 G of SEBI Act?

d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

22. The relevant regulations of PIT Regulations and sections of SEBI Act are state as under:

Sections 12A(d) and 12A(e) of SEBI Act

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

Section 12A*. No person shall directly or indirectly –*

(a) …

(b) …

(c) …

(d) engage in insider trading;

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

PIT Regulations :

Regulation 2(c)

"connected person" means any person who—

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

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

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

Regulation 2 (e)

"insider" means any person who

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

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

Regulation 2(h)

"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
…."

Regulation 2 (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. 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;]

Regulation 2(k)

"unpublished means information which is not published by the company or its agents and is not specific in nature

Explanation – Speculative reports in print or electronic media shall not be considered as published information.

Regulation 3(i)

*"**Prohibition on dealing, communicating or counselling on matters relating to insider trading.***
***3.** No insider shall—*
(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or"

Code of internal procedures and conduct for listed companies and other entities

12. (1) All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

Clauses 3.2.1 & 3.2.3 of Code of Conduct under schedule - I

***3.2.1** The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.*

***3.2.3** The trading window shall be, inter alia, closed at the time:-*

***(a)** Declaration of financial results (quarterly, half yearly and annually).*

(b) Declaration of dividends (interim and final).

(c) Issue of securities by way of public/rights/bonus etc.

(d) Any major expansion plans or execution of new projects.

(e) Amalgamation, mergers, takeovers and buy-back.

(f) Disposal of whole or substantially whole of the undertaking.

(g) Any changes in policies, plans or operations of the company.

3.2.3A The time for commencement of closing of trading window shall be decided by the company.

3.2-4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

3.2-5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

23. PSI 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. The information relating to periodical financial results, intended declaration of dividend, issuance and buy-back of securities, major expansion plan or execution of new project, amalgamation, merger and takeovers, disposal of whole and substantial part of undertaking or any significant change in policies, plans or operations of the company etc. is generally considered as "PSI" . These informations directly affect the market price of the share. Further, the list given in the explanation is an inclusive list and not an exhaustive one. So any other information which has a material implication on the price of the scrip is also PSI.

24. "Unpublished" means information which is not published by the company or its agents or which is not made public in print or electronic media and is not specific in nature. The information

published by a company or its agent in any newspaper or any print or electronic media as prescribed which is specific in nature with an objective to make it known to the investing public, would be a published information or otherwise “unpublished”.

25. Thus, from the above, I am of the view that declaration of the financial results of RIL for quarter ended June 2010 was PSI. Further, from the replies of the Noticee I find that it has not disputed this fact.

26. Further, I find that the company had made corporate announcement on July 28, 2010 stating that a meeting of its board of directors would be held on August 13, 2010 to consider the un-audited financial results for quarter ended June 30, 2010. It is the outcome of the financial results i.e. turnover, profit or loss etc made by the company during the quarter which affect the price and volume of the shares. I find that company had declared the financial results for quarter ended June 2010 only on August 13, 2010. Further, from the documents available on record I find that the trading window remained closed from August 7, 2010 till upto 24 hours after the Board Meeting on August 13, 2010. As per clause 3.2.1 read with 3.2.3 of Code of Conduct under schedule - I of PIT Regulations, the period of closure of trading window is decided by the company being a period during which, in the opinion of the company, PSI i.e. financial results are unpublished. Therefore, I am of the view that information regarding declaration of financial results for quarter ended June 2010 was unpublished till August 13, 2010 and UPSI period was the period identified by RIL for closure of trading window i.e., from August 07, 2010 till up to 24 hours after board meeting on August 13, 2010.

27. As regards the issue of whether Noticee is insider or not, the same is to be tested as per the definition provided in the PIT Regulations. The term 'insider' is defined in regulation 2(e) of PIT Regulations as any person who is or was connected with the company or is deemed to be connected with the company and who is reasonably expected to have or has received or has had access to such UPSI in respect of securities of a company. The term “connected person” has been defined in regulation 2(c) of PIT Regulations and includes any person who is a “director” of a company, or is an officer or employee of the company or holds position involving a professional or business relationship between himself and the company and who has reasonable access to the UPSI of the company. The term “person is deemed to be a connected person” has been defined in regulation 2(h)(i) of PIT Regulations and includes a company under same management or group.

28. From the documents available on record, I find that Ashish is the Chairman and Managing Director of RIL and therefore is a connected person to RIL as per regulation 2(c) of PIT Regulations.

29. I find that Noticee vide reply dated July 16, 2012 and July 30, 2012 stated that the information regarding the proposed declaration of un-audited financial results for quarter ended June 2010 came into the knowledge of its director, Ashish only on August 12, 2010. However, I am not inclined to accept the same as I find that RIL vide letters dated September 13, 2011 and October 20, 2011 had submitted that Ashish, Chairman & Managing Director and Mr. Naveen Gupta, Whole Time Director & CFO of RIL were privy to the un-audited financial results for the quarter ended June 2010. Thus, from the above I am of the view that Ashish and Naveen Gupta were in possession of UPSI from August 07, 2010.

It is noted that the sales of RIL which were Rs. 651.48 crores for quarter ended March 2010, fell to Rs. 343.36 crores for quarter ended June 2010 (fall of 52.70%). Similarly the net profit for quarter ended June 2010 fell to Rs. 5.88 crores from Rs. 14.41 crores in previous quarter, a fall of almost 60%. The company management would have definitely been aware of the erosion in performance of the company.

From the shareholding disclosure of RIL available on NSE website I find that Noticee was a part of promoter group of RIL and its shareholding in RIL for quarter ending June 2010 was 17.72 %. Noticee vide its letter dated September 17, 2011 and in its replies to SCN accepted that it was a part of promoter group of RIL. I also note that address of the Noticee is same as the registered address of RIL. I also find that Ashish is the managing director of RIL as well as the director of the Noticee and he along with his wife Neerza Jhunjhunwala has a shareholding of 68.52% in the Noticee and the balance is held by M/s Rav Dravya Pvt. Ltd., another promoter group entity. Further, Naveen Gupta is also director in RIL as well as in the Noticee.

30. From the above I find that Noticee is a company under control of the same management and is therefore deemed to be a connected person to RIL as per regulation 2h(i) of PIT Regulations.

31. As stated above, it is established that Ashish was in possession of UPSI. Ashish being the common person/director between the management of RIL & Noticee and being in possession of UPSI, it can be logically inferred that Noticee had access to UPSI. It is thus

concluded that Noticee was an insider as per regulation 2(e) read with regulations 2(c) & 2(h) of PIT Regulations.

32. The Noticee in its reply dated July 16, 2012 accepted that the orders for the sale of shares of RIL on May 11, 2010, July 30, 2010 and August 12, 2010 were placed by Ashish.

33. As per regulation 3(i) of PIT Regulations, an insider, being in possession of any unpublished price sensitive information, shall not deal in the securities of a company listed on any stock exchange, either on his own behalf or on behalf of any person, directly or indirectly. Further, as per sections 12A(d) & 12A(e) of SEBI Act, no person shall directly or indirectly engage in insider trading or deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of SEBI Act or the rules or the regulations made thereunder.

34. The day wise trading details of the Noticee are as follows:

Client Name	**Trade Date**	**Buy Volume**	**Sell Volume**	**Avg Buy Price**	**Avg Sell Price**	**Net Qty**	**% to mkt gross**	**% to mkt net**
N R Mercantiles Pvt Ltd	11-May-10	0	1650		72.97	1650	5.50	24.34
	30-Jul-10	0	77500	0.00	107.45	77500	4.51	26.13
	12-Aug-10	0	75000	0.00	109.33	75000	4.64	27.50

35. Upon analysis of trading pattern of the Noticee, I find that Noticee had sold 79,150 shares of RIL on May 11, 2010 & July 30, 2010 i.e. prior to UPSI period and sold 75,000 shares of RIL on August 12, 2010 i.e. during UPSI period (during August 07 to August 13, 2010). Noticee's trading during the UPSI period is in violation of PIT Regulations.

During UPSI period, Noticee had sold 75,000 shares @`108.24. Taking into account the average share price of the company @`90.67 on August 16, 2010 i.e. next trading day after announcement of financial results for quarter ended June 2010, the Noticee had avoided a potential loss of ` 13,17,750/-.

36. In terms of notice dated August 06,2010, the trading window was closed from August 7, 2010 till upto 24 hours after the Board Meeting on August 13, 2010. Thus this trading by noticee happened during the period of trading window closure. The Noticee has contended that it had taken preclearance for the sale of shares. However, no documentary evidence has been submitted in this regard.

37. The Noticee has contended that the sale of shares was done to comply with the public shareholding norm as provided in clause 40A of the Listing Agreement. Clause 40A of the Listing Agreement requires that the listed company should comply with the public shareholding norms as stipulated in the Securities Contracts (Regulation) Rules 1957. While clause 40A does mention the requirement of achieving & maintaining the minimum public shareholding, it is nowhere envisaged that the promoter entities can resort to market sales while in possession of UPSI to achieve this purpose. I am therefore unable to accept this contention.

38. The Noticee has also contended that it required the money urgently to repay the debts of RIL to the various lending entities. In support of this contention it has submitted copies of bank statements of itself, Ashish and RIL for the relevant period. On a prima facie scrutiny of the statements it appears that the sale proceeds of the shares was credited to the account of Noticee from which a major portion was credited to the account of RIL and some portion to Ashish. From

Ashish's account the amount was transferred to RIL's bank account. It cannot readily be established whether the amount was utilized for repayment of RIL's debts. However, it has not submitted any evidence to prove the urgency for such repayment. In other words, there are no documents on record to indicate that the need for this payment had arisen suddenly and that it had to be made by a particular date. Even if it is agreed that RIL was in default to various lending entities; it no way justifies its trading while in possession of UPSI.

39. The Noticee has quoted the case of *Rakesh Agarwal v. SEBI (2004) 1 Comp LJ 193*, contending that motive is built into the regulation and that insider trading without establishing a motive is not punishable. This case relates to trading done during the year 1996 at which time regulation 3(i) of PIT Regulations read as under:

> ***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* ***on the basis of*** *any unpublished price sensitive information; (emphasis supplied)*

The case against the Noticee relates to trading done in the year 2010 and the relevant regulation 3(i) of PIT Regulations reads as under:

> ***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; (emphasis supplied)*

As per the prevailing PIT Regulations, the motive of trading is not an issue for consideration. Mere trading while in possession of UPSI amounts to violation of PIT Regulations. The Noticee has traded while

in possession of UPSI relating to the quarterly financial results of the company at a time when the erosion in performance of the company was known, inter alia, to the Noticee. Thus, the Noticee has violated the provisions of sections 12A(e) & 12A(d) of SEBI Act and regulation 3(i) of PIT Regulations.

40. The Noticee has referred to the case of *Dilip S. Pendse vs. SEBI (SAT Appeal No. 80/2009)* and certain other cases wherein it has contended that as the charge of insider trading is a serious charge, higher must be the preponderance of possibilities in establishing that charge. Ashish was the Managing Director of RIL and in that position he was privy to all the operational information about RIL and the UPSI relating to the financial results for the quarter ended June 30, 2010. Further, he was also director of the Noticee as well as held major stake in the Noticee along with his wife. Further, admittedly Ashish placed the order on behalf of the Noticee for sale of shares on August 12, 2010. This was before the declaration of the quarterly results. In my opinion, there is adequate evidence on record to conclude that the Noticee has taken advantage of the knowledge of the UPSI to sell the shares before declaration of results and thereby have a higher realization.

41. Noticee during the course of hearing held on April 09, 2013 submitted that *'RIL has made a reference dated November 06, 2012 to BIFR u/s 15(1) of Sick Industrial Companies (Special Provisions) Act 1985. The BIFR has registered the said reference as case no. 67 of 2012. In support of the same, we are tendering letter dated November 21, 2012 and order dated December 24, 2012 passed by BIFR in the matter.'* I have examined the documents submitted by the company and note that at present only a reference had made to the BIFR and the company has not been declared as sick company. I am therefore not accepting the said contention.

42. The Noticee has also quoted Hon'ble Securities Appellate Tribunal (SAT) order dated May 09, 2008 in the case of *Rajiv B Gandhi Vs. SEBI* (in SAT Appeal no. 50 of 2007) and contended that if an insider shows that it did not trade on the basis of UPSI and that it traded on some other basis, then such insider would not be liable for penalty. Noticee has contended that Ashish did not have UPSI and further the sales were made in order to meet the repayment obligations/business expenses of RIL. It has already been established that Ashish was in possession of UPSI. It has also been established that the Noticee has not submitted any documents which would justify the need for selling of shares at that juncture. As already stated above, the need for repayment to lending entities or meeting business expenses does not justify trading while in possession of UPSI. I am therefore unable to accept the Noticee's contention.

43. In view of the foregoing, it is established that Noticee is an insider and has traded in the shares of RIL while in possession of UPSI. Therefore, the alleged violation of sections 12A(d) & 12A(e) of SEBI Act and regulation 3(i) of PIT Regulations by the Noticee stands established.

LEVY OF PENALTY

44. The aforesaid violation of SEBI Act and PIT Regulations by the Noticee, makes it liable for penalty under section 15 G of SEBI Act, 1992 which reads as follows:

"15G.Penalty for insider trading. *- If any insider who,-*

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."

45. I find that unlike the charging provision of regulation 3 (i) of PIT Regulations which prohibits trading in a scrip '*while in possession of* ' UPSI regarding the same scrip, section 15 G of SEBI Act prohibits trading in a scrip '*on the basis of*' the UPSI. For interpretation of the words 'on the basis of' in section 15G of SEBI Act, I rely on the interpretation of the words 'on the basis of' by the Hon'ble SAT in its order dated May 09, 2008 in the matter of Rajiv B Gandhi vs. SEBI (Appeal No.50 of 2007). In the said case, the Hon'ble SAT has elaborated on the issue of whether the insider, though in possession of unpublished price sensitive information, had traded 'on the basis of' that information or not? In this regard the Hon'ble SAT made the following observation:

"On a plain reading of regulation 3 it appears to us that the prohibition contained therein shall apply only when an insider trades or deals in securities ***on the basis of*** *any unpublished price sensitive information and not otherwise. The words "****on the basis of****" are significant and mean that the trades executed should be motivated by the information in possession of the insider. To put it differently, the information in possession of the "insider" should be the factor or circumstance that should induce him to trade in the scrip of the company. It is then that he will be said to have dealt with or traded "****on the basis of****" that information. We are of the*

considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading."

The explanations submitted by Noticee are not adequate to establish that it traded during the above period on some other basis and not the UPSI.

46. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…"*

47. While determining the quantum of penalty under Section 15G of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

> ***"15J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default."*

48. From the material available on record, I find that the amount of disproportionate gain or unfair advantage to the Noticee i.e. the potential loss avoided by the Noticee is ` 13,17,750/-. However, the loss caused to the investors as a result of the aforesaid violations is not quantifiable. Ashish being the director of the Noticee, placed the sell orders on behalf of Noticee, i.e. Noticee had sold the 75,000 shares of RIL during the UPSI period while in possession of UPSI, thereby avoided a potential loss of ` 13,17,750/-. Noticee should not have transacted in the shares of RIL during the UPSI period while in possession of the same. The Noticee was at an advantageous position due to possession of UPSI and the investing public was at disadvantageous position as they were not privy to the UPSI relating to RIL's financial results for the quarter ended June 2010. The object of the PIT Regulations prohibiting insider trading is to give equal opportunity to all investing public and protect their interests. To translate this objective into reality, measures have been taken by SEBI to prohibit communication of information as well as trading by insiders while in possession of UPSI. I am of the view that insider trading is a

serious offence in securities market which warrants a stringent penalty. I note that there is only one instance of trading during UPSI period.

ORDER

49. Considering the facts and circumstances of the case, in terms of the provisions of section 15G of SEBI Act and Rule 5(1) of the Rules, I hereby impose a penalty of ` 40,00,000/- (Rupees forty lakh only) on N R Mercantiles Private Limited, for violation of sections 12A(d) & 12A(e) of SEBI Act and regulation 3(i) of PIT Regulations. In my opinion this penalty shall be commensurate with the violations committed by it.

50. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to The General Manager, Investigations Department - ID 4, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

51. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 31, 2013 **PIYOOSH GUPTA**
Place: Mumbai **ADJUDICATING OFFICER**