

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/AR/2020-21/7796-7802]

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

**Mr. Rohit Premkumar Gupta
(AABPG6978J)**

**Mr. Sanjay Kumar Tayal
(AAEPT9209L)**

**Mr. Navin Kumar Tayal
(AABPT2833K)**

**Ms. Jyotika Tayal
(AABPT2949Q)**

**Advik Textiles & Realpro P. Ltd
(AAGCA0352E)**

**Mr. Kulwinder Kumar Nayyar
(AASPN4833F)**

**Mr. Azam Mohammed Ashan Shaikh
(AWYPS0941A)**

In the matter of

Insider Trading in the scrip of Bank Of Rajasthan

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the suspected insider trading in the scrip of Bank of Rajasthan (hereinafter referred to as '**Bank of Rajasthan**' / '**BoR**') with respect to the unpublished price sensitive information (hereinafter rereferred to as '**UPSI**') of amalgamation of Bank of Rajasthan with ICICI Bank Ltd (hereinafter referred to as '**ICICI Bank**') in the year 2010. The investigation conducted in this matter revealed that the following 7 entities (hereinafter collectively referred to as '**the noticees**') who were insiders / deemed insiders with respect to the scrip of BoR had indulged/facilitated insider trading in the scrip of BoR while in possession of UPSI during the UPSI period viz, May 07, 2010 to May 18, 2010, thereby violating relevant provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as '**PIT Regulations, 1992**') and SEBI (Prohibition of Insider Trading) Regulation, 2015 (hereinafter referred to as '**PIT Regulations, 2015**)

| Name of the notice | Violations Alleged |
|---|--|
| Mr. Rohit Premkumar Gupta ('Rohit' / ' noticee no. 1 ') | Section 12 A (a) (b) (c) (d) and (e) of SEBI Act Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations. |

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| Mr. Sanjay Kumar Tayal (‘Sanjay’ / ‘noticee no. 2’) | <p>Section 12 A (a) (b) (c) (d) and (e) of SEBI Act</p> <p>Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015</p> <p>Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations.</p> |
| Mr. Navin Kumar Tayal (‘Navin’ / ‘noticee no. 3’) | <p>Section 12 A (a) (b) (c) (d) and (e) of SEBI Act</p> <p>Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015</p> <p>Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations.</p> |
| Ms. Jyotika Tayal (‘Jyotika’ / ‘noticee no. 4’) | <p>Section 12 A (a) (b) (c) (d) and (e) of SEBI Act</p> <p>Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015</p> <p>Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations.</p> |
| Advik Textiles & Realpro P. Ltd (‘Advik Textiles’ / ‘noticee no. 5’) | <p>Section 12 A (a) (b) (c) (d) and (e) of SEBI Act</p> <p>Regulation 3(i), 3(ii) and 3A r/w Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015</p> |

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| | Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations |
| Mr. Kulwinder Kumar Nayyar ('Kulwinder' / 'noticee no. 6') | <p>Section 12 A (a) (b) (c) (d) and (e) of SEBI Act</p> <p>Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015</p> <p>Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations.</p> |
| Mr. Azam Mohammed Ashan Shaikh ('Azam Shaikh' / 'noticee no. 7') | <p>Section 12 A (a) (b) (c) (d) and (e) of SEBI Act</p> <p>Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015</p> <p>Regulation 3(b), 3(c), 3(d) and 4(1) of PFUTP Regulations.</p> |

2. In view of the aforesaid alleged violation of the abovementioned provisions of law by the noticees, adjudication proceedings were initiated with respect to the noticees under Sections 15G & 15HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh B. Menon was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') in the matter, vide communique dated November 17, 2017 under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with Sections 15I(1) and 15I(2) of the SEBI Act, and if

satisfied that penalty is liable, impose such penalty as deemed fit in terms of Rule 5 of the Adjudication Rules and Sections 15G & 15HA of the SEBI Act. Pursuant to the transfer of Shri Suresh B. Menon, the undersigned was appointed as the AO in the matter vide communique dated March 25, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notices no. A&E/EAD-3/SBM-ASR/23002/1-7/2018 dated July 31, 2018 (hereinafter referred to as '**SCN**') was issued to the noticees under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the noticees and why penalty should not be imposed upon the noticees under Sections 15G and 15HA of the SEBI Act, for the alleged violations of provisions of law. Briefly, the allegations made in the SCNs are mentioned below:

*a) BoR informed National Stock Exchange (hereinafter referred to as '**NSE**') on May 18, 2010 at 5:12:24 p.m. that it had received a request from one of its directors who is also related to the dominant shareholding group of BoR, viz, Mr. Sanjay Kumar Tayal / noticee no. 2, for convening an urgent board meeting on the same day, to inform the Board that the dominant shareholders of BoR have entered into an agreement on May 18, 2010 with ICICI Bank for proposing an amalgamation of both the banks. noticee no. 2, vide aforesaid communication to BoR also informed them that ICICI Bank is also convening a meeting of its Board of Directors on May 18, 2010, for considering the proposed amalgamation. Since as per regulation 2(ha)(v) of the PIT Regulations, 1992, amalgamation, mergers or takeovers are deemed to be price sensitive information, the aforesaid information of amalgamation of Bank of Rajasthan with ICICI Bank is also, prima facie, a price sensitive information.*

- b) *It is observed in the IR that the proceedings with respect to amalgamation of BoR and ICICI Bank started positively from the meeting held on May 07, 2010. Therefore, the period from May 07, 2010 to May 18, 2010 i.e. the period during which the aforesaid information of amalgamation of both the banks was not disclosed to the stock exchanges, is taken as period of unpublished price sensitive information (hereinafter referred to as 'UPSI') pertaining to the amalgamation of BoR and ICICI Bank.*
- c) *It is alleged in the IR that noticee no. 1 viz, Mr. Rohit Premkumar Gupta indulged in trading in the shares of BoR while in possession of and on the basis of the aforementioned price sensitive information regarding amalgamation of BoR and ICICI Bank. It is alleged that noticee no. 1 made unfair gains to the tune of Rs. 95,77,614/- by trading in the scrip of BoR while in possession of UPSI.*
- d) *It is alleged in the IR that Ms. Jyotika Sanjay Tayal / noticee no. 4 is deemed to be a connected person within the meaning of Regulation 2(h)(viii) of PIT regulations, 1992 as she is the wife of noticee no. 2. Further noticee no. 1 is also deemed to be a connected person as he is the brother of noticee no. 4.*
- e) *It is alleged that M/s Advik Textiles and Realpro Pvt. Ltd. / noticee no. 5 provided funds to noticee no. 1 for the sole purpose of purchase of shares of BoR by noticee no. 1. It is also alleged that the brother of noticee no. 2 viz, Mr. Navin Tayal/ noticee no. 3 was the authorized signatory to operate bank account of noticee no. 5, despite several changes in the shareholding/ directorship of noticee no. 5 over the period. In view of the aforementioned facts, it is alleged that the noticee no. 5 is also deemed to be a connected person.*

- f) *It is further alleged that noticee no. 5 is deemed to be a connected person as noticee no. 2, his wife noticee no. 4 and his brother noticee no. 3 were managing the affairs of noticee no. 5. Further, it is also alleged that noticee no. 5, being a deemed to be a connected entity, facilitated / provided funds to noticee no. 2 for purchase of shares of BoR. Further, Mr. Kulwinder Kumar Nayyar/ noticee no. 6 and Mr. Azam Mohammed Ashan Shaikh / noticee no. 7 were close associates of noticee no. 2, noticee no. 3 and noticee no. 4 and were also the directors of noticee no. 5 at the time of alleged violations by the noticees.*
- g) *In view of the above, it is alleged in the IR that the noticees connived with each another by sharing the UPSI and providing funds for the purpose of doing insider trading in the scrip of BoR on the basis of UPSI of the impending amalgamation of BoR with ICICI Bank and the said acts of the aforesaid seven noticees were in furtherance of the common intention of indulging in the scheme of insider trading. Thus, it is alleged that noticee no. 1 dealt in the scrip of BoR while in the possession of and on the basis of UPSI in connivance with noticee no. 2, noticee no. 3 and noticee no. 4 who, prima facie, funded noticee no. 1 for the insider trading in the shares of BoR through noticee no. 5, an entity controlled by noticee no. 2, noticee no. 3 and noticee no. 4. The directors of noticee no. 5 at the relevant point in time were noticee no. 6 and noticee no. 7 who were also close associates of other noticees. Therefore, all the noticees are alleged to have violated various provisions of PIT Regulations, 1992 as mentioned below and in the process have, prima facie, made ill-gotten gains of Rs. 95,77,814. The said act of the noticees also, allegedly, operated as a fraud on other investors and therefore the*

noticees are also alleged to have violated various provisions of PFUTP Regulations, as detailed below:

| Name of the noticee | Violations Alleged | Penal Provisions |
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| Mr. Rohit Premkumar Gupta (noticee no. 1) | Section 12A (a), (b), (c), (d) & (e) of the SEBI Act. Regulation 3(b), (c) & (d) and 4(1) of SEBI PFUTP Regulations. Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 and Regulation 12 of PIT Regulations, 2015 | Section 15 G and 15 HA of the SEBI Act |
| Mr. Sanjay Kumar Tayal (noticee no. 2) | Section 12A (a), (b), (c), (d) & (e) of the SEBI Act. Regulation 3(b), (c) & (d) and 4(1) of SEBI PFUTP Regulations. Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 and Regulation 12 of PIT Regulations, 2015 | Section 15 G and 15 HA of the SEBI Act |
| Mr. Navin Kumar Tayal (noticee no. 3) | Section 12A (a), (b), (c), (d) & (e) of the SEBI Act. Regulation 3(b), (c) & (d) and 4(1) of SEBI PFUTP Regulations. Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 and Regulation 12 of PIT Regulations, 2015 | Section 15 G and 15 HA of the SEBI Act |
| Ms. Jyotika Tayal (noticee no. 4) | Section 12A (a), (b), (c), (d) & (e) of the SEBI Act. Regulation 3(b), (c) & (d) and 4(1) of SEBI PFUTP Regulations. Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 and Regulation 12 of PIT Regulations, 2015 | Section 15 G and 15 HA of the SEBI Act |
| Advik Textiles & Realpro P. Ltd (noticee no. 5) | Section 12A (a), (b), (c), (d) & (e) of the SEBI Act. Regulation 3(b), (c) & (d) and 4(1) of SEBI PFUTP Regulations. Regulation 3(i), 3(ii) and 3A r/w Regulation 4 of PIT Regulations, 1992 and Regulation 12 of PIT Regulations, 2015 | Section 15 G and 15 HA of the SEBI Act |
| Mr. Kulwinder Kumar Nayyar (noticee no. 6) | Section 12A (a), (b), (c), (d) & (e) of the SEBI Act. Regulation 3(b), (c) & (d) and 4(1) of SEBI PFUTP Regulations. | Section 15 G and 15 HA of the SEBI Act |

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| | <i>Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 and Regulation 12 of PIT Regulations, 2015</i> | |
| <i>Mr. Azam Mohammed Ashan Shaikh (noticee no. 7)</i> | <i>Section 12A (a), (b), (c), (d) & (e) of the SEBI Act. Regulation 3(b), (c) & (d) and 4(1) of SEBI PFUTP Regulations. Regulation 3(i) and 3(ii) r/w Regulation 4 of PIT Regulations, 1992 and Regulation 12 of PIT Regulations, 2015</i> | <i>Section 15 G and 15 HA of the SEBI Act</i> |

5. It is observed that no response to the SCN was received from the noticees. Pursuant to my appointment as AO in the matter, letters dated July 22, 2019 was issued to the noticees wherein they were informed about my appointment as the AO in the matter and were also advised to submit their reply to the SCN. Vide aforesaid letter, the noticees were also advised to appear for personal hearing before the undersigned, on September 03, 2019. In response, noticee 3/ Mr. Navin and noticee 4/ Ms. Jyotika vide their separate letters dated August 12, 2019 submitted that they have authorized their legal representatives to make submissions in the matter. However, none of the noticees appeared for the personal hearing scheduled on September 03, 2019 and they also failed to make submissions in response to the SCNs issued to them. Meanwhile, vide letter dated August 09, 2019, the counsel for the noticee no. 2/ Mr. Sanjay Tayal submitted that Mr. Sanjay had expired on October 14, 2018 and also produced the death certificate issued by Sub-registrar (Birth & Death) Municipal corporation of Greater Mumbai A ward. The same has been taken on record.
6. Thereafter, in the interest of natural justice, separate hearing notices dated September 03, 2019 were issued to the noticees, wherein they were advised to submit their replies to the SCN and were advised to appear for the personal hearing on September 17, 2019. It is observed that none of the noticees appeared for personal hearing on September 17, 2019, however, all of the noticees (except noticee 2/ Mr. Sanjay) vide their separate letters dated

September 17, 2019 made requests to adjourn the hearing and provide them opportunities of inspection of documents related to the matter. Subsequently, letters dated October 17, 2019 scheduling hearing on November 18, 2019 was issued to the noticees. In response, the noticees vide their letters dated November 04 (noticee 1 / Rohit), November 05 (noticee 3 / Navin, noticee 4 / Jyotika and noticee 7 / Azam Sheikh), November 14 (noticee 5 / Advik) and November 15 (noticee 6 / Kulwinder), 2019, requested for inspection of documents in the matter. Thereafter, letter dated December 27, 2019, were issued to the noticees wherein they were informed that they can avail the opportunity of inspection of documents on January 30, 2020 and appear for personal hearing before the undersigned on February 17, 2020. It is observed that despite the delivery of the aforesaid letters to the noticees, they failed to avail the opportunity of inspection of documents and personal hearing on the scheduled dates.

7. I observe that despite the service of the SCNs and the hearing notices on the noticees, the noticees not only failed to submit their replies to the SCNs but also did not appear for the hearing fixed on the stipulated dates. The noticees were also provided with the opportunities of inspection of documents related to the matter. However, the noticees failed to appear for conducting the inspection of documents also, on the scheduled date. In view of the above reasons, I am convinced that the noticees were provided with ample opportunities to present their case and make submissions in the matter, but they did not avail the opportunities granted to them. In this context, it is pertinent to place reliance on the Order dated February 11, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal and Ors vs SEBI (Appeal No 68 of 2013), wherein Hon'ble SAT had observed that ".....
As rightly contended by Mr Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the show cause notices

issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges leveled against them in the show cause notices”

8. Therefore, in view of the above observations, I am compelled to proceed further in the matter *ex-parte* against the noticees on the basis of facts/material on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. Before proceeding any further, it is pertinent to discuss the issue of death certificate of the noticee no. 2/ Mr. Sanjay Tayal, submitted in the matter. On perusal of the same, it is found that the noticee no. 2/ Mr. Sanjay Tayal passed away on October 14, 2018. Therefore, it would be in the fitness of things to first decide as to whether upon the death of the noticee, the ongoing Adjudication proceedings would continue or abate w.r.t the noticee.
10. In this respect, it is noted that in *Girijandini vs. Bijendra Narain* (AIR 1967 SC 2110), the Hon'ble Supreme Court, *inter-alia*, observed that in case of personal action, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply. The Hon'ble Securities Appellate Tribunal has also held in *Chandravadan J Dalal Vs. SEBI* that “*The appeal abates since the appellant during the pendency of the appeal died on 29th November, 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates.*”

11. In view of the foregoing, the proceedings against the noticee no. 2 / Mr. Sanjay Tayal, stand abated. The SCN dated July 31, 2018 with respect to the noticee no. 2 / Mr. Sanjay is disposed of accordingly without going into the merits of the case.
12. I have carefully perused the charges leveled against the noticees, their replies and the documents / material available on record. I note that noticees made a request for inspection of documents in the matter which was acceded to and noticees were given opportunity of inspection of documents on January 30, 2020. However, none of the noticees availed the opportunity of inspection of documents. The noticees were also provided with adequate opportunities to submit their replies to the SCN and appear for personal hearing in the matter. However, the noticees failed to submit their replies to the SCN and also failed to appear for the hearing. In the absence of submission by the noticees, I am compelled to rely on the material available on record including certain publicly available documents. I observe that parallel proceedings under section 11B of the SEBI Act were also initiated against the noticees for the same set of alleged violations. It is observed that the noticees have made submissions in the matter before WTM-SEBI in the proceedings under section 11B of the SEBI Act and the same was concluded vide order dated November 22, 2017, and the same have been discussed in detail in the aforesaid final order. The issues that arise for consideration in the present case are-

A. Whether information regarding merger of BoR and ICICI Bank was a UPSI during the period May 7, 2010 to May 18, 2010?

B. Whether noticee 1 / Rohit is deemed to be a connected person/a relative of such person/an insider for the purpose of the PIT Regulations, 1992 and whether the trades executed by him in the scrip of BoR were on the basis of the UPSI for which funding was provided by noticee 5 / Advik?

C. Does the violation by the noticees, attract monetary penalty under sections 15HA and 15G of the SEBI Act? If so, what would be the monetary penalty that can be imposed on the noticees after taking into consideration the factors mentioned in section 15 J of the SEBI Act?

13. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act, PFUTP Regulations, PIT Regulations 1992 and PIT Regulations 2015, alleged to have been violated by the noticees, as below:

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

PIT Regulations, 1992

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

(ii) communicate or 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 :

3A. No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

Violation of provisions relating to insider trading.

4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

PIT Regulations, 2015

Repeal and Savings.

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(2) *Notwithstanding such repeal,—*

(a) *the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or*

punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

SEBI Act

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

12A.No person shall directly or indirectly—

(a)use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b)employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c)engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised

stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(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;

A. Whether information regarding merger of BoR and ICICI Bank was a UPSI during the period May 7, 2010 to May 18, 2010 ?

14. During the course of investigation, it was observed that the preliminary activities pertaining to the merger of BoR with ICICI Bank commenced in the meeting held on February 24, 2010. However, on May 06, 2010, the promoters of BoR communicated their unwillingness to the ICICI Bank to proceed with the merger. Thereafter, on May 07, 2010, the discussions resumed and the legal issues were then taken up. Subsequently, the information regarding the proposed amalgamation of BoR with ICICI Bank was informed to the exchange by BoR on May 18, 2010 at 05:12:24 PM. Thus, it was from May 07, 2010 that the actual activities/events leading to amalgamation of BoR with ICICI Bank can be considered to have commenced and the same came to the knowledge of investors on May 18, 2010 at 05:12:24 PM.

15. In this regard, it is pertinent to mention that section 2(ha) of the PIT Regulations, 1992 defines 'price sensitive information' as below:-

“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:

...

(v) amalgamation, mergers or takeovers;

16. The abovementioned definition of 'price sensitive information' makes it clear that the information regarding negotiation of merger between BoR and ICICI Bank was a Price Sensitive information under section 2(ha) of the PIT Regulations, 1992, publication of which was bound to materially affect the price of the scrip of BoR. The same is also evident from the fact that pursuant to the disclosure of the proposal of proposed merger of BoR and ICICI Bank, the scrip of BoR opened at Rs. 119.35 which was an increase of 20% from previous day's close of Rs. 99.45. The increasing trend in the price of BoR continued thereafter and it reached a high price of Rs. 205.90 on August 13, 2010.

17. As regards the issue of the information being unpublished is concerned, the section 2(k) of the PIT Regulations, 1992 stipulates the following:

(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.

18. From the combined reading of sections 2(ha) and 2(k) of PIT Regulations, 1992, it is clear that the news / information regarding the merger of BoR with ICICI Bank was unpublished until it was disclosed to the exchanges by one of the parties viz, BoR that it has received a communication from Mr. Sanjay Kumar Tayal, about entering into an agreement with the ICICI Bank for proposing an amalgamation of BoR and ICICI Bank and BoR is convening its Board meeting on same day for considering the proposed amalgamation and for approving several actions necessary for the process. Thus, the information regarding merger of BoR with ICICI Bank was price sensitive and unpublished till 5:12:24 PM on May 18, 2010, when BoR disclosed it to the Exchanges.

19. As discussed above, the “price sensitive information” originated on May 7, 2010 and continued to remain unpublished till May 18, 2010 at 5:12:24 PM (i.e. till the time of the exchange notification). Therefore, I conclude that the information relating to the execution of the pre-merger agreement (Binding Agreement), was a UPSI, as on May 17, 2010 and May 18, 2010 till 5:12:24 PM when BoR disclosed it to the Exchanges.

B. Whether noticee 1 / Rohit is deemed to be a connected person or an insider for the purpose of the PIT Regulations, 1992 and whether the trades executed by him in the scrip of BoR were on the basis of the UPSI for which funding was provided by noticee 5 / Advik?

20. In this regard, it would be relevant to refer to the definition of “Insider” as per the Regulation 2 (e) of the PIT Regulations, 1992 which stipulates the following:-

(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 company,

or

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

21. Therefore, it is seen that as per the PIT Regulations, 1992, an entity can be considered as an insider either by way of its connections with the company or by way of its access to the unpublished price sensitive information. The issue of noticee 1 / Rohit being an insider with respect to the UPSI of merger

of BoR and ICICI Bank has to be tested against the two aforementioned parameters.

22. As regards the connection of noticee 1 / Rohit is concerned, it is alleged in the SCN, that Rohit was the brother of noticee 4 / Jyotika, who is the wife of noticee No. 2 / Sanjay. Sanjay, as a director and promoter of BoR was associated with the activities pertaining to the merger of BoR with ICICI Bank and therefore, had access to the UPSI, as is clear from the documents available on record. The same is also evident from the fact that on May 18, 2010 at 5:12:24 PM, BoR made a disclosure to the exchanges that it has received a request from Mr. Sanjay Kumar Tayal, one of the directors who was also related to the dominant shareholding group of BoR, to convene a board meeting urgently on the same day, informing that i) the dominant shareholders of BoR have entered into an agreement on May 18, 2010, with ICICI Bank for proposing an amalgamation of both the banks and ii) ICICI Bank is also convening its meeting of the Board of Directors on May 18, 2010, for considering the proposed amalgamation and for approving several actions necessary for the process. Sanjay is clearly a connected person as per the definition stipulated under section 2(c) of the PIT Regulations, 1992 reproduced below:

“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;

- 23.** It is further alleged that Rohit is also ‘deemed to be connected person’ as per the definition stipulated under Regulation 2(h)(viii) and 2(h)(i) of the PIT Regulations, 1992, as he is the relative (brother) of the wife (viz. noticee 4 / Jyotika) of noticee 2 / Sanjay, who is a connected person. In this regard, it is pertinent to refer to the relevant provisions of the aforesaid regulations which are reproduced hereunder:-

2(h) “person is deemed to be a connected person”, if such person—

...

(viii) relatives of the connected person;...

2(i) “relative” means a person, as defined in section 6 of the Companies Act, 1956;

- 24.** The definition given in Section 2(i) of the PIT Regulations, 1992 as mentioned above depends on the definition of ‘relative’ as provided in Section 6 of the Companies Act, 1956, which reads as under:-

6. MEANING OF "RELATIVE"

A person shall be deemed to be a relative of another, if, and only if,

- (a) they are members of a Hindu undivided family ; or*
- (b) they are husband and wife ; or*
- (c) the one is related to the other in the manner indicated in Schedule IA*

SCHEDULE IA

[See section 6(c)]

LIST OF RELATIVES

- 1. Father.*
- 2. Mother (including step-mother).*
- 3. Son (including step-son).*
- 4. Son's wife.*
- 5. Daughter (including step-daughter).*
- 6. Father's father.*
- 7. Father's mother.*
- 8. Mother's mother.*
- 9. Mother's father.*
- 10. Son's son. Page 284 of 332*
- 11. Son's son's wife.*
- 12. Son's daughter.*
- 13. Son's daughter's husband.*
- 14. Daughter's husband.*
- 15. Daughter's son.*
- 16. Daughter's son's wife.*
- 17. Daughter's daughter.*
- 18. Daughter's daughter's husband.*
- 19. Brother (including step-brothers).*
- 20. Brother's wife.*

21. Sister (including step-sister).

22. Sister's husband

25. The definition of “relative” in the Companies Act, 1956 provides for a person who can be deemed to be a “relative” and states that if and only if, any person falls under the ‘List of Relatives’ in Schedule IA of Section 6 (c), only then he can be treated as a “relative”. It is understood that section 6(c) of the Companies Act does not cover reciprocal relationships in the reverse direction. Thus, although the ‘sister’s husband’ is a relative as far as a brother is concerned under the definition, ‘wife’s brother’ is not explicitly included as a relative of the husband. Therefore, I conclude that noticee 1 / Rohit cannot be considered as a “relative” of a person who is deemed to be connected person, as sought to be made out in the SCN.

26. Therefore, once it is established that noticee 1 / Rohit cannot be considered as an insider by way of his connection with noticee 2 / Sanjay as ‘wife’s brother’ is not explicitly included as a relative of the husband, it is to be tested whether Rohit can be considered an insider under the PIT Regulations, 1992, only from the perspective of his access to the UPSI. It is noted from the Regulation 2 (e) of the Insider Trading Regulation that even though a person is not connected or deemed to be connected with the company, still he can be an insider if he “has received or has had access to such unpublished price sensitive information”. Thus, it has to be decided whether Rohit Gupta had received or has had access to the UPSI or not. In order to ascertain Rohit’s access to UPSI, the relevant facts pertaining to the trading done by Rohit in the scrip of BoR need to be examined. The proximity of the relationship of Rohit with noticee 2 / Sanjay Tayal, noticee 3 / Navin Tayal and noticee 4 / Jyotika Tayal (hereinafter referred to as **‘the Tayals’** / **‘Tayal family’**) leads to the conclusion that Rohit had access to the UPSI. However, in such

scenario, one needs to consider the circumstantial evidence which points to the fact that Rohit was dealing in the shares of BoR only on the basis of UPSI.

27. Rohit is the Managing Director of a company viz. M/s Elementto Life Styles Pvt. Ltd. (hereinafter referred to as '**Elementto**'). As stated by Rohit during the course of investigation, the registered address of Elementto is "Raghuvanshi Mansion, Raghuvanshi Mill Compound, 11-12, Senapati Bapat Marg, Lower Parel (West), Mumbai, 400013". It is observed that the address of corporate office of Bank of Rajasthan was also the same. Thus, Elementto and BoR were located at the same address, further corroborating the connection of Rohit with BoR.

28. Investigation has revealed that Rohit purchased 1,40,000 shares of BoR during the UPSI period . A summary of the trading by Rohit in the scrip of BoR is tabulated as under-

| Trade Date | Exchange | No. of shares purchased | Avg. Rate (Rs.) | Value (Rs.) |
|--------------|----------|-------------------------|-----------------|-----------------------|
| May 17, 2010 | BSE | 2,000 | 83.21 | 1,66,409.40 |
| May 17, 2010 | NSE | 20,000 | 82.90 | 16,58,084.00 |
| May 18, 2010 | BSE | 18,000 | 89.89 | 16,18,043.36 |
| May 18, 2010 | NSE | 1,00,000 | 94.34 | 94,33,788.07 |
| Total | | 1,40,000 | 91.97 | 1,28,76,324.83 |

29. The investigation into the trading activities of Rohit has revealed that he was not an active investor in the equity market. In the financial year 2010-11, he had not dealt in any scrip other than BoR. Similarly, in the financial year 2009-10, he had only sold shares of five companies for a total value of around Rs. 1 crore and he had not traded in the equity market during the financial years 2011-12, 2012-13 and 2013-14. The investigation has also brought out the fact that he has never traded in the scrip of BoR since 2005-06 and suddenly on May 17 & 18, 2010, he purchased shares of BoR worth more than Rs. 1 crore in value, which was more than the aggregate value of

transaction done during the entire financial year 2009-10. He also sold off all the shares acquired in the next 8 to 10 days and made gains of Rs. 95,77,614.

30. The investigation has brought out that on May 17, 2010 from 12:30 PM onwards the discussions started between noticee 2 / Sanjay, along with other promoters on the side of BoR, and ICICI Bank regarding the “Binding Implementation Agreement”, which finally got executed on May 18, 2010 at approximately 4:30 AM. As mentioned earlier, Sanjay was part of the series of meetings held with respect to the merger and therefore he was having knowledge about the execution of the “Binding Implementation Agreement”. The Noticee 4/ Ms. Jyotika, is the wife of Sanjay and is deemed to be an ‘insider’ and is therefore deemed to have knowledge of the UPSI. The purchase of 22,000 shares of BoR was made by Rohit at 3:29 PM on May 17, 2010 and for 1,18,000 shares between 9:45 to 10:12 AM on 18th May, 2010, i.e. before the official dissemination was made to the Exchanges at 5:12 PM on 18th May, 2010. It is difficult to find documentary evidence establishing the transmission of the specific information between close relatives such as a sister and a brother, at the relevant time. However, the evidence available clearly shows that Rohit purchased shares of BoR specifically and only during a time when the agreement for merger of BoR with ICICI Bank was on the verge of being finalized and thereafter sold after the concrete step of promoter’s binding agreement was signed and informed to the public.

31. The very fact that Rohit traded just before the information becoming public cannot be considered as a coincidence. Rather, it is a clear indication that he traded on the basis of UPSI. Also, the additional fact that he did not otherwise trade in the equities market during the relevant period viz. March 2010 to March 2011, further corroborates the allegation that Rohit traded on

the basis of availability of UPSI to him. This pattern of trading during 17th and 18th of May 2010 is not in lines with his normal trading behaviors which is clearly a marked aberration. The news of merger was disseminated to the exchange at 5:12:24 PM on May 18, 2010 and the purchase by Rohit Gupta was at 3:26:09 PM on NSE and 3:29:36 PM on BSE on 17th May, 2010 and between 9.45 to 10.12 AM on 18th May, 2010. Now as far as appreciation of circumstantial evidence is concerned in the context of quasi-judicial proceedings, under the ambit of SEBI Act, 1992, what is relevant is the strength of the preponderances of evidences i.e. whether the probabilities of commission out-weigh that of non-commission or not.

32. To further examine the role played by other noticees in the alleged insider trading done in the scrip of BoR , it is imperative to examine the source of funds which were utilised by Rohit to purchase the shares of BoR. The SCN has alleged that the noticee 5 / Advik Textiles financed Rohit to the tune of Rs. 1.16 crore to enable him to purchase shares of BoR on May 17 and 18, 2010. The amount of Rs. 1.16 crore was transferred by Advik Textiles to Rohit on May 18 and May 19, 2010. During the course of investigation, both Rohit and Advik Textiles had submitted an Agreement for Sale for the purchase of four Shops on May 1, 2010 which was later on terminated. Both Rohit and Advik Textiles submitted to the Investigating officer that the funds were transferred to Rohit by Advik Textiles in pursuance of the aforesaid sale of agreement.

33. I note that the SEBI Order dated November 22, 2017 records that when SEBI during its investigation in 2013, started questioning the fund movement, Rohit filed a Civil Suit (S.C No. 3122 in 2014) before the City Civil Court, Bombay for declaration that the Defendants had no right whatsoever in respect of the properties, more particularly the four shops situated in the Mall known as Dreams Mall. It was further prayed that the Court may pass a permanent order of injunction restraining the Defendants or any person or

persons claiming through defendants claiming any rights under the agreement, in any manner. Eventually, on February 17, 2015, the declaration suit got disposed off on consent terms between the parties as evidenced by the court order, produced by the parties. During the course of proceedings before the WTM SEBI, it was submitted by the noticees that Rohit filed the suit after refund of the money to Advik as Advik was demanding interest on the money given to him, as advance. It is noted that though the termination of agreement happened in 2010, the declaration suit was filed as late as in 2014. Rohit also failed to show or produce the demand notice from Advik for interest on the amount given as advance. Therefore, the execution of the agreement for sale, filing of the Civil Suit and the disposal on consent terms are all attempts to show that there was some other transaction for which the fund transfer happened. The civil suit was also filed as a last attempt to conceal the true facts and circumstances. This leaves no doubt that all the noticees acted together in a well-planned manner for the alleged violation. The final disposal of the suit on consent terms also brings out the understanding or collusion between the parties in this regard. Therefore, in view of the lack of proper explanation by Advik and Rohit and their failure to produce documentary evidence to support their submissions, the transfer of ₹ 1,16,43,240 by Advik to Rohit Gupta on May 18 & 19, 2010 cannot be considered as advance for purchase of property.

- 34.** It is observed that on May 1, 2010, Advik Textile purportedly entered into an Agreement for sale with Rohit Gupta to sell 4 Shops worth Rs.1.74 crore. However, there were no witness to the aforesaid agreement for Sale. Further, Advik Textile, as a purchaser, agreed on the very day of signing of the Agreement itself, that a sum of Rs. 1,16,43,240 would be paid as advance in May 2010, which is 2/3 of the total consideration for sale. This has been done by Advik Textile, even before checking the suitability of the shops for its business and just after transferring funds, within 15-16 days of the advance

payment, Advik Textile found the property not suitable for its business and terminated the contract and received back the money.

35. Moreover, I note that the Agreement for sale is not between unrelated parties. Rohit is connected to the Tayal Family through his sister viz, Jyotika and the Tayals were at various points in time the owners of Advik Textile. It is further seen that the SEBI Order dated November 22, 2017 in this matter also records that after SEBI initiated its investigation in the matter of purported insider trading by Rohit utilising funding received from Advik Textile, Rohit filed a Civil Suit (S.C No. 3122 in 2014) before the City Civil Court, Bombay for a declaration that the Defendants had no right whatsoever in respect of the properties, more particularly the four shops situated in the Mall known as Dreams Mall. It was further prayed that the Court may pass a permanent order of injunction restraining the Defendants or any person or persons claiming through defendants claiming any rights under the agreement, in any manner. Eventually, on February 17, 2015, the declaration suit got disposed off on consent terms between the parties as recorded in the order of SEBI.

36. In this regard, it is noted from the order mentioned above that though the termination of agreement happened in 2010, the declaration suit was filed as late as in 2014. Therefore, in view of the discussion above regarding the agreement signed between Advik and Rohit and the suit filed by Rohit, I conclude that the execution of the Agreement for sale, filing of the Civil Suit and the disposal on consent terms are all attempts to mislead SEBI investigation into believing that fund transfer from Advik Textile to Rohit was genuinely for purchase of properties and had nothing to do with the Insider trading done by Rohit. The civil suit was filed as a last attempt to conceal the true facts and circumstances. This clearly establishes the fact that Rohit and Advik Textile were acting in coordination with each other. The final disposal

of the suit on consent terms also brings out the understanding or collusion between the aforesaid noticees.

37. As regards the issue whether Advik Textile is also connected to the Tayals to have had an access to the UPSI or not, it is observed from the investigation that Advik Textile was incorporated as a private limited company on November 01, 2006 having its registered office at "*Krishna House, Raghuvanshi Mill compound, Senapati Bapat Marg, Lower Parel, Mumbai 400013*". Later it changed its address to (C/o) "*Elementto Lifestyles Private Limited, Raghuvanshi Mansion, 11, Senapati Bapat Marg, Lower Parel (W), Mumbai 400013*". This address is the same address as that of the Corporate Office of BoR during the relevant point in time. Further, Rohit has been the Managing Director in Elementto Lifestyles Private Limited since May 2005 which is the company whose address is the same as that of Advik Textile as mentioned above.

38. Further, the details of shareholders of Advik Textile as obtained from MCA website, since incorporation till September 2012 is tabulated below:

| Sr. | Name of the shareholders | % of shareholding | Period | No of months |
|-----|--|-------------------|-------------------------------|--------------|
| 1 | Kulwinder / noticee no. 6 Mr. Satish Ramit Aggarwal | 50% 50% | From 01/11/2006 to 29/09/2007 | 5 |
| 2 | Data not available on MCA website for the period 30/9/2007 to 28/9/2008 | | | |
| 3 | Navin / noticee 3 (appointed as director on 02/06/2008) Jyotika / noticee 4 | 50% 50% | From 29/09/2008 to 02/03/2010 | 17 |

| | | | | |
|---|--|----------------|-------------------------------|----|
| 4 | Azam Shaikh / noticee 7 Kulwinder / noticee no. 6 | 50% 50% | From 02/03/2010 to 10/09/2011 | 18 |
| 5 | Navin / noticee 3 Sanjay /noticee 2 | 50% 50% | From 10/09/2011 to 05/10/2012 | 13 |

39. From the above table, it is noted that noticee 3 / Navin and noticee 4/ Jyotika owned the company till March 2010, just two months prior to the alleged insider trading episode by Rohit. It is noted from the account opening form of Advik Textiles with respect to current A/c no. 032305001613 of ICICI Bank, that Navin was one of the two authorized signatories to operate the bank account of Advik Textiles since the date of account opening viz. July 2008 and there was no change in the same till December 18, 2015, despite several changes in the directorship and shareholding of Advik Textiles. It is observed that the said ICICI Bank account was frequently used by Advik Textiles for several high value transactions. Therefore, considering the fact that the authorized signatory powers of such an active account continued to remain with noticee 3 / Navin even after Navin and Jyotika ceased to be shareholders of the company in March 2010, it is clear that Advik Textiles was connected to the Tayals through Navin, even at the time of providing funds to the tune of Rs.1.16 crore to Rohit for the purpose of insider trading. The other account signatory of Advik Textiles was one Mr. Vinod who was also appointed by the Tayals in July 2008 during their ownership of Advik Textile, i.e. prior to the transfer of entire shareholding of Advik Textiles to noticee 6 / Kulwinder & noticee 7 / Azam Sheikh.

40. I note that after the alleged fund transfer to Rohit for the purpose of insider trading, the noticee 6 / Kulwinder & noticee 7 / Azam Sheikh transferred the shareholding of Advik Textiles back to the noticee 3 / Navin & noticee 4 /

Jyotika on September 10, 2011. In my view, there is no economic / business rationale for such frequent swapping of shareholding among the noticees, back and forth, within such a short period of time, which again establishes the fact that Advik Textiles was always under control of the Tayals.

- 41.** It is observed that investigation in the matter has revealed that noticee 6 / Kulwinder & noticee 7 / Azam Sheikh were closely associated with the Tayals since they had been acting as directors in various companies connected /related to the Tayals. Kulwinder has been observed to be a director of K-Lifestyle & Industries Limited, a listed company promoted by the Tayals since September 10, 2004. During the relevant period, Kulwinder and/or Azam were directors in three other companies in which the Tayals were also directors during the same period, as shown below:

| Name of the Company/ and its Directors | Date of Original Appointment | Date of cessation |
|--|-------------------------------------|--------------------------|
| Gamin Traders Pvt Ltd | | |
| noticee 3 / Navin | 3-Oct-06 | 1-Oct-10 |
| noticee 7 / Azam Shaikh | 20-Feb-10 | * |
| noticee 6 / Kulwinder | 4-Mar-06 | 8-Jun-15 |
| Hotline Textiles And Infrastructure Pvt Ltd | | |
| noticee 3 / Navin | 10-Jan-07 | 3-Jan-14 |
| Keshav Navin Tayal | 3-Jan-14 | * |
| noticee 7 / Azam Shaikh | 20-Feb-10 | * |
| noticee 6 / Kulwinder | 9-Nov-06 | 8-Jun-15 |
| K-Lifestyle & Industries Limited | | |
| noticee 3 / Navin | 24-Feb-01 | 27-Feb-14 |
| noticee 6 / Kulwinder | 10-Sep-04 | 26-Mar-15 |
| * Part of the board – as on October 12, 2015 | | |

- 42.** In addition to the above, there are 14 other companies in which Kulwinder and/ or Azam were directors concurrently with the Tayals. Further, it is also

noted that Kulwinder was associated with 3 companies (Hotline Textile and Infrastructure Pvt. Ltd., Jaybharat Textiles and Real Estate Ltd., and K-Lifestyle and Industries Ltd) and Azam was associated with Hotline Textile and Infrastructure Pvt. Ltd as a director.

43. Therefore, I am of the view that when all the factors such as;

- i) the common address shared by Advik Textile and Rohit as evidenced from MCA website;
- ii) frequent changes in the shareholding pattern of Advik Textile and the noticees;
- iii) Navin Tayal's continuation as the authorized signatory of the ICICI Bank account of Advik Textile and the other account signatory also being a person appointed by Tayals during their ownership of Advik;
- iv) the transfer of funds to Rohit at the time of purchase of shares of BoR by Advik;
- v) abrupt purchase of huge quantity of shares of BoR by Rohit just before the signing of the Binding agreement;
- vi) sale of all the shares of BoR by Rohit within 8 to 10 days from the date of acquisition;
- vii) subsequent transfer of funds back to Advik Textiles by Rohit;
- viii) filing of a frivolous suit after initiation of investigation and then arriving at a compromise between Advik Textiles and Rohit are considered together, there is sufficient circumstantial evidence to establish the charge that Advik Textiles and noticees Nos. 2,3 & 4 viz. the Tayals are all connected and it was on the basis of such connection that Rohit and Advik Textiles had access to the UPSI. Further, the connections between the Tayals and Advik along with the other circumstances mentioned above strongly indicate that the funding by Advik Textiles to Rohit was on the basis of the inside information

so as to enable Rohit to purchase the shares of BoR before the UPSI got officially published with a view to subsequently offload the shares and derive huge profit, as they were all certain about the prospect of profit making in the deal.

44. Therefore, when I consider the overwhelming factual circumstances mentioned in paragraph above, I am convinced that Rohit's purchase of 1,40,000 shares of BoR on May 17 and 18, 2010 were on the basis of his access to UPSI and therefore he is also an insider as set out in Regulation 2 (e)(ii) of the Insider Trading Regulations which stipulates that an "insider" means any person who has received or has had access to unpublished price sensitive information. The circumstances clearly indicate that Rohit had purchased the shares of BoR during the UPSI period having had access to the UPSI, and then sold the shares immediately after the UPSI became public, and therefore the charge of insider trading in respect of Rohit is established. Further, the same factors also indicate that Rohit was funded by Advik Textiles/Tayals for indulging in insider trading in connivance with the other noticees.

45. With regard to the issue of pre-ponderance of circumstantial evidence, I would like to refer to the order of Hon'ble Supreme Court of India in SEBI v Kishore Ajmera; Civil Appeal No. 2818 of 2018 (dated February 23, 2016) wherein it was observed with respect to market manipulations that:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the

charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...”

- 46.** In view of the above facts, I find that noticee 1 / Rohit has committed insider trading in the scrip of BoR, as alleged in the SCN, and thereby violated Section 12A (d) and (e) of the SEBI Act, 1992 and Regulation 3(i), 3(ii) & 4 of the PIT Regulations, 1992.
- 47.** Further, I also conclude that noticee 1 / Rohit was able to commit insider trading in the scrip of BoR because of the support he received from the Tayals viz. noticee 2 / Sanjay, noticee 3 / Navin and noticee 4 / Jyotika. It is alleged in the SCN that the Noticees connived with each another by sharing the UPSI and providing funds for the purpose of doing insider trading in the scrip of BoR on the basis of UPSI of the impending amalgamation of BoR with ICICI Bank and the said acts of the aforesaid seven noticees were in furtherance of the common intention of indulging in the scheme of insider trading. Thus, I conclude that noticee no. 1 / Rohit dealt in the scrip of BoR while in the possession of and on the basis of UPSI in connivance with noticee no. 2 / Sanjay , noticee no. 3 / Navin and noticee no. 4 / Jyotika. Rohit was able to indulge in the insider trading in the shares of BoR also because of the funds it received through noticee no. 5 / Advik, an entity controlled by Sanjay, Navin and Jyotika. The directors of Advik at the relevant point in time were noticee no. 6 / Kulwinder and noticee no. 7 / Azam Sheikh who were also close associates of other noticees. It is reiterated that despite the changes in the directorship and shareholding of Advik Textiles, the affairs of Advik Textiles were effectively controlled by Sanjay, Jyotika and Navin.
- 48.** Knowledge of unpublished price sensitive information in the hands of a few persons who are connected with the company puts them in an advantageous position over the ordinary shareholders and the general public. Such

information can be used to manipulate and operate as a deceptive device to make illegal gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on a level playing field with other shareholders and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act provides for prohibiting insider trading and the Board has put in place the Insider Trading Regulations to achieve such object. These regulations prohibit insiders from taking advantage of information asymmetry in order to protect ordinary shareholders and preserve market integrity.

49. Thus, I conclude that the noticee 1 / Rohit, noticee 2/ Sanjay, noticee 3 / Jyotika, noticee 4/ Navin, noticee 6 / Kulwinder and Azam have contravened the provisions of section 12A (d) and (e) of the SEBI Act, 1992 read with Regulations 3 (i) and (ii) and 4 of the PIT Regulations, 1992 and noticee 5 / Advik Textiles has contravened the provisions of section 12A (d) and (e) of the SEBI Act, 1992 read with Regulations 3 (i)&(ii), 3A and 4 of the PIT Regulations 1992. Further, the proceedings against noticee 2 / Sanjay stand abated in view of the observations made in Paragraphs 9 to 11.

50. I also observe that the SCN has alleged a violation of PFUTP Regulations against all the noticees. However, the facts brought out in the investigation do not support the allegation of fraudulent tradings as contemplated in the PFUTP Regulations. Therefore, I conclude that the noticees have not violated the provisions of the PFUTP Regulations.

C. Does the violation by the noticees, attract monetary penalty under sections 15HA and 15G of the SEBI Act? If so, what would be the monetary penalty that can be imposed on the noticees after taking into consideration the factors mentioned in section 15 J of the SEBI Act?

51. Therefore, the noticees (except noticee 2/ Sanjay) are liable for monetary penalty under section 15G of the SEBI Act. I also conclude on the basis of observations made in the SCN and Investigation Report that the trading by Rohit has resulted in an unlawful gain of Rs. 95,77,614.

52. The provision of section 15G of the SEBI Act are mentioned below:

SEBI Act

Penalty for insider trading.

15G.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 twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher

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

Factors to be taken into account by the adjudicating officer.

15J. *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.*

54. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that noticee 1 / Mr. Rohit Premkumar Gupta made a profit of Rs. 95,77,614/- by indulging in insider trading in the scrip of BoR. I am of the view that the abovementioned act of indulging in insider trading done by the noticees are serious in nature. I have taken note of role played by each of the noticees and the extent of involvement of each of the noticees that resulted in Mr. Rohit Premkumar Gupta making a profit of Rs. 95,77,614/-. I also note that vide order dated November 22, 2017, SEBI has directed disgorgement of Rs. 95,77,614/- from the noticees. Further, while determining the penalty to be imposed on the noticees, I have also considered the fact that SEBI has already been debarred the noticees for a period of five years from accessing the securities market and further prohibited the Noticees from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner.

ORDER

55. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a joint penalty of Rs. 3,00,00,000/- (Rupees Three Crores) on the noticees 1, 3, 4, 5 and 6 under Section 15G of the SEBI Act for their violation of section 12A (d) and (e) of the SEBI Act and Regulations 3(i), 3(ii), 3A (violation of Regulation 3A is only

applicable to Advik Textile) & 4 of the PIT Regulations, 1992 r/w Regulation 12 of the PIT Regulations, 2015. The aforementioned penalty of Rs. 3,00,00,000/- (Rupees Three Crores) is to be paid jointly and severally by all the noticees except noticee 2 / Sanjay Tayal.

- 56.** I am of the view that the said penalty is commensurate with the lapse/omission on the part of the noticees. The noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of the penalty, the noticees may contact the support at portalhelp@sebi.gov.in.
- 57.** In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
- 58.** In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the noticees and also to the Securities and Exchange Board of India.

Date: May 29, 2020
Place: Mumbai

Dr. ANITHA ANOOP
ADJUDICATING OFFICER