

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. BM/AO-140/2013]**

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

**In respect of  
Mr. Ashish P Patel  
(PAN. No. ACTPP0045R)  
In the matter of Radhe Developers (India) Ltd**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the trading in the scrip of Radhe Developers (India) Ltd (herein after referred to as the ‘**Company/Radhe**’) from March 26, 2008 to May 07, 2008 (hereinafter referred to as the ‘**period of investigation**’). The Company was incorporated on February 03, 1986 and was in the business of construction and estate development activities. The Company diversified into bio-technological activities and to implement the same acquired 100% stake of Patel Agro Firm Pvt. Ltd.
2. The Company was listed at Bombay Stock Exchange Ltd. (hereinafter referred to as ‘**BSE**’) and Ahmedabad Stock Exchange (hereinafter referred to as ‘**ASE**’) during the investigation period, however investigation has observed that there has been no trading activity at ASE since 2004. During the investigation period, the scrip of the Company was traded in the ‘B’ segment at BSE. During the period from March 26, 2008 to May 07, 2008 it was observed that the price of the scrip opened at ₹.47.25 on March 27, 2008

touched a high of ₹.165.35 on May 7, 2008 and closed at ₹. 157.70 on May 7, 2008.

3. The company made the following corporate announcement during the investigation period.

Copy of the announcement received by BSE and ASE on:	Announcement.	Price movement in the scrip of Radhe.
May 02, 2008	The unaudited quarterly financial results of the company for the period up to March 31st 2008 were taken on record by the board of directors of the company at its meeting held on April 30th 2008.	<ul style="list-style-type: none"> <li>➤ On April 30, 2008 the scrip closed at ₹.136.10. (No trading on May 01 – being a holiday).</li> <li>➤ On May 02, 2008, the scrip opened at ₹.142.90. Hitting the applicable upper circuit limit of 5%. On that day the price remained constant at that rate.</li> </ul>

4. Investigation observed Mr. Ashish P Patel (hereinafter referred to as the '**Noticee**'), Managing Director and Promoter of the Company bought shares before the corporate announcement and sold the same soon after the corporate announcement was made. Investigation observed that the Noticee started purchasing the shares of the Company from April 03, 2008 onwards and bought shares even on the day of the BoD meeting and immediately sold the shares after the announcement. It was alleged that the Noticee was well conversed with the financial developments of the Company and that the outcome of the quarter ended March 31, 2008 were well within the Noticee's knowledge. Hence, it was alleged that the Noticee traded in the shares while in possession of unpublished price sensitive information thereby violated Regulation 3 (i) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulation**').

5. Investigation further observed that the 'Model Code of Conduct for Prevention of Insider Trading for Listed Companies' (hereinafter referred to as the "**Model Code of Conduct**") states that the trading window should be closed during the time the information is unpublished. The code of conduct framed by the company Radhe observed that the trading window would be closed only for four hours prior to the happening of the BoDs meeting. Investigation alleged that the model code of conduct of the company allows the directors/officers/designated employees to trade in the shares of the company even on the day of the BoDs meeting as happened in the instant case. Hence, investigation alleged that the model code of conduct of the company is faulty and framed in a manner to allow the directors/officers/designated employees of the company to trade in the shares during the time the price sensitive information is unpublished.
6. Investigation further observed from the Code of Conduct of the company Radhe, that "directors/ officers/ designated employees were required to seek prior approval only if the cumulative dealings in any financial year exceeds 5,00,000 shares/securities". Investigation observed that the equity base of the Company was 1,01,79,900 shares and the threshold limit set by the Company is around 5% of the Company's equity base. Investigation alleged that the company set the threshold limit for pre-clearance of trade unreasonably high, further the company has prescribed the limit as cumulative instead of transaction wise limit as required under the regulation set by SEBI in this regard. It was alleged that the threshold limit criteria set by the Company is in total contradiction to the one set out in the regulation.
7. Investigation observed that the Noticee was appointed as the Compliance Officer for the Company and was responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of designated employees and their dependants' trades monitoring of trades and the implementation of the code of conduct. It was alleged that the Noticee was responsible for setting forth

the model code of conduct in absolute incongruity with the one prescribed under the PIT Regulation which were not in terms of the spirit of the Regulations. Hence, in view of the above, it is alleged that the Noticee violated regulations 12 (1) & (3) of the PIT Regulations, 1992.

8. Consequently, the above violation of Regulation 3 (i) and 12 (1) & (3) of the PIT Regulations, 1992 make the Noticee liable for monetary penalty under sections 15 G (i) and 15 HB of the SEBI Act.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

9. I was appointed as the Adjudicating Officer, vide order dated March 31, 2010 read with February 09, 2011 under Section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15 G (i) and 15 HB of the SEBI Act for the alleged violation committed by the Noticee.

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

10. Show Cause Notice No. EAD-6/BM/RSL/8485/2011 dated March 15, 2011 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under section 15 G (i) and 15 HB of the SEBI Act for the alleged violations specified in the SCN.
11. The Noticee vide letter dated March 18, 2011 sought two weeks time to make the submissions to the SCN dated March 15, 2011. The Noticee vide letter dated June 01, 2011 expressed his desire to file for consent proceeding.
12. The Noticee vide application dated June 22, 2011 availed the consent proceeding. Hence, the adjudication proceeding was kept in abeyance till further communication received. The High Power Advisory Committee (HPAC) in its meeting dated December 21, 2011 rejected the consent term

proposed by the Noticee and the same was communicated to the Noticee vide letter dated February 22, 2012. Accordingly, the adjudication proceeding commenced from the stage it was kept in abeyance.

13. The Noticee was subsequently granted an opportunity of personal hearing on April 16, 2012 at SEBI –Western Regional Office, Ahmedabad vide hearing notice dated April 02, 2012. The Noticee vide letter dated April 09, 2012 requested to be provided with the inspection report, complete copy of the trade and order log for the period between January 01, 2008 to March 31, 2009 and copies of statements made by persons who have been called upon by SEBI.
14. Vide letter dated April 18, 2012 the Noticee was informed that the information relevant to the Noticee in the investigation report and the basis on which the charges were framed were already provided in the SCN. The trade and order log of the Noticee and the copies of the information and documents received from BSE was provided to the Noticee. With regard to the copies of the statements, since no reference of any statement of persons was made in the SCN and no charges were framed based on any statements, hence the Noticee was not provided with the same.
15. Vide letter dated May 07, 2012 the Noticee sought to avail an opportunity to inspect the documents with a request to hold the same anytime after June 20, 2012. The Noticee vide letter dated May 07, 2012 was informed that only the copy of documents provided to the Noticee, the original of the same shall be open for inspection.
16. Vide letter dated May 26, 2012 the Noticee furnished a list of documents sought by him for inspection and vide letter dated June 12, 2012 the Noticee was granted an opportunity to inspect the documents on June 22, 2012 at 11:20 am at SEBI, Mumbai. The Noticee requested to reschedule the date for inspection of documents, hence, the same was rescheduled to August 03, 2012 at SEBI, Mumbai. The Noticee failed to appear for the same.

17. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, an opportunity of personal hearing was granted to the Noticee on October 29, 2012 vide hearing notice dated September 01, 2012 at SEBI- WRO, Ahmedabad. The Noticee vide letter dated October 18, 2012 sought adjournment of the personal hearing and requested the same to be held on 2<sup>nd</sup> – 5<sup>th</sup> November, 2012 or else after November 25, 2012.
18. Accordingly, another hearing notice dated November 01, 2012 was issued to the Noticee for a hearing to be held on November 29, 2012 at SEBI- Head Office, Mumbai. The Noticee was also granted a final opportunity to inspect the documents after the personal hearing. It was further informed to the Noticee that the copy of documents which have been provided to the Noticee, the same shall be open for inspection. The Noticee vide letter dated November 24, 2012 confirmed its attendance for the personal hearing and also agreed to avail the opportunity of inspection of documents. Mr. Anish Kharidia, Authorized Representatives (hereinafter referred to as the 'AR') appeared on behalf of the Noticee. During the personal hearing, the Noticee sought to make written submissions to the SCN dated March 15, 2011 latest by December 21, 2012. The Noticee was clearly informed during the hearing that no further extension of time for the submission of the reply shall be granted.
19. The AR of the Noticee vide email dated December 17, 2012 sought one more week time to furnish the written submission of the Noticee. Accordingly, the Noticee was given a final extension of one week to make the necessary submission by December 28, 2012 on behalf of the Noticee.
20. The Noticee vide submission dated December 28, 2012 made his final submission to the SCN dated March 15, 2011 the relevant portion of the submission of the Noticee is as given below:
- a) *The Noticee submitted that there is nothing on record to show and establish that the trades during the investigation period were motivated by 'unpublished price sensitive information' which was in the possession of the Noticee.*

- b) *As a Managing Director of the Company, the Noticee is not expected to be aware of knowledge of daily profit or loss occurring in the Profit and Loss account of the company and the balance sheet of the company.*
- c) *The details of the names of the person of the Accounts department who were involved in the preparation and finalization of the accounts for the year 2007-08 was duly furnished by the company in the course of the investigation, wherein, the Noticee's name or any kind of role has not evidenced.*
- d) *The financial statement of the company for the year 2007-08 was not certified by the Noticee and the Noticee was not a member of the Audit Committee.*
- e) *The alleged purchases of shares during the investigation period was motivated for the sole object of consolidation of holding and not otherwise much less based on 'unpublished price sensitive information'.*
- f) *Noticee's act of purchasing the shares of the Company is consistent prior to and subsequent to 30.04.2008 till December 2008. it becomes evident that the act of purchase of shares since April 03, 2008 was neither motivated by nor based while on possession of the outcome contained in corporate announcement made on 30.04.2008.*
- g) *With regards to the selling of 6,300 shares on 6.05.2008 and 7.05.2008 is concerned, the same were sold by his broker on its own and unilaterally for not timely meeting with settlement obligation and therefore the same cannot be attributed to the Noticee. Therefore no profit has been made by the Noticee to attract the provisions of PIT Regulation.*
- h) *The moment the said information of sale of shares by the broker Anugrah came to his knowledge, the Noticee immediately purchased 6,876 shares through other broker on 07.05.2008 i.e. in much excess of 6,300 shares.*
- i) *The Noticee has further stated that the calculation of ill-gotten gains placed on record is in isolation of his simultaneous purchase of 6,876 shares and infact loss has been caused to the Noticee as it can be seen that the price of the scrip of Radhe was ₹. 35/- in the month of December and the average purchased price in the month of April 2008 was ₹. 93/-; therefore the price in December was much lower than the price in April.*

j) *It is evident to show that no purchase below the price of ₹. 35/- has been made nor sale of shares above the price of ₹. 93/- has been made by the Noticee. The shares purchased during the period April to December, 2008 were still lying in the demat account till December 2008. Therefore, in fact of shares purchased at the highest price lying in the demat account and no sale of corresponding shares thereafter, the question of resultant profit does not arise at all and on the contrary it resulted into loss on account of high cost of purchase.*

21. During the adjudication proceedings, the Noticee requested to be provided with the investigation report and all the copies of documents relied and collected by the investigating authority during the investigation period. As given in the previous paragraphs, the Noticee was informed that the relevant portion of the investigation report and relevant documents in respect of the Noticees on the basis on which the charges have been framed were already provided and further the Noticee has also availed the opportunity to inspect the documents on November 29, 2012. At this juncture it becomes necessary to quote the judgment of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'), in the case of *Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India* (Appeal No. 20 of 2012) dated 30.03.2012, The Hon'ble SAT observed that "The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count". In view of the above, I find that the principle of natural justice was met with.



## **CONSIDERATION OF ISSUES AND FINDINGS:**

22. I have carefully examined the SCN, the reply of the Noticee and the documents available on record. The allegations against the Noticee are as follows:

- a) Noticee being a Managing Director and Promoter of Radhe is a 'connected person' as defined under Regulation 2(c) (i) of the SEBI PIT Regulations and an 'insider' as defined under Regulation 2(e) of PIT Regulations and had access to the unpublished price sensitive information.
- b) The Noticee purchased shares from April 03, 2008 onwards and bought shares even on the day of the BoD meeting and immediately sold the shares after the corporate announcement pertaining to unaudited quarterly financial results of Radhe. The Noticee thereby traded while in possession of unpublished price sensitive information and thereby contravened the provisions of Regulation 3(i) PIT Regulations.

23. In view of the above, it was alleged that the Noticee violated the provisions of regulations 3 (i) of the PIT Regulations, 1992.

24. The SCN also contained allegations with respect to violations of Regulations 12 (1) & (3) of the PIT Regulations, 1992. The allegations and the contentions thereof by the Noticee are being dealt in a separate order.

25. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 2(c), 2(e), 3(i), of the PIT Regulations, 1992 which reads as under:

### ***Definitions.***

2. *In these regulations, unless the context otherwise requires :—*

(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*

*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*

- (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 who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or (ii) who has received or has had access to such unpublished price sensitive information;*

**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) .....]*

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

**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.*

**(2) .....**

**(3)** All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

26. The issues that arise for consideration in the present case are:
- i. Whether there was in existence 'unpublished price sensitive information'?
  - ii. Whether Noticee is a 'connected person' as defined under Regulation 2(c) (i) of the PIT Regulations and an 'insider' as defined under Regulation 2(e) of PIT Regulations and had access to the unpublished price sensitive information?
  - iii. Whether the Noticee traded while in possession of unpublished price sensitive information?
  - iv. Whether Noticee has violated Regulations 3 (i), of the PIT Regulations, 1992?
  - v. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 G (i) of the SEBI Act.?
  - vi. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?
27. I now proceed with the alleged violations of PIT Regulations, 1992.
- i. Radhe made a corporate announcement regarding the annual results of the company for the year ended March 2008 on April 30, 2008. As per the unaudited financial results of the Company for the quarter ended March 31, 2008, the total income increased to ₹.35.27 million from ₹.4.5 million for the quarter ended December 31, 2007. The net profit increased to ₹.17.74 million from ₹.0.26 million for the quarter ended December 31, 2007. The unaudited result for the year ended March 31, 2008, showed an increase in the total income to ₹.50.74 million from ₹.22.47 million for the year ended March 31, 2007, while the net profit increased from ₹.3.16 million to ₹.18.38 million.
  - ii. The company Radhe made the following corporate announcement during the investigation period:

<b>Copy of the announcement received by BSE and ASE on:</b>	<b>Announcement.</b>	<b>Price movement in the scrip of Radhe.</b>
May 02, 2008	The unaudited quarterly financial results of the company for the period up to March 31st 2008 were taken on record by the board of directors of the company at its meeting held on April 30th 2008.	<p>➤ On April 30, 2008 the scrip closed at ₹.136.10. (No trading on May 01 – being a holiday).</p> <p>➤ On May 02, 2008, the scrip opened at ₹.142.90. Hitting the applicable upper circuit limit of 5%. On that day the price remained constant at that rate.</p>

- iii. It was observed that the intimation for the BoD meeting was sent to BSE by the Company on April 10, 2008 and the notice of the BoD meeting to the directors were sent on April 23, 2008.
- iv. I note that once the information of unaudited quarterly financial results were published May 2, 2008 the price of the shares of Radhe which closed at ₹.136.10 on April 30, 2008 opened at ₹.142.10 on May 2, 2008 on BSE and increased to ₹. 157.70 on May 7, 2008. Thus the information was price sensitive.
- v. The information about the financial results became public only on May 02, 2008. While it is evident and undisputed that the information of the financial results was indeed price sensitive, it remained unpublished upto May 02, 2008.
- vi. Now as to the date when the UPSI (unpublished price sensitive information) came into existence there is no information in the show cause notice nor submitted by the Noticee as to the date on which the UPSI came into existence.

- vii. But it can be reasonably expected that the unaudited financial statements of the company would be in some shape of presentation to its Board by April 23, 2008 when the agenda was sent to the directors for the impending meeting scheduled on April 30, 2008; if not April 10, 2008 when the intimation of the agenda was provided to the Exchanges about the impending BoD.
- viii. Given the above, it can be determined that the unaudited financial results would have been available on April 23, 2008 and thus the date of the existence of the price sensitive information. Thus the period of the UPSI is April 23, 2008, i.e. the date of intimation of the agenda BoD to May 02, 2008 the date of dissemination to Exchange.
- ix. I would now proceed with the issue whether Noticee was in possession or was privy to this un-published price sensitive information. Investigations observed that the Noticee was the Managing Director, Promoter and also the Compliance Officer of the company. Noticee in his reply has claimed that as a Managing Director of the Company, the Noticee is not expected to be aware of knowledge of daily profit or loss occurring in the Profit and Loss account of the company and the balance sheet of the company. It is observed that Noticee was the Managing Director of the company and was therefore in charge of the day today management of the company. The Noticee being in the helm of the affairs of the company was reasonably expected to be privy to the price sensitive information of the company, and thus had access to the price sensitive information of the company. Hence the submission of the Noticee is not accepted.
- x. In view of the Noticee having access to the unpublished price sensitive information, he can be determined to be an insider in terms of Regulation 2 (e) of PIT Regulations, 1992.

- xi. Investigation observed that the Noticee was a connected person as per Regulation 2c (i) of PIT. It is observed that the Noticee is the Managing Director of the company and hence fall under the definition of 'connected person' as per the aforesaid Regulation.
- xii. Records show that Noticee bought shares of Radhe before the corporate announcement i.e May 02, 2008 and sold the same soon after the corporate announcement was made. The details of the trading of the Noticee during from the investigation period i.e, from March 26, 2008 to May 07, 2008 are as given below:

TABLE - A

<b>Date:</b>	<b>Background details:</b>	<b>Bought :</b>	<b>Sold:</b>
03/04/08	Before the announcement of the unaudited quarterly financial results for the period upto March 31st 2008 sent to BSE and ASE	10000	----
04/04/08		20000	----
25/04/08		2061	-----
29/04/08		23000	-----
30/04/08	Date of the BoD meeting.	824	-----
02/05/08	Date of intimation to Exchanges	Nil	
06/05/08	After the announcement	-----	4800
7/05/08		6876	1500
	<b>Grand Total</b>	<b>62,761</b>	<b>6,300</b>

- xiii. In the above table the trading of the Noticee prior to the existence of the UPSI is being excluded, thus the trading after April 23, 2008 of buying 25,885 shares is determined to be bought after being in possession of the UPSI. It is to be noted herein that while the Noticee contended that it was consolidating its holding, Investigations observed that during the entire period from September 1, 2007 to May 2008 i.e. a period covering nine months prior to the announcement, the Noticee did not buy any shares until its purchases only in the first week of April 2008. Thus the contention of the Noticee that it was consolidating its holding looks weak given that his purchases started only prior to announcement.
- xiv. Investigation further observed that the Model Code of Conduct states that the window shall be closed during the time the information is un-

published. In the above case the notice for the meeting was sent on April 23, 2008 for the Board of Directors meeting to be held on April 30, 2008 at 2 p.m. The Noticee was observed to have bought 824 shares till 3.24 p.m on April 30, 2008. The company submitted that the Meeting was postponed to 8 p.m,. on April 30, 2008 and as the closure of trading window commenced from 4 p.m, i.e. four hours prior to the BoD meeting as per the company's Model Code of conduct, trading done by the Noticee was prior to the closure of the trading window. From the documents submitted by the Noticees I find the following sequence of events:

- Intimation regarding holding of Board meeting for taking up interalia the unaudited financial results for March 31, 2008 was sent to BSE and ASE on April 10, 2008.
  - Notice and agenda for Board meeting was sent to the Board of Directors on April 23, 2008 for transacting the meeting at 2 p.m.
  - Letter dated April 29, 2008 from Praful Patel, Chairman of the company requesting to hold the meeting at 8 p.m. instead of 2 p.m.
  - Letter to BSE dated April 10, 2008 intimating closure of trading window on 30.4.2008 from 4 p.m. to 1.05.2008 upto 4.p.m
  - Minutes of the Board meeting for April 30, 2008 showing time for holding of the meeting at 2 p.m.
  - Letter dated June 1, 2008 from BSE advising the company to inform the period for which the trading window was closed for the meeting held on April 30, 2008.
  - Letter dated June 11, 2008 from the company to the exchange submitting that the trading window was closed four hours prior to the meeting as per the policy of the company.
- xv. From the sequence of event, I observe that the company had scheduled the meeting at 2 p.m. on April 30, 2008. Minutes of the meeting also clearly show that the meeting was held at 2 p.m. Thus given the policy of the company that the trading window will be closed four hours before the meeting, the trading window should have been closed at 10 am.
- xvi. However, as things progressed to the date of the meeting, it is a stand taken by the Noticees that meeting was rescheduled and the same was

held at 8 p.m. and not 2 p.m. as originally scheduled. However the copy of minutes before me mention the time as 2 p.m. The company further produced before me a letter dated April 10, 2008 written to the BSE- which does not bear the acknowledgement stamp of the BSE stating that the trading window shall be closed from 2 p.m.

- xvii. I ponder on two aspects, one what prompted the company to inform the exchange about the closure of the trading window when there is no requirement in law on the part of the company for it to do so. Second issue is more profound; how would the company predict on April 10, 2008 that the meeting would be postponed from its stipulated time of 2 p.m. to 8 p.m. vide a request of its chairman which was itself made on April 29, 2008 that it took the undue effort to inform the exchange about the closure of its trading window. This, I find even more intriguing given that the company did not take as much effort to inform the exchange about the rescheduling of the meeting from 2 p.m. to 8p.m. which it is statutorily required to do, but it took extra special efforts to intimate the exchange about closure of trading window.
- xviii. This to my mind brings to the fore that probably what the company is trying to project before me about the meeting taking place at 8 p.m. is not all true. The documentation of April 10, 2008 – letter to BSE for closure of trading window is all an afterthought to cover up the activities of the trading that indeed took place within the trading window closure. The credible records before me lead to the conclusion that the meeting indeed took place at 2 p.m. and that the Noticee, the director who was also the compliance officer under the PIT regulations, 1992 also sold during the closed trading window; he violated the very law that he was supposed to implement.
- xix. Noticee being the Managing Director, Promoter of the Company was an insider as per the PIT Regulation, was well conversed with the financial



development of the Company and the outcome of the quarter ended March 31, 2008. Noticee purchased shares prior to the announcement of the positive financial result. With regards to the selling of 6,300 shares on 6.05.2008 and 7.05.2008 is concerned, the Noticee claimed that the same were sold by his broker on its own and unilaterally for not timely meeting with settlement obligation and therefore the same cannot be attributed to him. The Noticee further stated that the moment the said information of sale of shares by the broker Anugrah came to his knowledge, he immediately purchased 6,876 shares through other broker on 07.05.2008 i.e. in much excess of 6,300 shares. In support of his claim that the broker sold shares on his own and without Noticee's consent no evidence has been provided by the Noticee during investigation or during the present proceedings. Further I find it to be a little more of a coincidence that the shares were sold immediately after the declaration of the result when the Noticee has not sold any shares of the Company in the entire investigation period. Hence, I find that the Noticee, an insider of the Company had the access to unpublished price sensitive information and traded in the scrip of Radhe.

- xx. As stated above, the Noticee purchased 25,885 shares of the Company after April 23, 2008 and sold 6300 shares after the announcement. The Noticee thus made a profit of ₹. 1,91,898/-  $[(₹.128.90 - ₹.159.36)*6300]$  on the purchases and sale of 6,300 shares and notional gain of ₹.2,74,190/-  $[(Closing\ Price\ of\ the\ day\ immediately\ after\ announcement - Avg.\ Price\ of\ Acquisition)*(25,885 - 6,300\ shares)]$  that is  $(₹.142.9 - 128.90)*(25,885 - 6300)$ . Thus, the Noticee made a gain of ₹.4,66,088/-  $[Actual\ Gain + Notional\ gain\ i.e.\ (₹.1,91,898.00 + ₹.2,74,190.00)]$ .
28. Considering the facts and circumstances as given above, I hold that the allegation of violation of Regulation 3 (i) of the PIT Regulations 1992 against the Noticee stands established.

29. 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."*

30. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under sections 15 G(i) of the SEBI Act, 1992 which reads as under :

15 G. 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;*

(ii) *.....*

(iii) *.....*

*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.*

31. While determining the quantum of monetary penalty under sections 15 G(i), I have considered 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."*

32. With regard to the above factors to be considered while determining the penalty, it may be observed from para 27(xx), the Noticee made a gain of ₹.4,66,088/- through the aforementioned trades. Insider trading is a systemic way of hoodwinking the common investors by the misuse of unpublished price sensitive information by the privileged few. It has the potential of eroding the faith of the investors in the securities market and undermines its credibility. It is of utmost importance that a sense of fair play be maintained in the market and a deterrent be felt by those that violate the provisions and that they should be adequately punished. Given this consideration, I am imposing a penalty of 3 times of the amount of profit made out of such trading.

### **ORDER**

33. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹.13,98,264/- (Rupees Thirteen Lakh Ninety Eight Thousand Two Hundred and Sixty Four only) under section 15 G (i) of the SEBI Act on the Noticee which will be commensurate with the violations committed by him.
34. 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 Mr. Jeevan Sonparote, General Manager, Investigation Department – 3, Securities and Exchange Board of India, Plot no. C4-A, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 500051.
35. 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: **March 28, 2013**  
Place: **Mumbai**

**BARNALI MUKHERJEE**  
**ADJUDICATING OFFICER**