BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 45/2012]

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. Sanjeev Arora

(Pan No. AAYPA9776B)

In the matter of Ritesh Properties and Industries Ltd

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in respect of trading in the shares of **Ritesh Properties and Industries Ltd** (hereinafter referred to as **"RPIL/Company"**) for the period from July 14, 2006 to May 20, 2008 (hereinafter referred to as the **Investigation Period**). During the investigation period the scrip of RPIL was listed at Bombay Stock Exchange Ltd (hereinafter referred to as '**BSE**'), Calcutta Stock Exchange (hereinafter referred to as '**CSE**'), Delhi Stock Exchange (hereinafter referred to as '**DSE**') and Ludhiana Stock Exchange (hereinafter referred to as '**LSE**'). As observed from the Annual Report of RPIL for 2006-2007, the company had already passed a resolution in the Annual General Meeting (AGM) of 2004 for delisting of shares from DSE, LSE and CSE.

2. It was observed that immediately before the investigation period, i.e, on July 13, 2006 the scrip of RPIL at BSE was at ₹. 3.52, the share price of RPIL at BSE rose from ₹.16.50 to ₹.86.25 from November 02, 2006 to January 02, 2007, from December 24, 2007 to January 03, 2008 the price of the scrip rose from ₹. 82 to ₹.157, and for the period from January 16, 2008 to January 21, 2008 the price of the scrip of RPIL rose from ₹.134.55 to ₹.141.15.

3. Investigation alleged that the Managing Director and Promoter of RPIL, Mr. Sanjeev Arora (hereinafter referred to as the '**Noticee'**) disseminated misleading information of RPIL and issued disclosures and tried to suppress negative information and made aggressive announcements on positive development with respect to the company. The alleged aggressive disclosure/announcement made by the Noticee is as given below:

a) BSE disclosure dated August 16, 2006 and January 08, 2007 regarding joint venture agreement with Ansal Township: Investigation observed that the Board of RPIL approved the joint collaboration agreement on August 12, 2006 with Ansal Townships and Projects Ltd (hereinafter referred to as '**Ansal**') and informed the exchange on August 16, 2006. It was alleged that a nominal disclosure was made through BSE on August 16, 2006. The relevant and significant details e.g., the projected net worth and profits from the same would be around ₹. 800 crores and ₹. 150 crores respectively (as compared to the then net profit of ₹.7.18 Cr for the company in FY2006-07) was suppressed even though the information was available with the company and were subsequently disclosed, without any specific trigger to do so, on January 8, 2007, after the prices were fixed for preferential allotment to certain connected entities.

b) It was further alleged that at the time of signing the joint venture agreement with Ansal i.e., on July 14, 2006, real estate business was not included in the main objectives of RPIL. Further, the name of the Company at that time was also only Ritesh Industries Ltd.

c) BSE disclosure on January 08, 2007 regarding permission from the Punjab Government: Investigation observed that on January 8, 2007, RPIL further disclosed on BSE that it had procured all the requisite permissions from the Punjab Government and the initial work had of the project had started. Further, a formal launch of project was scheduled to take place within a month and it would take 2-3 years for completion. It is alleged that the permissions from the Punjab Government were actually received only in September 2009 and no major construction work had progressed till that date.

d) Announcement dated September 06, 2007 regarding Beekman Helix: It was observed that the Company gave wrong and aggressive inputs to Economic Times which published a news article on September 12, 2007 titled, "US Fund to pick majority in Ritesh Properties" indicating that Beekman Helix India Consulting Pvt. Ltd. (BHICPL) would be picking up a majority stake in all the FDI compliant real estate projects of RPIL." During the investigation BHICPL clarified that neither BHICPL nor its parent company Beekman Helix India Partners LLC, US had signed any agreement with RPIL to acquire majority stake in all the FDI compliant real estate projects as was reported in the news article. Further, Bennett & Coleman (publishers of Economic Times) also clarified that the news report was based on information provided by the Managing Director of RPIL.

e) Announcement dated February 02, 2008 regarding preferential allotment of NDTV: RPIL made an announcement on their Board's decision to issue 1,92,308 equity shares of FV 10/- each at a premium of ₹.120/- to NDTV Ltd (New Delhi Television Ltd). It was alleged that, subsequently, on April 01, 2008, when NDTV informed RPIL about its withdrawal of

subscription to the proposed preferential equity allotment, RPIL did not disclose/update the same.

f) Announcement dated May 21, 2008 regarding Famella Fashion: Investigation further observed that on May 21, 2008, RPIL informed BSE regarding the press announcement made on May 17, 2008, in relation to their business in retailing women's apparel, RPIL had plans to open 500 outlets of Femella Fashions in the next 5 years and 50 stores by 2007-08. In another public statement made on May 31, 2008, RPIL announced that it had aggressive retail expansion plans. It was observed that price of the scrip rose steadily from ₹. 121.40 to ₹. 132.60 between the two announcements. It was also observed that as on date of the investigation only 4-6 stores were actually operating.

4. Investigation observed that immediately before the investigation period, on July 13, 2006 the scrip was at ₹.3.52 and the day's trading volume was 5,440 shares. On May 21, 2008 i.e., just after the investigation period, the closing price of the scrip was at ₹. 123.50 with a trading volume of 71,702 shares for the day. During the period of the above alleged announcements the price went up from ₹. 73.40 (last closing as on January 5, 2007) to ₹. 132.60 on May 31, 2008.

5. It was further alleged that the Noticee influenced the price of the scrip of RPIL through personal and wash trades during the investigation period which is as given below:

a) From December 24, 2007 to January 03, 2008, i.e., the period immediately before the pricing period for the allotment of preferential equity to NDTV Ltd (New Delhi Television Ltd), it was observed that the price of the scrip rose from ₹.82 to ₹.157. Analysis was made of the trades resulting into establishing new high prices. It was alleged that the Noticee appeared as buyer on 53 instances out of 217 instances. Further it was alleged that, during this period the Noticee bought 2,58,470 shares (18.75%) out of total traded volume of 13,78,112 shares and contributed ₹.10.5 to the cumulative price rise of ₹.75.00 with respect to the new high prices. It was alleged that by aggressively trading in the scrip, the Noticee was trying to set a higher price for allotment of shares to NDTV which if materialized would have set a benchmark to the investors in the market.

b) From January 16, 2008 to January 21, 2008, i.e, within the pricing period for preferential allotment to NDTV, it was alleged that the Noticee was using two broking accounts and acted as buyer and seller for 1,68,575 shares. These trades accounted for 45.67% of the total traded volume (3,69,131 shares) during the said period. It was alleged that markets were falling sharply between January 16, 2008 and January 21, 2008 but it was the pricing period for the preferential allotment to NDTV and the price of RPIL rose from ₹.134.55 to ₹.141.15 and closed at ₹.134.1 on January 21, 2008. Further, it was alleged that 1,01,540 (60.23%) of these wash trades were such that the difference between buy and sell orders was less than a minute. It was alleged that the trades by the Noticee had the effect of maintaining the price in a sharply falling market. Thus investigation alleged that, this was part of the plan to allot the shares to NDTV at a relatively higher price and

thereby sending a strong signal to the market and infuse confidence among the general investors.

6. In view of the above, the Noticee therefore violated Regulation 3(a), 3(b), 3(c), 3(d), 4 (1), 4(2)(a), 4(2)(b), 4(2)(e), 4(2)(f), 4(2)(g) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as **'PFUTP Regulations'**), and Section 12 A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

7. I was appointed as the Adjudicating Officer, vide order dated March 08, 2010, 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 HA of the SEBI Act for the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Show Cause Notice No. EAD/EAD-6/BM/10975/2010 dated July 06, 2010 (hereinafter referred to as **"SCN"**) was issued to the Noticee to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under Section 15 HA of the SEBI Act for the alleged violations specified in the said SCN.

9. It was alleged in the SCN that the Noticee, Managing Director and Promoter of RPIL disseminated misleading information of RPIL and further influenced the price of the scrip of RPIL through wash trades.

10. The Noticee vide letter dated July 23, 2010 sought 8 weeks time to reply to the SCN. The Noticee vide email dated September 20, 2012 requested to be provided with the SEBI investigation report. Vide letter dated September 22, 2010 the Noticee was advised to make submission to the SCN by October 06, 2010 as the relevant portion of the investigation report on the basis of which allegations were made were already provided in the SCN.

11. The Noticee vide letter dated October 05, 2010 made submissions to the SCN stating interalia the following:

- *It is submitted that the Noticee had made the necessary disclosures as required under the law and under the Listing Agreement. It is pertinent to mention that the necessary details in relation to the mega project undertaken by the Company in collaboration with APIL were disclosed to the BSE vide letter dated August 12, 2006 immediately after the conclusion of the board meeting held on the even date.. Further, the accusation that the disclosure given was nominal is incorrect. It is humbly submitted that the information which was material and important for the shareholders and other stakeholders of the Company was duly divulged in the disclosure. It is also submitted that the Company*

could not have been expected to divulge information about a project which was at a nascent stage.

- *Further, the 8671 shares bought between July 14 and August 16 of 2006 were miniscule and hardly show any intent to benefit from special knowledge. It would also hardly be the sign of a manipulator to buy such small quantity of shares. The noticee has consistently bought shares within the limits prescribed by law (within the creeping acquisition) and has made regular filings under the insider trading laws and takeover regulations, again hardly the signs of a manipulator. Even other shares bought and sold during the investigation period were duly disclosed to the Company and necessary disclosures required under law were intimated to the stock exchanges. The 8617 shares were in fact so small a quantity that even SEBI's own insider trading regulations do not get triggered for disclosure under Regulation 13.*

- *The Noticee submits that the Company had been exchanging information on the projections with APIL through the period of August 06 to Jan 07. Projections are hardly easy to quantify, particularly given the fact that the Company was not a real estate company, but was only tying up as a junior partner with APIL because of surplus factory land available with it. As a non expert, the Company could hardly be able to disclose something which was not easy to define or disclose. The Company did disclose further facts after several exchange of correspondence and meetings with APIL and thereafter duly intimated the Bombay Stock Exchange. The said information was couriered on January 06, 2007 along with the business plan. The Noticee submits that at the time of entering into the said agreement, the Company had tentatively discussed the projected revenues and profitability, however, any formal or final valuations had not been made or documented or arrived at amongst the parties for the purpose of disclosures and intimation to the authorities including the BSE. SEBI's own ICDR Regulations (Regulation 60) for public offers in fact prohibit projections in public offers: "shall not contain projections, estimates, conjectures, etc." because they tend to be highly subjective.*

- *Further, in so far as allegation pertaining to making disclosure about projections without any specific trigger after the preferential allotment is concerned, the said allegation is denied and the Noticee submits that the disclosure on January 8, 2007, has no relation with the preferential allotment to Auster Securities Limited erstwhile known as Vishal Concasts Limited and Godwin Securities Private Limited erstwhile known as Shri Atam Vallabh Poly Plastic Industries Private Limited, which was approved in the Extra Ordinary General Meeting ("**EGM**") held on December 23, 2006. The said preferential allotment was duly approved by the shareholders in the EGM held on December 23, 2006, thereafter, as per the directions of the BSE, the disclosures in relation to the said issue were ratified by the shareholders in the EGM held on February 28, 2007 and finally, pursuant the letter dated March13, 2007, the said allotment was duly made to the aforesaid entities on March 28, 2007. These issuances were made to non-promoters and therefore there is no reason to withhold positive projections which could have got the company higher valuations from the two companies. Therefore, the aforesaid allegations are without any basis and contradict the available facts.*

- *In this regard it is submitted that at the time of signing of the joint venture agreement with APIL, real estate business was not one of the main objects of the Company as the said joint venture agreement was subject to the approval of the board of directors of the Company, the Joint Venture was finally approved by the board of directors on August 12, 2006. On the same date, the resolution was also passed for amendment of the objects clause of the MOA of the Company. The stock exchanges were informed about the development and thereafter, necessary procedural formalities were complied with. The new objects were adopted on October 11, 2006 when the results of the postal ballot were announced.*

- *The law clearly permits entering into executory agreements which are beyond the objects clause, particularly given that steps were taken immediately to modify the clause by taking it to the shareholders meeting. It is important to note that though the agreement with APIL was binding, it was an executory contract which could be enforced only on receipt of further approvals by the state government. The Noticee was prompted by the need to join hands with one of the best real estate developers and to seize the opportunity which presented itself at that point of time. The Noticee acted in interest of the Company and squarely within the law so as to utilize the limited assets of the Company to turnaround its fate and to safeguard the interest of the shareholders and other stakeholders of the Company.*

- *The aforementioned allegation is baseless and untenable as the Noticee was not required to give any disclosures since the said transactions are not covered by Regulation 13 (3) and Regulation 13(4) of the PIT Regulations, 1992. The Noticee had undertaken the following transactions:*

S No.	***Date***	***Sale and purchase***	***Quantity***	***Amount***	***Percentage of the shareholding transacted***
1	*27.07.06*	*Purchase*	*1390*	*8,098.78*	*0.02%*
2	*31.07.06*	*Purchase*	*1109*	*7,437.42*	*0.02%*
3	*01.08.06*	*Purchase*	*6170*	*43,411.37*	*0.09%*
		Total		***58,947.57***	
4	*27.07.06*	*Sale*	*360*	*2,852.50*	*0.005%*

- *The Noticee during the said time period was holding about 11.31 percent of the total shareholding of the Company. During the aforementioned transactions, the change in shareholding had not exceeded the 2% limit and therefore the disclosure under the Regulation 13(3) of PIT Regulations was not required.*

- *Regulation 13(4) of PIT Regulations was also not applicable as the change in the shareholding of the Noticee due to the aforesaid transactions had not exceeded 1% of the total shareholding.*

- *In case the Noticee had any malafide intention of gaining any mileage out of any price sensitive information, it would have traded in greater volumes and booked the profits from such transaction. The Noticee bought trivial numbers and has not sold them even several years later.*

- *The aforesaid allegations are incorrect. The Company had made the aforesaid disclosure on the basis of an in- principle approval dated May 12, 2006 received from the Empowered Committee, Punjab Government as well as entered into a joint venture agreement with APIL. It was only thereafter that the Company and APIL initiated the construction related work on the land and had also prepared requisite drawings for the project.*

- *Thereafter the Government of Punjab declared the Company's project as a Mega Project and Empowered Committee sanctioned the same on March 31, 2007. Though the Company had entered into the final agreement with Punjab Government in the month of September 2009, it is submitted that the allegation that the Company did not have requisite approval is incorrect in view of the aforementioned facts. As explained in the introductory paragraphs the delay occurred because of a change of government and a relook at the entire scheme by the new government. Therefore, the announcements made prior to September 2009 were based on concrete permissions in writing by the state government not some artificial or imaginary developments.*

- *BHICPL vide its letter dated August 27, 2007 had shown its inclination to have a strategic partnership with the Company and its subsidiaries. BHICPL also agreed to invest in real estate projects of the Company which would meet the criteria laid down by the Government of India, Government of Punjab and are FDI compliant. In the said letter BHICPL has stated that it would be willing to make the Company its preferred partner. Therefore to suggest that the Company had no understanding with BHICPL is incorrect. The Noticee had not at any point of time conveyed to ET Delhi that Company had entered into an agreement with BHICPL. The true and correct facts are that ET Delhi had sought confirmation from the Noticee about the announcement made to BSE in relation to BHICPL which was reflected on the portal of BSE on September 6, 2007 which the Noticee confirmed. Noticee had not even whispered about any agreement with BHICPL. In fact, any person would know that a story which directly contradicts the press release made to the BSE just a few hours previously cannot possibly be true. Other newspapers and even other publication of the same group had published correct information. Website of ET Gujarati, a publication belonging to the same publication house disclosed correct information but ET Delhi carried incorrect information which was contrary to the public press release of the company. It is apparent there had been mis-understanding by ET Delhi for which Noticee cannot be held responsible or accountable for. It is respectfully submitted that BHICPL on receiving enquiry from SEBI got alarmed and later retracted from its assurances to the Company. The said act on part of SEBI to enquire directly from BHICPL has resulted in loss of business and reputation to the Company. SEBI ought to have enquired from the Company before making any roving*

enquiry about the Company from BHICPL, the said act of SEBI has caused immense loss of face and damaged the goodwill of the Company and Noticee in the market and the Noticee is finding it difficult to convince banks and foreign investors about the credentials of the Company.

- *The Company received the letter of withdrawal of subscription of the proposed preferential equity allotment on April 1, 2008 and thereafter contacted NDTV to reconsider its decision. However, when NDTV confirmed its decision to withdraw from the proposed preferential allotment, the Noticee instructed its staff to send the information to the BSE; however, in the letter send to BSE on April 5, 2008, the staff inadvertently failed to courier the same. The Noticee during the investigation came to know that the intimation to BSE about NDTV's withdrawal from preferential allotment had not been sent. The said non compliance had been completely inadvertent and not with intention to hold back and to conceal any information from the public and authorities.*

- *The Noticee humbly submits that after the receipt of the letter from NDTV confirming their intent to withdraw from the proposed preferential allotment, the Noticee had not sold any of the shares of RPIL held and owned by him during the said time period. The Noticee had bought the shares under the creeping acquisition permitted under the SEBI laws at the prevailing market prices and had given disclosures about the transactions undertaken which were duly posted on the website of BSE and all were privy to the said information. The Noticee had not booked any profits by selling any of the shares on receiving the information about NDTV withdrawal mentioned hereinabove. The Noticee has not made any benefit or personal gain from such information but on the other hand purchased shares at prices when the scrip of the Company was doing well in the market.*

- *The Noticee most humbly submits that although the Noticee is not required in law to intimate about the public announcements in relation to its wholly owned subsidiary, however, the Noticee as a measure of good corporate governance intimated BSE about the fact that its wholly owned subsidiary ("**WOS**") namely Femella Fashions had inaugurated a showroom in Pitampura, Delhi and that Femella Fashions had made an announcement that it had aggressive plans to open more such retail outlets, however to suggest that said information led to increase in the prices of the shares of the Company is a coincidence and cannot be construed as a mechanism to deliberately manipulate the prices of the shares of the Company.*

- *It is further submitted the allegation that the public announcements made were aggressive in nature is not correct and has no merits in it. The said announcements were made on the basis of certain projections. The business model of the WOS was similar to various other retail companies which have presence across India. In fact WOS was able to open 7 stores in a very short span of time. After May 2008, the WOS suffered major setback as the retail sector saw the worst recession in several decades due to the unprecedented financial crunch across the world. The fall of Lehman Brothers, the various banks hesitance to give financial assistance and the Parent Company's financial situation added to the misery of the said WOS as a result of which the WOS had to close down 3 of its showrooms. WOS is not the only company which faced difficulties, it is a matter of fact that several companies such as Spencer Retail Ltd, Aditya Birla Retail Ltd,*

Future Group, Reliance Retail Ltd, The Mobile Store, Vishal Retail, Kuotons, More, Priknit also faced similar difficulties and had to close down their stores.

- *It is natural for the company facing difficulties to turn conservative in approach and adopt mechanisms to avoid cost and expenses. It is humbly submitted that all companies are optimistic about their future; if they weren't, they would not be in business. Since business is about success and failure, neither of which is guaranteed, management of the Company cannot be blamed for having optimistic projections that they sincerely believe in, even though such projections do not materialize and they appear aggressive in hindsight. It is reiterated that the Company and Noticee had made sincere attempts for the growth and diversification of the Company and its WOS.*

- *The Noticee would like to bring it to your kind attention that since the markets have stabilized the WOS is now planning to open new stores in other cities of India and has entered into an understanding with upcoming malls in the said cities.*

- *The aforesaid allegations are incorrect and are denied. It is submitted that during the investigation period, the prices went up because the Company which was close to being declared sick, diversified into the real estate business and also the retail business which received a positive response. The investors felt that the Company had the potential and expertise to develop real estate and retail outlets. A number of reasons contributed to the rise in prices of the shares during the said period they being, the real estate project being backed by government approval and the tie up with APIL for real estate development, and the interest of foreign investors in the Company and its projects were the primary reasons for the increase in share prices. There was also substantial interest in mid-cap companies in the pre-crisis era and many domestic and international companies were seeking attractive companies, a fact which took the market bellwether index, particularly the mid-cap and small cap index to astronomical heights, from which it fell dramatically. Therefore, the said allegation is unfounded, the froth in the market was not a creation of the noticee but of the investors. To give just one example, the NDTV investment which was supposed to take place was not solicited by the company.*

- *As mentioned above, the Company has never practiced the policy of making selective announcements and both positive and negative information pertaining to the Company were duly disclosed to the stock exchanges. The Company never made any aggressive announcements about any positive development. The announcements that were made were all based on concrete information and projections. The Noticee has not deliberately or consciously made any statement to defraud its shareholders or given any information contrary to the facts. The Noticee is a law abiding citizen conscious of its responsibilities and duties especially in relation to the SEBI Act. In addition, the noticee almost consistently bought shares in the company including at the peak of the market and has held on to them despite the substantial fall in the market. The sign of a manipulator is of one who seeks to make quick money and more importantly of one who seeks to make any money. The Noticee has neither sold nor made any money from the investments made in the company. Further, it is hardly the sign of a manipulator to buy shares in his own name and remain above the radar of the regulator by making all necessary filings under the insider trading regulations for disclosure. The noticee's purchases (the material ones) were for all to see on the website of BSE and can still be seen.*

- *In para 6 of the notice it has been alleged that the Noticee had influenced the prices of the shares through personal and wash trading. The Noticee denies the allegations for the reasons given above.*

- *It has been alleged that Noticee due to transactions in the stock market as a buyer the noticee contributed to total traded volumes that led to cumulative price rise of Rs. 75 of the shares of the Company. It has been further alleged that the Noticee during the period from December 24, 2007 to January 03, 2008 had purchased 258470 shares of the Company which also led to setting up a new price for allotment of the shares to NDTV.*

- *It has been further alleged that from January 16, 2008 to January 21, 2008, the Noticee had bought the shares through Religare Securities Limited and sold through Almondz Capital Markets Private Limited. These trades accounted for 45.67% of the total traded volume and affected the pricing of shares for preferential allotment to NDTV. Further, it has been alleged that 101540 shares were bought and sold within less than a minute giving strong signal to the market and infused confidence amongst investors.*

- *With reference to the aforesaid allegations, it is submitted that the allegations are wrong for the following reasons:*

    (i) The acquisition of shares by promoters is permitted under the law subject to the conditions stipulated therein. During the period from December 24, 2007 to January 03, 2008, the Noticee had made certain purchases under the creeping acquisition as permitted by SEBI Act and takeover regulations and had given disclosures to that effect. The accusation that the said shares were bought to inflate the prices of the shares for the purpose of fixing a higher value for preferential allotment to NDTV is incorrect and denied. It is axiomatic that shares bought from the market and disclosed to the market would hardly be termed manipulation because NDTV and all investors were put to notice that the Noticee was buying shares. This is hardly a sign of a manipulator, who not only buys in his own name but makes a public announcement of the acquisition for all to take note of. The Noticee had not purchased the said shares with the intention to inflate the prices but to maintain and enhance his promoter shareholding levels in the Company. Further, the Noticee would not have benefited from the preferential allotment as the consideration for the same would have gone to the account of the Company and not to the coffers of the Noticee. Further, the price of the shares for preferential allotment was fixed at Rs. 130 and the said prices were arrived at as per the pricing guidelines provided in Chapter XIII of SEBI (DIP) Guidelines, 2000 and NDTV had agreed to the prices so determined. The Noticee would also like to state that NDTV had withdrawn its offer to subscribe to the shares and the said preferential allotment had not taken place. The Noticee would also like to draw your attention to the fact that the shares bought during the said period were not sold and considering the present price of the said shares, the Noticee continues to hold those shares with substantial book losses from the acquisition. From the combined reading of the aforementioned facts it is apparent that the Noticee

had not made any profits or gains then and has not made any gains at this point of time.

*(ii) The allegation that from January 16, 2008 to January 21, 2008, the Noticee had bought the shares through Religare Securities Limited **("Religare")** and sold through Almondz Capital Markets Private Limited **("Almondz")** which accounted for 45.67% of the total traded volume and affected the pricing of shares for preferential allotment to NDTV is also vehemently denied. The fact is that the shares were put to lien with Religare as collateral for a loan as the Noticee was in need of finances. As a security mechanism, Religare had directed the Noticee to transfer the said shares from Almondz to the account of the Noticee maintained with Religare and pursuant thereto the shares were transferred. The lien occurred through a freezing of Noticee's shares done by the depository in the routine fashion. There was no surreptious trade, rather the transfer of shares from one account to another of the Noticee was to enable Religare to mark an effective lien on shares and not to inflate the volume of the trading or to increase the price of the shares of the Company for preferential allotment purposes. The purchase and sale price were the same (with some rounding difference) and therefore there was no impact on the price of other buyers and sellers in the market. The said movement of shares from Noticee' one DP account to another is neither transfer nor acquisition of shares as envisaged in either the SEBI takeover code or the PIT Regulations to qualify for any disclosure to be given for the same and therefore no disclosures were made. Moreover, the allegation that the said trading was only to give strong signal to market and to infuse confidence amongst investors is not based on facts.*

12. 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 26, 2010 vide hearing notice dated October 07, 2010 at SEBI, Head Office, Mumbai.

13. Mr. Sandeep Parekh (hereinafter referred to as an '**Authorized Representative/AR'**) appeared on behalf of the Noticee and reiterated the submissions made in the Noticee's reply dated October 05, 2010. The Noticee sought to make further submission by October 29, 2010.

14. The Noticee vide letter dated October 28, 2010 made additional written submission. The summary of which is interalia the following:

- *The Company was unable to quantify its turnover and profits on the date of the signing of the collaboration agreement and came out with details of the plan after discussions and exchange of information with dominant partner of the venture. It is submitted with respect to the purchase of 8671 shares, that the purchase was of an immaterial quantity and was for a consideration of less that 30,000 and in fact quantity was so small that it did not even trigger disclosure under the insider trading regulations of SEBI. The same therefore could not be the quantity which could be seen as a means to manipulate the share price.*

- *With respect to the project delays the same was on account of change of state government and the JV begun construction work in 2006. The work was stalled due to long pause in govt policy.*
- *With respect to Beekman Helix, it is submitted that Beekman was serious about developing relationship with RPIL and the announcement was not an exaggeration of their interest. Regarding the mis-reporting by ET Delhi, the same was a mis-reporting based on the announcement made by RPIL to BSE and the correct announcement was carried out by ET, Gujarati, a sister publication.*
- *With respect to omission to report to the BSE, the withdrawal of intent of NDTV to invest in RPIL, it is submitted that the disclosure was given to an official of the Company, but through clerical error was not mailed.*
- *With respect to Familla Fashions, the plans of wholly owned subsidiary were bona fide and the intervening global crisis had an adverse impact on the growth projections of all retail companies large and small.*
- *Mr. Sanjeev Arora has pledged 12,66,102 shares of RPIL with Religare. Since Mr. Arora sought a loan on the collateral securities from Religare, they asked Mr. Arora to transfer the shares in his DP account with M/s Almondz Securities to his DP account with Religare. It is submitted that this transaction was fully above broad and was carried out in a manner prescribed by the depositaries, by freezing of the account of the depository account of the pledger. The transfer is permitted in law and did not trigger any disclosure norms.*

15. It was observed that SK Mittal & Co, a chartered accountant firm was appointed by SEBI to conduct special examination on the books of accounts of RPIL on March 08, 2010. Subsequent to the personal hearing and the submissions of the Noticee to the SCN, a copy of the report submitted by SK Mittal & Co was received by the Adjudicating Officer. On perusal of the report, the Noticee vide letter dated February 04, 2011 was advised to clarify on certain observations made by the chartered accountant firm with regard to the preferential allotment of RPIL on March 28, 2007 where the amounts for the allotment were received by RPIL much later. The Noticee vide letter dated March 08, 2010 was further required to submit details regarding the delayed disclosure of projected net worth and profits of the Ansal Township on January 06, 2007. The Noticee was also advised to submit the copies of correspondence and meetings with Ansal wherein it was decided that the net worth and profit of the project would be around ₹. 800 crore and ₹. 150 crore.

16. The Noticee vide email dated March 10, 2011 sought time to make its submission and vide letter dated March 09, 2011 the Noticee stated the following:
    - *RPIL had received the payments by way of cheques well in advance, however there was a slight delay in getting the cheques cleared and we got clear credit in account respectively on March 26, 2007, April 03, 2007 and April 6, 2007. Thus, amounts were credited both before and a little after the date of the allotment. There is no benefit which accrued to anyone or loss to the company because of the short delay in credit of the cheques.*
    - *At the time of entering into the collaboration agreement with Ansal, the Company had tentatively discussed the projected revenues and profitability, however, any formal or*

final valuations had not been made or documented or arrived amongst the parties for the purpose of disclosures and intimation to the authorities including the BSE.

17. Another opportunity of personal hearing was granted to the Noticee vide hearing notice dated March 11, 2011 and the Noticee was advised to appear for the same on March 28, 2011 at the SEBI, Northern Regional Office- New Delhi. The Noticee vide email dated March 11, 2011 requested for the hearing to be held in Mumbai.

18. Accordingly, the Noticee was granted an opportunity of personal hearing on May 23, 2011 vide hearing notice dated May 03, 2011.

19. Mr. Sandeep Parekh, AR appeared on behalf of the Noticee. During the personal hearing the Noticee was advised to submit the following documents - letter to BSE dated April 05, 2008 regarding withdrawal of NDTV from the preferential issue, retraction letter of Beekman Helix, copy of the board resolution with regard to Beekman Helix indicating strategic partnership with RPIL, documents showing how net profit regarding Ansal Township was decided and the meeting at which the same was decided and the documents showing if RPIL corrected the disclosure regarding the Famella Fashion.

20. The Noticee vide letter dated June 02, 2011 submitted only partial documents. Hence, vide letter dated June 13, 2011 the Noticee was advised to submit the following documents such as, the retraction letter of Beekman Helix, document showing that RPIL corrected the disclosure regarding Famella Fashion and documentary evidence regarding the meetings held with Mr. Deepak Sachdev (CEO of Ansal Township) with respect to the arrival of net worth and profit figures of ₹. 800 crores and ₹. 150 crores respectively.

21. The Noticee in letter dated June 22, 2011 stated that there is no formal letter of retraction from Beekman Helix. Further there are no documents available to show that RPIL updated the disclosure with regard to Famella Fashion. With regard to minutes of the meetings with the CEO of Ansal Township the Noticee stated that they have no documentary evidence in the form of minutes of the meetings, however the Noticee submitted an affidavit affirming various meetings with Mr. Deepak Sachdev, CEO of Ansal Township and various telephonic discussions on the projection as well as the specification of the project Ansal Township.

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) The Noticee disseminated misleading information of RPIL and tried to suppress negative information and made aggressive announcements on positive development with respect to the company.
    b) The Noticee influenced the price of the scrip of RPIL through personal and wash trades during the investigation period.

In view of the above it is alleged that the Noticee violated Regulation 3(a), 3(b), 3(c), 3(d), 4 (1), 4(2)(a), 4(2)(b), 4(2)(e), 4(2)(f), 4(2)(g) and 4(2)(r) of PFUTP Regulation and Section 12 A (a), (b) and (c) of the SEBI Act.

23. Now the issues that arise for consideration in the present case are :
    a) Whether the Noticee disseminated misleading information of RPIL and made aggressive announcements on positive development of the company?
    b) Whether the Noticee influenced the price of the scrip of RPIL through personal and wash trades during the investigation period.
    c) Whether the Noticee violated Regulation 3(a), 3(b), 3(c), 3(d), 4 (1), 4(2)(a), 4(2)(b), 4(2)(e), 4(2)(f), 4(2)(g) and 4(2)(r) of PFUTP Regulation and Section 12 A (a), (b) and (c) of the SEBI Act.
    d) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of the SEBI Act?
    e) 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?

24. Before moving forward, it will be appropriate to refer to the relevant provisions of the PFUTP Regulation and SEBI Act which reads as under:

PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(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 thereunder;

(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 thereunder.

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.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) …..
(d)…..
(e) any act or omission amounting to manipulation of the price of a security;
(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.
(r) planting false or misleading news which may induce sale or purchase of securities.

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITON OF SECURITIES OR CONTROL
Prohibition of manipulative and deceptive devices, insider trading an 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 recognised 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;

25. Upon careful perusal of the documents available on record and the written submission made by the Noticee, I find the following:-

26. **BSE disclosure dated August 16, 2006 and January 08, 2007 regarding the joint venture project of Ansal Township**: On August 16, 2006, the joint collaboration agreement was disclosed through BSE whereby, RPIL had signed a detailed agreement with Ansal to start a joint venture project in Ludhiana comprising of 60% industrial park and 40% residential area on the land belonging to RPIL.

27. Allegation: It was alleged that a nominal disclosure was made through BSE on August 16, 2006 and that the relevant and significant details e.g., the projected networth and profits from the same would be around ₹ 800 crores and ₹.150 crores respectively was suppressed even though the information was available with the company. It was further alleged that this suppressed information was subsequently disclosed, without any specific trigger to do so, on January 8, 2007, after the prices were fixed for preferential allotment to certain alleged connected entities.

28. Investigation further observed that subsequent to disclosure on January 08, 2007 about the Ansal project, the price of the scrip rose from ₹.73.40 (last closing as on January 5, 2007) to

a peak of ₹.113.65 on January 18, 2007. The Noticee, as the Managing Director of RPIL, allegedly bought 8,671 shares between July 14, 2006 (agreement signed) and August 16, 2006 (agreement disclosed to BSE).

29. Reply of the Noticee: The Noticee submitted that RPIL had been exchanging information on the projections with Ansal through the period of August 2006 and January 2007. Projections were not easy to quantify, particularly given the fact that the company was not a real estate company. RPIL disclosed further facts after several exchange of correspondences and meetings with Ansal and thereafter duly intimated to the BSE on January 06, 2007.

30. The Noticee further stated that at the time of entering into the Agreement with Ansal, RPIL had tentatively discussed the projected revenues and profitability, however, any final or formal valuations had not been made or documented or arrived at amongst the parties. The Noticee in its reply further denied that the disclosure on January 08, 2007 had any relation with the preferential allotment to Auster Securities and Godwin Securities Ltd which was approved in the EGM held on December 23, 2006.

31. The Noticee also stated that preferential allotment was duly approved by the shareholders in the EGM held on December 23, 2006, thereafter, as per the directions of BSE, the disclosures in relation to the said issue was ratified by the shareholders in the EGM held on February 28, 2007 and finally pursuant to the letter dated March 13, 2007, the said allotment was duly made to the aforesaid entities only on March 28, 2007. With regard to his buying of 8671 shares Noticee submitted that he did not have any malafide intention of gaining any mileage out of any price sensitive information, he would have traded in greater volumes and booked the profits from such transaction. The Noticee bought trivial numbers and did not sell for several years.

32. Findings: The Noticee in his reply has stated that at the time of entering into the agreement no formal valuations of profit or networth had been recorded RPIL had been exchanging information on the projections with Ansal through the period of August 2006 and January 2007. It was alleged that the relevant and significant details e.g., the projected networth and profits from the same would be around ₹ 800 crores and ₹.150 crores respectively was suppressed even though the information was available with the company. Thus, I understand that the crux of the issue here is to ascertain and conclude whether this crucial information was first and foremost available with the Noticee and thus being in possession was not disclosed to the general public at large and consequently that the disclosures as given by the Noticee were minimal in nature.

33. From the documents made available before me by the investigations, I do not find any material to show that the details of the projected networth and profit was indeed available with the company at the time of the alleged minimal disclosure was made in August 2006. Further, I find that there is credence in the submissions made by the Noticee that it was completely unprepared for providing the projections as it was its new business venture. Investigations have not provided for any evidence in support of the allegation that the

company had this information. Thus, given the above I am not inclined to hold the Noticee guilty of the above alleged charge of minimal disclosure and suppression of information.

34. It was further alleged that at the time of signing the joint venture agreement with Ansal i.e., on July 14, 2006, real estate business was not included in the main objects of RPIL. Further, the name of the Company at that time was also only Ritesh Industries Ltd and was changed to Ritesh Properties and Industries Limited in February 28, 2007. It was alleged that the name of the company was changed without having the required level of revenue from the property business.

35. Reply of the Noticee: The Noticee also submitted that at the time of signing of the joint venture agreement with Ansal, real estate business was not one of the main objects of the Company as the said joint venture agreement was subject to the approval of the board of directors of the Company, the Joint Venture was finally approved by the board of directors on August 12, 2006. On the same date, the resolution was also passed for amendment of the objects clause of the MOA of the Company. The stock exchanges were informed about the development and thereafter, necessary procedural formalities were complied with. The new objects were adopted on October 11, 2006 when the results of the postal ballot were announced.

36. Findings: It is alleged that at the time of signing the joint venture agreement with Ansal i.e., on July 14, 2006, real estate business was not included in the main objectives of RPIL. Further, the name of the Company at that time was also only Ritesh Industries Ltd. From the reply submitted by the Noticee, I observe that the Noticee entered into agreement on July 14, 2006 when the same was not included in the main objects of the company and was subject to the approval of the Board of Directors of the Company. I observe that change in the object clause to venture into real estate business was approved by the Board of Directors of the company on August 12, 2006 and subsequently was informed to the stock exchange BSE about change in the object clause. Further the shareholders also approved the change in the object clause in October 2006 and the amendment in the MOA was made. Noticee submitted that the agreement was executory in nature and no prejudice was caused to anybody. I find that though at the time of entering into agreement for venturing into real estate project it was not in the main object but subsequently the same was included as the main object in the MOA. Hence I find merit in the submission of the Noticee and hold that the allegation against the Noticee does not stand.

37. As regards buying of 8671 shares of RPIL by the Noticee between July 14, 2006 (agreement signed) and August 16, 2006 (agreement disclosed to the exchange) investigation has only made an observation and no specific allegation of manipulation or otherwise is being made out against the Noticee for the said transactions and thus, I am not examining this issue further.

38. **BSE discloser on January 08, 2007 regarding permission from the Punjab Government**: On January 8, 2007, RPIL disclosed that the Punjab Government had already approved the joint venture project in Ludhiana, for which an agreement was entered into with Ansal, as the Mega Project and all the requisite permissions from the Punjab Government had been obtained. The initial work on the project started and a formal launch of the project was scheduled to take place within a month and it would take 2-3 years for completion.

39. Allegation: It was alleged that the permissions from the Punjab Government were actually received only in September 2009 and no major construction work had progressed till that date.

40. Reply of the Noticee: The Noticee submitted that the Company had made the aforesaid disclosure on the basis of an in- principle approval received from the Empowered Committee, Punjab Government as well as on the joint venture agreement entered with Ansal. It was only thereafter that the Company and APIL initiated the construction related work on the land and had also prepared requisite drawings for the project. Thereafter the Government of Punjab declared the Company's project as a Mega Project and Empowered Committee sanctioned the same on March 31, 2007. It is submitted that the allegation that the Company did not have requisite approval is incorrect. The Noticee further stated that the delay occurred because of a change of government and a relook at the entire scheme by the new government.

41. Findings: I observe from the letter dated April 12, 2006 issued by Director of Industries and commerce, Punjab to the issue available before me that in-principle approval was given by the Empowered Committee to the company RPIL for setting up the project for which agreement was entered into with Ansal and the formal intent letter and the Agreement would be issued to the company after the outstanding dues were paid by the company to the satisfaction of the State Government. Further from the letter dated September 24, 2009 submitted by Ansal to the investigation, it is observed that the basic work on the land had started. The company RPIL entered into agreement with the Government of Punjab on September 10, 2009. Though the agreement was entered later the approval for the setting up the real estate project was received in April 2006. Hence, from the documents available before me I observe that the company made the announcement after receiving the in-principle from the Punjab Government and the initial work of construction also started when the announcement was made by the company RPIL. I therefore find merit in the submission of the Noticee. I therefore do not hold the Noticee guilty of the charge as alleged that permissions from the Punjab Government were actually received only in September 2009.

42. **Disclosure on September 06, 2007 regarding Beekman Helix India Consulting Pvt Ltd (BHICPL)**: On September 06, 2007, RPIL disclosed that, "Beekman Helix India Consulting Private Ltd, whose principals / associates have exposure in real estate of US$ 40 billion, has given in principle approval to bring in FDI for future real estate projects of the Company,

which are FDI Compliant. The Board has taken note of the same and Beekman Helix's consent to have Company as preferred partner".

43. Allegation: It was alleged that, alongside the Noticee gave wrong and aggressive inputs to Economic Times which published a news article on September 12, 2007 titled, "US Fund to pick majority in Ritesh Properties" indicating that Beekman Helix India Consulting Pvt. Ltd. (BHICPL) would be picking up a majority stake in all the FDI compliant real estate projects of RPIL.

44. Reply of the Noticee: The Noticee submitted that BHICPL vide its letter dated August 27, 2007 had shown its inclination to have a strategic partnership with the Company and its subsidiaries. BHICPL also agreed to invest in real estate projects of the Company which would meet the criteria laid down by the Government of India, Government of Punjab and are FDI compliant. In the said letter BHICPL stated that it would be willing to make the Company its preferred partner. The Noticee further submitted that he had not at any point of time conveyed to ET Delhi that Company had entered into an agreement with BHICPL. The true and correct facts are that ET Delhi had sought confirmation from the Noticee about the announcement made to BSE in relation to BHICPL which was reflected on the portal of BSE on September 6, 2007 which the Noticee confirmed. The Noticee observed that a website of ET Gujarati, a publication belonging to the same publication house disclosed correct information but ET Delhi carried incorrect information which was contrary to the public press release of the company. The Noticee submitted that there had been mis-understanding by ET Delhi for which Noticee cannot be held responsible or accountable for.

45. Findings: On perusal of the letter dated August 27, 2007 of BHICPL to RPIL, I find that Beekman Helix was on the preliminary stage of considering an investment. I observe from the website of ET Gujarati that the same information which was disclosed to the BSE regarding Beekman Helix's consent to have Company RPIL as preferred partner appeared in their website. Bennett & Coleman (publishers of Economic Times) vide letter dated October 21, 2009 clarified that the news report was published based on information provided by the MD of RPIL, Mr. Sanjeev Arora i.e the Noticee. I find that the same publication house of ET gave different information on the same subject. Given the fact that the information given to BSE also appeared in ET Gujarati, I am inclined to accept the submission of the Noticee that ET Delhi misinterpreted the information and disclosed incorrect information. The Noticee therefore cannot be held responsible for the incorrect disclosure made by ET Delhi. I am therefore inclined to give benefit of doubt to the Noticee and do not hold the Noticee guilty of the alleged charge as above.

46. **Announcement regarding NDTV preferential allotment**: On February 02, 2008, RPIL made an announcement on their Board's decision to issue 1,92,308 equity shares of FV 10/- each at a premium of ₹.120/- to NDTV Ltd (New Delhi Television Ltd). Subsequently, on April 01, 2008, NDTV informed RPIL about its withdrawal of subscription to the proposed preferential equity allotment.

47. Allegation: It was alleged that RPIL did not disclose the withdrawal of subscription by NDTV to the proposed preferential equity allotment.

48. Reply of the Noticee: The Noticee stated that RPIL received the letter of withdrawal of subscription of the proposed preferential equity allotment on April 1, 2008 and thereafter contacted NDTV to reconsider its decision. However, when NDTV confirmed its decision to withdraw from the proposed preferential allotment, the Noticee instructed its staff to send the information to the BSE; however, the staff inadvertently failed to courier the same. The Noticee during the investigation came to know that the intimation to BSE about NDTV's withdrawal from preferential allotment had not been sent. The said non compliance had been completely inadvertent and not with intention to hold back and to conceal any information from the public and authorities.

49. Findings: It is observed that after the announcement to issue shares to NDTV was made by RPIL promptly, the price of the scrip went up from ₹ .88.00 (opening price) on February 04, 2008 to the high of ₹ 97.95 on February 06, 2008. The general investing public would be expected to have some positive reaction with respect to the price of the shares of the company and that is evident from the price movement as given above. Thus, after the withdrawal by NDTV to subscribe to the shares of RPIL, the Company should have disclosed promptly to the exchange. The onus was on the Noticee to inform to the exchange immediately and by not disclosing the same they withheld vital information from the general public. The Noticee very promptly informed to the general public of their decision to issue shares to NDTV which is considered as price positive information but did not inform about the withdrawal by NDTV subsequently. The act of the RPIL and the Noticee clearly brings out their intention to play fraud on the gullible investors. The submissions given by the Noticee are therefore not acceptable and justifiable.

50. I observe that that the Noticee showed due promptness in ensuring that the positive development was put out in public domain, however when it came to putting out disclosure of the negative news this due promptness was found wanting and instead replaced by wanton display of indifference as to whether the negative news reached the public domain. This attitude permeates from the behavior of the Noticee when he states that he merely instructed his staff to courier the negative news, when it was required of him to promptly inform the exchange. Further I note that the Noticee did not take due care in ensuring that the due disclosure was made to BSE. The Noticee merely instructed its staff to courier the news to BSE, I am sure in case of any positive news, which might have been couriered, the Noticee would have ensured that the news indeed reached the exchange and also duly displayed by the exchange.

51. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee has a responsibility in ensuring the compliance of the disclosure norms. The correct disclosure is of importance from the point of view of the outside shareholders/other investors as the same would have prompted them to buy or sell

shares of the target company. The Noticee did not make the disclosure of the negative news to the exchange and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time. I therefore find the excuse given by the Noticee for non-disclosure non tenable.

52. Given the above there is no room for doubt in my mind that the Noticee intentionally did not disclose the negative news to the exchange.

53. **Announcement regarding Famella Fashion**: On May 21, 2008, RPIL informed BSE regarding the press announcement made on May 17, 2008, in relation to their business in retailing women's apparel. The announcement declared that RPIL had plans to open 500 outlets of Femella Fashions in the next 5 years and 50 stores by 2007-08. In another public statement made on May 31, 2008, RPIL announced that it had aggressive retail expansion plans.

54. Allegation: It was alleged that as on date of the investigation, only 4-6 stores were actually operating.

55. Reply of the Noticee: The Noticee submitted that although the Noticee is not required in law to intimate about the public announcements in relation to its wholly owned subsidiary, however, the Noticee as a measure of good corporate governance intimated BSE about the fact that its wholly owned subsidiary ("**WOS**") namely Femella Fashions had inaugurated a showroom in Pitampura, Delhi and that Femella Fashions had made an announcement that it had aggressive plans to open more such retail outlets, however to suggest that said information led to increase in the prices of the shares of the Company is a coincidence and cannot be construed as a mechanism to deliberately manipulate the prices of the shares of the Company.

56. Findings: Following the announcement, I find that the price of the scrip of RPIL rose steadily from ₹. 121.40 to ₹.132.60 between the two announcements on May 17, 2008 and May 31, 2008. During the personal hearing and also vide letter dated June 13, 2011 the Noticee was advised to submit documents/evidence showing whether RPIL corrected the disclosure with regard to Famella Fashion. The Noticee vide letter dated June 22, 2011 submitted that no documents are available to show that RPIL updated the disclosure with regard to Famella Fashion. It is further noted from the online website of Famella Fashion at www.famellafashions.com that only two stores were actually operating as of August 28 2012.

57. I observe that the Noticee has submitted that *'as a matter of law there is no duty to update, only a duty to correct a wrong statement and if a projection does not materialize that does not make the original statement incorrect'*. One cannot deny the tremendous impact such forward looking announcement can have on the investors, the same can be witnessed from

rise in price in the scrip of RPIL from ₹. 121.40 to ₹.132.60 between the two announcements on May 17, 2008 and May 31, 2008 which indicates that the announcement had a positive effect on the price of the scrip of RPIL.

58. First I would like to deal with the contention of the Noticee that it was not required by law to disclose this aspect when it was concerning the WOS. In this respect, I observe that consolidation of accounts requires companies to consolidate the accounts of its WOS along its own for presentation to its shareholders and the public at large. Given the perspective that the WOS was to expand its network of outlets, it would invariably have repercussions on the outlook for the company and thus in terms of the PIT regulations considering the price sensitiveness of the information, such information need to be made available to the public investors. There is no gain denying that this information is price sensitive, as the Noticee by his own admission has determined it to be price sensitive and had provided only part information and now I shall proceed to deal with the misleading information.

59. It is a fact as made out above that these positive announcements relating to WOS were merely positive sounding announcements and there appears to be a lot of gap between the actual announcement and the fact on ground. It was observed that only 4-6 stores were in operation at the time of the announcement, further the projections for the next year were pegged at 40-50 stores and in the next five years pegged at 500 stores. It is further noted from the online website of Famella Fashion at www.famellafashions.com that only two stores were actually operating as of August 2012.

60. When a company previously makes a public statement which it later discovers is not accurate, the onus is on the company to correct the error especially if the same has such an impact on the price of the scrip. The same was confronted to the Noticee to present its counter. During the personal hearing and also vide letter dated June 13, 2011 the Noticee was advised to submit documents/evidence showing whether RPIL corrected the disclosure with regard to Famella Fashion. The Noticee vide letter dated June 22, 2011 submitted that no documents are available to show that RPIL updated the disclosure with regard to Famella Fashion. The Noticee conveniently stated that they had not taken any steps to withdraw the positive announcement in an effort to present a correct and accurate picture to the investors. Here again, I observe that the Noticee has presented a disdainful attitude of not making public disclosure of negative announcement where as positive announcements have been made out tenaciously with abundant aggressiveness. I venture to comment that the good governance principle that the Noticee stated in his argument to make the positive announcement should have also been aptly in display even with the negative announcement, which is found wanting in this instance. Hence, the submission of the Noticee cannot be considered.

61. Hence, it can be therefore be concluded from the above that the company RPIL suppressed vital information with regard to NDTV and Famella Fashion and thus played fraud on the investors and mislead the gullible investors. Such fraudulent act of the company and the Noticee also led to the manipulation of the price of the scrip of the company. The Noticee

being the Promoter and Managing Director of the company is responsible for all the acts of omissions and commissions of the company. The Noticee by suppressing negative information from the public at large misled the investing public and constituted fraud on them. Hence, the Noticee violated the provision of Regulation 3(a), 3(b), 3(c), 3(d), 4(2)(e), 4(2)(f) and 4(2)(r) of PFUTP Regulations, 2003 and Section 12 A of SEBI Act, 1992.

62. I would now like to discuss the trades of the Noticee in the scrip of RPIL during the investigation period.

63. **Trades of the Noticee in the scrip of RPIL:** Investigation further observed that from **December 24, 2007 to January 03, 2008**, i.e., the period immediately before the pricing period for the allotment of preferential equity to NDTV Ltd, the price of the scrip rose from ₹. 82 to ₹.157. Analysis was made of the trades resulting into establishing new high prices. Investigation observed that the Noticee appeared as buyer on 53 instances out of 217 instances during the period from December 24, 2007 to January 03, 2008.

64. Allegation: It was alleged that the Noticee, during this period bought 2,58,470 shares (18.75%) out of total traded volume of 13,78,112 shares and contributed ₹.10.5 to the cumulative price rise of ₹.75.00 with respect to the new high prices established. By aggressively trading in the scrip, the Noticee was allegedly trying to set a higher price for allotment of shares to NDTV which if materialized would have set a benchmark to the investors in the market.

65. Reply of the Noticee: The Noticee stated that the acquisition of shares by promoters is permitted under the law subject to the conditions stipulated therein. During the period from December 24, 2007 to January 03, 2008, the Noticee had made certain purchases under the creeping acquisition as permitted by SEBI Act and takeover regulations and had given disclosures to that effect. The accusation that the said shares were bought to inflate the prices of the shares for the purpose of fixing a higher value for preferential allotment to NDTV is incorrect and denied. It is axiomatic that shares bought from the market and disclosed to the market would hardly be termed manipulation because NDTV and all investors were put to notice that the Noticee was buying shares. This is hardly a sign of a manipulator, who not only buys in his own name but makes a public announcement of the acquisition for all to take note of. The Noticee had not purchased the said shares with the intention to inflate the prices but to maintain and enhance his promoter shareholding levels in the Company. Further, the Noticee would not have benefited from the preferential allotment as the consideration for the same would have gone to the account of the Company and not to the coffers of the Noticee. Further, the price of the shares for preferential allotment was fixed at ₹ 130 and the said prices were arrived at as per the pricing guidelines provided in Chapter XIII of SEBI (DIP) Guidelines, 2000 and NDTV had agreed to the prices so determined. The Noticee would also like to state that NDTV had withdrawn its offer to subscribe to the shares and the said preferential allotment had not taken place. The Noticee would also like to draw your attention to the fact that the shares bought during the said period were not sold and considering the present price of the said shares, the Noticee

continues to hold those shares with substantial book losses from the acquisition. From the combined reading of the aforementioned facts it is apparent that the Noticee had not made any profits or gains then and has not made any gains at this point of time.

66. Findings: Investigation has observed that from December 24, 2007 to January 03, 2008, the price of the scrip rose from ₹. 82/- to ₹.157/-. It was alleged that during that period the Noticee appeared as buyer on 53 instances out of 217 instances that resulted in the new high price and contributed ₹.10.5 to the cumulative price rise of ₹.75.00 with respect to the new high prices established. It was observed that the Noticee bought 2,58,470 shares (18.75%) out of total traded volume of 13,78,112 shares.

67. I note that of the 53 instances where the Noticee appeared as a buyer and the trades which allegedly resulted in new high price happened on three (3) days i.e. December 24, 26 and 31, 2007. Further, it was observed that when the Noticee was placing the buy orders, immediately before his placing of the order, sale order was pending at that rate and his trades were executing with the pending sell order. While the Noticee was placing the buy orders which was at the rate ranging from ₹. 89.95 to ₹.129.40, in those three days the sell orders were pending which were ranging between ₹.82.00 to ₹. 129.40. at the same time Sample of the orders placed by the Noticee on December 24, 2007 is given below:

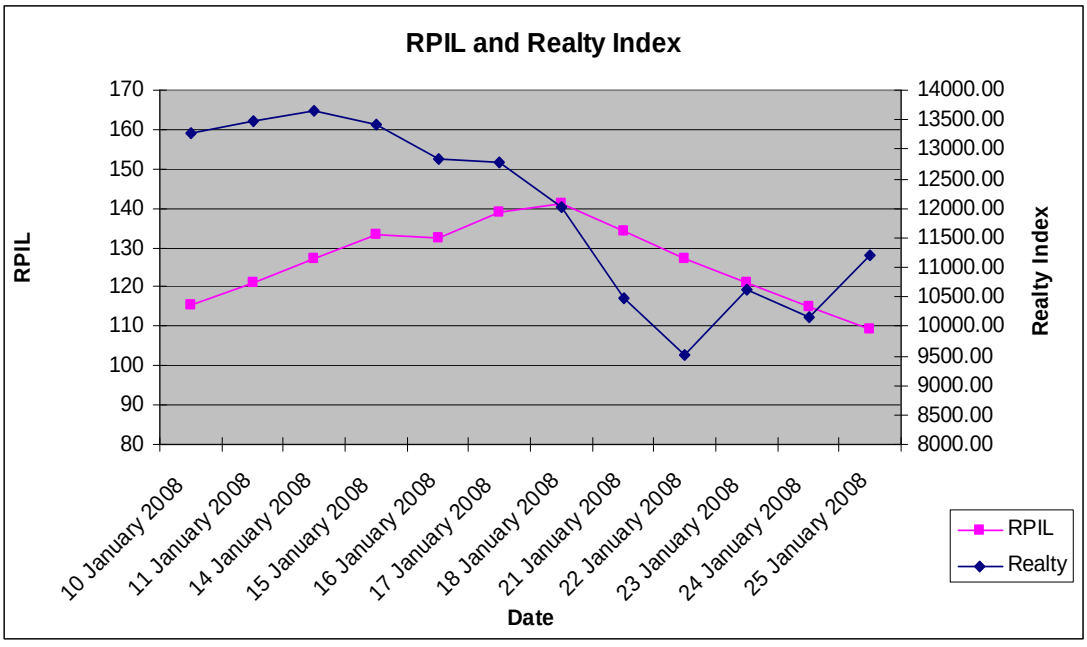
Date	Buy order client	Buy order quantity	Buy order time	Rate	Sell order quantity	Sell order time	Sell order rate	Sell order client
24-Dec-07	Sanjeev Arora	50	13:40:47	89.95	50	13:01:01	89.95	SONI SINGH
24-Dec-07	Sanjeev Arora	50	13:40:47	90.00	50	09:57:52	90.00	ANILKUMAR S K
24-Dec-07	Sanjeev Arora	50	13:41:40	91.50	50	13:33:06	91.50	SHARDA BERIWAL
24-Dec-07	Sanjeev Arora	200	13:41:40	91.75	200	13:41:16	91.75	SANJEEV KUMAR JHA
24-Dec-07	Sanjeev Arora	200	13:41:40	91.80	200	13:27:23	91.80	KAMAL SARABHAI SHAH
24-Dec-07	Sanjeev Arora	500	13:41:40	91.90	500	13:24:18	91.90	MAMTA RANI
24-Dec-07	Sanjeev Arora	1	13:41:40	92.00	1	12:57:41	92.00	ASHOK THAKKER
24-Dec-07	Sanjeev Arora	200	13:43:22	94.75	200	13:42:30	94.75	KRISHNA KUMAR BIRLA
24-Dec-07	Sanjeev Arora	200	13:43:22	94.80	200	12:48:05	94.80	SEEMA MEHTA
24-Dec-07	Sanjeev Arora	50	13:43:22	94.90	50	13:28:21	94.90	RANJANBALA NAVNITRAY MALKAN
24-Dec-07	Sanjeev Arora	500	13:43:22	94.95	500	10:09:21	94.95	KAPIL BALWANTRAJ MEHTA
24-Dec-07	Sanjeev Arora	500	13:43:22	95.00	500	09:58:55	95.00	SHRENIK SHAH

68. The same pattern as given above was observed on the other two days. It was also observed that the counter parties were also not found connected. Given the above, I am of the view there is no sufficient evidence to conclusively establish that the Noticee had any

significant role to manipulate the price of the scrip by setting a higher price for allotment of shares to NDTV as alleged. Hence the allegation against the Noticee for influencing the price of the scrip through high price does not stand established.

69. **Wash Trades of the Noticee** : It was observed that on February 04, 2008, RPIL informed BSE that the BOD of the Company at its meeting held on February 02, 2008, has taken the decision to issue 1,92,308 equity shares of ₹.10/- each at a premium of ₹.120/- per share as per SEBI pricing formula to NDTV on preferential allotment basis and to convene the Extra Ordinary General Meeting on February 27, 2008 to approve the preferential allotment. The relevant date for this issue was January 28, 2008 and the pricing period considered was January 14, 2008 to January 27, 2008. From **January 16, 2008 to January 21, 2008**, i.e, within the pricing period for preferential allotment to NDTV, it was observed that the Noticee was using two broking accounts and acted as buyer and seller for 1,68,575 shares. It was observed that the Noticee bought through member Religare Securities Ltd. and sold through member Almondz Capital Markets Pvt. Ltd. These trades accounted for 45.67% of the total traded volume (3,69,131 shares) during the said period.

70. Allegation: It was observed that markets were falling sharply between January 16, 2008 and January 21, 2008 but it was the pricing period for the preferential allotment to NDTV and the price of RPIL rose from ₹.134.55 to ₹.141.15 and closed at ₹.134.1 on January 21, 2008. Further, it was observed that 1,01,540 (60.23%) of these wash trades were such that the difference between buy and sell orders was less than a minute. The trades by the Noticee allegedly had the effect of maintaining the price in a sharply falling market as could be seen from the following graph as given below:



71. Thus, it was alleged that this was part of the plan to allot the shares to NDTV at a relatively higher price and thereby sending a strong signal to the market and infuse confidence among the general investors.

72. Reply of the Noticee: The Noticee submitted that the shares were put to lien with Religare as collateral for a loan as the Noticee was in need of finances. As a security mechanism, Religare had directed the Noticee to transfer the said shares from Almondz to the account of the Noticee maintained with Religare and pursuant thereto the shares were transferred. The lien occurred through a freezing of Noticee's shares done by the depository in the routine fashion. There was no surreptious trade, rather the transfer of shares from one account to another of the Noticee was to enable Religare to mark an effective lien on shares and not to inflate the volume of the trading or to increase the price of the shares of the Company for preferential allotment purposes. The purchase and sale price were the same (with some rounding difference) and therefore there was no impact on the price of other buyers and sellers in the market.

73. Findings: The Noticee has not denied having executed the transactions mentioned in Annexure IX of the SCN. The details such trades are as given below:

Trade Date	Trade Time	Member Name	Trade Qty	Trade Rate	LTP	Counter Party Member Name
16-January-2008	11:11:32	RELIGARE	8100	134.00	0.50	ALMONDZ
16-January-2008	11:11:39	RELIGARE	10000	134.00	0.00	ALMONDZ
16-January-2008	11:11:46	RELIGARE	5000	134.00	0.00	ALMONDZ
16-January-2008	11:11:51	RELIGARE	1900	134.00	0.00	ALMONDZ
16-January-2008	12:20:31	RELIGARE	7250	137.00	0.30	ALMONDZ
17-January-2008	11:15:40.	RELIGARE	20000	139.00	0.00	ALMONDZ
17-January-2008	11:38:24	RELIGARE	20000	138.95	-0.05	ALMONDZ
18-January-2008	10:36:13	RELIGARE	20000	145.00	0.00	ALMONDZ
18-January-2008	10:38:06	RELIGARE	19565	145.50	0.00	ALMONDZ
21-January-2008	13:00:11	RELIGARE	4345	134.15	0.00	ALMONDZ
21-January-2008	13:00:11	RELIGARE	5655	134.15	0.00	ALMONDZ
21-January-2008	13:02:32	RELIGARE	2345	134.15	0.00	ALMONDZ
21-January-2008	13:02:32	RELIGARE	5000	134.15	0.00	ALMONDZ
21-January-2008	13:02:32	RELIGARE	2655	134.15	0.00	ALMONDZ
21-January-2008	13:02:52	RELIGARE	10000	134.15	0.00	ALMONDZ
21-January-2008	13:03:18	RELIGARE	10000	134.15	0.00	ALMONDZ
21-January-2008	13:03:50	RELIGARE	2245	134.15	0.00	ALMONDZ

Trade Date	Trade Time	Member Name	Trade Qty	Trade Rate	LTP	Counter Party Member Name
21-January-2008	13:12:06	RELIGARE	9725	134.10	0.00	ALMONDZ
21-January-2008	13:39:18	RELIGARE	4000	134.15	0.00	ALMONDZ
21-January-2008	13:39:51	RELIGARE	790	134.15	0.00	ALMONDZ
		TOTAL: 1,68,575				

74. The Noticee has put forth the claim that the trades were executed and the transactions on the stock exchange were matched with counterparty brokers end so that the shares could be transferred from one participant (Almondz) to another (Religare) for the same beneficial owner (Noticee) in order to create a lien with Religare. It is clear that the Noticee has not disputed that the trades were executed in synchronized fashion i.e. where the quantity, price and rate matched. In fact, it is his admitted position that the same was done towards the above purpose thus this matter of synchronization is taken on records.

75. Now coming to the rationale for executing such alleged surreptitious trades in the market. As regards lien in depository system it is clear in law that if the shares were to be placed on lien in the depository systems the same can be done with any depository participant. There is no provision in law which states that the securities need to be deposited only in a particular depository participant so as to enable it to be charged on lien.

76. However, even if for a moment it was to be considered that such a position was indeed propositioned to the Noticee, it is surprising that the Noticee executed these transactions on the exchange when the Noticee could have very well executed an off market transfer to the other depository participant.

77. Given the above, I do not find any value in the rationale provided by the Noticee in the matter. Further I consider the explanations provide by the Noticee in the matter as a mere afterthought as the evidence available before me clearly shows that these shares were not charged on lien. I observe from the transaction statement submitted by the Noticee that before February 2, 2008 the balance in the beneficiary account was nil and on February 02, 2008 and February 16, 2008 2,99,581shares and 1,00,000 shares were credited respectively to Religare Securities Ltd showing balance of 3,99,581 as on April 2008. Thereafter, the shares which were credited in the account of the Religare was from April 2008 to November 2008 accounting for 12,66,102 shares which were shown as frozen in the DP account. Thus, it is observed that no shares were under lien as on January 31, 2008 i.e. no lien was created for the transactions executed between January 16, 2008 to January 21, 2008. Hence, the submission made by the Noticee is not acceptable.

78. I note that 1,01,540 (60.23%) of these wash trades were such that the difference between buy and sell orders was less than a minute and the same constituted to about 46% of the total traded volume during the said period. The day wise contribution of his trading in the scrip is as below:-

Ritesh Prop- BSE										
Date	**Open**	**High**	**Low**	**Close**	**Total Volume**	**No of Trades**	**Total Volume**	**No of Trades**	**Noticee's day wise contribution to the total volume(%)**	**Noticee's price**
16/01/2008	140	140	129.9	132.55	89012	507	32250	5	36.23	134 to 137
17/01/2008	136.9	139.15	136.05	139.15	70363	245	40000	2	56.85	138.5 & 139
18/01/2008	140	146.1	133	141.15	111168	574	39565	2	35.59	145 & 145.50
21/01/2008	144.2	144.2	134.1	134.1	98588	224	56760	11	57.57	134.10 &134.15

79. From the above, it can be seen that the Noticee contributed majorly to the daily traded volume. Further at the time of the falling market for the realty prices as given in the graph above Noticee was placing order in the scrip of RPIL at a price near to the days higher price and was thus maintaining the price of the scrip in the falling market. Consequently, I am convinced that these trades have been executed in the manner as alleged against the Noticee i.e. the trades by the Noticee had the effect of maintaining the price in a sharply falling market. Noticee has thus violated Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b), 4(2)(g) of SEBI (PFUTP) Regulations and Section 12A(a), (b),(c) of SEBI Act, 1992.

80. 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…"*

81. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under for monetary penalty under 15 HA of SEBI Act which reads as follows:

> ***15HA.Penalty for fraudulent and unfair trade practices.-*** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

82. While determining the quantum of monetary penalty under Section 15 HA of the SEBI Act, 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."

83. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. Further the amount of loss to an investor or group of investors also cannot be quantified on the basis of available facts and data. Suffice to state that keeping in mind the practices indulged in by the Noticee, gains per se were made by the Noticee by giving misleading announcements and trading in the scrip in a manner meant to create artificial volumes and liquidity which is an important criterion, apart from price, capable of misleading the investors while making an investment decision. It is of utmost importance that a sense of fair play be maintained in the market so that innocent investors do not find themselves at the receiving end and ought to be protected from any kind of fraud in the market. People who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions. It is also observed that the nature of default by the Noticee was repetitive in nature.

ORDER

84. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹. 10,00,000 (Rupees Ten Lakh only) on the Noticee which will be commensurate with the violations committed by him.

85. 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 General Manager, Investigations Department- 6, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

86. 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: **August 31, 2012** **BARNALI MUKHERJEE**
Place: **Mumbai** **ADJUDICATING OFFICER**