

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/AK/AO/52/2012]**

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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  
PRAKASH JHUNJHUNWALA (HUF)  
(PAN. No. AAFHP2374F)**

**In the matter of M/s Ramsarup Industries Limited**

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**FACTS OF THE CASE IN BRIEF**

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

2. The findings of the investigation led to the allegation that Prakash Jhunjunwala HUF (hereinafter referred to as “**Noticee**”) [ Prakash Jhunjunwala – Karta] had violated regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT Regulations**’) read with section 12A(d) & (e) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and therefore, liable for monetary penalty under section 15G of SEBI Act.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned has been appointed as Adjudicating Officer vide order dated April 12, 2012 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge under section 15G of SEBI Act, the alleged violation of provisions of PIT Regulations.

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

4. Show Cause Notice No. EAD-5/PG/TT/12098/2012 dated June 04, 2012 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of SEBI Act for the alleged violations specified in the said SCN.
5. During the investigation period, the scrip was traded with an average price of ₹89.96 with an average daily volume of 49,362 shares. Three months prior to the investigation period, the scrip traded with an average price of ₹77 with an average daily market

volume of 37,413 shares. Three months after investigation period the scrip traded with an average price of ₹48.42 with an average daily market volume of 63,345 shares. The open, high, low and close price of the scrip at NSE during investigation period is given below:

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

6. Investigation revealed that from July 01, 2010 till July 15, 2010 the price of the scrip was more or less constant within a range of ₹77 to ₹80. However, from July 16, 2010 the share price started rising gradually from ₹85 a share and reached its all time high of ₹119 on July 23, 2010. By August 13, 2010 the price had fallen down to ₹87 a share and reached a low of ₹61.5 a share on August 31, 2010. The volumes of the scrip remained more or less constant till July 15, 2010 within the range of 20,000 to 40,000. However, in tandem with rise in share price from July 16, 2010, the volume of the scrip too jumped to the range of 60,000 to 3,00,000 thereafter. By the end of August 2010, the volume had come down to 59,682 shares.
7. During investigation period, RIL had come out with two corporate announcements dated July 28, 2010 and August 13, 2010. The relevant details of corporate announcements on NSE and their impact on price & volume are as follows:

Date & Time of display on NSE Website	Particulars	Price impact/shares traded	Remarks																								
July 28, 2010. 3:19 PM	<p>Ramsarup Industries Ltd has informed NSE that a meeting of the Board of Directors of the Company will be held on August 13, 2010, inter alia, to consider and take on record the followings:</p> <ol style="list-style-type: none"> <li>The Un-audited Financial results for the 1st quarter ended on June 30, 2010.</li> <li>Raising of Long Term resources by: <ol style="list-style-type: none"> <li>Issue of Equity Shares / warrants / Securities Convertible in Equity Shares / ADRs / GDRs / FCCBs / and / or such other Convertible Instruments on preferential basis or otherwise and / or</li> <li>Issue of Equity Shares / Securities Convertible into Equity Shares, to eligible Qualified Institutional Buyers (QIBs) in one or more tranches through Qualified Institutional Placement (QIP)</li> </ol> </li> </ol>	<p><b>July 28, 2010</b> <b>Price(₹)</b></p> <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>106.9</td><td>107.35</td><td>103.05</td><td>104.95</td></tr> </table> <p><b>Volume</b> 4,72,099 shares</p> <p><b>July 29, 2010</b> <b>Price(₹)</b></p> <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>105</td><td>106.3</td><td>103.1</td><td>104.1</td></tr> </table> <p><b>Volume</b> 3,25,978 shares</p>	O	H	L	C	106.9	107.35	103.05	104.95	O	H	L	C	105	106.3	103.1	104.1	At 3:19 PM the scrip was trading at ₹.105.05. The opening price on July 29 increased by 0.04 % from the previous day's close price. However, trading volume has decreased by 30.9 % from previous day volume.								
O	H	L	C																								
106.9	107.35	103.05	104.95																								
O	H	L	C																								
105	106.3	103.1	104.1																								
August 13, 2010. 5:31PM	<p>Ramsarup Industries Ltd has informed NSE about the Financial Results for the Quarter ended June 30, 2010.</p> <p>Ramsarup Industries Ltd has informed NSE that the Board of Directors of the Company at its meeting held on August 13, 2010, inter alia, has approved the following:</p> <ol style="list-style-type: none"> <li>Issuance of FCCB and / or other convertible instruments to the extent of US\$ 250 Million / ₹. 1150 Crores.</li> <li>Issuance of 35,00,000 fully convertible Warrant of the Company, each convertible into 1 (one) equity share of the face value of ₹.10/- each on a preferential basis to the constituents of Promoter / Promoter Group and to Non Promoters / Strategic investors, representing not more than 10% of the Equity Share Capital of the Company at a price not less than the Price to be determined as per the relevant provisions of the SEBI (ICDR) Regulations, 2009 as amended.</li> </ol>	<p><b>August 12, 2010</b> <b>Price(₹)</b></p> <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>109</td><td>112.3</td><td>107.5</td><td>108.4</td></tr> </table> <p><b>Volume</b> 8,07,527 shares</p> <p><b>August 13, 2010</b> <b>Price(₹)</b></p> <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>109.2</td><td>109.8</td><td>86.75</td><td>87.75</td></tr> </table> <p><b>Volume</b> 37,05,199 shares</p> <p><b>August 16, 2010</b> <b>Price(₹)</b></p> <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>87.5</td><td>93.45</td><td>85.05</td><td>89.65</td></tr> </table> <p><b>Volume</b> 13,19,008 shares</p>	O	H	L	C	109	112.3	107.5	108.4	O	H	L	C	109.2	109.8	86.75	87.75	O	H	L	C	87.5	93.45	85.05	89.65	The opening price on August 16 decreased by 0.28% from the previous day's close price and trading volume also decreased by 64%
O	H	L	C																								
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8. It was alleged in the SCN that declaration of the financial results for quarter ended June 2010 on August 13, 2010 was a Price Sensitive Information (hereinafter referred to as “**PSI**”) as per regulation 2(ha) of PIT Regulations. Further, RIL vide letter dated March 13, 2012 stated that information about quarterly financial results came into existence on August 10, 2010. RIL vide letter dated August 26, 2011 submitted a certified copy of its letter dated August 06, 2010 regarding Notice of closure of the Trading Window. The letter dated August 06, 2010 *inter alia* stated that the trading window will remain closed from August 7, 2010 till upto 24 hours after the Board Meeting on August 13, 2010. However, as per clause 3.2.1 read with 3.2.3 of schedule - I under regulation 12(1) of PIT Regulations, the period of closure of trading window is decided by the company being a period during which, in the opinion of the company, PSI i.e. financial results are available but unpublished. As per investigation report, unpublished price sensitive information (hereinafter referred to as “**UPSI**”) period was the period identified by RIL for closure of trading window as per their letter dated August 26, 2011 i.e., from August 07, 2010 up to 24 hours after board meeting on August 13, 2010.
9. RIL vide letters dated October 20, 2011 and September 13, 2011, *inter alia* stated that the persons privy to finalization of accounts & financial results for quarter ended April-June 2010 (including statutory auditors) i.e. persons privy to UPSI are as under:

Name	Designation
Ashish Jhunjunwala	Chairman & Managing Director
Naveen Gupta	Whole Time Director & CFO
Gajendra Kumar Singh	Company Secretary
Vikash Ladia	Chief Commercial Officer
Bimal Kumar Jhunjunwala	Independent Director & Chairman

	Audit Committee
L M Chatterjee	Independent Director & Member Audit Committee
P K Lilha	Statutory Auditor

10. Thus, it was alleged that Mr. Ashish Jhunjunwala (hereinafter referred to as “**Ashish**”) is an insider as per regulation 2(e) of PIT Regulations. Further, Mr. Prakash Jhunjunwala is Karta of the Noticee and cousin brother of Ashish. The members of Prakash Jhunjunwala (HUF) are :

S.No	Name	status
1	Prakash Jhunjunwala	Karta
2	Sujata Jhunjunwala	Coparcener
3	Mukund Jhunjunwala	Coparcener
4	Mayank Jhunjunwala	Coparcener

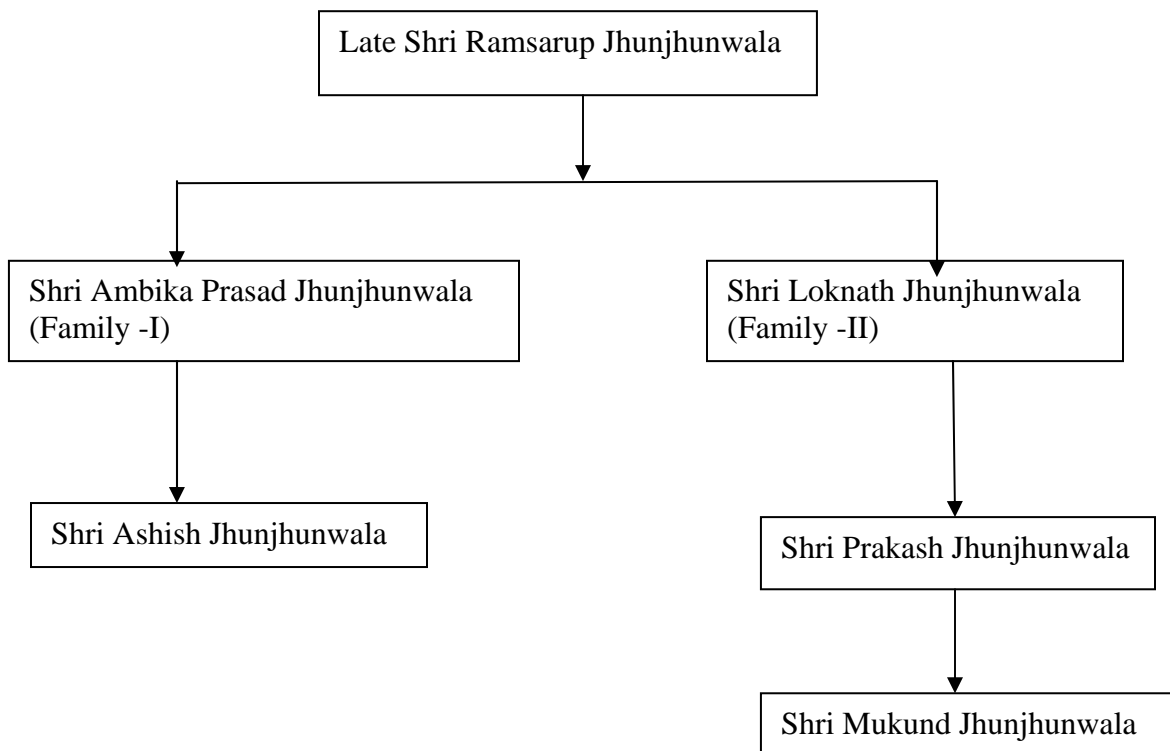
It was alleged that since Noticee & Ashish share common address and that they are related to each other, the Noticee was reasonably expected to have access to the UPSI. Therefore, it was alleged that Noticee is insider as per regulation 2(e) of PIT Regulations.

11. Further, Noticee during the period of UPSI had sold 686 shares at the rate of ₹ 109.73. Considering the average share price of the shares of RIL @ ₹90.67 on August 16, 2010 i.e. next trading day after corporate announcement, potential loss avoided by the Noticee was ₹13,075. Thus, it was alleged that Noticee by dealing in the shares of RIL during the period of UPSI had violated regulation 3(i) of PIT Regulations read with section 12A (d) & (e) of SEBI Act.

12. The Noticee vide letter dated June 22, 2012 submitted his reply to the SCN, which *inter alia* stated as under:

“.....

- *In this regard, I wish to submit that we do not have any connection with M/s Ramsarup Industries Limited except and extent to our shareholding in the company and to the fact the Managing Director of M/s Ramsarup Industries Limited is our relative “a cousin”, but neither we are in preview of the definition of relative as provided in the companies act,, 1956 nor we have any kind of access to any unpublished price sensitive information of the company. We have already stated that in our earlier letter that we have no say in any activities of M/s Ramsarup Industries Limited. we are just like any other general retail investor.*
- *Further, to elaborate we would like to submit that we have no business relations with M/s Ramsarup Industries Limited, therefore cannot be treated as insiders to the company. Just because of the reason that we are residing in the same building. The address under subject namely “10/4 Alipore Park Place, Kolkata -700027” is that address of ancestral property, having several floor, and several families live there, in their share of ancestral property, out which one wings belongs to us and another to the Managing Director of M/s Ramsarup Industries Limited from last 30 years. We have no link between us either personally or financially. Our families do not share any relationship among ourselves personally also.*
- *We have our own separate small construction business in the name of PURE COKE a partnership concern, executing construction contracts for companies like Hindustan Construction Company and Vodafone. It has no link with M/s Ramsarup Industries Limited.*
- *As mentioned in your notice, M/s Ramsarup Industries Limited has intimated the stock exchange on 28<sup>th</sup> July, 2010 the proposed Board Meeting to be held on 13<sup>th</sup> August, 2010 to consider un-audited quarterly results for the quarter ended on 30<sup>th</sup> June, 2010. Information regarding the financial results came into public domain on 28<sup>th</sup> July, 2010 itself.*
- *.....*
- *We once again emphasis, that we do not share any relationship among ourselves and by mere having a common residential address cannot be taken as having an access to any unpublished price sensitive information. Even though we and managing Director of M/s Ramsarup Industries Limited belong to the same common ancestor (Our Grandfather Late Shri Ramsarup Jhunjunwala) as described in the below mentioned family tree but we do not have any kind of business relations as both the families have separated since a long time (i.e. two decades ago).*



- *Further, all the transactions mentioned above were executed to generate funds to meet our other business requirements, without having any access or basis of any information. We have taken loan from bank for purchase of equipments for executing contract for construction work. The funds generated were used as margin money (details if desired can be provided).*
- *Thus on the basis of above submission and details submitted through earlier letter, we wish to submit that we do not have any kind of access to any kind of price sensitive information. All of our transactions are of on basis of our own decisions and to generate some funds to meet our requirements.*  
.”

13. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticee was granted an opportunity of personal hearing on July 20, 2012 vide letter dated June 29, 2012 at SEBI, Eastern Regional Office, Kolkata. Noticee vide letter dated July 09, 2012 had requested for postponement of the hearing scheduled on July 20, 2012 at SEBI, Eastern Regional Office, Kolkata. Acceding to the request of the Noticee, vide letter dated July 16, 2012, another opportunity of personal hearing was granted



at SEBI Head Office, Mumbai on July 24, 2012. Noticee vide letter dated July 20, 2012 had submitted detailed reply to the SCN in the matter which *inter alia* stated as under:

“.....

- *At the outset and without prejudice to anything stated herein, we deny all the allegations, charges and findings against us in the said SCN. Nothing contained in the said SCN may be deemed to have been admitted by -us merely on account of non traverse, unless specifically admitted herein.*
- *We are a Hindu Undivided Family engaged in the business of construction in the name of PURE COKE, a partnership concern with our clients including Hindustan Construction Company, Vodafone etc. we execute construction for companies on contract basis.*
- *The family tree of the family leads back to Late Shri Ramsarup Jhunjunwala grandfather of our karta Mr. Prakash Jhunjunwala). Late Shri Ramsarup Jhunjunwala had seven sons, Shri Ambika Prasad Jhunjunwala and Shri Loknath Jhunjunwala and five others. Shri Loknath Jhunjunwala is father of our Karta Mr. Prakash Jhunjunwala, and Shri Ashish Jhunjunwala, the Managing Director of RIL, is son of Shri Ambika Prasad Jhunjunwala. Thus, Shri Ashish Jhunjunwala is cousin brother of our karta Shri Prakash Jhunjunwala. About 15 years ago, the family of Shri Ambika Prasad Jhunjunwala and Shri Loknath Jhunjunwala and other brothers separated and by way of family settlement the ancestral and inherited properties were partitioned between the families which included the ancestral building containing many Flats at 10/4, Alipore Park Place, Kolkata and shares of RIL. After partition, the families of the respective successors continued to occupy and reside in their share of the ancestral residential building having address 10/4, Alipore Park Place, Kolkata-700027. Thus, we inherited the address 10/4 Alipore Park Place, Kolkata from Shri Loknath Jhunjunwala. Apart from the fact that I am an ordinary shareholders of RIL, I had no role, relation and participation of any nature whatsoever in the affairs, management and relations of the said RIL, at all. Admittedly, I am neither promoter nor director/employee of RIL at any point in time.*
- *In or around August 2010, the partnership firm raised loans from SREI Equipment Finance Pvt. Ltd. & Kotak Mahindra Bank Ltd. for purchase of equipments which were required for our construction business. Over and above the loan amount, the firm was required to meet further finance requirement. It is for this purpose, that we and the coparceners sold shares of RIL out of which 28227 shares are reflected in the table in the SCN. It is pertinent to note that our sale of shares in RIL was on market at the prevailing price and was delivery based trade. It is pertinent to note that our decision to sell the shares*

*of RIL and the corporate announcement made by RIL published on the website of the stock exchange and few of our trades during our sale of RIL shares falling in the alleged UPSI period was a mere coincidence, and our sale of RIL shares has nothing to do with the corporate announcements and vice versa. Thus, our sale was irrespective of and had nothing to do with the said corporate announcements.*

- *As mentioned in the SCN, RIL intimated the Stock Exchange on July 28, 2010 about the proposed Board Meeting scheduled to be held on August 13, 2010 to consider un-audited quarterly results for the quarter ended June 30, 2010.*
- *With respect to us, the Notice evidently proceeds on incorrect facts leading to surmises and conjectures and lacks basis and any documentary evidence. The allegations in the Notice are based on erroneous interpretation of law and erroneous understanding of factual position, and proceed without any foundation and patently contradict the correct factual position on record.....*
- *.....*
- *Before we deal with the allegations in the SCN, it is worth pointing out that in the SCN:*
  - a. *there is no recording as to how we are insiders with respect to RIL.*
  - b. *there is no allegation that we are connected or deemed to be connected person.*
  - c. *there is no explanation as to how we are connected or deemed to be connected person to fall under the definition of 'insider'.*
  - d. *there is no explanation as to how we are relative of Shri Ashish Jhunhunwala.*
  - e. *there is no explanation as to how we are expected to have access to the alleged UPSI.*
  - f. *the SCN nowhere records or alleges that we came in possession of the alleged UPSI, and it proceeds only on the presumption that we were reasonably expected to have access to the alleged UPSI.*
- *.....*
- *In the light of the facts of the case and relevant provisions reproduced hereinbefore, we submit as follows:*
- *NOT AN INSIDER: we are not an insider under the definition of 'insider' as per Regulation 2(e) of PIT Regulations. We are neither connected with RIL nor deemed to be connected with RIL. we cannot be reasonably expected to have access to unpublished price sensitive information in respect of securities of RIL. We have never received nor had access to such unpublished price sensitive information at all.*
- *NOT CONNECTED TO RIL: we submit that we are not connected person to RIL as neither we are director of RIL nor deemed to be a director of RIL by virtue of sub-clause (10) of Section 307 of the Companies Act, 1956. Further, neither we occupy position in RIL as an officer or an employee nor hold a position involving a professional*

*or business relationship between me and RIL (whether temporary or permanent). we cannot be reasonably expected to have an access to unpublished price sensitive information in relation to RIL. Section 2(c) of PIT Regulations is not at all applicable to me.*

- *NOT DEEMED TO BE CONNECTED PERSON/NOT RELATIVE: we do not fall within the criteria for persons deemed to be connected person under Regulation 2(h) of the PIT Regulations. An erroneous inference has been drawn against us in the SCN by stating that our Karta is related to Shri Ashish Jhunjunwala, MD and Chairman of RIL. It is denied that we (or our Karta) are related to Shri Ashish Jhunjunwala. we do not fall under the definition of “relative” as provided under Section 6 of the Companies Act, 1956.*
- *RESIDENCE ADDRESS: As submitted herein, our residence is independent and separate from that of Shri Ashish Jhunjunwala. We reside in our share of ancestral house and Shri Ashish Jhunjunwala reside in his share of the ancestral house, post partition. Our residence (Flat) is separate and independent of Shri Ashish Jhunjunwala. Since partition, neither we have any communication, nor there is any financial or business relationship between us and Shri Ashish Jhunjunwala or RIL. No adverse inference can be drawn against us on the basis of my residential address.*
- *REASONABLY EXPECTED TO HAVE ACCESS TO THE UPSI: It is denied that we had access to any UPSI with respect to RIL at all. The Notice nowhere records as to how and in what manner we can have or we had access to any UPSI with respect to RIL. It appears that the SCN proceeds on erroneous presumption that we were reasonably expect to have access to the UPSI on the misconceived basis that we are insider to RIL being relative to Shri Ashish Jhunjunwala who is MD and Chairman of RIL, and we reside in the same house as Shri Ashish Jhunjunwala. It is submitted that in the light of correct factual position that neither we are related to Shri Ashish Jhunjunwala nor residing together at the same residence address, nor connected to RIL, the presumption of my being reasonably expected to have access to the UPSI does not survive.*
- *Thus, from the above, it is reiterated that-*
  - a. *Our Karta Prakash Jhunjunwala is not an insider as per Regulation 2(e) of PIT Regulations as he is not related to Shri Ashish Jhunjunwala, MD and Chairman of RIL. Shri Ashish Jhunjunwala is not a relative of our Karta Mr. Prakash Jhunjunwala. Save and except the fact that Shri Ashish Jhunjunwala is son of our Karta’s uncle, we have no relationship including business and financial, with him. Undisputedly, our Karta Mr. Prakash Jhunjunwala does not at all fall within the definition of relative with respect to Shri Ashish Jhunjunwala.*

- b. *We have no common business/investment activities. Neither does he seek my views nor do we volunteer to show interest in his business activities. Neither our Karta nor any of the coparcener are director or promoter of RIL. Further, Shri Ashish Jhunjhunwala is also in no way associated with us in any or my business activities. We are totally independent and separate of each other in our individual/family, residence and business activities as well. As stated hereinbefore, neither we have any role to play in his affairs nor does he has any role to play in my affairs.*
- c. *The residential address 10/4 Alipore Park place, Kolkata, is of the ancestral house, where we reside separately and independently in our portion of our rightful share of the ancestral house, post partition. The premises in which Shri Ashish Jhunjhunwala lives in is independent of the premises in which we reside. Since the building is ancestral property, the postal address is the same, but post partition, the occupancy of premises in the respective rightful share of the premises is independent. Shri Ashish Jhunjhunwala does not reside with us and we do not share premises at all. We would, therefore request you to kindly note that said fact, and not to be misguided by the “address” to draw adverse inferences against us.*
- d. *We do not fall within the definition of Insider, neither we were having any access to the alleged UPSI nor did we have any reason to have access to the alleged UPSI. Post partition, we are totally disconnected to the extent that our families do not share any relationship with the family of Shri Ashish Jhunjhunwala, MD and Chairman of RIL. Our business is totally different and independent from that of RIL. Thus, there arises no reason for our having any access to any UPSI, as alleged.*
- *The entire SCN proceeds against us on the basis of incorrect facts leading to surmises and conjectures. In this regard, we would like to draw your kind attention to the Order passed by the Honourably Securities Appellate Tribunal, Mumbai (hereinafter “SAT”), the Appellate Body constituted under the Securities and Exchange Board of India Act, 1992, in the Appeal of Dilip S. Pendse Vs. Securities and Exchange Board of India (Order dated 19<sup>th</sup> November, 2009). In the order, Hon’ble SAT categorically stated that the charge of insider trading is one of the most serious charges in relation to the securities market. Having regard to the gravity of wrong doing in insider trading, the preponderance of probabilities and in establishing serious charge of insider trading must be higher.*
- *.....*
- *It is submitted that with respect to the trade analysis of Prakash Jhunjhunwala HUF and members of the HUF, in para 16(b) of the*

*Notice, no adverse inference can be drawn against us for the trades done by us in the shares of RIL. Without prejudice, it is submitted that from the Notice, we understand that the alleged UPSI was in existence from August 07, 2010 to August 13, 2010. As per table, it can be seen that we were selling shares of RIL prior to the alleged UPSI (i.e. prior to August 07, 2010), during the alleged UPSI (i.e. during August 07 to August 13, 2010) and post the alleged UPSI becoming public (i.e. post August 13, 2010). Sale of shares of RIL by us is a matter of record. The table in the SCN captures a total of 28227 share of RIL sold by Shri Prakash Jhunjhunwala, Prakash Jhunjhunwala HUF, Smt. Sujata Jhunjhunwala and myself during the August 06, 2010 to September 30, 2010. Out of these shares, only 686 shares were sold by us during the alleged UPSI (i.e. on August 09, 2010). No adverse inference can be drawn against us from the same.*

- *With respect to para 16 (c) of the SCN, it is submitted that from my sale of 686 shares of RIL on August 09, 2010, it is erroneous to allege that I have avoided potential loss by selling 686 shares. It is vehemently denied that by our sale of 686 shares on August 09, 2010 we have avoided potential loss. Also as can be seen from the sales of our coparceners, it is very clear that sale of shares of RIL was made by them even prior to and post the period when the alleged UPSI was in existence. Further, as can be seen from table in para 16 of the SCN, out of the total sale of 28,227 shares only 4483 shares were sold during the period when alleged UPSI was in existence, which amounts to only 15% of the shares reflected in the Table. It is pertinent to note that the sales made by us were independent and were not at all influenced by the alleged UPSI. Had we been in possession of any alleged UPSI, shares must have been sold during the alleged UPSI period and definitely not prior to or subsequent to the alleged UPSI period. Said fact itself destroys the allegation of insider trading by us.*
- *By dealing in shares of RIL during the period of alleged UPSI, which UPSI we were neither aware of nor concerned with, we have not violated Regulation 3(i) of PIT Regulations read with Section 12 A(d) & (e) of SEBI Act. As demonstrated hereinbefore, we are not insiders under the PIT Regulations. Since we are not insiders under the PIT Regulations, the allegation against us of violation of Regulation 3(i) of PIT Regulations do not and cannot arise.*
- *In the facts and circumstances of the case and in light of the correct factual position, it is submitted that we are not an insiders to RIL. Neither we have, on our own behalf or on behalf of any other person, dealt in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information, nor communicated any unpublished price sensitive information to any person with or without his request for such information. We have never counseled, or procured for any other person to deal in any*

*securities of the Company on the basis of unpublished price-sensitive information. Thus, we have not violated Regulation 3(i) of PIT Regulations read with Section 12A (d) & (e) of SEBI Act.*

- *It is denied that we are liable for any penalty under section 15G of the SEBI Act. It is submitted that no penalty can be imposed under section 15G of the SEBI Act, since we do not fall under the definition of 'insider' or deemed insider under the PIT Regulations. Therefore, in facts and circumstances there is no violation at all, and any imposition of penalty on me would be unjustified and unwarranted.*
- *It is prayed that while considering our submissions following factors may be noted:*
  - a. *We are neither insider nor connected or deemed to be connected persons with Shri Ashish Jhunjhunwala.*
  - b. *We have an unblemished history, and no action has been ever taken against me in the past by Securities and Exchange Board of India or any authority or regulatory body.*
  - c. *We have neither made any disproportionate gain(s) nor gained any unfair advantage out of said sale of 686 RIL shares, and we have also not caused any loss to investors or anybody.*
  - d. *considering the facts and circumstances of the case in light of the correct factual position, the charges against us in the Notice be dropped and proceedings against me be discharged.*

*.....”*

14. On July 24, 2012, Mr. Joby Mathew, Advocate, the authorized representative of the Noticee (hereinafter referred to as 'AR'), appeared on behalf of the Noticee. During the hearing, the AR reiterated the submissions made vide letters dated June 22, 2012 and July 20, 2012 and denied the allegations. Further, Noticee vide letter dated July 27, 2012 submitted additional written submissions in the matter which *inter alia* stated as under:

*“.....*

- *We are not insiders, and we are not director or employee of RIL and do not have any business relationship with RIL at all. We could not be considered as insider merely because our Karta Mr. Prakash Jhunjhunwala is cousin of Mr. Ashish Jhunjhunwala, since we do not fall within the definition of “relative” as set out in section 6 read with schedule 1A of the companies Act. Thus, neither we fall under the definition of insider under regulation 2(e), nor we fall under the definition of 'connected persons' under regulation 2(c), nor we fall under the*

*definition of ‘deemed to be connected person’ under regulation 2(h) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter “PIT Regulations”).*

- In the SCN, names of the persons who were privy to UPSI before it became public, are enlisted, and admittedly my name is not reflected in that list.*
- Neither there is any allegation against Mr. Ashish Jhunjunwala that he has communicated the alleged UPSI to us nor any allegation that we have received any alleged UPSI from Mr. Ashish Jhunjunwala. In the absence of any allegation against Mr. Ashish Jhunjunwala of communicating the alleged UPSI to us or we having received any alleged UPSI from Mr. Ashish Jhunjunwala, no allegation of our having access to or trading on the basis of/while being in possession of UPSI can arise. Further, no allegation against us has been leveled of my having access to or possession of the alleged UPSI. The only inference is that we were reasonably expected to have access to alleged UPSI, which is bald, sweeping, unsubstantial and based on mere surmises and conjectures.*
- Admittedly, there is no allegation in the SCN against Mr. Ashish Jhunjunwala that he violated regulation 3(i) of the PIT Regulations. The only allegation against Mr. Ashish Jhunjunwala is that he violated the code of conduct.*
- There is no allegation that our trades were induced by any alleged UPSI, or that our trades were executed while being in possession of or on the basis of any alleged UPSI, there is no allegation that we received any communication of alleged UPSI through Mr. Ashish Jhunjunwala or otherwise.*
- In the absence of the aforesaid, no inference of our having access to alleged UPSI or indulging in any insider trading can be drawn.*
- Further our trades also do not show any trait of insider trading, we and the coparceners were trading prior to, during and after the trading window closure period and our majority of trades were post window closure period. Same completely destroys any possibility of trades being motivated by possession of any alleged UPSI. Thus from the trading pattern also, it cannot be alleged that we traded on the basis of any UPSI.*
- In our submission, we have categorically stated that reason for our sale of shares of RIL was to meet up margin requirement for the loan availed from SREI Equipment Financiers Pvt. Ltd., which is undisputed.*
- In the light of the above facts only, we be discharged from the proceedings and the charges against us be dropped.*

- *It may be noted that, before any trade being alleged to be done on the basis of UPSI, there must be possession of such UPSI with the person so trading. In the present, we are evidently neither insider nor connected nor deemed to be connected person. Thus, inference against us of reasonable access to alleged UPSI is drawn on the basis of alleged relationship with Mr. Ashish Jhunjunwala and the residence address being same. Evidently, in the absence of any allegation of our having access to the alleged UPSI, or being communicated alleged UPSI, or being in possession of alleged UPSI, there stands no reason why the charges should stand against us.*
- *Further, during the personal hearing, your goodself was pleased to raise the following issues for my response:*
  - (i) *Any additional material to show that the families of Ashish Jhunjunwala are separate from our family.*
  - (ii) *The trading pattern of Shri. Ashish Jhunjunwala closely resembles that of us.*
- *In this regards, we submit that in year 1995, to settle the ongoing disputes between the family over business a family settlement was arrived at between the successors of late Shri Ramsarup Jhunjunwala by way of family settlement/arrangement dated March 31, 1995. Mr. Loknath Jhunjunwala, father of Mr. Prakash Jhunjunwala got his share of companies. Mr. Ashish Jhunjunwala's father Mr. Ambika Prasad Jhunjunwala got his share of factory which was Ramsarup Engineering Industry Limited, which is now known as Ramsarup Industries Limited.*
- *Our residence building is a three storey building containing eight flats, out of which Prakash Jhunjunwala HUF owns two flats as our share, in which our Karta Mr. Prakash Jhunjunwala and coparceners of Prakash Jhunjunwala HUF, which is totally separate and independent from others. Rest six flats are occupied by other brothers of my grandfather Mr. Loknath Jhunjunwala. We are separate from others including Mr. Ashish Jhunjunwala, to the extent that we have a separate electric connection in the name of our Karta Mr. Prakash Jhunjunwala as well.*
- *From the above, it is reiterated that our trades were independent and had nothing to do with the alleged UPSI. We sold my shares to meet the financial requirements and for our own business purposes. The entire allegation against me rest solely on circumstantial evidence viz. assumption that we were reasonably expected to have access to the alleged UPSI when we executed our trades on August 09, 2010, proximity of relationship between our Karta/coparcener and Mr. Ashish*



*Jhunjhunwala being cousins, and the trades done by us (HUF) and our coparcener Mr. Mukund Jhunjhunwala on August 09, 2010. With regard to each of the circumstances, it may be noted that the assumption that we were aware of alleged UPSI on August 09, 2010 is patently false as stated hereinbefore. Further, we and our coparcener were selling the shares of RIL, pre window closure, during window closure and post window closure on the ordinary course. Further while drawing any inference based on the circumstance, following circumstance cannot be overlooked and ignored:*

- a. We are financially independent and have traded independently:*
  - b. We and our coparceners have traded in the shares of RIL, pre window closure, during window closure and post window closure.*
  - c. We have sold the shares which were owned by us through succession:*
  - d. The quantum of shares sold on August 09, 2010 allegedly based on the alleged UPSI, is exceedingly insignificant:*
  - e. The major sale of shares were executed during post window closure period, when the prices were low, which does not justify the inference that we sold on August 09, 2010 to avoid loss:*
  - f. At the relevant time, we were holding 77528 shares of RIL. Shares which are subject matter of the alleged insider trading are mere 686 (sale by HUF) and 3797(sale by Mukund Jhunjhunwala), which is insignificant.*
- With regard to circumstantial evidence Hon'ble Courts have consistently laid down that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstance are found to be incompatible with the innocence of the accused or the guilt of any other person the circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances*
  - In the matter under reference, circumstances based on which inference of our having reasonable access to alleged UPSI has been drawn are factually incorrect and are also hollow. Further, the circumstances set out above clearly do not lead to inescapable inference that we are insider, nor connected person, nor deemed to be connected person. No allegation against Mr. Ashish Jhunjhunwala communicating alleged UPSI to us or we having received any alleged UPSI from Mr. Ashish Jhunjhunwala has been made in the SCN, No allegation of our being in possession of or trading on the basis of the alleged UPSI has been made in the SCN as well. Mere inference has been that we were reasonably expected to have access to the UPSI, which is wholly baseless and unsubstantiated.*

.....”

## **CONSIDERATION OF ISSUES AND FINDINGS**

15. I have carefully perused the written and oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
- a. Whether Noticee is insider in terms of regulation 2(e) of PIT Regulations?
  - b. Whether Noticee had violated regulations 3 (i) of PIT Regulations read with section 12A (d) & (e) of SEBI Act?
  - c. Do the above mentioned violations, if any, attracts monetary penalty under sections 15 G of SEBI Act?
  - d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

16. The above regulations and sections state as under:

### ***Regulation 3(i) of PIT Regulations***

***“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”***

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

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

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

***(a) ...***

***(b) ...***

***(c) ...***

***(d) engage in insider trading;***

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

17. Further, the definition of PSI and UPSI as per regulations 2(ha) read with 2(k) of PIT Regulations are as under:

***Regulation 2 (ha)***

*“price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*

*Explanation.—The following shall be deemed to be price sensitive information :—*

- (i) Periodical financial results of the company*
- (ii).....*
- (iii) .....*
- (iv) .....*
- (v).....*
- (vi).....*
- (vii) .....*

***Regulation 2(k)***

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

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

***Clauses 3.2.1 & 3.2.3 of schedule - I under regulation 12(1)***

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

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

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

18. Thus, PSI means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. The information relating to periodical financial results, intended declaration of dividend, issuance and buy-back of securities, major expansion plan or execution of new project,

amalgamation, merger and takeovers, disposal of whole and substantial part of undertaking or any significant change in policies, plans or operations of the company is generally considered as “PSI” till the time the same is made public. These factors directly affect the market price of the share. Further, the list given in the explanation is an inclusive list and not an exhaustive one. So any other information, which has a material implication on the price of the scrip, is PSI.

19. “Unpublished” means information which is not published by the company or its agents or which is not made public in print or electronic media and is not specific in nature. The information published by a company or its agent in any newspaper or any print or electronic media as prescribed which is specific in nature with an objective to make it known to the investing public, would be a published information or otherwise “unpublished”.
20. Thus, from the above, I am of the view that declaration of the financial results of RIL for quarter ended June 2010 was PSI. Further, from the replies of the Noticee I find that Noticee has not disputed this fact.
21. Further, I find that Noticee vide reply dated June 22, 2012 stated that the information regarding the proposed declaration of financial results for quarter ended June 2012 came into public domain on July 28, 2010. Whereas, I find that the company had made corporate announcement on July 28, 2010 stating that meeting of board of director of the company will be held on August 13, 2010 to *consider* the un-audited financial results for quarter ended June 30, 2010. Further, it is the outcome of the financial results i.e. profit or loss etc made by the company during the quarter which affect the

price and volume of the shares. I find that company had not published the financial results for quarter ended June 2010 before August 13, 2010. Further, from the documents available on record I find that the trading window remained closed from August 7, 2010 upto 24 hours after the Board Meeting on August 13, 2010. As per clause 3.2.1 read with 3.2.3 of schedule - I under regulation 12(1) of PIT Regulations that the period of closure of trading window is decided by the company being a period during which, in the opinion of the company, PSI i.e. financial results is available but unpublished. Therefore, I am of the view that information regarding declaration of financial results for quarter ended June 2010 was unpublished till August 13, 2010 and UPSI period was the period identified by RIL for closure of trading window as per their letter dated August 26, 2011 i.e., from August 07, 2010 up to 24 hours after board meeting on August 13, 2010.

22. As regards the issue of whether Noticee is insider or not, the same is to be tested as per the definition provided in the PIT Regulations. The relevant regulations in the PIT Regulations read as:

***Regulation 2 (e)***

*“insider” means any person who, 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 who has received or has had access to such unpublished price sensitive information;*

***Regulation 2(c)***

*“connected person” means any person who—*

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

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

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

**Regulation 2(h)**

*“person is deemed to be a connected person”, if such person—*

- (i) .....
- (ii) .....
- (iii).....
- (iv).....
- (v) .....
- (vi).....
- (vii) .....
- (viii) ) *relatives of the connected person: or*

23. The relevant section of Companies Act 1956 are as under:

**Section 6**

*Meaning of "relative".-*

- A person shall be deemed to be a relative of another if, and only if,-*
- (a) they are members of a Hindu undivided family; or*
  - (b) they are husband and wife; or*
  - (c) the one is related to the other in the manner indicated in Schedule IA*

**Schedule IA**

*List of Relatives*

- 1. Father.*
- 2. Mother (including step-mother).*
- 3. Son (including step-son).*
- 4. Son's wife.*
- 5. Daughter (including step-daughter).*
- 6. Father's father.*
- 7. Father's mother.*
- 8. Mother's mother.*
- 9. Mother's father.*
- 10. Son's son.*

11. *Son's Son's wife.*
12. *Son's daughter.*
13. *Son's daughter's husband.*
14. *Daughter's husband.*
15. *Daughter's son.*
16. *Daughter's son's wife.*
17. *Daughter's daughter.*
18. *Daughter's daughter's husband.*
19. *Brother (including step-brother).*
20. *Brother's wife.*
21. *Sister (including step-sister).*
22. *Sister's husband.*

The term insider is defined as any person who is or was or is deemed to be connected with the company and who is reasonably expected to have or has received or has had access to such UPSI in respect of securities of a company. The term “connected person” has been defined in regulation 2(c) and includes any person who is a “director” of a company, or is an officer or employee of the company or holds position involving a professional or business relationship between himself and the company and who has reasonable access to the UPSI of the company. The term “person is deemed to be a connected person” has been defined in regulation 2(h) and includes relatives of the connected person. Further, the term “relative” is defined under section 6 of Companies Act 1956 which says that a person shall be deemed to be a relative of another if, and only if, they are members of a Hindu undivided family or they are husband and wife or that one is related to the other in the manner indicated in Schedule IA as mentioned above.

24. As per regulation 3(i) of PIT Regulations, an insider, being in possession of any unpublished price sensitive information, shall not deal in the securities of a company listed on any stock exchange, either on his own behalf or on behalf of any person. An insider being in possession of unpublished price sensitive information is

prohibited from dealing in securities of such company, directly or indirectly. Communication may be written or verbal and communication of information by an insider to any other person even without the latter asking for it would be sufficient to bring the insider within this prohibition. In such case, the other person to whom the information is conveyed becomes an insider if he uses the information to deal in company's securities. Further, as per sections 12A(d) & 12A(e) of SEBI Act no person shall directly or indirectly engage in insider trading or deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of SEBI Act or the rules or the regulations made thereunder.

25. From the documents available on record, I find that the name of Mr. Ashish Jhunjunwala appears in the list of directors of the company, wherein his designation is Chairman & Managing Director. RIL vide its letters dated September 13, 2011 and October 20, 2011 stated that Mr. Ashish Jhunjunwala was privy to finalization of accounts & financial results and submitted the chronology of events leading to announcement of financial results for the quarter ended June 2012 which are as follows:



<b>Date</b>	<b>Matter</b>	<b>Persons involved</b>
July 28, 2010	Notice of Board Meeting given to BSE & NSE for holding the Board Meeting on August 13, 2010  Proposal of raising of capital came into existence	Ashish Jhunjunwala Naveen Gupta Gajendra Kr Singh
August 05, 2010	Notice with Agenda sent to Directors of the Company	Ashish Jhunjunwala Naveen Gupta Aayush Suresh Lohia Bimal Kumar Jhunjunwala K M Lal L M Chatterjee Debashis Sarkar
August 12, 2010	Meeting of Audit Committee to consider & approve Financial Result for the Quarter ending June, 2010	Bimal Kumar Jhunjunwala Lalit Mohan Chatterjee Aayush Lohia Gajendra Kumar Singh-Company Secretary in attendance
August 13, 2010	Financial result for the quarter June, 2010 was given to the Board of Directors. Meeting of the Board of Directors to consider & approve financial results for the Quarter ending June, 2010	All Directors & Company Secretary

26. From the minutes of the board meeting held on August 13, 2010, I find that Mr. Ashish Jhunjunwala was the chairman of the meeting. Thus, from the above, I am of the view that Mr. Ashish Jhunjunwala being the Chairman and Managing Director of RIL, was the person privy to the finalization of financial results & accounts and in possession of UPSI during UPSI period. Therefore, Mr. Ashish Jhunjunwala was an insider as per regulation 2(e) read with regulation 2(c) of PIT Regulations.

27. The next question is whether Noticee was an insider or not as per regulation 2(e) read with regulations 2(c) & 2(h) of PIT Regulations. From the document available on records, I find that Mr. Prakash Jhunjunwala is Karta of the Noticee. Further, neither Prakash Jhunjunwala nor any other coparcener of the Noticee was a director or any officer or employee of RIL. The Noticee owns a separate construction business in the name of PURE COKE. I also find that Mr. Prakash Jhunjunwala is a cousin brother of Mr.

Ashish Jhunjunwala. Further, upon interpreting the definition of 'relative' as specified under schedule IA of section 6 of the Companies Act 1956, I find that neither Mr. Prakash Jhunjunwala nor any coparceners of the Noticee is a relative of Mr. Ashish Jhunjunwala. Therefore, it is construed that Noticee is not a relative of Mr. Ashish Jhunjunwala as per Companies Act 1956. The ancestral hierarchy of Mr. Prakash Jhunjunwala has already been mentioned above.

28. Thus, from the above and as per the definition of 'connected persons' and 'person is deemed to be a connected person' defined under regulations 2(c) and 2(h) of PIT Regulations respectively, I find that Noticee is neither a connected person nor deemed to be a connected person even by virtue of definition of 'relative' as specified under section 6 read with schedule IA of the Companies Act 1956.
29. Next issue arises is that whether Noticee's Karta or any of its coparceners had received or had an access to UPSI and whether UPSI was communicated by Mr. Ashish Jhunjunwala to Noticee's Karta. From the documents available on records, I find that Noticee's Karta, Mr. Prakash Jhunjunwala is a cousin brother of Mr. Ashish Jhunjunwala, Chairman & Managing Director of RIL and both of them share a common address i.e. *10/4, Alipore Park Place, Kolkata – 700027*. Upon perusal of memorandum of family settlement/arrangement dated March 31, 1995 submitted by the Noticee, I find that the family members of late Shri Ramsarup Jhunjunwala i.e. Shri Loknath Jhunjunwala, Shri Ambika Prasad Jhunjunwala, Shri Kailash Chandra Jhunjunwala and Shri Sajjan Kumar Jhunjunwala had entered into a family settlement and

business arrangement. However, in the said memorandum of family settlement all the four parties i.e. Shri Loknath Jhunjunwala, Shri Ambika Prasad Jhunjunwala, Shri Kailash Chandra Jhunjunwala and Shri Shajjan Kumar Jhunjunwala shared a common address i.e. 10/4, Alipore Park Place, Kolkata – 700027. Further, Noticee vide reply dated July 20, 2012 and July 27, 2012 *inter alia* stated respectively that“.....About 15 years ago, the family of Shri Ambika Prasad Jhunjunwala and Shri Loknath Jhunjunwala and other brothers separated and by way of family settlement the ancestral and inherited properties were partitioned between the families which included the ancestral building at 10/4, Alipore Park Place, Kolkata and shares of RIL. After partition, the families of the respective successors continued to occupy and reside in their share of the ancestral residential building having address 10/4, Alipore Park Place, Kolkata-700027. Thus, we inherited the address 10/4 Alipore Park Place, Kolkata from Shri Loknath Jhunjunwala.....” and “.....our residence building is a three storey building containing eight flats, out of which we owns two flats as our share. In which our Karta Mr. Prakash Jhunjunwala and coparceners of Prakash Jhunjunwala HUF reside, which is totally separate and independent from others. Rest six flats are occupied by other brothers of our Karta’s father Mr. Loknath Jhunjunwala. We are separate from others including Mr. Ashish Jhunjunwala, to the extent that we have a separate electric connection in the name of our Karta Mr. Prakash Jhunjunwala as well...”. However, I find that Noticee had failed to submit any evidence with respect to the partition of ancestral building at 10/4 Alipore Park Place, Kolkata and of its share in the said building. Further, from the documents available on record, I find that Noticee’s Karta along with the coparceners and Mr. Ashish Jhunjunwala resides at same address. However, Noticee says that pursuant to partition it owns two flats out of eight flats of the building situated at 10/4 Alipore Park Place, Kolkata and Ashish

stays in separate flat and that they are totally independent. I am inclined to give benefit of doubt to the Noticee with respect to its said contention.

30. The day wise trading details of the Noticees, its Karta and coparceners are as follows:

Client Name	Client PAN	Day Date	Buy Volume	Sell Volume	Avg Buy Price	Avg Sell Price	Net Qty	% to mkt gross	% to mkt net
Prakash Kumar Jhunjhunwala	ACUPJ6352L	6-Aug-10	0	2000	0.00	112.00	2000	0.06	0.29
Prakash Kumar Jhunjhunwala	ACUPJ6352L	29-Sept-10	0	1225	0	58.95	1225	1.98	4.60
Prakash Kumar Jhunjhunwala	ACUPJ6352L	30-Sept-10	0	175	0	57.00	175	0.24	0.60
Prakash Kumar Jhunjhunwala (HUF)	AAFHP2374F	9-Aug-10	0	686	0.00	109.73	686	0.05	0.25
Sujata Jhunjhunwala	AFJPJ7437A	6-Aug-10	0	7041	0.00	111.03	7041	0.20	1.01

31. Upon analysis of trading pattern of the Noticees, its Karta and coparceners, I find that Prakash Jhunjhunwala had sold 2000 shares of RIL and Sujata Jhunjhunwala (wife of Prakash Jhunjhunwala) had sold 7,041 shares on August 06, 2010 i.e. prior to UPSI period (prior to August 07, 2010), Noticee sold 686 shares of RIL on August 07, 2010 i.e. during UPSI period (during August 07 to August 13, 2010) and Prakash Jhunjhunwala sold 1225 & 175 shares of RIL on September 29, 2010 & September 30, 2010 respectively i.e. post UPSI period (post August 13, 2010). Thus, Noticee, its Karta and coparceners had traded in the scrip of RIL prior to UPSI period, during UPSI period and post UPSI period. Considering the trading pattern of the Noticee, it does not appear that it has taken advantage of the UPSI.

32. Further, upon perusal of the documents available on record, I find that there is no conclusive evidence on record which shows that Mr. Ashish Jhunjunwala had communicated the UPSI to the Noticees Karta or any of its coparceners except from the fact that Noticees Karta, Mr. Prakash Jhunjunwala & Mr. Ashish Jhunjunwala have a common residential address. Further, even trading pattern of the Noticee, its Karta and coparceners does not clearly indicate that Noticee, its Karta and coparceners had traded in the scrip of RIL on the basis of possession of UPSI. Therefore, on the basis of available evidence, I am inclined to give benefit of doubt to the Noticee with regard to possession of UPSI.
33. Hon'ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) in *Dilip S Pendse vs. SEBI*<sup>1</sup>, held that, “.....the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In *Mousam Singha Roy v. State of West Bengal* (2003) 12 SCC 377, the learned judges of the supreme Court in the context of the administration of criminal justice observed that, ‘it is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.’ This principle applies to civil case as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability.....”

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<sup>1</sup> SAT Order dated November 19, 2009, Appeal No. 80 of 2009

34. *In Bater v. Bater*<sup>2</sup> Denning, L.J. observed that “.... It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion...”.
35. Thus, from the above, higher the gravity of charge, higher would be the degree of evidence required to prove it. Therefore, I am of the view that, there is not enough evidence available on record to conclusively establish that the Noticee had received or had access to UPSI. Therefore, I am inclined to give benefit of doubt to the Noticee, that it was an insider as per regulation 2(e) of PIT Regulations. Therefore, trading done by the Noticee in the scrip of RIL during the UPSI period does not appear to amount to the violation of regulation 3(i) of PIT Regulations read with section 12A(d) & (e) of SEBI Act.

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<sup>2</sup> (1950) 2 ALL E.R. 458

36. Thus, in the light of above, the alleged violation of regulation 3(i) of PIT Regulations read with section 12A(d) & (e) of SEBI Act by the Noticee does not stand established.

**ORDER**

37. In view of the foregoing, the alleged violation of the provisions of regulation 3(i) of PIT Regulations read with section 12A(d) & (e) of SEBI Act by the Noticee as specified in the SCN dated June 04, 2012 does not stand established and the matter is, accordingly, disposed of.

38. 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: September 28, 2012**  
**Place: Mumbai**

**PIYOOSH GUPTA**  
**ADJUDICATING OFFICER**