

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/AK/AO/53/2012]**

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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  
MUKUND JHUNJHUNWALA  
(PAN. No. AEFPJ0592R)**

**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, 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 Mr. Mukund Jhunjhunwala (hereinafter referred to as **“Noticee”**) 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/12099/2012 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:

<b>Particulars</b>	<b>Price(₹)</b>
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 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>1. The Un-audited Financial results for the 1st quarter ended on June 30, 2010.</li> <li>2. Raising of Long Term resources by: <ol style="list-style-type: none"> <li>a. 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>b. Issue of Equity Shares / Securities Convertible into Equity Shares, to eligible Qualified Institutional Buyers (QIBs) in one or more tranches through Qualified Institutional Placement (QIP)</li> </ol> </li> </ol>	<p><b>July 28, 2010</b> <b>Price(₹)</b></p> <table border="1" data-bbox="808 426 1177 590"> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></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" data-bbox="834 791 1151 947"> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></td></tr> </table> <p><b>Volume</b> 3,25,978 shares</p>																	<p>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.</p>
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>1. Issuance of FCCB and / or other convertible instruments to the extent of US\$ 250 Million / ₹. 1150 Crores.</li> <li>2. Issuance of 35,00,000 fully</li> </ol>	<p><b>August 12, 2010</b> <b>Price(₹)</b></p> <table border="1" data-bbox="875 1428 1187 1600"> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></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" data-bbox="878 1774 1187 1890"> <tr><td></td><td></td><td></td><td></td></tr> <tr><td></td><td></td><td></td><td></td></tr> </table>																	<p>The opening price on August 16 decreased by 0.28% from the previous day's close price and trading volume also decreased by 64%</p>

	<p>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.</p>	<table border="1" data-bbox="881 193 1190 256"> <tr> <td></td><td></td><td></td><td></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" data-bbox="881 430 1190 604"> <tr> <td></td><td></td><td></td><td></td></tr> <tr> <td></td><td></td><td></td><td></td></tr> </table> <p><b>Volume</b> 13,19,008 shares</p>													

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 till 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:

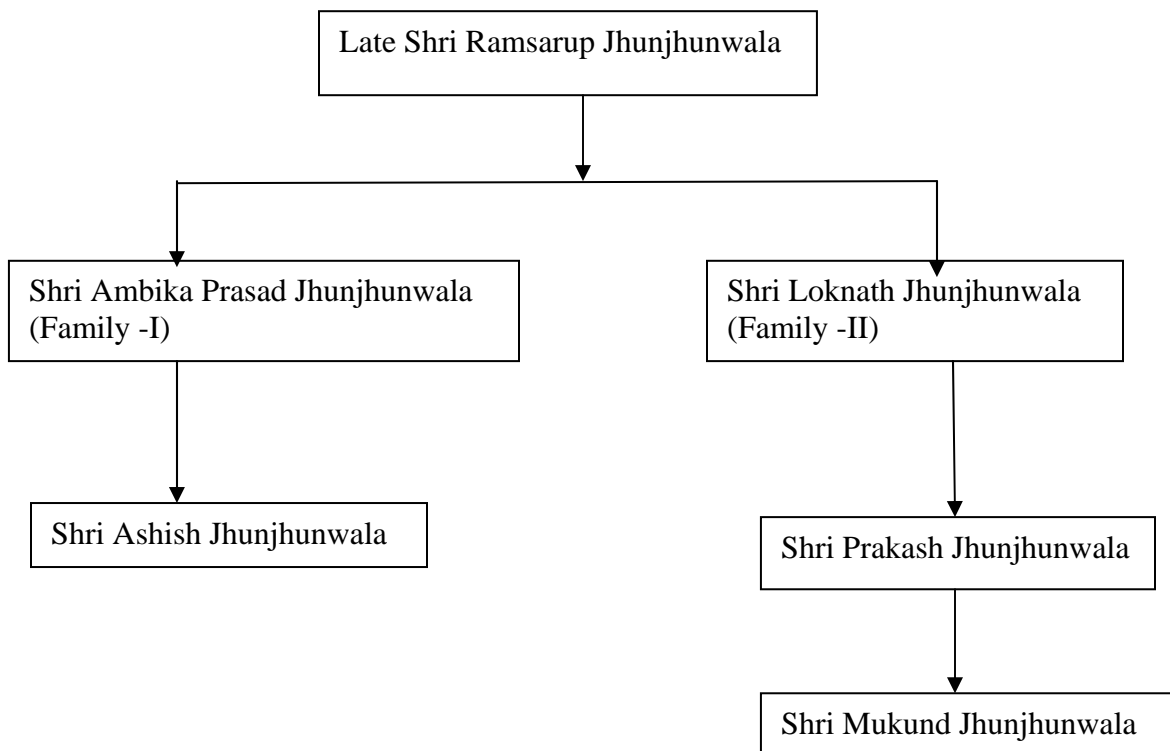
Name	Designation
Ashish Jhunjhunwala	Chairman & Managing Director
Naveen Gupta	Whole Time Director & CFO
Gajendra Kumar Singh	Company Secretary
Vikash Ladia	Chief Commercial Officer
Bimal Kumar Jhunjhunwala	Independent Director & Chairman Audit Committee
L M Chatterjee	Independent Director & Member Audit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

10. Thus, it was alleged that Mr. Ashish Jhunjhunwala (hereinafter referred to as “**Ashish**”) is an insider as per regulation 2(e) of PIT Regulations. Further, Noticee’s father, Mr. Prakash Jhunjhunwala is cousin brother of Ashish and Noticee & Ashish share common address, hence Noticee is related/connected to Ashish and 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 3,797 shares at the rate of ₹ 110.00. 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 ₹ 73396/-. 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 Jhunjhunwala) 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 email dated July 13, 2012 and 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, I deny all the allegations, charges and findings against me in the said SCN. Nothing contained in the said SCN may be deemed to have been admitted by me merely on account of non traverse, unless specifically admitted herein.*
- *I am an adult Hindu Indian citizen and a coparcener of Prakash Jhunjhunwala HUF engaged in the business of construction in the name of PURE COKE, a partnership concern. The partnership firm executes construction for companies on contract basis and it has clients including Hindustan Construction Company, Vodafone etc.*
- *I am great-grandson of Late Shri Ramsarup Jhunjhunwala, grandson of Shri Loknath Jhunjhunwala, and son of Shri Prakash Jhunjhunwala. The family tree of the family leads back to Late Shri Ramsarup Jhunjhunwala (my great grandfather). Late Shri Ramsarup Jhunjhunwala had seven sons, Shri Ambika Prasad Jhunjhunwala and Shri Loknath Jhunjhunwala and five others. Shri Loknath Jhunjhunwala is my grandfather, and his son Shri Prakash Jhunjhunwala is my father. Shri Ashish Jhunjhunwala, the Managing Director of RIL, is son of Shri Ambika Prasad Jhunjhunwala. Thus, Shri Ashish Jhunjhunwala is cousin brother of my father Shri Prakash Jhunjhunwala. About 15 years ago, the family of Shri Ambika Prasad Jhunjhunwala and Shri Loknath Jhunjhunwala 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, I inherited the address 10/4 Alipore Park Place, Kolkata and the shares of Ramsarup Industries Limited from Shri Loknath Jhunjhunwala. 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 I sold 33800 shares of RIL held by me. It is pertinent to note that my sale of shares in RIL was on market at the prevailing price and was delivery based trade. It is pertinent to note that my decision to sell the shares of RIL and the corporate announcement made by RIL published on the website of the stock exchange and one of my*

*sale transaction during the sale of RIL shares falling in the alleged UPSI period was a mere coincidence, and my sale of RIL shares has nothing to do with the corporate announcements and vice versa. Thus, my sale was irrespective of and had nothing to do with the said corporate announcements made by RIL.*

- *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 me, the SCN evidently proceeds on incorrect facts leading to surmises and conjectures and lacks basis and any documentary evidence. The allegations in the SCN 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 I dealt with the allegations in the SCN, it is worth pointing out that in the SCN:*
  - a. *there is no recording as to how am I insider with respect to RIL.*
  - b. *there is no allegation that I am connected or deemed to be connected person.*
  - c. *there is no explanation as to how am I connected or deemed to be connected person to fall under the definition of 'insider'.*
  - d. *there is no explanation as to how am I a relative of Shri Ashish Jhunjhunwala.*
  - e. *there is no explanation as to how am I expected to have access to the alleged UPSI.*
  - f. *the SCN nowhere records or alleges that I came in possession of the alleged UPSI, and it proceeds only on the presumption that I was reasonably expected to have access to the alleged UPSI.*
- *.....*
- *In the light of the facts of the case and relevant provisions reproduced hereinbefore, I submit as follows:*
- *NOT AN INSIDER: I am not an insider under the definition of 'insider' as per Regulation 2(e) of PIT Regulations. I am neither connected with RIL nor deemed to be connected with RIL. I cannot be reasonably expected to have access to unpublished price sensitive information in respect of securities of RIL. I have never received nor had access to such unpublished price sensitive information at all.*
- *NOT CONNECTED TO RIL: I submit that I am not connected person to RIL as neither I am 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 I 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). I 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: I 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 me in the SCN by stating that I am related to Shri Ashish Jhunjunwala, MD and Chairman of RIL. It is denied that I am related to Shri Ashish Jhunjunwala. I do not fall under the definition of “relative” as provided under Section 6 of the Companies Act, 1956.*
- *RESIDENCE ADDRESS: As submitted herein, my residence is independent and separate from that of Shri Ashish Jhunjunwala. I reside with my parents, brother and sister as a coparcener of Prakash Jhunjunwala HUF in the share of ancestral house rightfully belonging to Prakash Jhunjunwala HUF and Shri Ashish Jhunjunwala reside in his share of the ancestral house, post partition. Our residence is separate and independent of Shri Ashish Jhunjunwala. Since partition, neither I have any communication, nor there is any financial or business relationship between me and Shri Ashish Jhunjunwala or RIL. No adverse inference can be drawn against me on the basis of my residential address.*
- *REASONABLY EXPECTED TO HAVE ACCESS TO THE UPSI: It is denied that I had access to any UPSI with respect to RIL at all. The Notice nowhere records as to how and in what manner I can have or I had access to any UPSI with respect to RIL. It appears that the SCN proceeds on erroneous presumption that I was reasonably expect to have access to the UPSI on the misconceived basis that I am an insider to RIL being relative to Shri Ashish Jhunjunwala who is MD and Chairman of RIL, and I reside in the same house as Shri Ashish Jhunjunwala. It is submitted that in the light of correct factual position that neither I am 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. *I am not an insider as per Regulation 2(e) of PIT Regulations as I am not related to Shri Ashish Jhunjunwala, MD and Chairman of RIL. Shri Ashish Jhunjunwala is not my relative. Save and except the fact that Shri Ashish Jhunjunwala is son of my father’s uncle, I have no relationship including business and financial, with him. Undisputedly, I do not at all fall within the definition of relative with respect to Shri Ashish Jhunjunwala.*
  - b. *I have no common business/investment activities with either Ashish Jhunjunwala or RIL. Neither does he seek my views nor do I volunteer to show interest in his business activities. I am not a director or promoter of RIL. Further, Shri Ashish Jhunjunwala is also in no way associated with me 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 I 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 I reside separately with my parents, brother and sister being the coparcener of Prakash Jhunjhunwala HUF 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 I 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 do not share premises at all. I would, therefore request you to kindly note that said fact, and not to be misguided by the “address” to draw adverse inferences against me.*
  - d. *I do not fall within the definition of Insider, neither I was having any access to the alleged UPSI nor did I have any reason to have access to the alleged UPSI. Post partition, I am totally disconnected to the extent that neither me nor any the coparceners of Prakash Jhunjhunwala HUF share any relationship with the family of Shri Ashish Jhunjhunwala, MD and Chairman of RIL. My business is totally different and independent from that of RIL. Thus, there arises no reason for my having any access to any UPSI, as alleged.*
- *The entire SCN proceeds against me on the basis of incorrect facts leading to surmises and conjectures. In this regard, I 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 me for the trades done by me in the shares of RIL. Without prejudice, it is submitted that from the Notice, I understand that the alleged UPSI was in existence from August 07, 2010 to August 13, 2010. As per table, it can be seen that I was 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 me in a matter or 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. Further, from the records it can be seen that during 2010-2011 I was holding 33800 shares of RIL (as*

*detailed in Annexure 11 to the SCN). This entire shareholding of 33800 shares of RIL was sold by me during the period 06.08.2010 to 04.10.2010. Evidently, only 3797 shares out of my total shareholding in RIL of 33800 shares was sold by me during the alleged UPSI (i.e. on August 09, 2010). I have sold my shareholding to meet out the financial necessities as submitted herein and evidently my sale was not influenced by any alleged UPSI. No adverse inference can be drawn against me from the sale of 3797 shares of RIL on August 09, 2010.*

- With respect to para 16 (c) of the SCN, it is submitted that from my sale of 3797 shares of RIL on August 09, 2010, it is wrong to allege that I have avoided potential loss by selling 3797 shares. It is vehemently denied that by sale of 3797 shares on August 09, 2010 I have avoided potential loss, as alleged. It can be seen from records that I have sold shares of RIL prior to the UPSI period, during the UPSI period, and post the UPSI period. Evidently my sale prior to UPSI period and post UPSI period is much higher than my sale during the UPSI period. Evidently, the sales post the alleged UPSI are much higher and thereby if taking the theory of losses propounded in the Notice, losses incurred by me out of sale of RIL shares post UPSI period are much higher than the alleged potential loss avoided by sale of 3797 RIL shares during UPSI period. Had I been in possession of any alleged UPSI, all shares must have been sold by me only 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 me. It is pertinent to note that the sales made by me were independent and were not at all influenced by the alleged UPSI.*
- By dealing in shares of RIL during the period of alleged UPSI, which UPSI I was neither aware of nor concerned with, I have not violated Regulation 3(i) of PIT Regulations read with Section 12 A(d) & (e) of SEBI Act. As demonstrated hereinbefore, I am not insider under the PIT Regulations. Since I am not insider under the PIT Regulations, the allegation against me of violation of Regulation 3(i) of PIT Regulations does not and cannot arise.*
- In the facts and circumstances of the case and in light of the correct factual position, it is submitted that I am not an insider to RIL. Neither I have, on my 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. I 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, I have not violated Regulation 3(i) of PIT Regulations read with Section 12A (d) & (e) of SEBI Act.*
- It is denied that I am 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 I 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 my submissions following factors may be noted:*
  - a. *I am neither insider nor connected or deemed to be connected persons with Shri Ashish Jhunjunwala.*
  - b. *I 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. *I have neither made any disproportionate gain(s) nor gained any unfair advantage out of said sale of 3797 RIL shares, and I 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 me 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 Noticees. 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:

*“.....*

- *I am not insider, and I am not director or employee of RIL and do not have any business relationship with RIL at all. I could not be considered as insider merely because my father Mr. Prakash Jhunjunwala is cousin of Mr. Ashish Jhunjunwala, since I do not fall within the definition of “relative” as set out in section 6 read with schedule 1A of the companies Act. Thus, neither I fall under the definition of insider under regulation 2(e), nor I fall under the definition of ‘connected persons’ under regulation 2(c), nor I 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 Jhunjhunwala that he has communicated the alleged UPSI to me nor any allegation that I have received any alleged UPSI from Mr. Ashish Jhunjhunwala. In the absence of any allegation against Mr. Ashish Jhunjhunwala of communicating the alleged UPSI to me or my having received any alleged UPSI from Mr. Ashish Jhunjhunwala, no allegation of my having access to or trading on the basis of/while being in possession of UPSI can arise. Further, no allegation against me has been leveled of my having access to or possession of the alleged UPSI. The only inference is that I was 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 Jhunjhunwala that he violated regulation 3(i) of the PIT Regulations. The only allegation against Mr. Ashish Jhunjhunwala is that he violated the code of conduct.*
- *There is no allegation that my trades were induced by any alleged UPSI, or that my trades were executed while being in possession of or on the basis of any alleged UPSI, there is no allegation that I received any communication of alleged UPSI through Mr. Ashish Jhunjhunwala or otherwise.*
- *In the absence of the aforesaid, no inference of my having access to alleged UPSI or indulging in any insider trading can be drawn.*
- *Further my trades also do not show any trait of insider trading, I was trading prior to, during and after the trading window closure period and 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 I traded on the basis of any UPSI.*
- *In my submission, I have categorically stated that reason for my 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, I be discharged from the proceedings and the charges against me 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, I am evidently neither insider nor connected nor deemed to be connected person. Thus, inference against me of reasonable access to alleged UPSI is drawn on the basis of alleged relationship with Mr. Ashish Jhunjhunwala and the residence address being same. Evidently, in the absence of any allegation of my 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 me.*

- *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 my family.*
  - (ii) *The trading pattern of Shri. Ashish Jhunjunwala closely resembles that of me.*
- *In this regards, I 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.*
- *My residence building is a three storey building containing eight flats, out of which Prakash Jhunjunwala HUF owns two flats as our share. I reside in with my father, mother and other family members in the shares 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 (all the coparceners of Prakash Jhunjunwala HUF including me) are separate from others including Mr. Ashish Jhunjunwala as well.*
- *From the above, it is reiterated that my trades were independent and had nothing to do with the alleged UPSI. I sold my shares to meet the financial requirements and for my family business purposes. The entire allegation against me rest solely on circumstantial evidence viz. assumption that I was reasonably expected to have access to the alleged UPSI when I executed my trades on August 09, 2010, proximity of relationship between my father M. Prakash Jhunjunwala and Mr. Ashish Jhunjunwala being cousins, and the trades done by me on August 09, 2010. With regard to each of the circumstances, it may be noted that the assumption that I was aware of alleged UPSI on August 09, 2010 is patently false as stated hereinbefore. Further, I was 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. *I am financially independent and have traded independently:*



- b. *I have traded in the shares of RIL, pre window closure, during window closure and post window closure.*
- c. *I have sold the shares which were owned by me 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 I sold on August 09, 2010 to avoid loss:*
- f. *At the relevant time, I was holding 33800 shares of RIL. Shares which are subject matter of the alleged insider trading are mere 3797, 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 my 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 I am insider, nor connected person, nor deemed to be connected person. No allegation against Mr. Ashish Jhunjunwala communicating alleged UPSI to me or my having received any alleged UPSI from Mr. Ashish Jhunjunwala has been made in the SCN, No allegation of my 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 I was 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 he 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 2010 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 directors 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 i.e., from August 07, 2010 till 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.*

24. 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. The relatives of a person as per schedule IA are mentioned above.

25. 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.

26. 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

27. 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.



28. 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 Noticee was neither a director nor any officer or employee of RIL. The Noticee is the son of Mr. Prakash Jhunjunwala and 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 Mr. Prakash Jhunjunwala is not 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 the Noticee has already been given above.
29. 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.
30. The next issue is whether Noticee had received or had an access to UPSI and whether UPSI was communicated by Mr. Ashish Jhunjunwala to Noticee or not. From the documents available on records, I find that Noticee's father, 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, I inherited the address 10/4 Alipore Park Place, Kolkata and the shares of Ramsarup Industries Limited from Shri Loknath Jhunjunwala.....*” and “.....*My residence building is a three storey building containing eight flats, out of which Prakash Jhunjunwala HUF owns two flats as our share. I reside in with my father, mother and other family members in the shares 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 (all the coparceners of Prakash Jhunjunwala HUF including me) are separate from others including Mr. Ashish 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 his share in the said building. Further, from

the documents available on record, I find that Noticee and Mr. Ashish Jhunjhunwala reside at the same address. However, Noticee has submitted that pursuant to partition, his father Prakash Jhunjhunwala owns two out eight flats of the building situated at 10/4 Alipore Park Place, Kolkata wherein Ashish Jhunjhunwala stays in separate flat and they are totally independent. I am inclined to give benefit of doubt to the Noticee with respect to this contention.

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

Client Name	Day Date	Buy Volume	Sell Volume	Avg Sell Price	Net Qty	% to mkt gross	% to mkt net
Mukund Jhunjhunwala	6-Aug-10	0	10003	111.97	10003	0.28	1.44
Mukund Jhunjhunwala	9-Aug-10	0	3797	110.00	3797	0.25	1.40
Mukund Jhunjhunwala	27-Sept-10	0	3300	58.71	3300	2.14	4.81

32. Upon analysis of trading pattern of the Noticee, I find that Noticee had sold 10,003 shares of RIL on August 06, 2010 i.e. prior to UPSI period (prior to August 07, 2010), sold 3797 shares of RIL on August 07, 2010 i.e. during UPSI period (during August 07 to August 13, 2010) and sold 3300 shares of RIL on September 27, 2010 i.e. post UPSI period (post August 13, 2010). Thus, Noticee 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 he has taken advantage of the UPSI.

33. Further, upon perusal of the documents available on record, I find that there is no conclusive evidence on record which shows that Mr. Ashish Jhunjhunwala had communicated the UPSI to the Noticee except from the fact that Noticee & Mr. Ashish Jhunjhunwala have a common residential address. Further, even trading pattern of the Noticee does not clearly indicate that Noticee 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.
34. 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....."*
35. *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*

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

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

*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... ”.*

36. Thus, from the above, higher the gravity of charge, higher would be the degree of evidence required to prove it. 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 he was an insider as per regulation 2(e) of PIT Regulations. Hence, 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.
37. 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**

38. 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 as specified in the SCN dated June 04, 2012 does not stand established and the matter is, accordingly, disposed of.

39. 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**