

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI**

**CORAM: SHRI. S RAMAN, WHOLE TIME MEMBER**

**ORDER**

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(2) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 against Mr. Aashish Jhunjhunwala (PAN:ACPPJ2618E) in the matter of M/s Ramsarup Industries Limited.

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1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the dealings in the scrip of M/s Ramsarup Industries Ltd. (hereinafter referred to as '**Ramsarup Industries**' or '**the company**') for the period during July 01, 2010 – August 31, 2010 (hereinafter referred to as "**investigation period**"). Shares of Ramsarup Industries are listed on National Stock Exchange (**NSE**), Bombay Stock Exchange (**BSE**) and Calcutta Stock Exchange (**CSE**).
2. It is noted from the investigation conducted by SEBI that:
  - i. The company had informed NSE on July 28, 2010, that a meeting of its Board of Directors would be held on August 13, 2010, *inter alia*, to declare its unaudited financial results for the quarter ended June 30, 2010. Thereafter, the Company on August 13, 2010 disclosed its financial results to NSE.
  - ii. The net profit of the company for the quarter ended June 2010 had reduced by almost 2/3rd from its previous quarter, *i.e.* March 2010 (*i.e.* from ₹14.41 crore to ₹5.88 crore). The share price of the company prior to the declaration of the aforementioned financial results to NSE on August 13, 2010 (*i.e.* during the period July 20, 2010 to August 13, 2010), was in the range of ₹106/- to ₹120/-. Subsequent to the declaration of the financial results on August 13, 2010, the share price declined to ₹85/- on the next trading day. Thereafter, the price of the scrip fell to

₹61.50 by August 31, 2010. The decrease in the share price was clearly a consequence of the announcement of the financial results for the quarter ended June 2010.

- iii. The open, high, low and close price of the scrip at NSE during the investigation period (July 01 – August 31, 2010 ) are given below:

Particulars	Price (in ₹) (July 01 – August 31, 2010 )
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)

- iv. The financial results of the company was published on August 13, 2010 and the same was a price sensitive information (in terms of Regulation 2(ha)(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereafter referred to as "**SEBI PIT Regulations**") prior to its publication.
- v. The company, vide letter dated August 6, 2010 issued "*Notice of the closure of trading window*" to all directors and designated employees of the company, intimating them about the Board meeting scheduled on August 13, 2010 and advising them to refrain from buying/selling of the shares of the company from August 07, 2010 until 24 hrs after the publication of the proceedings of the Board meeting to the stock exchanges, *i.e.* till August 14, 2010 in terms of Regulation 12(1) read with the "*Model Code of Conduct for prevention of Insider Trading for listed companies*" stipulated under Schedule I of SEBI PIT Regulations. In the instant case, the period August 07, 2010 till August 14, 2010 (*i.e.* the "*trading window closure period*"), therefore was considered as the period during which "*Unpublished Price Sensitive Information*" (**UPSI**) was available with the connected persons including the directors and designated employees of the company.
- vi. As per the submissions made by the company vide letter dated October 20, 2011, during the course of investigation, the persons privy to finalization of accounts, at different stages of

consideration, included Mr. Aashish Jhunjunwala, who was also the Chairman and Managing Director (**CMD**) of the company during the relevant period. It was also stated by the company that the Notice with the agenda of the Board Meeting to be held on August 13, 2010 was sent to Mr. Jhunjunwala on August 05, 2010. The "*Notice of the closure of trading window*" vide letter dated August 6, 2010 was also issued to all directors including Mr. Jhunjunwala, officers and designated employees of the company. It is therefore a fact that Mr. Jhunjunwala, the Chairman and Managing Director of the company was a connected person and was in possession of the UPSI in the form of unaudited financial results of the company for the quarter ended June 2010 and hence an insider in terms of Regulation 2(e) of the SEBI PIT Regulations.

- vii. Investigation found that Mr. Jhunjunwala, Chairman and Managing Director of the company, while in possession of the UPSI in the form of unaudited financial results of the company for the quarter ended June 2010 and hence an insider under SEBI PIT Regulations, sold 5,25,802 shares (which constitutes 37.53% of his holding) at an average price of ₹109.33, during the "*trading window closure period*" (*i.e* from August 07, 2010 till August 14, 2010).
  - viii. It was also observed that the average share price of the company on August 16, 2010 (*i.e* next trading day after the corporate announcement and the day on which trading window opened for directors/officers/designated employees in terms of Model Code of Conduct), was ₹90.67 per share. Thus the potential loss avoided by Mr. Jhunjunwala by selling 5,25,802 shares at an average price of ₹109.33 (*i.e* ₹109.33 less ₹90.67 *i.e* ₹18.66 per share), while in possession of the UPSI, was ₹98,11,465.32 (5,25,802 x ₹18.66).
  - ix. In the facts and circumstances as detailed above, it was alleged that Mr. Jhunjunwala violated Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 3(i) of the SEBI PIT Regulations.
3. In view of the aforesaid findings of the investigation, SEBI initiated proceedings under Section 11(4) and 11B of the SEBI Act, 1992 against Mr. Aashish Jhunjunwala for violation of Section 12A (d) & (e) of the SEBI Act, 1992 read with Regulation 3(i) of the SEBI PIT Regulations.

### **Show Cause Notice, Reply and Personal Hearing**

4. A show cause Notice (**SCN**) dated February 28, 2013 was issued to Mr. Aashish Jhunjhunwala (hereinafter referred to as the "**Noticee**") under Section 11 & 11B of the SEBI Act to show cause as to why directions under Section 11, 11(4) and 11B of the SEBI Act read with Regulation 11 of the SEBI PIT Regulations, 1992 should not be issued against him for the alleged violations of Section 12A (d) & (e) of the SEBI Act read with Regulation 3(i) of the SEBI PIT Regulations, 1992.
5. Noticee filed his reply to the SCN vide letters dated March 25, 2013 and June 06, 2013.

### **Submissions made by the Noticee, vide letters dated March 25, 2013 and June 6, 2013:**

#### **5.1** Noticee, vide letter dated March 25, 2013 submitted as under:

- a. *" All the documents/ materials relied upon in preparation of the SCN have not been provided.*
- b. *SEBI shall furnish certain documents such as the copy of investigation Report, copy of the examination Report of the exchange, etc.. "*

#### **5.2** In response to this, SEBI, vide letter dated April 12, 2013 forwarded all the documents which were relied upon by SEBI in the matter.

#### **5.3** Thereafter, Noticee, vide letter dated June 6, 2013 *inter alia* submitted as under:

- i. *" In the year 2009 the promoter shareholding in the company was around 83.4%. Pursuant to the directions of the stock exchanges and also in consonance with the provisions Clause 40A of the listing agreement the promoters of the company were required to bring down their shareholding to 75% in the company. Hence, the promoters sold shares held by them inter alia to bring down their holding in terms of Clause 40A of the listing agreement.*
- ii. *In the ordinary course of business, the company had been raising loans from different entities for meeting its funds requirements from various lenders and the lenders were pressing the company for repayment of their outstanding*

*loan amounts. Since the company did not have funds/ finances, it approached its promoters including me, seeking funds in order to get over pressing repayment obligations. In order to avoid any default on the part of the company in meeting its repayment obligations, I, as one of the promoters, agreed to provide funds to the company by selling my existing shareholding in the company.*

- iii. The allegation of avoiding potential losses of ₹98,11,465 is misplaced, devoid of any basis and completely contrary to factual position on record. The sales were motivated by pious desire to raise finance for enabling the company to meet its pressing repayment obligations. Sales were not motivated by possession of alleged UPSI. The money raised out of sale of shares of the company by me (during July – August, 2010) has been remitted to the company and actually utilized by the company for repaying its debts/ liabilities.*
- iv. A certificate from M/s RSAP & Associates (Chartered Accountants) inter-alia confirming that an amount of Rs. 14,41,89,938/- was received from sale of shares during July 20, 2010 to August 18, 2010 (which included the trading window closure period i.e. August 7, 2010 to August 14, 2010) and an amount of ₹14,45,12,782 (including the aforesaid amount received from the sale of shares) had been ploughed back into the company, was also submitted.*
- v. I had been selling the shares right since July 2010 and had already sold considerable number of shares of the company prior to trading window closure period (i.e. August 07, 2010). The shares sold by me during the trading window closure period were neither sold on the basis of alleged UPSI and nor were the sales motivated by the alleged possession of UPSI. Sales were carried out for genuine and bonafide purposes.*
- vi. I was not involved in finalization of financial results and the same was being looked into by the Finance Department of the company headed by Chief General Manager Mr. Naveen Gupta. The financial results were put before Audit Committee in the meeting held at 4:00 pm on August 12, 2010 and the finance department of the company had forwarded the financial results to me on August 12, 2010 before putting it before the Audit committee on August 12, 2010 and I became aware about the crystallized financial results only on August 12, 2010. It is denied that period between August 07, 2010 to August 14, 2010 is the UPSI period alleged. The alleged UPSI came into existence only on August 10, 2010 and therefore, only the period between August 10, 2010 to August 14, 2010, if at all, can be taken as the UPSI period.*

- vii. *The sale of shares had no nexus with the date of notice calling the Board meeting issued by the company (on July 28, 2010), the date of finalization of financial results (on August 10, 2010) and the date of trading window closure (on August 07, 2010).*
- viii. *Due to the financials of the company being in dire straits, the company has been referred to BIFR under section 15(1) of SICA, 1985, the case number being 67/2012 dated 21.11.2012.*
- ix. *As per SEBI, UPSI period starts from August 07, 2010 to August 13, 2010, whereas I have been selling the shares since November 2009. Results during December 2009 and March 2010 of the company were good. For December 2009 there was a profit of ₹13.95 crore and for March 2010 it was ₹14.41 crore. Thus there was no nexus between my sales and the timing of UPSI as insinuated.*
- x. *The trading during trading window closure period happened inadvertently as I was travelling frequently during the relevant period for the business of the company. All the said sales were made transparently with all the requisite disclosures. The company vide letter dated August 17, 2010 had sought explanation for the said trades and I, vide letter dated August 20, 2010 regretted the breach and stated that the breach occurred inadvertently. Further, have not derived any benefits out of sales as the proceeds were used to repay the creditors of the company. I requested the company to condone the default and assured that no such default will occur in future. In view of this, the company advised me to refrain from such trades in future and thereafter closed the matter.*
- xi. *It cannot be inferred that I sold the shares before the information about financial results for the quarter ending June 30, 2010 became public. Anyway the results for the quarter ending June 30, 2010 was not poor vis-à-vis results of June 30, 2009. Profit for June 2009 was ₹6.22 crore and for June 2010 it was ₹5.88 crore.*
- xii. *I was not in possession of the UPSI in the form of un-audited financial results of the company for the quarter ended June 2010 as alleged and has not traded in the shares of the company while in possession of such UPSI as alleged. "*
6. Thereafter, an opportunity of personal hearing was granted to the Noticee on July 22, 2013, August 02, 2013 and September 03, 2013. However, on all the aforesaid occasions, he sought adjournments.

Another opportunity of hearing was granted to him on September 19, 2013. During the aforesaid hearing, the Noticee was advised to submit the following documents:

- i. Balance Sheet of the company for the year 2010-2011, indicating unsecured loans received from the Managing Director, *vis-à-vis* 2009-10,
- ii. The date on which the promoters' shareholding reduced to 75%,
- iii. Letter from the stock exchanges directing the company to maintain minimum public shareholding of 25%.

**6.1.** Subsequently, the Noticee, vide letter dated September 21, 2013, reiterated his submissions made in his earlier letter dated June 6, 2013. Additionally, it was *inter alia* submitted as under:

- i. *" The shareholding of the promoter group came down to 75.89% on June 2010 from 79.8% as on December 31, 2009. As a result of sales commencing from July 20, 2010 the shareholding of promoter group came below 75%. Therefore prior to commencement of sales during the investigation period, the shareholding of promoters was above 75%.*
- ii. *A letter dated February 13, 2009 received by the company from NSE regarding the promoter shareholding being above the permissible limit of 75% is enclosed "*

**6.2.** Thereafter, SEBI granted one more opportunity of hearing to the Noticee and fixed the dates on April 15, 2015 and May 8, 2015, which were adjourned at the request of the Noticee. One final opportunity of hearing was granted to the Noticee on June 19, 2015.

**6.3.** During the hearing held on June 19, 2015, the Noticee was advised to furnish the following documents/information:

- a. Audited financial statements for the FY 2011-12, 2012-13, 2013-2014 and 2014-15, with special reference to the unsecured loan (interest free),
- b. Details of the sale of shares made by the entity after August 13, 2010,
- c. Documents in respect of the closure of trading window period issued by the company.

## Submissions made by the Noticee subsequent to the hearing held on June 19, 2015:

6.4. Noticee, vide letter dated June 25, 2015 submitted as under:

- i. *" After August 13, 2010 further shares were sold from my account. Total sales during the quarter July – September 2010 was 22,59,147 out of which 14,00,802 shares were sold during the period under investigation leaving a balance of 8,58,345/- shares which were sold after August 17, 2010 upto September 30, 2010.*
- ii. *Sale of shares were made not only during the investigation period but even after that and there was no malafide intention to sell the shares at higher prices and make a profit. It was purely done to pay off the outstanding loans, interest and creditors,*
- iii. *Entire funds received from the sale of shares not only during the window closure period but from July 20, 2010 amounting Rs.14,41,89,938/- was ploughed back into the company for the repayment to the lenders, creditors, administrative and operative expenses. The same has been done virtually on real time basis i.e. as soon as the sale proceeds were received by me from the stock broker the funds were transferred to the company,*
- iv. *Enclosed copies of bank statements of M/s. Ramsarup Industries Limited and bank statements of my Proprietary Concern (M/s Ramsarup & Sons), in order to substantiate the contention that the money was ploughed back into the company for the repayment to the lenders, creditors, administrative and operative expenses.*
- v. *Entire funds of related parties have been deployed in M/s. Ramsarup Industries Limited. The funds so deployed by the related parties has not been withdrawn keeping in mind that the revival of M/s. Ramsarup Industries Limited is of utmost importance for all the stake holders.*
- vi. *An application for registration as a Sick Industrial Company within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985 (vide reference dated November 21, 2012) has been made on behalf of the company and has been registered as Case No. 67 of 2012. Any adverse action taken by you will jeopardize the chances of revival of the company. This will also effect over 18,000 shareholders of the company.*



- vii. *It has been alleged that I have avoided potential loss of ₹ 98,11,465.32, without admitting any wrong doing, in the interest of revival of the company and all its stakeholders, I propose that nominal penalty may be imposed with a reasonably long period of payment. "*

### **Consideration of Issues and Findings-**

7. I have considered the material available on record such as Investigation Report, SCN issued to the Noticee, his replies to the SCN along with the additional submissions (both written and oral) made during the personal hearings before me. In light of the same, I shall now proceed to deal with the issues that arise for consideration.
8. The issues that arise for consideration in the instant case are:
- i. Whether the Noticee was in possession of the UPSI relating to the company and thus an insider as defined by Regulation 2 (e) (i) of the SEBI PIT Regulations, 1992,
  - ii. Whether the Noticee traded in the shares of the company, while in possession of UPSI, thereby violating Section 12A (d) & (e) of the SEBI Act read with Regulation 3(i) of the SEBI PIT Regulations, 1992,
  - iii. Whether the Noticee avoided a potential loss of ₹98,11,465.32 by trading during the "*trading window closure period*".
- 8.1 Before I proceed to deal with the issues, the relevant legal provisions, the contravention of which have been alleged in this case are reproduced hereunder,

### **SEBI Insider Trading Regulations, 1992**

#### **"Regulation 2(e) (i)**

(e) "*insider*" means any person who,

(i) *is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*

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

**Regulation 3(i)**

***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;"*

**SEBI ACT, 1992**

**Section 12A (d)& (e)**

***"12A. No person shall directly or indirectly—***

*(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;"*

**8.2** SEBI (PIT) Regulations, 1992 were repealed by Regulation 12 (1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015. However, as per Regulation 12 (2) (a) and (b) of the 2015 Regulations the right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations of SEBI (PIT) Regulations, 1992, shall remain unaffected as if the repealed Regulations had never been repealed. Further, anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015.

**8.3** I now proceed to discuss the issues identified in Paragraph No. 8 above.

**8.3.1 Whether the Noticee was in possession of the UPSI of the company and an insider as defined by Regulation 2 (e) (i) of the SEBI PIT Regulations, 1992:**

- i. On July 28, 2010, Ramsarup Industries informed NSE that a meeting of its Board of Directors would be held on August 13, 2010, to *inter alia* declare its unaudited financial results for the quarter ended June 30, 2010.
- ii. Thereafter, the company on August 13, 2010 disclosed its financial results to NSE. The salient features of the results were:

	June 2009	March 2010	June 2010
Sales (in ₹cr.)	379.09	651.48	343.36
Net profit (in ₹cr.)	6.22	14.41	5.88

As can be seen from the aforesaid table, even though there was no significant reduction in sales and net profit of the company as on June 2010 *vis-a' vis* June 2009, the sales of the company had plummeted to ₹343.36 cr. for quarter ended June 2010 from ₹651.48 Cr. in quarter ended March 2010 (*i.e* fall of 52.70%). Similarly, the net profit fell from ₹14.41 crores in the quarter ended March 2010 to ₹5.88 crores in the quarter ended June 2010, a fall of more than 60%.

- iii. Regulation 2(ha) (i) of PIT Regulations states that the periodical financial results of the company shall be deemed to be price sensitive information. Hence, the financial results for quarter ended June 2010 of Ramsarup Industries was most certainly a Price Sensitive Information (“PSI”).
- iv. As per clause 3.2.1 read with clause 3.2.3 of Code of Conduct under schedule - I of 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, price sensitive information (PSI) such as financial results are available but unpublished. In the instant case, the UPSI period identified by the company for closure of trading window as per their notice

dated August 06, 2010 was from August 07, 2010 till up to 24 hours after board meeting on August 13, 2010. As per the records available with SEBI, it is noted that the company (vide letter dated August 26, 2011) furnished a certified copy of a notice dated August 06, 2010 regarding "*Notice of closure of the Trading Window*", issued by the company to all its directors and designated employees, which *inter alia* stated that the trading window would remain closed from August 7, 2010 till 24 hours after the publication of the proceedings of the Board Meeting to the stock exchanges on August 13, 2010 and that all the directors and designated employees should refrain from buying/selling in the shares of the company during the said period.

- v. The company, vide letter dated October 20, 2011, provided the list of persons privy to the un-audited financial result for the quarter April -June 2010 till it was deliberated at the Board Meeting. The list of persons is reproduced as under:

Serial No.	Name	Designation
1	Ashish Jhunjhunwala (Noticee)	Chairman & Managing Director
2	Naveen Gupta	Whole Time Director & CFO
3	Gajendra Kumar Singh	Company Secretary
4	Vikash Ladia	Chief Commercial Officer
5	Bimal Kumar Jhunjhunwala	Independent Director & Chairman Audit Committee
6	L M Chatterjee	Independent Director & Member Audit Committee
7.	P. K. Lilha	Statutory Auditor

- vi. From the above table, it is clear that the Noticee was one of the persons who were privy to the un-audited financial results for the quarter April -June 2010.
- vii. It is also noted that the Noticee was the Chairman cum Managing Director of the company, M/s Ramsarup Industries Ltd. during the relevant period and hence a "*connected person*" under the SEBI PIT Regulations. The term "*connected person*" has been defined in Regulation 2(c) of PIT Regulations 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.
- viii. The term '*insider*' is defined in Regulation 2(e) of PIT Regulations as any person who is or was connected with the company 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.
- ix. In the facts and circumstances as mentioned above, I find that the Noticee, who was then (and continues to be) the Chairman cum Managing director of Ramsarup Industries was indeed in possession of the UPSI and hence an insider in terms of Regulation 2(e)(i) of the SEBI PIT Regulations, 1992.

**8.3.2 Whether the Noticee had traded in the shares of the company, while in possession of UPSI and during the period in which the trading window was closed, thereby violating Section 12A (d) and (e) of the SEBI Act read with Regulation 3(i) of the SEBI PIT Regulations, 1992:**

- i. With the position being clear that the Noticee was in possession of the UPSI and hence an insider in terms of Regulation 2(e)(i) of the SEBI PIT Regulations, 1992, I now proceed to deal with the second issue, *i.e.* whether the Noticee had traded in the shares of the company, while in possession of UPSI and during the period in which the trading window was closed, thereby violating Section 12A (d) & (e) of the SEBI Act read with Regulation 3(i) of the SEBI PIT Regulations, 1992.
- ii. It is observed from the SCN that the Noticee, who was an insider in terms of Regulation 2 (e) of the SEBI PIT Regulations, 1992 traded during the investigation period (*i.e.* from July 01 2010– August 31, 2010). He sold 14,00,802 shares at an average price of ₹108.10 per share during the investigation period. The aforesaid trades executed during the investigation period has not been disputed by the Noticee.

- iii. The details of the sale transactions executed by the Noticee during the period from July 20, 2010 to August 13, 2010 (upto the end of the "*trading window closure period*") are as under:

Day Date	Sale Volume
20 Jul-2010	65000
21 Jul-2010	120000
23 Jul-2010	25000
28 Jul-2010	41100
29 Jul-2010	78900
30 Jul-2010	17000
2-Aug-2010	15000
2-Aug-2010	27000
3-Aug-2010	50000
4-Aug-2010	85000
5-Aug-2010	108000
6-Aug-2010	200000
<b>9-Aug-2010</b>	<b>100000</b>
<b>10-Aug-2010</b>	<b>302000</b>
<b>11-Aug-2010</b>	<b>48000</b>
<b>12-Aug-2010</b>	<b>70602</b>
<b>13-Aug-2010</b>	<b>5200</b>

- iv. As per the SCN, the "*trading window closure period*" i.e. from August 7, 2010 to August 14, 2010 is considered as the period in which the UPSI was available with the connected persons including the directors and designated employees. During the said period, the Noticee sold 5,25,802 shares at an average price of ₹109.33 per share (as mentioned in the aforesaid table). On August 7, 2010, Noticee, was holding 37,69,360 shares of the company. The details of the trades executed by the Noticee during the trading window closure period is as under:-

Date	Quantity
09-Aug-2010	1,00,000
10-Aug-2010	3,02,000
11-Aug-2010	48,000
12-Aug-2010	70,602
13-Aug-2010	5,200
<b>Total</b>	<b>5,25,802</b>

- v. The "*trading window closure period*" (i.e. from August 7 to 14, 2010) was intimated to the Noticee by the company vide "*Notice of closure of the Trading Window*" dated August 6, 2010. This fact is also not disputed by the Noticee.

- vi. Under the facts and circumstances mentioned above, it is evident that the Noticee, who was an insider in terms of Regulation 2(e)(i) of the SEBI PIT Regulations, 1992, traded in the shares of the company, while in possession of UPSI and during the period in which the trading window was admittedly closed, thereby violating Section 12A (d) & (e) of the SEBI Act read with Regulation 3(i) of the SEBI PIT Regulations, 1992.
- vii. With regard to the nature and purpose of the alleged trades, the main submissions by the Noticee, during the course of investigation and also vide letters dated June 6, 2013, September 21, 2013 and June 25, 2015 are as under:
1. The shares were sold in order to comply with the provisions of Clause 40A of the Listing Agreement which states that the promoters of the company are required to bring down the shareholding to 75% in the company.
  2. The sale of shares during "*trading window closure period*" occurred inadvertently. The company had sought explanation from the Noticee for the said trades and the Noticee, in reply regretted for the breach. Thereafter the company concluded the matter by advising the Noticee "*to refrain from such activities in future*". The Noticee also denied that the period between August 07, 2010 to August 14, 2010 is the period in which the UPSI was available, as alleged. Noticee also claims that he came to know about the "*crystallized results*" only on August 12, 2010, when the finance department of the company forwarded the financial results to him on August 12, 2010. The Noticee also states that the alleged UPSI came into existence only on August 10, 2010 and therefore, only the period between August 10, 2010 to August 14, 2010, if at all, can be taken as the period during which the UPSI was available.
  3. The entire funds received from the sale of shares from July 20, 2010 (including the "*trading window closure period*"), was ploughed back to the company by the Noticee for repayments to the lenders, creditors and for administrative and operative expenses.
- viii. I shall now deal with the aforesaid submissions made by the Noticee.

**1. Shares were sold to comply with Clause 40A requirement:**

- a) The letter from NSE to the company for compliance of minimum public shareholding of 25% as per Clause 40A of the Listing Agreement was sent on February 13, 2009.
- b) By virtue of the amendment of the Securities Contracts (Regulations) Rules, 1957 (**SCRR**) effected on August 09, 2010 (by Securities Contracts (Regulations) (Second Amendment) Rules, 2010), the last date for achievement of the threshold was extended by three years (*i.e.* three years from the date of the commencement of Rule 19A of the SCRR (effected on June 4, 2010 by Securities Contracts (Regulations) (Amendment) Rules, 2010, *i.e.* upto June 3, 2013).
- c) In view of the above, the promoter group of the company including the Noticee effectively had almost 3 years from August 9, 2010 to achieve the minimum public shareholding requirement of Clause 40A of the Listing Agreement.
- d) The shareholding pattern of the promoter group (including the Noticee) and the Noticee separately, from the quarter ending March 2009 till quarter ending September 2010 is as under:

Quarter	Promoters' shareholding	Shareholding of the Noticee
March- 2009	2,92,65,492 (83.43%)	48,84,310 (13.92%)
June-2009	2,92,65,492 (83.43%)	48,84,310 (13.92%)
September-2009	2,92,65,492 (83.43%)	48,84,310 (13.92%)
December-2009	2,80,00,492 (79.82%)	46,94,710 (13.38%)
March- 2010	2,66,20,929 (75.89%)	48,19,147 (13.74%)
June-2010	2,66,22,529 (75.89%)	48,35,507 (13.78%)
September-2010	1,73,34,544 (49.42%)	25,76,360 (7.34%)
December-2010	1,39,66,553 (39.82%)	17,25,700 (4.92%)



- e) It is evident from the aforesaid table that there was no change in the shareholdings of the promoter group (83.43%) and the Noticee (13.92%) during the period March 2009 to the quarter ended September 2009.
- f) A major reduction in the shareholdings of the promoter group took place only after the September 2009 quarter, with the share holding of the promoter group coming down to 79.82% in December 2009 and 75.89% in June 2010 (the shareholdings of the Noticee continued to be 13.92% upto September 2009 and showed a small reduction to 13.78% in June 2010 quarter). With these reductions, the company was close to achieving the threshold of 75% of Promoters' holding at the end of June 2010. With this being the position, for the full compliance of Clause 40A of the Listing Agreement, the Noticee could easily have waited for the "*trading window closure period*" to get over for effecting the required additional reduction of 0.89%. There was no conceivable urgency whatsoever to rush through sales of shares by the Noticee (as part of the group) during the "*trading window closure period*", to comply with the Clause 40A of the Listing Agreement.

The fact, as is evident from what has been detailed in the above paragraphs, is that the sale of shares by the Noticee during the "*trading window closure period*" had nothing to do with compliance of Clause 40A,... it had everything to do with sale of shares with the wrongful advantage of UPSI which the Noticee possessed, leading to the avoidance of potential loss as detailed in Paragraph No. 8.3.3 of this Order.

**2. That the sale of shares by the Noticee was a mere inadvertence:**

- a) The company, Ramsarup Industries Ltd. is a mid-sized company and anyone in the position of a CMD (which the Noticee was and continues to be so) is likely to have been aware of the broad details of the company's results of the June 2010 quarter well before the date of issuance of the notice for closure of trading window issued by the company on August 6, 2010. For the Noticee to claim "*I became aware about the crystallized financial results only on August 12, 2010 i.e. when the finance department of the company forwarded the results to me on August 12, 2010 before putting it before Audit Committee*", is nothing but a preposterous claim, which is totally devoid of merit.

- b) The Noticee has also claimed that the period during which the UPSI was available should be counted from August 10, 2010 and not from August 7, 2010. The logic for this claim is unfathomable, especially when he was served with a written notice (like all the other directors and designated employees) on August 06, 2010 that the trading window was closed from August 7, 2010 till 24 hrs after the declaration of the results on August 13, 2010 (*i.e* till August 14, 2010).
- c) Laws and regulations are framed for strict adherence so that minimum standards of Corporate behavior is ensured. In this case, the Noticee claims that the sale of shares was by sheer inadvertence. He also states that he subsequently apologized to the company and that the matter rests with his expressing regret. Nothing can be farther from the truth, as the chain of events detailed above clearly shows. To me, all these contentions are untenable and is totally unacceptable as an adequate explanation, considering the fact that the Noticee was served with the notice of closure of trading window during the period from August 07 to August 14, 2010.

Top corporate executives (in the instant case the Chairman and Managing Director) are expected to set an example of good behavior and should strictly follow the rules laid down. I have no hesitation to say that Mr. Jhunjhunwala thoroughly failed in this regard.

**3. That the Noticee sold the shares to help the company by way of extending unsecured loans:**

- a) I find from the balance sheet of the company as on March 31, 2011 that the Noticee, Mr. Jhunjhunwala had extended an unsecured loan of ₹30 crore on March 31, 2010. This amount continued to be ₹30 crore on March 31, 2011.
- b) In the balance sheet as on March 31, 2012, "*unsecured loans from related parties*" which I presume includes the Noticee, is shown as, ₹43.58 crore on March 31, 2011 and ₹44.79 crore on March 31, 2012. Subsequently, on March 31, 2013, the figure was ₹43.67, as is indicated in the relevant balance sheet.

- c) The figures in the audited balance sheets dated March 31, 2011 and March 31, 2012 are not fully consistent, in respect of the item "*Unsecured loan*": For instance, the balance sheet of March 31, 2011 shows "*Unsecured loan from Managing Director*" as ₹30 crore. No other "*Unsecured loan from Related Parties*" is shown. However, in the balance sheet of March 31, 2012, the opening balance as of March 31, 2011 against the item "*Unsecured loan from Related Parties*" is shown as ₹43.58 crore.

This however, is not really relevant to the breach of law which Mr. Jhunjhunwala did by effecting sales of his shares during the "*trading window closure period*".

- d) I am of the view that, even accepting the Noticee's plea that he sold the shares only to help the company for repayment to lenders, creditors, etc., it cannot be treated as a mitigating factor and cannot justify or absolve the Noticee of trading while in possession of UPSI, in violation of provisions of SEBI Act and SEBI PIT Regulations, or the unlawful avoidance of loss made by the Noticee by such sales during the period of prohibition.

- ix. In the facts and circumstances as detailed above, it is evident that the Noticee, who was in possession of the UPSI in the form of un-audited financial results of the company and an insider in terms of Regulation 2(e) of the SEBI PIT Regulations, 1992, traded in the shares of the company during the "*trading window closure period*". By doing so, Noticee has violated Regulation 12A (d) & (e) of the SEBI Act, 1992 read with Regulation 3(i) of the SEBI PIT Regulations.

### **8.3.3 Whether the Noticee has avoided the potential loss of ₹98,11,465.32 by trading during the trading window closure period:**

- i. The share price of the company prior to the declaration of the financial results to NSE on August 13, 2010 was in the range of ₹106/- to ₹120/-. However, subsequent to the declaration of the financial results, the share price reduced to ₹85/-(low) on the next day of the trading and thereafter the share price fell further to ₹61.50 on August 31, 2010.
- ii. On August 7, 2010, Noticee, who was an insider in terms of Regulation 2 (e) of the SEBI PIT Regulations, 1992, was holding 37,69,360 shares of the company. As per the SCN, it is observed that the Noticee traded during the investigation period (*i.e.* from July 01 – August

31, 2010). The sale of shares by the Noticee during the investigation period are given in Paragraph No. 8.3.2 (i) above.

- iii. It is observed from the SCN that during the "*trading window closure period*", i.e. from August 7, 2010 to August 13, 2010, the Noticee sold 5,25,802 shares. It is observed that the said 5,25,802 shares were sold at an average rate of ₹109.33. The details of the trades by the Noticee during the trading window closure is as under:-

Date	Quantity	Avg. Sell Price
09-Aug-2010	1,00,000	109.55
10-Aug-2010	3,02,000	114.36
11-Aug-2010	48,000	115.08
12-Aug-2010	70,602	108.41
13-Aug-2010	5,200	105.13
<b>Total</b>	<b>5,25,802</b>	

- iv. It is noted from the SCN that the average share price on August 16, 2010, (i.e. next trading day after the declaration of the financial results to NSE on August 13, 2010), is ₹90.67. However, (as detailed in the above paragraph), the Noticee sold 5,25, 802 shares at an average price of ₹ 109.33 while in possession of the UPSI. He thus avoided a loss of (i.e. ₹109.33 less ₹ 90.67 i.e ₹ 18.66 per share) and a total of ₹98,11,465.32. (5,25,802 x ₹18.66) by selling the shares, during the "*trading window closure period*".

**8.4** The Noticee has also referred to the order dated May 09, 2008 passed by the Hon'ble SAT in the matter of **Rajiv Gandhi** vs. **SEBI** (SAT Appeal No. 50 of 2007 decided on May 9, 2008) in the context of relevancy of motive behind trades involving allegation of insider trading. It was observed:

*"If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading."*

**8.5** In the instant matter, as has been observed in the forgoing paragraphs, all the grounds mentioned by the Noticee in order to substantiate that he had executed those trades to meet emergencies such as (i) compliance of Clause 40A requirement or (ii) assisting the company by

extending unsecured loans, etc. have not been found to be acceptable. The Noticee has not submitted adequate grounds of justification that the position of the company was so emergent that the sale of shares could not wait till the trading window opened within a few days time. Hence, the cited case-law does not in any way help the Noticee.

**8.6** In facts and circumstances as detailed in the forgoing paragraphs, I find that the Noticee being an insider, did trade in the shares of the company, while in possession of UPSI, specifically during the period when the trading window was closed by the company and thus violated Section 12A (d) & (e) of the SEBI Act, 1992 read with Regulation 3(i) of the SEBI PIT Regulations. By trading in the shares during the said period, the Noticee indeed avoided a potential loss of ₹98,11,465.32.

**8.7** Noticee, vide letter dated June 25, 2015 has requested SEBI to impose a nominal penalty with reasonably long period of payment. The intention to gain undue advantage by the Noticee is fully evident from the facts and circumstances detailed in the forgoing paragraphs. The Noticee was at an advantageous position as he was in possession of the UPSI (while the trading window was closed by the company), and the investing public was at an unequal position as they were not having similar information. The Noticee sold 5,25,802 shares at an average price of ₹109.33 to the investors, by making use of the UPSI, thereby avoiding a potential loss of ₹98,11,465.32 (as detailed in earlier paragraphs).

**9.** The quality and integrity of the securities market are vital for its smooth functioning and development. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich by way of wrongful or ill-gotten gains or avoidance of potential loss made on account of such activity.

**9.1** SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon

it under the securities laws. The Hon'ble SAT in **Samir Arora Vs. SEBI** (Appeal No. 83 of 2004 decided on October 15, 2004) observed:

*"Activities like insider trading, fraudulent trade practices and professional misconduct are absolutely detrimental to the interests of ordinary investors and are strongly deprecated under the SEBI Act, 1992 and the Regulations made there under. No punishment is too severe for those indulging in such activities."*

9.2 The judgment of the Hon'ble Supreme Court **N. Narayanan vs. Adjudicating Officer, SEBI** 2013 Indlaw SC 269, in Civil Appeal Nos. 4112-4113 of 2013, (order dated April 26, 2013) is also noteworthy:

*"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law".*

*Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity."*

9.3 It is, therefore, necessary that SEBI should exercise its powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities market, thereby fulfilling its legal mandate. Considering that the Noticee avoided a potential loss of ₹98,11,465.32, as detailed earlier in this Order, I am of the firm view that disgorgement of the said amount from the Noticee would be the most appropriate direction which can be given by me in the circumstances.

9.4 I also note that the Hon'ble Securities Appellate Tribunal vide order dated October 31, 2013 upheld the Adjudication Orders passed by SEBI against two other entities controlled by the Noticee viz. M/s N.R. Mercantiles Pvt. Ltd. and M/s Imtihan Commercial Pvt. Ltd., for

indulging in insider trading in the scrip of Ramsarup Industries during the same period when the trading window was closed from August 07, 2010 to August 14, 2010.

**Order-**

10. I, therefore, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, read with Section 11, 11(4) and 11B read with Regulation 11 of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 thereof, hereby direct Mr. Aashish Jhunjhunwala (PAN:ACPPJ2618E) Chairman and Managing Director of Ramsarup Industries Ltd:

- i. *to restrain from buying, selling or dealing in securities market, directly or indirectly, for a period of 3 years.*
- ii. *to disgorge the loss avoided, amounting to ₹98,11,465.32 within 45 days from the date of this Order.*

11. This Order shall come into force with immediate effect.

12. The copy of the said Order shall be forwarded to the concerned Stock Exchanges and Depositories.

13. Mr. Aashish Jhunjhunwala shall pay the aforesaid amount mentioned in the Order by way of crossed Demand Draft drawn in favour of "*Securities and Exchange Board of India*", payable at Mumbai.

Place: Mumbai  
Date: August 04, 2015

**S. RAMAN**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**