

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO-140-143/2013]

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

No.	Name	PAN No.
1.	Mr. Ashish Patel	ACTPP0045R
2.	Radhe Developers (India) Ltd	AAACR9177L
3.	Mr. Praful C Patel	AGUPP9330N
4.	Mr. Milan Patel	AASPP2685A

In the matter of Radhe Developers (India) Ltd

FACTS OF THE CASE IN BRIEF

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

2008 to May 07, 2008 it was observed that the price of the scrip opened at ₹.47.25 on March 27, 2008 touched a high of ₹.165.35 on May 7, 2008 and closed at ₹. 157.70 on May 7, 2008.

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

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

4. Investigation observed Mr. Ashish P Patel, Managing Director and Promoter of the Company bought shares before the corporate announcement and sold the same soon after the corporate announcement was made. Investigation observed that he started purchasing the shares of the Company from April 03, 2008 onwards and bought shares even on the day of the BoD meeting and immediately sold the shares after the announcement. Investigation observed that the 'Model Code of Conduct for Prevention of Insider Trading for Listed Companies' (hereinafter referred to as the "**Model Code of Conduct**") states that the trading window should be closed during the time the information is unpublished. The code of conduct framed by the company Radhe observed that the trading window would be closed only for four hours prior to the happening of the BoDs meeting. Investigation alleged that the model code of conduct of the company allows the directors/officers/designated employees to trade in the shares of the company even on the day of the BoDs meeting as happened in the instant case. Hence, investigation alleged that the model code of conduct of the company is faulty and framed in a manner to allow the directors/officers/designated

employees of the company to trade in the shares during the time the price sensitive information is unpublished.

5. Investigation further observed from the Code of Conduct of the company of Radhe, that “directors/ officers/ designated employees were required to seek prior approval only if the cumulative dealings in any financial year exceeded 5,00,000 shares/securities”. Investigation observed that the equity base of the Company was 1,01,79,900 shares and the threshold limit set by the Company is around 5% of the Company’s equity base. Investigation alleged that the company set the threshold limit for pre-clearance of trade unreasonably high, further the company has prescribed the limit as cumulative instead of transaction wise limit as required under the regulation set by SEBI in this regard. It was alleged that the threshold limit criteria set by the Company is in total contradiction to the one set out in the regulation.
6. Investigation observed that the board meeting of the Company for the said model code of conduct was adopted and approved by the Board of Directors (BoD) in its meeting held on January 31, 2003 and the following directors were present for the meeting when the said model code was adopted in 2003: Mr. Ashish Patel, Mr. Milan Patel and Mr. Praful Patel. Investigation further observed that Mr. Ashish Patel, was appointed as the Compliance Officer for the Company and was responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of “Price Sensitive Information”, pre-clearing of designated employees and their dependants’ trades monitoring of trades and the implementation of the code of conduct.
7. Hence, it was alleged that the company Radhe, and its Board of Directors, Mr. Ashish Patel, Mr. Milan Patel and Mr. Praful Patel. (all collectively referred to as the ‘**Noticees**’) were responsible for setting forth the model code of conduct in absolute incongruity with the one prescribed under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the ‘**PIT Regulations,1992**’) which were not in terms of the spirit of the Regulations. Hence, in view of the above, it is alleged that the Noticees violated regulations 12 (1) & (3) of the PIT Regulations, 1992.

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

APPOINTMENT OF ADJUDICATING OFFICER

9. I was appointed as the Adjudicating Officer, vide order dated March 31, 2010 read with February 09, 2011 and December 29, 2010 under Section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15 HB of the SEBI Act, 1992 for the alleged violation committed by the Noticees.

SHOW CAUSE NOTICE, HEARING AND REPLY

10. A common Show Cause Notices (hereinafter referred to as '**SCN**') dated March 15, 2011 was issued to the Noticees (Mr. Milan Patel, Mr. Praful Patel and the company, Radhe) under rule 4 of the Rules to show cause as to why an inquiry should not be held against the Noticees and penalty be not imposed under section 15 HB of the SEBI Act for the alleged violations specified in the SCN.
11. A separate SCN dated March 15, 2011 was issued to the Noticee, Mr. Ashish Patel for the alleged violation under regulation 3 (i) and 12 (1) & (3) of the PIT Regulation, 1992. The alleged violation under Regulation 3 (i) of the PIT Regulations is dealt in a separate adjudication order.
12. The Noticees vide letter dated March 18, 2011 sought two weeks time to make the submissions to the SCN dated March 15, 2011. The Noticees vide letter dated May 10, 2011 and June 01, 2011 expressed their desire to file for consent proceeding.
13. The Noticees vide application dated June 22, 2011 availed the consent proceeding. Hence, the adjudication proceeding was kept in abeyance till further communication received. The High Power Advisory Committee (HPAC) in its meeting dated December 21, 2011 rejected the consent term proposed by the Noticees and the

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

14. The Noticee was subsequently granted an opportunity of personal hearing on April 16, 2012 at SEBI –Western Regional Office, Ahmedabad vide hearing notice dated April 02, 2012. The Noticees vide letter dated April 09, 2012 requested to be provided with the inspection report, complete copy of the trade and order log for the period between January 01, 2008 to March 31, 2009 and copies of statements made by persons who have been called upon by SEBI.
15. Vide letter dated April 18, 2012 the Noticees were informed that the information/documents relevant to them in the investigation report and the basis on which the charges were framed were already provided in the SCN and as Annexure to the SCN. Additionally the trade and order log of the Noticee Mr. Ashish Patel was provided to him and the copies of the information and the documents received from BSE/ASE viz. letter dated 30-04-2008 regarding submission of unaudited results and a copy of the financial results for the quarter ended on 31-03-2008 were provided to all the Noticees. With regard to the copies of the statements, no reference of any statement of persons was made in the SCN and no charges were framed based on any statements, hence the Noticees were informed accordingly.
16. Mr. Milan Patel in his letter dated April 09, 2012 requested to drop the charges levied in the SCN against him as he had resigned as the director of Radhe before the alleged event of insider trading and the alleged event happened much after his resignation. It was informed to Mr. Milan Patel vide letter dated April 18, 2012 that the allegation pertaining to him referred to the discrepancies in the model code of conduct of the company adopted in the year 2003 when the same was approved by him along with other directors on the Board of the company.
17. Vide letters dated April 28, 29 and May 04, 07, 2012 the Noticees sought an opportunity to inspect the documents The Noticees vide letter dated May 07, 2012

was informed that only the copy of documents provided to the Noticee, the original of the same shall be open for inspection.

18. Mr. Milan Patel availed an opportunity to inspect the documents on August 22, 2012. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, an opportunity of personal hearing was granted to the Noticees on October 29, 2012 vide hearing notice dated September 01, 2012 at SEBI- WRO, Ahmedabad. The Noticees vide letter dated October 18, 2012 sought adjournment of the personal hearing and requested the same to be held on 2nd – 5th November, 2012 or else after November 25, 2012.
19. Accordingly, another hearing notice dated November 01, 2012 was issued to the Noticees (Mr. Milan Patel, Mr. Ashish Patel, Mr. Praful Patel and the company Radhe) for a hearing to be held on November 29, 2012 at SEBI- Head Office, Mumbai. The Noticees (Mr. Ashish Patel, Mr. Praful Patel and the company Radhe) were also granted a final opportunity to inspect the documents after the personal hearing. The Noticees Mr. Ashish Patel, Mr. Milan Patel and the company Radhe vide letter date November 24, 2012 confirmed their attendance for the personal hearing and also agreed to avail the opportunity of inspection of documents. Mr. Anish Kharidia, Authorized Representatives (hereinafter referred to as the '**AR**') appeared on behalf of the Noticees. During the personal hearing, the Noticees sought to make written submissions to the SCN dated March 15, 2011 latest by December 21, 2012. The Noticees was clearly informed during the hearing that no further extension of time for the submission of the reply shall be granted.
20. The AR of the Noticees vide email dated December 17, 2012 sought one more week time to furnish the written submission to the SCN dated March 15, 2011. Vide email dated December 18, 2012 and January 09, 2013 the Noticees were granted a final opportunity to make the necessary submission to the SCN.
21. The Noticees vide submission dated December 28, 2012 and January 08, 2013 made their final submission to the SCN dated March 15, 2011 the relevant portion of

the submission of the Noticees with respect to the Model Code of Conduct of the Company is as given below:

- a) *The Model Code of Conduct was first adopted on 30.04.2002 i.e. immediately after its promulgation on 20.02.2002 and thereafter was substituted on 31.01.2003 based on amendment announced on 29.11.2002.*
- b) *The enquiry procedure has been initiated on the basis of discrepancies in the model code of conduct framed by the Company. The term ‘discrepancies’ differ from the term “contravention” and the term “violation”, as has been envisaged in SEBI (PIT) Regulations, 1992 in particular and SEBI Act, 1992 in general.*
- c) *As per regulation 6 of the Model Code of Conduct, it can easily be inferred that to attract the violation of provision of model code prescribed under PIT Regulations first it needs to be established “any employee/officer/director” and “who trades in securities” or “communicates any information for trading in securities” in contravention of the code of conduct before establishing the person guilty of model code of conduct. Therefore, the essential ingredient to form the basis of violation of model code being the trading in the shares of the company based on UPSI.*
- d) *The whole proceeding appears to have been initiated under the misconception of the term trading window, closure of trading window and UPSI and its corresponding discretion made available to the company in respect of TW, the relevancy of timing of occurrence and possession and communication of UPSI during the period of investigation and thereby restrictively viewed its manner of framing in the Radhe Insider Code. The wisdom of the legislature allowing the company to decide time of trading window and the time of closure of trading window has not been appropriately conceived while observing that “the trading window shall be closed during the time the price sensitive information is un-published”.*
- e) *The plain and simple reading of the provision enumerated in para 3.2.1 enumerates the eligibility and permissibility of trading in the shares of the Company by the directors and designated employees with a right to decide its period of trading as well as closing of trading, which can be known as the trading window.*
- f) *The intention of the legislature is clear to allow the company to decide the time of trading period as well as commencement of closing of trading period. The Model Code further suggest that trading shall not be allowed during the period, the information referred in para 3.2.3 is unpublished. However, the decision of commencement of the closing of such trading period is at the discretion of the company as is evident in para 3.2.3A. Therefore the provision does not intent to impose a blanket ban or prohibition of the trading, during the period the information referred to in para 3.2.3 is unpublished. Hence, the wisdom exercised by the board on placing reliance of the advice of an expert, by fixing, 4:00 hours prior to BoD is not in inconsistency with the one prescribed as per PIT Regulations. There has been no*

violation of any provision of Model Code till the year 2008.i.e almost for a period of 6 years.

- g) Since the year 2002, there has not been a single instance of such trading pattern in the history of the company. If the code was framed to allow director and promoters to trade in shares of the Company on the day of the BoD no such instances of such trading as on 30.04.2008 of 824 shares were to be found since the year 2002.*
 - h) The Promoters holding was meager 25.40% as on 31.03.2002 and was 28% as on 31.03.2008 in particular and Ashish Patel's individual holding was just 14% at respective point of time. There was only an evident increase of 2.60% in the promoters holding in the period of 6 years from 2002 to 2008. This fact makes it abundantly clear that the promoters did not take advantage of the policy which is alleged to be prejudicial.*
 - i) As per para 3.3.1, the minimum threshold limit is to be decided by the Company. The wisdom of legislature is entitling BoD to exercise its wisdom to fix the minimum threshold limit and keep effective control on insider trading in the facts and circumstances of each company. The same has not been found appreciated.*
22. During the adjudication proceedings, the Noticees requested to be provided with the investigation report and all the copies of documents relied and collected by the investigating authority during the investigation period. As given in the previous paragraphs, the Noticees were informed that the relevant portion of the investigation report and relevant documents in respect of the Noticees on the basis on which the charges have been framed were already provided to them and further the Noticees have also availed the opportunity to inspect the documents on August 22, 2012 and November 29, 2012 respectively. At this juncture it becomes necessary to quote the judgment of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'), in the case of *Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India* (Appeal No. 20 of 2012) dated 30.03.2012, The Hon'ble SAT observed that "The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count". In view of the above, I find that the principle of natural justice was met with.

CONSIDERATION OF ISSUES AND FINDINGS:

23. I have carefully examined the SCN, the reply of the Noticees and the documents available on record. The allegations against the Noticees are as follows:
- a) The Noticees, Mr. Ashish Patel, Mr. Milan Patel and Mr. Praful Patel were among the BoDs present for the meeting when the said model code of conduct for Radhe was adopted in 2003.
 - b) The Model Code of Conduct of the Noticee Radhe allowed the directors/officers/designated employees to trade in the shares of the company even on the day of the BoDs meeting when the price sensitive information is unpublished.
 - c) The Code further set the threshold limit for pre-clearance of trade unreasonably high and prescribed the limit as cumulative instead of transaction wise limit which is in absolute incongruity with the one prescribed under the PIT Regulation.
 - d) The model code of conduct of Radhe was not in compliance with the spirit of the Regulation and facilitated its directors/promoters/officers to exploit the deficiencies in the code to their undue advantage.
24. In view of the above, it was alleged that the Noticees violated the regulations 12 (1) & (3) of the PIT Regulations, 1992.
25. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 12 (1) & (3) of the PIT Regulations, 1992 which reads as under:

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including :

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*
- (b) the self-regulatory organisations recognised or authorised by the Board;*
- (c) the recognised stock exchanges and clearing house or corporations;*
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and*

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

(2)

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

26. The issues that arise for consideration in the present case are:
- a) Whether the model code of conduct of the company/Radhe was faulty and framed in a manner to allow the directors/officers/designated employees of the company to trade in the shares during the time the price sensitive information is unpublished.
 - b) Whether the company/Radhe has set the threshold limit for pre-clearance of trade unreasonably high and has prescribed the limit as cumulative instead of transaction wise limit as required under the regulation set by SEBI?
 - c) Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 HB of the 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 the SEBI Act?
27. I now proceed with the allegation against the Noticees that the model code of conduct of the company was faulty and was framed in the manner to allow the directors/officers/designated employees of the company to trade in the shares of the company:
- i. The company Radhe made the following corporate announcement during the investigation period

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

- ii. It was observed that the intimation for the BoD meeting was sent to BSE by the Company on April 10, 2008 and the notice of the BoD meeting to the directors were sent on April 23, 2008.
- iii. From the trade and order log, it was observed that one of the Noticees Mr. Ashish Patel bought shares of Radhe before the corporate announcement and sold the same soon after the corporate announcement was made. The details of the trading of Mr. Ashish Patel during from the investigation period i.e, from March 26, 2008 to May 07, 2008 are as given below:

TABLE - A

Date:	Background details:	Bought	Sold:
03/04/08	Before the announcement of the unaudited quarterly financial results for the period upto March 31st 2008 sent to BSE and ASE	10000	----
04/04/08		20000	----
25/04/08		2061	-----
29/04/08		23000	-----
30/04/08	Date of the BoD meeting.	824	-----
06/05/08	After the announcement of the BoD meeting for unaudited quarterly financial results for the period upto March 31st 2008 received by BSE and ASE on 2/05/08.	-----	4800
7/05/08		6876	1500
		Grand Total	62,761 6,300

- iv. Investigation observed from the copy of the Code of Conduct for Prevention of Insider Trading' the closing of trading window would commence four hours prior to the happening of the BOD's meeting prior to the happening of certain events which included periodical results of the company.
- v. Investigation observed that on the day of the board meeting, Mr. Ashish Patel, who is one of the Noticee and also the Compliance Officer of Radhe bought 824 shares at ₹.136.10 per share from 3:15 p.m. to 3:24 p.m. As per the submission made by the Company during the investigation, the BoD meeting scheduled to be held on April 30, 2008 at 02:00 p.m. was postponed to 08:00 p.m. only on April 29, 2008 and as the closure of the trading window commenced four hours prior to the happening of the BoDs meeting, trading done by Mr. Ashish Patel were prior to the closure of the trading window. Investigation observed from the copy of the minutes of the meeting that the meeting was held at 2 p.m. The Company in its explanation during the investigation stated that the same was due to oversight and submitted that they are making necessary changes in the minutes. Investigation further observed that even if the meeting was rescheduled no reason has been recorded in the minutes and also no intimation regarding the re-scheduling of the meeting was sent to BSE or ASE whereas on other occasions when the BoDs meeting was postponed/rescheduled the same was intimated to BSE.
- vi. It was observed that even if the submission of the Noticees is to be considered as correct submission, the same is inherent faulty as it would allow the director/officers/designated employees to trade in the shares of the company on the day of BODs meeting.
- vii. The PIT Regulations, 1992 mandates that the trading window should be closed during the time the price sensitive information is un-published. As per Clause 3.2-1 of the Code prescribed under PIT Regulations, the Company shall specify a trading period to be called 'trading window', for trading in the company's securities and the trading window shall be closed during the time the information referred to in Clause 3.2-3 of the Code is unpublished. As per clause 3.2-3A, the time for commencement of closing of trading window shall be decided by the company.

- viii. I observe that the regulations allow the company to choose the period of the closure of the trading window. Thus, the company while providing for the closure of trading window four hours prior to the meeting is in terms of the regulations. However, I note that there is no charge on the company for non implementation/ violation of the trading window provision thus, I am not dealing with the same here.
- ix. I would now deal with the allegation with respect to the clauses dealing with threshold limit and pre-clearance of trades in the Model Code of the company Radhe.
- x. The Model Code of Conduct at 3.3.1 prescribed by SEBI further states that “All *directors/ officers/ designated employees of the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company)* should pre-clear the transaction as per the pre-dealing procedure as described hereunder. Further it is given in the code that after such pre-clearances the trades shall take place within one week. However investigations observed that as per the Model Code of Conduct of Radhe, directors/ officers/ designated employees were required to seek prior approval only if the cumulative dealings in any financial year exceeds 5,00,000 shares/ securities. The Model Code of Conduct of Radhe also requires that execution of the pre-cleared deal shall be completed no later than one-week from the date of the approval.
- xi. This is quite contrary to the threshold limit set by the Company as also to the provisions in the SEBI model code prescribed in PIT wherein it is clear that all trades are required to be pre-cleared and that pre-cleared trades if not executed within one week need to be pre-cleared again, there is thus no scope for accommodation for pre-clearances of trades on cumulative basis.
- xii. The stand taken by the company is indeed wrong implementation of the freedom granted by the model code under the PIT Regulations, 1992 to the companies to provide for a threshold for trades. However, here is a glaring example where the freedom has been twisted to turn the code on its head by prescribing threshold limits in cumulative trading.

- xiii. Thus, I conclude that the allegation that the Noticees have framed the Code of Conduct in such a fashion which allows the directors/officers/designated employees to bypass the requirement of pre-clearance as envisaged by the Model Code of Conduct prescribed by SEBI, is established.
- xiv. Investigation has also alleged that the company had set the threshold limit for pre-clearance of trade unreasonably high. The equity base of the Company was 1,01,79,900 shares and the threshold limit set by the Company was around 5% of the Company's equity base. The Noticees have submitted that as per clause 3.3.1, the minimum threshold limit is to be decided by the Company. I find that there is no justification given in the investigation as to how the threshold limit is unreasonably high. Hence, the submission by the Noticees is accepted only upto this extent, my observations with respect to the cumulative dealings are already detailed above.
- xv. I find that the Noticee, Mr. Ashish Patel being the Compliance Officer of Radhe, one of the key personnel had designated role to play in the company, viz of monitoring adherence to the rules for preservation of price sensitive information and implementation of the Code. The Noticee, Mr. Ashish Patel carried the responsibility of framing a model code as envisaged under the regulations and there on monitoring the various components of the model code such as closure of the trading window and pre-clearance of trades.
- xvi. I find that there is no doubt that Mr. Ashish Patel being the Managing Director and Designated Compliance Officer of Radhe was aware of the unpublished price sensitive information. The basic purpose of the trading window closure requirement in the abovementioned regulations is to prohibit trading by insiders by virtue of their easy access to price sensitive information and thereby not gain at the cost of the investors.
- xvii. Hence, in the instant case, the Company Radhe's model code of conduct has failed to keep a check on the same.
28. From the copy of the Board Resolution which was passed on January 31, 2003 for adopting the internal code of conduct, I observe that the Noticees; Mr. Milan Patel,

Mr. Ashish Patel and Mr. Praful Patel were present in the said meeting in the year 2003 when the model code of conduct was adopted by the Company. Hence, I find that the Company Radhe and its BoDs (Mr. Milan Patel, Mr. Ashish Patel and Mr. Praful Patel) responsible for setting forth the model code of conduct in absolute incongruity with the one prescribed under the PIT Regulations, 1992 which are not in terms of the spirit of the Regulation. Hence, the Noticees have violated Regulation 12 (1) and (3) of the PIT Regulations, 1992.

29. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*

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

15HB:- Penalty for contravention where no separate penalty has been provided.
"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

31. While determining the quantum of monetary penalty under sections 15HB, I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

| ***"15J - Factors to be taken into account by the adjudicating officer***

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) The amount of loss caused to an investor or group of investors as a result of the default;*
- (c) The repetitive nature of the default."*

32. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. It has been established that the Noticees failed to adopt the Model Code of

Conduct as statutorily required under PIT Regulations, 1992. It is essential for every market player to fulfil the requirements mandated in the law and this duty weighs more on the Compliance Officer who is conferred upon with the key responsibilities in the company. Hence, the violation by the Noticees inter-se needs to be viewed accordingly. I find from the records that the default of the Noticees is not repetitive in nature.

ORDER

33. After taking into consideration all the facts and circumstances of the case, I impose a penalty as given below under section 15HB of the SEBI Act on the Noticees:

No.	Noticees	Penalty in ₹.	Rupees in words
1.	Mr. Ashish Patel	₹. 7,00,000/-	Rupees Seven Lakh only.
2.	Radhe Developers (India) Ltd	₹. 5,00,000/-	Rupees Five Lakh only.
3.	Mr. Praful C Patel	₹. 5,00,000/-	Rupees Five Lakh only.
4.	Mr. Milan Patel	₹. 5,00,000/-	Rupees Five Lakh only.

34. The Noticees shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Jeevan Sonparote, General Manager, Investigation Department – 3, Securities and Exchange Board of India, Plot no. C4-A, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 500051.
35. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: **March 28, 2013**
Place: **Mumbai**

BARNALI MUKHERJEE
ADJUDICATING OFFICER