

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 90-94 /2012]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

Against

- 1. Shri Rameshchandra Ishwarlal Gandhi**
- 2. Gitaben R. Gandhi (PAN No. ABLPG2529G)**
- 3. Shri Devang Rameshchandra Gandhi (PAN No. ABGPG4596G)**
- 4. Smt Devanshi Devang Gandhi (PAN No. ABGPG4734Q)**
- 5. M/s Riddhi Silk Mills (PAN No. AAJFR2520H)**

In the matter of
Sunday Exports Limited

Background

- 1.** Shri Rameshchandra Ishwarlal Gandhi, Chairman and Managing Director (Noticee No. 1) and his wife Smt. Gitaben R. Gandhi (Noticee No. 2) are promoters of Sunday Exports Ltd. (hereinafter referred to as 'SEL'). Shri Devang Rameshchandra Gandhi, Director and Compliance Officer (Noticee No. 3) and Smt. Devanshi Devang Gandhi, Director (Noticee No. 4) are son and daughter-in-law of Shri Rameshchandra Gandhi, respectively. M/s Riddhi

Silk Mills (Noticee No. 5) is a partnership firm owned by Shri & Smt Devang Gandhi. The Noticee Nos. 1 to 5 are collectively referred to as Noticees.

2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into alleged irregularity in the trading in the scrip of SEL, a company listed on the Bombay Stock Exchange (BSE), for the period from April 15, 2010 to July 21, 2010. The investigation, inter alia revealed that the financial results of SEL for the quarter ended June 2010 showed marked improvement in the profitability. SEL made a profit of Rs. 2,75,000 as against a loss of Rs. 14,80,000 incurred for the quarter ended March 2010. The SEL finalized its unaudited financial results for the quarter ended June 2010 on July 01, 2010 and the Board meeting held on July 06, 2010 approved the same. The agenda papers were circulated to the Board of Directors on July 02, 2010 which included the price sensitive information pertaining to the unaudited financial results for the quarter ended June 2010. SEL vide letter dated July 07, 2010 forwarded the approved financial results to BSE and the same were received by it on July 09, 2010. BSE disseminated the approved quarterly financial results of SEL on its website on July 13, 2012. The Noticees are insiders of SEL and they dealt in the shares of SEL during the period from July 02, 2010 to July 13, 2010, on the basis of and while in possession of the aforesaid Unpublished Price Sensitive Information (UPSI). The Noticee No. 1 dealt in the scrip through trading account maintained in the name of Noticee No. 2, with the M/s Sharekhan Ltd (Sharekhan). The Noticee No. 2 and 5 dealt in the scrip of SEL through broker M/s Sushil Financial Services Ltd (SFSL) and Jainam Share Consultants Pvt. Ltd (JSCPL) respectively.
3. Further, Noticee No. 5 had artificially increased the price of SEL by executing first trades with a positive price variation when compared to previous day closing price, contributing to LTP, placing buy orders before sell orders, placing orders at a price higher compared to the previous day last traded price even when there was no sell order available in the system and by placing of

buy orders at a price higher than the available sell order price even when the sell order quantity available at a lesser price was sufficient to execute the buy order quantity.

4. Thirdly, SEL had not framed the Model Code of Conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under Section 12(1) of the SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as the 'PIT Regulations'). Therefore, it was alleged that the Noticee No. 1, 3 and 4 being the Chairman and Managing Director, Director and Compliance Officer and Whole Time Director, respectively, had failed to frame/ exercise overall supervision in framing the Model Code of Conduct for prevention of Insider Trading.
5. SEBI has, therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred as the "SEBI Act") to inquire into and adjudge the alleged violation of the provisions of Regulation 3(i) and 4 of the PIT Regulations read with Section 12A(d) and (e) of the SEBI Act, 1992 against the Noticees, Regulation 3(ii) against Noticee No. 1, Section 12A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) & (d), 4(1) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003 (hereinafter referred to as PFUTP Regulations) against Noticee Nos. 3, 4 & 5 and Clause 1.2 of the Code of Conduct as specified under Part A of Schedule I of the PIT Regulations read with Regulation 12(1) and 12(3) of the PIT Regulations against the Noticee Nos. 1, 3 & 4 respectively.

Appointment of Adjudicating Officer:

6. SEBI vide Order dated May 03, 2012 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication

Rules') under Section 15G, 15HA and 15HB of the SEBI Act, 1992 for the alleged violations as mentioned above.

Notice, Reply & Personal Hearing

7. The AO issued a common notice dated June 21, 2012 to Noticee Nos. 3, 4 & 5 and separate notices dated June 22, 2012 to the Noticee Nos. 1 & 2 (hereinafter referred to as the "SCNs") in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against them for the alleged violations as per paras 2 to 5 above.
8. The SCNs were sent to the Noticees by Registered Post Acknowledgment Due and the same were returned undelivered except for Noticee No. 5. Therefore, the SCNs of Noticee Nos. 1 to 4 were pasted at their last known addresses in terms of Rule 7(2) of the Adjudication Rules. The Noticees submitted their replies vide letters dated August 21 and 22, 2012. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, the undersigned vide letter dated September 05, 2012 granted an opportunity of personal hearing to the Noticees on September 27, 2012. The Authorized Representatives of the Noticees attended the hearing and made oral submissions. Further, the Noticee Nos. 1 & 2 made written submissions vide letter dated October 09, 2012.
9. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

10. I have carefully perused the charges against the Noticees mentioned in the SCN, the written & oral submissions made by them and the documents as available on record. The issues that arise for consideration in the present case are:

(a) (i) Whether the Noticees have violated Regulation 3(i) and 4 of the PIT Regulations read with Section 12A (d) and (e) of the SEBI Act, 1992 and also Regulation 3(ii) by Noticee No. 1?

(ii) Whether Noticee No. 3, 4 & 5 have violated Section 12A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) & (d), 4(1) and 4(2)(e) of PFUTP Regulations?

(iii) Whether the Noticee No. 1, 3 & 4 have violated Clause 1.2 of the Code of Conduct as specified under Part A of Schedule I read with Regulation 12(1) and 12(3) of the PIT Regulations?

(b) Does the violation, if any, on the part of the Noticees attract any penalty under Section 15G, 15HA and 15HB of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

11. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

Relevant provisions of PIT Regulations:-

Prohibition on dealing, communicating or counseling 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

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

Provided that nothing contained in the above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

Violation of provisions relating to insider trading.

4. Any insider who deals in securities in contravention of the provisions of Regulation 3 or 3A shall be guilty of insider trading.

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

12(1) All listed companies and organizations 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 organizations recognized or authorised by the Board;
 - (c) the recognized 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 without diluting it in any manner and ensure compliance of the same.
- (2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.
- (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);

Schedule I:- (PART A)

1.2 The compliance officer shall be 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 dependents’ trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term ‘designated employee’ shall include :—

- (i) officers comprising the top three tiers of the company management ;
- (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

Relevant provisions under PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

- (a).....
- (b).....
- (c).....
- (d).....
- (e) *any act or omission amounting to manipulation of the price of a security;*

Relevant provisions under SEBI Act, 1992:-

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

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

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (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;*

(i) Whether the Noticees have violated Regulation 3(i) and 4 of the PIT Regulations read with Section 12A(d) and (e) of the SEBI Act, 1992 and also Regulation 3(ii) by Noticee No. 1?

12. It is alleged in the SCN that the Noticees are insiders of SEL and they dealt in the shares of SEL during the period from July 02, 2010 to July 13, 2010, on the basis of and while in possession of the Unpublished Price Sensitive Information (UPSI). The Noticee No.1 had, being the Chairman and Managing Director of SEL having the unpublished price sensitive information during the period between July 02, 2010 to July 13, 2010, dealt in the shares of SEL on behalf of Mrs. Gitaben Rameshchandra Gandhi, wife of the Noticee through the broker, Sharekhan. He had even communicated the said unpublished price sensitive information to his wife who in turn on the basis of the said

information dealt in the shares of SEL through another broker, SFSL during the same period. The Noticee No. 5 on the basis of and while in possession of UPSI by its partners i.e. Noticee Nos. 3 & 4 purchased 40400 shares and sold 12100 shares through JSCPL.

13. The Noticee No. 1 denied having traded in the shares of SEL on his own account or on behalf of his wife nor communicated the UPSI to her. The SEBI relied on the basis of the e-mail from Sharekhan stating that orders for its client Mrs. Gandhi's trades were placed by him. The Noticee No. 2 submitted that she is deemed to be an insider being the wife of the Director of SEL. However, just because her husband might have the information, she is not deemed to possess the UPSI. Further, she submitted that she was never in possession of the UPSI and no information was communicated to her by her husband. The mere dealings only by way of purchase of shares also reveal that there is no element of insider trading.
14. The Noticee Nos. 3, 4 & 5 submitted that the draft results received by directors along with the notice of Board meeting cannot be price sensitive information unless the same are approved by Board. Otherwise, the Directors being in the management are always having information can never trade in the shares of the company. Besides, the information cannot be considered as unpublished on its submission to BSE. Therefore, the Noticees denied the allegations of violation of Insider Trading.
15. In this context, I am now examining the various provisions of law to ascertain the status of the Noticees as to whether they are "Insiders" of SEL. In terms of Regulation 2(e) of the PIT Regulations an "insider" means any person who,
 - (i) 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
 - (ii) has received or has had access to such unpublished price sensitive information;

- 16.** Further, in terms of Regulation 2(c) of PIT Regulations “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.

In terms of Regulation 2(h)(viii) of PIT Regulations “person is deemed to be a connected person”, if such person is relatives of the connected person”. And in terms of Regulation 2(h)(ix) of PIT Regulations a person is deemed to be a connected person is such person is a concern, firm, trust, HUF, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of Clause 3, of this regulation or any persons mentioned in sub-clause (iv), (vii) or (viii) of this clause have more than 10% of the holding or interest.

- 17.** I find that the Noticee No. 1 is the Chairman and Managing Director, Noticee No. 3 is the Director and Compliance Officer and Noticee No. 4 is the Whole Time Director with SEL. The Noticee No. 2 is one of the promoters of the company holding nearly 4.3% of shares of the total share capital in SEL for each quarter ended March/June/September, 2010. Also, she is the wife of Noticee No. 1 who is the Chairman and Managing Director of SEL. The Noticee No. 5 is a partnership firm and Noticee Nos. 3 & 4 are the partners having 45% each share of the profit or loss. Two minor sons of Noticee Nos. 3 & 4 hold the remaining 10% share (5% each) in the firm. Therefore, the Noticees are insiders of the company in terms of the above provisions of the PIT Regulations. Moreover, all of them are from the same family.

18. I find that the financial results of SEL for the quarter ended June 2010 showed a marked improvement in the profitability, a profit of Rs. 2.75 lakhs as against loss of 14.8 lakhs for the previous quarter. Such financial results is a price sensitive information in terms of Regulation 2(ha)(i) which states as under-
- “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.
19. The unaudited financial results of the company for the quarter ended June 2010 which is price sensitive information was finalized on July 01, 2010 and was circulated to the Board Members on July 02, 2010. The same were placed before the meeting of the Board held on July 06, 2010. The Company vide letter dated July 07, 2012 has submitted approved quarterly financial results to BSE. BSE received the same on July 09, 2010 and disseminated to the public on its website on July 13, 2010. Therefore, the unaudited financial results of SEL for the quarter ended June 2010 remained UPSI for the period between July 01, 2010 to July 13, 2010 (till 12:42:27pm) in terms of Regulation 2(k) of the PIT Regulations which states “unpublished means information which is not published by the company or its agents and is not specific in nature”.
20. I find from the Annexures to the SCN that the Noticee No. 1 bought 400 shares (100 shares each on July 08, 09, 12 and 14, 2010) and sold 200 shares on July 13, 2010 through the broker, Sharekhan, on behalf of Noticee No. 2. Noticee No. 2 bought 1100 shares on July 08, 2010. Sharekhan in its e-mail to SEBI confirmed that the orders for the trades of Noticee No. 2 were placed by Noticee No. 1. The Noticee No. 2 in her reply dated August 21, 2012 has admitted that she has merely made purchases, without referring to the sales made through Sharekhan, which further establish that Noticee No. 1 traded on behalf of Noticee No. 2 through Sharekhan. Noticee No. 5 has purchased 40400 shares and sold 12100 shares during the period July 01 –

14, 2010 through JSCPL. I note that Noticee Nos. 3 & 4 who are directors of SEL and partners of Noticee No. 5, son and daughter-in-law of Noticee Nos. 1 & 2. Further, the contention of the Noticee No. 1 that he has not communicated to Noticee No. 2 and that the Noticee No. 2 did not receive any communication from Noticee No. 1 is not acceptable for the reason that both are husband and wife. Also, the Noticees being family members acted in tandem in buying the shares of SEL during UPSI period cannot be treated as a mere coincidence.

21. From the foregoing, it is established beyond doubt that the Noticees had traded in the scrip of SEL on the basis of and while in possession of UPSI pertaining to the unaudited financial results for the quarter ended June 2010 thereby, violating Regulation 3(i) and 4 of the PIT Regulations read with Section 12A(d) and (e) of the SEBI Act, 1992 and also Regulation 3(ii) by Noticee No. 1 warranting imposition of penalty under Section 15G of the SEBI Act, 1992.

(ii) Whether Noticee No. 3, 4 & 5 have violated Section 12A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) & (d), 4(1) and 4(2)(e) of PFUTP Regulations?

22. It is alleged in the SCN that the Noticee No. 5 had artificially increased the price of SEL by executing first trades with a positive price variation when compared to previous day closing price, contributing to LTP, placing buy orders before sell orders, placing orders at a price higher compared to the previous day last traded price even when there was no sell order available in the system and by placing of buy orders at a price higher than the available sell order price even when the sell order quantity available at a lesser price was sufficient to execute the buy order quantity. In this regard, the Noticee inter alia, submitted as follows:

“It is the normal practice of Notice firm whose partners are directors and promoters of SEL to instruct the broker to purchase shares of SEL. Pursuant

to standing instructions, the broker usually place buy orders in shares of SEL. In order to ensure procurement of shares the orders are placed at price higher than previous day's closing price within the circuit limits of stock exchange. The policy to procure shares has been adopted since the promoters have faith in the company and shall provide exit opportunity for public investors. The directors have been receiving enquiries from the shareholders regarding small volumes of trading in shares and non-availability of exit opportunities. In era where SEBI is contemplating various means to provide exit opportunity to public investors by appointment of market maker and compulsory buy-back of shares in case price fall below stipulated level, the action of company ought to have been appreciated and cannot be construed as fraudulent or unfair trade practice. The sell orders were placed during the period for which there are buy orders and not exclusively sell orders have been placed in any period. It may be noted that sales were not exclusively done at time of higher time regime period but was done simultaneously during the periods the buy orders were placed. The buy and sell orders are on delivery have been honored and there is no default on part of promoters for making payment or delivery of shares. There is no artificial trading or circular trading and the actions of promoters have been disposed as per norms from time to time".

- 23.** The Noticee further submitted that in view of the above, they denied having violated PFUTP Regulations as alleged in the SCN. The investigation has failed to bring out how the action of the promoters to buy and sell shares can be termed as fraudulent or unfair. There is no allegation of contravention of any provisions of Act or Rules or Regulations or employment of any scheme or device in connection of dealing in securities by the promoters.
- 24.** I have considered the submissions made by the Noticee as above and I find that the corroborative evidences as available on record are insufficient to substantiate that the Noticee by merely executing first trades with a positive price variation when compared to previous day closing price, contributing to LTP, placing buy orders before sell orders and placing orders at a price higher

compared to the previous day last traded price even when there was no sell order available in the system has manipulated the price of the scrip. In this context, I also note from the investigation report that the scrip was traded in trade to trade segment with circuit filter of 5%, the Noticee was the single largest client who bought nearly 55% of the shares traded during the investigation period and the counter parties to Noticee's first trades were mostly scattered and trading in such instances did not occur on a continuous basis. The locations of the counter parties are also scattered and verification of their antecedents could not lead to any direct linkage or complicity with the Noticee. There were no off-market transfers, physical as well as in demat form, by the top counter parties of the Noticee. No pledge transactions were observed during the period. No synchronized trades were carried out among the top 10 buy/sell clients during the period under investigation. It is stated in the investigation report that no apparent connection between the Noticee/SEL and top 10 counter parties to the Noticee's buy transaction could be seen. There are only 6 instances wherein the Noticee placed buy orders at a price higher than the sell order price however, the orders were executed at sell order price in multiple trades.

25. In view of the above, I am inclined to give benefit of doubt to Noticee Nos. 3, 4 & 5 and conclude that the alleged violation of Section 12A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) & (d), 4(1) and 4(2)(e) of PFUTP Regulations is not established against them.

(iii) Whether the Noticee No. 1, 3 & 4 have violated Clause 1.2 of the Code of Conduct as specified under Part A of Schedule I read with Regulation 12(1) and 12(3) of the PIT Regulations?

26. It is alleged in the SCN that SEL had not framed the internal policy on code of conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under Section 12(1) of the PIT Regulation therefore, Noticee Nos. 1, 3 & 4 failed in their responsibility to frame / supervise the adoption of the

same. In this context I note the submission of SEL, vide letter dated June 12, 2012 to SEBI that as the secretary Late Shri. Laxmikant J. Patel was undergoing cancer treatment and that there was no one to give proper advice to the company, there was a delay in framing the internal model code of conduct. The Noticees, inter alia, submitted that though the specific code of conduct was not framed by the company, the same was enforced and followed as it can be seen that disclosures under the model code of conduct were made by directors, promoters and company.

27. I observe that the PIT Regulations specifically provide that every listed company should frame its own code of conduct for prevention of Insider Trading and adopt appropriate mechanisms and procedures to enforce the codes. The PIT Regulations further provide that the Compliance Officer shall set forth policies, procedures, monitor and implement the code under the overall supervision of the Board of Directors of the company.

28. In this context, it is worthwhile to note that the Hon'ble Securities Appellate Tribunal in *Shri N. Narayanan, Shri K. Natarahjan, Shri K.S. Kashiraman and Shri G. Ramakrishanan vs. SEBI (Appeal No. 29 of 2010 decided on October 05, 2012)* has made the following observations:

"With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto".

29. Therefore, it is established beyond doubt that the Noticee Nos. 1, 3 & 4 have failed in their duties to set forth policies, procedures, monitor and implement the prescribed model code of conduct thereby violating Clause 1.2 of the

Code of Conduct as specified under Part A of Schedule I read with Regulation 12(1) and 12(3) of the PIT Regulations warranting imposition of penalty under Section 15HB of the SEBI Act, 1992.

30. In light of para Nos. 21 and 29 above, the Noticees are liable for imposition of monetary penalty under sections 15G and 15HB of the SEBI Act respectively, which reads as under:

15G. Penalty for insider trading. -

If any insider who,-

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or*
 - (ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
 - (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*
- shall be liable to a penalty 50[of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.*

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 penalty under sections 15G and 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of the 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.** I observe that from the material available on record it is difficult to quantify exactly any gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default of the Noticees or to ascertain whether the defaults are repetitive in nature. It is mentioned in the investigation report that Noticee No. 2 earned a total profit of ₹3015 and Noticee No. 5 earned a total profit of ₹107868 inclusive of realized and unrealized profit for their trades during the UPSI. Further, the major quantity of shares purchased during the UPSI period was not sold by the Noticees. However, in my view, any acts of Insider Trading and non-compliance of the PIT Regulations are to be viewed seriously.

Order

- 33.** In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby,
- (a)** impose a penalty of ₹ 3,00,000 (Rupees three lakhs only) on Shri. Rameshchandra Ishwarlal Gandhi (Noticee No. 1), ₹ 2,00,000 (Rupees two lakhs only) on Smt. Gitaben Rameshchandra Gandhi (Noticee No. 2) and ₹ 5,00,000 (Rupees five lakhs only) on M/s Riddhi Silk Mills (Noticee No. 5) to be paid jointly and severally by Shri. Devang Rameshchandra Gandhi (Noticee No. 3) and Smt. Devanshi Devang Gandhi (Noticee No. 4) and thus, a total of ₹10,00,000 (Rupees ten lakhs only) under Section 15G of the SEBI Act, 1992.
- (b)** dispose of the alleged violation of Section 12A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), (b), (c) & (d), 4(1) and 4(2)(e) of PFUTP Regulations against Shri. Devang Rameshchandra Ganhi (Noticee No. 3), Smt. Devanshi Devang Gandhi (Noticee No. 4) and M/s Riddhi Silk Mills (Noticee No. 5) as the same is not established
- (c)** impose a penalty of ₹1,00,000 (Rupees one lak only) each on Shri Rameshchandra Ishwarlal Gandhi (Noticee No. 1), Shri. Devang Rameshchandra Gandhi (Noticee No. 3) and Smt. Devanshi Devang Gandhi (Noticee No. 4) and thus, a total of ₹3,00,000 (Rupees three lakhs only) under Section 15HB of the SEBI Act, 1992.

- 34.** The penalty amount as mentioned above shall be paid by the Noticees through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID8, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
- 35.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: November 02, 2012

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**