BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: S.K.MOHANTY, WHOLE TIME MEMBER
ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee no.	Noticees /Name of the entities	PAN
1	Cumballa Hill Property Development Pvt. Ltd	AAACC2276M
2	Cyber Info Zeeboombia.com Ltd	AABCC7400L
3	Cyber Infosystems and Technologies Ltd	AABCC2176K
4	EDC Securities Pvt. Ltd	AAACE9165D
5	Giriganga Investments Pvt. Ltd	AABCG8591L
6	Sumander Property Developers Pvt. Ltd	AAACS9998N
7	21st Century Entertainment Pvt. Ltd	AAACZ1383L
8	Ahmednagar Investments Pvt. Ltd	AADCA9872E
9	Pravin Kumar Tayal	AAEPT9210B
10	Sanjay Kumar Tayal	AAEPT9209L

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

IN THE MATTER OF BANK OF RAJASTHAN LTD.

1. Vide an ex-parte ad-interim order dated March 08, 2010 (hereinafter referred to as "**the Interim Order**"), Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), had restrained 100 entities from accessing the securities market and further prohibited the said entities from buying, selling or dealing in securities in any manner whatsoever, till further directions. The said directions were issued in the matter of Bank of Rajasthan Ltd (hereinafter referred to as "**BoR** or "**the Company**"), for their *prima facie* violations of provisions of Securities and Exchange Board of India Act, 1992

(hereinafter referred to as "**the SEBI Act, 1992**") and the regulations made thereunder. The Interim Order came into force with immediate effect. The Noticees herein were part of the 100 entities, as restrained vide the said Interim Order.

2. After completion of investigation in the matter, the directions issued vide the above noted Interim Order were revoked by an order dated March 26, 2012 (hereinafter referred to as "**the Final Order**"). However, it has been observed that the during the interregnum period, i.e., the period between passing of the Interim Order and the Final Order when the Interim Order was in force, the Noticees herein had executed a binding implementation agreement with ICICI Bank Limited (hereinafter referred to as "**ICICI**") on May 18, 2010 (hereinafter referred to **as "the Agreement**"), whereby it was agreed to have the BoR merged with ICICI, subject to the approval of the competent authority, i.e., Reserve Bank of India (hereinafter referred to as **"RBI"**). Accordingly, in terms of the said Agreement, the Noticees as shareholders of BoR, also had to swap their holdings in BoR with the shares of ICICI, after the scheme of merger was approved by RBI.

3. Since, on the date of execution of the said Agreement with ICICI, the Interim Order was in force and consequent to the execution of the Agreement and approval of the scheme of merger, the Noticees received the shares of ICICI in exchange of their shares in BoR in proportions to their holding in pursuance with the scheme of merger, the said act of execution of the Agreement and consequent acquisition of shares of ICICI was viewed to be in violation of the directions passed vide the Interim Order dated March 08, 2010.

4. Accordingly, based on subsequent investigation, a common Show Cause Notice dated November 13, 2017 (hereinafter referred to as "**the SCN**") was issued to the Noticees. It was alleged in the SCN that the act of entering into the Agreement and consequent receipt of the shares of ICICI in lieu of their shares of BoR, amount to dealing in securities by the Noticees, for which the Noticees were restrained under the directions passed in the Interim Order. It was thus alleged that the aforesaid act on the part of the Noticees is in violation of the SEBI's directions issue vide the Interim Order, passed under Sections 11, 11(4) and 11B of SEBI Act, 1992. Therefore, the Noticees have been called upon to explain as to why suitable directions under Sections 11(4)(b) and 11B of the SEBI Act, 1992 including debarring them from securities market for appropriate period, should not be issued against them for the alleged violations committed by the Noticees. In this case, the Noticee no.9, apart from acting on his own behalf, was also the authorized signatory on behalf of the Noticee no. 1 to 7, for the purposes of the Agreement, whereas the Noticee no. 10 was the authorized signatory on behalf of the Noticee no. 8.

5. The genesis of this case, lies in the fact that on the date of execution of the Agreement, the Interim Order was in force, therefore, the said act of execution of the

Agreement with ICICI was *prima facie* found to be in violation of the directions passed vide the Interim Order. The relevant potion of the Interim Order reads as under:-

> "*…I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4)(b) and 11B thereof, hereby, by way of ad interim ex-parte order restrain the following entities/persons from accessing the securities market and further prohibit them from buying, selling or dealing in securities in any manner whatsoever, with immediate effect, till further directions….*"

6. During the present proceedings, the Noticees were provided with an opportunity of personal hearing on August 01, 2018. However, the personal hearing had to be adjourned on the request of the Noticees, as the counsel was not available and on account of demise of the Noticee no. 10. In the meanwhile, a corrigendum dated October 25, 2018 to the SCN was issued. Subsequently, a common written reply dated August 14, 2019 to the SCN was filed by the Noticees and matter was personally heard on August 20, 2019. The Noticees have also filed a post hearing written submission vide letter dated August 29, 2019.

7. Based on the reply and written submissions filed on behalf of the Noticees, the contentions of the Noticees can be broadly summarised as under:

a) **No direction was in force as Stay was granted by Hon'ble Rajasthan High Court.**

The Interim Order was challenged in Writ Petition no. 4333/2010 before Hon'ble Rajasthan High Court. Vide order dated March 29, 2010, Hon'ble Rajasthan High Court had stayed the operation of the Interim Order.

b) **Merger is effected by operation of law.**

The merger of BoR with ICICI was put into effect by virtue of an agreement. In terms of the provisions of the Banking Regulation Act, 1949 (hereinafter referred to as "**the Banking Act**"), merger of banking companies require sanction of RBI, after a scheme of merger has been approved by the requisite majority of the shareholders. In case the Noticees did not vote in favour of the merger, by virtue of Section 44A of the Banking Regulation Act, 1949, they would have paid consideration for the shares of BoR on the value as determined by RBI.

c) **The execution of the Agreement is not covered in the purview of 'dealing in securities'.**

The Noticees did not deal in securities as mandated under the Interim Order and by executing the Agreement with ICICI, they merely exercised their rights as shareholders of BoR. Being promoters/directors, the Noticees had

responsibilities towards the shareholders of the Company. The Interim Order did not restrict participation in the functioning of BoR and it did not affect their voting rights. By executing the Agreement, the directions passed vide Interim Order were not violated.

d) **By virtue of doctrine of merger, the directions of Interim Order merged with the final order and hence directions of Interim Order was not in force at the time of issuance of SCN.**

The directions passed by the Interim Order were revoked by the final order dated March 26, 2012 passed by SEBI in the matter. Therefore, action if any, can only be initiated against the final order and not for the interim order that merged with the final order.

The Noticees have relied upon various judgments passed in the matter of: (i) *Shri Manish V. Shah vs. The Securities and Exchange Board of India (Appeal No. 259 of 2017) (date of decision: January 22, 2019) ; National Bal Bhawan & Anr. vs. Union of India & Ors. [2003 (9) SCC 671]; B. P. L. Ltd. & Ors. vs. K. Sudhakar & Ors. [2004 (7) SCC 219]; and M/s. B. S. N. Joshi & Sons Ltd. vs. A joy Mehta &Anr. [2009 (3) SCC 458].*

e) **No objection to the merger.**

With respect to the merger, RBI had vide its letter dated August 09, 2010 requested SEBI to clarify as to whether the Interim Order would in any manner come in the way of the merger process. In response thereto, vide its letter dated August 11, 2010, it was clarified by SEBI to RBI that the directions passed vide the Interim Order will not come in the way of the proposed merger. It was further clarified that the directions of Interim Order will continue to operate on the Noticees (along with other entities as named in the Interim Order). The SCN would not sustain in view of the no objection granted by SEBI to the scheme of merger. Once a scheme of merger is sanctioned, the same takes its own course without any intervention from the signatories to such scheme.

Following judgments have been relied upon in this connection: *Jai Singh vs. Mughla and Ors. (Second Appeal No. 667 of 1966); Nalaknath Sainuddin vs. Koorikadan Sulaiman (SLP No. 1599 and 8694 of 2001); Re: Magnaquest Solutions vs. Unknown (2007 80 SCL 496 AP)*

f) **MISC.**

The Noticee no. 10 was not holding any shares in BoR and therefore the SCN should not have been issued against him. Moreover, he has since expired on October 14, 2018, hence, the proceedings against the Noticee no. 10 should be dropped.

Consideration

8. Having carefully gone through the contents of the SCN as well as the reply filed on behalf of the Noticees, in my view, the only issue that requires consideration is whether the act of Noticees by signing/executing the Agreement with ICICI and consequently acquiring the shares of ICICI in swap of their BoR shares pursuant to the scheme of merger, would be in violation of the directions issued vide the Interim Order. However, before proceeding to deal with issue on merit, I observe that the Noticees have raised a preliminary objection for not being provided by SEBI with the complete set of documents viz., correspondences exchanged between SEBI and BoR, copy of communications between SEBI and RBI, copy of the statement recorded in the investigation, copy of investigation report etc.

9. On a perusal of the SCN, it is noted that the allegations made against the Noticees are that they have executed an agreement and consequent to such execution of agreement, they have received the shares of ICICI in exchange of shares of BoR and therefore, such acts on their part have been alleged to be in defiance of the directions issued vide the Interim Order, whereby they were restrained from dealing in securities in any manner. The SCN, while making the aforesaid allegations, relied upon two documents, i.e., copy of the Interim Order and copy of the Agreement dated May 18, 2010 which are very much in possession of the Noticees. I note that similar issue came up for consideration before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the case of *Reliance Commodities Ltd. Vs. National Commodity & Derivatives Exchange Ltd. (Appeal No 173 of 2019- DoD- 23.07.2019)* and the relevant observation of the Hon'ble SAT are as under:

> *"2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.*
>
> *3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant……..."*

10. Considering the above observation of the Hon'ble SAT, I find that in the instant proceeding as well, the SCN has referred to and relied upon only two documents as pointed out above while making the allegations and copies of the same were made available to the Noticees. Therefore, the objections of the Noticees are without any merit and deserve a rejection. Now, I proceed to deal with the matter on merit.

11. I note that the present proceedings are premised largely on two events: first, the interim directions passed by SEBI vide its order dated March 08, 2010 and second, the Agreement executed by the Noticees on May 18, 2010, with regard to the merger of BoR with ICICI.

12. The Noticees have contended that the allegations made under the SCN would not sustain against them for the reason that no restrain or prohibition was in operation either on the date of signing of the agreement with ICICI or on the date of merger of BoR with ICICI. It has submitted that the directions issued vide interim order was challenged by way of a Writ Petition (CW no. 4333/2010) before Hon'ble High Court of Rajasthan and the Hon'ble High Court vide its order dated March 29, 2010 had stayed the operation of the Interim Order. The relevant extract of the order passed by the Hon'ble High Court staying the operation of directions issued in the Interim Order is as under: :

> " *…Since it has been submitted that without providing an opportunity of hearing, the impugned order has been passed against the petitioner, we find that there is a prima facie case for grant of interim order.*
>
> *Accordingly, the respondent no. 2- SEBI is restrained to act against the petitioner-herein pursuant to the impugned order dated 8th March, 2010…"*

13. It is noted that the said order of the Hon'ble High Court have also recorded that

> "*It is however agreed by the learned counsel for the petitioner that during the period of interim order, the petitioner would not sale or buy the securities concerned to this case."*

14. The Noticees have placed a copy of the order dated March 29, 2010 in support of the submissions advanced by them. From the perusal of the aforesaid order of the Hon'ble High Court, it is noted that though the Hon'ble Court vide its order dated March 29, 2010 found a *prima facie* case of granting interim protection to the appellant including the Noticees herein, however at the same time the Noticees had undertaken before the Hon'ble High Court not to buy or sell the securities concerned to this case. In this regard, the Noticees have submitted copies of Demat account statement to support that they have not dealt in securities during the operation of the Interim Order, more particularly in the scrip of BoR. However, receiving of shares of ICICI in exchange of shares of BoR was only due to operation of law and not by any volition. The above stand of the Noticees further finds strength from the facts that the said Writ Petition was disposed of by Hon'ble High Court vide their order dated October 29, 2010 without any observations with regard to execution of this merger Agreement with ICICI by the Noticees . The relevant portion of the judgment and the order disposing of the Writ Petition is as under:

> "*…Accordingly, while not interfering with the impugned order, we give a liberty to the petitioners to submit their objections against the impugned order within a period of 10 days from the date of this order, if they so chooses. If objections are submitted, respondent No.2 will provide opportunity*

of hearing to the petitioners and thereupon pass appropriate orders deciding the matter finally within a period of 2 months from the date of submission of objections. It is expected that the SEBI would not guide itself by the interim order challenged herein and will take proper view after hearing the parties. Any observation made in this judgment may also not affect the order."

15. In view of the above, it would not be wrong to state that at the time of execution of the Agreement with ICICI, the Noticees were having protection from the operation of the Interim Order of SEBI and therefore, the order which allegedly restrained Noticees from dealing in securities was not absolutely enforceable against the Noticees at the time of execution of the Agreement. Hence, it may not be appropriate to suggest that while entering into the agreement, the Noticees have acted in violation of the Interim Order.

16. It has further been contended on behalf of the Noticees that the scheme of merger was processed in accordance with law and procedure provided for such merger and was in the interest of shareholders at large and not for the benefit of the Noticees in isolation. As per the submissions, the said merger was processed and approved in accordance with the provisions envisaged under the Banking Regulation Act, 1949, (hereinafter referred to " **the Banking Act**"), more particularly in terms and compliance of Section 44A of the Banking Act. For the sake of reference, the relevant extract of the said section is reproduced hereunder:

"*44A. Procedure for amalgamation of banking companies.-*

(1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association indicating the time, place and object of the meeting, and shall also be published atleast once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.

(3)Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting of the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as

determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares to be paid to the dissenting shareholder shall be final for all purposes.

4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing passed in this behalf, be binding on the banking companies concerned and also on all the shareholders thereof…."

17. From the above statutory provisions, it is noted that Section 44A (1) provides that for effecting merger of two banking companies, the scheme of merger warrants prior approval of the shareholders of each of the banking companies and the resolution approving such scheme of merger is required to be passed by a majority in number representing two third in value of the shareholders of each of the said companies. Sub-section (2) provides for giving notice to the shareholder with the requisite details and also provides for publication of the same in the newspapers as required under the said sub-section. In terms of sub-section (3), if any shareholder expresses his dissent to the proposal of merger or votes against the resolution, then, in such cases, subject to the passing of the resolution and approval of the scheme by RBI, the dissenting shareholder would be entitled to receive the value of his holding as determined by the RBI. Further, sub-section (4) of Section 44A of Banking Act, provides that after the approval of the resolution by the requisite majority, the scheme of merger shall be submitted to RBI for its sanction and after receiving RBI's approval/sanction, the scheme shall be binding on the banking companies concerned and on all the shareholders of the concerned banking companies.

18. It is noted from the records that the total paid up capital of the BoR was Rs.161.35 Crore which comprised of 16,13,50,093 shares of Rs.10 each. Out of the said number of shares, the Noticees being promoters of the Company were cumulatively holding a total of 4,61,46,354 shares (4.61 Crore approx.), amounting to 28.61% of paid up equity capital of BoR and the remaining shares comprising 71.39% of the paid up equity capital were held by shareholders in public category. The detailed break-up of the shareholding held by the Noticees is reflected in the following table:

Table-1

Name of the shareholders	**December 2009**		**March 2010**	
	No. of Shares	**Share as % of Total No. of Shares**	**No. of Shares**	**Share as % of Total No. of Shares**

Promoters				
21st Century Entertainment Pvt. Ltd. (Noticee no.7)	75,25,456	4.66	75,25,456	4.66
Ahmednagar Investments Pvt. Ltd. (Noticee no.8)	28,67,078	1.78	28,67,078	1.78
Cumballa Hill Property Development Pvt. Ltd. (Noticee no.1)	62,21,550	3.86	62,21,550	3.86
Cyber Info Zeeboombia.com Ltd. (Noticee no.2)	63,86,130	3.96	63,86,130	3.96
Cyber Infosystems and Technologies Ltd. (Noticee no.3)	73,98,201	4.59	73,98,201	4.59
EDC Securities Pvt. Ltd. (Noticee no.4)	71,86,502	4.45	71,86,502	4.45
Giriganga Investments Pvt. Ltd. (Noticee no.5)	26,59,750	1.65	26,59,750	1.65
Pravin Kumar Tayal(Noticee no.9)	450	0	450	0
Sumander Property Developers Pvt. Ltd. (Noticee no.6)	59,01,237	3.66	59,01,237	3.66
Total Promoter Shareholding (A)	**4,61,46,354**	**28.61**	**4,61,46,354**	**28.61**
Public Shareholders holding 1% and more (B)	1,49,61,893	9.26	89,25,872	5.53
Others (C)	10,02,41,846	62.13	10,62,77,867	65.86
Total issued and paid up capital	**16,13,50,093**	**100.00**	**16,13,50,093**	**100.00**

19. In terms of provisions of Section 44A of Banking Act, the merger of the two banking companies was possible only when a scheme placed before the shareholders for approval is passed by a majority in number, representing two-thirds in value of the shareholders of each of the said companies. Upon approval of the said resolution for merger of the companies, the scheme of merger requires sanction of the RBI. In this regard, I note that the provision under sub-section (4) does not bind the RBI to accord sanction to the resolution passed by the respective companies and even after attaining

majority votes in favour of merger, it is well within the power of RBI, to not sanction the scheme of merger, in case anything adverse comes to its notice. However, in the instant matter, nothing adverse has been found and the competent authority (RBI) had granted sanction to the scheme of merger. Thus, the resolution passed by the shareholders approving the merger does not create a binding obligation upon the RBI merely for the reason that such scheme has got approval of the requisite shareholders. The provisions empower RBI to scrutinise the scheme independently before granting sanction to the scheme. The provision of Section 44A further envisages that upon sanction by the competent authority, the scheme acquires the binding character on the companies concerned and the shareholders thereof.

20. In the present case, I note that there is no dispute as to the fact that a draft scheme of merger was placed before the shareholders for approval and the same was also approved by the requisite shareholders. There is also no dispute that after the approval of the scheme, the same got sanction of the competent authority (RBI) and consequent to the sanctioning of the scheme of merger, Noticees' shares in BoR got swapped with the shares of ICICI. As noted above, in terms of Section 44A (3) & (4) upon passing of the resolution by the shareholders and upon sanctioning of the same by RBI, the scheme becomes binding on the companies concerned and the shareholders thereof. Thus, from the facts as narrated above and in the absence of anything adverse with respect to the Noticees, I find that the Noticees were bound to receive the shares by operation of provision of Section 44A of Banking Act and even if the Noticees had not given consent to the proposed scheme of merger, as per the operation of law, they would have in any case surrendered the shares for a value as would have determined by the competent authority. The Noticees have further submitted that during the said period they have not traded in the securities and in support of their submissions, they have furnished copy of Demat account statements to show that no trades have been executed by them during the operation of the Interim Order. The transfer of shares of ICICI to their account in lieu of shares of BoR was only for the reason explained above and therefore, in my view in such circumstances, acquiring shares of ICICI in exchange of BoR would not amount to dealing in securities so as to be held breach of the directions issued under the Interim Order.

21. Having heard the counsel for the Noticees and after perusing the material on record, I find substance in the arguments advanced by the Noticees. The Noticees were restrained/prohibited from accessing the securities market, however, the Interim Order did not restrain or prohibit the Noticees from the exercise of voting rights with respect to the shares held by them. In pursuance of the voting rights, the Noticees had voted in favour of the merger along with other shareholders and resultantly, the shares of BoR were swapped by the shares of ICICI. I find that the shares of BoR ceased to exist by virtue of the merger and therefore, shares of ICICI were received by the Noticees in lieu

of their shares in BoR. I have seen the Demat account statement of the Noticees which reflect that on August 26, 2010, the shares of BoR held in the Demat account were debited with transaction particulars being mentioned as "Merger", and on the same date, shares of ICICI have been credited in their Demat accounts. Thus, there is only replacement of shares of BoR with ICICI by change in entry in the Demat account, because of the sanction of the competent authority to the merger of BoR with ICICI.

22. I find that the judgment in the matter of *Re: Magnaquest Solutions vs. Unknown (supra)* and other judgments relied upon by the Noticees, support the contentions of the Noticees. In the aforesaid judgment, Hon'ble Andhra Pradesh High Court, while dealing with the issue of sanction of scheme of merger under the provisions of Companies Act, 1956, have held that: "…*The sanction of the scheme by this Court has its own effect. It is not a mere act of the parties individually and volitionally. The scheme upon being sanctioned by this Court, it becomes operational by virtue of the orders passed by this Court. In other words, by operation of law, such changes would come into effect. Therefore, it has statutory genesis and statutory character, but not mere individual acts of the companies…"* In my view, the sanction granted by RBI with respect to scheme of merger of BoR with ICICI carried a statutory character and the merger cannot be termed as a mere result of act of private individuals of agreeing to merge the two companies, i.e., BoR with ICICI.

23. Be that as it may, the submissions of the Noticees find further strength from the fact that had the Noticees not voted in favour of the merger, the scheme of merger would have still been binding on them, once approved by the shareholders and sanctioned by the competent authority in terms of Section 44A(3) & (4) of Banking Act. I note that the merger would not have been completed by mere act of signing the Agreement by the Noticees with ICICI as it had to go through the rigours of due process of shareholders' approval and obtaining RBI's sanction before it became binding on the Noticees. Further, nothing adverse with respect to the Noticees have been found in the investigation and there is no charge that Noticees manoeuvred their way so as to get the shareholders' resolution passed. Further even after having approved by the majority shareholders the proposed merger was also independently sanctioned by the competent authority, which led to the merger of the two banking companies in terms of which the shareholders of BoR, including the Noticees, received shares of ICICI. Therefore, in the facts of the present matter, the allegations made against the Noticees do not appear to have any support from the available evidence, so as to uphold that the Noticees have acted in breach of the directions issued under Interim Order.

24. The Noticees have also contended before me that the SCN deserves to be disposed of in their favour on the ground that the said merger of BoR with ICICI has taken place with the statutory sanction of RBI. Further, keeping in view the Interim Order of SEBI, RBI had sought clarification from SEBI on the issue of applicability of the said Interim

Order on the proposed merger of BoR with ICICI to which, vide letter dated August 11 2010, it has been clarified by SEBI that the Interim Order will not come in the way of proposed merger of BoR with ICICI.

25. From the submissions advanced on behalf of the Noticees and on perusal of the materials made available before me, it is clear that the restraint imposed vide the Interim Order was not viewed by SEBI as a constraint coming in the way of merger of BoR with ICICI. Under the circumstances, it cannot be said that Noticees are guilty of signing the merger Agreement with ICICI or they had acted in breach of the directions issued to them vide the Interim Order more particularly, when SEBI itself has clarified to RBI that the restraint order would not come in the way of the proposed merger. It was further clarified by SEBI to RBI that the restraint or prohibition issued vide the Interim Order would continue to operate on the entities, in respect of their operations in securities market including dealing in the shares of ICICI. It implies that SEBI had no objection to the proposed merger of BoR with ICICI and consequently, had no objection to the proposed swap of shares of BoR with the shares of ICICI.

26. The Noticees have also contended the sustainability of charges levelled under the SCN, on the ground that that the directions passed vide Interim Order were subsequently revoked vide the Final Order dated March 26, 2012 and therefore no action could have been initiated for the alleged violation of directions issued in the Interim Order. The Noticees have relied upon the observations made in various judgments in this connection viz., *Shri Manish V. Shah vs. The Securities and Exchange Board of India (Appeal No. 259 of 2017) (date of decision: January 22, 2019), National Bal Bhawan &Anr. vs. Union of India & Ors. [2003 (9) SCC 671] etc.*

27. It has been submitted by the Noticees that after passing of the Final Order, action for the alleged violations of Interim Order would not be tenable on the ground of doctrine of merger as the directions issued under the Interim Order stood merged with the directions of Final Order. Accordingly, no action for the violations, if any, under the directions issued under the Interim Order would be valid. The Noticees have relied upon the observations made by Hon'ble SAT in the case of *Shri Manish V. Shah (supra)* to content that the actions initiated for the breach of the directions issued in the interim order, after passing of final order would not sustain. The relevant observation of the Hon'ble SAT is as under *:*

"...Once the interim order merges with the final order, the respondent can only initiate proceedings for penalty, if any, for violation of the final order. No penalty proceedings can be adjudicated against the interim order after final orders are passed. In the instant case, the final order was communicated to the appellant vide letter dated 27th March, 2015. The show cause notice for imposition of penalty was issued on 15th June, 2015, that is, much after the disposal of the matter under Sections 11(4) and 11B of the Act..."

28. The above observations have been made by the Hon'ble SAT while setting aside the order of Adjudication Officer, which was initiated and passed for the violations of interim order, but after the disposal of the final proceedings in the matter. In this connection, I further find that in the case of *National Bal Bhawan & Anr. vs. Union of India &Ors. (supra),* the Hon'ble Supreme Court had observed that once the interim order is merged in the final order, no action can be taken in pursuance of the interim order. In the instant proceedings, I find that similar allegations have been made that the Noticees have acted in violations of the directions issued vide the Interim Order. At the time of passing of the Final Order revoking the directions of Interim Order, the facts relating to the signing of the Agreement with ICICI and receipt of shares pursuant to the merger of the two Banking Companies was available in public domain. The issuance of clarification by SEBI to RBI and the fact that no adverse inference on the execution of the Agreement was drawn by SEBI while passing the Final Order in the case of the Noticees indicate that the execution of the Agreement during the period of restraint/prohibition did not constitute a breach of the directions issued in the Interim Order. Considering the above cited observations of the Hon'ble SAT and the Hon'ble Supreme Court of India, I find force in the submissions of the Noticees that initiation of proceeding for the violations of directions of interim order during the pendency of final disposal of the proceedings could sustain, however, after the final disposal of proceedings, any proceedings initiated for the violations of directions of interim order, which has already been subsumed in the final order, shall not be maintainable in law.

29. Therefore, in the facts of the present case, as the Final Order has already been passed by SEBI, it is difficult to arrive at a conclusion that only by signing the Agreement with ICICI, the Noticees have violated the directions issued to them in the Interim Order, which had ceased to operate.

30. In view of the observations recorded above and in the light of aforesaid facts and circumstances of the instant matter, having considered all the relevant factors starting from the shareholding of the Noticees in the BoR, approval of the scheme of merger by the shareholders of the two banking companies, sanction granted by RBI after obtaining no objection from SEBI to the binding character of the Agreement upon the respective companies as well as on their shareholders, & interim protection granted to the Noticees by the Hon'ble High Court of Rajasthan, and moreover, taking into cognizance the fact that the SCN was issued after passing of the final order in the matter, I am of the view that the allegations against the Noticees that entering into the Agreement and subsequent receipt of shares of ICICI by them resulted in violations of directions issued by SEBI in its interim order dated March 08, 2010 are not established and devoid of merit.

31. I, therefore, in exercise of the powers conferred under Section 11, 11(4) and 11(B) (1) read with Section 19 of SEBI Act, 1992, dispose of the proceedings against the Noticees without any directions.

-Sd-

Date: October 24, 2019 **S. K. MOHANTY**

Place: Mumbai **WHOLE TIME MEMBER**