BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/AO/SBM/2022-23/17647-17650]

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

In respect of:

Mr. Ashish P Patel
(PAN: ACTPP0045R)

Radhe Developers (India) Ltd
(PAN: AAACR9177L)

Mr. Praful C Patel
(PAN: AGUPP9330N)

Mr. Milan Patel
(PAN: AASPP2685A)

In the matter of
Radhe Developers (India) Ltd
Regd. Office: 1st Floor, Chunibhai Chambers, Behind City Gold Cinema, Ashram Road
Ahmedabad (PIN) 380 009

FACTS OF THE CASE

1. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'),** in Appeal No 110 of 2013, vide Order dated February 13, 2014, while setting aside the adjudication order dated March 28, 2013, remanded the matter to the Adjudicating Officer, SEBI to be adjudicated afresh with respect to Mr. Ashish P Patel (hereinafter referred to as '**Noticee no. 1'**), Radhe Developers (India) Ltd (hereinafter referred to as '**Noticee no. 2' / 'RDIL' / 'Company'**), Mr. Praful C Patel (hereinafter referred to as '**Noticee no. 3'**) and Mr. Milan Patel (hereinafter referred to as '**Noticee no. 4'**) w.r.t their alleged violation of the relevant provisions of Regulations 12 (1) & (3) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations'**) in the matter of their dealings/activities in the scrip of RDIL during the period March 26, 2008 to May 07, 2008 (hereinafter referred to as '**Investigation period'**). It is observed that Noticee nos. 1, 3 and 4 were directors on the Board of Noticee no. 2 i.e RDIL during the above mentioned investigation period. In the context of the present proceedings, Noticee nos. 1 to 4 are hereinafter collectively referred to as the '**Noticees'**.

2. In this regard, it is relevant to mention briefly the background behind the remand of the matter by Hon'ble SAT. It is observed that pursuant to the initiation of the adjudication proceedings against the Noticees, an adjudication order dated March 28, 2013 was passed against the Noticees by the then Adjudicating Officer ('AO') of SEBI imposing a total penalty of Rs 22,00,000/**-** on the Noticees under the provisions of section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) for their violation of the provisions of Regulation 12 (1) and (3) of the PIT Regulations during the above referred investigation period. In this regard, the Noticees, aggrieved by the said adjudication order, had preferred an appeal before the Hon'ble SAT and the Order dated February 13, 2014, as mentioned above, was passed by Hon'ble SAT in the matter wherein, the Hon'ble SAT while remanding the matter, *inter alia*, held that:

"Accordingly, impugned order dated March 28, 2013 is quashed and set aside with liberty to the respondent to pass fresh order on merits, by issuing fresh show cause notice if deemed fit. If fresh show cause notice is issued, then appellant would be at liberty to file reply to the said show cause notice. All contentions of both the parties are kept open"

3. During the Investigation Period, RDIL was listed on the Bombay Stock Exchange ('**BSE'**) and Ahmedabad Stock Exchange ('**ASE'**), however, it was observed that there was no trading activity in RDIL at ASE since 2004 and the scrip of RDIL was traded only on BSE during the above referred investigation period. It was observed that Noticee no. 1 was the promoter, Managing Director and also the Compliance Officer of RDIL during the Investigation period.

4. It is noted that the scrip of RDIL was traded in the 'B' segment at BSE during the investigation period and the scrip opened at Rs.47.25 on March 27, 2008 and it touched a high of Rs. 165.35 on May 7, 2008 and closed at Rs. 157.70 on May 7, 2008. It is observed that RDIL had made a corporate announcement to the stock exchanges on May 02, 2008 (after the BOD meeting held on April 30, 2008) regarding the declaration of its unaudited quarterly financial results for the financial year ending March 31, 2008. The financial results announced by the company was positive in nature and the same was evident from the substantial jump in profits as on the year ended March 31, 2008. In this regard, the Board of Directors (BoD) of RDIL in the meeting held on April 30, 2008 had also approved the above corporate announcement. The said corporate announcement of financial results was also a price sensitive information within the meaning of the PIT Regulations.

5. It was observed during the investigation that Mr. Ashish P Patel / Noticee no. 1, Managing Director, Promoter and also the Compliance Officer of RDIL had purchased large number of shares of the company i.e shares of RDIL just before the aforesaid corporate announcement and also sold some shares of the company immediately after the said corporate announcement was disseminated to the stock exchanges. From the investigation, it was

observed that Noticee no.1 started purchasing the shares of RDIL from April 03, 2008 onwards and in fact, purchased the shares of RDIL even on the day of the BoD meeting of RDIL, which had approved the above price sensitive information on the financial results of the company. The records made available showed that Noticee no.1 purchased the shares of the company on the day of the BoD meeting i.e on April 30, 2008 (at 3.24 pm) and the trading window of the company was closed only for four hours on April 30, 2008 (from 04.00 pm to 08.00 pm) as the BoD meeting of RDIL was fixed at 08.00 pm on April 30, 2008.

6. The 'Model Code of Conduct for Prevention of Insider Trading for Listed Companies' (hereinafter referred to as the 'Model Code of Conduct') as mandated under Regulation 12 (1) of the PIT Regulations states that the trading window should be closed during the time the price sensitive information is unpublished. It is not in dispute that RDIL i.e Noticee no. 2 had framed a Code of Conduct / Code of internal procedures and conduct in terms of the mandate stipulated under Regulation 12(1) of the PIT Regulations.

7. It is observed from the perusal of the code of conduct framed by RDIL that the trading window of the company is required to be closed only for four hours prior to the happening of the event which is price sensitive, in this case the BoD meeting which approved the periodical results of the company was price sensitive information in terms of the PIT Regulations. During investigation, it was observed 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 BoD meeting, as had happened in the instant case. Hence, pursuant to the investigation, it is alleged that the model code of conduct for prevention of insider trading of the company is faulty and framed in a manner to allow the directors/officers/designated employees to trade in the scrip of the company even on the BoD meeting date and also during the unpublished price sensitive information period (UPSI).

8. Further, during investigation, it was observed from the Code of Conduct framed by RDIL under the PIT Regulations, 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”. It was observed during investigations that the equity base of the Company was 1,01,79,900 shares and the threshold limit set by the Company for obtaining the pre-clearances of trades was around 5% of the Company’s equity base. It was alleged during investigation 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 regulations 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 PIT Regulations.

9. It was observed that in the Board of Directors meeting of the company which was held on January 31, 2003, the company approved and adopted the code of conduct under the PIT Regulations and the following directors were present for the meeting when the said model code was adopted in 2003 i.e Mr. Ashish Patel (Noticee no. 1), Mr. Praful Patel (Noticee no. 3) and Mr Milan Patel (Noticee no.4) . 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 dependents’ trades monitoring of trades and the implementation of the code of conduct. It was observed during investigations that Mr Ashish Patel (the MD and Compliance officer of the company and also Noticee no. 1) purchased the shares of the company on various dates in April 2008 during the time when the information regarding the financial results was unpublished price sensitive information (‘UPSI’) and he even bought shares of the company on the date of the BoD meeting which was held on April 30, 2008.

10. Therefore, it is alleged that the company and its directors i.e the Noticees in the context of the present proceedings were responsible for setting forth a

faulty code of conduct under the provisions of PIT Regulations which was in absolute incongruity with the one prescribed under the PIT Regulations. Therefore, it is alleged that Noticees have violated the provisions of regulations 12 (1) and (3) of the PIT Regulations. In view of the same, adjudication proceedings have been initiated against the Noticees under the provisions of section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

11. Pursuant to the Order of the Hon'ble SAT dated February 13, 2014, as aforesaid, Shri D Ravikumar was appointed as the Adjudicating Officer ('**AO'**) vide communique dated December 03, 2014 under Section 15 I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to, *inter alia*, inquire into and adjudge the alleged violation of the provisions of sections 12 (1) and 12 (3) of the PIT Regulations in respect of the Noticees. Pursuant to the transfer of Shri D Ravikumar, the undersigned was appointed as the AO in the matter, vide communique dated June 22, 2015. Thereafter, Dr. Anitha Anoop was appointed as the AO in the matter vide communiqué dated March 25, 2019. Subsequently, the undersigned was again appointed as the AO in the matter vide communiqué dated November 03, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. Show Cause Notices dated March 15, 2011 (hereinafter referred to as **'SCNs'**) were issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on the Noticees, *inter alia*, under the provisions of Section 15HB of the SEBI Act for the violation of the provisions of Regulations 12 (1) and (3) of the PIT Regulations by the Noticees. It is pertinent to mention here that the SCN

issued to Noticee no. 1, also alleged violation of the provisions of Regulation 3(i) of the PIT Regulations by the Noticee no. 1, which has been dealt in a separate order (i.e w.r.t violation of Reg.3 (i) of PIT Regulations) and is not the subject matter of present order.

13. The SCN, issued to the Noticees, *inter-alia*, alleged the following: -

a. *Investigation observed that the company made the following corporate announcement during the investigation period:*

Copy of the announcement received by BSE and ASE on:	***Announcement.***
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.*

b. *As observed from the unaudited financial results of the Company for the quarter ended March 31, 2008, the total income increased to Rs. 35.27 million from Rs. 4.5 million for the quarter ended December 31, 2007. The net profit increased to Rs. 17.74 million from Rs. 0.26 million for the quarter ended December 31, 2007. The unaudited result for the year ended March 31, 2008, showed an increase in the total income to Rs. 50.74 million from Rs. 22.47 million for the year ended March 31, 2007, while the net profit increased from Rs. 3.16 million to Rs. 18.38 million.*

c. *From the trade and order log it was observed that you, Managing Director and Promoter of the Company bought shares of the Company before the corporate announcement and sold the same soon after the corporate announcement was made. The details of your trading during the investigation period i.e, from March 26, 2008 to May 07, 2008 are as given below:*

Date:	***Background details:***	***Bought :***	***Sold:***
03/04/08	*Before the announcement of the*	*10000*	----
04/04/08	*unaudited quarterly financial*	*20000*	----

25/04/08	*results for the period upto March 31st 2008 sent to BSE and ASE*	*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***

d. *It is alleged that you being the Managing Director and Promoter and also the Compliance Officer of Radhe /Company were well conversed with the financial developments of the company and that the outcome of the quarter ended March 31, 2008 (fourth quarter) were well within your knowledge/It is observed that you started purchasing the shares from April 03, 2008 onwards and continued buying shares even on the day of the BoD meeting/During the period from April 03, 2008 to April 30, 2008 you altogether bought 55,885 shares for an overall value of Rs. 51,97,073. It is observed that the day before the announcement of the results i.e, on April 29, 200, you bought 23,000 shares at Rs. 129.65. After the announcement of the results, you sold 6,300 shares for Rs. 10,03,716 in the first week of May 2008 at Rs. 157.50 and Rs. 163.50. It is observed that you thereby, made a profit of Rs. 4,17,816.00 [(Rs. 159.32-rs. 93) * 6300] on the purchase and sale of 6,300 shares and notional gain of Rs. 24,74,291.50 [{(Closing price of the date immediately after announcement – Avg. Price of Acquisition) *(55,885 shares – 6,300 shares)} that is (Rs. 142.9 – 93.00) * (55885-6300)]. Thus, by trading on the basis of unpublished price sensitive information, you allegedly made a gain of Rs. 28,92,107 [Actual Gain+ Notional gain i.e. (Rs. 4.17,816.00 + Rs.24,74,291.50)].*

e. *It is further observed that the notice of the BoD meeting was sent on April 23, 2008. As alleged you being the Managing Director of the company were well conversed with the financial developments of the Company and that the outcome of the quarter ended March 31, 2008 were well within your knowledge. As given above you 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. Hence it is alleged that you traded on the basis of unpublished price sensitive information thereby violated Regulation 3(i) of the PIT Regulation.

f. *It is alleged that you being a Managing Director, Promoter and also the Compliance Officer of the Company are a 'connected person' in terms of Regulation 2(c)(i) of the PIT and further an 'insider' as per Regulation 2(e) of PIT, as you were connected with the company and had access to unpublished price sensitive information. It is alleged that you took advantage of the aforesaid unpublished price sensitive information and traded in the scrip of the Company thereby making an ill-gotten gain*

14. The Noticees vide letters dated December 28, 2012 and January 08, 2013 made their submissions to the SCN dated March 15, 2011, the relevant excerpts from the submissions of the Noticees are as under:

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.*

15. Pursuant to my appointment as the Adjudicating Officer in the matter, a letter dated July 24, 2018 was sent to the Noticees advising them, to make their submissions in the matter. In response, Noticees vide their reply dated August 04, 2018, requested for further time to make submissions in the matter. Thereafter, vide letter dated August 06, 2021, Noticees were advised to make their submissions by August 28, 2018 and also to appear for personal hearing in the matter on September 03, 2018. In response, the Noticees submitted that they have filed for settlement under the SEBI (Settlement of Administrative and Civil Proceedings), Regulations, 2014 and requested to keep the matter in abeyance till their consent application is disposed of.

16. Thereafter, vide email dated January 16, 2020, the concerned department of SEBI informed that the settlement application filed by the Noticees has been rejected by the competent authority. Subsequently, vide letter dated January 17, 2020, Noticees were advised to file submissions in the matter, if any and appear for personal hearing on February 05, 2020. In response, Noticees vide their letter dated January 30, 2020, filed a request for inspection of documents, which was forwarded to the concerned department of SEBI on February 17, 2020. The concerned department of SEBI informed vide email dated October

14, 2020 that the Noticees were granted online inspection of documents on the same day viz. October 14, 2020. Thereafter, Noticees vide their letter dated October 20, 2020 requested for one month's time to submit their reply in the matter. Vide email dated October 20, 2020, the Noticees were advised to file their submissions in the matter by November 20, 2020. Vide their letter dated November 13, 2020, the Noticees requested for certain clarifications regarding the adjudication proceedings in the matter which was provided to them vide email dated November 18, 2020. Further, vide the aforesaid email, the Noticees were also advised to appear for online hearing through Webex platform on December 14, 2020. However, Noticees vide their letter dated December 10, 2020 requested for adjournment/additional time in the matter citing health issues, Covid infection etc. Thereafter, vide letter dated December 15, 2020, the Noticees were provided time till January 04, 2021 to file a reply and were also advised to appear online for personal hearing in the matter on January 12, 2021. In response, Noticees vide letter dated January 02, 2021 once again requested for additional time to submit their reply in the matter. Vide letter dated January 07, 2021, the Noticees were granted further time to submit their reply and were also advised to appear for online hearing in the matter on January 28, 2021.

17. The Noticees failed to respond to the aforesaid letter sent to them regarding submission of reply and also failed to appear for personal hearing on the scheduled date. Thereafter, the Noticees submitted their reply to the SCN vide their letter dated February 17, 2021 and made the following submissions:

    a. *The Hon'ble SAT had been pleased to pass the identical Orders in both the Appeal as follows:*

       "This appeal is filed to challenge adjudication order dated March 28, 2013. Counsel for parties state that without going into merits of the case and without expressing any opinion on merits impugned order may be set aside with liberty to respondent to pass fresh order on merits, if necessary bv issuance of fresh show cause notice. Accordingly, impugned order dated March 28, 2013 is quashed and set aside with liberty to the respondent to pass fresh order on merits, bv issuing fresh

show cause notice if deemed fit If fresh show cause notice is issued, then appellant would be at liberty to file reply to the said show cause notice. All contentions of both the parties are kept open.

b. *Generally, matter gets remand back for reconsideration of specific issue or on reconsideration of merits but expression of opinion to issue new SCN is hardly given i.e. entirely afresh matter.*

c. *SEBI should not have adopted different stand and should have maintained the stand taken before Hon'ble SAT and respect the opinion and liberty given by Hon'ble SAT to issue fresh SCN, if deemed fit.*

d. *The SEBI PIT Regulations 1992 are repealed and replaced with new SEBIPIT Regulations 2015. On account of subsequent development, prima facie, the present proceedings have become infructuous on account of operation of law.*

e. *The Noticee company adopted its first Radhe Code of Internal Procedure and Conduct for Prevention of Insider Trading (Code) at its meeting held on 30.04.2002 pursuant to insertion of the Regulation 12(1) in SEBI (PIT) Regulations, 1992 on 20.02.2002 prepared by Mr. Ram Chaudhary,CA.*

f. *Mr. Ashish Patel was the Compliance Officer.*

g. *In the Model Code of Conduct:*

i. *Clause 3.2.1 states that "The Company shall specify a trading period to be called "Trading Window, for trading in the company's securities. The trading window shall be closed during the time information referred to in para 3.2.3 is un-published."*

ii. *The clause 3.2.3 states "The trading window shall be, inter alia, closed at the time of (a) Declaration of Financial results (quarterly, half yearly and annual)"*

iii. *The Clause 3.2.3A states "Time for commencement of closing of trading window shall be decided by the company."*

h. *With respect to Trading Window, discretion has been left to the company to fix the period of Closure of Trading Window. Considering the promotors holding at 24.71% as on 31.03.2002 and no significant trading*

activity by the insiders in the shares of the company, CA suggested Trading Window Closure of 4 hours prior to declaration of financial results (quarterly, half, yearly and annual).

i. *Clause 3.3-1 states "AII directors I officers I 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 transaction as per the pre- dealing procedure as described hereunder. "*

j. *With respect to pre-clearance of trade threshold limit, discretion has been left to the company to fix the limit. Considering the promoters holding at 24.71% as on 31.03.2002 and no significant trading activity by the insiders in the shares of the company, CA suggested Threshold limit be kept at cumulative dealings in any financial year exceeds 5,00,000 shares I securities. In the wisdom of said CA, it commensurate with 5% creeping acquisition limit prescribed in SAST Regulations.*

k. *The act and conduct of adoption of Radhe Code of Internal Procedure and Conduct for Prevention of Insider Trading (Code) as per Regulation 12(1) of SEBI (PIT) Regulations, 1992 by the company has not been under dispute.*

l. *Thus there is discretion vested with the company to fix the threshold limit. Rightly so, the intent of the legislature while granting this discretion is with the backdrop that each and every company would be the best judge to decide the threshold limit based on their share capital, market capitalization and public float as these factors differ and vary with companies.*

m. *In the absence of a regulatory framework pertaining to the exercise of discretion, can the SEBI act responsibility on the company and its directors and allege them guilty of violating the code, when admittedly there has been no allegation of violation of the clause where discretion was exercised.*

n. *In humble understanding, when the law specifically provides a statutory right and discretion to a listed company to determine the minimum threshold for obtaining pre- clearance or timing for closure of trading window, there can be no violation in the event a listed company exercises the discretion granted to it under the PIT Regulations. Accordingly, in the absence of a specific restriction or regulation as to the manner of administering the Model Code of Conduct by listed companies as prescribed in the PIT Regulations so far as the minimum threshold for pre-clearance time for closure of trading window are concerned, SEBI cannot sit in judgment over the manner in which the threshold trading window is fixed by the company.*

o. *Mr. Milan Patel resigned as director of the company on 14-03-2005. He has been roped in to the matter because he was director of the company and present at the Board Meeting held on 31.01.2003 whereat Code was adopted. No violation much less the alleged violation took place during his tenure as director of the company. Though as such, the obligation casts on the company to frame the Model Code of Conduct which was in place and PIT Regulations not prescribed its appropriate mechanism and procedure to implement it and left it to the listed company.*

p. *With effect from November 19, 2008, the code of conduct was made mandatory with a prohibition on diluting it in any manner, by way of an amendment to Regulation 12 of the PIT Regulations. Prior to such amendment, the Model Code of Conduct specified in Schedule I of the PIT Regulations was, therefore, not binding in absolute terms.*

18. Thereafter, in the interest of natural justice, Noticees were provided with a final opportunity of hearing in the matter on April 16, 2021. On the scheduled date of hearing viz. April 16, 2021, online personal hearing of the Noticees were conducted through the Webex platform, wherein the authorized representative of the Noticees reiterated the submissions of the Noticees made vide their letter dated February 17, 2021. The Noticees were granted time till April 30, 2021 to make additional submissions in the matter, if any. Vide their letter dated April

29, 2021, Noticees requested for additional time to make final submissions in the matter, which was granted to them vide email dated May 05, 2021. Vide their letter dated May 12, 2021, Noticees made the following additional submissions:

a) *Not a whisper has been made in the entire IR regarding para 17 of SCN that "The above model code of conduct was approved by the Board in its meeting held on January 31, 2003." Therefore, the charges and allegation against the directors and the company relating to approval of 'faulty' Insider Code are unfounded and deserves to be dropped as it is nothing but exceeding the scope and ambit of enquiry on the basis of IR relied upon.*
b) *The shareholding pattern and ratio of promoter's shareholding v/s public shareholding demonstrated at para 5.2.1 makes it abundantly clear that public shareholding was almost 3 times higher than promoters holding.*
c) *The analysis of trade makes it crystal clear that it was from amongst public shareholding which had traded heavily in the scrip and though MD had traded but was of no significance in the market.*
d) *The MD has disclosed every trade, however, small it was, during the period of investigation regularly. Therefore, his trading was very much in the knowledge of market participants whereby neither the question of insider trading nor the intention to frame model code of conduct to the benefit of promoters/directors does not arise at all.*

19. In addition to above, following judgments were also relied upon by the Noticees in support of their submissions in the matter.

a) *SEBI Order dated May 02, 2013 in the matter of Reliance Petroinvestments Limited.*
b) *Supreme Court Order in the matter of MousamSingha Roy v.State of West Bengal (2003) 12 sec 377*
c) *SAT Order in the matter of Rajiv B. Gandhi v. SEBI (Appeal No. 50 of 2007 decided on May 9, 2008)*

d) *SAT Order in the matter of Goldman Sachs Investments {Mauritius} Limited v. The Adjudicating Officer, SEBI decided on May 15, 2008.*

e) *Allahabad High Court order in the matter of Pradumna Kumar Jain v. U.P. Secondary Education Service decided on February 24, 1997.*

CONSIDERATION OF ISSUES AND FINDINGS

20. I have taken into consideration the facts and circumstances of the case and the material on record, including the investigation report. I have also carefully perused the investigation report, the violations alleged against the Noticees in the SCN and also the submission of the Noticees, in this regard..

21. Before moving forward, it will be appropriate to refer to the relevant provisions of the PIT Regulations which have been allegedly violated by the Noticees 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).*

22. The issues that arise for consideration and determination in the present matter are as under:-

    a. Whether the model code of conduct of the company/RDIL was faulty and framed in a manner to allow the directors/officers/designated employees of the company to trade in the shares during the UPSI period?

    b. Whether the company/RDIL has set the threshold limit for pre-clearance of trades unreasonably high and has prescribed the limit as cumulative instead of transaction wise limit as required under the regulations 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 on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

23. I will now proceed to deal with the allegations levelled 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 during the UPSI period.

24. It is noted that on May 02, 2008, RDIL made the following corporate announcement regarding its quarterly financial results.

    "*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."*

25. It is seen from the perusal of the unaudited financial results of RDIL for the quarter ending March 31, 2008 that its total income increased from Rs. 45 lakhs in the quarter ended December 31, 2007 to Rs. 3.53 crore for the quarter ended March 31, 2008. The net profit of RDIL increased from Rs. 2.6 lakhs for the quarter ended December 31, 2007 to Rs.1.77 crore for the quarter ended March 31, 2008. Similarly, the unaudited results for the year ended March 31, 2008, showed an increase in the total income from Rs. 2.25 crore for the year ended

March 31, 2007 to Rs. 5.07 crore for the year ended March 31, 2008 and the net profit increased from Rs. 31.6 lakh to Rs.1.84 crore during the same period. Thus, there was a huge jump in the quarterly/annual revenue and profits of the company, when compared with the previous quarters/financial year.

26. The aforementioned corporate announcement made by the company (on May 02, 2008 mentioned at para 24) was pertaining to the approval/adoption of the financial results by the BoD of the company for the FY March 31, 2008. 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 was sent on April 23, 2008.

27. From the trade and order log of RDIL during the investigation period, it was observed that one of the Noticees i.e Mr. Ashish Patel (Noticee no. 1) bought shares of RDIL immediately before the corporate announcement and sold the same soon after the corporate announcement was disseminated to BSE on May 2, 2008. The details of the trading of Noticee no. 1 during the investigation period i.e, from March 26, 2008 to May 07, 2008 is mentioned below:

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**

28. It is observed from the Code of Conduct for Prevention of Insider Trading' adopted by RDIL that the closing of the 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.

29. It was observed during investigation that on the day of the Board Meeting, Mr. Ashish Patel, i.e Noticee no. 1 who was the Managing Director and also the Compliance Officer of RDIL purchased 824 shares at Rs. 136.10 per share from 3:15 p.m. to 3:24 p.m. As per the submission made by RDIL during the course of the investigation, the BoD meeting which was 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 per the trading window closure policy which was adopted by the company in its Code of Conduct for prevention of Insider Trading, RDIL closed the trading window at 4.00 pm i.e four hours prior to the happening of the BoDs meeting. It is noted that Noticee no. 1 who was the MD and compliance officer of RDIL had purchased the shares of RDIL even on the BoD meeting date barely minutes before the trading window closure period. However, it was observed from the copy of the minutes of the said BOD meeting that the BOD 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 time of the meeting was rescheduled, no reason has been recorded in the minutes and also no intimation regarding the re-scheduling of the meeting time was sent to BSE or ASE whereas, on other occasions when the BoD meetings of the company were postponed/rescheduled, the same was intimated to BSE by the company.

30. The code of conducted approved and adopted by the company clearly states that the trading window shall be closed during the time when the price sensitive information is unpublished. It was observed that the code of conduct framed by RDIL is inherently faulty as it allowed the directors/officers/designated employees of the company to trade in the shares of the company even on the day of BODs meeting and therefore, the code of conducted adopted by the company is flawed. It is likely that the BoD meetings would discuss and approve core issues which are price sensitive in nature (such as the details mentioned in Regulation 2 ha of the PIT Regulations). If the directors/designated employees who are ‘insiders’ are allowed to freely trade in the shares of the company even on the day of the BoD meeting i.e during UPSI period, as was

observed in this case, the same would defeat the very purpose and requirement behind the mandate prescribed in the PIT Regulations.

31. The PIT Regulations, 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 the closing of trading window shall be decided by the company.

32. In the instant matter, RDIL closed the trading window only four hours before the BoD meeting held on April 30, 2008 citing that the closure of the trading window was as per its approved policy on the code of conduct for prevention of insider trading and in the said BoD meeting, the board of RDIL also discussed and approved the price sensitive information regarding the financial results for the year ended March 31, 2008. Further, it is on record that Noticee no 1 as the MD and compliance officer continuously bought the shares of RDIL from April 3, 2008 onwards and infact, even bought shares of RDIL minutes before the commencement of the aforesaid BoD. Thus, clearly, from the above observations, it is evident that the code of conduct framed by the company is indeed faulty.

33. 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 RDIL. 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 RDIL, 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 RDIL also requires that execution of the pre-cleared deal shall be completed no later than one-week from the date of the approval.

34. The above 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.

35. 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.

36. 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 in this regard cannot be accepted.

37. I find that the Noticee, Mr. Ashish Patel being the Compliance Officer of RDIL, 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.

38. I find that there is no doubt that Mr. Ashish Patel being the Managing Director and Designated Compliance Officer of RDIL 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. Hence, in the instant case, the Company's model code of conduct has failed to keep a check on the same.

39. The threshold limit fixed by the company has been sought to be justified on the basis that there is no provision which stipulates a particular threshold and that the fixation of the threshold is left to the sole and unqualified discretion of the company in question. It has been contented that the exercise of the discretion by the company cannot be called into question or be made the subject matter of proceedings for the imposition of penalty. It has been also contended that the cumulative limit of 5% in the financial year is not unreasonable and was taken from the limits prescribed under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1999 (**"the SAST Regulations"**).

40. It is submitted that Regulation 12 falls with Chapter IV of the PIT Regulations, which is headed *'Policy on Disclosures and Internal Procedure for Prevention of Insider Trading'.* The Code of Conduct specified under Regulation 12 has to read in conjunction with spirit of the said Chapter. The philosophy and statutory intent underlying Chapter IV, Regulation 12 and the Model Code is that oversight, regulations and prevention of trading by designated officers/employees who are likely to have access to UPSI *is to the carried out at the level of each company.* The framing and implementation of a Code of Conduct by listed companies is the very foundation of this policy and is therefore of obvious importance. It is submitted that this statutory intent must be taken into account, and the validity or otherwise of a Code of Conduct framed by a company must be examined in the light of the same.

41. In the present case, the Noticees have clearly fixed the minimum threshold limit at a unnecessarily high level with a view to enable trading in extremely large quantities of the shares without obtaining pre-clearance. *This purpose is not merely extraneous to, but is directly contrary to the objective sought to be achieved by the statutory pre- clearance requirement.*

42. If the interpretation of the Noticees of the PIT Regulations and the Model Code of Conduct is accepted, it would have extremely serious and damaging consequences as companies would be free to fix illusory limits at will and the

pre-clearances requirement would be completely obliterated in practice. It is well settled law that a statute must be interpreted with a view to give effect to its intent and not in such a manner as would defeat it.

43. The contention of the Noticees that the limit of 5,00,000 shares in a financial year has been taken form the SAST Regulations and is therefore reasonable, is also erroneous. To begin with, there is nothing to indicate that the Noticees have taken the 5,00,000 figure from the SAST Regulations. Further, the SAST Regulations and the PIT Regulations and the Model Code are intended to serve different statutory purposes and operate in different fields. The fact that a person acquiring more than 5% of the equity capital of the company in a financial year is required to make an open offer to purchase shares from the shareholders does not have any nexus with the requirements of the pre-clearance under the PIT Regulations and the Model Code that the statutory intent is that the pre-clearance from the company is required for trading by designated officers/employees in the company's share . It is only to ensure that the pre-clearance procedure is not triggered by each and every purchase of shares , however insignificant, and that provisions has been made for the company to fix a minimum threshold limit. It is untenable to contend that as high a threshold as 5% of the entire equity capital of the company may be fixed merely because the acquisitions of that percentage of the shares triggers an open offer under different issue. Assuming while denying that regard could or ought to have been had to any particular percentage is shares in any Regulations, it is significant that under Regulations 13 (4) of the PIT Regulations themselves a director or officer of a listed company is required to disclose a change in his shareholding of it exceeds *5 lakhs in value, 25,000 shares or 1% of the total shareholding or voting rights whichever is lower.*

44. In the present case, it is a matter of record that Noticee no. 1 who was the MD and compliance officer of Noticee no 2 i.e company traded in large quantities of the company ' shares without obtaining pre-clearance by taking the benefit of the unduly high minimum threshold limit. The fixation of the astronomically high threshold limit by the company ensured that Noticee No 1 purchased sizable quantities of shares of RDIL without obtaining pre-clearance and

therefore, in my assessment, led to violation of the provisions of Regulation 12 (1) and (3) of PIT Regulations.

45. 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 RDIL and its BoDs (Mr. Milan Patel, Mr. Ashish Patel and Mr. Praful Patel) were 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.

46. 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.".

47. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 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."*

48. While determining the quantum of monetary penalty under section 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."

49. 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 MD and Compliance Officer of the company who is conferred upon with the key responsibilities in the company. In this case, it is the MD and the compliance officer i.e Noticee no. 1 who had indulged in buying the shares of the company during the UPSI period and also buying the shares on a continuous basis taking advantage of the faulty code of conduct, which required Noticee no 1 to take pre-clearances only if the cumulative trading in the scrip exceeded 5 lakh shares. Hence, the violation by the Noticees inter-se needs to be viewed accordingly.

ORDER

50. In view of the above, after considering all the facts and circumstances of the case, reply of the Noticees and also the factors mentioned in section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules hereby impose a total penalty of Rs. 10,00,000/- (Ruppes Ten Lakhs only)) on the Noticees viz. Mr. Ashish Patel, Radhe Developers (India) Ltd, Mr. Praful C Patel and Mr. Milan Patel u/s 15HB of the SEBI Act for their violation of the provisions of the Regulation 12(1) & 12 (3) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015. The aforesaid penalty is to be paid jointly and severally by the Noticees.

51. I am of the view that the said penalty is commensurate with the lapses/omissions on the part of the Noticees. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; or by using the web link for payment of penalty at SEBI website viz. https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of the penalty, the Noticees may contact the support at portalhelp@sebi.gov.in.

52. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

53. In terms of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees viz. Mr. Ashish Patel, Radhe Developers (India) Ltd, Mr. Praful C Patel and Mr. Milan Patel and also to the Securities and Exchange Board of India.

Place: Mumbai **SURESH B MENON**
Date: 29.06.2022 **ADJUDICATING OFFICER**