BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2021-22/14890]

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) RULES, 1995

In respect of

Mr. Amalendu Mukherjee

(PAN - AMWPM2947A)

In the matter of Ricoh India Limited

BRIEF FACTS OF THE CASE

1. Securities and Exchange Board of India ("**SEBI**") conducted an investigation into the dealings in the scrip of Ricoh India Limited (hereinafter referred to as "**Ricoh/Company**") during the period from August 14, 2014 to November 17, 2015 (hereinafter referred to as "**investigation period**") to ascertain whether Mr Amalendu Mukherjee (hereinafter referred to as "**Noticee/AM**") had traded in the scrip of Ricoh on the basis of unpublished price sensitive information ("**UPSI**") in contravention of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred as "**PIT Regulations, 1992**") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred as "**PIT Regulations, 2015**") (both regulations together are also referred to as "**PIT Regulations**"). Pursuant to the investigation, SEBI observed certain violations of the SEBI Act as well as that of aforesaid PIT Regulations by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated December 07, 2020, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15G of SEBI Act, the alleged violation of Sections 12A(d) and (e) of the SEBI Act, Regulations 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Regulation 4(1) of PIT Regulations, 2015 by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated July 07, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against Noticee and why penalty, if any, should not be imposed on Noticee under Section 15G(i) of the SEBI Act for the aforesaid violations alleged to have been committed by Noticee.

4. The allegations levelled against Noticee in the SCN are as under:-

    a. *SEBI appointed Pipara & Co. LLP (herein after referred to as "**Forensic Auditor**") to conduct forensic audit into the books of accounts of Ricoh as well as Fourth Dimension Solutions Ltd (**FDSL**). Based on the forensic audit report ("Audit **Report**") dated October 25, 2019, submitted by the Forensic Auditor, SEBI observed that the financial statements of Ricoh were misstated from Financial Year 2012-13 onwards. Therefore, it was observed that the UPSI came into existence during Financial Year 2012-13 and the investigation period falls within the period of UPSI. Vide letter dated April 20, 2016, Ricoh disclosed that its financial statements did not reflect true and fair view of its state of affairs and the same was* *disseminated by BSE on April 22, 2016. Thus, SEBI considered that the period of UPSI to be from April 01, 2012 to April 22, 2016, i.e., from Financial Year 2012-13 till the date of dissemination of announcement on BSE.*

b. *Kotak Securities Ltd., vide its email dated October 23, 2019, informed SEBI that FDSL had authorized Mr. Amalendu Mukherjee (**AM**), who was the Managing Director and promoter of FDSL, to place orders on its behalf vide Board Resolution of FDSL dated June 21, 2014. It was observed by SEBI that AM traded in the scrip of Ricoh while in possession of UPSI. Therefore, FDSL and AM were considered as suspected entities. Further, considering the fact that AM had access to UPSI that the financial statements of Ricoh were untrue and he placed orders on behalf of FDSL to trade in the scrip of Ricoh while in the possession of UPSI, SEBI noted that AM would fall under the definition of 'insider' in terms of Regulation 2(e) of PIT Regulations.*

c. *The forensic audit report dated October 25, 2019 from the Forensic Auditor inter-alia confirmed the involvement of AM in the manipulation of sales and purchases of Ricoh. During the forensic audit, various discrepancies were observed in the transactions done by FDSL with vendors and customers of Ricoh wherein many of the vendors and customers were found to be connected to AM and communication of these entities with Ricoh was managed by AM.*

d. *The profit made from trading in the scrip of Ricoh by FDSL while in possession of UPSI is detailed below:*

Transaction	***Buy Qty***	***Wt Avg Buy Price***	***Buy Value (INR)***	***Sell Qty***	***Wt Avg Sell Price***	***Sell Value (INR)***	***Unlawful gains made (INR)***
Market	*8,16,907*	*379.17*	*30,97,49,007*	*816,407*	*392.77*	*32,06,60,499*	
Off market	*-*	*-*	*-*	*500*	*889.25**	*4,44,625*	
Total	***8,16,907***	***379.17***	***30,97,49,007***	***8,16,907***	***393.07***	***32,11,05,124***	***1,13,56,118***

**The closing price of the date of off-market transaction, i.e. June 4, 2015, has been considered as the sale price.*

e. *Further, it was observed in investigation that AM sold FDSL's entire shareholding of 22,828 shares in Ricoh at price of INR 831.86 per share on November 17, 2015, i.e., two days after the announcement dated November 15, 2015, by Ricoh adjourning the Audit Committee and Board of Directors Meetings of Ricoh for consideration of quarterly financial results for the quarter ended September 30, 2015.*

f. *The corporate announcement pertaining to financial statements being untrue was made on April 22, 2016 at 19:13:40 at BSE. The closing price on April 25, 2019 (the next trading day) was Rs. 320.3. It was alleged that by offloading its entire shareholding on November 17, 2015, FDSL avoided a notional loss of Rs. 1,16,77,892/-, the details of which are as under:*

Sell Qty.	***Wt Avg Sell Price***	***Closing price on April 25, 2016***	***Loss avoided (INR)***
22,828	*831.86*	*320.3*	***1,16,77,892***

g. *Thus, it is alleged that the total of unlawful gains (a) and loss avoided (b) by FDSL while in possession of UPSI is INR 2,30,34,010/- (Rupees 1,13,56,118 plus Rupees 1,16,77,892).*

h. *In view of the above, it is alleged that Noticee has violated Sections 12A(d) and (e) of the SEBI Act and Regulations 3(i), and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Regulation 4(1) of PIT Regulations, 2015.*

5. The SCN was sent to Noticee through Speed Post Acknowledgement due (hereinafter referred to as '**SPAD**') and digitally signed email dated on July 07, 2021. The SCN sent through SPAD returned undelivered. However, the SCN sent through digitally signed email was duly served upon Noticee and Noticee was given fourteen (14) days' time to make his submissions in respect of the allegations made in the SCN. Noticee submitted his reply to the SCN vide letter dated July 20, 2021.

6. Vide hearing notice dated September 06, 2021, served on Noticee through email dated September 06, 2021, Noticee was granted an opportunity of personal hearing

on September 24, 2021.The personal hearing was availed by Noticee on September 24, 2021, through his Authorized Representative ("**AR**") namely, Advocate Mr. Dinesh Kumar Sabharwal. Through his email dated September 21, 20201, Noticee filed written submissions through his AR. During the hearing, the AR reiterated the contents of Noticee's earlier submissions in the matter. Due to difficulties in view of Covid-19 pandemic, hearing was conducted through video conferencing.

7. The submissions of Noticee are summarized as under:
   a) *He was presently a suspended director of FDSL which is now being transferred to Linkstar Infosys Pvt Ltd. He denied the allegations against him in the SCN stating that the allegations are baseless, and superficial without any concrete evidence.*
   b) *He cannot be regarded as "insider" since no connection is seen between him & Ricoh. The report submitted by the audit committee has not conferred the proximity between him & Ricoh.*
   c) *He was engaged with Ricoh as a business partner and all allegations against were superficial and baseless.*
   d) *He through its company had operated through its Depository account maintained with Kotak Securities Ltd and for such operations, FDSL had authorized him vide a Board Resolution. Therefore, he cannot be held liable in a personal capacity and cannot be penalized for any gain/loss accrued to a company which is a separate legal entity.*
   e) *The order dated 06/07/2020 has been erroneously passed against him as beneficiary of the profit earned by FDSL from trading in the scrip of Ricoh and SEBI had not considered the documentary evidence presented by him during the WTM proceedings.*
   f) *An interim order has been passed on 12/02/2018 wherein he had been restrained from the securities market.*
   g) *FDSL, through its Board of Directors, had authorized him to trade in the shares of Ricoh. Ricoh had traded in thirteen other scrips also and squared off the positions in all the cases. FDSL had squared off position in shares of Ricoh on March 30,*

2015 as there was no balance left. FDSL had stopped trading from November 17, 2015 due to heavy losses.

h) *The decision to sell the shares of Ricoh was taken by the company on account of the circumstances relating to postponement of Audit Committee meeting and due to indication of crisis. FDSL sold the shares only after the public announcement of the adjournment of the Audit Committee meeting.*

i) *No personal benefit had accrued to him through such trading activities since all the trading activities had been done by FDSL through its Board approval.*

j) *The basis of charges in SCN are the forensic audit report by Pipaara & Co., the credibility of the audit report is doubtful since there are three FIRs filed against the Forensic Auditor and a red corner notice has also been issued against Mr. N. G. Pipara. Two other officials of this firm were also arrested due to wrong practices of the firm.*

k) *The audit report is also challenged on the grounds that it does not mention major facts about Ricoh, contains misstatements about many listed companies not being in existence, hides certain accounting practices about Ricoh and has falsely reported certain financial transactions by Ricoh and is biased against FDSL.*

l) *He was not aware of any financial misstatements w.r.t. Ricoh till it became public on April 22, 2016. Moreover, FDSL did not have any transactions with Ricoh during FY 2012-13 and 2013-14, so misstatement was going on even before FDSL started transacting with Ricoh.*

m) *The Directors' Report Statement of Ricoh acknowledge that the financial statements of the company, which should be the basis of any misstatement, was based on assumptions and estimates and so he would also not know the basis of such misstatements of the financials.*

n) *The allegations against him were solely based upon the report of Pipara & Co LLP and there is no mention of any report of CJS Nanda & Co.*

o) *Regarding the specific instances of misstatements in the SCN, he denied any knowledge of these transactions and stated that the audit report was baseless and frivolous and was intended to malign him.*

p) He further stated that FDSL was a Titanium Ricoh ITS Partner and was given a target of bringing business opportunities of INR 500 crore for Ricoh. He has further stated that the customer used to approach the dealer/partner for business which, in turn, would be forwarded to Ricoh and this was a normal practice being followed in Ricoh for many years.

q) Being the RITS partner, FDSL had forwarded the documents as received from the end customer. What Ricoh did with the same was their internal matter and he had no knowledge of their internal processes.

r) He mentioned that it was very common in the IT industry that companies who are vendors to one company in a business transaction becomes the seller in another transaction. FDSL, being the RITS partner, customers used to connect with them and provide their POs to them which were then forwarded to Ricoh.

s) The email regarding M/s KPMG was sent only to a sales co-ordinator and a junior employee of Ricoh who did not have any influence over management decisions. Majority of the decisions of Ricoh India were taken by the holding company, Ricoh Japan and he did not have the authority or power to dictate terms to them.

t) Regarding the personal benefits extended and booking of flights tickets for COO & CFO of Ricoh, he stated that these were only goodwill gestures and were provided as a business promotion exercise by FDSL. The COO was unable to make foreign payment towards tuition fees, so it was short arrangement which was returned by him later. In the nature of IT business and even in Ricoh, it was a very common practice to arrange overseas trips for their employees/partners/dealers etc.

u) He also quoted the judgements of Hon'ble Supreme Court in the matter of SEBI Vs Rakhi Trading (P) Ltd, 2018 (13) SCC 753 and Piramal Enterprises Ltd. Vs SEBI Appeal No 466 of 2016 as part of his contentions.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against Noticee, replies/submissions made by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

(a) Whether Noticee has violated the provisions of Sections 12A(d) and (e) of the SEBI Act and Regulations 3(i) and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Regulation 4(1) of PIT Regulations, 2015 ?

(b) If yes, then do the violations on the part of Noticee attract any monetary penalty under Section 15G of the SEBI Act?

(c) If yes, then what would be the quantum of monetary penalty that can be imposed upon Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act?

9. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI Act, PIT Regulations, 1992 and PIT Regulations, 2015 which are reproduced as under:-

PIT Regulations, 1992

Prohibition on dealing, communicating or counselling on matters relating to insider trading

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;

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.

SEBI Act

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

12A. No person shall directly or indirectly—

…

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PIT Regulations 2015

Trading when in possession of unpublished price sensitive information.

4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

……….

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

Issue No. I: Whether Noticee has violated the provisions of Sections 12A(d) and (e) of the SEBI Act and Regulations 3(i), and 4 of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 and Regulation 4(1) of PIT Regulations, 2015?

10. I note from records that SEBI had appointed Pipara & Co. LLP (hereinafter referred to as “**Forensic Auditor**”) to conduct forensic audits into the books of accounts of Ricoh and FDSL from financial year ending March 31, 2013 till financial year ending March 31, 2018. The audit report dated October 25, 2019, submitted by the Forensic Auditor (hereinafter referred to as ‘**Audit Report’**), highlighted certain discrepancies in the transactions done by FDSL with customers and vendors of Ricoh. The audit report also established the involvement of Noticee in the manipulation of sales and purchases of Ricoh. On the basis of the observation in the audit report that financial statements of Ricoh were misstated from Financial Year 2012 onwards, it has been alleged that the unpublished price sensitive information, i.e., the misstatements in the financial statements of Ricoh from the Financial Year 2012-13 onwards, was from April 01, 2012 till the date of dissemination of such facts by BSE on April 22, 2016.

11. In his submissions w.r.t. the allegations against him in the SCN, Noticee has contended that the earlier report of M/s C J S Nanda & Co. has not been considered by SEBI and SEBI has only relied on the audit report of Pipara & Co LLP to level the charges against him. In this regard, it is pertinent to note that SEBI had appointed Pipara & Co LLP to conduct forensic audit into books of accounts of Ricoh and FDSL and the present proceedings are related to the involvement of Noticee as an ‘insider’ while dealing in the scrip of Ricoh on behalf of FDSL. As such, I find that the report of M/s C J S Nanda & Co is not relevant to in the extant proceedings and thus, I find no merit in this contention of Noticee.

12. I note that Noticee has also challenged the credibility of the audit report, stating that there are criminal cases pending against the Forensic Auditor and their employees and a red corner notice has been issued against one of the partners of the firm. On account of these developments, Noticee has called into question the authenticity of the audit report. He has further pointed out certain discrepancies in the audit report, viz., alleged misstatements in the audit report about existence of listed companies, accounting adjustment w.r.t. dues from FDSL etc.

13. I find that Noticee has failed to adduce any relevant documentary evidence in support of his aforesaid contentions regarding the Forensic Auditor or regarding the discrepancies in the audit report. Although Noticee has submitted certain annexures to his reply as documentary proof, I find that those annexures are not relevant in the context of his contentions. Further, in regard to Noticee's contention about existence of listed companies involved in the transactions of Ricoh, I note from records that though names of the existing companies were used in the transactions, the addresses of such companies as given in transaction statements were not the registered addresses of those companies. I note that according to the audit report, names of known corporate entities but with different addresses have been used to create fictitious transactions. Therefore, I find that Noticee's contention questioning the credibility or authenticity of the audit report by M/s Pipara & Co LLP lacks any justification. However, even if I were to believe to that discrepancies in the Audit Report as contended by Noticee exist, I find that the core issue in the instant matter would not be affected by such discrepancy. In this regard, I note that Hon'ble Securities Appellate Tribunal (SAT) while deciding the appeal filed against Final Order of learned Whole Time Member, SEBI dated July 06, 2020 in the same matter has stated the following "*Even assuming there are some discrepancies in some of these reports on the existence of a few out of the 27 entities identified or part of the payments in question are factually correct do not vitiate the core findings in those reports.*"

14. The SCN has alleged that Noticee had access to unpublished price sensitive information i.e., the financial statements of Ricoh were misstated from Financial Year 2012-13 onwards. Regarding the misstatements in the financial statements of Ricoh, Noticee has contended that FDSL did not have any transactions with Ricoh during Financial Years 2012-13 and 2013-14 and therefore, any misstatements were continuing even before FDSL started transacting with Ricoh. He has further denied being in the know of such misstated financials, contending that such statements were based on certain assumptions as reported in the Directors Report and that the misstatement of the financials of Ricoh were still to be proven. However, I note from the audit report that the Forensic Auditor has clearly enumerated specific instances of

discrepancies /misstatements /manipulation in the financial statements of Ricoh. Against such specific instances brought out in the audit report, only a general statement of denial by Noticee, without any supporting documentary evidence, is unjustifiable and thus, I do not find this contention of Noticee to be acceptable.

15. As per the definition of '*price sensitive information'* as prescribed under Regulation 2(ha) of PIT Regulations, 1992, "*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 the company.

16. Similarly, under Regulation 2(1)(n) of PIT Regulations, 2015, '*unpublished price sensitive information'* (hereinafter referred to as '**UPSI'**) is defined as any information, relating to a company or its securities, directly or indirectly, that is not generally available, which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily include but not restricted to, information relating to the following: –

    (i) financial results;

    (ii) dividends;

    (iii) change in capital structure;

    (iv) mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;

    (v) changes in key managerial personnel.

17. In the instant case, I observe from records that the financial statements of Ricoh were misstated from FY 2012-13 onwards and did not reflect true and fair view of its state of affairs, which fact was also admitted to and disclosed by Ricoh vide their letter dated April 20, 2016. I note that information relating to financial results is specifically mentioned under the definition of UPSI under Regulation 2(1)(n) of PIT Regulations, 2015 and consequently, the information relating to misstatements in financial results is also an UPSI within the meaning of PIT Regulations .In my view, this information, once disseminated publicly, would clearly impact the price of shares of Ricoh, since

without the benefit of this knowledge, i.e., till its dissemination in the public domain, the market would not be in a position to factor in the negative news. I, therefore, find that this unpublished information would squarely fall under the definition of "*UPSI*" as stated under Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015. I also note from records that the disclosure about misstatements in the financials of Ricoh was made by BSE on April 22, 2016 and conclude that the period of UPSI would be from April 1, 2012 till April 22, 2016, when the information was disseminated in the public domain.

18. It has been alleged in the SCN that since Noticee had access to the UPSI, i.e., the financial statements of Ricoh were untrue and he traded in the scrip of Ricoh while in possession of the UPSI, he would fall under the definition of 'insider' as given in Regulation 2(e) of PIT Regulations, 1992, as well as Regulation 2(1)(g) of PIT Regulations, 2015. In his submissions, Noticee has denied the allegation stating that he cannot be regarded as "insider" since no connection was seen between him and Ricoh and he was engaged with Ricoh as a business partner. He has further stated that the report submitted by the audit committee has not conferred the proximity between him and Ricoh.

19. I find it pertinent here to examine the components of the term '*insider*'. The term "*insider*" as defined under Regulation 2 (e) of PIT Regulations, 1992, reads as follows:

> "*Regulation 2(e)- "insider" means any person who,*
> *(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access 10[***] to unpublished price sensitive information in respect of securities of 11[a] company, or*
> *(ii) has received or has had access to such unpublished price sensitive information ;]"*

20. "In terms of Regulation 2(c) PIT Regulations, 1992*, "connected person" means any person who—*

….

ii. Occupies the position as an office 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….”

[Explanation:—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading;]

21. Similarly, as per Regulation 2(1)(g) of PIT Regulations, 2015,

“*insider*” means any person who is:

i) *a connected person; or*

ii) in possession of or having access to unpublished price sensitive information;”

22. In terms of Regulation 2 ((1)(d) PIT Regulations, 2015, *"connected person" means,-*

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or <u>holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.</u>

….”

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also *intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information."*

23. In this regard, available records show that FDSL was a vendor as well as customer of Ricoh and Noticee was the Promoter and Managing Director of FDSL. I also note that Noticee had been authorized by the Board of Directors of FDSL to trade in the shares of Ricoh on behalf of FDSL. I note that Noticee has also admitted to the fact that he was a business partner of Ricoh and had traded in the shares of Ricoh on behalf of FDSL.

24. The SCN has alleged that the audit report confirmed Noticee's involvement in manipulation of sales and purchases of Ricoh. It has been alleged that during the forensic audit, various discrepancies were observed in the transactions done by FDSL with vendors and customers of Ricoh, and many of those vendors and customers were found to be connected to Noticee. I observe that specific instances of such connections have been narrated in the SCN, viz., 1) the editable tax invoice and purchase orders (**PO**) of Rudra Enterprises, RITS partner, were shared by Noticee with Ricoh to allow Ricoh to edit those and therefore, manipulate its sales figures and 2) POs and other details such as PAN, Bank details, Vendor Registration forms, invoices etc. of many related companies were shared with Ricoh by Noticee instead of such details being received directly from these companies. In this regard, Noticee, vide his reply dated September 21, 2021, has stated that FDSL was a Titanium Ricoh ITS Partner and was given a target of bringing business opportunities of INR 500 crore for Ricoh and that the customer used to approach the dealer/partner for business which, in turn, would be forwarded to Ricoh and this was a normal practice being followed by Ricoh. Noticee has also not disputed the specific instances pointed out in

the SCN, and has admitted that being the RITS partner, FDSL had forwarded the editable tax invoice and POs of customers to Ricoh. He also admitted that FDSL, being the RITS partner and due to it's connect in the industry, had forwarded the POs, as received from customers, to Ricoh.

25. I note that Noticee has admitted to the allegations in the SCN that FDSL and therefore, Noticee being the Managing Director of FDSL was involved in routing commercial/financial documents like tax invoices, PAN, Bank details, POs etc. of the company's customers/ vendors to the company. The above facts of admission by Noticee point to the undeniable conclusion that during the IP, Noticee was closely associated with the company and was involved in internal transactions that Ricoh had with its vendors/customers. I also note from the audit report that the many customers of Ricoh were found to be entities connected /related to Noticee. The audit report also mentions about related party transactions of Ricoh involving Noticee. Therefore, by his own admission and in light of the above observations, I find that Noticee satisfies the definition of a "*connected person*" as provided in Regulation 2(1)(d) of PIT Regulations, 2015 as well as Regulation 2(c) of PIT Regulations, 1992.

26. I note that the SCN alleges that Noticee had access to UPSI on the basis of further corroborative evidence as under:

(a) Noticee sold shares of Ricoh on November 17, 2015 and discontinued trading in Ricoh when BSR raised concerns in November 2015 regarding the financial statements of the Company.

(b) Noticee sent an email to one employee of Ricoh, viz., Ms Smriti Pandey, suggesting that Ricoh not have M/s KPMG as their auditors since M/s KPMG had been found guilty of being a party to manipulation of accounts of various companies. Due to this, it has been alleged that Noticee had access to insiders in Ricoh and he attempted to influence the decisions of the company.

(c) It has been alleged that Noticee extended personal benefits to the COO and CFO of Ricoh by virtue of which Noticee was in a position to influence the aforesaid insiders/Key Management Personnel of Ricoh.

27. Regarding the allegation cited at paragraph 26(a), Noticee has denied having knowledge of any misstatements in the financials of Ricoh and has stated that the decision to sell the shares of Ricoh was taken by the company on account of the crisis prevailing at that time and that such decision was taken after the adjournment of the audit committee meeting was made public. I note that the public announcement by Ricoh disseminated on BSE on November 15, 2015 merely discloses about the adjournment of the Audit Committee and Board of Directors meetings of the company. This development doesn't appear to be indicative of any crisis in the company, the reason cited by Noticee to justify the sale of shares of Ricoh by him. Therefore, I find that the explanation provided by Noticee in this regard is not borne out by facts and is untenable. In any case, the sale of shares of Ricoh by Noticee on behalf of FDSL happened during the UPSI period. Therefore, preponderance of the probability leads to the conclusion that Noticee was aware of the manipulation/ misstatements in the books of accounts of Ricoh, due to which he offloaded the entire shareholding of FDSL in the scrip of Ricoh after their statutory auditors, M/s BSR & Co., raised a red flag.

28. As regards the allegation at Paragraph 26(b), Noticee, in his submission, has tried to explain that he did not have the necessary authority over the holding company, i.e., Ricoh Japan, to influence their decisions regarding appointment of M/s KPMG as auditors and has contended that the email in this regard was sent only to a junior sales co-ordinator who had no say in the management decisions of Ricoh. I find the argument of Noticee to be contradictory, in that, while on one hand he is attempting to show that he was not in a position to influence the decisions of the management of Ricoh, on the other hand, he admits to having written an email to an employee of Ricoh regarding appointment of their auditor. If Noticee's statement in his reply that "*keeping KPMG or any other firm as auditors of the company was a company decision*" is to be given credence to, then it is only logical he should not have written to Ricoh

regarding their internal matters.The fact that Noticee, as the Managing Director of RITS partner of Ricoh, communicated his opinions about Ricoh's decision to appoint M/s KPMG as their auditor, clearly shows he had considerable influence over the management of Ricoh, despite his arguments to the contrary. The fact that he wrote to Ricoh further reinforces the point that unless he had considerable influence over Ricoh's management, he would not have interfered in the internal affairs of the company. Therefore, I find this contention of Noticee to be untenable. The aforesaid findings, therefore, lead to the conclusion that Noticee had access to insiders in Ricoh and he attempted to influence the decisions of the company.

29. In respect of the allegation at Paragraph 26(c) above, the contention by Noticee that personal benefits extended to CFO and COO of Ricoh were only a goodwill gesture and part of business promotion exercise by FDSL do not explain why he had personally financed the tuition fees of daughter of CFO or booked the flight tickets of COO and CFO of Ricoh. I note that Noticee has not furnished any evidence of such business promotion exercise being undertaken and financed by FDSL through its official channels, in support of his contention. Thus, I do not find aforesaid the justification given by Noticee to be valid. In light of these findings, it can be concluded that being the Managing Director of FDSL and maintaining close personal ties with the Key Management Personnel (**KMP**) of Ricoh, Noticee was in a position to influence the decisions of Ricoh's management.

30. I place reliance on the following proposition of Hon'ble SAT in the matter of "Utsav Pathak Vs. SEBI", in appeal no. 430 of 2019 decided on June 12, 2020 wherein Hon'ble SAT opined as "*In this regard, we may note that it is a fundamental principle of law that proving of an allegation levelled against a person can be derived either from direct substantive evidence or can be inferred by a logical process of reasoning from the totality of attending facts and circumstances surrounding the allegations made and levelled. The Supreme Court in SEBI vs. Kishore Ajmera(2016) 6 SCC 368 held that in the absence of direct evidence, the court cannot become helpless and that the court can take notice of immediate and proximate facts and circumstances*

surrounding the events and reach to a reasonable conclusion. The Supreme Court held that the test would always be as to what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

31. In view of the aforesaid judgment of Hon'ble SAT, the findings and analyses discussed above and supporting evidence as well as considering multiple factors such as Noticee being a business partner of Ricoh, his involvement in manipulating the accounts by sending editable purchase orders of fictitious companies, extending personal benefits to KMPs of Ricoh, etc., seen in conjunction, preponderance of probability leads to the conclusion that Noticee had close connection and influence over with the insiders of Ricoh and Noticee was also aware of the manipulation/ misstatements in the books of accounts of Ricoh. Preponderance of probability also indicates that Noticee was not only an insider by virtue of his being a connected person and being reasonably expected to have access to UPSI but also because of his actual access to and possession of UPSI due to his involvement in manipulation of accounts of Ricoh Therefore, I find that Noticee squarely falls under the definition of 'insider' under PIT Regulations, 1992 as well as PIT Regulations, 2015 and Noticee, being an insider, was in possession of UPSI.

32. The SCN has further alleged that Noticee had traded in the scrip of Ricoh when in possession of UPSI and that the profit made by FDSL from trading in the scrip of Ricoh, while in possession of UPSI, was Rs 1.14cr while the notional loss avoided was Rs 1.17cr. Therefore, the total unlawful gains made and loss avoided by FDSL in the scrip of Ricoh, when in possession of UPSI, was Rs 2.30cr. I note from the records that Noticee traded in the scrip of Ricoh during the period from August 14, 2014 till November 17, 2015, when he offloaded the entire shareholding of FDSL in the scrip of Ricoh. Since, the aforesaid transactions fall during the UPSI period, it is established that Noticee had traded during the UPSI period.

33. I note that in his submissions, Noticee has stated that he had been authorized by the Board of Directors of FDSL to trade in the shares of Ricoh on behalf of FDSL and Noticee has also admitted to the fact. However, Noticee has contended that FDSL had traded in other scrips also, in addition to Ricoh, and which had also been squared off. Noticee adds that no personal benefit had accrued to him or earned by him through such trading. In this respect, I place reliance on the order of Hon'ble SAT in the matter of *Rajiv B. Gandhi and Ors. v. SEBI* (Hon'ble SAT's order dated May 9, 2008) wherein the Hon'ble SAT has opined as under:

> "*We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established.*"

34. The aforesaid judgment of Hon'ble SAT, when applied to the facts and circumstances of the instant case, makes it clear that it was incumbent on Noticee to prove facts contrary to those alleged in the SCN since the burden of proof shifts to him. I note that in his arguments, Noticee has only denied the allegation but has not provided a plausible explanation for the basis on which he carried out the trades in the scrip of Ricoh. It has already been noted in an earlier part of the order that the reasoning furnished by Noticee regarding offloading of shares of Ricoh was not justified and not acceptable. Noticee has, in his contentions, further tried to show a pattern of offloading of shareholding in other scrips also to justify that selling of shares of Ricoh was not an exception. However, I find that such comparison with trading decisions across different scrips, that too for a limited period, as a justification for trading in/selling the shares of

Ricoh, to be baseless. Therefore, in absence of any facts or evidence submitted by Noticee to establish the contrary, I would be inclined to accept the allegations made in the SCN in this respect.

35. Noticee has also contended that SEBI has not considered the evidence provided during the proceedings before its Whole Time Member (**WTM**). In this regard, I note that the instant adjudication proceedings are separate and independent *quasi-judicial* proceedings and as such, submissions before a different *quasi-judicial* authority would not relevant to the present proceedings. Therefore, I do not find merit in this argument of Noticee.

36. I note that any Company, though a legal entity cannot act by itself, it can act only through its Directors who are expected to exercise their power on behalf of the company with utmost care, skill and diligence. I note the fact that Noticee who is the Managing Director of FDSL and having around 73% promoter holding in FDSL, is the ultimate and indirect beneficiary of the insider trading. I note that in the present matter there exists sufficient reason for lifting the corporate veil. As observed in the earlier part of the Order, Noticee being the Managing Director of the FDSL was therefore responsible for the acts of FDSL for instance, forwarding of POs, tax invoice etc. of customers of Ricoh to the Company. In this regard, I place reliance on decision of Hon'ble Supreme Court (Larger Bench) in the matter of LIC Vs Escorts Limited (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Court had observed*: "90. … the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc."*

37. In view of the above findings, I conclude that Noticee had traded in the scrip of Ricoh when in possession of UPSI. I note that the purpose of the PIT Regulations is to prohibit trading in which an insider gets advantage by virtue of his access to price sensitive information and the aforesaid relevant provisions of SEBI Act and PIT Regulations make it crystal clear that there is a total prohibition on an insider to deal in the shares of the company when in possession of UPSI.

38. I, therefore, conclude that Noticee by dealing in the securities of the company when in possession of UPSI, has contravened the provisions of Section 12A(d) and (e) of SEBI Act and Regulations 3(i) and 4 of PIT Regulations 1992 read with Regulation 12 of PIT Regulations, 2015 and Regulation 4(1) of PIT Regulations, 2015.

39. I also note that parallel 11 B proceeding in the same matter has been concluded vide order dated July 06, 2020 by learned Whole Time Member of SEBI, wherein it has been held that Noticee has violated the provisions of Section 12A(d) and (e) of SEBI Act and Regulations 3(i) and 4 of PIT Regulations 1992 and Regulation 4(1) of PIT Regulations, 2015 and directions have been passed against Noticee. I also note that decision in the aforementioned order of SEBI was upheld by Hon'ble SAT in its decision dated January 19, 2021.

<u>Issue No. II- Does the violation attract monetary penalty under Section 15G of SEBI Act?</u>

40. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s 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.….". ,*

41. In view of the judgment referred above and the fact that Noticee has violated Section 12A(d) and (e) of SEBI Act and Regulations 3(i) and 4 of PIT Regulations 1992 read with Regulation 12 of PIT Regulations, 2015 and Regulation 4(1) of PIT Regulations,

2015, I am of the view that a monetary penalty needs to be imposed upon Noticee under Section 15G of the SEBI Act, which reads as under:

> ***Penalty for insider trading.***
>
> *15G. 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 which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.*

42. I note that the charging provision has been inadvertently mentioned as Section 15G(i) of SEBI Act in the SCN, even though the order appointing AO mentions that adjudication proceedings would be conducted under Section 15G of SEBI Act. However, since this provision is a sub section of Section 15G, I find that the penalty can be imposed under Section 15G of SEBI Act.

<u>Issue No. III: If so, what would be the monetary penalty that can be imposed?</u>

43. While determining the quantum of penalties under Section 15HB of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

> ***<u>SEBI Act</u>***
>
> *<u>Factors to be taken into account by the adjudicating officer.</u>*

Section 15J - 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.

Explanation. — For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

44. In view of the charges as established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case I note from material on record that Noticee by trading in the account of FDSL made following ill-gotten gains, the calculation of which is as under:

Transaction	**Buy Qty**	**Wt Avg Buy Price**	**Buy Value (INR)**	**Sell Qty**	**Wt Avg Sell Price**	**Sell Value (INR)**	**Unlawful gains made (INR)**
Market	**8,16,907**	**379.17**	**30,97,49,007**	**816,407**	**392.77**	**32,06,60,499**	
Off market	**-**	**-**	**-**	**500**	**889.25***	**4,44,625**	
Total	**8,16,907**	**379.17**	**30,97,49,007**	**8,16,907**	**393.07**	**32,11,05,124**	**1,13,56,118**

*The closing price of the date of off-market transaction, i.e. June 4, 2015, has been considered as the sale price.

45. I note from available records that the share price of Ricoh had fallen drastically from a high of around Rs. 1,000 in August 2015 to below Rs. 200 in December 2016. I also observe that by virtue of offloading shares of Ricoh on November 17, 2015, Noticee on behalf of FDSL avoided a notional loss of INR 1,16,77,892/-, the details of which are as under:

Sell Qty	Wt Avg Sell Price	Closing price on April 25, 2016	Loss avoided (INR)
22,828	831.86	320.3	**1,16,77,892**

46. Thus, I note that by virtue of trading in the account of FDSL while in possession of UPSI, Noticee not only made wrongful gains but also avoided loss. In view of foregoing observations, I find that total of unlawful gains and losses avoided by FDSL, while in possession of UPSI, was INR 2,30,34,010/-. Further, I note that learned Whole Time Member of SEBI in Final Order dated July 06, 2020 passed a direction for disgorgement of unlawful gain/loss avoided by him i.e. INR 2,30,34,010/ along with simple interest @12% per annum from November17,2015 till the date of payment.

47. Further, I note from the aforesaid SEBI's order that Noticee has been restrained from dealing in securities as well as associating himself with any listed/ to be listed company for a period of seven years, in the same matter.

ORDER

48. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, 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 penalty of Rs. 20,00,000/-(Rupees Twenty Lakh only) on Noticee i.e. Mr. Amalendu Mukherjee under the provisions of Section 15G of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

49. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

50. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

51. 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 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties of Noticee.

52. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee viz Mr. Amalendu Mukherjee and also to SEBI.

Place: Mumbai
Date: January 31, 2022

SOMA MAJUMDER
ADJUDICATING OFFICER