**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**
**(ADJUDICATION ORDER NO:AA/AR/2019-20/4392)**

**UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 AND RULE 5 OF SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005**

*In respect of:*

**ICICI Bank Limited**
**(PAN: AAACI1195H)**

**Mr. Sandeep Batra**
**(PAN: ACRPB7391N)**

*In the matter of*

**Bank of Rajasthan Ltd**

## FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**), conducted an investigation into the suspected fraudulent activities w.r.t. amalgamation of Bank of Rajasthan Ltd (hereinafter referred to as '**BoR**') and the ICICI Bank Limited (hereinafter referred to as '**ICICI Bank' / 'Noticee 1'**). The investigation revealed that a "*Binding Implementation Agreement*" (hereinafter referred to as '**Binding agreement'**) was signed between the dominant shareholders of BoR and the ICICI Bank on May 18, 2010, which was not disclosed to the stock exchanges in a timely manner by ICICI Bank.

In view of the same, *prima facie*, violations of Clause 36 of the Equity Listing Agreement (hereinafter referred to as '**Listing Agreement**') read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') and Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as '**PIT Regulations, 1992'**) read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015(hereinafter referred to as '**PIT Regulations, 2015'**) were alleged to be committed by ICICI Bank and its compliance officer viz. Mr. Sandeep Batra (hereinafter referred to as '**Mr. Batra' / 'Noticee 2'**)

2. On May 18, 2010 at 5:12:24 P.M, BoR informed National Stock Exchange ('**NSE'**) that it has received a communication from Mr. Sanjay Kumar Tayal (hereinafter referred to as '**Sanjay Tayal'**), the Director of BoR (who was also related to the dominant shareholding group of BoR), requesting BoR to convene a board meeting urgently on the same day informing that the dominant shareholders of BoR have entered into an agreement on May 18, 2010, with ICICI Bank for proposing an amalgamation of both the banks and ICICI Bank is also convening a meeting of its Board of Directors on May 18, 2010, for considering the proposed amalgamation. It is alleged that that there was a delay in disclosure of the said agreement by ICICI Bank and the same resulted in insider trading committed by various entities in the scrip of BoR. In view of the above observations and alleged violations committed by Noticee 1 (ICICI Bank) and Noticee 2 (Mr. Sandeep Batra) (hereinafter collectively referred to as '**the Noticees**'), adjudication proceedings were initiated against them under the provisions of Section 23E of the SCRA and Section 15HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act'**).

## APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh B. Menon was appointed as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for

Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules, 1995'**) and Section 23-I of the SCRA read with Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 2005 ('**Adjudication Rules, 2005'**) to inquire into and adjudge under the provisions of Section 23E of the SCRA and Section 15 HB of the SEBI Act, the alleged violation of the relevant provisions of the SCRA, Listing Agreement, PIT Regulations, 1992 and PIT Regulations, 2015 by the Noticees. Pursuant to the transfer of Shri Suresh B. Menon to another department, I was appointed as an AO in the present matter vide communique of appointment of AO dated March 25, 2019.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. A Common Show Cause Notice ref. A&E/EAD-3/SBM-ASR/18565/1/2018 dated June 26, 2018 (hereinafter referred to as '**the SCN'**) was issued to the Noticees in terms of Rule 4 of the Adjudication Rules, 1995 and Rule 4 of the Adjudication Rules, 2005 to show cause as to why inquiries should not be initiated and penalties, if any, be not imposed on the Noticees under Section 23E of the SCRA and Section 15HB of the SEBI Act, for the alleged contravention of the provisions of Clause 36 of the Listing Agreement read with Section 21 of the SCRA and Regulation 12(2) of the PIT Regulations, 1992 read with Regulation 12 of SEBI PIT Regulations, 2015'. The primary allegations made in the SCN are given below:

   a. *BoR informed National Stock Exchange (hereinafter referred to as '**NSE'**) on May 18, 2010 at 5:12:24 p.m that BoR has received a communication from Mr. Sanjay Kumar Tayal, Director of BoR (who was also related to the dominant shareholding group of BoR), requesting BoR to convene a board meeting urgently on the same day informing that the dominant shareholders of BoR have entered into an agreement on May 18, 2010, with ICICI Bank for proposing an amalgamation of both the banks and ICICI Bank is convening meeting of its Board of Directors*

*on May 18, 2010, for considering the proposed amalgamation. It is alleged that that there was a delay in disclosure of the said agreement by ICICI Bank and the same resulted in insider trading committed by various entities in the scrip of BoR.*

b. *It is observed that as per the submissions of ICICI Bank to SEBI, Mr. Pravin Kumar Tayal and Mr. Sanjay Kumar Tayal on behalf of the dominant shareholders of BoR (holding 28.6% of shares of BoR) entered into "Binding Implementation Agreement", with ICICI Bank on May 18, 2010 at approximately 04:30 a.m. The said agreement was to procure cooperation and support of such shareholders to effect a proposal of a merger of BoR with ICICI Bank in terms of Section 44A of the Banking Regulation Act, 1949. It is observed that as per the Regulation 2(ha)(v) of the PIT Regulations, 1992, information pertaining to amalgamation, mergers or takeovers are deemed to be price sensitive information and therefore, the said information of the amalgamation of BoR with ICICI Bank was also a price sensitive information. It is also observed that the price of the scrip of BoR increased on May 19, 2010 i.e., after this price sensitive information was made public on May 18, 2010 at 17:12:24 i.e. post market hours.*

c. *It is observed that the **"Binding Implementation Agreement"** was executed by the then Executive Director and Chief Financial Officer of ICICI Bank viz, Mr. N. S. Kannan, as discussed above and in the IR, it was a price sensitive information as it had a bearing on the operations/ performance of ICICI Bank as well as BoR. Thus, the aforesaid price sensitive information was required to be disclosed immediately upon the same coming into existence i.e., at 04:30 AM on May 18, 2010. However, it is alleged that the disclosure of the agreement was made by ICICI Bank at 8:18 p.m to BSE and at 8:10 p.m to NSE, respectively, i.e. after 15 hours of occurrence of the event which also means after a delay of one full trading day. It is suspected that the delay on the part of ICICI Bank in making the disclosure of the agreement resulted in insider*

*trading in the scrip of BoR. The detailed allegations/ findings w.r.t. the failure of ICICI Bank in making timely disclosures of the* ***"Binding Implementation Agreement" with certain promoters of BoR is referred on pages 15 to 19 of the IR.***

d. *It is further observed that Clause 2.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading as specified in Schedule-II of PIT Regulations, 1992 also stipulates that "Price sensitive information shall be given by listed companies to stock exchanges and on a continuous and immediate basis".*

e. *However, as alleged in the IR, ICICI Bank delayed the concerned disclosure pertaining to "Binding Implementation Agreement" by one full trading day and therefore failed to adhere to the code of conduct in violation of Regulation 12(2) of SEBI (PIT) Regulations. Therefore, ICICI Bank and its compliance officer i.e. Noticee 2 have been alleged to have failed to adhere to the code of corporate disclosure practices for prevention of insider trading.*

f. *In view of the above, it is alleged that the failure of Noticee 1 and Noticee 2 in making timely disclosure of the "Binding Implementation Agreement" between promoters of BoR and Noticee 1, prima facie, led to the violation of Clause 36 of the equity listing agreement read with Section 21 of the SCRA and Regulation 12 (2) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.*

g. *The alleged violations of the aforementioned provisions/sections of the SCRA, Equity Listing Agreement and PIT Regulations, 1995, pertaining to each of the Noticee, if proved, make the respective Noticees, liable for penalty under the provisions of Section 23E of the SCRA and Section 15HB of the SEBI Act.*

5. In response to the SCN, the Noticees requested for inspection of documents relied upon by SEBI while framing charges in the SCN. The Noticees were provided with the opportunity for inspection of documents on August 07, 2019.

Subsequently, the Noticees vide their letter dated August 23, 2019 submitted their reply to the SCN. Briefly, the submissions made by the Noticees in the aforesaid letter are as given below:

a. *We have inspected 9 documents during the inspection the list of which is as per Annexure 3 containing the minutes of the Inspection.*
b. *As mentioned in our letter dated August 13, 2019, we request you to clarify whether only three letters addressed by ICICI Bank to SEBI as mentioned in the investigation Report page 15, para 13.2 are relied upon by SEBI*
c. *At the outset all and every allegation made against ICICI Bank and its Compliance Officer are hereby denied. It is submitted that there is no delay in making disclosures either under Clause 36 of the Listing Agreement or under Regulation 12 (2) of PIT Regulations as alleged in the Show Cause Notice. It is expressly denied that the purported delay in disclosure by ICICI Bank had in any way resulted in insider trading committed by any entity.*
d. *The "Binding Implementation Agreement" dated 18th May, 2010 entered into between ICICI Bank and certain Promoters of The Bank of Rajasthan is subject to certain banking sector specific regulatory requirements as well as conditions precedent specified in such Agreement, and is not a concluded contract unless the said regulatory requirements and conditions are fulfilled.*
e. *The said Agreement between ICICI Bank and certain shareholders of The Bank of Rajasthan Limited was only to procure the cooperation & support of such shareholders to take steps for a proposal of a merger of The Bank of Rajasthan with ICICI Bank in terms of Section 44A of the Banking Regulation Act, 1949 and applicable Reserve Bank of India (RBI) guidelines.*
f. *We submit that there are banking sector specific regulatory requirements with regard to taking decision on amalgamations. In this regard, we draw your reference to the extant RBI/2004-05/462Ref.DBOD.No.PSBS.BC.*

*89/16.13.100/2004-05 dated May 11, 2005 titled "Guidelines for merger /amalgamation of private sector banks".*

g. *In para 2 of the said RBI notification, it has been specified: "While dealing with the merger proposals between two banking companies or between a banking company and a non-banking financial company, banks may act in accordance with the enclosed guidelines. Boards of the banks have to play a crucial role in the process. It may be ensured that the decision of merger should be approved by two third majority of the total Board members and not those present alone."*

h. *We also draw your attention to para 2.1.2 of the said Guidelines, which inter alia states: "Before convening the meeting for the purposes of obtaining the shareholders' approval, the draft scheme of amalgamation needs to be approved individually by the Boards of Directors of the two banking companies." Thereafter various matters that the Board of Directors need to give particular consideration to has been also specified. We would accordingly submit that the disclosure by ICICI Bank prior to the Board of Directors of the Bank considering the matter in accordance with the extant regulatory requirements would have been premature and could have been misconstrued as having fulfilled such regulatory requirements and might have led to a false market in securities.*

i. *The "Binding Implementation Agreement" was not an agreement for acquisition of shares by ICICI Bank or for merger of The Bank of Rajasthan and ICICI Bank.*

j. *As a matter of abundant caution, ICICI Bank had ensured that the parties to the said Agreement were bound by confidentiality and non-disclosure covenants, and furthermore that the shareholders of The Bank of Rajasthan who were signatory to the said Agreement were bound by non-disposal undertakings. This was done by ICICI Bank to ensure that the parties to the agreement were bound to ensure that there was no risk of selective or premature disclosure.*

k. *The proposal of merger was subject to receipt of necessary corporate and regulatory approvals.*

l. *The "Binding Implementation Agreement" was executed at approximately 4:30 am on May 18, 2010. Under the terms of the agreement, it was to become effective only upon satisfaction of certain conditions precedent as stipulated therein and compliance with the extant regulatory requirements. These conditions precedent and compliance with the extant regulatory requirements were not satisfied immediately upon execution of the abovementioned agreement, and were satisfied by the respective parties during the course of the day on May 18, 2010 and culminated with the completion of the meeting of the Board of Directors at around 7.30 pm.*

m. *The proposal of merger as envisaged in the "Binding Implementation Agreement", and as specified in the extant regulatory requirements was subject to the approval of (a) the Board of Directors of ICICI Bank (b) the Board of Directors of The Bank of Rajasthan, (c) shareholders of both banks and (d) the Reserve Bank of India.*

n. *In the absence of approval of the Boards of Directors of both ICICI Bank and The Bank of Rajasthan (as also required by the extant regulatory requirements) and other steps mentioned, the merger could not have been proceeded with.*

o. *The meeting of the Board of Directors of ICICI Bank commenced at about 6:00 pm on May 18, 2010 and the Board accorded its approval to the captioned matter at this meeting. The meeting of the Board ended at around 7.30 pm.*

p. *Upon such an approval, ICICI Bank made a disclosure to the stock exchanges where its shares are listed between 8.10 pm to 8:18 pm.*

q. *We submit that no disclosure prior to the meeting of the Board of Directors could be made since it would be premature. There could be an uncertainty as to the outcome of such meeting including whether the Board of Directors would grant their approval, or not, itself a pre-requisite*

*under the extant regulatory requirements. It is submitted that any such premature disclosure could have also resulted in creation of a false market.*

r. *Further, clause 5.1 of the "Binding Implementation Agreement" reads as under:*

> *"5.1. This Agreement shall come into effect of the date hereof subject to the Dominant Shareholder depositing the Power of Attorney on the joint custody of Mr. Paras Kuhad and Mr. Cyril Shroff as per clause 2. 2(ii)"*

s. *The said covenant being condition precedent was complied with around 5.57 pm when an email was received from Cyril Shroff of the Cyril Amarchand Mangaldas.*

t. *In the matter of New Delhi Television Ltd Vs SEBI (Appeal No 358 0f 2015) the Hon'ble SAT had an occasion to examine the meaning and purport of 'immediate' as under:*

u. *With regard to the allegation that there was a violation of PIT Regulations 1992, it is submitted that since the information relating to the amalgamation was disclosed at the immediate possible occasion promptly without delay, there is no such violation on part of ICICI Bank or its Compliance Officer.*

v. *It is submitted that by the time this confirmation was received from Cyril Amarchand Mangaldas, the markets for the day were already closed and the Board meeting of ICICI Bank was about to be commenced (and which concluded, as mentioned above, at around 7.30pm).*

w. *In the light of the above, it is submitted that the disclosures were made to the stock exchanges between 8.10 pm and 8.18 pm was at the immediate possible occasion.*

x. *With regard to the allegation that there was a violation of PIT Regulations 1992, it is submitted that since the information relating to the amalgamation was disclosed at the immediate*

*possible occasion promptly without delay, there is no such violation on part of ICICI Bank or its Compliance Officer.*

6. In the interest of natural justice, the Noticees were provided with an opportunity of personal hearing in the matter on August 29, 2019. The Authorized representatives of the Noticee appeared for the hearing on scheduled day and reiterated the submissions made by them vide their letter dated August 23, 2019.

**CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS**

7. I have carefully perused the replies and submissions of the Noticee and documents available on record. The issues that arise for consideration in the present case are-

   **A. Whether ICICI Bank and its compliance officer, Mr. Sandeep Batra, failed to make the disclosure to BSE and NSE regarding the Binding agreement signed between the dominant shareholders of the BoR and ICICI Bank, on an immediate basis.**

   **B. Does the violation, if any, attract monetary penalty under Section 23E of the SCRA and Section 15HB of the SEBI Act, as applicable?**

   **C. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act and Section 23J of the SCRA?**

8. Before moving forward, it is pertinent to refer to the relevant provisions of the SCRA, Equity Listing Agreement and the PIT Regulations, which reads as under: -

   ***SCRA***

   *21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

***Equity Listing Agreement***

*36. Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:*

> *(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;*
>
> *i) Issue of any class of securities.*
>
> *ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.*
>
> *iii) Change in market lot of the company's shares, sub-division of equity shares of company.*
>
> *iv) Voluntary delisting by the company from the stock exchange(s).*
>
> *v) Forfeiture of shares.*
>
> *vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.*
>
> *vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.*

*viii) Cancellation of dividend/rights/bonus, etc.*

*The above information should be made public immediately*

***PIT Regulations, 1992***

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

*12(2). The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

***CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING***

*2.0 Prompt disclosure of price sensitive information*

*2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

***PIT Regulations, 2015***

*12*. (*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;*

9. On perusal of the material available and having regard to the submissions made by the Noticees, I record my findings hereunder, with regard to the issues framed:

   **A. Whether ICICI Bank and its compliance officer, Mr. Sandeep Batra, failed to make the disclosure to BSE and NSE, regarding the Binding agreement signed between the dominant shareholders of the BoR and ICICI Bank, on an immediate basis?**

10. As per the filings made by BoR to the exchanges, the 9 promoters of BoR were holding 28.61% of the total shareholding of their Company as on December 31, 2009 and March 31, 2010. The aforesaid 9 promoters have been referred to as the 'dominant shareholders' of the BoR in the agreement entered into between BoR and ICICI Bank. According to the submissions of ICICI, Mr. Pravin Kumar Tayal and Mr. Sanjay Kumar Tayal, on behalf of the dominant shareholders of BoR, entered into "Binding Implementation Agreement" with ICICI Bank on May 18, 2010 at approximately 04:30 a.m. to procure the cooperation and support of such shareholders to effect a proposal of amalgamation of BoR with ICICI Bank, in terms of Section 44A of the Banking Regulation Act, 1949. ICICI Bank made the disclosure to the Stock Exchanges regarding the Binding agreement after the stock markets closed on May 18, 2010 at 20:10 PM and 20:18 PM, despite the fact that the said agreement was entered into before opening of the stock markets on May 18, 2010 at 4:30 AM, which is equal to a delay of one trading day.

11. The Binding agreement was executed by the then Executive Director and Chief Financial Officer of the ICICI Bank. The dominant shareholders of BoR and ICICI Bank had agreed therein that BoR will be amalgamated with ICICI Bank and that swap ratio was also determined. Further, the draft of the

scheme of amalgamation was also annexed to the Binding agreement. In this regard, ICICI Bank has, in its reply to the SCN, stated that the Binding agreement was not an agreement for acquisition of shares by ICICI Bank or for amalgamation of the Bank of Rajasthan with ICICI Bank. A key provision of the Binding agreement is discussed below so as to get clarity. The point (iv) to sub clause 2.1 (Co-operation) to Clause 2 of the Binding agreement deals with (Obligations of Parties) to the agreement, which, *inter-alia*, states the following:

(a) transferee Bank (ICICI) shall approach its board for the purpose of obtaining in-principle approval to the scheme
(b) conduct of due diligence
(c) appointing identified valuer
(d) consider and adopt the valuation report
(e) approval of swap ratio (already arrived at in the agreement)
(f) convening meeting of shareholders.

12. Thus, the Binding agreement was a proper formalized legal agreement and a crucial step to effect the amalgamation of BoR with ICICI Bank. The Binding agreement also contains clauses regarding the swap ratio of shares for the amalgamation of ICICI Bank with BoR. The draft scheme of amalgamation was included as annexure to the Binding agreement. These facts clearly demonstrate the intention of partners to the amalgamation. Hence, the execution of the Binding agreement was the most important step towards the amalgamation of BoR with ICICI Bank.

13. The amalgamation of BoR with ICICI Bank was going to have significant bearing on the operations/ performance of ICICI Bank as well as BoR. As stipulated under Regulation 2(ha)(v) of the PIT Regulations, 1992, any information related to the amalgamation, mergers or takeovers of a listed company are deemed to be price sensitive information. Therefore, in the instant matter, the signing of the Binding agreement is a price sensitive

information. The disclosure regarding the Binding agreement was made by the ICICI Bank to the stock exchanges after the closing of stock market on May 18, 2010 at 20:10 PM and 20:18 PM. From the perusal of the aforesaid disclosures, it is observed that ICICI Bank has itself stated the following:

> "*There can be no assurance that terms of the scheme will not have an adverse impact on ICICI Bank. The proposed amalgamation and any future acquisitions or mergers may involve number of risks, including deterioration of asset quality, diversion of our management's attention required to integrate the acquired business and failure to retain key acquired personnel; and clients, leverage synergies or rationalize operations, or develop the skills required for new businesses and markets, or unknown and known liabilities, some or all of which could have an adverse impact on our business.*

14. It is thus observed from the above, that the materiality and price sensitive nature of the amalgamation of BoR with ICICI Bank and the Binding agreement signed in that connection, is clearly established by the abovementioned disclosure made by ICICI Bank. The material and price sensitive information viz., the binding agreement between BoR and ICICI for the proposed amalgamation was to be disclosed by the respective listed companies under the relevant provisions of the listing agreement r/w SCRA and the PIT Regulations, on an immediate basis.

15. The Noticees have submitted that the Binding agreement was subject to certain banking sector specific regulatory requirements as well as conditions precedent specified in such agreement, and is not a concluded contract unless the said regulatory requirements and conditions are fulfilled. The Noticees further state that the Binding agreement was only to procure the cooperation & support of such shareholders to take steps for a proposal of a merger of BoR with ICICI Bank in terms of Section 44A of the Banking Regulation Act, 1949 and applicable Reserve Bank of India guidelines and therefore, the disclosure by ICICI Bank prior to the Board of Directors of the Bank

considering the matter in accordance with the extant regulatory requirements would have been premature and could have been misconstrued as having fulfilled such regulatory requirements and might have led to a false market in securities.

16. As per the submissions of the Noticees, the meeting of the Board of Directors of ICICI Bank commenced at about 6:00 pm on May 18, 2010 and the Board accorded its approval to the captioned matter at this meeting. The meeting of the Board ended at around 7.30 pm. Further, as one of the condition precedents of the Binding agreement, the dominant shareholders of BoR were required to submit a power of attorney. A confirmation regarding the same was received by the ICICI Bank at 5:57 pm on May 18, 2010. The Noticees have submitted that the two aforesaid conditions i.e., the approval from the meeting of the Board of Directors of ICICI Bank and the deposit of power of attorney by the dominant shareholder of BoR occurred pursuant to the closing of stock markets on May 18, 2010. Therefore, ICICI Bank admittedly made the disclosures to the stock exchanges where its shares were listed between 8.10 pm to 8:18 pm when the aforementioned conditions were met.

17. The issue for consideration here is that whether ICICI Bank can be held liable for of a delay of 15 hours/one trading day in disclosing to the stock exchanges about the Binding agreement which was entered into at 4:30 am in the morning, for which the disclosures were made by the ICICI Bank at 8:10 pm and 8:18 pm in the evening. In this regard, reference is drawn to the order of Hon'ble Securities Appellate Tribunal (SAT) dated August 07, 2019 in the matter of M/s New Delhi Television Limited vs SEBI (Appeal No. 358 of 2015), wherein Hon'ble SAT has made following observation on the meaning of the words 'immediately' and 'prompt' with regard to the disclosures to be made under Clause 36 of the Listing Agreement.

> *"20. Clause 36 of the Listing Agreement read with the Guidance Note make it apparently clear that the company is required to intimate the Stock Exchange with regard to the material events immediately, which*

*information is required to be made to the public immediately. The word "immediately" has to be construed accordingly. It was urged that the word "immediately" should be construed liberally and not literally and, thus, contended that a reasonable time has to be given to make appropriate disclosure under Clause 36 of the Listing Agreement. In support of the submissions, the learned counsel has placed reliance upon a decision in Rosali V. vs. Taico Bank and Ors. (2009) 17 SCC 690 where the Supreme Court held that the word immediately should mean within a reasonable time and further held that is a well-settled principle of interpretation of a statute that where literal meaning leads to anomaly and absurdity, it should be avoided.*

*21. As per Black's Law Dictionary-eighth edition, the word "immediate" means occurring without delay, instant. As per Black's Law Dictionary-sixth edition, the term "immediately" means without interval of time, without delay, straightaway, or without any delay or lapse of time. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time.' and imply prompt, vigorous action, without any delay.*

*22. In Wharton's Law Lexicon the term "immediately" in the statute, means within a reasonable time. In Words and Phrases, the word "immediately" when used in a statute, is not synonymous with "then and there".*

*23. Thus, in a strict sense the word "immediately" means at once, forthwith, instantaneously or instantly and is also defined as meaning promptly, quickly, without delay, without interval or without lapse of time. However, in a broader relative sense, the term "immediately" means within a reasonable time, necessarily exclude all mesne time and is often construed to mean as soon as an act can be performed within a reasonable time.*

*24. A Full Bench of the Karnataka High Court in Keshava v. Ramchandra AIR 1981 Kant. 97, while interpreting the word "immediately" occurring in Article 134A of the Constitution of India, pointed out that the object of Article 134A was to avoid unnecessary delay and that it was precisely for this reason that the word "immediately" had been used to convey a sense of urgency.*

*25. Black's Law Dictionary sixth edition defines the word "prompt" and "promptly" as under:*

*"Prompt": to act immediately, responding on the instant.*

*"Promptly": adverbial form of the word "prompt", which means ready and quick to act as occasion demands. The meaning of the word depends largely on the facts in each case, for what is "prompt" in one situation may not be considered such under other circumstances or conditions. To do something "promptly" is to do it without delay and with reasonable speed."*

*In Rao Mahmood Ahmad Khan through their L.R. v/s Ranbir Singh and Ors. 1995 Supp (4) SCC 275 the Supreme Court held:*

*"The word 'immediately' connotes and implies that the deposit should be made without undue delay and within such convenient time as is reasonably requisite for doing the thing same day with all convenient speed excluding the possibility of rendering the other associated corresponding act and performance of duty nugatory. The word 'immediately' therefore, connotes proximity in time to comply and proximity in taking steps to resell on failure to comply with the requirement of deposit as first condition that is to take place within relatively short interval of time and without any other intervening recurrence. The meaning of the word 'forthwith' is synonymous with the word 'immediately' which means with all reasonable quickness and within a reasonably prompt time."*

*26. In the light of the aforesaid and considering the importance of disclosure under Clause 36 of the Listing Agreement, in our opinion, information was required to be given to the Stock Exchange at the earliest without any undue delay.*

18. From the above-mentioned observation of Hon'ble SAT, it is construed that the disclosure under Clause 36 of the Listing Agreement are required to be made on an immediate and prompt basis, which means, at the earliest without any undue delay. In the instant matter, once it is established that the information is material and price sensitive, the issue remains is whether it was possible for ICICI Bank to make the disclosure without the delay of one trading day. The potential time related consequences are crucial and relevant in this regard. The submission of ICICI Bank is that the Binding agreement had not attained finality and the execution of the Binding agreement was subject to

meeting of certain conditions as mentioned in previous paragraphs. It is clear that as soon as the Binding Agreement was signed at 4:30 am on May 18, 2010, the intention of the parties became concrete. The amalgamation had become a certainty at the time of signing of Binding agreement, even though it was subject to the meeting of certain other conditions. The fact of a Binding agreement signed between BoR and ICICI Bank was a material price sensitive event. The Listing Agreement and the PIT Regulations, 1992 mandate the listed companies to disclose the signing of such agreement irrespective of the future outcome of such agreement. The subsequent material developments related to the Binding agreement and the final outcome of such agreement are required to be disclosed to the exchanges subsequently. The signing of the Binding agreement with regard to the amalgamation of BoR with ICICI Bank was itself a material and price sensitive development. Once a disclosure regarding signing of the Binding agreement along with the pending conditions precedents is made to the general public, it is the call of the investing public to take further decisions pertaining to the investments in the scrip of ICICI Bank and BoR on the basis of the terms of the Binding agreement and the pending conditions precedent. However, by withholding such disclosure for one full trading day, ICICI created a situation of information asymmetry wherein the general public was not aware of any such agreement.

19. ICICI Bank cannot take shelter under the argument that all the conditions were not met for them to disclose the information to the stock exchange. As admitted by the ICICI itself, the in-principle approval of the Board of ICICI Bank and the deposition of power of attorney by the dominant shareholders of BoR were just two steps out of several other steps/ actions on the way to amalgamation of BoR with ICICI Bank. On perusal of the disclosure made in this regard by ICICI Bank to the exchanges on May 18, 2010, several pending actions have been observed at the time of disclosure. It is mentioned in the aforesaid disclosure that the in-principle approval of the Board is subject to due diligence and valuation by an independent valuer. Subsequently, ICICI Bank made a public announcement on May 24, 2010 at 8:56 am that pursuant

to submission of due-diligence and valuation report, the Board of ICICI Bank has approved the proposal of amalgamation of BoR with ICICI Bank. Thus, an argument can be made that the Binding agreement was still subject to the submission of due-diligence and valuation by an independent valuer, when it was disclosed on May 18, 2010 and it attained finality only upon final approval of the Board of ICICI Bank for which subsequent disclosure was made on May 24, 2010. However, ICICI Bank chose to make a disclosure regarding the same on May 18, 2010, itself. Two significant factors that cannot be omitted from the discussion in this regard are that (a) there was asymmetry of information available in the market regarding the amalgamation demonstrated by the episodes of insider trading in the scrip of BoR (shown in the order of WTM, SEBI dated November 22, 2017) and (b) that the amalgamation of BoR with ICICI bank did conclude and was disclosed to the exchanges on the same day after closing of the market on the same day. Continued and timely disclosures are intended to prevent instances of insider trading and in the instant case, the disclosures were not made in a timely manner. The table depicting the combined trading volume in the scrip of BoR on BSE and NSE on the day of announcement and two days prior and later is given below:

| Date | May 14, 2010 | May 17, 2010 | May 18, 2010 | May 19, 2010 | May 20, 2010 |
|---|---|---|---|---|---|
| Volume | 15,09,713 | 33,41,501 | 2,89,31,496 | 2,62,352 | 1,95,106 |

20. From the table above, it is seen that the traded volume was increasing progressively and had increased multiple times on May 18, 2010 until the announcement was made. Post announcement, the volume dropped significantly and it was also observed that there was an upper circuit on the subsequent two trading days and very few sellers were available. Therefore, it is clear that post the disclosure of the Price Sensitive Information (PSI) by ICICI, the shareholders of BoR did not wish to part away with the shares of

BoR and rather desired to hold shares as it would be beneficial considering the swap ratio of BoR to ICICI.

21. Further, the Noticees have also submitted that a disclosure of the Binding agreement prior to the Board of Directors of the Bank considering the matter in accordance with the extant regulatory requirements would have been premature and could have been misconstrued as having fulfilled such regulatory requirements and might have led to a false market in securities. I am not in agreement with the aforesaid submissions of the Noticees and consider this submission to be more of an afterthought to justify the delay in making disclosures regarding Binding agreement. As a listed company, it is the responsibility of ICICI Bank to promptly disclose all the price sensitive information. In this context, I would like to refer to the decision of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *J C Mansukhani Vs SEBI* (Appeal no 192/2014 decided on 26/07/2016): "*We find no merit in the arguments advanced by the Counsel for the Appellants. Their contention that the orders bagged by the Company became price sensitive only on the date of receiving the advance cannot be sustained in view of the fact that the orders constituted about 65% of the annual order book of the Company; share prices did increase by 4.74% on the date of announcement i.e. 29th April, 2009; the Company itself felt that the information is important enough to be disclosed and hence it was aware of the fact that this information was price sensitive and liable to be disclosed;* ***the contracts became "binding and effective" on the date of signing the contracts as stated in the contract itself (Clause 7) irrespective of the other conditions specified under the same clause.*** *There was no evidence about any proposed amendment to the contracts on the date of signing the contracts; third party agreement (of PEDEC) as a condition for fulfilling the second contract (signed on 22nd April 2009) was not stated in the contract itself. Constraints on trading with Iran, if any, should also have been factored in either in the contracts or otherwise before signing the contracts. In view of these reasons, the contracts became*

*binding and effective on the date of signing of the contract i.e. 1st April 2009 and 22nd April 2009 and had to be disclosed without any delay. As and when major changes to the contracts, if any, were effected the same also has to be disclosed. Conditions given under Clause 7 of the contract relating to advance payment, commencement of the contract, conditions of cancellation, etc. are part of any standard contract and cannot be taken as ground for delay in disclosure of entering into contract as on the date of signing the contracts…….. Accordingly argument set out by the A.O. in the impugned order that the information was price sensitive and liable to be disclosed on the date of signing the contracts cannot be faulted.* ***The contra-position taken by the Appellants that premature disclosure may invite penal action has no merit since it is the responsibility of any entity to prove that they made the right disclosures at the right time and if anything genuinely going wrong subsequently can be proved with evidence to that effect****. It is difficult to fine tune the merit of disclosures in a disclosure based regulatory regime and as such the ideal course of action is to disclose every material information on an immediate and continuous basis. Changes in contract specifications and conditions which are material also need to be disclosed in that spirit of a disclosure based regulatory regime.* SAT has rightly observed that it is difficult to fine tune the merit of disclosures in a disclosure based regulatory regime and every material information has to be ideally disclosed.

22. In order to illustrate the manner of making disclosure pertaining to signing of Binding agreement, I would also like to refer to market practice seen in similar disclosures made by other listed companies, which are publicly available on the website of the exchanges. For example, on December 20, 2010, Tata Chemicals Ltd made a public announcement to BSE regarding the signing of a binding agreement to acquire 100% stake in British Salt Ltd, UK subject to requisite regulatory approvals. It is observed from the aforesaid disclosure that Tata Chemicals Ltd had made a disclosure regarding the signing of Binding

Agreement. Similarly, ICICI Bank was also expected to make a public announcement regarding the signing of the Binding agreement which should have been followed by announcements pertaining to material developments.

23. In view of the factors discussed above, I conclude that there was a delay of 1 trading day by the ICICI Bank in making disclosures regarding the signing of Binding agreement which has led to the violation of Clause 36 of the Listing Agreement read with Section 21 of the SCRA, by the ICICI Bank.

24. On perusal of the Clause 2.1, of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of PIT Regulations, 1992, I observe that that it clearly states that the price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis. **Thus, for any disclosure regarding price sensitive information to be effective and to be in compliance with the requirements of PIT Regulations, 1992, such disclosure should be made immediately and on continuous basis.** Therefore, ICICI Bank should have disclosed the information regarding the signing of the Binding agreement on an immediate basis and should also have made continuous disclosures thereafter pertaining to the material developments regarding the same. However, in view of the factors discussed above, I conclude that there was a delay of 1 trading day by the ICICI Bank in making disclosures regarding the signing of Binding agreement, which has also led to the violation of Regulation 12(2) of PIT Regulations, 1992 read with Clause 2.1, of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading.

25. Once it is established that ICICI Bank was required to make disclosure regarding the signing of Binding agreement prior to the opening of the Stock markets on May 18, 2010 and not after closing of the markets, the other issue

that remains to be deliberated upon is whether the compliance officer of ICICI Bank, Mr. Sandeep Batra was also responsible for such failure of ICICI Bank. In this regard, I would like to consider the submissions made by the Noticees that Mr. Batra was waiting for the compliances/ conditions w.r.t. Binding agreement to be satisfied for making appropriate disclosures to the exchanges and as soon as basic conditions precedent were satisfied, immediately after the Board meeting, the information was disclosed to the Exchanges. It is clear from the above submission of the Noticees that Mr. Batra was aware of the developments related to the signing of the Binding agreement and thereafter Mr. Batra, despite, being aware of the same, did not file the necessary disclosure with the exchanges as he was purportedly, awaiting the fulfilment of the conditions precedent. Under Schedule I Part A, Clause 1.2 of PIT Regulations, 1992, it is the compliance officer who is responsible for the implementation of the code of conduct under the overall supervision of the Board of the listed company. The arguments regarding implementation of the Binding agreement being subject to meeting of certain conditions have already been dealt in the previous paragraphs. Therefore, I conclude that Mr. Sandeep Batra being the Compliance officer of ICICI Bank and also being aware of the developments regarding the signing of the Binding Agreement, failed to ensure that ICICI Bank complies with the requirements of making immediate and continuous disclosures regarding Binding agreement to the stock exchanges. Therefore, I conclude that Mr. Sandeep Batra has violated the provisions of Regulation 12(2) of PIT Regulations, 1992 read with Clause 2.1, of Schedule II for Code of Corporate Disclosure Practices for Prevention of Insider Trading.

26. Any violation of provisions laid down for the prevention of insider trading are to be viewed seriously. In view of the failure of the Noticees to comply with the provisions of Regulation 12(2) of the PIT Regulations, 1992. As the violation of the statutory obligation under PIT Regulations, 1992 has been established, I hold that the Noticees are liable for monetary penalty under Section 15HB of the SEBI Act, which reads as under :

***Section 15HB of the SEBI Act***

***Penalty for contravention where no separate penalty has been provided***

***15 HB****. Whoever fails to comply with any provisions of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees*

27. The conditions laid down under the Listing Agreement cast a responsibility on the listed companies to act in a manner so as to enable all categories of investors to operate in the market in a continuous, adequate and timely disclosure of information on an ongoing basis would achieve parity while enabling investors to make informed investment decisions in a fair manner. However, the failure of ICICI Bank in this regard is established as discussed in detail in paragraphs above. Clause 36 of the Listing Agreement read with Section 21 of the SCRA. Therefore, I hold that ICICI Bank is liable for monetary penalty under Section 23E of the SCRA.

**Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.**

***23E.*** *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

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

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

*While adjudging the 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"*

29. While determining the quantum of penalty under Section 23E of the SCRA, it is important to consider the factors stipulated in Section 23J of the SCRA, which reads as under:

***Factors to be taken into account by adjudicating officer.***

*23J. While adjudging the quantum of penalty under section 23-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.*

30. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default committed by the Noticees is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default by the Noticees, it is recognized that statutory requirement of compliance with the provisions of Listing Agreement and PIT Regulations, 1992 is important for maintaining information symmetry among the general investors and insiders/management/employees and their connected entities, so as to prevent such persons take advantage of such price sensitive information at the cost of general investors. Information symmetry is the basic foundation on which a fair market can be established which provides equal opportunities to all. When a listed company fails in complying with such provisions of Listing Agreement and Model Code of Conduct prescribed under PIT regulations, 1992, it opens opportunities for insiders to take fraudulent advantage at the cost of other

investors. The proper compliance with the Model Code of Conduct is the basic responsibility expected of a listed company for prevention of Insider Trading. I note that the Noticees have mentioned in their replies that there was no failure on their part to disclose the information regarding Binding Agreement as there were certain approvals/action remaining to be completed. However, due to the reasons discussed above, I cannot accept the arguments put forth by the Noticees in this regard and find it appropriate to impose a reasonable penalty on them. While imposing penalty, it is to be also kept in mind that ICICI Bank failed to comply with the conditions of listing with the stock exchange by not making immediate disclosures under Clause 36 of the Listing Agreement, and not disseminating the information to stock exchanges on a continuous and immediate basis as prescribed under Code of Corporate Disclosures Practices for Prevention of Insider trading Regulations under Regulation 12(2) of the PIT Regulations, 1992. Therefore, commensurate penal action is warranted on ICICI Bank for both the charges. As far as Mr. Batra is concerned, as Compliance officer of ICICI Bank, it was his responsibility to ensure that ICICI Bank complies with the provisions of Regulation 12(2) of the PIT Regulations, 1992, which he has failed to do, as discussed above.

## ORDER

31. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995 and Section 23-I of the SCRA read with Rule 5 of the Adjudication Rules, 2005 I hereby impose penalties on the Noticees as per the details given below:

| **Noticee** | **Penal provisions** | **Violation Committed** | **Penalty** |
|---|---|---|---|
| ICICI Bank Ltd | Section 15HB of the SEBI Act | Regulation 12 (2) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 | 5,00,000/- |

| | | | |
|---|---|---|---|
| | Section 23E of the SCRA | Clause 36 of the equity listing agreement read with Section 21 of the SCRA | 5,00,000/- |
| Mr. Sandeep Batra | Section 15HB of the SEBI Act | Regulation 12 (2) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 | 2,00,000/- |
| **Total Penalty** | | | 12,00,000/- |

32. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order.

33. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan 2, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051":

| | |
|---|---|
| 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:<br>(like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details) | |

34. 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. Payment can also be made online by following the below path at SEBI website www. sebi.gov.in: ENFORCEMENT ->Orders->Orders of AO ->PAY NOW.

35. In terms of the provisions of Rule 6 of the Adjudication Rules, 1995 and Adjudication Rules, 2005, copies of this order are being sent to ICICI Bank Limited and Mr. Sandeep Batra and also to the Securities and Exchange Board of India.

**Date: September 12, 2019**
**Place: Mumbai**

**Dr. ANITHA ANOOP**
**CHIEF GENERAL MANAGER**
**& ADJUDICATING OFFICER**