BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/BM/LD/2022-23/ 17202-04]

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

In respect of

1. Reliance Industries Limited PAN : (AAACR5055K) 3rd floor, Maker Chambers IV, 222, Nariman Point, **Mumbai 400 021.**	**2. Ms. Savithri Parekh** PAN : (AEMPP1916N) 602, Karmabhoomi, Jijamata Road, Near Sher-e- Punjab, Chakala MIDC, **Andheri (East)** **Mumbai – 400 093**	**3. Shri K. Sethuraman** PAN : (ADUPK3895Q) Flat No. 903/904, "C" Wing, Chaitanya Towers, Appasaheb Marathe Marg, **Prabhadevi,** **Mumbai – 400 025.**

In the matter of **Reliance Industries Limited**

Facts of the case

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***), conducted an investigation in the suspected insider trading activities in the scrip of Reliance Industries Limited.. The investigation period is September 01, 2019 to May 07, 2020 (hereinafter referred to as '**Inspection Period'**).

2. Based on the findings of the investigation, adjudication proceedings were initiated against Reliance Industries Limited (hereinafter referred to as Noticee 1), Compliance Officer, Ms Savithri Parekh(hereinafter referred to as Noticee 2) and Compliance Officer Mr K. Sethuraman (hereinafter referred to as Noticee 3) in terms of Section 15 HB of the SEBI act, 1922 for the alleged violation of the following corresponding provisions of securities laws as tabulated below:

Noticee	**Alleged violations**	**Regulatory provisions**
Noticee 2	Non-compliance with the Code of Conduct for Trading Window Closure by Noticee 1	Clause 4 of the Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons as specified in Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.
Noticee 1, 2 & 3	Non-adherence to Principles of fair disclosure of UPSI by RIL	Principle No. 4 under Schedule A - Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of UPSI r/w Regulation 8(1) to SEBI (PIT) Regulations, 2015 r/w Regulation 30(11) of SEBI (LODR) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated November 03, 2021 the undersigned was appointed as Adjudicating Officer (hereinafter referred to as **'AO'**) under Section 19 of the SEBI Act, read with Section 15-I (1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, (hereinafter referred as the SEBI Rules) to adjudicate upon the alleged violations of said entity.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated December 22, 2021 was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon Noticee under Section 15HB of the SEBI Act, 1992 for the aforesaid violations alleged to have been committed by Noticee.
5. The brief allegations in the SCN are as follows:
   It was observed during investigation that the company had made the following announcements ;

   A. Announcement 1 ; on April 22, 2020, the company made an announcement stating that Facebook to invest Rs. 43,574 crores in JPL for a 9.99 per cent stake.
   B. Announcement 2 ; on May 04, 2020 , the company made an Announcement stating that Silver Lake to invest Rs. 5,655.75 crores in jpl for a 1.15 per cent stake.
   C. Announcement 3 ; on May 08, 2020, the company made an announcement stating that Vista equity partners to invest Rs. 11, 367 crores in JPL for a 2.32 per cent

6. The UPSI period for Announcement 1 was from Sept 01, 2019 to March 24, 2020 The UPSI period for Announcement 2 was from April 17, 2020 to May 03, 2020 and the UPSI period for announcement 3 was from April 25, 2020 to May 07,2020.

7. During the investigation, it was gathered that there was lot of news flow around Facebook investing in Jio in the month of March and April, 2020 prior to the corporate announcement made on April 22, 2020. It was observed that the first news about impending Jio-Facebook deal was published in the Financial Times (FT), London on March 24, 2020 post market hours and thereafter, the said news report of FT was widely circulated in Indian media on the same day and next day. The news articles, inter-alia, stated that (i) Facebook is seeking to buy a

multibillion-dollar stake in Reliance Jio, (ii) Facebook was close to signing a preliminary deal for a 10% share in Jio, (iii) a deal with Facebook was due to be announced in March end, coinciding with the end of the Indian financial year. Post publication of said news articles, the scrip price of the Company went up by almost 15% on March 25, 2020. There were many other news articles/ items published/ appeared in media relating to Jio-Facebook deal prior to its corporate announcement by the Company.

8. It was observed that with regard the above, Noticees 1, 2 & 3 did not comply with the provision of principles of fair disclosure of UPSI which states that there should be prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available and did not issue any clarification on the same, as required under Regulation 30(11) of SEBI (LODR) Regulations, 2015 which states that “The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s)”.

9. Further Noticee 2 did not Comply with the Code of Conduct for closure of the trading window, when the 3 UPSI was in existence.

10. In view of the above it was alleged that Noticee 1, 2&3 violated Principle No. 4 under Schedule A - Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of UPSI r/w Regulation 8(1) to SEBI (PIT) Regulations, 2015 r/w Regulation 30(11) of SEBI (LODR) Regulations, 2015. Further Noticee 2 violated Clause 4 of the Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons as specified in Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.

11. The SCN was sent to Noticee through Speed Post AD on November 26, 2021and email on November 29, 2021 and was duly served upon Noticee.

12. Vide letter dated February 12, 2022 Noticee 2 sought extension of time till February 28, 2022 for submitting its reply. The request of Noticee was acceded to and Noticee was requested to submit its reply on or before February 28, 2022.

13. The Noticeess replied on February 28, 2022. The reply received is as reproduced below:

The Noticees deny the allegations made by SEBI in the Notice on the following grounds:

1. <u>Alleged violation of Regulation 30(11) of the LODR Regulations</u>

25. *With specific reference to the Jio-Facebook Deal, the allegation in the Notice is that the "first news" of the discussions between the parties was published by the Financial Times, London on March 24, 2020. Indian Media outlets thereafter published reports based on the report of the Financial Times on and in the days immediately following March 24, 2020. In this connection, the Notice at para II(e) (page no. 22) alleges firstly that although Noticee I was aware of the news reports published on March 24, 2020 and March 25, 2020, "yet it did not issue any clarification on the same, as required under Regulation 30(11) of SEBI (LODR) Regulations". This allegation is wholly misplaced, which is apparent from a plain reading of Regulation 30(11) of the LODR Regulations.*

26. *Regulations 30(10) and (11) of LODR Regulations state as follows:*

"(10) The listed entity <u>shall</u> provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information: [Emphasis supplied]
Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.

(11) The listed entity <u>mar, on its own initiative also</u>. confirm or deny any reported event or information to stock exchange(s). " [Emphasis supplied]

27. The present case is admittedly not one to which Regulation 30(10) applies, since no query was raised by Stock Exchange(s) with respect to any events or information pertaining to the Jio-Facebook Deal during March 2020 and *particularly with respect to the media reports. The issue that falls for consideration therefore is whether there is any obligation imposed on a listed entity under Regulation 30(11), de hors a query from a stock exchange, to confirm or deny information contained in media reports or appearing in other public fora (such as twitter or other social media platforms). The plain language of Regulation 30(11) makes it clear that the LODR Regulations impose no such obligation.*

28. *The use of the phrases "may" and "on its own initiative" occurring in Regulation 30(11) clearly bring out that what is contemplated in this provision is suo motu action by a listed entity. It is a settled principle of statutory interpretation that the word 'may ', in a general sense, is permissive and confers discretion. It is evident that the word "may" ih Regulation 30(11) has been utilised in conscious contradistinction to the word "shall", which occurs in Regulation 30(10). Regulation 30(10) imposes a mandatory requirement that a listed entity provide specific and adequate responses to queries raised by a stock exchange, without leaving this matter to the discretion of the listed entity. Regulation 30(11) on the other hand provides an option to the listed entity, at its discretion, to confirm or deny media reports or any other information. Where the two words 'may' and 'shall' are used in two different parts of the same provision, the intention is to make one part mandatory and the other part directory [Bachahan Devi v. Nagar Nigam, Gorakhpur and Another (2008) 12 SCC 372, paras. 20 and 22; Jamatraj Govani v. State of Maharashtra (1967) 3 SCR 415, para 10].*

29. *Regulation 30(11) does not impose any obligation on a listed entity, much less a positive obligation to confirm or deny any and every reported event or information. The suggestion that Regulation 30(11) requires a listed entity to confirm or deny every media report or information put out on a social media platform such as Twitter is an absurdity and would impose a wholly impractical compliance burden on listed entities. Regulation 30(11) therefore consciously and advisedly leaves it to the entity to exercise its discretion in the matter of providing response to information put out in the public domain. The assertion in the Notice that RIL was "required" under Regulation 30(11) of the LODR Regulations to issue a clarification on the news reports is therefore misplaced and without foundation.*

30. *The charge set out in the Notice is premised on an alleged violation of Schedule A of the PIT Regulations, read with Regulation 30(11) of the LODR Regulations. For the reasons detailed above, no case of violation of Regulation 30(11) of the LODR Regulations is sustainable, for the reason that Regulation 30(11) does not impose any obligation on a listed entity, but rather, provides an avenue for voluntary action on the part of a listed entity, at its discretion, to clarify' its stand/position on media or other reports.*

31. *The news reports in issue did not contain any statements from RIL or persons with whom RIL had shared information in compliance with the PIT Regulations. Rather, when called upon by media outlets to respond to the speculative content of these reports, RIL declined to comment on the reports. This position was reflected in some of the reports in the Indian media that had reported the contents of the report in the Financial Times. As informed to SEBI in RIL's letter of July 2, 2021, RIL did not choose to clarify the news reports since it was confident that its internal controls and systems were in place and functioning properly, and any confirmation or denial of the reported information, which was entirely speculative in nature, would have been premature. It is telling that even the Stock Exchanges did not consider that such news reports merited a response, and therefore, did not request for a clarification. As a general matter, it may be noted that there is constant speculation in the media and on social media platforms about RIL's business and operations, and it would be impossible for RIL to track every news report and confirm or deny the same suo moto.*

32. *Where, as in the present case, a listed entity in its discretion, determines that no response to a reported event or information is necessary or warranted, it is open to it to refrain from providing any response to the same. Such forbearance on the part of the listed entity to have recourse to the avenue provided under Regulation 30(11) of the LODR Regulations does not violate the said Regulation 30(11) or any other provision of the LODR Regulations. The composite charge framed in the Notice inter alia with reference to Regulation 30(11) of the LODR Regulations must therefore fail on this short ground alone.*

II. <u>Alleged violation of Principle No. 4 of Schedule A of PIT Regulations</u>

33. *The charge in the Notice at para II(f) (page no. 22) is that in terms of Principle No. 4 of Schedule A read with Regulation 8(1) of the PIT Regulations read with Regulation 30(11) of the LODR Regulations, "RIL should have promptly disseminated or clarified on the stock exchange platform, the UPSI relating to Jio-Facebook deal which got disclosed through publication in the newspapers". The fundamental premise on which this charge has been framed is that the period of the said UPSI, which admittedly commenced on September 1, 2019, came to an end on March 24, 2020, when the speculative report in the Financial Times, London was published. For the reasons detailed below, this premise, as also the charge framed on the basis of the same, are misconceived and baseless.*

34. *The charge framed by SEBI is with reference to Principle No. 4 of Schedule A, which mandates:*

"<u>Prompt dissemination</u> of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available. ',

35. In order to appreciate the substance of the obligation imposed under Principle No. 4, it is necessary to read the same with Principle No. 1 of Schedule A, which requires:

"Prompt public disclosure of unpublished price sensitive information that would impact price discovery <u>no sooner than credible and concrete information comes into being</u> in order to make such information generally available. " (Emphasis supplied)

36. The term "prompt dissemination" occurring in Principle No. 4 takes its colour from Principle No. 1, which requires that UPSI must be disclosed no sooner than when it has become "credible and concrete information". Any other interpretation of these provisions would result in a conflict between the substantive obligation under Principle No. I to disclose only such information *as is "credible and concrete" and the requirement under Principle No. 4 to undertake "prompt dissemination" of UPSI. It is a well settled maxim that a harmonious construction must always be preferred to one that would present a conflict between provisions occurring in the same body of rules/regulations. A harmonious construction of Principle No. I and Principle No. 4 would yield the result that only such information as is "credible and concrete" within the meaning of Principle No. I is required to be promptly disseminated in accordance with Principle No. 4.*

37. *The Notice takes the entirely specious position that "Principle No. 4 supersedes Principle No. 1". It is an elementary legal proposition that such an interpretation, which renders one provision of the Regulations (i.e., Principle No. 1) redundant, is unsustainable and must be avoided. It cannot be SEBI's case that a Regulation issued by SEBI itself is surplusage or mere deadwood and must be ignored. The assertion that Principle No. 4 overrides Principle No. 1 also produces absurd outcomes, since it would in effect mean that a listed entity is mandated to disclose information which to its knowledge is neither credible nor concrete and is merely one of a wide spectrum of possible outcomes at a given point in time. The suggestion that a listed entity is required to engage in speculation rather than disclose only credible and concrete information is a manifestly absurd outcome and cannot be the product of any valid interpretative process.*

38. *The interpretation set out above is lent further weight by BSE circular dated July 6, 2018 (LIST/COMP/16/2018-19) and NSE circular dated July 8, 2018 (NSE/CML/2018/25), dealing with disclosure of UPSI by listed companies, which reiterate the above interpretation by requiring:*

"All listed companies to disseminate the material information/event as soon as it become credible and concrete for maintaining information symmetry in the market. '.

In determining the period of UPSI for the Jio-Facebook Deal, what therefore requires to be considered is the date on which the UPSI that Facebook and JPL had entered into a binding agreement pursuant to which Facebook was *to invest in JPL can be said to have become "credible and concrete information". The narration of facts set out in the Notice in connection with this deal bring out that on the date of publication of the report in the Financial Times (i.e.. on March 24, 2020), due diligence was still ongoing in connection with the deal, and the parties were yet to even agree on the final valuation and value of the investment by Facebook. It was only on March 29, 2020, after several rounds of negotiation between the parties, that there was a tentative agreement on the valuation and the percentage stake that Facebook would acquire in JPL. The due diligence for the deal and negotiation concluded only on April 17, 2020. Thereafter, on April 18, 2020, Board meetings of RIL, JPL, Reliance Retail Limited and RJIL were held, during which the Boards approved entering into the transaction documents in connection with the proposed investment. After securing the requisite Board approvals of all involved parties, the transaction documents were executed on April 21, 2020 in the United States and RIL intimated the Stock Exchanges on April 22, 2020. As noted above, there is no dispute as to any of these dates and events.*

39. As is evident from the above, at no date prior to April 21, 2020 was there any "credible and concrete information" that the negotiations between the parties would fructify in a binding agreement that was capable of being enforced under law. Until the execution of the definitive transaction documents, there was only a non-binding arrangement between the parties to explore the transaction and there was no certainty that the proposed transaction will be consummated. In other words, either party could discontinue the process by walking out of the negotiations and declining to execute definitive agreements.

40. The aforesaid principle also corresponds to the requirement of making disclosures under Regulation 30 of the LODR Regulations. Annexure II of the 'Continuous Disclosure Requirements for Listed Entities - Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015' , also provides guidance that for certain events which involve discussions, negotiations and approvals, the event ordinarily can be said to have occurred only after receipt of approval of the

Board of Directors. Therefore, SEBI itself acknowledges that there is no finality to an event until, at the very minimum, approval of the board of directors is obtained. In a case where the happening of the event is further contingent upon a third party securing requisite internal approvals and executing contract documents, the event cannot be said to have occurred prior to the execution of such definitive transaction documents.

41. *The transaction not being final until execution of the transaction documents is also reflected in the fact that Facebook (the counterparty) issued a report in relation to the matter on its website only on April 21, 2020 (USA time), which corresponds with the corporate announcement made by RIL on April 22, 2020 (IST). It may be noted that at any time prior to April 21, 2020 (USA time), Facebook could have refused to sign the documents for any reason, and there would be no concrete event. A "credible and concrete" deal therefore only comes into being when the same is capable of legal enforcement, i.e., upon execution of definitive legal documentation. In regard to each investment into JPL, the disclosure was accordingly made by RIL immediately upon execution of the transaction documents by the parties thereto.*

42. *In addition and without prejudice to the above, it may also be noted that the transactions were entered into during highly uncertain times of Covid-19, and the global impact of the pandemic on business sentiment particularly in March-April, 2020. There was no certainty that the deals which were under negotiation would be signed, until the signatures of the counterparty were actually received and there was every likelihood that the then prevailing global restrictions would cause the negotiations to be deferred to an uncertain future date.*

43. *Considerable emphasis has been placed by SEBI on the non-binding term sheet executed on March 4, 2020 which set a contemplated timeline of March 31, 2020 for the transaction to be completed and Definitive Investment Agreement to be executed. Firstly, as its description suggests, a non-binding*

term sheet does not create a binding or enforceable obligation. Section 28 of the said term sheet provided as follows:

"Except with respect to the Binding Obligations set forth herein, this Term Sheet does not create and is not intended to create a binding and enforceable contract between the Parties and may not be relied upon by a Party as the basis for a contract by estoppel or otherwise. <u>A binding commitment with respect to the matters set forth in this Term Sheet can onlv result from the execution and delivery of the Definitive Investment Agreement in connection therewith and consummation of the Transaction will be subject to the terms and conditions of the Definitive Investment Agreement and the approval of the Definitive Investment Agreement b V each Part-v 's respective board of directors or appropriate decision-making authority. Neither this Term Sheet nor any exchange of information hereunder will obligate either Term Sheet Party to enter into the Definitive Investment Agreement or anv additional discussions or agreements or consummate the Transaction with the other Term Sheet Party</u>. Each of the Term Sheet Parties waives the right to, and will not assert, any claim regarding a definitive transaction or any failure to enter into a definitive transaction or further agreement prior to execution of the Definitive Investment Agreement." [Emphasis supplied]

45. Information in connection with an investment transaction cannot be said to be "credible and concrete" where the contours of the transaction (including on fundamental aspects such as valuation and percentage of stake being acquired) are still under discussion and the terms of the definitive agreements are yet to be finally agreed upon. in end-March 2020 and up until mid-April 2020, legal and other due diligence processes were ongoing and, until an agreement was executed, the deal could have been called off for a variety of reasons including differences on commercial terms, issues arising from diligence, parties deciding not to proceed with the deal particularly during the unprecedented uncertainty on account of the onset of COVID-19. So there was no certainty in relation to the Jio — Facebook Deal until definitive agreements were executed. The fact of execution of the non-binding term sheet therefore did not constitute credible or concrete information of a *definitive investment by Facebook in JPL and did not therefore trigger the obligation of disclosure under Principle No. I read with Principle No. 4.*

46. *Principle No. 4 is being interpreted by SEBI to mean that where UPSI (even if it is not "credible and concrete information" and has not attained finality) has gotten disclosed selectively due to any reason, the listed entity should promptly disseminate the UPSI (as though it has attained finality) to make such information generally available. This is incorrect. Principle No. 4 can only be interpreted to mean that if UPSI, which has become credible and concrete information and has attained finality has gotten disclosed inadvertently or otherwise, the listed entity should promptly disseminate the same. Further, Principle No. 4 means that a company cannot disclose any UPSI selectively, inadvertently or otherwise, and in the event a company discloses UPSI selectively, inadvertently or otherwise, the company shall promptly disseminate such UPSI so that such UPSI becomes generally available. If a company is required to disclose/disseminate UPSI (which is not credible and concrete information and which has not attained finality) every time a news report (not originated by the company) contains speculation as to the affairs of the entity, it would lead to companies disclosing UPSI prematurely and fuelling further undesirable speculation in the securities market. For instance, in respect of the Jio-Facebook Deal, if an announcement had been made in and around March 24, 2020 (i.e., at a time when the due diligence process was ongoing and fundamental terms of the deal were yet to be agreed upon) and the deal fell through thereafter, RIL would have opened itself up to the allegation that it had prematurely announced a deal that was still at a nascent stage and had thereby caused confusion in the securities market and artificially inflated the price of its shares. It is precisely for this reason that the standard of "credible and concrete information" in Principle No. I must conform to the obligation of "prompt dissemination" under Principle No. 4.*

47. *None of the news reports mentioned in the Notice have originated from or are based on any information provided by RIL. SEBI has also not found any evidence to the contrary, as is reflected from the Notice. RIL disclosing the UPSI, which was not credible or concrete information at the time of the news reports*

being published, would have caused confusion in the securities market. The obligation of the listed company is only to make UPSI that is concrete and credible generally available (and not selectively).

48. *A listed company like RIL, which is mindful of its obligations to comply with law and contribute to the robustness and integrity of a vibrant securities market, has to take into account all securities laws in their entirety, and comply with them in letter and spirit. Premature disclosure, aside from misleading investors, could lead to violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations").*

49. *A disclosure that would induce investors to buy shares in the company or affect the price of securities, which would subsequently not hold true, would be seen as deceiving the investors by making false statements. [In the matter of misleading advertisement by Manna Glass Tech Industries and Directors (SEBI WTM, 2007); In the matter of dealings in Zylog Systems Limited (SEBI WTM, 2013); In the matter of M/S DSQ Software Ltd. (SEBI WTM, 2013)]*

50. *Further, while dealing with an issue in relation to the PFUTP Regulations in the case of V. Natarajan v. SEBI (Order dated June 29, 2011 in Appeal no. 104 of 2011), the Hon 'ble Securities Appellate Tribunal, observed that:*

"This being so, we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. ... These regulations also prohibit persons tom indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities... " [Emphasis supplied]

51. *For the reasons detailed above, it is therefore submitted that the period of UPSI did not come to an end when the Financial Times report was published, since on this date (March 24, 2020), there was no "credible and concrete information" in regard to the Jio-Facebook Deal, which at the time was still being negotiated. Such "credible and concrete information" only came into existence sometime in and around April 21, 2020 when the transaction documents in connection with the Jio-Facebook Deal were executed by the parties. The period of UPSI in the present case is therefore from September 1, 2019 till April 21, 2020. By disclosing the deal to the Stock Exchanges before market hours on April 22, 2020, RIL therefore strictly complied with the letter and spirit of the PIT Regulations. No violation of Principle No. 4 of Schedule A to the PIT Regulations is therefore made out in the present case.*

52. *It is apparent from the allegation in para Il(f) (page no. 22) of the Notice "the company (RIL) should have promptly <u>disseminated or clarified</u> on the stock exchange platform, the UPSI relating to Jio-Facebook deal which got disclosed through publication in the newspapers" that SEBI itself is unclear of the charge. SEBI seems to realise that dissemination of UPSI is not possible unless it is concrete and credible and has attained finality. It is for this reason that even though Principle No. 4 does not talk about any clarification being mandatory, SEBI has alleged that RIL should have clarified to the Stock Exchanges when the Financial Times, London news report was published. Principle No. 4 does not talk of any clarification. As contended earlier, suo moto clarification under Regulation 30(11) of LODR Regulations is not an obligation.*

Ill. <u>Closure of Trading Window</u>

<u>Compliance with PIT Regulations</u>

53. *SEBI has alleged that Noticee 2 has violated Clause 4 of the Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons set out in Schedule B read with Regulation 9(1) of the PIT Regulations since:*

(a) *The trading window was not closed for all designated persons and their immediate relatives for the three UPSI (para (v) — page no. 20);*

(b) *The official trading window closure with respect to all the three UPSI were not notified to the Stock Exchanges (para (v) — page no. 20); and*

(c) *The Compliance Officer had failed in her duty to notify the period of closure of trading window to the Stock Exchanges after closing the trading window during which the three UPSI were in existence (para (vii) — page no. 20).*

54. It is submitted that the 'trading window closure' concept finds place in Clause 4 of the Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons set out in Schedule B read with Regulation 9(1) of the PIT Regulations.

"4(1) Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. trading—window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

4(2) Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration official results. The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.,,

55. In substance, the standards in Schedule B.

(a) *Require that for prohibiting the designated persons from trading in the securities of the company (and any other company involved in a* *transaction with the company), the company should impose a trading window closure period and notify the persons that they and their immediate relatives cannot trade in such securities during the period the trading window is closed. The trading window closure period for UPSI other than financial results has to commence from the time the designated persons come in possession of the UPSI and end when the UPSI is made generally available.*

(b) *As far as financial results are concerned, the trading window closure period is prescribed in Clause 4(2) of Schedule B.*

56. In terms of PIT Regulations, the Compliance Officer has to ensure and is responsible for compliance with the standards prescribed in Schedule B.

57. It is pertinent to point out that there is no SEBI regulation or standard which requires notification of trading window closure period to the Stock Exchanges. Especially with reference to the UPSI such as the ones in question, the trading window closure period is imposed for a class of persons in possession of the UPSI. Any notification to the Stock Exchanges that trading window closure period has been imposed by the company with respect to certain class of persons because they are in possession of certain UPSI (even though the actual UPSI is not disclosed) would encourage speculation in relation to the shares of the listed entity, since the market would be aware of the existence of UPSI even while lacking any knowledge of the content of the UPSI. Further a company will continuously have discussions on various transactions constituting UPSI for which trading window closure period would be imposed for different sets of persons in the company. Repetitive disclosures would only result in confusion in the market. It is for this precise reason that SEBI regulations do not mandate notification of trading window closure period to the Stock Exchanges. According to our knowledge, there have been no notifications by any listed company of trading window closure period for UPSI such as those in question in this case.

58. *With respect to quarterly financial results, the standard in Schedule B itself prescribes the trading window closure period and the notification to the Stock Exchanges of this trading window closure period has been in existence due to the circulars under the SEBI (Prohibition of Insider Trading) Regulations 1992 ("1992 PIT Regulations'), which regulations have been superseded upon the 1992 PIT Regulations having been rescindea.*

59. *Accordingly, there is no breach by the Compliance Officer in not notifying the trading window closure periods for these three UPSI to the Stock Exchanges.*

60. *It is also relevant to note that the Notice does not point out any specific regulation or circular or standard which has been breached in this regard.*

(d) 'Special Category Persons' are employees of RIL and its subsidiaries who are in possession of UPSI other than financial results including in relation to amalgamation, takeover, investment/ divestment, corporate restructuring, corporate actions, dividend, change in capital structure, starting / closing of business/unit, major litigation affecting business from time to time. Such persons and their immediate relatives are not permitted to trade in RIL's securities from the time they come in possession of UPSI, notwithstanding the fact that the trading window has not been closed.

64. *The Reliance Code therefore incorporates the Minimum Standards prescribed in the PIT Regulations. There is no dispute as to the position that the Reliance Code is fully compliant with the requirements of Regulation 9(1) of the PIT Regulations. To ensure that the PIT Regulations are adhered to in letter and spirit, the Reliance Code prohibits all employees in possession of UPSI from trading in RIL's securities. All designated persons in possession of UPSI are made subject to an absolute ban on trading during the period they are in possession of information that constitutes UPSI.*

65. *It is submitted that RIL had closed the trading window for each of the three UPSI in the following manner:*

(a) *The designated persons who had access to these UPSI were already in the know that they cannot trade while in possession of these UPSI.*

(b) *The Special Category Persons ("SCPs") who were not designated persons were specifically informed by their immediate reporting heads / persons who involved them in the transactions that the information is UPSI and that they should keep the UPSI confidential and not communicate the same to any other person; and that they should not deal in the securities of RIL till the transactions are announced or till they are informed that RIL is no longer pursuing the transactions.*

66. It can be seen from the above that RIL has closed the trading window irrespective of whether the Compliance Officer was informed of the UPSI or not.

67. The Notice mischaracterises this position as an attempt on the part of the Compliance Officer to "escape" from the duty of closing the trading window, since, as a matter of fact, the end result of closure of the trading window i.e. imposing a prohibition on dealing in securities of the company is in fact achieve . In terms of the Reliance Code, any and all persons in possession of UPSI are, <u>with</u>out exception, made aware that they are absolutely restricted from trading in the shares of the company as long as they are privy UPSI. Contrary to SEBI's assertion, that employees who were in possession of the three UPSI were aware of the provisions of the Reliance Code.

68. The Compliance Officer was not aware of the UPSI since the UPSI was shared with the bare minimum essential persons on a need-to-know basis.

69. Clause 4 of Schedule B itself acknowledges that the closure of the trading window is a means to ensure that designated persons comply with the PIT Regulations. The restriction on SCPs in the Reliance Code is also to ensure that there is no breach of the PIT Regulations.

70. *Reference by SEBI to trading activity by two individuals, Mahavir Jain and Sanjay Jain during the period when they were SCPs neither demonstrates any lacuna in the Reliance Code nor in the systems followed by RIL to notify SCPs of the ban on trading activity. RIL understands that the trading activity engaged in by them during the period when they were in possession of the UPSI was de minimis (10 shares in one case and 8 shares in the other) and wholly inadvertent.*

71. *In light of the above, it is submitted that the PIT Regulations, and specifically, Clause 4 of Schedule B were complied with by RIL.*

14. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee on April 11, 2022 vide hearing notice dated March 10, 2022. Noticee availed the opportunity of hearing granted to it on April 11, 2022, through WebEx platform. Authorised Representative (AR) appeared on behalf of the Noticee. During the course of the hearing, the AR reiterated the submissions made vide letter dated March 29, 2022. AR also mentioned during hearing that additional submissions will be made and would file affidavits with regard to the instruction which was given to the Special Category Persons (SCPs) of RIL that they should not deal in the securities of RIL during the UPSI period. The additional submissions were received from the Noticee vide letters dated May 10, 2022, June 01, 2022 and June 03, 2022. The Noticee has submitted a compilation of judgements and affidavits from non-designated persons that the information with regard to the transaction(s) of the proposed investment by Facebook Inc/ Silver Lake / Vista Partners in Jio Platforms Limited was Unpublished Price Sensitive Information (UPSI) and that they should not deal in the securities of the Company till the said transaction(s) is announced or till they are informed that the Company is no longer pursuing the transaction(s).

<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>

15. I have carefully perused the charges levelled against Noticee in the SCN and the material available on record. I have also perused the submissions made by

Noticee in this regard. The issues that arise for consideration in the present case are:

I. a) Whether Noticee1, 2 and 3 have violated Principle No. 4 under Schedule A – Principles of Fair Disclosure read with Regulation 30(11) of LODR Regulation 2015 by not disclosing or clarifying to the Stock Exchange the UPSI relating to JIO Facebook deal which got disclosed through the publication in the newspaper.

b) Whether Noticee 2 have violated Clause 4 of the Minimum Standards for Code of Conduct for Listed read with regulation 9(1) of SEBI (PIT) Regulations, 2015 by not closing the trading window with respect to the UPSIs

II. ***Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act, 1992 ?***

III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

16. Before moving forward, it is pertinent to refer to the relevant provisions which are reproduced hereunder:-

11.1 Principle No. 4 under Schedule A read with Regulation 8(1) of SEBI (PIT) Regulations, 2015 reads as under:

"4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.

"The above fair disclosure principle means that a company cannot disclose any UPSI selectively and in case inadvertently or otherwise, the company discloses the same selectively, the company has to promptly disseminate such UPSI so that such UPSI becomes generally available."

Regulation 30(11) of LODR reads as under

30 (11) The listed entity may, on its own initiative also. confirm or deny any reported event or information to stock exchange(s).

As per Clause 4 under Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders of SEBI (PIT) Regulations, 2015 *“The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information.”*

“Designated persons and their immediate relatives shall not trade in securities when the trading window is closed”

Issue I: Whether Noticee has violated the provisions as enumerated under paragraph 2 :

17. I will now proceed to deal with the aforementioned allegations levelled against Noticee 1, 2 & 3 in the SCN, the submission made by Noticee in this regard and record my observations/ findings as under:

a) Non-adherence to Principles of fair disclosure of UPSI

- During the investigation, it was gathered that there was lot of news flow around Facebook investing in Jio in the month of March and April, 2020 prior to the corporate announcement made on April 22, 2020.
- On April 22, 2020, RIL made an announcement in the pre-market hours, wherein the Company submitted to the exchanges, a copy of the media release titled *“Facebook to Invest ₹ 43,574 crore in Jio Platforms for a 9.99% Stake”.*
- Post aforesaid announcement on April 22, 2020, there was a significant rise in price of the scrip by 10.20% on NSE and 10.30% on BSE on April 22, 2020 against the previous day closing price.
- Investigation observed that on March 24 and 25, 2020 there were flowing regarding the Jio Facebook deal in foreign and national newspaper/media.
- The first news about impending Jio-Facebook deal was published in the Financial Times/ “FT”, London on March 24, 2020 at 14:54 London time (07:24 PM India time) (copy of FT reply and its report placed at (Annexure-9).

Subsequently, the said news report of FT, was widely circulated in Indian media, on March 24, 2020 and also on March 25, 2020.

- The news articles stated that Facebook is seeking to buy a multi-billion dollar stake in Reliance Jio and it was close to signing a preliminary deal to buy 10% stake in Reliance Jio which was quite similar to the exact transaction happened between Facebook and Reliance Jio.
- It was seen that post publication of the aforesaid news articles on March 24, 2020 and March 25, 2020, the price rise in the scrip of RIL was almost 15% (against the previous day closing price) on March 25, 2020. Hence it was considered as price sensitive information. On the other hand, post corporate announcement on April 22, 2020 price rise in the scrip was around 10% against the previous day closing price, which was comparatively low.
- It was observed that the UPSI relating to Jio-Facebook deal had come into existence on September 01, 2019 when the initial discussion on potential transaction with Facebook started.
- The UPSI relating to Jio-Facebook deal became generally available upon its publication in various newspapers and media reports on March 24, 2020 post market hours, despite the fact that the corporate announcement was made on April 22, 2020 pre-market hours. The first news about impending Jio-Facebook deal was published in the Financial Times, London on March 24, 2020 at 14:54 London time (07:24 PM India time).
- Considering the date when UPSI came into existence and the date when it became generally available through publication in various newspapers and media reports, the period from September 01, 2019 to March 24, 2020 is taken as period of UPSI for UPSI-1.
- From the submission made by Noticee 1 during investigation it was observed that Noticee 1 was well aware of all the news reports published/ appeared in media on March 24 & 25, 2020 relating to Jio-Facebook deal.
- It has been alleged that in terms of Principle No. 4 of under Schedule A - Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of UPSI r/w Regulation 8(1) to SEBI (PIT) Regulations,

2015, Noticee 1 should have promptly disseminated or clarified on the stock exchange platform, the UPSI relating to Jio-Facebook deal which got disclosed through publication in the newspapers. Further as per Regulation 30(11) of LODR *The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).* However Noticee 1 and 2 & 3 being the compliance officer had failed to do.

- Noticee in its submission has stated that the allegation is wholly misplaced, which is apparent from a plain reading of Regulation 30(11) of the LODR Regulations.

- Regulations 30(10) and (11) of LODR Regulations state as follows:
  "(10) The listed entity shall provide specific and adequate reply to all queries raised by stock exchange(s) with respect to any events or information: [Emphasis supplied]
  Provided that the stock exchange(s) shall disseminate information and clarification as soon as reasonably practicable.
  (11) The listed entity may, on its own initiative also. confirm or deny any reported event or information to stock exchange(s). " [Emphasis supplied]

- The present case is admittedly not one to which Regulation 30(10) applies, since no query was raised by Stock Exchange(s) with respect to any events or information pertaining to the Jio-Facebook Deal during March 2020 and particularly with respect to the media reports. The issue that falls for consideration therefore is whether there is any obligation imposed on a listed entity under Regulation 30(11), de hors a query from a stock exchange, to confirm or deny information contained in media reports or appearing in other public fora (such as twitter or other social media platforms). The Noticees have argued that the plain language of Regulation 30(11) makes it clear that the LODR Regulations impose no such obligation.

- To some extent the Noticees argument on the use of the phrases "may" and "on its own initiative" occurring in Regulation 30(11) clearly bring out that what is contemplated in this provision is suo motu action by a listed entity.

- While that may be a case it now comes to consider the very aspect of the design of the PIT law in India. There are basically two fundamental premises. One that information which is UPSI should be enveloped until made public. Second that if information needs to be made public then it should be made public for all and not selectively. Thus the entire regulation revolves around giving body to the above two premises giving various circumstances. One of the circumstances contemplated in law is that if the UPSI is somehow selectively available to someone or is being made available in bits and pieces like rumours or press articles carried in newspapers, the law provides a mechanism where company can clarify on the rumour or such articles in news papers. This forms a major part of the task that the company would need to address from rumour verification perspective. While it has been argued by the Noticees that none has asked them and thus they have not provided and that there is no compulsion under the law for them to do so. However, I am unable to be convinced that the company can abdicate its responsibility to verify a news article that has appeared in the newspaper. One of the issues is that information that the company wanted to keep enveloped in secrecy until made pubic, clearly failed in that objective. Further, when the bits of UPSI that then became selectively available the company abdicated its responsibility to verify and come clean on the unverified information that was floating around.

- The other predicament the Noticees present are that they could not have clarified the rumour on its own too because the agreement was yet to signed, yet to be approved by the Board of the Company and that it was not yet final. However, here too it is hard to be convinced that the company would respond to rumours only after finality of transactions. On a mere perusal of the announcements made by companies on the stock exchanges there are plethora of announcements where only the MoU has been entered, or where term sheet have been signed, or other acquisition are being scouted.

- The company itself has provided the chronology of events culminating in the deal that was later announced in April 2020, As on the date of the news article it is fairly clear that it was in the advanced stages of finality of the deal.

- The narration of facts set out in the Notice in connection with this deal bring out that on the date of publication of the report in the Financial Times (i.e.. on March 24, 2020), due diligence was still ongoing in connection with the deal, and the parties were yet to even agree on the final valuation and value of the investment by Facebook. It was only on March 29, 2020, after several rounds of negotiation between the parties, that there was a tentative agreement on the valuation and the percentage stake that Facebook would acquire in JPL. The due diligence for the deal and negotiation concluded only on April 17, 2020. Thereafter, on April 18, 2020, Board meetings of RIL, JPL, Reliance Retail Limited and RJIL were held, during which the Boards approved entering into the transaction documents in connection with the proposed investment. After securing the requisite Board approvals of all involved parties, the transaction documents were executed on April 21, 2020 in the United States and RIL intimated the Stock Exchanges on April 22, 2020. As noted above, there is no dispute as to any of these dates and events.

- I note that the various news paper / media article on March 24 and March 25, 2020 gave the news " Facebook eyes multibillion dollar deal to acquire 10% stake in Reliance Jio" . Subsequent to the news article the price of the scrip on March 25, 2020 opened at Rs. 963.80 i.e 2.16% rise against the previous day closing price and closed at Rs. 1082.25 i.e. 14.72% against the previous day closing. The news was therefore price sensitive. The discussion of the deal started from September 2019 as per the details given by the Notcee 1. Since the information pertaining to Facebook Jio deal become available to the public on March 24, 2020 the period of UPSI was taken from September 2019 to March 2020. Principle 4 as set out in Schedule A – Principles of Fair Disclosure requires "Prompt Dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available" Further As per Regulation 30(11) of SEBI (LODR) Regulation 2015, "The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchanges"

- I note that Noticee 1 made announcement to the stock exchange about the investment by Facebook in JPL The chronology of events relating to the above announcement as submitted by Noticee 1 are as follows:

Date	**Events / Discussions (Phone/ meetings, etc.)**	**Particulars (Details of matters discussed)**
01/09/2019	Initial discussion of the intent to explore a potential transaction with Facebook Inc.	Initial Discussion
10/09/2019	Entries made in structured digital database "SDD"	Entries made in structured digital database "SDD"
30/09/2019	Execution of Confidentiality and Non-Disclosure Agreement between RIL and Facebook Inc.	Confidentiality and Non-Disclosure Agreement with Facebook Inc.
30/10/2019 to 31/10/2019	Visit by Facebook Inc's Corporate Development team to RIL	Group and business overview
12/11/2019 to 13/11/2019	Visit to Facebook Inc's Menlo Park Office	Initial Management Meeting
18/11/2019 to 10/02/2020	Follow-up questions on various aspects of business and financial statements	Follow on calls
26/11/2019 to 22/04/2020	Davis Polk assisted RIL and JPL in preparing for and then facilitating due diligence conducted by Facebook and	Due-diligence and execution of transaction document

Date	Events / Discussions (Phone/ meetings, etc.)	Particulars (Details of matters discussed)
	preparation, execution of relevant transaction documentation	
10/12/2019	Draft term-sheet sent to Facebook Inc.	Broad terms of investment
13/01/2020 to 14/01/2020	Visit by Facebook Inc's team to RIL, Management meetings between RIL, RJIL and Facebook to discuss potential investment in JPL by Facebook. Morgan Stanley prepared materials for the management meetings.	Discussions regarding business overview and financial parameters
30/01/2020	Visit to Facebook Inc's Menlo Park Office	Discussion on Jio roadmap and Facebook roadmap in India
12/02/2020	Mark-up of term sheet received from Facebook Inc.	Broad terms of investment
12/02/2020 to 27/02/2020	Follow-on-discussions on the term-sheet on calls with Facebook Inc's team	Broad terms of investment
27/02/2020	Appointment of AZB & Partners by RIL as legal counsels for the proposed investment by Facebook into JPL	Appointment of legal counsel
28/02/2020 to 04/03/2020	Meetings at Maker Chambers IV between representatives of RIL and Facebook Inc to discuss non-binding term sheet for minority investment by Facebook Inc. in Jio Platforms Limited.	Term- Sheet execution on 04-03-2020
06/03/2020	Facebook started Due-diligence on JPL	

Date	Events / Discussions (Phone/ meetings, etc.)	Particulars (Details of matters discussed)
07/03/2020 to 17/04/2020	Conduct of due-diligence, including discussions and calls in relation to the due diligence, with advisors of Facebook Inc. Negotiation and Finalisation of transaction documents	Audio-Video calls
End of March	The final price and value of investment by Facebook was agreed upon between RIL/ JPL and Facebook after multiple rounds of negotiation between the parties	Telephonic / Video calls
29/03/2020	The Parties agreed that Facebook Inc. will invest Rs.43,574 crore in JPL for a 9.99% equity stake on a fully diluted basis	
18/04/2020	Board Meeting of RIL, JPL, RRL and RJIL - Approval for entering into transaction documents in connection with the proposed investment of 9.99% by Facebook Inc. in JPL	Approval for entering into the transaction documents
21/04/2020 (US)	Transaction documents executed on behalf of RIL and JPL by Mr. Mathew Oommen- Non-Executive Director, RJIL at Dallas	Execution of Transaction documents
22/04/2020	RIL informed to the stock exchanges about the media release titled “Facebook to Invest ₹43,574 crore in Jio Platforms for a 9.99% Stake” wherein they have announced signing of binding	Corporate announcement

Date	Events / Discussions (Phone/ meetings, etc.)	Particulars (Details of matters discussed)
	agreements between RIL, JPL and Facebook Inc. for an investment of ₹43,574 crore by Facebook into JPL which will translate into a 9.99% equity stake in JPL.	

- I observe from the chronology of events that when the information about Facebook Jio deal came in the media/ news articles the discussion was still going on with respect to Facebook Jio deal. The news article which came out on March24 &25 2020 stated that (i) Facebook is seeking to buy a multibillion dollar stake in Reliance Jio, (ii) Facebook was close to signing a preliminary deal for a 10% share in Jio, (iii) a deal with Facebook was due to be announced in March end, coinciding with the end of the financial year.

- Thus coming back to the issue while Noticee 1 had the obligation to have enveloped the UPSI, however having come to know about the selective availability of the information it was incumbent upon the Noticee1 to provide due clarification on its own, as it primarily fanciciled to keep the UPSI. Thus Noticee 2 and Noticee 3 on behalf of Noticee1 should have clarified to the exchanges on the news item.

- The Noticees have bargained before me about the harmonious construction of regulations and its two principles, one that there should be prompt disclosure of inadvertent or otherwise available to make it generally available – principle four and second that there should be disclosure of credible and concrete information principle 1.

- The principle of harmonious constructions is the bedrock of legislative interpretation. However it cannot be selectively used solely for the purposes of deriving benefit from it, which in this case the Noticees are attempting to do.

- The harmonious interpretation principle applies to the entire regulation and its various provisions for the ultimate purposes for which the regulation has been notified. Applying this selectively only for the principles 1 and 4 will not provide the desired result sought to be achieved by law.

- In view of the above I do not agree with the submissions made by Noticees and hold Noticee 1, Noticee 2 and Noticee3 liable for the violation of the provisions of Principle no. 4 under Schedule A – Principles of Fair Disclosure for purposes of code of practices and procedures for Fair Disclosure of UPSI r/w regulation 8(1) to SEBI PIT) Regulations, 2015 r/w Regulation 30 (11) of the SEBI LODR Regulations, 2015.

b) <u>Non-compliance with the Code of Conduct for Trading Window Closure</u>

18. During investigation it was observed that Noticee 1 made 3 corporate announcements

Announcement 1 :

- On April 22, 2020, RIL made an announcement in the pre-market hours, wherein the Company submitted to the exchanges, a copy of the media release titled "Facebook to Invest ₹ 43,574 crore in Jio Platforms for a 9.99% Stake".

- Post aforesaid announcement on April 22, 2020, there was a significant rise in price of the scrip by 10.20% on NSE and 10.30% on BSE on April 22, 2020 against the previous day closing price. Hence, it is observed that the said announcement dated April 22, 2020 was a price sensitive information.

- Based on the submission made by Noticee 1 the existence of the UPSI was September 1, 2019

Investigation observed that the first news about impending Jio-Facebook deal was published in the Financial Times/ "FT", London on March 24, 2020 at 14:54 London time (07:24 PM India time) Subsequently, the said news report of FT, was widely circulated in Indian media, on March 24, 2020 and also on March 25, 2020.

It was seen that post publication of the aforesaid news articles on March 24, 2020 and March 25, 2020, the price rise in the scrip of RIL was almost 15% (against the previous day closing price) on March 25, 2020. On the other hand, post corporate announcement on April 22, 2020 price rise in the scrip was around 10% against the previous day closing price, which was comparatively low.

Noticee 1 submitted during investigation that the UPSI relating to the corporate announcement dated April 22, 2020 of Facebook investing in JPL for 9.99% stake came into existence on September 09, 2019. In view of the said reply of and chronology of events provided, the UPSI relating to Jio-Facebook deal had come into existence on September 01, 2019 when the initial discussion on potential transaction with Facebook started. The UPSI relating to Jio-Facebook deal became generally available upon its publication in various newspapers and media reports on March 24, 2020 post market hours, despite the fact that the corporate announcement was made on April 22, 2020 pre-market hours. The first news about impending Jio-Facebook deal was published in the Financial Times, London on March 24, 2020 at 14:54 London time (07:24 PM India time). Considering the date when UPSI came into existence and the date when it became generally available through publication in various newspapers and media reports, the period from September 01, 2019 to March 24, 2020 was taken as period of UPSI for UPSI-1.

Announcement 2 :

On May 04, 2020, RIL made an announcement stating that Silver Lake to invest Rs.5,655.75 crores in JPL for a 1.15% stake wherein the Company submitted to the exchanges, a copy of the media release titled “Silver Lake to invest ₹ 5,655.75 Crore in Jio Platforms at an Equity Value of ₹ 4.90 Lakh Crore”

As per the submission made by Noticee 1 and the chronology of events provided, the UPSI relating to Jio-Silver Lake deal had come into existence on April 17, 2020 when the initial discussion on potential transaction with Silver Lake started. The corporate announcement relating to Jio-Silver Lake deal was disseminated on May 04, 2020 on BSE at 08:26 AM and on NSE at 08:27 AM.

Considering the date when UPSI came into existence and the date when it got published, the period from April 17, 2020 to May 03, 2020 was taken as period of UPSI for UPSI-2.

Announcement 3 :

On May 08, 2020, the Company made an announcement stating that Vista Equity Partners to invest Rs. 11,367 Crores in JPL for a 2.32% stake wherein the Company submitted to the exchanges, a copy of the media release titled "Vista to invest ₹11,367 crore in Jio Platforms at an equity value of ₹4.91 lakh crore" issued by the Company.

As per the submissions made by Noticee1 and the chorology of events provided the UPSI relating to Jio-Vista Equity Partners deal had come into existence on April 25, 2020 when the initial discussion on potential transaction with Vista Equity Partners started. The corporate announcement relating to Jio-Vista Equity Partners deal was disseminated on May 08, 2020 on BSE at 08:12 AM and on NSE at 08:13 AM. Considering the date when UPSI came into existence and the date when it got published, the period from April 25, 2020 to May 07, 2020 is taken as period of UPSI for UPSI-3.

Summary of the aforesaid UPSI analysis has been tabulated below:

UPSIs	**Start date of UPSI**	**Date & time when the PSI became generally available/ was disclosed on exchange website**	**UPSI period**
UPSI-1: Jio-Facebook deal	Sept 01, 2019	March 24, 2020 07:24 PM {First news article about impending Jio-Facebook deal was published in Financial Times on March 24, 2020 after market hours – "*Facebook eyes multi billion dollar stake in Reliance Jio*"}	Sept 01, 2019 to Mar 24, 2020
UPSI-2: Jio-Silver Lake deal	Apr 17, 2020	May 04, 2020 08:27 (NSE) May 04, 2020 08:26:39 (BSE)	Apr 17, 2020 to May 03, 2020

UPSIs	Start date of UPSI	Date & time when the PSI became generally available/ was disclosed on exchange website	UPSI period
UPSI-3: Jio-Vista Equity Partners deal	Apr 25, 2020	May 08, 2020 08:13 (NSE) May 08, 2020 08:11:59 (BSE)	Apr 25, 2020 to May 07, 2020

As per 9(1) of the Code of Conduct under PIT Regulation " The board of directors of every listed company and [the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct [with their approval] to regulate, monitor and report trading by its [designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.

[Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.]

NOTE: It is intended that every company whose securities are listed on stock exchanges and every [intermediary] registered with SEBI is mandatorily required to formulate a code of conduct governing trading by [designated persons and their immediate relatives]. The standards set out in the [schedules] are required to be addressed by such code of conduct.

Further as per Clause 4 under Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders of SEBI (PIT) Regulations, 2015 "*The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information."*

"Designated persons and their immediate relatives shall not trade in securities when the trading window is closed"

It has been alleged that the trading window was not closed and notified in terms of the above clause read with Regulation 9(1) of SEBI (PIT) Regulation, 2015 and Noticee 2 being the Compliance of Noticee 1 violated the aforesaid clause/Regulation.

With regard to the trading window closure in respect of abovementioned UPSIs, Noticee 2, Company Secretary and Chief Compliance Officer of the Company, submitted :

- *"In terms of the Company's Code to Regulate, Monitor and Report Trading by Directors, Promoters, Designated Employees and Specified Connected Persons of the Company and Material Subsidiaries of the Company (Reliance Code) formulated under the SEBI (Prohibition of Insider Trading) Regulations, 2015:*

- *Special Category Persons (means employees of the Company and subsidiaries who are in possession of UPSI other than financial results including but not limited to amalgamation, takeover, investment/ divestment, corporate restructuring, corporate actions, dividend, change in capital structure, starting / closing of business/unit, major litigation affecting business, from time to time. Such persons may or may not be Designated Persons) and their Immediate Relatives should not Trade in the Company's Securities during Trading Window Close Period for other types of UPSI, notified to them; and*

- *Notwithstanding the fact that a Trading Window Close Period for other types of UPSI has not been notified, Special Category Persons and their Immediate Relatives shall not Trade in the Company's Securities from the time he/she comes in possession of UPSI till 48 hours after the UPSI becomes a Generally Available Information.*

- *Persons who were involved in the process of/ having access to and/ or in possession of the unpublished price sensitive information (UPSI) relating to the aforesaid corporate announcements were made aware of this provision in the Reliance Code."*

19. With respect to the reason for not closure of the trading window Noticee 1 submitted that

- *There is a specific provision in the Reliance Code that notwithstanding the fact that a Trading Window Close Period for other types of UPSI has not been notified, Special Category Persons and their Immediate Relatives shall not Trade in the Company's Securities from the time he/she comes in possession of UPSI till 48 hours after the UPSI becomes a Generally Available Information. Accordingly, trading window was closed for the Special Category Persons and their Immediate Relatives with respect to each of the aforesaid corporate announcements."*

- Relevant part of the Reliance code is reproduced below:

5. Restrictions on all employees of the Company and preservation of UPSI

5.1 All employees, whether Designated Persons or not, shall:

(a) ..

(b) ..

(c) not deal in Company's Securities while in possession of UPSI and till expiry of 48 hours after such UPSI becomes Generally Available Information irrespective of whether there is an official announcement of Trading Window or not.

9. Restrictions on Special Category Persons

9.1 Special Category Persons and their Immediate Relatives should not Trade in the Company's Securities during Trading Window Close Period for other types of UPSI, notified to them; and

9.2 Notwithstanding the fact that a Trading Window Close Period for other types of UPSI has not been notified, Special Category Persons and their Immediate Relatives shall not Trade in the Company's Securities from the time he/she comes in possession of UPSI till 48 hours after the UPSI becomes a Generally Available Information.

10. Trading Window Close Period

10.1 The Compliance Officer shall notify the Trading Window Close Period for the different types of UPSI."

20. Noticee further submitted that the Designated Persons who were involved in the process of/ having access to and/or in possession of the UPSIs were aware of the Reliance Code. The remaining persons were made aware of this provision in the Reliance Code by their immediate reporting heads/ persons who involved them in the transactions and communicated the UPSI to them.

21. In reply to the SCN it was interalia submitted :

It is useful to note at the outset the salient features of clause 4 of Schedule B which are as follows:

(a) Designated persons may execute trades subject to compliance with PIT Regulations

(b) To this end the notional trading window shall be used to monitor trading by designated persons:

(c) The trading window shall be closed when compliance officer determines that a designated person can be expected to have possession of UPSI. Designated persons shall not trade in securities when trading window is closed.

22. It was further submitted that the Reliance code incorporates the Minimum Standard prescribed in the PIT Regulations. There is no dispute as to the position that the Reliance code is fully complaint with the requirements of Regulation 9(1) of the PIT Regulation.

23. I observe from the 9(1) of the code of conduct of the PIT Regulation that the Board of Director of the listed company shall formulate a code of conduct to regulate, monitor and report trading by designated persons and their immediate relative and adopt the minimum standards as set out in Schedule B to the Regulation.

24. I note that the Reliance Code of Conduct contains interalia '*Notwithstanding the fact that a Trading Window Close Period for other types of UPSI has not been notified,……..'*

The above provision in the Reliance code is enforcing a trading window closure, even when there is no company-wide trading window closure. Thus this provision of Code goes above and beyond the basic minimum provided in the PIT Regulations.

25. I also note that the charge against the Noticee is not that the Code of Conduct implemented by the Noticees was not in terms of the PIT Regulations. Thus it is not the case in the SCN that the code is not in compliance of the Clause 4 under Schedule B Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders of SEBI (PIT) Regulations, 2015.

26. The charge therefore is whether the compliance officer has discharged the responsibility under the Code as implemented by the Company. Based on the submissions made by the Noticee 2 it is evident that the Code has been implemented in the manner it was intended by Noticee 1. Thus under the company code for closure of trading window, the responsibility was cast on the relevant employees cognizant of their responsibilities.

27. Given that the Noticee 1 had implemented the Code designed by it, there appears to be no reason to hold the Noticee 2 liable for any violations of not having closing the trading window. The violation of Clause 4 of the Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons as specified in Schedule B r/w Regulation 9(1) of SEBI(PIT) Regulations, 2015 against Noticee 2 therefore does not stand established.

Issue No. II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act , 1992

28. As stated at para 15 Noticee 1, Noticee 2 and Notice 3 has violated Principle 4 under Schedule A – Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of UPSI r/w Regulation 8(1) of SEBI (PIT) Regulation, 2015 r/w Regulation 30(11) of SEBI (LODR) Regulations, 2015.

In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''*

29. Therefore, the aforesaid violations committed by Noticees attract monetary penalty under Section 15HB of the SEBI Act which read as follows:

Section 15HB of SEBI Act: - *Penalty for contravention where no separate penalty has been provided: Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue No. III*: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty*?

30. While determining the quantum of penalty under, Section 15HB of the SEBI Act the following factors have to be given due regard:

Factors to be taken into account by the adjudicating officer under SEBI Act

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*

31. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee 1, 2 and 3 or the amount of loss caused to an investor or group of investors as a result of the default. I find that the news pertaining JIO Facebook deal came out on March 24 and 25, 2020 and the information to the stock exchanges about the media release titled "Facebook to Invest ₹43,574 crore in Jio Platforms for a 9.99% Stake" was made on April 22, 2020 i.e. after 28 days and this calls for an appropriate penalty.

ORDER

32. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in and Section 15HB of SEBI Act I, in exercise of the powers conferred upon me under Section 15-HB of the SEBI Act hereby impose the following penalty on Noticee 1, Noticee 2 and Noticee 3 viz. Reliance Industries Limited, Ms. Savithri Parekh and Shri K. Sethuraman to be paid jointly and severally

S. No.		**Penalty**	**Under the provisions of**
1.	Reliance Industries Limited (PAN: AAACR5055K)	Rs. 30,00,000/- (to be paid jointly and severally)	Section 15HB of the SEBI Act, 1992
2.	Ms. Savithri Parekh (PAN : AEMPP1916N)		
3.	Shri K. Sethuraman (PAN : ADUPK3895Q)		
	Total	**Rupees Thirty Lakhs only**	

I am of the view that the said penalty is commensurate with the violations committed by Noticee.

33. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website 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

34. Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. Noticee shall provide the following details while forwarding DD/ payment information:

    i. Name and PAN of the entity (Noticee)
    ii. Name of the case / matter
    iii. Purpose of Payment – Payment of penalty under AO proceedings
    iv. Bank Name and Account Number
    v. Transaction Number

35. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee 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.

36. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to Noticees viz. M/s. Reliance Industries Limited(PAN : AAACR5055K), Ms.

Savithri Parekh (PAN AEMPP1916N) and Shri K. Sethuraman (PAN : ADUPK3895Q).

Date: June 20, 2022
Place: Mumbai

BARNALI MUKHERJEE
Adjudicating Officer