BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/2022-23/36/22680

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

In respect of

Madhuben Prafulbhai Patel
(Address: First Floor, Chunibhai Chambers,
Behind City Gold Cinema ,
Ashram Road
Ahmedabad - 380009)

(PAN: ADZPP3630R)
In the matter of Radhe Developers (India) Ltd.

BACKGROUND

1. A Department (OD) of Securities and Exchange Board of India (hereinafter referred to as the **SEBI**) conducted an investigation regarding trading activities in the scrip of Radhe Developers (India) Ltd. (hereinafter referred to as **RDIL**/**Company**) for the period from October 01, 2009 to July 30, 2010 (hereinafter referred to as **Investigation Period**) on the basis of a reference received from Financial Intelligence Unit (FIU-IND). The company was listed on Bombay Stock Exchange (BSE) during the investigation period. During the course of investigation it was observed by Investigating Authority (**IA**) of SEBI that Madhuben Prafulbhai Patel (hereinafter referred to as **Noticee**) has violated the provisions of regulations 3(i) and 4 Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**) read with (r/w) section 12A(d) and (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**).and regulation 7(1A) r/w 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **SAST Regulations, 1997**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the investigation, SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge, under section 15A(b) of the SEBI Act, 1992 for alleged violations of provisions of regulation 7(1A) r/w 7(2) of SAST Regulations, 1997 and under section 15G of the SEBI Act, 1992 for alleged violations of provisions of regulation 3(i) and 4 PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992. Shri Nagendraa Parakh was appointed as the Adjudicating Officer (AO) under section 15-I of the SEBI Act, 1992 r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge, under section 15A(b) of the SEBI Act, 1992 for alleged violations of provisions of regulation 7(1A) r/w 7(2) of SAST Regulations, 1997 and under section 15G of the SEBI Act, 1992 for alleged violations of provisions of regulation 3(i) and 4 PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992 by the Noticee. Subsequently, the matter was transferred and undersigned was appointed AO vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated December 07, 2016 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it for the alleged violations of provisions under regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 and regulations 3(i) and 4 PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992 and why penalty be not imposed on the Noticee under section 15A(b) and 15G of the SEBI Act, 1992 for the alleged violations as specified in the SCN. The SCN was issued to the Noticee through speed post acknowledgement due (SPAD) and the same was delivered to the Noticee as seen from the material available on record.

4. It was alleged in the SCN as follows:
    - IA observed that Noticee was holding 76,50,870 shares of RDIL i.e 3.04% of the total shares of Company as on October 01, 2009. Following change was noted in her holding:

Date	Trans	Market	
		Buy	Sell
30-Oct-09	Mkt	0	1,60,000
03-Nov-09	Mkt	0	2,39,377
05-Nov-09	Mkt	0	20,000
06-Nov-09	Mkt	0	2,90,305
09-Nov-09	Mkt	0	7,70,000
10-Nov-09	Mkt	0	2,50,000
26-Nov-09	Mkt	0	152
23-Dec-09	Mkt	0	3,00,000
24-Dec-09	Mkt	0	1,00,000
29-Dec-09	Mkt	0	11,00,000
30-Dec-09	Mkt	0	12,00,000
31-Dec-09	Mkt	0	10,00,000
05-Jan-10	Mkt	0	10,00,000
06-Jan-10	Mkt	0	1,57,561
07-Jan-10	Mkt	0	10,00,000
12-Jan-10	Mkt	0	63,475

- IA observed as regards holding of PAC's that is Noticee, Ashish Patel and Mrs. Jahnavi Patel that had undergone change for which disclosures were to be made:

Date	Name	Buy/ received or sell/ transferred	Quantity of shares	Cumulative no. of shares	% change in share holding	Violation
31-Dec-09	Ashish Patel	Sell	-5,49,441	-53,95,237	-2.14	No disclosure made for aggregate change in shares by more than 2% of share capital of RDIL
07-Jan-10	Madhuben Patel	Sell	-10,00,000	-1,08,39,315	-4.3	No disclosure made for aggregate change in shares by more than 2% of share capital of RDIL
18-Jan-10	Ashish Patel	Sell	-3,90,650	-1,59,75,190	-6.34	No disclosure made for aggregate change in shares by more than 2% of share capital of RDIL
21-Jan-10	Ashish Patel	Sell	-24,81,011	-2,12,06,834	-8.42	No disclosure made for aggregate change

						in shares by more than 2% of share capital of RDIL

- IA observed that for the decrease in shareholding on January 07, 2010 Noticee was required to make disclosures in terms of under regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 to the company and to the Stock Exchange.
- IA further observed that being wife of Prafulbhai Patel and mother of Ashish Patel, both of them being directors on the company, were privy to price sensitive information (PSI) and during the unpublished price sensitive information period of October 24, 2009 to October 31, 2009 termed as UPSI 1 in the investigation report, the Noticee was in possession of the UPSI 1 when the trading window was open. On October 30, 2001 ie the period of UPSI 1 Noticee has traded 1,60,000 shares. In this regard, it is alleged that Noticee violated the provisions of regulations 3(i) and 4 PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992.
- Noticee was advised to show cause as to why an inquiry should not be held against you in terms of Rule 4 of the Adjudication Rules, 1995 read with section 15-I of the SEBI Act, 1992 and why penalty, if any, should not be imposed on you under section 15A(b) and 15G of the SEBI Act, 1992 for the alleged violation of the provisions of law mentioned above, if any.

5. Noticee replied vide letter dated January 18, 2017 seeking documents relied upon, opportunity for inspection. Upon my appointment as AO, vide hearing notice dated November 21, 2017 enclosing the SCN, the Noticee was granted an opportunity of personal hearing on December 14, 2017. In the said hearing notice, the Noticee was also advised to submit reply to the SCN by December 10, 2017. The said hearing notice was served to the Noticee through SPAD. The Noticee vide letter dated November 30, 2017 submitted the reply to the SCN requesting to provide various documents and also for inspection of documents and that Noticee has filed a consent application dated March 7, 2017. Office of AO ascertained from the relevant Department of SEBI regarding whether such an application was pending, upon ascertaining the matter was kept on abeyance. Vide email dated October 19, 2019 relevant department informed about status of consent application of Noticee. Vide

email (secretarial at radheinfra dot com) dated November 05, 2019 the company sent a letter on behalf of the Noticee to relevant Department of SEBI regarding rejection of the said consent application. Vide letter dated January 17, 2020 sent and delivered by SPAD, documents sought by Noticee were sent with an advice to reply within 15 days from receipt. Noticee sent a reply dated January 30, 2020 seeking inspection of documents. Inspection request was sent by undersigned AO to the relevant Department vide letter dated February 27, 2020 with a copy to Noticee. Relevant department vide email dated July 17, 2020 sent email regarding sharing all the documents for inspection by email with the Noticee. Noticee sent a copy of letter it sent to BSE dated July 25, 2020 asking BSE to provide system and records of receipt of disclosure and dissemination of the same so as to enable the Noticee to verify what could have happened to their postal sending of registered AD at prevalent point of time. In this regard, vide email dated August 21, 2020 Noticee was advised to file reply to the SCN else the matter shall be proceeded upon on the basis of material on record. Vide email dated August 28, 2020 relevant Department sent final confirmation to AO that inspection has been provided to Noticee. Undersigned AO vide email dated August 28, 2020 advised the Noticee that, extended periods of delay have been allowed in the interest of natural justice, however, in case Noticee fails to defend itself against the charges levied in the SCN through written submissions/personal hearings, the material already on record (including letters mentioned in trailing email) will be relied upon to take the instant adjudication proceedings to its end. Vide letter dated August 27, 2020 Noticee requested for more time. Hearing Notice dated August 23, 2021 was sent to Noticee for hearing scheduled from August 30, 2021 to September 03, 2021 at any date between 11:00 AM to 04:00 PM through any mode convenient to Noticee. Noticee sought postponement. Another opportunity of hearing was provided vide email dated October 13, 2021 for any date from October 20 to 22, 2021, failing which matter will be proceeded upon on the basis of material on record. Noticee intimated about his Authorized representative and confirmed about attending the hearing as scheduled. Hearing proceedings were completed on October 20, 2021. Noticee attended with Authorised Representative. Minutes were confirmed over email. During the hearing Noticee requested for additional time to be given for reply, the same was given. Noticee filed a reply dated December 21, 2021.

6. The Noticee submitted following reply:

- Noticee is neither promoter director of the company. Investment of Noticee was out of her own resources. Holding of Noticee, Ashish Patel and Mrs. Jahnavi Patel is 2,1254,384 i.e 8.44% of total no. of shares. Noticee is spouse of Praful C Patel but not his dependent and her being spouse cannot be assumed as dependency.
- Disclosures to company, ASE and BSE for the aforementioned transactions of 31-Dec-09.
- "When in possession" has not been substantiated with cogent evidence, "motivation" to trade if when in possession has not been substantiated with cogent evidence. Fact of company making losses since year 2006 and having accumulated losses on quarter to quarter basis has not been brought out. Consistent trading pattern has not been viewed and there were 16 trades during the IP comprising of two quarters. Provisions of Takeover Code has been erroneously invited and applied in the facts of only selling the shares and not purchasing. Regulation 7(1A) begins with "any acquirer…" which is incorrect. As regards shareholding of PAC, there was only selling and not acquisition. Selling of shares was not on the basis of UPSI but on Noticee's own judgement. Trading window was open at the time of trading.
- From company's reply: trading window is a preventive mechanism to monitor entire internal control system and to prevent trading by all directors/officers and designated employees. The trading window shall be closed when during the time the information referred in para 3.2.3 is unpublished. Observation of IA that Noticee was in possession of UPSI when the trading window was open, once the trading window is open, the question of unpublished price sensitive information does not arise. Declaration of financial information is price sensitive in nature, but being specific in nature it cannot attract cause of unpublished. PSI and trading window go together. The operation of definition 2(ha) and 2(k) are two sides of a coin. 2(ha) defines specific nature of the information and 2(k) defines not specific nature of the information.

7. After taking into account, the allegations levelled in the SCN, reply to the SCN and other materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

8. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997? Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15G of the SEBI Act, 1992

(b) Whether the Noticee has violated the provisions of regulations 3(i) and 4 PIT Regulations, 1992 r/w 12A(d) and (e) the SEBI Act ? Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

9. Before proceeding further, it will be appropriate to refer to the relevant provisions of law which read as under:-

10. ***SAST Regulations, 1997***

11. ***CHAPTER II DISCLOSURES OF SHAREHOLDING AND CONTROL IN A LISTED COMPANY***

12. ***Acquisition of 5 per cent and more shares or voting rights of a company.***

13. *7. (1)…..*

14. *(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale. 2 Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.*

15. *(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,— (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.*

16. ***Consolidation of holdings.***

17. *11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights*

entitling him to exercise more than 3 [5% of the voting rights], with post acquisition shareholding or voting rights not exceeding fifty five per cent.,] 5 [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations..

18. (2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations

PIT Regulations, 1992

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

3. No insider shall— (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

Violation of provisions relating to insider trading.

4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

(b) the acquisition or sale of shares or voting rights, as the case may be.

SEBI Act, 1992

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITON OF SECURITIES OR CONTROL

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

12A. No person shall directly or indirectly

..

(d) engage in insider trading;

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

FINDINGS

19. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

(a) It is alleged in the SCN that Noticee was holding 76,50,870 shares of RDIL i.e 3.04% of the total shares of Company as on October 01, 2009. SCN further alleges that violated the provisions of regulation 7(1A) r/w 7(2) of SAST Regulations, 1997. In this regard, I note that regulation 7(1A) requires any acquirer who acquired shares under 11(1) or 11(2) second proviso to disclose to purchase or sale of 2% or more of total shareholding of the company, to be disclosed to the target company and stock exchange within two days of such purchase or sell. In this regard, I note that the regulation 7(1)A requires disclosures to be made by the acquirer whereas all the transactions entered by Noticee were sales during IP, in light of which, it does not attract compliance of 7(1A) r/w 7(2) of SAST Regulations,1997. Said contention of the Noticee is acceptable to me, therefore aforementioned allegations levelled against the Noticee do not get established.

(b) I note from the SCN that the Noticee has been alleged to have traded while in possession of UPSI and thus violated the provisions of regulations 3(i) and 4 PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992. I note that regulation 3(i) prohibits anyone with unpublished price sensitive information from trading. I note that Noticee and the company has given various contentions regarding how operation of definition 2(ha) and 2(k) are two sides of a coin. 2(ha) defines specific nature of the information and 2(k) defines not specific nature of the information, however, there is no doubt in my mind that publishing of result is a price sensitive information, as it is an established fact. As regards, whether the Noticee having possession of the said information has violated regulations 3(i) and 4 PIT Regulations, 1992 r/w 12A(d) and (e) the SEBI Act. Noticee has not furnished any evidentiary proof of not having traded as alleged. In light of this I am of a considered opinion that even if the trading window was open and the fact that company was going to declare the result on October 31 and Noticee has traded on October 30 is a good enough indication of Noticee having violated the said insider trading provisions and thereby attracts penalty under section 15G of the SEBI Act. Section 15G of the SEBI Act, 1992 reads as follows:

> ***15G.Penalty for insider trading.- If any insider who,-***
> *(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or*
> *(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
> *(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

(c) Question arises for me is what should be the quantum of such penalty. In this regard while determining the quantum of penalty, it is pertinent to refer to and consider the factors stipulated in section 15J of SEBI Act read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

15J "Factors to be taken into account by the adjudicating officer-
While adjudging 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."

I am inclined to consider the following mitigating factors which are as follows: (i) record does not indicate any disproportionate gain or unfair advantage to the Noticees or loss caused to an investor or group of investors as a result of the default and (ii) record does not show that violation of the Noticee is repetitive in nature (iii) Noticee does not appear to have committed repeated securities markets violations and (iv) the Noticee admittedly is of an advanced age. Given this circumstances and facts of the case, the imposition of minimum penalty in this case appears to be too harsh and it may not be meeting the ends of justice as the Noticee has been overall selling since before the possession of the said UPSI and seems to be in the direction of her earlier calls. I am of a considered opinion that penalty of Rs. 5,00,000/- is appropriate in this matter.

ORDER

20. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 5,00,000/ for the charges of insider trading violations as alleged in the said SCN and established as seen from the above para. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

21. The Noticee shall remit/ pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- Penalties

Remittable to Government of India ", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT>Orders>Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/ RTA /AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in The said confirmation of e – payment made in the format as given below should be sent to "The Division Chief, EFD1 – DRA - V, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C - 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e- mail id:- tad@sebi.gov.in

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

In terms of the Rule 6 of the Adjudication Rules, 1995, a copy of each of this order is being sent to the Noticees and also to Securities and Exchange Board of India.

Date: December 30, 2022 **SANGEETA RATHOD**
Place: Mumbai **ADJUDICATING OFFICER**