BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/2022-23/40/22693]

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

Ashishbhai Prafulbhai Patel

(Address: First Floor, Chunibhai Chambers,

Behind City Gold Cinema ,

Ashram Road

Ahmedabad - 380009)

(PAN: ACTPP0045R)

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 Ashishbhai Prafulbhai Patel (hereinafter referred to as **Noticee**) has violated the provisions of regulations 3(i) and 4of 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**), regulation 7(1A) r/w 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **SAST Regulations, 1997**), regulation 13(4) r/w 13(5) of PIT Regulations, 1992 and clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992

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 regulations 7(1A) r/w 7(2) of SAST Regulations, 1997, regulations 13(4) r/w 13(5) of PIT Regulations, 1992, 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, under section 15HB of the SEBI Act, 1992 for alleged violations of clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 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 regulations 7(1A) r/w 7(2) of SAST Regulations, 1997, regulations 13(4) r/w 13(5) of PIT Regulations, 1992, 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, under section 15HB of the SEBI Act, 1992 for alleged violations of clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 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 regulations 7(1A) r/w 7(2) of SAST Regulations, 1997, regulations 13(4) r/w 13(5) of PIT Regulations, 1992, regulations 3(i) and 4 PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992, clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992 and why penalty be not imposed on the Noticee under section 15A(b), 15G and 15HB as applicable 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 1,56,38,812 shares of company i.e. 6.21% of the total shares of Company as on October 01, 2009. As regards the following changes in the holding of the Noticee, the Noticee was required to have made disclosure made to the Company under regulations 13(4) r/w 13(5) of PIT Regulations, 1992

Date	Market		Off Market		Net	Share Capital	% Change	Actual (%)
	Buy	Sell	Credit	Debit				
17-Dec-09	0	0	15,00,000	0	15,00,000	25,17,99,000	0.60	6.69
23-Dec-09	0	0	0	5,00,000	5,00,000	25,17,99,000	-0.20	6.49
30-Dec-09	0	0	0	10,00,000	10,00,000	25,17,99,000	-0.40	6.09
06-Jan-10	0	10,00,000	0	2,05,000	12,05,000	25,17,99,000	-0.48	5.03
27-Jan-10	0	0	0	5,00,000	5,00,000	25,17,99,000	-0.20	1.07

- Noticee is also alleged to have failed to make disclosures under regulations 13(4) r/w 13(5) of PIT Regulations, 1992 for purchase of 50,000 shares on August 04, 2009.
- Noticee is alleged to have failed to have made disclosures under regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 for his holding alongwith PAC's. IA observed as regards holding of PAC's that is his wife/dependent Mrs. Jahnavi Patel was 21.06% and had undergone change for which disclosures were to be made:

Date	Name	Buy / receiv-ed or sell/ transfe -rred	Quantity of shares	Cumulative no. of shares	% change in share holding	Violation
31-Dec-09	Noticee	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	Madhu ben Patel	Sell	-10,00,000	-1,08,39,315	-4.3	
18-Jan-10	Ashish Patel	Sell	-3,90,650	-1,59,75,190	-6.34	
21-Jan-10	Ashish Patel	Sell	-24,81,011	-2,12,06,834	-8.42	

- Noticee is alleged to have traded in the scrip of RDIL while in possession of unpublished price sensitive information (UPSI). On October 26, 2009 ie the period of UPSI 1(October 24, 2009 to October 31, 2009) Noticee has traded 1,70,000 shares. In period of UPSI 2 i.e. January 19, 2010 to January 30, 2010, on January 19, 2010 and January 21, 2010 Noticee has traded for 27, 50,633 and 24,81,011 shares respectively and thereby alleged to have violated regulations 3(i) and 4 of PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992.
- Noticee has bought 1,00,000 shares on September 16, 2009 and sold 1,25,962 shares on October 17, 2009. In this regard, Noticee is alleged to have entered opposite trade in six months of earlier trade and violated clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 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),15G and 15HB, as applicable, of the SEBI Act, 1992 for the alleged violation of the provisions of law mentioned above, if any.

5. Noticee replied vide letter dated December 28, 2016 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 26, 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 24, 2021.

6. The Noticee submitted following reply:

- There was no buy/sell on December 17, 23, and 30, 2009, and January 05, 2010. The shares were given to Atlanta for margin purpose and the same were returned. Shares were given to Champaklal on friendly basis and it cannot attract six months criteria. Those were off-market transfer of shares.
- During the alleged insider trading i.e 26/10.2009, 19/01/2010 and 21/01/2010, the WAP is higher than the closing price, showing that no impact has happened of the trades. Trading on the alleged corporate announcement dates November 03, 2009 and February 01, 2010 shows WAP of 8.91 vs closing price of 8.84 and 4.00 vs closing price of 4.05 respectively. This shows irrespective of UPSI, PSI the trading of the Noticee has not impacted the market, otherwise or at all rest apart materially impacted.
- From April 01, 2009 till September 18, 2009 Noticee was purchasing shares from the market, no violation of PIT or takeover code has been observed, not even disclosure violation. Sale of shares started from October 17, 2009. IA considered period outside IP and has ignored the substantial fact.
- During IP no change in holding exceeding 2% it was 1.66%. Minor delay of 2 days is noted from the BSE records. Provisions of 13(4) not applicable in the matter.
- There was no trade of 50,000 shares on August 04, 2009.
- Wife Jahnavi Patel holds more shares than Noticee, promoter and MD of the company. Said investment by spouse was out of own resources.

- Shares were sold to meet income tax demand of Rs. 6,33,85,000/- as well known in realty sector in those days. This fact was communicated to IA during the course of investigation with proof of IT challan paid.
- According to Noticee, few significant facts which have definite bearing on the charges and allegations levelled in the SCN: (1)Shares sold were brought prior to IP for which no disclosure violations observed (2)company was making losses since year 2006 and having accumulated losses on quarter to quarter basis. (3)Sale of shares is due to income tax demand. (4) promoter holding was 30& and public holding 70% promoters dare not do insider trading (5) noticee contributed 2.12% of market volume and (6)huge time gap between date of sale of shares and date of Board Meeting.
- Disclosures were made but RP AD acknowledgement could not be traced. There was an income tax raid on company and the company could not pay attention to BSE website, where the said disclosures were not appearing for almost 3-4 months and when it was found that the said disclosures which were sent through RP AD were not on BSE website, it was discussed with BSE officials and immediately sent the same. However, BSE acknowledged in its records with its subsequent date of receipt and therefore the delay is being shown. All information was given to IA but IA has formed its view on BSE letter.
- "When in possession" has not been substantiated with cogent evidence, "motivation" to trade if when in possession has not been substantiated with cogent evidence.
- Noticee's sale cannot attract 71A and 7(2) violations as regulation 7(1A) talks of any acquirer.
- Disclosures have been made pursuant to regulations 13(2) and (3) of PIT regulations have not been considered.
- As regards, violation of clause 1.2 and 4.2 of the Code of conduct as alleged, the charges have been levelled simultaneously against Jigar Shah and Ashish Patel, not been ascertained in SCN. No specific instance of failure of, setting forth policies, monitoring adherence, preclearing of trades etc has been observed in investigation or SCN. 15HB refers to "whoever fails to comply…", which is not satisfied and therefore cannot be attracted to Noticee.

- Point 19.1 of the IR states that no adverse findings: For the shares which were transferred to Atlanta and returned back, based on the reply of Atlanta, IR states no adverse findings. This is contrary to para 5 of SCN and 15 of SCN.
- SCN fails to specify which compliance officer failed to ensure compliance of clause 1.2 of the Code of conduct specified in Part A of Schedule 1 read with Regulations 12(1) of the PIT regulations 1992. As for clause 4.2 mere off-market trades does not automatically attract the alleged provision.
- Merely basis of issue of notice for board meeting cannot be assumed or presumed the commencement of period of UPSI.
- The price of the shares have closed higher than they opened after the board meeting announcements.
- As regards, preparation of accounts, the skeletal accounts staff prepares it, company is a small company related to others in the sector, management prepares accounts on time, presents to the audit committee which approves and the Board meeting is immediately after the audit committee meeting. The trading window was open. As regards insider trading charges nothing cogent has been put forth in the SCN.
- Trading was done during trading window was open.
- Essential criteria of 'materiality' of impact of trades has not been brought out.
- Essential criteria of profit/loss has not been brought out.

CONSIDERATION OF ISSUES

7. 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 and regulations 13(4) r/w 13(5) of PIT Regulations, 1992? Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992? 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?
   b) Whether the Noticee has violated the provisions of clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the

PIT Regulations, 1992? Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of the SEBI Act, 1992? 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?

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

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

SAST Regulations, 1997

CHAPTER II DISCLOSURES OF SHAREHOLDING AND CONTROL IN A LISTED COMPANY

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

7. (1)…..

(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.

(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.

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.

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

12. (1) All listed companies and organisations associated with securities markets including:(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ; (b) the self-regulatory organisations recognised or authorised by the Board; (c) the recognised stock exchanges and clearing house or corporations; (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

SCHEDULE I

[Under regulation 12(1)]

PART A MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

…..

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :— (i) officers comprising the top three tiers of the company management; (ii) the *employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.*

4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time. In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

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Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

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;…

PENALTIES AND ADJUDICATION

15A. Penalty for failure to furnish information, return, etc.- *If any person, who is required under this Act or any rules or regulations made thereunder,-*

…

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

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.

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

FINDINGS

9. 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 1,56,38,812 shares of company i.e. 6.21% 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.

As regards, allegation of violation by Noticee of the 13(4) r/w 13(5) of PIT Regulations, 1992, I note that regulation 13(4) requires any person holding over 5% to make disclosures regarding any change in holding which is beyond 2% of the total shareholding of the company and regulation 13(5) requires any director to disclose change since the last disclosure in case the holding changes which exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. In this regard, I note that as regards, the disclosure in terms of regulation 13(4) the same would be required in case the change is beyond 2%, however as evident from the material on record the said change is less than 2% and therefore said allegation is not established. As for disclosures under regulation 13(5), it is noted from the evidence submitted regarding various disclosures made by Noticee that disclosures have been made for the transaction dated January 06, 2010 and not available for December 17, 23 and 30, 2009 and January 27, 2010. As regards, transaction dated August 04, 2009, from the material on record non-disclosure as alleged do not get established. Violations of the Noticee of regulation 13(5) of PIT Regulations, 1992 as alleged for the transactions dated December 17, 23 and 30, 2009 and January 27, 2010 get established. In my opinion such violation attracts penalty as specified under the provision of section 15A(b) of the SEBI Act, 1992.

(b) SCN alleges that the Noticee has violated the provisions of clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992. In this regard, I note that the clause 1.2 prescribes that the compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades etc. and clause 4.2 mentions that all directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction within six months of the prior transaction. In this regard, I note that it is an admitted position that the Noticee has entered into opposite transaction. As regards, whether it has been specified as to who is the compliance officer in the said SCN, or not, the fact that Noticee in its admittance being an MD of a small company and being hands on in most matters, cannot feign ignorance of the same. As regards, the allegation and the admitted position of the Noticee, the said allegation as levelled in the SCN stands established. In my opinion such violation attracts penalty as specified under the provision of section 15HB of the SEBI Act, 1992.

(c) I note from the SCN that the Noticee has been alleged to have traded while in possession of UPSI On October 26, 2009 ie the period of UPSI 1(October 24, 2009 to October 31, 2009) Noticee has allegedly traded 1,70,000 shares. In period of UPSI 2 i.e. January 19, 2010 to January 30, 2010, Noticee is alleged to have traded on January 19, 2010 and January 21, 2010 for 27, 50,633 and 24,81,011 shares respectively and thereby alleged to have violated provisions of regulations 3(i) and 4 PIT Regulations, 1992 r/w section 12A(d) and (e) of the SEBI Act, 1992. In this regard, I note from the regulation 3 (i) of PIT Regulations, 1992, that it prescribes that no insider shall, 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 and regulation 4 prescribes that such insider who deals in securities in contravention of the provisions of regulation 3 shall be guilty of insider trading. Section 12 (d) and (e) prohibits a person from indulging in insider trading. In this regard, the instances under consideration are as follows: October 26, 2009, January 19, 2010 and January 21, 2010

I note that Noticee has put forth various contentions regarding in Noticee's opinion what is lacking in the SCN such as impact of such trades on the market, price of the scrip remaining same or higher on the actual information made public, etc., as regards the said contentions, what is endogenous to the SCN shall be dealt with.

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, 1992 even that is evident from the admitted position that the company is small in nature and a few people handle accounts related work. I note that Noticee has not furnished any evidentiary proof of not having traded as alleged and it is an admitted position to have entered into the said transactions during the UPSI1 and UPSI2. In light of this I am of a considered opinion that even if the trading window was open and the fact that Noticee has traded just before the price sensitive information was going to be made public 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.

(d) In light of the above findings, question that arises before me is what should be the quantum of such penalty that can be levied for the violations established in preceding paras. 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 note that there are many mitigating factors in the matter such as for some submissions of the Noticee relating to the SCN, the IA has observed no adverse comments, the market price of the scrip has not taken a serious hit owing to adverse financials if any for which the allegations of trading in the UPSI have been established in the above paragraphs. I also note that record does not show that any profit made by the Noticee or losses if any caused by the said non-compliances by the Noticee. I further note from the record that nothing indicates the said violations to be repetitive in nature. In this regard, imposing the minimum penalty may not be meeting the ends of justice, I hereby impose penalty as under.

ORDER

10. 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 the following quantum of penalties individually, I am of the considered view that the said penalty is commensurate with the defaults committed by the Noticee.

Name and PAN of the entity	Violation provisions	Penalty provisions	Amount of Penalty
Ashishbhai Prafulbhai Patel PAN: ACTPP0045R	13(5) PIT Regulations, 1992	15A(b) of the SEBI Act, 1992	Rs. 1, 00,000/- (Rs. One Lakh only)
	Clause 1.2 and 4.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992	15HB of the SEBI Act, 1992	Rs. 1,00,000/- (Rs. One Lakh only)
	3(i) and 4 PIT Regulations, 1992 r/w 12A(d) and (e) the SEBI Act, 1992	15G of the SEBI Act, 1992	Rs. 25,00,000/- (Rs. Twenty Five Lakh only)

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 Noticee and also to Securities and Exchange Board of India.

Date: December 30, 2022 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**