BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.ID-6/OCPL/VK/AO/DRK/AKS/EAD-3/301/67-11]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against:

Shri V.K. Kaul
Flat No. 8202 & 8204,
Sector B-XI, Vasant Kunj,
New Delhi- 110070
PAN No.: AAAPK6215D

FACTS IN BRIEF

1. On March 17, 2008 Bear Sterns sold large quantities of shares in different scrips including 6.5 lakh shares in Orchid Chemicals & Pharmaceuticals Ltd (hereinafter referred to as '**scrip** / **OCPL**'). The scrip fell from ₹ 201 at opening to ₹ 196.7. The promoters of OCPL also had substantial quantity of shares pledged with Indiabulls Financial Services Ltd. and Religare Finvest Ltd. on which margin calls were due but the Promoters were unable to meet the same. These shares were also offloaded by these financiers on the same day leading to a steep drop in price of the scrip to ₹ 111.6 at closing. The scrip fell a further 11% on the next day. However, the scrip recovered from ₹ 115 on 25/3/2008 to ₹ 163.85 on 01/04/2008 and went on to rise to ₹ 319.7 on 16/4/2008.

2. Several alerts were generated at the end of National Stock Exchange of India Ltd. (hereinafter referred to as '**NSE**'), and Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') on 17/3/2008, 31/3/2008, 07/4/2008, 08/4/2008 and 09/4/2008. Based on the discussions in the Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') Surveillance meeting, the scrip was taken up for joint investigation by the Exchanges on which a report was submitted by them on 15/4/2008. Further, SEBI, Integrated Surveillance Department had asked NSE to examine the trading activity in the scrip.
3. None of the Exchanges reports made any adverse observation except that the trading activity of Ms. Bala Kaul ahead of Solrex Pharmaceuticals Company (hereinafter referred to as '**Solrex**') prima facie pointed towards insider trading. Ms. Bala Kaul wife of Shri V. K. Kaul (hereinafter referred to as '**noticee**'), an Independent Director of Ranbaxy Laboratories Ltd. (hereinafter referred to as '**RLL**') which is the parent company of Solrex, had bought 96,69,977 shares of OCPL between 31/3/2008 to 11/4/2008.

APPOINTMENT OF ADJUDICATING OFFICER

4. I was appointed as the Adjudicating Officer and the same was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated 31.03.2011 under Section 15 I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to inquire into and adjudge under Section 15G of the SEBI Act the violations of Sections 12A (d) and (e) read with Section 15G (i) of SEBI Act alleged to have been committed by the noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. A Show Cause Notice (herein after referred to as **'SCN'**) dated 08.04.2011 was served on the noticee by "Registered Post

Acknowledgement Due" in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring him to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under Section 15G (i) of the SEBI Act. In the said SCN, it was stated / alleged that:

a. From the investigation report (hereinafter referred to as '**IR**') it is observed that noticee during the period 17.03.2008 to 09.04.2008, had provided funds to Smt. Bala Kaul (herein after referred to as '**noticee's wife**') to trade in the scrip of OCPL.
b. Noticee's wife trading through stock broker, Religare Securities Ltd. bought shares of OCPL between March 27 and March 28, 2008 prior to start of the buying of shares by Solrex on March 31, 2008. She bought a total of 35,000 shares at an average price of ₹ 131.71 and sold them on April 10, 2008 at an average price of ₹ 219.94.
c. The IR alleged that the noticee was in possession of the information that Solrex is going to buy shares of OCPL and had traded on behalf of his wife on 27/3/2008 and 28/3/2008 ahead of the trading of Solrex.
d. Thus, it was alleged that noticee being a connected person of RLL as per Regulation 2 (c) (i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as '**PIT Regulations**') had traded on behalf of his wife in the scrip of OCPL based on unpublished price sensitive information which led to the violation of Sections 12A (d) and (e) of the SEBI Act, 1992.

6. Noticee vide his letter dated 27.04.2011 sought extension of time till 31.05.2011 to file a reply to the SCN. As requested by the noticee, vide letter dated 28.04.2011 noticee was granted time till 16.05.2011 to submit the reply. Noticee vide his letter dated 02.05.2011 appointed Amarchand &

Mangaldas & Suresh A. Shroff & Co. (hereinafter referred to as '**AR**') to represent him in the matter.

7. The AR vide its letter dated 05.05.2011 requested for inspection as well as copies of all the documents that were relied upon in support of the allegations made in the SCN. In response to the same, vide letter dated 09.06.2011 the noticee was informed that his request for inspection has been forwarded to the investigation department and he was advised to address further communication in that regard to the investigation department.
8. However, the AR vide its letter dated 17.06.2011 made a follow up request for inspection of documents. The AR informed vide its letter dated 15.07.2011 that the inspection of documents remains incomplete as it is yet to receive / review a number of documents and information. Vide letter dated 22.08.2011, the noticee was provided with the relevant documents that were relied upon while issuing the SCN and was granted 15 days time to submit a reply. The AR vide its letter dated 29.08.2011 stated that the inspection of documents remains incomplete and the documents that were provided were unauthenticated photocopies. Also some of the documents that were provided were incomplete. Therefore, the AR submitted that it will submit a reply once the inspection is complete.
9. Vide hearing notice dated 09.09.2011, the noticee was informed that the Adjudication Order will be based on the relevant portions of the IR and relevant portion of the documents / materials relied upon to issue the SCN which were already provided to the noticee. Noticee was further notified that almost five months had lapsed since the SCN has been served on him but he has not submitted any reply to the same till date. In view of the same, he was advised to submit a detailed reply to the SCN latest by 22.09.2011 and attend the hearing on 26.09.2011.

10. In response to the hearing notice, the AR vide its letter dated 16.09.2011 informed that the noticee has appointed a Senior Counsel of the Bombay High Court to represent him in the matter and sought an adjournment of the scheduled hearing. As requested vide hearing notice dated 21.09.2011 noticee was advised to attend the final hearing in the matter on 03.10.2011.

11. The AR vide its letter dated 23.09.2011 submitted a reply to the SCN wherein it stated as follows-

- Nothing in the documents/material provided by SEBI to the noticee contains any supporting evidence to the assertion that a decision to purchase OCPL shares was taken within RLL by March 20, 2008 or that this information was available within RLL from the said date. In fact, the SCN relies only on the fact that Solus Pharmaceutical Ltd (hereinafter referred to as '**SPL**') and Rexcel Pharmaceutical Ltd (hereinafter referred to as '**RPL**') opened a joint demat account, pursuant to resolutions adopted by their respective Boards on March 20, 2008.

- No evidence, direct or circumstantial, has been placed on record by SEBI to prove that there was any decision as to which specific securities would be purchased by Solrex or by SPL or RPL when the Resolutions by the Board of SPL and RPL were passed on March 20, 2008 for opening of a joint demat account. Therefore, SEBI's inference that the decision of Solrex for purchase of OCPL shares was arrived at and was made available to RLL by March 20, 2008 is in the nature of mere speculation or conjecture, which cannot be a substitute for actual evidence in a quasi judicial proceeding.

- It is submitted that in his capacity as Non-Executive Independent Director of RLL during the Relevant Period, noticee was not involved in day to day management of RLL and its subsidiaries. Noticee's role in RLL is consistent with the legal position recognized by SEBI in the matter of *Gennex Laboratories* wherein it was held that independent, Non-Executive Directors of a company are not involved in the day to day management of the company and should not therefore be fastened with liability of the company in all cases.

- Being a Non-Executive Independent Director of RLL, noticee would have been aware of only such matters (including those related to subsidiaries of RLL) that were brought before the Board of RLL (including any Committee(s) of the Board of RLL of which noticee was a member) or discussed there. The matter of purchase of OCPL shares by Solrex was

informed to the Board of RLL for the first time at its meeting held on April 22, 2008. Hence, in the absence of any evidence to the contrary, it cannot be alleged that the noticee was aware of the decision of Solrex to buy shares of OCPL prior to April 22, 2008.

- It also appears to be SEBI's case that the funding of Solrex for the purchase of OCPL shares was done by RLL pursuant to the meeting of the Board of Directors of RLL on March 28, 2008. However, in reality, the discussions at the RLL Board meeting on March 28, 2008 in this regard were limited to authorizing Mr. Malvinder Singh (who was the CEO & Managing Director of RLL during the Relevant Period) to extend loans to wholly owned subsidiaries of RLL up to ₹ 800 crores in the aggregate. Here the noticee would also like to point out that RLL had 54 subsidiaries globally as on March 31, 2008. A generic decision of the Board to authorize granting of loans to its subsidiaries cannot be construed as a specific decision in relation to authorization for grant of loans to SPL and RPL.

- The IR also records that RLL, Solrex, Mr. Malvinder Mohan Singh, Mr. Amitabh Gupta (the then Vice President – M&A and Business Analysis), Mr. Omesh Sethi (Vice President and Head Global Finance), Mr. Sandeep Mahendroo (Director Finance – Global Manufacturing & Shared Services Centre), and Mr. Sunil Kumar (Director Internal Audit of Ranbaxy) (These individuals were aware about the deal) have independently confirmed to SEBI that noticee was not in possession of information relating to purchase of OCPL shares by Solrex during the Relevant Period.

- The purported extracts of the IR also note that "it is found that Mr. Malvinder Singh and Mr. Omesh Sethi had a number of telephonic contacts on the mobile of the noticee on and before March 28, 2008 wherein they could have also discussed about the purchase of OCPL shares. However, no conclusive proof in this regard could be found."

- It is a settled position of law that mere surmise and conjecture or suspicion cannot sustain the holding of guilt. In this regard, the ruling in the case of *Nandkishor Prasad vs*. State of Bihar is relevant, since the Supreme Court observed that: "*The minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take place of proof even in domestic enquiries."*

- Noticee's wife relied only on information available in the public domain to invest in OCPL shares.

- It is pertinent to mention here that during the year ended March 31, 2008, the aggregate purchases by noticee's wife in equity shares of listed companies at NSE and BSE were for ₹ 5.19 Crores approximately. Therefore, SEBI's observation that noticee's wife traded infrequently and in low volumes in other scrips is erroneous and misleading.

- To prove a charge of insider trading, under PIT Regulations, it is essential, at the outset, to show that a violation of Regulation 3 of the PIT Regulations has occurred. For this purpose, it is also imperative to establish that the person alleged to have engaged in insider trading was an "insider" of the company whose shares are alleged to have been traded (which is OCPL in the present case). However, in the situation at hand, neither has Regulation 3 of the PIT Regulations been invoked against the noticee nor has any case been made out by SEBI to demonstrate how the noticee constituted "insiders" of OCPL.

- From a plain reading of Regulation 2 (e) of PIT Regulations, it is evident that a person would qualify as an "insider" of a company only when he is connected with that same company and is reasonably expected to have access to Unpublished Price Sensitive Information (hereinafter referred to as '**UPSI**') regarding the securities of that company.

- In view of the above provisions, to establish an allegation of insider trading by the noticee in respect of OCPL scrip, it is imperative to prove that the noticee is 'insider' in relation to OCPL. This in turn, would require proof of the fact that the noticee is "deemed connected persons"/ "connected persons" of OCPL.

- The SCN however, do not even allege in any way that the noticee is insider or connected person of OCPL. Further, no evidence has been provided by SEBI either as part of the SCN or in the documents inspected to suggest that the noticee was insider of OCPL. The noticee respectfully submits that the connection of the noticee with RLL cannot be superimposed to imply or to allege that the noticee was connected person with respect to OCPL or to allege that he engaged in insider trading in the shares of OCPL.

- The noticee submits that a penalty under Section 15G (i) of SEBI Act can only be imposed in a situation when an "insider" deals in the securities of a body corporate on the basis of UPSI. The SCN only suggest that the

noticee is “deemed to be connected persons/ connected persons” of RLL and that is not adequate to establish that the noticee was an insider with respect to OCPL as well during the relevant period or he engaged in insider trading in the shares of OCPL in terms of Regulation 3 of the PIT Regulations. The SCN and the evidence relied upon by SEBI also do not prove that the noticee had received or had acess to any UPSI with respect to OCPL. It is therefore entirely misplaced to suggest that by virtue of his connection to RLL (if at all), the noticee could be held to be in violation of Section 15G (i) of SEBI Act for trading in the shares of OCPL which is a company totally unconnected with RLL.

12. The AR vide its letter dated 28.09.2011requested for another adjournment of the hearing. However, vide letter dated 29.09.2011 the AR was informed that its request for adjournment of final hearing has not been acceded to and the noticee was advised to attend the scheduled final hearing on 03.10.2011. The AR once again vide its letter dated 29.09.2011 sought for an adjournment, however, the AR vide its letter dated 30.09.2011 confirmed that it will attend the scheduled final hearing along with Shri Zal Andhyarujina, Advocate Bombay High Court who has also been appointed by the noticee vide his letter dated 30.09.2011 to represent him.

13. During the personal hearing the ARs denied all the allegations made in the SCN and reiterated the submissions made in the reply dated 23/09/2011. The ARs submitted that the noticee is connected to RLL but it is not reasonable enough to say that the noticee being Non Executive Independent Director would have had or had access to UPSI of Solrex, a subsidiary company of RLL. A clarification was sought from the noticee whether the noticee was aware of the Board Meetings of SPL or RPL during the investigation period i.e. on 20/03/2008, 28/03/2008 and 31/03/2008 and whether he was aware of the agenda of the Board Meetings of SPL or RPL during the investigation period on 20/03/2008, 28/03/2008 and 31/03/2008. The ARs also undertook to submit noticee’s wife trading in other scrips and

noticee's trading during the investigation period along with a further reply with relevant case laws to the SCN within ten days from the date of hearing.

14. Accordingly the noticee vide his letter dated 13.10.2011 submitted a further reply to the SCN wherein he stated as follows-

- From the reading of Regulation 2 (e) of PIT Regulations (and so far as is relevant), it is evident that an insider must be a person who is or who connected with the company **and** who is reasonably expected to have an access to UPSI in respect of securities of a company **or** has received **or** has had access to such UPSI.

- There is no charge whatsoever in the SCN and no material has been provided by SEBI to demonstrate that noticee is a person who is either reasonably expected to have access to the UPSI in respect of the securities of a company or that he has actually received or has had access to such UPSI. This being the case, it is submitted that assuming everything stated in the SCN to be true, the SCN can never result in the conformation of the charge against the noticee that he is an insider.

- The charge that noticee was in possession of the UPSI as the same was *"implicitly available"* since March 20, 2008 when the Board of Directors of RPL and SPL passed a resolution to open a joint demat account in the names of both companies on behalf of Solrex is merely stated to be rejected. There is no material whatsoever which supports SEBI's case that such information was in possession of noticee. In any event, the mere fact that the Board of RPL and SPL passed a resolution on that day to open a joint demat account in the name of both the companies on behalf of Solrex does not in any manner indicate that knowledge of the forthcoming purchases by Solrex was in existence and/or available to anyone at all on that date. These findings are purely in the nature of conjecture. In fact, from the material available, it is evident that the Boards of RPL and SPL became aware of the said purchases by Solrex on 31st March, 2008 itself. It is a settled position in law that mere surmise and conjecture or suspicion cannot sustain the holding of guilt and standard of proof.

- Similarly, the charge that noticee was somehow in possession of the UPSI as *"the decision to purchase the OCPL shares would have been taken inside of RLL by 20/3/2008 at least"* and that the UPSI *"existed within RLL at least from March 20, 2008"* by itself can never result in the charge being confirmed against the noticee. There is no material, whatsoever, to suggest that even if the said information was in existence and available to

RLL, noticee was in possession of the same. Further and in any event, as stated above, the mere fact that the said joint demat account was opened does not lead to the conclusion that there was any information available to RLL that Solrex intended to make the said purchases in OCPL.

- The noticee submits that merely by virtue of being an Independent Director and a Non-Executive Director of RLL, noticee could not have been in possession of the UPSI. It is submitted that the SCN must, to make good the charge, state the specific manner in which the noticee was in fact in possession of the UPSI. There is no such allegation/charge made by SEBI.

- In any event, to assume as the SCN does that merely by virtue of being an Independent Director, noticee was in possession of the UPSI is misconceived and unfounded. Further, such an assumption altogether ignores the fact that Independent Non-Executive Directors have a very limited role to play in the day to day affairs and management of the company.

- The noticee has also provided a detailed trading history of noticee's wife, including her demat account statement for account No.10004490 to evidence the fact that she undertook substantial number of transactions and in sizeable quantities of shares in the stock market during the year ended March 31, 2008. The noticee has also provided statement showing transactions undertaken by noticee's wife in equity shares (10,000 and above) bought at the Stock Exchanges (NSE & BSE) and credited to her demat account during the year ended March 31, 2008 and the statement showing peak holdings (10,000 and above) of equity shares in her demat account during the year ended March 31, 2008 to prove that she had undertaken large trades of similar nature in other shares and the transaction in the shares of OCPL was similarly executed in the normal course without access to any UPSI.

Clarifications:

- In response to the specific query raised during the personal hearing as to whether the noticee traded in any other shares during the period of 17th March, 2008 to 19th April, 2008, the noticee submitted that noticee's wife had purchased 3,000 equity shares of Gujarat NRE Coke on the NSE on 27th March, 2008. The noticee also confirms that no transactions were undertaken in his account during the relevant period.

- Clarification was also sought as to whether the noticee was aware of the Board Meetings or the agenda of the Board Meetings of SPL and RPL

during the period between March 20, 2008 and March 31, 2008. The noticee has confirmed that he was not aware of the Board Meetings, the agenda or the background papers, etc. of the Board Meetings of SPL and RPL during the period between March 20, 2008 – March 31, 2008.

CONSIDERATION OF EVIDENCE AND FINDINGS

15. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegation in the present matter is that the noticee traded on behalf of his wife while in possession of UPSI that Solrex is going to make a strategic investment in the scrip of OCPL.

16. The primary issue in the present matter is that whether the noticee is reasonably expected to have access to UPSI or has received or has had access to UPSI when he traded on behalf of his wife in the scrip of OCPL.

17. It is observed from the IR that since the time the joint demat account was opened in the name of SPL and RPL on behalf of Solrex, it did not have any other securities at any point in time other than the OCPL shares that were bought by Solrex from 31/3/2008 onwards. It is also noted that Solrex did not trade in any other scrip during the investigation period. Thus, it could be concluded that the demat account was opened for the purpose of purchase of OCPL shares only and as such the decision on the same was implicitly available since 20/3/2008 at least when the Boards of SPL & RPL had decided to open a Demat Account with Religare Securities Ltd. on behalf of Solrex.

18. Further, considering the bank balances of RPL and SPL which stood at only ₹ 10,000 each as on 31/03/2008, it does not seem plausible that the Board of Directors of RPL and SPL being public limited companies could decide then and there at the Board Meeting to make a strategic investment not exceeding ₹ 200 crore and less than 15% of the equity share capital of

OCPL without considering about investing in any other scrip / sector / industry. It is observed from the IR that during the investigation when copy of agenda papers for the Board meeting of RPL & SPL held on 31.03.2008 was sought, Shri Sandeep Mahendroo (Director Finance – Global Manufacturing & Shared Services Centre of RLL & Director of SPL & RPL) replied vide his email dated 14.03.2011 that for the Board meetings of SPL and RPL, background and agenda papers were not circulated. It also raises a suspicion that the Board of a company whose financial strength was only ₹ 10,000 could take such a major investment decision of making a strategic investment of ₹ 200 crore and less than 15% of the equity share capital of OCPL in an hours time. This further strengthens the fact that the decision to invest in the OCPL shares was implicitly / inherently available since 20/3/2008.

19. It is noted from the IR that Shri Malvinder Mohan Singh (the then CEO & Managing Director of RLL) vide his email dated 27.01.2011 had informed SEBI that the matter as per his recollection came up during the last week of March 2008 and few Directors from the offices of partners of Solrex (RPL & SPL) approached RLL, indicating that Solrex desired to acquire shares of OCPL and required funds for the same. Thus, it can be concluded that Shri Malvinder Mohan Singh was in possession of the information regarding investment by Solrex in the scrip of OCPL in the last week of March 2008. Further, Shri Omesh Sethi would be reasonably expected to have access to the information regarding investment by Solrex in the scrip of OCPL since he was Vice President and Head Global Finance of RLL (as per the Minutes of Board Meeting of RLL held on 22.04.2008) and was also on the Boards of RPL & SPL.

20. It is seen from the telephonic records that the noticee was in constant touch with Shri Malvinder Mohan Singh and Shri Omesh Sethi from 24.03.2008 to

26.03.2008 (last week of March 2008) who had received / access to UPSI and thereafter the frequency of the telephonic contact reduced considerably. From the telephonic call records available on record, it is observed as follows:

- On 24.03.2008 Shri Malvinder Mohan Singh spoke to the noticee four times for 25 mins.
- On 25.03.2008 the noticee spoke to Shri Omesh Sethi and then Shri Omesh Sethi spoke to the noticee three times for 20 mins.
- On 26.03.2008 Shri Malvinder Mohan Singh spoke to the noticee twice for 15 mins.

21. Over here I would like to rely on the recent insider trading case decided on 11.08.2011 by the Hon'ble District Court Southern District of New York in the matter of *United States of America* V *Raj Rajaratnam* 09 Cr. 1184 (RJH) wherein on the charge of Count One: The Galleon Conspiracy, Rajaratnam argued that "…relying on the calls and trading records without any direct evidence of the content of the calls asks the jury to engage in impermissible speculation. (Tr. 3688.) However, the Court of Appeals has rejected that proposition. *See McDermott*, 245 F.3d 133. In *McDermott*, the Second Circuit considered the insider trading conviction of McDermott, a corporate executive, for tipping Gannon, with whom he was having an affair. Neither McDermott nor Gannon (nor Pomponio, whom Gannon tipped during the course of another affair) testified. Rather, [t]he Government built its case against McDermott almost entirely on circumstantial evidence linking records of telephone conversations between McDermott and Gannon with records of Gannon's and Pomponio's trading activities…Although the government was unable to produce direct evidence of the content of any conversation during which McDermott transferred material, non-public information to Gannon, the Second Circuit held "that rational minds could infer such a conclusion from the above evidence…"

22. The information regarding the strategic investment of ₹ 200 crore by Solrex in OCPL is price sensitive and it is beyond doubt that it was unpublished at the time the noticee traded on behalf of his wife in the scrip.

23. I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *Shri E Sudhir Reddy* Vs. *SEBI* decided on 16.12.2011 wherein the Hon'ble Securities Appellate Tribunal has observed as follows:

> *"…The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the Sebi Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice…"*

24. Thus, based on the above circumstantial evidences, it can be reasonably concluded that the noticee had received / access to the UPSI. In view of the same, the noticee's contention in para 11 sub para 2 does not hold good.

25. The next issue to be decided is whether the noticee is an "Insider". To arrive whether the noticee is an "Insider", the following 2 criteria as per Regulation 2(e) of PIT Regulations should be shown:

    a. The noticee is or was connected with the company or is deemed to have been connected with the company.

    b. The noticee is reasonably expected to have access, by virtue of such connection, to unpublished price sensitive information of **a**

company or who has received or has had access to such unpublished price sensitive information.

26. It is noted that the noticee at that point in time was a connected person of RLL (holding company of Solrex) as per Regulation 2(c) (i) of PIT Regulations being its Independent Director. It is observed from the IR that earlier the noticee was VP Finance & Corporate services of RLL and he ceased to be Whole time Director of RLL w.e.f 31.12.03. The text of the Regulation 2 (c) (i) of PIT Regulations, 1992 is as follows:

> 2 (c) "connected person" means any person who—
>
> (i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or
> …."

27. The noticee is deemed to be connected with Solrex as per Regulation 2(h) (i) of PIT Regulations since Solrex is the 100% subsidiary company of RLL. Further, the Directors of RPL and SPL (Partners of Solrex) are the same and they are also the Directors / senior managerial personnel of RLL. Thus, the first criterion is fulfilled by the noticee. The text of the Regulation 2 (h) (i) of PIT Regulations, 1992 is as follows:

> 2 (h) "person is deemed to be a connected person", if such person—
>
> (i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;

28. It has already been established in pre paras that the noticee had received / access to the UPSI. Thus, the second criterion is also fulfilled by the noticee. Hence, the noticee is an "Insider" within the meaning of Regulation 2(e) of PIT Regulations.

29. The noticee's argument that a person would qualify as an "Insider" of a company only when he is connected *with that same company* and is reasonably expected to have access to UPSI regarding the securities of that company is not acceptable. On a perusal of Regulation 2(e) of PIT Regulations, it is seen that a person is an "Insider", if he is connected with *the company* and has received or has had access to UPSI or is reasonably expected to have access to UPSI in respect of securities of *a company*. The use of words *the company* in one place and *a company* at another place, makes it clear that the securities need not be of the same company with which the person is connected or is deemed to be connected. It is noted that vide an amendment the letter "*the*" was substituted for "*a*" from the said Regulation with effect from 20.02.2002.

30. To illustrate, if noticee's submission is accepted then a situation will arise wherein a Director of the company X cannot be held guilty of insider trading if he trades in the scrip of company Y based on the UPSI, that company X is going to make a strategic investment / placing a huge purchase order for plant and machineries in company Y. Such a scenario will defeat the purpose of PIT Regulations.

31. Thus, from the above it can be concluded that the noticee is an "Insider" as per PIT Regulations.

32. It is observed from noticee's wife bank statement and the IR that she had received funds from the noticee and had transferred the sales proceeds back to him. Further, the noticee's wife mentioned in her reply dated 01.01.2011 to the investigation department that the instruction to the stock broker for the aforementioned transactions was given telephonically by the noticee himself. Thus, it can be concluded that the noticee was dealing on behalf of his wife.

33. Further, from the IR it is noted that the noticee's wife purchased OCPL shares on 27.03.2008 and 28.03.2008 on NSE for ₹ 46,09,780 and sold it off within 2 weeks of buying the same. Thereby making a considerable profit of ₹ 30,88,103. Thus, her decision to buy 35,000 shares of OCPL on NSE within a period of 2 days and subsequently selling it off within 2 weeks, thereby making a profit of approximately 67%, appears to have been undertaken as the noticee had received / access to UPSI.

34. It is further observed from the demat statement for the period from 01.10.2007 to 30.04.2008 submitted by the noticee's wife that she had bought approximately another 15,000 shares of OCPL on 28.03.2008 on BSE during the investigation period and sold it off within 2 weeks, thereby making additional profit of approximately ₹ 12.84 lakhs.

35. Once again I would like to rely on the recent insider trading ruling of the Hon'ble District Court Southern District of New York in the matter of *United States of America* V *Raj Rajaratnam* 09 Cr. 1184 (RJH) decided on 11.08.2011 wherein it was observed as follows:

> *"…Furthermore, both the Second and Ninth Circuits have noted that evidence of timely trading following calls connecting an insider and tippees, particularly in "situations in which unique trading patterns or unusually large trading quantities suggest that an investor had used inside information," gives rise to a strong inference of insider trading. See United States v. Smith, 155 F.3d 1051, 1069 (9th Cir. 1998)…"*

36. The Hon'ble Securities Appellate Tribunal in the matter of *Rajiv B Gandhi et. al.* Vs. *SEBI* decided on 09.05.2008 wherein the Hon'ble Securities Appellate Tribunal has observed as follows:

> *"…We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden*

of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading. In view of the interpretation that we have placed on Regulation 3 and on the admitted facts of this case, there would be a presumption that the appellants being insiders, traded on the basis of the unpublished price sensitive information in possession of Gandhi and the onus to rebut that presumption was on them..."

37. Thus, in view of the material made available on record and circumstantial evidences as discussed above, it can be further concluded that the noticee being an insider had traded on behalf of his wife in the scrip of OCPL while he had received / access to UPSI.

38. Regarding the issue of relevance of circumstantial evidence, the Hon'ble District Court Southern District of New York in the matter of *United States of America* V *Raj Rajaratnam* 09 Cr. 1184 (RJH) decided on 11.08.2011 has observed as follows:

"…Moreover, several other Courts of Appeals have sustained insider trading convictions based on circumstantial evidence in considering such factors as "(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contact between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee." United States v. Larrabee, 240 F.3d 18, 21-22 (1st Cir. 2001)…"

39. In the instant case all the 6 parameters mentioned in aforesaid case has been established in pre paras. Therefore, it can be concluded that the

noticee has violated Sections 12A (d) and (e) of the SEBI Act, 1992. The text of the said provisions are as follows:

SEBI Act

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

12A. No person shall directly or indirectly –

(d) engage in insider trading;

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

40. The said violations attract penalty under Section 15G (i) of the SEBI Act. The text of Section 15G (i) is as follows:

SEBI Act

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
…
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.

41. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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

42. With regard to the above factors to be considered while determining the quantum of penalty, it is observed that the investigation report has quantified that noticee's wife earned a positive square off difference of ₹ 30.88 Lakh through the aforementioned trades.

43. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 50,00,000/- (Rupees Fifty Lakh only) on the noticee under Section 15G (i) of the Securities and Exchange Board of India Act, 1992 for the violations of Sections 12A (d) and (e) of the SEBI Act, 1992 which is appropriate in the facts and circumstances of the case.

ORDER

44. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹ 50,00,000/- (Rupees Fifty Lakh only) on Shri V K Kaul having PAN No. AAAPK6215D in terms of the provisions of Section 15G (i) of the Securities and Exchange Board of India Act, 1992 for the violations of Sections 12A (d) and (e) of the SEBI Act, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the noticee.

45. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to Deputy General Manager- ID-6, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

46. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Shri V K Kaul residing at Flat No. 8202 & 8204, Sector B-XI, Vasant Kunj, New Delhi-110070 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: January 04, 2012

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER