

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ISD/IPCL/MHM-SMM/AO/DRK-CS/EAD-3/356/22-13]**

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

In respect of
Shri. Manoj H.Modi
and
Smt. Smita M Modi
29, Sharda Sadan, 3rd Floor,
11 S.A. Brelvi Road
Mumbai-400 001

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation in the trading of the scrip of Indian Petrochemicals Corporation Ltd. (hereinafter referred to as “IPCL/ Company”) during the period from February 22, 2007 to March 08, 2007 (hereinafter referred to as “Investigation Period”). Reliance Petroinvestments Ltd. (hereinafter referred to as "RPIL") has been classified as one of the promoters of IPCL holding around 46% shares of IPCL. The price and volume data at BSE and NSE for the period February 22, 2007 to March 09, 2007 is given below:

Date	NSE		BSE			SENSEX	SENSEX % change from prev. close
	Close Price	Total Traded Qty	Close Price	Total Traded Qty	% change from prev. close		
22/02/07	259.9	1833225	262.7	304470	0.00	14021.3	0.00
23/02/07	256.35	266739	256.65	277112	-2.36	13632.5	-2.85
26/02/07	259.15	230630	259.35	97684	1.04	13649.5	0.12
27/02/07	260.35	1185382	260.7	179809	0.52	13478.8	-1.27
28/02/07	260.7	883844	259.25	206326	-0.56	12938.1	-4.18
1/03/07	260.5	2006261	260.4	215421	0.44	13159.6	1.68
2/03/07	256.6	1929109	256.7	165530	-1.44	12886.1	-2.12

5/03/07	237.35	424400	237.4	243760	-8.13	12415	-3.79
6/03/07	232.95	999269	233.85	309412	-1.52	12697.1	2.22
7/03/07	231	575816	231.65	254617	-0.95	12579.8	-0.93
8/03/07	260.5	7686890	259.8	352576	10.84	13049.4	3.60
9/03/07	268.85	11580625	268.6	382351	3.28	12885	-1.28

2. It was observed from the above table that share price of IPCL had more or less moved in sync with the sensex movement as observed on March 5, 2007 the scrip declined by 8.13% on BSE when the sensex declined by 3.79%. It is pertinent to add that the price of the scrip declined even after the announcement of the interim dividend by IPCL. However, in a divergence from the index, the scrip witnessed substantial price gain on March 8, 2007 and March 9, 2007 subsequent to the important announcement of amalgamation of IPCL with Reliance Industries Ltd. (hereinafter referred to as "**RIL**").

APPOINTMENT OF ADJUDICATING OFFICER

3. Consequent to transfer of previous Adjudicating Officer, the undersigned was appointed as Adjudicating Officer and the same was communicated vide proceedings of appointing Adjudicating Officer dated August 16, 2012 to inquire into and adjudge under section 15G of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") the alleged violations of the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") by Shri. Manoj H. Modi (hereinafter referred to as "**MHM**") and Smt. Smita M Modi (hereinafter referred to as "**SMM**") {hereinafter collectively referred to as "**Noticees**"}

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice (hereinafter referred to as "**SCN**") dated January 31, 2011 was served on the Noticees by "Hand Delivery" in terms of the provisions of Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under Section 15G of the SEBI Act. In the said SCN, it was stated as follows:
- a. The following announcements made by IPCL on March 02, 2007 and on March 07, 2007 are price sensitive information as per the provisions of Regulation 2 (ha) of PIT Regulations:

Date/ Time	Announcement
02/03/2007 14:28	To consider, inter alia, declaration of Interim Dividend on equity shares of the Company. The Company further informed the Exchange that the Company has fixed March 22, 2007 as 'Record Date' to determine the equity shareholders who would be eligible to receive the Interim Dividend if declared by the Board at its meeting scheduled on March 10, 2007. In the event of the Board deciding to pay Interim Dividend, the Company shall commence dispatch of the Dividend Warrants on and from March 23, 2007.
07/03/2007 17:15 (after market hours)	To consider, inter alia, declaration of Interim Dividend on equity shares of the Company. The Company has now informed the Exchange that the Board will also consider and recommend amalgamation of the Company with Reliance Industries Limited (RIL).

- b. The definition of price sensitive information covers the information about "intended declaration of dividends (with interim and final)" and "amalgamation, mergers or takeovers" therefore, announcements of declaration of interim dividend and amalgamation of IPCL with RIL constitute price sensitive information (hereinafter referred to as "**UPSI**").
- c. The details of trading in the scrip of IPCL by MHM and SMM during the period from April 01, 2006 to March 31, 2007 are as under:

Date	Scrip	Trading Member Name	Client Name	Buy Qty	Buy Amount (in ` Lacs)	Average Buy Price (`)
28/02/07	IPCL	Sonal share & stock brokers pvt. Ltd.(SSSB)	MHM	25,000	63.25	253
1/03/07	IPCL	SSSB	SMM	58,900	152.87	259.54
2/03/07	IPCL	SSSB	SMM	16,100	41.7	259
			Total/ Avg	1,00,000	257.82	257.82

- d. MHM and SMM were considered as 'insider' on the basis of following:

- i) MHM has admitted that he acts as a consultant to Mr. Mukesh Ambani Chairman of IPCL (hereinafter referred to as "**MA-IPCL**") and also stated that he is currently on the board of Reliance Retail Ltd (hereinafter referred to as "**RRL**") and during the pertinent period was on the board of Reliance Petroleum Ltd. (hereinafter referred to as "**RPL**"), both group companies of RIL. By virtue of his position involving a professional and business relationship between himself and MA, suggesting the close proximity of MHM with MA and his group of industries, MHM is a connected person in terms of regulation 2 (c) (ii) of PIT Regulations and therefore he is an 'insider' in terms of provisions of Regulation 2 (e) of PIT Regulations.
 - ii) SMM is the spouse of MHM who is a connected person. By virtue of being a relative of a connected person, SMM is also deemed to be a connected person in terms of regulation 2(h) of PIT Regulations and therefore she is an 'insider' in terms of provisions of Regulation 2(e) of PIT Regulations.
- e. In view of the above it was alleged that during the period from February 28, 2007 to March 2, 2007, MHM and SMM together bought 1,00,000 shares of IPCL for ` 257.82 lacs at an average price of ` 257.82 per share prior to announcement of declaration of interim dividend and amalgamation of IPCL with RIL, i.e., when the price sensitive information remained unpublished. It was further alleged that MHM and SMM did not sell any shares of RIL and received the dividend of ` 6 per share amounting to ` 6,00,000/-. Pursuant to record date for merger of IPCL with RIL on October 18, 2007, MHM and SMM received 20,000 shares of RIL as against 1,00,000 shares of IPCL acquired prior to the dissemination of the price sensitive information.
- f. It was alleged that Noticees were in possession of UPSI on the following grounds, while trading in 1,00,000 shares of IPCL:
- i. MHM is a 'connected person' and therefore he is an 'insider'.
 - ii. SMM is the spouse of MHM who is a connected person. By virtue of being a relative of a connected person, SMM is also a 'deemed to be a connected person' and therefore she is an 'insider'.
 - iii. The timing of dealing in the shares of IPCL by MHM and SMM during the period from February 27, 2007 to March 2, 2007 coincides with the dealing in the shares of IPCL by RPIL and more coincidentally both the entities carried out their purchases through the stock broker Sonal

Share & Stock Brokers Pvt. Ltd. (hereinafter referred to as "**SSSB**").
Incidentally, as per the records of NSE, MHM is a director of SSSB.

- g. In view of the aforesaid, it was alleged that MHM and SMM were in the possession of UPSI while trading in the scrip of IPCL prior to announcement of declaration of interim dividend and amalgamation of IPCL with RIL which resulted in violation of regulation 3 of PIT Regulations.
5. Noticees vide letter dated February 11, 2011 sought an opportunity of inspection of all documents/information relied upon in the SCN. Accordingly, vide letter dated October 4, 2011 an opportunity of inspection of documents was granted to the Noticees by the Investigation Authority (IA) on October 18, 2011. Subsequently, the Noticees's representative AZB & Partners vide its letter dated November 2, 2011 and November 23, 2011 emphasized that the documents/ supporting material relied upon by SEBI in alleging that MHM and SMM were in possession of UPSI while trading in IPCL were not provided and requested for the same. However, vide letters dated November 15, 2011 and May 28, 2012 it was informed by the IA that all the documents sought by the Noticees were furnished, duly examined and acknowledged by the authorized representative of the Noticees.
6. Noticees filed consent application dated November 21, 2011, however, the consent applications were rejected and the same were communicated to the Noticees vide letter dated November 1, 2012.
7. It was observed from the records that in spite of lapse of more than one and half years no reply was received from the Noticees. However, an opportunity of personal hearing was granted to the Noticees vide hearing notice dated September 24, 2012 to appear on October 22, 2012 at 11:00 A.M at Sebi Bhavan, Mumbai. Further, in the notice the Noticees were also advised to submit their reply by October 15, 2012. In response to the same, Noticees vide their letter dated October 15, 2012 sought short extension of time upto October 26, 2012 to submit their reply to the SCN and also sought for adjournment of personal hearing. While acceding to the request of the Noticees another opportunity of personal hearing vide hearing notice dated October 17, 2012 was granted to the Noticees to appear on November 8, 2012 at 11:00 A.M at Sebi Bhavan, Mumbai.
8. Noticees submitted their common reply dated October 25, 2012, which states as follows:
- a) The Noticees are active long term investors in various stocks. MHM and SMM have been actively trading on various stock exchanges for more than a

decade. Following table gives the value of transactions in the cash segment of stock markets during the period 2001-02 to 2006-07.

Year	MHM			SMM		
	Purchases	Sales	Total	Purchases	Sales	Total
2001-02	29.78	12.30	42.08	6.39	3.37	9.76
2002-03	49.63	43.57	93.20	4.18	4.74	8.92
2003-04	80.00	90.45	170.45	23.31	25.23	48.54
2004-05	52.87	56.34	109.21	22.36	23.27	45.63
2005-06	130.74	110.42	241.16	31.33	27.59	58.92
2006-07	21.34	36.62	57.96	18.89	23.36	42.25

- b) The relevant trades i.e. trades done on 28/02/07, 1/03/07 and 2/03/07 were executed by the Noticees on the basis of charts, economic survey, worldwide demand and supply of petrochemicals, budget and the opinions expressed by reputable and credible analysts - recommending purchase of the Company's stock based on performance in the FY 2006-07. Further, the budget of February 28, 2007 seemed beneficial for petrochemical companies.
- c) Despite repeated requests to SEBI, the Noticees have not been provided or shown the information or material (if any) on the basis of which the SCN has been issued to the Noticees. Noticees respectfully submit that in the interest of justice and fair play, it is incumbent upon SEBI to provide all information and material based on which the SCN has been issued to the Noticees since it is absolutely necessary so to do to enable the Noticees to effectively present their case.
- d) Further conjectural allegations are contained in paragraph 9(d) of the SCN regarding the coincidental timing between the relevant trades executed by the Noticees and trades executed by Reliance Petroinvestments Limited ("RPIL") in the shares of IPCL. The SCN alleges that the Noticees and RPIL carried out their purchase through M/s. Sonal Share & Stock Brokers Private Limited ("SSSB"), in which MHM is a director. It is submitted that the coincidence in the timings of execution of the relevant trades and RPIL's trades in the shares of IPCL have no material bearing to the present case. No inference of the nature sought to be drawn in the SCN from the facts specified therein can be drawn. The SCN fails to provide any material to

establish the fact that MHM obtained any so-called UPSI from SSSB or RPIL, or any other person.

- e) Further, it is submitted that SSSB is a broking firm owned by MHM's brothers and MHM has been regularly trading through SSSB since inception in 1995. Moreover, this is neither the solitary nor the first instance of Reliance group companies having traded in securities through SSSB. SSSB has been one of the broking firms for promoter group companies of RIL for many years. RPIL has availed the services of SSSB since May 2006 for purchase of IPCL shares and it is not that RPIL traded in IPCL shares through SSSB only during the Relevant Period.

- f) It is also submitted that MHM resigned as director of SSSB in April 1996. The resignation has been communicated to the NSE by SSSB and NSE has also acknowledged and noted the same in May 1996. SSSB has also informed MHM that every year the list of directors of SSSB is being furnished to NSE and it is the mistake of NSE to have shown MHM as director of SSSB. Copy of the communication to NSE dated April 29, 1996 and the copy of letter dated 17th May 1996 from NSE acknowledging the resignation were also submitted.

- g) The Noticees have ascertained the following facts:
 - a) On 28th February 2007, the Union Budget contained a proposal to enhance the Divided Distribution Tax (DDT) from 12.5% to 15% for dividends payable on and from 1st April 2007;

 - b) In view of the above, a proposal to declare and pay interim dividend by the Company was mooted by Mr. S.K. Anand, Whole-time Director of the Company on 2nd March 2007;

 - c) Accordingly, Mr K Sethuraman, Vice President - Corporate Secretarial informed the stock exchanges about the proposed board meeting on 10th March 2007 for consideration of payment of interim dividend;

 - d) The information regarding proposed declaration of interim dividend by the Company was known only to Mr Mukesh Ambani, Mr. K. Sethuraman, Mr. S.K. Anand and Ms. Sasikala Rao and was not known to anyone else prior to the notification to stock exchange by the Company on 2nd March 2007.

- h) The Company closed its trading window as per the Insider Trading Code of the Company only on 2nd March 2007 which closure, continued till 24 hours after 10th March 2007 (date of Board Meeting of the Company declaring interim dividend and approving the amalgamation of the Company). Given that the trading window had got shut on 2nd March 2007 when the UPSI being the proposal for interim dividend came into existence, there was no requirement to shut the trading window again for the second UPSI being the proposed merger. This fact clearly demonstrates that even according to the Company no unpublished price sensitive information regarding the declaration of interim dividend existed prior to the corporate announcement made on March 2, 2007.
- i) Without prejudice to the above contention, it is further submitted that in view of the proposal to enhance the DDT from 12.5% to 15% with effect from 1st April 2007 contained in the Union Budget announced on 28th February 2007, it was only to be expected that several companies would declare and distribute an interim dividend prior to 1st April 2007. While usually companies do not declare and distribute interim dividend during the month of March, as a matter of fact, about 180 companies in the aggregate declared and distributed interim dividend during the month of March 2007, in view of the budget proposal. The list of such companies includes prominent public sector companies such as LIC Housing Finance Limited, UCO Bank, Andhra Bank, MMTC Ltd, NALCO Ltd. etc. Thus, the announcement of interim dividend by the Company could not be considered as unexpected or UPSI in light of the budget proposal made public on the morning of 28th February 2007. IPCL was a regular dividend paying company at least since 1997. It did not require great mind or any inside information to expect declaration and distribution of interim dividend by the Company prior to 1st April 2007.
- j) The Noticees have ascertained the following facts:
- a) The proposal for the merger of IPCL with RIL was for the first time considered only on 4th March 2007.
 - b) The proposal was known to only select top executives of IPCL and RIL and was kept confidential;
 - c) The valuer's and financial advisors were appointed only on or after 5th March 2007;

The aforesaid facts clearly prove that the Second Alleged UPSI was not in existence while carrying out the relevant trades.

- k) The allegation that "MHM has admitted that he acts as a consultant to Mr. Mukesh Ambani, Chairman of IPCL" is a misinterpretation of the statement made by MHM to create a wrong perception that MHM was a consultant to Mr. Mukesh Ambani on all matters of the Company. MHM has stated (refer letter dated July 17, 2007) *"I am a consultant to Sri Mukesh Ambani with respect to new business ventures. Presently I am involved in setting up Reliance Retail Ltd. During the course of my work, I have to interact with employees or consultants of Reliance Group as the situations demand, I am not involved in the day to day affairs of RIL or IPCL."* MHM is a consultant to Shri Mukesh Ambani, Chairman of RIL only with respect to new business ventures by RIL group (hereinafter referred to as "**MA-RIL-NBV**"). He is not a consultant providing advice on the day to day affairs of the Company or with respect to any decisions of the Company.
- l) Further for a person to be considered as a "connected person" the second limb of Regulation 2(c)(ii) of the PIT Regulations "and who may be reasonably be expected to have an access to unpublished price sensitive information in relation to that company" must be fulfilled. It is not enough if a person just holds a professional or business relationship with the company. SEBI must demonstrate that the person, by virtue of his relationship with the company may reasonably be expected to have access to unpublished price sensitive information.
- m) The transactions under question are one among numerous long term investment transactions undertaken in the ordinary course by the Noticees. Without prejudice to any of the aforesaid, the volume of the transactions entered into by the Noticees was not material and did not yield any significant yield for the Noticees.
- n) In the present case, it is submitted that SEBI has completely failed to provide any, (leave alone) cogent material, which would satisfy a reasonable standard of proof that the Noticees are 'connected' persons or 'deemed to be connected' persons or that they had in fact, received or had access to unpublished price sensitive information.
- o) The SCN alleges that SMM is 'deemed to be connected' under Regulation 2(h)(viii) of the PIT Regulations since she is the wife of MHM. However, the SCN fails to allege or make out any case or produce any evidence to establish that SMM had, in fact, received or had in fact any access to the First Alleged UPSI and/or the Second Alleged UPSI of IPCL. Further, the

SCN is also devoid of any relevant independent cogent material to show that MHM had passed on any price sensitive information (assuming strictly for the sake of argument and without admitting that he was in possession of any unpublished price sensitive information), to SMM to facilitate her trades.

9. Noticees vide common letter dated November 6, 2012 authorised Mr. Janak Dwarkadas, Senior Advocate, Mr. K.R. Raja and Mr. Shuva Mandal, Partner- AZB & Partners (Advocates and Solicitors) to appear as Authorised Representatives (ARs) on their behalf for the personal hearing. Personal hearing was conducted on November 8, 2012 wherein ARs reiterated the submissions made vide reply dated October 25, 2012. During the course of the hearing ARs have submitted that the alleged UPSI was not in existence prior to 2/03/2007 14:01 pm and SCN does not contain anything to show the existence of UPSI before 14:01 pm. ARs further stated there was no evidence direct, indirect, or circumstantial in the show cause notice to prove that such information existed. ARs further stated that the alleged close proximity of MHM with MA-RIL-NBV does not entail that the UPSI was made known to him. ARs further stated that MHM was professional consultant only for new business ventures by RIL group but no inference could be drawn to say that he was made aware of both the UPSI relating to IPCL. In response to the question as to why Noticees relied on four months old research reports to trade in the shares of IPCL to which ARs replied that Noticees are long term investors therefore invested on the basis of multiple research reports over a period of time and that the reports also contained the future projection of prices. ARs were advised to submit a brief background of MHM covering appointment letter to act as professional consultant for new business ventures, his association with RIL from January 2006 to the March 2007. The ARs during the personal hearing have submitted following additional documents/ affidavits undertaken by Directors/ officials/ valuers/ analysts in support of the claim that MHM was not in possession of UPSI and the same are taken on record:

- i) Mr. Mukesh Ambani, Chairman and Managing Director of Reliance Industries Ltd. (RIL).
- ii) Mr. Alok Agarwal, Chief Financial Officer of RIL.
- iii) Mr. L.V. Merchant, Controller-Accounts of RIL.
- iv) Mr. Bimal Tanna, Executive Director with PricewaterhouseCoopers Pvt. Ltd.
- v) Mr. S.K. Anand, the then Whole-Time Director of IPCL.
- vi) Mr. Sanjeev Agarwal, Partner in charge of valuations practice at Ernst & Young Pvt. Ltd. during 2007.
- vii) Mr. K. Sethuraman, company secretary of RIL.
- viii) Mr. Adi Patel, Co-CEO, Investment banking of JM Financial Institutional Services Private Ltd.

- ix) Letter dated November 2, 2012 from BoAML.

The ARs have undertaken to submit the documents sought during the personal hearing and additional submission if any within ten days of hearing. The Noticees had subsequently filed an additional written submissions dated November 19, 2012, wherein it was stated that MHM provides consultancy services with respect to setting up of new projects by Reliance Group. In this connection the following officials also submitted the affidavits:

- i) L.V. Merchant, Controller Accounts-RIL on behalf of RIL.
ii) Sri M. Sundar, Director Reliance Ports and Terminals Ltd.

CONSIDERATION OF EVIDENCE AND FINDINGS

10. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegations in the present matter are that the Noticees were in possession of UPSI i.e., announcement of declaration of interim dividend of IPCL and amalgamation of IPCL with RIL while trading in the scrip of IPCL. Before proceeding with the merits of the case it may be added that during the personal hearing, the Noticees were asked whether they have received all the documents they had sought for and the ARs confirmed that the documents that were sought by the Noticees have been provided by SEBI. Hence, the matter is proceeded as below.

Allegations with respect to Shri. Manoj H. Modi

11. It was alleged in the SCN that MHM is a connected person in terms of regulation 2(c) (ii) of PIT Regulations and therefore he is an 'insider' in terms of provisions of regulation 2(e) of PIT Regulations as stated in para d(i) at page 4. Therefore, the primary issue to be decided in the present matter is whether the Noticee is a "connected person" as per regulation 2(c)(ii) of PIT Regulations and therefore an "insider" as per regulation 2(e) of PIT Regulations. Before moving forward it would be pertinent to refer to the definition of "connected person" as per the provisions of regulation 2(c)(ii) of the PIT Regulations:

"connected person" means any person who- (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company [whether temporary or permanent] and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company":

[Explanation: - For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading.]

12. During the deposition of MHM recorded on July 16, 2007 he had stated that he acts as professional consultant to MA-RIL-NBV, and currently involved in Reliance Retail project and that his consultancy with Reliance Group of Companies/ group companies of RIL is only for new business ventures. He also stated that he was not involved in decision making process in RIL or IPCL during the financial year 2006-07. MHM in his reply has stated that the allegation that "MHM has admitted that he acts as a consultant to Mr. Mukesh Ambani, Chairman of IPCL" is a misinterpretation of the statement made by him during the deposition made on July 16, 2007 to create a wrong perception that he was a consultant to MA-RIL-NBV on all matters of RIL. He has submitted that he is a consultant to Shri Mukesh Ambani with respect to new business ventures by Reliance Group. Presently he is involved in setting up Reliance Retail Ltd. During the course of his work, he has to interact with employees or consultants of Reliance Group of companies as the situations demand. He further submitted that he is not involved in the day to day affairs of RIL or IPCL. MHM in his reply has further contended that the so-called close proximity between him and MA-RIL-NBV is a rationale wholly foreign and unknown to the definition of connected person as contained in regulation 2c(ii) of PIT Regulations.
13. In view of the contentions/ submissions of the Noticees comments were sought from the concerned department vide notes dated December 12, 2012 and January 24, 2013 with regard to following points:
- Existence of first alleged UPSI i.e. declaration of interim dividend,
 - IPCL closed its trading window on March 2, 2007 which continued till 24 hours after March 10, 2007, showing that UPSI did not exist,
 - Second UPSI came into existence only on 4th/5th March, 2007, the proposal was known only to top executives of IPCL and RIL. The valuers and financial advisors were appointed only on or after March 5, 2007,
 - Specific clarification as to whether MHM is a professional consultant or is in business relationship between himself and IPCL as per regulation 2(c)(ii) of PIT Regulations.

The department in their comments dated January 22, 2012 and February 6, 2013 have reiterated the findings as stated in the investigation report (IR) i.e.,

- (i) The inference drawn by the Noticees regarding existence of UPSI may not be true and other factors stated in IR clarifies that Noticees were aware of the 1st alleged UPSI at the time of trading.

- (ii) MHM is a consultant to MA-IPCL and was on the board of RRL and RPL, both group companies of RIL and have consulted them on various projects. On the basis of this it is an accepted position that he is related to MA-IPCL. Hence he is a connected person as defined under regulation 2c(ii) of PIT Regulations.
- (iii) MHM is related to MA-IPCL and hence is reasonably expected to have access to UPSI in respect of securities of IPCL.
- (iv) Trading pattern, timings of the trades of the Noticees and other entities, the proximity of MHM with MAIPCL being a connected person suggests that Noticees were in possession of UPSI.

However, no specific comments were received as to whether MHM is a professional consultant or is in business relationship between himself and IPCL as per regulation 2(c)(ii) of PIT Regulations.

14. As discussed in pre-para 11, as per regulation 2c(ii) of PIT Regulations, it is necessary to show that MHM holds a position involving a professional or business relationship between himself and the company [whether temporary or permanent] and who may reasonably be expected to have an access to UPSI in relation to that company. However, in the present case it was alleged that MHM had close proximity to MA-IPCL. It could be stated that mere close proximity by virtue of professional relationship i.e., MHM being professional consultant to MA-RIL-NBV does not suffice to show that MHM was connected for the purpose of regulation 2c(ii) of PIT Regulations which requires connection between the Noticee and the company i.e. IPCL and not to MA-RIL-NBV. Thus, it is difficult to conclude that MHM is connected person in terms of regulation 2(c) (ii) of PIT Regulations as alleged in the SCN.
15. Further, the BSE & NSE joint analysis report dated March 20, 2007 observed that SMM and MHM were apparently related to each other, apart from this relationship no other apparent relationship could be established between the company, clients and trading member.
16. From the available records it is observed that there is no evidence to substantiate/ demonstrate the connection between MHM and the company as required under regulations 2c(ii) of the PIT Regulations other than the mention that there is close proximity between MHM and MA-IPCL. In the given facts and circumstances of the case and from the available records it may be inferred that MHM did not have professional or business relationship with RIL and he may not be reasonably expected to have access to UPSI from RIL.

17. In order to establish a charge of insider trading under Regulation 3 of the PIT Regulations, it is necessary to prove that MHM was an 'insider' and he dealt in securities of the company IPCL when in possession of any unpublished price sensitive information. The text of said regulation is as follows:

"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*
- (ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:*

Provided that nothing contained above shall be applicable to any communication required in the ordinary course business or profession or employment or under any law."

18. The term insider has been defined under regulation 2(e) of PIT Regulations as follows:

2 (e). *"insider" means any person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or has received or has had access to such unpublished price sensitive information;*

As per regulation 2(e) of PIT Regulations to arrive at whether the Noticee is an "Insider", the following two criteria should be fulfilled:

- The Noticee is or was connected with the company or are deemed to have been connected with the company.
- The Noticee is reasonably expected to have access, to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information.

19. The Noticees in their reply have relied upon the following Hon'ble SAT orders:

Samir Arora v SEBI [2005] 59 SCL 96 (SAT), has held that there could be a prima facie presumption of being an 'insider' once both the conditions in the definition of 'insider' are met with. Thus, persons can be treated as insiders only if they have received price sensitive information or have had in fact, access to such information. It was also held that "the fact of such connected or deemed to be connected persons having received information will have to be established by evidence satisfying reasonable standard of proof."

Hon'ble Securities Appellate Tribunal in *Dilip S Pendse vs. SEBI*, held that, ".....the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In *Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377*, the learned judges of the supreme Court in the context of the administration of criminal justice observed that, 'it is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.' This principle applies to civil case as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability....."

In the above matter, SAT has also referred a judgement of *Bater v. Bater*, wherein Denning, L.J. has observed that "... It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion...".

BPL Ltd. SEBI ([2002] 38 SCL 310 (SAT), wherein the SAT has held that allegations of a serious nature and cannot be based on surmises and conjectures.

Videocon International v. SEBI ([2002] 4 Comp. LJ 402 (SAT) where it has been held that SEBI must adduce sufficient evidence as a result of which a reasonable person acting reasonable and objectively may arrive at a finding upholding the alleged charges.

Sterlite Industries (India) Ltd. V. SEBI (2001) 34 SCL 485 (SAT), SAT has held that evidence based on probabilities and endeavors to prove the fact on the basis

of preponderance of probabilities is not sufficient to establish such a serious offence of market manipulation.

20. From the above Hon'ble SAT orders/ judgements it can be safely stated that, higher the gravity of charge, higher must be the degree of evidence to prove the same. MHM being a professional consultant to MA-RIL-NBV, and being Director in two group companies out of number of group companies of RIL does not tantamount to have access to UPSI of either IPCL or RIL. Therefore, in the present case in the absence of adequate evidence available on record, the charge of insider trading against MHM could not be established.
21. It was further alleged in the SCN that MHM was in the possession of both the UPSI while trading in the scrip of IPCL prior to announcement of declaration of interim dividend and amalgamation of IPCL with RIL which resulted in violation of regulation 3 of PIT Regulations. MHM in his reply has contended that both the UPSI did not exist when he had traded in the scrip of IPCL. He has further contended that the proposal to consider declaring interim dividend was mooted by Mr. S.K. Anand, Whole Time Director of IPCL on March 2, 2007, accordingly, Mr. K Sethuraman Vice President- Corporate Secretarial informed the stock exchanges about the proposal of board meeting to be held on March 10, 2007 for consideration of payment of interim dividend. Considering the submissions of the Noticee and perusal of IR, it is observed that no sufficient/ cogent evidence was made available to establish that the UPSI existed before or at the time of trading done by MHM. Considering the reply of the Noticee and in the absence of any record in respect of this point in IR it may be reasonably inferred that the UPSI did not exist before March 2, 2007.
22. With respect to MHM being Director of SSSB, MHM in his reply has stated that he had resigned as a director of SSSB in April 1996. The resignation has been communicated to the NSE by SSSB vide letter dated April 29, 1996 and NSE has also acknowledged and noted the same in May 1996. SSSB has also informed MHM that every year the list of directors of SSSB is being furnished to NSE and it is the mistake of NSE to have shown MHM as director of SSSB. MHM has enclosed copy of the communication to NSE dated April 29, 1996 and the copy of letter dated May 17, 1996 from NSE acknowledging such resignation.

Allegation with respect to Smt. Smita M. Modi

23. SMM had been alleged as deemed to have been connected with the company in terms of regulation 2(h) of PIT Regulations as she is the spouse of MHM who was

alleged to have been a connected with the company and therefore she is also an 'insider' in terms of provisions of regulation 2(e) of PIT Regulations.

Regulation 2(h) of the PIT Regulations stipulates as follows:

2. (h) "person is deemed to be a connected person", if such person-

....

(viii) relatives of the connected person;

24. As stated in pre-para no. 17, to establish that SMM is an insider two criterias should be fulfilled. First whether the SMM can be considered as deemed to be a connected person with the company and second whether SMM is reasonably expected to have access to UPSI of the company. SMM is the spouse of MHM who was alleged to be connected to the company. As concluded above the allegations against MHM that he is connected to the company could not be established. From the available records it could not be said that she was connected to IPCL or RIL, therefore it can be inferred that she may not be reasonably expected to have access to the UPSI of the company. Moreover, from the records/ IR no satisfactory/ cogent evidence were made available to substantiate the allegations against SMM.
25. Noticees have relied upon the case of *Manoj Gaur v SEBI Appeal No. 64 of 2012* decided on October 3, 2012, the trading pattern of the appellants, the number of shares purchased and the status of the appellants was analysed and it was held that *"it seems highly improbable that trading was done by them on the basis of UPSI. On the other hand, it is more probable that they traded in the normal course of business."* The SAT argued if the intention of the appellants had been to capitalize on the UPSI, allegedly communicated by Mr. Manoj Gaur, the quantum of purchase would not have been so small. *"Both the appellants are financially independent and trade independently which is clear from their trading pattern that they have been buying the shares in similar quantities in the immediate past as well as on later dates."*
26. As discussed and concluded in pre-paras, since the allegation against MHM as an insider could not be established, consequently, the allegation against SMM is not established.
27. Thus, in the light of the above discussions/ inferences/ conclusions and in the absence of adequate/cogent evidence available in the IR, the alleged violation of regulation 3 of PIT Regulations by the Noticees could not be established. Therefore, I am of the view that the Noticees are not insiders as alleged in the SCN as per regulation 2(e) of PIT Regulations. Considering the material made

available it can be concluded that, the trading done by the Noticees in the scrip of IPCL during the investigation period is not in violation of regulation 3 of PIT Regulations.

ORDER

28. In view of the foregoing, considering the facts and circumstances of the case and available records, the alleged violation of the provisions of regulation 3 of PIT Regulations as specified in the SCN dated January 31, 2011 against Shri. Manoj H. Modi and Smt. Smita M. Modi do not stand established and the matter is, accordingly, disposed of.

29. In terms of rule 6 of the Rules, copies of this order are being sent to Shri. Manoj H. Modi and Smt. Smita M. Modi residing at 29, Sharda Sadan, 3rd Floor, 11 S.A. Brelvi Road, Mumbai-400 001 and to the Securities and Exchange Board of India, Mumbai.

Date: April 10, 2013

Place: Mumbai

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**