

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ISD/IPCL/RPIL/AO/DRK-CS/EAD-3/359/25-13]

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

In respect of
Reliance Petroinvestments Ltd.
3rd floor, Maker Chambers IV,
222, Nariman Point,
Mumbai- 400 021

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”). 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. Share price of IPCL had more or less moved in sync with the sensdex movement as observed on March 5, 2007 the scrip declined by 8.13% at BSE when the sensdex

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 announcement of amalgamation of IPCL with Reliance Industries Ltd. (hereinafter referred to as "**RIL**").

3. The findings of the investigation led to the allegation that Reliance Petroinvestments Ltd. (hereinafter referred to as "**RPIL/Noticee**") was in the possession of unpublished price sensitive information (hereinafter referred to as "**UPSI**") while trading in the scrip of IPCL prior to announcement of declaration of interim dividend and amalgamation of IPCL with Reliance Industries Ltd. (hereinafter referred to as "**RIL**") which resulted in violation of regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**"). It is observed from the Investigation Report (hereinafter referred to as "**IR**") that RPIL received a dividend of approx. ₹127.98 lakhs and made a notional profit of approx. ₹254.66 lakhs (diff. between acquisition cost of IPCL shares and market price of RIL shares on dealing dates based on average price). Thus, the Noticee made a profit of approx. ₹382.64 lakhs when in possession of UPSI relating to declaration of interim dividend and amalgamation of IPCL with RIL.

APPOINTMENT OF ADJUDICATING OFFICER

4. 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**").

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as "**SCN**") dated January 31, 2011 was served on the Noticee by "Hand Delivery" (acknowledged received) in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed under Section 15G of the SEBI Act. In the said SCN, it was stated/alleged that:
 - 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) It was alleged that during the period from February 27, 2007 to March 2, 2007, RPIL bought 21,32,953 shares of IPCL for ₹55,50,86,211 at an average rate of ₹259.42 prior to announcement of declaration of interim dividend and amalgamation of IPCL with RIL, i.e. when the price sensitive information remained unpublished. It is alleged that RPIL did not sell any shares of RIL till March, 31, 2007 and received dividend of ₹6 per share amounting to ₹1,27,97,718. Pursuant to record date for merger of IPCL with RIL on October 18, 2007, RPIL received 4,26,590 shares of RIL as against 21,32,953 shares of IPCL acquired prior to the dissemination of the price sensitive information.

c) RPIL and RIL are considered as '*insider*' on the basis of following:

- As per the disclosures made by IPCL under regulation 8 (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**") as on March 31, 2006, RPIL is named as a "***promoter having control over the company***". Further, RIL has been shown as a "***person(s) acting in concert***" with RPIL. In addition the following Directors, who are on the board of RIL are also shown as "***person(s) acting in concert***" with RPIL:

- a) Shri M P Modi
- b) Shri M L Bhakta
- c) Shri Y P Trivedi
- d) Shri Ramniklal H Ambani

- Mr Mukesh Ambani is the Chairman of IPCL and Chairman and Managing Director of RIL, therefore, in terms of clause (i) of Sub-section (1B) of section 370, of Companies Act, 1956, IPCL and RIL are deemed to be under the same management.
 - RPIL holds more than one-third of the total voting power of IPCL therefore, in terms of clause (iii) of Sub-section (1B) of section 370, of Companies Act, 1956, IPCL and RIL are deemed to be under the same management.
 - RIL holds the entire share capital of RPIL through two of its wholly owned subsidiaries, therefore, in terms of clause (iii) of Sub-section (1B) of section 370, of Companies Act, 1956, RPIL and RIL are deemed to be under the same management.
 - In view of above it was concluded that RPIL and RIL are deemed to be a connected persons in terms of Regulation 2(h) of PIT Regulations and therefore RPIL and RIL are 'insider' in terms of provisions of regulation 2(e) of PIT Regulations.
- d) It was alleged that the Noticee was in possession of unpublished price sensitive information (hereinafter referred to as "**UPSI**") on the following grounds, while trading in 21,32,953 shares of IPCL:
- (a.) RPIL is a deemed to be connected person and therefore it is an 'insider'.
 - (b.) Mr. K Sethuraman, Group Company Secretary of RIL, (hereinafter referred to as "**KS**") represented on behalf of RPIL. Mr K Sethuraman, while making submission to SEBI on behalf of RPIL mentioned that RPIL was not in possession of above mentioned price sensitive information at the time of buying the shares of IPCL. It is pertinent to mention that Mr K Sethuraman represented on behalf of RPIL and the orders for buying the shares of IPCL were placed by one Mr. Ashok C Jain (hereinafter referred to as "**ACJ**"), who is an employee of RIL. Therefore, it is clear that RIL was having the entire control over RPIL and the employees of RIL were making investment decisions on behalf of RPIL. It is also pertinent to mention that KS was the contact person on behalf of RIL for interacting with the legal advisor, valuers, financial advisors, etc. in the matter of merger of RIL with IPCL. Therefore, by virtue of close proximity of RPIL and RIL employees as explained above, it is alleged that RPIL was having access to the UPSI prior to its investments in the shares of IPCL.

- (c.) The purchase of shares of IPCL by RPIL was financed by RVL through an interest free loan. RVL is a wholly owned subsidiary of RIL.
- (d.) It was stated that RPIL was conceived by the management of RIL for the sole purpose of acquiring shares at the time of disinvestment by the Government in favour of RIL. Further, it is observed that during the period June 9, 2006 to February 26, 2007 RPIL has not dealt in the shares of IPCL but all of sudden started buying the shares of IPCL from February 27, 2007 i.e just before the major announcement of declaration of the interim dividend and amalgamation of IPCL with RIL.
6. Noticee vide letter dated February 14, 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 Noticee by the Investigating Authority (IA) on October 18, 2011. Noticee vide its letter dated October 12, 2011 listed out the documents for inspection. Subsequently, the Noticee'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 RPIL was 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 Noticee were furnished, duly examined and acknowledged by the authorized representative of the Noticee.
7. Noticee filed consent application dated November 8, 2011, however, the consent application was rejected and the same was communicated to the Noticee vide letter dated November 1, 2012.
8. It was observed from the records that inspite of lapse of more than one and half years no reply was received from the Noticee. However, an opportunity of personal hearing was granted to the Noticee 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 Noticee was also advised to submit its reply by October 15, 2012. In response to the same, Noticee vide its letter dated October 15, 2012 sought short extension of time upto October 26, 2012 to submit its reply to the SCN and also sought for adjournment of personal hearing. While acceding to the request of the Noticee another opportunity of personal

hearing vide hearing notice dated October 25, 2012 was granted to the Noticee to appear on November 16, 2012 at 11:00 A.M at Sebi Bhavan, Mumbai. Noticee vide its letter dated November 5, 2012 requested to prepone the date of hearing to November 8, 2012 due to unavailability of the counsel on November 16, 2012.

9. Noticee submitted its reply along with the letter dated November 5, 2012, which states as follows:

a. *"The mere fact that Mr. K Sethuraman, Group Company Secretary of RIL (who was the contact person on behalf of RIL for interacting with legal advisors, valuers, and advisors for merger of IPCL with RIL) made a representation to SEBI on behalf of RPIL when SEBI initiated enquiry into the Impugned Trades is no proof that RPIL would have access to the First Alleged UPSI and Second Alleged UPSI. Mr. K Sethuraman was responsible for regulatory matters of all RIL group companies.*

b. *That RPIL was conceived by the management of RIL for the sole purpose of acquiring IPCL shares at the time of disinvestment by the Government is no material or reason to conclude that RPIL was in possession of First Alleged UPSI and the Second Alleged UPSI.*

c. *It was commonly known that RIL acquired IPCL and RPIL was the entity through which the acquisition was undertaken. It is only natural that RIL or its wholly owned subsidiary will fund RPIL for its business needs including monies required for creeping acquisition of IPCL shares. The funding of RPIL by RIL can in no way be treated as evidence (direct or circumstantial) to conclude that RPIL was in possession of First Alleged UPSI and the Second Alleged UPSI.*

d. *Mr. Ashok Jain from time to time took decisions to purchase shares of IPCL. It was after these resolutions in April 2006 and January, 2007 that Mr. Ashok Jain started purchasing shares of IPCL from May 2006 and thereafter in February/March, 2007. It is again reiterated that Mr. Ashok Jain at no time had access to any unpublished price sensitive information and the purchases of IPCL by him for and on behalf of RPIL were for the purpose of creeping acquisitions, which acquisition decisions were taken by the board of directors of RPIL in April, 2006 and January, 2007. The mere fact that Ashok Jain was an employee of RIL cannot in anyway substantiate the charge that RPIL was in possession of First Alleged UPSI and the Second Alleged UPSI.*

- e. *The Show Cause Notice further alleges that RPIL had not purchased any shares after 9th June 2006 till 26th February 2007, but all of a sudden started purchasing shares of IPCL from 27th February 2007 just before the major announcement of declaration of interim dividend and the amalgamation of IPCL with RIL. It is submitted that during the period May – June 2006, RPIL purchased about 12 lakhs shares of IPCL at prices at around Rs. 205 to Rs. 220 per share. Thereafter the share prices of IPCL started increasing and it touched even Rs. 325 per share. Thereafter, the price starting witnessing a downward trend and settled at around Rs. 250 to Rs. 260 per share. Between July, 2006 to February, 2007, the price was in the range of Rs 255 to Rs 325 It was only in the third week of February, 2007, the price witnessed a fall to around Rs 250, and it was decided to purchase further quantity towards creeping acquisition.*
- f. *RPIL submits that the acquisition of shares in IPCL was part of creeping acquisition of IPCL which was under its control and that there is absolutely no basis for the allegations set out in the SCN. RPIL acquired shares under the creeping limits prescribed by the erstwhile Takeover Regulations, not only in the impugned period but also during May-June, 2006, in order to consolidate its holding in IPCL.*
- g. *It is submitted that*
- *The First Alleged UPSI came into existence only on 2nd March 2007;*
 - *The persons responsible and who were involved in the process have affirmed that the First Alleged UPSI was treated as confidential and was known only to select people connected therewith; No connection has been drawn in the SCN between such persons and the relevant person at RPIL who executed the trades in IPCL.*
 - *There is no question of the relevant person at RPIL having knowledge of or being in possession of the First Alleged UPSI while carrying out the Relevant Trades.*
- h. *It is submitted that:*
- *The Second Alleged UPSI came into existence only on 4th/5th March 2007;*
 - *The persons responsible and who were involved in the process have affirmed that the Second Alleged UPSI was treated as confidential and was known only to select people connected therewith;*
 - *There is no question of the relevant persons at RPIL who made the investment decision to acquire IPCL shares, having knowledge of or being*

in possession of the Second Alleged UPSI while carrying out the Relevant Trades.

- i. It is expressly declared that RPIL and IPCL are not companies deemed to be under the same management as per Section 370 (1B) of the Companies Act, 1956. It is submitted that the allegations against RPIL in this regard set forth in the SCN are incorrect and deserve to be rejected for the following reasons which are all in the alternative and without prejudice to each other:*
- j. Two bodies corporate are deemed to be under the same management under sub clause (i) (a) of Section 370 (1B), of the Companies Act, 1956, if the managing agent, secretaries and treasurers, managing director or manager of one body is the same as that of the other, In this case, Mr. Mukesh Ambani is the Managing Director only of RIL, and does not occupy any of the above mentioned positions in IPCL. He was a non-executive chairman of IPCL. However, the SCN sets out that Mr Mukesh Ambani is the Chairman of both IPCL and RIL. In this regard, it is important to note that this Section will not be attracted in an instance where the position of Chairman of the two bodies corporate is occupied by the same person, It is thus abundantly clear that the SCN has failed to establish that Mr. Mukesh Ambani occupies any of the statutorily enumerated positions, as per Section 370 (1B) (i) (a) of the Companies Act, 1956, IPCL and RIL cannot be said to be under the same management on this ground.*
- k. Two bodies corporate are deemed to be under the same management under sub clause (ii) of Section 370 (1B) of the Companies Act, 1956,, if within the six months immediately preceding, the directors of one body constitute a majority on the board of the other body. It is submitted that the Board of Directors of RPIL for the financial years 2006-07 and 2007-08 comprised of the following individuals respectively:*
- Directors of RPIL during 2006-07:***
- Jyotindra H. Thacker*
Arjun Vasant Betkekar
Venkatachalam Subramaniam
- Directors of RPIL during 2007-08:***
- Jyotindra H. Thacker*
Arjun Vasant Betkekar
Venkatachalam Subramaniam
P.M.A. Prasad (appointed on 24.03.2008)
B.K. Gangopadhyay (appointed on 24.03.2008)

None of the Directors of RPIL were on the Board of IPCL during the F.Y. 2006-07 and 2007-08.

- l. Two bodies corporate are deemed to be under the same management under sub clause (iii) of Section 370 (1B), if not less that one-third of the total voting power relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate. For this condition to be satisfied, it is not sufficient to allege that one body corporate merely holds more than one third of the total voting power in another body corporate. It is imperative to establish that the same individual or body corporate holds more than a third of the voting rights with respect to both the companies being examined for the purpose of this clause.*

- m. At no point is the SCN able to establish a connection between RPIL and IPCL by way of a common individual or body corporate holding more than one third of the voting rights in both the companies. Thus, given the requirements under sub clause (iii) of Section 370 (1B), the allegation is incorrect and in no way prove that RPIL and IPCL are under the same management.*

- n. Two bodies corporate are deemed to be under the same management under sub clause (v) of Section 370 (1B) when one or more directors of one body corporate, with or without their relatives, hold the majority of shares in both the body corporates. From the above it is clear the provisions of sub clause (v) of Section 370 (1B) are not attracted."*

10. Noticee vide 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 its 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 submitted that IPCL and RPIL do not fall under section 370 1B of the Companies Act. ARs further stated that RPIL bought only 0.54% shares of IPCL by creeping acquisition. ARs further submitted that the proposal of merger was first discussed on 4/03/2007 and the valuers were appointed on 5/03/2007. ARs furthermore submitted that the swap ratio by valuers was discussed in the board meeting held on 10/03/2007. The ARs during the personal hearing have submitted following additional documents/ affidavits undertaken by Directors/ officials/ valuers/

analysts stating that amalgamation of IPCL with RIL was discussed on March 4th/5th, 2007. 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 Noticee had subsequently filed an additional written submission dated November 19, 2012, wherein it was stated that RPIL and IPCL are not companies under the same group as per the definition of group under the Monopolies and Restrictive Trade Practices Act, 1969 so as to exercise control, directly or indirectly, over any body corporate, firm or trust i.e. third party.

CONSIDERATION OF EVIDENCE AND FINDINGS

11. 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 were that the Noticee was in possession of UPSI of two events 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 Noticee was asked whether they have received all the documents they had sought for and the ARs confirmed that the documents that were sought by the Noticee have been provided by SEBI. Hence, the matter is proceeded as below.

12. It was alleged in the SCN that RPIL is a deemed to be connected person in terms of regulation 2(h) of PIT Regulations and therefore it is an 'insider' in terms of provisions of regulation 2(e) of PIT Regulations as stated in para 5 (c) at page 4. Regulation 2(e) has been reproduced as under:

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

(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information :—

(i)

(ii) *intended declaration of dividends (both interim and final);*

(iii)

(iv)

(v) *amalgamation, mergers or takeovers;*

(vi)

(vii)

13. Therefore, the primary issue to be decided in the present matter is whether the Noticee is a "deemed to be connected person" as per regulation 2(h) 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 "deemed to be connected person" as per the provisions of regulation 2(h) of the PIT Regulations.

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; or

14. The Noticee in its reply dated November 5, 2012 has stated that RPIL and IPCL are not companies deemed to be under the same management as per section 370 (1B) of the Companies Act, 1956 as stated in pre-para nos. 9i- 9n at page nos. 8-9.

15. It is observed that with respect to regulation 2(h) (i) of PIT Regulations, it is pertinent to show that the person is a company under the same management within the meaning of sub-section (1B) of section 370 of the Companies Act, 1956. The text of sub-section (1B) of section 370 of the Companies Act has been reproduced as under:

(1B) [For the purpose of sub-section (1) and (1A)] two bodies corporate shall be deemed to be under the same management -

(i) if the managing agent, secretaries and treasurers, managing director or manager of the one body, or where such managing agent or secretaries and treasurers are a firm,

any partner in the firm, or where such managing agent or secretaries and treasurers are a private company, any director of such company, is -

(a) the managing agent, secretaries and treasurers, managing director or manager of the other body; or

(b)

(c)

(ii).....

(iii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate; or

(iv)

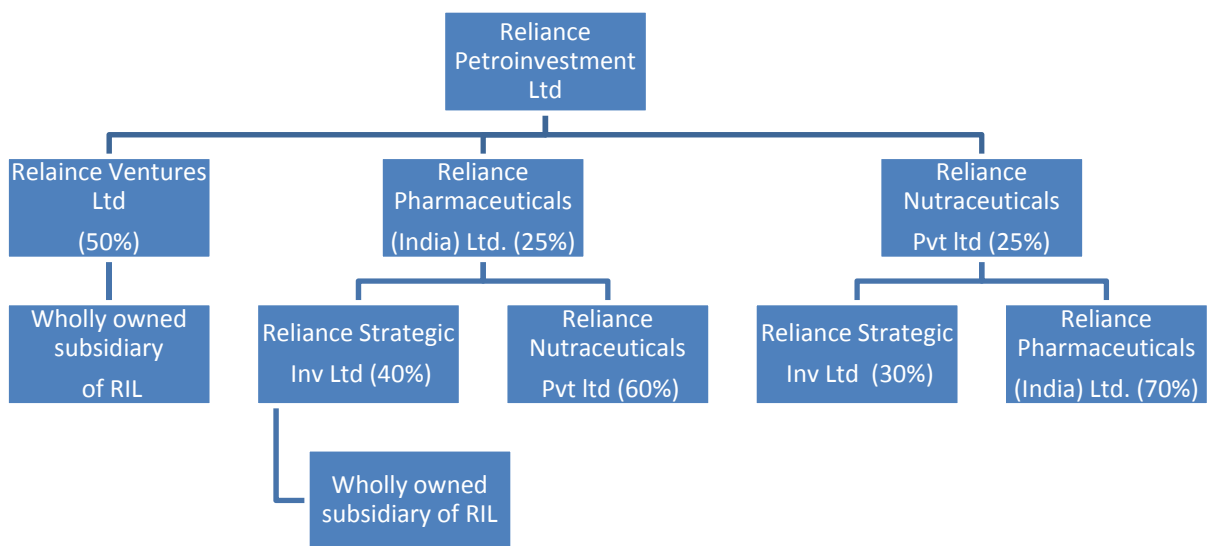
(v)

16. Noticee in its reply dated November 5, 2012 has stated that "Two bodies corporate are deemed to be under the same management under sub clause (i) (a) of Section 370 (1B) of the Companies Act, 1956, if the managing agent, secretaries and treasurers, managing director or manager of one body is the same as that of the other. In this case, Mr. Mukesh Ambani is the Managing Director only of RIL, and does not occupy any of the above mentioned statutory positions in IPCL. He was a non-executive chairman of IPCL." In the SCN it is alleged that Mr. Mukesh Ambani is the Chairman of IPCL and Chairman and Managing Director of RIL. It is observed that Clause (i) sub-section 1B Section 370 expressly excludes Chairman from its ambit. Upon perusal of the Noticee's reply and the provision of Section 370 (1B) (i) (a), I agree with the contention of the Noticee.

17. Further as per clause (iii) of sub-section 1B of Section 370, two bodies corporate shall be deemed to be under the same management if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual or body corporate.

18. From the Investigation Report (IR) it is noted that RIL holds the entire share capital of RPIL through two of its wholly owned subsidiaries. As per the Annual Report of RIL for the year 2005-06, RPIL is shown as an "associate companies and joint ventures". As per the information submitted by RPIL, Reliance Ventures Ltd (hereinafter referred to as "RVL") holds 50% of the paid-up capital of RPIL,

Reliance Pharmaceuticals (India) Pvt Ltd. (hereinafter referred to as "RPPL") holds 25% of the RPIL and Reliance Nutraceuticals Pvt Ltd. (hereinafter referred to as "RNPL") holds the balance 25% of RPIL. RVL is wholly-owned subsidiary of RIL. Reliance Strategic Investments Ltd (hereinafter referred to as "RSIL"), which is also a wholly-owned subsidiary of RIL, holds 40% of the paid-up capital of RPPL and 30% of the paid-up capital of RNPL with the balance holding in each of these two companies cross held by them. In effect, it is observed that RSIL holds 50% shares of RPIL, when shown of the intricacy of cross holdings. Therefore, RIL holds 100% sharecapital of RPIL since it is the holding company of both RSIL and RVL. A chart showing the shareholding of RPIL is given below:



19. Therefore, in terms of clause (iii) of Sub-section (1B) of section 370, of Companies Act, 1956, RPIL and RIL are deemed to be under the same management.

20. RPIL held 45.78 % shares of IPCL. Therefore, RPIL held more than one third of the total voting power of IPCL as required under clause (iii) of sub-section 1B of Section 370 of the Companies Act. RPIL is held by the subsidiary companies of RIL. RPIL is wholly owned subsidiary of RIL. As per Section 4 of the Companies Act, 1956 subsidiary of a subsidiary is the subsidiary of the holding company. From the above shareholding pattern, it may be stated that RIL had control over RPIL and also had control over IPCL through RPIL. Therefore, IPCL and RPIL were under the same management of RIL as alleged in the SCN.

21. IPCL in its shareholding pattern for the quarter ending December 31, 2006 has shown RPIL holding approx. 46% shares of IPCL while public shareholding comprises of institutions, mutual funds, financial institutions/ banks, central government (s)/ state government (s), foreign institutional investors, etc. were

holding 27.51% and non- institutions comprises of bodies corporate, individuals, NRI/OCBs etc. were holding 25.75%. Therefore, it is seen that the Noticee was the majority shareholder of IPCL. And as discussed above Noticee falls under the same management as required in clause (iii) sub-section 1B section 370. Therefore, from the above facts it may be concluded that the Noticee is deemed to be connected person of IPCL in terms of Regulation 2(h) of PIT Regulations. Therefore, the first element of the definition of "insider" i.e. "deemed to have been connected with the company" as per regulation 2(e) has been established.

22. It is observed that declaration of interim dividend and amalgamation are price sensitive information as per regulation 2(ha) of PIT Regulations.

23. Further, second element of the regulation 2(e) of PIT Regulations says that Insider means any person who is reasonably expected to have access to UPSI in respect of securities of a company. What needs to be established now is that whether the Noticee was reasonably expected to have access to UPSI in respect of IPCL.

24. It is observed from the disclosures made by IPCL itself to the stock exchanges under Regulation 8 (3) of SAST Regulations as on March 31, 2006 that RPIL is a **"promoter having control over the company"** with the total shareholding of approx. 46%. Further, RIL has been shown as a "person(s) acting in concert" with RPIL.

25. The above facts establish that RPIL was having control over IPCL. It may therefore, be concluded that by virtue of RPIL having control over IPCL, it was reasonably expected to have access to UPSI of IPCL. Noticee being the promoter having control over the company holding approx. 46% shares of IPCL is inherently expected to have access to UPSI. Noticee being in such a position it is unacceptable that the Noticee was not aware of such major/ important decisions of the company IPCL.

26. In addition to the above findings, I find that the Noticee was reasonably expected to have access to UPSI also on the basis of the following grounds:

- i. The purchase of shares of IPCL by RPIL was financed by RVL through an interest free loan. RVL is a wholly owned subsidiary of RIL.
- ii. During the deposition of KS recorded on July 1, 2007, he stated that the orders for buying the shares of IPCL by RPIL were placed by ACJ, Principal Officer of RPIL, who is an employee of RIL. It is also pertinent to mention that KS was the contact person on behalf of RIL for interacting

with the legal advisor, valuers, financial advisors, etc in the matter of merger of IPCL with RIL.

- iii. It was further observed that during the period June 9, 2006 to February 26, 2007 RPIL has not dealt in the shares of IPCL but all of a sudden started buying the shares of IPCL from February 27, 2007 i.e just before the major announcement of declaration of the interim dividend and amalgamation of IPCL with RIL.

27. Therefore, in view of the above findings, the charge of insider trading against the Noticee as per regulation 3 of PIT Regulations stands established.

28. From the records it is observed that RPIL traded on its own behalf which is in violation of regulation 3(i) of PIT Regulations.

29. The provisions of regulation 3 of PIT Regulations are reproduced hereunder:-

“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.”

30. At this juncture, I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *Rajiv B Gandhi 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..."

31. The aforesaid violation attracts penalty under Section 15G of the SEBI Act. The text of Section 15G is as follows:

SEBI Act

Penalty for insider trading -

15G. *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.

32. 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

33. With regard to the above factors to be considered while determining the quantum of penalty, it is observed from the IR that the Noticee made a total profit of approx. ₹382.64 lacs. After considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹11,00,00,000 (Rupees Eleven Crore only) on the Noticee under Section 15G of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 3 of PIT Regulations, which is appropriate in the facts and circumstances of the case.

ORDER

34. 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 ₹11,00,00,000 (Rupees Eleven Crore only) on Reliance Petroinvestments Ltd. in terms of the provisions of Section 15G of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 3 of PIT Regulations. 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.

35. 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- ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

36. 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, copy of this order is being sent to Reliance Petroinvestments Ltd., Registered Office located at 3rd floor, Maker Chambers IV, 222, Nariman Point, Mumbai- 400021 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: May 2, 2013

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