

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 And Regulation 11 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.

In the matter of Ricoh India Limited

In Re: Insider Trading Norms

In respect of:

S.No.	Name of the Entity	PAN
1	Amalendu Mukherjee	AMWPM2947A

1. Securities and Exchange Board of India (“**SEBI**”) conducted an investigation in the scrip of Ricoh India Limited (“**Ricoh/Company**”) during the period from August 14, 2014 to November 17, 2015 (“**Investigation Period**”).
2. Upon completion of investigation in the matter, SEBI passed *an interim ex-parte impounding* order dated March 17, 2020 against suspected entities viz., Fourth Dimension Solutions Limited (“**FDSL**”) and Amalendu Mukherjee (“**The Noticee**”) impounding an amount of INR 2,30,34,010/- from them jointly and severally, being the amount of illegal gains made and notional loss avoided on account of trades carried out in the trading account of FDSL. They were also directed to provide, within 7 days of the Order, a full inventory of all their assets and properties and details of all their bank accounts, demat

accounts and holdings of shares/securities, if held in physical form and details of companies in which they hold substantial or controlling interest.

3. Vide the said interim order, they were also called upon to show cause as to why certain directions shall not be passed against them in light of the alleged violations of insider trading activities in the scrip of Ricoh and were advised to file their replies to SEBI within 30 days from the date of receipt of the Order.
4. Subsequently, the Resolution Professional of FDSL appointed by NCLT informed SEBI that FDSL had been undergoing corporate insolvency resolution process ('CIRP') under the Insolvency and Bankruptcy Code, 2016 ('IBC') since July 26, 2019 and a moratorium under section 14 of the IBC had been in force. In view of the same, an addendum to the interim order was issued on March 30, 2020 wherein the directions issued against FDSL were kept in abeyance as long as the moratorium is in force and the directions issued against Amalendu Mukherjee were directed to be in force.
5. Vide email dated March 18, 2020, Amalendu Mukherjee contended that as FDSL had been undergoing the CIRP, he had become a suspended Director and did not have any authority to reply to the SCN on behalf of FDSL. He also submitted that trading in the shares of Ricoh was never done by him in his personal capacity and he had never gained/lost from any such transaction. He requested SEBI to provide him copies of forensic audit reports of Pipara & Co. LLP as well as M/s CJS Nanda & Associates and all other relevant documents based on which the Order had been passed so that he can prepare a reply to be submitted to SEBI within a reasonable period of time as per the Order.
6. A copy of the forensic audit report of Pipara & Co. LLP had been sent to Amalendu Mukherjee. Vide email dated March 20, 2020, the same was informed to him and it was also informed to him that the forensic audit report of M/s CJS Nanda & Associates had not been relied upon by SEBI while passing the interim order.
7. Vide email dated March 24, 2020, Amalendu Mukherjee provided details of his bank accounts, demat accounts, credit cards and details of companies in which he held controlling interest in compliance of the Order. He also submitted that he had one car, two

motorcycles and no property in his name. Further, he submitted that banks have also frozen some bank accounts held by Mrs. Namita Mukherjee (his wife) and requested to issue necessary instructions to banks to remove the freeze from these bank accounts.

8. Vide the said email, Amalendu Mukherjee once again submitted that the Order dated March 17, 2020 had been passed against him personally despite the fact that the demat account used for trading did not belong to him and the beneficial owner of the said demat account was FDSL. He also submitted that his all account balance was not more than INR 50,000/- and he would not be able to survive in the prevailing situation of COVID19 pandemic if his bank accounts were not released (so that if he gets a job, he could use at least his salary coming to his account). Further, he submitted that SEBI had already restrained him from accessing the securities market and prohibited him from buying, selling or otherwise dealing in securities vide an interim order February 12, 2018 (i.e. in the matter of accounting manipulation in the books of Ricoh) which was still in force. Due to this restraint, 1.59 crore shares of FDSL held by him had been under freeze since February 12, 2018 (when the market price of the shares of FDSL was INR 189.45) till date (the market price on March 17, 2020 being INR 6.9) and therefore, his personal loss accumulated during this period is around INR 290 crore.
9. Further, vide email dated May 4, 2020, Amalendu Mukherjee in addition to his earlier submissions, informed SEBI that FDSL was being taken over by LinkStar Infosys Private Limited, the Resolution Applicant which would become the beneficial owner of FDSL as all the members of the Committee of Creditors ('CoC') had voted in favour of the Resolution Plan submitted by the Resolution Applicant and attached a copy of the minutes of 14th meeting of the CoC under IBC held on April 28, 2020. He had also attended the said meeting as the director of the suspended Board of Directors of FDSL. He submitted that SEBI had failed to submit any claim on FDSL because it did not have enough proof for filing claim on FDSL even after the Resolution Professional of FDSL requested for the same. He requested SEBI to file claim with the Resolution Professional of FDSL so that SEBI may get money from the Resolution Applicant of FDSL. He also requested SEBI to

rectify the Order dated March 17, 2020 as he was not the beneficial owner of FDSL.

10. Subsequently, Amalendu Mukherjee filed an appeal before the Hon'ble Securities Appellate Tribunal against the interim order. The Hon'ble SAT, vide order dated May 27, 2020, directed him to submit his reply to the order-cum-SCN dated March 17, 2020 on or before June 15, 2020 and directed the SEBI to decide the matter finally by July 6, 2020 after giving an opportunity of hearing to him. SAT also directed listing of the appeal for admission on July 7, 2020.
11. Pursuant to the Order of the Hon'ble SAT, Amalendu Mukherjee, vide email dated June 12, 2020, has sent his reply dated June 11, 2020 to the interim order and sought an opportunity of hearing through video conferencing on any date from June 17, 2020 to June 19, 2020 after 2 pm as per availability.
12. Vide the reply dated June 11, 2020, Amalendu Mukherjee has denied all the allegations made against him in the Order. He has mostly reiterated all the submissions made by him vide his earlier emails dated March 18, 2020, March 24, 2020 and May 4, 2020 and has made additional submissions which are dealt in the consideration of issues and part of this order.

Hearing and submissions:

13. On June 19, 2020, Amalendu Mukherjee and Mr. Dinesh Sabharwal, Chartered Accountant and the Authorised Representative of Mr. Amalendu Mukherjee appeared before me for the hearing through video conferencing and made *inter alia*, the following submissions:
 - i. That the trading in the shares of Ricoh was never done by him in his personal capacity and he had never gained/lost from any such transaction
 - ii. That the demat account used to trade into securities market was that of FDSL. He has not traded in any securities through his personal demat account, except in the shares of FDSL.

- iii. That all his accounts' balance was not more than INR 50,000/- and he would not be able to survive in the prevailing situation of COVID19 pandemic if his bank accounts were not released.
- iv. That he was neither an insider nor a connected person. There were four adjournments of the Board Meetings of the Ricoh. So, as a prudent investor he had the doubt that something is wrong in the Company. Hence, he sold all the shares of Ricoh held by FDSL.
- v. That there is not even single evidence in the SCN to say that he had access to UPSI in this matter.
- vi. FDSL had also traded in other scrips during the period and its trading pattern is same as that in the scrip of Ricoh.
 - In this regard, the Noticee was directed to submit Broking/Demat statement six months prior to and six months post FDSL's trading in the scrip of Ricoh and highlight the trading pattern.
- vii. That the Forensic Auditor's report is based on assumptions and suspicions.
- viii. That M/s CJS Nanda & Associates were appointed after the interim order dated February 12, 2018 and had submitted their report during September 2018. However, the same has not been considered for some reason and reliance has been made only on another report of Pipara & Co. LLP which was appointed in early 2019.
- ix. That Ricoh filed three complaints against him before the Economic Offences Wing, but there is no single evidence found against him in those cases.
- x. That as he had to give Rs.500 crores worth business to Ricoh, he was in touch with the Company. And based on mere suspicion, his accounts are frozen and he is struggling miserably.
- xi. That SEBI's claim of Rs.2.3 crores was taken into account by the Resolution Professional of FDSL and SEBI is in the list of creditors. Hence he may be

exonerated from the charges.

- In this regard, the Noticee was directed to submit the documents to prove that SEBI's claim has been taken up by Resolution Professional of FDSL and documents, if any, to support that FDSL has enough funds to honour the claim amongst all claims.

14. As requested, the Noticee was granted time till June 23, 2020 to submit the details/documents.

15. The Noticee, vide email dated June 23, 2020, submitted the aforesaid documents.

Consideration of Issues & Findings

16. I have considered the interim order-cum-SCN, oral and written replies/ submissions of the Noticee and other material available on record. Considering the allegations levelled in the interim order, arguments advanced by the Noticee in that regard and other material available on record, the following issues arise for consideration:

- I. Whether “the act of misstating financial statements of Ricoh from the Financial Years 2012-2013 onwards” was a price sensitive information?**
- II. If the answer to issue No. I is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?**
- III. Whether the Noticee is an ‘insider’ as per PIT Regulations 1992 and 2015?**
- IV. Whether the Noticee traded on behalf of FDSL in the scrip of Ricoh during the period when the price sensitive information remained unpublished?**
- V. Whether the Noticee traded on behalf of FDSL in the scrip of Ricoh while in possession of UPSI and violated the provisions of regulation 3(i) and regulation 4 of the PIT Regulations, 1992 r/w regulation 12 of SEBI (PIT) Regulations, 2015, regulation 4(1) of SEBI (PIT) Regulations, 2015 and section 12A(d) & (e) of SEBI Act, 1992?**
- VI. If the answer to issue V is in the affirmative, what directions need to be issued**

against the Noticee?

17. Before dealing with the issues for consideration in the present proceedings, I note that the Noticee has made a preliminary submission that the interim order has been passed in violation of the principles of natural justice without providing him any opportunity to defend himself.

17.1. In this regard, I note that the interim order has been passed on the basis of findings observed during the investigation undertaken by SEBI. The facts, circumstances and the reasons necessitating issuance of directions by the interim order have been examined and dealt with in the said interim order. The interim order has also been issued in the nature of a show cause notice as well affording the Noticee a post-decisional opportunity of hearing. I also note that the power of SEBI to pass interim orders flows from sections 11 and 11B of the SEBI Act, which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well-settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others Vs Union Of India & Other (1984) 3 SCC 465* are noteworthy:-

"It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation

or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request. "

17.2. Thus, considering the facts and circumstances of a particular case, an ad-interim ex parte order may be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the interim order in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that "Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned". Further, various Courts, while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an interim order is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathi & Others Vs. SEBI (2002) 2 Bom CR 403*, has held as under:

"Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded."

17.3. Further, the Hon'ble High Court of Rajasthan at Jaipur in the matter of *M/s. Avon Realcon Pvt. Ltd. & Ors Vs. Union of India & Ors (D.B. Civil WP No. 5135/2010 Raj HC)* has held that:

“...Perusal of the provisions of Sections 11(4) & 11(B) shows that the Board is given powers to take few measures either pending investigation or enquiry or on its completion. The Second Proviso to Section 11, however, makes it clear that either before or after passing of the orders, intermediaries or persons concerned would be given opportunity of hearing. In the light of aforesaid, it cannot be said that there is absolute elimination of the principles of natural justice. Even if, the facts of this case are looked into, after passing the impugned order, petitioners were called upon to submit their objections within a period of 21 days. This is to provide opportunity of hearing to the petitioners before final decision is taken. Hence, in this case itself absolute elimination of principles of natural justice does not exist. The fact, however, remains as to whether post-decisional hearing can be a substitute for pre-decisional hearing. It is a settled law that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, the requirement of giving reasonable opportunity exists before an order is made. The case herein is that by statutory provision, principles of natural justice are adhered to after orders are passed. This is to achieve the object of SEBI Act. Interim orders are passed by the Court, Tribunal and Quasi Judicial Authority in given facts and circumstances of the case showing urgency or emergent situation. This cannot be said to be elimination of the principles of natural justice or if ex-parte orders are passed, then to say that objections thereupon would amount to post-decisional hearing. Second Proviso to Section 11 of the SEBI Act provides adequate safeguards for adhering to the principles of natural justice, which otherwise is a case herein also...”

17.4. In view of the above, I find that the interim order passed by SEBI was in compliance with the principles of natural justice since, reasons for passing the interim order have been clearly stated in the interim order and, in accordance with the settled law, the Noticee was afforded a post-decisional opportunity to file his reply and avail an

opportunity of personal hearing. I, therefore, reject the contention of the Noticee in this regard.

18. Further, the Noticee contended that M/s C J S Nanda & Co, Chartered Accountants were appointed immediately after Interim order dated 12th February, 2018 and had submitted their report during September, 2018, however the same has not been considered for some reason and reliance is made only on another firm Pipara and & Co. LLP, appointed during start of 2019. Further, no reason has been provided why only Pipara and & Co. LLP report has been considered and not that of C J S Nanda & Co.

In this regard, it is pertinent to note that the Report of M/s C J S Nanda & Co., is limited to the forensic audit of Ricoh carried out by BSE and therefore the same has not been relied upon by SEBI. Whereas the scope of appointment of Pipara and Co. appointed by SEBI was to conduct forensic audit of Ricoh and FDSL and the present proceedings are related to the involvement of the Noticee as an ‘insider’ while dealing in the scrip of Ricoh on behalf of FDSL. Therefore, there is no relevance to the Report of M/s C J S Nanda & Co in the extant proceedings.

19. I note that during the personal hearing the Noticee submitted that Ricoh filed three complaints against him before the Economic Offences Wing, but there is no single evidence found against him in those cases. In this regard, I note that the he has failed to give any supporting documentary evidence to support his contentions regarding the said EOW case. In any case, I am of the view that the same is not relevant to the present proceedings as the present proceedings are related to the involvement of the Noticee as an ‘insider’ while dealing in the scrip of Ricoh on behalf of FDSL.

Issue No. I: Whether “the act of misstating financial statements of Ricoh from the Financial Years 2012-2013 onwards’ was a price sensitive information?

20. Before dealing with the first issue, I note the relevant legal provision with regard to the

‘price sensitive information’.

21. The expression ‘price sensitive information’ is defined under regulation 2(ha) of SEBI (PIT) Regulations, 1992 as follows:

“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.

22. Further, the definition of ‘unpublished price sensitive information’ as per Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015 is as follows:

"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel.”

23. I note that the definition of “price sensitive information” under regulation 2(ha) of PIT Regulations, 1992 and regulation 2(1) (n) of PIT Regulations, 2015 requires that the information should be such which if published is likely to materially affect the price of securities of the company.

24. From the plain reading of the definition of unpublished price sensitive information’ (“UPSI”), I note that financial statements are definitely considered as price sensitive

information as they are very likely to have impact on the share price of securities. I note that the explanation to regulation 2(ha) provides for illustrative sets of information which would be deemed as “price sensitive information” and financial results are the first item in the said illustrative list. The reason being Financial statements including Balance Sheet, Profit & Loss Statement and Cash flow Statements basically reflect a company’s financial performance and true state of affairs of the company. They show profits and assets/liabilities of the business. The shareholders of a company rely on these statements to understand how their investments are paying off. If a company is earning profits, they might decide to invest even more money. On the contrary, stagnant profits or even losses are likely to prompt them to pull out. Investors also extensively use a company’s financial statements to assess its finances. The regulatory bodies too heavily rely on the true status of the financial results of the company to ensure the protection of investors.

25. I note that any information having a material adverse impact on Ricoh financials or which is likely to have an indirect adverse effect on Ricoh financials are considered to be price sensitive information in respect of Ricoh.

26. In this regard, it is pertinent note the following factual matrix leading to the misstatement of financials of Ricoh:

26.1. Ricoh was incorporated under the Companies Act, 1956 on October 22, 1993. The registered office of Ricoh is at 1132, 3rd Floor, Building No. 11, Solitaire Corporate Park, Guru Hargovindji Marg, Andheri Ghatkopar Link Road Chakala, Andheri East, Mumbai – 400093. The shares of Ricoh were listed on BSE Limited (“BSE”). The Company has been delisted from BSE in December 2019.

26.2. Ricoh India Limited has been operational in India for last 4 decades and was involved in trading of multi-functional printers and other hardware (core business) and providing IT related services (ITS business) in the Indian Markets.

26.3. The revenue and net profit as disclosed in the annual and quarterly financial results of Ricoh for various quarters covering the Investigation Period are given below:

TABLE IV [AMOUNT IN ₹ CRORES] [SOURCE: BSE WEBSITE]						
Description	QUARTER ENDED					
	Sep 2014	Dec 2014	Mar 2015	Jun 2015	Sep 2015	Dec 2015
Revenue	373.83	409.02	627.88	442.86	661.45	273.10
Net Profit	-2.83	10.55	41.48	0.40	-147.39	-102.04

26.4.M/s. Sahni Natrajan & Bahl were the statutory auditors of Ricoh for 13 years from FY 2001-02 till FY 2013-14. On September 24, 2015, the statutory auditors were changed to BSR & Co (part of KPMG network). BSR & Co. raised suspicions regarding certain transactions between Ricoh and its customers & vendors in **October-November 2015**, while they were conducting limited review of the financial results of Ricoh for the quarter ended September 30, 2015.

26.5.Pursuant to the same, the Audit Committee of Ricoh appointed M/s. Shardul Amarchand Mangaldas & Co., Advocates & Solicitors who, in turn, appointed Pricewaterhouse Coopers Private Limited, India (“**PwC**”) to conduct forensic audit of the books of accounts of Ricoh for the half-year ended September 30, 2015. PwC submitted its report on preliminary findings on **April 20,2016**, subsequent to which, on the same day, Ricoh informed SEBI that its financial statements for the quarters ended June 30, 2015 and September 30, 2015 did not reflect true and fair view of its state of affairs.

26.6.PwC submitted its investigation report dated November 17, 2016 to Ricoh, a copy of which, was forwarded to SEBI by Ricoh. The said report highlighted, inter alia, potentially fictitious transactions in the Information Technology Services (“ITS”) business of Ricoh during the half-year ended September 30, 2015. The report also stated that Fourth Dimension Solutions Limited (“FDSL”), a vendor as well as customer of Ricoh, had traded in the shares of Ricoh from August 22, 2014 to November 20, 2015 and liquidated its shareholding in Ricoh during the week of

November 20, 2015, which happens to be around the time when BSR raised concerns relating to certain transactions with its vendors and customers.

27. Further, I note that with respect to the accounting manipulation, an interim order was passed by SEBI on February 12, 2018 against certain employees of Ricoh and Amalendu Mukherjee, *inter alia*, restraining them from accessing the securities market. The directions in the interim order were confirmed vide order dated August 16, 2018.
28. Subsequently, Pipara & Co. LLP was appointed by SEBI to conduct forensic audit into the books of accounts of Ricoh as well as FDSL. Based on the forensic audit report dated October 25, 2019 submitted by Pipara & Co. LLP, it was observed that the financial statements of Ricoh were misstated from FY 2012-13 onwards. Ricoh admitted the same and corrected/made adjustments in the Revenue figures of its Financials.
29. I note that vide letter dated April 20, 2016, Ricoh disclosed that its financial statements did not reflect true and fair view of its state of affairs. The same was disseminated by BSE on April 22, 2016. It is pertinent to note that prior to this disclosure the market was believing and relying on such misstated financials to take decision on their investments without any grounds to believe that the said financials statements were incorrect. I also note that the misstated financials had impacted the price of the scrip of Ricoh.
30. Considering the above, it is clearly evident that ‘the act of misstated financial statements of Ricoh from the Financial Years 2012-2013 onwards’ is qualified as “price sensitive information”.
31. In the light of the above discussion, I find that ‘the act of misstating financial statements of Ricoh from the Financial Years 2012-2013 onwards’ was indeed a “price sensitive information” as per PIT Regulations.

Issue No. II: If the answer to issue No. I is in the affirmative, whether the price sensitive information was unpublished and if so, when did it get published?

32. Having answered the first issue in the affirmative, the next issue for consideration is whether the “price sensitive information” was unpublished during the period of

investigation.

33. I note that upon receipt of preliminary investigation report from PWC, vide letter dated April 20, 2016, Ricoh disclosed to SEBI that its financial statements did not reflect true and fair view of its state of affairs. The same was disseminated by BSE on April 22, 2016. The forensic audit report dated October 25, 2019, submitted by Pipara & Co. LLP, also noted that the financial statements of Ricoh were misstated from FY 2012-13 onwards.
34. In the instant case, ‘the act of misstated financial statements of Ricoh from the Financial Years 2012-2013 onwards’ is considered as the UPSI, as the public was not aware that the financial statement of Ricoh, from FY 2012-13 onwards, did not reflect a true and fair view of the financial performance of the Company.
35. The financial statements of the Company from FY 2012-13 onwards were misstated. This came into the public domain only when the said information was disclosed on the BSE platform on April 22, 2016. Therefore, the period from April 01, 2012 to April 22, 2016 has been considered as the UPSI period.
36. Considering the above, I find that the price sensitive information, relating to ‘the act of misstatements of Financial Statements of Ricoh’ became public from the time when the same was disseminated on the BSE i.e. on April 22, 2016 and ceased to be a UPSI from that date. Accordingly, the period during which the UPSI existed was from the date of financial year from which financials were misstated to its publication i.e. from April 01, 2012 to April 22, 2016. I also note that the said fact has not been disputed by the Noticee.

Issue No.III: Whether the Noticee is an ‘insider’ as per PIT Regulations 1992 and 2015?

37. For the purpose of examination of the present issue, I find it relevant to quote the following regulations of the PIT Regulations, 1992:
38. In terms of Regulation 2(e) of SEBI (PIT) Regulations, 1992,

“insider” means any person who:

*(i) is or was connected with the company or is deemed to have been connected with the company **and** is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*

(ii) has received or has had access to such unpublished price sensitive information.

39. From the aforesaid provision, it shows that a category of insider is one who is connected with the company who has to satisfy the following two conditions:

- i. The person has to be connected with the company or deemed to be connected with the company.
- ii. The person is reasonably expected to have access to UPSI or has received it or has access to it.

40. The second category of insider is one who is in receipt/ possession of UPSI or has access to UPSI. There could be cases when one person can be insider under both categories for the purpose of meeting the definition of “insider”.

41. In order to examine whether the Noticee has satisfied the first condition as mentioned above, we need to place reliance on Regulation 2 (c) of the PIT Regulations, which reads as follows:

“Regulation 2(c) – “connected person” means any person who –

....

*ii. Occupies the position as an office 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;]

42. Similarly, as per terms of Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015,

““insider” means any person who is:

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;”

2 (d) "connected person" means,-

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

....”

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.”

43. The Noticee vide replies and oral submissions before me claims that he is neither an insider nor a connected person. The Noticee submitted that for insider trading, a relationship with a company is not essential. It is essential to prove receipt of information. SEBI has failed to prove that he had received any information.
44. I note from the material available on record as well as the submissions of the Noticee that the Noticee was in business relationship with Ricoh. The Noticee, vide his reply dated June 11, 2020, admitted that FDSL was a Titanium Ricoh ITS Partner and was given a target of bringing business opportunities of INR 500 crore for Ricoh. The customer used to approach the dealer/partner for business which, in turn, would be forwarded to Ricoh. Being the Managing Director and Promoter of FDSL, the Noticee was in touch with Key Managerial Personnel of Ricoh. Thus, the Noticee falls squarely within the definition of "connected persons" as defined under Regulations 2(c)(ii) of PIT Regulations, 1992 and Regulation 2(d)(i) of PIT Regulations, 2015.
45. With respect to the second aspect of whether the Noticee can be reasonably expected to have access to the UPSI, I note various circumstances and evidence brought out which are detailed are as under:
- 45.1. I note that SEBI appointed Forensic Auditors Pipara & Co. LLP conducted forensic audit into the books of accounts of Ricoh as well as FDSL. Based on the forensic audit report dated October 25, 2019 submitted by Pipara & Co. LLP, it was observed that the financial statements of Ricoh were misstated from FY 2012-13 onwards. The forensic audit report dated October 25, 2019 from Pipara & Co. LLP, *inter alia*, corroborated the involvement of Amalendu Mukherjee in the manipulation of sales and purchases of Ricoh. In this regard, the Noticee vide reply dated June 11, 2020 contended that he was not aware of any financial misstatements till it became public on April 22, 2016 and the interim order is solely based on a forensic audit report which is entirely based on assumptions and no specific conclusive evidence has been placed before SEBI.

45.2. However, I note from the Forensic Audit Report that during the forensic audit, various discrepancies were observed in the transactions done by FDSL with vendors and customers of Ricoh. Many of such vendors and customers were found to be connected to Amalendu Mukherjee. It was found that many of these entities did not communicate directly with Ricoh and instead, Amalendu Mukherjee was operating as a link between Ricoh and these entities. For instance,

- i. Editable tax invoice and purchase order ('PO') of Rudra Enterprises, a customer of Ricoh, was shared by Amalendu Mukherjee with Ricoh in an email dated December 31, 2014 to allow Ricoh to edit the values and other details in the PO in order to manipulate sales of Ricoh.

I note from the Forensic Auditors Report that the Prospectus of FDSL reported that the Noticee held significant control over Rudra Enterprises and Domain ID of Rudra Enterprises was registered in the name of the Noticee. The Report also noted circular transactions between Rudra enterprises, Ricoh and FDSL.

- ii. Further, a group of entities with which Ricoh had numerous transactions amounting to a large proportion of total revenue, was found to be related and under the same management. Some of these entities are Nike Sales Corporation, Redhex, PS Techno Solutions Pvt. Ltd, Jatalia Global Ventures Limited, Jindal Infra Solutions Pvt. Ltd., Aastha Impex, etc. This inference was drawn because POs of these companies were shared with Ricoh by Amalendu Mukherjee instead of being received directly from these companies. In addition to this, various other details such as PAN No., Bank details, Vendor Registration forms, invoices etc. were shared by Amalendu Mukherjee instead of direct communication with the respective entities.

I note from the Forensic Auditors Report that the Nike Sales Corporation, Redhex, PS Techno Solutions Pvt. Ltd, Jatalia Global Ventures Limited, Jindal Infra Solutions Pvt. Ltd., Aastha Impex, etc. were found to be not in existence.

- iii. Though the Noticee argued that the finding of forensic audit report is entirely based on assumptions and no specific conclusive evidence has been placed before SEBI, I note that the Noticee failed to substantiate the same by any cogent reasons and evidence in his support to rebut the findings of the Forensic Audit Report.
- iv. The Noticee further submitted that FDSL was a Titanium Ricoh ITS Partner to bring business opportunities to Ricoh India and FDSL, like all other dealer/partner, was given a business target of Rs. 500 crores. This was similar to other dealers/partners commonly appointed by Ricoh India in their other stream of business verticals. The customer used to approach the dealer/partner for business which in turn would be forwarded to Ricoh India. This was a normal practice being followed by Ricoh India for over so many years. In the same lines Ricoh ITS (RITS) Partner Program was launched by them. As regards the Editable tax invoice and Purchase order (PO) of Rudra Enterprise RITS partner, it was stated that FDSL had forwarded the documents as sent to FDSL by the end customer. It was further submitted that the allegation of so many companies being either related or under same management is only based on an assumption that POs were shared by the Noticee. The Noticee also contended that the basis of connection with the group companies cannot be based on the sharing of purchase orders.

In this regard, I note that the Noticee has admitted that FDSL being the RITS partner, customers used to connect with FDSL through the Noticee, and due to his connect in the industry, customers provide their POs to FDSL which were then forwarded to Ricoh for their internal process. I also note that the Noticee has admitted that he had forwarded the editable tax invoice and purchase orders of customer to Ricoh. I also note from the Auditors Report that the prospectus of FDSL reported that Amalendu Mukherjee held significant control over Rudra Enterprises. I also note from the Forensic Audit Report that the customers of Ricoh routed through the Noticee were also found to be fictitious entities and/or connected/related entities of the Noticee.

I note that standalone these evidences may be accepted however, considering the fact that editable purchase orders were sent through the Noticee coupled with the fact that he had substantial control over the customer company and again coupled with the fact that such customer company was found to be not in existence during the forensic audit and Ricoh has admitted its Financials were misstated and corrected, are sufficient documentary evidence on preponderance of probability to prove that editable invoices and the purchase orders were provided by the Noticee with the knowledge that it can enable manipulation of the Financials of Ricoh. Therefore the preponderance of the probability is that the Noticee was aware of the fact that the financials of Ricoh were misstated.

45.3. In addition to the aforesaid findings of the forensic audit report, the access to the UPSI by Amalendu Mukherjee can be corroborated from the following events:

- a) Amalendu Mukherjee discontinued trading when BSR raised concerns in November 2016 regarding the financial statements of the Company.
- i. M/s. Sahni Natrajan & Bahl were the statutory auditors of Ricoh for 13 years from FY 2001-02 till FY 2013-14. In FY 2014-15, the statutory auditors were changed to BSR & Co (part of KPMG network). BSR & Co. raised suspicions regarding certain transactions between Ricoh and its customers & vendors in October-November 2015, while they were conducting limited review of the financial results of Ricoh for the quarter ended September 30, 2015. Pursuant to this development, the Board meeting to consider and approve unaudited financial results for the quarter ended September 30, 2015, which was scheduled to be held on November 5, 2015, was rescheduled to November 10, 2015, which was again rescheduled to November 14, 2015. On November 15, 2015, the following disclosure of Ricoh was disseminated on BSE:

“With reference to the earlier letter dated November 10, 2015, November 05, 2015 and October 13, 2015, Ricoh India Ltd has now informed BSE that the Limited

Review for the Quarter ended September 30, 2015 is taking longer time in view of this being the first audit being done by our newly appointed Auditors.

As a result, the work relating to finalization and completion of Unaudited Financial Results and Limited Review Report of the Company for the Quarter ended September 30, 2015 could not be completed in Company's Audit Committee meeting held on November 14, 2015. Accordingly, Audit Committee and Board of Directors Meetings stand adjourned."

- ii. Subsequently, FDSL sold 22,828 shares of Ricoh on November 17, 2015 and did not trade in its shares thereafter.
- iii. In this regard, the Noticee strongly objected to this statement and contended that he had never personally traded in any securities of the company. All trades were done on behalf of the company only. Further, he contended that he was not aware anytime of any financial mis-statements of Ricoh India since FY 2012-13. Also FDSL started dealing in securities, not only in Ricoh India but also in others as well, from August, 2014. As contended by him, considering the facts of the matter, as mentioned in the biased forensic audit report, the Audit Committee had to postpone their Audit Committee meeting three times before adjourning it further for an uncertain period, that too for approval of Limited Review Report of the statutory auditors. This according to him, gave enough indication of the nature of crisis any company was going through. Accordingly, it becomes prudent upon any business to take necessary action at an appropriate time. Further as contended by him FDSL sold its shares only after it was made public of the adjournment of the Audit Committee meeting for an indefinite time. Further he contended that there is no evidence of having any access to UPSI and any allegation cannot be based only on assumptions, which is against natural justice.

In this regard, I note that being the MD of FDSL he was authorized to trade on behalf of FDSL. I note from the Forensic Audit Report that FDSL had business

transactions with Ricoh since February 28, 2013 when Ricoh placed its first purchase order with FDSL. I note that the Noticee had placed buy and/or sell orders in the shares of Ricoh as the authorized person on behalf of FDSL during the period of UPSI. Though he claimed that he was not aware of any UPSI till it became public, I note that the Noticee was in business relationship with Ricoh. It is already seen that he had forwarded editable invoices of fictitious companies (Rudra Enterprises) wherein he was having substantial control. In view of the same, I am not inclined to accept his contention that he is not aware of the UPSI. Further, his trading behaviour also shows that he has substantially bought and sold during the UPSI period. This also adds to the inference that the Noticee was having access and awareness that the Financials were misstated.

b) Email from Amalendu Mukherjee to Ricoh;

- An email was sent by Amalendu Mukherjee on January 14, 2016 to Ms. Smriti Pandey (an employee of Ricoh). The email contained worldwide cases wherein KPMG was found guilty of being a party to manipulation of accounts of various companies. The suggestion of Amalendu Mukherjee to not have KPMG as auditors of Ricoh and continue with the existing auditors indicates his access to the insiders in Ricoh and his attempt to influence its decisions.
- In this regard, the Noticee contended that the email sent by him to Ms. Smriti Pandey, an employee of Ricoh, on January 14, 2016 was public information and was shared in an ordinary way without any intent.
- As a standalone instance, it could be argued that the Noticee is just sharing public information, however, given the other facts brought about in the Auditors Report, the preponderance of probability indicates his access to the insiders in Ricoh and his attempt to influence its decisions.

c) Personal benefits extended to COO and CFO of Ricoh

- i. Amalendu Mukherjee extended various personal benefits to Anil Saini (then COO of Ricoh) and Arvind Singhal (then CFO of Ricoh) which indicates that he was in a position to influence the aforesaid insiders / KMPs of Ricoh by virtue of the benefits extended to them. Some instances of the personal benefits extended to Anil Saini and Arvind Singhal are as under:
 - ii. Amalendu Mukherjee paid tuition fees of Ms. Sheetal Saini, the daughter of Anil Saini, for her education in Singapore.
 - In this regard, the Noticee contended that Tuition fees of the daughter of COO for her education in Singapore were paid by him as a goodwill gesture and it was a short-term arrangement. He claimed that the amount was returned to him later.
 - I note that Amalendu Mukherjee has failed to provide the evidence that the amount paid by him on behalf of the COO of Ricoh was later returned to him. Even if the amount was returned to him, the dealings show that he was in close association with the COO of Ricoh/ the insiders of Ricoh.
 - iii. Amalendu Mukherjee financed the flight tickets for the families of Anil Saini and Arvind Singhal for a trip to Dubai.
 - In this regard, the Noticee contended that the flight tickets for the families of COO and CFO of Ricoh for a trip to Dubai were financed by him as a business promotion exercise by FDSL. However, I note that he failed to substantiate the claim by way of any documentary evidence.
 - iv. Amalendu Mukherjee booked flight tickets for his family as well as the families of Anil Saini and Arvind Singhal for a trip to Aurangabad.
 - In this regard, the Noticee contended that he had booked flight tickets for

his family as well as the families of COO and CFO of Ricoh for a trip to Aurangabad and the same was a one-day pilgrimage trip to Shirdi. However, I note that he failed to provide the justification for financing the trip of the families of COO and CFO of Ricoh. The dealings also show that he was in close association with the COO and CFO of Ricoh/ the insiders of Ricoh.

46. From the aforesaid chronology of events and supporting evidence, on a standalone basis of such evidences one may give benefit of doubt but considering multiple factors such as involvement in manipulating the accounts by sending editable purchase orders of fictitious companies, extending personal benefits to KMPs of Ricoh, etc., seen in conjunction, the preponderance of probability is that Amalendu Mukherjee had influence over and close connection with the insiders of Ricoh and had access to UPSI.

47. I also place reliance on the following proposition of Hon'ble SAT in the matter of "*Utsav Pathak Vs. SEBI*", in appeal no. 430 of 2019 decided on June 12, 2020 wherein Hon'ble SAT observed "*In this regard, we may note that it is a fundamental principle of law that proving of an allegation levelled against a person can be derived either from direct substantive evidence or can be inferred by a logical process of reasoning from the totality of attending facts and circumstances surrounding the allegations made and levelled. The Supreme Court in SEBI vs. Kishore Ajmera(2016) 6 SCC 368 held that in the absence of direct evidence, the court cannot become helpless and that the court can take notice of immediate and proximate facts and circumstances surrounding the events and reach to a reasonable conclusion. The Supreme Court held that the test would always be as to what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*"

48. Therefore, the preponderance of probability indicates that the Noticee is not only an insider by virtue of his being connected person and reasonable expectation of having access but also because of his actual access and possession of UPSI. Therefore, he falls under the definition of 'insider' under SEBI (PIT) Regulations, 1992 as well as SEBI (PIT)

Regulations, 2015.

Issue No. IV: Whether the Noticee traded on behalf of FDSL in the scrip of Ricoh during the period when the price sensitive information remained unpublished?

49. As per the material available on record (the email dated October 23, 2019 from Kotak Securities Ltd.), Amalendu Mukherjee, the MD of FDSL, was authorized to place orders for FDSL. I note in this regard that the Noticee contended that he has not traded in the scrip of Ricoh in his personal capacity using his personal demat account but the scrip of Ricoh has been dealt through FDSL's account only. I note that the Noticee was an authorized person being Managing Director of FDSL to buy/sell the scrip of Ricoh. I further note that the Noticee has admitted the fact that he was promoter holding substantial shares (admittedly to the tune of 1.59 crores of shares of FDSL) as well in the scrip of FDSL.
50. The details of trades executed by Amalendu Mukherjee on behalf of FDSL on BSE in the scrip of Ricoh during the investigation period while the price sensitive information was unpublished are as follows:

Date	Buy Qty	Wt. Avg Buy Price (in Rs.)	Sell Qty	Wt. Avg Sell Price (in Rs.)
14-Aug-14	10,000	182.47	-	-
19-Aug-14	5,000	202.47	-	-
22-Aug-14	10,000	207.86	-	-
26-Aug-14	21,500	240.49	-	-
28-Aug-14	53,500	269.89	-	-
9-Sep-14	7,610	262.25	-	-
16-Sep-14	-	-	82,610	284.51
17-Sep-14	16,701	279.33	-	-
18-Sep-14	13,081	298.80	-	-
19-Sep-14	102,730	315.46	-	-
22-Sep-14	17,244	313.08	54	319.00
23-Sep-14	-	-	30,200	312.59
26-Sep-14	36,498	294.01	-	-

29-Sep-14	-	-	18,604	300.32
30-Sep-14	-	-	17,894	308.08
9-Oct-14	-	-	70	305.20
14-Oct-14	61,672	292.15	-	-
16-Oct-14	13,499	263.33	-	-
17-Oct-14	-	-	3,499	266.00
20-Oct-14	-	-	26,420	254.38
28-Oct-14	-	-	30,000	258.96
30-Oct-14	-	-	20,000	279.16
12-Nov-14	76,905	297.36	4,176	301.65
13-Nov-14	139	291.96	-	-
17-Nov-14	-	-	11,979	299.75
18-Nov-14	10,000	295.15	1,730	296.80
19-Nov-14	-	-	2,709	296.00
21-Nov-14	-	-	6,134	294.00
24-Nov-14	24,341	303.34	-	-
26-Nov-14	-	-	20,765	316.35
27-Nov-14	-	-	60,000	300.66
28-Nov-14	-	-	31,104	315.88
3-Dec-14	-	-	30,803	300.12
4-Dec-14	-	-	3,939	305.00
5-Dec-14	-	-	4,719	314.04
12-Dec-14	306	322.93	1,130	320.01
30-Dec-14	10,000	296.66	-	-
31-Dec-14	2,100	298.14	-	-
2-Jan-15	-	-	2,100	308.70
5-Jan-15	-	-	184	308.07
6-Jan-15	1,680	297.58	-	-
8-Jan-15	21,650	316.10	8,348	314.62
9-Jan-15	-	-	42,782	319.43
12-Jan-15	10,000	317.94	5,136	310.06
13-Jan-15	2,000	321.85	-	-
14-Jan-15	5,000	322.70	-	-
19-Jan-15	2,000	315.54	-	-
20-Jan-15	2,000	316.17	-	-
21-Jan-15	2,000	314.29	-	-
22-Jan-15	4,000	316.61	-	-
23-Jan-15	2,000	317.21	-	-
30-Jan-15	2,000	307.23	-	-
2-Feb-15	2,000	306.97	6,685	300.61

3-Feb-15	-	-	681	298.81
4-Feb-15	2,000	298.46	25,000	292.09
9-Feb-15	25,000	297.78	7,812	289.41
10-Feb-15	20,000	299.27	-	-
11-Feb-15	-	-	63,889	334.88
12-Feb-15	10,000	369.20	35,000	353.46
13-Feb-15	59,597	444.46	4,811	430.00
20-Feb-15	3,000	489.56	79	470.01
23-Feb-15	100	489.69	-	-
24-Feb-15	6,000	552.93	3,886	553.96
25-Feb-15	3,000	549.49	-	-
26-Feb-15	-	-	1,310	532.72
27-Feb-15	3,500	506.31	2,541	504.59
4-Mar-15	1,000	505.04	12,750	504.00
9-Mar-15	12,654	508.80	-	-
12-Mar-15	5,300	503.52	700	500.07
13-Mar-15	1,000	517.93	2,211	521.23
17-Mar-15	2,000	500.66	-	-
19-Mar-15	20,400	587.67	23,646	575.11
20-Mar-15	-	-	1,276	597.03
23-Mar-15	7,000	578.68	613	575.34
25-Mar-15	1,500	551.88	-	-
30-Mar-15	16,000	568.89	43,228	539.29
31-Mar-15	-	-	45,000	548.43
25-May-15	31,000	840.90	6,087	842.50
26-May-15	24,700	880.99	-	-
27-May-15	-	-	22,679	881.18
29-May-15	-	-	10,043	911.87
25-Jun-15	-	-	6,391	1,007.40
17-Jul-15	2,000	989.75	-	-
5-Aug-15	-	-	172	1,040.64
6-Oct-15	10,000	949.40	-	-
9-Oct-15	1,000	942.59	-	-
17-Nov-15	-	-	22,828	831.86
Total	816,907	379.17	816,407	392.77

* 500 shares were sold by FDSL off-market on June 4, 2015

51. In view of the above, I note that the Noticee had traded during the UPSI period. Further, I also note that when the statutory auditors of Ricoh raised concerns, the Noticee had

offloaded the entire shareholding in Ricoh on November 17, 2015 which is within the UPSI period.

Issue No. V: Whether the Noticee traded on behalf of FDSL while in possession of UPSI and violated the provisions of regulation 3(i) and regulation 4 of the PIT Regulations, 1992 and regulation 4(1) of SEBI (PIT) Regulations, 2015 and section 12A(d) & (e) of SEBI Act, 1992?

52. I have already noted that the Noticee traded in the shares of Ricoh during the UPSI period. I have also noted that the Noticee is an insider and had access to UPSI and himself contributed to the existence of UPSI. It has already been noted that he was in possession of UPSI.
53. Having observed as above, the next question that emerges for consideration is whether the Noticee violated regulation 3(i) read with regulation 4 of the PIT regulations 1992 and Regulation 4(1) of PIT Regulations, 2015 read with section 12A(d) and (e) of the SEBI Act. For reference, the text of the said regulations and section is reproduced as under:

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

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;

Violation of provisions relating to insider trading.

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

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;

PIT Regulations 2015

Trading when in possession of unpublished price sensitive information.

4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:”

54. As noted above, the Noticee was an “insider” within the meaning of the said term as defined under regulation 2(e) of the PIT Regulations 1992 and Regulation 2(g) of PIT Regulations, 2015. I have also found that during the period of August 14, 2014 to November 17, 2015 the Noticee had traded in the shares of Ricoh on behalf of FDSL.

55. Before dealing with the submissions of the Noticee in this regard on merit, I find it pertinent to refer to the order of Hon’ble SAT in the matter of *Rajiv B. Gandhi and Ors. v. SEBI* (Hon’ble SAT’s order dated May 9, 2008) wherein the Hon’ble SAT observed the following:

“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.”

56. As observed earlier, the Noticee was an “insider” having access to UPSI under regulation 2(e) of the PIT Regulations, 1992 read with 2 (g) of PIT Regulations, 2015 and therefore in the light of the above observations of Hon’ble SAT, there is a presumption that he traded when in possession of the unpublished price sensitive information. Consequently, it becomes necessary to decide whether the Noticee has submitted adequate material to contradict the admitted events and evidence on record and also to refute the presumption against him. I note in this present case Noticee is found to be involved in the manipulation of accounts of Ricoh and therefore himself was not only having access to UPSI but also had the possession of UPSI. Therefore, material on record goes beyond the legal presumption of possession but also support the actual possession of UPSI. The said fact of actual possession of UPSI is corroborated by the Forensic Audit Report and also the Company Ricoh itself declared that its financials were misstated.

57. I note that the Noticee claimed that FDSL’s trading pattern in the scrip of Ricoh was same as that of trading in other scrips during the Investigation Period. In this regard, during the hearing, the Noticee was directed to submit details of FDSL’s trading pattern in other scrips as well. I note that the same was submitted by the Noticee. From the perusal of the same, I note that during this period, he had traded in 13 scrips including Ricoh and squared off the positions in all the cases. However, what is pertinent to note here is that the Noticee’s gross traded value in Ricoh was substantially high as compared to other scrips. He traded in the scrip of Ricoh during the UPSI period and it is already held that he is an insider and as he is closely connected to the insiders of Ricoh, he had access to and

possession of UPSI. In fact, the evidence on record clearly shows that the Noticee was in possession of UPSI since the Noticee was party to the same, hence, I am not inclined to accept the contentions of the Noticee. I note trading pattern would be relevant fact in cases when circumstantial evidence is relied upon for establishing the possession of UPSI. But in the present case there is substantial evidence of his involvement in the manipulation of the accounts of Ricoh.

58. Further, I note that the Noticee on behalf of FDSL sold the entire shareholding of 22,828 shares of Ricoh at a price of INR 831.86 per share on November 17, 2015 around the time when BSR & Co. raised suspicions regarding certain transactions between Ricoh and its customers / vendors and two days after the announcement dated November 15, 2015 by Ricoh adjourning the Audit Committee and Board of Directors Meetings for consideration of quarterly financial results ended September 30, 2015.

In this regard, the Noticee raised the contention that in the present matter, the Board meeting of Ricoh was adjourned four times from October 13, 2015 to November 14, 2015 which can create doubt in the mind of any investor and therefore, FDSL had sold its holdings in Ricoh on November 17, 2015, i.e., three days after the publication of the fourth adjournments.

I note that the Noticee who was the Promoter and Managing Director of FDSL at the relevant time had influence over the insiders of Ricoh and had access to UPSI, much before it was disclosed in public domain on April 22, 2016 by Ricoh itself. I further note from the evidence on record that the Noticee was already in possession of the UPSI as he was involved in manipulating the purchase orders of related company. I note that the Noticee on behalf of FDSL had substantially traded in the scrip of Ricoh even prior to the said adjournments of the board meeting and the Noticee offloaded the shares of Ricoh when the irregularities in the financial results of Ricoh was pointed out by newly appointed statutory auditor BSR & Co. Therefore, I am of the view that he placed buy and/or sell orders in the shares of Ricoh as the authorized person on behalf of FDSL while in

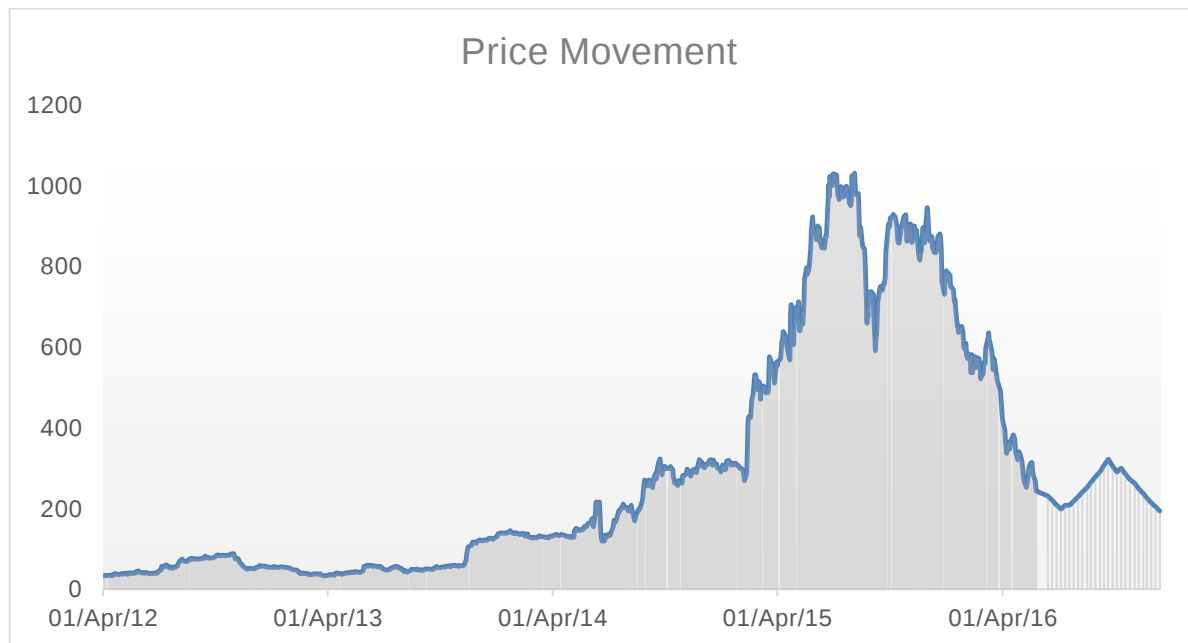
possession of the aforesaid UPSI.

59. I further note that the Noticee by trading in the account of FDSL made following ill-gotten gains, the calculation of which is as under:

Transaction	Buy Qty	Wt Avg Buy Price	Buy Value (INR)	Sell Qty	Wt Avg Sell Price	Sell Value (INR)	Unlawful gains made (INR)
Market	8,16,907	379.17	30,97,49,007	816,407	392.77	32,06,60,499	
Off market	-	-	-	500	889.25*	4,44,625	
Total	8,16,907	379.17	30,97,49,007	8,16,907	393.07	32,11,05,124	1,13,56,118

*The closing price of the date of off-market transaction, i.e. June 4, 2015, has been considered as the sale price.

60. I also note that the Noticee offloaded in the account of FDSL the entire shareholding of Ricoh held by FDSL on November 17, 2015. In order to see the impact of misstatements, the share price variation of Ricoh during the period from 2012 to 2016 has been analysed. The price movement during this period is as follows:



Date	2-Apr-12	1-Apr-13	1-Apr-14	1-Apr-15	4-Aug-15	1-Apr-16	12-Dec-16
Share Price	33	34	131	564	1,030	413	193

61. From the above, it can be seen that the share price of Ricoh has fallen drastically from a high of around Rs. 1,000 in August 2015 to below Rs. 200 in December 2016 and by virtue of his offloading during November 17, 2015, the Noticee on behalf of FDSL avoided a notional loss of INR 1,16,77,892/-, the details of which are as under:

Sell Qty	Wt Avg Sell Price	Closing price on April 25, 2016	Loss avoided (INR)
22,828	831.86	320.3	1,16,77,892

62. It is noted that by virtue of the trading while in possession of UPSI, the Noticee in the account of FDSL not only made wrongful gains but also avoided loss. The total of unlawful gains and losses avoided by FDSL, while in possession of UPSI, was INR 2,30,34,010/-.

63. I note that the Noticee contended that SEBI has taken action on the basis of lifting the corporate veil of FDSL, but there is not even a single instance, that can give reason to SEBI, to look beyond the company. Further he stated that SEBI has failed to show any unfair personal gain to him and has failed to show my ill-intentions behind selling his shareholding on November 17, 2015.

I note that any Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In this context, it needs to be considered whether this is a fit case for lifting the corporate veil of FDSL. In this regard, I place reliance on the

decision of Hon'ble Supreme Court (Larger Bench) in the matter of *LIC Vs Escorts Limited* (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Court had observed:

“90. ... the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.”

64. Reliance can also be made on another judgment of the Hon'ble SAT in the matter of *Sahara Asset Management Company P. Ltd. Vs. SEBI* (SAT Appeal 428/2018 decided on June 27, 2017) wherein it was held that *“In the securities market, SEBI Act empowers SEBI to take actions in the interest of protecting the interests of the investors and hence lifting the corporate veil to the extent to identify who controls a regulated entity cannot be faulted. Without such a power SEBI will be a mute spectator to many of the corporate misdeeds which may jeopardize the interests of investors. Given the mandate of SEBI to protect the interests of the investors in the securities market SEBI is statutorily empowered to lift the corporate veil and find out the truth whenever interests of the investors are affected or likely to be affected”*.
65. I note the fact that the Noticee who is the MD and having around 73% promoter holding in FDSL, is the ultimate and indirect beneficiary of the insider trading. In view of, a) improper conduct of insider trading, b) the fraud of manipulation of accounts of Ricoh by FDSL with the involvement of its Managing Director i.e, the Noticee, and c) being the ultimate beneficiary as controlling promoter of FDSL, for the protection of interest of investors relating to Ricoh, the corporate veil of FDSL requires to be lifted in the present

facts and circumstances of the case. If so lifted, the Noticee is also liable for the above discussed insider trading and its consequences. Therefore, Noticee is also individually liable for an amount of INR 2,30,34,010/-.

66. I note that the purpose of the insider trading regulations is to prohibit trading in which an insider gets advantage by virtue of his access to price sensitive information and the aforesaid relevant provisions of SEBI Act and PIT Regulations make it crystal clear that there is a total prohibition on an insider to deal in the shares of the company when in possession of UPSI. In this regard, the following is noted from the Order of Hon'ble SAT in the matter of *E. Sudhir Reddy Vs. SEBI* decided on December 16, 2011:

"...A shareholder becomes an owner of the company to the extent of the value of shares held by him. He is therefore, entitled to his share in the profits earned by the company. Therefore, performance of a company is of primary importance to the investors as well as to the general public who might be interested in investing in the company. The shareholders and general public get information about the company either through the annual report or during the annual general meeting. However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. 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.”

67. In view of the above, it is held that the Noticee by dealing in the securities of the Company when he was in possession of UPSI, has contravened the provisions of Section 12A(d) and (e) of SEBI Act and Regulations 3(i) and 4 of PIT Regulations 1992 and Regulation 4(1) of PIT Regulations, 2015.

Issue No. VI. If the answer to issue V is in the affirmative, what directions need to be issued against the Noticee?

68. It has already been held in preceding paragraph that the Noticee is liable for insider trading in the scrip of Ricoh and by virtue of the said trading is liable for the ill-gotten gains/losses availed of INR 2,30,34,010/-. Therefore, he is also liable to disgorge the illegal gains/loss availed by virtue of insider trading in the scrip of Ricoh.
69. Here, it will be noteworthy to quote the observations of Hon’ble Supreme Court of India in the matter of *Dushyant Dalal and another Vs. SEBI* decided on October 4, 2017, wherein the Hon’ble Court observed as follows:

“16. We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings

...

28. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity...”

70. Considering the above observations of the Hon’ble Supreme Court of India, I note that an

appropriate rate of interest should be levied on the ill-gotten gains/losses for which Noticee is also liable from the date on which the cause of action arose in the extant matter. By applying the principle as recognized by Hon'ble Apex Court in the aforesaid matter in the present case, interest should be levied on the respective ill-gotten gains/losses averted from the respective trading days. Though, at the same time, it is also noted that in the present case, calculation of interest has not been done. Thus, considering the same, in my view, it would be reasonable that interest be calculated from the last day on which the Noticee executed trades in the account of FDSL in the scrip when in possession of UPSI i.e. November 17, 2015 upto the date of payment.

71. I note that the Noticee contended during the personal hearing that SEBI's claim of Rs.2.3 crores was taken into account by the Resolution Professional of FDSL and SEBI is in the list of creditors. Hence, he may be exonerated from the charges. In this regard, the Noticee was directed to submit the documents to prove that SEBI's claim has been taken up by Resolution Professional of FDSL and documents, if any, to support that FDSL has enough funds to honour the claim amongst all claims. In response, the Noticee submitted the Minutes of 14th Meeting of the CoC. I note from the Minutes of 14th Meeting of the CoC under IBC forwarded by the Noticee with regard to FDSL's CIRP before the NCLT that the Resolution Applicant has expressed its concern of obstacle due to SEBI's restraint order for transferring any shares/ accessing the assets of the FDSL/Corporate debtor etc. I specifically note that it has been recorded in the said Minutes of Meeting that "It was discussed and finalized that the Resolution Professional, while filing the application for approval of the Resolution Plan, would include as an additional Prayer that SEBI would not be further allowed to enforce this order against the Corporate Debtor, after the approval of the Resolution Plan and the transfer of shares would be allowed, post approval of the Resolution Plan. The Resolution Professional confirmed that she would request the advocate to include this as an additional prayer, along with the Prayer to approve the

Resolution Plan”. Hence, I do not find any merit in the claim of the Noticee with regard to the pending CIRP of FDSL before the NCLT and the consequential liability of FDSL since trading in the scrip of Ricoh has been done entirely by the Noticee on behalf of FDSL and the liability crystalized vide this order is towards the violation of the Noticee being an insider holding UPSI. In any case, the liability of the Noticee in the present case stands established in his individual capacity. The fact of pending proceedings in IBC against FDSL will not absolve the liability of the Noticee.

72. Furthermore, I note that SEBI is mandated to protect the interests of investors and promote the development of and to regulate the securities market. For the said purpose, SEBI is empowered to take suitable measures. Factors on which this confidence depends include, among others, the assurance the market can afford to all investors that they are placed on an equal footing and will be protected against improper use of inside information. I note that a reliable operation of the securities market and its healthy growth and development depends, to a large extent, on the quality and integrity of the market. Such a market can help to inspire confidence in investors. Insider trading leads to loss of confidence of investors in securities market as they feel that market is rigged and only the few, who have inside information, get benefit and make profits from their investments. Hence, process of insider trading is against the level playing field. Therefore, the practice of insider trading is intended to be prohibited in order to sustain the investors’ confidence in the integrity of the security market. Inequitable and unfair trade practices such as insider trading affect the integrity and fairness of the securities market and impair the confidence of the investors. Therefore, in view of the violations committed by the Noticee, I find that the Noticee is not only liable to disgorge the ill- gotten gain/losses averted by dealing in the securities of the company when in possession of UPSI, but it also becomes necessary for SEBI to issue appropriate directions against the Noticee.

73. Summary:

- 73.1. Ricoh was incorporated under the Companies Act, 1956 on October 22, 1993. On September 24, 2015, its earlier statutory auditors were changed to BSR & Co (part of KPMG network).
- 73.2. BSR & Co. raised suspicions regarding certain transactions between Ricoh and its customers & vendors, while they were conducting limited review of the financial results of Ricoh for the quarter ended September 30, 2015.
- 73.3. Thereafter, Pricewaterhouse Coopers Private Limited, India (“PwC”) conducted forensic audit of the books of accounts of Ricoh for the half-year ended September 30, 2015.
- 73.4. PwC submitted its report on preliminary findings on April 20, 2016. Then on the same day, Ricoh informed SEBI that its financial statements for the quarters ended June 30, 2015 and September 30, 2015 did not reflect true and fair view of its state of affairs.
- 73.5. PwC submitted its investigation report dated November 17, 2016 to Ricoh. The said report highlighted, *inter alia*, misstatement of Ricoh during the half-year ended September 30, 2015.
- 73.6. Subsequently, Pipara & Co. LLP was appointed by SEBI to conduct forensic audit into the books of accounts of Ricoh as well as FDSL. Based on the forensic audit report dated October 25, 2019 submitted by Pipara & Co. LLP, it was observed that the financial statements of Ricoh were misstated from FY 2012-13 onwards with the involvement of Amalendu Mukherjee.
- 73.7. The act of misstating financial statements of Ricoh from the Financial Years 2012-2013 onwards’ is qualified as “price sensitive information”, as the definition of price sensitive information includes Financial results as price sensitive information.
- 73.8. Ricoh vide letter dated April 20, 2016, disclosed that its financial statements did not reflect true and fair view of its state of affairs. The same was disseminated by BSE

on April 22, 2016. Therefore, the period from April 01, 2012 to April 22, 2016 has been considered as the UPSI period.

73.9. The Noticee is an 'insider' as defined under SEBI (PIT) Regulations, 1992 as well as SEBI (PIT) Regulations, 2015, for the following reasons: -

- FDSL and the Noticee were in a long business relationship with Ricoh. The Noticee also had a personal relationship with the Senior Management of Ricoh. Being the Managing Director and Promoter of FDSL, the Noticee was associated with Ricoh. The Noticee was not only reasonably expected to have access to the UPSI, but also he was in fact himself in possession of UPSI as he was involved in the manipulation of accounts of Ricoh.
- Thus, the Noticee falls squarely within the definition of "connected persons" as defined under Regulations 2(c)(ii) of PIT Regulations, 1992 and Regulation 2(d)(i) of PIT Regulations, 2015. He also falls within the definition of "insider" by virtue of his possession of UPSI.

73.10. The Noticee traded through the account of FDSL while in possession of UPSI during the period of UPSI. Noticee traded through the account of FDSL from August 14, 2014 to November 17, 2015.

73.11. While trading so, the Noticee made a wrongful gain of Rs. 1,13,56,118 in the account of FDSL. Similarly, the Noticee wrongfully avoided a loss of Rs. 1,16,77,892 in the account of FDSL. The Noticee is the Managing Director and Promoter, having shareholding of 73.23% in FDSL and control over its financials and operations.

73.12. In view of,

- a. improper conduct of insider trading
- b. the fraud of manipulation of accounts of Ricoh with the involvement of FDSL and its Managing Director i.e, the Noticee, and

- c. being the ultimate beneficiary as controlling promoter and dominant shareholder of FDSL.
- d. for the protection of interest of investors relating to Ricoh, the corporate veil of FDSL requires to be lifted in the present facts and circumstances of the case.

73.13. As the corporate veil is lifted, the Noticee is also liable for the above discussed insider trading and its consequences. Therefore, Noticee is also individually liable for an amount of INR 2,30,34,010/- and interest thereon.

74. I note the submissions of the Noticee that banks have also frozen some bank accounts held by Mrs. Namita Mukherjee (his wife) and requested to issue necessary instructions to banks to remove the freeze from these bank accounts.

In this regard, I note from the Impounding order dated March 17, 2020 that *“Banks shall not allow debits from the bank accounts of FDSL and Mr. Amalendu Mukherjee, to the extent of the amounts impounded under paragraphs 7.1, until the Escrow Account(s) as stated above are opened by them and the amounts as stated are transferred. Any debit beyond the said limit may be automatically permitted. Credits, if any, into the accounts may be allowed. ... The Banks and the Depositories are directed to ensure that all the aforementioned directions are strictly enforced.”* I note that the entities mentioned in paragraph 7.1 of the impounding order were FDSL and Amalendu Mukherjee. I note that there is no direction against the bank accounts held by Mrs. Namita Mukherjee, wife of the Noticee. In view of the same, I am inclined to give appropriate order to defreeze the account of Mrs. Namita Mukherjee. However, I am of the view that in case there is any account jointly held by the Noticee and his wife, Noticee shall provide the information as mentioned in the following directions. On perusal of the same, SEBI shall communicate an appropriate decision to him.

Order

75. In view of the aforesaid observations and findings, I, in exercise of the powers conferred

under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11, 11(4), and 11B (1) of the SEBI Act, hereby issue the following directions:

- i. Amalendu Mukherjee shall disgorge the unlawful gain/loss avoided by him i.e. INR 2,30,34,010/- along with simple interest @ 12% per annum from November 17, 2015 till the date of payment. He shall pay the said amount within 45 (forty-five) days from the date of receipt of this order. In case Amalendu Mukherjee fails to make the payment within such 45 days, he shall be liable to pay future interest at the rate of 12% per annum till the date of payment. Payment will be made by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai OR through e-payment facility into Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

- ii. The Banks, with which the Noticee’s accounts lie, are directed that no debit shall be made, without permission of SEBI, in respect of the bank accounts held by Amalendu Mukherjee, except for the purposes of compliance of this order. However, credits, if any, into the accounts may be allowed.
- iii. The Depositories, with which the Noticee’s demat accounts lie and Registrar and Transfer Agents are directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held by Amalendu Mukherjee, except for the purposes of compliance of this order. However, credits, if any, into the accounts of Amalendu Mukherjee may be allowed.
- iv. Amalendu Mukherjee is also directed not to dispose of or alienate any of his assets/

properties/ securities, till such time the direction of this order is complied with.

- v. Amalendu Mukherjee shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, from the date of this order till the expiry of seven years from the date of completion of payment of disgorgement amount along with interest as stated in preceding paragraphs. Further, Amalendu Mukherjee is also restrained from associating himself with any listed public company and any public company which intends to raise money from the public or any intermediary registered with SEBI from the date of this order till the expiry of seven years from the date of completion of payment of disgorgement amount along with interest as stated in preceding paragraphs.
- vi. Noticee shall provide the following information to SEBI, in case wife of the Noticee is a joint account holder with him, within one week from the date of receipt of this order.
 - a. The details of payment made to the joint account as evidenced by the Bank statement for the relevant period
 - b. The documentary proof of source of income of Noticee's wife for the credits mentioned in the Joint account.
 - c. Copy of income tax statement of Noticee's wife for the relevant financial years corresponding to the credits mentioned in the Bank account.
 - d. Certificate of Chartered Accountant on verification of the above documents stating that the money credited in the joint account belongs to his wife, in case it so belongs.

76. In case the Noticee fails to pay as detailed in paragraph 75(i) within the above specified time, SEBI shall initiate recovery process under section 28A of the SEBI Act.

77. Copy of this order shall be sent to the Noticee.

78. Copy of this Order shall be forwarded to the recognized stock exchanges and depositories, registrar and transfer agents and banks for information and necessary action.

DATE: July 06, 2020

MADHABI PURI BUCH

PLACE: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA