

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under sections 11(1) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of insider trading by suspected entities in the scrip of Bank of Rajasthan Limited (now merged with ICICI Bank Limited) and in continuation of order dated January 05, 2016 in the matter of Bank of Rajasthan Limited.

In respect of -

S. No.	Name	PAN
1.	Rohit Premkumar Gupta	AABPG6978J
2.	Sanjay Kumar Tayal	AAEPT9209L
3.	Navin Kumar Tayal	AABPT2833K
4.	Jyotika Sanjay Tayal	AABPT2949Q
5.	Advik Textiles and Realpro Pvt. Ltd. (Advik)	AAGCA0352E
6.	Kulwinder Kumar Nayyar	AASPN4833F
7.	Azam Mohammed Ashan Shaikh	AWYPS0941A

1. Securities and Exchange Board of India (SEBI) conducted an investigation in the scrip of Bank of Rajasthan Ltd (hereinafter referred to as BoR) for the period of May 07 - 18, 2010 to ascertain any violation of the provisions of SEBI Act 1992 and SEBI (Prohibition of Insider Trading) Regulations, 1992 ('Insider Trading Regulations'). The period just prior to the announcement of an Agreement between the dominant shareholders of BoR with ICICI Bank Ltd (ICICI) to merge the two banks spanning over 12 days from May 7 to May 18, 2010 was delineated as the investigation period as it witnessed considerable price and volume movement. The said information of merger was a price sensitive information, in terms of Regulation 2(ha)(v) of the Insider Trading Regulations.
2. After the investigation, SEBI passed an interim impounding order dated January 5, 2016 against the noticees. Rohit P. Gupta (Rohit) (Noticee No. 1) is the brother of Jyotika Tayal (Noticee No. 4), Jyotika Tayal (Jyotika) is the wife of Sanjay Kumar Tayal (Noticee No. 2);

Navin Kumar Tayal (Navin) (Noticee No. 3) is the brother of Sanjay Kumar Tayal (Sanjay); Advik is alleged to be connected to the Tayal family (Sanjay K Tayal, Navin K Tayal and Jyotika Tayal) and Noticees No. 6 & 7 were directors of Advik at the time of the alleged violations (hereinafter Noticee Nos. 1 to 7 are together referred to as “Noticees”). The Tayals i.e. Noticee Nos. 2, 3 and 4 were the dominant shareholders of BoR at the relevant point of time. The interim impounding order directed the Noticees not to divert the unlawful gains, arising out of the alleged insider trading violations which might result in defeating the effective implementation of the direction of disgorgement, if any, to be passed after the conclusion of the proceedings on merits.

3. Against the aforesaid impounding order, Advik filed an appeal before Hon’ble Securities Appellate Tribunal (SAT) and Hon’ble SAT vide order Dated October 11, 2017 directed SEBI to pass final order in the matter within a period of six weeks. In order to comply with the direction of Hon’ble SAT, SEBI issued common Show Cause Notices dated October 18, 2017 (hereinafter referred to as “the SCN”) to the noticees and the same was served to all the noticees.

**Show Cause Notice, Reply & Personal hearing.**

4. The brief facts of the case and charges in the SCN *inter alia* are as follows :-
  - i. Pravin Kumar Tayal, one of the promoters of BoR and his brother Sanjay Kumar Tayal (Noticee No. 2) on behalf of BoR were associated in the discussion on the merger of BoR with ICICI;
  - ii. SCN alleged that the period of unpublished price sensitive information (UPSI) was from May 07, 2010 to May 18, 2010 (till 05:12:24 p.m.), since till May 6, 2010, the promoters of BoR expressed their unwillingness to proceed with the transaction/proposed merger immediately and there was no definite terms of agreement between the two parties to the merger;
  - iii. The discussions with respect to merger of BoR with ICICI resumed from the meeting held on May 07, 2010 and thereafter legal issues were taken up;

- iv. On May 18, 2010, Pravin Kumar Tayal (Pravin) and Sanjay on behalf of the dominant shareholders of BoR, entered into a "Binding Implementation Agreement" at approximately 04:30 a.m. with ICICI to procure cooperation and support of such shareholders to effect a proposal of a merger of BoR with ICICI;
- v. BoR informed exchanges on May 18, 2010 at 17:12:24 hrs that it has received a communication from Sanjay Tayal, its director and related to dominant shareholding group, requesting it to convene a board meeting urgently on May 18, 2010 and informing that the dominant shareholders of BoR have entered into an agreement on May 18, 2010 with ICICI for proposed merger of both the banks and that ICICI is convening its Board of Directors meeting on May 18, 2010 for considering the proposed merger and for approving several actions necessary for the process;
- vi. Immediately prior to the signing of the aforesaid Binding Implementation Agreement, Rohit Gupta (Noticee No. 1) who is the brother of Jyotika (Noticee No. 4), purchased 1,40,000 shares of BoR, details of which are as follows:-

Trade Date	Exchange	No. of shares purchased	Avg. Rate ( ₹	Value ( ₹
May 17, 2010	BSE	2,000	83.21	1,66,409.40
May 17, 2010	NSE	20,000	82.90	16,58,084.00
May 18, 2010	BSE	18,000	89.89	16,18,043.36
May 18, 2010	NSE	1,00,000	94.34	94,33,788.07
Total		1,40,000	<b>91.97</b>	1,28,76,324.83

- vii. Subsequently, within 8 to 10 days, Rohit sold the said BoR shares and made a profit of ₹ 95,77,614. Details of shares of BoR sold and profit calculations with respect to Rohit Gupta are tabulated as follows:-

Trade Date	Exchange	No of shares sold	Avg. Rate ( ₹	Value ( ₹
May 25, 2010	BSE	14,000	158.28	22,15,953.15
May 25, 2010	NSE	2,000	157.61	3,15,220.00
May 26, 2010	BSE	17,000	160.39	27,26,709.40
May 26, 2010	NSE	50,000	160.22	80,11,014.70
May 27, 2010	BSE	2,000	160.70	3,21,400.00
May 27, 2010	NSE	75,000	160.95	1,20,71,347.10
Total		1,60,000	<b>160.39</b>	2,56,61,644.35
Average sale consideration for 1,40,000 shares				2,24,53,939.00
Cost of acquisition of 1,40,000 shares				1,28,76,324.00
<b>Gross Profit on purchase and sale of 1,40,000 shares</b>				<b>95,77,614.00</b>

- viii. In the SCN, it is alleged that Noticee No. 1 dealt in the scrip of BoR while in the possession of and on the basis of UPSI in connivance with Noticee Nos. 2, 3 and 4 who funded Noticee No. 1 for the insider trading in the shares of BoR through Noticee No. 5, an entity controlled by Noticee Nos. 2, 3 and 4;
- ix. The directors of Noticee No. 5 at the relevant point in time were Noticee Nos. 6 and 7 who were also close associates of Noticee Nos. 2, 3 and 4;
- x. Therefore, SCN alleged that Noticees Nos. 1 to 7 violated Section 12A (d) and (e) of SEBI Act, 1992 and Regulation 3(i) and 3(ii) read with Regulation 4 of Insider Trading Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015;
- xi. It is further alleged in the SCN that Noticee No. 5 has violated Regulation 3A read with Regulation 4 of Insider Trading Regulations 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations');

- xii. Apart from the allegation of Insider Trading, SCN also alleged that the Noticee Nos. 1 to 7 have also committed a fraud on other investors and therefore the Noticees have violated Section 12A(a), (b) and (c) of SEBI Act, 1992 and Regulation 3(b), 3(c) and 3(d) and 4(1) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations'). The provisions of the SEBI Act, 1992 and the aforesaid Regulations violated read as under:-

**Section 12A (a), (b), (c), (d) and (e) of the SEBI Act, 1992**

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL  
12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(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;

### **SEBI (PIT) Regulations, 1992**

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

#### **3. No insider shall—**

- (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or
- (ii) communicate or 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 of business or profession or employment] or under any law.

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

### **SEBI (PFUTP) Regulations, 2003**

#### **3. Prohibition of certain dealings in securities: No person shall directly or indirectly—**

- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

#### **4. Prohibition of manipulative, fraudulent and unfair trade practices**

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities. The above directions shall come into force with immediate effect.

5. In response to the SCN dated October 18, 2017, Noticees, submitted as follows:-

(a) Response of Rohit Gupta vide letter dated November 9, 2017:-

- i. The entire case is based on wrong premise, assumptions and presumptions;
- ii. The SCN has erroneously alleged violation of Section 12A(d) and (e) of SEBI act, 1992 and Regulation 3(i) and 3(ii) read with Regulation 4 of the Insider Trading Regulation read with Regulation 12 of SEBI PIT Regulations, 2015, Section 12A(a), (b) and (c) of Sebi Act, 1992 and Regulation 3(b), 3(c) and 3(d) and 4(1) of the PFUTP Regulations. The said invocation is incorrect. The, invocation of the provision PIT Regulation, 2015 is itself contrary to the settled position of law that a penal statute of regulation cannot have a retrospective effect;
- iii. The SCN is based on the premise that he was in possession of the UPSI on May 18, 2017 when he traded in the scrip of BoR;
- iv. SCN has failed to provide any evidence that he was in possession of the UPSI. SCN is only able to draw an inference without any clear proof or document to show that he was in possession of the UPSI;
- v. The news of the merger was already out in the market on May 6, 2010;
- vi. At least 104 entities had traded in the Scrip of BoR on 18th May, 2010 for more than 10,000 shares and therefore to say that the volumes of trade in the script of BoR was less is totally incorrect. The news on the basis of which he traded along with other 104 entities cannot be considered as an UPSI. He should be given the same treatment like the others who traded in the scrip of BoR on 18th May, 2010;
- vii. The provisions of PFUTP Regulations are totally inapplicable in the present scenario and the shares were purchased by obtaining delivery in his own account. He had not committed fraud or deceit upon any person in connection with dealing in securities;

- viii. For invocation of PIT Regulations there are three categories of people who can be roped in: An Insider, Connected person and person deemed to be connected;
- ix. He is not an Insider as per the definition of insider. He is not related to the company or the whole transaction in any manner;
- x. He is not a connected person as specified in the categories of persons mentioned in the definition of the connected person;
- xi. He cannot even be deemed to be a connected person as he does not fall in any of the categories of the relatives as specified in the definition of relative;
- xii. The allegation of PIT Regulation against him is on the basis that his sister is married to the promoter of the BoR and has incorrectly interpreted him in the definition of relative. SCN has erroneously considered "Wife's brother" also in the definition of the relative;
- xiii. The trading pattern of the scrip on 18th May, 2010 clearly depicts that the strong news in the market regarding the amalgamation and on the basis of which he had gone ahead and purchased the shares as the funds were available with him on that day due to the payment being received by him on account of advance on sale of property;
- xiv. The Conclusion drawn that his company and corporate office of BoR is at the same address is absolutely incorrect and unintelligible. Raghuvanshi Mill Compound is a huge space having more than 200 offices;
- xv. Conclusion drawn that he was not an active investor in the Equity market is absolutely incorrect. His statement regarding his trading in Mutual funds should be considered and those transactions were in the tune of crores. Mutual funds are also part of the equity market;
- xvi. He had bank balance of few crores, 10 days prior to purchase of shares of BoR, which he had invested in the mutual funds.



xvii. He was continuously dealing in the securities market by way of shares or mutual funds.

(b) Response of Sanjay Kumar Tayal, Jyotika Tayal and Navin Kumar Tayal vide letters dated November 9, 2017 and November 13, 2017 is as below:-

- i. They were not the directors or shareholders of Advik at the relevant time;
- ii. Advik cannot be deemed to be a connected person in terms of Regulation 2(h)(ix) of PIT Regulations as Mr. Sanjay Tayal became a shareholder of Advik only on 10th September, 2011 for a period of 13 months until 5th October, 2012 which is clearly outside the investigation period;
- iii. With regards the connection of Mr. Navin Tayal with Advik it was submitted that during the investigation period he wasn't even a shareholder of Advik. He was a director of Advik only for the period 2nd June, 2008 till 2nd March, 2010 which is also outside the investigation period;
- iv. SCN proceeds on a wrong and erroneous basis that there was any UPSI on the said alleged agreement dated 18<sup>th</sup> May 2010. The same did not conclude or effect any merger /amalgamation. Admittedly, the same only recorded a proposal for such amalgamation. This was only one of the many steps in the process of negotiations which had been admittedly going on since March 2010. Most importantly, the information about such negotiations was already in the public domain. The said merger took place on August 12, 2010;
- v. The allegation against Tayal's is that they were at some point before the investigation period holding shares in Advik and are having common directorship with the Directors of Advik which are Noticees no. 6 and 7 in the captioned SCN in other Companies and they have connived with Mr. Rohit Gupta to enable him to trade in the scrip of Bank of Rajasthan to allegedly make profit out of such insider trading;
- vi. It is denied that any of the alleged connections or links, past or present could lead to any legitimate conclusion that the alleged dealings of Mr. Rohit Gupta while conniving with us were on the basis of UPSI or

amounted to any violation of PIT regulations. In fact, as aforesaid there was no UPSI at all at the relevant time and the relevant information was already in the public domain, *inter alia* by way of news reports. This is also evident from the volume in the scrip of Bank of Rajasthan on 06th May, 2010 as compared to 18th May, 2010;

Date	Traded Quantity		Total
	NSE	BSE	
6 <sup>th</sup> May, 2010	2,66,37,535	1,51,04,540	4,17,42,075
18 <sup>th</sup> May, 2010	1,78,78,180	1,10,53,316	2,89,31,496

- vii. It is very clear from the above mentioned data in the scrip of BoR that trading was much higher on 06th May, 2010 as compared to 18th May, 2010. Therefore it cannot be alleged that the UPSI came into existence on 7 May, 2010 when in fact it was already in the public domain;
- viii. As regards the allegation that Mr. Navin continued to be one of the two authorized signatories to operate one of the Bank accounts of Advik with ICICI Bank since 2nd July, 2008 till at least 9th December, 2013, it is submitted that Mr. Navin is very well known to the Directors of Advik since long. Mr. Navin and the Directors of Advik also travel frequently together, and Mr. Kulwinder Kumar Nayyar had requested Mr. Navin Tayal to remain as an authorized signatory to one of the bank accounts of Advik, so that he could sign cheques in case of emergencies if any, at times when they were out of station, and he had agreed to do so. Because of this reason, Mr. Navin agreed to be the authorized signatory only to Advik account with ICICI Bank Ltd. It is to be noted that Mr. Navin was one of the two authorized signatories. This allegation is immaterial and cannot lead to any conclusion that Navin or Jyotika or Sanjay Tayal were managing

the affairs of Advik during May-June 2010 as purported to be stated in the SCN.

- ix. The SCN inter alia records that Mr. Rohit Gupta also informed SEBI that the said Sale Agreement was later terminated on 03rd June, 2010 and the said advance amounts paid were refunded by him to Advik. The SCN however makes no reference to the Suit filed by Mr. Rohit Gupta against Advik in the Hon'ble Bombay City Civil Court.
- x. They relied upon the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sterlite Industries (India) Limited vs. SEBI dated October 22, 2001.

(c) Advik, Kulwinder Kumar Nayyar and Azam Mohammed Ashan Shaikh vide letter dated November 8, 2017 responded as below:-

- i. That SEBI had not recommended action against several suspected entities including ICICI Bank Ltd. However, proceedings under Section 11(1), 11(4) (d) and 11B of the SEBI Act, 1992 was recommended only against the 7 noticees;
- ii. That SEBI has recorded Statements of Noticee No. 1 on 24-09-2013 and 20-08- 2014. Since SEBI had relied on the said Statement in the Proceeding, they requested SEBI to allow them to cross examine of Noticee No.1 i.e. Mr. Rohit Gupta at the office of the SEBI.
- iii. That they had paid ₹ 36.38 Lakhs on 18-05-2008 and ₹ 80.06 Lakhs on 19-05-2016 through two RTGS totaling to ₹ 116.44 Lakhs to Noticee No.1 towards amount payable to him under agreement of sale dated 01-05-2010. Para 5 of the said Agreement for Sale provided that "The Purchaser hereby agrees to pay in the month of May , 2010 ₹ 1,16,43,240/- (Rupees One Crore Sixteen Lac Forty Three Thousand Two Hundred Forty Two Only) which is 2/3<sup>rd</sup> of the amount of total consideration of ₹ 1,74,64,860/- (₹ One Crore Seventy Four Lac Sixty Four Thousand Eight Hundred Sixty Only) being charged @ ₹ 17430/- per sq. ft. on the carpet area".

- iv. That reference to Para 13 of the SCN, they had terminated the Agreement for Sale dated 01-05-2010 by letter dated 03-06- 2010 and requested the Noticee No.1 to refund the advance amount paid by them to him. Accordingly the Noticee No.1 repaid an amount of ₹ 1,16,44,000/- to Noticee No.5 on or about 17-06-2010.
- v. That the said Agreement for Sale was not required to be registered as it was not a final Sale Deed. In law, there is no requirement to register an Agreement of Sale and only final Sale Deed/Conveyance Deed is require to be registered. As regards the allegation that the said Agreement for Sale was terminated on 03-06-2008 without recording the reason for the same, it was stated that the said Agreement for Sale itself expressly stipulated that if the Vendor fails to prove his clear title on the property or for any reason whatsoever then purchaser has full right to terminate the said agreement by serving 3 days' notice to that effect;
- vi. That the 4 (four) shops which they had agreed to purchase were situated on the first floor of Shopping Mall known as "Dreams the Mall". They however, discovered that the electricity supply to the said Mall was erratic and there were frequent power failures. It was also discovered that the said Mall apparently had some security issues, many non-operational shops in the Mall and a deficit "foot falls of consumers", which is important to the success of a Garments Business. Further, apparently because of the lack of sales, huge outgoings were being charged by the Mall Management. Further, they submitted that there is no requirement in the law that an 'Agreement to Sale' is required to be witnessed by any other persons on behalf of the Buyer and Seller.
- vii. That the Company has its office address at "11/ 12, Rahuvanshi Mill Compound, Lower Parel, Mumbai 400013", which is a huge compound having more than 200 offices of numerous Companies using the same address, which is headed by the name of the Company followed by

common address. This does not mean that all the companies have their address in the said compound belong to the same group as BoR;

- viii. That Mr. Kulwinder Kumar Nayyar i.e. Noticee No. 6 had resigned from directorship of the Company from 08-06-2015;
- ix. That simply because Noticee No. 6 and 7 were Directors in various Tayal's related /connected companies during the Investigation Period as well as pre and post Investigation Period, no adverse inference should be drawn against them. The said Directors were not privy to any price sensitive information;
- x. That just because Noticee No.3 along with one Mr. Vinod were the authorized signatories to operate the bank account of the Company, it cannot be concluded by SEBI that Noticees Nos. 2 to 4 were managing the affairs of the Company and therefore "deemed to be a connected person" in terms of Regulation 2 (h) (ix) of PIT Regulations;
- xi. That the Ld. Whole Time Member had passed an Ex-Parte Order dated 05-01-2016 and directed banks and depositories participants etc. to freeze all bank and demat accounts etc. which is completely untenable in law, unsupported by any facts and a gross abuse of power. Further, the said order purports to direct impounding even of interest @ 12 % despite the clear judgment dated 4.10.2012 of the Hon'ble SAT in the matter of Shailesh S. Jhaveri Vs. Sebi, wherein it was clearly held that interest can be levied by SEBI only after passing the final order of disgorgement and expiry of the time period provided therein for payment of the disgorgement amount.

- 6. An opportunity of personal hearing was granted to all the noticees to hear the parties on the allegations levelled in the SCN, on November 09, 2017. All noticees attended personal hearing through Authorized representatives and filed their replies along with the oral submissions. Advik in its written reply submitted at the time of personal hearing, sought cross examination of Rohit Gupta. However during the personal hearing the said request

was not pressed by the parties. In this regard, I also note that the statement of Rohit Gupta was not relied upon in the SCN dated October 18, 2017 and therefore the request for cross-examination is not relevant for consideration.

7. During the personal hearing, a question was raised with respect to the frequent changes in the shareholding pattern of Advik, as reflected in para 17 of the SCN, (i.e. with Noticee No. 6 from 01/11/2006 to 29/09/2007 and thereafter with Noticee Nos. 3 and 4 (Tayal family) from 29/09/2008 to 02/03/2010 and thereafter with Noticees 6 and 7 from 02/03/2010 to 10/09/2011 and thereafter from 10/09/2011 to 05/09/2012 with Tayals). To this query, the Tayals sent a clarification vide letter dated November 13, 2017 that *it was just a business transactions done in the normal course of business and it does not have any impact on the present matter. The present matter is pertaining to the investigation period i.e. 07<sup>th</sup> May, 2010 to 18<sup>th</sup> May, 2010 during the time which we were not the shareholders of Advik.*

**Issues for consideration:-**

- A. Whether the information regarding the merger of BoR and ICICI was a UPSI, between the period May 7, 2010 to May 18, 2010?**
- B. Whether Rohit Gupta is deemed to be a connected person / a relative of such person / an insider for the purpose of the Insider Trading Regulations?**
- C. Whether Advik was connected to the Tayals at the relevant time in any manner, so that the charge of financing Rohit Gupta by Advik can be sustained?**

The detailed consideration of each issue is as follows:

- A. Whether the information regarding merger of BoR and ICICI was a UPSI, between the period May 7, 2010 to May 18, 2010?**
8. 'Price Sensitive information' as defined in Section 2 (ha) of the Insider Trading Regulations reads as under:-

“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) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects.
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) and significant changes in policies, plans or operations of the company;

9. As noted from the above definition, the information regarding negotiation of merger between BoR and ICICI falls within the definition of Price Sensitive information, as it directly relates to BoR and is likely to materially affect the price of securities, if published. This has not been disputed by the Noticees. However, the noticees have disputed the fact that the same was “unpublished”, as the information regarding the negotiation of merger between BoR and ICICI was already in the public domain. Rohit Gupta, Noticee No. 1 has submitted that he traded on the basis of the information that was available in public domain just like several other persons who traded in the scrip of BoR during the period. The noticees relied on certain media reports such as, Live Mint; Business Standard and Economic Times dated May 06 and 07 of 2010.

10. The term “unpublished” has also been defined in Section 2(k) of the Regulations, which reads as under:-

(k) “unpublished” means information which is not published by the company or its agents and is not specific in nature.

Explanation.—Speculative reports in print or electronic media shall not be considered as published information.]

11. A combined reading of both the above definitions along with the Explanation to Regulation 2 (k) makes it amply clear that if the news / information regarding the merger of BoR with ICICI in newspapers / reports are not published by either of the two parties, to the merger or their agents, then the same cannot be treated as published. It continues to remain “Unpublished as defined in Regulation 2(k) above. Upon a perusal of the media reports, I observe that the news of a confirmed merger between the two companies is not forth coming. The news only relates to some talks going on between the two companies regard merger and the information of having firmed up the merger by execution of a Binding Agreement got publicized only on May 18, 2010 at 5:12:24 PM, when BoR notified the Exchanges. Therefore, the submission of the noticees in this regard cannot be accepted.
12. It is also observed that during the relevant period, the shareholding of the promoter group of BoR was 28.36 %, whereas public shareholders holding more than 1% shares was a meager 5.53 % and smaller shareholders constituted 65.86 %. Therefore, signing of the “Binding Implementation Agreement” between the dominant shareholding group /promoter group to procure cooperation and support of such dispersed public shareholders to effect a proposal of merger of BoR with ICICI in terms of Section 44A of the Banking Regulation Act, 1949 on May 18, 2017 at 4:30 am was a significant step towards merger of BoR and ICICI.
13. It is also noted from the investigation report that the plan of merger of two companies started in the meeting held on February 24, 2010. Subsequently, the valuation aspect was also discussed in various meetings, and the investigation revealed that on May 06, 2010, BoR promoters communicated to ICICI their unwillingness to proceed with the transaction. On May 07, 2010, the discussions resumed and thereafter legal issues were taken up and then the information regarding the “Binding Implementation Agreement” was informed to the exchange on May 18, 2010 at 05:12:24 PM. Therefore, investigation found that the UPSI came into existence from May 07, 2010 after the negotiations between



the entities restarted till the information regarding “Binding Implementation Agreement” was made to public on May 18, 2010 at 5:12:24 PM. As the “price sensitive information” emanated on May 7, 2010 and continued to remain unpublished till May 18, 2010 at 5:12:24 PM (i.e. till the time of the exchange notification), I am of the view that the information relating to the execution of the pre-merger agreement, was a UPSI, as on May 17, 2010 and May 18, 2010, when the alleged trades were executed by Noticee No. 1. The mere fact that the information was circulated in media in the form of speculative or unconfirmed reports does not, in any manner, undermine the character of UPSI as clearly indicated in explanation to Regulation 2(k) of the PIT Regulations.

**B. Whether Rohit Gupta is deemed to be a connected person / a relative of such person / an insider for the purpose of the Insider Trading Regulations?**

14. In the SCN, it has been stated that Rohit Gupta was the brother of Noticee No. 4 (Jyotika Tayal), who is the wife of Sanjay Tayal, Noticee No. 2. Sanjay Tayal was associated with the ICICI negotiation and had access to the UPSI. Accordingly, the SCN has alleged that Jyotika Tayal being a “deemed to be connected person”, a relative of such person will also be deemed to be a connected person by virtue of Regulation 2 (h)(viii) of the Insider Trading Regulations. Rohit Gupta in his reply has stated that he is not an insider, a connected person or a deemed to be connected person.
15. With a view to appreciate the contentions of the noticees, it is necessary to refer to the relevant provisions of the regulations which have a bearing on the allegation against the noticees and these provisions are reproduced hereunder for facility of reference:-

“2(c) “connected person” means any person who—

- (i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or
- (ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably

be expected to have an access to unpublished price sensitive information in relation to that company.

Explanation :—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading;

(e) “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 company, or

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

(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 subsection (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;

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or, is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who has a fiduciary relationship with the company;

(iv) is a Member of the Board of Directors, or an employee, of a public financial institution as defined in section 4A of the Companies Act, 1956;

(v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body;

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person; or

(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;

(i) “relative” means a person, as defined in section 6 of the Companies Act, 1956;

16. All the noticees have *interalia* contended that Rohit Gupta is not a connected person or deemed to be connected person in terms of the definition of Insider Trading Regulations. In support of the same, they have referred to the definition given in Section 2(i) of the Insider Trading Regulations, as mentioned above. This definition depends on the definition of relative as provided in Section 6 of the companies Act, 1956, which reads as under:-

6. MEANING OF "RELATIVE"

A person shall be deemed to be a relative of another, if, and only if,

- (a) they are members of a Hindu undivided family ; or
- (b) they are husband and wife ; or
- (c) the one is related to the other in the manner indicated in Schedule IA

SCHEDULE IA

[See section 6(c)]

LIST OF RELATIVES

- 1. Father.
- 2. Mother (including step-mother).
- 3. Son (including step-son).
- 4. Son's wife.
- 5. Daughter (including step-daughter).
- 6. Father's father.
- 7. Father's mother.
- 8. Mother's mother.
- 9. Mother's father.
- 10. Son's son. Page 284 of 332
- 11. Son's son's wife.
- 12. Son's daughter.
- 13. Son's daughter's husband.
- 14. Daughter's husband.
- 15. Daughter's son.
- 16. Daughter's son's wife.
- 17. Daughter's daughter.
- 18. Daughter's daughter's husband.
- 19. Brother (including step-brothers).
- 20. Brother's wife.
- 21. Sister (including step-sister).
- 22. Sister's husband

17. I have considered the SCN and the submissions of the noticee. The definition of “relative” in the Companies Act, 1956 provides for a person who can be deemed to be a “relative” of another and states that if and only if, any person falls under the ‘List of Relatives’ in Schedule IA of Section 6 (c), only then he can be treated as a “relative”. I note that on a reference made by Indian Banks’ Association as regards the scope of the relationship listed in Schedule IA, the Department of Company Affairs, stated that “S 6(c) of the Companies Act does not cover reciprocal relationships in the reverse direction.” Therefore, though the ‘sister’s husband’ is a relative as far as a brother is concerned under the definition, ‘wife’s brother’ is not explicitly included as a relative of the husband. Thus, I agree with the contentions of the noticees that Rohit Gupta cannot be roped in as a “relative” of a person who is deemed to be connected person, as sought to be made out in the SCN.

18. In this regard, it would be relevant to appreciate the definition of “Insider” as per Regulation 2 (e) of the Insider Trading Regulations which states:-

- (e) “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 company,
  - or**
  - (ii) has received or has had access to such unpublished price sensitive information ;

19. Clearly, the definition of “insider” has two parts, one which stems directly from the “connectedness” and the other in relation to access to UPSI. Taking into consideration the fact and circumstances of the instant case, the issue for consideration is whether Rohit Gupta can be categorized as an “insider” under the Regulation, purely from the perspective of his access to UPSI. It is noted from the Regulation 2 (e) of the Insider Trading Regulation that even though a person is not connected or deemed to connected with the company, still he can be an insider if he “has received or has had access to such unpublished price sensitive information”. Thus, it has to be decided whether Rohit Gupta had received or has access to the UPSI or not.

20. The thrust of the argument of Rohit Gupta is that he cannot be considered to be either a “deemed to be a connected person” or a relative of a “deemed to be a connected person” under the Insider Trading Regulations, as the definition in the PIT Regulations read with the Companies Act provisions do not provide so. I understand that the definitions are to be strictly interpreted and I cannot construe the definitions to bring Rohit Gupta within the ambit of the deeming fiction provided by law. At this juncture, I am constrained to consider whether the overwhelming factual circumstances including the nature of trading pattern of Rohit Gupta; his family connections; the sum of ₹ 1.16 crore that got credited to his account immediately before his alleged transaction; the connection between the Tayal family with Advik; the frequent changes in the shareholding pattern of Advik etc; can be considered independently or not. If the facts communicated in the SCN sufficiently support the allegation of Insider Trading against Rohit Gupta and independently reveal that he has had access to the UPSI then he would fall within the definition of insider and having traded while in possession of UPSI, then he would be liable for insider trading. I find that Rohit Gupta has in fact traded in 1,40,000 shares during the relevant period.
21. I have noted that all noticees have contended that there is no evidence brought out in the SCN showing that the UPSI was passed on to Rohit Gupta. All the noticees have contended in unison that Rohit Gupta traded in the scrip just like several other persons on the basis of the news that was circulating in the market.
22. It is observed that, as brought out in the SCN, Rohit Gupta was not an active investor in the equity market. In the financial year 2010-11, he had not dealt in any other scrip except BoR. Similarly, in the financial year 2009-10, he had only sold shares of five companies for a total value of around ₹ 1 crore and he had not traded in the equity market during the financial years 2011-12, 2012-13 and 2013-14. SCN has also brought out the fact that he has never traded in the scrip of BoR since 2005-06 and suddenly on May 17 & 18, 2010, he purchased shares of BoR worth more than a crore in value, which was more than the aggregate value of transaction done during the entire financial year 2009-10. He also sold

off all the shares acquired in the next 8 to 10 days and made illegal gains of ₹ 95,77,614. I find that the timing of the trades executed by Rohit Gupta is relevant to note. The Investigation Report has brought out that on May 17, 2010 from 12:30 pm onwards the discussions were on the “Binding Implementation Agreement executed on May 18, 2010 at approximately at 4:30 am”, between Noticee No. 2 along with other promoters on the side of BoR and ICICI Bank. The Noticee No. 2 having partaken in a series of meetings held with respect to the merger was definitely having knowledge about the execution of the “Binding Implementation Agreement”. The insider’s wife is deemed to be an ‘insider’ and is deemed to have knowledge of the UPSI. As far as Rohit Gupta is concerned, he had cordial relation with his sister as admitted during the personal hearing by his authorized representative. The purchase of BoR scrip was made by Rohit Gupta at 3:29 pm on May 17, 2010 and between 9:45 to 10:12 am on 18<sup>th</sup> May, 2010, i.e. before the official dissemination was made to the Exchanges at 5:12 pm on 18<sup>th</sup> May, 2010. Between close relatives such as a sister and a brother, it is difficult for a regulator to lay hands on a concrete direct proof establishing the transmission of the specific information at the relevant time. In such circumstances, one would be guided by the various circumstances as evidenced on record otherwise, so as to ascertain whether insider trading has been committed or not. In this connection, I wish to place reliance on the decision of the Hon’ble District Court Southern District of New York in the matter of United States of America V Raj Rajaratnam 09 Cr. 1184 (RJH) rendered on 11.08.2011, where in the context of insider trading, the relevance of circumstantial evidence is brought out as extracted below:

*“...Moreover, several other Courts of Appeals have sustained insider trading convictions based on circumstantial evidence in considering such factors as “(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contact between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee.”*

23. Thus, Rohit Gupta purchased shares of BoR during a time when the merger of BoR with ICICI had not become final officially and only rumors were going around and sold after the concrete step of promoter's binding agreement was signed and informed to the public. Further, it is noted that the orders for purchase of shares of BoR in the account of Rohit on May 17, 2010 were entered just before the close of the trading hours i.e., from 15:26:09 on NSE for 20,000 shares of BoR and 15:29:36 on BSE for 2,000 shares of BoR, which is unusual for a person who is not a regular trader. Further, the information regarding the signing of the agreement was put out in the public domain only at 5:12:24 PM on May 18, 2010. The fact that Rohit Gupta bought a large chunk of 1,18,000 shares on May 18, 2010 before the information was in the public domain does show an unseemly hurry on his part to acquire a good number of BoR shares to maximize his profit potential. This pattern of trading during 17<sup>th</sup> and 18<sup>th</sup> of May 2010 is not in sync with his normal trading behaviour which is clearly a marked aberration!

24. In response to the said allegations in the SCN, Rohit Gupta has submitted that he was an active trader in the market, but I find that Rohit Gupta was an active trader only in mutual fund and not in the equity market. On the issue of trading pattern Rohit Gupta has further submitted that :-

*"The trading pattern of the script on 18th May, 2010 clearly depicts that the strong news surely existed in the market of the amalgamation and on the basis of which I have gone ahead and purchased the shares as the funds were available with me on that day due to the payment being received by me on account of advance on sale of property."*

25. I do not agree with the above submission of Rohit Gupta. The volume of trade in BoR on May 6, 2010 was 2.66 crores, but Rohit Gupta did not participate in the trade in the scrip of BoR on May 6, 2010 and the negotiation between BoR and ICICI broke down in between and the prices were low. It is reiterated that he traded on May 17 & 18 in a manner (both in terms of price and volume) which is very much in contrast with his normal trading pattern of trading which is restricted to mutual funds. The news of merger was

disseminated to the exchange at 5:12:24 PM on May 18, 2010 and the purchase by Rohit Gupta was at 3:26:09 PM on NSE and 3:29:36 PM on BSE on 17<sup>th</sup> May, 2010 and between 9.45 to 10.12 AM on 18<sup>th</sup> May, 2010.

26. Now as far as appreciation of circumstantial evidence is concerned in the context of a quasi-judicial proceedings, under the ambit of SEBI Act, 1992, what is relevant is the strength of the preponderances of evidences i.e. whether the probabilities of commission out-weighs that of non-commission or not. If the circumstances of connections, a reasonable assessment of availability of information and the time at which the shares are acquired together go to show that the probabilities of insider trading by Rohit Gupta is very high, then I can overrule the possibility that he has specifically traded on May 17 and 18 based on market news. The circumstances based on the preponderances of probabilities go to confirm the commission of the violation by the use of inside information by Rohit Gupta.

27. In view of the above facts, I find that Rohit Gupta has committed insider trading as alleged in the SCN, and thereby violated Section 12A (d) and (e) of the SEBI Act, 1992 and Regulations 3 and 4 of the PIT Regulations 1992.

**C. Whether Advik was connected to the Tayals at the relevant time in any manner, so that the charge of financing Rohit Gupta by Advik can be sustained?**

28. I have also noted that with respect to the allegation of financing Rohit Gupta by Advik, both the parties have relied on an Agreement for Sale for the purchase of four Shops on May 1<sup>st</sup>, 2010 which was later on terminated. This argument is unacceptable for the reasons discussed herein. On May 1, 2010 Advik purportedly entered into an Agreement for sale with Rohit Gupta to sell 4 Shops worth ₹ 1.74 crores. The Agreement for Sale though on a stamped paper is not witnessed by anyone. Surprisingly, I note that Advik, as a purchaser agreed on the very day of signing of the Agreement itself, that a sum of ₹



1.16,43,240 crore would be paid as advance in May 2010, which is 2/3 of the total consideration for sale. This has been done even before checking the suitability of the shops for its business and suddenly after 15-16 days after the advance payment, Advik found the property not suitable for its business and terminated the contract by paying back the money. Moreover, I note that the Agreement for sale is not between total strangers. Rohit Gupta is part of the Tayal Family and the Tayals were at various points in time the owners of Advik. It is further seen that when SEBI during its investigation in 2013, started questioning the fund movement, Rohit filed a Civil Suit (S.C No. 3122 in 2014) before the City Civil Court, Bombay for declaration that the Defendants had no right whatsoever in respect of the properties, more particularly the four shops situated in the Mall known as Dreams Mall. It was further prayed that the Court may pass a permanent order of injunction restraining the Defendants or any person or persons claiming through defendants claiming any rights under the agreement, in any manner. Eventually, on February 17, 2015, the declaration suit got disposed off on consent terms between the parties as evidenced by the court order, produced by the parties. During the personal hearing, the representative was asked as to why Rohit Gupta filed the suit after refund of the money to the purchaser-Advik. To this query, the response was that Advik was demanding interest on the money given to him, as advance. I note that though the termination of agreement happened in 2010, the declaration suit was filed as late as in 2014. The claim of a demand of interest made by Advik is not supported, going by the bar of limitation on a money claim. During the personal hearing, though Rohit Gupta was requested to submit the demand notice based on which he filed the suit, he was unable to show or produce the demand notice from Advik. I find that execution of the Agreement for sale, filing of the Civil Suit and the disposal on consent terms are all attempts to show that there was some other transaction for which the fund transfer happened. The civil suit was also filed as a last attempt to conceal the true facts and circumstances. This leaves no doubt that all the noticees acted together in a well-planned manner for the alleged violation. The final disposal of the suit on consent terms also brings out the understanding or collusion between the parties in this regard. Thus, in my view, the transfer of ₹ 1,16,43,240 by Advik to Rohit Gupta on May 17 & 18, 2010 is not explained properly.

29. The next question logically would be, whether Advik is connected to Tayals to have had an access to the insider information or not. From the investigation, it was noticed that Advik was incorporated as a private limited company on November 01, 2006 having its registered office at "*Krishna House, Raghuwanshi Mill compound, Senapati Bapat Marg, Lower Parel, Mumbai 400013*". Later it changed its address to (C/o) "*Elementto Lifestyles Private Limited, Raghuwanshi Mansion, 11, Senapati Bapat Marg, Lower Parel (W), Mumbai 400013*". This address is the same address as that of the Corporate Office of BoR during the relevant point in time. Further, Rohit has been the Managing Director in Elementto Lifestyles Private Limited since May 2005. This is the company whose name is mentioned in the address of Advik as mentioned above.

30. Details of shareholders of Advik as obtained from MCA website, since incorporation till September 2012 is tabulated below:

Sr. No	Name of the shareholders	% of shareholding	Period	No of months
1	Mr.Kulwinder Kumar Nayyar (Noticee no. 6)	50%	From 01/11/2006 to 29/09/2007	5
	Mr. Satish Ramit Aggarwal	50%		
2	Data not available on MCA website for the period 30/9/2007 to 28/9/2008			
3	Mr. Navin Kumar Tayal (appointed as director on 02/06/2008) (Noticee no. 3)	50%	From 29/09/2008 to 02/03/2010	17
	Ms. Jyotika Sanjaykumar Tayal (Noticee no. 4)	50%		
4	Mr. Azam Mohmmmed Ashan Shaikh (Noticee no.7)	50%	From 02/03/2010 to 10/09/2011	18

	Mr. Kulwinder Kumar Nayyar (Noticee no. 6)	50%		
5	Mr. Navin Kumar Tayal (Noticee no. 3)	50%	From 10/09/2011 to 05/10/2012	13
	Mr. Sanjay Kumar Tayal (Noticee no. 2)	50%		

31. From the above table, it is noted that Navin Kumar Tayal and Jyotika Tayal owned the company till March 2010, just two months prior to the impugned transactions of Rohit Gupta. It is noted from the account opening form of Advik with respect to current A/c no. 032305001613 of ICICI Bank, that Navin Tayal was one of the two authorized signatories to operate the bank account of Advik since July 2008 (i.e. date of account opening) and there was no change in the same till December 18, 2015 despite several changes in directorship and shareholding. I have perused the bank statement of the said ICICI Account and note that the account was frequently used by Advik for different high value transactions. Thus, I am unable to appreciate the fact that the authorized signatory powers of such an active account continued to remain with Navin Tayal even after 2 months from the date of severance of Tayals from the company. The other account signatory called Vinod, was also appointed by the Tayals in July 2008 during their ownership of Advik, i.e. prior to the transfer of Advik to Noticee 6 & 7.

32. I note that after the alleged fund transfer, the Noticees Nos.- 6 & 7 again transferred the shareholding of Advik to Noticees 2 & 3 on September 10, 2011. During the personal hearing, when the economic rationale of the same was questioned, Noticees 2,3 & 4 vide letter dated November 13, 2017 submitted that *"It was just a business transaction done in the normal course of business and it does not have any impact on the present matter. The present matter is pertaining to the investigation period i.e. 7<sup>th</sup> May, 2010 to 18<sup>th</sup> May, 2010 during which time we were not the shareholders of Advik."* The reply submitted by noticees also fails to adequately explain

the economic / business rationale for swapping shareholding between the noticees, back and forth, within a short period of time.

33. It is observed from the table above that Kulwinder and Azam were closely associated with the Tayals since they have been acting as directors in various Tayal related/ connected companies during the period under examination. Kulwinder has been observed to be a director of K- Lifestyle & Industries Limited, a listed company promoted by the Tayals since September 10, 2004. During the examination period, Kulwinder and/or Azam were directors in three other companies in which the Tayals were also directors during the examination period, as shown below:

Name of the Company/ and its Directors	Date of Original Appointment	Date of cessation
<b>Gamin Traders Pvt Ltd</b>		
Navin Tayal	3-Oct-06	1-Oct-10
Azam Mohammed Ashan Shaikh Azam	20-Feb-10	*
Kulwinder Kumar Nayyar	4-Mar-06	8-Jun-15
<b>Hotline Textiles And Infrastructure Pvt Ltd</b>		
Navin Tayal	10-Jan-07	3-Jan-14
Keshav Navin Tayal	3-Jan-14	*
Azam Mohammed Ashan Shaikh Azam	20-Feb-10	*
Kulwinder Kumar Nayyar	9-Nov-06	8-Jun-15
<b>K-Lifestyle &amp; Industries Limited</b>		
Navin Tayal	24-Feb-01	27-Feb-14
Kulwinder Kumar Nayyar	10-Sep-04	26-Mar-15
* Continues to be on board – as on October 12, 2015		

34. In addition to the above, there are 14 other companies in which Kulwinder and/ or Azam were directors concurrently with the Tayals. Further, it is also noted that Kulwinder was associated with 3 companies (Hotline Textile and Infrastructure Pvt. Ltd., Jaybharat Textiles and Real Estate Ltd., and K-Lifestyle and Industries Ltd) and Azam was associated with Hotline Textile and Infrastructure Pvt. Ltd as a director.

35. In view of all the factors such as - the common address shared by Advik and Rohit as evidenced from MCA website; continuous changing in the shareholding pattern of Advik and the noticees; Navin Tayal's continuation as the authorized signatory of the ICICI account of Advik and the other account signatory also being a person appointed by Tayals during their ownership of Advik; the transfer of funds to Rohit; purchase of huge quantity of shares of BoR just before the signing of the Binding agreement; sale of all the shares by Rohit within 8 to 10 days from the date of acquisition; subsequent transfer of funds back to Advik; filing of a suit after initiation of investigation and then a compromise between Advik and Rohit Gupta etc; I am inclined to hold that Advik and Noticees Nos. 2,3 & 4 are connected. The connections between Tayals and Advik along with the other circumstances strongly probalilise the possibility that the funding by Advik was on the basis of the inside information so as to enable Noticee No. 1 to purchase the shares of BoR before the merger news got officially published with a view to subsequently offload the shares and derive huge profit, as they were all certain about the prospect of profit making in the deal.
36. In the circumstances, I am inclined to believe that Rohit who carried out the insider trading was able to do it because of the support he received from the Tayals arising out the proximity of family relationship and from Advik and its two directors because of his other associations / connections, as brought out above. It is reiterated that despite the changes in the directorship and shareholding of Advik, the affairs of Advik were effectively controlled by Tayals namely, Sanjay, Jyotika and Navin.
37. Knowledge of such unpublished price sensitive information in the hands of a few persons who are connected the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to manipulate and operate as a deceptive device to make illegal 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 a level playing field

with other shareholders 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 provides for prohibiting insider trading and the Board has put in place the Insider Trading Regulations to achieve such object. Insiders ought to trade and share information, with a great degree of care and caution, as information asymmetry leads to a lot of market manipulation and illegal gains in the hands of a few insiders and such connected persons or relatives of those insiders, who by virtue of their connections can have an access to the price sensitive information.

38. Thus, I conclude that the seven Noticees i.e., Rohit, Sanjay, Jyotika, Navin, Advik, Kulwinder and Azam have contravened the provisions of section 12A (d) and (e) of the SEBI Act, 1992 read with Regulations 3 (i) and (ii) and 4 of the PIT Regulations 1992. I also conclude that the trading has resulted in an unlawful gain of ₹ 95,77,614. I also observe that the SCN has alleged a violation of PFUTP Regulations against all the Noticees. The facts brought out in investigation do not support the allegation of fraudulent tradings as contemplated in the PFUTP Regulations. Thus I am inclined to drop the charges on this account alleged in the SCN against the Noticees.

39. Considering the above, I, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and 11B thereof hereby:-

- (a) Prohibit the noticees namely, Rohit Premkumar Gupta, Sanjay Kumar Tayal, Navin Kumar Tayal, Jyotika Sanjay Tayal, Advik Textiles and Realpro Pvt. Ltd., Kulwinder Kumar Nayyar and Azam Mohammed Ashan Shaikh from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever, for a period of 5 years;
- (b) the Noticees shall jointly and severally disgorge an amount of ₹ 95,77,614, as ascertained in paragraph 4 above along with interest calculated at the rate of 12% per annum from May 27, 2010 onwards, within a period of 45 days from the date of the order;

- (c) Noticees shall pay the said amount either by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment \* to SEBI account as detailed below:

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

- (d) \*Noticee who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details:	

40. The directions issued to the Banks and Depositories vide order dated January 05, 2016 shall stand revoked upon the compliance with directions in para 39 (b) above or upon transfer of an equivalent amount to the escrow account {“**Escrow Account in Compliance with SEBI Order dated November 22, 2017 – A/c (in the name of**

**the respective persons/entities)"} created specifically for the purpose in a Nationalized Bank.**

41. The above directions shall come into force with immediate effect.

42. A copy of this order shall be served upon the stock exchanges and the depositories for necessary action and compliance.

**Date: November 22, 2017**  
**Place: Mumbai**

**G. MAHALINGAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**