BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BD/AA/2020-21/10063-10066]

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

In respect of

S. No.	Name of the Noticee	Address
1	Reliance Industries Ltd	3rd Floor, Maker Chambers IV, Nariman Point, Mumbai- 400 021
2	Mr. Mukesh D. Ambani	3rd Floor, Maker Chambers IV, Nariman Point, Mumbai- 400 021
2	Navi Mumbai SEZ Pvt. Ltd.	NMSEZ House, Sector 10B, Kopar Nhava Road, At. Shivaji Nagar, Post Gavhan Ulwe (W), Tal: Panvel, Raigad District, Navi Mumbai – 410206
4	Mumbai SEZ Ltd.	D-414, NMSEZ Commercial Complex, 7th Floor, Plot No. 6, Sector 11D, Dronagiri, Navi Mumbai – 400702

In the matter of Reliance Petroleum Limited (now known as Reliance Industries Limited)

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the trading in the scrip of Reliance Petroleum Limited (now known as Reliance Industries Limited) for the period November 1, 2007 to November 29, 2007 (hereinafter referred to as the '**Investigation Period'**) to ascertain whether there was any violation of the provisions of

Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and various rules and regulations made thereunder.

2. It was observed that a resolution was passed by the Board of Directors of (hereinafter referred to as '**Noticee-1**' / '**RIL**') on March 29, 2007 which *inter alia* approved the operating plan for the year 2007-08 and resource requirements for the next two years, i.e., approximately Rs. 87,000 crore. Thereafter, RIL decided to sell approximately 5% of its shareholding in RPL (i.e., upto 22.5 crore RPL shares) in November 2007.

3. Subsequently, RIL admittedly appointed 12 agents, between 30th October, 2007 to 3rd November, 2007, to undertake transactions in the November 2007 RPL Futures (settlement period 1st November - 29th November 2007) on its behalf. The names of the said Agents is as below:

   (i) Gujarat Petcoke and Petroproducts Supply Pvt. Ltd.

   (ii) Dharti Investments and Holdings

   (iii) Vinamra Universal Traders Pvt. Ltd.

   (iv) Pipeline Infrastructure (India) Pvt. Ltd.

   (v) Fine Tech Commercials Pvt. Ltd.

   (vi) Darshan Securities Pvt. Ltd.

   (vii) Aarthik Commercials Pvt. Ltd.

   (viii) LPG Infrastructure India Pvt. Ltd.

   (ix) Relpol Plastic Products Pvt. Ltd.

(x) Motech Software Pvt. Ltd.

(xi) Relogistics (India) Pvt. Ltd.

(xii) Relogistics (Rajasthan) Pvt. Ltd.

The above entities are hereinafter collectively referred to as '**Agents**'.

4. The said 12 Agents appointed by RIL took short positions in the F&O Segment on behalf of RIL, while RIL undertook transactions in RPL shares in the cash segment. During the period of 1st November 2007 to 29th November 2007, various transactions were undertaken by RIL in the Cash Segment and by RIL through the Agents in the F&O Segment. From 15th November 2007 onwards, RIL's short position in the F&O Segment constantly exceeded the proposed sale of shares in the Cash Segment. On 29th November 2007, RIL sold a total of 2.25 crore shares in the Cash Segment during the last 10 minutes of trading resulting in fall in the prices of RPL shares, which also lowered the settlement price of RPL November Futures in the F&O Segment. RIL's entire outstanding position of 7.97 crores in the F&O Segment was cash settled at this depressed settlement price resulting in profits on the said short positions. The said profits were transferred by the agents to RIL as per a prior agreement.

5. In view of the above observations during investigation, it was observed that RIL had entered into a well-planned operation with its Agents to corner the open interest in the RPL Futures and to earn undue profits from the sale of RPL shares in both cash & futures segments and to dump large number of RPL shares in the

cash segment during the last ten minutes of trading on the settlement day resulting in a fall in the settlement price. It was also observed that Shri Mukesh D. Ambani (hereinafter referred to as '**Noticee-2**'), being the Chairman & Managing Director of RIL, was responsible for its day-to-day affairs and thereby, liable for the manipulative trading done by RIL. In view of the same, SEBI initiated Adjudication Proceedings under Section 15HA of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Section 12A(a), (b), (c) of the SEBI Act against RIL for violation of Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d) & (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003**') & SEBI Circular no. SMDRP/DC/CIR-10/01 dated November 2, 2001 against RIL and Noticee-2. It was also observed that Navi Mumbai SEZ Pvt. Ltd. (hereinafter referred to as '**NMSEZ**' / '**Noticee-3**') and Mumbai SEZ Ltd. (hereinafter referred to as '**MSEZ**' / '**Noticee-4**') have allegedly aided and abetted RIL by providing funds to one of the agents appointed by RIL, who in turn provided funds to other 11 agents for making the margin payments for the short positions in RPL November Futures. In view of the same, Adjudication Proceedings have also been initiated against Noticee-3 and Noticee-4 for the violation of Regulation 3(b), (c), (d) and Regulation 4(2)(d) & (e) of PFUTP Regulations, 2003.

APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned was appointed as Adjudicating Officer, vide communique dated June 20, 2017, under Section 19 read with Sub-section (1) & (2) of Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire into and adjudge the aforesaid alleged violations by the Noticees Section 15HA of the SEBI Act read with Section 12A(a), (b), (c) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. A Show Cause Notice dated November 21, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticees and why penalty should not be imposed upon the Noticees under Section 15HA of of the SEBI Act for the violations alleged to have been committed by the Noticees. The SCN was sent by Speed Post Acknowledgement Due ('SPAD') to the Noticees. The SCN was duly delivered to the Noticees.

8. I note that the Noticees have made their submissions in the matter through various letters submitted by their Authorised Representatives ('ARs'). A list of the same is enumerated below:

   (i) AZB & Partners submitted a letter dated December 07, 2017 on behalf of all the Noticees and requested to keep the Proceedings in abeyance on

account of appeal filed by RIL before Hon'ble Securities Appellate Tribunal ('SAT') against the Order dated March 24, 2017 passed by Hon'ble Whole Time Member ('WTM') of SEBI.

(ii) Thereafter, vide letter dated January 19, 2018, further preliminary submission was made by AZB & Partners in respect of initiation of Adjudication Proceedings against Noticee-2.

(iii) Vide letter dated April 13, 2018, the Noticees were advised to submit their reply in respect of the allegations in the SCN within 14 days of receipt of the letter.

(iv) Vide letter dated April 27, 2018, AZB & Partners on behalf of Noticee-1 and Noticee-2 requested for time till June 15, 2018 to respond to the SCN. The said request was acceded to, vide letter dated May 18, 2018.

(v) Vide letter dated April 27, 2018, a request was made on behalf of Noticee-3 and Noticee-4 for inspection and copies of relied upon documents in the matter. In view of the same, the request of the said Noticees was forwarded to the concerned Department of SEBI for inspection.

(vi) The AR of Noticee-3 and Noticee-4 completed the inspection of documents on June 7, 2018. In view of the same, the said Noticees were advised, vide letter dated June 18, 2018, to submit their reply to the charges by July 6, 2018.

(vii) Preliminary objections / submissions were made in respect of Noticee-1 and Noticee-2, vide separate letters dated June 15, 2018, and personal hearing was sought.

(viii) Vide letter dated August 3, 2018, Noticee-1 and Noticee-2 were granted an opportunity of hearing on August 14, 2018.

(ix) Vide letter dated August 10, 2018, it was requested that the said scheduled hearing be postponed. In view of the same, the hearing was postponed to September 11, 2018, vide email dated August 14, 2018.

(x) On September 11, 2018, the ARs of Noticee-1 and Noticee-2 appeared for hearing and made detailed submissions, while reiterating the earlier made submissions. The ARs undertook to file detailed written submissions by September 12, 2018.

(xi) Vide separate letters dated September 12, 2018, written submissions on preliminary objections were made on behalf of Noticee-1 and Noticee-2.

(xii) The ARs of Noticee-3 and Noticee-4, vide letter dated June 25, 2018, had requested for copies of certain additional documents. Thereafter, in view of the request made by the said Noticees, certain additional documents were provided to them vide letter dated March 08, 2019. The ARs of Noticee-3 and Noticee-4, vide letter dated June 25, 2018, again requested for copies of certain additional documents.

(xiii) Noticee-1 had filed an appeal before Hon'ble SAT on the subject matter. It was observed that no directions were passed to stay the instant Proceedings. In view of the same, vide letter dated June 17, 2019, the Noticees were advised to file their respective replies to the charges alleged in the SCN latest by July 5, 2019. Vide the said letter, Noticee-3 and

Noticee-4 were informed that all the documents which were relevant and relied upon in the instant proceedings were already provided to them.

(xiv) Vide letter dated July 2, 2019, it was requested on behalf of Noticee-1 and Noticee-2 to keep the proceedings in abeyance in view of the preliminary objections raised and the pendency of the appeal filed by Noticee-1 against WTM Order dated March 24, 2017 before Hon'ble SAT.

(xv) The Noticees were informed, vide letter dated July 16, 2019, that since there is no direction to stay the instant Proceedings, the same cannot be kept in abeyance. Therefore, the Noticees were given a final opportunity to file their detailed reply on the charges alleged in the SCN, latest by August 7, 2019.

(xvi) Vide letter dated August 7, 2019, it was submitted that a Miscellaneous Application was filed on behalf of Noticee-1 and Noticee-2 for a stay on the Proceedings pending final disposal of appeal by Hon'ble SAT. It is noted that Hon'ble SAT refused to accept the said prayer on the ground that Adjudication Proceedings are separate and independent. Hon'ble SAT agreed to grant time of six weeks to the Noticees for filing reply on merits.

(xvii) Vide separate letters dated September 20, 2019, detailed submissions were filed by all the Noticees.

(xviii) Thereafter, vide letter dated November 8, 2019, the Noticees were granted an opportunity of hearing on November 26, 2019.

(xix) Vide letter dated November 22, 2019, it was requested on behalf of Noticee-1 and Noticee-2 to keep the Proceedings in abeyance due to the Appeal filed by RIL before Hon'ble SAT.

(xx) Vide letter dated December 3, 2019, the Noticees were again advised that the instant Adjudication Proceedings cannot be kept in abeyance. Therefore, the Noticees were granted an opportunity of hearing on December 20, 2019.

(xxi) Thereafter, vide letters dated December 19, 2019, it was requested on behalf of the Noticees to postpone the above scheduled hearing. In view of the same, RIL and Noticee-2 were granted an opportunity of hearing on January 24, 2020, while Noticee-3 and Noticee-4 were granted hearing opportunity on January 22, 2020.

(xxii) The ARs of Noticee-3 and Noticee-4 appeared for hearing on January 22, 2020 and made oral submissions with regard supply of documents as mentioned their letter dated March 25, 2019. It was decided to provide documents mentioned at Point No. 9 & 10 of the said letter. Further, the details of UCC furnished by the Stock Exchanges, which denotes the basis of connection as alleged in the SCN, was also handed over to the ARs. Noticee-3 and Noticee-4 also sought fresh hearing upon furnishing of documents.

(xxiii) The ARs of RIL and Noticee-2 attended the hearing on January 24, 2020 and made oral submissions, while reiterating the written submissions

made vide letters dated September 20, 2019. Since the matter was partly heard, RIL and Noticee-2 were granted next hearing on February 18, 2020.

(xxiv) The documents agreed upon to be provided during the hearing on January 22, 2020 were provided to the ARs of Noticee-3 and Noticee-4 vide email dated February 10, 2020. Further, they were granted another opportunity of submitting their reply by February 20, 2020 and another opportunity of hearing on February 25, 2020. However, Noticee-3 and Noticee-4 failed to appear for the said hearing and submit any reply.

(xxv) Vide letter dated February 13, 2020, a request was made on behalf of RIL and Noticee-2 to postpone the hearing scheduled on February 18, 2020. In view of the same, the hearing was rescheduled to March 12, 2020. On the scheduled date, i.e., March 12, 2020, the ARs of RIL and Noticee-2 attended the hearing and made their submissions. Since the matter was partly heard, it was decided that the next date of hearing shall be communicated in due course.

(xxvi) Subsequently, vide email dated October 14, 2020, the Noticees were granted an opportunity of hearing on November 11, 2020 (RIL & Noticee-2) and November 12, 2020 (Noticee-3 & Noticee-4) through webex video conference in view of the prevailing circumstances of Covid-19.

(xxvii) The ARs of RIL and Noticee-2, vide email and letter dated November 7, 2020, *inter alia* requested to postpone the hearing scheduled on November 11, 2020. In view of the same, RIL and Noticee-2 were granted

hearing opportunity on December 1, 2020, vide email dated November 10, 2020.

(xxviii) The ARs of the Noticee-3 and Noticee-4, vide letter dated November 07, 2020, *inter alia* stated that they were unable to furnish a further reply and to appear for hearing on February 25, 2020 due to a technological issue. Further, they requested for time till November 23, 2020 for filing a further reply and to postpone the hearing scheduled on November 12, 2020. In view of the said request, the Noticee-3 and Noticee-4 were granted an opportunity of hearing on December 2, 2020, vide email dated November 10, 2020. The ARs of Noticee-3 and Noticee-4 submitted a common reply dated November 23, 2020.

(xxix) On the scheduled date of hearing on December 01, 2020, the ARs of RIL and Noticee-2 appeared for hearing and made oral submissions in the while reiterating the written submissions made vide letter dated September 20, 2019. I note that further hearings were held in respect of RIL and Noticee-2 on December 18, 2020, December 22, 2020 and December 23, 2020. I note that the hearings have been, thus, completed in respect of RIL and Noticee-2 in the present Adjudication Proceedings.

(xxx) On the scheduled date of hearing on December 02, 2020, the ARs of Noticee-3 and Noticee-4 appeared for hearing and made oral submissions in the while reiterating the written submissions made vide letter dated November 23, 2020. The ARs also requested for another opportunity of hearing, which was scheduled for December 14, 2020. On the next date

of hearing on December 14, 2020, the ARs of Noticee-3 and Noticee-4 made oral submissions and the hearings in respect of Noticee-3 and Noticee-4 was completed.

(xxxi) I note that post hearing submissions on behalf of RIL and Noticee-2 have been made on December 28, 2020 and post hearing submissions on behalf of Noticee-3 and Noticee-4 have been made on December 29, 2020.

9. I note that RIL has made detailed submissions through letters dated September 12, 2018; September 20, 2019 and December 28, 2020. Further, hearings have been conducted in respect of RIL and Noticee-2 on September 11, 2018; January 24, 2020; March 12, 2020, December 01, 2020, December 18, 2020, December 22, 2020 and December 23, 2020. I note that on behalf of RIL and Noticee-2, Shri Janak Dwarkadas, Senior Counsel, Shri Ashwath Rau, Advocate and the legal team from AZB & Partners and representatives of RIL appeared before me for hearing. During the hearing, the ARs have made submissions in respect of last 10 minutes of trades in cash segment on November 29, 2007, position limits, hedging, fraud and manipulation. The above submissions made on behalf of RIL are summarized as under:

(i) In cases where SEBI exercises its power of disgorgement under Section 11B, after adjudicating a final finding of guilt and when such finding is under consideration by the Hon'ble Tribunal in appeal, there cannot be proceedings initiated under Section 15-1 as the initiation of adjudication at this stage would not be a parallel proceeding, but would tantamount to the authority (in this case, SEBI) reviewing

its own finding (that too by an officer junior) during the pendency of an appeal before the Hon'ble SAT. Initiation and continuation of proceedings under Chapter VI-A of the Act by SEBI in the present case would be contrary to principles of public policy and interest of justice which are also enshrined in Section 10 of the Code of Civil Procedure, 1908, which provides that a court shall not proceed with a trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties.

(ii) Broadly, there are three assumptions in the Notice which lead to the erroneous allegation that RIL (through its agents) made unfair and undue profits on the positions taken in the November 2007 RPL Futures. These are as follows:

a) The strategy adopted by RIL and the 12 Named Entities could not be considered to be a hedging strategy and can only be considered as a manipulative device to gain profit;

b) RIL taking short positions in the November 2007 RPL Futures through 12 Named Entities as agents in excess of prescribed limit was a fraudulent and manipulative practice; and

c) RIL dumped a large number of shares in the last 10 minutes of trading on November 29, 2007 in the cash segment in NSE (significantly depressing the closing price for the RPL shares), being fully aware that it has a huge short position in the November 2007 RPL Futures (through the 12 Named Entities) clearly demonstrates a flagrant employment of the fraudulent and manipulative trading scheme to make extra ordinary gains.

(iii) These are generalizations and assumptions and fail to address the actual figures which completely negate the hypothesis of there being any pre-decided / planned fraudulent or manipulative trading scheme. Further, these generalizations and

assumptions are against the facts and circumstances of the matter, which do not appear to have been properly considered when issuing the Notice.

(iv) The Notice alleges that RIL adopted a scheme to corner Open Interest in the November 2007 RPL Futures through the 12 Named Entities (between November 1, 2007 and November 6, 2007), when it was known that RIL subsequently selling a huge quantity of RPL shares in the cash segment would result in depressing the RPL share price. The Notice further alleges that the 12 Named Entities took up short positions in the futures segment only in the November 2007 RPL Futures (as that was the month in which RIL planned to offload its stake) and that as a result of RIL's intervention, the price of RPL shares in the cash segment came down to Rs. 215.60 at market closing on November 29, 2007, such that RIL made a profit of Rs. 513 crore.

(v) Assuming (whilst denying) the above is true, it is submitted that the effect of the ostensible 'well thought out and deliberate' fraudulent and manipulative scheme alleged by SEBI in this matter would be as follows:

a) Assuming that RIL planned to bring down the prices in the cash segment (and consequently, in the futures segment, as it happened), RIL planned to make a gain of Rs. 32 per share (Rs. 273 - Rs. 241) on 9.92 crore November 2007 RPL Futures, amounting to about Rs. 320 crore.

b) After bringing down the prices by Rs. 32 per share, it planned to sell all 22.5 crore RPL shares at such reduced price of Rs. 241, which would amount to a loss of Rs. 720 crore at the minimum.

c) In sum, RIL's fraudulent and manipulative scheme was to make a net loss of Rs. 400 crore (Rs. 720 crore - Rs. 320 crore) at the minimum.

(vi) *Therefore, it is completely illogical and against the facts of the matter to attribute any fraudulent or manipulative intent or motive to RIL and it is clear that there was no 'well thought out and deliberate' fraudulent and manipulative scheme, as alleged or otherwise.*

(vii) *It is not in dispute that on March 29, 2007, the Board of RIL approved the operating plan for the year 2007-2008 and the resource requirements for the next 2 (two) years for upstream, retail and completion of other projects on hand and the funding avenues for the said requirements. Further, two senior executives of RIL viz., Shri Alok Agarwal, Chief Financial Officer, and Shri Laxmidas V. Merchant, Controller - Accounts, were authorized by the Board of RIL to explore and identify optimal avenues of funding.*

(viii) *It was decided by the authorized two senior executives to raise part of the resources by sale of 22.5 crore (5%) RPL shares. By the end of September 2007, the price of RPL shares had reached around Rs. 150 per share and this was followed by some analysts' report indicating that the scrip was overvalued.*

(ix) *By October 31, 2007, the price of RPL shares had further increased to a high of Rs. 247 (from Rs. 150 at the end of September 2007, which was already considered over priced by Goldman Sachs) and a weighted average of Rs. 242 on the NSE. In these circumstances, as a first step, RIL's agents acquired short positions in November 2007 RPL Futures and it is on record that the weighted average price at which the 12 Named Entities acquired the 9.92 crore short positions was Rs. 265.67 per share. For a scrip which has peaked at Rs. 294.95 on November 1, 2007, it made perfect sense for a prospective seller to hedge at Rs. 265. The two authorized senior executives did not want to sell 22.5 crore RPL shares in a day.*

(x) Simple economics dictates that the impact, if any, of selling / buying of a significant quantity of shares would be less if done in the segment where the liquidity is high. Therefore, though nothing prevented RIL from selling the 22.5 crore RPL shares starting from November 1, 2007 in the cash market, it was decided by the two authorized senior executives to use the segment where the trading and liquidity was higher, to minimize the impact of the sale on the RPL share price and to meet the above objectives. The trading in the futures segment was nearly four times more than that in the cash segment. Trading in the segment where liquidity was higher would minimize the impact of the sale and effect the sale in an orderly manner factoring in the market integrity. Accordingly, short positions were taken in the November 2007 RPL Futures by RIL, through the 12 Named Entities acting as RIL's agents, in an orderly manner over a period of four trading days and not on a single day.

(xi) The two authorized senior executives could have started selling in the cash market from November 1, 2007 itself when the prices were ruling between Rs. 265 - Rs. 273 and realized more money. Instead, the hedge positions were fairly created first and then the sale in the cash segment started on November 6, 2007, even though the prices had fallen and the hedge positions protected the risk to some extent.

(xii) After the decisions were taken, between November 1, 2007 and November 6, 2007, 18.05 crore of RPL shares were sold in the next 17 days between November 6, 2007 and November 23, 2007. RIL raised Rs. 4,023 crore from these sales.

(xiii) The sale of 20.29 crore shares in the cash segment was done over a period of 11 trading days out of 21 trading days in November 2007 and on both NSE (13.83 crore shares) and BSE (6.46 crore shares). This was done in spite of the fact that there are no regulations governing the number of shares that can be sold and

delivered in a single day on a particular exchange. This step was executed after thoughtful consideration for an orderly sale and not to disturb the market integrity.

(xiv) The short positions taken in the November 2007 RPL Futures are a genuine hedge, considering that: (i) there was an underlying exposure of: (A) the impending sale of about 5% of RPL shares (approximately 22.5 crore RPL shares) on November 1, 2007; and (B) the huge inventory of around 337.5 crore RPL shares held by RIL; and (ii) the genuine and existing risk of price fluctuations of the RPL shares. These clearly satisfy the characteristics of a genuine hedge.

(xv) RIL trades in the commodity and foreign exchange derivatives only for the purpose of hedging, where there is always an underlying exposure. Similarly, RIL in November 2007 traded in the November 2007 RPL Futures only because it had an underlying exposure in the form of a proposed sale in the form of 22.5 crore RPL shares. RIL has otherwise never traded in the stock derivative segments till the sale of RPL shares in the cash segment in November 2007. This in itself demonstrates that the futures trades were undertaken as a hedge.

(xvi) When the impugned trades were carried out in November 2007, the manner in which a hedge is to be made, the ratio and the methodology, were all left to the commercial wisdom of the hedgers. There was no stipulation, in any law or otherwise, that the hedge ought to be in some proportion to the underlying and that such proportion was to be maintained throughout the period of hedge. Even from the accounting perspective, the parameters for qualifying as a hedge were fulfilled in the case of the hedges created by RIL in November 2007.

(xvii) RIL had a huge inventory of around 337.5 crore RPL shares (at a time where there were genuine and existing risk of price fluctuations of the RPL shares). Therefore, it is incorrect to isolate the net short positions held by RIL on a given day, and

allege that the hedge was not in proportion to the underlying exposure of RIL or in excess of the hedging requirements.

(xviii) Further, on November 29, 2007, when the outstanding hedge position was 7.97 crore, a balance of 4.45 crore shares were pending to be sold as on November 26, 2007 against the proposed sale of 22.5 crore shares. It is irrelevant that ultimately only 20.29 crore shares were sold in the cash segment.

(xix) The position limits in derivatives contracts prescribed by stock exchanges and by SEBI under the Position Limits Circulars clearly apply to a 'customer / client' individually.

(xx) A reading of the Position Limits Circulars suggests that the requirement that the gross open position across all derivative contracts should not exceed the thresholds prescribed therein, is with respect to a specific customer or client only. Each of the 12 Named Entities are individual entities and individual customers/ clients and hence, the above requirement applies to each of them individually. The Position Limits Circulars has deliberately and consciously omitted providing for language, such as "individually or together with its group" or "in concert with each other", which would imply aggregation of holdings of all client/ customers for purposes of determining the open position limits. This evidences a conscious decision on the part of SEBI to provide leeway to transactions structured in the manner executed by RIL and the 12 Named Entities.

(xxi) The so called "scheme" of cornering open interest positions in November 2007 RPL Futures could be deemed to be fraudulent only if there had been no genuine sale of 20.29 crore RPL shares in the cash segment and such trades in the cash segment were done by RIL as a circular trade artificially affecting market activity and manipulating prices in the cash segment for the purpose of reaping undue

profits on the open interest positions in the futures. However, in this case, the trades have been carried out for the purpose of genuine hedging. Therefore, even assuming (without admitting) that RIL exceeded the position limits, the same can at most be considered a technical breach of the Position Limits Circulars and can never be construed to be an inducement to the counter party to enter into the trade and thereby, a fraud.

(xxii) RIL sold 1.95 crore shares of RPL in the cash market between 3:21:40 pm and 3:28:55 p.m. of November 29, 2007. If RIL wanted to manipulate the market, it would have started selling the RPL shares at 3.00 p.m. Further, with 21:40 minutes already lapsed out of the last 30 minutes (i.e., 72% of the time), it would be impossible to manipulate the last half an hour's weighted average price. The weighted average price of the last half an hour cannot be manipulated by trading merely in the last 8 minutes and 20 seconds.

(xxiii) The 1.95 crore RPL shares have been sold in an orderly manner through splitting them into 19 trades at regular intervals and the sale prices offered every time were reasonable and not unduly lower than the LTP.

(xxiv) The orders placed by RIL in the cash segment had to be placed at lower than the LTP for the sales to go through.

(xxv) Matching the demand in terms of price and quantity when placing orders is not manipulation and mere sale of the shares at a price less than LTP should not be regarded as price manipulation. The allegation in the Notice that the sale of 1.95 crore RPL shares in cash segment in the last 10 minutes on November 29, 2007 is manipulative is incorrect and baseless.

(xxvi) RIL did not sell any RPL shares in the cash segment between November 1, 2007 and November 5, 2007, when the average prices ranged from Rs. 265 to Rs. 273

per RPL share. RIL started selling RPL shares in the cash segment only from November 6, 2007 when the prices were already down (i.e. at a weighted average of Rs. 241 per RPL share). RIL sold 4.67 crore RPL shares in NSE and 2.52 crore RPL shares in BSE, aggregating to 7.19 crore RPL shares at an average of Rs. 235.32 per RPL share on November 6, 2007.

(xxvii) RIL sold and delivered 20.29 crore RPL shares in the cash segment between November 6, 2007 and November 29, 2007. The average realization per RPL share for RIL in the cash segment was Rs. 221.78 per share.

(xxviii) RIL realized an amount of Rs. 513 crore on the 9.92 crore short positions in the November 2007 RPL Futures, which is alleged in the Notice to be an unlawful gain by the Notice.

(xxix) Prior to 2018, physical delivery against a hedged short position was not allowed in the futures segment in India.

(xxx) The above leads to the following logical inference:

a) RIL's actual realization due to the impugned trades would have been materially the same as what RIL would have realised had physical deliveries been allowed in the futures segment at that time.

b) Accordingly, there is no question of any unlawful gain of Rs. 513 crore being made by RIL.

(xxxi) The intention of RIL has been very clear from the beginning. Short positions were first taken in the futures segment as a hedging strategy. Thereafter, the sales were started in the cash segment.

(xxxii) The Noticee does not dispute the following:

a) *An underlying exposure was present on November 1, 2007, i.e. impending sale of about 5% of shares (22.5 crore RPL shares) in the cash segment and huge inventory of 337.5 crore RPL shares held by RJL;*

b) *There was an identified risk (i.e. the risk of price fluctuation);*

c) *Such identified risk was existing at the time of creation of the hedges;*

d) *The trading in November 2007 RPL Futures was undertaken with a view to reduce or mitigate such identified existing risk;*

e) *A hedge is not a guarantee that the outcome with hedging will be better than the outcome without hedging. Had the share prices moved up, the outcome without hedging would be better than with hedging; and*

f) *The short position taken in the November 2007 RPL Futures, i.e. hedge position taken does not exceed the quantity of underlying exposure, when such short positions were taken, Had RIL taken a short position of more than 22.5 crore shares to start with (assuming whilst denying its inventory of RPL shares should be excluded), there could have been a doubt whether the positions were for the purpose of hedging. It is not in dispute and the admitted fact is that on November 6, 2007, the 12 Named Entities had a combined net short position of 9.92 crore shares against the proposed sale of 22.5 crore shares in the cash segment, with an actual quantity of 20.29 crores shares sold ultimately in the month of November 2007. It is also a fact that RIL, throughout the period of hedge, had a huge inventory of shares.*

10. The submissions made on behalf of Noticee-2 are summarized as under:

(i) *From the documents provided by SEBI during the course of the investigation and reinvestigation of the Impugned Trades, it is clear that no evidence was found*

against Noticee-2 and a final decision on initiation of Adjudication Proceedings against Noticee-2 (and others) had to be taken based on the outcome of the Section 11B proceedings.

(ii) The Section 11B proceedings culminated in the Whole Time Member issuing order dated March 24, 2017, which did not include any finding against Noticee-2 and instead found two named officials of RIL as allegedly being responsible for the relevant trades in RPL shares. Therefore, the outcome of Section 1 IB proceedings was that there were no findings against Noticee-2. In view of the same, in accordance with settled principles of law, the "jurisdictional fact" that had to be established before initiation of Adjudication Proceedings against Noticee- 2, and was a sine qua non or a condition precedent for initiation of proceedings against Noticee-2, was never established. Therefore, the issue of the Notice to Noticee-2 is without application of mind and in any event, without jurisdiction.

(iii) The Notice against Noticee-2 is without jurisdiction as the provisions of Section 27 of the SEBI Act, 1992 (prior to its amendment with effect from March 8, 2019) applied only to "offences" by companies, i.e., in case of prosecution proceedings, and not in case of Adjudication Proceedings. Section 27 did not apply to Adjudication Proceedings under Section 15I, where penalties may be imposed on and paid by companies.

(iv) The order appointing the Adjudicating Officer does not indicate the basis on which SEBI formed an opinion to initiate Adjudication Proceedings against Noticee-2, and merely states that there are grounds to adjudicate the alleged violations. In fact, there were no findings against Noticee-2 in the Investigation Findings or the WTM Order. In the absence of any such findings, there is no basis for SEBI to initiate

proceedings against Noticee-2 and the Notice is in violation of Rule 3 of the SEBI Inquiry Rules.

(v) *Given that there is no evidence whatsoever that Noticee-2 was involved in or aware of the relevant trades, and to the contrary, the Whole Time Member itself has found two other officials responsible for the trades, there is no basis to suggest that Noticee-2 was in any manner, involved in or was aware of funding arrangements between Noticee-3 and 4 and Vinamra Universal Traders Private Limited.*

(vi) *It was the RIL Board, and not Noticee-2 in his capacity as the managing director, that authorized and entrusted persons other than Noticee-2 to raise funds (and not specifically through the sale of RPL shares), and Noticee-2 was neither in-charge of nor responsible for the identification or implementation of the avenues for raising funds. The RIL Board (including Noticee-2) was informed of the sale of 5% shares of RPL only at the meeting held on November 19, 2007, but not of the specific details. Noticee-2 was only a recipient of information along with the other directors and cannot be alleged to have carried out the trades. The purported findings of SEBI referred to above make it evident that the knowledge of specific terms of the sales were only with the authorized officials and not in the knowledge of the RIL Board (including Noticee-2). Such process and procedure were also not out of the ordinary: (a) for a company with the size and scale of operations of RIL; and (b) in the context of the materiality of the value of the transactions qua the overall size of the operations of RIL and the fund-raising exercise.*

11. I note that Noticee-3 and Noticee-4 made detailed submissions through letters dated September 20, 2019, November 23, 2020 and December 29, 2020. Further, hearings have been conducted in respect of Noticee-3 and Noticee-4 on

January 22, 2020; December 02, 2020 and December 14, 2020. I note that on behalf of Noticee-3 and Noticee-4, Shri Raghavendra Shankar, Advocate, Shri Amey Nabar, Advocate, Shri Ramachandran Venkatraman and Shri Sanjeev Dandekar appeared before me for hearing. A brief of their submissions is as below:

(i) *SEBI has conducted the present Inquiry in a manner wholly inconsistent with the Principles of Natural Justice, inter alia, by failing to provide Noticee-3 and Noticee-4 with relevant documents / information mentioned in the SCN and which has been relied upon to sustain the aforementioned charge under the FUTP. Despite the fact that Noticee-3 and Noticee-4 have made numerous bona fide attempts to obtain the full record of documents referred to and relied upon in the SCN and which are self-evidently relevant to the charge against it, SEBI has seen fit to only provide what can at best be described as partial and selective disclosure of documentation. In view of this, Noticee-3 and Noticee-4 have been deprived of the opportunity to adequately inform itself of the case against them, and have been denied a real and effective opportunity to meet such case.*

(ii) *Their involvement in the said investigation was limited to providing responses to certain factual queries raised by SEBI. No Show Cause Notice was at any time issued to them in relation to the said investigation, nor was it at any stage put to notice of the charges involved in the same or the conclusions arrived at by SEBI in relation to such charges. The SCN however makes explicit that the said investigation and the conclusions of the same form the basis of the SCN or at the very least, that the present Adjudication has arisen out of such proceedings.*

Undeniably therefore, documents pertaining to and arising out the investigation into RPL by the WTM constitute material pertinent to the present proceedings.

(iii) The present Adjudication Proceedings relate to an investigation period that commenced and concluded in November 2007. Until the issuance of the SCN on 21.11.2017, no notice was issued or proceedings initiated by SEBI against Noticee-3 and Noticee-4 in regard to this investigation period. The delay of nearly 10 years in bringing the present proceedings is inordinate and unexplained. It is not even SEBI's case that these proceedings could not have been brought at any earlier time for any reason.

(iv) A delay of this magnitude has occasioned serious prejudice to their ability to defend themselves against the charges in the SCN. These charges relate to specific commercial transactions that took place nearly a decade ago. No applicable law requires that Noticee-3 and Noticee-4 maintain records of every transaction in which it was involved over such period of time. Change in managerial personnel over time and lack of availability of computerized records for this period have significantly constrained their ability to meet the charges against them. This situation has been exacerbated by withholding of material pertaining to the said transactions. The vast, inordinate and unexplained delay of nearly 10 years between the period in which the trades took place and the SCN was issued, is fatal to the validity of the same. It is therefore respectfully prayed the SCN be withdrawn on this ground alone.

(v) The sole basis on which a connection has been sought to be drawn between them and Noticee-1 and 2 is a statement on the website of Noticee-3 under the title "Chairman's Profile" which states that the Chairman of Noticee-3 and 4, Mr. Anand Jain, has acted as a "strategic advisor" to the "Reliance Group" in the past. This

merely stated that Mr. Anand Jain, the Chairman of Noticee-3, is involved in a professional capacity with the Reliance Group as a strategic advisor to the company.

(vi) *No known principle of law permits attribution of the conduct of one company to another, or an inference of collusive conduct in the affairs of two unconnected companies, solely on the basis that the Chairman of one company has extended his professional services to the other company. The suggestion that Noticee-3 and 4 are "closely related" to Noticee-1 and Noticee-2, merely with reference to Mr. Anand Jain, is therefore without any merit.*

(vii) *Similarly, it is submitted that Noticee-3, Noticee-4 and Vinamra are all separate corporate entities with independent Boards of Directors. It is denied that Shri. Sanjay Punkhia was a director of Vinamra. SCN incorrectly alleges that there was a common director. Even assuming without admitting that the Board of these companies contain one common individual as a Director, it does not provide a basis for imputing the conduct of one of these companies to either of the others.*

(viii) *No known principle of law contemplates that a lender who provides funds to a borrower on an arms-length basis is legally responsible for the manner in which these funds are utilised by the borrower. Indeed, adopting such a principle would have absurd outcomes, inasmuch as any lending entities (including banks and other financial institutions) would find themselves liable in law for every unlawful use to which funds lent by them to borrowers have been put, creating virtually unlimited liability. The concern of the lender is limited to receiving interest on the funds provided and securing return of the principal amount as per the Facility Agreement, both of which occurred without default on the part of Vinamra.*

(ix) *In so far as the alleged "manipulation scheme" said to have been devised and implemented by Noticee-1 is concerned, they were not involved in any manner in the same. The admitted position arising from the SCN is that any "undue gain" did not accrue to their benefit. Even as per the narrative set out in the SCN, their role was limited to lending funds to Vinamra. In these circumstances, no offence can be said to have been committed by Noticee-3 and Noticee-4.*

(x) *The SCN merely references the provisions of the FUTP without explaining how its provisions can be applied to Noticee-3 and Noticee-4. The SCN does not contain any basis for holding that a funding entity (especially a level removed) can be held to be violate Regulation 3 and Regulation 4 of the FUTP. These provisions clearly do not apply to financing entities (such as Noticee-3 and Noticee-4) that have no role in the trades that were allegedly fraudulent.*

(xi) *In the present case, their involvement even as per the case set out in the SCN is not based on any cogent evidence, but is purely conjectural. The SCN does not even allege any "inducement" on the part of Noticee-3 and Noticee-4. They have not dealt in securities, whether directly or indirectly. There is no shred of evidence of any collusion between Noticee-1 and Noticee-3 & 4.*

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully perused the charges levelled against the Noticees, their reply and the documents / material available on record. The issues that arise for consideration in the present case are :

(a) Whether the Noticee-1 has entered into a well-planned operation with its appointed agents to earn undue profits from the sale of RPL shares in both the cash and the futures segment?

(b) Whether the dumping of a large number of shares in the cash segment of the RPL scrip during the last ten minutes of the trading by Noticee-1 resulted in a fall in the settlement price of RPL futures contract, resulting in violation of Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d), (e) of the PFUTP Regulations, 2003 & SEBI Circular no. SMDRP/DC/CLR-10/01 dated November 2, 2001?

(c) Whether Noticee-2, being the CMD of Noticee-1 and responsible for its day-to-day affairs, is liable for manipulative trading done by Noticee-1, resulting in violation of Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d), (e) of the PFUTP Regulations, 2003 & SEBI Circular no. SMDRP/DC/CLR-10/01 dated November 2, 2001?

(d) Whether Noticee-3 and Noticee-4 have aided and abetted Noticee-1 by providing funds to one of the agents appointed by Noticee-1, which in turn provided funds to the other agents appointed by Noticee-1, resulting in violation of Regulation 3(b), (c), (d) and Regulation 4(2)(d) & (e) of PFUTP Regulations, 2003?

(e) Do the violations, if any, attract monetary penalty, as applicable, under Sections 15HA of the SEBI Act read with Section 12A(a), (b), (c) of the SEBI Act?

(f) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act?

13. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act and PFUTP Regulations as below:

Regulation 3: - Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(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 thereunder;

(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 thereunder.

Regulation 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.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

……

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(e) any act or omission amounting to manipulation of the price of a security;

……..

14. I note that the allegation against RIL is that it manipulated the settlement price by placing huge sell orders in the cash segment during the last ten minutes of trading on November 29, 2007 (the day of expiry of RPL November Futures contracts) which depressed the closing share price of RPL, while simultaneously having large short position in RPL November futures through its agents. Consequently, the settlement price of the RPL November futures contract was depressed enabling RIL to make unfair and undue profit on the said positions taken in the futures segment through its Agents. Noticee-2**,** being the Chairman & Managing Director of RIL, is alleged to be directly responsible for the actions of RIL. Noticee-3 and Noticee-4, being connected to RIL, have allegedly provided

the necessary finance to the Agents of RIL, thereby enabling them to take large positions in the futures segment.

15. Before moving forward, I note that Hon'ble SAT in its order dated August 09, 2019 had directed the undersigned to consider the preliminary objections raised by the Noticees while deciding the matter on merits after giving them an opportunity of hearing. Accordingly, I proceed to deal with the preliminary objections raised by the Noticees. I note that RIL had raised a preliminary objection that inquiry proceedings and Adjudication Proceedings cannot be said to be parallel proceedings in view of the manner of exercise of power under Section 11 and Section 11B of the SEBI Act. RIL has contended that in cases where SEBI exercises its power of disgorgement under Section 11B, after adjudicating a final finding of guilt and when such finding is under consideration by the Hon'ble Tribunal in appeal, there cannot be proceedings initiated under Section 15-I as the initiation of Adjudication at this stage would not be a parallel proceeding, but would tantamount to SEBI reviewing its own finding during the pendency of an appeal before the Hon'ble Tribunal. RIL contended that , in the present case, when the Whole Time Member has used the proceedings under Section 11 and Section 11B of the SEBI Act to adjudicate in detail on the allegations in relation to the transactions which are subject matter of the SCN, and when such findings are pending appeal and decision by the Hon'ble Tribunal, any further proceedings by the Adjudicating Officer on the same issues would be

against the above principle of public policy and would result in multiplicity of proceedings.

16. Firstly, with respect to finality of guilt, I note that the Whole Time of Member of SEBI has already passed Order dated March 24, 2017 in respect of RIL and its Agents under Section 11/ 11B Proceedings. Therefore, as far as SEBI is concerned, finality in respect of the Section 11/ 11B proceedings has already been achieved upon the passing of the WTM order. I also note that at the time when RIL had raised the said objection, its appeal was under consideration before Hon'ble SAT. Subsequently, Hon'ble SAT in its order dated November 05, 2020 has upheld the said Order dated March 24, 2017 passed by the WTM of SEBI and, therefore, finality of appeal before Hon'ble SAT has been attained. I also note that Hon'ble SAT in its above referred order dated August 09, 2019 had observed that: "…*In our view simultaneous parallel proceedings can be initiated under Rule 4 of the Rules of 1995 which is distinct and different from the proceedings initiated under Section 11 and 11B of the SEBI Act, 1992. We, therefore, do not propose to stay the proceedings initiated under Rule 4 of the Rules of 1995 pursuant to the Notice dated November 21, 2017...*" In view of the above, I find that the preliminary objection raised by RIL is devoid of merit.

17. Noticee-2 contended that the Order appointing the Adjudicating Officer does not indicate the basis on which SEBI formed an opinion to initiate Adjudication Proceedings against Noticee-2. In this regard, I note from the records that at the

time of approving action against RIL and its agents under Section 11/ 11B of the SEBI Act, it was decided that the initiation of Adjudication Proceedings against RIL, Noticee-2, Noticee-3 and Noticee-4 would be decided on basis of the outcome of the said Section 11/ 11B proceedings against RIL. Accordingly, I note that Adjudication Proceedings against the said Noticees have been initiated only after passing of the final Order on March 24, 2017, under Section 11/ 11B of SEBI Act. Therefore, I find no infirmity in the order appointing the Adjudicating Officer.

18. I note that the Noticee-3 and Noticee-4 in in their submissions have contended that they have not been provided with all the documents which they had sought through their letters dated June 11, 2018, June 25, 2018 and March 25, 2019. In this regard, I note that the allegations against the Noticees are clearly delineated in the SCN and relevant documents have been provided to the Noticees as enclosures to the SCN. Further, at the request of Noticee-3 and Noticee-4, certain additional documents have also been provided to them vide letter dated March 08, 2019 and email dated February 10, 2020. I am of the view that all the relied upon documents in respect of Noticee-3 and Noticee-4 have been provided to them. In this regard, I note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had made the following observations: *"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary*

proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied".

"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".

"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

19. In view of the above, since all the documents which were relevant and relied upon in the instant proceedings, have been provided to Noticee-3 and Noticee-

4, I am of the opinion that Principles of Natural Justice have been duly complied with in the instant proceedings and no prejudice in filing their reply has been caused to Noticee-3 and Noticee-4.

20. Noticee-3 and Noticee-4 have also raised the issue of delay in initiation of the Adjudication Proceedings. The said Noticees have contended that the present Adjudication Proceedings relate to an investigation period that commenced and concluded in November 2007. Their involvement in the said investigation was limited to providing responses to certain factual queries raised by SEBI. Until the issuance of the SCN on November 21, 2017, no notice was issued or proceedings initiated by SEBI against them. The said Noticees have claimed that the delay of nearly 10 years in bringing the present proceedings is inordinate and unexplained and has caused serious prejudice to their ability to defend themselves against the charges in the SCN.

21. In this regard, I note that the investigation in the matter was concluded in the year 2010 and Section 11/ 11B proceedings were approved against RIL and the 12 Agents appointed by it. It was further decided that based on the outcome of Section 11/ 11B proceedings against RIL and the Agents, final decision may be taken about Adjudication Proceedings against RIL, its MD Shri Mukesh Ambani and the 2 funding entities (NMSEZ and MSEZ). Thereafter, an SCN dated December 16, 2010 under Section 11/ 11B proceedings was issued to RIL and the 12 Agents. During the course of the said proceedings, RIL and 12 Agents

filed applications for settlement through consent order on April 26, 2011. The said application was placed before the High Powered Advisory Committee ('HPAC') of SEBI and the HPAC decided that the said application cannot be settled through consent order and the same was communicated to RIL vide letter dated January 2, 2013. Meanwhile, RIL filed an appeal no. 224 of 2012 before Hon'ble SAT in respect of inspection of documents in the matter. The said appeal was disposed of by the Hon'ble SAT through its order dated December 20, 2013. I note from the submissions of RIL that personal hearings in the matter were conducted on various dates between April, 2015 and January, 2017. Subsequently, the Whole Time Member of SEBI passed the final Order on March 24, 2017 under Section 11/ 11B of the SEBI Act. From the above chronology of events, it is evident that due process and procedure was followed to process the consent application, for inspection of documents and for the hearings which itself took nearly two years for completion. Therefore, I am of the view that considering the sensitivity of the matter, sufficient opportunities and time were granted to the Noticees under the said Proceedings in accordance with the Principles of Natural Justice and therefore, such period cannot qualify as undue and unexplained delay.

22. Considering the decision about Adjudication Proceedings based on the outcome Section 11/ 11B Proceedings, I am of the view that the applicable time to be considered for the purpose of delay, if any, would begin from the time of completion of Section 11/ 11B proceedings, i.e., March 24, 2017. I note that SCN

has been issued in the present Proceedings on November 21, 2017. Thereafter, the Adjudication Proceedings have been conducted as per the Adjudication Rules and the chronology of the various correspondences in this regard has been provided in paragraph 8 of this Order. From the said chronology, I note that due process has been followed in compliance with Principles of Natural Justice whereby Noticee-3 and Noticee-4 have been granted inspection of documents at their request and additional documents were also provided to them. I further note that multiple opportunities of submitting reply have been granted to them and they have also been provided with multiple opportunities of hearing. It can be seen that on certain occasions the Noticees themselves have requested to keep the matter in abeyance, which were not accepted in view of the Hon'ble SAT Order dated August 09, 2019.

23. I also rely on the observations of Hon'ble SAT in the matter of Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 7 of 2016 decided on May 27, 2019) where it has been observed that: - *"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine harmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition*

of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held: "There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."" Therefore, I am of the view that, since the initiation of present Adjudication Proceedings, no undue delay has been made while complying with the process and procedures laid down in the Adjudication Rules and therefore, no prejudice has been caused to the Noticees as contended. Thus, I find that the contention of the Noticee-3 and Noticee-4 about the delay in the Proceedings is not valid.

24. After dealing with the preliminary objection raised by the Noticees, I now proceed further by dealing with relevant issues for consideration.

Issue (a): Whether the Noticee-1 has entered into a well-planned operation with its appointed agents to earn undue profits from the sale of RPL shares in both the cash and the futures segment resulting in violation of Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d), (e) of the PFUTP Regulations, 2003 & SEBI Circular no. SMDRP/DC/CLR-10/01 dated November 2, 2001?

25. I note from the extracts of agenda for the meeting of Board of Directors of RIL held on March 29, 2007, as available on record, that a presentation on the Operating Plan and Capital Budget for the year 2007-08 was to be made by various executives, wherein the resource requirement for next two years was projected to be Rs. 87,000 crore. Thereafter, a resolution was passed by the Board of Directors of Directors of RIL on March 29, 2007 which *inter alia* approved the operating plan for the year 2007-08 and resource requirements for the next two years. RIL has submitted that the Board of RIL had authorized two senior executives, viz. Chief Financial Officer Mr. Alok Agarwal and Controller of Accounts Mr. L V Merchant, to explore, identify and implement optimal avenues of funding. The relevant extract from the minutes of the said RIL Board meeting dated March 29, 2007 is reproduced below:

> *"Detailed presentations on the highlights and Annual Plans for the year 2007-08 for various business segments and services were made by Shri P.M.S. Prasad, Shri ATul Laul, Shri R.D. Udeshi, Shri Kamal Nanavaty, Shri B. Sundar, Shri Alok Agarwal, Shri Ashish Chauhan, Shri M.N. Bajpai and Shri V.V. Bhatt.*
>
> *The Board, after discussion, noted the presentations and approved the Operating Plan and Capital Budget for the year 2007-08 including resource requirements for the next two years and Funding Avenues and authorized Shri Alok Agarwal and Shri L V Merchant, Executives of the Company to explore, identify and implement optimal avenues of funding."*

26. I note that the aforesaid resolution did not refer to sale of shares of RPL. RIL held 337.50 crore shares of RPL amounting to 75% of its share capital. Therefore, RPL was a 75% subsidiary of RIL as of March 2007. RIL has stated that the shares of RPL started moving upwards and reached approximately Rs. 150/- on

September 27, 2007. This was followed by some analysts reports - Goldman Sachs in September 2007 and Kotak Institutional Equities Report dated October 30, 2007, indicating that the scrip was overvalued. Due to these facts and analysts reports, RIL decided to sell 5% of shares of RPL in November 2007.

27. Between October 30, 2007 to November 3, 2007, RIL admittedly appointed 12 agents to undertake transactions in the November 2007 Futures (settlement period 1st November - 29th November 2007) on its behalf. For this purpose, RIL entered into agency arrangement with the said agents, which envisaged that the transfer of profits arising out of F&O transactions would be made over to the account of RIL by the agents and that they would earn commission for these services. The identities of the said 12 agents along with the dates on which RIL entered into agreement with each entity; and their trading background is as below:

TABLE-1

S. No.	Entity	e-mail id @ril.com	Person placing the order related to RIL	Other	Address
1	Gujarat Petcoke and Petroproducts Supply Pvt. Ltd.	Y	Y	One of the Directors of the company- Mr. Parimal Nathwani, is also an executive, corporate affairs of RIL and is also the group president of Reliance Retail	White House, Opp. 9-Patel Colony, Dadi Road, Jamnagar
2	Dharti Investments and Holdings	Y	Y	As per UCI data base of the exchange, address is same as entity no. 3, which is same as that of companies Navi Mumbai SEZ Pvt Ltd. and Mumbai SEZ Ltd., which are promoted by Mr. Anand Jain and who according to the website (www.nmsez.com), has been closely associated with the Reliance Group as a strategic advisor to the company.	Jai Centre, 1st Floor, 34, P.D'mello Road, Opp.Red Gate, Mumbai

3	Vinamra Universal Traders Pvt. Ltd.	Y	Y	As per UCI data base of the exchange, address is same as entity no. 2, which is same as that of companies Navi Mumbai SEZ Pvt Ltd. and Mumbai SEZ Ltd., which are promoted by Mr. Anand Jain and who according to the website (www.nmsez.com), has been closely associated with the Reliance Group as a strategic advisor to the company. Further, Shri Sanjay Punkia is a Director of Vinamra, NMSEZ and MSEZ.	Jai Centre, 1st Floor, 34, P.D'mello Road, Opp.Red Gate, Mumbai
4	Pipeline Infrastructure (India) Pvt. Ltd.	Y	Y	As per NSE report and documents filed with ROC, address is same as entity no. 5 & 6. Also, according to trade mark journal no 1341, 1 Apr 2006, a Reliance Group company by the name Reliance Consolidated Enterprises Limited has the same address.	84 A Mittal Court 224 Nariman Point Mumbai Maharashtra India
5	Fine Tech Commercials Pvt. Ltd.	Y	Y	As per NSE report and documents filed with ROC, address is same as entity no. 4 & 6. Also, according to trade mark journal no 1341, 1 Apr 2006 a Reliance Group company by the name Reliance Consolidated Enterprises Limited has the same address.	84 A Mittal Court 224 Nariman Point Mumbai Maharashtra India
6	Darshan Securities Pvt. Ltd.	N	Y	As per NSE report and documents filed with ROC, address is same as entity no. 4 & 5. Also, according to trade mark journal no 1341, 1 Apr 2006 a Reliance Group company by the name Reliance Consolidated Enterprises Limited has the same address- http://www.patentoffice.nic.in/tmr_new/tm_journal/part7-a.pdf	84 A Mittal Court 224 Nariman Point Mumbai Maharashtra India
7	Aarthik Commercials Pvt. Ltd.	Y	Y	As per details submitted by the entity, it has one Director in common with entity no. 8. As per the information memorandum filed by Reliance Communication Ventures Limited on February 28, 2006 with exchanges, its consolidated income figures included the figures of an entity named Aarthik Commercials Pvt Ltd.- http://www.bseindia.com/BSEdata/ipo_downloads/RCVL%20IM.pdf	307, Parekh Market, 3rd Floor,39 Jaganath Shankar Seth Road,Opera House, Mumbai
8	LPG Infrastructure India Pvt. Ltd.	Y	Y	As per details submitted by the entity, it has one Director in common with entity no. 7. As per NSE Report, the address of the company is same as a Reliance Group company, Reliance Petrochemicals Private Limited	C/O Reliance Petrochemicals P. Ltd, Gate A Central Bldg, Ghansoli, Thane-Belapur Road, Navi Mumbai

9	Relpol Plastic Products Pvt. Ltd.	Y	Y	It is noted from the accounts of National Organic Chemical Industries for year ended March 07, "the business of Plastic Product Division (PPD) was transferred to Relpol Plastic Products Limited (Relpol) with effect from July 2005. The Company conducted the said business in trust on behalf of Relpol for the period 1 April 2005 to 20 July 2005. The income earned and expenditure incurred for the said period was transferred to Relpol and the same were disclosed as a reduction from the total income and total expenditure in Profit and Loss Account." It may be noted that Reliance Industries Ltd had taken over National Organic Chemicals Industries Ltd (Nocil) through its business associate Sunbright Cement Agencies Pvt Ltd. From the details available with the NSDL it is noted that the client has given its address to its DP Reliance Capital Ltd as 3rd Floor, Reliance House, 15, Walchand Hirachand Marg, Ballard Estate, Mumbai. Further, it is also brought out that earlier (prior to March 2006) the company was known as NOCIL Petrochemicals Ltd.	Plot No-5,TTC Industrial Area,Thane Belapur Road,Navi Mumbai-400701
10	Motech Software Pvt. Ltd.	Y	Y	As per its website (www.motechsoftware.com), it is promoted by the promoters of the Reliance Group. One of its directors, Annu Tandon is also a Corporate Consultant to the Reliance Group	Motech House,56 Mogba Villge Lane,Off Old Nagardas Road,Andheri(East)
11	Relogistics (India) Pvt. Ltd.	Y	Y	As per its website (www.reliancelogistics.com), it is an associate company of Reliance Industries Ltd. The company was earlier (prior to Jan 2007) known as Relogistics (Mumbai) Pvt Ltd. It is noted that the in Dec 2006 the company had taken a Loan of Rs.1.17 Cr from HDFC bank for a commercial vehicle and the M/s Reliance Logistic was the guarantor for the said loan.	Plot No. 17, GDC House, State Transport Road, Santacruz (W),Mumbai-400054
12	Relogistics (Rajasthan) Pvt. Ltd.	N	Y	The address provided by the entity is the same as the address on the website of entity no. 11.	Plot No. 17, GDC House, State Transport Road, Santacruz (W),Mumbai-400054

28. The table above shows that 11 entities, except Dharti, had opened new trading accounts with different trading members during the period May - November 2007. Dharti had its account opened in 2005 and 2006 through different trading

members. Each of the 12 Agents entered into separate agreements with RIL between October 30, 2007 to November 3, 2007. A few of the entities such as Fine Tech Commercials Pvt. Ltd., Pipeline Infrastructure (India) Pvt Ltd, Motech Software Pvt. Ltd., Darshan Securities Pvt.Ltd, Relogistics (India) Pvt. Ltd. and Relogisitcs (Rajasthan) Pvt. Ltd had never traded in F&O segment between April 1, 2007 to November 1, 2007, before they entered into the agreements with RIL. The above named 6 entities traded in RPL futures for the first time on the 1st, 5th and 6th of November 2007.

29. It is noted that one Mr. Sandeep Agarwal was commonly authorized by the 12 Agents to place orders in the F&O Segment. I note that Sandeep Agarwal was an employee of a wholly owned subsidiary of RIL. He was also placing the orders on behalf of RIL in cash segment. Therefore, I note that the orders were placed by the same person for all the entities and the entities were connected directly or indirectly with RIL (either through common directors or addresses or email identity etc.).

30. The aforesaid 12 Agents appointed by RIL admittedly took a net short position of 9.92 crore shares of RPL in the November 2007 futures during the period November 1, 2007 to November 6, 2007 as below:

TABLE-2

S. No.	Client Name	Net Short Qty (in lac shares)	% to total Open Interest	Maximum Permissible Client wise position limit on November 6, 2007 (lac shares)
1	Gujarat Petcoke And Petro Products Supply Pvt Ltd	90.42	4.43	**101**
2	Aarthik Commercials Private Limited	89.88	4.41	
3	LPG Infrastructure India Private Limited	88.91	4.36	
4	Relpol Plastic Products (p) Ltd.	89.88	4.41	
5	Fine Tech Commercials Pvt Ltd	89.65	4.39	
6	Pipeline Infrastructure India Private Limited	89.98	2.69	
7	Motech Software Private Ltd	89.61	4.39	
8	Darshan Securities Pvt Ltd	80.00	3.92	
9	Relogistics India Private Limted	77.49	3.80	
10	Relogistics (Rajasthan) Private Limited	12.06	0.59	
11	Vinamra Universal Traders P.lt	89.55	4.39	
12	Dharti Investment And Holdings Limited	104.79	5.14	
	Total	**992.2**	**48.64**	

31. The agents appointed by RIL took net short positions of 7.86 crore shares of RPL in November 2007 Futures between 1st and 5th November 2007. On November 6, 2007, the net short position increased to 9.92 crore shares constituting 61.15% of the OI in November futures contract of RPL and 48.64% of the OI across all the derivative contracts in RPL. In this connection, it is relevant to mention that it was on November 6, 2007 that the derivatives contracts of RPL reached 95% of Market Wide Position Limits (MWPL) of the Futures & Options segment of NSE, thereby leading to a restriction upon it, of no further increase in OI, as per the existing exchange rules. In short, during the month of November 2007, the front entities of RIL had held a position which was substantial compared to the maximum permissible limit, in accordance with NSE data.

32. I note from above the first eleven entities had stayed within the maximum permissible client wise position limit of 1.01 crore shares per client. One out of the 12 entities exceeded the maximum client limit which attracted the levy of penalty by NSE. I note that two of the entities have squared off their positions before the date of expiry and as on November 29, 2007, the remaining ten entities had jointly held a net short position of 797.21 lac shares, all expiring on November 29, 2007, accounting for 93.63% of the open interest in the November futures contracts of RPL and 40.13% of open interest across all derivatives contracts in RPL as below:

TABLE-3

No	Client Name	Total Net Short position in near month expiry as on November 29, 2007 (lac shares)	Maximum permissible client-wise position limit on November 29, 2007 (lac shares)
1.	Relpol Plastic Products Pvt Ltd	89.88	90
2.	Aarthik Commercial Pvt. Ltd.	89.88	
3.	Gujarat Petcoke and Petro Product Supply Pvt Ltd	89.75	
4.	Fine Tech Commercial Pvt Ltd	89.65	
5.	Motech Software Pvt Ltd.	89.61	
6.	LPG Infra Structure India Private Ltd	88.91	
7.	Darshan Securities Pvt Ltd	80.00	
8.	Relogistics (India) Pvt Ltd.	77.49	
9	Pipeline Infra Structure India Private Limited	89.98	
10	Relogistics Rajasthan Private Limited	12.06	
	Total	**797.21**	

33. In this backdrop, it was alleged in the SCN that these arrangements were entered with the intention to corner the F&O segment and were therefore fraudulent and manipulative in nature. I note that the agents of RIL had assumed individual positions in the November 2007 futures of RPL, without disclosing their

relationship with the principal, i.e., RIL. The fact that the clients have been authorized by RIL to take separate and independent position limits was not known to the trading members or the market at large.

34. The fact that the 12 Agents were acting on behalf of one entity viz. RIL and thus, in law, were nothing but RIL is established by the following undisputed facts:

(i) Admittedly, all the 12 agency agreements are identical and the trades done by the Agents in the F&O Segment were only for the benefit of RIL.

(ii) Clauses 1.2 of the agency agreements provide that each transaction executed by the Agents was to be approved by RIL and that the Agents did not have any discretion to execute trades without RIL's authorization.

(iii) Clause 3.2 of the agency agreements provide that all the profits and losses arising out of the transactions would be to the account of RIL.

(iv) The 12 Agents opened Bank Accounts and entered into agreement with RIL just before the trading in early November, 2007 and that such trading was the first trade in RPL shares for all of them. They were thus clearly instruments and agencies of RIL.

35. The reason RIL adopted the scheme of executing trades through the agents was because SEBI circular no. SMDRP/DC/CIR-10/01 dated November 2, 2001 and NSE Circular No. NSE/CMPT/2982 dated November 7, 2001 *inter alia* imposed client-wise position limits in respect of single stock futures. These circulars were in fact issued as a part of "Risk Containment Measures' and "to deter and detect

concentration of positions and market manipulation". 'Position limits' define the maximum position, either total or net long / short that may be held or controlled by one entity or one class of traders. Position limits are imposed for risk mitigation and to ensure heterogeneity of market participants and availability of the open interest in a particular scrip to different market participants. Therefore, stock-wise, client-wise and broker/ member-wise position limits are recommended / prescribed by rules so as to reduce concentration risk and are among the risk containment measures mandated for trading in derivatives. As per the aforesaid SEBI and NSE Circulars, the gross open position across all derivative contracts on a particular underlying of a customer/client should not exceed the higher of 1% of the free float market capitalization (in terms of number of shares) or 5% of the open interest in the derivative. As per these position limits:

(i) On 6th November 2007, the maximum permissible client-wise position limit was 101 lakh shares; and

(ii) On 29th November 2007, the maximum permissible client-wise position limit was 90 lakh shares.

36. RIL in its submissions has contended that the position limits are only client wise limits and there is no concept of aggregate of positions / persons acting in concert under the above referred SEBI and NSE Circulars and therefore, the position held by each of its agents could not be aggregated. In this regard, I note that Section 226 of the Contract Act, 1872 provides that "*Contracts entered into though an agent, and obligations arising from acts done by an agent, may be*

enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person." Therefore, the acts of the agent have the same consequences as though the acts had been done by the principal himself. Therefore, the futures contracts executed by RIL through its Agents have the same legal effect as though they were executed by RIL itself. If the interpretation put forth by RIL is accepted, the stipulation of a client-wise limit in the relevant circulars itself becomes irrelevant and redundant. Further, it would allow any person to multiply his position by enlisting agents to act on his behalf rather than to limit itself to the stipulated criteria laid down in law. If a client corners position by procuring position limits covertly from their trading members showing different names and identities, it would deprive the other market players of the availability of the Open Interest in a particular scrip.

37. Considering the position limits stated above for RPL futures, I note that if RIL was to enter into short position in F&O Segment on its own name / client code, it could not have exceeded the position limits of 101 lakh shares on November 6, 2007 and 90 lakh shares on November 29, 2007. By employing this scheme/ device and acting through its 12 Agents, RIL had clandestinely accumulated position limits far in excess of limits permissible for a single client. In this regard, I am of the view that the principal could not have authorized the agents to do what they were assigned to do under the agreement as the principal itself lacked the authority to do such acts. In the matter of Firm of Pratapchand Nopaji v. Firm of

Kotrike Venkatta Shetty (1975) 2 SCC 208, the Hon'ble Supreme Court of India has held that - *"what cannot be done directly cannot be done indirectly by engaging another..."*. The Hon'ble Supreme Court has reiterated the said position in Jagir Singh Vs. Ranbir Singh (1979 AIR 381), wherein it was held that - *"what may not be done directly cannot be allowed to be done indirectly, that would be an evasion of the statute."*

38. In light of the above, I am of the view that RIL, which could not directly take a position in the futures market in excess of the prescribed position limits, cannot do so indirectly through the device of 12 agents. The principal agent arrangement, put forward by RIL to justify the cornering of position limits by individual entities in the F&O segment and execute the trades through a common person authorized on their behalf, who also happens to be the same person executing the trade on behalf of RIL in the cash segment is clearly a well - orchestrated scheme to defeat the position restrictions.

39. The circulars authorizing exchanges to impose penalty for breaches committed with respect to client-wise position limits cannot be construed in such a way to impose a limitation upon the inherent powers of the regulator to check and curb the perpetration of fraudulent and manipulative practices in the securities market and to protect and preserve the market integrity. From the manner and the time frame in which the agency agreements were executed, it is obvious that these agreements were executed by RIL for the purpose of circumventing the

regulatory framework laid down to govern the transactions in the F&O segment. The whole exercise of position limit violation has been perpetrated from the time the 12 entities were identified and appointed as agents by RIL for the sake of taking positions in F&O segment. Therefore, this appears to be a premeditated and pre planned exercise of RIL.

40. I note that RIL has admittedly taken the above steps in the F&O segment in view of its planned sale of 22.5 crore of RPL Shares in the cash segment. Any sale of such a magnitude in the cash segment is naturally expected to trigger steep price declines in the cash segment and alongside in the futures segment. The only way to take advantage of the sharp price decline will be by taking large positions in futures markets. It is pertinent to reiterate that the RIL, by itself, could have taken a maximum position of about 1.01 crore shares in futures in the month of November 2007 but by roping in 12 entities to act on its behalf, its position taking capacity in futures got proportionately amplified.

41. In this background, the argument of RIL that the position limit violation can only attract the stipulated monetary penalty and such a breach will not automatically amount to market manipulation or a fraudulent trade in securities is not acceptable. The significance of client wise, member wise, position limits can in no way be allowed to be undermined by fraudulent and deceitful methods. Such steps increase the concentration risk in the derivatives market and can be detrimental to market integrity. Therefore, I find that the very act of appointment

of several Agents by RIL coupled with the act of assuming separate position limits by its 12 agents, in the F&O segment was fraudulent in nature as defined in section 12A(a), (b) & (c) of the SEBI Act and Regulations 3 and 4 of PFUTP Regulations, 2003.

42. RIL has also sought to justify the transactions executed by it (though its Agents) in the F&O Segment by contending that such transactions were in the nature of hedging transactions. RIL stated that since it expected that the RPL share price may fall, it decided to adopt a prudent strategy to hedge, its proposed sale of RPL shares by undertaking short positions in the RPL November 2007 Futures.

43. In this regard, I note that hedging is a strategy of offsetting the price risk inherent in any cash market position by taking an equal but opposite position in the futures market. While hedging does not reduce the risk of losing money on an investment, it does mitigate that risk. That makes hedging a valuable tool for investors looking for some downside protection on a regular basis. I note that Black's Law Dictionary (11th Edition) defines a Hedging Contract as - *"A contract of purchase or sale that amounts to insurance against changing prices by which a dealer contracts to buy or sell for future delivery the same amount of a commodity as he or she is buying or selling in the present market."*

44. From above definition of Hedging Contract, I note that Hedging Contracts are permissible contracts available in market which facilitates a dealer to mitigate

price risk by providing an insurance against changing prices in cash market. Therefore, I am of the view that hedging contracts, as a tool for a dealer, are primarily aimed to mitigate / reduce their price risk and not designed to make substantial profits. From above definition of Hedging Contract, I note that there are two requirements in a hedge contract. First requirement is existing exposure in cash market and second requirement offset price by taking equal but opposite position in futures market. I also note that there could be hedge transaction against a future purchase or a sale of any security which is called a cash flow hedge, while hedge transaction to safeguard the value of an inventory of asset, which is expected to witness a decline in value in future is called fair value hedge or inventory hedge transactions. In any case, whatever type of hedge transactions, they are by its design provides for mitigation or offset price risk and does not provide for making substantial profits.

45. I note that in Pankaj Oil Mills v. Commissioner of Income-tax. 1976 SCC OnLine Guj 33, AIR 1978 Guj 226, the Hon'ble Gujarat High Court distinguished between hedging and speculative transactions by stating that :-

"….Hedging transactions are, however, to be distinguished from the speculative transactions, inasmuch as they are genuine transactions entered into for purposes of insuring against adverse price fluctuations. In hedging transactions neither delivery nor transfer is contemplated and yet they cannot be treated as speculative transactions in the commercial parlance. The technique of hedge trading is very pithily explained by a well-known Economist, W. R. Natu, in his book Regulation of Forward Markets, at page 9, as under :"

7. The hedge contract is so called because it enables the persons dealing with the actual commodity to hedge themselves, i.e., to insure themselves against adverse price fluctuation. A dealer or a merchant enters into a hedge contract when he sells or purchases a commodity in the forward market for delivery at a future date. His transaction in the forward market may correspond to a previous purchaser or sale in the ready market or he may propose to cover it later by a corresponding transaction in the ready market, or he may off set it by a reverse transaction on the forward market itself.

8. To take an illustration, a market may go to ready market and purchase cotton. He may purchase it for selling it again later to a mill for manufacturing it into cloth, in which case, he might hold it in his stock for a time, say, one month. If he buys the cotton at Rs. 800 per candy, and during the month, the price falls to Rs. 750 per candy, he would be making during the month, the price falls to Rs. 750 per candy, he would be making a loss of Rs. 50 per candy. He thus undertakes a risk when he buys cotton in the ready market and stocks it for a period of time, and naturally tries to find a way by which the risk can be reduced. He, therefore, goes to the forward market and sells cotton forward contract for delivery after one month, at, say, Rs. 770 per candy. The purchase transaction in the ready market is thus counterbalanced by a sale transaction in the forward market. At the end of one month, if the ready price has fallen by Rs. 50 he would be put to a loss in the ready market, when he offsets his original purchase by a sale in that market. At the same time, however, he would also be offsetting his original sale on the forward market by a corresponding purchase in that market. Since the course of prices in the forward market generally follows the same trend as in the ready market, he would be purchasing in the forward market and also at a lower price, perhaps at Rs. 720 per candy, making a profit of Rs. 50 per candy. He would thus make a profit on the forward market which would reduce or at times even more than wipe out the loss that he suffers on the ready market. In this way, he is able to reduce his risk and cut his losses by recourse to the forward market and might even in favorable circumstances end up with a profit on balance.

9. To take another illustration, an exporter of castor oil may contract to sell 100 tons of castor oil to an importer in U.S.A., delivery to be effected after two months, at the rate

of Rs. 1,650 per ton. Immediately after the conclusion of the contract, the exporter would buy in the forward market about 4,000 candies of castor seed which is roughly equivalent to 100 tons of castor oil. Subsequently, he would start purchasing ready castor oil in the market to fulfil his export commitment, and as and when he buys ready castor oil he would start purchasing ready castor oil he would liquidate his purchase position in the forward market. If between the time he concluded the export deal and the actual purchase of ready oil, the price of castor oil had advanced, he would incur a loss in his dealings in the ready commodity for export, but as the forward price of castor seed also would have gone up during the time, he would realise a corresponding profit in his dealing on the forward market.

10. Thus, by resorting to counterbalancing transactions in the market for the ready commodity on the one hand and in the hedge market on the other hand, the hedger seeks to safeguard his position. The movement of prices in the two markets may not always follow an identical course and the hedger might at times gain ad at times lose but such a gain or loss would be marginal and far less than what it would be if the person had not hedge at all. While, however, the hedging operation protects the hedger against loss arising from adverse fluctuations in prices, it also prevents him from making windfall profit owing to favourable fluctuations in prices as well. The forgoing of such a possible windfall profit is the price which he pays for the insurance against loss…..

….

In order to be genuine and valid hedging contracts of sales, the total of such transactions should not exceed the total stocks of the raw materials or the merchandise on hand which would include existing stocks as well as the stocks acquired under the firm contracts of purchases….”

46. RIL has stated that its Board, while approving the operating plan for 2007-08 and the broad resource requirements for the next 2 years, did not lay down the plan to be followed for raising of resources and left these details to be decided by two senior level officials. It is also clear from the submissions of RIL that it did not

draw up a hedging policy for the sale of 22.5 crores of RPL shares. Therefore, it appears that the transactions in RPL futures were decided without putting in place a policy framework for the same. It is also a matter of surprise, that in a large corporate of the size of RIL, major operations in the market are not guided by an approved policy plan, which will minimize the scope for individualistic discretions to come into play and thereby, protect the interests of the RIL shareholders.

47. I am of the view that it is necessary to demonstrate that it was a genuine hedge either in the form of documentary evidence as per approved policy or transactions entered should clearly evidence in accordance with the hedge transactions. I note from the submissions of RIL that it did not draw up a hedging policy for the sale of 22.5 crores of RPL shares. Therefore, in the absence of any approved hedge policy and failure to demonstrate before me that the impugned transactions were in accordance with the said policy, I find that there is no merit in the said submissions of Noticee-1, especially when admitted facts as mentioned above clearly demonstrate that the transactions were routed through web of entities by circumventing provision of positions limits which are a measure meant to reduce concentration risk or cornering by any entity.

48. I will now proceed to examine the transaction in light of the normal acceptable hedge practices. I note that RIL has *inter alia* stated in its submissions that there is no requirement, legal or otherwise that the hedge proportion should be

generally maintained at the same level throughout the period of hedge. In this regard, I note that there must be a correlation in the quantities of shares exposed to market fluctuations and the quantity of the hedge transaction undertaken in the futures market. If the short position held by RIL in the F&O Segment was a genuine hedge in respect of its proposed sales of shares, then RIL would have unwound its futures position to off-set the sales made by it in the cash segment. However, instead of doing so, RIL held on to its position in the futures market in excess of its proposed sale in the cash segment, thereby exposing itself to market fluctuations for its excess futures position. RIL's position in the futures market was therefore, a speculative transaction and not a genuine hedge. Maintaining a so-called hedge position of 7.97 crore shares in the F&O segment as against the physical requirement of 4.5 crore shares clearly shows that the hedging argument has no basis. Moreover, on November 19, 2007 and November 27, 2007, RIL had executed additional short sales in the future market of 0.02 crore shares through its Agents. It is contrary to any hedging objective for RIL to have increased its short position even when the maximum number of RPL shares to be sold were already less than its existing short position in the F&O Segment. Further, on November 29, 2007, RIL sold 2.25 crores shares in the cash segment and the entire outstanding position of 7.97 crores shares in the F & O Segment held by RIL was cash settled at the end of the day. Therefore, RIL had 2.21 crore shares still left to sell after expiry of RPL November futures. Noticee-1 has failed to show that it had entered into any fresh futures contract after November 29, 2007 to provide a hedge in respect of this anticipated sale.

In view of the above, I am of the view that the impugned transactions by RIL do not reflect a genuine intention to hedge the position but to earn speculative gains by taking advantage of the price dip in the cash segment due to the fact that the hedge continuously exceeded the proposed sale from November 15, 2007 onwards.

49. RIL also stated that it is not correct to contend that the futures position was put on only to protect cash market sales; it was also from an angle of providing an inventory hedge to its huge inventory of RPL shares (335 crore) against a drop in the RPL share price. However, I note that RIL was holding on to the shares of RPL from 2006 onwards and there has been no evidence of RIL formulating a policy for inventory hedge or taking a position in the futures market prior to November 01, 2007. I also note that RIL's excess position in the futures market in the month of November 2007 was not an inventory hedge as is evident from the fact that RIL had failed to show that it had entered into any fresh futures contract after November 29, 2007 even though it had a huge inventory of RPL shares. In case of hedging for inventory, RIL should have rolled over the RPL Futures contracts to the next month. The very fact that RIL allowed the short position to expire at settlement price shows that this was not an inventory hedge as it still had its huge inventory of RPL shares at the time of expiry of the said RPL futures contracts. Further, the futures contracts entered into by RIL would be fair value hedge of only a miniscule fraction of inventory of RPL shares held

by it. Therefore, I am of the view that the futures position was never intended to be used to hedge the price risk, but was used for speculative purpose.

50. I note that RIL clearly expected the cash market prices of RPL to dip once they start selling in the market. A large dip in the cash market would bring down the extent of realization of RPL shares sales in the cash market. Hence, RIL was led to corner a huge position limit in futures (much more than what is permissible to an individual client) and sequence the transactions in such a manner as to make unlawful gains in the process. The entire sequence of operation as stated above could not have been done without a strategy to corner the futures position in the first place.

51. I note that RIL has accepted the connections between itself and the Agents and has claimed the same to be a principal agent arrangement. RIL has also claimed a hedging strategy to divert the regulatory attention from position concentration created due to their transactions in F&O Segment. To justify the hedging strategy, RIL relied on the following Table in its written submissions:

TABLE-4

Date	Position in RPL Nov-07 Futures				Qty of Shares yet to be sold in Cash Segment out of proposed 22.5 Cr			% of Hedge Position	So called "Excess Hedge" Position	Inventory of RPL Shares with RIL
	Opening	Sale	Purchase	Closing	Opening	Sales	Closing			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9) = (5)/(8)%	(10) = (5)-(8)	(11)
01-Nov-07	-	2.22		2.22	22.50		22.50			337.50
02-Nov-07	2.22	2.63	(0.53)	4.32	22.50		22.50			337.50
05-Nov-07	4.32	3.92	(0.38)	7.86	22.50		22.50			337.50
06-Nov-07	7.86	2.68	(0.62)	9.92	22.50		22.50	44.10%		337.50

06-Nov-07	9.92			9.92	22.50	7.19	15.31	64.80%		330.31
07-Nov-07	9.92		(0.15)	9.77	15.31		15.31	63.82%		330.31
08-Nov-07	9.77			9.77	15.31		15.31	63.82%		330.31
09-Nov-07	9.77		(0.01)	9.77	15.31		15.31	63.77%		330.31
12-Nov-07	9.77			9.77	15.31		15.31	63.77%		330.31
13-Nov-07	9.77			9.77	15.31	1.33	13.98	69.84%		328.98
14-Nov-07	9.77			9.77	13.98	2.91	11.07	88.21%		326.07
15-Nov-07	9.77		(0.01)	9.75	11.07	1.73	9.34	104.40%	0.41	324.34
16-Nov-07	9.75		(0.01)	9.75	9.34	0.58	8.76	111.23%	0.98	323.76
19-Nov-07	9.75	0.01	(0.33)	9.43	8.76	1.55	7.21	130.74%	2.22	322.21
20-Nov-07	9.43		(0.13)	9.30	7.21	1.00	6.21	149.64%	3.08	321.21
21-Nov-07	9.30		(0.26)	9.04	6.21	0.36	5.86	154.33%	3.18	320.86
22-Nov-07	9.04		(0.76)	8.28	5.86	0.88	4.97	166.49%	3.31	319.97
23-Nov-07	8.28			8.28	4.97	0.52	4.45	185.91%	3.83	319.45
26-Nov-07	8.28		(0.31)	7.97	4.45		4.45	178.96%	3.52	319.45
27-Nov-07	7.97	0.01	(0.01)	7.97	4.45		4.45	178.96%	3.52	319.45
28-Nov-07	7.97			7.97	4.45		4.45	178.96%	3.52	319.45
29-Nov-07	7.97		(7.97)	0.00	4.45	2.25	2.21			317.21

52. As can be seen from the above table submitted by RIL containing an analysis of the day-wise quantum of RPL shares remaining to be sold by RIL in the cash segment vis-a-vis the quantum of net short position accumulated on the F&O side, it can be seen that from November 15, 2007 onwards, the short position in F&O segment was in excess of the cash market sales remaining to be undertaken. Therefore, some of the F&O positions were naked until the expiry of the November RPL futures on November 29, 2007. This does not reflect a genuine intention to hedge the position but to earn speculative gains by taking advantage of the price dip in the cash segment in the last half an hour, on the day of expiry of the futures.

53. The following table gives the details of the date-wise positions taken and the profit earned by the 12 entities, which were passed on to RIL, in the derivatives segment of RPL during the month of November 2007:

TABLE-5

S. No.	Entity	Trading in F&O				Profit Earned through derivatives trading (in Rs. Crores)
		Date	Purchase	Sale	Comments	
1	Relpol Plastic Products Pvt Ltd	5-Nov-07		8733450	Position held till expiry	60.51
		6-Nov-07	3748650	4003250		
		29-Nov-07	8988050			
		Total	**12736700**	**12736700**		
2	Aarthik Commercial Pvt. Ltd.	5-Nov-07		8988050	Position held till expiry	53.87
		29-Nov-07	8988050			
		Total	**8988050**	**8988050**		
3	Gujarat Petcoke and Petro Product Supply Pvt Ltd	2-Nov-07		7336500	Position held till expiry	48
		5-Nov-07		2338300		
		6-Nov-07	633150			
		9-Nov-07	67000			
		29-Nov-07	8974650			
		Total	**9674800**	**9674800**		
4	Fine Tech Commercial Pvt Ltd	5-Nov-07		4502400	Position held till expiry	33.76
		6-Nov-07		4462200		
		29-Nov-07	8964600			
		Total	8964600	8964600		
5	Motech Software Pvt Ltd.	5-Nov-07		5711750	Position held till expiry	38.56
		6-Nov-07		3249500		
		29-Nov-07	8961250			
		Total	**8961250**	**8961250**		
6	LPG Infra Structure India Private Ltd	2-Nov-07		8890900	Position held till expiry	42.57
		29-Nov-07	8890900			
		Total	**8890900**	**8890900**		
7	Darshan Securities Pvt Ltd	5-Nov-07		790600 contracts of Rs 270 Call option and another 201000 contracts of Rs 280 call option	Position held till expiry	1.69
		5-Nov-07		5209250		35.48
		6-Nov-07	311550	3102100		

S. No.	Entity	Trading in F&O				Profit Earned through derivatives trading (in Rs. Crores)
		Date	Purchase	Sale	Comments	
		29-Nov-07	7999800			
		Total	**8311350**	**8311350**		
8	Relogistics (India) Pvt Ltd.	6-Nov-07		3758700	Position held till expiry	10.94
		6-Nov-07		3999900		
		6-Nov-07	10050			
		29-Nov-07	3748650			
		29-Nov-07	3999900			
		Total	**7758600**	**7758600**		
9	Pipeline Infra Structure India Private Limited	1-Nov-07		8411850	Position held till expiry	54.42
		2-Nov-07		586250		
		29-Nov-07	8998100			
		Total	**8998100**	**8998100**		
10	Relogistics Rajasthan Private Limited	6-Nov-07		1206000	Position held till expiry	0.49
		29-Nov-07	1206000			
		Total	**1206000**	**1206000**		
11	Vinamra Universal Traders Pvt. Ltd.	1-Nov-07		8760250	Position squared off before expiry	60.3
		2-Nov-07	5282950	5517450		
		5-Nov-07	2140650	2100450		
		19-Nov-07	331650	110550		
		20-Nov-07	1192600			
		21-Nov-07	1969800			
		22-Nov-07	2475650			
		26-Nov-07	3095400			
		28-Nov-07	110550	110550		
		Total	**16599250**	**16599250**		
12	Dharti Investment and Holdings Ltd.	1-Nov-07		5028350	Position squared off before expiry	72.53
		2-Nov-07	43550	4013300		
		5-Nov-07	1618050	1604650		
		6-Nov-07	1504150	2998250		
		7-Nov-07	1500800			
		15-Nov-07	103850			
		16-Nov-07	63650			
		19-Nov-07	2948000			
		20-Nov-07	134000			
		21-Nov-07	2130600			
		22-Nov-07	3597900			
		Total	**13644550**	**13644550**		
Total Profit						**513.12**

54. To conclude, I find that RIL was not genuinely hedging the risk but was aiming at reaping huge speculative profits by cornering futures positions and playing a fraud on the general investors and the market. Noticee-1 cornered the Open Interest position in November RPL futures to the extent of 61.5% as on November 6, 2007 and 93.63% as on November 29, 2007 and closed out the outstanding short position of 7.97 crore shares on November 29, 2007 through its agents. I am of the view that this amounts to a well- planned, fraudulent and manipulative trading scheme in terms of the PFUTP Regulations, 2003.

Issue (b): Whether the dumping of a large number of shares in the cash segment of the RPL scrip during the last ten minutes of the trading by Noticee-1 resulted in a fall in the settlement price of RPL futures contract, resulting in violation of Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d), (e) of the PFUTP Regulations, 2003 & SEBI Circular no. SMDRP/DC/CLR-10/01 dated November 2, 2001?

55. The next issue for consideration is whether RIL, by selling 1.95 crore of RPL shares on NSE in the cash segment in the last ten minutes of the trading session on November 29, 2007, can be said to have acted fraudulently or manipulated the securities market, as per the PFUTP Regulations, 2003. It is observed from the price volume data that the price of the RPL scrip started rising from October 22, 2007. RIL entered the market to sell its shares just 5 days after the scrip had witnessed its intraday lifetime high price of Rs. 295 on November 1, 2007. Further, it started selling in the market only after its front entities had taken up

huge short positions in the derivatives segment from November 1-6, 2007. RIL commenced selling RPL shares in the cash segment of both BSE and NSE on November 6, 2007 and by November 23, 2007, it had sold 18.04 crore shares. RIL sold another tranche of 1.95 crore shares of RPL on NSE and 29 lakh shares on the BSE aggregating to 2.24 crore shares during the last 10 minutes of trading on November 29, 2007, i.e., on the expiry date of November futures contracts. The trading activity of RIL in the scrip of RPL on NSE and BSE during the said period is as below:

TABLE-6

	NSE			**BSE**			
Date	**Quantity Sold on NSE (A)**	**Total Volume**	**% of Total Volume**	**Quantity Sold on BSE(B)**	**Total Volume**	**% of Total Volume**	**Total Sale by RIL(A+B)**
06.11.2007	46673224	150327863	31.05	25205974	76237392	33.06	71879198
13.11.2007	9834405	34261680	28.70	3454246	14840423	23.28	13288651
14.11.2007	19457873	65742523	29.60	9663686	30736118	31.44	29121559
15.11.2007	11025513	40662603	27.11	6251271	19671999	31.78	17276784
16.11.2007	3851673	33600352	11.46	1940151	15907587	12.20	5791824
19.11.2007	10000000	28154379	35.52	5500000	14433570	38.11	15500000
20.11.2007	6554545	28848961	22.72	3445312	14602926	23.59	9999857
21.11.2007	2231124	38220473	5.84	1340159	19327723	6.93	3571283
22.11.2007	5801179	53963652	10.75	3027347	24642523	12.29	8828526
23.11.2007	3295897	35372893	9.32	1900000	17502750	10.86	5195897
Total	**118725433**			**61728146**			**180453579**
29.11.2007	19534004	176590962	11.06	2953320	55686748	5.30	22487324

56. It can be observed from the above table that the sale by RIL constituted a large percentage of the day's volume in the RPL scrip on each of the days that RIL sold the shares (ranging between 5.84%-35.52% on NSE and 6.93%-38.11% on BSE), i.e., the volume was enough to significantly impact the price of the share.

On November 28, 2009, the price at which the RPL scrip closed was Rs. 192.10. On November 29, 2007, the RPL scrip had opened at Rs. 193.80. If the RPL share price remained around Rs. 193 or fell further, RIL would have made considerable profits on its short position in the F&O Segment. However, the price of the RPL shares started to rise on November 29, 2007. In fact, by 3:00 pm the RPL share price had reached Rs.208.2 per share and thereafter it rose to Rs. 224.35 per share by 3:20 pm. However, between 3:21:40 and 3:28:55, RIL placed a total of 17 sell orders for 2.43 crore shares on NSE, out of which orders for 1.95 crore shares got executed through 22,704 trades. In terms of volume, RIL traded a significant 56 % of the total volume of shares traded in the last 10 minutes. This immediately caused a reversal in the upward trend in the RPL share price and brought down the share price to Rs. 209.8 at the 3:30 pm.

57. In fact, in 12 out of 17 trades RIL placed its sale orders at prices lower than the Last Traded Price ("LTP"). For instance, at 3:21:40, when the LTP was Rs. 224.70, RIL placed a sell order for 20 lac shares at Rs. 222 i.e. Rs. 2.70 lower when there were buy orders available for 8.85 lac shares between a price range of Rs. 222.05- Rs. 224.7. At 3:25:08, when the LTP was Rs. 217, RIL placed a sell order for 10 lac shares at Rs. 215, i.e. Rs. 2 lower when there were buy orders available for 8.64 lac shares between a price range of Rs. 215.05- Rs. 217. At 3:25:30, when the LTP was Rs. 217.25, RIL placed a sell order for 20 lac shares at Rs. 210, i.e. Rs. 7.25 lower when there were buy orders available for 18.69 lac shares between a price range of Rs. 210.05- Rs. 217.25. It is observed

that RIL was able to sell a much higher quantity by placing orders at prices lower than LTP as compared to the quantity sold by placing orders at/ above LTP i.e. by placing orders below LTP, RIL was able to dump a huge quantity of shares in the cash market during the last ten minutes thus affecting the price. As a result of RIL's repeated sell orders below LTP, the price continued to fall and the scrip closed the day at Rs. 205.05.

TABLE-7

AskOrderId	Time	Volume	Price	LTP	LTP Variation	Best Ask Price	Best Ask Volume	Best Bid Price	Best Bid Vol
"2007112903205206"	15:21:40	2000000	222	224.7	-2.7	224.9	151227	**224.7**	31916
"2007112903221378"	15:22:39	1000000	220	221.5	-1.5	221.55	1791	**221.5**	10002
"2007112903225754"	15:22:55	1000000	220	219.7	0.3	219.9	350	**219.7**	4750
"2007112903241557"	15:23:53	833197	219	219.5	-0.5	219.5	87	**219.35**	22667
"2007112903249462"	15:24:23	1000000	220	218.55	1.45	218.65	100	**218.55**	10392
"2007112953508369"	15:24:26	3000000	218	218.9	-0.9	218.9	3694	**218.55**	360
"2007112903261198"	15:25:08	1000000	215	217	-2	217.25	1510	**217**	7376
"2007112903266785"	15:25:30	2000000	210	217.25	-7.25	217.5	1670	**217.25**	10970
"2007112903270909"	15:25:46	2000000	210	216.75	-6.75	216	360	**215.3**	3557
"2007112903275904"	15:26:04	1000000	210	212.7	-2.7	212.7	2816	**212**	38477
"2007112903277009"	15:26:11	1000000	210	212.7	-2.7	212.8	21456	**212.7**	468
"2007112903281073"	15:26:22	500000	210	210	0	210	641085	**209.7**	532
"2007112953555204"	15:27:07	2500000	211	212.8	-1.8	212.8	1990	**212.6**	739
"2007112903303201"	15:27:40	3000000	210	211	-1	211	389091	**210.8**	67276
"2007112903307149"	15:27:55	1000000	210	209.25	0.75	210	1753604	**209.25**	15188
"2007112903312638"	15:28:17	500000	210	210	0	210	1925505	**209.75**	4042
"2007112953584783"	15:28:55	1000000	210	209	1	209	3071	**208.65**	479

58. There is no rational explanation for the above transactions by RIL. It was under no compulsion to sell the entire 22.5 crore RPL shares in November 2007. This is also clear from the fact that –

(i) It did not sell any RPL shares after November 23 until the last 10 minutes on November 29; and

(ii) Even after the sale of shares on November 29, RIL still had 2.21 crore shares left to sell out of the 22.50 crores shares, it had allegedly decided to sell in a decision taken much before November, 2007.

These facts show that RIL's real objective was to bring down the RPL share price by dumping huge quantity of shares in the cash segment during the last 10 minutes to influence the settlement price in F&O segment.

59. RIL selected the last ten minutes of trading on November 29, 2007 (also the day of expiry of November 2007 futures) to get advantage in the closing price of the cash segment which would immediately convert into returns in the futures segment. This is also apparent from the fact that RIL chose not to sell all of the 22.5 Crores RPL shares although it could have got similarly higher prices in the days close to November 29, 2007. The said date was also not any deadline for sale of all 22.5 Crores RPL shares. Indeed 2.21 crores RPL shares remained unsold on November 29, 2007.

60. Without prejudice to the fact that dumping such huge quantity of RPL shares in the cash segment led to the fall in price of the RPL shares and the settlement price of the RPL futures, I note that the very act of dumping these shares in last ten minutes of trading establishes that RIL was trying to manipulate the market, by using a commonly known method called 'marking the close'. Once there is manipulation, the actual impact on price and whether or not RIL made a profit / loss would be immaterial. In view of my observations above at issue (a) and issue

(b), the manipulative / deceptive transactions of RIL are, *prima-facie*, covered under the definition of 'fraud' and therefore were "fraudulent", as defined under regulation 2(1)(c) of the PFUTP Regulations, 2003. In view of the same, I find that RIL has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (d) & (e) of PFUTP Regulations, 2003 and SEBI Circular no. SMDRP/DC/CIR-10/01 dated November 02, 2001.

Issue (c): Whether Noticee-2, being the CMD of Noticee-1 and responsible for its day-to-day affairs, is liable for manipulative trading done by Noticee-1 and has violated Regulation 3 (a), (b), (c), (d) and Regulation 4(1), 4(2)(d), (e) of the PFUTP Regulations, 2003 & SEBI Circular no. SMDRP/DC/CIR-10/01 dated November 2, 2001?

61. The next issue for consideration is whether Noticee-2 was complicit to the violation of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (d), (e) of PFUTP Regulations, 2003 and SEBI Circular no. SMDRP/DC/CIR-10/01 dated November 02, 2001 by RIL. I note that Noticee-2 was the Chairman & Managing Director of RIL for the relevant period.

62. Noticee-2 has contended that Section 27 of the SEBI Act, as it stood prior to amendment in 2019, is not applicable to the present Adjudication Proceedings. It has been contended that prior to its amendment with effect from March 8, 2019, Section 27 of the Act only applied to "offences" by companies which are dealt with under Section 24 of the Act which are tried before special courts established

for trying such offences. In the present case, there are admittedly no prosecution proceedings against RIL for any ‘offence" under Section 24 of the Act.

63. In this regard, I am of the view that the Regulatory intent of Section 27 of the SEBI Act was not to deal with criminal proceedings alone, but also with civil proceedings. The word ‘offence’ in the Section 27 of the Act prior to the amendment cannot be said to specifically exclude Adjudication Proceedings from its purview. I am of the view that the amendment to the said Section in the year 2019 was clarificatory in nature by replacing ‘offences’ with ‘contraventions’. In this context, reference may be made to Section 68 of FERA which is *pari materia* to Section 27 of SEBI Act. The Hon’ble Supreme Court of India while dealing with Section 68 of Foreign Exchange Regulation Act, 1973 in Standard Chartered Bank Vs Directorate Of Enforcement in its judgment dated February 24, 2006 observed - *“The word 'offence' is not defined in the Act. According to Concise Oxford English Dictionary, it means, 'an act or instance of offending'. Offend means, 'commit an illegal act’ and illegal means, 'contrary to or forbidden by law'. According to New Shorter Oxford English Dictionary, an offence is "a breach of law, rules, duty, propriety, etiquette, an illegal act, a transgression, sin, wrong, misdemeanour, misdeed, fault." Thus, an offence only means the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime alone. It is an act committed against law or omitted where the law requires it and punishable by it. In its legal signification, an offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private rights; a punishable violation of law, a crime, the doing that which a penal law forbids to be done or omitting to do what*

it commands (see P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn, 2005 page 3302). This Court in Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya [(1997) 2 SCC 699] stated that the word 'offence' generally implies infringement of a public duty, as distinguished from mere private rights punishable under criminal law. In Brown v. Allweather Mechanical co. [(1954) 2 QB 443], it was described as "a failure to do something prescribed by a statute may be described as an offence, though no criminal sanction is imposed but merely a pecuniary sanction recoverable as a civil debt." Therefore, the contention of Noticee-2 regarding non-applicability of the provisions of Section 27 to the instant proceedings is devoid of merit.

64. I consider it relevant to examine hereafter the role of Noticee-2, being the Managing Director, in terms of either direct involvement or knowledge / awareness of such well-planned manipulative scheme of trades undertaken by RIL leading to violation of SEBI Regulations and Circulars.

65. Noticee-2 in his submissions has stated that the scope of powers and functions of a Managing Director are subject to the agreement with the company and/ or the powers delegated to such person by the board or shareholders of the company and that he is not responsible for each and every action of a company. In this regard, I note that a Managing Director, as defined in Section 2(26) of the Companies Act, 1956, means a director who is encrusted with substantial powers of management which would not otherwise be exercisable by him. The proviso

to section 2(26) provides that the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management.

66. In the matter of Wasava Tyres v. The Printers (Mysore) Ltd. [2007 139 CompCas 446 Kar], the Hon'ble Karnataka has observed that –

"…12. The words "substantial powers of management" specifically excludes certain acts from its preview. Therefore except the excluded acts the managing director has power and privilege of conducting the business of company in accordance with the Memorandum and Articles of Association of the company. The institution of the emit on behalf of the company by the managing director is deemed to be within the meaning of "substantial powers of management" since such a power is necessary and incidental for managing the day-today affairs and business of the company…"

67. Therefore, I note that a Managing director is responsible for managing the day-to-day affairs and business of the company and he has been vested with the said power under the Companies Act, 1956. This implies a high level of accountability and knowledge of the overall functioning of the company. I also note that no agreement between the Noticee-2 and the Board of RIL has been presented

before me that limits the Noticee-2's powers to implement the said decisions of the Board of RIL. Even if such an agreement exists, it would go against the interest of the shareholders of RIL whereby the Managing Director does not have any oversight over the decisions relevant to the company.

68. Noticee-2 has contended that RIL Board had authorised two officials to implement Board decision taken in the meeting dated March 29, 2007 and therefore, he cannot be held responsible for any such actions. Noticee-2 has further contended that the RIL Board (including Noticee-2) was informed of the sale of 5% shares of RPL only at the meeting held on November 19, 2007, but not of the specific details and therefore, cannot be alleged to have carried out the trades.

69. I note from minutes of Board Meeting held on March 29, 2007 that two officials of RIL namely Mr. Alok Agarwal (Chief Financial Officer) and Mr. L V Merchant (Controller-Accounts) were authorised to explore, identify and implement optimal avenues of funding. The relevant extract of the Board Minutes is as below:

"…Detailed presentations on the highlights and Annual Plans for the year 2007-08 for various business segments and services were made by Shri P.M.S. Prasad, Shri Atul Laul, Shri R.D. Udeshi, Shri Kamal Nanavaty, Shri B. Sundar, Shri Alok Agarwal, Shri Ashish Chauhan, Shri M.N. Bajpai and Shri V.V. Bhatt.

The Board, after discussion, noted the presentations and approved the Operating Plan and Capital Budget for the year 2007-08 including resource requirements for the next two years and Funding Avenues and authorized Shri Alok Agarwal and Shri L V

Merchant, Executives of the Company to explore, identify and implement optimal avenues of funding..."

70. I note from the minutes of RIL Board meeting dated November 19, 2007 that a presentation on "Update on Strategic Plan including financial performance" was made by Mr. Alok Agarwal, the CFO of RIL and who was one of the authorized officials. In this regard, I note that the matter of sale of 5% of RPL shares was discussed in the RIL Board meeting held on November 19, 2007. The relevant extract of the Minutes of the said Board meeting is as below:

"The Board was informed of the progress made towards raising of resources for the Company's ongoing projects in line with the fund raising programme as earlier authorised by the Board of Directors at the budget meeting held in March 2007. The Board was also informed that after exploring various means of finance, the Company is disposing RPL shares of upto 5% through trades in RPL securities. Board noted the same."

71. It is the contention of Noticee-2 that the RIL Board had authorised the aforesaid two officials to explore, identify and implement optimal avenues of funding. I note that RIL in its submissions has stated that at the relevant time it had total assets worth Rs. 149,792 crore and its turnover for financial year 2007-08 was Rs. 139,269 crore. Therefore, I find it difficult to believe that entire asset sale to raise Rs. 87,000 crore, as decided in the Board meeting dated March 29, 2007, was left at the discretion of the said two officers and without the supervision of the

Managing Director, when the said amount was a substantial percentage of its total assets and its turnover.

72. I am of the view that the only test before me is to decide whether the said officials were competent to take all the decisions given their designation. I note from the plain reading of the Board Minutes that the intention of the Board of RIL was not to completely delegate the responsibility of all the three activities (viz. exploring, identifying and implementing) to the said officials of RIL. Rather, I am of the view that the required funding was to be raised in two stages and the first stage being exploring and identifying the avenues of funding and, the implementation would happen only after approval by Competent Authority, given the size of the funds to be raised and the designation of the persons authorised. Authorising only two officials to independently carry out all the three activities is not desirable in any corporate structure considering the huge amount funding to be raised, because in such a scenario, individual discretions of the officials would come into play, which may not be in the best interest of the Company and its shareholders. Therefore, I am of the view that the hierarchy in a Corporate Structure is designed in such a way that adequate checks and balances are available to prevent afore stated situation and a Managing Director is a key person for such a hierarchy to work properly in the interest of the Company and its shareholders. Therefore, I am of the view that the intention of Board of RIL could never have been to put the entire responsibility of all the three activities towards raising of funding on the said officials without any oversight of the Managing Director, who is also the

member of the Board of RIL. I note that there are no records presented before me to demonstrate the entire chronology of how the various avenues of funding were explored, identified and implementation plan were arrived at. Therefore, it is implicit that either the Board or the Managing Director, who is also a part of the Board, would be the Competent Authority to authorise the implementation plan after discussions on avenues explored and identified. I note that there is no record or document presented before me that such explicit approval for implementation plan was given by Board of RIL. Therefore, in the absence of the same and considering the corporate hierarchy and given that Noticee-2 is Managing Director and also a member of the Board, it is implicit that Noticee-2 would be the Competent Authority to authorise the implementation plan of funding avenues explored and identified. Noticee-2 has claimed that the Board of RIL including himself was informed of the sale of RPL shares only during the Board meeting on November 19, 2007. In my view, considering the facts and circumstances of the case as discussed above, it is highly unlikely that the Noticee-2 was not aware till the Board meeting as claimed because of the reasons stated above. Further, as per admitted facts on record, the implementation plan to raise finance through disposing of 5% shares of RPL was already in motion and 18 Crore shares of RPL were already sold on the Cash Segment while the Agents were holding the short positions in F&O Segment, pursuant to an agreement by one of the Board Authorised Person, i.e., Mr. L V Merchant. Therefore, I am of the view that, given the hierarchy in the corporate structure, such transaction in the Cash and F&O Segments could not have taken

place without the approval (either written or oral) or knowledge of the Managing Director, who heads the corporate hierarchy of RIL and, therefore, I find that there is no merit in the submissions of Noticee-2 that he was not aware of the transactions undertaken for the benefit of RIL till the Board Meeting on November 19, 2007.

73. Apart from the above discussion, I also consider it appropriate to examine whether the authorised officials on their own were independently capable and had desired authority and power, in the absence of any document indicating express delegation apart from the Board minutes, to undertake the entire scheme of transactions without any consent, knowledge and approval from the Managing Director or RIL Board.

74. Noticee-2 has contended that the relevant actions of RIL in the present case were part of a special mandate given by the RIL Board to two officers and such officers would be obliged to inform the RIL Board of the actions taken by them. I note that the role of the said officers is differentiated from the role of Compliance officer under law where it provides for direct reporting to the Board. Since, these officials were not Compliance Officers it cannot be assumed that they had an obligation on them to report directly to the RIL Board. Therefore, I am of the view that the said two officers, being subordinate officer to Noticee-2, were operating under a hierarchy which was headed by Noticee-2 as the Managing Director. I further note that the authorisation by RIL Board to the said officials was limited

to exploring, identifying and implementing the optimal avenues of funding as brought out in the above paragraphs.

75. Now, I proceed to run through the admitted facts of the case to determine whether the authorised officials could have independently carried out the entire scheme by themselves without involvement of Noticee-2. As per the scheme of transactions undertaken in the chronological order, I note that the trading in RPL in cash and futures market was arranged in the following stages:

    a. RIL had entered into similar agreements with all the 12 Agents between 30th October 2007 to 3rd November 2007 and these were in the nature of Principal/Agent agreements, i.e., all transactions carried out by the entities were on behalf of RIL in the F&O Segment for the said 12 entities to take short positions in RPL futures on behalf of RIL. The clauses in the agreement specifically provided that RIL would reimburse the interest costs for any borrowed funds and all profits or losses arising out of the said transactions were to be credited to the account of RIL. Following are a few important clauses of the agreement:

    1.1.2 All investments will be made by the Agent based on prior instructions of the Principal. In case the Agent recommends any proposals, the Agent shall execute the transactions only after the proposal has been evaluated and approved by the Principal and investment instructions are thereafter communicated to the Agent. Sale of all investments will also be done by the Agent only based on prior instructions of the Principal.

2.2.1 The Agent having represented that it is capable of arranging funds, it shall utilise its own funds for making any investment transactions on behalf of the Principal, unless the Principal has provided funds to the Agent. In case the funds are provided by the Principal, the Agent undertakes to utilise the funds solely for executing transactions as instructed by the Principal.

2.2.2 In the event of the Agent utilising its own funds, the same shall not exceed the maximum limit of Rs. 75,00,00,000/- (Rupees Seventy Five Crores only). Beyond this limit, unless the Principal provides funds to the Agent, the Agent shall not be under any obligation to execute a transaction.

2.2.3 In the event of the Agent borrowing funds to execute transactions on behalf of the Principal, the Principal shall reimburse to the Agent the interest costs incurred by the Agent for such borrowed funds.

3.3.2 During the course of executing transactions, the Agent is permitted to execute transactions in its own name. It is, however, understood that all such transactions will be done by the Agent for and on behalf of the Principal and all profits and losses arising out of such transactions shall be to the account of the Principal.

b. For the stated purpose of undertaking transactions on behalf of RIL, one of the Agents Vinamra had already arranged finance from Noticee-3 to the tune Rs. 2,750 crore and from Noticee-4 to the tune of Rs. 550 crore by way of inter corporate deposits and subsequently, advanced loans to other 11 Agents. All the Agents were eligible for reimbursement of interest costs from RIL for the borrowed funds in terms of the clause in the agreement

about reimbursement of interest cost on borrowed money. The said funds were utilised for making margin money payment to brokers by the Agents.

c. At the instruction of RIL as per the agreement, Agents took short positions in RPL November Futures during November 1 2007 to November 6, 2007, for the stated purpose of hedge positions towards future sales of RPL Shares in the Cash Segment.

d. Sale of RPL shares in the cash market on various trading days during November 2007 starting from November 6, 2007 after the short positions in F&O Segment had been taken by the Agents. The orders in the F&O Segment and in the Cash Segment in the account of the Agents and RIL respectively were placed by the same person - one Mr. Sandeep Agarwal, who is connected to RIL.

e. Information provided to the RIL Board on November 19, 2007 by authorised officials about disposing of 5% of RPL shares.

f. RIL did not sell any shares in the cash market from November 24, 2007 until the last half hour of trading on November 29, 2007. During the last 10 minutes of trading on November 29, 2007, RIL sold another tranche of 1.95 crore shares on NSE, accounting for 11% of the day's total traded volume and about 25% of the total traded volume during the last half hour of trading. It also sold 29 lakh shares on the BSE during the last half hour of trading on November 29, 2007.

g. As confirmed from their bank statements, all the profits earned in the futures and options transactions in RPL scrip were duly paid over to RIL between

December 5, 2007 to December 26, 2007 by the Agents and the commission was paid by RIL to these entities on December 26, 2007.

76. I note from the above chronology that finance was a critical component for the Agents to undertake all the transactions in the F&O Segment on behalf of RIL and therefore, was critical for the aforesaid scheme of manipulative trades. I note that one of the authorised officials Mr. L V Merchant had signed that agreement on behalf of RIL with the 12 Agents which are admittedly connected entities of RIL. The said agreement provided an implicit guarantee to the Agents that the interest costs on availed loans would be reimbursed by RIL. The interest part being borne by RIL is indicative of the fact that the finance was arranged on the strength of the name of RIL and not on the individual capacity of the two Board authorised officials. The fact that the finance was arranged from Noticee-3 and Noticee-4, whose Chairman is closely connected with RIL, denotes that the said finance have not been raised on the personal reputation of the two officials but in the name of RIL and its Managing Director. The said loans were provided at a concessional rate to one of the Agents by Noticee-3 and Noticee-4 and without any security as collateral. Such terms of finance could only have been offered to the Agent only on the strength of the name of RIL and its Managing Director giving assurance that the amounts advanced would be repaid and not on the name of the said two officials. I further note that in order to protect the interests of RIL, the agreement with the Agents had a clause that all the profits / losses

from the transactions in the F&O Segment were to be transferred back to RIL by the Agents.

77. I note from the above that the aforesaid two officials did not have any locus in the entire scheme of transactions and all the steps undertaken could be effected through the RIL name. Therefore, when the entire sequence of transactions undertaken for RIL have occurred under the corporate hierarchy of the company, I am of the view that the said two officials could not have independently taken every decision for such a multi-level implementation plan and given that there is a need for an approval in corporate set up before implementation. Therefore, it is necessary to consider surrounding facts and circumstance of transactions along with timing and pattern of transactions involved in executed implementation plan as outlined above, in order to arrive at any conclusion. Having noted that authorised officials do not have locus and financial reputation or capacity to independently arrange for funds, I conclude that Noticee-2, being the Managing Director of RIL, would have given approval / had knowledge about as entire manipulative scheme including manipulative trades undertaken by RIL in last half an hour as manipulative scheme was well planned and ended with transfer of ill-gotten gains made to account of RIL, as per the agreement. In this regard, reference is drawn towards K.K. Ahuja vs. V.K. Vora and another (2009(3) JCC (NI)194, where the Hon'ble Supreme Court observed that: - *"if the accused is the managing director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the*

company, for the conduct of business of the company. It is sufficient if an averment is made that the accused was the Managing Director / Joint Managing Director at the relevant time. This is because the prefix 'Managing' to the word 'Director' makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company."

78. In view of the foregoing, I find that Noticee-2 is deliberately trying to shift the blame of manipulative traded by RIL on the said two officers. I am of the view that Noticee-2, being the Managing Director of the RIL, cannot absolve himself and plead ignorance about the entire scheme of manipulative transactions undertaken for the benefit of RIL in the shares of RPL in the Cash and F&O Segment. Therefore, I find that Noticee-2 was liable for the actions of RIL resulting in violations of PFUTP Regulations, 2003 and SEBI Circular. Therefore, I find that Noticee-2 has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (d), (e) of PFUTP Regulations, 2003 and SEBI Circular no. SMDRP/DC/CIR-10/01 dated November 02, 2001

Issue (d): Whether Noticee-3 and Noticee-4 have aided and abetted Noticee-1 by providing funds to one of the agents appointed by Noticee-1, which in turn provided funds to the other agents appointed by Noticee-1, resulting in violation of Regulation 3(b), (c), (d) and Regulation 4(2)(d) & (e) of PFUTP Regulations, 2003?

79. The next issue for consideration is whether Noticee-3 and Noticee-4, who financed the whole manipulation scheme by funding the Agents of RIL have violated the provisions of Regulations 3 (b), (c), (d) and Regulations 4(2) (d) and (e) of PFUTP Regulations, 2003 by being complicit in the aforesaid scheme of manipulation to make undue gains. It was alleged that Noticee-3 and Noticee-4 had provided loans of Rs. 2775 crore and Rs. 550 crore respectively to Vinamra, which was one of the agents appointed by Noticee-1. Vinamra in turn had advanced funds to 10 of the agents appointed by RIL in the form of a short term inter corporate deposit @ 12% p.a. for the purpose of making margin money payments to brokers. As per the agreement between RIL and the agents, RIL was obligated to reimburse the interest costs incurred by the agents for such borrowed funds. Further, as per the Balance Sheet of M/s Vinamra Universal Traders, the company had a Net Worth of Rs. 1 lac and Unsecured Loans of Rs. 3592 crores as on March 31, 2008. The SCN also alleges connection between RIL and Noticee-3 & Noticee-4 through their Chairman Shri Anand Kumar Jain, who, according to the website of Noticee-3, has been closely associated with the Reliance Group as a strategic advisor to the company. Further, it has also been alleged that Shri Sanjay Punkhia was a director on Board of Noticee-3, Noticee-4 and Vinamra. I also note that the address of Vinamra and Dharti Investment & Holdings (another Agent appointed by RIL) is same as that of Noticee-3 and Noticee-4.

80. In this regard, the said Noticees have submitted that they had placed their temporary surplus funds as Inter Corporate Deposits ('ICDs'), repayable on demand with Vinamra to earn income. Admittedly, the rate of interest on the ICDs given to Vinamra by Noticee-3 was 8% p.a. and by Noticee-4 was 6.5% p.a. I note that both Noticee-3 and Noticee-4 have submitted that they had received back the principal and the interest due from Vinamra as per the terms and conditions of the agreement. They have stated that it was a business decision to advance loans as ICDs to Vinamra and the same cannot be construed to be as collusion with RIL and its agents. Noticee-3 and Noticee-4 have also denied any relationship with RIL and informed during investigation that no fund transfers were executed with RIL during FY 2007-08. Both Noticee-3 and Noticee-4 have contended that their Chairman Shri Anand Kumar Jain was merely involved in "professional capacity" with RIL and there is no connection between Reliance Group and them. Both Noticee-3 and Noticee-4 have further contended that Shri Sanjay Punkhia was never a director of Vinamra.

81. I note that the connection of Noticee-3 and Noticee-4 with Vinamra and RIL has to be seen in context of the terms of finance provided by them and relevant facts relating to links between the companies through their officials and address. In this regard, I note from available records that Vinamra was incorporated on July 17, 2007. I further note that Noticee-4 admittedly entered into a facility agreement with Vinamra on August 04, 2007 and Noticee-3 admittedly entered into a facility agreement with Vinamra on September 22, 2007 to place ICDs of Rs. 550 crore

and Rs. 2775 crore respectively. Therefore, I note that Noticee-3 and Noticee-4 agreed to advance such a large amount to Vinamra within days of its incorporation.

82. I also note that the rate of interest charged by Noticee-3 and Noticee-4 was 8.00% p.a. and 6.50% p.a. for the said unsecured loans. I note that at the relevant time, the repo rate fixed by the Reserve Bank of India (RBI) was at 7.75%. Repo Rate, or repurchase rate, is the key monetary policy rate of interest at which the RBI lends short term money to banks. The interest rates on loans are generally priced by way of adding a spread over the repo rate after taking into account various parameters such as borrower profile, type of loan, etc. The interest spread for unsecured loans are larger than the spread for a secured loan. Therefore, I find that Noticee-3 and Noticee-4 have advanced unsecured loans of Rs. 2775 crore and Rs. 550 crore respectively at concessional interest rates of 8.00% p.a. and 6.50% p.a. to Vinamra. In case of Noticee-4, the rate of interest was well below the prevailing repo rate, while in case of Noticee-3 the rate of interest was nearly the same as the prevailing repo rate. Therefore, I note that both Noticee-3 and Noticee-4 have advanced unsecured loans to Vinamra at concessional rates of interest, despite their claims that they were not connected with Vinamra. However, I am of the view that placing of ICDs at such a low interest rate with a new company by unrelated entities is not in normal course of business.

83. I note that the website of Noticee-3 itself had the profile of Shri Anand Kumar Jain which stated that he was closely associated with the Reliance Group. I am of the view that the Noticee-3 now cannot seek to deny that it was merely on account of professional services given. I also note that the letter dated September 24, 2008 from Vinamra to SEBI encloses a resolution passed on September 21, 2007 in the meeting of Board of Directors of Vinamra for undertaking investment activities. The said resolution states as below:

"…. RESOLVED FURTHER THAT any of the Directors of the Company for the time being in office, Shri Sanjay Punkhia, Shri Rohit C. Shah, and Shri Hermesh Shah, Authorised Signatories, be and are hereby severally authorized:

(i) to sign and execute the application forms, transfer deeds, instructions for electronic transactions and/or other papers including signing of receipts on behalf of the Company, in connection with its investments/disinvestments.

(ii) to open a Client Account with one or more Stock Broker or other appropriate entitles registered with the Security Exchange Board of India for carrying out any of the transactions authorized pursuant to this resolution and to sign member-client agreement, or such other documents, instruments and other papers as may be required for operation of the company's account with any such broker/entity.

(iii) to do all other acts, deeds, matters and things as may be necessary to give full effect to this Resolution…."

84. It is clear from above resolution that Shri Sanjay Punkhia was authorized by the Board of Directors of Vinamra to undertake various activities in respect of the company's investments / disinvestments. Therefore, the contention of Noticee-3

and Noticee-4 that there was no connection between them and Vinamra is not acceptable as Shri Sanjay Punkhia is a common link wherein he was authorized by the Board of Vinamra in respect of Vinamra's investment activities, while concurrently also being a director on the Boards of Noticee-3 and Noticee-4.

85. I note that facility agreement between Vinamra and Noticee-3 & Noticee-4 have been signed on August 04, 2007 and September 22, 2007 respectively. Subsequently, Vinamra entered into an agreement with RIL for entering into short position in F&O Segment which is evident from terms of the agreement as mentioned above. Therefore, on a combined reading of both the facility agreements and the agreement entered between RIL and the Agents, and coupled with the fact that all terms of the agreement have been fulfilled including repayment of ICDs pursuant to transfer interest costs by RIL to Vinamra, it is clear that Noticee-3 and Noticee-4 were fully aware that the funds extended through ICDs were in fact meant for the purpose of funding the scheme of manipulative trades by RIL and its Agents.

86. I also note, based on terms of agreement between RIL and the Agents, interest rates on the borrowed funds were to be reimbursed by RIL to the Agents. The fact that Noticee-3 and Noticee-4 advanced funds to Vinamra at concessional rates indicates that they had a prior knowledge about the entire gamut of transactions / agreements to be undertaken by the Agents and RIL in pursuance to the scheme of manipulative trades and had the implicit comfort that the funds

advanced for such purpose would ultimately be repaid by the Agents as RIL was going to reimburse interest rates charged on the funds. Therefore, based on the circumstances of the matter, I am of the view that the facility agreements entered with Vinamra by Noticee-3 and Noticee-4 were an important leg of the scheme of manipulative trades by RIL and the funds so provided in the guise of ICDs by way of these facility agreements were ultimately used to implement the plan of taking short positions in F&O Segment. I further note that Vinamra and other Agents were subsequently reimbursed the interest charges on the funding availed by RIL and admittedly, Vinamra had repaid the funds advanced by Noticee-3 and Noticee-4 with agreed interest. I am of the view that the said repayment was made possible only because of reimbursement of interest charges by RIL. Therefore, I conclude that there is no merit in the contention that funds advanced were in the nature of ICDs advanced in normal course of business and that Noticee-3 and Noticee-4 had no knowledge of the end use of the funds advanced by them.

87. In view of the foregoing, I find that Noticee-3 and Noticee-4 actively aided and abetted RIL by providing funds to Vinamra, which was ultimately used in providing margin money to the stock brokers for taking the short positions by the Agents of RIL in RPL futures for earning illegitimate profits from the said positions. In view of the foregoing, I find that Noticee-3 and Noticee-4 have violated the provisions of Regulation 3(b), (c), (d) and Regulation 4(2)(d) & (e) of PFUTP Regulations, 2003.

88. In view of the foregoing discussions, I find the Noticees were part of a well-planned scheme of manipulative trades in the Cash Segment and the F&O Segment in RPL shares. As a result of their involvement in this scheme, RIL and Noticee-2 have violated the Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2) (d), (e) of PFUTP Regulations, 2003 and SEBI Circular no. SMDRP/DC/CIR-10/01 dated November 02, 2001. I also note that Noticee-3 and Noticee-4 have violated the provisions of Regulations 3 (b), (c), (d) and Regulations 4(2) (d) and (e) of PFUTP Regulations, 2003.

89. The Hon'ble Supreme Court of India in the case of SEBI v. Rakhi Trading Pvt. Ltd., (2018) 13 SCC 753 has appreciated that fairness, integrity and transparency are the hallmarks of the stock market in India and the stock market is not a platform for any fraudulent or unfair trade practice. The Hon'ble Apex Court has further observed that: - "*The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market.*" Further, Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

90. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticees under the provisions of Section 15HA of the SEBI Act read with Section 12A(a), (b) & (c) of the SEBI Act, which read as under:

Section 15HA of the SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Section 12A(a), (b), (c) of SEBI Act

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;

91. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

92. I note that RIL has entered into a scheme of manipulative trades in respect of the sale of 5% of RIL stake in RPL. However, before undertaking sale transactions in the Cash Segment, RIL fraudulently booked large short positions in the RPL November Futures through 12 Agents with whom it had entered into an agreement to circumvent position limits for a commission payment. As a result,

RIL fraudulently cornered nearly 93% of open interest in RPL November Futures, when the said 12 Agents took short positions in F&O Segment on its behalf. The funding for the margin payments by the said Agents was provided by Noticee-3 and Noticee-4. A common person connected with RIL had placed orders in the Cash Segment on behalf of RIL and in the F&O segment on behalf of the Agents. On the date of settlement of RPL November Futures, i.e., on November 29, 2007, RIL sold 1.95 crore RPL shares on NSE Cash Segment in the last 10 minutes of trading resulting in fall in the prices on the Cash Segment, which artificially depressed the settlement price of RPL November Futures. This resulted in profits on the huge short positions held by the Agents in RPL November Futures and the said profits were transferred back to RIL by the Agents as per prior agreement. The above strategy undertaken by RIL has resulted in manipulation of settlement price of RPL November Futures and prices of RPL shares in the Cash Segment. I note that Noticee-2, being the Managing Director of RIL, was responsible for the manipulative activities of RIL. I am of the view that listed companies should exhibit highest standards of professionalism, transparency and good practices of Corporate Governance, which inspires confidence of the investors dealing in the capital markets. Any attempt to deviate from such standards will not only erode the confidence of the investors but also affect the integrity of the markets. From the facts mentioned above paragraphs, the transactions executed by Noticees were structured and executed in such manner so as to escape the notice of regulatory authorities, investors as they were not in

public domain. Therefore, I conclude that the said scheme of manipulation was deceptive and against the interest of the securities markets.

93. I am of the view that any manipulation in the volume or price of securities always erodes investor confidence in the market when investors find themselves at the receiving end of market manipulators. In the instant case, the general investors were not aware that the entity behind the above F&O Segment transactions was RIL. The execution of the aforesaid fraudulent trades affected the price of the RPL securities in both Cash and F&O Segments and harmed the interests of other investors. Execution of manipulative trades affects the price discovery system itself. It also has an adverse impact on the fairness, integrity and transparency of the stock market. I am of the view that such acts of manipulation have to be dealt sternly so as to dissuade manipulative activities in the capital markets.

94. I note that the Whole Time Member of SEBI in Order dated March 24, 2017 has directed RIL to disgorge an amount of Rs. 447.27 crore along with interest calculated at the rate of 12% per annum from 29 November, 2007 onwards till the date of payment. Further, RIL was prohibited from dealing in equity derivatives in the F&O segment of stock exchanges, directly or indirectly, for a period of one year from the date of the said Order. I find it appropriate to consider the direction in the nature of debarment and the disgorgement that has already been passed against RIL herein as a relevant factor while deciding the quantum

of penalty. I have also considered the quantum of loans advanced by Noticee-3 and Noticee-4 to the Agent appointed by RIL. Considering the above, I proceed to impose an appropriate penalty on each of the Noticee that serves as a deterrent to the Noticees and others indulging in such fraudulent trade practices.

ORDER

95. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticees under Section 15HA of the SEBI Act:

S. No.	Name of the Noticee	Penalty
1	Reliance Industries Limited	Rs. 25,00,00,000 (Rupees Twenty Five crore only)
2	Shri Mukesh D. Ambani	Rs. 15,00,00,000 (Rupees Fifteen Crore only)
3	Navi Mumbai SEZ Pvt. Ltd.	Rs. 20,00,00,000 (Rupees Twenty Crore only)
4	Mumbai SEZ Ltd.	Rs. 10,00,00,000 (Rupees Ten Crore only)

96. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI,

i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

97. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-II, SEBI, SEBI Bhavan 2, Plot No. C –7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051". The Noticee shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity

    b) Name of the case / matter

    c) Purpose of Payment – Payment of penalty under AO proceedings

    d) Bank Name and Account Number

    e) Transaction Number

98. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

99. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: January 1, 2021 **B J DILIP**

Place: Mumbai **ADJUDICATING OFFICER**