BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. SD/AO- 45/2009]

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

Against

M/S Pragari Finvest (I) Pvt. Ltd. in the matter of Mittal Securities Finance Ltd.

(PAN.AACCP2734R)

FACTS OF THE CASE IN BRIEF

1. The shares of Mittal Securities Finance Limited (hereinafter referred to as "MSFL") is listed on Bombay Stock Exchange (hereinafter referred to as "BSE") and Ahemadabad Stock Exchange (hereinafter referred to as "ASE"). SEBI conducted an investigation into the affairs relating to buying, selling and dealing in the shares of MSFL. The investigation covered the period from February 02, 2005 to February 14, 2005.

2. The investigation conducted by SEBI revealed that M/s Pragari Finvest (India) Private Limited (hereinafter referred to as "Noticee") had failed to comply with regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "SEBI (PIT)". It was alleged that the Noticee had violated the provisions of the said

regulations and therefore, liable for monetary penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer, vide order dated March 17, 2008 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Rules') to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violation of regulation 13(3) read with regulation 13(5) of SEBI (PIT).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice (EAD-2/SD/PM/133521/2008) dated July 30, 2008 (hereinafter referred to as "SCN") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated against the Noticee and penalty be not imposed under section 15A(b) of SEBI Act for Noticee's failure to comply with the provisions of regulations 13(3) read with 13(5) of SEBI (PIT).

5. The Noticee vide its letter dated September 02, 2008 replied to the said SCN. The extracts of the reply of the Noticee, inter-alia are stated as under:-

- We sold the shares of MSFL during the period of February 2005. Our holding & disclosures were made to public by the disclosure of the shareholding pattern as filed under cl. 35 of the Listing Agreement. SEBI (Prohibition of Insider Trading) Regulations, 1992 also talks about a disclosure which will not mislead the public. Small company like us, it is burdensome, troublesome & very difficult to keep thousand of regulations & compliance thereof for no reason. The object set out by regulator is simple not to mislead the public.
- There were no corporate announcements of intimation at that time by MSFL. We sold the shares as part of our immediate financial need at that time for our survival. The Shareholding Pattern under cl. 35 of the Listing Agreement which per se a market disclosure for the quarter ended 31st March 2005 intimated & published in the BSE site talks about the sell of shares. Our sell of shares neither affected the market nor related to any alleged manipulation of the script. It was a mere submission of the sell of the shares under the SEBI (Prohibition of Insider Trading) Regulation, 1992.
- Taking into account the object of the regulation & the need for the disclosure, in this case our non disclosure had not impacted anybody.

6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on March 18, 2009. Mr. Ramesh Chandra Mishra appeared on behalf of the Noticee and submitted, *inter alia*, as under:

i. The promoters of all the three companies are same i.e.
    a. M/s. Clarus Finance & Securities Limited (formerly known as Mittal Securities Finance limited – a BSE listed Company;
    b. M/s. Platinum Finvest Private limited; and
    c. M/s. Pragari Finvest Private Limited.
ii. The company sold part of shares of M/s. Mittal securities during the period February 2, 2005 to February 14, 2005 to return the loan of MSL.
iii. The company is a small company. And it was difficult at the relevant time to appoint and manage persons who has adequate knowledge of Securities Act and Regulations as framed under the SEBI Act.
iv. It is an admitted position that we failed to make intimation/disclosures as required under regulation 13(3) & 13 (5) of the IT Regulation 1992 to (i) the company for the following reasons :
    a. The companies involved are small companies;
    b. There were no adequate and qualified staff;
    c. The promoters were not well conversant with the said applicable regulations i.e. IT Regulation 1992;
    d. The error was inadvertent and accidental (for lack of knowledge of the applicable Regulation) ;
v. The disclosure under regulation 13(3) & 13 (5) of the IT Regulation 1992 with the stock Exchange are purely for dissemination of information for use of public. The object of the legislation is purely to protect the interest of the investors. Though our sale of shares we failed to intimate under the said regulation but till as on date there were no complaint or reference of the alleged sale against the interest of any investor or market per se.

vi. The object of IT Regulation 1992 prevent the insiders to not to deal with sensitive and market affected information of the company. Here at that time there were no corporate announcements or any price sensitive information after and before share price remain in the same parlance.

vii. The promoters are the 1st Person to know about the inside information's at first stage. There were no such information, manipulation or use of any hidden facts to their advantage. The sale proceed was returned back to MSL to strength their balance sheet.

viii. After receipt of your investigation letter the company took adequate steps for compliance of the IT Regulation 1992 and implemented the code of Insider Trading which was long back adopted by the company in true Spirit. This can be verified by the recent intimations/Disclosures to the stock Exchanges. This shows our initiative of not only to admit any fault but also to take adequate steps to prevent and comply any applicable provisions in its true spirit.

ix. Under the aforesaid submission, we hereby request you to consider the following facts as well:

   i. The promoters before and after the sale remain the same;
   ii. The company & Promoters took all majors to prevent and comply any applicable provisions in its true spirit including that of IT Regulation 1992;
   iii. Nobody was effected or any complaint ever received by you or the company from any investors for any loss or suffering because of this non-disclosure;
   iv. the price of the shares in the market remain stable;
   v. the offence was non repetitive;

There were no financial gain or accommodation to the promoters , as the sale proceed was a part of return of the loan to the company by the said promoter group companies.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the written and oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

   (i) Whether the Noticee was holding more than 5% of the shares of MSFL prior to sale of the shares?
   (ii) Whether the Noticee attracted the disclosure requirements under regulation 13(3) read with regulation 13(5) of SEBI (PIT)?
   (iii) If so, whether the Noticee had complied with the same or not?
   (iv) Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?
   (v) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

8. Before moving forward, it will be appropriate to refer to the relevant provisions of SEBI (PIT), which reads as under:

   13(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling

below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation (1); and such change exceeds 2% of total shareholding or voting rights in the company.

13(5) The disclosures made in sub-regulations (3) and (4) shall be made within 4 working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

9. I find from the materials available on records that the Noticee was holding 4,77,850 shares of MSFL as on March 31st , 2004 i.e. 15.93% shares of MSFL. Moreover in the reply of the Noticee dated January 08, 2008 where the Noticee had acknowledged the receipt of letters sent by investigation department, the Noticee in its para no. 8 of the same had mentioned the Noticee's Shareholding Pattern of MSFL as on December 31st, 2004 (477850 shares of MSFL) & February 28, 2005 (192350 shares of MSFL). Thus, it is evident that prior to the sale of shares of MSFL the Noticee was holding more than 5% of the shares of the company (MSFL).

10. As per the Noticee's reply dated January 08, 2008, Noticee sold 2,85,500 shares of MSFL but as per the details given by the Noticee's broker through whom the Noticee had sold shares, the Noticee sold 2,90,500 shares of MSFL during the Investigation Period. Since, the sale is more than 2% it has to be disclosed to the MSFL in Form C as prescribed in Regulation 13(3) of PIT & within time as prescribed in Regulation 13(5) of PIT.

11. In terms of regulation 13(3) read with 13(5) of SEBI (PIT), any person who holds more than 5% of shares or voting rights in a

listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights

12. I find that with the sale of 2,90,500 shares, the Noticee crossed the limit of 2% specified in the aforesaid regulations. Further, with the said sale, the shareholding of the Noticee came down from 15.93% to 6.25% (approx). Thus, the Noticee had attracted the disclosure requirements under regulations 13(3) and 13(5) of SEBI (PIT).

13. The next issue for consideration is whether the Noticee had complied with the disclosure requirements under regulation 13(3) read with regulation 13(5) of SEBI (PIT).

14. However, I don't find any merits in its reply & I am of the view that the ignorance of law is no excuse & it is no defence for the Noticee to state that it is very small company & has not employed adequate & qualified staff. If it can't employ such adequate & qualified staff then there is no need of such company which can't comply with the statutory requirements & moreover such company should not acquire or hold shares in such huge quantities. Moreover, the Noticee in its reply dated March 18, 2009 had admitted that it had not made the requisite disclosure due to reasons referred above. Hence, I am of the view that the Noticee had not complied with the disclosure requirements of regulations 13(3) and 13(5) of SEBI (PIT). Therefore, the violation of the said provisions stands established.

15. The next issue for consideration is as to whether failure on the part of the Noticee to comply with the provisions of SEBI (PIT) attracts monetary penalty under section 15A(b) of SEBI Act, and if so, what would be the monetary penalty that can be imposed on the Noticee.

16. The provisions of section 15 A (b) of SEBI Act is reproduced here under :

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,-*

(a) ……

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

(c) ……

17. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC) inter-alia* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow".*

18. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act.

19. While determining the quantum of monetary penalty under section 15A (b), I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

> ***"15J - Factors to be taken into account by the adjudicating officer***
>
> *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."*

20. From the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. The change in the shareholding of the Noticee and timely disclosure thereof, were of some importance from the point of view of outside shareholders/other investors as that would have prompted them to buy or sell shares of MSFL. By not complying with the regulatory obligation of making the disclosure when the change in the shareholding of the Noticee exceeded 2%, it had concealed the vital information from the investors. The object of the SEBI (PIT) mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The purpose of these disclosures is to bring about transparency in the transactions and assist

the Regulator to effectively monitor the transactions in the market. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding of the Noticee. The Noticee could not pre-judge the reaction of the investors. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time. The Noticee had failed to comply with the provisions of Reg. 13(3) & 13(5) of SEBI (PIT) for two times i.e. on February 4, 2005 when the Noticee sold 1,00,000 shares of MSFL & the change in shareholding at that point of time was 3.33 % app. & therefore the Noticee was statutory obligation to disclose the sale of shares within 4 working days of the sale. Moreover, the Noticee had sold 95,500 shares of MSFL on February 7, 2005 & the change in shareholding had exceeded 2 % & therefore the Noticee was under statutory obligation to disclose the number of shares held & change in shareholding within 4 working days. Thus, the nature of default committed by the Noticee can be treated as repetitive. Had there been any investor complaint the violation would have been more serious.

ORDER

21. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on the Noticee which will be commensurate with the default committed by Noticee.

22. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI- Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft shall be forwarded to General Manager, Investigation Department - Division – ID6, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

23. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: April 20, 2009 **SANDEEP DEORE**

Place: Mumbai **ADJUDICATING OFFICER**