

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. - SRP/JP/AO: 196 /2011]

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

In respect of:

Mr. Rajesh Mamania

PAN: AADPM2369M

In the matter of M/s. Gemstone Investments Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigations into the affairs, trading and dealings in the shares of Gemstone Investments Limited (hereinafter referred to as '**Company/GIL**') for the period from August 28, 2006 to August 21, 2008 on the basis of a report received from the Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') regarding substantial reduction in the shareholding of the promoters of the Company and unusual spurt in price and traded volume of the scrip.
2. During the investigations, it was, inter alia, observed by SEBI that Rajesh Mamania (hereinafter referred to as '**the Noticee**') had traded in the shares of GIL on the Bombay Stock Exchange Ltd. (BSE) and allegedly did not make the required disclosures to the Company/ BSE in regard to his shareholding/change in shareholding and thus violated the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**') and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') vide order dated March 31, 2010 to inquire into and adjudge under section 15A (b) of the SEBI Act, the alleged

violations of the regulations 7 (1) and (2) of the SAST Regulations and regulations 13 (1), (3) and (5) of the PIT Regulations by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice dated June 08, 2010 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Rules. The Noticee was asked to show cause as to why an inquiry be not held and penalty be not imposed on him under section 15 A (b) of the SEBI Act for the alleged violation of the provisions of the regulations 7 (1) and (2) of the SAST Regulations and /or regulations 13 (1), (3) and (5) of the PIT Regulations.
5. The Noticee did not reply to the said SCN even after duly acknowledging the same. Therefore, based on the available information and the material on record, it was decided to conduct an inquiry in the matter and for the purpose an opportunity of hearing on August 03, 2010 was granted to the Noticee vide notice dated July 09, 2010. In response to the said notice, the Noticee, vide his letter dated July 18, 2010, made submissions towards the allegations levelled against him in the aforesaid SCN and also enclosed therewith copy of his letters dated January 15, 2009 and September 15, 2009, which were earlier submitted by him to the Investigating Authority of SEBI in connection with the above said investigations. Thereafter, the undersigned received an email (sent from email ID: prashantshah_9@hotmail.com) from one CA Ketan Mamania seeking adjournment of the hearing scheduled for August 02, 2010 for 15-days. It may be mentioned that in the said communiqué dated August 02, 2010, neither the authority of the sender of the email to seek adjournment on behalf of the Noticee was provided nor the reason/ground on which the said adjournment was sought, was indicated. However, in consideration of the said request and in the interest of natural justice, another opportunity of hearing on August 26, 2010 was granted to the Noticee vide notice dated August 04, 2010. The hearing on August 26, 2010, was attended by the Noticee alongwith his authorized representative. During the hearing, the Noticee also filed his further written submissions dated August 24, 2010 in respect of the above said SCN.
6. The written submissions of the Noticee dated July 18, 2010 and August 24, 2010 and oral submissions made at the time of hearing on August 26, 2010 are briefly mentioned below :
 - *I am not aware of any of such regulations at the time of trading in such shares and holding of such shares are only for a very short period. So I request you not to initiate any penalty under section 15A (b) of the SEBI Act.*
 - *It is seen from the notice that for the period from 15-01-2007 to 22-01-2007 i.e. for a period of one week my holding in Gemstone Investments Ltd is increased by 5% by ignorance, as I am not aware of the total paid up capital of the company. I therefore,*

request you to drop the penalty under the provision of the SEBI Act as the said transaction was done first time and thereafter also till today I have not done any such transaction which violate the provision 15 A (b) of the SEBI Act or require any disclosure or other requirement as per PIT and SAST regulation.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the allegations against the Noticee, the submissions made by him and the material/evidence on record. The issues that arise for consideration before me in the present case are as under :
 - a. Whether the Noticee had acquired/disposed of GIL shares for which he was required to make disclosures under the provisions of regulations 7(1) and (2) of the SAST Regulations and/or regulation 13 (1), (3) and (5) of the PIT Regulations and if yes, whether he complied with the said regulations?
 - b. Does the contravention/violation of the aforesaid regulations, if any, committed by the Noticee attract penalty under section 15 A (b) of the SEBI Act?
 - c. If so, what would be the penalty that can be imposed taking into consideration the factors mentioned in section 15 J of the SEBI Act?
8. Before moving forward it would be pertinent to refer to the relevant provisions of the SAST Regulations and the PIT Regulations alleged to have been violated by the Noticee. The provisions of these regulations are reproduced hereunder:

A. SAST Regulations

Regulation 7 of the SAST Regulations.

7. Acquisition of five per cent and more shares or voting rights of a company.

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

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

B. PIT Regulations

Regulation 13 of PIT Regulations.

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

Continual disclosure.

(3) Any person who holds more than 5% shares or 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; and such change exceeds 2% of total shareholding or voting rights in the company.

(5) The disclosure mentioned 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 have carefully examined the alleged charges and replies of the Noticee and the same are dealt on merit issue wise as under.

ISSUE: Whether the Noticee had acquired/disposed of GIL shares for which he was required to make disclosures under the provisions of regulations 7(1) and (2) of the SAST Regulations and/or regulation 13 (1), (3) and (5) of the PIT Regulations, and if yes, whether he complied with the said regulations?

10. I have noted from the material on record and the information/detail provided to the Noticee in the SCN that during the relevant period the shares of GIL were listed on BSE and its paid up capital was ₹ 3,00,00,000/- consisting of 30,00,000 equity shares of ₹ 10/- each. The details of the transactions done by the Noticee in the shares of GIL are as under:

Trade Date	Purchase Quantity	Sale Quantity	Net Purchase	Total Shareholding	Shareholding as a % of share capital
12/21/2006	100200	0	100200	100200	3.34
12/22/2006	0	200	-200	100000	3.33
12/27/2006	0	20000	-20000	80000	2.67
12/28/2006	50200	200	50000	130000	4.33
01/04/2007	800	800	0	130000	4.33
01/09/2007	300	300	0	130000	4.33
01/11/2007	0	130000	-130000	0	0.00
01/12/2007	55900	0	55900	55900	1.86
01/15/2007	153600	0	153600	209500	6.98

01/16/2007	0	18000	-18000	191500	6.38
01/19/2007	0	21500	-21500	170000	5.67
01/22/2007	0	57000	-57000	113000	3.77
01/23/2007	0	13000	-13000	100000	3.33
01/29/2007	50000	0	50000	150000	5.00
06/14/2007	0	65000	-65000	85000	2.83
06/15/2007	0	85000	-85000	0	0.00

11. It has been alleged in the SCN that the Noticee had acquired 1, 53,600 shares/voting rights of GIL on January 15, 2007 and thereby his shareholding/voting rights in the Company increased from 1.86% to 6.98% (i.e. more than 5 %), which triggered the disclosure requirements specified under regulation 7(1) read with regulation 7(2) of the SAST Regulations and also regulation 13(1) of the PIT Regulations and that the Noticee had allegedly failed to make the said required disclosures to the company and/or to the stock exchange within the prescribed time and manner as has been specified under the aforesaid regulations.
12. It is also been alleged in the SCN that the Noticee was holding 6.98% of the share capital/voting rights in GIL on January 15, 2007, i.e. the date on which the last disclosure requirement was triggered. He sold/dispensed of 18,000 shares on January 16, 2007; 21, 500 shares on January 19, 2007 and 57,000 shares on January 22, 2007 when his total shareholding /voting rights in the Company decreased to 3.77%. As this decrease/change in shareholding from 6.98 % on January 15, 2007 to 3.77% on January 22, 2007 was more than 2% of his total shareholding/voting rights in the Company, the Noticee was required to make disclosures to the Company in the prescribed form and within the prescribed time in terms of regulation 13(3) read with regulation 13(5) of the PIT Regulations, which the Noticee allegedly failed to do. Therefore, it has been alleged that the Noticee has violated the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations and regulations 13(1) and 13(3) read with regulation 13(5) of the PIT Regulations.
13. The Noticee has neither denied nor disputed his said transactions in the GIL shares, rather admitted the same attributing his ignorance about the said statutory requirements and also his unawareness about the total share capital of the Company to be the reasons for his said non-compliances. The Noticee has also stated that his holdings were for a very short period and that it was the first time when such requirements were triggered on account of his transactions.
14. In regard to the said allegations against the Noticee, I have noted that the paid up capital of the Company was ₹ 3 crore consisting of 30 lakh equity shares of ₹ 10 each. Prior to January 15, 2007, the Noticee was holding 55,900 shares amounting to 1.86% of the share capital/voting rights in the Company. The Noticee acquired 1,53,600 shares on January 15, 2007 and thus

his total shareholding in GIL, increased to 2, 09,500 shares, which amounts to 6.98% of the share capital/voting rights in the Company (i.e. an increase of 5.12 %). These facts and transactions are undisputed and have not been denied by the Noticee.

15. In view of above said facts of the case, I arrive at the conclusion that the Noticee crossed the threshold of 5% shareholding/voting rights in the Company on 15/01/2007. On crossing the bench mark of 5 %, the Noticee was required to disclose the aggregate of his shareholding/voting rights to the Company and to the stock exchange (s), where its shares are listed, in terms of regulation 7(1) read with regulation 7(2) of the SAST Regulations, which he has admittedly failed to do and has, thereby, contravened the provisions of the said regulation 7(1) read with regulation 7(2) of the SAST Regulations. Further, on crossing the benchmark of 5% shareholding in GIL, the Noticee was also under obligation to make the required disclosures to the Company in accordance with the provisions of regulation 13(1) of the PIT Regulations. The Noticee has admittedly failed to do so, therefore, I am of the view that the Noticee has also violated/contravened the provisions of regulation 13(1) of the PIT Regulations.
16. Further, for determining the alleged violation of regulations 13 (3) and (5) of the PIT Regulations, I have observed from the material on record and the relevant details provided to the Noticee in the table at para 4 of the SCN that the Noticee was holding 2, 09,500 shares (i.e. 6.98 % of the share capital/voting rights in the Company) on 15/01/2007 i.e. the date on which the last disclosure requirement was triggered. Subsequently, he sold 18,000 shares on 16/01/2007; 21,500 shares on 19/01/2007 and thereafter 57,000 shares on 22/01/2007, when his total shareholding in the Company came down to 1,13,000 shares (3.77 % of the share capital/voting rights). It is evident from the said undisputed details that the Noticee's shareholding/voting rights in the Company had come down to 3.77% on 22/01/2007 from his holding of 6.98% on 15/01/2007. Since, the said change in shareholding /voting rights was to the tune of 3.21 % ($6.98 \% - 3.77\% = 3.21 \%$) i.e. it exceeded 2 % of the total shareholding/voting rights in the Company, the Noticee was under obligation to make the required disclosures to the Company in terms of the provisions of regulation 13(3) read with regulation 13(5) of the PIT Regulations. The Noticee has not disputed or denied the above facts regarding his transactions and holdings in the shares of GIL and about not complying with the aforesaid provisions of the PIT Regulations. Therefore, going by the facts and circumstances of the case and the material on record, I arrive at the conclusion that the Noticee has violated/contravened the aforesaid provisions of the PIT Regulations.
17. The Noticee has attributed his ignorance of the law and also his unawareness about the share capital of the Company to be the reasons for the said violations/non-compliances. I am of the view that the aforesaid plea cannot absolve the Noticee of the said contraventions. It is the

well-known maxim of law "*Ignorantia juris non excusat* or *Ignorantia legis neminem excusat*" (meaning "ignorance of the law does not excuse" or "ignorance of the law excuses no one") holding that a person who is unaware of a law may not escape liability for violating that law merely because he or she was unaware of its content. I cannot ignore the fact, that such disclosures are vital not only for the investors and stakeholders in the Company but also for other market participants in making their investment decisions or otherwise. I am therefore, of the opinion that this excuse of ignorance of law or unawareness about the share capital of the Company etc. shall not absolve the Noticee from the charges leveled against him or to escape from the liability for violating the law.

18. In light of the above, I am of firm opinion that the aforesaid violations of the SAST and PIT Regulations make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, which reads as follows:

15A. Penalty for failure to furnish information, return, etc.

(b) to file any return or furnish any information, books or other documents within the time specified therefore 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

19. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the 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. Regarding penalty under section 15A (b) of the SEBI Act for failure to make disclosures in terms of regulation 7(1) read with regulation 7 (2) of the SAST Regulations and regulations 13 (1), (3) and (5) of the PIT Regulations, it is difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by the Noticee or the consequent losses suffered by the investors. Available records do not suggest that the Noticee had indulged repetitively in similar or other kinds of violations.

21. Though, it may not be possible to ascertain the monetary loss to the investors on account of such defaults by the Noticee, as I have stated earlier such change in shareholdings and timely disclosure thereof, is of utmost importance from the shareholder's or investor's point of view in making prompt investment decisions. 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. Here, the fact remains that the markets in general and the investors in particular were deprived of such important information at the relevant point of time.
22. However, while imposing penalty upon the Noticee in the present case, I have considered the fair admission of the violations by the Noticee and the stated reasons for the said non-compliances, and considering all the above said facts and circumstances of the case, I am therefore of the opinion that a consolidated penalty of ₹ 75,000/- (Rupees seventy five thousand only) on the Noticee under section 15A (b) of the SEBI Act shall be commensurate with the violations committed.

ORDER

23. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose a consolidated penalty of ₹ 75,000 only (Rupees seventy five thousand only) on the Noticee under the provisions of section 15 A (b) of the SEBI Act. 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 should be forwarded to the Deputy General Manager, IVD – ID 8, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.
24. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: April 18, 2011

Place: Mumbai

**Satya Ranjan Prasad
ADJUDICATING OFFICER**