

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.: - SKS/AO/01/2010]**

---

**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**

**Shri Prahladbhai J Patel**

**PAN : ABNPP5218K**

**In the matter**

**M/s. Promact Plastics Limited.**

**BRIEF FACTS OF THE CASE :**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an investigation in respect of dealing in the scrip of M/s Promact Plastics Limited (hereinafter referred to as '**PPL**') for the period from February 11, 2005 to September 30, 2005. The scrip of PPL was listed on The Stock Exchange, Mumbai, and Ahmedabad Stock Exchange (hereinafter referred to as BSE and ASE respectively).

2. As per the Investigation Report (hereinafter referred to as IR) Shri Prahladbhai J Patel (hereinafter referred to as the '**Noticee**') alleged to have violated the Regulation 13(3) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations**') for which the adjudication proceeding has been initiated against the Noticee .

#### **APPOINTMENT OF ADJUDICATING OFFICER :**

3. The undersigned was appointed as the Adjudicating Officer vide order of SEBI dated 9<sup>th</sup> September, 2009, under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**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 '**Adjudicating Rules**') to inquire into and adjudge under Section 15A (b) of the SEBI Act, the alleged violations of the PIT Regulations committed by the Noticee.

#### **SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING :**

4. A show cause notice (hereinafter referred to as '**SCN**') dated September 25, 2009 under Rule 4 of the SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995, was issued to the Noticee asking him to show the cause as to why an enquiry should not be held against him and why penalty, as prescribed, should not be imposed under Section 15A(b) of SEBI Act for his violations of Regulation 13(3) read with 13(5) of PIT Regulations. However, it is pertinent to note that the SCN has returned undelivered with the remark left. In this connection, after verifying the address of the Noticee with BSE, we found that M/S. Kantilal Chhaganlal Securities Private Limited was the broker of

the Noticee and the SCN was duly served on the correct address of the Noticee through the aforesaid broker. It is to be noted that the SCN was duly acknowledged. Noticee neither replied nor communicated to the undersigned, despite receiving the SCN.

5. Thereafter, considering the principles of natural justice and material available on record it was decided by the undersigned to conduct an inquiry in the instant matter for which an opportunity of personal hearing was given to the Noticee. The Noticee was advised by the undersigned to attend the said personal hearing on January 22, 2010. However, the Noticee refused to receive the hearing notice and the hearing notice returned undelivered with the remark '**refused**' and finally did not appear before the undersigned. It is pertinent to mention that lot of effort was taken to deliver the SCN as well as the personal hearing notice. As the Noticee has refused to receive the personal hearing notice and neither filed any reply nor appeared before the undersigned, the matter is now being proceeded on the basis of the material available on record.

#### **CONSIDERATION OF ISSUES AND FINDINGS :**

6. I have carefully perused the charges levelled against the Noticee mentioned in the SCN and the materials available on record. In the instant matter, the following issues arise for consideration and determination.
  - 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 PIT Regulations?**

- 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 the 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 the SEBI Act?

7. Before moving forward, it will be appropriate to refer to the relevant provisions of regulations alleged to have violated by the Noticee and the respective penal provisions of the SEBI Act which *inter alia* reads as under:

**PIT Regulations :**

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

**13. (1)** ... ..

(2) ... ..

(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; and such change exceeds 2% of total shareholding or voting rights in the company

(4) .... ..

(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.*

**SEBI Act :**

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

*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) .....

8. I find from the materials available on records i.e. shareholding pattern of PPL, the Noticee was holding 3,07,200 shares of PPL as on 30th June 2005 constituting 5.66% of the total share capital of PPL and the share holding of the Noticee in the PPL was reduced to 92,900 shares constituting 1.71% of the total share capital PPL as on 30th September, 2005. Thus, it is evident that the Noticee was holding more than 5% of the shares of the company prior to sale of the shares. It is to be noted that the noticee was not appearing as a major client either on BSE or off-market (dematerialized form) during the investigation period.

9. Since the Noticee had sold 2,14,300 shares of PPL (3,07,200 shares as on 30.06.2005 less 92,900 shares as on 30.09.2005) during the period 30.06.2005 to 30.09.2005, the change in shareholding amounts to 3.95 % approx. (5.66% as on 30.06.2005 less 1.71% as on 30.09.2005). Therefore the sale is more than 2% of the share holding and it has to be disclosed to the PPL in Form C as prescribed in Regulation 13(3) of PIT regulations & within 4 working days as prescribed in Regulation 13(5) of PIT regulations. Though it is a statutory obligation, the Noticee failed to disclose the sale of shares at any point of time. Hence, it is evident that the Noticee had failed to comply with the disclosure requirements as prescribed under regulations 13(3) and 13(5) of PIT regulations and therefore the violation of the said provisions stands established.
10. The next issue for consideration is as to whether failure on the part of the Noticee to comply with the provisions of PIT regulations 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.
11. The Honourable Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)** 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”*.
12. In this regard, I would like to rely upon the findings of Honourable SAT in the matter of **Milan Mahendra Securities Pvt. Ltd. Vs SEBI** (Appeal No.

66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosures, in which SAT has observed that, *“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.”* Thus I am of view that by not disclosing its shareholding pattern in a listed company to the company, the Noticee had clearly violated the provisions of PIT Regulations.

13. Further, it is to be noted that the Noticee has not filed any reply to the SCN issued by the undersigned in order to defend itself from the violations as alleged in the SCN. In this regard, I would like to rely upon the findings of the Hon'ble Securities Appellate Tribunal in the matter of ***Classic Credit Limited Vs. SEBI*** (Appeal No.68 of 2003, Date of Decision: December 8, 2006) regarding the significance of the filling the reply to the show cause notice, in which it is stated that *“the appellant did not file any reply to the second show cause Notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them”*. Hence, based on the aforesaid finding, it is presumed that the Noticee is admitting its non-compliance of disclosure as required by the PIT Regulations. After taking all these facts into consideration, it is established that the Noticee has violated the alleged provisions of PIT Regulations.
14. Therefore by considering the above said facts, and as the Noticee failed to appear before the undersigned in spite of the opportunities given to him, the facts compelled the undersigned to proceed on the materials available on record.

15. 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.
16. 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.”*
17. I have carefully perused the IR and the relevant documents available on record. 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 PPL. 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 PIT regulations 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 changed its holding in PPL to the extent of more than 2% and the change in shareholding amounts to 3.95 % approx. Further, the Noticee who was under statutory obligation, failed to disclose to the PPL in Form C as prescribed in Regulation 13(3) of PIT regulations & within 4 working days as prescribed in Regulation 13(5) of PIT regulations which he had failed to do so at any point of time thereafter. Therefore it is clearly evident that the Noticee had failed to comply with the provisions of Reg. 13(3) & 13(5) of PIT regulations. Thus, the nature of default committed by the Noticee can be treated as repetitive and had there been any investor complaint, the violation would have been more serious.

### **ORDER**

18. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I of the Act, I

hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakhs Only) on Shri Prahladbhai J Patel u/s 15A(b) of the SEBI Act. I am of view that the said penalty is commensurate with the violations made by Shri. Prahladbhai J Patel.

19. The above penalty amount shall be paid through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Deputy General Manager, Investigation Department - ID 6, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
20. In terms of the Rule 6 of the Adjudicating Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

**Date: 22.02.2010**

**SANTOSH KUMAR SHARMA**

**MUMBAI**

**ADJUDICATING OFFICER.**