

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 193/2009]

**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**

In respect of

RIGHT FINSTOCK PVT. LTD.

(PAN. AAACR9277R)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of Innovision eCommerce Limited (hereinafter referred to as “**ICL**”) whose shares witnessed a sharp rise from Re.0.39 on November 10, 2003 to Re.0.76 on January 28, 2004 (hereinafter referred to as “**investigation period**”) reaching a high of Rs.1.10 on January 20, 2004. The face value of the shares of ICL was reduced from Rs.10 per share to Re.1 per share with effect from September 2002.
2. It was alleged that Right Finstock Pvt. Ltd., (hereinafter referred to as “**Noticee**”) violated the provisions of regulations 4(1), 4(2) (a), (b), (e) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as

“PFUTP”), 7 (1) and 7 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2003 (hereinafter referred to as “SAST”) and 13 (1), (3) and (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “PIT”) and therefore, liable for monetary penalty under sections 15HA and 15A(b) of 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 April 7, 2008 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘Rules’) to inquire into and adjudge the alleged violations of provisions of PFUTP, SAST and PIT.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No. EAD-5/VSS/JR/137759/2008 dated September 15, 2008 (hereinafter referred to as “SCN”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under sections 15 HA and 15A(b) of SEBI Act for the alleged violation/s specified in the said SCN.
5. The Noticee did not reply to the SCN. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on February 13, 2009 at SEBI, Head Office, Mumbai vide notice dated January 29, 2009. Ms. Bharati Daga, Authorized Representative of the Noticee (hereinafter referred to as “AR”) appeared and made submissions.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration in the present case are :
- a) Whether the Noticee had violated regulation 4(1), 4(2) (a), (b), (e) and (g) of PFUTP?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act?
 - c) Whether the Noticee has violated regulations 7(1) and (2) of SAST and regulations 13 (1), (3) and (5) of PIT?
 - d) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 A (b) of SEBI Act?
 - e) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
7. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP, SAST and PIT, which reads as under:

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities

(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: -

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) ...

(d) ...

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

(f) ...

- (g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

Acquisition of 5 per cent or more shares or voting rights of a company

7 (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 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 the shares of the target company are listed.

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

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

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, 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 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.*

MANIPULATIVE TRADING

8. Upon careful perusal of the documents available on record, I find the following:
- a. The financial results of ICL for the quarter ended December 31, 2003 showed a total income of Rs.132.26 million as against Rs.18.32 million in the previous year, an increase by **622%**. The Listing Committee of BSE advised ICL to explain this phenomenal increase. ICL failed to give any satisfactory explanation for the same to BSE. Hence, BSE shifted ICL to “Z” category with effect from February 5, 2004. Thus, declaration of such phenomenal financial results by ICL was without any justification.
 - b. Mr. Akshay Pravin Sanghvi, Managing Director of ICL, transferred 1 crore shares off-market to the Noticee on January 2, 2004.
 - c. During the investigation period, the Noticee bought 3,38,600 shares (3.75% of the trading volume) and sold 30,19,944 shares (33.47% of the trading volume).
 - d. During January 07-09, 2004, the Noticee sold 300 shares at circuit price of Re.0.58, Re.0.63 and Re.0.69 respectively. On January 08-09, 2004 only 100 shares were traded daily. The Noticee sold the shares through the broker, viz., Parklight Investment Pvt. Ltd. (hereinafter referred to as “**PIPL**”). The buying broker was AKD Securities Pvt. Ltd.
 - e. These trades were executed at upper circuit rate. Since then, the volume as well as the price increased.

- f. The perusal of the extract of the order log showing orders of 1,00,000 shares or more placed and deleted by PIPL, on behalf of the Noticee, reveals that PIPL had placed several large quantity buy-orders and deleted the same subsequently, i.e. within a time gap of around 30-40 minutes. PIPL had placed 9 large buy orders for 48.80 lakh shares during January 13-23, 2004 and deleted orders for 48.30 lakh shares. PIPL had confirmed to the IA that such placing of orders and subsequent deletion, was done at the behest of the Noticee. Thus, the Noticee created an artificial buying pressure in the scrip. These large buy orders gave an impression of huge demand of the scrip which was otherwise illiquid.
- g. PIPL had also placed 6 large sell orders for 18 lakhs shares during January 13-23, 2004 and deleted orders for 14.07 lakh shares. Large number of such orders was found on January 21, 2004, which was immediately after the declaration of the results for the quarter ended December 31, 2003 by the company on January 20, 2004. PIPL had confirmed to the IA that such placing of orders and subsequent deletion was done at the behest of the Noticee. Thus, the Noticee, through PIPL, created an artificial buying pressure in the scrip after declaration of favourable results by the company and thereafter sold shares.
- h. Mostly, the buy-orders were deleted for the entire quantity for which they were placed i.e. they remained unexecuted, however, the sell orders were deleted for the balance unexecuted quantity.
- i. The details of such placement of orders and subsequent deletion are as under:

Orders placed by the member Parklight Investment Pvt. Ltd. (Clg. No. 407) for 1,00,000 shares or more													
Memb	trdid	S	type	rate	qty	Avqty	aud	cacl	Date	Time	err	ordid	client
407	1	S	L	0.82	500000	50000	A	30	13-Jan-04	11:21:01	0	40700100010051449	N042

407	1	S	L	0.82	200000	20000	A	30	13-Jan-04	11:22:21	0	40700100010051451	N042
407	1	B	L	0.68	1000000	1000000	A	30	13-Jan-04	11:24:29	0	40700100010051452	N042
407	1	B	L	0.70	500000	500000	A	30	13-Jan-04	11:25:01	0	40700100010051453	N042
407	1	B	L	0.00	1000000	1000000	D	30	13-Jan-04	11:43:11	0	40700100010051452	
407	1	B	L	0.00	500000	500000	D	30	13-Jan-04	11:43:12	0	40700100010051453	
407	1	S	L	0.00	166800	20000	D	30	13-Jan-04	12:04:19	0	40700100010051451	
407	1	B	L	0.68	200000	200000	A	30	13-Jan-04	12:04:34	0	40700100010051479	R079
407	1	B	L	0.00	200000	200000	D	30	13-Jan-04	12:59:31	0	40700100010051479	
407	1	S	L	0.75	200000	20000	A	30	13-Jan-04	12:59:49	0	40700100010051511	R079
407	1	S	L	0.72	300000	300000	A	30	13-Jan-04	14:11:02	0	40700100010051526	R079
407	1	S	L	0.00	181600	181600	D	30	13-Jan-04	14:22:22	0	40700100010051526	
407	1	B	L	0.70	500000	500000	A	30	13-Jan-04	14:22:39	0	40700100010051529	R079
407	1	B	L	0.72	300000	300000	A	30	13-Jan-04	14:22:44	0	40700100010051530	R079
407	1	B	L	0.75	100000	100000	A	30	14-Jan-04	09:59:33	0	40700100010051616	R079
407	1	B	L	0.73	200000	200000	A	30	14-Jan-04	09:59:53	0	40700100010051618	R079
407	1	S	L	0.89	300000	30000	A	30	14-Jan-04	10:10:24	0	40700100010051622	R079
407	1	S	L	0.00	171920	9000	D	30	14-Jan-04	10:46:59	0	40700100010051622	
407	1	S	L	1.05	500000	50000	A	30	21-Jan-04	09:55:11	0	40700100010052215	R079
407	1	B	L	1.00	180000	180000	A	30	21-Jan-04	09:55:12	0	40700100010052216	R079
407	1	B	L	1.00	200000	200000	A	30	21-Jan-04	09:56:39	0	40700100010052218	R079
407	1	S	L	0.00	439000	39400	D	30	21-Jan-04	09:58:25	0	40700100010052215	
407	1	B	L	0.87	2000000	2000000	A	30	21-Jan-04	10:18:23	0	40700100010052235	R079
407	1	B	L	0.90	400000	400000	A	30	21-Jan-04	10:18:29	0	40700100010052236	R079
407	1	B	L	0.00	130000	130000	D	30	21-Jan-04	10:22:10	0	40700100010052216	
407	1	B	L	0.00	200000	200000	D	30	21-Jan-04	10:22:11	0	40700100010052218	
407	1	B	L	0.00	2000000	2000000	D	30	21-Jan-04	10:22:12	0	40700100010052235	
407	1	B	L	0.00	400000	400000	D	30	21-Jan-04	10:22:13	0	40700100010052236	

407	1	B	L	0.87	100000	100000	A	30	21-Jan-04	10:22:35	0	40700100010052245	R079
407	1	B	L	0.00	100000	100000	D	30	21-Jan-04	11:39:54	0	40700100010052245	
407	1	S	L	1.02	200000	20000	A	30	22-Jan-04	09:55:08	0	40700100010052318	R079
407	1	S	L	1.03	300000	30000	A	30	22-Jan-04	09:55:10	0	40700100010052319	R079
407	1	B	L	0.86	200000	200000	A	30	22-Jan-04	10:23:46	0	40700100010052342	R079
407	1	B	L	0.00	200000	200000	D	30	22-Jan-04	11:43:22	0	40700100010052342	
407	1	S	L	0.00	147300	15000	D	30	22-Jan-04	11:44:44	0	40700100010052318	
407	1	S	L	0.00	300000	30000	D	30	22-Jan-04	11:44:45	0	40700100010052319	
407	1	B	L	0.81	200000	200000	A	30	23-Jan-04	09:57:06	0	40700100010052451	R079
407	1	B	L	0.00	200000	200000	D	30	23-Jan-04	12:22:59	0	40700100010052451	
407	1	B	L	0.85	100000	10000	A	30	23-Jan-04	12:35:54	0	40700100010052490	R079

j. The aforesaid leads to the finding that the Noticee set the benchmark price for the trades in the market initially and when the price rose gradually, it sold the shares through PIPL.

k. The foregoing sequence of events leads to the finding that the Noticee manipulated the market and sold the shares of Mr. Akshay Pravin Sanghavi, which it received through off-market from him. Thus, the Noticee acted as a conduit for him.

9. The Hon'ble SAT in *Ketan Parekh Vs. Securities & Exchange Board of India* (Appeal No. 2 of 2004) held that in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.

10. Regulation 4(2)(a) of PFUTP, inter alia, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(b) of PFUTP, inter alia, prohibits

dealings in a security intended to operate as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gains. Regulation 4(2)(e) of PFUTP prohibits a person to act in a way to manipulate the price of the security. Regulation 4(2)(g) of PFUTP prohibits a person from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. As detailed above, the way the Noticee had traded in the scrip of ICL by increasing the price of the scrip by executing transactions, not only manipulated the price of the scrip but also created artificial volume in the scrip of ICL. This led to misleading appearance of trading interest in the scrip of ICL, thus increasing its price. This facilitated the Noticee to offload the shares which it had received off-market from Mr. Akshay Pravin Sanghvi.

11. The pattern of trading, behaviour of the entities, apparent irregularities and the available trading data, etc., prove manipulation which always depends on inferences drawn on a mass of factual detail. When all of these are considered together, they can emerge as ingredients to prove the manipulative scheme designed and executed by such manipulators with intent to tamper with free market forces.
12. During the hearing held on February 13, 2009, the AR of the Noticee submitted as under:

Mr. Vishnu Parekh is one of the directors of the Noticee. He appointed Mr. Ankur Desai as an employee to look after the business of RFPL. Probably, Ankur Desai would have had some connection with Mr. Akshay Sanghavi. Based on this, he might have received the shares as stated in the show cause notice, in the name of RFPL and sold the same. Mr. Vishnu Parekh was not aware of these dealings.

13. I find that the above submission of the Noticee is devoid of merit and did not absolve it from the violation. In view of the foregoing, I am of the view that the facts of the present case clearly bring out an element of fraud and unfair trade practices indulged in by the Noticee. Therefore, I hold that the charges leveled against the Noticee are proved and that the allegation of violation of provisions of regulations 4(1), 4(2) (a), (b), (e) and (g) of PFUTP by the Noticee stands established.
14. The 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..."*.
15. Thus, the aforesaid violations by the Noticee make it liable for penalty under Section 15HA of SEBI Act which read as follows:
- "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 of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

NON-DISCLOSURE UNDER SAST & PIT

16. The Noticee had acquired 1,00,00,000 shares from Mr. Akshay Pravin Sanghvi on January 2, 2004 which constituted 10.53% of the total share/voting capital of ICL. Consequent to the said transaction, the post acquisition shareholding exceeded the percentage specified in regulations 7 (1) of SAST and 13 (1) of PIT. Consequently, the Noticee ought to have made the disclosures as required under regulations 7 (2) of SAST and 13 (1) of PIT, respectively. However, I find that no such disclosures were made.

17. After the aforesaid acquisition, the Noticee had transacted in the shares of ICL, details of which are stated above. As per the shareholding pattern at the quarter ended March 31, 2004, I find that the shareholding of the Noticee was reduced to 65,41,956 shares (6.89%). The change in the shareholding (from 10.53% to 6.89% = 3.64%) exceeded the percentage specified in regulation 13 (3) of PIT. Consequently, this (change) should have been disclosed under regulation 13(5) of PIT. However, I find that the Noticee had failed to do so.
18. The object of the SAST and PIT mandating disclosure of acquisitions 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 full information is required.
19. During the hearing held on February 13, 2009, the AR of the Noticee submitted as under:
- Mr. Vishnu Parekh is one of the directors of the Noticee. He appointed Mr. Ankur Desai as an employee to look after the business of RPL. Probably, Ankur Desai would have had some connection with Mr. Akshay Sanghvi. Based on this, he might have received the shares as stated in the show cause notice, in the name of RPL and sold the same. Mr. Vishnu Parekh was not aware of these dealings.*
20. I find that the above submission of the Noticee is devoid of merit and did not absolve it from the violation. In view of this, I am of the view that the Noticee had failed to make the requisite disclosures under regulations 7(1) and (2) of SAST and 13 (1), (3) and (5) of PIT.

21. The 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..."*.
22. The aforesaid violations attract monetary penalty under section 15A(b) of the SEBI Act, which reads as under:
- 15A. If any person, who is required under this Act or any rules or regulations made there under,-*
- (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;*

LEVY OF PENALTY

23. While determining the quantum of monetary penalty under sections 15HA and 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."*
24. 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 ICL. Due to the non-disclosure by the Noticee in the scrip of ICL, genuine investors were attracted to trade in the shares of ICL. By not complying with the regulatory obligation/s of making the disclosure when the acquisition of shares exceeds 5% and the change in the shareholding of the Noticee exceeded 2%, it had concealed the vital information from the investors. The object of the SAST and 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.

25. I find from the material available on record that the transfer of shares by Mr. Akshay Pravin Sanghavi (who was the Managing Director of ICL) to the Noticee through off-market was effected on January 2, 2004, which was just before the announcement of the quarterly results on January 20, 2004. The financial results showed that the income of the company had increased by 622% as compared to the same quarter in the previous year. I also find, on perusal of the demat statement of the Noticee that it had sold part of the said shares received from Mr. Akshay Pravin Sanghavi, in the market after the announcement of the aforesaid price sensitive information. The Noticee was able to aid and abet Mr. Akshay Pravin

Sanghavi to dispose of his shares by indulging in fraudulent, unfair and manipulative practices as detailed in the earlier paragraphs under the head “MANIPULATIVE TRADING”.

26. Under these circumstances, the compliance with the disclosure requirements under SAST and PIT assumes significance and the Noticee’s failure to do so has to be viewed seriously and accordingly, punished in an exemplary manner.

ORDER

27. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs.2,00,000/- (Rupees Two Lakh only) under section 15HA and Rs.8,00,000/- (Rupees Eight Lakh only) under section 15A(b) of SEBI Act, {i.e. a total penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on the Noticee which will be commensurate with the violation/s committed by it.
28. 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 Ms. Barnali Mukherjee, 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.
29. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: **November 16, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER