

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO- 67/2010]

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

In respect of

Mrs. Rajendra Sharad Karnik

(PAN. N A)

in the matter of

Channel Guide India Limited

FACTS OF THE CASE IN BRIEF

1. The shares of Channel Guide India Limited (hereinafter referred to as '**CGIL/Company**') are listed at Bombay Stock Exchange (hereinafter referred to as '**BSE**'). The total paid-up equity share capital/voting capital of the Company was 60,00,000 shares as filed by the Company for the quarter ended March 2007.
2. Rajendra Sharad Karnik (hereinafter referred to as '**Noticee**') traded in the scrip of CGIL through Saurashtra Capital Services Pvt. Ltd. (Member, BSE) during the period January 01, 2007 to August 26, 2008.
3. The details of transactions done by the Noticee in the scrip of CGIL are mentioned below:

Trade Date	Gross Purchase Quantity	Gross Sell Quantity	Net Quantity	Cumulative holding	Percentage of paid up Capital
9-May-07	15000	0	15000	15,000	0.25
10-May-07	104593	0	104593	119,593	1.99
11-May-07	112100	0	112100	231,693	3.86
18-May-07	131298	0	131298	362,991	6.05
24-May-07	90003	0	90003	452,994	7.55
6-Jun-07	48000	0	48000	500,994	8.35
7-Jun-07	51100	0	51100	552,094	9.20
12-Jun-07	5006	0	5006	557,100	9.29
13-Jun-07	10000	0	10000	567,100	9.45
14-Jun-07	5000	0	5000	572,100	9.54
15-Jun-07	0	5000	-5000	567,100	9.45
18-Jun-07	5000	0	5000	572,100	9.54
19-Jun-07	4100	0	4100	576,200	9.60
22-Jun-07	0	5000	-5000	571,200	9.52
4-Jul-07	1250	100	1150	572,350	9.54
5-Jul-07	5000	0	5000	577,350	9.62
23-Jul-07	25000	0	25000	602,350	10.04
25-Jul-07	20000	0	20000	622,350	10.37
1-Aug-07	10000	0	10000	632,350	10.54
7-Aug-07	5000	0	5000	637,350	10.62
9-Aug-07	5000	0	5000	642,350	10.71
16-Aug-07	24300	0	24300	666,650	11.11
20-Aug-07	2000	0	2000	668,650	11.14
22-Aug-07	26180	0	26180	694,830	11.58
23-Aug-07	0	1000	-1000	693,830	11.56
24-Aug-07	10000	400	9600	703,430	11.72
27-Aug-07	2000	0	2000	705,430	11.76
28-Aug-07	5300	0	5300	710,730	11.85
29-Aug-07	2600	0	2600	713,330	11.89
30-Aug-07	25500	0	25500	738,830	12.31
31-Aug-07	5000	0	5000	743,830	12.40
3-Sep-07	16726	0	16726	760,556	12.68
4-Sep-07	10000	0	10000	770,556	12.84
19-Sep-07	105500	0	105500	876,056	14.60
10-Mar-08	215000	0	215000	1,091,056	18.18
21-May-08	3000	0	3000	1,094,056	18.23
22-May-08	2000	0	2000	1,096,056	18.27
23-May-08	2000	0	2000	1,098,056	18.30
26-May-08	2000	0	2000	1,100,056	18.33
28-May-08	4000	0	4000	1,104,056	18.40
29-May-08	2000	0	2000	1,106,056	18.43

4. It was alleged that the Noticee did not make necessary disclosure under regulation 7(1) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST**”) and regulation 13(1), 13(3) and 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”), it was alleged that he had violated the said provisions and consequently, liable for monetary penalty under section 15A (b) of SEBI Act, 1992 (hereinafter referred to as the “**Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

5. Mr V.S. Sundaresan was appointed as Adjudicating Officer vide order dated September 15, 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 under Section 15A(b) of the Act for the alleged violation of SAST and PIT.
6. Pursuant to transfer of Mr. V.S. Sundaresan, the undersigned was appointed as Adjudicating Officer vide order dated November 12, 2009.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice No.EAD-5/VSS/TZ/146048/2008 dated November 28, 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 him and penalty be not imposed under section 15A(b) of SEBI Act for his failure to comply

with the provisions of regulations 7(1) read with 7(2) of SAST and 13(1), 13(3) & 13(5) of PIT. The said SCN was sent through Pune Stock Exchange. However, no response was received from the Noticee.

8. Accordingly, an advertisement regarding the aforesaid SCN was published in the newspapers, Hindustan Times, Sakal, Damini & Sandesh on April 10, 2010. It was informed through the newspapers that the SCN has been made available on the SEBI website (www.sebi.gov.in) under the heading "Unserved Summons/Notice". Moreover, the Noticee was also given an option to collect the same from SEBI, Head office, Mumbai.
9. 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 June 17, 2010, vide notice dated May 7, 2010. An advertisement with regard to the same was also published in national newspapers on June 11, 2010. Further, the notice was also available on the SEBI website. The said notice was sent to the Noticee through speed post, published in a national newspaper and was made available on SEBI website (www.sebi.gov.in) under the heading "Unserved Summons/Notice". Further, the Noticee was also given an option to collect the same from SEBI, Head office, Mumbai. The Noticee neither appeared for the aforesaid hearing nor made any submissions.
10. However, in the interest of natural justice, another opportunity of hearing was granted to the Noticee vide notice dated October 7, 2010 on October 20, 2010. The said Notice was sent to the Noticee through Pune Stock Exchange. As the Noticee was not found, the same was affixed at the last known address of the Noticee. The

Noticee neither appeared for the aforesaid hearing nor made any submissions. Thereafter, another opportunity of hearing was granted to the Noticee on November 25, 2010 vide Notice dated November 16, 2010, and was duly delivered. The Noticee neither appeared for the said hearing nor made any submissions.

11. I am of the view that ample opportunities have been given to the Noticee to explain his case. As per rule 4(7) of the Rules, if any person fails neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons therefor. Despite having been given ample opportunities as stated above, the Noticee has failed to avail the opportunity of personal hearing. I am, therefore, compelled to proceed with the matter *ex-parte* based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

12. 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 :
 - a. Whether the Noticee attracted the disclosure requirements under regulations 7(1) read with 7(2) of SAST and if so, whether complied or not?
 - b. Whether the Noticee attracted the disclosure requirements under regulation 13(1), 13(3) and 13(5) of PIT and if so, whether complied or not?
 - c. Does the non-compliance, if any, attract monetary penalty under section 15A(b) of SEBI Act?

- d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

13. **ALLEGED VIOLATION OF 7(1) READ WITH 7(2) OF SAST**

- (a) The provisions of regulations 7(1) read with 7(2) of SAST read as under:

SAST

“7. Acquisition of 5 per cent or 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) I find that the requirement of regulation 7(1) read with 7(2) of SAST are two fold i.e. disclosure to the company and to the Stock Exchange in case of acquisition of more than 14% shares or voting rights in a company, within two working days of, viz.,

the receipt of intimation of allotment of shares as well as the acquisition of shares or voting rights, as the case may be.

(c) As per the aforesaid regulation of SAST, I find that an acquirer has to make disclosure, within 2 days of receipt of intimation of allotment or acquisition of shares, to the Company and Stock Exchange upon acquiring more than 5% or 10% or 14% or 54% or 74% of the total shares or voting rights in the Company. As per the investigation report the Noticee has made the requisite disclosure upon acquiring 5% & 10% of the shares/voting rights of the Company. I also observe that the Noticee acquired 1,05,500 shares on September 19, 2007 in CGIL thereby increasing his holding from 7,70,556 (12.84%) to 8,76,056 shares (14.60%).

(d) As the Noticee had acquired more than 14% shares/voting rights in CGIL, he was under obligation to make disclosure under regulation 7(1) of SAST Regulations to the Company and to the Stock Exchange. However upon perusal of the documents on record, I find that no disclosure has been made by the Noticee under the aforesaid regulation.

(e) Thus, the allegation of violation of the provisions of regulations 7(1) and 7(2) of SAST stands established.

14. ALLEGED VIOLATION OF REGULATION 13(1) OF PIT

(a) The provisions of regulation 13(1) PIT read as under:

“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 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.

(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.”

- (b) In terms of regulation 13(1) of PIT, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company in Form A, the number of shares or voting rights held by such person, within 4 working days of (i) the receipt of intimation of allotment of shares, (ii) the acquisition or sale of shares or voting rights, as the case may be.

(c) As the Noticee had acquired 1,31,298 shares on May 18, 2008 his shareholding in CGIL increased from 2,31,693 (3.86%) to 3,62,991 shares (6.05%) of CGIL which was more than 5% shareholding/voting capital of the Company. Accordingly, the Noticee was under the obligation to make disclosures in terms of regulation 13(1) of PIT. However, it was alleged that no disclosure had been made by the Noticee.

(d) Further, after crossing 5% limit of the total shareholding or voting rights in CGIL on May 18, 2008, the Noticee had acquired further shares of CGIL and as a result, his shareholding had changed/exceeded the limits prescribed in regulation 13 (3) of PIT. The Noticee ought to have made disclosure to the Company in the prescribed form within the stipulated time as per regulation 13(3) of PIT. However, it was alleged that the Noticee had not made the said disclosures.

15. I find that the disclosures under regulation 13(1) & 13(3) read with 13 (5) of PIT has to be made to the Company. Therefore, the Noticee had an obligation to make the aforesaid disclosures to CGIL. However, I find that there is no document on record indicating that the Noticee had not made the required disclosures to the Company. Thus, I am of the view that in the absence of any evidence on record I am inclined to give him benefit of doubt in this regard.

16. The non-compliance with the provisions of regulations 7(1) and 7(2) of SAST attracts monetary penalty under section 15 A (b) of SEBI Act , which reads as under:

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

If any person, who is required under this Act or any rules or regulations made thereunder, -

(a)...

(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 therefore 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.

17. 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..."*.
18. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15,2005 the Hon'ble 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."*
19. 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.
20. 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.”*

21. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. The purpose of disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, he had concealed the vital information from the investors.
22. I also note that in the case of P.K. Tayal Vs. SEBI (Appeal No. 89 of 2007), the Hon'ble SAT upheld a penalty of Rs.1 lakh on the appellant for violation of regulations 7 (1) and 7 (2) of the SAST Regulations. Also, in the matter of Mega Resources and Others Vs. SEBI, (Appeal No. 138/2003, 138 A to 138F/2003) the Hon'ble SAT reduced the penalty of Rs.3 lakhs to Rs.1.5 lakhs on seven entities for the violation of Regulation 7 (1) and 7 (2) of the SAST Regulations

ORDER

23. After taking into consideration all the facts and circumstances of the case and on a judicious exercise of the powers conferred upon me, I hereby impose a monetary penalty of Rs. 50,000/- (Rupees Fifty thousand only) for the violation of regulations 7(1) and 7(2) of SAST under section 15A(b) of the Act on the Noticee, which will be commensurate with the violation committed by him.
24. The Noticee shall pay the said penalty of Rs.50,000/- (Rupees Fifty thousand only) 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 Shri S. Ramann, Officer on Special Duty, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
25. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **November 25 , 2010**
Place: **MUMBAI**

Piyoosh Gupta
ADJUDICATING OFFICER