BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/GR/AE/2019-20/5100-5118]

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

In respect of:

Noticee No.	Noticee Name	PAN
1	Paresh Joshi	ABBPJ3755H
2	Darshan Dashani	ACLPD8452E
3	Haresh Tank	ABVPT5689G
4	Nilesh Joshi	ABHPJ8545R
5	Jayshree Joshi	ADKPJ1753C
6	Urvashi Joshi	AFXPJ8613E
7	Samir Dashani	AFYPD4402L
8	Hasit Dashani	ACLPD8451H
9	Bindu Tank	AFIPT1852L
10	Manoj Tank	ACHPT7888E
11	Rajesh Rajyaguru	ABGPR6605P
12	Harish Rajyaguru	ABRPR6135K
13	Shilpa Rajyaguru	ABRPR6053L
14	Bindu Rajyaguru	ABRPR6631G
15	Bhanumatiben M Rajyaguru	AGMPR2112G
16	Madhusudan Rajyaguru	ABNPR7499A
17	Tushar Rajyaguru	ABXPR2623N
18	Preeti Rajyaguru	ABRPR6052M
19	Deepjit Rajyaguru	AJNPR3646K

In the matter of Real Realty Management Company Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) received a draft letter of offer (DLO) filed by Corporate Professionals Capital Pvt Ltd, manager to the offer, on behalf of Mr. Dharm Swetank Patel (Acquirer) vide letter dated December 01, 2015. It was observed that previously there had been a scheme of arrangement covering *inter alia* the merger of Real Realty Management Company Private Limited into Hillock Agro Foods (I) Ltd which became effective on February 07, 2013. In regards to the same, the name of the transferee company was changed from Hillock Agro Foods (I) Ltd to Real Realty Management Company Limited (hereinafter referred to as "**Noticee / RRML / company**"*).* Pursuant to the aforesaid scheme, 19 entities namely, Paresh Joshi, Darshan Dashani, Haresh Tank, Nilesh Joshi, Jayshree Joshi, Urvashi Joshi, Samir Dashani, Hasit Dashani, Bindu Tank, Manoj Tank, Rajesh Rajyaguru, Harish Rajyaguru, Shilpa Rajyaguru, Bindu Rajyaguru, Bhanumatiben M Rajyaguru, Madhusudan Rajyaguru, Tushar Rajyaguru, Preeti Rajyaguru, and Deepjit Rajyaguru (hereinafter collectively referred to as "**Noticees**") acquired 36,00,000 shares of RRML comprising 74.95% of the share capital. As per the shareholding pattern of RRML for quarter ending June 2013, the above 19 acquirers are shown as part of the promoters group of RRML. In respect of the aforesaid acquisition, Regulation 10(6) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as *"*SAST Regulations, 2011") required the acquirers to file a report to the stock exchanges where the shares of the Target Company are listed within four working days from the date of acquisition. Further, since the shareholding of the acquirers crossed more than 5% of the total shares of RRML, the Noticees were required to file disclosure regarding their aggregate shareholding. As per Regulation 29(3) of SAST Regulations, 2011, the disclosure under Regulation 29(1) has to be file to the stock exchanges and the company within 2 working days from the date of the acquisition. However, it was alleged that the Noticees have not made the aforesaid disclosures, hence it was alleged that the Noticees have violated the provisions of Regulations 10(6) and 29(1) of SAST Regulations, 2011.

2. It may be noted that RRML had changed its name to Real News & Views Ltd. Subsequently the name of the company was changed to Real Eco-Energy Limited on October 06, 2018.

APPOINTMENT OF ADJUDICATING OFFICER

3. Initially, Shri Satya Ranjan Prasad, Chief General Manager, was appointed as the Adjudicating Officer **(AO)** in the matter to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violation alleged to have been committed by the Noticee, and the same was communicated to the AO vide communique dated September 06, 2018. Pursuant to the transfer of Shri Satya Ranjan Prasad, the undersigned has been appointed as the AO in the matter by SEBI and the same was communicated to the undersigned vide communique dated May 22, 2019. These proceedings are therefore been carried forward from where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated October 08, 2018 (*hereinafter referred to as '**SCN**'*) was issued to the Noticees in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "***Rules***") for the violations as specified in the SCN.

5. Vide letter dated March 05, 2019, a reply was received from Shri Paresh Joshi (Noticee No. 1). The main contentions made therein are reproduced as below –

> *"Please refer to the above Notice sent to me. I convey my sincere apology in responding the Notice after a lapse for a long delay. I was earlier a member of the Promoter Group in the above company and the said Promoter Group had already sold its entire shareholding in the company to new promoters in the compliance of the Takeover regulations. We had handed over all records to the New Management and we could not find the necessary documents for a long time. Please pardon us for this delay.*

I submit we had made necessary disclosure under Regulation 10 (6) of the SEBI (SAST) Regulations, 2011. We also submit that the letter/disclosure were sent to the ***Bombay Stock Exchange ltd. (BSE)*** *in the same envelope in which Real Realty Management Company ltd. Had despatched certain other disclosures under the Takeover Regulations as well as PIT Regulations. A copy of the courier Receipt evidencing despatch of the same is enclosed herewith us* ***Annexure A****.*

I have also enclosed a copy of the same disclosure made by us under regulation 10(6) of the SEBI (SAST) Regulations, 2011 to the ***Ahmedabad Exchange ltd. (ASE)*** *which was duly acknowledged by the ASE on 20 May, 2013. A copy of such acknowledge evidencing receipt of the same by the ASE is enclosed herewith as* ***Annexure B****.*

I therefore request you to take the above on record and drop the proceedings. I also request you to consider this as reply by the other Notices who were the member of the Promoter Group in the above company.

I also wish to inform that I would like to avail an opportunity for person appearance in any hearing if fixed in the matter."

6. In its aforesaid reply, the Noticee has enclosed the following documents –
    i. Copy of the courier receipts dated May 20, 2013 issued by Professional Couriers (Annexure A)
    ii. Copy of disclosure under Regulation 10(6) of SAST Regulations, 2011 dated May 19, 2013 made to the Ahmedabad Stock Exchange Ltd. (Annexure B)

7. Pursuant to the appointment of the undersigned as AO, in terms of Rule 4 (3) of the Rules and as per the Noticee's request, an opportunity of personal hearing was granted to the Noticees on July 11, 2019 vide Hearing Notice dated June 28, 2019. The said Hearing Notice was delivered to Noticee Nos. 1 to 10 and 16, and in case of rest of the Noticees, the Hearing Notice returned undelivered with the endorsement *"Door Locked" / "Unclaimed"*. In the personal hearing on July 11, 2019, the authorized representative appeared on behalf of the Noticee Nos. 1 to 10 and reiterated the written submissions made earlier in the matter vide the aforesaid reply dated March 05, 2019.

Subsequently, Noticee Nos. 11 to 19 were granted another opportunity of personal hearing on October 03, 2019 vide Hearing Notice dated 17, 2019, and delivery of the same was attempted, however the entities refused to accept the Notice as well as affixture of the Notice at the premises. Details in this regard are available on record. At this juncture, it is pertinent to refer to the observations of Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of ***Dave Harihar Kirtibhai Vs SEBI*** (Appeal No. 181 of 214 dated December 19, 2014), wherein the Hon'ble SAT observed as under:

> *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*

8. In view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly I deem it appropriate to proceed against the Noticees including *ex-parte* against the Noticee Nos. 11 to 19, based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :

   I. Whether the Noticees has violated the provisions of Regulation 10(6) and 29(1) of SAST Regulations, 2011?

II. Does the violations, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

III. If so, what would be the monetary penalty that can be imposed on the Noticees?

FINDINGS

10. Before I proceed with the matter, it is pertinent to mention the relevant provisions of SAST Regulations, 2011 alleged to have been violated by the Noticees and the same is reproduced below:

SAST Regulations, 2011

General exemptions.

10(6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

Issue I) Whether the Noticees has violated the provisions of Regulation 10(6) and 29(1) of SAST Regulations, 2011?

11. As per the material available on record, I note that 19 entities viz. the Noticees comprising the promoters group of RRML, namely, Paresh Joshi, Darshan Dashani, Haresh Tank, Nilesh Joshi, Jayshree Joshi, Urvashi Joshi, Samir Dashani, Hasit Dashani, Bindu Tank, Manoj Tank, Rajesh Rajyaguru, Harish Rajyaguru, Shilpa Rajyaguru, Bindu Rajyaguru, Bhanumatiben M Rajyaguru, Madhusudan Rajyaguru, Tushar Rajyaguru, Preeti Rajyaguru, and Deepjit Rajyaguru acquired 36,00,000

shares, pursuant to a scheme of arrangement which involved *inter alia* amalgamation of Real Realty Management Company Pvt Ltd (Transferor Company) with Hilock Agro Foods (India) Ltd which became effective on February 07, 2013, and subsequent renaming of the Transferee Company as RRML. The acquired shares comprised 74.95% of the share capital of RRML.

12. It has been alleged in the SCN that the Noticees failed to make the requisite disclosures to the stock exchanges under Regulation 10(6) and 29(1) of SAST Regulations, 2011 with regards to their aforesaid acquisition.

13. I note that the Shri Paresh Joshi (Noticee No. 1) has filed letter dated March 05, 2019 making written submissions to the SCN and the same was reiterated by the authorized representative of Noticee Nos. 1 to 10 at the time of personal hearing, wherein it was *inter alia* submitted that they had made the necessary disclosure under Regulation 10(6) of the SAST Regulations, 2011 and that the said disclosure were sent to the Bombay Stock Exchange (**BSE**) in the same envelope in which the company RRML has dispatched certain other disclosures under the Takeover Regulations as well as PIT Regulations. The Noticee has also furnished a copy of courier receipt evidencing the dispatch of the disclosure. In this regard, on perusal of the material available on record, I note that BSE vide its email dated April 08, 2016 has stated that they have not received any disclosures with regard to the acquisition of 36,00,000 shares of RRML in 2013 by the Noticees. The facts regarding non-disclosures has not been refuted by Noticee Nos. 11 to 19. Thus, I find that the Noticees have not made the requisite disclosure under Regulation 10(6) and 29(1) of SAST Regulations, 2011 to BSE with regard to their aforesaid acquisitions, and hence have violated the provisions of the said Regulations.

14. The Noticee has also submitted a copy of the disclosure dated May 19, 2013 under Regulation 10(6) of SAST Regulations, 2011 made to and acknowledged by Ahmedabad Stock Exchange (**ASE**), wherein the date of acquisition by the Noticees is mentioned to be May 17, 2013. In this regard, I note that the provisions of Regulation 10 and 29 of SAST Regulations, require that the reports/disclosures have to be filed

with all the stock exchanges where the shares of the target company are listed, which also includes BSE in the present case. Thus, filing disclosure with one stock exchange, whereas the target company is listed at multiple stock exchanges does not tantamount to compliance of the relevant provisions of the SAST Regulations. Accordingly, I find no merit in the above submission of the Noticees.

15. Further, I have also perused the copy of courier receipt dated May 20, 2013 furnished by the Noticee to substantiate its claim of disclosures having been made to BSE, and on perusal of the same, I am of the view that the unsigned and unstamped courier receipts with a mention of BSE as addressee which have been submitted by the Noticee do not establish that disclosures were indeed made to the BSE in the required format mandated under Regulation 10(6) and/or 29(1) of the SAST Regulations, 2011. In fact from the said courier receipt, even the contents of the documents purportedly sent through the said courier is also not evident.

16. I also find it relevant to mention that the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of ***Mega Resources Ltd. v. SEBI*** (Appeal No. 49/2001 dated March 19, 2002) had observed that, *"....the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement..... Regulation 7(1) requires the acquirer to disclose the aggregate of this holding... Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox... I am not inclined to view that by posting a letter under certificate of posting, stating the shareholding by itself is sufficient compliance of regulation 7(1). In my view the Appellant has failed to comply with the requirement of regulation 7(1), for the reason that it has failed to make the disclosure of the requisite information*".

17. As already noted above, BSE has confirmed to SEBI that are not in receipt of the requisite disclosures in the instant matter from the Noticees. At this juncture, I also find it relevant to mention that the Hon'ble SAT, in the matter of ***Kalindee Rail Nirman (Engineers) Limited v. Securities and Exchange Board of India*** (Appeal No. 97 of

2010 dated July 19, 2010) had observed that, *".. the agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgment received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant. … In this view of the matter, no fault can be found with the impugned order…*".

18. In view of the above, since the requisite disclosures have not been made by the Noticees with regards to their acquisitions, I find that the Noticees have violated the provisions of Regulation 10(6) and 29(1) of SAST Regulations, 2011.

Issue II) **Does the violations, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?**

19. I note that the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** 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.*"

20. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of ***Akriti Global Traders Ltd. Vs SEBI*** had observed that -

> *"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under*

the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

21. Thus, the violation of Regulation 10(6) and 29(1) of SAST Regulations, 2011 makes the Noticees liable for penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under –

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(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;

Issue III) If so, what would be the monetary penalty that can be imposed on the Noticees?

22. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules, require that while adjudging the quantum of penalty, 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.

23. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticees. I also note that no prior default of the Noticees is available on record. I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that, the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. As a result of the violation committed by the Noticees, the investors were deprived of valuable information which would have enabled them to take well informed decisions regarding their investments in the company. In the present matter, I note that Noticees acquired 36,00,000 shares of RRML comprising 74.95% of the share capital of RRML but have has failed to make the disclosures to BSE regarding their acquisition and has thus violated Regulation 10(6)and 29(1) of SAST Regulations, 2011.

ORDER

24. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I hereby impose a penalty of Rs. 4,00,000/- (Four Lakh Only), to be paid jointly and severally, on the Noticees viz. Paresh Joshi, Darshan Dashani, Haresh Tank, Nilesh Joshi, Jayshree Joshi, Urvashi Joshi, Samir Dashani, Hasit Dashani, Bindu Tank, Manoj Tank, Rajesh Rajyaguru, Harish Rajyaguru, Shilpa Rajyaguru, Bindu Rajyaguru, Bhanumatiben M Rajyaguru, Madhusudan Rajyaguru, Tushar Rajyaguru, Preeti Rajyaguru, and Deepjit Rajyaguru under Section 15A(b) of SEBI Act,

1992 for the violations of the provisions of Regulation 10(6) and 29(1) of SAST Regulations, 2011.

25. The Noticees shall remit / pay the said amount of penalty, jointly and severally, within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

26. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticees shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticees
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

28. In terms of rule 6 of the Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: October 22, 2019 **G Ramar**
Place: Mumbai **Adjudicating Officer**