

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/DSR/RG/815-- 821/2017]**

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**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:**

- 1. Shri Tribhawan Kumar Parnami(PAN : AARPP6532H)**
- 2. Tribhawan Kumar ParnamiHUF (PAN : AABHT6051M)**
- 3. Shri Anil Kumar Parnami (PAN : AECPP0019A)**
- 4. Anil Kumar Parnami HUF (PAN : AAGHA4866E)**
- 5. Shri Raman Kumar Parnami (PAN : AARPP6531E)**
- 6. Raman Kumar Parnami HUF (PAN : AAIHR6234D)**
- 7. Ms. ShashiParnami (PAN : AEJPP1091B)**

**In the matter of**

**PARNAMI CREDITS LIMITED**

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- 1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') had examined the alleged irregularity in the shares of Parnami Credits Limited (hereinafter referred to as the 'target company' / 'PCL') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act, 1992') and various Rules and Regulations made there under.**
- 2. While examining the draft letter of offer filed by one, Shri Rakeshchand M Jain (Acquirer) to acquire 26% equity shares of PCL, SEBI had observed certain non-compliances with regard to the provisions of Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the 'SAST Regulations') by the former promoters of PCL viz. Shri Tribhawan Kumar Parnami, TribhawanKumar Parnami HUF, Shri Raman Kumar Parnami. Raman Kumar Parnami HUF, Shri**

Anil Kumar Parnami, Anil Kumar Parnami HUF and Ms.ShashiParnami (hereinafter individually referred by their respective names and collectively referred to as the Noticees). SEBI, therefore, had initiated adjudication proceedings against the Noticees for the alleged violations of the said provisions of law.

### **Appointment of Adjudicating Officer**

3. I have been appointed as the Adjudicating Officer, vide order dated November 17, 2016, under Section 15-I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violation of the provisions of law by the Noticees.

### **Show Cause Notice, Reply and Personal Hearing**

4. A common show cause notice dated April 27, 2017 (hereinafter referred to as the 'SCN') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law. The said SCN was duly delivered to all the Noticees except, Shri Anil Kumar Parnami, Anil Kumar Parnami HUF and Shri Raman Kumar Parnami. However, vide letter dated May 13, 2017, Shri Tribhawan Kumar Parnami filed a reply on behalf of himself and the other Noticees in the matter. However, it was noted that no Authority Letters were enclosed with the said letter dated May 13, 2017 authorizing Shri Tribhawan Kumar Parnami to reply on behalf of the other Noticees.
5. Thereafter, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, vide hearing notices dated October 11, 2017, an opportunity of personal hearing was granted to the Noticees on October 27, 2017 in the matter. The Authorized Representative (AR) appeared on the behalf of the Noticees on the scheduled date of hearing and made oral submissions. The AR reiterated the submissions made by the Noticees in their earlier replies. The AR was advised to submit authority letters authorizing Shri Tribhawan Kumar Parnami to represent the other Noticees in the matter on or

before October 30, 2017. Accordingly, vide email dated October 28, 2017, the Noticees have submitted the authority letters which have been taken on record.

### **Consideration of Issues, Evidence and Findings**

6. I have carefully perused the charges levelled against the Noticees as per the SCN, replies filed by them and the material as available on record. The issues that arise for consideration in the present case are:

***(a) Whether the Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations?***

***(b) Do the violations, if any, on the part of the Noticees attract any penalty under Section 15A (b) of the SEBI Act, 1992?***

***(c) If yes, what should be the quantum of penalty?***

7. Before proceeding further, it will be appropriate to refer to the relevant provisions the SAST Regulations which read as under:

**Relevant provisions of the SAST Regulations:**

**Disclosure of acquisition and disposal**

**29(2)** Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

**(3)** The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and  
(b) the target company at its registered office.

8. I find from the SCN and the material available on record that the shares of PCL are listed on the Bombay Stock Exchange (BSE). While examining the draft letter of offer filed by one, Shri Rakeshchand M Jain (Acquirer) to acquire 26% equity shares of PCL, certain non-compliances with respect to the disclosure provisions of the SAST Regulations were observed. The details of the said non-compliances are as under:

Name of the promoters who sold shares	Date of Acquisition/sale	Total Promoter Shareholding		Reg. Applicable	Due date for compliance	Actual date of compliance	Delay (in no. of days)
		Before	After				
1. Tribhuvan Kumar Parnami, 2. Tribhuvan Kumar Parnami (HUF), 3. Raman Kumar Parnami (HUF)	November 21-22, 2014	6,54,100 (19.51%)	2,07,500 (6.19%)	29(2) of SAST 2011 Change in shareholding exceeding more than 2%	November 25, 2014	December 1, 2014	6
4. ShashiParnami , 5. Raman Kumar Parnami	November 24, 2014	2,07,500 (6.19%)	93,100 (2.78%)		November 26, 2014	December 1, 2014	5

9. It was, therefore, alleged in the SCN that the Noticees, being promoters and persons belonging to the promoter group of PCL, had made the necessary disclosures to the target company and to the Stock Exchange as prescribed under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, belatedly, on change in their shareholding exceeding more than 2% of the shares or voting rights of PCL.

10. Vide letter dated May 13, 2017, Shri Tribhawan Kumar Parnami submitted a detailed reply on behalf of all the Noticees. The Noticees submitted that the adequate disclosures were prepared by them within the due date and the same were to be sent by post / courier to the BSE and other stock exchanges. In case of the sale carried out on November 21 – 22, 2014, the disclosures were dispatched within the stipulated time and thus, there was no delay on their part. In case of the sale carried out on November 24, 2014, the Noticees submitted that they had handed over the documents to their staff to be sent via courier on November 26, 2014 itself. However, it is the case of the Noticees that due to some exigencies the staff personnel could not send it across on time and therefore, the disclosures could be couriered only on November 26, 2014. Thus, the Noticees state that there was no intention on their part to file the said disclosures with a delay, let alone any malafide intention for the same. Further,

the Noticees state that admittedly, as per the disclosures on the BSE website, same were disseminated on the BSE website on December 01, 2014.

11. Further, the Noticees submitted that Regulation 29(3) of the SAST Regulations cast an obligation to make disclosures specified in sub-regulation (2) to be made on receipt of intimation of allotment of shares or acquisition of shares or voting rights. Thus, as the Noticees have neither been allotted any shares nor have they acquired any shares or voting rights, it is the case of the Noticees that they were not under any liability to make any disclosures. However, out of good corporate governance practice and to honor the rights of the shareholders to be aware of the happenings in the target company, the Noticees had made the requisite disclosures within the stipulated time to BSE. The Noticees, in support of their contentions, have submitted the courier receipts forwarding the disclosures to BSE which have been taken on record.
12. The Noticees further stated that they did not have any intention to hide and conceal the information and neither the Noticees have made any unfair gain or advantage nor any loss or harm was caused to the investors with the non-disclosure of the said information. Thus, the Noticees pray that a lenient view should be taken in the matter and no monetary penalty should be imposed on them for the said violation. Further, the Noticees also stated that Shri Anil Kumar Parnami and Anil Kumar Parnami HUF have not sold even a single share or warrant. However, the said Noticees have also been shown caused for the said alleged violation of the disclosure provisions of the SAST Regulations, which is contended by the Noticees to be without any basis and legally untenable and unsustainable.
13. I have carefully perused the charges levelled against the Noticees in the SCN and the submissions made by them. I note that Regulation 29(2) of the SAST Regulations casts an obligation on any acquirer who, together with persons acting in concert with him, holds shares or voting rights entitling them (together) to 5% or more of the shares or voting rights in a target company, to make disclosure of every acquisition or disposal of shares of such target company representing 2% or more of the shares or voting rights in such target company.

Thus, I note that the said Regulation specifically mentions about acquisition or disposal of shares. However, Regulation 29(3) of the SAST Regulations, which prescribes the time line within which these disclosures are to be made to the stock exchanges and the target company itself, does not specifically state about the disposal of shares. As Regulation 29(2) of the SAST Regulations specifically casts an obligation for disclosure upon disposal of shares also, Regulation 29(3) has to be interpreted in accordance with the objective behind the said disclosure requirement. Therefore, I do not find any merit in the submissions of the Noticees that the said Regulations of the SAST Regulations do not cast any obligation on them to make disclosures for the disposal (sale) of shares.

14. I further find that the Noticees have submitted that the said disclosures were sent by them to the company and the stock exchanges by courier and have produced the courier receipts in support of their submission. I find that it is a well settled law that courier receipts per se cannot be treated as a proof of delivery of any document or letter. The actual proof of delivery is when some documentary evidence is present to show that the recipient of the said document or letter has received the same. Here, I would like to rely on the observations made by the ***Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001***. The Hon'ble Court while examining the issue of certain disclosure related compliances as prescribed under the SAST Regulations, 1997, observed as under:-

*“..... Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In law, anyone sending a written information through the agency of someone else, appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect*

*of a letter sent by registered post. In all other circumstances, the post office acts as a mere agent of the sender of the letter. The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressee. In the event, it is contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said regulation cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of transmission inasmuch as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent.”*

**15.** In the present case, I find that the Noticees had made the necessary disclosures as required under Regulation 29(2) of the SAST Regulations, however, the same were received by BSE only on December 01, 2014, which has also been admitted by the Noticees. The same were even disseminated by the BSE on December 01, 2014. Therefore, I find that it is an admitted fact that the Noticees had made the necessary disclosures with a delay (as the same were received by the stock exchange only on December 01, 2014) and thus, I do not find any merit in the submissions of the Noticees.

**16.** In this context, I note that ***the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order dated January 27, 2014*** has, inter alia, observed that: “Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure.” Further, I also note that in ***Appeal No. 78 of 2014 in the case of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014*** has, inter alia, observed that:

*“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay”.*

17. With respect to the contention of the Noticees that Shri Anil Kumar Parnami and Anil Kumar Parnami HUF had neither acquired nor sold any shares or warrants but they also have been alleged of violating the provisions of Regulation 29(2) of the SAST Regulations in the SCN, I find that Regulation 29(2) casts an obligation not only on the acquirer but also on the persons acting in concert (PAC) together with the acquirer to make the necessary disclosures of the aggregate change in the shareholding of the acquirer together with the PACs. Therefore, the statutory obligation to make the disclosures under the said Regulations is on the acquirer together with the PACs for achieving the very objective of the disclosure provisions in the Regulations and to disseminate a true and correct picture of the shareholding in the target company. Here, I also note that the term ‘acquirer’ as defined under Regulation 2(1)(a) of the SAST Regulations includes persons acting in concert. Thus, as Shri Anil Kumar Parnami and Anil Kumar Parnami HUF were the promoter group entities shown in the shareholding pattern for the relevant period as disseminated on the BSE website, the same form part of the PACs and thus, were also liable to make the disclosures in the prescribed format under the said Regulations. In view of the same, I do not find any merit in the submissions of the Noticees in this respect.

18. The Hon’ble Securities Appellate Tribunal, ***in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI***, has also 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. We cannot therefore subscribe to the view that the violation was technical in nature”.*

19. In view of the above, I conclude that the Noticees have failed to make timely disclosures to the Company and the Stock Exchange as prescribed under



Regulation 29(2) read with Regulation 29(3) of the SAST Regulations by making the said disclosures belatedly, thereby, warranting imposition of monetary penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under:

***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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

**20.** 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..."*.

**21.** While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 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.*

**Explanation:** *For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to*

*15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

**22.** I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the default of the Noticees are repetitive in nature. I note that the Regulations seek to achieve fair treatment by, *inter alia*, mandating disclosure of timely and adequate information to enable shareholders to make an informed decision. Therefore, correct and timely disclosures play an essential part of the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed decision. I, therefore, conclude that the Noticees by failing to make the necessary disclosures within the prescribed time lines as required under the SAST Regulations are liable for monetary penalties under the SEBI Act, 1992.

### **ORDER**

**23.** In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalties on the Noticees:

<b>Sr. No.</b>	<b>Name of the Noticee</b>	<b>Provisions of law violated</b>	<b>Penal Provisions</b>	<b>Penalty Amount (in `)</b>
<b>1.</b>	Shri Tribhawan Kumar Parnami	Regulation 29(2) read with Regulation 29(3) of the SAST Regulations	Section 15A(b) of the SEBI Act, 1992	<b>1,00,000/- (Rupees One lakh Only) payable jointly and severally</b>
<b>2.</b>	Tribhawan Kumar Parnami HUF			
<b>3.</b>	Shri Raman Kumar Parnami			
<b>4.</b>	Raman Kumar Parnami HUF			
<b>5.</b>	Shri Anil Kumar Parnami			
<b>6.</b>	Anil Kumar Parnami HUF			
<b>7.</b>	Ms. Shashi Parnami			

In my view, the aforesaid penalty is commensurate with the default committed by the Noticees.

- 24.** The amount of penalties shall be paid either by way of demand draft/s in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft/s or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to "The Division Chief (Enforcement Department - DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai - 400 052."

1.	Case Name :	
2.	Name of Payee:	
3.	Date of Payment:	
4.	Amount Paid:	
5.	Transaction No:	
6.	Bank details in which payments is made :	
7.	Payment is made for: (like penalties/ disgorgement / recovery/ settlement amount and legal charges along with order details)	

- 25.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

**Date: October 30, 2017**  
**Place: Mumbai**

**D.SURA REDDY**  
**GENERAL MANAGER &**  
**ADJUDICATING OFFICER**