BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/AO/169/2013]

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

M/s. Sainath Herbal Care Marketing Pvt. Ltd.

[PAN – AAJCS6076L]

In the matter of

Quintegra Solutions Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has examined the trading activity of Sainath Herbal Care Marketing Pvt. Ltd. (hereinafter referred to as the Noticee)in the scrip of Quintegra Solutions Ltd. (hereinafter referred to as 'QSL') listed on the Bombay Stock Exchange (BSE) for the period from June 01, 2010 to October 10, 2011and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and various Rules and Regulations made there under.

2. The Noticee had allegedly bought 56,80,612 shares and sold 27,35,219 shares of QSL during the period from August 02, 2010 to November 22, 2010. The shareholding of the Noticee increased from Nil to 13.96% by February 21, 2011. Thereafter

the shareholding decreased to 0.14% on October 10, 2011. The Noticee was required to make various disclosures for the acquisition and disposal of the shares of QSL in such percentages under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (herein after referred to as the "SAST Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the "PIT Regulations"). The Noticee allegedly failed to make the disclosures under Regulation 7(1) of the SAST Regulations and Regulation 13 (1) of the PIT Regulations, following its trading in the shares of QSL on October 13, 2010 and October 19, 2010 which resulted in the increase of its shareholding from 4.86% to 6.43% and 8.68% to 10.18% respectively. Further the change in Noticee's shareholding exceeded 2% on several occasions after it crossed the limit of more than 5% holding in the share capital of QSL. The Noticee was required to make disclosures under Regulation 13 (3) of the PIT Regulations which also the Noticee failed to do.

3. SEBI has therefore, initiated adjudication proceedings under the provisions of the SEBI Act against the Noticee to inquire and adjudge the alleged violations of the provisions of Regulation 7 (1) of SAST Regulations and Regulation 13 (1) & (3) of PIT Regulations.

Appointment of Adjudicating Officer

4. SEBI vide order dated June 21, 2012 appointed me as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the 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 15 A (b) of the SEBI Act, the alleged violation of the Noticee as above.

Show cause Notice, Reply and Personal Hearing

5. I issued a Notice dated August 14, 2012 ('SCN') to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against it and penalty be not imposed under Section 15 A (b) of the SEBI Act for its alleged violation of Regulation 7 (1) of the SAST Regulations and Regulation 13 (1) & (3) of the PIT Regulations. The Noticee submitted its reply vide its e-mail dated September 30, 2012.

6. After considering the reply submitted by the Noticee, I decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing on November 30, 2012. The Authorized Representative of the Noticee sought an adjournment. I therefore, granted another opportunity of personal hearing to the Noticee on December 13, 2012. The Authorized Representative appeared before me and made oral submissions.

7. The Noticee vide letter dated September 26, 2012 denied each and every allegation made against it in the SCN and submitted that it had made the necessary disclosures under Regulation 7 of the SAST Regulations within a period of two days as required to the Stock Exchange and QSL. The SCN erroneously alleges that no disclosure has been made by the Noticee. As regards the violation of PIT Regulation it assumed that the disclosure made under Regulation 7 of the SAST Regulations would suffice to meet the requirements and therefore no separate

intimation/disclosure was filed. The lapse if any was unintentional in view of the aforesaid disclosure. The Noticee further submits that it is neither "connected person" nor an "Insider" within the meaning of PIT Regulations and therefore the breach if any should be considered sympathetically. The Noticee has never defaulted before and after the period of the notice in any manner whatsoever which demonstrates that, the lapse, if any was unintentional and not wilful.

8. In view of the above, I am proceeding with the inquiry taking into account the submissions made by the Noticee, documents and material as available on record.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges made against the Noticee as mentioned in the SCN, the written and oral submissions of CCAP and all the material as available on record. The issues that arise for consideration in the present case are:

   a. **Whether the Noticee has violated Regulation 7 (1) of the SAST Regulations and Regulation 13 (1) & (3) of the PIT Regulations?**
   b. **Whether the Noticee is liable for monetary penalty prescribed under Section 15 A (b) of the SEBI Act for the aforesaid violation?**
   c. **If, yes what should be the quantum of monetary penalty?**

10. Before proceeding, I would like to refer to the relevant provisions of the SAST Regulations and PIT Regulations which read as under:

SAST Regulation

7. Acquisition of 5 per cent and 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.

PIT Regulations

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - 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 2 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 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.

11. I find that the Noticee's shareholding in the scrip of QSL increased from 4.86% to 6.43% on October 13, 2010 and from 8.68% to 10.18% on October 19, 2010. The acquisition of shares led to cross the threshold limit of 5% and 10% of the paid up capital of QSL require the Noticee to make disclosures under Regulation 7 (1) of the SAST Regulations. The Noticee crossed the threshold of 5% shares of QSL on October 13, 2010

and accordingly required to make disclosures under Regulation 13 (1) of the PIT Regulations. Further the Noticee's shareholding exceeded 2% on several occasions after it crossed the limit of more than 5% holding in the share capital of QSL when it was required it to make disclosures under Regulation 13 (3) of the PIT Regulations. It was alleged in the SCN that the Noticee failed to make the aforesaid disclosures as required under SAST Regulations and PIT Regulations.

12. The Noticee in its reply to the SCN submitted that it has made the necessary disclosures to the Stock Exchange and QSL under Regulation 7 (1) of the SAST Regulations within the requisite time frame of two days. The Noticee vide its email letter dated September 26, 2012, submitted a copy of the disclosure purport to have made to QSL and to BSE as regards its acquisition resulting in 6.43% of shares in QSL apparently acknowledged under the seal and signature of BSE inward section official. The Noticee has also submitted a copy of a courier receipt evidencing dispatch of an envelope to QSL on October 14, 2010. A courier receipt is only a simple proof of dispatch and does not amount to sufficient proof of delivery. Moreover, it is not possible to ascertain as to whether the disclosure as regards the Noticee's acquisition of over 6.48% was made to QSL through it.

13. However, I find that the Noticee did not submit any proof of having made the disclosure to the QSL and the BSE upon acquisition of 10.18% shares of QSL. BSE vide letter dated January 11, 2011 has stated that the Noticee has not made any disclosures to it when the Noticee's shareholding exceeded 5%

and 10% upon the acquisition of shares of QSL. Similarly QSL vide its e-mail dated May 14, 2012 stated that it has not received any disclosures vis-à-vis the SAST Regulations or the PIT Regulations made by the Noticee.

14. From the foregoing findings and analysis, even if I give benefit of doubt to the Noticee and concede the contention that it has made disclosure to QSL and to the BSE upon crossing the limit of 5% paid up capital of the company, it is established beyond doubt that the Noticee failed to make the disclosure upon cumulative acquisition of 10.18% shares of QSL on October 19, 2010 thereby violated Regulation 7 (1) of the SAST Regulations.

15. Under Regulation 13 (1) of the PIT Regulations, any person holding more than 5% shares or voting rights in any listed company is required to disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be. As stated above, the Noticee was holding 1327522 shares of QSL amounting to 4.86% on October 12, 2010 and on October 13, 2010 the Noticee purchased 5586432 shares of QSL and sold 135820 respectively. The shareholding of the Noticee increased to 6.43% thereby crossing the limit of five percent and requiring it to notify QSL of the same under the PIT Regulations.

16. The Noticee submitted that it assumed that the disclosure made under Regulation 7 of the SAST Regulations to the Stock exchange (and to the company) would suffice to meet the requirements under the PIT Regulations and therefore refrained

from filing separate intimation/disclosure under the PIT Regulations. It is an admitted fact that the Noticee has failed to make the requisite disclosures under the PIT Regulations. Having read Regulation 7 (1) of the SAST Regulations and Regulation 13 (1) of the PIT Regulations, it is understood that the purpose behind making disclosures under each of the Regulations is different. Therefore I find that disclosures required to be made under SAST Regulations are independent of the disclosures required to be made under PIT Regulations. It is stated that making disclosures under the SAST Regulations cannot mean that disclosures do not have to be made under the PIT Regulations and vice versa. The Noticee should have made the disclosures under Regulations 13 (1) of the PIT Regulations when its shareholding increased to 6.43% on October 13, 2010.

17. Additionally, I also find from Annexure 2 to the SCN that the Noticee's shareholding has changed more than 2% on several occasions between October 15, 2010 and October 04, 2011 after its shareholding had exceeded the limit of 5% which the Noticee ought to have disclosed under Regulation 13 (3) of the PIT Regulations. It is an admitted fact that the Noticee has failed to make the requisite disclosures under the PIT Regulations. The Noticee further submitted that it has never defaulted before or after the period of the notice in any manner whatsoever which demonstrates that, the lapse, if any was unintentional and not wilful. It is neither a "connected person" nor an "Insider" within the meaning of PIT Regulations and therefore the breach if any should be considered sympathetically.

18. From the foregoing it is established beyond doubt that the Noticee did not make the required disclosures upon acquisition /sale of shares QSL, thereby violating the provisions under Regulation 7(1) of the SAST Regulations and Regulation 13 (1) read with 13 (3) of the PIT Regulations warranting imposition of monetary penalty as per the provisions of 15 A (b) of the Act.

19. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC)** *inter alia* held: ***"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. The basic purpose of disclosure requirement inherent in the above mentioned Regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of share holding in a listed company. The Hon'ble SAT in the matter of ***Milan Mahindra Securities Pvt. Ltd. Vs, SEBI*** *(Appeal No. 66 of 2003 and order dated November 15, 2006.),* ***regarding the importance of disclosures, 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 any violation of the disclosure requirements has to be view seriously.***

21. Thus, the aforesaid violations by the Noticee make it liable for penalty under Section 15 A (b) of the 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,-

…..

(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 37[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

22. While imposing monetary penalty it is important to consider 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."

23. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by the Noticee and the consequent losses suffered by the investors. The Noticee failed to make disclosures under Regulation 13 (3) on several occasions and therefore the default is repetitive in nature. Timely disclosure of material information as specified in

the SAST Regulations and PIT Regulations are essential ingredients of a fair and transparent market aimed to protect the interest of investors.

Order

24. 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, I hereby impose a monetary penalty of ₹ 3,00,000/- (Rupees Three Lakh Only) under Section 15 A (b) of the SEBI Act on the Noticee. I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

25. The penalty shall be paid by way of demand draft drawn 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 Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

26. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: March 07, 2013 **P. K. KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**