

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. ISD/PMTL-JPS/AO/DRK-AKS/EAD3-721/46-2015]

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**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA  
ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE  
BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING  
PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

**In respect of:**

**Shri Jipal Pineshkumar Shah**

A/5, Fateh Apartment

Krishnavijay Hotel, Paldi

Opp. Tejpal Society

Ahmedabad- 380007

**PAN No. BMWPS2515R**

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**FACTS IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') while conducting an examination in the scrip of P.M. Telcelinks Ltd. (hereinafter referred to as '**PMTL / Company**') observed certain non compliances with SEBI (Substantial Acquisition of Shares & Takeover) Regulations 2011 (hereinafter referred to as '**SAST Regulations**') and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') alleged to have been committed by Shri Jipal Pineshkumar Shah (hereinafter referred to as '**noticee**').

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. I was appointed as Adjudicating Officer under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15A (b) of the SEBI Act the violation of Regulation 29(1) of SAST Regulations and Regulation 13(1) of PIT Regulations alleged to have been committed by the noticee and the same was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated July 2, 2013.

## **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. A Show Cause Notice No. A&E/EAD3/DRK/CS/7822/2014 dated 11.03.2014 (herein after referred to as '**SCN**') was served on the noticee vide Speed Post Acknowledgement Due requiring the noticee to show cause as to why an inquiry should not be held against the noticee and why penalty, if any, should not be imposed on the noticee under Section 15A (b) of the SEBI Act.
4. In the said SCN, it was alleged that as per the trading details on January 2, 2012 noticee was holding 3,84,924 shares of PMTL constituting 4.16% of the total shareholding of PMTL. On February 6, 2012 noticee had acquired 26,500 shares due to which his shareholding increased to 5,28,921 shares constituting 5.25% of the total shareholding in the company.

<b>Date</b>	<b>Acq / Sale</b>	<b>Holding before transaction</b>	<b>No of Shares Acquired or Sold</b>	<b>Holding after transaction</b>	<b>% of share holding</b>
02-01-2012	Acq	3,84,924	33,955	4,18,879	4.16
17-01-2012	Acq	4,18,879	83,542	5,02,421	4.99
02-02-2012	Sale	5,02,421	(-) 25,000	4,77,421	4.74
06-02-2012	Acq	4,77,421	25,000	5,02,421	4.99

<b>06-02-2012</b>	<b>Acq</b>	<b>5,02,421</b>	<b>26,500</b>	<b>5,28,921</b>	<b>5.25</b>
06-02-2012	Acq	5,28,921	11,020	5,39,941	5.36
07-02-2012	Acq	5,39,941	25,000	5,64,941	5.61
13-02-2012	Sale	5,64,941	(-) 39,000	5,25,941	5.22
15-02-2012	Acq	5,25,941	23,266	5,49,207	5.45
13-03-2012	Acq	5,49,207	17,500	5,66,707	5.62
14-03-2012	Sale	5,66,707	(-) 12,000	5,54,707	5.51
19-03-2012	Sale	5,54,707	(-) 7,600	5,47,107	5.43
20-03-2012	Sale	5,47,107	(-) 5,000	5,42,107	5.38
20-03-2012	Sale	5,42,107	(-) 9,090	5,33,017	5.29
28-03-2012	Acq	5,33,017	28,316	5,61,333	5.57
29-03-2012	Acq	5,61,333	50,000	6,11,333	6.07

5. As per Regulation 29(1) of the SAST Regulations noticee was required to disclose his aggregate shareholding in PMTL to the stock exchange and to the company within two working days of receipt of intimation of allotment of shares or acquisition of shares or voting rights which he failed to do so. Further, as per Regulation 13(1) of PIT Regulations noticee was also required to make disclosure to the company on holding more than 5% shares within two working days of receipt of intimation of allotment of shares or acquisition of shares or voting rights which he failed to do so.
6. The noticee vide his letter dated 08.04.2014 requested for additional period of 3 weeks to submit a reply to the SCN as he has to collect, collate and compile information / data / documents from old records.
7. The noticee vide letter which was received on 24.06.2014 stated that he has submitted the disclosure under Regulation 29 (2) to BSE Ltd. (hereinafter referred to as '**BSE**') and BSE has updated the same on its website. Noticee further requested for additional 8 to 10 days to prepare reply and requested for a personal hearing.

8. As requested by the noticee vide hearing notice dated 08.08.2014 the noticee was granted an opportunity of hearing on 26.08.2014 at 03:15 pm at SEBI Bhavan, Mumbai.
9. Noticee vide his letter dated 12.08.2014 submitted a reply to the SCN as follows:
- He is a retail investor in the stock market. He used to trade / invest in other scrips also at the relevant time. It is pertinent to mention that he has never defaulted in any of his settlement obligations.
  - He was holding 3,84,924 (3.82%) shares of PMTL as on 31.12.2011. He then through market purchase acquired few more shares of PMTL and on 06.02.2012 acquired some 50,000 shares and his holding increased to 5.25% (5,02,421 shares).
  - He is a retail non-promoter shareholder and somehow came to hold the abovementioned quantity of shares. He being lay investor was not aware about disclosures to be made by retail investors. Neither the company nor the trading member made him aware or drew his attention to it.
  - A common investor like him does not know and cannot be expected to know Insider Trading Regulations and Takeover Code Regulations for trading in the securities market. It is pertinent to mention that neither SEBI nor Exchanges nor member brokers have ever spread any awareness either through brochures, leaflets, investors booklet, contract notes or television / print media advertisement to the investors about such type of special disclosures.
  - The sole onus of disclosures on the lay investor is improper, inappropriate as a lay investor does not have knowledge, infrastructure, wherewithal, logistics, mental strength, time and it is very difficult to remember and take consequential act on such stray exceptional buy / sale transaction. Hence it is requested that a practical view be taken and not hyper technical view.
  - In the circumstances, the noticee submits that the lapses were unintentional, inadvertent – the non-disclosure were technical as the corporate / stock market world knew about the increase in shareholding through quarterly disclosures by the company to BSE. This was a stray case. Hence, no harm, loss or injury was caused to anyone on account of the non-disclosure at the relevant time. There was hardly any interest of the investors as in seen from trading volume in the said scrip.

10. Noticee vide his email dated 21.08.2014 had requested to adjourn the scheduled hearing. Noticee's request was acceded to and vide hearing notice dated 25.08.2014 noticee was granted a final opportunity of hearing on 02.09.2014 at 03:00 pm at SEBI Bhavan, Mumbai. In response to the same, the noticee vide his letter dated 01.09.2014 authorised Ms. Rinku Valanju, Advocate (herein after referred to as '**AR**') to attend the scheduled hearing.
11. The scheduled hearing was conducted on 03.09.2014 at the request of the AR. At the time of hearing the AR reiterated the submissions made in the reply dated 12.04.2014 and further submitted that it was a technical omission on part of the noticee as he was not aware that he was required to file the disclosures under SEBI Regulations. The AR submitted that there was no mens rea on the part of the noticee.

### **CONSIDERATION OF EVIDENCE AND FINDINGS**

12. I have taken into consideration the facts and circumstances of the case and the material made available on record.
13. It is observed from the records that on 06.02.2012 noticee had acquired 26,500 shares due to which his shareholding taken together with his earlier shareholding in the company increased from 3,84,924 shares to 5,28,921 shares constituting 5.25% of the total shareholding of the company as depicted in the table at para 4. Noticee has admitted that he has failed to make disclosures under SAST Regulations and PIT Regulations as he was not aware that he was required to make disclosures under both the Regulations.
14. Noticee's submission that he was not aware of SEBI Regulations, it is technical in nature and there was no mens rea on his part may not be acceptable as under Regulation 29(1) of SAST Regulations disclosure has to be made whenever there is acquisition which taken together with earlier

holding aggregates to 5% or more shares or voting rights. Once the trigger limit is breached, provisions of Regulation 29(1) of SAST Regulations gets attracted. Similarly under Regulation 13(1) of PIT Regulations, any person who holds more than 5% shares or voting rights, such person has to make a disclosure on becoming such holder.

15. In view of the above facts and circumstances of the case and the material made available on record, it can be concluded that the noticee has failed to comply with Regulation 29(1) of SAST Regulations and Regulation 13(1) of PIT Regulations. The text of the said provision is reproduced below:-

SAST Regulations:

**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.

PIT Regulations:

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

13.(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.

16. The said violation attracts penalty under Section 15A (b) of the SEBI Act. The text of the said provision is reproduced below:-

SEBI Act

**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 a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

17. 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

18. It has been noted from the material available on record that it is difficult to quantify any gain or unfair advantage accrued to the noticee as a result of this kind of default by the noticee. SEBI's examination has also not quantified the profit / loss for the nature of default / non compliance by the noticee and no material is made 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 default of the noticee.

19. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on the noticee under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for his failure to make disclosure under Regulation 29(1) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations 2011 and Regulation 13 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 which is appropriate in the facts and circumstances of the case.

## **ORDER**

20. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on Shri Jipal Pineshkumar Shah having PAN No. BMWPS2515R in terms of the provisions of Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for his failure to make disclosures under Regulation 29(1) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations 2011 and Regulation 13 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the noticee.

21. 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 Chief General Manager- EFD, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

22. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating



Officer) Rules 1995, copies of this order are being sent to Shri Jipal Pineshkumar Shah residing at A/5, Fateh Apartment, Krishnavijay Hotel, Paldi, Opp. Tejpal Society, Ahmedabad- 380007 and also to the Securities and Exchange Board of India, Mumbai.

**Place: Mumbai**

**Date: 30.03.2015**

**D. RAVI KUMAR  
CHIEF GENERAL MANAGER &  
ADJUDICATING OFFICER**