

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

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  
**Shri Narendra Prabodh Ganatra**  
**PAN: AEMPG4315C**

IN THE MATTER OF  
**Epic Energy Ltd.**

---

The undersigned was appointed as the Adjudicating Officer vide order of Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) dated December 13, 2008 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 Penalty 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, the alleged failure to make requisite disclosures under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the “**PIT Regulations**”) and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**Takeover Code**”) by Shri Narendra Prabodh Ganatra (hereinafter referred to as “**the Noticee**”).

2. A notice dated February 18, 2009 under Rule 4 of the Adjudication Rules was issued to the Noticee asking him to show cause as to why an inquiry should not be held against him and the prescribed penalty for the alleged violation of PIT Regulations and the Takeover Code not be imposed under Section 15A (b) of SEBI Act. Pursuant to the issuance of show cause notice, hearing was also granted to the noticee on the 20<sup>th</sup> of August, 2009 which was attended by the noticee's representative – Shri Mahesh Varde, following which the noticee submitted his written submissions on the 28<sup>th</sup> of August, 2009.

3. In the instant matter the following issues arise for consideration:

- a. Whether the Noticee had violated regulation 7(1) and 7(2) of the Takeover Code?
- b. Whether the Noticee had violated regulation 13(1) of the PIT Regulations?
- c. Whether the Noticee is liable for imposition of monetary penalty under section 15A (b) of the SEBI Act?

4. Following are the relevant provisions of the PIT Regulations and the Takeover code applicable in the instant case:

“

***Acquisition of 5% and more shares of a company***

***7. (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 percent 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.*

....

....

***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 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.*

”

**5.** I have carefully gone through the charges set out in the show cause notice and other documents on record.

**6.** SEBI conducted investigation into the trading in the shares of EPIC Energy Ltd. (hereinafter referred to as the “**Target Company**”) and into possible violations of the provisions of the SEBI Act and various rules and regulations made thereunder. During the course of investigations it was observed that in the quarter ending June 2006, the Noticee was holding 1.08% of equity shares in the Target Company. In the quarter ending September 2006 his holding increased to 3.84% and in December 2006, he held 5.1% of the Target Company’s equity shares. SEBI had received information from BSE

that its records do not show any disclosures made by the noticee regarding these acquisitions, as mandated by regulations 7(1) and 7(2) of the Takeover Code and Regulation 13(1) of the PIT Regulations.

**7.** A letter seeking the noticee's explanation in this regard was sent to him by SEBI on February 5, 2008. A reply dated February 8, 2008 was received from him on February 14, 2008 in which the violation of the aforementioned disclosure requirements was admitted by the noticee. The noticee justified this defect by claiming ignorance of the relevant legal provisions.

**8.** It is clear from the language of regulations 7(1) and 7(2) of the Takeover Code that the noticee was mandated to disclose the purchase of shares to the Target Company and the stock exchanges where the shares of the target company were listed and that these disclosures were to be made within two days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights.

**9.** It is also clear from a plain reading of regulation 13(1) of the PIT Regulations that the Noticee was required to disclose the change in his shareholding to the Target Company.

**10.** The aforementioned violations are questions of fact- whether the Noticee had made disclosures under regulations 7(1) and 7(2) of the Takeover Code and regulation 13(1) of the PIT Regulations, or not. As per BSE's records and as per the admission made by the noticee, no disclosures were made to the company or the Exchange by the Noticee within the stipulated time under the said regulations. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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.”*

**11.** Thus, I conclude that the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act which states 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;”*

**12.** Further, on the determination of the quantum of penalty under section 15A (b), I have considered the factors stipulated in section 15J of the SEBI Act, which reads as under:-

***“Factors to be taken into account by the adjudicating officer.***

*15J. 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.”*

**13.** In his written submissions the noticee submitted *inter alia* that he was not “connected with the management” of the target company and “traded in many scrips for very small margins” and also was “not acting as a broker for any person”. He also stated that “as on November 16, 2006 his holding was 187033 shares (4.91%) after which only 7500 shares were acquired through stock market purchase” consequently increasing his shareholding percentage to 5%. This happened “only in one quarter” pursuant to which the noticee claims his holding was “continuously below five percent”. The noticee also submitted that “submissions were filed late by February 21, 2008 “but had not derived any undue gain”. The noticee further submitted that this was the first time he received such a notice and the violation was “purely by oversight” on account of “less knowledge of laws and Rules”.

**14.** I have considered the aforementioned submissions made by the noticee and find that undue gain to the noticee or loss to investors cannot be quantified in this case. Further, there is no evidence on record that this is a repeated violation. Records on the BSE website substantiate the noticee’s submission that only in one quarter his holding had crossed 5%, pursuant to which his holding was continuously below 5%. As per these records, in the quarter ending March 2007, the noticee’s shareholding reduced below 5% to 4.39% and in the quarter ending September 2007 this holding reduced to 1.49%. Also, BSE records posted on its website on February 28, 2008 acknowledge the delayed receipt of information regarding the acquisition of shares by Shri Narendra Prabodh Ganatra. However,

correct and timely disclosures are an essential part of the proper functioning of the securities market and any failure to do so results in preventing the investors from taking a well-informed decision.

**ORDER:**

**15.** In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me u/s 15-I(2) of the SEBI Act, I hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on Shri Narendra Prabodh Ganatra u/s 15A (b) of the SEBI Act. I am of view that the said penalty is commensurate with the violations committed by Shri Narendra Prabodh Ganatra.

**16.** The above penalty amount shall be paid through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra(East), Mumbai- 400 051.

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

**Date: 14.09.2009**  
**Mumbai**

**J.Ranganayakulu**  
**Adjudicating Officer**