

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/RG/ 31-32 /2014]

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
Smt Devyani Chandrakant Doshi [PAN: ABVPD9687L]
and
Shri Chandrakant Nanalal Doshi [PAN: ABPPD3877N]

In the matter of
Rajoo Engineers Limited

Background:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the irregularity in trading in the shares of Rajoo Engineers Limited (hereinafter referred to as 'REL'), a company listed on the Bombay Stock Exchange (BSE), Ahmadabad Stock Exchange and Rajkot Stock Exchange and into the possible violation of the provisions of the SEBI Act, 1992 (herein after referred to as the Act) and various Rules and Regulations made there under.
2. The examination, inter alia, revealed that Smt. Devyani Chandrakant Doshi (hereinafter referred to as Noticee No. 1) and Shri Chandrakant Nanalal Doshi (hereinafter referred to as Noticee No. 2) were the promoters of REL. It was observed that Noticee No. 1 was holding 13,45,000 (3.66%) shares on February 06, 2013 and received 27,77,000 (11.22%) shares in an off-market transaction from Noticee No. 2 which resulted in an increase in her holding to more than 5% of the total paid-up share capital. Further, as a result of the said transaction,

the shareholding of Noticee No. 2 came down to zero from 27,77,000 shares (7.56%). In view of the said increase / change in the shareholding, the Noticees being the promoters of REL were required to make the necessary disclosures as prescribed under Regulation 13(1), 13(3) & 13(4A) read with Regulation 13(5) the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the PIT Regulations) and Regulation 29(1) & 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as SAST Regulations). The Noticees failed to make the said disclosures, thereby, violating the provisions of law.

3. SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violations of the provisions mentioned under Regulation 13(1), 13(3) & 13(4A) read with Regulation 13(5) the PIT Regulations and Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations against the Noticees.

Appointment of Adjudicating Officer:

4. I have been appointed as the Adjudicating Officer, in place of previous Adjudicating Officer, vide order dated August 29, 2013 under Section 15-I of the SEBI Act 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 Act the alleged violation of the abovementioned provisions of the PIT and SAST Regulations by the Noticees.

Notice, Reply & Personal Hearing:

5. Accordingly, a common notice dated October 15, 2013 (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 violations. The Noticee No. 1, vide letter dated October 29, 2013, replied to the said SCN and informed that Noticee No. 2 i.e. her husband expired on January 05, 2013 and enclosed a certified copy of the Certificate of Death as issued by the Rajkot Municipal Corporation, Gujarat Government as proof thereof. In view the same, the adjudication proceedings

initiated against Noticee No. 2 stand abated. The Noticee No. 1 in the said letter also mentioned that the said transfer of shares was mere transmission of shares on the basis of nomination by shareholders under Section 109B of the Companies Act, 1956. The Noticee No. 1 also requested for a period of 30 days to submit her detailed reply to the SCN. However, no reply was received from her.

6. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to Noticee No. 1 vide notice dated December 16, 2013 on December 30, 2013. The Noticee did not attend the said hearing. However, vide e-mail dated December 30, 2013, the Noticee No. 1 submitted her detailed reply to the SCN along with copies of disclosures made by her now to stock exchange and the company vide her letters dated December 24, 2013. Further, she also sought adjournment of the hearing scheduled on December 30, 2013 to any date after March, 2014. However, looking into the time elapsed in the said case, another opportunity of hearing was granted to her on January 21, 2014 vide notice dated January 01, 2014. The Authorized Representatives attended the said hearing on behalf of Noticee No. 1 and made oral submissions. They reiterated the submissions made by Noticee No. 1 vide her earlier reply and further submitted a copy of the 'Client Master Details' as provided by the Depository Participant (DP) evidencing the transmission of shares on February 06, 2013 to support their contention.
7. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges against the Noticees as per the SCN, written submissions and the materials & documents as available on record. The issues that arise for consideration in the present case are:
(a) Whether the Noticees has violated the provisions of Regulation 13(1), 13(3) & 13(4A) read with 13(5) of the PIT Regulations and Regulation 29(1) & 29(2) read with Regulation 29(3) of the SAST Regulations?

(b) Does the violation, if any, on the part of the Noticees attract any penalty under Sections 15A (b) of the SEBI Act?

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

9. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

Relevant provisions of 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.

Continual disclosure.

(3) Any person who holds more than 5% shares or 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.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Relevant provisions of 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.

(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.

- 10.** Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, 2011 mandates any person who holds more than 5% shares or voting rights in any listed company to disclose to the company, the total number of shares held by the person. The said change is to be disclosed to the company within 2 working days from the date of acquisition or receipt of intimation of allotment of shares. Regulation 13(3) of PIT Regulations, 1992 and Regulation 29(2) of the SAST Regulations, 2011 further mandates the person holding more than 5% shares or voting rights to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if the change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under Regulation 13(1) and such change exceeds 2% of the total shareholding or voting rights in the company. Regulation 13(4A) specifically mandates the promoters of the listed company to disclose to the company and the stock exchanges where the shares of the company are listed, if there has been a change in such holdings of such person from the last disclosure and the change exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

- 11.** I find from the SCN that REL is a company listed on BSE, ASE and Rajkot Stock Exchange. The Noticees are the promoters of REL. Noticee No. 1 was holding 13,45,000 (3.66%) shares on February 06, 2013 and received 27,77,000 (11.22%) shares in an off-market transaction from Noticee No. 2 which resulted in an increase in her holding to more than 5% of the total paid-up share capital. Further, as a result of the said transaction, the shareholding of Noticee No. 2 came down to zero from 27,77,000 shares (7.56%). The details of the transaction is as under:

Date of transaction	Holding before the transaction	Transaction Type	Debit/ credit	No. of shares transacted	Holding After transaction	Counterparty Client
06.02.2013	13,45,000 (3.66%)	Off MKT	Credit	27,77,000	41,22,000 (11.22%)	Chandrakant Nanalal Doshi (Noticee No. 2)

Upon the said increase in the holdings, the Noticees were required to make the necessary disclosures to the company as prescribed under the PIT and SAST Regulations. However, the Noticees did not make the said disclosures.

- 12.** The Noticee No. 1 vide her reply dated October 29, 2013 submitted that Noticee No. 2 i.e. her husband expired on January 05, 2013 and enclosed a certified copy of the 'Certificate of Death' as issued by the Rajkot Municipal Corporation, Gujarat Government as proof thereof. In view of the same, I find that the Noticee No. 2, against whom the proceeding was initiated, has expired on January 05, 2013 and is no more alive to face the penalty. In the light of the above, I am of the opinion that the proceedings against Noticee No.2 stand abated .
- 13.** Further, Noticee No. 1 in the said reply and in the additional reply dated December 27, 2013 submitted that the said transfer of shares (27,77,000 shares) from Noticee No. 2 to her was on account of transmission of shares on the basis of nomination by shareholders under Section 109B of the Companies Act, 1956 and being a nominee in the Demat account of Noticee No. 2. The

number of shares transferred is very insignificant. The aggregate holding post transmission is quite negligible. Further, she submits that she is a housewife and she has neither interfered in the affairs of her husband (Noticee No. 2) nor was aware of the affairs of the company so far as the responsibility, accountability and obligations were concerned. She is neither conversant with nor accustomed with the Capital Market Activity and corresponding rules and regulations in that regard. However, the Noticee No. 1 submits that she has initiated the process of engaging legal counsel for dealing with the requisite SEBI Laws. In compliance with the regulatory requirements, the Noticee No. 1 has now filed the requisite disclosures with BSE. A copy of the said disclosure is also available on record .

14. After considering the charges leveled against the Noticee No. 1 in the SCN and her reply to the same, I find that Noticee No. 1 was holding 13,45,000 (3.66%) shares on February 06, 2013. On account of the said transmission of shares, as informed by the Noticee No. 1, her holding did increase from 13,45,000 (3.66%) to 41,22,000 (11.22%), which required her to make necessary disclosures as prescribed under the PIT and SAST Regulations which she admittedly has failed to make. Further, I note from the submissions of Noticee No. 1 that she has made the requisite disclosures to the stock exchange vide her letter dated December 24, 2013, which is after the initiation of the present proceedings. Therefore, I am of convinced that the Noticee No. 1 by not making the necessary disclosures within the prescribed time has violated Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, 2011 and Regulation 13(1) , 13(4A) read with Regulation 13(5) of the PIT Regulations and is liable for monetary penalty under Section 15A(b) of the Act.

15. Section 15A (b) of the SEBI Act, 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 there under:-

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or

furnish the same within the time specified therefore 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.

16. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".
17. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the 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.*

18. I observe that from the material available on record, it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee . The defaults are not repetitive in nature. Further, I find that the said acquisition was on account of transmission of shares as Noticee No. 1 was the nominee of deceased Noticee

No. 2. However, the objective of the disclosure provisions laid down under the SAST and PIT Regulations is to keep the investors and public at large informed of the change in the holdings of any company. Further, proper disclosures beyond acquisition / sale of shares is to give equal opportunity to the shareholders and the investors at large. The said Regulations are framed to have transparency in the market and to further facilitate in keeping the integrity of the market intact. In view of the aforesaid observations, the said non-disclosure by the Noticee cannot be ignored and has to be viewed seriously.

ORDER

- 19.** 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 read with Rule 5 of the Adjudication Rules, I conclude that the proceedings against Noticee No.2 i.e Shri Chandrakant Nanalal Doshi stand abated. Further, I impose a penalty ₹ 12,00,000 (Rupees Twelve Lakhs Only) on Noticee No. 1 i.e. Smt Devyani Chandrakant Doshi under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee No. 1.
- 20.** The penalty amount as mentioned above shall be paid by the Noticee No. 1 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 the Division Chief, ISD, Securities and Exchange Board of India, Sebi Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
- 21.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to Noticee No. 1 and also to Securities and Exchange Board of India.

Date: January 23, 2014

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Place: Mumbai

ADJUDICATING OFFICER