

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - PG/AO/99-101/2011]

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

Mr. Nikhil Mansukhani

[PAN: AACPM2145E]

Mr. Anita Mansukhani

[PAN: AAHPM0923H]

M/s. JPA Holdings Private Limited

[PAN: AABCJ7151K]

In the matter of

MAN Industries (India) Limited

Background of the case

1. Securities and Exchange Board of India (**SEBI**) had received a complaint dated October 01, 2010 from the Company Secretary of M/s. MAN Industries (India) Limited (hereinafter referred to as the '**company**') regarding certain irregularities committed by Mr. J C Mansukhani, Vice-Chairman and Managing Director of the company and by JPA Holdings Pvt. Ltd (JPA), a company owned and controlled by J C Mansukhani, while dealing in the shares of the company during the period June 01,

2010 to September 30, 2010, in violation of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). The shares of the company are listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). The Global Depository Receipts (GDR) of the company are listed on NASDAQ, Dubai and bonds issued by the company are listed on Singapore Stock Exchange (SSE).

2. SEBI conducted investigation into the transactions in the shares of the company for the period June 01, 2010 to September 30, 2010 (hereinafter referred to as the '**investigation period**') based on the said complaint to ascertain whether any provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') and PIT Regulations have been violated during the investigation period. It was observed that on June 16, 2010, the Company informed BSE that its Board of Directors at meeting held on June 15, 2010, had considered and approved the allotment of 2, 50, 000 Equity Shares of ₹ 5/- each at a premium of ₹ 30/- per share to Mr. Nikhil Mansukhani, a promoter, upon conversion of 2, 50, 000 warrants by way of preferential allotment. Further on June 21, 2010 the Company informed BSE the outcome of Board Meeting held on June 19, 2010 regarding allotment of 10 lakh shares of ₹ 5/- each at a premium of ₹ 30/- per share to Nikhil Mansukhani, Anita Mansukhani and JPA Holdings Pvt. Ltd. upon conversion of 10 lakh warrants.
3. From a perusal of the shareholding pattern filed by the company with BSE during the investigation for the quarters ended March 2010, June 2010 and September 2010, it is observed that aggregate promoter holdings as on June 30, 2010 was 53.36% which in the subsequent quarter i.e., September 30, 2010, went up to 55.18% i.e., increased by 1.82%. Detailed entity-wise, quarter-wise tabulation of the shareholdings

of the promoter group for the aforesaid quarters as obtained from the BSE website is given below.

<i>Name of the Shareholder</i>	<i>As per Shareholding pattern on BSE Website</i>						<i>Computed from Trade data of SE</i>	
	<i>March 31, 2010</i>		<i>June 30, 2010</i>		<i>Sept 30, 2010</i>		<i>June 30, 2010</i>	
	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%</i>	<i>Number</i>	<i>%age</i>	<i>Number</i>	<i>%</i>
<i>Jagdishchandra Jhamaklal Mansukhani</i>	9,910,007	18.51	10,326,309	18.85	10,326,309	18.85	10,326,309	18.85
<i>Anita Mansukhani</i>	446,580	0.83	696,580	1.27	696,580	1.27	696,580	1.27
<i>Jagdish Jhamaklal Mansukhani HUF</i>	57,500	0.11	57,500	0.10	57,500	0.10	57,500	0.10
<i>Priyal Jagdish Mansukhani</i>	1,365,978	2.55	1,365,978	2.49	1,365,978	2.49	1,365,978	2.49
<i>JPA Holding Pvt. Ltd</i>	693,448	1.30	943,448	1.72	959,517	1.75	959,517	1.75
<i>Rameshchandra Mansukhani</i>	10,262,026	19.17	10,262,026	18.73	10,262,026	18.73	10,262,026	18.73
<i>Nikhil Mansukhani</i>	1,160,047	2.17	1,910,047	3.49	1,910,047	3.49	1,910,047	3.49
<i>Man Global Ltd</i>	725,192	1.35	825,192	1.51	1,803,442	3.29	1,803,442	3.29
<i>Deepa Rameshchandra Mansukhani</i>	322,292	0.60	322,292	0.59	322,292	0.59	322,292	0.59
<i>Heena Mansukhani</i>	288,112	0.54	288,112	0.53	288,112	0.53	288,112	0.53
<i>Rameshchandra Mansukhani HUF</i>	72,200	0.13	72,200	0.13	72,200	0.13	72,200	0.13
<i>Jhamaklal Mirchumal Mansukhani</i>	810,831	1.51	820,306	1.50	820,306	1.50	810,831	1.48
<i>Kimatdevi Jhamaklal Mansukhani</i>	1,272,814	2.38	1,272,814	2.32	1,272,814	2.32	1,272,814	2.32
<i>J Mansukhani</i>	58,038	0.11	58,038	0.11	58,038	0.11	58,038	0.11
<i>Narayandas Mankani</i>	6,000	0.01	6,000	0.01	6,000	0.01	6,000	0.01
<i>Bhagwanti Mankani</i>	4,000	0.01	4,000	0.01	4,000	0.01	4,000	0.01
<i>K R Patidar</i>	1,000	0.00	1,000	0.00	1,000	0.00	1,000	0.00
<i>K R Patidar</i>	1,000	0.00	1,000	0.00	1,000	0.00	1,000	0.00
<i>Nikita Jaichandani</i>	600	0.00	600	0.00	600	0.00	600	0.00
<i>Ashok Lalwani</i>	200	0.00	200	0.00	200	0.00	200	0.00
Total Promoter / Promoter Group holding	27,457,865	51.29	29,233,642	53.36	30,227,961	55.18	30,218,486	55.16
<i>Public Shareholdings</i>	21,620,547	40.39	21,094,770	38.51	20,100,451	36.69		
<i>Shares held by Custodians and against which Depository Receipts have been issued</i>	4,456,462	8.32	4,456,462	8.13	4,456,462	8.13		
Total Shareholding of the Company	53,534,874	100	54,784,874	100	54,784,874	100	54,784,874	100

4. It was observed that during the quarter ending June, 2010, the aggregate promoters' holding had increased from 53.36% to 55.18%, an increase of 1.82% due to the conversion of warrants by Anita Mansukhani, Nikhil Mansukhani and JPA on June 19, 2010. It was alleged that since total promoters' shareholding increased to 55.18% thereby crossing the threshold limit of 55% without complying with Regulation 11 (1) read with 2nd proviso to Regulation 11 (2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the '**SAST Regulations**'), Anita Mansukhani (AM), Nikhil Mansukhani (NM) and JPA (hereinafter referred to as the '**Noticees**') violated Regulation 11 (1) read with 2nd proviso to Regulation 11 (2) of the SAST Regulations.
5. In view of the findings of the Investigation as given above, SEBI has initiated adjudication proceedings under the SEBI Act, against the Noticees for allegedly not complying with Regulation 11 (1) read with 2nd proviso to Regulation 11 (2) of the SAST Regulations.

Appointment of Adjudicating Officer

6. SEBI vide Order dated March 11, 2011 had appointed the undersigned as Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (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 15H of the SEBI Act, the alleged violation of Regulation 11 (1) read with 2nd proviso to Regulation 11 (2) of the SAST Regulations by the Noticees.

Show Cause Notice, Reply & Personal hearing

7. Show Cause Notice dated May 11, 2011 (SCN) was issued to the Noticees in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against them in

respect of the violations alleged to have been committed by them. The SCN alleges that the Noticees failed to make public announcement to acquire shares in accordance with the SAST Regulations.

8. **Noticee Mr. Nikhil Mansukhani-** Vide his letter and e-mail dated July 19, 2011, Mr, Nikhil Mansukhani had submitted that before allotting the shares against the warrants to him, the Board had satisfied itself that the allotment of shares was within the permissible limits as specified in the SEBI Regulations as it was not aware of the market purchases made by the managing director Mr. J C Mansukhani and JPA Holdings Pvt. Ltd and Mr. J C Mansukhani was not only present at the said meeting of the Board but he was a part of the decision taken by the Board. As a result, the total shareholding of the promoter group consequent to the said allotment against conversion of warrants increased to only 54.93% of the total capital of the company which was well within the permissible limits. Unfortunately Mr. J C Mansukhani did not disclose the acquisition of shares made by him and his associate company a few days earlier; neither the company was informed nor the Board meeting where such allotment was made was informed by him of the additional shares acquired by him. Thus the conversion of the warrants was approved by the Board without being aware of the market acquisitions made just two days before the meeting as the same was not brought to the Company's notice. If the Board would have been informed of the said acquisition of shares by the managing director Mr. J C Mansukhani and JPA Holdings Pvt. Ltd, the Board would have approved conversion of lesser number of warrants so as to remain within the prescribed limits permissible under the SEBI regulations.
9. On considering the facts of the case as available on record, it was decided to conduct an inquiry in the matter. Accordingly, the undersigned had granted an opportunity of personal hearing on July 20, 2011 vide notice of hearing dated July 5, 2011. On the scheduled date,

the authorised representative Mr. S D Israni, advocate had appeared on behalf of the Noticee Mr. Nikhil Mansukhani and reiterated the submissions made vide letter dated July 19, 2011 and further submitted that the shares allotted by the Board were within the prescribed limit of 55% in terms of Regulation 11 of the SAST Regulations and that at that stage the Board was not aware of any acquisition by Mr. J C Mansukhani, managing director of the company and that the Noticee Mr. Nikhil Mansukhani did not act in concert with the managing director and in fact, the Noticee did not even have an inkling about the acquisition of shares by the managing director.

10. **Noticee Ms. Anita Mansukhani-** Vide her letter dated May 24, 2011, she had stated that Board of Directors of the Company at its Board meeting held on June 19, 2010 had approved allotment of 250,000 equity shares to them, pursuant to conversion of warrants. She was not aware that subsequent to the said allotment, the total promoters' shareholding increased to 55.18% thereby crossing the threshold limit of 55% and that it is duty of the company and its Board to check the threshold limit before allotment to them. Further, the Noticee vide her letter dated June 7, 2011, sought time till June 30, 2011 to submit additional written response.
11. Accordingly, the undersigned had granted an opportunity of personal hearing on June 20, 2011 vide notice of hearing dated June 10, 2011. The Noticee vide her letter and e-mail dated June 16, 2011, had intimated about the change in her correspondence address. The Noticee had been sent the Notice of hearing dated June 10, 2011 once again vide letter dated June 16, 2011. On the scheduled date of June 20, 2011, the authorized representatives of the Noticee Mr. Indranil Deshmukh, Principal Associate and Mr. Adarsh Saxena, Associate, Amarchand & Mangaldas & Suresh & Shroff & Co., Advocates and Mr. Kishore Talreja had appeared on behalf of the Noticee and stated that

they have already made their submissions vide letter dated June 20, 2011.

12. **Noticee M/s. JPA Holdings Private Limited-** Vide its letter dated May 24, 2011, the Noticee had stated that Board of Directors of the Company at its Board meeting held on June 19, 2010 had approved allotment of 250,000 equity shares to them, pursuant to conversion of warrants. It was not aware that subsequent to the said allotment, the total promoters' shareholding increased to 55.18% thereby crossing the threshold limit of 55% and that it is duty of the company and its Board to check the threshold limit before allotment to them. Further, the Noticee vide its letter dated June 7, 2011, sought time till June 30, 2011 to submit additional written response.
13. Accordingly, the undersigned had granted an opportunity of personal hearing on June 20, 2011 vide notice of hearing dated June 10, 2011. On the scheduled date of June 20, 2011, the authorized representatives of the Noticee Mr. Indranil Deshmukh, Principal Associate and Mr. Adarsh Saxena, Associate, Amarchand & Mangaldas & Suresh & Shroff & Co., Advocates and Mr. Kishore Talreja had appeared on behalf of the Noticee and stated that they have already made their submissions vide letter dated June 20, 2011.
14. Vide letter dated June 20, 2011, Noticees Ms Anita Mansukhani and M/s. JPA Holdings Pvt. Ltd. had submitted that there has been a serious rift between Mr. R C Mansukhani and Mr. J C Mansukhani since as far back as October 2009, when Mr. R C Mansukhani attempted to interfere with and curtail the powers of Mr. J C Mansukhani. Mr. R C Mansukhani (RCM) had even attempted to replace Mr. J C Mansukhani (JCM) as the managing director of the company in May 2010. Therefore, the RCM group is in control of the company and is systematically trying to marginalize the JCM group including the Noticees herein. Further, it was

stated that the RCM group has wilfully, deliberately and with a view to exert undue pressure on the JCM group, attempted to expose Mr. J C Mansukhani and Noticee M/s. JPA Holdings Pvt. Ltd. to proceedings, inter alia, under the SEBI Act by not filing the requisite disclosures with stock exchange/s under the PIT Regulations, despite the same having been handed over and made available to the company in compliance with the provisions of the SEBI Act and the PIT Regulations. Therefore, it was clear that the intent of the said deception was to victimize the JCM group, especially Mr. J C Mansukhani by falsely contending and implicating the Noticees of the alleged violation of the SAST Regulations. That it is apparent from the complaint letter dated October 1, 2010 addressed by the company that it could not be disputed and was well understood by all concerned that with regard to acquisition of shares on June 17-18, 2010, the Noticee/JCM group could not be said to be persons acting in concert with the RCM group. The fact that the RCM group proceeded to address the complaint dated October 1, 2010 to SEBI even before Mr. J C Mansukhani had replied to the Company's SCN dated September 29, 2010 to JCM demonstrates the malafide intent which motivated the said complaint letter. The relationship between both the groups had deteriorated to such an extent that the JCM group was constrained to take legal recourse by filing the CLB Petition in October 2010 for relief against the acts of oppression and mismanagement perpetuated by the RCM group. That the Noticees have been made the unfortunate victims of the disingenuous and/or fraudulent scheme and/or conduct of the RCM group who, in fact and in law, are in control of the company and attempting to squeeze out the JCM group from the company.

15. Thus the inquiry is being proceeded with taking into account the facts of the case, oral/written submissions made by the Noticee and other material available on record.

Consideration of Issues, Evidence and Findings

16. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are :

- a) Whether the Noticees have violated Regulation 11 (1) read with 2nd proviso to Regulation 11 (2) of the SAST Regulations?
- b) Does the violation, if any, on the part of the Noticees attract monetary penalty under section 15H of SEBI Act?
- c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

17. The relevant provisions of the SAST Regulations are as follows:

“Consolidation of holdings

11. (1) *No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent., in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*

(2)

.....

Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent (5%) voting rights in the target company subject to the following:-

- (i) *the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal / block deal / negotiated deal / preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;*

(ii) *the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).”*

18. I find from the material available on record that, on June 21, 2010 the Company informed BSE the outcome of Board Meeting held on June 19, 2010 regarding allotment of 10 lakh shares to the Noticees upon conversion of 10 lakh warrants. I find that aggregate promoter holdings as on June 30, 2010 went up to 55.18% due to conversion of warrants by the Noticees on June 19, 2010. Therefore, since the total promoters' shareholding increased to 55.18%, the same crossed the threshold limit of 55% stipulated under SAST Regulations requiring the Noticees to make public announcement to acquire the shares. Further, as the allotment of shares to the Noticees occurred upon conversion of warrants issued on preferential allotment basis, the same doesn't fall under proviso to Regulation 11 (2) of the SAST Regulations, thus requiring the Noticees to make public announcement on exceeding 55% threshold limit laid down in SAST Regulations.
19. The Noticees have not denied that pursuant to allotment of shares on conversion of warrants, the total promoter group shareholding has exceeded 55% of paid up capital of the company. They have also not denied that increase in promoter shareholding over 55% through preferential allotment does result in triggering the obligation for making public announcement for acquiring further shares from public. However, no announcement has been made till date. If the Noticees had no intention of acquiring more than 55% of the share capital, on becoming aware of the violation they could have taken appropriate corrective action as per law. There is no document/statement on record to signify such an intention. This indicates that they wish to continue to hold these shares which have resulted in the promoters' holding exceeding 55% of the paid up share capital.

20. The main contention of AM & JPA is that the RCM group is in control of the company and is systematically trying to marginalize the JCM group including them. This contention is not acceptable as the same seems to be an internal conflict among two promoter groups of the company and it is only vide letter dated April 22, 2011 that the stock exchanges were informed by the company about the formation of two different promoter groups and their constitution, before which the company is deemed to have only one promoter group. However, the liability of the acquirers does not change due to the abovementioned state of affairs in the company.
21. NM has contended that Mr. J C Mansukhani did not disclose the acquisition of shares made by him and his associate company a few days earlier to the Company due to which the conversion of the warrants was approved by the Board and shares were allotted. In my view, it is inappropriate for NM to state in his reply that had the company known about the acquisition by J C Mansukhani, it would have allotted lesser number of shares. As submitted by him, he had applied for conversion of warrants and the company had done so. There is no liability on the company to ensure/monitor the promoters' holdings. The liability pursuant to acquisition is that of the acquirer.
22. From the foregoing, I conclude that the Noticees failed to adhere to the disclosure requirements mandated under the SAST Regulations and thus it is established beyond doubt that the Noticees violated Regulation 11 (1) read with 2nd proviso to Regulation 11 (2) of the SAST Regulations warranting imposition of monetary penalty under Section 15H of the SEBI Act.
23. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund**¹ held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the*

¹ (2006) 68SCL 216 (SC)

intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”

24. Thus, the aforesaid violations by the Noticees make them liable for penalty u/s. 15H of the SEBI Act, 1992 which reads thus:

“Penalty for non-disclosure of acquisition of shares and takeovers

15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

- (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or*
- (ii) make a public announcement to acquire shares at a minimum price;*
- (iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or*
- (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.*

he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.”

25. While determining the quantum of penalty u/s. 15H, it is important to consider the factors stipulated in S.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 S.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.*

26. It is noted that it is difficult to assess the disproportionate gain or unfair advantage made by the Noticees as a result of the said failure to make public announcement to acquire shares. While it is difficult to ascertain exact loss to investors, they definitely lost an opportunity to exit the shares. Furthermore, it is difficult to ascertain the repetitive nature of the default, however, it has been established that the Noticees failed to make public announcement to acquire shares as required under the Takeover Regulations. As per records, the violation by the Noticees does not appear to be repetitive. It is essential for every market player to maintain necessary transparency levels in the market for which the said disclosure requirements have been mandated in the law and not act in a manner adverse to shareholders' interest. Hence, the violation by the Noticees needs to be viewed seriously.
27. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty against the aforesaid Noticees. SAST Regulations stipulate a methodology to arrive at the offer price pursuant to public announcement. The Noticees were required to acquire 1,09,56,975 shares of the company (being 20 % of the total issued capital) through the open offer mechanism and the market price at NSE was ₹ 87.20 on June 21, 2010. The available records do not enable me to arrive at the exact offer price; hence I am unable to arrive at the gain/ loss for the Noticees if they had made the open offer. Even though computation of exact profit / gain made by the Noticees is difficult, it can definitely be said that they have made notional gains in terms of avoiding the costs of making open offer as well as through interest on the amount which was supposed to be paid to investors through open offer for the period that they have not made the open offer. Considering the above, I am of the view that a penalty of Rs 10,00,00,000/- would be appropriate in the matter.

ORDER

28. In exercise of the powers conferred upon me u/s 15- I (2) of SEBI Act, I hereby impose a penalty of ₹ 10,00,00,000/- (Rupees Ten Crores only) on the Noticees, Mrs Anita Mansukhani, Mr Nikhil Mansukhani and M/s JPA Holdings Pvt. Ltd. on the basis of joint and several liability, in terms of Section 15H of the SEBI Act, 1992 for violation of Regulation 11 (1) read with 2nd proviso to regulation 11 (2) of the SAST Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticees.
29. The penalty shall be paid by way of a duly crossed 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, Investigation Department- 7 (IVD-ID7), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
30. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

DATE: September 30, 2011
PLACE: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER