

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 79/2009]

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

Roopa S Shah

(PAN. AMMPS3569G)

FACTS OF THE CASE IN BRIEF

1. Pursuant to the investigation conducted by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) in respect of buying, selling and dealing in the shares of Motorola Speciality Oils Limited (hereinafter referred to as ‘**MSOL/Company**’) for the period from January 1, 2001 to October 5, 2001 (hereinafter referred to as “**investigation period**”), it was alleged that Roopa S Shah (hereinafter referred to as “**Noticee**”) had failed to comply with regulations 13 (3) and 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”). Consequently, it was alleged that the Noticee was liable for penalty under section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer vide order dated May 15, 2008 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the alleged violations of provisions of the aforesaid regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notice No. EAD-5/VSS/JR/136956/2008 dated September 5, 2008 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A(b) of SEBI Act for the alleged violations specified in the said SCN.
4. The Noticee vide letter dated September 15, 2008 replied to the SCN denying the alleged violations.
5. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on February 13, 2009 at SEBI, Head Office, Mumbai vide notice dated January 29, 2009. Mr. Rajesh Maurya, Authorized Representative, (hereinafter referred to as "**AR**") appeared. During the hearing, the AR reiterated the submissions made vide letter dated September 15, 2008.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration in the present case are :
 - a) Whether the Noticee had violated regulations 13(3) and 13(5) of PIT?

- b) Does the violation/s, if any, on the part of the Noticee attract monetary penalty under section 15A(b) 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?

7. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT, which reads as under:

Continual disclosure.

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 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.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

8. I have noted the written and oral submissions of the Noticee made during the present proceedings. I find that the Noticee had contended that the allegation has been made based on the trading details, whereas it ought to have been made based on the shares/voting rights held by her. In this regard, I have noted the submission of the Noticee that she had not crossed the threshold limit of 5% shares/voting rights at any point of time. However, the transaction statement submitted by her vide letter dated February 24, 2009 was not categorical enough to confirm the said contention. Therefore, in order to verify the veracity of the statement of the Noticee, information was sought from Stock Holding Corporation of India Limited, the Depository Participant (hereinafter referred to as “**SHCIL**”) with whom the Noticee was having the BO account. SHCIL, vide fax dated May 14, 2009, has confirmed that the highest holding of the Noticee at any

point of time was 10,30,104 shares (3.52%) of MSOL. This corroborates the submission of the Noticee that she had never held 5% or more of shares/voting rights of MSOL.

9. On perusal of regulation 13 (3) of PIT, I find that the same is attracted only when an entity holds/held 5% or more shares/voting rights of a company at any point of time. On careful examination of the facts of the case, I find that the Noticee had never crossed 5% of shares/voting rights of MSOL at any point of time and hence, she had not attracted regulations 13(3) and 13(5) of PIT. When the regulations were not attracted, the question of their compliance or otherwise does not arise.

ORDER

10. In view of the foregoing, the alleged violation of the provisions of regulations 13(3) and 13(5) of PIT by the Noticee, as specified in the SCN, does not stand established and the matter is, accordingly, disposed of.
11. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **May 14, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER