

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 62 /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. MIR HASNAIN ALI KHAN

PAN NO.ADOPK6456B

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted examination in the trading in the scrip of Remidicheria Infra & Power Limited formerly known as Star Leasing Limited (hereinafter referred to as ‘**RIPL/ Company**’).
2. The findings of the examination led to the allegation that Mr. Mir Hasnain Ali Khan (hereinafter referred to as “**Noticee**”) had violated regulation 13 (3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT Regulations**’) and consequently, liable for monetary penalty under section 15A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated March 24, 2011 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 '**Rules**') to inquire into and adjudge under section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD/PB/RG/12269/2011 dated April 11, 2011 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act for the alleged violation specified in the SCN.
5. It was alleged in the SCN that as a result of off-market sale of 13,050 shares on July 15, 2008 which constituted 5.44% of the total shareholding, Noticee's shareholding reduced to 94,351 shares i.e. 39.31% of the total shareholding. Since, there was a change in shareholding by more than 2% of the total shareholding, therefore, in terms of regulation 13(3) read with regulation 13(5) of the PIT Regulations, Noticee was required to make disclosures to the company regarding change in his shareholding within 4 working days of the sale of shares. The disclosures were made by the Noticee under regulation 13(3) read with regulation 13(5) of PIT Regulations on January 27, 2009 as against the due date of July 18, 2008. There was a delay of 194 days.
6. The SCN addressed to the Noticee were sent through SPAD. The SCN was received and acknowledged by the Noticee. The Noticee vide letter dated April 25, 2011 replied to the SCN and inter-alia stated that:

"With reference to your Notice no. EAD/PB/RG/12273/2011 dated the 11th April, 2011 we submit the following facts for your consideration and request you to kindly condone the delay in making disclosure under Regulation 13(3) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and the delay is unintentional and there is no mala fide intention in any manner:

- 1. The Company has a small share capital base of ₹ 24 lakhs divided into 2,40,000 equity shares of ₹ 10 each and its total number of shareholders are very small i.e. less than 100 shareholders and listed only in Bombay Stock Exchange.*
 - 2. The trading in the equity shares has been under "suspension mode" in BSE .*
 - 3. Reserve Bank of India rejected to give NBFC Registration and as a result the company has not been carrying on any business for the past several years.*
 - 4. The sale of shares was done through "off market" at face value and not at any premium and the promoters have not gained anything in the process and it is not detrimental to any shareholders.*
 - 5. The allegation in the SCN that the disclosure was made after a delay of 194 days. We humbly submit that this delay was purely unintentional and lack of professional help and guidance in time and there is no mala fide intention on the part of the sellers.*
 - 6. We also submit that Mrs. Rasheeda Fatima and Mr. Mir Mir Mehdi Ali Khan have not sold any shares prior to the open offer and thus have not violated any of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992.*
 - 7. In the light of the above facts and circumstances of the case, we request you to kindly condone the delay in disclosure and drop the proceedings against us. We assure you that such instances shall not recur in future and ensure compliances promptly. We are herewith enclosing the copy of PAN Cards of Mir Ahmed Ali Khan, Mr. Hasnain Ali Khan, Mr. Mir Ahmed Ali Khan. We further bring to your notice that Mrs. Rasheeda Fatima does not possess a Pan Card."*
7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on May 26, 2011, vide notice dated May 16, 2011 sent through SPAD

to the Noticee. The said hearing notice was received and acknowledged by the Noticee. Vide e-mail dated May 19, 2011, Noticee requested for postponement of the hearing to June 08-10, 2011. Accordingly, another opportunity of hearing was given to the Noticee on June 10, 2011. Mr. Mir Ahmed Ali Khan and Sri Manikyaram Devata, Practicing Company Secretary appeared as Authorized Representatives (hereinafter referred to as “ARs”) on behalf of the Noticee for the hearing. During the course of hearing, the ARs reiterated the submissions made vide letter dated April 25, 2011.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had violated the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations?
 - b. Does the violations, if any, attract monetary penalty under section 15A(b) of the 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 the SEBI Act?
9. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, which reads as under:-

PIT Regulations

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

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.

(4).....

(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.

- Upon perusal of the documents available on record and the reply of the Noticee, I find that vide Share Purchase Agreement dated March 12, 2001, the present promoters and directors of the company i.e. Mrs. Rasheeda Fatima, Mr. Mir Mehdi Ali Khan, Mr. Mir Ahmed Ali Khan and the Noticee had acquired 78.92% shares of Star Leasing Limited from the erstwhile promoters. Subsequently an open offer was made vide public announcement dated March 16, 2001 to the shareholders of the Target Company i.e. Star Leasing Limited to acquire additional 20% shares/voting rights under which the present promoters acquired 24,551 (10.23%) shares, as a result of which their shareholding increased to 89.15%.
- As on July 15, 2008, your shareholding in RIPL was 1,07,401 shares i.e. 44.75% of the total shareholding. On July 15, 2008, as a result of off-market sale of 13,050 shares by the Noticee which constituted 5.44%, of the total shareholding, Noticee's shareholding reduced to 94,351 shares i.e. 39.31% of the total shareholding.

Alleged violation of regulation 13(3) read with regulation 13(5) of PIT Regulations

10. In terms of regulation 13(3) of PIT Regulations, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose

to the company the number of shares or voting rights held and change in shareholding or voting rights under two circumstances as detailed below:

- If such change results in shareholding falling below 5%:
- If there has been change in such holdings from the last disclosure made under regulation 13(1) or under regulation 13(3) and such change exceeds 2% of total shareholding or voting rights in the company.

11. As per regulation 13(5) of PIT Regulations, the disclosure mentioned in sub-regulation (3) 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.

12. In the instant case, with the off-market sale of 13,050 shares on July 15, 2008 by the Noticee which constituted 5.44% of the total shareholding, the shareholding of the Noticee reduced from 44.75% to 39.31% of the total shareholding. Since, there was a change in shareholding by more than 2% of the total shareholding, therefore, in terms of regulation 13(3) read with regulation 13(5) of the PIT Regulations, Noticee was required to make disclosures to the company regarding change in his shareholding within 4 working days of the sale of shares. The disclosures were made by the Noticee under regulation 13(3) read with regulation 13(5) of PIT Regulations on January 27, 2009 as against the due date of July 18, 2008. There was a delay of 194 days.

13. The Noticee did not make the disclosure in time. Further, from the reply dated April 25, 2011 of the Noticee, I find that the Noticee has admitted that there was a delay which was unintentional and there was no mala fide intention while selling the shares. The Noticee, therefore, ought to have made relevant disclosures to the company as per the provisions of PIT Regulations.

However, the Noticee failed to do so. Therefore, the allegation of violation of regulation 13(3) read with 13(5) of PIT Regulations stands established.

14. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”*

15. 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”*.

16. As the violation of the provisions of regulation 13(3) read with regulation 13(5) of the PIT Regulations is established, I hold that the Noticee is liable for monetary penalty under section 15A(b) of the SEBI Act, which 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 thereunder, -

(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.

17. While determining the quantum of monetary penalty under section 15A (b) , I have considered the factors stipulated in section 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 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. The object of the PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. The disclosure assumes all the more significance as the same was transacted through off market. Since the transaction had taken place off market, it is all the more important for the Noticee to have disclosed the same in a timely manner to the company, so that it could have brought it to the knowledge of the public in time. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors. It may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee.

ORDER

19. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 25,000 /- (Rupees Twenty Five Thousand Only/-) under

section 15A (b) on the Noticee which will be commensurate with the violation committed by him.

20. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Mr. Shashi Kumar, Deputy General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

21. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 30 , 2011

Place: MUMBAI

PARAG BASU

ADJUDICATING OFFICER