

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
ADJUDICATION ORDER NO. EAD/BJD/NJMR/105/2017-18**

**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:

**Lakhani India Ltd.,  
(PAN: Not available)  
131, Sector 24  
Faridabad – 121005.**

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') while conducting an examination in the scrip of Lakhani India Ltd., ("**Lakhani**" / "**Noticee**" / "**Company**") on August 22, 2014 observed that there were inter-se transfer of shares of the Company among the promoters viz., Suman Lakhani and Mayank Lakhani, without making disclosures in terms of the provisions of SEBI (Prohibition of Insider Trading Regulations), 1992 (*hereinafter referred to "**PIT Regulations**"*) and SEBI (Substantial Acquisition of Shares & Takeovers), 2011 (*hereinafter referred to "**SAST Regulations**"*). It was observed by SEBI that pursuant to inter-se transfer among the promoters, the Noticee failed to make disclosures under the provisions of SEBI (PIT) Regulations and thereby violated the provisions of Regulation 13 (6) of SEBI (PIT) Regulations.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as the Adjudicating Officer vide Order dated May 18, 2017 (*communicated vide Order dated November 7, 2017*) under Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred

to as “**Adjudicating Rules**”) to inquire into and adjudge under Section 15 A (b) of the SEBI Act for the alleged violation of provisions SEBI (PIT) Regulations.

### **SHOW CAUSE NOTICE**

3. A Show Cause Notice (hereinafter referred to as “**SCN**”) bearing ref. no. EAD/BJD/NJMR/1139/2018 dated January 11, 2018 was issued to the Noticee under Rule 4 of SEBI Adjudicating Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15 A (b) of the SEBI Act, 1992 for the violation alleged to have been committed by it.
4. It was alleged in the SCN that that there was an inter-se transfer of 63,68,075 shares amongst two promoters viz., Suman Lakhani and Mayank Lakhani in the scrip of Lakhani India Ltd., on August 22, 2014. It was observed that Mayank Lakhani had transferred 63,68,075 shares to Suman Lakhani through off-market. As a result, the shareholding of Suman Lakhani increased from 11.07% (14,89,510 shares) to 58.4% (75,57,585 shares) and shareholding of Mayank Lakhani decreased from 47.33% (63,68,075 shares) to 0% (NIL shares), of the total shareholding. It was observed that no disclosures were available on the website of Bombay Stock Exchange Ltd., (BSE), where the shares of Lakhani India Ltd., were listed. It was also confirmed by BSE vide email dated October 27, 2014 that no disclosures were received under Regulation 29 of SAST Regulations and Regulation 13 of PIT Regulations from the Company i.e., Lakhani India Ltd., and from the two promoters viz., Suman Lakhani and Mayank Lakhani.
5. In terms of Regulation 13 (6) of SEBI (PIT) Regulations, every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III. However, it was observed that no such disclosures were made

by Lakhani India Ltd., to BSE. Therefore, it was alleged that the Noticee by not making the required disclosures in terms of SEBI (PIT) Regulations, has violated the provisions of Regulation 13 (6) of SEBI (PIT) Regulations.

6. The SCN sent to the aforesaid address, returned undelivered with the remarks "*left*". The SCN sent by digitally signed email was bounced.
7. I am given to understand that Hon'ble High Court of Punjab & Haryana at Chandigarh vide Order dated April 21, 2015 and May 25, 2015 passed in C.P. No. 159 of 2013, had appointed the Official Liquidator attached to Hon'ble High Court of Punjab & Haryana at Chandigarh as the Provisional Liquidator of the Noticee viz., Lakhani India Ltd., and thereafter, Hon'ble High Court of Punjab and Haryana at Chandigarh pleased to pass Orders to wound up the Company vide Order dated August 24, 2015.

## **FINDINGS**

8. I have carefully perused documents available on record. I note the following facts of the case.
  - a) The Noticee was required to disclose to all stock exchanges on which the shares of the company are listed, the information received under sub-regulations (1), (2), (3) and (4) of SEBI (PIT) Regulations.
  - b) It was observed that the Noticee failed to make disclosures of inter-se transfer of shares amongst promoters of the Company in terms of Regulation 13 (6) of SEBI (PIT) Regulations.
  - c) I note that the Noticee had been ordered to wound up and the Official Liquidator had been appointed as Provisional Liquidator, by Orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh.
9. In view of the above, I am of the view that before proceeding in the matter on its merit, it would be in the fitness of the thing to first decide the preliminary

issue as to whether the Adjudication proceedings initiated by SEBI against the Noticee are maintainable.

10. In order to examine the maintainability of the present Adjudication proceedings against Noticee, it will be appropriate to refer to Section 446 of the Companies Act, 1956, (corresponding to Section 279 of Companies Act, 2013) which reads as under:-

**“Section 446 of Companies Act, 1956**

*When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose.”*

11. According to Black’s Law Dictionary, Sixth Edition, the term ‘Legal Proceedings’ includes “all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy.” Further, the term ‘Proceedings’ means, “any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.”
12. In the “Guide to the Companies Act” by A Ramaiya, (17th Edition Reprint 2010, page 4929 & 4930), it is stated that the object of winding up of a company by the court is to facilitate the protection and realization of its assets with a view to ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. Consequently, once the court has taken the assets of a company under its control or has passed an order for its being wound up, it will not be proper to allow proceedings to be started

or continued against the company. "Section 446 is wide in its terms and is not restricted to any category of suits or any class of plaintiffs. It is wide enough to cover all suits and other legal proceedings who-ever may be plaintiff." {**Murgan Oil Industries (P.) Ltd. Re, (1970) 40 Com. Cases 77, 82 (Mad) }**}.

13. While examining the issue of maintainability of the legal proceedings initiated after the date of order of winding up/ appointment of Official Liquidator, the Hon'ble High Court of Bombay, in the case of **Deutsche Bank v. S.P. Kala {(1990) 67 Com. Cases}** held as under:-

*"Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Sub-section (2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction..... The expression "any suit or proceeding by or against the company" is wide enough to bring within its sweep any kind of suits."*

14. I note that Adjudication proceedings against the Noticee commenced on May 18, 2017, whereas, the Noticee has been ordered to be wound up by Hon'ble High Court of Punjab & Haryana vide Order dated August 24, 2015.

15. In the light of the above, I am of the considered view that the present Adjudication proceedings against the Noticee which is under liquidation

cannot be continued without the leave of the Court as it falls under the term “other legal proceedings” used in Section 446 of Companies Act, 1956. Further, I note that there is no material on record to suggest that leave of the Court has been taken.

## **ORDER**

16. In view of my findings noted in the preceding paragraphs, I am of the view that the Adjudication proceedings initiated against the Noticee vide SCN dated January 11, 2018 is not maintainable and therefore disposed of accordingly.
17. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee, Official Liquidator (*attached to Punjab & Haryana High Court*), Corporate Bhawan, Plot No. 4-B, 2<sup>nd</sup> Floor, Sector 27-B, Madhya Marg, Chandigarh - 160019 and also to the Securities and Exchange Board of India.

**Place: Mumbai**

**Date: 29 January 2018**

**B J DILIP**

**ADJUDICATING OFFICER**