

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.: - PG/AO/97/2011]**

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**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**

**M/s. MAN Industries (India) Limited**

**[PAN: AAACM2675G]**

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**Background of the case**

1. The Securities and Exchange Board of India (**SEBI**) had received a complaint dated October 01, 2010 from the Company Secretary of the company M/s. MAN Industries (India) Limited (hereinafter referred to as the '**Noticee**') regarding certain irregularities committed by Mr. J C Mansukhani, Vice-Chairman and Managing Director of the Noticee and by JPA Holdings Pvt. Ltd, a company owned and controlled by J C Mansukhani, while dealing in the shares of the Noticee 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 Noticee are listed on the Bombay Stock Exchange (**BSE**) and the National Stock Exchange (**NSE**). The Global Depository Receipts (**GDR**) of the Noticee are listed on NASDAQ, Dubai and bonds issued by the Noticee are listed on Singapore Stock Exchange (**SSE**).

2. SEBI conducted investigation into the affairs of the Noticee 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 the Noticee had informed BSE on May 08, 2010 that a Board meeting would be held on May 18, 2010 to inter alia consider and recommend final dividend. The Noticee also made an announcement on May 18, 2010 that the Board of Directors had recommended dividend of 35%. The Noticee also made various other corporate announcements during the investigation period, the details of which and their impact on the price of the scrip are as follows:

(Source: [www.bseindia.com](http://www.bseindia.com))

Date of announcement	Announcement	Impact on price of the scrip (Figures are for BSE. Figures within brackets and italicized represent NSE)
June 16, 2010 (Wednesday) @ 3:57:39 PM	The Board of Directors of the Company at its meeting held on June 15, 2010, has considered and approved the allotment of 2,50,000 Equity Shares of Rs. 5/- each at a premium of Rs. 30/- per share to Mr. Nikhil Mansukhani, a promoter, upon conversion of 2,50,000 number of warrants into equivalent number of equity shares by way of preferential allotment.	The scrip opened on June 17, 2010 at ₹86.85 ( <i>₹87.20</i> ), touched an intraday high and low of ₹88.85 ( <i>₹88.80</i> ) and ₹85.30 ( <i>₹85.25</i> ) resp. before closing at ₹86.50 ( <i>₹86.90</i> ) [previous closing ₹86.55 ( <i>₹86.45</i> )]. The scrip opened <b>0.35% (0.85%) higher</b> than its last closing price. 94, 562 ( <i>1, 66, 408</i> ) shares were traded on June 17, 2010.
June 21, 2010 (Monday) @ 8:18:17 AM	Man Industries (India) Ltd has informed BSE about outcome of Board Meeting held on June 19, 2010 regarding allotment of 10 lakh shares to Nikhil Mansukhani, Anita Mansukhani and JPA Holdings Pvt. Ltd. upon conversion of 10 lakh warrants	The scrip opened on June 21, 2010 at ₹88.00 ( <i>₹90.25</i> ), touched an intraday high and low of ₹90.85 ( <i>₹90.65</i> ) and ₹87.10 ( <i>₹86.80</i> ) resp. before closing at ₹87.40 ( <i>₹87.20</i> ) [previous closing ₹87.95 ( <i>₹88.00</i> )]. The scrip opened <b>0.06% (2.56%) higher</b> than its last closing price. 66, 316 ( <i>73, 488</i> ) shares were traded on June 21, 2010.
June 22, 2010 (Tuesday) @ 10:22:42 AM	The Register of Members & Share Transfer Books of the Company will remain closed from July 10, 2010 to July 16, 2010 (both days inclusive) for the purpose of Payment of Dividend & Annual General Meeting (AGM) of the Company to be held on July 16, 2010. (See Note 1)	The scrip opened on June 22, 2010 at ₹87.00 ( <i>₹87.80</i> ), touched an intraday high and low of ₹87.00 ( <i>₹87.80</i> ) and ₹85.40 ( <i>₹85.65</i> ) resp. before closing at ₹85.85 ( <i>₹85.90</i> ) [previous closing ₹87.40 ( <i>₹87.20</i> )]. The scrip opened <b>0.46% lower (0.69% higher)</b> than its last closing price. 37, 270 ( <i>29,413</i> ) shares were traded on June 22, 2010.
July 20, 2010 (Tuesday) @ 5:47:49 PM	The members at the 22nd Annual General Meeting of the Company held on July 16, 2010, inter alia, have	The scrip opened on July 21, 2010 at ₹85.65 ( <i>₹83.25</i> ), touched an intraday high and low of ₹83.70 ( <i>₹83.50</i> ) and ₹82.60 ( <i>₹82.25</i> ) resp.

	<p>approved the following:</p> <ol style="list-style-type: none"> <li>1. Adoption of the Audited Balance Sheet as at March 31, 2010 and the Profit &amp; Loss Account for the year ended as on that date and the Reports of Auditors and Directors thereon.</li> <li>2. Dividend of 35% on the Equity Shares (Rs. 1.75 per share of the Face Value of Rs. 5/- each) for the year ended March 31, 2010.</li> <li>3. Re-appointment of Mr. Kirit Damania and Mr. Vijay G. Kalantri as Directors of the Company.</li> <li>4. Appointment of M/s. Rohira Mehta &amp; Associates, Chartered Accountants, as the Statutory Auditors of the Company.</li> </ol>	<p>before closing at ₹82.90 (₹82.80) [previous closing ₹82.25 (₹82.15)]. The scrip opened <b>0.49% (1.34%) higher</b> than its last closing price. 18, 666 (23, 858) shares were traded on July 21, 2010.</p>
<p>August 12, 2010 (Thursday) @ 2:03:47 PM)</p>	<p>Man Industries (India) Ltd has informed BSE about the Financial Results for the Quarter ended June 30, 2010.</p>	<p>The scrip opened on August 12, 2010 at ₹86.25 (₹85.50), touched an intraday high and low of ₹93.90 (₹93.90) and ₹86.25 (₹85.50) resp. before closing at ₹90.45 (₹90.35) [previous closing ₹86.25 (₹86.35)]. The scrip opened at the <b>same levels (0.98% lower)</b> as its last closing price. 21, 30, 196 (26, 87, 538) shares were traded on August 12, 2010.</p> <p>The scrip opened on August 13, 2010 at ₹92.00 (₹91.40), touched an intraday high and low of ₹92.00 (₹91.70) and ₹86.10 (₹86.20) resp. before closing at ₹86.60 (₹86.65) [previous closing ₹90.45 (₹90.35)]. The scrip opened <b>1.71% (1.16%) higher</b> than its last closing price. 3, 24, 482 (4, 36, 838) shares were traded on August 13, 2010.</p>
<p>August 18, 2010 (Wednesday) @ 6:00:06 PM</p>	<p>Man Industries (India) Ltd has informed BSE that the auditor's have conducted the limited review of the unaudited financial results for the quarter ended June 30, 2010.</p>	<p>The scrip opened on August 19, 2010 at ₹91.85 (₹92.50), touched an intraday high and low of ₹96.40 (₹95.95) and ₹91.85 (₹94.55) resp. before closing at ₹94.85 (₹94.85) [previous closing ₹92.30 (₹94.85)]. The scrip opened <b>0.49% lower (0.27% higher)</b> than its last closing price. 4, 59, 286 (3, 80, 092) shares were traded on August 19, 2010.</p>
<p>September 07, 2010 (Tuesday) @ 1:51:35 PM</p>	<p>Man Industries (India) Ltd has informed BSE regarding a Press Release dated September 07, 2010 titled "MAN Industries bags orders worth ₹ 1200 crores from Domestic and International Market".</p>	<p>The scrip opened on September 07, 2010 at ₹105.00 (₹105.60), touched an intraday high and low of ₹109.90 (₹109.90) and ₹104.00 (₹104.30) resp. before closing at ₹105.55 (₹105.65) [previous closing ₹103.75 (₹103.75)]. The scrip opened <b>1.20% (1.78%) higher</b> than its last closing price. 5, 37, 171 (7, 35, 047) shares were traded on September 07, 2010.</p> <p>The scrip opened on September 08, 2010 at</p>

		₹106.55 (₹106.90), touched an intraday high and low of ₹108.90 (₹109.40) and ₹104.75 (₹104.50) resp. before closing at ₹105.25 (₹105.20) [previous closing ₹105.55 (₹105.65)]. The scrip opened <b>0.95% (1.18%) higher</b> than its last closing price. 3, 38, 601 (4, 61, 084) shares were traded on September 08, 2010.
September 27, 2010 (Monday) @ 6:56:04 PM	The Board of Directors of the Company at its meeting held on September 27, 2010, have withdrawn with immediate effect the powers of management exercisable by Mr. J C Mansukhani as the Managing Director of the Company ( <b>See Note 2</b> )	The scrip opened on September 28, 2010 at ₹102.60 (₹101.00), touched an intraday high and low of ₹103.40 (₹103.70) and ₹97.50 (₹97.50) resp. before closing at ₹97.95 (₹98.10) [previous closing ₹102.60 (₹102.50)]. The scrip opened at the <b>same levels (1.46% lower)</b> as its last closing price. 2, 43, 761 (2, 06, 616) shares were traded on September 28, 2010.

**Note 1** The Company had made an announcement to the BSE on May 08, 2010 stating that a Board Meeting would be held on May 18, 2010 to *inter alia* consider and recommend final dividend. The Company also made an announcement on May 18, 2010 stating that the Board recommended dividend of 35%.

**Note 2** The Company on October 18, 2010 informed BSE that the Board of Directors at its meeting held on October 16, 2010, had revoked the suspension of Mr. J. C. Mansukhani as the Managing Director.

3. In terms of the PIT Regulations, out of the above announcements, the announcements relating to periodical financial results, intended declaration of dividend, significant changes in policies, plans or operations of the Noticee, execution of new projects etc., are price sensitive information (PSI).

4. It was observed that the Noticee had received orders aggregating ₹ 1200 crores from various entities which it informed BSE on September 07, 2010 and the details of such orders are as follows:

(₹ in crore)

S. No.	Buyer	Value	Cumulative	Date of receipt of orders
1	SCOP-5391	54.74	54.74	17-Jun-2010
2	GAIL – Assorted	5.89	60.63	27-Jul-2010
3	TI-4 (ABB/ KOC)	155.69	216.32	06-Aug-2010
4	SCOP-2090	623.60	839.92	15-Aug-2010
5	ELP – Zakhem	161.92	1,001.84	25-Aug-2010
6	GAIL – DBP	123.14	1,124.98	26-Aug-2010
7	ADCO	15.18	1,140.16	30-Aug-2010
8	Various / Miscellaneous	59.84^	1,200.00	
	<b>Total</b>	<b>1,200.00</b>		

(^ - approximately 5% of the total order value. This amount was stated to have been mentioned to take care of fluctuations in order quantity and for currency fluctuation.)

5. The investigation report states that though the Noticee claimed the information relating to substantial orders aggregating ₹ 1200 crores to be PSI, it was observed that orders were received in varying value from June 17, 2010 to August 30, 2010 in tranches. Considering the total sales of the company of ₹1,505.96 crores during the financial year 2009 -10, during the period of investigation, the day the cumulative value of orders exceeded 10% of the said total sales i.e., ₹ 150 crore, has been considered as the date when PSI relating to substantial orders came into existence i.e. August 06, 2010. Further, from August 06, 2010 to August 30, 2010, orders aggregating ₹ 1, 139. 37 crores were received by the company and information thereto was submitted to BSE on September 07, 2010. Hence, the period August 06, 2010 to September 07, 2010 has been considered as the period when the information about substantial orders was Unpublished Price Sensitive Information (UPSI). The company should have closed the trading window during the above period when the information was UPSI. However, the Company had informed that trading window was closed from August 02, 2010 to August 13, 2010 for the purpose of declaration of financial results for the quarter ended June 2010.
6. In view of the findings of the Investigation as given above, SEBI has initiated adjudication proceedings under the SEBI Act, against the Noticee for allegedly failing to close the trading window in respect of UPSI about substantial orders received by it and for making public the PSI relating to substantial orders after a delay of 7 days thereby violating Regulation 12 (1) read with Clause 3.2 of Part A of Schedule I and Regulation 12 (2) read with Clause 2.0 of Schedule II respectively of the PIT Regulations.

#### **Appointment of Adjudicating Officer**

7. 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 15HB of the SEBI Act, the alleged violation of Regulation 12 (1) read with Clause 3.2 of Part A of Schedule I and Regulation 12 (2) read with Clause 2.0 of Schedule II of the PIT Regulations.

### **Show Cause Notice, Reply & Personal hearing**

8. A Show Cause Notice dated May 11, 2011 (SCN) was issued to the Noticee in terms of the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against it in respect of the violations alleged to have been committed by it. The SCN alleges that the Noticee failed to close the trading window in respect of the UPSI relating to substantial orders received by it and there was a delay in making public the PSI relating to the said substantial orders.
9. The Noticee vide its letter and e-mail dated May 26, 2011 requested for time till June 3, 2011 to submit its reply. Accordingly, the Noticee vide its letter and e-mail dated June 2, 2011 submitted its reply, wherein the Noticee, inter alia, stated the following,
  - That the business of the Noticee is a tender based business and is highly competitive in nature. The submission of tenders and receipt of order may take a period even more than six months and the information about submission of tender and the price quoted therein being sensitive in nature the same is not available to the employees but is restricted to very few persons in the marketing department. That the assumption in the show cause notice about the receipt of orders exceeding 10% of the total sales constitutes PSI has no basis and is incorrect. As the order process is very long and if they close the trading window the day the orders received crosses 10% of the total sales, then the period of window closure will be very long as they receive the orders worth more than 10% of the total sales

throughout the year and as per the practice followed by the Noticee, the receipt of orders below Rs.550 crores are not informed to the stock exchanges, since in the opinion of the Noticee, the said information is not PSI. Only on the aggregate values of confirm orders exceeding Rs. 550 crores, does the Noticee disclose to the stock exchanges.

- That as regards the order from State Company for Oil Projects, Iraq (SCOP) for an amount equivalent to Rs. 623.60 crore received on August 15, 2010, was not a confirm order and from their letter dated August 15, 2010, it can be inferred that there was only intention to award the order. There were a lot a negotiations after August 15, 2010 with SCOP and on September 7, 2010, the order got confirmed and the total quantum of order booked was increased from Rs.516.56 crore to Rs. 1200 crore and hence immediately the Noticee had informed the Stock Exchanges about the receipt of the orders.
- That therefore there is no default by the Noticee in either closing the trading window or delay in submission of PSI to the stock exchanges.

10. 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 June 20, 2011 vide notice of hearing dated June 10, 2011. On the scheduled date, the authorised representatives of the Noticee, Mr. SD Israni, advocate and Mr. Rajesh Parte, company secretary, had appeared on behalf of the Noticee and submitted that the additional written submissions would be made by June 27, 2011. Accordingly, on the said date, the Noticee had filed additional written submissions, wherein, the Noticee reiterated the earlier submissions and had inter alia stated that the primary mode of generating orders is the bidding process, which is normally a long drawn out process at times spreading over several months and the Noticee's managing director was personally in-charge of marketing operations of the Noticee. That their annual sales turnover is

around Rs. 1600 crores comprising of several orders including many small orders vis-à-vis turnover. Further, it was stated that as far as the disclosure of orders to the stock exchanges is concerned, whenever the management believes that it has got a large order the information about the same is conveyed to the stock exchanges and that there are no guidelines provided in any of the SEBI Rules and Regulations that indicate what the threshold limit is for such disclosures. That the 10% limit specified in the show cause notice is not mentioned in any of the said rules or regulations. That the closing of the trading window for order announcement is neither mandated by SEBI Regulations nor is it practical as the events of order procurement are uncertain and keep on happening throughout the year and in the present case, the managing director being the principal officer of the Noticee, he was privy to all the developments on the order front and therefore, his action of buying shares was a blatant and brazen offence of the PIT Regulations.

11. 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**

12. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are :
  - a) Whether the Noticee has violated Regulation 12 (1) read with Clause 3.2 of Part A of Schedule I and Regulation 12 (2) read with Clause 2.0 of Schedule II of the PIT Regulations?
  - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HB 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?
13. The relevant provisions of the PIT Regulations are as follows:



***“Code of internal procedures and conduct for listed companies and other entities***

12. (1) *All listed companies and organisations associated with securities markets including:*

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;*
- (b) the self-regulatory organisations recognised or authorised by the Board;*
- (c) the recognised stock exchanges and clearing house or corporations;*
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and*
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.*

*(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

***Schedule I***

***[Under regulation 12(1)]***

***PART A***

***MODEL CODE OF CONDUCT FOR PREVENTION OF  
INSIDER TRADING FOR LISTED COMPANIES***

***1.0 ....***

***2.0 .....***

***3.0 .....***

3.1 .....

### **3.2 Trading window**

3.2.1 *The company shall specify a trading period, to be called “trading window”, for trading in the company’s securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.*

3.2.2 *When the trading window is closed, the employees/directors shall not trade in the company’s securities in such period.*

3.2.3 *The trading window shall be, inter alia, closed at the time:—*

- (a) Declaration of financial results (quarterly, half-yearly and annually).*
- (b) Declaration of dividends (interim and final).*
- (c) Issue of securities by way of public/rights/bonus etc.*
- (d) Any major expansion plans or execution of new projects.*
- (e) Amalgamation, mergers, takeovers and buy-back.*
- (f) Disposal of whole or substantially whole of the undertaking.*
- (g) Any changes in policies, plans or operations of the company.*

3.2.3A *The time for commencement of closing of trading window shall be decided by the company.*

3.2-4 *The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.*

3.2-5 *All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.*

3.2-6 *In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall not be allowed when trading window is closed.”*

## **SCHEDULE II**

**[Under regulation 12(2)]**

### **CODE OF CORPORATE DISCLOSURE PRACTICES FOR**

#### **PREVENTION OF INSIDER TRADING**

**1.0** ....

#### **2.0 Prompt disclosure of price sensitive information**

2.1 *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

2.2 *Listed companies may also consider ways of supplementing information released to stock exchanges by improving Investor access to their public announcements.”*

14. The Noticee in its complaint dated October 1, 2010, had stated that the information regarding receipt of orders (worth Rs. 1200 cr) from the various client companies was highly price sensitive and in terms of the PIT Regulations, significant changes in operations of a company constitutes PSI. I further find that the Noticee in its letter dated October 27, 2010, had stated that it received orders aggregating ₹ 1200 crores from various entities which it informed BSE on September 07, 2010, the details of which are given in para 5 of this order.
15. The above stand of the Noticee is contradictory to its contention mentioned in its reply dated June 2, 2011 that as per the practice followed by the Noticee, the receipt of orders below ₹.550 crores are not informed to the stock exchanges, since in the opinion of the Noticee, the said information is not PSI and only on the aggregate values of confirmed orders exceeding Rs. 550 crores, does the Noticee disclose to the stock exchanges. It is the Noticee's own case that aggregate order values exceeding ₹.550 crores are considered PSI by it.
16. Further, the Noticee's contention with regards to the order from State Company for Oil Projects, Iraq (SCOP) for an amount equivalent to Rs. 623.60 crore received on August 15, 2010, is that it was only a letter of intent and got converted to an order only on September 07, 2010 when the company duly disclosed the same. The company's submissions in this regard vide letter dated June 02, 2011 are given below:-

*"You may notice from the information and documents submitted by us that the order from State Company for Oil Projects, Iraq (SCOP) for an amount equivalent to Rs. 623.60 Crore was received on 15<sup>th</sup> August 2010. However, the letter dated August 15, 2010 received from SCOP was not a confirm order. You may notice from the said letter dated 15<sup>th</sup> August, 2010, that it was only an intention to award the order and was not a confirm order. After 15<sup>th</sup> August 2010 there were lot of negotiations with SCOP and finally on 7<sup>th</sup> September*

*2010, we sent to SCOP our final comments on the “Form of Contract” received by us from SCOP and that was the day when the Company was reasonably sure of the confirmation of the said order. Due to confirmation of this order on 7<sup>th</sup> September , 2010, the total quantum of order booked was increased from Rs. 516.56 Crore to Rs. 1200 Crore (including 5% for fluctuations in order quantity and currency fluctuations) and hence immediately on 7<sup>th</sup> September 2010, the Company informed the Stock Exchanges about the receipt of the orders.”*

As per the above submission, the sending of final comments in the form of contract to SCOP by the Noticee has been treated as order confirmation which does not appear reasonable, in absence of any specific document from SCOP specifically confirming the order. I would, therefore, consider August 15, 2010 as the order date as was originally submitted by the company (vide letter dated October 27, 2010). As per its own policy, the Noticee should have disclosed the information relating to substantial orders to the stock exchange on August 15, 2010 and should have closed the trading window from that day onwards till the information was made public on September 7, 2010.

17. I find that receipt of huge orders which exceeded Rs. 550 crores is price sensitive information and is covered under the clause ‘changes in plans or operations of the company’ for which trading window needs to be closed as per Clause 3.2 of Part A of Schedule I read with Regulation 12 (1) of the PIT Regulations.

18. I further find that the receipt of orders was over a period of time and on August 15, 2010, it exceeded Rs. 550 crores. However, the Noticee made this announcement on September 7, 2010, thus violating Clause 2.0 of Schedule II read with Regulation 12 (2) of the PIT Regulations which states that PSI needs to be disclosed on continuous and immediate basis.

19. From the foregoing, I conclude that the Noticee failed to close the trading window in respect of the UPSI about substantial orders received by it and failed to disclose the PSI on continuous and immediate basis, as stipulated in the PIT Regulations. Therefore it is established beyond doubt that the Noticee violated Regulation 12 (1) read with Clause 3.2 of Part A of Schedule I and Regulation 12 (2) read with Clause 2.0 of Schedule II of the PIT Regulations warranting imposition of monetary penalty under Section 15HB of the SEBI Act.

20. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund**<sup>1</sup> 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."*

21. Thus, the aforesaid violations by the Noticee make it liable for penalty u/s. 15HB of the SEBI Act, 1992 which reads thus:

**15HB. Penalty for contravention where no separate penalty has been provided**

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

22. While determining the quantum of penalty u/s. 15HB, 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:-*

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<sup>1</sup> (2006) 68SCL 216 (SC)

- (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.*

23. It is noted that it is difficult to assess the disproportionate gain or unfair advantage made by the Noticee and it is also not possible to ascertain the loss to investors, as a result of the said failure to close the trading window during the time when the price sensitive information is unpublished and also of the failure to make public the said information on continuous and immediate basis, however, it has been established that the Noticee violated the above clauses of the Code of Conduct under the PIT Regulations. It is essential for every market player to maintain necessary transparency levels in the market for which the said requirements have been mandated in the law, especially, the duty weighs even more on the company to make sure that no official of the company or otherwise, who is in possession of such information misuses it when it is unpublished and hence the requirement of closing of trading window has been stipulated in the PIT Regulations. Hence, the violation by the Noticee needs to be viewed seriously.

## **ORDER**

24. I find that there is a delay of twenty two days (August 16, 2010 to September 7, 2010) in making public the PSI and in not closing the trading window. 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 Noticee. I, in exercise of the powers conferred upon me u/s 15- I (2) of the SEBI Act, impose a penalty of ₹ 11,00,000/- (Rupees Eleven lakhs only) on the Noticee in terms of Section 15HB of the SEBI Act, 1992, for violation of Regulation 12 (1) read with Clause 3.2 of Part A of Schedule I and a

penalty of ₹ 22,00,000/- (Rupees Twenty two lakhs only) for the violation of Regulation 12 (2) read with Clause 2.0 of Schedule II of the PIT Regulations, a total penalty of ₹ 33,00,000/- (Rupees Thirty three lakhs only). I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

25. 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.

26. In terms of the 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: September 30, 2011**  
**PLACE: Mumbai**

**PIYOOSH GUPTA**  
**ADJUDICATING OFFICER**