

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. ISD/ HFIL/AO/DRK-DS/EAD3-376/42-2013]**

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**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

Against  
**Highline Finance & Investment Pvt. Ltd.**  
**[PAN No.: AAACH4968H]**  
H.No. 1-10-28/196/13  
MRR Nagar Colony,  
Kushaiguda, ECIL Post,  
Ranga Reddy District 500 062  
Andhra Pradesh

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), observed a price spurt in the scrip of Raj Packaging Industries Ltd. (hereinafter referred to as 'company/RPIL') during the period August 02, 2010 – October 06, 2010. The shares of the company are listed at BSE.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. I was appointed as the Adjudicating Officer and the same was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated August 28, 2012 under section 15 I of the Securities and Exchange Board of India Act, 1992 read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') the alleged violation of Regulation 13(3) read with Regulation 13(5) of the Securities and Exchange Board of India

(Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') committed by Highline Finance & Investment Pvt. Ltd. (hereinafter referred to as 'noticee').

### **SHOW CAUSE NOTICE, HEARING AND REPLY**

3. A Show Cause Notice no. A&E/EAD-3/DRK/DS/482/2013 dated January 03, 2013 (hereinafter referred to as 'SCN') was served on the noticee in terms of the provisions of Rule 4 of the Rules, requiring the noticee to show cause as to why an inquiry should not be held against the noticee and why penalty, if any, should not be imposed on it under Section 15A(b) of the SEBI Act for the alleged violation of the provision of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations.
4. It was stated in the SCN that the noticee was holding 9.14% equity shares of the total paid up capital of the company as on June 30, 2010. It was observed that the noticee sold 84,000 shares by Sep 14, 2010 resulting in a change of 2.12% of the paid up capital of RPIL. It was further observed that during the period Sep 15, 2010-Oct 04, 2010 noticee sold further 84,857 shares which constituted 2.13% of the company's paid up capital. Therefore, it was alleged that no disclosures in this regard were made to the company by the noticee in the prescribed format i.e. Form C as specified under Regulation 13(3) of PIT Regulations and within the specified timelines as specified under Regulation 13(5) of the PIT Regulations.
5. The SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record. The aforesaid SCN sent through Registered Post Acknowledgment Due (RPAD) was returned undelivered by the postal authorities with the remark 'office shifted'.

6. Therefore, vide letter dated January 30, 2013, RPIL was requested to deliver the said SCN to the noticee. In response to the same RPIL vide letter dated February 07, 2013 forwarded the proof of delivery of the said SCN.
7. The noticee, vide its reply dated February 19, 2013, made the following submissions:
  - a) We wish to inform you that we are very small investment company having small paid up capital. We made a small investment in M/s Raj Packaging Industries Limited and sold the shares. We were unaware of the specific regulations/guidelines governing investment in listed public limited companies.
  - b) However, we did intimate M/s Raj Packaging Industries Limited about the sale of shares vide Letter dated 29<sup>th</sup> September 2010.
  - c) Further, we would like to submit that, neither did we participate in the price rigging nor were we party or privy to the alleged manipulation. We sold our investment in the M/s Raj Packaging Industries Limited in order to book profits considering the spurt in the market price of the shares held by us which would be the obvious course of action for any investment company.
  - d) We reiterate and emphasize that it was our ignorance of SEBI Regulations that led to the non-compliance of Regulations 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992. It was our ignorance that resulted in an act of omission and not that of commission which itself is an isolated instance in the history of our company.
8. As requested by the noticee, vide hearing notice dated April 15, 2013, the noticee was provided with an opportunity of being heard and was advised to attend the hearing on April 25, 2013 at 11.00 AM at SEBI Bhavan, Mumbai. The said hearing notice was sent through RPAD, however, it was again returned undelivered by the postal authorities with the remark 'left'. Subsequently, vide hearing notice dated May 31, 2013, the noticee was provided with another opportunity of being heard and was advised to attend the hearing on June 10, 2013 at 12.00 Noon at SEBI, Hyderabad Local Office. The said hearing notice was forwarded to the noticee via email and the company was also requested to serve the same to the noticee. In response to the personal hearing notice, the noticee vide email dated June 07, 2013 confirmed the attendance and authorised Shri S Sarveswar Reddy, Practicing Company Secretary (AR) to appear for the

hearing on behalf of the noticee. The AR of the noticee appeared for the hearing and made the following submissions:

- a. AR reiterated the submissions made in the reply February 19, 2013. AR submitted that the noticee had failed twice to make disclosure of the change in shareholding in the prescribed format (Form C of the PIT Regulations) to the company due to ignorance of the applicable law.
- b. AR requested that the noticee is a small company, therefore, a lenient view may be taken in the matter.

### **CONSIDERATION OF EVIDENCE AND FINDINGS**

9. I have taken into consideration the facts and circumstances of the case, and the material available on record.
10. It was alleged in the SCN that the noticee did not make disclosures of its change in shareholding in the RPIL to the company as required under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations.
11. As per Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares and voting rights held and change exceeding 2% of the total shareholding or voting rights in the company within two working days of such change.
12. The noticee has submitted that it had intimated the company about the sale of shares vide letter dated September 29, 2010. However, the said intimation was not made in the required format as prescribed under Regulation 13(3) of the PIT Regulations due to ignorance of law. On perusal of the said letter it is noted that the said disclosure was not made in the prescribed format and the key informations like PAN No., shareholding prior to sale, receipt of sale of shares, number and percentage of shares post sale, trading member through whom the

trade was executed with SEBI registration number, exchange on which the trade was executed and sell value were not provided.

13. At this juncture I would like to quote the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Alpha Hi-Tech Fuel Limited v. SEBI* (Order dated December 04, 2009 in Appeal No. 142 of 2009) wherein the Hon'ble SAT held that if the information was not furnished by the company in the prescribed formats, the provisions of the Regulations stand violated. This being so, penalty must follow.

14. In view of the above facts and material made available on record, it can be concluded that the noticee has failed to comply with the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. The text of the said provision is as follows:-

**"13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies**

**(3) Continual disclosure.**

Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C 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 two 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."

15. The aforesaid non-disclosure makes the noticee liable for penalty under Section 15A(b) of the SEBI Act which is reproduced below:

**"Penalty for failure to furnish information, return, etc.**

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

...

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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;"

16. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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.*
17. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of the failure on the part of the noticee to make the disclosures are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticee or the loss caused to the investors in a default of this nature.
18. Having considered the facts and circumstances of the case, submissions made by the noticee and after taking into account the factors under Section 15J of the SEBI Act, 1992, I find that a penalty of `1,50,000 [Rupees One Lakh Fifty Thousand Only] on the noticee would commensurate with the non-disclosures by the noticee.

## **ORDER**

19. In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a penalty `1,50,000 [Rupees One Lakh Fifty Thousand Only] on Highline Finance and Investment Private Limited in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the failure to comply with the provisions of Regulation 13(3) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the failure of the noticee to make the disclosures.
20. The penalty shall be paid by way of 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 the Deputy General Manager, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
21. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Highline Finance and Investment Private Limited and also to the Securities and Exchange Board of India, Mumbai.

**Place: Mumbai**

**Date: July 26, 2013**

**D. RAVI KUMAR  
CHIEF GENERAL MANAGER &  
ADJUDICATING OFFICER**