

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.: PG/AO/BRK/ - 46 /2013]**

**UNDER RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY
ADJUDICATING OFFICER) RULES, 1995**

In respect of

**Uttam Kumar Kothari
(PAN: AAFPK4604H)**

**In the matter of
Rasi Electrodes Ltd**

Facts of the case in brief

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an investigation into the rise in price and volume of the scrip of M/s. Rasi Electrodes Ltd. (hereinafter referred to as “**the Company**”) during the period June 08, 2007 to July 20, 2007 (hereinafter referred to as “**investigation period**”). The scrip of the Company is listed on Bombay Stock Exchange Ltd. (hereinafter referred to as “**BSE**”). During the investigation period, the price of the scrip of the Company rose from ` 19.1 to ` 58.45 with a high of ` 63.10, a rise of 307% in 34 trading days. The total traded volume during the investigation period was 9, 94, 508 shares. It was observed that certain promoter entities had traded in the scrip during the investigation period and made profits to the tune of ` 7.44 lakhs. It was observed that the company had made various corporate announcements mainly related to financial results, dividend declaration and issue of bonus shares. Major corporate announcements made during the investigation period and their impact on scrip price / volume is tabulated as under:

S. No	Date and Time	Announcement	Price Impact/Shares Traded	Remarks																
1	June 21, 2007 @ 3:32 PM	<p>A meeting of Board of Directors (“BoDs”) will be held on June 30, 2007 for</p> <p>➤ consideration and taking on record the audited financial results for the FY ending March 31, 2007 and QE March 31, 2007</p> <p>➤ recommendation of dividend for the FY ending March 31, 2007.</p>	<p>21/06/07</p> <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>26.05</td><td>27.00</td><td>25.55</td><td>26.35</td></tr></table> <p>No. of shares traded: 16,150</p> <p>22/06/07</p> <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>25.90</td><td>26.95</td><td>25.90</td><td>26.55</td></tr></table> <p>No. of shares traded: 10,672</p>	O	H	L	C	26.05	27.00	25.55	26.35	O	H	L	C	25.90	26.95	25.90	26.55	On 22/06/07, the scrip closed 0.76% above its previous day’s closing price.
O	H	L	C																	
26.05	27.00	25.55	26.35																	
O	H	L	C																	
25.90	26.95	25.90	26.55																	
2	Saturday, June 30, 2007 @ 1:59 PM	<p>BoDs in its meeting held on June 30, 2007 decided the following:</p> <p>➤ The Audited financial results for the FY ending March 31, 2007 & q.e. March 31, 2007 was approved and taken on record.</p> <p>➤ BoDs has recommended a dividend of 5% on the paid-up value of equity</p>	<p>29/06/07</p> <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>25.55</td><td>30.35</td><td>24.20</td><td>28.75</td></tr></table> <p>No. of shares traded: 17,669</p> <p>2/07/07</p> <table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>30.50</td><td>34.35</td><td>28.00</td><td>32.10</td></tr></table> <p>No. of shares traded: 18,520</p>	O	H	L	C	25.55	30.35	24.20	28.75	O	H	L	C	30.50	34.35	28.00	32.10	The scrip closed on 2/07/07 at 11.65% above its previous day’s closing price.
O	H	L	C																	
25.55	30.35	24.20	28.75																	
O	H	L	C																	
30.50	34.35	28.00	32.10																	

		<i>shares for the FY ending March 31, 2007.</i>																		
3	<i>July 17, 2007 @ 3:31 PM</i>	<i>A meeting of BoDs will be held on July 25, 2007 to consider among others, recommendation of issue of bonus shares in the ratio to be approved by the BoDs subject to approval of shareholders at the ensuing AGM.</i>	<div><i>17/7/07</i><table><tr><th><i>O</i></th><th><i>H</i></th><th><i>L</i></th><th><i>C</i></th></tr><tr><td>48.75</td><td>52.15</td><td>46.10</td><td>51.85</td></tr></table><i>No. of shares traded: 66,395</i> <i>18/7/07</i><table><tr><th><i>O</i></th><th><i>H</i></th><th><i>L</i></th><th><i>C</i></th></tr><tr><td>56.95</td><td>57.00</td><td>53.50</td><td>57.00</td></tr></table><i>No. of shares traded: 85,152</i></div>	<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>	48.75	52.15	46.10	51.85	<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>	56.95	57.00	53.50	57.00	<i>The scrip opened 9.84% higher on 18/7/07 and closed 9.93% above its previous day's closing price. The trading volume increased by 28.25% on 18/7/07 as compared to the previous trading day.</i>
<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>																	
48.75	52.15	46.10	51.85																	
<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>																	
56.95	57.00	53.50	57.00																	
4	<i>July 25, 2007 @ 4:34 PM</i>	<i>The BoDs has recommended issue of bonus shares in the ratio of 2:5 subject to approval of shareholders at the AGM to be held on September 28, 2007.</i>	<div><i>25/7/07</i><table><tr><th><i>O</i></th><th><i>H</i></th><th><i>L</i></th><th><i>C</i></th></tr><tr><td>58.90</td><td>61.90</td><td>58.00</td><td>61.40</td></tr></table><i>No. of shares traded: 33,603</i> <i>26/7/07</i><table><tr><th><i>O</i></th><th><i>H</i></th><th><i>L</i></th><th><i>C</i></th></tr><tr><td>62.20</td><td>64.80</td><td>61.80</td><td>62.50</td></tr></table><i>No. of shares traded: 48,000</i></div>	<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>	58.90	61.90	58.00	61.40	<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>	62.20	64.80	61.80	62.50	<div><i>The scrip closed on 26/7/07 at 1.79% above its previous day closing price.</i> <i>The volume increased by 42.84% on 26/7/07 as compared to the previous trading day.</i></div>
<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>																	
58.90	61.90	58.00	61.40																	
<i>O</i>	<i>H</i>	<i>L</i>	<i>C</i>																	
62.20	64.80	61.80	62.50																	

2. During the investigation it was observed that the price of the scrip of the Company had mainly increased during the periods June 28 2007 to July 03, 2007 when the closing price of the scrip moved up from ` 25.30 to ` 33.10 and during July 09 2007 to July 19, 2007 when closing price of the scrip moved up from ` 34.70 to ` 60.75.
3. To a query during the investigation, the company had replied that the agenda for the Board meeting to be held on June 30, 2007 was discussed internally between Mr. B Popatlal Kothari, Chairman & MD and Mr. G Mahavirchand Kochar, Whole time

Director. Agenda was finalized between June 19 - 21, 2007 and the agenda papers were circulated on June 21, 2007. However, the rate of dividend was finalized in the meeting held on June 30, 2007. The price of the scrip closed 11.65% higher on the next day immediately after declaration of financial results and rate of dividend on June 30, 2007. In view of the above factors, the period of June 19 – 30, 2007 has been considered as a period when the information about financial results and dividend was unpublished price sensitive information (hereinafter referred to as “UPSI”).

4. Similarly, during the investigation, the company had replied that the agenda for the Board meeting to be held on July 25, 2007 was discussed internally during the period July 15-17, 2007 and the agenda papers were circulated on July 17, 2007. The price of the scrip closed 9.93% higher on July 18, 2007 than previous day's closing price after the announcement of bonus issue proposal and by 1.79% higher on July 26, 2007 after the announcement of bonus ratio on July 25, 2007. As per investigation report, the period July 15-17, 2007 has been considered to be the period when information about issue of bonus shares was UPSI.
5. The trading details of all the company related entities who dealt in the scrip when the information about the announcement of financial results and dividend was UPSI were analyzed. The summary of trading by the above entities is tabulated below

<i>S. No</i>	<i>Entities</i>	<i>19/6/2007 - 30/6/2007</i>					<i>1/7/2007 – 6/7/2007</i>				
		<i>Buy Qty</i>	<i>Avg. Buy Price (₹)</i>	<i>Sell Qty</i>	<i>Avg. Sell Price (₹)</i>	<i>Net Buy Qty</i>	<i>Buy Qty</i>	<i>Avg. Buy Price (₹)</i>	<i>Sell Qty</i>	<i>Avg. Sell Price (₹)</i>	<i>Net Sell Qty</i>
1	<i>Ranjana Kothari</i>	17505	25.54	1000	30.35	16505	10349	32.15	-	-	(10349)
2	<i>Uttam Kothari</i>	10060	26.02	-	-	10060	-	-	400	31.75	400
3	<i>Chandrakala</i>	4065	26.38	6300	25.79	(2235)	3550	31.41	1611	32.63	(1939)
4	<i>Kashyap Kothari</i>	3700	25.25	-	-	3700	-	-	-	-	-

Appointment of Adjudicating Officer

6. The undersigned has been appointed as the Adjudicating Officer, vide order dated January 17, 2011 under section 15 (I) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**Act**”) and rule 3 of 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 15I of SEBI Act, the allegation of violation of regulations 3 (i), (ii) and 4 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992, (hereinafter referred to as “**PIT Regulations**”) by Uttam Kumar Kothari (hereinafter referred to as “**Noticee**”)

Show cause notice, hearing and reply

7. Show cause notice (hereinafter referred to as “**SCN**”) dated March 11, 2011 was issued to the Noticee under rule 4 (1) of the Rules to show cause as to why inquiry should not be held and penalty be not imposed on her under section 15G of SEBI Act for the alleged violations of regulations 3 (i), (ii) and 4 of PIT Regulations. No response was received to the SCN.
8. However in the interest of principles of natural justice a personal hearing was granted to Noticee on April 05, 2011 which was informed to the Noticee vide hearing notice dated March 24, 2011. The Noticee vide letter dated March 30, 2011 replied to the SCN stating as under

- "1. I regularly trade in the shares of Rasi Electrodes Limited and also in the scrip of all the other companies.*
- 2. The trades mentioned in your notices were all genuine transactions which was carried out by me as part of normal buying and selling. I have not sought for nor have I received any price sensitive information from my brothers Mr. B Ranjeet Kothari or Mr. B. Popatlal Kothari.*

3. *I have not based my trades on any material information to the detriment of other investors. The trades have not been done with a view to profiteer out of other investors.*
4. *We brothers have separated out of the family arrangement that has taken place during the year 2005 and we are handling all our financial matters independently from then on.*
5. *It was mentioned in your letter that my brother Mr. Ranjeet Kumar Kothari and myself were residing in the same apartment. I wish to inform you that during the relevant period June 2007 – July 2007 my brother Mr. Ranjeet Kothari was not residing with me at the same premises. Besides, we very rarely meet and certainly not on a day to day basis. Hence, there was no chance of me receiving any privileged information.*
6. *I have invested in the shares of Rasi Electrodes Limited during the public issue during the year 1995. Even assuming a return based on bank rate the price of the scrip as on June July 2007 works out to Rs 27 @ 8% CAGR. Hence when the price of the scrip reached around this price first time during the period June- July 2007 I was tempted to sell. Hence you will appreciate that there is no ulterior motive in selling our holdings which was kept for around 12 years without matching returns from ordinary bank deposit.*
7. *I do not have the resources nor the inclination to prolong proceedings and hence I am willing to apply for consent process in due course of time. However, I request that some leniency may be shown in my cases since I have not indulged in any malpractices”*

Personal hearing that was scheduled for April 5, 2011 was postponed to April 18, 2011. The hearing was conducted on April 18, 2011 the Noticee appeared and reiterated the submissions made by him vide reply dated March 30, 2011 and added that he had no further submissions to make in the present matter.

9. In view of the Noticee still being shown as promoter of the Company by the Company during the relevant period i.e., July 2007 and on the website of BSE, the Noticee was

issued a supplementary SCN dated May 05, 2011 informing about the disclosures made by the Company and his name still being part of promoters as per BSE website and to show cause as to why inquiry should be not be held against him in terms of rule 4 of Rules.

The Noticee vide reply dated May 19, 2011 reiterated the submissions made in his earlier dated March 30, 2011 and requested to drop the proceedings. The Noticee had also requested for a personal hearing preferably at Chennai.

Personal hearing was scheduled on June 27, 2011 which was informed to the Noticee vide hearing notice dated June 20, 2011. In response, the Noticee vide letter dated June 27, 2011 stated that he did not receive hearing notice and requested for personal hearing to be scheduled to after July 07, 2011 at Chennai. Vide letter dated June 29, 2011, Noticee informed that he wants to file for consent.

10. On August 04, 2011, SEBI informed that the Noticee had filed for consent. On February 21, 2013, SEBI informed that the consent application filed by the Noticee had been rejected.

The Noticee vide letter dated March 04, 2013 placed on record a copy of the order dated January 31, 2012 passed by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of Mrs. Chandrakala Vs. Adjudicating Officer, SEBI wherein the facts involved are similar to the case of the Noticee and requested for a personal hearing.

In view of the rejection of consent application filed by the Noticee and in the interest of principles of natural justice, a personal hearing was scheduled at Chennai on March 15, 2013 and the Noticee was informed vide hearing notice dated March 05, 2013. Copy of the notice was forwarded to the Noticee by e-mail also. The notice for personal hearing dated March 05, 2013 returned undelivered.

The Noticee vide letter dated March 13, 2013 referred to the notice for personal hearing dated March 05, 2013 and informed that he has engaged Mumbai based

advocates, Corporate Law Chamber India hence requested for the personal hearing to be rescheduled and fixed at Mumbai. A personal hearing was scheduled on April 17, 2013 at Mumbai which was informed to the Noticee vide hearing notice dated April 09, 2013.

11. Mr. Vinay Chauhan, Advocate appeared on behalf of the Noticee for the scheduled personal hearing on April 17, 2013 and interalia submitted that as per a family arrangement the Noticee was no longer a promoter which was informed to BSE vide letter dated April 21, 2005 and submitted a copy of the same. Mr. Chauhan submitted that in view of the Noticee no longer being a promoter, he did not have access to UPSI. He added that trading pattern of the Noticee during the relevant period shows that he did not have UPSI as the Noticee not only purchased but also sold the Company shares between the period the company informed BSE about consideration of declaration of bonus by the Board and the announcement of declaration of bonus was made. In support of this submission, reliance was placed on an order passed by the Hon'ble SAT in the matter of Mrs. Chandrakala Vs. Adjudicating Officer, SEBI.

Consideration of issues and findings

12. The issues that arise for consideration in the present case are:
 - a). Whether Noticee had violated regulations 3 (i), (ii) and 4 of PIT Regulations?
 - b). Does the violation, if any, on the part of Noticee attract monetary penalty under sections 15G SEBI Act?
 - c). If so, what would the monetary penalty be that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

Before moving forward, it will be appropriate to refer to the relevant provisions, which read as under:

“Prohibition on dealing, communicating or counseling on matters relating to insider trading

3. *No insider shall—*

- (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or*
- (ii) communicate, counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:*

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

Violation of provisions relating to insider trading

4. *Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.*

13. It is pertinent to note that as per investigation report, agenda for the Board meeting to be held on June 30, 2007 was discussed internally between Mr. B Popatlal Kothari, Chairman and MD and Mr. G Mahavirchand Kochar, Whole time Director and finalized between June 19 - 21, 2007. The rate of dividend was finalized in the meeting held on June 30, 2007. Hence, the period of June 19 – 30, 2007 had been considered as a period when the information about financial results and dividend was UPSI. Further, agenda for the Board meeting to be held on July 25, 2007 was discussed internally during the period July 15-17, 2007 and the agenda papers were circulated on July 17, 2007. Accordingly, July 15-17, 2007 had been considered to be the period when information about issue of bonus shares was UPSI.

I note that the Noticee had purchased and sold the Company shares during June 08, 2007 and July 19, 2007 as detailed below:

S. No.	Buy Date	Buy Qty	Buy Value	Avg. Buy Price	Sell Date	Sell Qty	Sell Value	Avg. Sell Price
1	8/6/2007	3882	83525	21.52				
2	11/6/2007	100	2300	23.00				
3					12/6/2007	1600	36160	22.60
4	14/6/2007	500	12170	24.34				
5	15/6/2007	3650	92440	25.33				
6	18/6/2007	3183	79688	25.04	18/6/2007	1	26	26.00
7	19/6/2007	4050	102010	25.19				
8	22/6/2007	5470	145139	26.53				
9	25/6/2007	540	14606	27.05				
10					2/7/2007	400	12700	31.75
11					9/7/2007	3157	101805	32.25
12					10/7/2007	2005	70193	35.01
13					11/7/2007	2500	88750	35.50
14	12/7/2007	1999	81959	41.00	12/7/2007	1870	70248	37.57
15	13/7/2007	350	15115	43.19	13/7/2007	1050	46990	44.75
16	16/7/2007	1150	54200	47.13	16/7/2007	1150	52478	45.63
17	17/7/2007	4000	191454	47.86	17/7/2007	3000	155150	51.72
18	19/7/2007	200	12360	61.80	19/7/2007	7525	463404	61.58
19					20/7/2007	12000	740564	61.71
Total		29074	886966	30.51		36258	1838468	50.71

The trading details as above indicate that the noticee has been regularly trading in shares of the company. He purchased 29, 074 and sold 36, 258 shares of the company between June 08, 2007 and July 19, 2007. Out of these, the Noticee had purchased 10, 060 shares between June 19–30, 2007, when the information about

financial results and dividend was UPSI, and sold 8062 shares between July 02 to 11, 2007. Noticee had also purchased 5,150 shares between July 15-17, 2007, during which period agenda papers for the Board meeting to be held on July 25, 2007 were discussed internally. As per investigation report, on July 18, 2007, proposal for consideration of bonus issue was announced and the price of the scrip had closed 9.93% higher than previous day's closing price. Between July 12 to 19, 2007 (which includes the UPSI period), he has done both purchase and sale transactions on all trading days. It appears that he has been doing day trading on these days. The trading pattern of the Noticee does not suggest that he had traded while in possession of UPSI; if the Noticee was in possession of UPSI, he would have waited till the announcement of bonus issue to sell shares at a higher price.

I am inclined to agree with the Noticee that if he had UPSI he would only purchase and not sell shares between June 19, 2007 and July 17, 2007 i.e., period between consideration of bonus and declaration of bonus.

Such trading behaviour does not conclusively indicate that he was in possession of UPSI relating to financial results, dividend and bonus issue. In this case it is relevant to quote the Hon'ble SAT in the matter of Chandrakala wherein the Hon'ble SAT had observed that

"A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming public. This is not so in the case under consideration. The trading pattern of the appellant, as shown in the chart above, does not lead to the conclusion that the appellant's trades were induced by the unpublished price sensitive information."

Further as per the investigation report, it was alleged that the Noticee had access to UPSI in his capacity of promoter of the Company based on which he traded in the shares of the Company. During the adjudication proceedings, the Noticee had submitted a copy of letter dated April 21, 2005 written by the Company to BSE forwarding details of shareholding of promoters and persons acting in concert. It is pertinent to note that the declaration by the Company which states that

".... Due to family arrangement, the brothers of Mr. B. Popatlal Kothari have relinquished their interest in the Company as promoters. However, being brothers of Mr. B. Popatlal Kothari, their shareholding (i.e., the shareholdings of Mr. B. Tejjraj Kothari, Mr. B. Ranjit Kumar Kothari and Mr. B. Uttam Kumar Kothari) are included in the list above."

On the basis of the foregoing discussions, I am of the view that benefit of doubt can be given to the Noticee in respect of the charges under PIT Regulations as mentioned in the SCN.

Order

14. In the light of the above discussion, I do not find this a fit case to impose monetary penalty on the Noticee, Uttam Kumar Kothari. The matter is accordingly disposed off.

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

Date: June 25, 2013

Place: Mumbai

PIYOOSH GUPTA

ADJUDICATING OFFICER