BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - PG/AO/98/2011]

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. Jagdish Mansukhani
[PAN: AACPM2147G]
In the matter of
MAN Industries (India) Limited

Background of the case

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

2. SEBI conducted investigation into the transactions in the shares of the company for the period June 01, 2010 to September 30, 2010 (**'investigation period'**) based on the said complaint to ascertain whether any provisions of the Securities and Exchange Board of India Act, 1992 (**'SEBI Act'**) and PIT Regulations have been violated during the investigation period. It was alleged by the company that, on June 17, 2010 and June 18, 2010, the Noticee had purchased/acquired 47,402 and 43,000 equity shares respectively, a total of 90,402 shares of the company. However, no disclosures were made by the Noticee as required under Regulations 13 (4) and (5) of the PIT Regulations. During the investigation, it was also noted from a perusal of the BSE site that no such disclosures were available thereon. Further, the Noticee also failed to furnish conclusive evidence or provide copies of disclosures along with the acknowledgement of the company and the stock exchange despite being asked specifically to do so during the investigation. BSE had also confirmed that no disclosures in respect of the above acquisitions were filed with it by the company.

3. 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 make disclosures required under Regulations 13 (4) and (5) of the PIT Regulations.

Appointment of Adjudicating Officer

4. 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 15A (b) of the SEBI Act, the alleged violation of Regulations 13 (4) and (5) of the PIT Regulations by the Noticee.

Show Cause Notice, Reply & Personal hearing

5. Show Cause Notice dated May 11, 2011 (SCN) was issued to the Noticee in terms of the provision of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against him in respect of the violations alleged to have been committed by him. The SCN alleges that the Noticee failed to make disclosures to the company on acquisition of shares in accordance with the PIT Regulations.

6. The Noticee vide his letter dated May 24, 2011, submitted that he gave intimation to the Company Secretary of the company about the purchase of 47,402 and 43,000 equity shares of the company. He further submitted that, as a general practice, he had not been taking any acknowledgements from the company and he enclosed a statement showing the changes in demat and physical shareholding status for the week June 18, 2010 to June 25, 2010. It was also submitted that on July 15, 2010 at 4:40 pm, he had re-submitted the intimation for purchase of 47402 and 43000 equity shares of the company to Mr. Ajay Jain, CFO and to Ms. Shalini Sanjay, Asst. Company Secretary via e-mail, which he had enclosed.

7. Further, the Noticee vide his letter dated June 7, 2011, requested for time till June 30, 2011 to submit additional written response.

8. 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. However, the Noticee requested for re-scheduling of the hearing to the second week of July 2011. The undersigned granted an opportunity of personal hearing on July 14, 2011 vide notice of hearing dated July 5, 2011. On the scheduled date, the authorised representative Mr. Indranil Deshmukh, principal associate and Mr. Adarsh Saxena, M/s. Amarchand &

Mangaldas & Suresh A.Shroff & Co., Advocates and Solicitors, along with Mr. Kishore Talreja, authorised representative had appeared on behalf of the Noticee and filed additional reply vide letter dated July 14, 2011.

9. Vide letter dated July 14, 2011, the Noticee had submitted that the company and/or the RC Mansukhani group (RCM group) has wilfully, deliberately and with a view to exert undue pressure on the Noticee, attempted to expose the Noticee to proceedings, inter alia, under the SEBI Act by not filing the requisite disclosures with stock exchange/s under the PIT Regulations, despite the same having been handed over and made available to the company in compliance with the provisions of the SEBI Act and the PIT Regulations. Further, he submitted that he is entitled to a copy of the investigation report, based on which the SCN has been issued, non-furnishing of which is contrary to the principles of natural justice. That without prejudice to the above, the Noticee stated that the alleged breach is technical, venial, inadvertent and not resulted in any gain to the Noticee.

10. 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

11. 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 Regulations 13 (4) and (13 (5) of the PIT Regulations?

b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15A (b) 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?

12. The relevant provisions of the PIT Regulations are as follows:

Regulation 13- "Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure

(1) *…..*

(2) *….*

Continual disclosure

(3) *…..*

(4) *Any person who is a director or officer of a listed company, shall disclose to the company in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25, 000 shares or 1% of total shareholding or voting rights, whichever is lower.*

(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."*

13. I find that during the investigation period, on June 17, 2010 and June 18, 2010, the Noticee had purchased/acquired 47402 and 43000 equity shares respectively, a total of 90,402 shares of the company. However, there is no evidence on record to show that timely disclosures were made by the Noticee as required under Regulations 13 (4) and (5) of the PIT Regulations. The Noticee has submitted copies of undated Form D purporting to the purchase of 90,402 shares of the company by him on

June 17 & 18, 2010 which he stated to have filed on June 19, 2010. However, there is no acknowledgement stamp on the same from the company which has denied the receipt thereof on the said date. The Noticee has contended that there was no practice of taking acknowledgement for such filing.

14. I also find from records that no such disclosures were available on BSE web site. Despite being asked specifically to furnish conclusive evidence or provide copies of disclosures along with the acknowledgement of the company and the stock exchange, the Noticee failed to do so. BSE had also confirmed that no disclosures in respect of the above acquisitions were filed with it by the company. Thus, the Noticee having failed to produce any kind of evidence including acknowledgement from the company, that he had disclosed to the company in Form D on June 19, 2010 in compliance with Regulation 13 (4) of the PIT Regulations as contended by him, it is difficult to establish that the Noticee had made the said disclosure required under the PIT Regulations.

15. As regards the Noticee's contention that he was entitled to receive a copy of the entire investigation report and non-furnishing of the same being in violation of natural justice principles, it is felt that as relevant information from the investigation report had already been provided in the SCN, the contention of the Noticee is not acceptable. Further, the Noticee's contention that non-provision of the investigation report to him had deprived him of an opportunity to cross-examine the concerned personnel from the company secretarial department of the company is not acceptable as no specific demand or request for cross-examination has been made by the Noticee before me. Therefore the decision of Hon'ble SAT in the matter of Price Waterhouse vs. SEBI (PWC) (Dated June 01, 2011), put forth by the Noticee is support of his contention, is not applicable as the appellants in the PWC matter have categorically put forth specific request for cross-examination, which was partially

denied by the appropriate authority, which is not the case in the instant matter. Further, the above stand taken by the Noticee at this juncture appears to be dilatory tactic since on the hearing scheduled on July 14, 2011 and even during earlier correspondences of the Noticee, no such request for either investigation report or cross examination was made by him.

16. From the foregoing, I conclude that the Noticee had violated regulations 13 (4) and 13 (5) of the PIT Regulations warranting imposition of monetary penalty under Section 15A (b) of the SEBI Act.

17. The basic purpose of disclosure requirement inherent in the abovementioned regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of shareholding by any entity in a listed company. This obligation is especially significant in case of transactions by insiders. The Hon'ble SAT in the matter of ***Milan Mahendra Securities Pvt. Ltd. Vs SEBI*** (*Appeal NO. 66 of 2003 and Order dated November 15, 2006*), regarding the importance of disclosures, 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"*. Thus, any violation of the said disclosure requirements has to be viewed seriously.

18. The Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund***[1] 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."*

[1] (2006) 68SCL 216 (SC)

19. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15A (b) of the SEBI Act, 1992 which reads thus:

Section 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 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."

20. While determining the quantum of penalty u/s. 15A (b), it is important to consider the factors stipulated in S.15J of SEBI Act, which reads as under:-

Section 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:-

(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.*

21. 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 make disclosure about the change in shareholding, however, it has been established that the Noticee failed to make disclosure as required under the PIT Regulations. It is essential for every market player to maintain necessary transparency levels in the market for which the said disclosure requirements have been mandated in the law, especially, the duty is

even more on persons like managing directors etc, who are at the helm of affairs in a company. Hence, the violation by the Noticee needs to be viewed seriously.

ORDER

22. The Noticee acquired the shares on June 17 & 18, 2010 and was required to make disclosures within two working days i.e., by June 21, 2010 (June 20 & 21, 2010 being Saturday and Sunday). He had made this disclosure on July 15, 2010 after a delay of 24 days. After taking into consideration all the facts and circumstances of the case and the delay in making the disclosure, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹ 24,00,000 /- (Rupees Twenty Four lakhs only) on the Noticee in terms of Section 15A (b) of the SEBI Act, 1992 for violation of Regulations 13 (4) and 13 (5) of the PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

23. 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 Comlex, Bandra (E), Mumbai- 400 051.

24. 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. The matter is disposed of accordingly.

DATE: September 30, 2011 **PIYOOSH GUPTA**
PLACE: Mumbai **ADJUDICATING OFFICER**