

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.RKD/AO/GTLL/01/2010]**

**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

SHRI RAMSINHABHAI N CHAUDHARI

PAN: ABMPC2502N

IN THE MATTER OF

M/s GUJARAT TERCE LABORATORIES LTD

BRIEF FACTS OF THE CASE

1. The shares of M/s Gujarat Terce Laboratories Ltd (hereinafter referred to as 'GTLL') are listed at The Stock Exchange Mumbai (hereinafter referred to as 'BSE'). As per the information available on the website of BSE, the total paid-up equity share capital/voting rights of GTLL for the quarter ended June 2005 was 38,95,300. Based on a report filed by BSE, an examination of the shareholding pattern in the scrip of GTLL was undertaken by SEBI. In this regard, it was observed that during the period March 2005 to June 2005 Shri Ramsinhbhai N Chaudhari (hereinafter referred to as 'noticee' or 'Ramsinhbhai N Chaudhari') had acquired 1,90,889 shares of GTLL. Subsequent to the acquisition of 1,90,889 shares of GTLL, the holding of the Shri Ramsinhbhai N Chaudhari as a percentage of the total paid-up capital / voting rights of GTLL increased from 4.31% as on the quarter ended March 31, 2005 to 9.21% as on the quarter ended June 30, 2005.
2. Further, from the shareholding pattern of GTLL as available on the website of BSE, it is observed that for the quarter ended March 31,

2005 the noticee was holding 1,67,801 shares of GTLL which increased to 3,58,690 shares for the quarter ended June 30, 2005. The holding of the noticee increased by 1,90,889 shares i.e, increased from 4.31% to 9.21% of the total paid-up capital/voting rights of GTLL. In this regard, it was alleged that the requisite disclosures on further acquisition of shares / voting rights was not made by the noticee to BSE and GTLL. Thereby the noticee had allegedly violated Regulation 13 (1), 13(4) and 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") and Regulation 7(1) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "SAST Regulations").

3. Accordingly, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has initiated adjudication proceedings under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') to inquire into the alleged violation of Regulation 13 (1), 13(4) and 13(5) of SEBI PIT Regulations and Regulation 7(1), 7(2) of the SEBI SAST Regulations against the noticee on account of his failure to make necessary disclosures as stipulated under the said PIT and SAST Regulations.

APPOINTMENT AS ADJUDICATING OFFICER

4. The undersigned has been appointed as Adjudicating Officer (hereinafter referred to as 'AO'), vide order of SEBI dated April 20, 2009 under section 15I of 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 'Adjudicating Rules') to inquire into and adjudge under section 15A(b) of SEBI Act the alleged violation of the provisions of Regulation 13(1), 13(4) and 13(5) of SEBI PIT Regulations and Regulation 7(1) and 7(2) of SEBI SAST Regulations for the alleged non disclosure of the acquisition of shares or voting rights by Shri Ramsinhabhai N Chaudhari in the scrip of GTLL, as observed during the examination of the shareholding pattern undertaken by SEBI in the scrip of GTLL.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as 'notice') dated May 07, 2009 under Rule 4 of the Adjudication Rules was issued to the Noticee through Registered Post Acknowledgement due, advising him to show cause as to why an inquiry should not be held against him and the prescribed penalty for the alleged violation of PIT Regulations and the SAST Regulations not be imposed under Section 15A (b) of SEBI Act. A time period of fifteen days was also given to the noticee to submit the reply along with documents / records to substantiate the reply. Since no reply was received another opportunity was given to the noticee by way of a reminder notice dated June 22, 2009. As per the acknowledgement card of the Department of Posts, India, both the Show cause notice and the reminder notice has been received by the noticee.
6. No reply was submitted by the noticee even after issuance of the reminder notice, in order to follow principles of natural justice a fresh reminder notice dated September 30, 2009 was issued to the Noticee intimating the date of personal hearing to be held on October 15, 2009. The Notice and intimation of the date of hearing was arranged to be hand delivered through Regional office of SEBI. The same could not be delivered as the occupant at the address indicated that they did not have any contact with the noticee who was her brother and further they expressed their unwillingness to accept the notice on behalf of the noticee.
7. The initial notice and the reminder was served, the subsequent reminders to the notice including intimation to the date of personal hearing were not delivered and the noticee did not attend the hearing on the indicated date. In view of the same it was decided to affix the notice including intimation for personal hearing, at the last known address of the Noticee. The same was done by the regional office of SEBI on February 22, 2010 in compliance with Rule 7 of the Adjudication Rules and proof of affixture is placed on record in the file.
8. An attempt was also made to serve the notice intimating the date for personal hearing through ASE Capital Markets Ltd (hereinafter

referred to as 'ACML'), a depository participant, with whom the noticee was having his beneficiary account. ACML vide their letter dated March 03, 2010 informed that the noticee was not available at the stated address, hence the notice could not be delivered.

9. Since the Noticee did not attend the personal hearing nor submitted any reply to the show cause notice, the matter is therefore proceeded with on the basis of the material available on record, under Rule 4(7) of the Adjudication Rules.

CONSIDERATION OF THE ISSUES

10. In the instant matter the following issues arise for consideration:
 - a) Whether the noticee had violated regulation 13(1), 13(4) and 13(5) of the PIT Regulations?
 - b) Whether the noticee had violated regulation 7(1) and 7(2) of the SAST Regulations?
 - c) Whether the noticee was a Director or Officer of GTLL at the time of acquisition of shares / voting rights of GTLL?
 - d) Whether the noticee is liable for imposition of monetary penalty under section 15A (b) of the SEBI Act?
11. Following are the relevant provisions of the PIT Regulations and the SAST Regulations applicable in the instant case:

PIT Regulations

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be...

13(4) Any person who is 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.

13(5) The disclosures mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:

- i. the receipts of intimation of allotment of shares, or*
- ii. the acquisition or sale of shares or voting rights, as the case may be.*

SAST Regulations

Acquisition of 5% and more shares of a company

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen percent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be*

FINDINGS

- 12. I have carefully gone through the charges set out in the show cause notice and the documents on record.
- 13. Based on a report filed by BSE, SEBI undertook an examination of the shareholding pattern in the scrip of GTLL. From the shareholding pattern of GTLL as available on the website of BSE, it is observed that for the quarter ended March 31, 2005 the noticee who was Director on the Board of GTLL was holding 1,67,801 shares of GTLL.

Further, it was observed that as on the quarter ended June 2005 the holding of the noticee had increased to 3,58,690 shares of GTLL. Subsequent to the further acquisition of 1,90,889 shares of GTLL by the noticee, the holding of the noticee as a percentage of the total paid-up capital/voting rights of GTLL increased from 4.31% as on the quarter ended March 2005 to 9.21% as on the quarter ended June 2005. Therefore, it is undisputed that the shareholding of the noticee as on the quarter ended June 2005 was 9.21% as a percentage of the total paid-up capital/voting rights of GTLL.

14. On account of the acquisition of 9.21% shares / voting rights of GTLL the noticee was required to make the requisite disclosures to GTLL and BSE within four days of such acquisition. BSE reported that its records do not suggest any disclosures made by GTLL regarding these acquisitions, as mandated under Regulation 13(1), 13(4) and 13(5) of the PIT Regulations. GTLL also vide their letter dated November 24, 2008 confirmed that the requisite disclosures as required under Regulation 13(1), 13(4) and 13(5) of the PIT Regulations and Regulations 7(1) and 7(2) of the SAST Regulations were not made by the noticee to them. Therefore, it stands established that the noticee did not intimate either the company i.e, GTLL and the stock exchange as required under the above mentioned SAST and PIT Regulations.
15. From the documents available on record I find that the noticee was a Whole Time Director on the Board of GTLL at the relevant time. Therefore the change in the shareholding of the noticee attracted the provisions of Regulation 13(4) of PIT Regulations, accordingly the noticee was required to make the necessary disclosures within four days of the acquisition in terms of the provisions of Regulation 13(5) of the PIT Regulations. BSE reported that its records do not suggest any disclosures made by the noticee regarding these acquisitions, as mandated by Regulation 13(4) and 13(5) of the PIT Regulations. GTLL also vide their letter dated November 24, 2008 confirmed that the above requisite disclosures were not made by the noticee to them. Therefore, it stands established that the noticee did not intimate either the company i.e, GTLL and the stock exchange as required under the

above mentioned PIT Regulations.

16. A letter seeking the noticee's explanation including their request for personal hearing, if any was sent on May 07, 2009, which was received by the noticee. The noticee neither replied to the notice nor submitted any request for a personal hearing, therefore a reminder notice was issued on June 22, 2009, which was also received by the noticee. Subsequently, another reminder notice along with intimation on date of hearing was issued on September 30, 2009. The noticee did not take advantage of the opportunity granted and did not attend the personal hearing and hence, the matter is proceeded on the basis of material available on record under Rule 4(7) of the Adjudication Rules. The initial notice has been served, subsequent attempts to intimate the date of hearing have resulted in returning of the letters undelivered and even after affixing of the notice at the last known address there has been no reply from the noticee. In view of the above it is implied that the noticee has chosen to ignore the opportunity granted and no reply has been submitted by the noticee to suggest that the statements of BSE and GTLL are incorrect.
17. Further, from a plain reading of regulation 13(1), 13(4) and 13(5) of the PIT Regulations, it is clear that the noticee who had acquired more than 5% shares / voting rights was required to disclose within four working days the number of shares or voting rights held by him in GTLL.
18. It is also clear from the language of regulations 7(1) and 7(2) of the SAST Regulations that the noticee was required to disclose the purchase of shares to the Target Company and to the stock exchanges where the shares of the target company were listed and that these disclosures were to be made within two days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.
19. The aforementioned violations are questions of fact i.e, whether the noticee had made disclosures under regulations 7(1) and 7(2) of the SAST Regulations and regulation 13(1), 13(4) and 13(5) of the PIT

Regulations, or not. As per BSE's and GTLL's records, no disclosures were made to the company or the Exchange by the noticee in terms of the said regulations

20. Thus, I conclude that the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act which states as under :-

“Penalty for failure to furnish in formation, return, etc.

15A. 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 there for in the regulations, fails to file return or furnish the same within the time specified therefore 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;”

21. Further, on the determination of the quantum of penalty under section 15A (b), I have considered the factors to be taken into consideration under section 15J of the SEBI Act, which reads as under:-

“Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under section 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.”

22. In the instant case there is nothing on record to quantify the disproportionate gain or unfair advantage made or the amount of loss caused to an investor or group of investors as a result of the aforesaid violation. Moreover, the available records do not suggest that the violation is of repetitive nature. However, the aforementioned

regulations have been framed in order to prevent information asymmetry, to ensure timely disclosures which are an essential part for the proper functioning of the securities market and absence of such information may prevent investors from taking a well-informed decision.

ORDER:

23. In view of the above and after taking into consideration all the facts and circumstances of the case and exercising the powers conferred upon me u/s 15-I(2) of the SEBI Act, I hereby impose a penalty of Rs. 1,75,000/- (Rupees One Lakh Seventy Five Thousand Only) on Shri Ramsinhabhai N Chaudhari u/s 15A (b) of the SEBI Act. I am of the view that the said penalty is commensurate with the violations committed by Shri Ramsinhabhai N Chaudhari.
24. The above penalty amount shall be paid by way of a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400 051.
25. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: March 31, 2010
Mumbai

Rajesh Kumar. D
Adjudicating Officer