

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 92/2011]

**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. SWAMINATHAN RAJENDRAN

(PAN. AIGPR6377P)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of M/s Filatex Fashions Ltd. (hereinafter referred to as ‘**FFL**’). The period of investigation in the scrip of FFL was from April 2007 to November 2007 (hereinafter referred to as “**Investigation Period**”).
2. The findings of the investigation led to the allegation that Mr. Swaminathan Rajendran (hereinafter referred to as “**SR/Noticee**”) had violated provisions of regulation 13 (4) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) and consequently, liable for monetary penalty under section 15A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated September 24, 2010 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the alleged violations of provisions of PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No.EAD-7/PB/SS/2553/2011 dated January 18, 2011 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A(b) of the SEBI Act for the alleged violation specified in the said SCN.
5. I find from the records that, the aforesaid SCN was issued to the Noticee through SPAD at "Filatex Fashions Limited, Mayfair Garden, Road No. 12, Banjara Hills, Hyderabad – 500 034". The SCN was acknowledged by the Noticee. The Noticee vide letter dated February 15, 2011 as well as through e-mail address swamirajen06@gmail.com dated February 16, 2011 replied that he wished to avail the consent process and would be filing consent application in some time. The Noticee further mentioned to take note of his correct address i.e. Tiruchirapalli, Tamilnadu. The Noticee vide letter dated nil received by SEBI on April 06, 2011 submitted the consent application. It is understood that the consent application filed by the Noticee was not in the prescribed format and the same was returned to the Noticee by SEBI on May 19, 2011. However, till date i.e. after more than 6 months has since elapsed, the Noticee has not filed a revised consent application with SEBI.

6. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on July 25, 2011 vide notice dated July 14, 2011. The said notice was sent through SPAD to address mentioned by the Noticee for further correspondence in the copy of consent application, i.e. H No. 37, RMS Colony, Bharati Street, Edamalaipatti Puthur, Trichy- 620012, Tamilnadu as well as his e-mail address swamirajen06@gmail.com mentioned in the consent application. However, the same was returned undelivered with remark "No Such Addressee". Further, the notice sent to the aforesaid e-mail address was delivered to the Noticee. The Noticee was granted another opportunity of personal hearing on August 11, 2011 vide notice dated July 15, 2011. The said notice was once again sent though SPAD to the aforesaid address. However, the same was returned undelivered with remark "No Such addressee". The last opportunity of hearing was granted to the Noticee on August 26, 2011 vide notice dated August 12, 2011. The said notice was sent through SPAD to "Filatex Fashions Limited, Mayfair Garden, Road No. 12, Banjara Hills, Hyderabad – 500 034 as well as his e-mail address swamirajen06@gmail.com. The said notice was returned undelivered with remark "No Such Addressee". Further, the notice sent to the aforesaid e-mail address was delivered to the Noticee.
7. I find from the aforesaid records that Noticee tried all his bits to stall and avoid any progress with regard to the adjudication proceedings. The idea of the Noticee was to frustrate the proceedings with his dilatory tactics which can be seen from the following instances:
- The Noticee's reply dated February 15, 2011 giving only the partial address of the Noticee i.e. "Tiruchirapalli, Tamilnadu".
 - Submission of consent application before me instead of the concerned department of SEBI.
 - Submission of consent application not as per prescribed format.

- Notices sent to address mentioned by the Noticee in the consent application returned undelivered.
 - Notices sent to e-mail address mentioned by the Noticee delivered to the Noticee were never acknowledged by the Noticee.
 - The mobile number mentioned in the consent application i.e. 9030739805 is not a valid number gives indication of the Noticee's misleading intention.
 - Through the SCN as well as hearing notices, the Noticee was advised that as the proceedings were in progress, to keep the undersigned informed about the change in correspondence address, if any, till the proceedings are complete. However, the Noticee chose to ignore the advice.
8. I find from the material available on record that during the investigation proceedings also the Noticee did not reply to the letters/summons issued by SEBI though the same were acknowledged by the Noticee.
9. The fallacy of the submission of the Noticee will be quite apparent if one sees the events as they have unfolded so far. Had the Noticee been so innocent, naive and law abiding, after granting so much time to the Noticee starting from its letter dated February 15, 2011 till date i.e. almost nine months having elapsed, the Noticee should have filed the reply to the SCN or filed the revised consent application or at least bothered to contact office of undersigned with regard to the progress of present proceedings which the Noticee failed to do.
10. In view of the aforesaid steps taken, I am convinced that ample opportunities have been given to the Noticee to explain his case. As per rule 4(7) of the Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons therefor. Despite having been given ample opportunities, the Noticee had failed to avail of the same. I am, therefore, compelled to proceed with the matter *ex-parte* based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the present case are :

- a) Whether the Noticee had violated regulation 13(4) read with regulation 13(5) of PIT Regulations?
- b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 A (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. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations, which reads as under:

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.*

13. In terms of regulation 13 (4) read with regulation 13 (5) of the PIT Regulations, if there is a change in shareholding of any person who is director or officer of a listed company and the change exceeds ₹ 5.00 lakh in value or 25000 shares or 1% of total shareholding or voting rights whichever is lower, the necessary disclosures in prescribed format are to be made to the company where the shares are listed, within 4 working days.

14. The summary of the price-volume data during the investigation period of the scrip of FFL recorded at BSE is as below:

(Face Value ₹ 10)

Open (₹)	High (₹)	Low (₹)	Close (₹)	Volume (Shares)
8.05 April 2, 2007	25.80 November 20, 2007	7.50 April 5, 2007	22.40 November 21, 2007	49,54,197

The scrip of FFL opened at ₹ 8.05 on April 2, 2007 and price of the scrip increased to ₹25.80 as on November 20, 2007 with little ups and down and closed at ₹22.40 on November 21, 2007. The shares traded on 160 days with an average volume of 30964 shares. Prior to the investigation period the scrip was traded within range of ₹8.50 to ₹12.50 during February 2007 and March 2007 and after the investigation period scrip was traded within range of ₹19.30 to ₹30.25 during December 2007 and January 2008. During initial period from April 2, 2007 to June 21, 2007 scrip was thinly traded except few trading days. Scrip was substantially traded June 25, 2007 onwards and the price also moved from ₹12.75 to ₹25.80 as on November 20, 2007.

15. On perusal of the documents available on record, I find that Noticee was working as Manager of FFL. The findings with regard to the Noticee are as under:
- With the sale of 3,86,600 shares of FFL representing 3.58% of total share capital of FFL on April 30, 2007, the shareholding of the Noticee reduced from 3,86,600 shares representing 3.58% of total share capital of FFL to nil holding on April 30, 2007. Consequent to the said transaction, as the change in the shareholding of the Noticee exceeded the number/percentage/value specified in regulation 13 (4) of PIT Regulations, Noticee ought to have made disclosures to FFL as required

under regulation 13 (4) read with regulation 13(5) of PIT Regulations. However, the Noticee had failed to do so.

- ii. With the acquisition of 3,00,000 shares of FFL representing 2.78% of total share capital of FFL on August 31, 2007, the shareholding of the Noticee increased from nil shareholding on April 30, 2007 to 3,00,000 shares representing 2.78% of total share capital of FFL on August 31, 2007. Consequent to the said transaction, as the change in the shareholding of the Noticee exceeded the number/percentage/value specified in regulation 13 (4) of PIT Regulations, the Noticee ought to have made disclosures to FFL as required under regulation 13 (4) read with regulation 13(5) of PIT Regulations. However, the Noticee had failed to do so.
- iii. With the acquisition of 1,99,400 shares of FFL representing 1.84% of total share capital of FFL on September 14, 2007, the shareholding of the Noticee increased from 3,00,000 shares representing 2.78% of total share capital of FFL to 4,99,400 shares representing 4.62% of total share capital of FFL on September 14, 2007. Consequent to the said transaction, as the change in the shareholding of the Noticee exceeded the number/percentage/value specified in regulation 13 (4) of PIT Regulations, Noticee ought to have made disclosure to FFL as required under regulation 13 (4) read with regulation 13(5) of PIT Regulations. However, the Noticee had failed to do so.
- iv. With the sale of 1,99,400 shares of FFL representing 1.84% of total share capital of FFL on September 17, 2007, the shareholding of the Noticee reduced from 4,99,400 shares representing 4.62% of total share capital of FFL to 3,00,000 shares representing 2.78% of total share capital of FFL on September 17, 2007. Consequent to the said transaction, as the change in the shareholding of the Noticee exceeded

the number/percentage/value specified in regulation 13 (4) of PIT Regulations, Noticee ought to have made disclosure to FFL as required under regulation 13 (4) read with regulation 13(5) of PIT Regulations. However, the Noticee had failed to do so.

- v. Noticee had sold 1,53,500 shares constituting 1.42% of the share capital of the FFL in the following manner:

Date	Sell	Balance	% change to paid up capital
September 26, 2007	23500	276500	0.22
September 27, 2007	50000	226500	0.46
September 28, 2007	80000	146500	0.74
Total	153500	649500	1.42

With the sale of 1,53,500 shares of FFL representing 1.42% of total share capital of FFL from September 26, 2007 to September 28, 2007, the shareholding of the Noticee reduced from 3,00,000 shares representing 2.78% of total share capital of FFL to 1,46,500 shares representing 1.36% of total share capital of FFL on September 28, 2007. Consequent to the said transaction, as the change in the shareholding of the Noticee exceeded the number/percentage/value specified in regulation 13 (4) of PIT Regulations, Noticee ought to have made disclosure to FFL as required under regulation 13 (4) read with regulation 13(5) of PIT Regulations. However, the Noticee had failed to do so.

- vi. With the sale of 1,46,500 shares of FFL representing 1.36% of total share capital of FFL on October 03, 2007, the shareholding of the

Noticee reduced from 1,46,500 shares representing 1.36% of total share capital of FFL to nil on October 03, 2007. Consequent to the said transaction, as the change in the shareholding of the Noticee exceeded the number/percentage/value specified in regulation 13 (4) of PIT Regulations, Noticee ought to have made disclosure to FFL as required under regulation 13 (4) read with regulation 13(5) of PIT Regulations. However, the Noticee had failed to do so.

16. In the light of above the violations committed by the Noticee can be summarized as follows:

Date	Before Acquisition		Acquisition/Sale			After Acquisition		Regulations Triggered	Whether the Noticee has disclosed to FFL
	Shares	%	Shares Acq.	Sale		Shares	%		
April 30, 2007	3,86,600	3.58		3,86,600	3.58	0.0	0.0	13(4) of PIT Regulations	No
August 31, 2007	0.0	0.0	3,00,000		2.78	3,00,000	2.78	13(4) of PIT Regulations	No
September 14, 2007	3,00,000	2.78	1,99,400		1.84	4,99,400	4.62	13(4) of PIT Regulations	No
September 17, 2007	4,99,400	4.62		1,99,400	1.84	3,00,000	2.78	13(4) of PIT Regulations	No
September 26, 2007 to September 28, 2007	3,00,000	2.78		1,53,500	1.42	1,46,500	1.36	13(4) of PIT Regulations	No
October 03, 2007	1,46,500	1.36		1,46,500	1.36	0.0	0.0	13(4) of PIT Regulations	No

17. The Noticee being Manager of FFL is an officer of FFL within the meaning of PIT Regulations. The Noticee failed to disclose the change in his shareholding on aforesaid six occasions which resulted in violation of regulations 13(4) read with regulation 13(5) of PIT Regulations. In view of the above, the allegation of violation of regulations 13(4) read with regulation 13(5) of PIT Regulations stands established.

18. By not making the disclosures on time, the Noticee failed to comply with his statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal 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.*”

19. The provisions of section 15A (b) of SEBI Act is reproduced hereunder:

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,-

(a) ...

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

20. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC) 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. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A (b) of the SEBI Act.

22. While determining the quantum of monetary penalty under section 15A (b), I have considered the factors stipulated in section 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 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.”*

23. The object of the PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. 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. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors. It may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find that the Noticee has failed to disclose the change in his shareholding on six occasions which shows the repetitive nature of the default.

24. I find that the Noticee has failed to file any reply to the said SCN and has not refuted the charges. The Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. ...v/s... SEBI [2007] 76 SCL 51 (SAT - MUM.) inter-alia held – *“the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”*. The order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I presumed that the Noticee has admitted the charges alleged in the said SCN.

ORDER

25. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 50,000/- (Rupees fifty thousand only) under section 15A (b) on the Noticee which will be commensurate with the violations committed by him.
26. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Mr. Aliasgar Mithwani, Deputy General Manager, Investigations Department - 4, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
27. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **December 15, 2011**

PARAG BASU

Place: **Mumbai**

ADJUDICATING OFFICER