

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 7/2013]

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

Prakash Industries Limited

(PAN: AABCP6765H)

In the matter of Prakash Industries Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigation in trading in the scrip of Prakash Industries Limited (hereinafter referred to as the "**Noticee**") during the period between January 01, 2007 and January 31, 2008 (hereinafter referred to as the "**investigation period**"). It was observed that the price of the scrip of Noticee increased from ₹ 36.60 to ₹ 281.30 i.e. by 668% during the investigation period.
2. It was observed that that Shri. Vikram Agarwal, Managing Director of the Noticee, had bought/sold shares of the Noticee and had made the necessary disclosures to the Noticee as required under Regulation 13(4) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**"). It was observed that as per the provisions of Regulation 13(6) of the PIT Regulations Noticee was required to disclose the information received from Vikram Agarwal to the stock exchanges where it is listed. However, when verified with the stock

exchanges it was observed that no such disclosure was made by the Noticee and no such disclosures were available on the BSE and NSE websites. It was therefore alleged that Noticee did not make disclosure with respect to transactions of Vikram Agarwal as required under regulation 13(6) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated August 30, 2012 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 PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No. EAD-6/BM/VS/20660/2012 dated September 12, 2012 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 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 SEBI Act for the alleged violation specified in the said SCN. The said SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated September 24, 2012 submitted the following:

- a. *That we have submitted all the declarations received from Shri. Vikram Agarwal about changing in his shareholding in FORM D to the Stock Exchanges within the stipulated time through fax. The copies of the available fax receipts had already been submitted to you vide letter dated 7th June, 2012.*
- b. *That at no stage during the last five years we have received any notice from the stock exchanges about the non receipt of the said declaration made from time to time. You will kindly appreciate that almost 5 years have passed since the above declaration were submitted to the Stock Exchanges and at this stage it may be*

very difficult for us to ascertain as to how the same are not updated on their websites.

- c. Further, your goodself may kindly refer to the chart given in your above mentioned letter showing details of shares purchased and sold by Shri. Vikram Agarwal. As can be seen from the chart and also from the declaration submitted by us earlier, Shri Vikram Agarwal has not made any profits from the purchase and sale transactions in the shares. As such these transactions has no relation to the price of the scrip increasing from Rs.36 to Rs.281 as mentioned in para 2 of your above letter. We may further like to add here that the last transaction made by shi Vikram Agarwal was on 22nd October, 2007 on which date the price of the share was Rs. 126, as such major increase in the share price has happened subsequent to the date when Shri Vikram Agarwal has transacted in the scrip. It has been further informed that Shri Vikram Agarwal has not entered into any transaction of purchase of shares from the open market and purchases have been made from the promoter companies.*
 - d. In view of the fact mentioned in aforesaid paras, there was no reason on the part of the company for not having submitted the declaration received from Shri Vikram Agarwal to the stock exchanges which were duly sent from time to time.*
5. In the interest of natural justice an opportunity of hearing was provided to the Noticee on December 7, 2012 vide hearing notice dated November 26, 2012. Mr. Manoj Agarwal, Company Secretary, Authorized Representative (AR) appeared on behalf of the Noticee and submitted that reply dated September 24, 2012 shall be considered as final reply to the SCN. During the hearing AR was advised to get confirmation in writing from BSE and NSE that the disclosures as claimed to have been made by the Noticee to the BSE and NSE has been received by them. AR undertook to submit the same by December 14, 2012.
6. Vide latter dated December 14, 2012 Noticee informed that they have sent letters dated December 7, 2012 to BSE and NSE regarding confirmation of alleged disclosures made by them and till dated they have not received any reply

from them. Hence, Noticee sought for 15 days time to submit the required information. Vide email dated December 17, 2012 Noticee was advised to submit the said information by December 28, 2012. Noticee was further informed that if they failed to submit the information on time the matter shall be proceeded on the basis of material available on record. Vide letter dated December 28, 2012 Noticee made the following submission:

- a. That Noticee under no provision of any law, Rules and/or Regulation or even any contractual obligation with recognized stock exchanges, is under any obligation to hoist such information on the website of such stock exchanges including BSE and/or NSE.*
- b. That the Id. Adjudicating Officer has also relied upon statement of certain representatives of said stock exchanges, without examining such representatives.*
- c. That the imposition of penalty is a serious measurer and the same cannot be resorted to merely upon a statement of a third party, particularly, when the Noticee has provided all necessary documents with regard to disclosures required to be made which are duly made by the Noticee under the PIT Regulations. That as such the present Show Cause Notice and proceedings there under ought to be dropped by the Id. Adjudicating Officer, at the present stage itself in as much as no sufficient material available on record calling for the continuance of the present proceedings.*
- d. That during the course of personal hearing held in the captioned matter on 07th December, 2012, the Id. Adjudicating Officer was of the view that the Noticee should approach the concerned stock exchanges and obtain the necessary information regarding receipt of the said intimations submitted by the Noticee to the concerned stock exchanges regarding compliances with respect to disclosures. It is submitted that although Noticee was under no statutory obligation to obtain such confirmation, in as much as, it is the SEBI who is relying upon such statements of the concerned stock exchanges and as such it is incumbent upon SEBI to produce the persons from Stock Exchanges*

for examination by the Noticee before such statement could be used against the Noticee for imposing penalty.

- e. That accordingly the Noticee wrote the concerned stock exchanges vide letter dated 10th December, 2012 calling upon the stock exchanges to confirm the receipts of the necessary disclosures made by the Noticee in compliance of Regulation 13(6) of the said PIT Regulations. However, till date the said stock exchanges have not provided any information.*
 - f. That as such the Noticee requests that the Ld. Adjudicating Officer, may in exercise of its powers under Rule 4(6) may summon persons of the concerned stock exchanges, namely, BSE and NSE, before statement of such person could be used against the Noticee and on basis of which statements, the Ld. Adjudicating Officer is show causing imposition of penalty upon the Noticee.*
7. Thereafter, vide letters dated January 7, 2013 BSE and NSE was forwarded a copy of the disclosures claim to have been made by the Noticee alongwith the copy of the fax confirmation dated July 5, 2007 & October 22, 2007 sent to BSE and August 24, 2007 & October 22, 2007 sent to NSE; and they were further advised to confirm on:
- a. Whether Noticee has filed requisite disclosures under 13(6) of PIT Regulations;
 - b. Whether the fax no's 022-22722037 and 022-26598237 appearing on the fax confirmation copies belongs to listing departments of BSE and NSE respectively.

BSE and NSE vide their letters dated January 15, 2013 and January 11, 2013 informed that that they have not received any disclosures under Regulation 13(6) of PIT Regulations during the period January 1, 2007 to January 30, 2008. Exchanges further confirmed that the fax no's mentioned in the fax report belongs to the listing department of the exchanges. However they did not provide any comments on the evidence provided by the Noticee w.r.t. "ok" delivery report produced by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:

- Noticee did not disclose to the stock exchanges (i.e. BSE and NSE) where the shares of Noticee were listed of the transactions of Vikram Agarwal as required under Regulation 13(6) of the PIT Regulations.

9. In view of the above it was alleged that the Noticee violated the provisions of Regulation 13(6) of the PIT Regulations.

10. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 13(6) of the PIT Regulations, which reads as under:

Disclosure by company to the stock exchanges under Regulation 13(6) of PIT Regulations is as under:

(6) Every listed company, within five working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in respective formats specified in Schedule III.

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

- i. Whether Noticee has informed the exchanges of the transactions of Vikram Agarwal as required under Regulation 13(6) of the PIT Regulations.
- ii. Whether Noticee has violated Regulation 13(6) of the PIT Regulations?
- iii. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b) of SEBI Act?
- iv. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS:

12. I now proceed with the alleged violations of PIT Regulations.

- i. It was observed that the price of scrip of Noticee company increased from ₹ 36.60 to ₹ 281.30 i.e. by 668% during the investigation period. During the investigation period it was observed that Vikram Agarwal had bought/sold shares of the Noticee. Following are the details of transactions submitted by Vikram Agarwal which were carried out during the investigation period:

Table 1

Date of Acquisition of Shares	Date of Intimation to Company	No. of Shares held by the Directors/ Officers	No. of Shares Bought	No. of Shares Sold	Buy / Sell Value	Mode of Acquisition	No. of Shares post Acquisition	% Change in Share-holding
25/06/2007	29/06/2007	356605	115555	0	6713938	Off-Market	472160	0.11
25/06/2007	29/06/2007	472160	0	43261	2513536	Market	428899	0.04
26/06/2007	29/06/2007	428899	0	16826	950921	Market	412073	0.02
27/06/2007	29/06/2007	412073	0	8342	460868	Market	403731	0.01
28/06/2007	29/06/2007	403731	0	32720	1786616	Market	371011	0.03
29/06/2007	29/06/2007	371011	0	14406	784797	Market	356605	0.01
02/07/2007	05/07/2007	356605	241050	0	13342198	Off-Market	597655	0.22
02/07/2007	05/07/2007	597655	0	39885	2207648	Market	557770	0.04
03/07/2007	05/07/2007	557770	0	138157	7655003	Market	419613	0.13
04/07/2007	05/07/2007	419613	0	58600	3372551	Market	361013	0.05
05/07/2007	05/07/2007	361013	0	4408	266015	Market	356605	0.00
21/08/2007	24/08/2007	356605	2501566	0	180604234	Off-Market	2858171	2.29
21/08/2007	24/08/2007	2858171	154401	0	11147207	Off-Market	3012572	0.14
21/08/2007	24/08/2007	3012572	1400000	0	101961185	Off-Market	4412572	1.28
21/08/2007	24/08/2007	4412572	0	2600000	187710821	Market	1812572	2.38
22/08/2007	24/08/2007	1812572	0	1400000	101961185	Market	412572	1.28
23/08/2007	24/08/2007	412572	423254	0	33437066	Off-Market	835826	0.39
05/09/2007	09/08/2007	835826	0	400000	29131767	Market	435826	0.37
12/09/2007	09/12/2007	435826	122100	0	12454200	Off-Market	557926	0.11
19/09/2007	20/09/2007	557926	0	201321	21138705	Off-Market	356605	0.18
18/10/2007	22/10/2007	356605	2000000	0	256350673	Off-Market	2356605	1.83
19/10/2007	22/10/2007	2356605	0	300000	38452601	Market	2056605	0.27
19/10/2007	22/10/2007	2056605	0	350000	43643827	Market	1706605	0.32
22/10/2007	22/10/2007	1706605	0	1350000	171151052	Market	356605	1.24

- ii. It is observed from the reply submitted by Vikram Agarwal dated May 25, 2012 that he had submitted the necessary disclosures for the transactions mentioned at Table-1 to the Noticee as required under Regulation 13(4) of PIT Regulations. Vide letter dated June 07, 2012, Noticee has also submitted that they had received the declaration from Vikram Agarwal under regulation 13(4) of the PIT Regulations. I note that as per the provisions of Regulation 13(6) of PIT Regulations, Noticee was required to disclose the information received from Vikram Agarwal to the stock exchanges where it is listed.
- iii. Noticee contented that they have made the necessary disclosures to stock exchanges and in support of it they submitted the fax receipts showing the delivery report. Same was sent to the stock exchanges for verification and for their comments. It is to be mentioned that the comments of the exchange was specifically sought on the proof of communication as claimed by the Noticee.
- iv. On perusal of the fax delivery report produced by the Noticee it is observed that the same bears the destination telephone number. The exchanges have confirmed that the destination numbers mentioned in the reports are their respective numbers which belongs to the listing department, the rest of the delivery report has not been commented upon by the exchanges despite providing a specific opportunity to do so. Further no adverse comments have been received from the Exchanges with respect to the evidential value of the documents presented by the Noticee.
- v. Hence, in absence of any concrete evidence casting doubts on the evidence produced by the Noticee that Noticee has not made any disclosure to the Exchanges during the investigation period I am left with no choice but to hold the document before me as proof of compliance of the Noticee with the regulations. I seek reliance in the matter on the judgment of the Hon'ble

Supreme Court in *K. Gopal Reddy vs. State Of Andhra Pradesh* on 22 November, AIR 387, 1979 SCR (2) 265 stated:

"If two reasonably probable and evenly balanced views of the evidence are possible one must necessarily concede the existence of a reasonable doubt. But fanciful and remote possibilities must be left out of account. To entitle an accused person to the benefit of a doubt arising from the possibility of duality of views, the possible view in favour of the accused must be as nearly reasonably probable as that against him. If the preponderance of probability is all one way, a bare possibility of another view will not entitle the accused to claim the benefit of any doubt. It is, therefore essential that, any view of the evidence in favour of the accused must be reasonable even as any doubt, the benefit of which an accused person may claim, must be reasonable. A reasonable doubt does not mean some light, airy, insubstantial doubt that may flit through the mind of a Judge about almost anything at any time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict, it means a real doubt, a doubt founded upon reason."

- vi. Given the above, I conclude that the violation of Regulation 13(6) of PIT does not stand established against the Noticee.

ORDER

13. Considering the facts and circumstances of the case, I do not find the instant matter fit for imposition of penalty in terms of Section 15A (b) of SEBI Act and dispose of the proceeding accordingly.

14. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **February 7, 2013**

Place: **Mumbai**

BARNALI MUKHERJEE

ADJUDICATING OFFICER