

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/PU/274/2014]

**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 Vinod Narsiman
[PAN: ABYPN3505C]**

In the matter of

Indsil Hydro Power and Manganese Limited

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had carried out an examination into the alleged irregularities in the matter of Indsil Hydro Power and Manganese Limited (herein after referred to as 'IHPML'), a company listed on the Bombay Stock Exchange (BSE) and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and the various rules and regulations made there under.

2. Upon examination it was, inter alia, observed that Shri Vinod Narsiman (herein after referred to as 'the Noticee'), a Director at IHPML, was in possession of 6,91,800 shares (7.32%) of IHPML and further, had transacted in shares of the company which changed his shareholding on five occasions i.e. on February 07, 2003, February 20, 2003, April 21, 2003, September 19, 2003 and October 07, 2003 and he was required to make disclosures to the company as prescribed under

Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the 'PIT Regulations'). Further, on May 28, 2003, the Noticee had purchased additional 1,900 shares which increased his holding from 7.32% to 9.33%, i.e. by 2% and he was required to make the disclosures to the company as required under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. However, it was observed that the Noticee failed to do so.

Appointment of Adjudicating Officer

3. SEBI has, therefore, initiated Adjudication proceedings and I have been appointed as the Adjudicating Officer (AO), vide order dated April 21, 2014 under Section 15 I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

4. A show cause notice dated June 26, 2014 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on him under Section 15 A(b) of the SEBI Act, for the alleged violation of the provisions of law. The Noticee vide his letter dated July 11, 2014, sought additional time of two weeks to file his reply to the SCN.
5. As no reply was received from the Noticee, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on August 04, 2014. In the meanwhile, vide letter dated July 24, 2014, the Noticee submitted his reply

to the SCN. The Authorized Representatives (ARs) appeared on behalf of the Noticee on the scheduled date. The ARs reiterated the submissions made by the Noticee vide his reply dated July 24, 2014 and further, vide letter dated August 02, 2014, made additional submissions in the matter. They also submitted copies of the Noticee's shareholding patterns for the quarters ending June 2003 and December 2003.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges levelled against the Noticee as mentioned in the SCN, written submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:
 - a) **Whether the Noticee has failed to comply with Regulations 13(3) & 13(4) read with Regulation 13(5) of the PIT Regulations?**
 - b) **Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?**
 - c) **If so, what should be the quantum of monetary penalty?**
7. Before moving forward, I would like to refer to the relevant provisions of the PIT Regulations, which read as under:

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

.....

Continual disclosure.

- (3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this*

sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(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 four 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."

8. I find from the SCN that the Noticee is a Director at IHPML, who had purchased shares of IHPML on and off between the period January 17, 2003 and October 07, 2003. I further find that during the said period, the Noticee had acquired more than 25,000 shares on five occasions viz. February 07, 2003, February 20, 2003, April 21, 2003, September 19, 2003 and October 07, 2003. Therefore, the Noticee being the Director of IHPML, was under an obligation to disclose the change in his aggregate shareholding to the company in terms of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations which he failed to do. Further, on May 28, 2003, the Noticee had acquired additional 1,900 shares which increased his shareholding in the company from 7.32% to 9.33%, i.e. by 2% and he was required to make disclosure in terms of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. However, the Noticee was alleged to have failed to do so.

9. The Noticee, vide his reply dated July 24, 2014 submitted that he was a director of IHPML at the time of the transactions and continues to be one till date. Additionally, he submitted that by virtue of him being a Director at IHPML, the compliance and necessary disclosures as prescribed under Regulation 13(4) read

with Regulation 13(5) of the PIT Regulations, will only be applicable to him. The Noticee also submitted that formats were only introduced by the amendment to the PIT Regulations vide SEBI (Insider Trading) (Amendment) Regulations, 2003 which was applicable from July 11, 2003.

10. The Noticee further submitted that he remembers informing the company regarding his acquisitions, however, he does not have copies of the said disclosures. Since, no formats were specified until July 10, 2003 wherein the new Form C or Form D were introduced, the requirement for making necessary disclosures in the specified format either Form C or Form D for the acquisitions made prior to September 09, 2003 does not arise. Hence, the requirement of necessary disclosures in the specified format (Form D), as the Noticee is the Director of the company, arises only in respect of aggregated acquisitions on September 19, 2003 (wrongly written as September 09, 2003 in the Noticee's reply) and October 07, 2003. The Noticee also submitted that the disclosures for the transactions on September 19, 2003 and October 07, 2003 have been made to the company, however, it is admitted that the same may not have been done in the prescribed Form D.

11. Moreover, neither any major corporate action occurred in or about the date of the sale nor was the Noticee in possession of any price sensitive information while undertaking the aforesaid transaction. Majority of the transactions were inter se transactions and the sale was not made with an intention to make profit or manipulate the market or defraud the shareholders of the company, as he has not disposed the shares so acquired to any third party till date but for Sunmet Holdings India Pvt. Ltd., a promoter company. The said non-compliances were only technical in nature and have not resulted in any prejudice to the interest of any stakeholder nor caused any jeopardy to the public interest.

12. The Noticee vide his letter August 02, 2014 additionally submitted that the sale of shares happened inter se between the promoters on various dates as stated in the SCN and the company has made the necessary disclosures in this respect to the Stock Exchanges as required under Clause 49 of the Listing Agreement. A comparison of the shareholding of the Noticee as on March 31, 2003, June 30, 2003, September 30, 2003 and December 31, 2003 clearly shows that the respective acquisition /sale of shares of IHPML on various dates has been in the knowledge of the company which had enabled it to make the necessary disclosures to the stock exchange. Hence, the Noticee submitted that the sale of shares was already in the public domain and the omission to report the same as per the said Regulations was not deliberate but only due to inadvertence and such omission is only technical in nature.

13. From the material available on record, I note that as regards the acquisition made by the Noticee on May 28, 2003, by acquiring additional 1900 shares his shareholding in the company increased from 7.32% to 9.33%, i.e. by 2%. I find that the Noticee was in possession of more than 5 % of shares of IHPML at the time of the said acquisition and additional acquisition of shares resulted in change of more than 2% in his aggregate shareholding which required him to make the necessary disclosure of his aggregate shareholding to IHPML in terms of Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations. I do not find merit in the submission made by the Noticee to the extent that by virtue of him being a Director at IHPML, the compliance and necessary disclosures under Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations, will only be applicable to him. Upon a plain reading of Regulation 13 (3) of the PIT Regulations, I find that the said provision is inclusive in nature and therefore, every shareholder of IHPML including the Directors will fall within the ambit of the term 'any person'. As a result, I find that the Noticee has violated the provisions of Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations for the acquisition made by him on May 28, 2003.

14. Further, with regard to the acquisitions on February 07, 2003, February 20, 2003, April 21, 2003, September 19, 2003 and October 07, 2003, I find that the Noticee has submitted that the formats were not specified until the amendment to the PIT Regulation applicable from July 11, 2003 SEBI (Insider Trading) (Amendment) Regulations, 2003. Therefore, the Noticee has contended that the requirement for making necessary disclosures in the specified format i.e. Form C or Form D for the acquisitions made prior to September 09, 2004 does not arise. Hence, the requirement of necessary disclosures in the specified format (Form D), arises only in respect of aggregate acquisitions made on September 19, 2003 (wrongly written as September 09, 2003 in Noticee's reply) and October 07, 2003. I do not find merit in the said submissions of the Noticee as I find that even if the amendment to Form D under Regulation 13 (4) of the PIT Regulations was introduced in July 2003, the Noticee should have made the said disclosures in the prescribed Format i.e Form D as was existing during the relevant period which the Noticee failed to do.

15. I further find that the Noticee has stated in his reply that he had made disclosures for the transactions done on September 19, 2003 (wrongly written as September 09, 2003 in Noticee's reply) and October 07, 2003 to the company. However, it is further stated by the Noticee that the same may not have been done in the prescribed Form D. Therefore, I do not find merit in the submissions made by the Noticee in this regard in as much as the Noticee has failed to produce any documentary evidence in support thereof and conclude that the Noticee had failed to make the necessary disclosure for the said acquisitions made not only on September 19, 2003 and October 07, 2003 but also on February 07, 2003, February 20, 2003 and April 21, 2003.

16. Further, I note from the Noticee's submissions that the company had made necessary disclosures to the stock exchanges under Clause 49 of the Listing

Agreement. However, the said fact does not absolve the Noticee from his duty of making the necessary disclosures to the Company under Regulation 13 (4) read with 13 (5) of the PIT Regulations in as much as the said disclosure shall be made within four 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. Whereas, the requirements of clause 49 of the Listing Agreement are separate and independent and the same have nothing to do with the requirements as prescribed under Regulation 13 (4) read with 13 (5) of the PIT Regulations. Therefore, I do not find merit in the submissions of the Noticee in this regard.

17. In view of the above and based on the documents available on record, I find that the Noticee did fail to make the necessary disclosures to the company as required under Regulation 13(3) and 13(4) read with 13(5) of the PIT Regulations and thus, liable for monetary penalty under Section 15 A(b) of the SEBI Act, which reads as under:

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,-

.....

(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;

18. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein, the Hon'ble Court, *inter alia*, held: "*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."

19. While imposing monetary penalty, it is important to consider 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."

20. I observe from the material available on record that it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the defaults. Further, the violations are repetitive in nature.

ORDER

21. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 12,00,000/- (Rupees Twelve Lakh Only) on the Noticee viz. Shri Vinod Narsiman under Section 15 A (b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

22. The above penalty amount shall be paid by the Noticee through 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 shall be forwarded to The Division Chief, Shri Debashis

Bandyopadhyay, ISD, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

23. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 12, 2014

Place: Mumbai

**D. SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER**