

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. MC/CB/2018-19/53]**

---

**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

In respect of –

**Priyal Mansukhani (PAN: AUDPM9949B)** having address at – Plot No. 43, Aadhya, Jai Hind Co-op Hsg. Society, N. S. Road No. 10, JVPD Scheme, Vile Parle (West), Mumbai – 400 049

In the matter of *Man Industries (India) Limited*

---

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted examination in the scrip of Man Industries (India) Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) as well as the National Stock Exchange of India Limited (hereinafter be referred to as, the “**NSE**”) for the period April 01, 2013 to March 31, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(4A) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) by Ms. Priyal Mansukhani (hereinafter be referred to as, the “**Noticee**”) upon not making relevant disclosures upon change in her shareholding in the Company.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) *vide* order dated March 07, 2017 to inquire into and adjudge under Section

15A (b) of the SEBI Act against the Noticee for the alleged violation of Regulation 13(4A) read with 13(5) of the PIT Regulations. Subsequently, the undersigned was appointed as the Adjudicating Officer on April 26, 2018 which was communicated *vide* order dated August 21, 2018.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. EAD/EAD5/MC/CB/29285/2018 dated October 19, 2018 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against her under Section 15A (b) of the SEBI Act for alleged violation of Regulation 13(4A) read with 13(5) of the PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
  - a) The Noticee was a promoter of the Company during the Examination Period and indulged in sale of 1,50,000 shares of the Company on August 16, 2013. Relevant evidence of the aforesaid sale was provided to the Noticee by way of Statement of Transactions carried out by the Noticee provided to SEBI by NSDL.
  - b) As a result of such sale, the Noticee was required to submit relevant disclosures within 2 days of the sale to the Company and to BSE & NSE under Regulation 13(4A) read with 13(5) of the PIT Regulations. However, the Noticee, allegedly, failed to submit disclosure required under the PIT Regulations.
  - c) The aforementioned failure of the Noticee to disclose change in her shareholding was confirmed by the NSE *vide* e-mail dated July 17, 2018, BSE *vide* e-mail dated July 11, 2018 and the Company *vide* e-mail July 18, 2018.
  - d) It was alleged that the aforesaid non-disclosure regarding change in her shareholding by the Noticee was in violation of Regulation 13(4A) read with 13(5) of the PIT Regulations, text of which is mentioned as below:

#### ***SEBI (Prohibition of Insider Trading) Regulations, 1992***

13. ....

*(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed 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 of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding of voting rights, whichever is lower.*

*(5) The disclosure mention in sub-regulations (3), (4) and (4A) 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.*

e) The Noticee was also informed that the alleged violation, if established, would make her liable for imposition of monetary penalty under Section 15A(b) of the SEBI Act.

5. The SCN was served upon the Noticee by way of Speed Post with Acknowledgment Due at the address of the Noticee on October 26, 2018, an acknowledgment of which is available on record. The Noticee was also advised to file her reply, if any, within 14 days from the receipt of the SCN. However, no reply towards the SCN was received from the Noticee.
6. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on November 26, 2018 *vide* Notice of Hearing dated November 12, 2018. The Noticee was also advised to file her reply, if any, towards the SCN by November 23, 2018. Thereafter, the Noticee *vide* letter dated November 12, 2018 requested for an extension for three weeks to file her reply.
7. Thereafter, *Mindspright Legal*, the authorized representative of the Noticee made a further request for grant of an extension for filing of reply by the Noticee *vide* letter dated November 20, 2018. The request of the Noticee was acceded to *vide* notice of hearing dated November 27, 2018 and a final opportunity of hearing was provided on December 07, 2018.

8. Thereafter, the Noticee submitted her reply towards the SCN vide letter dated December 03, 2018. Relevant submissions of the Noticee are summarized as under:

- a) The Noticee claimed that the transaction alleged in the SCN was in the nature of pledge by way of transfer and it only effected a change of hands and not of the ownership / voting rights and hence, no disclosure was required to be made under the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations.
- b) The Noticee also submitted that it was not her intention to hide information about the off-market transaction as necessary disclosures were filed by her under Regulation 29(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011. To substantiate her claim, the Noticee submitted a disclosure made to BSE under Regulation 29(2) of the SAST Regulations.
- c) The Noticee submitted that she does not deny the fact that there was a change in her shareholding on August 16, 2013 but the transaction was intended in the form of transfer of possession in the way of pledge and the ownership of the said shares continued to be with the Noticee. The shares were transferred from the demat account of the Noticee to that of the pledgee till the time pledge subsisted, with the intention that once the pledge was released, the said shares would be again transferred back to the Noticee.
- d) The Noticee submitted that she did not accrue any illegal profit by the alleged non-disclosure and no individual suffered any loss or detrimental consequences owing to the error on the part of the Noticee. She also submitted that there was no intention on the part of the Noticee to deliberately avoid disclosure and dispose shares of the Company. The Noticee also submitted that no proceedings have earlier been initiated against the Noticee for disclosure violation.
- e) To substantiate her submissions, the Noticee placed reliance upon various judgments of various courts, including **Bhagat Ram v. State of Himachal Pradesh** [(1983) ILJ 1 SC], **Ranjit Thakur v. Union of India** [AIR 1987 SC 2386], **Reliance Industries Limited v. SEBI** [SAT Appeal No. 39/2002], **Akbar Badrudin Jiwani v. Collector of Customs Bombay** [AIR 1990 SC 1579], **Director of Enforcement v. MCTM Corporation Pvt. Ltd.** [AIR 1996 SC 1100], **Hindustan Steel Ltd. v. State of Orissa** [AIR 1970 SC 253], **Bajrang Oil Mills v. Income Tax Officer** [(2007) 295 ITR 314 (Raj)], to contend that the

breach of law arose from a bona fide error in the instant case and therefore, the Adjudicating Officer is not bound to impose penalty just because the relevant provisions under PIT Regulations prescribe.

- f) The Noticee also submitted that the allegation of violation of PIT Regulations cannot be alleged on the basis of mere surmises and conjectures and based on erroneous interpretation of data and cited reference to various judicial precedents including **Union of India v. H. C. Goel** [AIR 1964 SC 364], **L. D. Jaisinghani v. Naraindas N Punjabi** [(1976) 1 SCC 354], **Razikram v. J. S. Chauhan** [AIR 1975 SC 667], **Ambalal v. Union of India** [AIR 1961 SC 264], **Seth Gulabchand v. Seth Kudilal** [AIR 1966 SC 1734], **Ex-Naik Sardar Singh v. Union of India** [(1991) 3 SCC 212], **Ranjit Thakur v. Union of India** [AIR 1987 SC 2386].
  - g) The Noticee, thus prayed for the Notice to be set aside and the charges leveled against her be dropped.
9. The hearing scheduled on December 03, 2018 was attended by Mr. Pulkit Sharma, Ms. Nirali Mehta and Ms. Mayuri Thakkar who were appointed as, the authorized representatives by the Noticee (hereinafter be referred to as, the “**Authorized Representatives**”). During the hearing, the Authorized Representatives reiterated their submissions dated December 03, 2018 and sought additional time to make submissions. The request of the Authorized Representative was acceded to and the Noticee was given additional time until December 18, 2018 to make submissions.
10. Thereafter, *vide* e-mail dated November 14, 2018, the Noticee made following additional submissions:
- a. The Noticee presented a copy of disclosure submitted to the BSE under SAST Regulations.
  - b. The Noticee also submitted that she had no intention to hide information about the off-market transaction.
11. Since the inquiry in the instant matter is concluded, I proceed to decide the case on merit taking into account the allegations levelled against the Noticee in the SCN, submissions of the Noticee towards the SCN and material available on record.

## CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the instant matter are:

**Issue No. I** Whether the Noticee failed to make disclosure required under Regulation 13(4A) of the PIT Regulations as alleged in the SCN?

**Issue No. II** If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

**Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

**Issue No. I** **Whether the Noticee failed to make disclosure required under Regulation 13(4A) of the PIT Regulations as alleged in the SCN?**

13. Regulation 13(4A) of the PIT Regulations requires any person who is a promoter or part of a promoter group of a listed company to disclose to the company as well as the stock exchanges the number of shares held and change in such shareholding if there is a change in shareholding from the last disclosure made and such change exceeds Rs. 5 Lakhs in value or 25000 shares or 1% of the total shareholding.

14. From the reply of the Noticee, I note that the facts relating to the Noticee being a promoter of the Company during the Examination Period and reduction of 1,50,000 shares in the shareholding of the Noticee in the Company are not disputed. However, the Noticee has submitted that the aforesaid reduction was effected in the form of transfer of possession by way of pledge and the ownership of the said shares continued to be with the Noticee. The Noticee also submitted that she had made a disclosure under Regulation 29(2) of the SAST Regulations to the BSE for the reduction in her shareholding of 1,50,000 shares.

15. I note that although the Noticee has contended that the transaction was a pledge transaction and not a sale transaction, she has not brought any material on record to substantiate her claim of a pledge, such as documents pertaining to pledge creation or reason for making a pledge. Pledge is an activity of taking loan against a collateral of securities, where the depository facilitates creation of pledge by marking a lien on the shares held in the beneficial owner's account of pledger in favour of the pledgee. Thus, creation of pledge over shares does not involve transfer of beneficial ownership

of those shares. However, a perusal of *Statement of Transactions* carried out by the Noticee reveals that shares were debited from the account of the Noticee and credited to the beneficial account number 10127746 *vide* order number 10000005720799, indicating that the transaction on August 16, 2013 involved a change in beneficial ownership.

16. To verify the claim of the Noticee that information relating to the aforesaid change in shareholding was in public domain by way of disclosure under Regulation 29(2) of the SAST Regulations, I have perused the copy of disclosure submitted by the Noticee. On perusal, I note that the disclosure under Regulation 29(2) of the SAST Regulations was made by Persons Acting in Concert (PAC), i.e. *Ms. Priyal J. Mansukhani, Mr. J C Mansukhani, M/s. JPA Solutions Pvt. Ltd., Mrs. Anita J. Mansukhani, Jagdish Mansukhani HUF and M/s Man Steel and Power Limited* in respect of sale of 1,50,000 shares on August 20, 2013.
17. Further, I note that disclosure is required under Regulation 29(2) when shareholding changes by 2% or more, which was not applicable in this case, as the change amounted to only 0.26%. Thus, the disclosure has been made under an incorrect regulation. I also note that in the disclosure, it is mentioned that the mode of sale is “by way of encumbrance/ transfer against loans/ dues to the lending entity.” The form also reflects that shareholding of Noticee has not changed after the transaction. It is noted that under SAST Regulations, pledge disclosure is required in a different format under Regulation 31 of the SAST Regulations.
18. I note that other than the statement in the aforesaid disclosure which mentions, “*encumbrance/ transfer against loans/ dues to the lending entity*”, there is no evidence of any loan taken or collateral given. A direct transfer of shares from one beneficiary account to another beneficiary account amounts to transfer of ownership cannot be considered a pledge transaction in the absence of any other evidence of a pledge, loan or collateral creation.
19. It is pertinent to note that Regulation 13(4A) of the PIT Regulations gets triggered when shareholding of a person who is a promoter or belongs to promoter group undergoes change and such change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of the total shareholding in the Company. Therefore, the yardstick for application for

disclosure under Regulation 13(4A) of the PIT Regulations and Regulation 29(2) of the SAST Regulations is different. Thus, the Noticee ought to have disclosed the change in her shareholding during the Examination Period to the Company as well as BSE & NSE under the PIT Regulations. Since confirmations of non-receipt of such disclosures in the Company as well as the BSE & NSE are on record, I am of the view that non-compliance of Regulation 13(4A) read with 13(5) of the PIT Regulations by the Noticee is established.

**20.** I also find it relevant to refer to the order of the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of **Premchand Shah & ors. v. SEBI** (Appeal No. 108 of 2010 dated February 21, 2011) wherein, it held, *"...when law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case. .... Non-disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making the investments."*

**21.** In view of the aforesaid, it is established that the Noticee failed to make disclosures required under Regulation 13(4A) read with 13(5) of the PIT Regulations to the Company as well as the BSE & NSE.

**Issue No. II                      If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

**&**

**Issue No. III                    If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

**22.** Since failure of the Noticee in making disclosures to the Company as well as BSE & NSE under Regulation 13(4A) read with 13(5) of the PIT Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:



**SEBI Act**

*“15A. 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 therefore 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.”*

**23.** While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

**24.** I note that the Noticee had submitted that the non-disclosure on the part of Noticee were unintentional and were merely a technical lapse and that it did not cause any loss to any investor nor did she make any wrongful gain out of it. I find it relevant to note here that the Hon'ble SAT in the matter of **Virendrakumar Jayantilal Patel v. SEBI** (Appeal No. 299 of 2014 dated October 14, 2014) had observed that, *“obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures.”* Thus, I am of the view that the abovementioned submissions of the Noticee cannot be accepted. I also note that the Noticee has cited numerous judicial precedents with regard to levy of penalty and intention of the Noticee. These submissions are noted and taken on record.

**25.** While it is established that the Noticee did not make disclosure to the Company and to BSE & NSE under Regulation 13(4A) read with 13(5) of the PIT Regulations, I also take cognizance of the fact that the information relating to shareholding of the Noticee

became available in public domain by way of shareholding pattern of the Company on October 20, 2014, i.e. after about 2 months of the disposal. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. From the material available on record, repetitive nature of default could also not be ascertained.

26. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹1,00,000/- will be commensurate with the violations committed. .

## **ORDER**

27. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lac only) upon the Noticee, i.e. Ms. Priyal Mansukhani under Section 15A(b) of the SEBI Act for violation of Regulation 13(4A) read with 13(5) of the PIT Regulations.

28. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

29. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
- a) Name and PAN of the entity (Noticee)
  - b) Name of the case / matter
  - c) Purpose of Payment – Payment of penalty under AO proceedings

- d) Bank Name and Account Number
- e) Transaction Number

**30.** Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**Date : January 28, 2019**

**Place : Mumbai**

**(Maninder Cheema)**

**Adjudicating Officer**