BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO-33/2009]

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

M/S RAJESH M. RANKA

(PAN.ACUPR5573R)

FACTS OF THE CASE IN BRIEF

1. The shares of M/s Softrack Technology Exports Limited (hereinafter referred to as **"STEL/ company"**) are listed on Bombay Stock Exchange (hereinafter referred to as **"BSE"**) and Ahmedabad Stock Exchange (hereinafter referred to as **"ASE"**). The scrip of STEL was traded only in BSE during the investigation period. SEBI conducted an investigation into the affairs relating to buying and selling and dealing in the shares of STEL. The investigation covered the period from January 01, 2002 to July 31, 2002.

2. The findings of the investigation led to the allegation that Mr. Rajesh M. Ranka (hereinafter referred to as **"RMR/Noticee"**) had violated regulations 7(1) read with 7(2) and 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as

"**SAST**") and regulations 13 (1) & (13(3) read with 13(5)) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT"**) and consequently, liable for monetary penalty under sections 15A (b) and 15H (ii) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. Mr. Piyoosh Gupta was appointed as Adjudicating Officer vide order dated April 07, 2008 under section 15 I of the 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 **'Rules'**) to inquire into and adjudge under section 15A (b) and 15 H (ii) of the SEBI Act.

4. Consequent upon the transfer of Mr. Piyoosh Gupta, the undersigned was appointed as the Adjudicating Officer vide order dated November 19, 2007.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice (EAD-5/VSS/SS/133298/2008) dated July 29, 2008 (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 initiated against him and penalty be not imposed under sections 15A(b) and 15H(ii) of SEBI Act for his failure to comply with the provisions of regulations 7(1) read with 7(2) and 10 of SAST and 13 (1) & (13(3) read with 13(5)) of PIT.

6. The Noticee vide letter dated August 21, 2008 submitted his reply stating, inter-alia that though he had already replied to the Notice,

SEBI keeps sending Notices to him. He also replied that he is working in the software technology department of the company and has no connection in the matter and requested to consider the letter as its reply and file the same.

7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 19, 2009 vide notice dated December 31, 2008. However, neither the Noticee nor any of his authorized representatives appeared for the hearing. The Noticee was granted another opportunity of hearing on March 02, 2008 vide Notice dated February 05, 2009. The Noticee appeared on March 02, 2009 and submitted, *inter alia*, as under:

    - Ranka Rajeshkumar Mangilal is called in the names of Rajesh M. Ranka and Rajesh Jain. A copy of driving license has been submitted in support of identity. Rakesh Ranka is my own brother.

    - I had 2 BO accounts, one in the name of Rajesh M. Ranka and the other in the name of Rajesh Jain. I had one bank account in the name of Rajesh M. Ranka

    - I am a very ordinary person. I came to know of Mr. Sunil Gaglani who is an industrialist. He promised many things to me and lured me to operate in the stock market. I merely lent my name. He opened the BO account in my aforesaid names. Whenever he asked me to sign on the documents, I did so. He informed me that he was to get some contract from the Government of Gujarat and he will share the profit with me once the contract materialises. However, he did not get the contract. He, therefore, could not fulfil his promise to me. I do not know anything pertaining

to compliance with rules and regulations of SEBI. I did whatever Sunil Gaglani asked me to do. All these things have happened because of Sunil Gaglani.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the written and oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

   a. Whether the Noticee attracted the disclosure requirements under regulations 7(1) read with 7(2) of SAST and if so, whether complied or not?
   b. Whether the Noticee attracted the disclosure requirements under regulation 13(1) PIT and if so, whether complied or not?
   c. Whether the Noticee attracted the disclosure requirements under regulations 13(3) read with 13(5) of PIT and if so, whether complied or not?
   d. Does the non-compliance, if any, attract monetary penalty under section 15A(b) of SEBI Act?
   e. Whether the acquisition of 69,61,890 shares by the Noticee on February 02, 2002 attracted the provisions of regulation 10 of the SAST and if so, whether complied or not?
   f. Does the non-compliance, if any, attract monetary penalty under section 15H(ii) of SEBI Act?
   g. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

9. **ALLEGED VIOLATION OF 7(1) READ WITH 7(2) OF SAST**

(a) The provisions of regulations 7(1) read with 7(2) of SAST (as existed on the date of acquisition i.e. February 02, 2002) which reads as under:

7. Acquisition of 5 per cent or more shares or voting rights of a company

(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 shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company to the company.

(2) The disclosures mentioned in sub-regulation (1) shall be made within four 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.

(b) I find that regulation 7(1) read with 7(2) of SAST deals with disclosure of number and percentage of shares/voting rights to the company by an 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 5% shares or voting rights in a company, in any manner whatsoever, within four working days of , viz., the receipt of intimation of allotment of shares as well as the acquisition of shares or voting rights, as the case may be.

(c) In the instant case, I find that the Noticee acquired 69,61,890 shares (51.19%) on February 02, 2002 and with the said acquisition, his share holding/voting rights in STEL increased from 3.63% to 54.82%, which is more than the 5% threshold specified in regulation 7(1) of SAST. As the acquisition had taken place on February 02, 2002, the due date for compliance under regulations 7(1) and (2) of SAST was February 07, 2002. The Noticee had not

made the disclosure. He has not disputed this fact. Therefore, the allegation of violation stands established.

10. **ALLEGED VIOLATION OF 13(1) OF PIT**

(a) The provisions of regulation 13(1) PIT (as existed on the date of acquisition i.e. February 02, 2002) which reads as under:

> ***13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure***
>
> *(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, 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.*

(b) In terms of regulation 13(1) of SEBI (PIT), any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting rights held by such within 4 working days of (i) the receipt of intimation of allotment of shares, (ii) the acquisition or sale of shares or voting rights, as the case may be.

(c) In the instant case, I find that the Noticee acquired 69,61,890 shares (51.19%) on February 02, 2002 and with the said acquisition, his share holding/voting rights in STEL increased from 3.63% to 54.82%, which is more than the 5% threshold specified in 13(1) of PIT. As the acquisition had taken place on February 02, 2002, the due date for compliance with the provisions of regulation 13 (1) of PIT was February 07, 2002. The Noticee had not made the disclosure. He has not disputed this fact. Therefore, the allegation of violation stands established.

11. **ALLEGED VIOLATION OF 13(3) READ WITH 13(5) OF PIT**

(a) The provisions of regulations13(3) read with 13(5) of PIT (as existed on the date of acquisition i.e. February 16, 2002) which reads as under:

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

Continual Disclosure

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 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.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.

(b) In terms of regulations 13(3) read with 13(5) of PIT, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights under 2 circumstances as detailed below:

- If such change results in shareholding falling below 5%:
- If there has been change in such holdings from the last disclosure made under regulation 13(1) or under regulation 13(3) and such change exceeds 2% of total shareholding or voting rights in the company.

(c) In the instant case, the Noticee had sold 6,29,655 shares constituting 2.27% of the paid up capital of the company in the following manner:

Date	Buy	Sell	Balance	% change to paid up capital
04/02/2002	0	35,555	74,19,792	0.26
06/02/2002	0	2,200	74,17,592	0.02
07/02/2002	0	16,000	74,01,592	0.12
09/02/2002	0	36,700	73,64,892	0.27
12/02/2002	0	95,200	72,69,692	0.28
14/02/2002	0	1,82,000	70,87,692	0.54
16/02/2002	0	2,62,000	68,25,692	0.78
Total	**0**	**6,29,655**	**5,07,86,944**	**2.27**

I find that with the sale of 6,29,655 shares from February 04, 2002 to February 16, 2002, the cumulative sale of the Noticee crossed the limit of 2% specified in the aforesaid regulations. The Noticee had not made the disclosure. He has not disputed this fact. Therefore, the allegation of violation stands established.

12. The provisions of section 15A (b) of SEBI Act (as existed on the date of acquisition i.e. February 02, 2002) is reproduced here 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, -*
> *(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 or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.*

13. 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".

14. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15,2005 the Hon'ble SAT 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."*

15. 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.

16. 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."*

17. The object of the PIT and SAST 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. It may not be possible to ascertain the exact monetary loss to the investors on account of

default by the Noticee. The acquisition of 69,61,890 shares representing 51.90% by which the shareholding of the Noticee had gone from 3.63% to 54.82% assumes significance inasmuch as the same was not known to the public. The disclosure assumes all the more significance as the same was transacted through off market. Since the transaction had taken place off market, it is all the more important for the Noticee to have disclosed the same in a timely manner to BSE, so that it could have brought it to the knowledge of the public in time. With the sale of 6,29,655 shares by Noticee, his individual shareholding has come down by 2.27%. The said sale by Noticee was also of importance from the point of view of outside shareholders / other investors as that would have prompted them to sell or buy shares. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid transactions. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the outside shareholders were deprived of the important information at the relevant point of time. The Noticee failed to disclose the acquisition as well as the sale, both done at different points of time. This reflects the repetitive nature of default by him.

18. In view of the foregoing, I impose a penalty of Rs.2,00,000/- (Rupees two lakh only) under section 15A (b) of the SEBI Act on the Noticee which will be commensurate with the violation committed by him.

19. **ALLEGED VIOLATION OF REGULATION 10 OF SAST**

(a) The provisions of regulation 10 of SAST (as existed on the date of acquisition i.e. February 02,2002) which reads as under:

10. <u>Acquisition of fifteen per cent or more of the shares or voting rights of any company</u>

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

(b) It is observed from the provisions of regulation 10 of SAST that any person acquiring shares or voting rights which taken together with shares or voting rights, if any, held by him or by persons acting in concert with him, entitle such person to exercise 15% or more of the voting rights in that company, will be obligated to make a public announcement to acquire shares of such company in accordance with SAST.

(c) I find that with the (net) acquisition of 69,61,890 (71,81,890 - 2,20,000) shares representing 51.19% on February 2, 2002, the shareholding of the Noticee increased from 3.63% to 54.82% i.e. more than the threshold limit of 15% specified under regulation 10 of SAST. Therefore, Noticee ought to have made a public announcement in terms of regulation 10 SAST. The Noticee failed to do so. He has not disputed this fact. Therefore, the allegation of violation of regulation 10 of SAST stands established

20. The provisions of section 15 H(ii) of SEBI Act (as existed on the date of acquisition i.e. February 02, 2002) is reproduced here under :

15H. <u>Penalty for non-disclosure of acquisition of shares and takeovers</u>

If any person, who is required under this Act or any rules or regulations made thereunder, fails to, -

(i)….
(ii) make a public announcement to acquire shares at a minimum price; or

he shall be liable to a penalty not exceeding five lakh rupees.

21. It has been held by the Hon'ble SAT in the case of *Arya Holdings Limited Vs. P Sri Sai Ram, Adjudicating Officer*, -- Appeals No.3-5 of 2001 – Order dated May 04, 2001 – that *"……., the acquirer is required to comply with the requirement of making a public offer in terms of regulation 10, and failure to do so would attract the provisions of section 15H(ii)."* The Hon'ble SAT has also upheld the Order of the Adjudicating Officer imposing monetary penalty for non-compliance of regulation 11(1) of SAST Regulations in the case of *Arun Kumar and Others vs. SEBI* - Appeal No.62 of 2008 – Order dated October 13, 2008.

22. 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"*.

23. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15H(ii) of the SEBI Act.

24. While determining the quantum of monetary penalty under section 15H (ii) , 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."*

25. On perusal of the various provisions of the SAST Regulations, it is observed that the open offer process includes appointment of a SEBI registered merchant banker as manager to the offer, determination of offer size and price, opening of an escrow account, making public announcement in newspapers, filing of offer document with SEBI, dispatch of offer document to the eligible share holders, etc. By not having complied with the mandatory requirement of the SAST Regulations, the Noticee has avoided the expenditure which otherwise they would have incurred towards cost of engaging the services of a Merchant Banker, making public announcement in newspapers, filing of offer document with SEBI, dispatch of offer document to the eligible share holders, etc. To this extent, it can be said that the Noticee have earned disproportionate gain or unfair advantage. The fact remains that had the Noticee made a public announcement to acquire 20% of the shares of STEL, the shareholders of STEL would have got an opportunity/option to tender their shares pursuant to such an open offer and exit from the company at a price to be determined under the SAST. This opportunity/option was denied to them. Further, such an announcement if made would have also impacted the movement of the price of the shares of STEL on the stock exchanges. Thus, the exit opportunity available to the shareholders through the open offer which the Noticee ought to have made under the SAST would have been in addition to the exit route through the secondary market. There was an opportunity loss to the shareholders at large inasmuch as the Noticee denied an exit opportunity to the shareholders through the open offer process which was legitimately due to them.

26. In view of the foregoing, I impose a penalty of Rs.3,00,000/- (Rupees three lakhs only) under section 15H (ii) of the SEBI Act on the Noticee which will be commensurate with the violation committed by him.

ORDER

27. The Noticee shall pay the total penalty of Rs.5,00,000/- (Rupees Five Lakh only) {Rs.2,00,000/- under section 15A(b) and Rs.3,00,000/- under section 15H(ii)} 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 Ms. Barnali Mukherjee, General Manager, Investigations Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

28. 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: **March 20, 2009** **V.S.SUNDARESAN**

Place: **MUMBAI** **ADJUDICATING OFFICER**