

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/53/2012]

**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 Pramod Jain

[PAN:ADHPJ8942J]

In the matter of

GHCL Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has conducted investigation into the trading and dealings of Mr. Pramod Jain (hereinafter referred to as 'the Noticee') in the scrip of GHCL Ltd. (hereinafter referred to as 'the Company') and into the possible violations of provisions of the law by him.
2. Investigation revealed that the Noticee was a director of the Company during the period January 30, 2009 to April 30, 2009. Copy of the relevant letter dated June 19, 2010 of the Company in regard to directorship of the Noticee is available on record. As on January 31, 2009 the Noticee was holding 73,368 shares of the Company. He thereafter sold 60,000 shares and 13,368 shares on February 02, 2009 and March 21, 2009 respectively.
3. As required under regulation 13(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1993 (hereinafter referred to as 'PIT Regulations') disclosures in respect of number of shares or voting rights held by such person are to be made to the Company within two days of becoming a director. Further, in terms of regulation 13 (4) read with regulation 13 (5) of the PIT Regulations, if there is a

change in shareholding of such person and the change exceeds Rs. 5 lakh in value or 25000 shares, the necessary disclosures are to be made to the Company and the Stock Exchanges where the shares are listed, within 2 days.

4. The Noticee had allegedly failed to make the requisite disclosures and SEBI has therefore initiated adjudication proceedings under the SEBI Act against the Noticee to inquire into and adjudge the alleged violations as above.

Appointment of Adjudicating Officer

5. SEBI vide order dated July 22, 2010 appointed Shri S.R. Prasad as Adjudicating Officer ('AO') 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 the 'Adjudication Rules') to inquire into and adjudge under section 15 A(b) of the SEBI Act, the alleged violation of the provisions of the SEBI Act and/or the PIT Regulations by the Noticee. SEBI vide order dated May 22, 2012, appointed the undersigned as AO in this matter.

Show Cause Notice, Reply and Personal Hearing

6. The AO issued Show Cause Notice ('SCN') dated August 4, 2010 to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against him and penalty be not imposed under Section 15 A(b) of the SEBI Act for his alleged violation of the provisions of Regulation 13(2) and 13(4) of the PIT Regulations.
7. The Noticee submitted a reply vide letter dated August 11, 2010. After considering the reply submitted by the Noticee, the AO decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing to him on October 05, 2010 vide letter dated September 20, 2010. The Noticee sent an email dated October 1, 2010, informing the AO that he had applied for consent in the matter. Vide office note dated October 8, 2010, the AO was intimated about the Noticee's consent application and was requested to keep the proceedings in abeyance.
8. The Noticee was given another opportunity to be heard on June 25, 2012 vide notice of hearing dated May 30, 2012. The Noticee attended the hearing and stated

that he had already sent a detailed reply vide letter dated August 11, 2010 and that the same may be taken into consideration. He also submitted a gist of the brief facts of the case for ready reference and stated that he had nothing further to add.

9. Vide office note dated July 13, 2012, the AO was intimated of the fact that the Noticee had withdrawn his application for consent.

Consideration of Issues, Evidence and Findings

10. I have carefully perused the charges against the Noticee mentioned in the SCN, the written submissions of the Noticee and all the materials and documents as available on record. The issues that arise for consideration in the present case are:

- a) Whether the Noticee has violated the provisions of Regulations 13(2) and 13(4) of the PIT Regulations?*
- b) Do the violations, if any, on the part of the Noticee attract any penalty under Section 15A(b) of the SEBI Act?*
- c) If yes, what should be the quantum of monetary penalty?*

11. The provisions of Regulations 13(2) and 13(4) of the PIT Regulations, read with Regulations 13(5), are as under:

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

(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

(4) Any person who is a director or officer 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 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 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.*

12. The Noticee, in his reply, has submitted that he had given consent to act as director of the Company on January 30, 2009 and that even though he was appointed as director on January 30, 2009, he was informed of the same only on February 7, 2009. The Noticee sold 60,000 shares of the Company on January 31, 2009. He stated that when he was informed of the directorship, i.e. on February 7, 2009, he held only 13,368 shares, which is less than 25,000 and Rs. 5 lakhs.
13. This submission of the Noticee cannot be accepted because he was under an obligation to make a disclosure to the Company within two working days of becoming a director. This obligation under Regulation 13(2) does not depend upon the number or value of the shares held by him. From the material on record, the Noticee was informed of his appointment as director on February 7, 2009 whereas I observe that the Noticee made the requisite disclosure on March 16, 2009 (copy of disclosure available on record). Therefore even if his contention is accepted that he was informed of his directorship only on February 7, 2009, he still failed to make the disclosure within two working days as mandated by Regulation 13(2).
14. The Noticee has also denied selling the remaining 13,368 shares on March 21, 2009 and has contended that he sold them on May 4, 2009. He has provided a copy of a contract note as evidence. However, I note that it is clearly stated in the Noticee's DP account statement that is available on record, that he transferred 13,368 shares on March 23, 2009. I am of the opinion that it is well within the realm of possibility that the shares may have been transferred to the member's account in March 2009 while the sale might have occurred later. A DP account statement is not conclusive evidence of the sale of shares. Therefore, in this regard, I give benefit of doubt to the Noticee. Moreover, from the BSE website's archives, it appears that the WAP of the shares of GHCL on March 23, 2009 was Rs. 26.06 and since the Noticee sold 13,368 shares, the worth of the transaction would have been approximately Rs. 3,48,370/- which is less than Rs. 5 lakhs. Therefore the requirement of disclosure under Regulation 13(4) of the PIT Regulations, with regard to the sale of the 13,368 shares, was not triggered at all. Therefore the violation of Regulation 13(4) of the PIT Regulations has not been established.

15. The Noticee has contended that he was inducted in the board of the Company for a fixed tenure and did not attend any board meeting and in practice, had never acted as director of the Company. He also stated that he had not made any disproportionate gain or unfair advantage as a result of his default and neither had he caused loss to any investor or group of investors. He said that there was no intention to commit the default and that the total involvement of shares was merely 0.06% of the capital of the Company amounting to the then market value of less than Rs. 20 lakhs.

16. In view of the above-mentioned observations and finding, I conclude that the allegation of violation of provisions of Regulation 13(2) of the PIT Regulations by the Noticee stands established which makes him liable for penalty under Section 15A(b) of the SEBI Act.

17. The provisions of Section 15A(b) of the SEBI Act read as follows:

15A. Penalty for failure to furnish information, return, etc.

(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 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. While imposing penalty it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.”*

19. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default. Further, the amount of loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data.

Order

20. 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 Rs. 25,000/- (Rupees Twenty Five Thousand Only) under Section 15A (b) of the SEBI Act on the Noticee. In my view, the penalty is commensurate with the defaults committed by the Noticee.

21. 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 Mr. Debashis Bandyopadhyay, Deputy General Manager, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. In terms of the provisions of Rule 6 of the Adjudication Rules the copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: August 17, 2012

Place: Mumbai

**P. K. KURIACHEN
ADJUDICATING OFFICER**