BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/AO/45/2013]

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

Mr. K.S. Ramakrishna

PAN: ADIPK7411Q

In the matter of
Karuturi Global Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in the trading in the shares of M/s Karuturi Global Limited (hereinafter referred to as 'KGL') 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 various rules and regulations made there under.

2. The investigation inter-alia revealed that the shares of KGL are listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE). Mr. K.S. Ramakrishna (hereinafter referred to as 'Noticee') is the Managing Director and promoter of KGL. KGL adopted the

code of conduct as prescribed in the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') on April 27, 2006 and as per the said internal code, the trading window for trading in the scrip of KGL was closed for 7 days prior to the board meeting and the trading window opens only on the next day of the board meeting. KGL in its meeting held on Aug 23, 2006 had inter-alia recommended 20% dividend. Accordingly, the trading window was closed for the board meeting held on August 23, 2006. Noticee traded in the shares of KGL in BSE on Aug 23, 2006 while the trading window was closed. Noticee while trading during the window closure period was required to take permission from KGL under the Code of Conduct as prescribed under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') which the Noticee failed to do. Moreover, Noticee did substantial trading in the scrip of KGL as a result of which he was required to make disclosures to KGL and to the stock exchange under the PIT Regulations which the Noticee failed to do.

3. SEBI has, therefore, initiated adjudication proceedings under the Act against the Noticee to inquire into and adjudge the alleged violation of the provisions of clause 3.2 and 3.3 of Part A, Schedule I under Regulation 12(1) of the PIT Regulations and Regulation 13(4) read with Regulation 13(5) of PIT Regulations.

Appointment of Adjudicating Officer

4. SEBI vide order dated July 16, 2012 appointed Shri Parag Basu as the Adjudicating Officer under section 15 I of the SEBI Act read with Rule 3 of 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 Sections 15A(b) and 15HB of the SEBI Act for the alleged violation of the abovementioned provisions of PIT Regulations by the Noticee. Consequent to the transfer

of Shri Parag Basu, SEBI vide Order dated August 16, 2012 appointed me as the Adjudicating Officer.

Notice, Reply & Personal Hearing

5. A Notice dated September 11, 2012 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against him for the alleged violations. The SCN was sent to the Noticee by Registered Post which was delivered and acknowledged by the Noticee. It was alleged in the SCN that the Noticee has failed to take permission from KGL under the Code of Conduct as prescribed under clause 3.2 and 3.3 of Part A, Schedule I of Regulation 12(1) of the PIT Regulations. Also, Noticee failed to make disclosures to KGL and to the stock exchange under Regulation 13(4) read with 13(5) of the PIT Regulations.

6. The Noticee vide letter dated October 03 2012 sought extension of time for filing reply to the SCN. However the Noticee did not submit any reply to the SCN.

7. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules the Noticee was granted an opportunity of personal hearing on November 26, 2012 vide notice dated November 06, 2012. The personal hearing notice was sent to the Noticee by Registered Post which were delivered and acknowledged by the Noticees. The Noticee vide letter dated November 19, 2012 requested for postponement of hearing. Another opportunity of personal hearing was granted to the Noticee on January 31, 2013 vide notice dated January 16, 2013. The Authorized Representative's (AR's) of the Noticee appeared for the hearing, filed written submissions dated January 30, 2013 and reiterated the said submissions. The Noticee vide letter dated January 30, 2013 inter alia denied all the allegations made against him. The salient point of submissions made by the Noticee are as follows:

(a) The Noticee submitted that his purchase of 10,000 shares and sale of 50,000 shares in the scrip of KGL during the window closure period was a bonafide mistake. He had traded post declaration of dividend by the company on August 23, 2006. Thus, the information regarding declaration of dividend by the company was already in public domain. The alleged violation is merely a technical and venial violation.

(b) Failure to make disclosures by him under Regulation 13(4) of PIT Regulations was inadvertent and bonafide error. Disclosures regarding his shareholding were already in public domain. Disclosures were made by the company with the stock exchanges under clause 35 of the Listing Agreement. Copies of the disclosures made by the company with the stock exchanges were enclosed. Also, on becoming aware of the alleged lapse on his part, he had immediately taken steps to cure the alleged lapse.

(c) Fluctuation in his shareholding was very nominal to have any kind of impact on the market or adversely affect the interest of the shareholders in the market. the fluctuation in his shareholding was a consequence of trading done by him in the ordinary course of business dehors sinister/manipulative/fraudulent intent or design.

(d) The alleged trading window closure period and the delayed filing of the disclosure is not deliberate and intentional and in contumacious disregard of the provisions of law. Same is at the highest technical, procedural and venial breach and has not caused any loss to any investor and has also not affected the shareholders of the company or the securities market.

8. In view of the above, I am proceeding with the inquiry taking into account of the submissions made before me, the documents and material as available on record.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges against the Noticee mentioned in the SCN, submissions made by the Noticee, 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 clause 3.2 and 3.3 of Part A, Schedule I under Regulation 12(1) of the PIT Regulations and Regulation 13(4) read with Regulation 13(5) of PIT Regulations?

b) Does the violation, if any, on the part of the Noticees attract any penalty under Sections 15HB and 15A(b) of the SEBI Act?

c) If yes, what should be the quantum of penalty?

10. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

SEBI (Prohibition of Insider Trading) Regulations, 1992

Regulation 12

Code of internal procedures and conduct for listed companies and other entities.

(1) All listed companies and organisations associated with securities markets including :

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations 45[without diluting it in any manner and ensure compliance of the same].

3.2 Trading window

3.2.1 The company shall specify a trading period, to be called "trading window", for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2.3 is unpublished.

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.2.3 The trading window shall be, inter alia, closed at the time :—

(a) Declaration of financial results (quarterly, half-yearly and annually).

(b) Declaration of dividends (interim and final).

(c) Issue of securities by way of public/rights/bonus etc.

(d) Any major expansion plans or execution of new projects.

(e) Amalgamation, mergers, takeovers and buy-back.

(f) Disposal of whole or substantially whole of the undertaking.

(g) Any changes in policies, plans or operations of the company.

3.2-4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

3.2-5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

3.2-6 In case of ESOPs, exercise of option may be allowed in the period when the trading window is closed. However, sale of shares allotted on exercise of ESOPs shall 69[not] be allowed when trading window is closed.

3.3 Pre-clearance of trades

3.3.1 All directors/officers/designated employees of the company 70[and their dependents as defined by the company] who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable :

(a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.

(b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.

(c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.

(d) That he/she has made a full and true disclosure in the matter

Regulation 13

Continual disclosure

(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 of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, 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), (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

11. I find from the material available on record that KGL adopted the code of conduct as prescribed in the PIT Regulations on April 27, 2006 and as per the said internal code, the trading window for trading in the scrip of KGL was closed for 7 days prior to the board meeting and the trading window opens only on the next day of the board meeting. KGL in its meeting held on Aug 23, 2006 had inter-alia recommended 20% dividend. Accordingly, the trading window was closed for the board meeting held on August 23, 2006. From Annexure I to the SCN, I find that the Noticee had purchased 10,000 shares and sold 50,000 shares of KGL in BSE on Aug 23, 2006 while the trading window was closed. Noticee traded during the window closure period and failed to take permission from KGL for the sale of 50,000 shares on August 23, 2006 under the Code of Conduct as prescribed under clause 3.2 and 3.3 of Part A, Schedule I of Regulation 12(1) of the PIT Regulations.

12. From Annexure II to the SCN, I find that Noticee did substantial trading in the scrip of KGL during the period from February 23, 2005 to December 13, 2010. Noticee's trading in the shares of KGL resulted ‘in the change exceeding Rs. 5 lac in value or 25000 shares or 1% of the total shareholding or voting rights, whichever is lower’ and accordingly Noticee was required to disclose to the company and to the stock exchange as required under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations. From the trade details it is seen that Noticee, being the managing director of KGL had failed continuously on 34 occasions to comply with Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.

13. I do not accept the contention of the Noticee that the alleged violation is merely a technical and venial violation and was a result of inadvertence. The reasons cited by the Noticee, do not, in any way,

absolve the Noticee for trading during the window closure period without taking permission from KGL for the sale of 50,000 shares on August 23, 2006. It is therefore, established beyond doubt that the Noticee violated provisions of clause 3.2 and 3.3 of Part A, Schedule I under Regulation 12(1) of the PIT Regulations and Regulation 13(4) read with Regulation 13(5) of PIT Regulations warranting imposition of monetary penalty under section 15A(b) and 15HB of the SEBI Act.

14. In Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. *Vs* SEBI – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal 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. We cannot therefore subscribe to the view that the violation was technical in nature"*.

15. 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"*.

16. As the violation of the statutory obligation under clause 3.2 and 3.3 of Part A, Schedule I of Regulation 12(1) of the PIT Regulations and Regulation 13(4) read with Regulation 13(5) of PIT Regulations by the Noticee stand established, I hold that the Noticee is liable for monetary penalty under sections 15A(b) and 15 HB of the SEBI Act.

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

Penalty for failure to furnish information, return, etc.

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 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[1]*[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];*

Penalty for contravention where no separate penalty has been provided

15HB: *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

18. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the 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.

19. From the material available on record, I find that the principles of corporate governance viz. transparency and accountability have been ignored by the Noticee. The Noticee by using such information and using it for own benefit and has violated the law in letter and spirit. The object of the PIT Regulations 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. 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. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Moreover, the violation is repetitive in nature.

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 monetary penalty of ` 1,00,000/- (Rupees One Lakh Only) under Section 15HB and ` 2,00,000/- /- (Rupees Two Lakhs Only) under section 15 A(b) of the SEBI Act and thus a total penalty of Rs. 3,00,000 (Rupees Three Lakhs Only) on the Noticee. In my view, the penalty is commensurate with the default committed by the Noticee.

21. The penalty amount as mentioned above 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 should be forwarded to the Regional Manager, Northern Regional Office, Bank of Baroda Building, 5th Floor, 16 Sansad Marg, New Delhi -110 001.

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

Date: July 02, 2013 **P K KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**