

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 151/2013]

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.

In respect of

Shri. Prakash Devidas Shah

(PAN: AAEPS9007M)

In the matter of DJS Shares and Stocks Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation in trading in the scrip of DJS Shares and Stocks Ltd. (hereinafter referred to as the **company**). During examination in the scrip of the company it was observed that Shri. Prakash Devidas Shah (hereinafter referred to as the **Noticee**) while trading in the scrip of the company had acquired/ sold shares in market and off-market transactions on various occasions.
2. It was observed that Noticee while trading in the scrip of the company had purchased and sold shares on-market/ off-market of the company. Noticee being director of the company was required make disclosures to the company under Regulation 13(4) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations**). It was further observed that Noticee sold 17,54,438 shares of the company through off-market transactions for which he was required to make necessary disclosures to the company and to the stock

exchange where the shares of the company is listed within two days as stipulated under Regulation 7(1A) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **SAST Regulations**). Noticee made such disclosure with a delay of three days.

3. In view of the above it was alleged that Noticee did not comply with Regulation 13(4) read with 13(5) of PIT Regulation and Regulation 7(1A) read with 7(2) of the SAST Regulations. Consequently the Noticee was liable for penalty under Section 15A (b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated September 10, 2012 under Section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Rules**) to inquire into and adjudge the alleged violations of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No. EAD-6/BM/VS/4119/2013 dated February 15, 2013 (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 held and penalty be not imposed under Section 15A (b) of SEBI Act for the alleged violation specified in the said SCN. The said SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated March 5, 2013 sought time of three weeks to file reply to the SCN which was granted vide email dated March 11, 2013. Vide letter dated March 29, 2013 Noticee made the following submissions:

- a. *That the non-compliances as mentioned in the SCN were brought to my knowledge for the first time during June/July 2010 by the Manager to the offer viz. Vivro Financial Services Private Ltd. who were appointed by the acquirers viz. B.K. Dyeing & Printing Mills Pvt. Ltd., Sriram Stocks Management Pvt. Ltd. Malar Share Shoppe Ltd. (hereinafter, "Acquirers").*
- b. *That on realizing such non-compliance, I voluntarily submitted an application for consent dated November 10, 2010 offering an amount of Rs. 1,00,000/- to resolve the matter amicably and not warranting any penal action against me by SEBI. Later on, after personal meeting with the Internal Committee of SEBI on consent, I by my letter dated June 17, 2011 revised the consent terms to Rs.2,00,000/- to mitigate litigation cost and maintain my unblemished track record. However to my regrets, the High powered Advisory Committee on Consent constituted by SEBI did not accept the revised consent terms and therefore my application was rejected by SEBI and I was intimated about the same vide letter No. EFD/DRA-1/KG/OW/27239/2011 dated August 25, 2011.*
- c. *The above referred DJS/ the Company was incorporated under the Companies Act 1956, on April 27, 1994 as a Public Limited Company having registered office at Coimbatore. The Company was promoted by Mr. Prakash Devidas Shah with the main object to inter-alia carries out share broking activity. The Company came out with the Public issue of 30,30,400 shares in January 1995 and made Preferential allotment of 10,00,000 shares in June 1997. Thereafter the Company has not made any further issue of share capital till October 2012. During October 2012, Company allotted Bonus shares in the ratio of 1:2 and split face value from Rs.10/to Rs.1/-.*
- d. *The promoter of the Company viz. Mr. Prakash Devidas Shah signed a Share Purchase Agreement as on March 17, 2010 with the Acquirers viz. B.K. Dyeing & Printing Mills Pvt. Ltd., Sriraman Stocks Managements Pvt. Ltd. and Malar Share*

Shoppe Ltd. to sell his entire holding of 28,07,100 shares representing 55.80% of the total paid up equity share capital of the Company @ Rs.25/- and the said Acquirers in compliance of SEBI (SAST) Regulations, 1997 made Public Announcement on March 23, 2010. The said acquirers made an open offer in July 2010 to acquire 10,06,080 shares representing 20 % of the total paid up equity share capital of the Company @ Rs.45/-. However in response thereto only 1,600 shares were tendered by the public shareholders. Thus the public shareholders had an opportunity to sell the shares @ Rs.45/- in July 2010.

- e. With regard to the non-disclosure under Regulation 13(4) of the PIT Regulations for acquisition of 30,600 shares on April 30, 2002 and 88,100 shares on November 03, 2008, I humbly submit that I was not aware and had no acknowledge of such compliance requirements for the same.*
- f. Further, with regard to acquisition of 29,700 shares on January 14, 2003, I would like to submit that it was transferred from my mother Smt. Subhadra Devidas from her demat account bearing Client ID 01160000003186, by way of inheritance to me. thus, it was my understanding that since the transaction is not only within family but also in the form of inheritance; I was under the bonafide impression that no disclosure was required under Regulation 13(4) of PIT Regulation.*
- g. However with regard to off-market transaction of 31,000 shares, I would like to humbly submit that on February 26, 2008 the said 31,000 shares were transferred to the demat account of my nephew Mr. Devang M shah who retransferred/returned the said 31,000 shares to my account on March 26, 2008 i.e. within a period of one month. Hence, I would like to submit that the said 31,000 shares had just remained in his demat account for one month and consequently the said transaction had no significant effect in the larger scheme of things. in my humble submission these two off market transactions of 31,000 shares i.e. delivery on February 26, 2008 shares ought not to trigger the*

disclosure requirement under Regulation 13(4) if the PIT Regulations.

- h. Further, with regard to the off-market transfer of 17,54,438 shares on September 02, 2010, it is submitted that the said transfer had taken place pursuant to the Share Purchase Agreement (SPA) executed on March 17, 2010 with the acquirers for which Public Announcement was made on July 01, 2010 by the said acquirers incidentally the required disclosure was made but inadvertently there was a delay of merely 3 days. Under these circumstances wherein the shares were transferred pursuant to the aforesaid SPA and that the Acquirers had appointed Merchant Bankers to comply with the statutory requirements of the stock exchanges and SEBI, penal action ought not to have been taken against me. I would like to humbly submit that your good selves shall take into cognizance that a mere delay of 3 days in making the requisite disclosures to the Company is a venial lapse and thus no penal action be pursued for the same.*
- i. Additionally, it is also pertinent to note that during the relevant period, DJS/ the Company itself was acting as its Registrar and Transfer Agents. Therefore every sale transaction resulting into change in beneficial ownership necessarily passed through DJS/the Company records. Be that as it may, I admit and accept the non-compliance, however please be informed that it was unintentional and innocent lapse on my part. I therefore request your good selves to kindly take a lenient view and exonerate me from penal action for the same.*
- j. Under the facts and circumstances as enumerated hereinabove, I request you to kindly consider the following facts and mitigating factors in exonerating me from the alleged violations in the SCN.*
 - (i) The execution of aforesaid transactions has not adversely affected the interests of the shareholders of the DJS/ the Company in any manner whatsoever and has not put the existing Shareholders of the Company to any disadvantage.*

(ii) There was no intention to suppress any material/information from the DJS/ the Company or from any shareholder of the Company.

(iii) I have voluntarily made an Application for Consent to settle the matter amicably before issuance of the aforesaid SCN to me.

(iv) The said violation is only technical, procedural and venial breach and has not caused any adverse consequences to anybody, especially the shareholders of the company.

(v) I have not consciously or deliberately avoided the filing of the requisite information to DJS / the Company.

(vi) I have not made any disproportionate gain or derived any unfair advantage from the aforementioned transaction.

(vii) No loss has been caused to any investor or group of investors or to any member of the public as a result of the technical default on my side.

(viii) The alleged default is not repetitive in nature.

(ix) There is no investors' complaint with regard to the non compliances arising from the execution of aforesaid transactions by me.

6. In the interest of natural justice an opportunity of hearing was provided to the Noticee on April 25, 2013 vide hearing notice dated April 3, 2013. Noticee vide email dated April 4, 2013 requested to reschedule the hearing on or before April 23, 2013. Accordingly the hearing was rescheduled to April 18, 2013 and same was intimated to the Noticee vide email dated April 5, 2013. Shri. Prakash Shah, (Advocate) Authorized Representative (AR) appeared along with the Noticee and reiterated the submissions given in the reply to the SCN. During the hearing Noticee sought time till April 23, 2013 for filing additional submission, if any. Vide letter dated April 18, 2013 Noticee reiterated the submission made vide letter dated March 11, 2013 and made following further submissions:

a. The alleged non-compliance of the disclose requirements with regard to 'SEBI Insider Trading Regulations' was to be furnished to the Company only and therefore unintentional.

- b. The alleged non-compliance of the disclose requirements is technical/ venial in nature.*
- c. I have not gained anything by such non disclosures*
- d. Effectively, no harm, loss damage or injury of any nature whatsoever has been caused to any investor.*
- e. To the best of my knowledge and information, SEBI and stock exchanges have never carried out investigation in the dealings/ scrip of DJS Stocks and Shares Ltd. for the manipulations or malpractice of any kind.*
- f. There is no investor's complaint with regard to the non-compliance arising from non disclosure arising from execution of aforesaid transaction by me.*
- g. I have voluntary approached SEBI about such lapse from my side when it was brought to my knowledge.*

CONSIDERATION OF ISSUES AND FINDINGS

- 7. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:
 - i. Noticee did not make necessary disclosures under Regulation 13(4) of PIT Regulations to the company when there was change in his shareholding in the company and such change exceeded Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.
 - ii. Noticee delayed in filing disclosures under Regulation 7(1A) of SAST Regulations.
- 8. In view of the above it was alleged that the Noticee violated the provisions of Regulation 7(1A) read with 7(2) of SAST Regulations and 13(4) read with 13(5) of PIT Regulations.
- 9. Before moving forward, it will be appropriate to refer to the relevant provisions of 13(4) read with 13(5) of PIT Regulations, Regulation 7(1A) read with 7(2) of SAST Regulations, which reads as under:

Regulation 13(4) of PIT Regulations is as under:

- (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 right 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-regulation (3) and (4) shall be made within 4 working days of:
- (a) The receipt of intimidation of allotment of shares, or
 - (b) The acquisition or sale of shares or voting rights, as the case may be.

Regulation 7(1A) of SAST Regulations is as under:

- (1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term ‘acquirer’ shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

- (2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

10. The issues that arise for consideration in the present case are:

- i. Whether Noticee did not make necessary disclosures under Regulation 13(4) of PIT Regulations to the company when there was change in his shareholding in the company and such change exceeded Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower?
- ii. Whether Noticee delayed in filing disclosures under Regulation 7(1A) of SAST Regulations to the company and to the stock exchange?
- iii. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b) of SEBI Act?
- iv. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS:

11. I now proceed with the alleged violations of SAST and PIT Regulations.

- i. I note that Noticee while trading in the scrip of the company had acquired/ sold shares in market and off-market transactions on various occasions. Details of market and off-market transactions are given below:

Sr. no	Date of transaction	Mode of Transfer	Shareholding Before Acquisition/ Transfer (%)	No. of shares Acquired/ Transferred (%)	Shareholding After Acquisition/ Transfer (%)	Disclosure Required under PIT Regulation	Disclosure Required under SAST Regulation
1	04/06/1997	Market	1658900 (41.16%)	1000000 (19.88%)	2658900 (52.86%)	NA	NA
2	11/09/1997	Market	2658900 (52.86%)	-9600 (-0.19%)	2649300 (52.67%)	NA	NA
3	30/04/2002	Market	2649300 (52.67%)	30600 (0.61%)	2679900 (53.27%)	13(4)	NA
4	14/01/2003	Off-market	2649200 (52.67%)	29700 (0.60%)	2679900 (53.27%)	13(4)	NA
5	26/02/2008	Off-market	2711100 (53.89%)	-31000	2679900 (55.27%)	13(4)	NA
6	26/03/2008	Off-market	2679900 (53.27%)	31000	2711100 (53.89%)	13(4)	NA
7	03/11/2008	Off-market	2713900 (53.95%)	88100	2801600 (55.69%)	13(4)	NA
8	02/09/2010	Off-market	2807100 (55.80%)	1754438	1754438 (34.88%)	NA	7(1A)

- ii. It was observed that on April 30, 2002 Noticee acquired through market transactions 30,600 shares representing 0.61% of the total shareholding in the company. Vide off-market transactions dated January 14, 2003, March 26, 2008 and November 3, 2008 he acquired 29,700, 31,000 and 88100 shares and on February 26, 2008 sold 31000 shares of the company respectively. Noticee being the Director of the company was required to make disclosures under Regulation 13(4) of the PIT Regulations. Admittedly no disclosure was made by the Noticee.
- iii. It was further observed that on September 2, 2010 Noticee transferred 17,54,438 shares of the company through off-market transactions for which he was required to make disclosure under Regulation 7(1A) of SAST Regulations to the company and to the exchange. It was observed that the Noticee failed to make necessary disclosures within stipulated time as required under the Regulations and made it with a delay of 3 days to the company and to the stock exchange BSE. Thus, the Noticee did not comply with Regulation 7(1A) of SAST Regulations.
- iv. Noticee in his reply has submitted that for the transaction dated April 30, 2002 and November 3, 2008 he had no knowledge of such compliance requirement. He claimed that for the transaction dated January 14, 2003 he inherited shares from his mother by way of inheritance and on February 26, 2008 he transferred shares to his nephew who returned the same within one month i.e. on March 26, 2008. The said transaction, according to Noticee, ought not to trigger the PIT Regulations. With regard to transaction dated September 2, 2010 Noticee admitted that the disclosure was inadvertently made with a delay of 3 days.
- v. From the documents available on record and from the reply of the Noticee I note that for the transactions dated April 30, 2002, January 14, 2003, February 26, 2008, March 26, 2008, November 3, 2008 Noticee was required to make necessary disclosures under Regulation 13(4) of PIT Regulations. Noticee has submitted that since the transaction was not only within the family but also in

form of inheritance, he was under the bonafide impression that no disclosure was required under 13(4) of PIT Regulations. I note that disclosure requirement under Regulation 13(4) of PIT Regulations does not exempt whether shares are transferred within family nor does it exempt those transaction where shares are transmitted through inheritance. Thus, the submission of the Noticee is not acceptable. Hence, I conclude that by not making such disclosures under Regulation 13(4) read with 13(5) of PIT Regulations he has violated the said provision.

- vi. For the transaction dated September 2, 2010 Noticee transferred 17,54,438 shares of the company through off-market transactions for which he was required to make disclosure under Regulation 7(1A) of SAST Regulations to the company and to the stock exchange within two days. I note that Noticee made the disclosure but with a delay of 3 days. The disclosures were required to be filed under Regulation 7(1A) of SAST Regulations for the aforesaid transactions within two days the change in the holding to the company and the stock exchange where the shares are listed. It was observed that the Noticee failed to make necessary disclosures within stipulated time as required under the Regulations and made it with a delay of 3 days to the company and stock exchange BSE. Making delayed disclosures amount to not making disclosures. Thus, the Noticee failed to comply with Regulation 7(1A) of SAST Regulations.
12. Noticee in his submission mentioned various mitigating factors for exonerating him such as there has been no disproportionate gain or unfair advantage as a result of the transaction in question nor has there been any loss caused to an investor or investor group and this is the first default, if any, committed by him etc. I note that Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."

13. In view of the above I hold that the Noticee violated the provisions of Regulation 7(1A) read with 7(2) of SAST Regulations and 13(4) read with 13(5) of PIT Regulations.

14. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 7(1A) read with 7(2) of SAST Regulations and 13(4) read with 13(5) of PIT Regulations attracts monetary penalty under section 15A(b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.

15. The object of the SAST and PIT Regulation mandating disclosure of acquisitions 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 such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that:

"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market".

Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 7(1A) read with 7(2) of SAST Regulations and 13(4) read with 13(5) of PIT Regulations

16. 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, which reads as under:

15A(b). Penalty for failure to furnish information, return, etc.-

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.

17. While determining the quantum of penalty under Section 15A (b) of SEBI Act, 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.”*

18. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The SAST and PIT Regulation have been framed in order to bring about the transparency in the market and timely disclosure to the investors. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, had responsibility in ensuring the compliance of disclosure norms. The timely disclosure was of importance from the point of view of outside shareholders/other

investors as such disclosure would have prompted them to buy or sell shares of the target company. As regards the contention of the Noticee that no loss was caused to the investors the Noticee cannot pre-judge the reaction of the investors. It is an admitted fact that the Noticee had not made the disclosure as required and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the information. Under these circumstances, the compliance with the disclosure requirements under SAST and PIT Regulation assumes significance and the Noticee's failure to do so needs to be viewed seriously and an appropriate view is being taken with regard to imposition of monetary penalty in the matter.

19. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find from the records available before me the default is not repetitive.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹. 3,00,000 (Rupees Three lakh only) under Section 15A (b) of SEBI Act, on the Noticee which will be commensurate with the violations committed by it.
21. The Noticee shall pay the said amount of penalty 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 Shri. Debashis Bandyopadhyay, Deputy General Manager, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. 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: **May 08, 2013**

BARNALI MUKHERJEE

Place: **Mumbai**

ADJUDICATING OFFICER