

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 49 /2013-14]

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

Against

Shri Madanchand Prasanchand

[PAN: ACIPP6930E]

In the matter of

Raj Packaging Industries Limited

Background:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the irregularity in trading in the shares of Raj Packaging Industries Limited (hereinafter referred to as 'RPIL'), a company listed on the Bombay Stock Exchange (BSE), for the period from June 01, 2012 to January 21, 2013, and into the possible violation of the provisions of the SEBI Act, 1992 (herein after referred to as the Act) and various Rules and Regulations made there under.
2. The examination, inter alia, revealed that as per the quarterly shareholding pattern for the quarter ended June 2012 filed by RPIL with the stock exchange, Shri Madanchand Prasanchand (hereinafter referred to as the 'Noticee'), one of the shareholders, was holding 47,597 shares in the company. The Noticee's holding increased / changed to 2,00,857 shares on September 05, 2012 constituting 5.06% of the total shares of RPIL. In view of the said increase / change in the shareholding, the Noticee was required to

make the necessary disclosures as prescribed under Regulation 13(1) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the PIT Regulations) and Regulation 29(1) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as SAST Regulations). The Noticee failed to make the said disclosures thereby violating the provisions of law.

3. Further, the shareholding of the Noticee had changed by more than 2% on three occasions i.e. on November 15, 2012 [2,80,621 (7.07%) shares], December 27, 2012 [3,60,065 (9.07%) shares] and January 17, 2013 [4,51,913 (11.38%) shares] requiring him to make disclosures to the company as prescribed under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(2) of the SAST Regulations. The Noticee also failed to do so.
4. SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violations of the provisions mentioned under Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) and 13(3) read with Regulation 13(5) of the PIT Regulations against the Noticee.

Appointment of Adjudicating Officer:

5. In view of the above, SEBI vide Order dated March 11, 2013 appointed the undersigned as the Adjudicating Officer (AO) 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 Section 15A(b) of the SEBI Act, 1992 for the alleged violation of the abovementioned provisions of PIT Regulations and SAST Regulations by the Noticee.

Notice, Reply & Personal Hearing:

6. Accordingly, the undersigned issued a notice dated April 02, 2013 (hereinafter referred to as the 'SCN') to the Noticee in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against him for the alleged violations. The SCN was duly delivered to the Noticee. The Noticee vide e-mail and letter dated April 19, 2013 replied to the said SCN. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee vide notice dated June 19, 2013 on July 05, 2013. The Noticee attended the said hearing and reiterated the submissions made in his reply dated April 19, 2013. The Noticee further submitted that the non-disclosures were inadvertent and due to lack of knowledge he did not make the requisite disclosures as required under the stated Regulations. He produced the e-mail copies exchanged with the company in support of his earlier submissions. The Noticee has even submitted the copies of disclosures made by him now to stock exchange and the company vide his letters dated July 10, 2013.
7. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges against the Noticee as per the SCN, written submissions and the materials & 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 Regulation 29(1) & 29(2) read with Regulation 29(3) of the SAST Regulations and Regulations 13(1) & 13(3) read with 13(5) of the PIT Regulations?
(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A (b) of the SEBI Act?
(c) If yes, what should be the quantum of penalty?
9. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

Relevant provisions of PIT Regulations:-

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

- 13.(1)** Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 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.

Continual disclosure.

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

Relevant provisions of SAST Regulations:-

Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

10. Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, 2011 mandates any person who holds more than 5% shares or voting rights in any listed company to disclose to the company, the total number of shares held by the person. The said change is to be disclosed to the company within 2 working days from the date of acquisition or receipt of intimation of allotment of shares. Regulation 13(3) of PIT Regulations, 1992 and Regulation 29(2) of the SAST Regulations, 2011 further mandates the person holding more than 5% shares or voting rights to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if the change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under Regulation 13(1) and such change exceeds 2% of the total shareholding or voting rights in the company.
11. I find from the SCN that the Noticee is one of the shareholder in RPIL. As per Annexure II to the SCN the Noticee was holding 47,597 shares of RPIL as on June 30, 2012. The holding of the Noticee increased / changed to 2,00,857 shares on September 05, 2012 constituting 5.06% of the total shares of RPIL. Upon the said increase in the shareholding, the Noticee was required to make the necessary disclosures as required under the SAST and PIT Regulations to the company. I further find that the shareholding of the Noticee had changed by more than 2% on three occasions i.e. November 15, 2012 [2,80,621 (7.07%) shares], December 27, 2012 [3,60,065 (9.07%) shares] and January 17, 2013 [4,51,913 (11.38%) shares]. Upon the said increase in the holdings, the Noticee was required to make the necessary disclosures to the company as prescribed under the PIT and SAST Regulations. However, the Noticee did not make the said disclosures.
12. The Noticee vide his reply dated April 19, 2013 submitted that he had purchased the shares of RPIL through a broker from BSE and when the holdings reached 5% of total equity, he had informed the company through mail and in turn told the company to inform BSE about the same. Further, the

Noticee submitted that he does not have any connection with the promoters of the company. The Noticee has enclosed a trail of e-mails in support of his contention.

- 13.** Upon examining the submissions of the Noticee and the supporting e-mails provided by him in support of his contention, I find that vide e-mail dated September 17, 2012 to the company, the Noticee intimated it about the increase in the shareholding by more than 5%. The said intimation was not in the prescribed format as per the Regulations to the company and was not made to the stock exchange. Further, despite the company's repetitive mails to the Noticee requesting him to submit the information in the prescribed format and procedures as laid down in the relevant rules, the Noticee had not submitted the information in the prescribed format and therefore, has not adhered to the law. Wrong disclosures or disclosures in wrong format amounts to non-disclosure. Further, the Noticee, in the personal hearing granted to him, submitted that the said non-disclosures were inadvertent on his part and due to lack of knowledge he did not make the necessary disclosures as required in the law. Therefore, I am of the view that the Noticee's submission that he had informed the company about the change in the shareholding upon acquiring more than 5% of shares via e-mail cannot be accepted. I further find that, the Noticee has not made any submission with respect to the change in his holding by more than 2% on three occasions i.e. on November 15, 2012, December 27, 2012 and January 17, 2013. During the personal hearing, the Noticee has produced before me the copies of disclosures made by him to the company and the stock exchange vide his letters dated July 03, 2013, which is after the initiation of the present proceeding. Therefore, I am of the view that the Noticee by not making the necessary disclosures within the prescribed time has violated the disclosure requirements under the SAST and PIT Regulations.
- 14.** From the foregoing, I conclude that the Noticee has violated the provisions of Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) and 13(3) read with Regulation 13(5) of the

PIT Regulations for non-disclosure of the change in the shareholding warranting monetary penalty under Section 15A(b) of the Act.

15. Section 15A (b) of the SEBI Act, reads as 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 there under:-

(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

16. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".

17. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important 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.*

18. I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee or to ascertain whether the defaults are repetitive in nature.

Order

19. 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 ₹ 1,00,000 (Rupees One Lakh only) on Shri Madanchand Prasanchand under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.
20. 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 Division Chief, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
21. In terms of the Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: July 23, 2013

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**