

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.ISD/ AFL/AO/DRK/VVK/EAD-3-361/27 - 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

Against

Ankush Finstock Limited

PAN NO. (AAHCA7833R)

B/708, Fairdeal House,
Opp.St.Xavier's Girl's Hostel,
Off.C.G.Road,
Ahmedabad 380 009

In the matter of Ankush Finstock Limited

FACTS OF THE CASE IN BRIEF

1. The scrip of Ankush Finstock Limited (hereinafter referred to as the "**said Scrip**") is listed at The Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**"). BSE on the basis of an internal alert conducted a snap investigation in the said Scrip for the period from 28/02/2011 to 08/04/2011 (**Investigation Period / IP**). BSE in its report informed the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") that Ankush

Finstock Limited (**AFL**) had allegedly not filed the required disclosure to the Stock Exchange viz. BSE regarding the dealings of its Managing Director of

AFL Mr.Bharat Manubhai Shah ("**MD**").

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide Order dated 10/08/2012, I was appointed as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act,1992 (hereinafter referred to as 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 '**Rules**') to inquire into and adjudge the violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the said " **PIT Regulations**") alleged to have been committed by AFL under Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE. HEARING AND REPLY

3. A Show Cause Notice No. A&E/DRK/VVK/20358/2012 dated 07/09/ 2012 (hereinafter referred to as "**SCN**") was sent to Ankush Finstock Limited (hereinafter referred to as the "**Noticee /Company**") by the Registered Post Acknowledgement Due ("**RPAD**") under Rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and why penalty be not imposed on the Noticee, in respect of the violation alleged to have been committed by the Noticee under the provision of regulation 13(6) of the said PIT Regulations read with Section 15A(b) of the SEBI Act.
4. Based on the examination carried out by SEBI into the dealings in the scrip of AFL, it was alleged in the SCN that the Noticee had not filed the required disclosures to BSE for the dealings of its MD who had reportedly bought 81,389

shares and sold 72,889 shares during the said investigation period and on two occasions had triggered the provision of regulation 13(6) of the PIT Regulations. The said failure of AFL resulted in violation of the provision of

regulation 13(6) of the said PIT Regulations.

5. The Noticee vide its response dated 24/09/2012 requested for fifteen days' time for submission of the reply to confirm the quantum of shares sold by its MD which was acceded to and the same was communicated vide letter dated 03/10/2012. Subsequently, the Noticee in response to the same, vide its letter dated 04/10/2012, submitted its reply and clarified on the dealings of its MD and sought an opportunity of hearing to present its case in the said matter. The contents, *inter alia*, of the said reply of the Noticee are given as below :-

** " the number of shares sold by Mr.Bharat Manubhai Shah stands at 8500 shares and not 72,889 shares during the said IP.*

** the same figures were provided by him to the Company as part of the information required to be provided by him under SEBI (PIT) Regulations, 1992.*

** The Company had not filed the necessary reports with the Stock Exchange considering the fact that volume of shares was less than 2% of the equity of the Company and in that context it was not required to report to the stock exchange as provided under regulation 13(2) of PIT. The fact there was not more than 2% change in shareholding of Mr.Bharat Manubhai Shah is established from the fact that his total holding prior to the acquisition was 9.02% and that post-acquisition became 10.19% which is increased of 1.17%.*

** Company was required to intimate to the stock exchange under regulation 13(6) within two days of the disclosure received from the Director. It is*

understood that Company only referred to the provisions of the regulation 13(3) and probably overlooked the provisions of regulation 13(6).

** On account of technical interpretation of the relevant law, Company did not make the necessary disclosure. Considering the facts we would appreciate that the error made on the part of company be condoned.*

6. Vide personal hearing notice dated 20/02/2013, the noticee was granted an opportunity of hearing on 06/03/2013 at 12 Noon at SEBI Bhavan, Mumbai. The Noticee vide its letter dated 28/02/2013 confirmed its attendance and sought to represent the case through its Authorized Representative Mr. Nayan Rawal, Advocate (hereinafter referred to as "**AR**") on the said date of hearing. The AR while admitting the allegations levelled against the Noticee, made the following submissions :-

* " The AR reiterated the submissions made vide letter dated 04/10/2012 and submitted a copy of the letter dated 10/07/2012 addressed to AGM,ISD,SEBI,HO,Mumbai which is taken on record.

* MD had sold 8500 shares and not 72,889 shares as alleged in the SCN.

* The company had failed to report to the stock exchange about the alleged transaction in the SCN and prayed for lesser punishment inasmuch as the said contravention occurred through inadvertence.

CONSIDERATION OF EVIDENCE AND FINDINGS

7. It was alleged in the SCN that the MD who had reportedly bought 81,389

shares and sold 72,889 shares during the said investigation period and on two occasions had triggered the provision of Regulation 13(6) of the PIT Regulations and the Noticee and was required to make disclosure to BSE.

8. I have taken into consideration the facts and circumstances of the case and the material made available on record. I note that the allegation against the noticee was that the noticee had failed to make disclosures to BSE with respect to the dealings of its MD during the aforesaid investigation period in the scrip of AFL.
9. I note that the Company in its reply submitted that the MD of the Company has made required disclosures to the company, about his dealings in the said shares of the Company who had reportedly bought 81,389 shares and sold 8500 shares during the said investigation period. In view of the submission of the Noticee regarding the sell figure, a clarification was sought from the concerned department of SEBI. The department clarified that "it was inadvertently mentioned 72,889 shares instead of 8500 shares sold. The fact is that MD bought 81,389 shares and sold 8500 shares and net buyer for 72,889 shares." Therefore, based on the clarification of the department as mentioned above, the sell figure stands corrected and based on the confirmation from the department, I proceed in this matter as below.
- 10 As observed by examination report of SEBI that the MD on two occasions had triggered the provision of regulation 13(6) of the PIT Regulations, however, the company, in turn, failed to make the required disclosures to that effect to BSE. It was alleged that the said failure of the company has violated regulation 13(6) of the PIT Regulations. The company in its submissions has admitted that the -

MD of the company had bought 81,389 shares and sold 8,500 shares during the said investigation period and stated that its MD had reported the said

transactions to it. I have noted that the said share transactions of the MD who in his dealings bought 81,389 shares and sold 8,500 shares and, hence, required to file disclosures under the said Regulations for every change of holding in excess of 25,000 shares. The details of the trigger points during the examination period for making disclosures are given below :-

Date	Previous day holding (no. of demat shares)	Total demat Holding of Client	Change in holding	Consol.relevant change in holding from last disclosure (point)	SEBI Regulation
4/3/2011	151,700	161,350	9,650	20,850	
5/3/2011	161,350	161,350	0	20,850	
7/3/2011	161,350	173,085	11,735	32,585 cumulative change in holding 32,585 (change since Dec.31,2010)	PIT 13(4)
8/3/2011	173,085	188,688	15,603	48,188	
9/3/2011	188,688	206,888	18,200	66,388 (cumulative change in holding) 33,803 (change since March 7,2011)	PIT 13(4)
10/3/2011	206,888	217,589	10,701		

11. Further, the company had agreed to the fact that it required to intimate the said disclosures to the BSE within two days of disclosure received from its MD. The company vide its letter dated the 04/10/2012 submitted its reply and reiterated

the same during the hearing on 06/03/2013 that it overlooked the provisions of regulation 13(6) and on technical interpretation of the relevant law the company did not make the necessary disclosures and admitted that it failed to comply with the requirements of provision of regulation 13(6) of the said Regulations.

12. In view of the above facts and as accepted by the noticee itself, it can be concluded that the Noticee has failed to comply with the provision of regulation 13(6) of the PIT Regulations.

13. The text of the provision of reg.13(6) of the said Regulations is reproduced as below :

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

" 13(6) - Disclosure by company to stock exchanges.

Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1),(2),(3) and (4) in the respective formats specified in Schedule III."

14. The text of the provision of regulation 13(4) of the said Regulations is reproduced as below :

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

15. The aforesaid failure attracts penalty under Section 15A(b) of the SEBI Act which provides that:

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; -

(a)

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

16. In this case, it becomes necessary to quote the judgment of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shriram 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....".

17. The provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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. It is also to be noted that the examination report has not quantified the profit/loss for the nature of violations / transactions committed by the noticee and no figures are made available on record to assess the disproportionate gain or unfair advantage and the amount of loss caused to an investor or group of investors as a result of the actions of the noticee. It has been noted from the material available on record that it is difficult to quantify any gain or unfair advantage accrued to the noticee as a result of this kind of default committed by the noticee.

19. In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of the SEBI Act, 1992. Therefore, I am inclined to impose a penalty of ₹2,50,000/- (Rupees two lakh fifty thousand only) on the noticee in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for violation of the provisions of Regulation 13(6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

ORDER

20. In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹2,50,000/- (Rupees two lakh fifty thousand only) on the noticee Ankush Finstock Limited (PAN AAHCA7833R) in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of regulation 13(6) of the SEBI (Prohibition of Insider Trading) Regulations,1992.
21. The penalty shall be paid by way of Demand Draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai within 45 (forty five) days of receipt of this order. The said demand draft shall be forwarded to General Manager, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, 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 Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Ankush Finstock Limited, Regd.Off: B/708, Fairdeal House, Opp.St.Xavier's Girl's Hostel, Off.C.G.Road, Ahmedabad 380 009 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date : 10/05/2013

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER