

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 3/2013]

**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

C R Rajesh Nair

PAN No. ADRPN0413A

In the matter of

Sigrun Holdings Limited (Formerly known as
Gee Kay Finance and Leasing Company Ltd).

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference dated July 26, 2010 from Bombay Stock Exchange (hereinafter referred to as '**BSE**') informing that Mr. C R Rajesh Nair Managing Director of Sigrun Holdings Limited (Formerly known as Gee Kay Finance and Leasing Company Limited) (hereinafter referred to as '**the Noticee**') had sold 45,000 share on 24.05.2010 however, no disclosure was made by him to that effect under PIT Regulations.
2. Investigations were conducted by SEBI with regard to share holding pattern filed by the company for quarters ending December 2009, March 2010, and June 2010 as well as the

disclosures made by the Noticee under regulation 13(4) of PIT Regulation for the period from 01.12.2009 to 30.06.2010 on BSE website. It was observed that the Noticee was the Managing Director of Sigrun Holdings Limited (Formerly known as Gee Kay Finance and Leasing Company Limited) (hereinafter referred to as “**Company**”) had sold shares of the company at four instances during the period 21.11.2009 to 30.06.2010.

3. Upon examination into the dealing in the shares of the Company it was observed that the Noticee sold 94,000 shares between 21.11.2009 to 30.06.2010. The shares of the company were listed at Bombay Stock Exchange (hereinafter referred to as ‘**BSE**’). Delhi Stock Exchange (hereinafter referred to as ‘**DSE**’). Uttar Pradesh Stock Exchange (hereinafter referred to as ‘**UPSE**’). The paid-up capital of the company during 21.11.2009 to 30.06.2010 was 53,52,40,220 shares.
4. It was observed that the Noticee had sold shares as follows:

Date	Quantity sold	Sell value
November 25, 2009	12000	7,58,400
December 3, 2009	10,000	7,65,500
December 08, 2009	27,000	20,52,000
May 24, 2010	45,000	8,69,370

Investigation observed that the Noticee was under an obligation to make disclosures under Regulation under 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading) (hereinafter referred to as ‘**PIT Regulations**’). However allegedly no such disclosure was made by the Noticee under Regulation 13(4) read with 13(5) of PIT Regulations. It was therefore alleged that through the aforesaid act the Noticee violated Regulation 13(4) read with 13(5) of PIT Regulations. Consequently, the Noticee was liable for penalty under Section 15 A (b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. I was appointed as the Adjudicating Officer, vide order dated March 22, 2011, under Section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **‘Rules’**) to inquire into and adjudge under Section 15 A (b) of the SEBI Act for the alleged violation of Regulation 13(4) read with 13(5) of PIT Regulations allegedly committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice (hereinafter referred to as “**SCN**”) dated 19.04.2011 was issued to the Noticee along with relevant annexure under rule 4(1) of SEBI Rules communicating the alleged violation of PIT Regulations.
7. The details of sales of shares by which there were change in the share holdings/voting rights of the Noticee were given in the SCN as below :

Date of sale	No. of shares held by Noticee prior to sale	Quantity Sold	Sell Value	No of shares held by the Noticee after sale
25.11.2009	1,58,000	12,000	7,58,400	1,46,000
03.12.2009	1,49,100	10,000	7,65,500	1,39,100
08.12.2009	1,39,100	27,000	20,52,000	1,12,100
24.05.2010	52,07,566	45,000	8,69,370	51,62,566

8. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against him and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violation. The SCN was duly acknowledged by the Noticee.

9. In the interest of natural justice and in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of hearing on 21.06.2011 vide notice dated 02.06.2011 the said notice was duly acknowledged by the Noticee. The Noticee vide its letter dated 07.06.2011 informed that he is desirous to avail consent process.
10. Second opportunity of hearing was granted on 05.08.2011 vide notice dated 22.07.2011. The said hearing notice returned undelivered by the remark room closed. The Noticee submitted its reply to the SCN vide letter dated 26.07.2011 the relevant portion of which is as under :
 - a. I would like to state that I had purchased and sold shares on seven different dates from 23.11.2009 to 21.12.2009 and I had complied with the filing under SEBI (SAST) Regulations, 1997 and SEBI (PIT) Regulations, 1992 on 4 occasions. I had not complied with the disclosure under SEBI (PIT) Regulations, 1992 on the three dates mentioned by you, purely by oversight.
 - b. Further, I have not made disclosure for the sale of shares on 24.05.2010 which is again by pure oversight.
11. The Noticee filed an application for consent terms vide letter dated 01.08.2011 against the SCN dated 19.04.2011 hence the proceedings were kept in abeyance. The HPAC in its meeting dated 04.09.2012 recommended that the aforesaid adjudication proceeding may not be settled on the terms, as proposed by the Noticee and the Noticee was informed accordingly.
12. An opportunity of hearing was granted on 19.12.2012 vide letter dated 03.12.2012. The Noticee vide email dated 19.12.2012 sought adjournment for the hearing and request to keep the hearing in the second week of January 2013. Accordingly, final opportunity of hearing was granted to the Noticee on 10.01.2013 vide letter dated 02.01.2013. The said hearing notice returned undelivered on 05.01.2013 with a remark "person out of station". Thereafter, the scan copy of the hearing notice dated 02.01.2013 was sent through email dated 08.01.2013 advising the Noticee to appear on 10.01.2013 failing which the

adjudication proceedings will be proceeded based on the documents available on record. The said email was delivered to the Noticee on 08.01.2013 however, the Noticee failed to appear on 10.01.2013 for the personal hearing.

13. As elaborated above Noticee failed to appear for hearing. For the reasons mentioned above, I observe that the Noticee was provided with enough opportunity to be heard and hence, I am constrained to proceed with the matter on the basis of the reply of the Noticee and the material available on record.

CONSIDERATION OF ISSUES

14. I have carefully perused the documents available on record. The allegations against the Noticee were as follows:

The Noticee had sold 12,000 shares on 25.11.2009, 10,000 shares on 03.12.2009, 27,000 shares on 08.12.2009 and 45,000 shares on 24.05.2010. Thereby, there was change in share holding/voting rights of the Noticee in company, for which the Noticee was required to make disclosure in term of regulation 13(4) of PIT Regulation which the Noticee allegedly did not make.

In view of the above it was alleged that the Noticee violated the provisions of Regulation 13(4) read with 13(5) of PIT Regulation.

15. Before moving forward, it is pertinent to refer to the provisions of Regulation of 13(4) read with 13(5) of PIT Regulation. The provisions are reproduced hereunder:

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

13. (1).....

(2).....

Continual disclosure.

(3).....

(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.

(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.

16. Now the issues that arise for consideration in the present case are :

- a) Whether the Noticee was the director of the company at the time of sales of shares by him on 25.11.2009, on 03.12.2009, on 08.12.2009 and on 24.05.2010?
- b) Whether the Noticee attracted the disclosure requirements under regulations 13(4), and 13(5) of PIT Regulations?
- c) If so, whether the Noticee complied with the above provisions of PIT Regulations?
- d) Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15 A(b) of SEBI Act?
- e) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

FINDINGS

17. I now proceed with the alleged violations of PIT Regulations

From the documents available before me and the reply of the Noticee it is observed that the he was the Managing Director of the company during the relevant time and had sold

94,000 shares between 21.11.2009 to 30.06.2010. The details of the sales of shares by the Noticee is given in the table below.

Table A

	Date of sale	No. of shares held by Noticee prior to sale	Quantity Sold	Sell Value	No. of shares held by Noticee after sale
Paid up capital of the company 53,52,40,220	25.11.2009	1,58,000	12,000	7,58,400	1,46,000
	03.12.2009	1,49,100	10,000	7,65,500	1,39,100
	08.12.2009	1,39,100	27,000	20,52,000	1,12,100
	24.05.2010	52,07,566	45,000	8,69,370	51,62,566

As per Regulation 13(4) of PIT 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, 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 from the last disclosure made, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

In view of the above provisions the sale of shares by the Noticee, which resulted change in his holdings, attracted the provisions of 13(4) of PIT Regulations. Hence the Noticee was required to make the disclosure in Form D and as required under 13(5) such disclosure was to be made to the company and to the exchange within 2 working days as detailed below:

Table: B

Date of sale	No. of shares held by you prior to sale	Quantity Sold	Sell Value	No. of shares held by you after sale	Disclosures to be made to the Company and the exchange within:
25.11.2009	1,58,000	12,000	7,58,400	1,46,000	27.11.2009
03.12.2009	1,49,100	10,000	7,65,500	1,39,100	07.12.2009
08.12.2009	1,39,100	27,000	20,52,000	1,12,100	10.12.2009
24.05.2010	52,07,566	45,000	8,69,370	51,62,566	26.05.2010

The Noticee did not avail of the opportunity of the personal hearing given to him more than once. The Noticee in his reply has given the reason that the disclosure was not made due to oversight. Thus admittedly the Noticee has not made the disclosures as required for the above sale of shares.

In view of the above Noticee violated the provisions of Regulation 13(4) read with 13(5) of PIT.

18. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 13(4) and 13(5) of PIT Regulations attracts monetary penalty under section 15 A(b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.
19. The object of the 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 Hon'ble 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”. In terms of regulation 13(4) of PIT read with 13(5) of PIT disclosure was required to be made to the exchange within 2 working days. 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.

20. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 13(4) and 13(5) of PIT.
21. The 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*”.
22. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15 A(b) of the SEBI Act, which reads as under:

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 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

23. While determining the quantum of monetary penalty under Section 15 A(b), I have considered 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.”*

24. In view of the charges as established, and the facts and circumstances of the case, and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The disclosure norms of PIT Regulations have been framed in order to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. 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, being the Managing Director of the company had more responsibility in ensuring the compliance of disclosure norms. The disclosure was of some importance from the point of view of outside shareholders/other investors as that would have prompted them to buy or sell shares of the target company. The Noticee had not made the disclosures to the exchange 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 important information at the relevant point of time. Under these circumstances, the compliance with the disclosure requirements under PIT Regulations assumes significance and the Noticee failure to do so have to be viewed seriously and a considerate view is taken with regard to imposition of monetary penalty in the matter.
25. 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 that the Noticee did not make the

disclosure in more than one occasion. Hence the default of the Noticee is repetitive in nature.

ORDER

26. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 2,00,000 (Rupees Two lakh only) under Section 15 A(b) of SEBI Act, on the Noticee which will be commensurate with the violations committed by him.
27. 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 Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
28. 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: 18.01.2013

Place: Mumbai

BARNALI MUKHERJEE
ADJUDICATING OFFICER