

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 85/2009]

**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

Manhattan Fingrowth Limited

(PAN: Not Available)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in respect of buying, selling and dealing in the shares of Motorola Speciality Oils Limited (hereinafter referred to as ‘**MSOL/Company**’) for the period from January 1, 2001 to October 5, 2001 (hereinafter referred to as “**investigation period**”). The shares of MSOL are listed at Bombay Stock Exchange (hereinafter referred to as ‘**BSE**’) and Calcutta Stock Exchange (hereinafter referred to as “**CSE**”).
2. Pursuant to the investigation, it was alleged that Manhattan Fingrowth Limited (hereinafter referred to as “**Noticee**”) had failed to make the necessary disclosure in terms of regulations 13 (3) and 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”). Consequently, it was alleged that the Noticee was liable for

penalty under section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated May 15, 2008 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 provisions of the aforesaid regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No. EAD-5/VSS/JR/136957/2008 dated September 5, 2008 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN.
5. The Noticee vide letter dated September 17, 2008 replied to the SCN seeking extension of four weeks to apply for consent under SEBI Circular No. EFD/ED/Cir- 1/2007, dated April 20, 2007. No further communication has been received from the Noticee.
6. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on February 13, 2009 at SEBI, Head Office, Mumbai vide notice dated January 29, 2009. The Noticee neither sought for an adjournment nor appeared before me. Vide letter dated February 17, 2009 a second and final opportunity was given to the Noticee to appear before me on March 4, 2009. However, neither did the Noticee appear nor extension was sought by the Noticee.

7. I am convinced that ample opportunities have been given to the Noticee to explain his case. As per rule 4(7) of the Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons therefor. Despite having been given ample opportunity, the Noticee has failed to avail the opportunity of filing any reply to the SCN and personal hearing. I am, therefore, compelled to proceed with the matter *ex-parte* based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have noted that the allegation has been made based on the trading details of the Noticee. I am of the view that the shareholding/voting rights of the Noticee need to be examined in order to ascertain whether the Noticee, in the first instant, attracted the disclosure requirements under PIT. Since the Noticee did not co-operate and furnish any information, details, including Client id, PAN, Name of the Depository Participant, Transaction details of the Noticee for the period from January 1, 2001 to October 5, 2001 in the scrip of MSOL, Whether at any point of time prior to January 1, 2001 did it hold 5% or more of the paid up capital of MSOL i.e. 14,62,120 or more shares of MSOL, etc., was sought from National Securities Depository Limited (hereinafter referred to as “**NSDL**”) vide email dated May 13, 2009.
9. NSDL vide email dated May 20, 2009 furnished the requisite information. Further information was sought from the Depository Participant, Stock Holding Corporation of India Limited (hereinafter referred to as “**SHCIL**”) vide email dated May 21, 2009. Upon perusal of the details furnished by NSDL and SHCIL, I find that the Noticee did not hold 5% or more of

shares/voting rights of MSOL at any point of time. SHCIL vide email dated May 21, 2009 has also confirmed that the highest holding of the Noticee at any point of time was 10,00,100 shares (3.42%) of MSOL.

10. On perusal of regulation 13 (3) of PIT, I find that the same is attracted only when an entity holds/held 5% or more shares/voting rights of a company at any point of time. On careful examination of the facts of the case, I find that the Noticee had never crossed 5% of shares/voting rights of MSOL at any point of time and hence, she had not attracted regulations 13(3) and 13(5) of PIT. When the regulations were not attracted, the question of their compliance or otherwise does not arise.

ORDER

11. In view of the foregoing, the alleged violation of the provisions of regulations 13(3) and 13(5) of PIT by the Noticee, as specified in the SCN, does not stand established and the matter is, accordingly, disposed of.
12. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **May 21, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER