

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AK/AO/34-42/2013]

**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

| Name | Permanent Account No. | Order Number |
|------------------------------------|------------------------------|--------------------------|
| Ramsarup Industries Limited | AACCR2821D | PG/AK/AO/34/2013 |
| Ashish Jhunhunwala | ACPPJ2618E | PG/AK/AO/35/2013 |
| Naveen Gupta | ACZPG7668K | PG/AK/AO/36/2013 |
| Gajendra Kumar Singh | AUFPS1302L | PG/AK/AO/ 37/2013 |
| Bimal Kumar Jhunhunwala | ACZPJ3494J | PG/AK/AO/38/2013 |
| Lalit Mohan Chatterjee | ACLPC4629C | PG/AK/AO/39/2013 |
| Krishna Murari Lal | AAZPL2494C | PG/AK/AO/40/2013 |
| Aayush Suresh Lohia | ABKPL4922D | PG/AK/AO/41/2013 |
| Debashis Sarkar | AAHPS5727R | PG/AK/AO/42/2013 |

In the matter of M/s Ramsarup Industries Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the affairs relating to buying and selling and dealing in the shares of RIL. The shares of M/s Ramsarup Industries Limited (hereinafter referred to as "**RIL/Company**") were listed on National Stock Exchange (hereinafter referred to as "**NSE**"), Bombay Stock Exchange (hereinafter referred to as "**BSE**") and Calcutta Stock Exchange (hereinafter referred to as "**CSE**"). The investigation covered the period from July 01, 2010 to August 31, 2010 (hereinafter referred as '**Investigation Period**').
2. The findings of the investigation led to the allegation that RIL had violated regulation 12(1) & 12(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'), Ashish Jhunjhunwala (hereinafter referred to as "**Ashish**"), Naveen Gupta (hereinafter referred to as "**Naveen**"), Krishna Murari Lal (hereinafter referred to as "**Krishna**"), Bimal Kumar Jhunjhunwala (hereinafter referred to as "**Bimal**"), Aayush Suresh Lohia (hereinafter referred to as "**Aayush**"), Lalit Mohan Chatterjee (hereinafter referred to as "**Lalit**"), Debashis Sarkar (hereinafter referred to as "**Debashis**") and Gajendra Kumar Singh (hereinafter referred to as "**Gajendra**") had violated regulation 12(1) & 12(3) of PIT Regulations read with clause 1.2 of Model Code of Conduct (**MCC**) of Schedule I under regulation 12(1) of PIT Regulations and were therefore liable for monetary penalty under section 15G of Securities and Exchange Board of India, Act 1992 (hereinafter referred to as "**SEBI Act**").

3. RIL, Ashish, Naveen, Krishna, Bimal, Aayush, Lalit, Debashis and Gajendra are collectively referred to as "**Noticees**".

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned has been appointed as Adjudicating Officer vide order dated April 16, 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 under section 15G of SEBI Act, the alleged violation of provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice dated June 04, 2012 (hereinafter referred to as "**SCN**") was issued to the Noticees under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of SEBI Act for the alleged violations specified in the said SCN.
6. It was alleged in the SCN that as per Regulation 12(1) of PIT Regulations, every listed company is required to frame MCC for prevention of Insider Trading. RIL, being a listed company was also required to comply with the same. The MCC specified in Schedule I of Regulation 12 of PIT Regulations *inter-alia* requires:
 - Appointment of compliance officer who sets forth the policies etc., for adherence to the rules for preservation of Price sensitive information, pre-clearing of trades by designated employees, monitoring of trades and the implementation of code of conduct under overall supervision of the Board.

- Trading Window: This window shall be closed during the time PSI is unpublished. Employees/ directors are prohibited from trading during this period and the company has to decide the period of closure of trading window as a period when the PSI though available, remains unpublished.
 - Other restrictions: Directors etc., cannot enter into opposite transaction during the next 6 months following the prior transaction.
7. It was observed that the MCC furnished by RIL did not contain some of the provisions specified in Schedule I of regulation 12 of PIT Regulations viz. Appointment of compliance officer, trading window closure, pre-clearance of trades, other restrictions, etc.
8. Therefore, it was alleged that, RIL by not having a proper MCC in place, had violated regulations 12(1) and 12(3) of PIT Regulations.
9. As mentioned in the preceding paragraphs, it was alleged that the MCC furnished by RIL did not contain some of the provisions specified in Schedule I of Regulation 12 of PIT Regulations like appointment of compliance officer, trading window, pre-clearance of trades, other restrictions, etc. Clause 1.2 of Schedule I of PIT regulations makes the Compliance officer responsible for implementation of the code of conduct under the overall supervision of Board of Directors. Thus, the failure to have MCC as per the said regulations reflects failure on the part of Compliance officer and Board of Directors of the company. Therefore, it was alleged that Ashish, Naveen, Krishna, Bimal, Aayush, Lalit, Debashis & Gajendra have violated regulations 12(1) & 12(3) of PIT Regulations read with Clause 1.2 of Model Code of Conduct of Schedule I under Regulation 12(1) of PIT Regulations.

10. Aayush, Krishna and Lalit vide letters dated July 20, 2012 and July 30, 2012 submitted their reply to the SCN. RIL, Gajendra, Naveen and Ashish vide letters dated July 16, 2012 and July 30, 2012 submitted their reply to the SCN. Bimal vide letters dated July 17, 2012 and July 30, 2012 submitted his reply to the SCN. Debashis vide letters dated July 18, 2012, July 26, 2012 and December 04, 2012 submitted his reply to the SCN. The main points of the replies are as under:

- Aayush, Bimal, Lalit & Krishna are independent directors on the board of RIL, Debashis is independent nominee director (nominee director of IDBI Bank Ltd.) , Naveen is whole time director & chief financial officer, Ashish is promoter, chairman & managing director and Gajendra is company secretary & Compliance Officer of RIL.
- Aayush, Bimal, Lalit, Krishna, Debashis stated that they are not involved in day to day management and affairs of the company and their role is very limited and restricted.
- Aayush, Bimal, Lalit, Krishna, Debashis, Naveen stated that they cannot be held responsible for certain clauses being allegedly not available in the MCC adopted by RIL. Further, it was stated that the responsibility for formulation of contents of the MCC as prescribed in PIT Regulations was on the Compliance Officer who is to report to Managing Director or the Chief Executive Officer. Therefore, apart from Compliance Officer/Managing Director/Chief Executive Officer, liability if any for the deficiencies in Code cannot be saddled to other directors. It is settled law that resort is not to be made to a general provision when a specific provision exists.
- Ashish stated that responsibility for the formulation of contents of MCC lies with the compliance officer of the company.

- Aayush, Bimal, Lalit, Krishna, Debashis, Naveen, Gajendra stated that they have not dealt in securities of RIL on the basis on any UPSI or have not communicated any UPSI to anybody.
- With regard to the allegation that it could not prevent its director from trading during trading window closure period or from taking opposite position, RIL submitted that it had policies and systems in place. RIL could not be expected to prevent directors/designated employees from trading, when such trades are done without the knowledge of the company. RIL has not overlooked the breach of the MCC. RIL had issued a notice on August 17, 2010 to Ashish on becoming aware that Ashish had traded in the securities of RIL during trading window closure period. Ashish requested RIL for condoning the default and assured that no such default will occur. RIL vide letter dated August 30, 2010 advised Ashish to refrain from such trades in future.
- Noticees denied the violation of the provisions of regulations 12(1) & 12(3) of PIT Regulations read with Clause 1.2 of MCC of Schedule I under Regulation 12(1) of PIT Regulations.
- Noticees stated that the company has MCC dated July 29, 2005 in place as stipulated in PIT Regulations; the said MCC followed by the company is near to the MCC as specified in PIT Regulations.
- Noticees stated that RIL has a compliance officer, has been closing trading window (notice dated August 6, 2010 sent by the compliance officer of RIL to Directors/Designated Employees), Directors /Designated Employees have been seeking pre clearances for their trades from compliance officer and company has been taking action against Directors/Designated Employees for the breach of MCC (action taken by the company against Ashish for trading during the trading window closure period). All these show that company is religiously following the provisions of MCC as

prescribed in PIT Regulations. Therefore, all the facets of MCC as prescribed in PIT Regulations are already being followed by the Company, in accordance with the MCC adopted by the Company.

- Noticees stated that RIL had rectified the deficiency in MCC dated July 29, 2005 by adopting MCC , as specified in the Schedule I of the PIT Regulations w.e.f. July 12, 2012..
- Noticees stated that the violation is venial, technical and procedural in nature.

11. Debashis vide letter dated July 26, 2012 stated *inter alia* as under:

".....

- *I was nominated as a director on the Board of Directors of the Company with effect from 2.3.2009 pursuant to the provisions of the Loan Agreements entered into between IDBI Bank & Ramsarup Industries Limited. IDBI Bank has withdrawn my nominee-ship with effect from 28.5.2012 from the Board of the Company..... As a nominee director my role on the board of the company is very limited. I am not in charge or responsible to the day to day conduct of the business of the company. I am not personally responsible for alleged violations as I am representing the Bank on the board of the company and I have no interest whatsoever in the alleged violations/irregularities committed by the company or its promoters directors. Therefore, I am also not aware of the alleged violations/irregularities committed by the company and its promoter directors.*
- *In this context. I would like to invite your attention to the judgment of the Calcutta High Court in Bhuban Mohan Bose & others vs. the state (1991 – ILLJ page 11) wherein the court held that a director of the company cannot be made vicariously liable for any and every contravention made by the company unless he is in charge of the day to day conduct of the affairs of the company and that he must be in actual control of the company's operations.*

....."

12. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, RIL, Ashish, Naveen, Bimal, Lalit, Debashis and Gajendra were granted an opportunity of personal hearing on July 19, 2012 vide notice dated June 29, 2012 at SEBI,

Eastern Regional Office, Kolkata. Further, Aayush and Krishna were granted an opportunity of personal hearing on July 17, 2012 vide notice dated June 29, 2012 at SEBI, Head Office, Mumbai. Noticees vide letter dated July 11, 2012 requested for change of place of hearing from Kolkata to Mumbai. Acceding to the request of the Noticees, vide notices dated July 16, 2012, another opportunity of personal hearing was granted at SEBI Head Office, Mumbai on July 23, 2012. Mr. Vinay Chauhan and Prashant Ingle, Advocates, Corporate Law Chamber India, Authorized Representative of the Noticees (hereinafter referred to as "**AR**") appeared for hearing on July 23, 2012 and, *inter alia*, stated as under:

".....

- *We reiterate the submissions made vide our replies to the Show Cause Notice dated June 4, 2012. Further, we seek liberty to file further submissions and documents within two weeks.*
- *We also want to submit that we will be filing our consent applications shortly.*
- *We confirm that the correct name of N.R Mercantiles is N.R. Mercantiles Pvt. Ltd....."*

13. However, all Noticees except Debashis had filed the consent application in the matter. Further, Debashis was granted an opportunity of personal hearing on November 20, 2012 vide notice dated November 06, 2012 at SEBI, Southern Regional Office, Chennai. Debashis appeared for hearing stating *inter alia* under:

"As SCN was sent to my Kolkata address from where I have been transferred to Hyderabad, the said SCN was fax to me by the Ramsarup Industries Limited which was not complete. Hence, I did not understand the charge properly. Thus, I request a time of 15 days from the date of hearing to submit additional written submissions in the matter"

14. Debashis vide letter dated December 04, 2012 submitted his reply and informed that he has withdrawn his vakalatnama given to abovementioned AR. As the consent applications filed by the Noticees (excluding Debashis) were rejected by the High Powered Advisory Committee of SEBI in its meeting held on March 08, 2013, the said rejection was communicated to the respective Noticees . These Noticees were granted a final opportunity of personal hearing on April 09, 2013 at SEBI, Head Office, Mumbai, vide Notice dated April 02, 2013. AR appeared for the hearing and stated as under:

"We reiterate the submissions made vide our earlier letters dated July, 16 2012, July 20, 2012 and July 30, 2012. Further, we want to submit that RIL has made a reference dated November 06, 2012 to BIFR u/s 15(1) of Sick Industrial Companies (Special Provisions) Act 1985. The BIFR has registered the said reference as case no. 67 of 2012. In support of the same, we are tendering letter dated November 21, 2012 and order dated December 24, 2012 passed by BIFR in the matter"

CONSIDERATION OF ISSUES AND FINDINGS

15. I have carefully perused the written and oral submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are:
- a. Whether Noticees had violated regulations 12(1) & 12(3) of PIT Regulations read with Clause 1.2 of Model Code of Conduct of Schedule I under Regulation 12(1) of PIT Regulations?
 - b. Do the above mentioned violations, if any, attracts monetary penalty under sections 15G of SEBI Act or under sections 15HB of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

16. The relevant provisions of PIT Regulations are reproduced as under:

“Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including :

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*
- (b) the self-regulatory organisations recognised or authorised by the Board;*
- (c) the recognised stock exchanges and clearing house or corporations;*
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and*
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,*

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2)

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).”

“SCHEDULE I

[Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

1.1 *The listed company has appointed a Compliance Officer senior level employee who shall report to the Managing Director/Chief Executive Officer.*

1.2 *The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of “Price Sensitive Information”, pre-clearing; of designated employees’ and their dependents’ trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation*

of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

(i) officers comprising the top three tiers of the company management ;

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

*.....
..... ”*

Findings:

17. The position / status of the Noticees is as under :

| Name | Designation at RIL |
|-----------------------------|---|
| Ramsarup Industries Limited | Company (RIL) |
| Ashish Jhunjunwala | Chairman and Managing Director |
| Naveen Gupta | Whole Time Director & CFO |
| Gajendra Kumar Singh | Company Secretary & Compliance Officer |
| Bimal Kumar Jhunjunwala | Independent Director & Chairman Audit Committee |
| Lalit Mohan Chatterjee | Independent Director & Member Audit Committee |
| Krishna Murari Lal | Independent Director |
| Aayush Suresh Lohia | Independent Director |
| Debashis Sarkar | Independent Nominee Director |

18. Noticees (except Debashis) during the course of hearing held on April 09, 2013 submitted as under :

'RIL has made a reference dated November 06, 2012 to BIFR u/s 15(1) of Sick Industrial Companies (Special Provisions) Act 1985. The BIFR has registered the said reference as case no. 67 of 2012. In support of the same, we are tendering letter dated November 21, 2012 and order dated December 24, 2012 passed by BIFR in the matter.'

I have examined the documents submitted by the Noticees and note that at present only a reference has been made to BIFR and RIL has not been declared as sick company.

19. It is observed that with respect to the allegation of insider trading by Ashish, separate proceedings have been initiated under sections 11 & 11B of SEBI Act. Therefore, this order is only in respect of Ashish's role with regard to shortcomings in the MCC adopted by RIL [regulations 12(1) & 12(3) of PIT Regulations read with Clause 1.2 of Model Code of Conduct of Schedule I under Regulation 12(1) of PIT Regulations].
20. Upon perusal of the MCC of RIL dated July 29, 2005, I find that it does not contain the following provisions as specified in Schedule I of Regulation 12 of PIT Regulations:
 - Appointment of compliance officer who sets forth the policies etc., for adherence to the rules for preservation of Price sensitive information, pre-clearing of trades by designated employees, monitoring of trades and the implementation of code of conduct under overall supervision of the Board.
 - Trading Window: This window shall be closed during the time PSI is unpublished. Employees/ directors are prohibited from trading during this period and the company has to decide the period of closure of trading window as a period when the PSI though available, remains unpublished.
 - Other restrictions: Directors etc., cannot enter into opposite transaction during the next 6 months following the prior transaction.

21. The contentions of Aayush, Bimal, Lalit, and Krishna are that they are independent directors on the board of RIL & Debashis has stated that he is independent nominee director. They are not involved in day to day management and affairs of the company and their role is very limited and restricted. Therefore, they cannot be held responsible for certain clauses being allegedly not there in the MCC adopted by RIL. The responsibility for formulation of contents of the MCC, prescribed in PIT Regulations rests on the Compliance Officer who is to report to Managing Director or the Chief Executive Officer.
22. A Company, though a legal entity, cannot act by itself. It can act only through its directors who are collectively referred to as the Board of Directors. The Directors act on behalf of a company in a fiduciary capacity and their acts and deeds have to be done for the benefit of the company. Thus, there is a fiduciary relationship between the company, its owners- shareholders and its directors. The directors are the brains and mind behind the company and its decision making ability. Being responsible for the operations of the company, they are expected to exercise utmost care, skill and diligence in the exercise of their power and functions on behalf of the company as is expected from men at such responsible positions. While describing what is the duty of care required for a Director, Hon'ble Supreme Court of India has held in *Official Liquidator v P.A. Tendolkar (1973)* that “A Director may be shown to be placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to every one who examines the affairs of the Company even superficially.” This

observation is relevant to the matter at hand and I am of the view that the directors are therefore, responsible for all the acts of omission and commission by the company.

23. To execute their role, independent directors, have similar responsibilities as the other directors. The fiduciary duties of care, diligence and acting in good faith apply equally to independent directors as to other directors. In view of responsibility cast on them, they are required to execute their functions diligently. The institution of independent directors has been established to promote corporate governance and enhance the protection of investors. The independent directors have a critical role to play in protection of interest of general investors in securities. Therefore, I am of the view that it was the duty of Aayush, Bimal, Lalit, Krishna & Debashis also as independent directors to exercise due care, skill and diligence and to ensure that proper MCC was in place.
24. As regard the contention of the Noticees (except Gajendra & RIL) that as per Clauses 1.1.& 1.2 of the MCC provided in PIT Regulations, the liability for failure on part of the Company of not having a proper MCC as per PIT Regulations does not fall on the Board of Directors and only the Compliance Officer and the Managing Director are responsible for the same, I do not find any merit in this contention. Although the aforesaid clause 1.2 of the MCC provided in the PIT Regulations inter alia states that the Compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the code of conduct and the implementation of the same; however the same must be done under the overall supervision of the Board of the company.

25. Thus from the above, I am of the view that framing of code of conduct as near to the MCC specified in schedule I of Regulation 12 of PIT Regulations is mandatory for each company and it is the responsibility/duty of compliance officer, all directors of the company including independent directors & nominee directors etc to ensure the same . On the basis of documents available on record, I observe that although RIL did not have a proper MCC in place but, in practice, it was following the requisite provisions of the MCC i.e. it had appointed a compliance officer, had been closing trading window from time to time , the Directors/Designated Employees had been seeking pre- clearance of their trades from RIL. Further, RIL had been taking action against Directors/Designated Employees in case of any breaches. RIL has submitted copies of numerous requests for preclearance of trades & the permissions, notice of trading window closure dated January 21, 2010, May 20, 2010, August 06, 2010 & November 05, 2010, copies of annual disclosures of securities held, etc. It thus appears that although all the requisite provisions were not expressly mentioned in the MCC, RIL was following the same.

I also note that RIL has amended its MCC subsequent to the issuance of SCN and has adopted the MCC as specified in Schedule I of regulation 12 of PIT Regulations.

26. In view of the above, I inclined to give benefit of doubt to the Noticees and take a lenient view in the matter with respect to the violation of provisions of regulations 12(1) & 12(3) of PIT Regulations read with Clause 1.2 of MCC of Schedule I under regulation 12(1) of PIT Regulations.

ORDER

27. In view of the foregoing, the proceedings for the alleged violation of the provisions of regulations 12(1) & 12(3) of PIT Regulations read with Clause 1.2 of MCC of Schedule I under Regulation 12(1) of PIT Regulations as specified in the SCN dated June 04, 2012 against Ramsarup Industries Limited, Ashish Jhunjunwala, Naveen Gupta, Krishna Murari Lal, Bimal Kumar Jhunjunwala, Aayush Suresh Lohia, Lalit Mohan Chatterjee, Debashis Sarkar and Gajendra Kumar Singh are accordingly disposed of.
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: May 31, 2013
Place: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER