

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ID-1/MIL/AO/DRK/DS/EAD-3/339/5/2013]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 & SECTION 23 I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5(1) OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

Against :

MINAL INDUSTRIES LIMITED

[PAN: AABCM3102D]

603, Minal Complex, Off Saki Vihar Road,
Andheri - East, Mumbai - 400 069

FACTS IN BRIEF

1. SEBI conducted an investigation in the scrip of Minal Industries Limited with regard to the bonus issue of equity shares during the year 2010.

APPOINTMENT OF ADJUDICATING OFFICER

2. I was appointed as the Adjudicating Officer, vide communication dated April 24, 2012 under section 15 I of the Securities and Exchange Board of India Act, 1992 read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') and Section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SC(R)A') and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter

referred to as 'SC(R)Rules') to inquire into and adjudge under Section 15HB of the SEBI Act and Section 23A of the SC(R)A for the alleged violation of the provisions of Section 21 of the SC(R)A read with Clause 19(b) of the Listing Agreement and Regulations 12(2) read with Clause 2.1 of Schedule II of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations').

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice (hereinafter referred to as SCN) dated October 15, 2012 was issued to Minal Industries Limited (hereinafter referred to as noticee/Minal) in terms of the provisions of Rule 4 of the Rules and Rule 4 of the SC(R)Rules, calling upon the noticee to show cause as to why an inquiry should not be held against the noticee and why penalty, if any, should not be imposed on the noticee under Section 15HB of the SEBI Act and Section 23A of the SC(R)A for the alleged violation of the provisions of Section 21 of the SC(R)A read with Clause 19(b) of the Listing Agreement and Regulations 12(2) read with Clause 2.1 of Schedule II of the PIT Regulations.
4. It was alleged in the SCN that the Managing Director of the company conceptualized the proposal for bonus issue of equity shares. The agenda for meeting of the Board of Directors to discuss the bonus issue of shares was circulated along with notice to all the Directors on July 01, 2010. However it was only on July 06, 2010 that the company informed BSE that a meeting of the Board of Directors will be held on July 09, 2010 to consider the bonus issue of equity shares.
5. In view of the above facts, it is alleged that the noticee has violated Clause 19(b) of the Listing Agreement read with Section 21 of the SC(R)A and Regulation 12(2) of PIT Regulations read with Clause 2.1 of Schedule II of PIT Regulations.

6. The noticee acknowledged receipt of the said SCN. Vide letter dated October 29, 2012, the noticee sought an extension of 14 days to file the reply to the SCN.
7. Noticee vide letter dated November 15, 2012 made the following submissions:
 - a) In the reply given to SEBI on 14th February, 2012 during investigation proceeding, it was mentioned that the Managing Director of the company has conceptualized the proposal for bonus issue of equity shares on 1st July, 2010 and on the same day the agenda along with the notice was circulated to all the directors of the company. The decision to make bonus issue of shares was taken by the Managing Director of the company in consultation with other board members on July 06, 2010 and immediately informed to BSE regarding board meeting for bonus issue of shares.
 - b) The company is under impression that the intimation regarding bonus issue of shares is to be intimated at least 2 working days in advance as per clause 19 of the Listing Agreement. However, we have checked the clause 19 of Listing Agreement and as per clause 19(b) it should be intimated simultaneously to the Stock Exchanges in case the proposal for declaration of bonus is communicated to the Board of Directors of the company as part of the agenda papers. There is no reason for delay in informing BSE about meeting of Board of Directors to discuss bonus issue of shares. It is due to ignorance of the provision of clause 19(b) of Listing Agreement. The company is under the impression that the declaration of bonus issue of shares is governed by clause 19(a) of the Listing Agreement.
 - c) There is delay in compliance of Clause of 19(b) of the Listing Agreement but it is not with any motive and in order to comply the clause 19 of Listing Agreement, as per the information and knowledge of the company, the

proposal for declaration of bonus issue is communicated on 6th July, 2012 i.e. at least two working days in advance as per clause 19(a) of the Listing Agreement. The company is complying the conditions of Listing Agreement but on account of ignorance of Clause 19(b) of Listing Agreement, the intimation was sent to BSE as per the clause 19(a) of Listing Agreement.

- d) We have given the price sensitive information to the Stock Exchange and have not made any concealment of such information at any point of time. The Stock Exchange or any other concerned entity has not raised any issue about violation or non-compliance of this provision of the applicable law. We have a good track record of compliance of all applicable legal provisions and in this matter also we have complied with the law in letter and spirit.
- e) The company has not violated Regulations 12(2) read with Clause 2.1 of Schedule II of the PIT Regulations, the company has informed to the stock exchange regarding declaration of bonus issue of shares on 6th July, 2010 which was confirmed by the board on 9th July, 2010.
- f) The promoters of the company have not traded in the shares of the company during the said period of delay. None of the officers of the company, except Managing Director, holds the shares in the company and none of them have traded in the shares of the company during the said period of delay.
- g) The shareholding of the promoters and promoter group has not changed. In other words, they have not purchased or sold the shares in the company during the period under enquiry.
- h) The movement in the price of shares has not been abnormal during the said period of delay. The price has moved up by ₹. 11.85 during the said period of delay. In percentage terms, it is 16, which is lower to about 21% of the previous similar period and about 18.5% of the subsequent similar week. In other words, since no trade

has been done by the promoters or the directors or officers of the company, the price movement during the said period of delay, remained totally market driven. The lower percent price movement clearly indicates that no public prejudice has been created or done even if the said period is considered as delayed compliance on the part of the company and its directors.

- i) We have submitted our explanation but if you want some further clarification, kindly give us an opportunity for personal hearing.

CONSIDERATION OF EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case, and the material made available on record and the reply of the noticee. The noticee in the reply has stated that the noticee has submitted the explanation and an opportunity for personal hearing may be granted in case of further clarification. Since there were no clarifications to be sought from the noticee, the instant matter is being proceeded on the basis of the reply submitted by the noticee.
9. The allegations against the noticee are that it had violated Clause 19(b) of the Listing Agreement read with Section 21 of the SC(R)A and Regulation 12(2) of PIT Regulations read with Clause 2.1 of Schedule II of PIT Regulations.
10. Under Clause 19(b) of the Listing Agreement read with Section 21 of the SC(R)A, a company is required to give notice simultaneously to the Stock Exchanges in case the proposal for declaration of bonus is communicated to its Board of Directors as part of the agenda papers. Further, Regulation 12(2) of PIT Regulations read with Clause 2.1 of Schedule II of PIT Regulations also mandates that all the listed companies shall disseminate price sensitive information on a continuous and immediate basis.

11. In the instant case the noticee has submitted that it was under impression that the intimation regarding bonus issue of shares is to be intimated at least 2 working days in advance as per clause 19(a) of the Listing Agreement. The noticee has also submitted that it has complied with the conditions of Listing Agreement but due to ignorance of Clause 19(b) of the Listing Agreement, the intimation was sent to BSE as per clause 19(a) of the Listing Agreement i.e. two working days before the Board Meeting. As per Clause 19(b) of the Listing Agreement read with Section 21 of the SC(R)A and Regulation 12(2) of PIT Regulations read with Clause 2.1 of Schedule II of PIT Regulations, the noticee was required to disseminate the information simultaneously to the Stock Exchanges regarding the bonus issue of equity shares.
12. Further the noticee has also submitted that during the period of delay, the promoters of the noticee did not trade in the shares of Minal. It is also submitted by the noticee that none of the officers of the noticee, except Managing Director, holds the shares of Minal and none of them traded in the shares of Minal during the period of delay.
13. In this regard, I would like to quote the order of Hon'ble Securities Appellate Tribunal in *Appeal No. 01/98, Shri Sharad Doshi Vs. The Adjudicating officer & others*, order dated April 07, 1998:
".... Ignorance or inadequate understanding of the legal provisions as the reason for the default put forth by the Representative of the appellant is not an acceptable defence."
14. In view of the material made available on record and the order of Hon'ble Securities Appellate Tribunal quoted above, I am inclined to take a view that the noticee has not complied with the provisions of Clause 19(b) of the Listing Agreement read with Section 21 of the SC(R)A and Regulation 12(2) of PIT

Regulations read with Clause 2.1 of Schedule II of PIT Regulations. The text of the said provisions is as follows:-

➤ **Listing Agreement**

"19(b). The Company agrees to give notice simultaneously to the Stock Exchanges in case the proposal for declaration of bonus is communicated to its Board of Directors as part of the agenda papers."

➤ **SC(R)A**

"Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

➤ **PIT Regulations**

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

12(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

Schedule II - Prevention of Insider Trading

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis."

CONCLUSION:

15. Considering the facts and circumstances of the case and the evidence made available on record as discussed in pre paras, it can be concluded that the noticee has not complied with the provisions of Clause 19(b) of the Listing Agreement read with Section 21 of the SC(R)A and Regulation 12(2) of PIT Regulations read with Clause 2.1 of Schedule II of PIT Regulations. In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of the SEBI Act and SC(R)A.

16. As mentioned in pre-paras of this order, the instant Adjudication proceedings are adjudged under Section 23A of the SC(R)A and Section 15HB of the SEBI Act. The text of the aforesaid provisions is reproduced below-

➤ **SC(R)A**

" Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made there under,—

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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 for each such failure;"

➤ **SEBI Act**

"15HB. Penalty for contravention where no separate penalty has been provided.-

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

17. Considering the facts and circumstances of the case and the evidence made available on record and the reply of the noticee as discussed in pre paras, it can be concluded that the noticee has not complied with the provisions of Clause 19(b) of the Listing Agreement read with Section 21 of the SC(R)A and Regulation 12(2) of PIT Regulations read with Clause 2.1 of Schedule II of PIT Regulations. In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of the SC(R)A and SEBI Act.

18. The aforesaid non-compliance makes the noticee liable to penalty under Section 23A of the SC(R)A Section and 15HB of the SEBI Act.
19. In this regard, the provisions of Section 23J of SC(R)A read with Rule 5 of the SC(R)Rules and Section 15J of the SEBI Act read with 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.*
20. With regard to the above factors to be considered while determining the quantum of penalty, the Investigation Report has noted that there is no prima facie evidence to establish any unfair advantage/gain made on the basis of unpublished price sensitive information as a result of the non-compliance by the noticee. It is also noted that the Investigation Report has not quantified the amount of loss caused to an investor or group of investors as a result of the non compliance by the noticee. Therefore, it is difficult to determine the amount of disproportionate gain or unfair advantage caused to an investor or group of investors for such non compliances.
21. At this juncture, I would like to quote the judgement of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held that :
- “once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally*

irrelevant. Once the contravention is established, then the penalty is to follow”.

22. Having considered the facts and circumstances of the case and after taking into account the factors under Section 15J of the SEBI Act and 23J of the SC(R)A, I find that a penalty of ₹1,00,000 (One Lakh Only) under Section 23A of the SC(R)A and ₹1,00,000 (One Lakh Only) under Section 15HB of the SEBI Act on the noticee would be commensurate with the non-compliances by the noticee in this case.

ORDER

23. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and Section 23-I of the Securities Contracts (Regulation) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005, I hereby, impose a consolidated penalty of ₹2,00,000 (Two Lakh Only) on Minal Industries Limited in terms of the provisions of Section 15HB of the Securities and Exchange Board of India Act, 1992 and Section 23A of the Securities Contracts (Regulation) Act, 1956 for the non compliance of the provisions of Section 21 of the Securities Contracts (Regulation) Act, 1956 read with Clause 19(b) of the Listing Agreement and Regulation 12(2) read with Clause 2.1 of Schedule II of the SEBI (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the non compliances by the noticee.
24. 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 days of receipt of this order. The said demand draft shall be forwarded to the Deputy General Manager, IVD-ID-1, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

25. 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 and Rule 6 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005, copies of this order is being sent to Minal Industries Limited and also to Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: January 29, 2013

D. RAVI KUMAR

**CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**