

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/SVKM/RGA/AO/ 26 /2015-16]

**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

Brijmohan Rathi

PAN No. AACPR2189P

In the matter of M/s Maharashtra Polybutenes Limited

FACTS

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigation into the alleged irregularities in the trading in the shares of Maharashtra Polybutenes Ltd. (hereinafter referred to as '**MPL**') from February, 2009 to July, 2009 (hereinafter referred to as '**relevant period**') and into the possible violation of the provisions of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') and Regulations made thereunder. During the relevant period, MPL had incurred losses till the financial year 2006-07 and made meagre profit of ₹ 2.87 crore and ₹ 2.91 crore for the financial years 2007-08 and 2008-09 respectively. MPL shares were infrequently traded earlier but during the relevant period a total of 53,51,932 shares were traded and the price increased from ₹ 53.35 to ₹ 79.95, an increase of 49.85%.

2. It is alleged that Brijmohan Rathi (hereinafter referred to as '**Noticee**'), promoter and Managing Director of MPL, had made wrong disclosures on pledging of shares and wrong reporting of shareholding pattern to BSE during the relevant period. It is also alleged that Noticee indulged in creation of artificial volume and price manipulation besides, non-disclosure of change in shareholding pattern to the BSE. It was, therefore, alleged that Noticee had violated provisions of section 12A(a), (b) and (c) of SEBI Act, 1992 read with section 27 of SEBI Act, 1992 regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a), (d), (e), (f), (g), (r) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003**'), regulation 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**').

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated July 22, 2013, SEBI appointed Shri Piyoosh Gupta as the Adjudicating Officer. Consequent to the transfer of Shri Piyoosh Gupta, Shri A. Sunil Kumar was appointed as Adjudicating Officer vide order dated November 08, 2013. Pursuant to the transfer of Shri A. Sunil Kumar, the undersigned has been appointed as Adjudicating Officer vide order dated June 22, 2015 to inquire and adjudge under sections 15HA and 15A(b) of the SEBI Act, 1992 the violations specified in the SCN.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. ASK/RGA/25483/2014 dated August 28, 2014 (hereinafter referred to as 'SCN') was issued to the noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with section 15I of SEBI Act, 1992 for the violations as specified in the SCN. Vide notice dated January 02, 2015, an opportunity of personal hearing was also granted to the Noticee on January 28, 2015. The Authorized Representative of the Noticee appeared and sought time for filing reply to the SCN. Noticee did not submit any reply to the SCN. Vide notice dated March 09, 2015, another opportunity of hearing was scheduled on March 25, 2015. Vide letter dated March 13, 2015, Noticee filed his reply to the SCN. On March 25, 2015, the Authorized Representative of the Noticee appeared for the personal hearing and sought time for filing additional submissions. Further, subsequent to the transfer of erstwhile Adjudicating Officer, another opportunity of hearing was provided to the Noticee on June 29, 2015 vide notice dated June 22, 2015. The Noticee requested for rescheduling

the hearing. Accordingly, the hearing was rescheduled to July 06, 2015. The Authorized Representative of the Noticee appeared for the hearing and submitted its reply dated July 06, 2015 and also agreed to submit certain additional documents. Vide letter dated July 09, 2015, Noticee submitted the additional documents. In the hearing dated July 06, 2015, Noticee submitted the following:

- a) *The transactions of the promoter group entities as given at pg no 3 & 4 of SCN are for the purpose of raising a loan from an NBFC namely Shikhar Merchandise Pvt Ltd and filed a copy of agreement dated September 01, 2006 to support his contention. It was because the lender insisted on transfer of shares, the shares were transferred at the desire of lender as security for loan. There was no pledge created in terms of the Regulations. He has undertaken to file a renewal agreement with the same borrower latest by July 10, 2015. The same argument was adopted for other promoter group entities.*
- b) *On the charge of creation of artificial volume and price manipulation against Noticee as detailed at para no.6 of the SCN. the Authorized Representative submitted that he will file reply latest by July 10, 2015.*
- c) *With regard to the charge of non-disclosure of change in shareholding pattern it was admitted that the disclosure was incomplete in terms of the prescribed Regulations to the company. However, it was contended that disclosure to the Stock Exchange was made and supporting documents will be filed by July 10, 2015.*
- d) *As regard the charge that the shareholding pattern reported to BSE by MPL was different from actual shareholding pattern with reference to table at pg no 5, of the SCN it was submitted that*

difference arose because of the understanding of the promoters of the shares pledged were not shown although the transfer of these shares had taken place to secure the loan received. He explained that shares transferred as part of pledge were shown as shareholding of the promoter which was not the case with de-mat statement which shows shares transferred to the lender.

5. The salient submissions of the Noticee vide its letter dated March 13, 2015, July 06, 2015 and July 09, 2015 are as under:

- Since no commercial banks were willing to finance the company, because of the BIFR background of the company, the promoters of MPL had to arrange funds for the working capital requirement as well as long term fund requirement of MPL by pledging their equity shares in MPL.
- Pledges are different from sales. In a sale both possession and ownership of property are permanently transferred to the buyer. In a pledge only possession passes to the second party, the first party retains ownership of property in question while the second party takes possession of the property until the terms of the contract are satisfied.
- During the investigation period, until May 25, 2009, the company was under the purview of Hon'ble BIFR and section 22(1) of SICA was applicable. Therefore, SEBI must have obtained consent of BIFR before carrying out any such investigation for the period.
- As per regulation 28(3) of SAST Regulations, 2011 the term "encumbrance" shall include a pledge, lien or any such transaction, by whatever name called. As per regulation 31(1) of

SAST Regulations, 2011 the promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified. Thus, a company has to report to the stock exchange not only a pledge created through a depository but also a pledge or encumbrance created otherwise. The shares were transferred with an intention to create an encumbrance or pledge on the shares so transferred. So, the promoters and company have rightly disclosed the shareholding pattern so that the investors can take an informed decision.

- It was agreed upon and understood between the financiers and the promoters that the transfer of shares for raising loans is merely a transaction of pledge by way of transfer and such transfer of shares cannot be construed as sale. It was agreed upon and understood between the financiers and the promoters that the financiers will keep such transferred shares in their custody in good faith and will not re-pledge or sale or transfer such shares.
- Shares so transferred were off-market. The shares were not sold through stock exchange mechanism. Instead the company received the loan amount directly from the pledgee.
- There is no wrong disclosure from the company or the promoters. The share transfer transactions were legitimate pledge transfers and loan amount was received or shares were returned back to the pledgor.
- The company acted in good faith and relied upon the information given by the promoters and accordingly informed the BSE of

shareholding pattern. *The shareholding pattern received from registrar and Transfer Agent did not show the alleged transactions as pledged therefore the shareholding pattern was edited to give effect to the alleged sale transactions.*

- The allegation that there was creation of artificial volume is baseless and untrue. shares were sold through stock exchange, so buyer is not known.

CONSIDERATION OF ISSUES AND FINDINGS

6. The issues that arise for consideration in the present case are :
 - a. Whether Noticee violated the provisions of section 12A(a), (b) and (c) of SEBI Act, 1992 read with section 27 of SEBI Act, 1992 regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a), (d), (e), (f), (g), (r) of PFUTP Regulations, 2003?
 - b. Whether Noticee violated the provisions of regulation 13(4) read with 13(5) of PIT Regulations, 1992?
 - c. Does the violation, if any, attract monetary penalty under section 15HA and 15A(b) of SEBI Act, 1992?
 - d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?
7. It would be appropriate here to refer to the aforesaid provisions of the SEBI Act, 1992, PFUTP Regulations, 2003 and PIT Regulations, 1992 which reads as under:

SEBI Act, 1992

Section 12

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

PFUTP Regulations, 2003

Regulation 3

Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

Regulation 4

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

- (a) indulging in an act which creates false or misleading appearance of trading in the securities market;*
- (d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;*
- (e) any act or omission amounting to manipulation of the price of a security;*

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(r) planting false or misleading news which may induce sale or purchase of securities.

PIT Regulations, 1992

Regulation 13

(1).....

(2).....

(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.

(4A).....

(5) The disclosure mentioned in sub-regulations (3), (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.

Findings

8. The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticees had violated the provisions of section 12A(a), (b) and (c) of SEBI Act, 1992 read with section 27 of SEBI Act, 1992 regulations 3(a), (b), (c), (d), 4(1) and 4(2) (a), (d), (e), (f), (g), (r) of PFUTP Regulations, 2003?

I. Wrong disclosures on Pledging of shares and Wrong reporting of Shareholding pattern

9. From the material available on record, it is observed that MPL had reported various corporate announcements to BSE including the disclosure pertaining to "pledge" of shares by the Noticee, Brijmohan -HUF, New Era Advisors Pvt Ltd. and Sunciti Financial Services Pvt Ltd. (hereinafter referred to as '**promoter group entities**'). It is seen from the de-mat statement that pledge was not created in terms of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 (hereinafter referred to as '**DP Regulations, 1996**') but the shares were transferred to various entities as under:

BRIJMOHAN RATHI (Noticee)

Total no. of company shares						1,55,90,457		
Total no. of Shares held by Brijmohan						10,00,000		
Transaction date	Transferred From	Transferred To	Opening balance	Transferred shares	Balance shares	Opening balance	Transferred shares %	Balance shares %
17-Oct-08	Brijmohan	Kamala	10,00,000	2,00,000	8,00,000	6.41	1.28	5.13
17-Oct-08	Brijmohan	Shailendar	8,00,000	1,00,000	7,00,000	5.13	0.64	4.49
19-Dec-08	Brijmohan	Shailendar	7,00,000	1,00,000	6,00,000	4.49	0.64	3.85
29-Dec-08	Brijmohan	Kamala	6,00,000	50,000	5,50,000	3.85	0.32	3.53
02-Feb-09	Brijmohan	Vishal Vijay	5,50,000	1,00,000	4,50,000	3.53	0.64	2.89
15-Mar-09	Brijmohan	Multimedia	4,50,000	2,50,000	2,00,000	2.89	1.60	1.28
23-Mar-09	Brijmohan	Pay-in of securities -	2,00,000	25,000	1,75,000	1.28	0.16	1.12
13-Apr-09	Kamala	Brijmohan	1,75,000	50,000	2,25,000	1.12	0.32	1.44
13-Apr-09	Brijmohan	Vinod	2,25,000	2,00,000	25,000	1.44	1.28	0.16
20-Aug-09	Vishal	Brijmohan	25,000	50,000	75,000	0.16	0.32	0.48
08-Oct-09	Vishal	Brijmohan	75,000	7,000	82,000	0.48	0.04	0.53
08-Oct-09	Vishal	Brijmohan	82,000	1,000	83,000	0.53	0.01	0.53
09-Oct-09	Vishal	Brijmohan	83,000	11,000	94,000	0.53	0.07	0.60
27-Oct-09	Vishal	Brijmohan	94,000	4,000	98,000	0.60	0.03	0.63
30-Nov-09	Varun	Brijmohan	98,000	5,000	1,03,000	0.63	0.03	0.66
10-Dec-09	Varun	Brijmohan	1,03,000	10,000	1,13,000	0.66	0.06	0.72
15-Dec-09	Varun	Brijmohan	1,13,000	4,000	1,17,000	0.72	0.03	0.75
04-Feb-10	Vishal	Brijmohan	1,17,000	1,000	1,18,000	0.75	0.01	0.76
31-Mar-10	Multimedia	Brijmohan	1,18,000	2,50,000	3,68,000	0.76	1.60	2.36
06-Apr-10	Varun	Brijmohan	3,68,000	7,000	3,75,000	2.36	0.04	2.41
03-Jun-10	Kamala	Brijmohan	3,75,000	1,50,000	5,25,000	2.41	0.96	3.37
06-Jun-10	Kamala	Brijmohan	5,25,000	50,000	5,75,000	3.37	0.32	3.69

BRIJMOHAN-HUF

Total no. of company shares							1,55,90,457	
Transaction date	Transferred From	Transferred To	Opening balance	Transferred	Balance shares	Opening balance	Transferred shares	Balance shares %
05-May-09	Brijmohan-HUF	Vinita Vindo Chandak Pithadia	1,50,000	50,000	1,00,000	0.96	0.32	0.64

NEW ERA ADVISORS PRIVATE LIMITED

Total no. of company shares							1,55,90,457	
Transaction date	Transferred From	Transferred To	Opening balance	Transferred shares	Balance shares	Opening balance	Transferred shares %	Balance shares
16-Jun-09	New Era Advisors Private	Shriram Insight Share Brokers	25,00,000	1,00,000	24,00,000	16.04	0.64	15.39
15-Jul-09	New Era Advisors Private Limited	Aryavart Overseas Private Limited	24,00,000	5,00,000	19,00,000	15.39	3.21	12.19

SUNCITY FINANCIAL SERVICES PRIVATE LIMITED

Total no. of company shares							1,55,90,457	
Transaction date	Transferred From	Transferred To	Opening balance	Transferred shares	Balance shares	Opening balance	Transferred shares %	Balance shares
17-Feb-09	Suncity Financial	SHIKHAR MERCHANDISE PVT	65,85,000	10,00,000	55,85,000	42.24	6.41	35.82
17-Aug-09	Suncity Financial	ARYAVART OVERSEAS PVT LTD	55,85,000	10,00,000	45,85,000	35.82	6.41	29.41

10.Total shares of MPL during the investigation period was 1,55,90,457 shares. MPL had made disclosure of shareholding pattern of the Noticee and other promoter group entities to BSE for the quarters December 2008, March 2009 and June 2009 as given below:

Category /As on quarter ended	31-Dec-08	31-Mar-09	30-Jun-09	30-Sep-09
Indian (Promoter & Group)	67.25	67.09	66.45	66.45
Non Promoter (Institution)	0.02	0.02	0.02	0.02
Non Promoter (Non-Institution)	32.73	32.89	33.53	33.53
Total Non Promoter	32.75	32.91	33.55	33.55
Grand Total	100.00	100	100	100

	Dec-08		Mar-09		Jun-09		Sep-09	
Category	No. of Shares	(%)	No. of Shares	(%)	No. of Shares	(%)	No. of Shares	(%)
Brijmohan Pyarelal Rathi	10,00,000	6.41	9,75,000	6.25	9,75,000	6.25	9,75,000	6.25
Brijmohan Rathi HUF	1,50,000	0.96	1,50,000	0.96	1,50,000	0.96	1,50,000	0.96
Mridul Rathi	1,00,000	0.64	1,00,000	0.64	1,00,000	0.64	1,00,000	0.64
New Era Advisors Pvt Ltd	25,00,000	16.04	25,00,000	16.0	24,00,000	15.39	24,00,000	15.39
Pyarelal Rathi	1,00,000	0.64	1,00,000	0.64	1,00,000	0.64	1,00,000	0.64
Sunciti Financial Services Pvt Ltd	65,85,000	42.24	65,85,000	42.24	65,85,000	42.24	65,85,000	42.24
Sunita Maheshwari	50,000	0.32	50,000	0.32	50,000	0.32	50,000	0.32
Sub Total	1,04,85,000	67.25	1,04,60,000	67.09	1,03,60,000	66.45	1,03,60,000	66.45

11. However, on examination of the demat statements of the Noticee and other promoter group entities by Registrar to Issue/Share Transfer Agent(R&TA) and the shareholding pattern submitted by MPL to BSE, it is observed that the share holding reported to BSE by MPL was different from the actual share holding pattern of the Noticee and other promoter group entities. The details are as under:

	Dec-08		Mar-09		Jun-09		Sep-09	
Promoter/Promoter Group entities	No. of Shares as reported to BSE	No. of shares as per De-mat Statements	No. of Shares as reported to BSE	No. of shares as per De-mat Statements	No. of Shares as reported to BSE	No. of shares as per De-mat Statements	No. of Shares as reported to BSE	No. of shares as per De-mat Statements
Brijmohan Pyarelal Rathi	10,00,000	5,50,000	9,75,000	1,75,000	9,75,000	25,000	9,75,000	75,000
Brijmohan Rathi HUF	1,50,000	1,50,000	1,50,000	1,50,000	1,50,000	50,000	1,50,000	50,000
New Era Advisors Pvt. Ltd.	25,00,000	25,00,000	25,00,000	25,00,000	24,00,000	14,00,000	24,00,000	19,00,000
Sunciti Financial Services Pvt. Ltd.	65,85,000	65,85,000	65,85,000	55,85,000	65,85,000	55,85,000	65,85,000	45,85,000

12. From the actual shareholding of the promoters of the company including the Noticee as observed from the above table, it is clear that there is a gross mismatch between the actual shareholding of the promoters of the company and as disclosed in the mandatory quarterly disclosures of shareholding to the public through the BSE. For instance, it is observed from the details submitted by R&TA that the Noticee who is the promoter and Managing Director of the company was holding 5,50,000 shares on December 31, 2008, 1,75,000 shares on March 2009, 25000 shares on June 2009 and 75000 shares on September 2009. However, from the shareholding disclosed by the company to BSE, it is observed that the Noticee was holding 10,00,000 shares for the quarter ending December 31, 2008, 9,75,000 shares for the quarter ending March 31, 2009, June 30, 2009 and September 30, 2009. Therefore, the disclosures made to BSE were factually incorrect and misleading the investors by indicating that the promoter was holding on large quantity of shares whereas in reality his shareholding as evidenced by the demat statements has come down substantially. It may be noted that in the submissions made it was stated that the shareholding

pattern received from R&TA was "edited" to give effect to the "pledge" of shareholding by promoters.

13. I am of the view that had the Noticee and the promoter group entities created pledge of aforesaid shares in accordance with the provisions of Depositories Act, 1996, DP Regulations, 1996 and Bye-laws of Depositories, the same would have been reflected in the books of the depository by marking a lien and in the demat statement of the Noticee and other promoter group entities. The difference arose because shares which were already transferred by the promoters was shown to BSE in the disclosures as if they are still held by promoter group.

14. I note that in terms of section 10 of the Depositories Act, 1996, the beneficial owner is the person whose name is recorded as such with a depository and is entitled to all the rights and benefits and also subjected to all liabilities in respect of its securities held by a depository. As per section 41(3) of the Companies Act, 1956, every person holding shares of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company. Further, as per section 152A of the Companies Act, 1956, the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be an index of members and register and index of debenture holders, as the case may be. Therefore, the presence of shares in a depository account is a sine qua non for any individual/entity to declare that he is a shareholder of the company. Further, any transfer of securities from the beneficial owner account would be construed

as change in ownership in respect of those securities which have been transferred to another beneficiary account. *Therefore, it is not open for the Noticee to transfer his shares to various entities and still claim that such transfer is not actual transfer of title but only a pledge and declare his holdings to the stock exchange as if there is no change in the holdings held by the promoter group. Infact; the figures received from the R&TA were fudged so as not to reflect the share transfers made by promoters in favour of third parties and showed them as pledge. This is confirmed in the submissions when it was admitted that the figures of shareholding of promoter group received from R&TA were "edited" before sending it to stock exchange.*

15. The Noticee also contended that the share transfer transactions were legitimate pledge transfers as loan amount was received. In support of his contention, Noticee had submitted copy of a loan agreement dated September 01, 2006 of MPL with a NBFC i.e. Sikhar Merchandise Pvt Ltd. Noticee has contended that it was because the lender insisted on transfer of shares as security, the shares were transferred. However, the Noticee has admitted that there was no pledge created in terms of the Regulations. It is noted that the said loan agreement was valid for two years from September 01, 2006 to August 31, 2008. But the transactions in question relate to subsequent period i.e. from October 2008 onwards. Noticee has also submitted a renewal agreement with the same lender. On perusal of the renewal agreement, it is noted that the said agreement was not stamped, dated or notarised. It is also noted that no sanction letter for the loan agreement from the NBFC was submitted. The so called agreement does not contain important details like terms and

conditions of loan, period of loan, rate of interest and repayment schedule. These are the normal covenants in any loan transaction which are not found in the present case. Thus, the evidence produced by the Noticee does not inspire confidence. The Noticee has attempted to create a facade of pledge by producing fabricated copy of agreement. Hence, the so called loan agreement as such cannot be admitted to be case of pledge when infact the title in the shares has already passed on. In such a case, it can no longer be called as pledge and has to be treated as sale. As per Regulation 58 of DP Regulations, 1996 the shares pledged have to be identified separately as 'pledged' shares. However, no such pledge can be seen in the demat statement of the Noticee. In this regard, I also refer to the observations made by Securities Appellate Tribunal (SAT) in Appeal No. 83 of 2010 in Liquid Holdings Pvt Ltd. v. SEBI decided on 11.03.2011-".....*The law also prescribes a mode for the creation and revocation of a pledge. The parties cannot agree to create a pledge contrary to the provisions of Regulation 58.....In the case of shares held in demat form, the Depositories Act and the Regulations framed there under provide the manner in which the pledge is to be created and invoked.....*". Thus, the contention of the Noticee that the share transfer transactions was pledge cannot be accepted. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal (SAT) in *Premchand Shah and Others V. SEBI* dated February 21, 2011, wherein it was held that "*.....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....*".

16. The reduced shareholding of the promoter group was not disclosed to the public despite the actual steep reduction in the promoter shareholding. Therefore, the shareholding patterns submitted by the company and to BSE were false and misleading to the public and the Noticee being the promoter and Managing director of MPL is responsible for the same.
17. Noticee has contended that during part of the investigation period, i.e. until May 25, 2009, the company was still under the purview of BIFR and section 22(1) of SICA was applicable. Therefore, SEBI must have obtained consent of BIFR before carrying out any such investigation for the period. The relevant provision to refer to is Section 22(1) of SICA which reads as under:-

“Suspension of legal proceedings, contracts, etc. – (1)

Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or

for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.”

18. A reading of the aforesaid provision makes it clear that where an enquiry is pending under section 16 of the SICA before the Board (read BIFR) or any scheme referred to in section 17 of the SICA is under preparation or consideration or a sanctioned scheme is under implementation relating to an industrial company, or an appeal is pending under Section 25 of the SICA Act, then no proceedings would lie against it for its winding up or for execution, distress or the like against any of its properties except with the consent of the Board. Hence, only those proceedings would be barred which are in the nature of winding up or for recovery of monies or are for the enforcement of any security against the sick company. In this context, reliance is placed on judgment of Hon'ble Supreme Court in the matter of KSL & Industries Ltd. v. M/s Arihant Threads Ltd. & Ors. Civil Appeal No. 5225 of 2008 dated October 27, 2014 wherein it was observed that "..... *the purpose of laying down that no proceedings for execution and distraint or the like or a suit for recovery shall not lie, is to protect the properties of the sick industrial company and the company itself from being proceeded against by its creditors who may wish to seek the winding up of the company or levy execution or distress against its properties. But as is apparent, the immunity is not absolute. Such proceeding which a creditor may wish to institute, may be*

instituted or continued with the consent of the Board or the Appellate Authority." Initiation of adjudication proceedings by the statutory Regulations in respect of misconduct relating to wrong disclosure of shareholding to the stock exchange by the promoters is not barred by the said provision. Moreover, as admitted by the Noticee, vide order dated May 25, 2009, of BIFR, MPL has ceased to be a sick industrial company. Thus, the contention of the Noticee is devoid of any merit.

19. Thus, despite the actual steep reduction in the promoter shareholding the company/promoters including the Noticee had misled the general public and investors by making inflated and incorrect disclosures to BSE. By misreporting such price sensitive information the company had sent false signals to the market as the promoters had substantially reduced their holding and the same was not reflected in the mandatory quarterly disclosures of shareholding pattern to the public through the disclosures made to BSE for four consecutive quarters.

20. Section 12 of the SEBI Act, 1992 and Regulation 3 of PFUTP Regulations, 2003 prohibits a person from dealing in securities in a fraudulent, manipulative or deceptive manner either directly or indirectly. Regulation 4(1) of PFUTP Regulations, 2003 prohibits a person from indulging in a fraudulent or unfair trade practice in securities. Regulation 4(2)(f) of PFUTP Regulations, 2003 prohibits publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities, Regulation 4(2)(r) of PFUTP Regulations, 2003 prohibits planting false or

misleading news which may induce sale or purchase of securities. As already observed, despite the actual steep reduction in the promoter shareholding, the company had made incorrect, false and inflated disclosures to BSE continuously quarter after quarter for four (4) quarters. I note that the Noticee being the promoter and Managing Director of the company, was in charge of and responsible to the company for the conduct of the business of the company. Therefore, by reporting information which was not true in his disclosures, the Noticee acted in contravention of provisions of section 12A(a), (b) and (c) of SEBI Act, 1992, section 27 of SEBI Act, 1992 and regulations 3(a), (b), (c), (d), 4(1) and 4(2) (f) and (r) of PFUTP Regulations, 2003

II. Creation of artificial volume and price manipulation

21. Further, it is observed that the Noticee had sold 25,000 shares on March 23, 2009. The extract of the trading details is as under:

BRIJMOHAN

Trade Date	Trade Number	Trade Time	Buy Client Name	Sell Client Name	Trade Qty	Trade Rate	LTP%	Order Time	CP Order Time	Time Diff	Order Qty	CP Order Qty	Order Rate	CP Order
23-March-	60	15:28:4	VARUN RAMCHANDRA	BRIJMOHA	2315	55.00	0.27%	15:28:3	15:25:0	00:03:3	2639	25000	52.55	55.00
23-March-	64	15:43:3	HITESH MULCHAND	BRIJMOHA	600	54.60	0.00%	15:43:3	15:40:5	00:02:4	600	1735	54.60	54.60
23-March-	63	15:43:2	HITESH MULCHAND	BRIJMOHA	400	54.60	0.00%	15:43:2	15:40:5	00:02:3	400	1735	54.60	54.60
23-March-	62	15:43:2	HITESH MULCHAND	BRIJMOHA	235	54.60	-	15:43:2	15:40:5	00:02:3	235	1735	54.60	54.60
23-March-	65	15:43:3	HITESH MULCHAND	BRIJMOHA	200	54.60	0.00%	15:43:3	15:40:5	00:02:4	200	1735	54.60	54.60
23-March-	66	15:43:4	HITESH MULCHAND	BRIJMOHA	200	54.60	0.00%	15:43:4	15:40:5	00:02:4	200	1735	54.60	54.60
23-March-	61	15:29:2	NANUBHAI HARIBHAI	BRIJMOHA	115	55.00	0.00%	15:29:2	15:25:0	00:04:2	119	25000	51.05	55.00
23-March-	67	15:43:4	HITESH MULCHAND	BRIJMOHA	100	54.60	0.00%	15:43:4	15:40:5	00:02:5	100	1735	54.60	54.60

From the above table, it is observed that one Varun Mahaleshwar had purchased 23,150 shares out of 25,000 shares on March 23, 2009 from the Noticee. Part of these shares was transferred back to the Noticee during the month Nov and Dec 2009, as can be seen from the table below:

Transaction date	Transferred From	Transferred To	Transferred shares
30-Nov-09	Varun Mahalshekar	Brijmohan	5,000
10-Dec-09	Varun Mahalshekar	Brijmohan	10,000
15-Dec-09	Varun Mahalshekar	Brijmohan	4,000
06-Apr-10	Varun Mahalshekar	Brijmohan	7,000

22. It was alleged that Noticee had executed the circular trades with Varun Mahalshekar for the quantity of 23,150 shares and created the artificial volume in violation of section 12 A(a), (b),(c) of SEBI Act, 1992 read with section 27 of the SEBI Act, 1992 regulation 3(a), (b),(c), (d), 4(1) and 4(2)(a), (d), (e), (g) of PFUTP Regulations, 2003. On perusal of material available on record it is observed that the Noticee sold 25,000 shares on the exchange on March 23, 2009. The counter party for 23,150 shares was Varun Mahalshekar and the rest of the sale was scattered. 26,000 shares were bought by the Noticee off market from Varun Mahalshekar in four tranches over a period of 6 months between November 2009 and April 2010. No allegation of circular trading in violation of section 12 A(a), (b),(c) of SEBI Act, 1992 read with section 27 of the SEBI Act, 1992 regulation 3(a), (b),(c), (d), 4(1) and 4(2)(a), (d), (e), (g) of PFUTP Regulations, 2003 is established because of the following reasons:

- i. No synchronized trades between the parties wherein price/time/quantity are matched.
- ii. The so called sale back or reverse transactions had taken place six months thereafter and that too in four tranches.
- iii. Usually in circular trades, more than two parties are involved with the same shares being transferred amongst the group to create an illusion of volumes traded. In the

present case, there were only two parties to the transaction and the reverse transaction over six months was spread.

- iv. There is no material like nearness of relationship, no other party to the transactions, etc,

(b)Whether Noticee violated the provisions of regulation 13(4) read with 13(5) of PIT Regulations, 1992?

III. Non-disclosure of change in shareholding pattern

23. It is observed that Noticee was holding 10 lakh shares i.e., 6.41% of the total share holding of MPL on October 17, 2008. As a result of transfer of shares done by the Noticee, his shareholding had changed by more than 25000 shares in many instances. The details of change in the share holding of Noticee are as under:

	Total no. of company shares							1,55,90,457	
	Total no. of Shares held by Brijmohan							10,00,000	
S.N.	Transaction date	Transferred From	Transferred To	Opening balance	Transferred shares	Balance shares (Brijmohan)	Opening balance %	Transferred shares % w.r.t Company	Balance shares % w.r.t Company
1	17-Oct-08	Brijmohan	Kamala	10,00,000	2,00,000	8,00,000	6.41	1.28	5.13
2	17-Oct-08	Brijmohan	Shailendar	8,00,000	1,00,000	7,00,000	5.13	0.64	4.49
3	19-Dec-08	Brijmohan	Shailendar	7,00,000	1,00,000	6,00,000	4.49	0.64	3.85
4	29-Dec-08	Brijmohan	Kamala	6,00,000	50,000	5,50,000	3.85	0.32	3.53
5	02-Feb-09	Brijmohan	Vishal	5,50,000	1,00,000	4,50,000	3.53	0.64	2.89
6	15-Mar-09	Brijmohan	Multimedia Entertainment	4,50,000	2,50,000	2,00,000	2.89	1.60	1.28
7	23-Mar-09	Brijmohan	Pay-in of	2,00,000	25,000	1,75,000	1.28	0.16	1.12
8	13-Apr-09	Kamala	Brijmohan	1,75,000	50,000	2,25,000	1.12	0.32	1.44
9	13-Apr-09	Brijmohan	Vinod	2,25,000	2,00,000	25,000	1.44	1.28	0.16
10	20-Aug-09	Vishal	Brijmohan	25,000	50,000	75,000	0.16	0.32	0.48
11	08-Oct-09	Vishal	Brijmohan	75,000	7,000	82,000	0.48	0.04	0.53
	08-Oct-09	Vishal	Brijmohan	82,000	1,000	83,000	0.53	0.01	0.53
	09-Oct-09	Vishal	Brijmohan	83,000	11,000	94,000	0.53	0.07	0.60
	27-Oct-09	Vishal	Brijmohan	94,000	4,000	98,000	0.60	0.03	0.63

	30-Nov-09	Varun	Brijmohan	98,000	5,000	1,03,000	0.63	0.03	0.66
12	10-Dec-09	Varun	Brijmohan	1,03,000	10,000	1,13,000	0.66	0.06	0.72
	15-Dec-09	Varun	Brijmohan	1,13,000	4,000	1,17,000	0.72	0.03	0.75
	04-Feb-10	Vishal	Brijmohan	1,17,000	1,000	1,18,000	0.75	0.01	0.76
	31-Mar-10	Multimedia	Brijmohan	1,18,000	2,50,000	3,68,000	0.76	1.60	2.36
13	06-Apr-10	Varun	Brijmohan	3,68,000	7,000	3,75,000	2.36	0.04	2.41
	03-Jun-10	Kamala	Brijmohan	3,75,000	1,50,000	5,25,000	2.41	0.96	3.37
	06-Jun-10	Kamala Pithadia	Brijmohan	5,25,000	50,000	5,75,000	3.37	0.32	3.69

24. As per regulation 13(4) of PIT Regulations, 1992, any person who is a director or officer of a listed company is required to disclose to the company and to the stock exchange the change in their shareholding and the shareholding of their dependents, if the change exceeds ₹ 5 lac in value or 25000 shares or 1% of the total shareholding or voting rights, whichever is lower. It is observed that change in Noticee's shareholding exceeded the benchmark limit of 25000 shares as specified under regulation 13(4) of PIT Regulations, 1992, in as many as 12 instances indicated in bold in the above table. Noticee was required to disclose his shareholding and change in shareholding to the company i.e. MPL and to the stock exchange i.e. BSE within two days from the date of such acquisition or sale of shares under regulation 13(4) read with regulation 13(5) of PIT Regulations, 1992. Noticee had made the disclosure only to the company under regulation 13(4) of PIT Regulations, 1992, and even the said disclosure to the company was incomplete. The disclosure did not contain important details such as PAN No., No. & Percentage of voting rights held by the promoter/person, Mode of acquisition (market purchase/public/ rights/ preferential offer), No. & % of shares/voting rights post acquisition/sale and sell value as per the Form D prescribed under the PIT Regulations, 1992. Thus, the disclosure by the Noticee to the company was not in

compliance with regulation 13(4) of PIT Regulations, 1992. It misses out on important parameters. Noticee has admitted that the disclosure was incomplete in terms of the prescribed Regulations to the company. Hence, it has to be treated as a case of 'no disclosure' for the aforesaid reasons.

25. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal (SAT) in *Premchand Shah and Others V. SEBI* dated February 21, 2011, wherein it was held that "*.....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments.....*".

26. Further, with regard to the disclosure to the stock exchange under PIT Regulations, 1992, it was informed by the Noticee during the course of hearing that disclosure to the Stock Exchange was made and supporting documents will be filed by July 10, 2015. However, no supporting documents were submitted by the Noticee in this regard. Thus, Noticee had failed to make disclosure under regulation 13(4) of PIT Regulations, 1992 to the stock exchange. Thus Noticee has violated regulation 13(4) read with regulation 13(5) of PIT Regulations, 1992.

27. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of ***Chairman, SEBI v.. Shriram Mutual Fund*** {[2006] 5 SCC 361} wherein it was held

that "In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."

28. Thus, the aforesaid violations by the Noticee make him liable for penalty under Section 15HA and 15A(b) of SEBI Act, 1992 which read as follows:

"Penalty for fraudulent and unfair trade practices

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made there under,-

(a)

(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.

(c)

29. It is noted that the disproportionate gain or unfair advantage made by the Noticee or loss caused to the investors as a result of default of this nature is not available on record. Continuous

wrong disclosures to the stock exchange regarding shares held by promoter group consecutively for four quarters is a matter to be viewed seriously. The steep reduction of the shareholding of the promoter group was withheld from the public. By virtue of making wrongful and misleading disclosures to the BSE and also failure to make necessary disclosures under Regulation 13(4) of PIT Regulations, 1992, in 12 instances the fact remains that the investors were deprived of the correct information at the relevant point of time. General public were made to believe through repeated wrong disclosure to BSE that there was no change in the shareholding of the promoters whereas the shareholding of promoter group has come down significantly. The default by the Noticee is repetitive in nature as the Noticee has made wrongful and misleading disclosures for himself and other promoter group entities to the BSE on more than one occasion i.e. continuously for four quarters. Also, Noticee has failed to make disclosures under Regulation 13(4) read with regulation 13(5) of PIT Regulations, 1992 in twelve instances.

ORDER

30. After taking into consideration the facts and circumstances of the case, nature and gravity of the charges and the factors mentioned in section 15J of the SEBI Act, 1992 I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose following monetary penalty on the Noticee:

Penalty Amount		Violation
₹1,35,00,000/- (Rupees One Crore and Thirty Five Lakhs Only)		Under Section 15HA of SEBI Act, 1992 for violation of section 12A(a), (b) and (c) of SEBI Act, 1992 read with section 27 of SEBI Act, 1992 regulations 3(a), (b), (c), (d), 4(1) and 4(2) (f) and (r) of PFUTP Regulations, 2003.
₹ 17,00,000/- (Rupees Seventeen Lakhs Only)		Under Section 15A(b) of SEBI Act, 1992 for violation of regulation 13(4) read with 13(5) of PIT Regulations, 1992
Total	₹ 1,52,00,000 /- (Rupees One Crore Fifty Two Lakhs Only)	

31.I am of the view that the penalty imposed is commensurate with the violations committed by the Noticee. 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 The Division Chief, Enforcement Department-EFD-DRA-III, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

32.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: SEPTEMBER 30, 2015

PLACE: MUMBAI

**S.V. KRISHNAMOHAN
CHIEF GENERAL MANAGER
&ADJUDICATING OFFICER**