

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 85-86 /2012]

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

- 1. Shri Pravinchandra Dashrathbhai Patel &**
- 2. Shri Fulian Ashvin Reshamwala (PAN No. ABNPR3543H)**

In the matter of
Sunday Exports Limited

Background

- 1.** Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into alleged irregularity in the trading in the scrip of Sunday Exports Ltd. (hereinafter referred to as SEL), a company listed on the Bombay Stock Exchange (BSE), for the period from April 15, 2010 to July 21, 2010. The investigation, *inter alia* revealed that, SEL had not framed the Model Code of Conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under Section 12(1) of the SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as the 'PIT Regulations').
- 2.** SEBI, therefore, initiated adjudication proceedings under section 15-I of the SEBI Act, 1992, among others, against the Whole Time Directors of SEL

namely, Shri Pravinchandra Dashrathbhai Patel and Shri Fulian Ashvin Reshamwala (hereinafter referred to as Noticees), for their alleged failure in exercising overall supervision in framing the Model Code of Conduct for prevention of Insider Trading.

Appointment of Adjudicating Officer:

3. SEBI vide Order dated May 03, 2012 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HB of the SEBI Act, 1992 for the alleged violation of Clause 1.2 of the Code of Conduct as specified under Part A of Schedule I of the PIT Regulations read with Section 12(1) and 12(3) of the SEBI Act, 1992 by the Noticees.

Notice, Reply & Personal Hearing

4. The AO issued a common notice dated May 30, 2012 (hereinafter referred to as 'SCN') to the Noticees in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against them for the alleged violations. It is alleged that SEL had not framed the internal policy on code of conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under Section 12(1) of the PIT Regulation. The Noticees, being the Whole Time Directors of SEL, failed in discharging their responsibility of the overall supervision of 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.

5. The SCNs were sent to the Noticees by Registered Post Acknowledgment Due and the same were duly delivered. However, the Noticees did not reply to the SCN. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticees on August 22, 2012. The Authorized Representatives (AR) attended the scheduled hearing and made oral submissions. Further, the Noticees made written submissions vide their letters dated August 20 & 21, 2012. The Noticees, *inter alia* submitted that, they are independent directors and since the company appointed a qualified company secretary, they are not responsible for the delay in framing the model code of conduct. Further, the model code of conduct was enforced by the company even before the same was framed.
6. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges against the Noticees mentioned in the SCN, the written & oral submissions made by them and the documents as available on record. The issues that arise for consideration in the present case are:
 - (a) Whether the Noticees have violated Clause 1.2 of the Code of Conduct as specified under Part A of Schedule I of the PIT Regulations read with Section 12(1) and 12(3) of the SEBI Act, 1992?***
 - (b) Does the violation, if any, on the part of the Noticees attract any penalty under 15HB of the SEBI Act, 1992?***
 - (c) If yes, what should be the quantum of penalty?***

8. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

Relevant provisions of PIT Regulations:-

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

12(1) All listed companies and organizations 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 organizations recognized or authorised by the Board;*
- (c) the recognized 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) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(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:- (PART A)

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.*

9. It is alleged in the SCN that the Noticees had not framed the internal policy on code of conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under Section 12(1) of the PIT Regulation. SEL, vide letter dated June 12, 2012 to SEBI, submitted that as the secretary Late Shri. Laxmikant J. Patel was undergoing cancer treatment and that there was no one to give proper advice to the company, there was a delay in framing the internal model code of conduct. Further, the Noticees, in their own submissions admitted that though the specific code of conduct was not framed by the company, the same was enforced by it as the disclosures under the model code of conduct were made by the directors/promoters of the company from time to time. I do not find merit in their contention that the enforcement of the model code of conduct is sufficient compliance of the regulation and that the insertion of the model code of conduct in the regulation itself pre assumes that the same would be applicable in case no code of conduct is specifically framed. I observe that the PIT Regulations specifically provide that every listed company should frame its own code of conduct for prevention of Insider Trading and adopt appropriate mechanisms and procedures to enforce the codes.
10. I also do not agree with the argument of the Noticees that they cannot be held guilty of the said delay in adoption and framing of the model code of conduct, as under Clause 1.1 of the code of conduct prescribed under Schedule I of Part A of the PIT Regulations, the compliance officer is the person who is in charge of the said compliances and is responsible for any non-compliance. I find that the PIT Regulations specifically provide that the Compliance Officer shall set forth policies, procedures, monitor and implement the code under the overall supervision of the Board of Directors of the company.
11. I also do not agree with the contention of the Noticees that they are independent directors and since the company appointed a qualified company secretary, they are not responsible for the delay in framing the model code of conduct. In this context, it is worthwhile to note that the Hon'ble Securities

Appellate Tribunal in *Shri N. Narayanan, Shri K. Natarahjan, Shri K.S. Kashiraman and Shri G. Ramakrishanan vs. SEBI (Appeal No. 29 of 2010 decided on October 05, 2012)* has made the following observations:

"With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto".

12. In light of the abovementioned facts and circumstances of the case, I am of the view that the Noticees have violated the provisions of Clause 1.2 of the code of conduct specified under Part A of the Schedule I read with regulations 12 (1) and 12 (3) of the PIT Regulations and are therefore, liable for imposition of penalty under section 15HB of the SEBI Act, which reads as under:

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 there under for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees".

13. While determining the quantum of penalty under section 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under:-

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall

have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

- 14.** I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default of the Noticees or to ascertain whether the defaults are repetitive in nature.

Order

- 15.** In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000 (Rupees one lakh only) each on Shri Pravinchandra Dashrathbhai Patel and Shri Fulian Ashvin Reshamwala thus, a total of ₹ 2,00,000 (Rupees two lakhs only) on the Noticees under Section 15HB of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticees.
- 16.** The penalty amount as mentioned above shall be paid by the Noticees through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID8, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

- 17.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: November 01, 2012

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**