

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: EAD-3/AO/DRK/JP/420/86 of 2013]

UNDER SECTION 15 I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Mr. Dhaval Janardan Nanavati

(PAN: AAIPN8125B)

Address: 12, Om Satyadeep Coop. Housing Society,
Gulmohar Cross Road No.7,
JVPD Scheme, Vile Parle (W)
Mumbai- 400 049

(In the matter of Organic Coatings Ltd.)

Background:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') during the course of examination in the shares of Organic Coatings Ltd (**Company/OCL**) observed that Mr. Dhaval J. Nanavati (hereinafter referred to as '**the Noticee**') had failed to disclose to the Company the change in his shareholding.

Appointment of Adjudicating Officer:

2. I was appointed as Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act 1992 (hereinafter known as '**SEBI Act**') read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide communiqué dated March 13, 2013, to inquire into and adjudge under Section 15 A (b) of the SEBI Act, the violations of Regulation 13 (3) & 13 (5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as '**PIT Regulations**'), alleged to have been committed by the Noticee.

Show Cause Notice, Reply of Noticee and Personal Hearing:

3. A Show Cause Notice A&E/EAD-3/DRK-VVK/18101/2013 dated July 23, 2013 (hereinafter referred to as “**SCN**”) was issued to the Noticee under Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry be not held against him and penalty be not imposed under section 15 A (b) of the SEBI Act, for the aforesaid alleged violations of PIT Regulations.
4. It was stated in the SCN that the Noticee was holding 7,51,000 shares amounting to 9.79% of the total share capital of the OCL during the quarter ended September 2012, and sold the entire shareholding on October 05, 2012 to Mr. Dhaval Kalpesh Doshi, Mr. Krishnakant Ratanlal Shah and Mr. R K Shah HUF. As a result, the shareholding of the Noticee in the OCL came down to zero. It was alleged that the Noticee had not complied with the requirement of provisions of Regulation 13 (3) & 13 (5) of the PIT Regulations which requires that if a person is holding more than 5% of the share capital or voting rights of the company, then on every change of 2% or more of total shareholding or voting rights, he is required to disclose the same to the company within a period of 2 working days. The said provisions of PIT Regulation are produced below:

13 (3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

*13 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) 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.*

5. The said SCN was duly served upon the Noticee on July 29, 2013 through Regd. Post A.D., however, no reply is received from him towards the SCN. Thereafter, for the purpose of inquiry, an opportunity of hearing was granted to the Noticee on September 10, 2013 vide notice dated August 23, 2013 which was served through hand delivery on August 28, 2013. In the aforesaid notice, the Noticee was also *inter-alia* avised to submit reply towards SCN, failing which the case would be decided as per the material

available on records. However, the Noticee neither appeared for the hearing nor responded to the allegations. Considering the principle of natural justice, another opportunity of hearing was provided to the Noticee on October 18, 2013 vide notice dated October 04, 2013 which was served through hand delivery. However, again he neither appeared for the hearing nor responded to the allegations.

6. I am of the view that sufficient opportunities were provided to the Noticee to submit reply and to appear for the hearing which the Noticee failed to avail. Hence, I am proceeding against the Noticee *ex-parte* on the basis of available records/evidence.

Consideration of Issues and Finding:

7. After taking into account the allegations and other evidences/material available on records, the case is being decided on merits as under.
8. It is observed from the records i.e. Annexure B of the SCN (Transaction Statement of Client) which shows that on October 05, 2012, the Opening Holding of the Noticee was 7,51,000 shares of OCL and on the same day the Closing Holding of the Noticee became zero. Further, as regards to the allegation that the Noticee failed to disclose the said change to the Company/OCL, the same is not in dispute as he did not file any reply/evidence which can disapprove the allegation. It is well settled law that if a person charged with some allegations on certain facts, does not dispute the same or do not otherwise disprove when the onus is on him to disprove, then it is implied that he has accepted those facts. The said proposition was also explained in case of **Jatin Shah vs. SEBI (Appeal No. 68/2008)** decided on August 10, 2009 by the Hon'ble Securities Appellate Tribunal (SAT).
9. In view of the above undisputed facts and also taking into account the available material on records, it is established that the Noticee had failed to disclose to the Company the change in his shareholding and thereby had violated the provisions of Regulation 13 (3) & 13 (5) of the PIT Regulations which warrants the imposition of monetary penalty under section 15 A (b) of the SEBI Act. Section 15 A (b) reads as under;

15A. Penalty for failure to furnish information, return, etc.-

If any person, who is required under this Act or any rules or regulations made hereunder,-

(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 therefor 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.

10. As regards to the issue of imposition of monetary penalty under 15 A (b) of the SEBI Act, I quote the well known judgment of Hon'ble Supreme Court of India in the case of **Chairman of SEBI vs. Shri Ram Mutual Fund (AIR 2006 SC-2287)** decided on May 23, 2006, wherein it was held that "once the civil wrong as contemplate under the Act, Rules & Regulations, is committed, the penalty must follow irrespective of the *mens - rea* behind such commission".

11. While determining the quantum of penalty under section 15 A(b) of the SEBI Act, the factors stipulated in section 15J of the SEBI Act are taken into consideration, 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.*

12. The available records neither indicate the quantum of any unfair gain made by the Noticee nor any loss/harm caused to the investors/shareholders. As per records, the default of the Noticee is not repetitive in nature.

Order:

13. 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 of the SEBI Act and Rule 5 of the Adjudication Rules, I impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) under the provisions of Section 15A (b) of the SEBI Act on the Noticee. I am of the view that the said

penalty would commensurate with the aforesaid failure committed by the Noticee.

14. 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 demand draft shall be forwarded to the Chief General Manager (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

15. Copy of this order is being sent to the Noticee (Mr. Dhaval Janardan Nanavati) and also to the SEBI, in terms of rule 6 of the Adjudication Rules.

Date: November 27, 2013

Place: Mumbai

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**