

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PB/AO-42/2011]**

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**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**

**MR. KRISHNA GOPAL MOTILAL CHANDAK**

**(PAN. No. PAN No. ABAPC7514Q)**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the trading in the scrip of M/s JK Agri Genetics Ltd. (hereinafter referred to as ‘**JK/ Company**’) during the period from February 01, 2006 to September 28, 2007.
2. The findings of the investigation led to the allegation that Mr. Krishna Gopal Motilal Chandak (hereinafter referred to as “**Noticee**”) had violated regulation 7(1) read with regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the “**SAST Regulations**”) and regulations 13(1), 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) and

consequently, liable for monetary penalty under section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”).

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned has been appointed as Adjudicating Officer vide order dated November 27, 2009 under section 15 I of the 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 ‘**Rules**’) to inquire into and adjudge under section 15A(b) of the SEBI Act.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. The Show Cause Notice No. EAD-07/PB/SS/19092/2010 dated September 07, 2010 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act for the alleged violation specified in the SCN.
5. The SCN addressed to the Noticee was sent through SPAD. The SCN was received and acknowledged by the Noticee. However, the Noticee did not submit any reply to the SCN.
6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on November 16, 2010, vide notice dated October 22, 2010 sent through SPAD to the Noticee. The said hearing notice was received and acknowledged by the Noticee. The Noticee vide e-mail dated November 15, 2010 requested for adjournment of hearing. Acceding to the request of the Noticee, another opportunity of hearing was granted to the Noticee on January 12, 2011 vide letter dated November 30, 2010. The Noticee once again vide e-mail dated

January 11, 2011 requested for adjournment of hearing. Acceding to the request of the Noticee, third opportunity of hearing was granted to the Noticee on January 17, 2011 vide letter dated January 12, 2011. Mr. Krishna Gopal Motilal Chandak appeared on January 17, 2011 and submitted inter-alia as under:

*“In regards to violation of the provisions of regulation 7(1) read with 7(2) of SAST Regulations and regulation 13(1), 13(3) read with 13(5) of PIT Regulations. I like to submit that I had made all disclosures to the company and Bombay Stock Exchange. Please also note that the disclosures were made to the best of my knowledge. Please also note that shares were purchased by me and the amount was financed by M/s Religare Finvest Ltd.”*

During the course of hearing the following information was sought from the Noticee:

*“ Have you made any disclosures to M/s JK Agri Genetics Pvt. Ltd. as well as stock exchange with regard to acquisition as well as sale of the shares of M/s JK Agri Genetics Pvt. Ltd. alleged in the SCN. If yes, please submit the documentary evidence along with the proof of delivery.*

*Did you enter in any loan agreement with M/s Religare Finvest Ltd. If so:*

- *How much loan was taken from M/s Religare Finvest Ltd.*
- *Details of securities given by you to M/s Religare Finvest Ltd. against the loan given to you*
- *Bank statement as well as loan statement showing the loan amount given to you by M/s Religare Finvest Ltd.*
- *Have you repaid the loan. Please submit the bank statement showing the loan amount repaid, if any, to M/s Religare Finvest Ltd.”*

7. The Noticee requested for one week's time from the date of hearing to submit the reply to the aforesaid queries. The Noticee vide e-mail dated January 25, 2011 submitted that he had made proper disclosures under regulation 7(1) read with regulation 7(2) of SAST Regulations and regulations 13(1), 13(3) read with regulation 13(5) of PIT Regulations. Further, the Noticee submitted that, all the papers pertaining to these transactions were under the custody of Income Tax authorities and requested for two months time for the detailed submission.

8. As no information about disclosure was forthcoming from the Noticee even after lapse of two months, there was no choice but to seek the information from other sources. Therefore, information was sought directly from Bombay Stock Exchange Limited (hereinafter referred to as “**BSE**”), Calcutta Stock Exchange Limited (hereinafter referred to as “**CSE**”) and JK vide letters dated March 08, 2011.
9. BSE vide letter dated March 17, 2011 informed that Noticee has made a disclosure vide letter dated November 21, 2006 received by the BSE on November 24, 2006 in terms of Regulation 7 of SAST Regulations intimating that his total holding in JK as on November 21, 2006 is 421727 shares (12.027% shares). However, with regard to other alleged instances, BSE has confirmed that they have not received any disclosures under regulation 7 of SAST Regulations.
10. Upon perusal of the letter dated March 18, 2011 of CSE, I find that Noticee has not made any disclosure under regulation 7 of SAST Regulations.
11. JK vide letter dated March 21, 2011 informed inter-alia as under:
  - Letter dated April 27, 2006 received from the Noticee informing about acquisition of additional 1,90,673 shares of JK and with this acquisition the shareholding of the Noticee increased from 11,850 shares to 2,02,523 (5.786%) shares.
  - Letter dated November 21, 2006 received from the Noticee informing about acquisition of 219204 shares (6.25% shares) and with this acquisition the shareholding of the Noticee increased from 202523 (5.78%) shares to 4,21,727 (12.03%) shares.
12. As two months had lapsed since the request of the Noticee vide e-mail dated January 25, 2011 for the submission of the reply and considering

his request for an opportunity of hearing before passing of the order, in the interest of natural justice, an opportunity of hearing was granted to the Noticee on April 19, 2011 vide letter dated April 05, 2011.

13. The Noticee vide e-mail dated April 19, 2011 requested to keep the matter on hold for some more months without giving any definite period of time.
14. In view of the aforesaid steps taken, I am convinced that ample opportunities have been given to the Noticee to explain his case. Moreover, in the light of information submitted by BSE, CSE and JK, I do not find it relevant to give more time to the Noticee. I am, therefore, proceeding with the matter on the material available on record.

### **CONSIDERATION OF ISSUES AND FINDINGS**

15. The issues that arise for consideration in the present case are :
  - a. Whether the Noticee had violated the provisions of regulation 7(1) read with regulation 7(2) of SAST Regulations and regulations 13(1), 13(3) read with regulation 13(5) of PIT Regulations?
  - b. Does the violation, if any, attract monetary penalty under section 15A(b) of the 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 the SEBI Act?
16. Before moving forward, it is pertinent to refer to the provisions of regulations 7(1) and 7(2) of SAST Regulations and regulations 13(1), 13(3) and 13(5) of PIT Regulations, which reads as under:-

#### **SAST Regulations**

##### ***Acquisition of 5% and more shares of a company***

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent. or fourteen percent or fifty four percent or seventy four percent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(2) The disclosures mentioned in sub-regulation (1) and (1A) shall be made within two working days of,—

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

### **PIT Regulations**

#### **13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure**

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

.....

#### **Continual Disclosure**

(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.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.

17. The details of opening balance, debit-credit and closing balance of the shares on days on which Noticee has triggered regulation 7(1) read with regulation 7(2) of SAST Regulations and regulation 13(1),

regulation 13(3) read with regulation 13(5) of PIT Regulations are as under:

Date	Holdings				Total Share Capital	% of holding	Change in holdings	Alleged violation of SAST Regulations and PIT Regulations
	Op. Bal	Debit	Credit	Cl. Bal.				
9/2/2006	12289	0	105430	117719	3506510	3.36	-	-
10/2/2006	117719	0	252945	370664	3506510	10.57	7.21	7(1) read with 7(2) of SAST Regulations and 13 (1) of PIT Regulations
24/2/2006	372413	200000	0	172413	3506510	4.92	-5.65	13 (3) read with 13(5) of PIT Regulations
22/3/2006	171277	0	5551	176828	3506510	5.04	0.13	7(1) read with 7(2) of SAST Regulations and 13 (1) of PIT Regulations
1/9/2006	213077	0	40000	253077	3506510	7.22	2.17	13 (3) read with 13(5) of PIT Regulations
20/11/2006	253016	0	168711	421727	3506510	12.03	4.81	7(1) read with 7(2) of SAST Regulations and 13(3) read with 13(5) of PIT Regulations
5/12/2006	421727	73031	0	348696	3506510	9.94	-2.08	13(3) read with 13(5) of PIT Regulations
28/12/2006	348171	135000	0	213171	3506510	6.08	-3.86	13(3) read with 13(5) of PIT Regulations
29/12/2006	213171	0	135025	348196	3506510	9.93	3.85	13(3) read with 13(5)

								of PIT Regulations
8/2/2007	350633	0	105	350738	3506510	10.0025	0.07	7(1) read with 7(2) of SAST Regulations
12/3/2007	356442	140000	600	217042	3506510	6.19	-3.81	13(3) read with 13(5) of PIT Regulations
10/7/2007	247182	8432	129230	367980	3506510	10.49	4.30	7(1) read with 7(2) of SAST Regulations and 13(3) read with 13(5) of PIT Regulations

18. From the aforesaid details, I find the following:

- I. With the acquisition of 3,58,375 shares on February 09, 2006 and February 10, 2006, the shareholding of the Noticee increased from 0.35% shares to 3,70,664 shares representing 10.57% shares which is more than the threshold specified in regulation 7(1) read with regulation 7(2) of SAST Regulations and regulation 13(1) of PIT Regulations. In terms of regulation 7(1) read with regulation 7(2) of SAST Regulations, Noticee ought to have informed the company and the stock exchanges within two working days of acquisition of shares and in terms of regulation 13(1) of PIT Regulations, Noticee ought to have informed the company within four working days of acquisition of shares. However, in the light of information submitted by BSE, CSE and JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 7(1) read with regulation 7(2) of SAST Regulations and regulation 13(1) of PIT Regulations.
- II. With the sale of 2,00,000 shares on February 24, 2006, shareholding of the Noticee decreased from 10.57% shares as on February 10, 2006 to 1,72,413 shares representing 4.92% shares which resulted in shareholding of the Noticee falling below 5% threshold as specified in regulation 13(3) read with regulation 13(5) of PIT Regulations. In terms of regulation 13(3) read with regulation 13(5) of PIT Regulations, Noticee ought to have informed the company within four working days of sale of shares. However, in the light of information submitted by JK that the Noticee has not disclosed the transaction, I



am of the view that Noticee has violated provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.

- III. With the acquisition of 5551 shares on March 22, 2006, shareholding of the Noticee increased from 4.92% shares as on February 24, 2006 to 1,76,828 shares representing 5.04% shares which is more than the threshold specified in regulation 7(1) read with regulation 7(2) of SAST Regulations and regulation 13(1) of PIT Regulations. In terms of regulation 7(1) read with regulation 7(2) of SAST Regulations, Noticee ought to have informed the company and the stock exchanges within two working days of acquisition of shares and in terms of regulation 13(1) of PIT Regulations, Noticee ought to have informed the company within four working days of acquisition of shares. However, in the light of information submitted by BSE, CSE and JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 7(1) read with regulation 7(2) of SAST Regulations and regulation 13(1) of PIT Regulations.
- IV. With the acquisition of 40,000 shares on September 01, 2006, shareholding of the Noticee increased from 5.04% shares as on March 22, 2006 to 2,53,077 shares representing 7.22% shares which crossed the 2% threshold specified in regulation 13(3) of PIT Regulations. In terms of regulation 13(3) read with regulation 13(5) of PIT Regulations, Noticee ought to have informed the company within four working days of sale of shares. However, in the light of information submitted by JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.
- V. With the acquisition of 1,68,711 shares on November 20, 2006, shareholding of the Noticee increased from 7.22% shares as on September 01, 2006 to 4,21,727 shares representing 12.03% shares which is more than the 10% threshold specified in regulation 7(1) read with regulation 7(2) of SAST Regulations and which was also resulted in shareholding crossing the 2% threshold as specified in regulation 13(3) of PIT Regulations. Upon perusal of the information submitted by BSE, CSE and JK, I find that the Noticee has disclosed the transaction to BSE and JK under regulation 7(1) read with regulation 7(2) of SAST Regulations. However, the Noticee has not disclosed the transaction to CSE under regulation 7(1) read with

regulation 7(2) of SAST Regulations. Moreover, the Noticee has not disclosed the transaction under regulation 13(3) read with regulation 13(5) of PIT Regulations to JK. I am of the view that by disclosing the transaction to BSE and JK under regulation 7(1) read with regulation 7(2) of SAST Regulations, the information was already in public domain. Thus, allegation of violation of regulation 7(1) read with regulation 7(2) does not stand established. However, the Noticee failed to disclose the transaction to JK which resulted in violation of regulation 13(3) read with regulation 13(5) of PIT Regulations.

VI. With the sale of 73031 shares on December 05, 2006, shareholding of the Noticee decreased from 12.03% shares as on November 20, 2006 to 3,48,696 shares representing 9.94% shares which crossed the 2% threshold specified in regulation 13(3) of PIT Regulations. In terms of regulation 13(3) read with regulation 13(5) of PIT Regulations, Noticee ought to have informed the company within four working days of sale of shares. However, in the light of information submitted by JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.

VII. With the sale of 1,35,000 shares on December 28, 2006, shareholding of the Noticee decreased from 9.94% shares as on December 05, 2006 to 2,13,171 shares representing 6.08% shares which crossed the 2% threshold specified in regulation 13(3) of PIT Regulations. In terms of regulation 13(3) read with regulation 13(5) of PIT Regulations, Noticee ought to have informed the company within four working days of sale of shares. However, in the light of information submitted by JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.

VIII. With the acquisition of 1,35,025 shares on December 29, 2006, shareholding of the Noticee increased from 6.08% shares as on December 28, 2006 to 3,48,196 shares representing 9.93% shares which crossed the 2% threshold specified in regulation 13(3) of PIT Regulations. In terms of regulation 13(3) read with regulation 13(5) of PIT Regulations, Noticee ought to have informed the company within four working days of acquisition of shares. However, in the light of information submitted by JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.

- IX. With the acquisition of 105 shares on February 08, 2007, shareholding of the Noticee increased from 9.93% shares as on December 29, 2006 to 3,50,738 shares representing 10.0025% shares which is more than the 10% threshold specified in regulation 7(1) read with regulation 7(2) of SAST Regulations. In terms of regulation 7(1) read with regulation 7(2) of SAST Regulations, Noticee ought to have informed the company and the stock exchanges within two working days of acquisition of shares. However, in the light of information submitted by BSE, CSE and JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 7(1) read with regulation 7(2) of SAST Regulations.
- X. With the sale of 1,40,000 shares and acquisition of 600 shares on March 12, 2007, shareholding of the Noticee decreased from 10.0025% shares as on February 08, 2007 to 2,17,042 shares representing 6.19% shares which crossed the 2% threshold specified in regulation 13(3) of PIT Regulations. In terms of regulation 13(3) read with regulation 13(5) of PIT Regulations, Noticee ought to have informed the company within four working days of sale of shares. However, in the light of information submitted by JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.
- XI. With the sale of 8432 shares and acquisition of 1,29,230 shares on July 10, 2007, shareholding of the Noticee increased from 6.19% shares as on March 12, 2007 to 3,67,980 shares representing 10.49% shares which is more than the 10% threshold specified in regulation 7(1) read with regulation 7(2) of SAST Regulations and which crossed the 2% threshold specified in regulation 13(3) of PIT Regulations. In terms of regulation 7(1) read with regulation 7(2) of SAST Regulations, Noticee ought to have informed the company and the stock exchanges within two working days of acquisition of shares and in terms of regulation 13(3) read with regulation 13(5) of PIT Regulations, Noticee ought to have informed the company within four working days of acquisition of shares. However, in the light of information submitted by BSE, CSE and JK that the Noticee has not disclosed the transaction, I am of the view that Noticee has violated provisions of regulation 7(1) read with regulation 7(2) of SAST

Regulations and regulation 13(3) read with regulation 13(5) of PIT Regulations.

19. In view of the foregoing, the allegation of violation of regulation 7(1) read with regulation 7(2) of SAST Regulations and regulations 13(1), 13(3) read with regulation 13(5) of PIT Regulations by the Noticee stands established.
20. Moreover, during the course of proceedings the conduct of the Noticee was far from satisfactory and it is evident from the documents and material available on record that the Noticee was never interested in cooperating with the proceedings and used all possible excuses and tried every bit to avoid its representation. Despite granting two months to the Noticee for the submission of the reply, the Noticee did not bother to reply his position. Further, the Noticee tried to delay the proceedings by requesting that the matter be put on hold for indefinite period of time.
21. Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT"), in Appeal No.66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, has also observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature"*.
22. In view of the foregoing, the allegation of violation of regulation 7(1) read with regulation 7(2) of SAST Regulations and regulations 13(1), 13(3) read with regulation 13(5) of PIT Regulations by the Noticee stands established.
23. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and*

*hence the intention of the parties committing such violation becomes wholly irrelevant...”.*

24. Thus, the aforesaid violations by the Noticee makes him liable for penalty under section 15A(b) of the SEBI Act, 1992 which reads as follows:

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

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

*(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 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;*

25. While determining the quantum of penalty under section 15A(b), 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.”*

26. The object of the SAST Regulations and PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. It may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. The disclosure assumes all the more significance as the same was transacted through off market.

Since the transaction had taken place off market, it is all the more important for the Noticee to have disclosed the same in a timely manner to BSE ,CSE and JK so that it could have brought it to the knowledge of the public in time. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid transactions. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the outside shareholders were deprived of the important information at the relevant point of time. The Noticee failed to disclose transfer of shares on eleven occasions. This reflects the repetitive nature of default by him.

### **ORDER**

27. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees one lakh only) on the Noticee which will be commensurate with the default committed by him.

28. 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 shall be forwarded to Mr. Debashis Bandyopadhyaya, Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

29. 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: April 29, 2011**

**Place: MUMBAI**

**PARAG BASU**

**ADJUDICATING OFFICER**