

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ISD/RPIL/AO/DRK-DS/EAD3-377/43-2013]

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

Against
Raj Packaging Industries Ltd.
[PAN No: AABCR1338J]
6-3-1090/C-4,
Opposite Kapadia Lane,
Raj Bhavan Road,
Hyderabad – 500 082

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), observed a price spurt in the scrip of Raj Packaging Industries Ltd. (hereinafter referred to as 'the noticee/company/RPIL/it') during the period of August 02, 2010 – October 06, 2010. The shares of the company are listed at BSE.

APPOINTMENT OF ADJUDICATING OFFICER

2. I was appointed as the Adjudicating Officer and the same was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated August 28, 2012 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'SEBI Rules') and Section 23-I of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SC(R)A') read

with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SC(R)Rules') to inquire into and adjudge under Sections 15A(b) and 15HB of the SEBI Act and Section 23A of the SC(R)A, the following violations alleged to have been committed by the noticee:

- a. Regulation 13(6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations');
- b. Clause 5.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations;
- c. Clause 35 of the Listing Agreement read with Section 23A(a) of the SC(R)A.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice no. A&E/EAD-3/DRK/DS/482/2013 dated January 04, 2013 (hereinafter referred to as 'SCN') was served on the noticee in terms of the provisions of Rule 4 of the SEBI Rules and Rule 4 of the SC(R)Rules, requiring it to show cause as to why an inquiry should not be held against RPIL and why penalty, if any, should not be imposed on it under Sections 15A(b) and 15HB of the SEBI Act and Section 23A of the SC(R)A for the alleged violations of Regulation 13(6) of the PIT Regulations, Clause 5.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations and Clause 35 of the Listing Agreement read with Section 23A(a) of the SC(R)A.
4. It was alleged in the SCN that vide letter dated September 29, 2010 Highline Finance & Investment Pvt. Ltd. (hereinafter referred to as 'HFIL') which was holding 3,62,873 shares of the company amounting to 9.14% of the total paid up capital of the company, had intimated the noticee regarding selling of 89,000 shares amounting to 2.24% of the total paid up capital of the company. However the noticee in turn did not make any disclosure to the stock exchange where the shares of the company are listed as required under Regulation 13(6) of the PIT Regulations, Clause 5.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations and Clause 35 of the Listing Agreement read with Section 23A(a) of the SC(R)A.

5. The SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record. The said SCN was served on the noticee and the proof of service is available on record.
6. The noticee, vide letter dated January 24, 2013 sought ten days time to submit its reply. Vide letter dated January 30, 2013, the request of the noticee was acceded to and was granted time till February 08, 2013 to submit the reply.
7. The noticee, vide its reply dated February 06, 2013, made the following submissions:
 - a) We are SME unit engaged in manufacture of plastic packaging film and are listed on BSE since June/July, 1995 with Share Capital of 39,69,750 equity shares of 10/-each. We are very small company in terms of size and profitability and secretarial work is managed in-house as it is beyond the financial position of the company to engage a full time Company Secretary.
 - b) Our company has been filing on regular basis all periodical statements and returns including shareholding patterns, corporate governance report or secretarial audit reports without any default.
 - c) We had, vide our letter dated 21.09.2010, informed to the BSE that the price quoted on the Stock Exchange is unrealistic and misleading and is not in the best interest of the investor public. We, further requested the BSE to look into the matter. Bulk trades are being disseminated on the BSE Website and in newspapers with details of client who are buying/selling in the scrip and this price information is very much available to the general public and, we thought, it disseminates price sensitive information to the public not requiring any specific information from the company.
 - d) For the first time in the history of the company compliance under Clause 5.1 of Code of Corporate disclosure was required to be made as sent by HFIL and since, this was not a regular compliance, got overlooked.
 - e) It is also submitted that the company from time to time has been regularly submitting shareholding pattern in terms of Clause 35 of the listing Agreement with Stock Exchange.
 - f) As regard HFIL information is concerned the shareholding of the entity is informed to the stock exchange on quarterly basis under the specific column of "Persons holding more than 1%".

g) It is submitted that non disclosure was never the intention nor that we have made any undue advantage or gain out of non-disclosure or caused any loss or damage to the interest of the investors.

8. As requested by the noticee, vide hearing notice dated April 15, 2013, the noticee was provided an opportunity of being heard and was advised to attend the hearing on April 25, 2013 at 12.00 Noon at SEBI Bhavan, Mumbai., The noticee vide its letter dated April 22, 2013 sought adjournment of the personal hearing. Vide hearing notice dated May 31, 2013, the noticee was granted final opportunity of being heard and was advised to attend the hearing on June 10, 2013 at 11.00 AM at SEBI, Hyderabad Local Office. In response to the same, the noticee vide email dated June 07, 2013 authorised Shri S. Sarveswar Reddy, Practicing Company Secretary (hereinafter referred to as 'AR') to appear the hearing on behalf of the noticee. The AR of the noticee appeared for the hearing and made the following submissions:

- a. The noticee did not receive the disclosure of change in shareholding from HFIL in the prescribed format (Form C of the SEBI (PIT) Regulations, 1992).
- b. Since, the disclosure made by HFIL was not in the prescribed format, the noticee was not under any obligation to make the said disclosure to the stock exchanges.
- c. The AR has also submitted that the noticee had made all the disclosures regarding the persons belonging to the category of Public and persons holding more than 1% of the total number of shares to the stock exchanges which is in compliance with the Clause 35 of the listing Agreement and Clause 5.1 of the Code of Corporate Disclosure Practices for the Prevention of Insider Trading of the SEBI (PIT) Regulations, 1992. The AR also submitted the shareholding patterns for the quarter ending September 2010 and December 2010 to substantiate the same. In view of the same AR submitted that there has been no violation as alleged in the SCN, therefore, the proceedings may be dropped.

CONSIDERATION OF EVIDENCE AND FINDINGS

9. I have taken into consideration the facts and circumstances of the case, and the material made available on record.
10. As mentioned in pre-para 4, it was alleged in the SCN that the noticee had failed to make disclosure with respect to the change in the shareholding of HFIL in RPIL to the stock exchanges where the shares of the RPIL were listed.
11. As per the requirements of Regulation 13(6) of the PIT Regulations, the noticee was required to make the disclosure received in the prescribed format to the stock exchanges where the shares of the company were listed within two working days of the receipt of the disclosure in the respective format as specified in Schedule III of the PIT Regulations. This has resulted in the violation of Clause 5.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations. The text of the said provisions is reproduced below:

➤ Regulation 13(6) of the PIT Regulations

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. ...

Continual disclosure.

...

(6) Disclosure by company to stock exchanges. Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

➤ SCHEDULE II - Code of Corporate Disclosure Practices for Prevention of Insider Trading

5.0 Timely Reporting of shareholdings/ownership and changes in ownership

5.1 Disclosure of shareholdings/ownership by major shareholders and disclosure of changes in ownership as provided under any Regulations made under the Act and the listing agreement shall be made in a timely and adequate manner.

➤ **Regulation 12(2) of the PIT Regulations**

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

(1) All listed companies and organisations associated with securities markets including :

(a)...

(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.

12. In this regard it is observed that as per the requirement of Regulation 13(3) of the PIT Regulations, HFIL was required to make the disclosure in the following format of Form C.

Name, PAN & address of shareholders	Shareholding prior to acquisition/sale	No. & % of shares/voting rights acquired/sold	Receipt of allotment advice/acquisition of shares – specify	Date of intimation to company	Mode of acquisition (market purchase/public/rights/preferential offer etc.)	No. & % of shares/voting rights post-acquisition/sale	Trading member through whom the trade was executed with SEBI Registration no. of the TM	Exchange on which the trade was executed	Buy quantity	Buy value	Sell quantity	Sell value

13. However from the records made available it is noted that HFIL informed the noticee by way of a mere letter wherein only 3 out of 10 applicable informations were provided and the key requirements like PAN No., shareholding prior to sale, receipt of sale of shares, number and percentage of shares post sale, trading member through whom the trade was executed with SEBI registration number, exchange on which the trade was executed and sell value were not made available.

14. At this juncture, I would like to quote the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Alpha Hi-Tech Fuel Limited v. SEBI* (Order dated December 04, 2009 in Appeal No. 142 of 2009) wherein the Hon'ble SAT held that if the information was not furnished by the company in the prescribed formats, the provisions of the Regulations stand violated. This being so, penalty must follow.
15. Since HFIL failed twice to make adequate disclosures to the noticee in the prescribed format including the key requirements as discussed in para 13, as required under PIT Regulations, I tend to agree with the submissions of the noticee mentioned in pre-para 8. Therefore, the allegation against the noticee with respect to its non disclosure to the stock exchange is difficult to establish.
16. Further it was also alleged that the noticee had failed to file the details mentioned in Clause 35 of the Listing Agreement read with Section 23A(a) of the SC(R)A. The text of the said provisions is reproduced below:

➤ **Listing Agreement**

"35. The company agrees to file the following details separately, for each class of equity shares/security with the Exchange on a quarterly basis, within 21 days from the end of each quarter, in the format specified as under"

➤ **SC(R)A**

Penalty for failure to furnish information, return, etc.

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

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;"

17. However, during the course of the hearing, the AR provided a copy of the shareholding patterns filed with BSE for the quarter ending September 2010 and

December 2010 retrieved from the BSE website. Thus, the allegation against the noticee with respect to the Clause 35 of the Listing Agreement is not established.

18. Thus, in the light of above discussions, the alleged violation of Regulation 13(6) of the PIT Regulations, Clause 5.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations and Clause 35 of the Listing Agreement read with Section 23A(a) of the SC(R)A by the noticee could not be established.

ORDER

19. In view of the foregoing, considering the facts and circumstances of the case and available records, the alleged violation of the provisions of Regulation 13(6) of the PIT Regulations, Clause 5.1 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with Regulation 12(2) of the PIT Regulations and Clause 35 of the Listing Agreement read with Section 23A(a) of the SC(R)A by the noticee could not be established.

20. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to the noticee namely, Raj Packaging Industries Ltd. and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: July 29, 2013

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