

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2//DSR/ VVK/ 77/2014]**

**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
Shri Madanchand Prasanchand
[PAN: ACIPP6930E]
In the matter of Raj Packaging Industries Limited**

Facts of the Case :

Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the irregularity in trading in the shares of Raj Packaging Industries Limited (hereinafter referred to as '**RPIL / Target Company**'), a company listed on the Bombay Stock Exchange (hereinafter referred to as "**BSE**"), for the period from 21/01/2013 to 17/09/2013, and into the possible violation of the provisions of the SEBI Act, 1992 (herein after referred to as the "**Act**") and various Rules and Regulations made there under.

2. The examination into the alleged irregularity in trading in the shares of RPIL, *inter alia*, revealed that Shri Madanchand Prasanchand (hereinafter referred to as the '**Noticee / Acquirer**'), one of the shareholders, acquired 87,545 (2.2% of issued share capital) shares and 1,17,207 (2.8% of issued share capital) shares during the period

17/1/2013 - 4/3/2013 and 5/3/2013 - 28/6/2013 respectively which is more than 2% of the total shareholding of the RPIL. It is observed that there was alleged change in Noticee's shareholding from the period 17th January,2013 to 17th September,2013 (hereinafter referred to as the "**said period**") and that the Noticee had not filed disclosures vis-a-vis the change in his shareholding for the said period within the stipulated 2 working days (hereinafter referred to as "**specified days**") and as per the specified format. It was, therefore, alleged that the Noticee has, violated the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as " **SAST Regulations, 2011** ") and the SEBI (Prohibition of Insider Trading) Regulations,1992 (hereinafter referred to as the "**PIT Regulations,1992**").

3. SEBI , therefore, initiated adjudication proceedings under the Act against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011 and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations,1992.

Appointment of Adjudicating Officer:

4. In view of the above, SEBI vide Order dated December 3,2013 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 '**Rules**') to inquire into and adjudge under Section 15A(b) of the SEBI Act,1992 the alleged violation of the above-mentioned provisions of PIT Regulations,1992 and SAST Regulations, 2011 by the Noticee.

Notice, Reply & Personal Hearing:

5. Accordingly, a Show Cause Notice dated December 16, 2013 (hereinafter referred to as the '**SCN**') was issued to the Noticee in terms of Rule 4 of the Rules requiring him to show cause as to why an inquiry should not be held against him for the alleged

violations. The Noticee vide e-mail and letter dated February 25, 2014 replied to the said SCN.

6. In the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the said Rules, an opportunity of personal hearing was granted to the Noticee on February 28, 2014. The Noticee attended the said hearing through his Authorized Representatives viz. Mr. Nikesh M. Jain and Mr. Rishabh N.Jain and reiterated the submissions made vide letter dated February 25, 2014.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges against the Noticee as per the SCN and the annexures C,D and E thereto, written submissions and the facts of the case and the other documents available on record.

The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations,2011 and Regulations 13(3) read with Regulation 13(5) of the PIT Regulations,1992?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A(b) of the SEBI Act?

(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, 1992 :-

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

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) and (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.

Relevant provisions of SAST Regulations, 2011 :- Disclosure of acquisition and disposal.

29(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and*
- (b) the target company at its registered office.*

9. I find from the SCN that the Noticee is one of the shareholders in RPIL and that the Noticee acquired 87,545 shares (2.2.% of issued share capital) and 1,17,207 shares (2.8% of issued share capital) during the period 17/01/2013 - 04/03/2013 and 05/03/2013 - 28/06/2013 respectively which is more than 2% of the total shareholding of the RPIL. However, the Noticee failed to make any disclosures for change in his shareholding in RPIL for more than 2% on 4/3/2013 [5,39,458 (13.59%) shares] and on 28th June,2013 [6,56,665 (15.78%) shares] i.e. from 13.59% to 15.78% (more than 2%) to RPIL within the said specified days of the acquisition of shares. Upon the said increase in the shareholding, the Noticee was required to make the necessary disclosures as required under the SAST Regulations,2011 and PIT Regulations,1992 to the company viz.RPIL. Therefore, the Noticee was required to file requisite disclosures on 6/3/2013 and 2/7/2013. However, the Noticee did not make the said disclosures in the prescribed format within the specified time.

10. The Noticee vide his reply dated 25th February,2014 submitted that he had acquired 2,04,752 equity shares of RPIL representing 5% of total paid up capital of the company during the said period from January 01,2013 to September 17,2013. purchased the shares of RPIL through a broker from BSE and when the holdings reached 5% of total equity, he had informed the company through mail and in turn told the company to inform BSE about the same. Further, the Noticee submitted that he does not have any connection with the promoters of the company. The Noticee has enclosed a trail of e-mails in support of his contention.

11. Upon examining the submissions of the Noticee and the supporting e-mails provided by him in support of his contention, I find from Annexure `E' to the SCN that vide e-mail dated 22nd February,2013 to the company, the Noticee intimated it about

the increase in the shareholding by more than 15%. The said intimation to the company and the Stock Exchange (BSE) was not in the prescribed format as per the SAST Regulations, 2011 and the PIT Regulations, 1992. Disclosures in wrong format also amounts to non-disclosure. Further, the Noticee vide his letter dated 25th February, 2014 submitted the following :-

" - I have acquired 2,04,752 equity shares of RPIL representing 5% of total paid up capital of the company in the period from January 01, 2013 to September 17, 2013.

- For the period under consideration, due to ignorance of regulations, lack of knowledge and oversight, there were delay in filing the information under the Regulation 29(2) read with Regulation 29(3) of the SEBI SAST Regulations, 2011. The delay was totally unintentional and without any malafide intention.

- As soon as it came to my knowledge, I have filed the reports under Regulation 29(2) read along with Regulation 29(3) of Regulations to the stock exchange.

- Delay reporting has neither resulted in any gain to me."

12. It is evident from the above, that the Noticee has admitted the delay in complying with the Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 1992. I further find that the Noticee has not made any submissions with respect to the change in his holding by 2% or more, on two occasions i.e. 04/03/2013 and 28/06/2013. Therefore, it can be concluded that the Noticee has admitted the violation of the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations, 1992.

13. Therefore, I conclude that the Noticee has violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations,1992 and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations,1992 thus warranting monetary penalty under Section 15A(b) of the Act.

14. Section 15A(b) of the SEBI Act, 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 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.

15. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shriram Mutual Funds** [2006] 68 SCL (216) SC held that " once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow".

Further in the matter of **Ranjan Varghese v. SEBI** (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "Once it is established that the mandatory provisions of takeover code was violated the penalty must follow.

The Hon'ble Securities Appellate Tribunal in the matter of **Milan Mahindra Securities Private Limited vs SEBI** (Order dated November 15, 2006 Appeal No. 66 of 2003) 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."

16. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in Section 15-J 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.

17. It is difficult, as per the material available on record, to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee. The default is repetitive in nature inasmuch as the defaults committed by the Noticee are on two occasions by non-disclosure. I find that the failure on the part of the Noticee in making disclosures on two occasions i.e. 04/03/2013 and 28/06/2013 is repetitive in nature.

18.The disclosures under Regulation 13(3) read with regulation 13(5) of the PIT Regulations,1992 and regulation 29(2) read with regulation 29(3) of the SAST Regulations,2011 by a company is made public only through Stock Exchange. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. The disclosures made by companies

listed on the stock exchanges are the means to attain such end and therefore, dissemination of true and complete information is required. However, the Noticee has neglected his duty of making the disclosures in compliance with Regulation 13(3) read with regulation 13(5) of the PIT Regulations, 1992 and regulation 29(2) read with regulation 29(3) of the SAST Regulations, 2011 within the specified period, thereby demonstrating the casual and unbecoming attitude on the part of the Noticee in fulfilling the statutory obligations.

ORDER

19. 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, 1992 read with Rule 5 of the said Rules, I hereby impose a penalty of ₹10,00,000/- (Rupees ten lakh only) on Shri Madanchand Prasanchand under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

20. The penalty amount as mentioned above shall be paid by the Noticee through a Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 (forty five) days of receipt of this order. The said Demand Draft should be forwarded to the Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 - A, 'G' Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

21. In terms of Rule 6 of the said Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date : March 20, 2014
Place: Mumbai

D.SURA REDDY
ADJUDICATING OFFICER