

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/DSR/RG/PU/273/2014]**

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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

**Shri S N Vardarajan  
[PAN: ABRPV7215Q]**

In the matter of

**Indsil Hydro Power and Manganese Limited**

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1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had examined the alleged irregularities in the matter of Indsil Hydro Power and Manganese Limited (herein after referred to as 'IHPML') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and the various rules and regulations made there under.
2. Upon examination it was, inter alia, observed that one Shri S. N. Vardarajan (herein after referred to as 'the Noticee'), Director of IHPML, was in possession of 7,08,200 shares (7.49%) and on April 21, 2003 had sold 58,500 shares which decreased his shareholding to 6,49,700 shares (6.88%) and he was required to disclose the same to the company, as prescribed under Regulation 13 (4) read with Regulation 13 (5) of the SEBI (Prohibition of Insider Trading)

Regulations,1992 (herein after referred to as the 'PIT Regulations'). It was alleged that the Noticee had failed to do so.

### **Appointment of Adjudicating Officer**

3. SEBI has, therefore initiated Adjudication proceedings and I have been appointed as the Adjudicating Officer (AO), vide order dated April 21, 2014 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 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticee.

### **Show Cause Notice, Reply and Personal Hearing**

4. A show cause notice dated June 26, 2014 (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 should not be held and penalty should not be imposed on him under Section 15 A(b) of the SEBI Act, for the alleged violation of the provisions of the PIT Regulations. The Noticee vide his letter dated July 11, 2014, sought additional time of two weeks to file his reply to the SCN.
5. As no reply was received from the Noticee, 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 Noticee on August 04, 2014. In the meanwhile, vide letter dated July 24, 2014, the Noticee submitted his reply to the SCN. The Authorized Representatives of the Noticee appeared on the scheduled date and reiterated the submissions made by the Noticee in his reply dated July 24, 2014 and further, vide letter dated August 02, 2014 made additional submissions enclosing copies of the Noticee's shareholding patterns for the quarters ending June 2003 and December 2003 in the matter.

## Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges levelled against the Noticee as mentioned in the SCN, written submissions and all the documents as available on record. In the instant matter, the following issues arise for consideration and determination:

a) **Whether the Noticee has failed to comply with Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations?**

b) **Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?**

c) **If so, what should be the quantum of monetary penalty?**

7. Before moving forward, I would like to refer to the relevant provisions of the PIT Regulations, which read as under:

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

.....

***Continual disclosure.***

*(4) Any person who is a director or officer of a listed company, shall disclose to the company in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

.....

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

8. I find from the SCN that the Noticee is a Director of IHPML, who was in possession of 7,08,200 (7.49%) shares of IHPML as on April 20, 2003 and sold

58,500 shares of IHPML on April 21, 2003 which reduced his shareholding in IHPML to 6,49,700 (6.88%). Since, the change in shareholding exceeded 25,000 shares, the Noticee being a Director was under an obligation to make the necessary disclosures to the company as required under Regulation 13(4) read with 13(5) of the PIT Regulations. However, the Noticee was alleged to have failed to disclose the same.

9. The Noticee, vide his reply dated July 24, 2014, submitted that he was a director at IHPML at the time of the transaction and continues to be one till date. The Noticee further submitted that the requirement of reporting of transactions relating to purchase/sale of shares above a certain threshold limit was introduced by the SEBI (Insider Trading) (Amendment) Regulations, 2002 (only with effect from February 20, 2002). Further, the prescribed formats (Form D) for the disclosures were introduced only with effect from July 11, 2003 vide SEBI (Insider Trading) (Amendment) Regulations, 2003.
10. The Noticee submitted that he remembers informing the company about the sale of 58,500 shares of IHPML on April 21, 2003, however, does not have a copy of the disclosures so made as the same were made in 2003. He also submitted that neither any major corporate action occurred in or about the date of the sale nor was he in possession of any price sensitive information while undertaking the aforesaid transaction. The sale was not made with an intent to make profit or manipulate the market or defraud the shareholders of the company. He stated that he has not breached the threshold limit in the subsequent years till date and has never been summoned for any non-compliance/lapse. The said non-compliance is only technical in nature and has not resulted in any prejudice to the interest of any stakeholder nor caused any jeopardy to the public interest.

**11.** The Noticee vide his letter August 02, 2014 submitted his additional reply in the matter and stated that the sale of shares happened inter se the promoters on April 21, 2003 and the company had made the necessary disclosures in this respect to the Stock Exchanges as required under Clause 49 of the Listing Agreement. A comparison of the shareholding of the Noticee as on March 31, 2003 and June 30, 2003, clearly shows that the sale of 58,500 shares of IHPML was in the knowledge of the company which has enabled it to make the necessary disclosures to the stock exchanges. Hence, the Noticee submitted that the sale of shares is already in the public domain and the omission to report about the same as per the said regulations is not deliberate but only due to inadvertence and such omission is only technical in nature.

**12.** Upon perusal of the documents available on record and considering the submissions of the Noticee, I find that IHPML is a company listed on BSE and the Noticee is a Director of IHPML. I further find that the Noticee in his submissions stated that the prescribed formats (Form D) for the disclosures were introduced only with effect from July 11, 2003 vide SEBI (Insider Trading) (Amendment) Regulations, 2003, while the sale of 58,500 shares of IHPML by the Noticee took place only on April 21, 2003. I find that even if the amendment to Form D under Regulation 13 (4) of the PIT Regulations was introduced in July 2003, the Noticee should have made the said disclosures in the prescribed Format i.e Form D as was existing during the relevant period which the Noticee has failed to do.

**13.** Further, I note from the Noticee's submissions that the company had made necessary disclosures to the stock exchanges under Clause 49 of the Listing Agreement. However, the said fact does not absolve the Noticee from his duty of making the necessary disclosures to the Company under Regulation 13 (4) read with 13 (5) of the PIT Regulations in as much as the said disclosure shall be

made within four 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. Whereas, the requirements of clause 49 of the Listing Agreement are separate and independent and the same have nothing to do with the requirements as prescribed under Regulation 13 (4) read with 13 (5) of the PIT Regulations. Therefore, I do not find merit in the submissions of the Noticee in this regard.

14. I also note that it is the case of the Noticee that he had informed the company about the sale of shares and does not have any proof of the same. I do not find merit in the submissions made by the Noticee in this regard in as much as the Noticee has failed to produce any documentary evidence in support thereof.

15. In view of the above, I find that the allegation of failure to make disclosure to IHPML in terms of the PIT Regulations stands established. Therefore, I conclude that the Noticee has violated the provisions of Regulation 13 (4) read with 13 (5) of the PIT Regulations and thus, is liable for monetary penalty under Section 15A (b) of the SEBI Act, which 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 thereunder,-*

.....

*(b) to file any return or furnish any information, books or other documents within the time specified therefor 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;*

16. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein, the Hon'ble Court, *inter alia*, held: "once the violation of statutory regulations is

*established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

**17.** While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of 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."*

**18.** I observe from the material available on record that it is difficult 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 defaults. Further, the violation is not repetitive in nature.

## **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 read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 2,00,000/- (Rupees Two Lakh Only ) on the Noticee viz. Shri S. N. Vardarajan under Section 15 A (b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

**20.** The above penalty amount shall be paid by the Noticee 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 shall be forwarded to The Division Chief, Shri Debashis Bandyopadhyay , 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 the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

**Date: November 12, 2014**

**Place: Mumbai**

**D. SURA REDDY  
GENERAL MANAGER &  
ADJUDICATING OFFICER**