

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. BM/AO- 123/2011]**

---

**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 AND SECTION 23-I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER), RULES 2005.**

In respect of

**MTZ Polyfilms Limited**

(PAN: AAACM7504Q)

In the matter of MTZ Polyfilms Limited

---

**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigation in trading in the scrip of MTZ Polyfilms Limited (hereinafter referred to as '**Noticee**' or '**the company**') during the period between July 2009 and September 2010 as huge off-market transfers were observed during this period. The shares of the company are listed at Bombay Stock Exchange (hereinafter referred to as '**BSE**'). The paid-up capital of the Noticee during July 2009 to September 2010 was 89,355,760 shares.
2. It was observed that that during the period between quarter ending June 2009 and September 2009 MTZ Industries Limited (erstwhile MTZ (India) Limited), a BSE listed company and belonging to the promoter group entity of the Noticee, had

transferred 56,25,000 shares of the company on 10.07.2009, 04.08.2009 and 17.09.2009 in off-market to Mr. Sanjay Bajranglal Sharma. It was further observed that Mr. Bajranglal Sharma then transferred 56,25,000 shares off-market to MTZ Industries Limited on 13.07.2010, 13.08.2010, 08.09.2010, 14.09.2010. It was observed that due to such transfers there was change in the holding of Mr. Sanjay Bajranglal Sharma by more than 5% of the paid up capital of the company and 14% in case of MTZ Industries Limited and such changes required disclosures to the exchange under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997(hereinafter referred to as '**SAST Regulations**') and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). It was alleged that the Noticee did not make the disclosures to the exchange under Regulation 7(3) of SAST and Regulation 13(6) of PIT.

3. Investigation further observed that the Noticee did not comply with the various clauses of the listing agreement.
4. In view of the above it was alleged that the Noticee failed to comply with the provisions of It was also alleged that Noticee failed to comply with the provisions of Regulation 7(3) of SAST and Regulation 13(6) of PIT Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**'). Consequently the Noticee was liable for penalty under section 15A (b) of SEBI Act, Section 23A read with 23E of SCRA.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

5. The undersigned was appointed as Adjudicating Officer vide order dated December 2, 2010 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and Section 23 I of SCRA read with rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter

referred to as 'Rules') to inquire into and adjudge the alleged violations of SAST Regulations, PIT Regulations and SCRA Act.

**SHOW CAUSE NOTICE, HEARING AND REPLY**

6. Show Cause Notice No. EAD-6/BM/VRS/14663/2011 dated May 6, 2011 (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 held and penalty be not imposed under section 15A (b) of SEBI Act, 23A and 23E of SCRA for the alleged violation specified in the said SCN. The said SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated June 15, 2011 and August 28, 2011 submitted as follows:

- a. That there was no transactions of sale and/or purchase or acquisition of shares of the company between MTZ Industries Limited and Mr. Sanjay B Sharma as alleged attracting the provisions of SAST and PIT Regulations warranting filing of prescribed forms by the company.*
- b. That the transactions referred to in the Notice is the outcome of loan transaction. The said Mr. Sanjay Sharma advanced loan to the company which was guaranteed by MTZ Industries Limited by offering 56,25,000 shares of the company as collateral security to secure the said loan.*
- c. That the shares being in the de-mat form the instructions was accordingly issued. However, the lender opted for transfer of said shares instead of keeping the de-mat instructions with him though the right was given under the Loan Agreement to do so only in case of default. Further, he has not furnished the required declaration under the companies Act, 1956 and other applicable regulations including SAST.*
- d. As the shares were transferred in the name of the lender, MTZ Industries Limited protested and has taken the matter with him to transfer back the shares as the agreement does not confer such right and unless there is a default in the repayment of loan, lender is not entitled to encash the security.*

- e. *That though the shares were transferred and registered in the name of the lender, the right, title and interest in the shares are not transferred and MTZ Industries Limited continue to be the owner of the said shares. Further, while transferring the shares, the lender has given no declaration or intimation to the company and therefore the company could not do anything.*
  - f. *That in case of repayment of loan the same shares were returned back to the MTZ Industries and the position was thus neutralized and restore.*
  - g. *That since the alleged Acquirer i.e. Pledgee or the shareholder (MTZ Industries Limited) in the instant case, have not provided the information as required under sub- regulations(1) and or (1A) r/w explanation thereto of Regulation 7 of SAST, in our humble opinion the Company cannot be held liable to disclose the information as required under Regulation 7(3) of SAST.*
  - h. *That without prejudice to what is stated above, in our humble opinion the company cannot be held liable to disclose the information as required under Regulation 8A(4) of SAST since it has not received the disclosure required under Regulation 8 A(2) & (3) of the SAST.*
  - i. *That due to cripple working condition and liquidity crunch resulting from the sickness for which the company has been registered under SICA, the company suffers from many bottlenecks and hurdles resulting in delay in compliances in general and particularly clause 38 and 47 and Secretarial Audit as no relevant records are available due to non payment to NSDL and RTA.*
  - j. *That the Bombay High Court has ordered to wind up the company vide its order dated 3<sup>rd</sup> August 2010 and the actions were initiated by the Official Liquidator and RoC as a result the company was unable to prepare the accounts in time delaying complying with the clause 15/16 and clause 35.*
  - k. *That the company has since complied with most of the pending matters.*
7. In the interest of natural justice an opportunity of hearing was provided to the Noticee on July 20, 2011 vide hearing notice dated July 04, 2011 for the personal hearing. Noticee vide letter dated July 19, 2011 sought for an adjournment. Vide

hearing notice dated August 11, 2011 another opportunity of personal hearing was provided on August 30, 2011. Mr. Haresh Sanghvi, Authorized Representative appeared on behalf of the company and reiterated the submissions given in the reply to the SCN. During the personal hearing, Noticee was asked to submit the documents showing the lien which they claimed to have created on the shares which were pledged against the loan. Noticee vide letter dated September 5, 2011 submitted only copies of the Demat Instructions given to the Bank of Baroda (Depository Participant).

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

8. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:
  - i. Noticee did not disclose to the exchange for change in holding of Mr. Sanjay Bajranglal Sharma of more than 2% and more than 5% under Regulation 13(6) of PIT and Regulation 7(3) of SAST respectively.
  - ii. Noticee did not inform exchange for change in holding of MTZ Industries Limited of more than 14% under Regulation 7(3) of SAST.
  - iii. Noticee did not comply with the various clauses under the listing agreement.
9. In view of the above it was alleged that the Noticee violated the provisions of Regulation 7(3) of SAST Regulations, Regulation 13(6) of PIT Regulations and Section 21 of SCRA.
10. The issues that arise for consideration in the present case are:
  - i. Whether Noticee has violated Regulation 7(3) of SAST Regulations and Regulation 13(6) of PIT Regulations.
  - ii. Whether Noticee has not complied with Conditions for Listing as required under Section 21 of SCRA.

- iii. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b) of SEBI Act, 23A read with 23E of SCRA?
  - iv. 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 and SCRA respectively?
11. Before moving forward, it will be appropriate to refer to the relevant provisions of the Regulation 7(3) of SAST Regulations, Regulation 13(6) of PIT Regulations and Section 21 of SCRA, which reads as under:

**The continual disclosure requirement under Regulation 7 of SAST Regulations is as under:**

*(3) Every Company, whose shares are acquired in a manner referred to in sub-regulations (1) and (1A), shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulation (1) and (1A).*

**The continual disclosure requirement under Regulation 13 of PIT Regulations is as under:**

*(6) 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), (3) and (4) in the respective formats specified in Schedule III.*

**Conditions for listing.**

*21. Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

## **FINDINGS:**

12. I now proceed with the alleged violations of SAST, PIT Regulations.

- i. During the period between quarter ending June 2009 and September 2009 MTZ Industries Limited had transferred 56,25,000 shares of the Noticee on 10.07.2009, 04.08.2009 and 17.09.2009 in off-market transfers to Mr. Sanjay Bajranglal Sharma. The details of the off-market transfer between the two entities for various dates during July 2009 till September 2010 is as under:

Execution Date	Quantity	Buy BO Name	Sell BO Name
10/7/2009	1250000	Sanjay Bajranglal Sharma	MTZ(India) Limited
4/8/2009	2500000	Sanjay Bajranglal Sharma	MTZ(India) Limited
17/9/2009	1875000	Sanjay Bajranglal Sharma	MTZ(India) Limited
<b>Total</b>	<b>5625000</b>		

- ii. I note that Mr. Bajranglal Sharma then transferred 56,25,000 shares off-market to MTZ Industries Limited on 13.07.2010, 13.08.2010, 08.09.2010, 14.09.2010. The details of the off-market transfer between the two entities for various dates during July 2009 till Sep 2010 is as under:

Execution Date	Quantity	Buy BO Name	Sell BO Name
13/7/2010	180000	MTZ(India) Limited	Sanjay Bajranglal Sharma
13/8/2010	180000	MTZ(India) Limited	Sanjay Bajranglal Sharma
8/9/2010	3225000	MTZ(India) Limited	Sanjay Bajranglal Sharma
14/9/2010	2040000	MTZ(India) Limited	Sanjay Bajranglal Sharma
<b>Total</b>	<b>5625000</b>		

- iii. It is observed from the IMSS data for the CDSL for holding more than 1%, that as on 17.09.2009 Mr. Sanjay Bajranglal Sharma was holding 56,25,000 representing 6.3% of shareholding of MTZ Polyfilms Limited. The details of change in his shareholding on various dates as per IMSS data is as under:

<b>Date of Transaction</b>	<b>No. of shares Acquired/ (Transferred)</b>	<b>Shareholding in the MTZ Polyfilm Ltd.</b>	<b>% Change in shareholding</b>	<b>Total % of shareholding</b>
10/7/2009	1250000	1250000	1.4	1.4
4/8/2009	2500000	3750000	2.8	4.2
17/9/2009	1875000	5625000	2.1	6.3
13/7/2010*	(180000)	5445000	0.2	6.1
13/8/2010*	(180000)	5265000	0.2	5.9
8/9/2010*	(3225000)	2040000	3.6	2.3
14/9/2010*	(2040000)	0	2.3	0

\* Shares were transferred to MTZ Industries Limited

- iv. It is also observed from the IMSS data for NSDL that as on 17.09.2009 MTZ Industries Limited was holding 97,60,391 representing 10.92% of shareholding of MTZ Polyfilms Limited. The details of changes of its shareholding of MTZ Industries Limited on various dates as per IMSS data is as under:

<b>Date of Transaction</b>	<b>No. of shares Transferred/ (Acquired)</b>	<b>Shareholding in the MTZ Polyfilm Ltd.</b>	<b>% Change in shareholding</b>	<b>Total % of shareholding</b>
9/7/2009	0	16801618	0	18.80
10/7/2009	1250000	15551618	1.4	17.40
4/8/2009	2500000	11635391	2.8	13.02
17/9/2009	1875000	9760391	2.1	10.92
13/7/2010*	(180000)	8900239	0.2	9.96
13/8/2010*	(180000)	9080239	0.2	10.16
8/9/2010*	(3225000)	12305239	3.6	13.77
14/9/2010*	(2040000)	14345239	2.3	16.05

\* Shares were acquired from Mr. Sanjay Bajranglal Sharma

- v. From the documents available on record I note that for change in the shareholding above five percent of Mr. Sanjay Bajranglal Sharma and fourteen percent of MTZ Industries Limited Noticee were required to make disclosure to the exchange under Regulation 7(3) of SAST and for change in shareholding of more than two percent for the transactions dated 04.08.2009, 17.09.2009, 08.09.2010 and 14.09.2010 of Mr. Sanjay Bajranglal Sharma and MTZ Industries Limited under Regulation 13(6) of PIT. I note



from the information given by BSE that there were no disclosures made by regarding the compliance under Regulation 7(3) of SAST Regulations and Regulation 13(6) of PIT Regulations.

- vi. Noticee in its reply has stated that the above transactions were not of a sale and purchase but of a pledge of shares and therefore the Noticee has not violated the provisions of SEBI PIT and SAST Regulations. From the Demat Instructions submitted by the Noticee I find that the nature of transaction of MTZ Industries Limited and Mr. Sanjay Bajranglal Sharma is an off-market sale and purchase share transfer. A pledge of securities has to be created with the approval of the depository in terms of Section 12 of the Depositories Act 1996 and there is no material to suggest that the pledge has been created in the present case. Hence this submission of the Noticee cannot be accepted.
- vii. Noticee has also submitted that the above transferor and transferee never informed to the Noticee about the change in their holdings as required under Regulation 7(1) and (1A) of SAST and hence was not required to make disclosure under Regulation 7(3). It is observed from reading of Regulation 7(3) of SAST and Regulation 13(6) of PIT that a company has to make disclosure to the stock exchange where its shares are listed for any change in holding as required under the relevant Regulations only on receipt of information from the entities concerned. Thus the Regulations cast disclosure obligation only upon receipt of information and not suo moto. It is observed from the investigation report that the above entities did not disclose change in their holdings to the Noticee as required under Regulation 7(1) of SAST and Regulation 13(3) of PIT. The Noticee has also submitted that it has not received any information as required under the Regulation. Hence I find merit in the submission of the Noticee.

viii. Thus, the allegation of violation of Regulation 7(3) of SAST and 13(6) of PIT against the Noticee does not stand established.

13. I now proceed with the alleged violations of SCRA Act.

- i. It is observed from the investigation report with regard to the compliance level of the Noticee that various clauses of the listing agreement for period April 2009 till September 30, 2010 were not complied with which are as under:

<b>Clause of Listing Agreement</b>	<b>Status</b>
Clause 15/16 (Book closure / Record date)	Not submitted for the year 2009, 2010
Clause 35 (Submission of Shareholding Pattern on quarterly basis)	Not submitted for the quarter ended March 2010 & June 2010
Clause 38 (Annual Listing Fees)	Rs.1,20,907.50 outstanding
Clause 41 (Submission of Quarterly Results)	Not submitted for the quarter ended March 2010 & June 2010
Clause 47 (Compliance Certificate, Appointment of Compliance Officer, RTA & Common Agency)	Not submitted copy of MOU signed with RTA. Not submitted half yearly certificates for March 2009 & March 2010
Clause 49 (Corporate Governance)	Not submitted for the quarter ended June 2009 to June 2010
Investors Services Cell (Investors complaints)	1 complaint pending
Secretarial Audit	Not submitted for the quarter ended March 2009 to June 2010

- ii. The Noticee in its reply has submitted that the due to crippling working conditions and financial crisis resulting from sickness for which the Noticee has been registered under SICA there was delay in compliance. It has further submitted that the non-compliance was unintentional and caused solely on account of liquidity crisis. From the documents submitted by the Noticee, I find that it was declared sick industrial company in terms of Section 3(1)(o) of SICA from March 17, 2003. However, this does not absolve the Noticee from

its liability from complying with the listing requirements as the Noticee is still listed at BSE and thus the Noticee was under the obligation to comply with the listing conditions within time. Further it is observed that there was trading of the scrip of the Noticee on the exchange, hence the compliance by the Noticee was important from the point of the investors as it would help them to take informed decision for investing in the shares of the Noticee. Thus, I conclude that Noticee failed to comply with Section 21 of SCRA and thus violated the said section.

14. The next issue for consideration is as to what would be monetary penalty that can be imposed on the Noticee for violation of Section 21 of SCRA. 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..."*.

15. Thus, the aforesaid violations by the Noticee make him liable for penalty under Section 23A read with 23E of SCRA which read as follows:

**Section 23A of SCRA: Penalty for failure to furnish information, return, etc.-**

*(a) To furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the specified therefore in the listing agreement or conditions or bye-laws of the recognized 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.*

**Section 23E of SCRA: Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds-**

*If a company or any person managing collective investing scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or*

*commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

16. While determining the quantum of penalty under Section 23A read with 23E of SCRA, it is important to consider the factors stipulated in section 15J of SCRA, 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. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find from the records that the Noticee did not comply with the listing requirements only during 2009-2010. The default is technical in nature and not repetitive.

**ORDER**

18. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 1,00,000 (Rupees one lakh only) under Section 23A read with 23E of SCRA, on the Noticee which will be commensurate with the violations committed by it.

19. 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 should be forwarded to Mr. Shashi Kumar Deputy General Manager, Investigations Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
20. 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: **September 09, 2011**

**BARNALI MUJHERJEE**

Place: **Mumbai**

**ADJUDICATING OFFICER**