BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/AO/ 43 /2013-14]

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

M/s Rhea Holdings Pvt. Ltd.

PAN: AABCR6958A

In the matter of

Karuturi Global Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in the trading in the shares of M/s Karuturi Global Limited (hereinafter referred to as 'KGL') 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 various rules and regulations made there under.

2. The investigation inter-alia revealed that the shares of KGL are listed on Bombay Stock Exchange Limited and National Stock Exchange of India Limited. M/s Rhea Holdings Pvt. Ltd. (hereinafter referred to as 'Noticee') is the promoter group entity of KGL. Shri K.S. Ramakrishna and Ms. Anitha Karuturi are the common directors of KGL and the Noticee. KGL had issued 19,99,600 warrants to three persons viz., Shri Vivek Karoli, Shri Sunil Hemdev and Shri C D Vijay on April 02, 2005 and the same were converted into 19,99,600 equity shares on December 29, 2005. The

three warrant allottees had pledged the shares to the Noticee for the period of 4 months with the interest rate of 8% per annum. Noticee had paid funds to the tune of Rs.3,34,10,000/- to the three warrant allottees. The warrant allottees failed to repay the loan amount as a result the allottees surrendered the ownership of the shares to the Noticee. Consequently, Noticee's shareholding in KGL increased from NIL to 25%. Noticee also did substantial trading in the scrip of KGL which has resulted in change of Noticee's individual shareholding in KGL by more than 2% of the total shareholding of the KGL. Noticee was required to make disclosures to the company and to the stock exchange under SEBI (Substantial Acquisition of Shares and Takeovers') Regulations, 1997 (hereinafter referred to as the 'SAST' Regulations) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') which it failed to do.

3. SEBI has, therefore, initiated adjudication proceedings under the Act against the Noticee to inquire into and adjudge the alleged violation of Regulation 7(1) read with Regulation 7(2) of the SAST Regulations and Regulations 13(1), 13(3) read with Regulation 13(5) of the PIT Regulations.

Appointment of Adjudicating Officer

4. SEBI vide order dated July 16, 2012 appointed Shri Parag Basu as the Adjudicating Officer 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 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of the abovementioned provisions of SAST Regulations and PIT Regulations by the Noticee. Consequent to the transfer of Shri Parag Basu, SEBI vide Order dated August 16, 2012 appointed me as the Adjudicating Officer.

Notice, Reply & Personal Hearing

5. A Notice dated September 11, 2012 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against it for the alleged violations. The SCN was sent to the Noticees by Registered Post which was delivered and acknowledged by the Noticees. It was alleged in the SCN that the Noticee had failed to make disclosures to KGL and to the stock exchange under Regulation 7(1) read with Regulation 7(2) of the SAST Regulations and Regulations 13(1), 13(3) read with Regulation 13(5) of the PIT Regulations. The Noticee vide letter dated October 05 2012 sought extension of time for filing reply to the SCN. 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 as per Rule 4 (3) of the Adjudication Rules the Noticee was granted an opportunity of personal hearing on November 26, 2012 vide notice dated November 06, 2012. The personal hearing notice was sent to the Noticee by Registered Post which were delivered and acknowledged by the Noticees. The Noticee vide letter dated November 19, 2012 requested for postponement of hearing. Another opportunity of personal hearing was granted to the Noticee on January 31, 2013 vide notice dated January 16, 2013. The Authorized Representative's (AR's) of the Noticee appeared for the hearing, filed written submissions dated January 30, 2013 and reiterated the said submissions. The Noticee vide letter dated January 30, 2013 inter alia denied all the allegations made against it. The salient point of submissions made by the Noticee are as follows:

   (a) After invoking the pledge Noticee's shareholding in KGL increased from NIL to about 25%, the company i.e. KGL had disclosed

Noticee's shareholding in the quarterly disclosures filed with the exchanges. Failure to make disclosures by the Noticee under SAST Regulations and PIT Regulations was inadvertent and bonafide error. Disclosures regarding Noticee's shareholding were already in public domain. Disclosures were made by the company with the stock exchanges under clause 35 of the Listing Agreement. Copies of the disclosures made by the company with the stock exchanges were enclosed. Also, on becoming aware of the alleged lapse on its part, Noticee had immediately taken steps to cure the alleged lapse.

(b) Trading in the scrip of KGL on August 24, 2006, October 26, 2006, October 27, 2006 and February 11, 2006 was done in the ordinary course of business dehors sinister intent or design.

(c) The alleged violation is technical.

7. In view of the above, I am proceeding with the inquiry taking into account of the submissions made before me, the documents and material as available on record.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges against the Noticee mentioned in the SCN, submissions made by the Noticee, the materials and documents as available on record. The issues that arise for consideration in the present case are:

a) Whether the Noticee has 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, on the part of the Noticees attract any penalty under section 15A(b) of the SEBI Act?

c) If yes, what should be the quantum of penalty?

9. Before moving forward, it will be appropriate to refer to the relevant provisions of SAST and PIT Regulations which read as under:-

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations. 1997

Regulation 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 per cent [or fifty four per cent or seventy four per cent] 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-regulations (1)and (1A) shall be made within 4 two 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.

SEBI (Prohibition of Insider Trading) Regulations, 1992

Regulation 13

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (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 2 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 for voting rights in any listed company shall disclose to the company 51[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), (4) and (4A) 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

10. From the material available on record, I find that Noticee vide letter dated December 05, 2011 to the Investigating Authority (IA) had stated that "*at the time of conversion of warrants Shri Vivek Karoli, Shri Sunil Hemdev and Shri C.D. Vijay approached us for providing funds for the subscription of the balance amount of convertible warrants and as security, has pledged the shares to us for the period of 4 months with the interest rate of 8% per annum*". Noticee had paid funds to the tune of Rs.3,34,10,000/- to the abovementioned three warrant allottees. Since, the warrant allottees failed to repay the loan amount, the allottees bequeathed/surrendered/gave up their entitlements/ ownership of the shares to you. As a result, Noticee became a rightful owner of these shares.

11. As on March 31, 2006, Noticee's shareholding was NIL. From Annexure I to the SCN, I find that Noticee has received 80,00,000 shares of KGL constituting 24.99% of the total shareholding of the company on July 15, 2006. With the increase in Noticee's shareholding from NIL to about 25% in KGL, Noticee has crossed the threshold limit of 5% specified under Regulation 7(1) read with Regulation 7(2) of SAST Regulations, and Regulation 13(1) of the PIT Regulations which requires Noticee to make disclosures to the company i.e. KGL and to the stock exchange i.e. BSE within two days from the date of such acquisition.

12. From Annexure II to the SCN, I find that Noticee had made various sales transactions which has resulted in change of Noticee's individual shareholding in KGL by more than 2% of the total shareholding of the company on dates such as August 24, 2006, October 26&27, 2006 and

February 11, 2006. However, Noticee has not made disclosures to the KGL and to the stock exchanges of such change as required under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations.

13. I do not accept the contention of the Noticee that the alleged violation is merely a technical and venial violation and was a result of inadvertence. The reasons cited by the Noticee, do not, in any way, absolve the Noticee for failure to make disclosures to KGL and to the stock exchange under Regulation 7(1) read with Regulation 7(2) of the SAST Regulations and Regulations 13(1), 13(3) read with Regulation 13(5) of the PIT Regulations. It is therefore, established beyond doubt that the Noticee violated Regulation 7(1) read with Regulation 7(2) of the SAST Regulations and Regulations 13(1), 13(3) read with Regulation 13(5) of the PIT Regulations warranting imposition of monetary penalty under section 15A(b) of the SEBI Act.

14. In Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. *Vs* SEBI – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal has 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"*.

15. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"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"*.

16. As the violation of the statutory obligation 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 by the Noticee stand established,

I hold that the Noticee is liable for monetary penalty under section 15A(b) of the SEBI Act.

17. The provisions of Sections 15A(b) of the SEBI Act read 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,—*
>
> *(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*[1]*[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];*

18. While imposing monetary penalty it is obligatory 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***
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> *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.*

19. 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. 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. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary

disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Moreover, the default committed by the Noticee is repetitive in nature.

Order

20. 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 Adjudication Rules, I hereby impose a monetary penalty of ₹ 3,00,000 /- (Rupees Three Lakhs Only) on the Noticee under section 15 A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

21. The penalty amount as mentioned above 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 should be forwarded to the Regional Manager, Northern Regional Office, Bank of Baroda Building, 5th Floor, 16 Sansad Marg, New Delhi -110 001.

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

Date: July 02, 2013 **P K KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**