BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO/12/2014-15]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

Sicom Limited

PAN- AAACS5524J

In the matter of Raj Oil Mills Limited

Background

1. Raj Oil Mills Limited **(company)** was incorporated on October 17, 2001. The company was formed to undertake the business of buying, selling, manufacturing and processing of edible oils, edible oil seeds and other related products. Securities and Exchange Board of India (SEBI) examined into the shareholding pattern of Sicom Limited (**Noticee**). The said examination revealed that the shareholding of the Noticee in the company had undergone changes subsequent to invocation of pledge on shares of the company by the Noticee. It was observed that the Noticee was required to make disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 **(PIT Regulations)** and SEBI (Substantial Acquisition of Shares and takeovers) Regulations, 2011 **(SAST Regulations)** regarding such change in the shareholding, to the company and to the exchange and the Noticee had not made the required disclosures.

2. SEBI has, therefore, initiated adjudicating proceedings under the Securities and Exchange Board of India, 1992 **(SEBI Act)** to inquire into and adjudge under section 15A(b) of the SEBI Act, the alleged violations of the provisions of regulations 13(1) & 13 (3) read with 13 (5) of PIT Regulations and regulation 29 (1) & (2) read with 29(3) of SAST regulations 2011 committed by the Noticee.

Appointment of Adjudication Officer

3. The undersigned was appointed as Adjudicating Officer vide order dated January 16, 2014 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 **(Adjudication Rules)** to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violations of the provisions of regulations 13(1) & 13 (3) read with 13 (5) of PIT Regulations and regulation 29 (1) & (2) read with 29(3) of SAST regulations 2011 by the Noticee.

Show Cause Notice, Reply and Personal Hearing

4. Show Cause Notice dated March 04, 2014 (**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 initiated and penalty be not imposed against him under section 15A(b) of the SEBI Act for the alleged violations specified in the SCN.

5. The Noticee vide letter dated March 19, 2014 filed reply to the SCN. Thereafter, the Noticee was granted an opportunity of hearing on May 08, 2014 when Mrs Sujata M Navare, Senior Manager (Legal) & Mrs Swarda K Chourikar, Assistant Manager of the Noticee appeared as Authorized Representatives (ARs) on behalf of the Noticee. The ARs re-iterated the submissions already made on record. The ARs further submitted that the Noticee had acquired 55, 50,000 shares upon invocation of pledge and it sold 6, 56,101 shares and the current holding of the Noticee in the company is 48,

93,899 shares. During the personal hearing, the ARs were advised to file written submissions along with (1) D-mat account statement of the Noticee (2) details of acquisition of shares upon invocation of pledge, subsequent sale of shares and the current holding of shares in the company and (3) shareholding pattern of the company and time till May 09, 2014 was given to the Noticee for filing additional submissions. The Noticee, vide letter dated May 09, 2014, filed additional submissions submitting the documents as aforementioned.

6. The main submissions of the Noticee are as under:

- The Noticee is a company established by the Government of Maharashtra for financing industries. The Noticee is a deemed financial corporation within the meaning of Section 46 of the State Financial Corporations Act, 1951 by virtue of Notification dated 11th December 1986. The Noticee has been notified as a Public Financial Institute under section 4A of the Companies Act, 1956.
- The Noticee had given financial assistance to company in the form of Purchase Bills Discounting facility.
- In consideration, the company had created security by way of pledge of un-encumbered equity shares in D-mat form in favor of the Noticee.
- As there was erosion in the value of security and there were continuous defaults by the company as a part of recovery measure, the Noticee invoked 23,00,000 shares on 28.09.2011 and 32,50,000 shares on 24.02.212.
- Even though the shares have been invoked by the Noticee, the same has not been shown as an investment by the Noticee in the investment note to the Noticee's Balance Sheet.
- With regard to the violation of SAST Regulations, the Noticee has submitted that as per the provisions of 29(4) of SAST Regulations, Scheduled Commercial Banks and Public Financial Institutions holding shares as pledge for securing indebtedness in the ordinary course of business are exempted from the operation of Regulation 29(1) & (3) of

SAST Regulations and being a Public Financial Institution, the Noticee is exempted from making disclosures.

- With regard to the violation of PIT Regulations, the Noticee has submitted that the requirement of disclosure of interest as stated therein is applicable only if a member of the Board of Directors or an employee of a public financial institution as defined in Section 4A of the Companies Act, 1956 has acquired or holds more than 5% shares or voting rights in any listed company. The Noticee has further stated that Regulation 13(1) of PIT Regulations, does not fit in the definition of "person is deemed to be connected person" under the regulation 2(h) of PIT Regulations. The Noticee has further submitted that it is not a connected person as defined in PIT Regulations and the disclosure requirements under PIT Regulations is not applicable to the Noticee.

Consideration of Issues, Evidence and Findings

6 I have carefully perused the material available on record, written and oral submissions made by the Noticee.

7 The issues that arise for consideration in the instant case are:

a. Whether the Noticee has violated the provisions of regulations 13(1) & 13 (3) read with 13 (5) of PIT Regulations and regulation 29 (1) & (2) read with 29(3) of SAST regulations 2011?

b. Do the violations if any, on the part of the Noticee attract penalty under section 15A (b) of SEBI Act?

c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

8 The relevant provisions of PIT Regulations are as under:

PIT Regulations

Regulation 13

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

(*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.

(2).....

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in [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. .

(4) .....

4(A) .....

(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.

SAST Regulations.

Regulation 29. Disclosure of acquisition and disposal.

(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(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.

(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.

FINDINGS

9 The issues for examination in this case and the findings thereon are as follows:

a) Whether the Noticee has violated the provisions of regulations 13(1) & 13 (3) read with 13 (5) of PIT Regulations and regulation 29 (1) & (2) read with 29(3) of SAST regulations 2011?

10 From the material available on record, I note that Raj Oil Mills Limited is a company listed on the BSE Limited (BSE) and the National Stock Exchange Limited (NSE) and was engaged in undertaking the business of buying, selling, manufacturing and processing of edible oils, edible oil seeds and other related

products. The Noticee is a shareholder of the company. I note that SEBI examined the shareholding of the Noticee, which revealed that the Noticee was having two BO IDs (IN30081210492219 and IN30045080000406). It also revealed that the shareholding of the Noticee in the company was NIL at the quarter ended June 2011. Thereafter, the holding of the Noticee had gone up to 23,00,000 shares upon invocation of pledge on 28.09.2011 which accounted for 6.39% of shares of the company. The holding of the Noticee had further increased to 55,27,232 shares accounting for 15.35% shares upon invocation of pledge on 24.02.2012. As the changes in the shareholding had exceeded the benchmark limit as applicable to the Noticee on both the occasions, the Noticee was under obligation to make disclosure to the company and to the stock exchange under the relevant provisions of PIT Regulations and SAST Regulations. The details of invocation of pledge and changes in the shareholding of the Noticee in excess of the benchmark limit, which required disclosure by the Noticee under PIT Regulations and SAST Regulations are tabulated below:

Date	**Transaction type**	**Credit/Debit (C/D)**	**quantity**	**Issued Capital**	**Holding after transaction**	**As a % of share capital**	**Disclosure required under PIT Regulations and SAST Regulations.**
Holding before transaction 0						**0.00**	**NA**
28.09.2011	Pledge Invocation	C	2300000	36010108	2300000	6.39%	13(1) of PIT Regulations and regulation 29(1) read with 29(3) of SAST Regulations
24.02.2012	Pledge Invocation	C	3250000	36010108	5527232	15.35%	13 (3) read with 13(5) of PIT Regulations and 29(2) read with 29(3) of SAST Regulations

11 From the reply of the Noticee, I note that the Noticee has not disputed the aforesaid transactions relating to invocation of pledge. It has submitted that it is a Public Finance Institution and was assisting the company in its financial difficulties. It has also stated that it had got shares pledged by way of security and was compelled to invoke the pledge of shares as the company defaulted its payments to the Noticee.

12 With regard to the specific allegations of SAST Regulations, the Noticee has submitted that in view of the provisions of 29(4) of SAST Regulations, Scheduled Commercial Banks and Public Financial Institutions (PFI) holding shares as pledge for securing indebtedness in the ordinary course of business are exempted from the operation of regulations 29(1) & (3) of SAST Regulations and being a PFI, the Noticee is exempted from making disclosures under SAST Regulations.

13 In this regard, I note that Regulation 29 of SAST Regulations mandates disclosure of shareholding by the acquirers/sellers in the event of acquisition or disposal of shares by them beyond the limits as specified under the said regulation. Sub-regulation (4) of regulation 29, makes it clear that acquisition includes shares acquired by way of encumbrance and disposal includes shares given upon release of encumbrance. However, the proviso to sub-regulation (4) of regulation 29 of SAST Regulations carves out an exemption to the general rule which exempts Scheduled Commercial Banks and Public Financial Institutions from the application of the general rule. Regulation 29(4) reads as under:

> *"For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:*
>
> ***Provided** that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business".*

14 It is clear from the above provisions that shares taken by way of encumbrance shall be treated as an acquisition and release of encumbrance shall be treated as a disposal and disclosures have to be made accordingly. The Proviso to the regulation exempts from the application of the above regulation, scheduled commercial banks and PFIs as pledgee with a pledge of shares for securing indebtedness in the ordinary course of business.

15 There is no doubt that the proviso to regulation 29 gives exemption to scheduled commercial bank and PFIs when shares are taken by them as pledgee in connection with a pledge of shares for securing the indebtedness in the ordinary course of business. In other words, the benefit of exemption is available to a bank/PFI at the time they take shares as a pledgee. In fact, in terms of sub-regulation 4 of Regulation 29, taking of shares under encumbrance amounts to acquisition requiring disclosure under sub-regulation 1 & 2 of regulation 29. However, proviso to regulation 29 gives exemption to bank/PFI from disclosure requirement in respect of such taking of shares under encumbrances. i.e. to say, when the shares were taken by the Noticee under pledge, the Noticee had the benefit of exemption from disclosure requirement, provided under proviso to regulation 29.

16 In the instant case, the Noticee has invoked the pledge and got the shares transferred in its name. These shares are held in the demat form in the name of the Noticee. The Noticee has become the beneficial owner of the shares entitling it to exercise voting rights in respect of those shares held in its name in demat form, consequent to invocation of pledge. In short, the Noticee has acquired the shares and can no longer be said to be holding shares under encumbrance as pledgee. Taking of shares by way of encumbrance as pledgee is different from acquisition of shares by way of invocation of pledge. It is only in respect of the former type of transactions/acquisitions, exemption is available to a bank/PFI. As such, no benefit of exemption from disclosure requirement is available to the Noticee at this stage when it has already become the beneficial owner of the shares.

17 Clearly, when the Noticee invoked the pledge and got the shares transferred in its name, acquisition of shares by the Noticee has taken place. In this context, it is pertinent to state here that for the purpose of SAST Regulations, what is relevant is acquisition of shares and once acquisition of shares exceeds the limits prescribed therein, provisions of SAST Regulations are triggered. In the instant case, since the said acquisition of shares by the Noticee constituted more than the benchmark limit specified in regulation 29, it attracted the provisions of the said regulation, thereby under obligation to file disclosure with the company and stock exchanges. I find that no disclosures were made by Noticee. The contention of the Noticee that it, being a PFI, enjoyed exemption by virtue of proviso to Regulation 29, has no merit for the reasons explained above. The Noticee cannot claim any relief or immunity.

18 The Noticee has also contended that is continues to show the loan outstanding due to it by the company under Receivables and shares which are held as mere security are not shown as part of their investments. It is immaterial as to how the Noticee had recorded the transaction in the books of accounts and reflected its position in its annual financial statements. What is material and relevant is the fact that the Noticee is now the beneficial owner of the said shares and is shown as such in the disclosure relating to shareholding made by the company to the stock exchanges, a copy of which was made available on record by Noticee. In this regard, reliance is also placed on the judgment of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Liquid Holdings Private Limited (Appeal No. 83 of 2010 decided on 11.03.2011) wherein it was held that *".....as long as the shares remained under pledge, the pledgors (the appellants) were their beneficial owners and the only effect of the pledge was that the shares under pledge could not be transferred any further or dealt with in the market without concurrence of the pledgees i.e, the banks. The pledge by itself did not bring about any change in the beneficial ownership of the shares pledged and there was no question of the provisions of the takeover code being attracted. It was somewhere in the year 2004 that default was committed in the repayment of the loans as a result whereof the*

banks invoked the pledges and got the shares transferred from the demat accounts of the appellants (pledgors) to their own demat accounts. On such invocation, the depository cancelled the entry of pledge in its records and registered the banks as beneficial owners of the shares of the shares in its accounts and made necessary amendments therein. .....Upon banks being recorded as beneficial owners of the shares in the records of the depository, they became members of the target company and they acquired not only shares but also the voting rights thereto".

19 On the basis of the above discussion, I find that the Noticee has acquired 23,00,000 shares (6.39%) on 28.09.2011 and 3250000 shares (15.35%) on 24.02.2012, in excess of the benchmark limit of the provisions of regulations 29 (1) and (2) of SAST Regulations and was under the obligation to file disclosures as mandated under regulation 29 (3) of SAST Regulations. I find that the Noticee has not filed any disclosures and as such and hence I hold that it has violated the provisions of 29 (1) and (2) read with 29(3) of SAST Regulations.

20 With regard to the charges of PIT Regulations, I note that the Noticee has referred to the definition of "person is deemed to be a connected person" as defined in regulation 2 (h) of PIT Regulations. The Noticee has further stated that a combined reading of regulations 13(1) and 2 (h) of PIT Regulations makes it clear that the requirement of disclosure is applicable only if a member of Board of Directors or an employee of a public financial institution has acquired or holds more than 5% shares or voting rights in any listed company. The Noticee has submitted that in view of the same, the disclosure requirements as stated in regulation 13(1) &(2) of PIT Regulations does not applicable to the Noticee.

21 In this regard, the requirement of regulation 13(1) of PIT Regulations is that disclosure by any person who holds more than 5% shares or voting rights in any listed company regarding the number of shares or voting rights held by such person on becoming such holder within two days to the company. Regulation 13(3) requires that any person who holds more than 5% of shares shall disclose to the company the change in shareholding exceeding 2% of the total shareholding or

voting rights in the company. In the instant case, as stated in the foregoing paragraphs, I note that upon invocation of pledge on 28.09.2011 and 24.02.2012, the Noticee has become the holder of 23,00,000 shares (6.39%) and 3250000 shares (15.35%) shares respectively. Hence, the Noticee has crossed the prescribed limits of 13 (1) and (3) of PIT Regulations and was under the obligation to make disclosures as mandated under the provisions of regulation 13 (5) of PIT Regulations. The arguments put forth by the Noticee in this regard, has no relevance and is not acceptable. I find that the Noticee has not filed any disclosures and as such I hold that it has violated the provisions of 13 (1) and (3) read with 13 (5) of PIT Regulations.

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

22 At this juncture, it is relevant to quote the judgment of Supreme Court in the matter of *SEBI vs. Shri Ram Mutual Fund* wherein it was inter alia 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."*

23 Thus, the aforesaid violation by the Noticee make him liable for penalty under section 15A(b) of the SEBI Act which reads thus:

SEBI Act

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 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".

c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

24 While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.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."*

25 It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by not making the specified disclosures on the due dates. However the fact remains that by not making the required disclosures, the Noticee had deprived the investors of important information at the relevant time. It is pertinent to mention here that our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. There are two such instances of non- disclosure and hence the violation committed by the Noticee is repetitive in nature.

Order

26 After taking into consideration all the facts and circumstances of the case, I am convinced that this is a fit case for imposing monetary penalty on the aforesaid Noticee, Sicom Limited. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹. 5,00,000/-(Rupees Five Lakh only) on the Noticee in terms of section 15A(b) of the SEBI Act. The

above mentioned penalty will be commensurate with the violation committed by the Noticee.

27 The penalty shall be paid by way of a duly crossed demand draft drawn 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 shall be forwarded to the Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.

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

DATE: May 19, 2014 **A SUNIL KUMAR**
PLACE: Mumbai **ADJUDICATING OFFICER**