BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 152/2013]

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

Prakash Devidas Securities Ltd.

(PAN: AAACP3264A)

In the matter of DJS Shares and Stocks Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation in trading in the scrip of DJS Shares and Stocks Ltd. (hereinafter referred to as the **company**). During examination in the scrip of the company it was observed that Prakash Devidas Securities Ltd. (hereinafter referred to as the **Noticee**) while trading in the scrip of the company had acquired/ sold shares in market and off-market transactions on various occasions.

2. It was observed that Noticee while trading in the scrip of the company had purchased and sold shares on-market/ off-market of the company. It was observed that Noticee acquired shared representing 2.27% of the share capital of the company as a result of which its shareholding in the company crossed 5% of the paid up capital of the company. Consequently Noticee was required make necessary disclosure under Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **SAST**

Regulations). It was further observed that the shareholding of the Noticee in the company reduced from 7.03% to 3.90% as a result of which Noticee was required to make necessary disclosures to the company under Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations**).

3. In view of the above it was alleged that Noticee did not comply with Regulation 7(1) read with 7(2) of the SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulation. Consequently, the Noticee was liable for penalty under Section 15A (b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated September 10, 2012 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 (hereinafter referred to as **Rules**) to inquire into and adjudge the alleged violations of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No. EAD-6/BM/VS/4124/2013 dated February 15, 2013 (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 for the alleged violation specified in the said SCN. The said SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated March 5, 2013 sought time of three weeks to file reply to the SCN which was granted vide email dated March 11, 2013. Vide letter dated March 29, 2013 Noticee made the following submissions:

a. *That the non-compliances as mentioned in the SCN were brought to my knowledge for the first time during June/July 2010 by the Manager to the offer viz. Vivro Financial Services Private Ltd. who were appointed by the acquirers viz. B.K. Dyeing & Printing Mills Pvt. Ltd., Sriram Stocks Management Pvt. Ltd. Malar Share Shoppe Ltd. (hereinafter, "Acquirers").*

b. *That on realizing such non-compliance, I voluntarily submitted an application for consent dated November 10, 2010 offering an amount of Rs. 1,00,000/- to resolve the matter amicably and not warranting any penal action against me by SEBI. Later on, after personal meeting with the Internal Committee of SEBI on consent, I by my letter dated June 17, 2011 revised the consent terms to Rs.2,00,000/- to mitigate litigation cost and maintain my unblemished track record. However to my regrets, the High powered Advisory Committee on Consent constituted by SEBI did not accept the revised consent terms and therefore my application was rejected by SEBI and I was intimated about the same vide letter No. EFD/DRA-1/KG/OW/27239/2011 dated August 25, 2011.*

c. *The above referred DJS/ the Company was incorporated under the Companies Act 1956, on April 27, 1994 as a Public Limited Company having registered office at Coimbatore. The Company was promoted by Mr. Prakash Devidas Shah with the main object to inter-alia carries out share broking activity. The Company came out with the Public issue of 30,30,400 shares in January 1995 and made Preferential allotment of 10,00,000 shares in June 1997. Thereafter the Company has not made any further issue of share capital till October 2012. During October 2012, Company allotted Bonus shares in the ratio of 1:2 and split face value from Rs.10/to Rs.1/-.*

d. *The promoter of the Company viz. Mr. Prakash Devidas Shah signed a Share Purchase Agreement as on March 17, 2010 with the Acquirers viz. B.K. Dyeing & Printing Mills Pvt. Ltd., Sriman Stocks Managements Pvt. Ltd. and Malar Share*

Shoppe Ltd. to sell his entire holding of 28,07,100 shares representing 55.80% of the total paid up equity share capital of the Company @ Rs.25/- and the said Acquirers in compliance of SEBI (SAST) Regulations, 1997 made Public Announcement on March 23, 2010. The said acquirers made an open offer in July 2010 to acquire 10,06,080 shares representing 20 % of the total paid up equity share capital of the Company @ Rs.45/-. However in response thereto only 1,600 shares were tendered by the public shareholders. Thus the public shareholders had an opportunity to sell the shares @ Rs.45/- in July 2010.

e. *On July 15, 1998 we had acquired 1,14,100 shares of the company through off-market transaction whereby our shareholding in the company was increased from 1,92,800 shares (2.27%) to 3,06,900 shares (6.10%). Under then applicable provisions, we were required to disclose to the DJS/ the company about the said acquisition. However, we would like to submit that the proof of the said disclosure document was asked from us in June / July 2010 i.e. after a lapse of nearly 12 years and we had not preserved the records for uh long period. Therefore we ere unable to submit the necessary disclosure document to DJS in 2010. Consequently, DJS/ company reported to SEBI about our non compliance under Regulation 7(1) of the SAST Regulation. We humbly submit that the aforesaid lapse on our part be condoned solely on the ground of long delay in inquiring from us about the said compliance.*

f. *Further from March 31, 2007 to March 19, 2008, we had transferred 1,57,200 shares representing 3.13% of its share holding in the DJS/ company as a result of which our shareholding in the company decreased from 7.03% to 3.90%. Incidentally, it was only in one transaction in March 19, 2008, wherein we had sold 1,12,200 shares which triggered the compliances under Regulation 13(3) of the PIT Regulations. speaking for ourselves, we had no knowledge and were not made aware about such disclosure requirements to be made by the company in whose shares we had traded.*

g. *Indeed, it is also pertinent to note that during the relevant period, DJS/ the Company itself was acting as its Registrar and Transfer Agents. Therefore every sale transaction resulting into change in beneficial ownership necessarily passed through DJS/the Company records. Be that as it may, I admit and accept the non-compliance, however please be informed that it was unintentional and innocent lapse on my part. I therefore request your good selves to kindly take a lenient view and exonerate me from penal action for the same.*

h. *Under the facts and circumstances as enumerated hereinabove, I request you to kindly consider the following facts and mitigating factors in exonerating me from the alleged violations in the SCN.*

(i) The execution of aforesaid transactions has not adversely affected the interests of the shareholders of the DJS/ the Company in any manner whatsoever and has not put the existing Shareholders of the Company to any disadvantage.

(ii) There was no intention to suppress any material/information from the DJS/ the Company or from any shareholder of the Company.

(iii) I have voluntarily made an Application for Consent to settle the matter amicably before issuance of the aforesaid SCN to me.

(iv) The said violation is only technical, procedural and venial breach and has not caused any adverse consequences to anybody, especially the shareholders of the company.

(v) I have not consciously or deliberately avoided the filing of the requisite information to DJS / the Company.

(vi) I have not made any disproportionate gain or derived any unfair advantage from the aforementioned transaction.

(vii) No loss has been caused to any investor or group of investors or to any member of the public as a result of the technical default on my side.

(viii) The alleged default is not repetitive in nature.

(ix) There is no investors' complaint with regard to the non compliances

arising from the execution of aforesaid transactions by me.

6. In the interest of natural justice an opportunity of hearing was provided to the Noticee on April 25, 2013 vide hearing notice dated April 3, 2013. Noticee vide email dated April 4, 2013 requested to reschedule the hearing on or before April 23, 2013. Accordingly the hearing was rescheduled to April 18, 2013 and same was intimated to the Noticee vide email dated April 5, 2013. Shri. Prakash Shah, (Advocate) Authorized Representative (AR) appeared along with the Noticee and reiterated the submissions given in the reply to the SCN. During the hearing Noticee sought time till April 23, 2013 for filing additional submission, if any. Vide letter dated April 18, 2013 Noticee reiterated the submission made vide letter dated March 11, 2013 and made following further submissions:

   a. *The alleged non-compliance of the disclose requirements with regard to 'SEBI Insider Trading Regulations' was to be furnished to the Company only and therefore unintentional.*
   b. *The alleged non-compliance of the disclose requirements is technical/ venial in nature.*
   c. *I have not gained anything by such non disclosures*
   d. *Effectively, no harm, loss damage or injury of any nature whatsoever has been caused to any investor.*
   e. *To the best of my knowledge and information, SEBI and stock exchanges have never carried out investigation in the dealings/scrip of DJS Stocks and Shares Ltd. for the manipulations or malpractice of any kind.*
   f. *There is no investor's complaint with regard to the non-compliance arising from non disclosure arising from execution of aforesaid transaction by me.*
   g. *I have voluntary approached SEBI about such lapse from my side when it was brought to my knowledge.*

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:

   i. Noticee failed to make necessary disclosures under Regulation 7(1) read with 7(2) of SAST Regulations to the company.

   ii. Noticee failed to make necessary disclosures under Regulation 13(3) read with 13(5) of PIT Regulations to the company.

8. In view of the above it was alleged that the Noticee violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and 13(3) read with 13(5) of PIT Regulations.

9. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 7(1) read with 7(2) of SAST Regulations and 13(3) read with 13(5) of PIT Regulations.

   Regulation 7(1) of SAST Regulations is as under:

   (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 shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company, to the company.

   (2) The disclosures mentioned in sub-regulations (1) shall be made within four 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.

Regulation 13(3) r/w 13(5) of PIT Regulations is as under:

(3) Any person who holds more than 5% shares for 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.

(5) The disclosure mentioned in sub-regulation (3) and (4) shall be made within 4 working days of:

(a) The receipt of intimidation of allotment of shares, or

(b) The acquisition or sale of shares or voting rights, as the case may be.

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

i. Whether Noticee failed to make disclosures under Regulation 7(1) read with 7(2) of SAST Regulations to the company?

ii. Whether Noticee failed to make disclosures under Regulation 13(3) read with 13(5) of PIT Regulations to the company?

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

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?

FINDINGS:

11. I now proceed with the alleged violations of SAST and PIT Regulations.

i. I note that Noticee while trading in the scrip of the company had acquired/ sold shares in market and off-market transactions on various occasions. Details of market and off-market transactions are given below:

Sr. no	Date of transaction	Mode of Transfer	Shareholding Before Acquisition/ Transfer (%)	No. of shares Acquired/Transferred (%)	Shareholding After Acquisition/ Transfer (%)	Disclosure Required under PIT Regulation	Disclosure Required under SAST Regulation
1	15/07/1998	Off-market	192800 (3.83%)	114100 (2.27%	306900 (6.10%)	NA	7(1)
2	30/04/2002	Market	306900 (6.10%)	7400 (0.15%	314300 (6.25%)	NA	NA
3	08/04/2004	Market	314300 (6.25%)	39300 (0.78%	353600 (7.03%)	NA	NA
4	31/03/2007 to 19/03/2008	Market	353600 (7.03%)	-157200 (-3.13%	196400 (3.90%)	13(3)	NA

ii. It was observed that on July 15, 1998 Noticee acquired through off-market transactions 1,14,100 shares representing 2.27% of its total shareholding in the company as a result of which its shareholding in the company crossed the 5% of the paid up capital of the company which required Noticee to make necessary disclosures under Regulation 7(1) of the SAST Regulations to the company. Admittedly no disclosure was made by the Noticee.

iii. It was further observed that from March 31, 2007 to March 19, 2008 Noticee transferred 1,57,200 shares representing 3.13% of its shareholding in the company as a result of which its shareholding in the company decreased from 7.03% to 3.90% for which Noticee was required to make necessary disclosures under Regulation 13(3) of the PIT Regulations to the company.

iv. Noticee in its reply has submitted that for the transaction dated July 15, 1998 they were not able to provide the proof of disclosure document on June/ July 2010 i.e. after lapse of 12 years when it was asked by the company and thus same may be condoned. Noticee further submitted that for the transactions

dated March 31, 2007 to March 19, 2008 they did not have knowledge and were not made aware about such disclosure requirement under Regulation 13(3) of PIT Regulations.

v. From the documents available on record and from the reply of the Noticee I note that for the transaction dated July 15, 1998 Noticee was required to make necessary disclosures under Regulation 7(1) of SAST Regulations. I note that Noticee has failed to make necessary disclosure under the said provision to the company. Noticee admitted the lapse on its part. From the foregoing I conclude that the Noticee violated Regulation 7(1) read with 7(2) of SAST Regulations.

vi. I further note that Noticee was further required to make disclosure under Regulation 13(3) of PIT Regulations for the transaction dated March 31, 2007 to March 19, 2008 to the company. Noticee's submission, that they were not aware of such disclosure requirement is not acceptable, as the disclosure under Regulation 13(3) of PIT Regulation is mandatory and non compliance of the same attracts monetary penalty under Section 15A (b) of SEBI Act. Hence, I conclude that by not making such disclosures under Regulation 13(3) read with 13(5) of PIT Regulations Noticee has violated the said provision.

12. Noticee in its submission mentioned various mitigating factors for exonerating it such as there has been no disproportionate gain or unfair advantage as a result of the transaction in question nor has there been any loss caused to an investor or investor group and this is the first default, if any, committed by it etc. I note that 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…".

13. In view of the above I hold that the Noticee violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and 13(3) read with 13(5) of PIT Regulations.

14. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and 13(3) read with 13(5) of PIT Regulations attracts monetary penalty under section 15A (b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.

15. The object of the SAST and PIT Regulation mandating disclosure of acquisitions 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 such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that:

> *"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market".*

16. Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and 13(3) read with 13(5) of PIT Regulations.

17. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act, which reads as under:

15A(b). <u>Penalty for failure to furnish information, return, etc.-</u>

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.

18. While determining the quantum of penalty under Section 15A (b) of SEBI Act, 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."

19. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The SAST and PIT Regulation have been framed in order to bring about the transparency in the market and timely disclosure to the investors. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, had responsibility in ensuring the compliance of disclosure norms. The timely disclosure was of importance from the point of view of outside shareholders/other investors as such disclosure would have prompted them to buy or sell shares of the

target company. As regards the contention of the Noticee that no loss was caused to the investors the Noticee cannot pre-judge the reaction of the investors. It is an admitted fact that the Noticee had not made the disclosure as required and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the information. Under these circumstances, the compliance with the disclosure requirements under SAST and PIT Regulation assumes significance and the Noticee's failure to do so needs to be viewed seriously and an appropriate view is being taken with regard to imposition of monetary penalty in the matter.

20. 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 available before me the default is not repetitive.

ORDER

21. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹. 3,00,000 (Rupees Three lakh only) under Section 15A (b) of SEBI Act, on the Noticee which will be commensurate with the violations committed by it.

22. 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 Shri. Debashis Bandyopadhyay, Deputy General Manager, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

23. 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: **May 08, 2013** **BARNALI MUKHERJEE**

Place: **Mumbai** **ADJUDICATING OFFICER**