BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 123/2010]

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

Bhagyanagar India Ltd

(Pan No. AAACB8963C)

In the matter of Ritesh Properties and Industries Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in respect of trading in the shares of **Ritesh Properties and Industries Ltd** (hereinafter referred to as **"RPIL/Company"**) for the period from July 14, 2006 to May 20, 2008 (hereinafter referred to as the **Investigation Period**). During the investigation period the scrip of RPIL was listed on Bombay Stock Exchange Ltd (hereinafter referred to as '**BSE**').

2. During the course of investigation it was observed that Vishal Concast Ltd (hereinafter referred to as '**VCL**') had acquired 12,50,000 shares of RPIL through preferential allotment in 2006. On April 19, 2008 VCL transferred all of 12,50,000 shares to Bhagyanagar India Ltd (hereinafter referred to as '**BIL/Noticee'**) in off market. The shares acquired by the Noticee accounted for 10.78% of the paid up capital of the company. The Noticee was required to make disclosure to the company and the stock exchange where it is listed under Regulation 7(1), 7(1A) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **"SAST"**) and Regulation 13(1) of SEBI (Prohibition of

Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT**'). It is alleged that the Noticee did not make the disclosure as required under the aforesaid Regulations.

3. In view of the above it is alleged that the Noticee violated the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), SAST and PIT Regulations. Consequently the alleged violations make the Noticee liable for monetary penalty under section 15 A (b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. I was appointed as the Adjudicating Officer, vide order dated March 08, 2010, under Section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of the provision of SEBI Act, SAST and PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice No. EAD/EAD-6/BM/11743/2010 dated July 07, 2010 (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 against the Noticee and penalty be not imposed under section 15 A (b) of the SEBI Act for the alleged violations specified in the said SCN.

6. It was alleged in the SCN that VCL transferred 12,50,000 shares of RPIL in an off market transfer to the Noticee on April 19, 2008. The above 12,50,000 shares of RPIL constituted 10.78% of the share capital of the company. Accordingly, the Noticee was required to make disclosure in terms of SAST and PIT regulations which the Noticee allegedly failed to disclose.

7. The Noticee vide letter dated July 28, 2010 requested for a weeks time to reply to the SCN.

8. Subsequently, the Noticee vide letter dated August 2, 2010 replied to the SCN stating inter alia the following:

- *The company had entered into a loan agreement dated April 19,2008 with M/s Vishal Concast Ltd wherein it was agreed that the company shall sanction a loan amount of Rs.10 crore in favor of VCL. The said amount was the maximum that VCL could have borrowed from the company. In terms of clause 3 of the agreement, the said transfers of shares envisaged in clause 3 of the agreement was to act as a security against the loan granted to VCL by the company.*

- *The company in accordance with the terms of the loan agreement transferred an amount of Rs. 3,50,00,000 to VCL vide cheques no. 976931 dated 19.04.2008 drawn on HDFC bank, Lakdikapul Branch, Hyderabad.*

- *VCL pursuant to the loan agreement transferred 12, 50,000 equity shares of RPIL into the demat account of the company.*

- *Considering the volume of transaction undertaken by the company, the shares which were transferred by VCL to the company were not taken in the form of pledge but accepted as transfer to the company's demat account only to stay protected against difficulties that may arise in case VCL is subjected to any liquidation or winding up proceedings.*

- *It is pertinent to mention that company has not gained or derived any benefit from the said shares. From the date of transfer of shares into the company's demat account till date the company has not dealt with the shares in any manner whatsoever. The company would also like to draw your kind attention to clause 14 of the agreement wherein it is provided that the company was required to credit to the VCL's account all the rights bonuses and other corporate action received on behalf of the VCL .it is most humbly submitted that the company has performed its obligations as provided in the loan agreement. Therefore, although there was transfer of shares in favor of the company, albeit for a limited purpose of holding them as a security against the loan advanced to VCL, in sum and substance, it is submitted for all the practical purposes the beneficial ownership in the shares despite the transfer vested solely with VCL. It is submitted in view of the aforesaid facts and submissions, the company although acquired shares, it had not become an "Acquirer" in letter and spirit.*

- *The company regrets of having failed to register this security arrangement as pledge with the depositories.*

- *The company would like to draw your attention to the fact that VCL failed to repay the loan amount advanced and the Company was constrained to serve a legal notice on VCL.*

- *It is most humbly submitted that the company had inadvertently failed to comply with the Regulation 7 (1) and 7 (2) of SEBI (Acquisition of Shares and takeover) regulations 1997, and Regulation 13 (1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992. The transfer of shares was only for the reason to secure loan granted to VCL and not for the company to become and act as an*

'acquirer' as envisaged in the aforesaid regulations.

- *The company would also like to most humbly submit that in its view Regulation 7 (1A) would not be applicable since the company, prior to the transaction in question was not holding any shares of RPIL, for it to come within the purview of the said Regulation.*

- *Further, since the company never harboured any malafide intention of acquiring shares of RPIL, it had not used any deceptive or manipulative devices to acquire any control or substantial stake in the RPIL, the transfer of shares was only a security mechanism for the loan granted to VCL. VCL had on its own volition proposed transfer of RPIL shares as security and therefore Company is of the view that section 12 A(f) of SEBI Act, 1992 is not applicable on the company.*

9. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, an opportunity of personal hearing was granted to the Noticee on October 26, 2010 vide Notice dated October 07, 2010 at SEBI, Head Office, Mumbai. The Noticee vide letter dated October 22, 2010 requested for adjournment of the personal hearing for 2 weeks.

10. Accordingly, another opportunity of personal hearing was given to the Noticee vide hearing notice dated November 04, 2010 for a hearing to be held on November 23, 2010 at SEBI, Mumbai.

11. Mr. L K Baid (hereinafter referred to as an '**Authorized Representative/AR'**) appeared on behalf of the Noticee and reiterated the submissions made in the Noticees earlier letter dated August 02, 2010 to the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully examined the SCN, the reply of the Noticee and the documents available on record. The allegations against the Noticee are as follows:
    a) On April 19, 2008 the Noticee received 12,50,000 shares of RPIL in off market from VCL.
    b) The Noticee became beneficial owner of 12,50,000 shares (10.78%) of RPIL and accordingly the Noticee was required to make disclosure under SAST and PIT Regulations, however the Noticee failed to make such disclosures.

In view of the above it is alleged that the Noticee has violated the provisions of regulations 7 (1), 7 (1A) and 7 (2) of the SAST Regulations, Regulation 13 (1) of PIT Regulations and Section 12A (f) of SEBI Act, 1992.

13. Now the issues that arise for consideration in the present case are :

a. Whether the Noticee acquired shares more than 5% of the shares of RPIL?
b. Whether the Noticee attracted the disclosure requirements under Regulation 7 (1), 7 (1A) and 7 (2) of the SAST Regulations, Regulation 13 (1) of PIT Regulations?
c. If so whether the Noticee has violated regulations 7 (1), 7 (1A) and 7 (2) of the SAST Regulations, Regulation 13 (1) of PIT Regulations and Section 12A (f) of SEBI Act, 1992?
d. Does the violation, if any, on the part of the Noticee attract monetary penalty under sections 15 A(b) of the SEBI Act?
e. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

14. Before moving forward, it will be appropriate to refer to the relevant provisions of SAST and PIT Regulations and SEBI Act which reads as under:

Acquisition of 5 per cent and more shares or voting rights of a company.

7. *1[(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.]*

[(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, [or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]
2[Explanation.—For the purposes of sub-regulations (1) and (1A), the term _acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

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

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

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITON OF SECURITIES OR CONTROL

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –
(a) …….
(b) ……..
(c)…….
(d) ……
(e) ……..
(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act.]

15. Upon careful perusal of the documents available on record and the written submission made by the Noticee, I find the following:-

    a. It is observed that VCL acquired 12,50,000 shares of RPIL through preferential allotment in 2006.
    b. On April 19, 2008 VCL transferred all of 12,50,000 shares to the Noticee in an off market transfer.

Date of transfer	Name of transferor	Shares transferred to	No of shares held before transfer	No. of shares Transferred	% of the total shareholding
April 19, 2008.	Vishal Concast Ltd.	Bhagyanagar India Ltd.	Nil.	12,50,000 shares	10.78%

Non-compliance of Regulation 7(1) 7(1A) and 7(2) of SAST and 13(1) of PIT:

c. I would like to discuss first whether the Noticee attracted the provisions of Regulation 7(1) of SAST.

d. The paid up capital of RPIL was 1,15,91,000 shares. The Noticee acquired shares which accounted for 10.78% of the shares of RPIL. From the demat account statement of the Noticee it is observed that the beneficial ownership of the shares were transferred to the Noticee. Further the Noticee has not disputed to the fact that 12,50,000 shares of RPIL were transferred into the Noticees demat account on April 19, 2008 by VCL. Hence I observe that by acquiring the above shares the Noticee was holding more than 5% of the paid up capital of the company. The Noticee thus attracted the provisions of Regulation 7(1) of SAST and was required to make disclosure to RPIL and BSE within 4 working days as required under Regulation 7(2) of SAST. The Noticee has failed to make the required disclosure.

e. During investigation the Noticee claimed that the above transfer were pledged however, it was observed that no such pledge was registered with the depositories as required for pledge of all demat securities.

f. The Noticee in its reply to the SCN has admitted that no pledge was created for the shares received in off market and further submitted that the off market transfer of 12,50,000 shares into the Noticees account was done as per the Loan Agreement entered into with VCL on April 19, 2008 for 10 crores in favour of VCL. The Noticee in its reply has also admitted that it has inadvertently failed to make the disclosure under Regulation 7(1) and 7(2) of SAST.

g. In view of the above, I hold that the Noticee has violated Regulation 7(1) and 7(2) of SAST.

h. I now proceed to discuss on the alleged violation of the provisions of Regulation 7 (1A) of the SAST.

i. Regulation 7(1A) of SAST refers to acquirers who have acquired shares or voting rights of the company under Regulation 11 (1) and 11 (2) of the SAST Regulation. A reading of the proviso of Regulation 11 of SAST requires that such an acquisition has to be *made through open market purchase in normal segment on the stock exchange*. However, it is observed that the Noticee acquired shares of RPIL in an off market transaction and not through open market on the stock exchange. The Noticee in its reply has submitted that regulation 7 (1A) would not

be applicable since the Noticee, prior to transaction in question was not holding any shares of RPIL for it to come within the purview of the said regulation. I find merit in the submission of the Noticee and therefore, I absolve the Noticee of the charge of violating Regulation 7(1A) of the SAST Regulation.

j. Section 12A (f) of the SEBI Act refers to acquisition of shares of a company more than the equity share capital of a company listed or proposed to be listed which is in contravention of the regulation made under the Act. In the instant case the Noticee acquired more than 5% of share capital of RPIL but did not comply with the provisions of Regulation 7(1) of SAST. Regulation 7(1) does not prohibit acquisition of shares but only requires necessary disclosures to be made to the company and the exchange. Hence the acquisition of shares by the Noticee is not in contravention of Section 12 A(f) of the SEBI Act.

k. Now I would discuss on the alleged violation of provisions of Regulation 13(1) of PIT.

l. As mentioned above the Noticee acquired 12,50,000 shares of RPIL which accounted for 10.78% of the shares of RPIL. Since 12,50,000 shares acquired by the Noticee constitutes more than 5% shares of RPIL, the Noticee was required to disclose the same to the company within 2 working days. The Noticee has not made the required disclosure to RPIL. The Noticee in its reply has also not disputed on the same. In view of the above I hold that the Noticee has violated Regulation 13(1) of PIT.

m. 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), 7(2) of SAST and 13 (1) of PIT Regulation attracts monetary penalty under section 15A (b) of the SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.

16. 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".* In terms of regulation 7(1) and 7(2) of SAST disclosure is required to be made to the company and exchange and under 13(1) of PIT disclosure is required to be made to the company within the specified time period. 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 above facts into consideration, it is established that the Noticee has violated the alleged provisions of Regulation 7 (1), 7 (2) of SAST Regulations and Regulation 13(1) of PIT.

17. 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.".*

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

> ***15A***. *If any person, who is required under this Act or any rules or regulations made there under,-*
> *(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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;*

19. While determining the quantum of monetary penalty under section 15 A(b), I have considered 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."*

20. 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 aforesaid regulations have been framed in order to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. 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 change in the shareholding of the Noticee and the timely disclosure thereof, were of some importance from the point of view of outside shareholders/other investors as that would have prompted them to buy or sell shares of RPIL. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time. Under these circumstances, the compliance with the disclosure requirements under PIT and SAST assumes significance and the Noticee's failure to do so have to be viewed seriously and accordingly, punished in an exemplary manner.

21. 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 default of the Noticee is not repetitive in nature.

ORDER

22. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹.2,00,000 (Rupees Two lakh only) under Section 15 A(b) on the Noticee which will be commensurate with the violations committed by him.

23. 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. Biswajit Choudhury, Deputy General Manager, Investigations Department- 6, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

24. 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: **November 29, 2010**	**BARNALI MUKHERJEE**
Place: **Mumbai**	**ADJUDICATING OFFICER**