

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SPL/AO/SKS/SG/DCR/02/2010]

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

Against

Shri Bharat R Shah

PAN: ADAPS6885Q

In the matter

M/s Shalimar Production Limited

FACTS IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an investigation in respect of dealing in the scrip of M/s Shalimar Production Limited (hereinafter referred to as 'SPL') for the period from May 7, 2004 to August 11, 2004. The scrip of SPL was listed on The Stock Exchange, Mumbai, and Delhi Stock Exchange (hereinafter referred to as BSE and DSE respectively).
2. It has been alleged that Shri Bharat R Shah (hereinafter referred to as "Noticee"), had acquired more than 5% of shares in SPL and the

same has not been disclosed to both the company and exchanges by which the noticee has violated the Regulation 7(1) & (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997(hereinafter referred to as the '**Takeover Regulations**') and Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order of SEBI dated May 21, 2009, under Section 19 of the SEBI Act, 1992 read with section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudicating Rules**') to inquire into and adjudge under Section 15A (b) and 15HA of the SEBI Act.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. A show cause notice (hereinafter referred to as '**SCN**') dated June 24, 2009 under Rule 4 of the SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995, was issued to the Noticee asking him to show the cause as to why an enquiry should not be held against him and why penalty, as prescribed, should not be imposed on under Section 15A (b) and 15HA of SEBI Act for the alleged violations of Regulations 7(1) & (2) of Takeover Regulations and Regulation 13(1) of PIT Regulations. The said SCN was sent by Registered Post Acknowledgement Due and the service of the same is available on record. However, no reply has been received from the Noticee in this regard.
5. With due consideration to the Principles of Natural Justice, hearing notice dated December 9, 2009 was issued to the noticee for personal

hearing before the undersigned on December 17, 2009. But, noticee vide letter dated December 24, 2009 requested for grant of extension of time for the personal hearing.

6. Considering the aforesaid request of the noticee, the undersigned vide letter dated January 4, 2010 informed the noticee that the date of personal hearing before the undersigned was adjourned to 11-01-2010. But, once again the noticee vide letter dated January 11, 2010 requested for grant of extension of time for the personal hearing.
7. Once again considering the aforesaid request of the noticee, the undersigned vide letter dated January 14, 2010 informed the noticee that the date of personal hearing before the undersigned was adjourned to 27-01-2010.
8. Finally, an opportunity of personal hearing was granted to the noticee on January 27, 2010. During the course of hearing, the noticee has submitted the following submissions:
 - a. The noticee has been in the business of medical distribution since 1998 and produced a visiting card of M/s J.R.Shah Exports Ltd. J.R.Shah & Co Prima Distributors as proof.
 - b. Further stated that the alleged transactions were made by Mr. Mahendra Shah in the name of the noticee.
 - c. The noticee also has undertaken to submit reply within a week's time.
9. However, it is observed that no reply has been received from the noticee till date.

CONSIDERATION OF EVIDENCE AND FINDINGS

10. The allegation against the noticee is that it has violated Regulations 7(1) & (2) of Takeover Regulations and Regulation 13(1) of PIT Regulations. The text of the said regulations is as follows:-

Regulation 7(1) & (2) of Takeover Regulations

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 [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.

Regulation 13(1) of PIT Regulations

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 4 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.

11. As per the provisions of the aforesaid Regulations, after crossing 5% of shares in the company, the noticee was required to disclose its

shareholding to the company and to the stock exchanges where shares of the target company are listed within two days incase of Takeover Regulations and to the company within 4 days in case of PIT Regulations from the date the acquisition of shares or voting rights, as the case may be.

12. It is observed from the Demat statement during the period from May 07, 2004 to September 30, 2004 that the noticee was required to disclose its shareholding in terms of provisions of aforesaid Takeover as well as PIT Regulations is as follows:

Name & (% holding)	Date on which disclosure required under	
	Takeover	PIT
	Regulation 7(1) & (2)	Regulation 13(1)
Bharat R Shah (6.16%)	June 26, 2004	June 26, 2004

13. Further, it would be apt to note the observations made by the Hon'ble High Court of Calcutta in W.P. No. 33/2001- *Arun Kumar Bajoria Vs SEBI* and others as under:

“... the object of Regulation 7 is to inform the investors that an individual has acquired 5 per cent shares in the company concerned. If the acquisition has been made by more than one individual in association with each other, it is also obligatory on the part of such individuals to disclose their identity. This can only be done when the information is given to the company. If after the company has received the information, its officer do not read the information and in consequence thereof no information is given to the investors through the concerned Stock Exchanges, the company is to be blamed but unless the company receives the information , the question of the officers of the company reading the information and then transmitting such information to the investors through the Stock Exchanges concerned does not, nor

can at all arise. Therefore, it is obligatory on the part of the person so acquiring to inform the company...”

14. Further, it is observed that 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”*.
15. 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 disclosures, in which Hon'ble SAT 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.”*

CONCLUSION:

16. It is also observed that the noticee has failed to submit any evidences regarding his submission that the alleged transactions were done by Mr. Mahendra Shah in the name of the noticee.
17. Considering the facts and circumstances of the case and the evidence made available on record as discussed in pre paras, it is concluded that the noticee has violated the provisions of Regulations 7(1) & (2) of Takeover Regulations and Regulation 13(1) of PIT Regulations. In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of the SEBI Act, 1992.

18. The violations stipulated in the above paragraphs makes the noticee liable to the penalty under Section 15A (b) of the SEBI Act, 1992. The Text of the said provision is stated below-

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 a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less

19. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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. I have carefully persuaded the IR and the relevant documents available on record. 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. The change in the shareholding of the Noticee and 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 SPL. By not complying with the regulatory obligation of making the disclosure when the change in the shareholding of the Noticee exceeded 5%, it had concealed the vital information from the investors. The object of the Takeover 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 such 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. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding of the Noticee. The Noticee could not pre-judge the reaction of the investors. 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.

21. Having considered the facts and circumstances of this case and after taking into account the factors under section 15J of the SEBI Act, 1992, I find that a consolidated penalty of Rs. 1,00,000 (Rupees one lakh only) on the noticee would be commensurate with the default committed by the noticee in this case.

ORDER

18. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I of the Act, I hereby impose a penalty of Rs. 1,00,000 (Rupees one lakh

only)on Shri. Bharat R Shah under Section 15A(b) of the SEBI Act. I am of view that the said penalty is commensurate with the violations made by Shri. Bharat R Shah.

19. The above penalty amount shall be paid through 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 should be forwarded to Deputy General Manager, Investigation Department - ID 6, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
20. In terms of the Rule 6 of the Adjudicating Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: 25-03-2010

SANTOSH KUMAR SHARMA

MUMBAI

ADJUDICATING OFFICER