BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 155/2013]

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

Zoom Mercantile and Finance Limited

PAN No. AAACZ1999A

In the matter of *S R Industries Limited*

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigation in trading in the scrip of SR Industries Limited (hereinafter referred to as the **"company"**) during the period between February 14, 2011 and April 15, 2011. It was observed that Zoom Mercantile and Finance Limited while trading in the scrip of the company failed to comply with the disclosure requirements under Regulation 13(3) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**).

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer vide order dated October 10, 2011 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 PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notice No. EAD-6/BM/VS/36628/2011 dated November 30, 2011 (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. However, Noticee failed to reply to the SCN.

4. In the interest of natural justice and in order to conduct an inquiry under the Rules an opportunity of personal hearing was granted to the Noticee on January 31, 2012. However, the hearing notice was returned undelivered. Thereafter, another opportunity of personal hearing was granted to Noticee on March 26, 2012. Again the hearing notice was returned undelivered. Hence, the hearing notice was addressed to the Ludhiana Stock Exchange Limited (LSE) with the direction to deliver the same to the Noticee and /or arrange to affix it at the last known address. The Noticee was given an opportunity to appear for the hearing on April 10, 2012. LSE vide letter dated April 24, 2012 acknowledged the receipt of the letter and informed that the address of the Noticee mentioned in the KYC maintained by them was different from the address mentioned in the hearing notice. Thus, LSE delivered the letter to the Noticee and forwarded the acknowledgement.

5. Vide letter dated April 28, 2012 Noticee submitted that due to change of address, the communication for the personal hearing was received late and they could not manage to be personally present for the hearing and thus sought for a fresh date for hearing. Noticee further showed their interest in applying for consent order. Vide letter dated May 9, 2012 Noticee submitted a copy of consent application.

6. Mr. Sanjiv Kumar Goel, Company Secretary and Authorized Representative (AR) of the Noticee appeared on behalf of the Noticee. AR informed that Noticee has

applied for consent vide application dated May 9, 2012. He undertook to submit to file the reply to the SCN by May 21, 2012.

7. Noticee vide letter dated May 17, 2012 filed reply to the SCN and made following submissions:

   (a) It is agreed that the company was holding 657650 equity shares of SR Industries Limited but was not aware of the fact that its holding of 657650 equity shares constituted 5.23% of share capital of that company.

   (b) It is agreed that the company off-loaded 290490 equity shares of SR industries Limited in the market but was not aware of the fact that its holding fell below 5% of the share capital of the company as the company was never aware of the fact that its holding 657650 equity shares constituted 5.23% of share capital of that company.

   (c) It is agreed that the company off loaded 290490 equity shares of SR Industries Limited between March 15, 2011 to March 17, 2011 in the market but was not aware of the fact that its holding fell below 5% of the share capital of the company and the change exceeded 2% of the share capital of the SR Industries Limited.

   (d) It is stated that the company is defunct company and is not carrying on any business for the last 8-10 years. In view of no activity in the company, there is no staff on its payrolls. Failure to make disclosure under Regulation 13(3) read with 13(5) of PIT Regulations was inadvertent and accidental. However, on coming to know its lapse, the company made the necessary disclosure under Regulation 13(3), to SR Industries Limited, on February 24, 2012.

   (e) That the company is a defunct company and is not carrying on any business for the last 8-10 years. In view of no activity in the company, there is no staff on its payroll. Further, the shares were liquidated so that the company could be closed in due course. Failure to make disclosure under Regulation 13(3) read with 13(5) of PIT Regulations was inadvertent and accidental. However, on coming to know

its lapse, the company made the necessary disclosure under Regulation 13(3), to SR Industries Limited on February 24, 2012.

(f) Due to inadvertent failure to make disclosure under Regulation 13(3) of PIT Regulations, no adverse consequences have been caused to anybody. The company has not made any disproportionate gain or gained any unfair advantage and no loss has been caused to anybody except the company. This is the first omission on the part of the company which is of technical nature. The company has never been charged or found guilty of any omission/ offence earlier. The company has already suffered heavy losses in this transaction. It is humbly requested that in view of the facts stated, it is requested that a lenient view may please be taken and this lapse may please be condoned.

(g) The company wishes to avail the consent process and has already made an application for consent order at the given address under intimation to Adjudicating Officer vides its letter dated May 9, 2012.

8. On enquiring on the status of consent application from the Enforcement Department, the department on February 12, 2013 informed that the application filed by the Noticee was returned to the applicant vide letters dated November 30, 2012 and January 17, 2013 due to certain discrepancies and no consent application has been received thereafter. Thus, a final opportunity of personal hearing was provided to the Noticee on March 22, 2013. AR appeared for the hearing on behalf of the Noticee and submitted that reply dated May 17, 2012 shall be considered as final reply to the SCN. During the hearing AR informed that they will be submitting the documents required for processing the consent order by March 28, 2013. It was informed to the AR that this was the final hearing and no further hearing shall be given even if the consent order is rejected, which was acceded to. Vide email dated April 5, 2013, Noticee informed that they have couriered the consent application. Noticee vide email dated submitted that the consent application filed by the Noticee was rejected by SEBI because of non-filing of the application within the stipulated period of 60 days from the date of SCN. Thus, the pending adjudication proceeding was revived on intimation to the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

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

   - Noticee did not make necessary disclosure to the company under Regulation 13(3) read with 13(5) of the PIT Regulations when its shareholding in the company fell below 5% of the paid-up capital of the company.

10. In view of the above it was alleged that the Noticee violated the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations.

11. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 13(3) read with 13(5) of the PIT Regulations, which reads as under:

The continual disclosure requirement under Regulation 13 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-regulations (3) and (4) shall be made within 2 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.

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

i. Whether Noticee has made disclosure to the company of the transactions when its shareholding in the company fell below 5% of the share capital of the company.
ii. Whether Noticee has violated Regulation 13(3) read with 13(5) of the PIT Regulations?
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:

13. I now proceed with the alleged violations of PIT Regulations.

i. It was observed that Noticee appeared in the list of shareholders holding more than 1% of share capital of the company for the quarter ending December 2010. It was observed that in the quarter ending December 2010 Noticee was holding 6,57,650 shares amounting to 5.23% of the share capital of the company. As per quarter ending March 2011, Noticee's share holding in the company decreased to 1,57,650 shares amounting to 1.25% of the share capital of the company.

ii. It was observed from the exchange data that Noticee off-loaded 2,90,490 shares in the market. Details of his trading are given below:

Date	Sell Qty	Cumulative Sell	% to SHC
15/3/2011	90490	90490	0.72
16/3/2011	100000	185480	1.51
17/3/2011	100000	285480	2.31

iii. It is observed from the above data that from March 15, 2011 to March 17, 2011, Noticee sold 2,90,490 shares of the company due to which his shareholding in

the company fell below 5% of the share capital of the company and the change exceeded 2% of the share capital of the company.

iv. Noticee's holding fell below 5% of the paid up capital of the companyfor which he was required to make disclosures to the company under Regulation 13(3) read with 13(5) of PIT Regulations. It is noted that Bombay Stock Exchange (BSE) vide its letter dated June 7, 2011 has informed that that there was no disclosure filed with the exchange for aforesaid transactions under PIT Regulations.

14. Noticee submitted that the breach on part of the Noticee has been purely due to inadvertence and not due to any malafide intention or act on his part. Noticee further submitted that 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 Noticee. Thus admittedly Noticee did not make disclosures as required under Regulation 13 (3) of PIT. 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…".*

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

15. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 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.

16. The object of the PIT Regulation mandating disclosure 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".*

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 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 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 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 company. 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 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 before me that the default is not repetitive.

ORDER

21. 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 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. Sujit Prasad, Chief 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: **July 25, 2013** **BARNALI MUKHERJEE**

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