**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. PKB / AO- 9 / 2011**

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**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**

**M/s. KEMEFS Specialities Pvt. Ltd.**

**PAN: AABCK0081F**

**In the matter of**

**M/s. Helios and Matheson Information Technology Ltd.**

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## I. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation into the alleged irregularity in the trading in the shares of M/s. Helios and Matheson Information Technology Ltd. (hereinafter referred to as "Company") for the period February 2005 to September 2006 (hereinafter referred to as "Investigation Period").

2. On the conclusion of investigation by SEBI, Adjudication Proceedings under Chapter VI A of the SEBI Act, 1992 (hereinafter referred to as "Act") were initiated in respect of M/s. KEMEFS Specialities Pvt. Ltd. (hereinafter referred to as "Noticee").

3. Shri Sura Reddy was appointed as the Adjudicating Officer vide Order dated June 29, 2007 to inquire into and adjudicate under sections 15A(a) and 15G(i) of the Act, the alleged violation of provisions of Regulation 3 of

SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") and section 15A(a) of the Act.

4. Pursuant to transfer of Shri Sura Reddy, the undersigned was appointed as the Adjudicating Officer vide Order dated December 10, 2008.

## II. SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice (hereinafter referred to as "SCN") dated March 18, 2008 was issued to the Noticee under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules"), calling upon the Noticee to show cause why inquiry should not be held against the Noticee for the alleged violations.

6. The Noticee vide letter dated March 26, 2008 acknowledged the receipt of the SCN and made certain submissions. Vide letter dated March 31, 2008, the Noticee referred to an article and also enclosed a copy of the same. Further, vide letter dated April 9, 2008 the Noticee referred to the letter received from RBI addressed to their Chairman and vide letter dated April 15, 2008 enclosed a copy of letter of the Company addressed to FIPB. Vide letters, each dated April 21, 2008 and April 22, 2008, the Noticee made further submissions.

7. Subsequently, on examination of the aforesaid submissions of the Noticee, Notice of Inquiry dated April 27, 2009 was issued to it vide which an opportunity of hearing was accorded to the Noticee which was scheduled to be held on May 11, 2009. Vide letter dated May 6, 2009, the Noticee sought an extension of the hearing. This request of the Noticee was considered and vide Notice of Inquiry dated October 7, 2009, the Noticee was given one more opportunity of hearing scheduled to be held on October 23, 2009.

8. Shri Joby Mathew and Shri Deepak Dhane, Advocates appeared on behalf of the Noticee in the hearing and submitted Vakalatnama, Board Resolution and requested for adjournment of the Proceedings to

November 13, 2009. Vide letter dated November 13, 2009, the Noticee informed that it has submitted the Application for Consent, in view of which the Adjudication Proceedings were kept in abeyance.

9. Subsequent to the rejection of the Consent Application of the Noticee, Notice of Inquiry dated March 10, 2010 was issued to the Noticee, vide which the hearing was scheduled to be held on March 23, 2010. The Noticee vide letter dated March 22, 2010 requested for adjournment of the hearing to next week. This request of the Noticee was considered and vide Notice of Inquiry dated March 30, 2010, the Noticee was given one last opportunity of hearing which was scheduled to be held on April 6, 2010.

10. Shri Joby Mathew, Advocate and Shri B K Koshik, Commercial Manager of the Noticee appeared for the hearing and submitted that Oral submissions have been made which would be reduced to writing and would be submitted by April 13, 2010. Vide letter dated April 12, 2010, the Noticee made its submissions. All the submissions made by the Noticee would be dealt with elaborately while arriving at the Findings in the subsequent paragraphs.

## III. ISSUES FOR CONSIDERATION

11. On perusal of the SCN and Noticee's submissions, I have the following Issues for consideration, viz.,

ISSUE 1: Whether the Noticee has violated provisions of Regulation 3 of PIT Regulations and section 15 A(a) of the Act?

ISSUE 2: Whether the Noticee is liable for monetary penalty under sections 15 A(a) and 15 G(i) of the Act?

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in section 15J of the Act?

## IV. FINDINGS

12. On careful perusal of the material available on record, I proceed to discuss the Issues for Consideration and my findings are recorded as under:

***ISSUE 1: Whether the Noticee has violated provisions of Regulation 3 of PIT Regulations and section 15 A(a) of the Act?***

13. The provisions of Regulation 3 of PIT Regulations and section 15A(a) of the Act read,

***3. Prohibition on dealing, communicating or counselling on matters relating to insider trading.***

*No insider shall –*

*(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or*

*(ii) communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :*

*Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.*

***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, –*

*(a) to furnish any document, return or report to the Board, fails to furnish the same, 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;*

14. It is observed that the Noticee purchased 5791 shares @ rate of Rs.152.49 on April 06, 2005 & April 11, 2005 [i.e. prior to the announcement by the Company on April 12, 2005 about acquiring 3 entities of vMoksha Technologies Pvt. Ltd. (hereinafter referred to as "vMoksha") and sold 7000 shares @Rs.228.51 on January 03, 2006 (i.e. before the announcement of the Company on 13/02/2006 pertaining to initiation of arbitration). Further, it is observed that the Noticee made a net profit of Rs.4,40,216.30 on purchase and sale of 5791 shares of the Company.

15. Further, it is observed that on July 12, 2004 an Engagement Letter, on a best effort basis, was signed whereby Mr. Rajeev Sawhney wished to exit

as a shareholder of vMoksha Technologies Ltd., Mauritius and the parent company of vMoksha Company Pvt. Ltd. India and PWC was retained to act as Lead Financial Adviser. On April 8, 2005 a Term Sheet was executed, addressed to the Company which provided that the existing shareholders of vMoksha Technologies Limited (Mauritius) offer to sell 100% of their equity stake and also all of their equity stake (including their families) in vMoksha Technologies Pvt. Ltd., Bangalore, vMoksha Technologies Inc. USA and vMoksha Technologies Pte Ltd. Singapore (as Sellers) to Helios & Matheson Information Technology Ltd., Chennai (as Buyer).

16. Further, it is observed that vMoksha (in which Mr. Rajeev Sawhney was a director) was going to be acquired by the Company was unpublished price sensitive information based on which the buy transactions were executed by the Noticee. Similarly, the sale took place in January 2006, after expiry of 120 days from the signing of the SPA (the maximum time frame mentioned in the SPA for completion) and about the time when the Company/vMoksha were contemplating legal action in a deal that had now gone sour. The announcement of initiation of legal action was made on February 13, 2006. It is observed that prices rose significantly after the deal was announced and fell when the arbitration proceedings were announced. Therefore, it is observed that the Noticee dealt in the shares of the Company based on unpublished price sensitive information.

17. Further, it is observed that Rajeev Sawhney being one of the promoters of vMoksha and one of the signatories to Share Purchase Agreement between vMoksha and the Company, was aware of the deal prior to announcement and also the subsequent dispute. Hence, it is observed that this transaction is prima facie in violation of PIT Regulations. It is further observed that Shri Rajeev Sawhney can be deemed to be an 'insider' by way of his being a 'connected person' as defined in the said Regulations.

18. As per the Regulation 3 of PIT Regulations, no insider on his own behalf or on behalf of any other person is to deal in securities on the basis of the unpublished price sensitive information.

19. Firstly, the information, both regarding the acquisition of the vMoksha entities by the Company and the not working of the deal between vMoksha and the Company were price sensitive information and the same was unpublished at the time when the trading has occurred and there can be no denial to this. I don't consider it necessary to dwell on the price sensitive aspect of the information as clearly, it can be seen that the information was very vital and would affect the price of the scrip of the Company as can also be seen that the price of the scrip went up after the announcement on April 12, 2005 and went down after the announcement in February 13, 2006. The information was unpublished before the respective announcements were made by the Company. Secondly, the Noticee has executed the trades in the scrip of the Company, so would it be violating the Regulation 3 of PIT Regulations is what has to be seen. In this regard, what has to be specifically seen is that the Noticee is an insider who possessed the above unpublished price sensitive information and in possession of the same, Noticee dealt in the trading of the scrip of the Company.

20. I find that Rajeev Sawhney was one of the promoters and Director of vMoksha and one of the signatories to Share Purchase Agreement between vMoksha and the Company, and was aware of the deal prior to announcement and also the subsequent dispute. And Rajeev Sawhney is also Promoter and Director of the Noticee. Therefore, it can be said that Rajeev Sawhney was an insider as he was a connected person as per the PIT Regulations who had access to the unpublished price sensitive information and as he was holding the position of Director and Promoter of the Noticee, it can't be denied that the Noticee also had the same information. Therefore, it can be said that the Noticee was also an Insider for the purposes of PIT Regulations. In this regard, I take aid of the provisions of Regulation 2(e) of PIT Regulations which defines an

*"insider" as any person who, is or was connected with the company or is deemed to have been connected with the company, and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or who has received or has had access to such unpublished price sensitive information.* Therefore, in this case the Noticee had received the information from Rajeev Sawhney and therefore qualifies to be an insider. Therefore, Rajeev Sawhney when in possession of the unpublished information is also very much at the helm of the affairs in the Noticee company. Therefore, even if trading by the Noticee is undertaken, the decisions are very well guided by persons including Rajeev Sawhney. Therefore, the Noticee being an insider had access to the unpublished information and while in possession had traded in the shares of the Company, and therefore, the trading of the shares of the Company on the basis of unpublished price sensitive information by the Noticee was clearly in violation of the PIT Regulations.

21. Furthermore, the trading by the Noticee seems to be too much of a coincidence to fathom, that the Noticee traded at the same time in the scrip of the Company independent of any information surrounding the acquisition of vMoksha by the Company and later the problems surrounding the execution of deal, when Rajeev Sawhney had access to all information and was very much an integral part of Noticee.

22. A letter was sent to the Noticee seeking explanation regarding the said transactions. The reply by the Noticee stated that there was no violation whatsoever as alleged by SEBI of PIT Regulations or any other Regulations of SEBI in the facts and circumstances of the present case and that it couldn't in any event be said that the Noticee and its director, Mr. Rajeev Sawhney, could be deemed to be an insider, nor that Mr. Rajeev Sawhney could be deemed to be a connected person. It was also stated in the letter that the Noticee, apart from its other business, do also have investments in various listed companies. Further, the Noticee stated that as part of its investments policy, it deals in transactions of purchase/sale of securities/shares of various companies and that it undertakes such

transactions only through its investment advisers, JM Morgan Stanley Retail Services Pvt. Ltd. (hereinafter referred to as "JMMSRSPL"). It was also stated that JMMSRSPL is a constituted attorney for Noticee's company in relation to all of its transactions of purchase/ sale of securities/ shares of various companies. JMMSRSPL is authorized by the Noticee under a Power of Attorney, as none of the directors of its company, including Mr. Rajeev Sawhney, has permanent residence in India and they are NRIs and as constituted attorney for the Noticee enter into various transactions of purchase and sale of securities/ shares of the listed companies. The Noticee stated that it also entered into transactions of purchase and sale of shares of other companies and that depending upon the fund requirement of its company and market conditions, JMMSRSPL involved it in such transactions, as JMMSRSPL deemed necessary in the interest of its company.

23. It has been put forward that a letter was sent to JMMSRSPL seeking verification of the submissions made by the Noticee. JMMSRSPL replied that the Noticee was not registered nor did it have any agreement with JMMSRSPL other than as client for secondary market trades. However, Mr. Rajeev Sawhney in his personal capacity was registered as one of their Portfolio Management clients and the orders for these transactions were placed by the Noticee.

24. On the basis of the above mentioned facts, it is observed that the stance taken by the Noticee is in total dissonance with the reply received from JMMSRSPL. Therefore it is observed that the Noticee has misrepresented facts in its reply to SEBI and therefore violated provisions of section 15A(a) of the Act.

25. Now I deal with Noticee's submissions vide letter dated March 26, 2008 they submitted the text of the email message received from Namit Naye Gandhi from JMMSRSPL expressing anxiety on the sharp rise in the stock price of the Company and called for caution and requesting to exit. On perusal of the email dated June 30, 2005, it is observed that the email was

addressed to Rajeev Sawhney and not to the Noticee and the email was in June 30, 2005 whereas the sale by the Noticee has taken place on January 3, 2006. Therefore, this email can't be attributed directly to the sale of the shares by the Noticee. This email can't be said to have immediately triggered the decision of the Noticee to exit the shares of the Company and can't be said to be the immediate and direct reason for the exit of shares of the Company by the Noticee. The Noticee also stated that the Power of Attorney was given to JMMSRSPL for purchase and sale of various Company's scripts on Noticee's behalf and that JMMSRSPL had also traded the shares of various other Companies on Noticee's behalf and most of it were sold in or around January 3, 2006 along with the sale of 5791 Company's shares. In this regard, I note that the SCN has already stated that a letter was sent to JMMSRSPL seeking verification of the submissions made by the Noticee and JMMSRSPL replied that the Noticee was not registered nor did Noticee have any agreement with JMMSRSPL other than as client for secondary market trades. However, Mr. Rajeev Sawhney in his personal capacity was registered as one of their Portfolio Management clients and the orders for these transactions were placed by the Noticee. Further, the email enclosed by the Noticee also substantiates the reply of JMMSRSPL and not the Noticee as JMMSRSPL had submitted that Mr. Rajeev Sawhney in his personal capacity was registered as one of their Portfolio Management clients and the email was addressed to Mr. Rajeev Sawhney and nowhere supports the submission of the Noticee that JMMSRSPL was given the Power of Attorney by the Noticee. I also note that after the email in June 2005, there were many troubles in the execution of the deal, which culminated in the initiation of arbitration, therefore, taking this factor also into account, it is difficult to believe that the Noticee executed the sale transaction on the sole advise of JMMSRSPL. Therefore, I don't find the explanations of the Noticee satisfactory.

26. However, it can be from the aforesaid paragraphs that the Noticee treats Mr. Rajeev Sawhney and itself as the same, therefore, the Noticee also can't take the defense as provided for in Regulation 3B of PIT

Regulations as claimed by the Noticee in its letter dated May 17, 2007. Regulation 3B of PIT Regulations reads as

> ***3B.*** *(1) In a proceeding against a company in respect of regulation 3A, it shall be a defence to prove that it entered into a transaction in the securities of a listed company when the unpublished price sensitive information was in the possession of an officer or employee of the company, if :*
> *(a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and*
> *(b) such company has put in place such systems and procedures which demarcate the activities of the company in such a way that the person who enters into transaction in securities on behalf of the company cannot have access to information which is in possession of other officer or employee of the company; and*
> *(c) it had in operation at that time, arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transactions or agreement was given to that person or any of those persons by that officer or employee; and*
> *(d) the information was not so communicated and no such advice was so given.*

In view of the facts of the case that the Noticee was not the portfolio management client of JMMSRSPL and it was only Mr. Rajeev Sawhney who was the portfolio management client of JMMSRSPL the explanations of the Noticee that it acted on the advise of JMMSRSPL is not acceptable and the Noticee can't take the defense under Regulations 3B of PIT Regulations.

27. The Noticee vide letter dated March 31, 2008 enclosed a copy of an Article on various violations by the Company (M/s. Helios and Matheson Information Technology Ltd.). However, I have not considered the same in the instant matter as it is not relevant for the present Proceedings. The Noticee vide letter dated April 9, 2008 drew our attention to letter received from RBI, Foreign Exchange Department addressed to Noticee's Chairman. I have also not considered the same in the instant Proceedings as the same are not relevant in the instant Proceedings. The Noticee vide letter dated April 15, 2008 enclosed a copy of the Company's letter dated August 1, 2005 addressed to FIPB. I have not considered the same also for the purpose of the present Adjudication Proceedings.

28. The Noticee vide letter dated April 22, 2008 requested us to look into the entire transaction in totality and submitted that their Director, Rajeev Sawhney who is also Director of vMoksha Technologies (P) Ltd. -

Bangalore has been cheated and is a victim of fraud committed by the Company. The Noticee also submitted that Rajeev Sawhney had no association with the Company nor was he Director of the Company to have any insider information other than he being just a signatory as a witness/confirming party to the Share Purchase Agreement, Subscription Agreement and Escrow Agreement entered into between the Company and vMoksha group of companies. I note that not just did Rajeev Sawhney engage PWC to exit from vMoksha but was also Director and Promoter of vMoksha, therefore, it is difficult to believe the Noticee's submissions and the many emails enclosed by the Noticee as its submissions show that he was a very integral part of the deal, therefore, I don't accept Noticee's submissions and the inside information being the acquisition by the Company and fallout between him and the other promoter was definitely known to him. The Noticee also submitted that they were enclosing evidence that confirms on or before January 3, 2006 the Company was not contemplating any legal action against vMoksha, instead were guiding /giving opinion to Director of the Noticee, Shri Rajeev Sawhney as there was a mutual settlement agreement being negotiated between Pawan Kumar and Director of the Noticee, Shri Rajeev Sawhney with complete knowledge of the Company's Chairman and Managing Director. The Noticee enclosed various correspondences exchanged between the aforementioned persons and others to prove that contrary to the allegation that the Company was contemplating any legal action a mutual settlement agreement was being negotiated with the knowledge of the Company. The Noticee also drew our specific attention to email dated January 5, 2006 from Suresh Talwar confirming that he had received an email from J M Morgan Stanley that the funds have been arranged as per the Mutual Settlement Agreement. The Noticee also submitted that in order to arrange payment to Pawan Kumar as stipulated in the Mutual Settlement Agreement, Director of the Noticee had sold off all the equity holdings in the Noticee's account including shares of the Company and these shares were sold around January 3, 2006 and whereas there was no issue of so called legal action being contemplated by the Company hence the shares

of 5791 sold by the Noticee around January 3, 2006 were very much part of normal securities transactions. On perusal of the enclosures, I find that the concerned parties were trying to reach conclusion, however, this also shows that there were problems in execution of the agreement between the parties and this information was very much available to these parties but not the general public, therefore, even if negotiations were being carried out, there is no denial that the investment by Noticee was risky in such circumstances, and therefore, the sale by the Noticee was very much influenced by these situations. Therefore, this evidence can't prove that the sale of the shares of the Company by the Noticee was not guided by any unpublished price sensitive information which was only revealed to the public on February 13, 2006. And even, if we consider Noticee's submissions that no legal action was being contemplated by the Company against vMoksha in January 2006, it can't deny the fact that in February 2006 there was a public announcement regarding the initiation of arbitration and such decision can't be arrived at in a matter of day or two and in cases of such huge commercial transactions, such decisions are only taken over a period of time. Therefore, there were certain problems in the deal which may be were being tried to be resolved. Therefore, the presence of strain can't be denied by the Noticee and hence, in such circumstances, the sale of shares of the Company was guided by the circumstances surrounding the deal. Moreover, after the elapse of 120 days from the signing of SPA, the parties were aware that there was problem in completion of the deal as clause 4 of SPA clearly stipulates that the completion would take place on a date mutually agreed to and not later than 120 days from the signing of SPA.

29. The Noticee vide letter dated April 21, 2008 submitted that it was enclosing crucial evidence to confirm that in January 2006, the Company was not contemplating any legal action against vMoksha. The Noticee submitted that instead a Mutual Settlement Agreement was being negotiated between Pawan Kumar and Director of the Noticee, Rajeev Sawhney with complete knowledge of the Company's Managing Director and enclosed copies of emails dated January 22, 2006 and January 24, 2006

and that to arrange for payment to Pawan Kumar as stipulated in the Mutual Settlement Agreement, the Director of the Noticee, Rajeev Sawhney had sold off the equity holdings in the Noticee's Account including shares of the Company also and these shares were sold around January 3, 2006. On perusal of the enclosures, I note that I would not like to comment on the mutual agreement that was being negotiated between the concerned parties, however as stated earlier, there may not be any denial that all parties were trying to negotiate the execution of the deal, however, at the same time, it can't be denied that there was strain involved which ultimately culminated with the announcement of arbitration initiation on February 13, 2006. Therefore, merely by the Noticee's submissions regarding the mutual settlement agreement, it can't absolve itself from the violations.

30. Now I deal with the Noticee's submissions made vide letter dated April 12, 2010 that

*"At the outset, we thank you for the opportunity of personal hearing granted to us on April 6, 2010 and for the patient hearing. As desired, we are submitting the following written submissions:*

i. *At the outset and without prejudice to anything stated hereinafter, we submit that the present show cause notice is misconstrued and erroneously issued under a misinterpretation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ("Insider Trading Regulations"). We submit that we are not insiders within the meaning of the term as defined in the Insider Trading Regulations.*

   *Regulation 2 (1) (e) of the Insider Trading Regulations provides that*

   *" … 2 (1) (e) "insider" means any person who,*

   *(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or*

   *(ii) has received or has had access to such unpublished price sensitive information ; …"*

*We submit that we are not an insider or a connected person or a deemed connected person as defined in the Insider Trading Regulations because we did not have unpublished price sensitive information and we did not purchase or sell shares of Helios and Matheson Information Technology Limited on the basis of any unpublished price sensitive information. This is explained more fully hereunder.*

ii. *At the further outset, subject to what is stated hereinafter, we repeat, reiterate and confirm all that is stated in our earlier replies inter alia dated May 17, 2007, May 31, 2007, June 25, 2007, July 10, 2007, March 26, 2008, March 31, 2008, April 9, 2008, April 15, 2008, April 21, 2008 and April 22, 2008 and deny everything to the contrary and inconsistent therewith. As desired, we are submitting a copy of our letter dated May 17, 2007 as **Exhibit A** herewith.*

iii. *We are a trading company specializing in importing speciality chemicals and supplying them to Indian Corporates. As part of financial prudence, the Noticee also makes investments, inter alia, in shares of companies listed on stock exchanges in India.*

iv. *As part of the said investment, the Noticee purchased a total of 5,791 shares of Helios and Matheson Information Technology Limited **("the Company")** on April 6 and 11, 2005. Thereafter, the Noticee further acquired 2,700 shares of the Company on July 8, 2005 and sold 7,000 shares of the company on January 3, 2006. All the said trades were carried out through M/s J M Morgan Stanley Retail Services Private Limited.*

v. *One of the promoters of the Noticee is Mr. Rajeev Sawhney, a Non Resident Indian and a wellknown and well reputed business man based in Bahrain. Mr. Sawhney was also one of the promoters of the V Moksha Technologies Group, which had a presence in India, Mauritius and Singapore among other places. In the latter part of 2004, Mr. Sawhney decided to exit from the V Moksha Group and retained Price Waterhouse Coopers (PWC) as the Lead Financial Advisor for the said purpose.*

vi. *In and around January 2005, PWC approached the Company with a proposal to sell them the shareholding held by the Noticee and his co-promoters in the V Moksha Group. After several rounds of discussions, the parties signed a term sheet on April 8, 2005 and due diligence commenced. On April 12, 2005, the Company issued a Press Release announcing that it had signed an agreement to acquire V Moksha and that the transaction would be completed in May 2005. Annexed hereto and marked as **Exhibit B** is a copy of the said Press Release dated April 12, 2005.*

vii. *On May 11, 2005, the Company, the Noticee and others signed a Share Purchase Agreement (SPA) and Share Acquisition Agreement wherein it was agreed that the existing shareholders of V Moksha Technologies (Mauritius) would sell 100% of their equity in three companies viz.*

    *(a) V Moksha Technologies Pvt. Ltd, Bangalore*

*(b) V Moksha Technologies Inc USA and*
*(c) V Moksha Technologies Pte Singapore*

*to the Company. As per the said SPA, the sale was to be completed within 120 days i.e. by September 9, 2005. On the said day i.e. May 11, 2005, the Company issued a press release stating that they had completed the acquisition of V Moksha and that the all cash deal was closed for USD 19 million. Annexed hereto and marked as* ***Exhibit C*** *is a copy of the said Press Release dated May 11, 2005.*

viii. *However, the parties i.e. the Company and V Moksha were not able to satisfy the Conditions Precedent (CP) set out in the SPA and therefore, the sale of shares of the 3 V Moksha entities to the Company did not materialize within September 9, 2005. The main reason for non compliance with the CPs was the differences between the promoters of V Moksha - Mr. Rajeev Sawhney and Mr. Pawan Kumar. The said promoters sought to settle their differences and even circulated a draft Mutual Settlement Agreement as late as January 18, 2006. However, the Company invoked the Arbitration Clause on February 10, 2006 and appointed an Arbitrator. The Company also issued a press release in this regard on February 13, 2006. Annexed hereto and marked as* ***Exhibit D*** *is a copy of the said Press Release dated February 13, 2006.*

ix. *It is alleged in the Show Cause Notice dated March 18, 2008 that the purchase of shares of the Company by us on 6th and 11th of April 2005 was an instance of insider trading on the ground that Mr. Rajeev Sawhney, one of our directors was privy to the unpublished price sensitive information that the Company was in talks with V Moksha for acquisition of the latter. In this regard we submit that the term sheet, which is only a precursor to the deal was signed on April 8, 2005. The financial and legal due diligence required would start only after the term sheet was signed and only thereafter would the terms of agreement be drawn up. This even on the date when the term sheet was signed, no person including Mr. Sawhney could have been certain that the acquisition would take place or even that the SPA could be signed. Even the Company, for its own reasons, stated in the press release issued by it on April 12, 2005 that it had signed an agreement to acquire V Moksha and that the transaction would be completed in May 2005. If the acquisition or even the SPA was not a certainty, then information regarding the negotiations for a possible deal cannot be described as "price sensitive". Thus, the information available to Mr. Sawhney at the time of purchase by us of 5,791 shares on 6th and 11th April 2005 was not price sensitive information and the trades by us allegedly based on the said information cannot be termed as trades in violation of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.*

x. *It is further alleged in the Show Cause Notice dated March 18, 2008 that the sale of shares by the Noticee on January 3, 2006 was also an instance of insider trading on the ground that Mr. Rajeev Sawhney had prior knowledge of the fact that the Company would invoke the arbitration clause in the SPA, that the said information was price sensitive*

*information and since the said information was made public only on February 13, 2006. In this regard, it is submitted that Mr. Sawhney was never aware on January 3, 2006 that the Company would invoke the arbitration clause of the SPA. As mentioned herein above, Mr. Sawhney and his co-promoter, Mr. Pawan Kumar were endeavoring to come to a mutual settlement of their disputes as late as January 28, 2006 and had circulated emails in this regard. They had both expressed the hope that once their disputes were settled, then the CPs for completion of the deal would be fulfilled and the deal could be closed. Therefore, it is erroneous to allege that on January 3, 2006, Mr. Sawhney knew that the Company would invoke the arbitration clause and therefore, the Noticee sold shares to pre-empt a negative reaction on the price of the shares of the Company. In this regard, it is also pertinent to note that the acquisition of V Moksha by Helios and Matheson Information Technology Limited could not be complete because of the unreasonable demands and the greed shown by Mr. Pawan Kumar, the co-promoter of the V Moksha Group. Copies of the relevant emails exchanged between Mr. Sawhney and the members of the deal team are annexed hereto and marked as **Exhibit E**.*

xi. *In view of the above, it is submitted that SEBI has drawn an adverse inference of insider trading against us merely on the basis of our trading and has not considered the fact that neither our director Mr. Rajeev Sawhney not we had access to unpublished price sensitive information. We further deny that we have acted in violation of Regulation 3 of the Insider Trading Regulations and/or that we are liable to any penalty under Section 15 G (i) of the Securities and Exchange Board of India Act, 1992.*

xii. *With regard to the allegation that we had submitted wrong information regarding our relationship with J M Morgan Stanley Retail Services Pvt. Ltd. ("Morgan Stanley"), we submit that all our trades were executed through Morgan Stanley and they have issued contract notes for all trades. Annexed hereto and marked as **Exhibit F** are copies of the contract notes issued by Morgan Stanley in respect of our trades in April 2005, July 2005 and January 2006. All the above trades were carried out based on the advise and inputs given by Morgan Stanley to Mr. Rajeev Sawhney, our director; it is pertinent to note that Morgan Stanley are Portfolio Managers to Mr. Sawhney and it is in this context that we had stated that we had acted as per their advice. We repeat, reiterate and submit that we are registered as clients with Morgan Stanley (as a stock broker) and our director is registered with them as a Portfolio Manager. We also submit that there was no misrepresentation to SEBI on our part and therefore, it is erroneous to hold so and therefore, we deny that we are liable to any penalty under Section 15 A (a) of the Securities and Exchange Board of India Act, 1992.*

xiii. *In view of the above, we humbly request that the charges of insider trading and misrepresentation to SEBI made against us in the Show Cause Notice dated March 18, 2008, may be dropped and we may be discharged from the present proceedings."*

31. The Noticee has submitted that the Noticee are not insiders, however, I note that Shri Rajeev Sawhney is an insider as per PIT Regulations as connected person by virtue of him being Director and Promoter of vMoksha and he is also promoter and director of the Noticee, therefore, the Noticee had received and had access to such unpublished information which was with Rajeev Sawhney and therefore, qualifies as Insider as per the PIT Regulations. Moreover, as per the own submissions of the Noticee, it is clear that all throughout Rajeev Sawhney was playing an active part in the deal between vMoksha and the Company, and therefore, it can in no manner be said that he did not have access to the information, and the spirit of the PIT Regulations is to prohibit anyone who had access to information which was not available with the rest of the investors to use the same for dealing in shares of the Company, as other investors will be in a disadvantageous position.

32. The Noticee has also submitted that Term Sheet was only a precursor to the deal, however, in this regards, I note that its Noticee's own submissions that Rajeev Sawhney had retained PWC to exit from vMoksha and PWC approached the Company to sell them the shareholding in vMoksha group and after several rounds of discussions, term sheet was signed on April 8, 2005 and on April 12, 2005 there was public Announcement by the Company of signing agreement to acquire vMoksha. Even if we assume that term sheet was only a precursor to the deal, discussions were going on between vMoksha and the Company and all this information was with Rajeev Sawhney and in such a backdrop the trading by the Noticee just before the public announcement and during the signing of the term sheet seem to be to much of a co incidence to fathom as normal business transaction. I note that the price of the scrip started rising after the announcement on April 12, 2005 which shows that it was definitely price sensitive information. I also note that although Noticee claims that the information present with Rajeev Sawhney wasn't price sensitive as it lacked certainity, then what was the sudden new discovery that led to Noticee buying the shares of the Company at almost

the same time when talks of acquisition of the vMoksha were happening with the Company.

33. Moreover, the Noticee only has also stated that as per the Share Purchase Agreement, sale was to be completed within 120 days, which means that after the expiry of the 120 days, when the deal was not completed, the parties definitely knew of the differences and difficulties in the execution of the deal. I also note that the information that the deal is to be completed within 120 days was not available in the public domain. Moreover, I may not disagree that differences were being tried to be negotiated, however, whether the same could be settled or not was a question whose answer could not be said with certainty, therefore, this can't be taken as a defense by the Noticee to state that the sale by the Noticee was not on the basis of the unpublished price sensitive information. The Noticee submitted that Rajeev Sawhney and Pawan Kumar were trying to reach a mutual settlement, therefore, Rajeev Sawhney did not know that the Company would invoke the arbitration clause and the deal could not be completed because of unreasonable demands of Pawan Kumar. However, I only note that the deal was going sour, and this knowledge was available with the parties concerned, even when negotiations were being carried to repair the differences and the general public were eluded the same information. And in such circumstances, the investment of the Noticee was risky.

34. The Noticee also enclosed contract notes to support its submission that trades were executed through JMMSRSPL and that the same were based on advise and inputs given by JMMSRSPL to their Director, Rajeev Sawhney. Therefore, this submission itself shows how important the position of the Director is and that major decisions of the Company are very well guided by others including Rajeev Sawhney. Therefore, it can't be said that only the advise of JMMSRSPL guided him for the trading in the shares by the Noticee as he himself had sufficient knowledge of the deal going sour as he was an integral part of the deal. However, these contract notes do not prove any of the Noticee's submission that JMMSRSPL was a constituted attorney for the Noticee in relation to all of

the transactions of purchase/ sale of securities/ shares of various companies and that JMMSRSPL was authorized by Noticee under a Power of Attorney, as none of the directors of Noticee's company, including Mr. Rajeev Sawhney, has permanent residence in India and they are NRIs and as constituted attorney for Noticee enter into various transactions of purchase and sale of securities/ shares of the listed companies. Rather, it only supports the submissions of JMMSRSPL who claimed that the Noticee was not registered nor did it have any agreement with JMMSRSPL other than as client for secondary market trades and that Mr. Rajeev Sawhney in his personal capacity was registered as one of their Portfolio Management clients and the orders for these transactions were placed by Noticee. The contract notes only show that JMMSRSPL carried out trades for Noticee and it was wrong on part of Noticee to not come out straight and state the truth. Vide submissions dated April 12, 2010, the Noticee brought the true picture which was not shown during the Investigation in the instant matter, wherein now the Noticee does not talk of power of attorney given to JMMSRSPL and states that advise was given to Rajeev Sawhney and hence the Noticee had said that they acted as per the advise of JMMSRSPL. This was not the case when the Noticee submitted otherwise during investigation and therefore, I find that the Noticee misrepresented to SEBI as the Noticee has not challenged the version of JMMSRSPL and the evidence given by Noticee also support the submission of JMMSRSPL and not of the Noticee made during the course of investigation, making the Noticee liable for penalty under the section 15A(a) of the Act.

35. In view of the aforesaid, I find the Noticee guilty of violating provisions of Regulation 3 of PIT Regulations and section 15A(a) of the Act.

***ISSUE 2: Whether the Noticee is liable for monetary penalty under sections 15 A(a) and 15G(i) of the Act?***

36. Section 15 A(a) of the Act prescribes the penalty for failure to furnish information, return etc. The provisions of the section read,

***"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,—*

*(a) to furnish any document, return or report to the Board, fails to furnish the same, 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"*

In view of my findings recorded in the preceding paragraphs, I find that the Noticee is liable for monetary penalty under section 15A(a) of the Act for misrepresenting to SEBI.

37. Section 15G(i) of the Act prescribes the Penalty for insider trading. The provisions of the section read,

***"Penalty for insider trading.***
*15G. If any insider who,—*

*(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information;*
*shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."*

In view of the violation of provisions of Regulation 3 of PIT Regulations, I find that the Noticee is indeed liable for monetary penalty under section 15G(i) of the Act.

***ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in section 15J of the Act?***

38. Section 15J of the Act prescribes the factors to be taken into account by the Adjudicating Officer while adjudging the quantum of penalty under section 15-I, the provisions of which read,

*"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."*

39. I note that the SCN has alleged that the Noticee made a net profit of Rs.4,40,216.30 on purchase and sale of 5791 shares of the Company. This profit can be taken into account as the disproportionate gain or unfair advantage made as a result of the default of the Noticee. Further, the amount of loss caused to an investor or group of investors cannot be quantified on the basis of the available facts and data. Even though the exact monetary loss to the investors can not be computed, it has to be considered that the investors who did not possess the information which the Noticee had access to places them at a disadvantageous position than the Noticee and this should be definitely taken into account. And such a violation always erodes investor confidence in the market. It is of utmost importance that a sense of fair play be maintained in the market. The Noticee's violation of the PIT Regulations is not only once but two times, when the Noticee in possession of the unpublished price sensitive information has traded in the market, hence the Noticee has defaulted repetitively.

40. It has already been established that the Noticee has violated provisions of Regulation 3 of PIT Regulations and section 15A(a) of the Act.

41. Considering the facts and circumstances of the case and the material available on record and the violation committed by the Noticee, I find that penalty of ₹ 15,00,000/- (Rupees Fifteen Lakh only) under section 15G(i) of the Act and ₹ 10,00,000/- (Rupees Ten Lakh only) under section 15A(a) of the Act on M/s. KEMEFS Specialities Pvt. Ltd. would be commensurate with the violation committed by the Noticee.

**V. ORDER**

42. Considering the facts and circumstances of the case, in terms of the provisions of Sections 15G(i) and 15A(a) of the Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakh only) on M/s. KEMEFS Specialities Pvt. Ltd. for

violation of provisions of Regulation 3 of PIT Regulations and section 15A(a) of the Act.

43. The penalty shall be paid by way of 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 Shri S. Ramann, OSD, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

44. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this Order are being sent to the Noticee and to SEBI.

**DATE: JANUARY 31, 2011** **P. K. BINDLISH**

**PLACE: MUMBAI** **ADJUDICATING OFFICER**