

ADJUDICATION ORDER NO. EAD-3/JS/GSS/ 1625 /2018-19

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 Raj Oil Mills Ltd.
CIN No.:L15142MH2001PLC133714**

In the matter of Raj Oil Mills Limited

BACKGROUND OF THE CASE

1. SEBI conducted investigation in the scrip of Raj Oil Mills Ltd., during the period January 01, 2013 to March 25, 2014 (Investigation Period), *prima facie* observed that as per the news article published in the News Paper 'Mumbai Mirror' on March 23, 2013, *Mumbai Edition*, that Shri Shaukat Tharadara, Chairman and Managing Director of Raj Oil Mills and Shri Abdulla Musla, director of the company were arrested by MIDC Police and remanded in police custody on March 22, 2013. This event concerning the key management personnel of the Company was not disclosed by the Company in terms of the disclosure requirements under SEBI(Prohibition of Insider Trading Regulation, 1992. In view of the above, adjudication proceedings were instituted in the said matter on February, 02, 2016.

APPOINTMENT OF ADJUDICATING OFFICER

2. The Adjudicating Officer (AO) was appointed vide order dated June 02, 2016 under section 15I of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and under Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) to inquire into and adjudge under section 15HB of SEBI Act, 1992 the alleged violations of Clause 2.1 and 7.0 (ii) of code of Corporate Disclosure Practices for prevention of Insider Trading provided in Schedule II read with regulation 12 (2) of SEBI(Prohibition of Insider Trading Regulation, 1992 (SEBI PIT Regulation, 1992). Further the Adjudicating Office is appointed under

section 23-I (1) of Securities Contracts (Regulation) Act, 1956 (SCRA Act, 1956) and Rule 3 Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (Adjudication Rules) to inquire into and adjudge under section 23(A)(a) read with 23E of SCRA Act, 1956 the alleged non-compliance of Clause 36 of the Listing Agreement read with section 21 of SCRA Act, 1956. Consequent to transfer, these proceedings are now continued in terms of Order dated May 31, 2018 to inquire into and adjudge under section 15HB of SEBI, 1992 and section 23(A)(a) read with 23E of SCRA Act, 1956 the alleged violations against the Noticee.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING, ADDITIONAL WRITTEN SUBMISSIONS

3. A Show Cause Notice (SCN) dated June 06, 2018 was issued by the Adjudicating Officer (AO) under rule 4(1) of SEBI(Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (‘AO Rules’) in the matter to the Noticee. The same was also duly served upon the Noticee as per records. Thereafter, notice dated September 05, 2018, under rule 4(3) of AO rules, was issued to the Noticee affording an opportunity of personal hearing on September 17, 2018. Nevertheless, vide letter dated September 11, 2018, Noticee sought for adjournment of scheduled hearing in the matter. The scheduled hearing was thus rescheduled to September 18, 2018.
4. On the scheduled day of hearing, Mr. Sanjay K. Samantaray, Chief Financial Officer (CFO) of the Noticee, accompanied by an Advocate, represented the Noticee. During the course of hearing, the Noticee sought eight days’ time to file their replies to the SCN and additional written submissions with respect to alleged violations as mentioned in the SCN.
5. During the hearing Noticee informed that the Noticee Company has undergone corporate insolvency proceedings and Hon’ble National Company law Tribunal (NCLT) vide its order dated April 19, 2018, has appointed new promoters of the Noticee Company. Thereafter, the resolution professional has handed over the charge of the Noticee Company on May 03, 2018. The Noticee further submitted that in light of the above facts and circumstances, by virtue of section 14 of the Insolvency and Bankruptcy Code 2016, the allegations mentioned in the SCN pertain to the transactions done by erstwhile promoters of the company, which is prior to the initiation of corporate insolvency proceedings.

6. Subsequently, vide e-mail dated September 26, 2018, the Noticee submitted its reply to the SCN. Submissions of the Noticee are summarized below:

- a. *It is submitted that the old directors of the Raj Oil Mills Limited were not in the position to pay the debts of various financial institute as well as of operation creditors, therefore the old Director Mr. Rashid Tharadra filed an Company Petition under 10 of the IBC Code read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules for the Corporate Insolvency Process Resolution (hereinafter referred to as "CIRP", for the sake of brevity) on 23rd June, 2017.*
- b. *Subsequent to the admission of the Company Petition, one Mr. U.V.G. Navak, Chartered Accountant was appointed as Interim Resolution Professional (hereinafter referred to as "IRP", for the sake of brevity).*
- c. *The said IRP then published the commencement of the CIRP in newspapers on 15th July, 2017. It is submitted that in this public announcement, the IRP notified the public at large the CIRP process of Raj Oil Mills Limited and directed to lodge their claim with including the statutory authority which also include SEBI.*
- d. *Thereafter, vide an Order dated 15th September, 2017, the Hon'ble NCLT appointed Dr. Rajendra M. Ganatra, as Resolution Professional (hereinafter referred to as "RP", for the sake of brevity).*
- e. *It is submitted that the final Information Memorandum as per the books of accounts and records maintained till that date was published on 15th November, 2017 and further, it was called upon the public at large, including the each of the statutory authorities to submit their claim, if any with a stipulated time mention therein. It is submitted that all secured and unsecured creditors which included the statutory authorities and their respective claim which included SEBI were bound to lodge their claim with the RP within the stipulated time mentioned therein in order to ascertain the actual liabilities of the Raj Oil Mills Limited.*
- f. *It is submitted that during the entire CIRP process of 270 days, the SEBI failed to lodge their claim with the RP within the stipulated time.*
- g. *It is submitted that the Resolution Applicant at the time of submitting their Resolution Plan taking into consideration all the outstanding liabilities as mentioned in the Information Memorandum and accordingly, submitted their Resolution Plan notifying the amount to paid to each of the person and/or institute mention therein and the time slab within which said payment would be made.*
- h. *Subsequent to the compliance of all the formalities, the Committee of Creditors approved the Resolution Plan of the Resolution Applicant and submitted the application before the Hon'ble NCLT for approval. It is submitted that the Resolution Applicant in the page No.77 of the Resolution Plan had categorically mentioned that the Resolution Applicant shall not be liable for any other liabilities of the Raj Oil Mills Limited prior to the approval of the Resolution Plan.*
- i. *It is submitted that the Hon'ble NCLT by an Order dated 19th April, 2018, which was uploaded on 2nd May, 2018, approved the Resolution Plan of the Resolution Applicant and thereafter, the Rubbervula Housing and Infrastructure Limited together with Mukhi Industries Limited through their Managing Director Mr. Sufyan Maknojia took the charge of the Raj Oil Mills Limited. A copy of the Resolution Plan submitted by Rubbervula Housing and Infrastructure Limited together with Mukhi Industries Limited and Order dated 19th April, 2018 passed by the Hon'ble NCLT is enclosed / attached herewith.*
- j. *It is submitted that apart from the claim recognized by the Committee of Creditors and lodged with the IRP and RP and/ all the dues and/ or outstanding arose prior to completion of the CIRP standing worked out and hence are not due and payable by the Raj Oil Mills Limited through its present directors.*
- k. *In view of the aforesaid and further in view of the provisions of IBC Code, all your dues also stand worked out and hence not due and payable by the Raj Oil Mills Limited.*

I. CONSIDERATION OF ISSUES

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

- i. Whether the Noticee has violated Clause 2.1 and 7.0 (ii) of code of Corporate Disclosure Practices for prevention of Insider Trading provided in Schedule II read with regulation 12 (2) of SEBI PIT Regulation, 1992? Whether the Noticee has violated Clause 36 of the Listing Agreement read with section 21 of SCRA Act, 1956?

- ii. Whether the Noticees are liable for monetary penalty under Section 15HB of the SEBI Act 1992?
- iii. If so, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

8. The Company has raised a technical objection to the initiation of these proceedings against it, which needs to be settled before dealing with the merits of the case.
9. Noticee, in its reply dated September 26, 2018, has taken a plea that pursuant to the corporate resolution, the company has been taken over by new management and directors under Indian Bankruptcy Code, 2016 ("IBC"). Given that now it is a new management, they are not responsible for the violations committed by the previous management. Further that these proceedings were not brought to notice earlier during the resolution process.
10. In this respect it is to be appreciated that the present proceedings are against the company. As per clause 11.3 of the resolution plan provided by the company, it is clearly stipulated that with respect to new promoters / resolution applicants, stepping into the shoes of Erstwhile Company and taking over the business, the provisions of Companies Act, 2013, shall be applicable.
11. Therefore, even after passing of corporate resolution, the Company continues as going concern and still exists as separate legal entity. The change of promoters / Directors of the Noticee Company does not dilute the status of the Company from being a legal entity by virtue of section 9 of the Companies Act, 2013. Thus company has remained the same as it is a going concern and continues to be so. So much so that the company continues its status as a listed company.
12. Further, as per section 30 (1)(e) of IBC *"The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan does not contravene any of the provisions of the law for the time being in force."*
13. The current proceedings were initiated against the company and not against its promoters / directors. Therefore, the approval of resolution plan resulting into subsequent takeover of the company by the new management does not restrict initiation of any action / proceeding by the company for breach / violation of statutory norms committed by the company.
14. Further, it is also observed that the approved resolution plan does not exempt Raj Oil Mills - the company from any legal proceedings against it, pursuant to the taking over by resolution

applicants / new promoters. Any violation of the securities laws by a company are enforceable against such company irrespective of change of management. It is a settled law and section 30(2)(e) of the IBC 2016 clearly provides that the resolution plan shall not contravene any of the provisions of the existing law.

15. Therefore, in light of above, contention of the Noticee that *“during the entire CIRP process of 270 days, the SEBI failed to lodge their claim with the RP within the stipulated time”* does not stand valid, and thus having dealt with the contention of the company on the technical validity of these proceedings, the matter is now being dealt with on merits of the case as discussed hereinafter.
16. Before dealing with the issues, the provisions of law alleged to be violated in the matter are reproduced below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities

12(2) (2) *The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

SCHEDULE II

[Under regulation 12(2)]

Code of Corporate Disclosure Practices for Prevention of Insider Trading

2.0 Prompt disclosure of price sensitive information

2.1 *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

7.0 Medium of disclosure /dissemination

(ii) *Corporates shall ensure that disclosure to stock exchanges is made promptly.*

“Listing Agreement

Clause 36 – *“..... The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/ operations of the company as well as price sensitive information. The material events may be events such as:*

(5) Litigation/ dispute with a material impact

The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

The above information should be made public immediately.”

17. Based on the allegations contained in the show cause notice, replies/submissions of the Noticee during the hearing and on records prima facie the findings are recorded in succeeding paragraphs.

Issue No. I: Whether the Noticee has violated Clause 2.1 and 7.0 (ii) of code of Corporate Disclosure Practices for prevention of Insider Trading provided in Schedule II read with regulation 12 (2) of SEBI PIT Regulation, 1992?

Whether the Noticee has violated Clause 36 of the Listing Agreement read with section 21 of SCRA Act, 1956?

18. As per regulation ¹2(ha) of the PIT regulations, 1992, price sensitive information means; “*any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*”

Explanation.—the following shall be deemed to be price sensitive information:—

- (i) periodical financial results of the company;*
- (ii) intended declaration of dividends (both interim and final);*
- (iii) issue of securities or buy-back of securities;*
- (iv) any major expansion plans or execution of new projects.*
- (v) amalgamation, mergers or takeovers;*
- (vi) disposal of the whole or substantial part of the undertaking;*
- (vii) and significant changes in policies, plans or operations of the company;]*

19. From above, it is clear that media news published in the News Papers regarding arrest of the chairman and Managing Director of Raj Oil Mills in police custody qualifies to be a price sensitive information within the meaning of regulation 2(ha) of the PIT regulations, which could have affected price of securities of company.
20. In this regard, it is to be mentioned that the Listing Agreement mandates the listed companies to immediately inform the stock exchanges of all material events, including price sensitive information, which will have a bearing on the performance / operations of the company. Infact, the provisions of sub-clause 7 of Clause 36 of the Listing Agreement clearly stipulates that the company shall immediately inform the stock exchanges of all material events including Litigation /dispute with a material impact. Thus, in light of price sensitive information shall also include information relating to litigation / arrest / initiation of any penal proceedings / remand in police / judicial custody of a chairman / managing director / any key personal of a listed company etc.
21. The Code of Corporate Disclosure practices for prevention of Insider Trading as stated in Schedule II read with Regulation 12 (2) of the PIT Regulations 1992 also mandates that the price sensitive information should be disclosed by listed companies to stock exchanges on a continuous and immediate basis.

¹ Inserted by the SEBI (Insider Trading) (Amendment) Regulations, 2002, w.e.f. 20-2-2002

22. Information regarding police arrest of the Chairman and Managing Director of Raj Oil Mills – undoubtedly a key management personnel of the company is ‘price sensitive information’ within the meaning of regulation 2 (ha) of the PIT Regulations 1992 and therefore, Noticee ought to have disseminated the said material information to BSE.
23. It is on record that the Noticee has failed to make the disclosure on the information relating to police arrest of its chairman and director, which may have the potential to impact the trading in the shares of the company.
24. In this context, it is relevant to quote the observations made by Hon’ble SAT in the matter of **M/s. Helios and Matheson Information Technology Limited vs. SEBI** (Appeal No. 69 of 2011 decided vide order dated November 16, 2011). In the said Order, following was observed by Hon’ble SAT:

“... The requirement of making necessary disclosures to the stock exchanges and through them to the investors is contained in clause 36 of the listing agreement that is executed between the stock exchange(s) and the issuer company. This agreement is executed by every listed company with the stock exchange(s) where its securities are listed and it has a statutory force. There is a format prescribed by SEBI which is contained in its manuals and every listing agreement has to be in that format. “
25. A reading of the aforesaid clause makes it clear that a company is required to immediately inform the stock exchange(s) of the events which would have a bearing on its performance/operations as well as price sensitive information. Sub-clause (5) of clause 36 requires the issuer company to inform the stock exchange(s) regarding Litigation/dispute with a material impact Price sensitive information when published is likely to materially affect the price of the securities of a company and it is for this reason that clause 36 of the listing agreement mandates that such information should be made public at the earliest.
26. This is also the requirement of clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading in schedule II to the PIT regulations which provides that “price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis”. Disclosure of such information prevents insider trading. It is pertinent to mention that PIT regulations prohibit a person from trading when he is in possession of unpublished price sensitive information. Non-disclosure of price sensitive information is, thus, viewed seriously.
27. As evident from the above observations, Company has not disclosed to the stock exchange (BSE) about the important price sensitive information regarding the arrest of its chairman

and director. Further, Noticee, in its reply dated September 26, 2018, has also not disputed the fact of such non-disclosure of information to BSE.

28. Therefore, there is no hesitation in holding that the Noticee has violated the provisions of clause 36(5) of the Listing Agreement read with Section 21 of SC(R) Act, 1956 and Regulation 2 (ha) of the PIT Regulations, 1992 read with Clause 1.1 and Clause 2.1 of the Code of Corporate Disclosure Practice for Prevention of Insider Trading contained in Schedule II read with Regulation 12(2) of the PIT Regulations, 1992.

Issue No. II: Whether the Noticees are liable for monetary penalty under Section 15HB of the SEBI Act 1992 and under section 23(A)(a) read with 23E of SCRA Act?

29. The violations mentioned above is that the Noticee was under statutory obligation to disclose to the stock exchange (BSE) about the important price sensitive information regarding the arrest of its chairman and director, which would have significant effect on the price of the securities of the company.
30. Further, the aforesaid non-disclosure of the price sensitive information to the stock Exchange by the Noticee, would attract penalty under section 23(A)(a) read with 23E of SCRA Act, wherein penalty is specified for non-disclosure of information to the stock exchange as specified in the listing agreement and for failure to comply with the conditions of the listing agreement.
31. Further, Section 15HB of the SEBI Act reads as *“Penalty for contravention where no separate penalty has been provided”*. Thus, as clear from the body of the section, the penalty under 15HB can be imposed for only those violations for which no separate penalty is prescribed under any other provision of SEBI Act/ rules / regulations. Hence, section 15HB holds an exclusive sanction for contraventions which are not covered under any other SEBI laws.
32. It is observed that the violations in the current proceedings are already being covered under the provisions of 23A (a) and 23E of the SCRA. Therefore, there appears no case to impose penalty under section 15HB of the SEBI Act.
33. As the violation of the aforementioned provisions of law by the Noticee has been established, hence, there is no hesitation to hold that it is a fit case for imposing monetary penalty on the Noticee under the provisions of Section 23(A)(a) read with 23E of SCRA Act, 1956 which reads as follows:

Section 23(A)(a) read with 23E of SCRA Act, 1956
Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made thereunder,—

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty ² [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees] for each such failure;

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be ³ [liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.]

34. Reliance is placed on the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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..."

35. With regard to above, it is noted that disclosure of price sensitive information as per laws under reference serve a purpose and are not mere technical obligations. The purpose is to make investors aware of the information which is likely to materially affect the price of the securities of a company and it is for this reason that relevant provisions require that such information should be made public at the earliest, enabling investors to take informed investment decisions.

36. Given the above it is to be held that it is a fit case for imposition of monetary penalty.

Issue No. III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

37. While determining the quantum of penalty under Section 15HB, 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:-

² Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014

³ Substituted for the words "liable to a penalty not exceeding twenty-five crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

- (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.”

⁴[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

38. It is noted that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees’ default nor has the same alleged in the SCN.
39. There is no records to suggest that the violation of the company is repetitive in nature.
40. It is on records that the company is now under a new management/directors pursuant to the resolution process under IBC
41. Given the above, it is determined an appropriate penalty is liable to be imposed on the Noticees in the matter.

ORDER

42. After taking into consideration the facts and circumstances of the case, in term of Section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, a penalty of Rs. 5,00,000 (Five Lakh only) under section 23(A)(a) read with 23E of SCRA Act, 1956, for afore-mentioned violation, is imposed on the Noticee.
43. The above Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

44. The above Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-DRA-IV). The Format for forwarding details/ confirmations of e-payments

⁴ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

45. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: November 29, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer