

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. SRP/DL/AO- 94/2010]

**UNDER SECTION 15- I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING
PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of
Mr. Ashok Doshi
(PAN: AALPD2969A)

In the matter of
Madhav Marbles and Granites Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigations into the alleged irregularity in the trading/dealings in the shares of Madhav Marbles and Granites Limited (hereinafter referred to as “**MMGL/ Company**”). The shares of MMGL are listed on the Bombay Stock Exchange Ltd. (**BSE**) and the National Stock Exchange of India Ltd. (**NSE**).
2. The investigations, prima facie, revealed that Mr. Ashok Doshi, the Managing Director of the Company, (hereinafter referred to as the ‘**Noticee**’), who was holding 5.52% shares in MMGL , further acquired 45,000 shares of the Company on September 29, 2009 for a total consideration of Rs.11,98,550/-. The relevant details in regard to the shares acquired by the Noticee are given below :

No. and % of shares/voting rights held by Mr. Ashok Doshi prior to acquisition	Date of Acquisition	No. of shares /voting rights acquired	No. and % of shares / voting rights post acquisition	Stock Exchange on which the purchase transaction was executed	Buy value (in Rs.)
4,93,900 5.52%	29.09.2009	20,000	5,13,900 6.02%	NSE	5,34,800
5,13,900 6.02%	29.09.2009	25,000	5,38,900 6.17%	BSE	6,63,750

3. Vide letter dated December 24, 2009 the Noticee informed SEBI that he had made the required disclosures to the Company in the prescribed form under regulation 13(4) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') on September 30, 2009. As regards the disclosures to the stock exchanges, NSE and BSE have stated vide their communication to SEBI dated November 10, 2009 and November 30, 2009 respectively, that the Noticee has not made the required disclosures under PIT Regulations to them regarding the aforesaid acquisition within the prescribed time.
4. Therefore, it has been alleged that the Noticee, as managing director of the Company, has failed to make the required disclosures under regulation 13(4) read with 13(5) of the PIT Regulations to BSE and NSE in regard to acquisition of shares of the Company on September 29, 2009. This alleged violation/contravention of the provisions of the PIT Regulations, if established, makes the Noticee liable for penalty under section 15A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned has been appointed as Adjudicating Officer vide order dated March 4, 2010 under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules**") to inquire into and adjudge under section 15A (b) of the SEBI Act, the alleged violation/contravention of the provisions of the PIT Regulations, by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice No. EAD-1/SRP/DSL/200078/2010 dated March 29, 2010 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry be not held against him and penalty be not imposed under sections 15A (b) of the SEBI Act for the alleged violation of the provisions of regulation 13(4) read with 13(5) of the PIT Regulations.
7. Thereafter, in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of hearing on June 28, 2010 vide notice dated June 10, 2010. Mr. O P Jain, Authorized Representative of the Noticee, attended the hearing on behalf of

the Noticee and made his written and oral submissions. Written submissions were made vide letter dated June 28, 2010. He also provided the documents/enclosures referred therein, including a copy of earlier submissions of the Noticee to SEBI dated December 24, 2009. Oral submissions made by him were duly recorded.

8. The submissions made by the Noticee are mainly to the following effect :
 - That the Noticee is the Managing Director of the Company and he had acquired 45,000 shares of the company on September 29, 2009 from his spouse Mrs. Aruna Doshi and the required disclosures were made by him to the Company on September 30, 2009; and .
 - That the Noticee had sent the aforesaid disclosure to the concerned stock exchanges on October 1, 2009.
9. The Noticee sought time till July 5, 2010 to submit documentary evidence in support of his claim that the disclosures were made to the stock exchanges within the specified time.
10. Subsequently, vide letter dated June 30, 2010, the Noticee submitted copy of courier receipts (C.N. No. 20939 and 20940) of Kamdhenu Air Service, Udaipur, by which the letters purported to contain the required disclosures were dispatched to the stock exchanges. The Noticee also forwarded two covering letters (in original) each dated October 01, 2009 and addressed to BSE and NSE, vide which the said disclosures in Form "D" were stated to have been submitted to the Stock Exchanges.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully examined the written and oral submissions made by the Noticee and the documents/material available on record. The issues that arise for consideration in the present case are whether the Noticee has failed to comply with the provisions of regulation 13 (4) read with 13(5) of the PIT Regulations and whether non-compliance, if any, attract penalty under section 15A (b) of the SEBI Act?
12. Before moving forward, it would be appropriate to refer to the relevant provisions of the PIT Regulations :

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

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs.5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

13. It is observed from the documents available on record that Mr. Ashok Doshi was the Managing Director (MD) of the Company and he was holding 5.52% shares/voting rights in MMGL. On September 29, 2009, he acquired a further 45,000 shares/voting rights of the Company for a total consideration of Rs.11, 98,550/-. Since, the aforesaid purchases made by the Noticee as MD of the Company were far more in quantity than the threshold of 25,000 shares and in value were of more than Rs.5 lakh, he was required to make the necessary disclosures to the Company and to NSE and BSE in terms of regulation 13(4) read with regulation 13(5) of the PIT Regulations. The Noticee has submitted that the disclosure under regulation 13(4) of the PIT Regulations was made to the Company in the prescribed form on September 30, 2009 and the Company had received it on the same day. Regarding the disclosure by the Noticee to the stock exchanges under regulation 13(4) of the PIT Regulations, the Noticee has submitted that the required disclosures were sent to the stock exchanges by courier on October 1, 2009. However, the stock exchanges viz., NSE and BSE have stated that they have not received any disclosure under PIT Regulations with regard to the purchase of shares on September 29, 2009 by Mr. Ashok Doshi. NSE vide email to SEBI dated November 10, 2009, had stated that *"Exchange has not received any disclosure under the SEBI Insider Trading Regulations from Mr. Ashok Doshi/ Madhav marbles and Granites Limited regarding the purchase of 20,000 shares of the Company by Mr. Ashok Doshi on September 29, 2009"*. Similarly, BSE vide email to SEBI dated November 30, 2009 had stated that *"No disclosures were found in the Exchange records w.r.t. purchase of 25,000 shares by Ashok Doshi on 29.09.2009 in terms of the SEBI (Prohibition of Insider Trading) Regulations,1992"*.

14. The Noticee has contended that the disclosures under regulation 13(4) were made to the Company and to the Stock Exchanges in the prescribed form within the prescribed time.

15. As regards the disclosures to the company is concerned it is observed that the Company has admitted receipt of the disclosure in prescribed form. It has confirmed that the necessary disclosures, as stipulated under regulation 13(4) of the PIT Regulations, from Mr. Ashok Doshi and his spouse Mrs. Aruna Doshi, were received by the Company on September 30, 2009.
16. However, with regard to the required disclosures by the Noticee to the stock exchanges, the exchanges have denied having received any such disclosure from the Noticee. The Noticee has made submissions before me that the required disclosures were made by him to the stock exchanges and the details in prescribed format were sent to the exchanges on October 01, 2009. For the purpose of evidence the Noticee has furnished copy of courier receipts of "Kamdhenu Air Service" dated October 1, 2009 and also two forwarding letters each dated October 01, 2009 addressed respectively to BSE and NSE vide which the disclosures in the specified format is said to have been forwarded to the stock exchanges. I have observed that these forwarding letters made available to me are the original letters and not the copy or duplicate of the letters said to have been sent to BSE/NSE. Further, neither the forwarding letters nor the courier receipts, submitted to me as evidence, bear the stamp or acknowledgement of BSE and NSE to confirm that disclosures stated to have been made by the Noticee, have been received by the stock exchanges. I have also examined the letter dated December 24, 2009 of the Noticee, vide which it had replied to the query dated December 16, 2009 of SEBI and made submissions to the effect that it had made the required disclosures to the Company. However, in regard to disclosure to the stock exchanges the Noticee had stated the following –

"I had made disclosure to the company in form 'D' for further filing to the stock exchanges on due time."

This statement, prima facie, indicates that the Noticee has not made the required disclosures to the stock exchanges and was relying on the Company in this regard. As has been specified under regulation 13(4) of the PIT Regulations the Noticee was under obligation to make disclosures not only to the Company but also to the Stock Exchanges. The abovementioned material and details on record suggest failure on the part of the Noticee in complying with the provisions of the PIT Regulations.

17. Even if the contention of the Noticee is accepted that he had made the disclosures and sent the required details to stock exchanges by courier, the fact remains that BSE and

NSE, both have denied receipt of the same. The Noticee has not provided any evidence that suggest receipt of the disclosure details either at BSE or NSE. In such circumstances it would be pertinent to refer to the observations of the Hon'ble High Court at Kolkata in Writ Petition 331/2001– Order dated March 27, 2001, in the matter of Arun Kumar Bajoria v/s SEBI.

18. The Hon'ble High Court while examining the issue of compliance with regard to regulation 7 (the provision deals with disclosure by an acquirer to the target company) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, made the following observations:-

“..... Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In law, anyone sending written information through the agency of someone else, appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect of a letter sent by registered post. In all other circumstances, the post office acts as a mere agent of the sender of the letter. The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressee. In the event, it is contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said regulation cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of transmission inasmuch as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent.”

19. In my opinion the principles laid down by the Hon'ble High Court of Kolkata in the aforesaid matter of Arun Kumar Bajoria v/s SEBI are applicable in the present case of disclosure under regulation 13 of PIT Regulations. It follows from the above, that it is the

responsibility of the sender to establish and if necessary, through the agent, that the letter has been received by the addressee. Thus, the burden of proving that the communication sent was received by the exchanges is upon the Noticee and he has failed to discharge it. Therefore, the above details clearly indicate that the Noticee has failed to make the required disclosure under regulation 13(4) of PIT Regulations to the stock exchanges, viz., NSE and BSE, within the prescribed time.

20. In light of all the above, I am of the opinion that the Noticee has violated/contravened the provisions of regulation 13(4) read with regulation 13(5) of the PIT Regulations, which makes him liable for monetary penalty under Section 15A (b) of the SEBI Act, which states as under -

15A. Penalty for failure to furnish information, return, etc. - *If any person, who is required under this Act or any rules or regulations made there under, -
b) to file any return or furnish any information, books or other documents within the time specified 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.*

21. While determining the quantum of penalty under section 15 A (b) of the SEBI Act , I have considered the factors stipulated under 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 result of the default;*
- c) the repetitive nature of the default.*

22. In this regard, I would like to mention that from the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage which may have accrued to the Noticee or the loss that the investors would have incurred as a result of the aforesaid default by the Noticee. However, I am of the opinion that the change in the shareholding and timely disclosure thereof, is of prime importance from the point of view of shareholders/investors as that would have prompted them in making decision on investment or otherwise. It would also be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding. On account of failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. Further, there is nothing on record to show that the Noticee has defaulted repetitively.

23. Therefore, in consideration of all the facts and circumstances of the case as well as the submissions made by the Noticee, I am of the view that a penalty of Rs.25, 000/- on the Noticee shall be commensurate with the violations committed by him.

ORDER

24. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose penalty of Rs.25, 000/- (Rupees twenty five thousand only) on the Noticee in terms of the provisions of Section 15 A (b) of the Act for the violation of the provisions of regulation 13(4) read with 13(5) of the PIT Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the Noticee.
25. 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 - The Chief General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
26. 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 12, 2010

Place : Mumbai

Satya Ranjan Prasad

Adjudicating Officer