

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO-26/2010]

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

In respect of

KASI RAM SOFTTECH (INDIA) LTD.

(FORMERLY KNOWN AS “RBG INDUSTRIES INDIA LTD.”)

(PAN. AACCR3707Q)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the trading in the scrip of M/s Sai Info Ltd. (hereinafter referred to as ‘**SAI/ Company**’) during the period from March 15, 2002 to September 03, 2002.
2. The findings of the investigation led to the allegation that Kasi Ram Softtech (India) Ltd. (formerly known as “RBG Industries India Ltd.) (hereinafter referred to as “**Kasi Ram/Noticee**”) had failed to make disclosures under regulation 13(3) read with regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter

referred to as “**PIT Regulations**”) and consequently, liable for monetary penalty under section 15A (b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated May 19, 2009 under section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Rules**’) to inquire into and adjudge under section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD/PB/SS/184804/2009 dated November 24, 2009 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act for failure to comply with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.
5. The aforesaid SCN was sent through Northern Regional Office, SEBI. The said notice was pasted at “15, Mandakini, Greater Kailash, New Delhi – 110 019” as per the affixture report received from Northern Regional Office, SEBI. However, the Noticee did not reply to the aforesaid SCN.
6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on March 19, 2010 vide notice dated March 03, 2010. Ms. Deepika Vijay, Authorized Representative of the Noticee

(hereinafter referred to as “AR”) appeared on behalf of the Noticee and mentioned during the course of the hearing that the Noticee wanted to make written submissions in the matter. The request of the Noticee was acceded to. Pursuant to the aforesaid hearing, the Noticee vide its letter dated March 24, 2010 made written submissions.

CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had violated regulations 13(3) read with 13(5) of PIT Regulations?
 - b. Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
8. Before moving forward, it is pertinent to refer to the provisions of regulations 13 (3) read with 13(5) of the PIT Regulations , which reads as under:-

Continual disclosure.

13(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company [in Form C] the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13(5) The disclosures mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:

- i. the receipts of intimation of allotment of shares, or*
- ii. the acquisition or sale of shares or voting rights, as the case may be.*

9. In terms of regulation 13(3) read with 13(5) of PIT Regulations, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights under 2 circumstances as detailed below:

- a) If such change results in shareholding falling below 5%:
- b) If there has been change in such holdings from the last disclosure made under regulation 13(1) or under regulation 13(3) and such change exceeds 2% of total shareholding or voting rights in the company.

10. The disclosure is required to be made in Form C. The following details are contained in Form C :

- a) Name, PAN and address of the shareholders
- b) Shareholding prior to acquisition/sale
- c) No. and % of shares /voting rights acquired/sold
- d) Receipt of allotment advice/acquisition of shares/sale of shares
- e) Date of intimation to company
- f) Mode of acquisition (market purchase/public/rights/preferential offer, etc.)
- g) No. and % of shares /voting rights post acquisition/sale
- h) Trading member through whom the trade was executed with SEBI registration No. of the trading member
- i) Exchange on which the trade was executed
- j) Buy quantity
- k) Buy value
- l) Sell Quantity
- m) Sell value

11. As regards the allegation of violation of regulations 13(3) and 13(5) of PIT Regulations, I find that the same has been made on the premise that the Noticee was holding 21.30% shares in Sai and had acquired

further 4.61% in off market transaction on January 21, 2004 and March 29, 2004. The details of shares acquired by the Noticee are as under:

Date	Name of seller	Name of Purchaser	Quantity	Percentage
January 21, 2004	Swell International Pvt. Ltd.	RBG Industries India Ltd.	3,70,731	2.87%
March 29, 2004	Ulahyaja Internatinal Pvt. Ltd.	RBG Industries India Ltd.	2,25,000	1.74%
		Total	5,95,731	4.61%

12. With regard to non disclosure of purchase of 2,25,000 shares constituting 1.74% shares of SAI on March 29, 2004 by the Noticee, I have noted the submission of the Noticee that the requirement to make the disclosure under regulation 13(3) of PIT Regulations is only when the change in shareholding is 2% or more and this transaction did not attract the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations. Upon perusal of the provisions of regulation 13 (3) of PIT Regulations, I find that the disclosure is mandatory if the change exceeds 2% of total shareholding or voting rights in the company. In the present case, purchase of 2,25,000 shares constituting 1.74% shares of SAI on March 29, 2004 by the Noticee have not exceeded the prescribed limit under regulation 13(3) of PIT Regulations. Thus, I find merit in the submissions of the Noticee.

13. With regard to non disclosure of purchase of 3,70,731 shares constituting 2.87% shares of SAI on January 21, 2004, I find that the Noticee has admitted the failure to disclose the transaction but defended the same by stating, inter-alia, that:

- *The scrip of Sai Info had been suspended since February 2003. The transactions were off-market and therefore could not have any impact on the market or be prejudicial to the public interest.*
- *The Company is small having not much business activities in software trading and investments.*
- *The financial position of the company has not been good.*

14. Upon perusal of the aforesaid submissions made by the Noticee, I am of the view that the reasons cited by the Noticee, did not, in any way, absolve the Noticee of its failure in complying with the statutory requirements.

15. I have also noted the submission of Noticee that it does not have anybody to inform regarding the requisite provision for disclosure under PIT Regulations. However, I am not inclined to accept the same.

16. '*Ignorantia juris non excusat*', that is to say, ignorance of law is not an excuse. Ignorance of law of the state does not exclude any person from the penalty for the breach of it, because every person is bound to know the law, and is presumed so to do. If any individual should infringe the law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent of him to aver in a Court of Justice that he was ignorant of the law of the land, and Court of Justice is not at liberty to receive such a plea.

17. A mistake of law is never accepted as a defence in actions, whether civil or criminal. The basis of this rule is said to be another maxim in the law of evidence, namely, "every man is presumed to know the law". Austin, the famous jurist explained two reasons of the rule, i.e., 'Ignorance of law is no excuse', thus,

- (i) If ignorance of law were admitted as a ground of exemption, the Courts will be involved in questions, which it were scarcely possible to solve, and which would render the administration of justice next to impracticable.
- (ii) If ignorance of law were admitted as a ground of exemption, ignorance of law would always be alleged by the party by way of defence, and the Court, in every case, would be bound to decide the point, whether the party was really ignorant of the law. And for the purpose of determining the cause of his ignorance, it would be incumbent upon the Court to unravel it's precious history and to search his whole life for the elements of just and correct solution.

18. The object of the PIT Regulations mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. In terms of regulation 13(3) of PIT Regulations disclosure is required to be made to the company. "Disclose to the company" is the clue. "Disclose" according to Webster's Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus, the requirement is that complete information should reach the person for whom it is meant. The fact that complete information should be disclosed to the company is also evident from the provisions of regulation 13(6) of PIT

Regulations which casts an obligation on the company to disclose to the stock exchanges within 5 days of receipt of information from the person. Failure to disclose full details on the specific aspects provided in the regulation cannot be considered as trivial or of no consequence to be overlooked.

19. In view of the above, I hold that the Noticee had not complied with the disclosure requirements of regulations 13(3) and 13(5) of PIT Regulations. Therefore, the violation of the said provisions stands established.

20. By not making the disclosure on time, the Noticee failed to comply with its statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”*

21. The next issue for consideration is as to whether failure on the part of the Noticee to comply with the provisions of SEBI (PIT) attracts monetary penalty under section 15A(b) of SEBI Act, and if so, what would be the monetary penalty that can be imposed on the Noticee.

22. The provisions of section 15 A (b) of SEBI Act is reproduced here under :

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made there under,-

- (a)
- (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;*
- (c)

23. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC) held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow*".

24. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act.

25. While determining the quantum of monetary penalty under section 15A (b), I have considered the factors stipulated in section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) *the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) *the repetitive nature of the default."*

26. From the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. By not complying with the regulatory obligation

of making the disclosure when the change in the shareholding of the Noticee exceeded 2%, it had concealed the vital information from the investors. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding of the Noticee. The Noticee could not pre-judge the reaction of the investors. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time.

ORDER

27. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of Rs. 1,00,000/- (Rupees one lakh only) on the Noticee which will be commensurate with the violation committed by it.
28. 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 Mr. Ashish Kumar, Deputy General Manager, Investigations Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

29. 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: **April 30, 2010**
Place: **MUMBAI**

PARAG BASU
ADJUDICATING OFFICER