BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2018-19/1285-1291]

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:

1. **Mr. Ratan Chand Lodha**
2. **Ms. Shobha Lodha**
3. **RCL Enterprises Ltd.**
4. **Mr. Nitesh R. Lodha**
5. **Mr. Shreyans Lodha**
6. **Mr. Satish Jain**
7. **Ms. Nitha Lodha**

In the matter of
RCL Foods Limited

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), based on internal alert, conducted an examination in the scrip of RCL Foods Limited (hereinafter referred to as 'RCL'), a company listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'), during the period June 2014. During the examination, it was observed that, shareholding of the two promoters namely, Mr. Ratan Chand Lodha and Ms. Shobha Lodha had decreased on account of sale of shares by them during the quarter ending March-2014 to June-2014 as described in the following table:-

Sr. No.	Name of Shareholder	March-2014		June-2014	
		No. of shares held	% to total shares	No. of shares held	% to total shares
1	Mr. Ratan Chand Lodha	231818	5.10	158418	3.49
2	Ms. Shobha Lodha	148485	3.27	115815	2.55

2. BSE, vide email dated March 26, 2015 and RCL, vide its email dated March 30, 2015 had informed that no disclosures were made by the aforesaid promoters to them with regard

to aforesaid change in their shareholding. It was thus, observed that the aforementioned promoters had failed to make disclosures as required under regulation 13(4A) read with regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'). These provisions of PIT Regulations read as under:

PIT Regulations, 1992

Continual disclosure.

'13 (4A) *Any person who is a promoter or part of promoter group 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 of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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), (4) and (4A) 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.'*

3. It was also observed that promoter group shareholding in the shares of RCL had changed from 26.70 % (March-2014) to 24.39% (June-2014) i.e. by 2.31%. During examination, BSE, vide its email dated April 16, 2015 and RCL, vide its email dated July 27, 2017 had informed SEBI that no disclosures were made by the promoters with regard to aforesaid change in shareholdings.

4. Thus, it was observed that the promoters namely 1) Mr. Ratan Chand Lodha, 2) Ms. Shobha Lodha, 3) RCL Enterprises Pvt. Ltd., 4) Mr. Nitesh R Lodha, 5) Mr. Shreyans Lodha, 6) Mr. Satish Jain and 7) Ms. Nitha Lodha (hereinafter referred together as 'the Noticees' and individually as Noticee No. 1-7 respectively) had failed to make disclosures as required under regulation 29(2) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 (hereinafter referred to as 'SAST Regulations'). The said provisions of SAST Regulations read as follows:

SAST Regulations, 2011

'Disclosure of acquisition and disposal.

29. (2) *Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the target company, in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

(a) *every stock exchange where the shares of the target company are listed; and*

(b) *the target company at its registered office.'*

5. In view of the above, SEBI felt that there are sufficient grounds to adjudicate upon the aforesaid allegation by the Noticees and on March 01, 2016 appointed Mr. Suresh Gupta, Chief General Manager, as Adjudicating Officer (AO) to inquire and adjudge under section 15A (b) of the SEBI Act for the alleged violations by the Noticees. The AO sought certain clarification and evidence from the concerned department i.e., the name of persons acting in concert (PACs) with evidence that they are PACs. The concerned department of SEBI clarified that, the names as stated in quarterly shareholding pattern for March-2014 and June-2014, depicts the names of persons belonging to the promoter category and promoter group as per regulation 2(q)(2)(iv) of SAST Regulations. Hence, all the aforesaid 7 promoters were under obligation to make disclosures under regulation 29(2) read with regulation 29(3) of the SAST Regulations.

6. Thereafter, vide communication order dated April 02, 2018, this case has been transferred to me with advice that except for the change of the Adjudicating Officer the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers were appointed) '*shall remain unchanged and shall be in full force and effect'*. It has also been advised that I should proceed in accordance with the terms of reference made in the original orders. Thereafter, the record of these proceedings were provided on May 25, 2018.

7. After receipt of records as aforesaid, the notice to show cause no. EAD-2/SS/VS/18371/1-7/2018 dated June 28, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') read with section 15I of the SEBI Act and the terms of reference advised vide communication dated April 02, 2018. By the SCN the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act which reads as under:

SEBI Act

Penalties and Adjudication

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,—*

(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 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*

8. The SCN was sent at the last known address of the Noticees through Speed Post Acknowledgment Due, which was, however, returned undelivered. Therefore, in terms of Rule 7(c) of Adjudication Rules, the SCN was affixed at the last known address of the Noticees. In the said SCN, the Noticees were asked to reply within a period of 14 days. However, no reply was received from the Noticees. Further, in the interest of natural justice and in terms of rule 4(3) of the Adjudication Rules, the Noticees were granted an opportunity of personal hearing on August 20, 20018 vide notice dated August 03, 2018. The notice of hearing was duly served upon the Noticees on August 09, 2018 by way of affixture. However, till date, no reply / communication has been received from the Noticees. Vide the said SCN/notice of hearing, it was clearly indicated that in case of failure to submit reply or to appear for the hearing, the case would be proceeded with *ex-parte* on the basis of the material available on record.

9. It is noted that the Noticees have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them. In the facts and circumstances of this case, I am of the view that the Noticees has nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record. I have carefully considered the allegations and charges levelled against the Noticees and relevant material relied upon in this case. While deciding the case, I cannot lose sight of settled position of law that the charge should be established with valid reasons and in accordance with law. I, therefore, deem it necessary to examine each of the two charges in accordance with law.

10. The first charge is that the Noticees 1 and 2 failed to make disclosures under regulation 13(4A) read with regulation 13(5) of the PIT Regulations with regard to reduction in their respective shareholding as disclosed in shareholding pattern of RCL during the quarter ended March 2014 and June 2014. It is established in this case that Noticee No.1 sold his shares between June 12, 2014 to June 30, 2014 and his sale transaction on June 12, 2014 triggered the threshold of 1% shareholding under Regulation 13(4A). Similarly, Notice No. 2 had sold his shares between June 12, 2014 to June 27, 2014 and on June 12, 2014, he sold 31800 shares of RCL. Thus, their transactions on June 12, 2014 triggered their respective obligation to make requisite disclosures in specified Form D under regulation 13(4A) within two working days from June 12, 2104 as stipulated under regulation 13(5) of the PIT Regulations. The BSE as well as RCL have confirmed that they had not received any disclosures from the Noticees no. 1 and 2 about their sale transactions. There is no material even to indicate any subsequent disclosures about these transactions in reasonable time.

11. In absence of any response from the Noticees to the SCN, it is presumed that the Noticee No.1 and 2 have admitted this charge levelled against them as held by Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) that, *"… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*. Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has, *inter alia*, observed that: *"… appellants have neither filed reply to show cause notices*

issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..." In this case, Noticee No.1 and Noticee No.2 have failed to give any explanation to the allegation in this regard and thus, it is admitted position that they have failed to make disclosures under Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations.

12. With regard to the second charge, in view of the issue of ambiguity raised by erstwhile AO, it is necessary to see the allegations from this aspect as well. It is settled law that the allegation need to be clear, unambiguous and should be levelled on reasonable basis. In this case, it is noted that the charge has been leveled on the basis of the shareholding pattern of the RCL for the quarter ended during March-2014 and June- 2014 wherefrom the following change in shareholdings of the Noticees have been noted:

Sr. No.	Name of Shareholder	March-2014		June-2014	
		No. of shares held	% to total shares	No. of shares held	% to total shares
1	Mr. Ratan Chand Lodha	231818	5.10	158418	3.49
2	Ms. Shobha Lodha	148485	3.27	115815	2.55
3	RCL Enterprise	1000	0.02	0	0
4	Mr. Nitesh R. Lodha	165000	3.63	168691	3.71
5	Mr. Shreyans Lodha	84261	1.85	84261	1.85
6	Mr. Satish Jain	461900	10.16	461900	10.16
7	Ms. Nitha Lodha	121530	2.67	119599	2.63
Total		**1213994**	**26.70**	**1108684**	**24.39**

13. It is noted that under regulation 29(2) read with regulation 29(3) and 28(1) of the SAST Regulations, the obligation has been cast to disclose the change in shareholding to the target company and to the stock exchanges within two days of acquisition of shares. The essential ingredients are as following:-

    i. *Such obligation is upon 'any person';*

    ii. *that person, together with person acting in concert with him, holds 5% or more shares or voting rights in the target company; and*

    iii. *the change in shareholding exceeds 2% of total shareholding of voting rights in the target company,*

iv. the person should make disclosures taking into account change in his shareholding together with persons acting in concert with him .

14. From the provisions of regulation 29(2) and 29(3) of SAST Regulations, it is noted that the disclosure obligation therein is transaction specific and relates to the date of transaction and not to periodic disclosure of consolidated shareholding of promoters as provided in regulation 30 of SAST Regulations. In this case, the allegation is vague to the extent that date of transaction which triggered obligation is not alleged at all. It is also ambiguous as to the person/promoter whose transaction triggered this disclosure obligation. It is also not on reasonable basis as to how all promoters should make disclosures about transaction of one or few promoters. In similar situation, while deciding the issue of disclosure obligations of acquirer and PACs under regulation 7(1A) of the erstwhile 1997 SAST Regulations, The Hon'ble SAT in the matter of *O.P. Gulati v. SEBI (Appeal No. 185 of 2011 decided on January 11, 2012*) has held as following :

"…The next question that arises is whether it casts an obligation on her to make a disclosure under regulation 7(1A) of the takeover code. Does the said regulation require each and every acquirer within the meaning of the takeover code to make a declaration to the stock exchanges is the moot question. We are of the view that it is not so. The said regulation casts an obligation to disclose purchase or sale of the share capital of the target company to the target company and to the stock exchanges within two days of such purchase or sale if: 1) person is an acquirer; 2) that person has acquired shares or voting rights; 3) such acquisition is under sub-regulation (1) to regulation 11; and 4) purchase or sale aggregates two per cent or more of the share capital of the target company. To attract the provisions of regulation 7(1A), it is necessary that all the four conditions stipulated above are satisfied. … The purpose of declaration to the target company and to the stock exchanges where shares of the target company are listed is well served by the disclosure to be made by the acquirer who acquires the shares of the target company. A person who may fall within the definition of acquirer under the takeover code but has not acquired the shares and is not a person acting in concert with the person acquiring the shares is not obliged to make disclosure under regulation 7(1A) of the takeover code. In a given case, suppose there are 20 persons in a target company who may fall within the definition of 'acquirer' under the takeover code and say only two of them have purchased or sold shares aggregating two per cent or more of the share capital of the target company and these two persons are not acting in concert with any of the other eighteen persons. If the argument of learned counsel for the respondent Board is accepted then all the twenty persons who fall within the definition of 'acquirer' are required to make disclosure to the company as well as to the concerned stock exchanges. Such

additional disclosure by eighteen persons who have neither purchased nor sold shares, nor are persons acting in concert with the two acquirers, serves no purpose."

15. In my view the obligation under regulation 29(2) is cast upon the person whose shareholding, along with shareholding of PACs with him, changes beyond 2% prescribed threshold. From the holding statement of the Noticees as provided on record, it is noted that during the quarters ended March 2014 and June 2014, the individual as well collective shareholding of Noticee changed on different dates as described in the following table:-

Date	Noticee 1	Noticee 2	Noticee 3	Noticee 4	Noticee 5	Noticee 6	Noticee 7	Total
01/04/14	5.1	3.27	0.02	3.63	1.85	10.16	2.67	26.70
28/05/14	5.1	3.27	0.02	3.67	1.85	10.16	2.67	26.74
10/06/14	5.1	3.27	0.02	3.95	1.85	10.16	2.67	27.02
11/06/14	5.1	3.27	0.02	3.71	1.85	10.16	2.67	26.78
12/06/14	3.73	2.57	0.02	3.71	1.85	10.16	2.67	24.71
16/06/14	3.62	2.57	0.02	3.71	1.85	10.16	2.67	24.60
18/06/14	3.59	2.57	0.02	3.71	1.85	10.16	2.67	24.57
20/06/14	3.59	2.57	0.02	3.71	1.85	10.16	2.64	24.54
23/06/14	3.59	2.57	0	3.71	1.85	10.16	2.64	24.52
27/06/14	3.59	2.55	0	3.71	1.85	10.16	2.63	24.49
30/06/14	3.48	2.55	0	3.71	1.85	10.16	2.63	24.38

16. It is admitted position that it is only the sale transaction of Noticees no. 1 and 2 (i.e. sale of 1.37% and 0.7%, respectively) on June 12, 2014, the change in their combined shareholding was more than 2% and accordingly change in entire promoters' shareholding as on this date, was also more than 2%. Then in view of the allegations in this respect, the question would arise whether all the promoters should make disclosures under regulation 29(2) of SAST Regulations as alleged with regard to individual sale transactions dated June 12, 2014 of Noticees No.1 and No.2. It may relevant to note that the definition of the term *"persons acting in concert"* in regulation 2 (q)(2)(iv) is acquisition specific i.e. is with regard to specific acquisitions of shares with a commonality of object and community of interest of acquiring shares/voting rights. In this case, the Noticee No.4 had acquired as well sold and the others had sold their shareholding as discussed in hereinabove and his transaction did not trigger the disclosure obligation. Further, Noticees No.5 and 6 had neither acquired nor sold any shares in the RCL on any dates during these period under reference. Thus, the commonalty of objective to acquire additional shares is apparently missing so as to

term them all as "*persons acting in concert"* with each other. The obligation under regulation 29(2) of SAST Regulations is on "a person" who acquires or sells shares whereby there is 2% change in shareholding in his shareholding taken together with shareholdings of PACs with him. This regulation does not cast specific obligation on all PACs of the person whose shareholding changes. There is no material or basis to even hold Noticees no.1 and 2 to be PACs with each other for their individual sale transaction dated June 12, 2014. Thus, the obligation under this regulation would be on the promoter who is transacting in the shares on the relevant date and not on all deemed PACs as held by Hon'ble SAT in the aforementioned *O.P. Gulati case* and in the matter of *Mr. Gopalakrishnan Raman and Ors Vs. SEBI* decided on November 20, 2015 wherein it held that requiring every promoter to make such disclosures would lead to absurd consequences and disclosure by each promoter is not required under the language and spirit of relevant regulation. In this case, it is unclear as to why all the Noticees should make disclosures about individual sale transactions of Noticees No.1 and 2 as alleged. In the facts and circumstances of this case, this charge does not sustain for these reasons.

17. In view of the above, I hold that the breach by the Noticees no. 1 and 2 of the obligations under regulation 13(4A) read with regulation 13(5) of PIT Regulations as found hereinabove is established in this case.

18. For the purpose of adjudication under section 15A (b) read with section 15J of the SEBI Act, I note that admittedly, the Noticees had failed to make requisite disclosures. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. However, timely disclosures to the target Company/Stock Exchanges as required under the PIT Regulations, are of significant importance from the point of view of the investors and regulators. The complete failure as found in this case, had clearly defeated the purposes of regulations.

19. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose the monetary penalty on Noticee No. 1 and 2 as per following table under Section 15A(b) of the SEBI Act, 1992. In my view, the said penalty is commensurate with the violation committed by these Noticees in this case.

Name of Noticee	Amount of Penalty / Provisions of Law violated
Mr. Ratan Chand Lodha	**₹ 1,00,000** /-(Rupees One Lakh only)
Ms. Shobha Lodha	**₹ 1,00,000**/-(Rupees One Lakh only)
Total	**₹ 2,00,000**/- (Rupees Two Lakh only)

20. The Noticees no. 1 and 2 each shall individually remit / pay the ₹ 1,00,000/- each as the 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 as follows:

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

21. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052" and also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the 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)	

22. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: September 12, 2018
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer