

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. AO/EAD/SG-SKS/119/2018]**

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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:**

**Smt. Kokila Dhirubhai Ambani  
Sea Wind Building,  
39, Cuffe Parade,  
Mumbai – 400005.**

**In the matter of Reliance Capital Ltd. Reliance Communications Ltd. and  
Reliance Power Limited**

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**BACKGROUND**

1. A department of Securities and Exchange Board of India (i.e. IMD-DOF) had carried out inspection of the books of accounts and other records of Reliance Capital Asset Management Ltd (hereinafter referred to as 'RCAM') pertaining to its operations as a portfolio manager. During the said inspection, it was observed that certain shares of Reliance Capital Limited, Reliance Communications Limited and Reliance Power Limited were lying in the client account of Smt. Kokila Dhirubhai Ambani (hereinafter referred to as 'Noticee').
2. On a reference by IMD-DOF to another department of Securities and Exchange Board of India (hereinafter referred to as 'CFD'), it was observed by CFD that the number of shares lying in the said account of the Noticee were different from the shareholding disclosed as 'promoter' by Reliance Capital Limited, Reliance Communications Limited and Reliance Power Limited on the websites of the exchanges viz. BSE/NSE. The details of the same are as under:

<b>Company</b>	<b>As per NSE website</b>	<b>Through RCAM (Portfolio Manager A/c)</b>	<b>Lowest Market price/share from 2008 to 2014 (BSE)</b>	<b>Value of shareholding (In Rs.)</b>
Reliance Capital Ltd.	545,126	17,00,000	315.30	53,60,10,000
Reliance Communications Ltd.	4,665,227	10,00,000	46.60	4,66,00,000
Reliance Power Ltd.	916,306	1,60,000	124.25	1,98,80,000

3. Based on the above information, it was observed by CFD that the number of shares held by the Noticee through her portfolio account was more than 25000 and the market value of those shares was more than Rs. 5 lakh. Further, the said shareholding was not disclosed to the respective companies and stock exchanges as prescribed 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') and the period of non-compliance of PIT Regulations by the Noticee as on January 31, 2014 was as under:

<b>Transaction Date</b>	<b>Security</b>	<b>Quantity</b>	<b>Cumulative Quantity</b>	<b>Report Period</b>	<b>Client Report sent on</b>	<b>Due date of compliance</b>	<b>Period of non-compliance (Days)</b>
12.02.2008	Reliance Capital Ltd.	657000	657000	2007-08	30.06.2008	02.07.2008	2009
12.02.2008		343000	1000000	2007-08	30.06.2008	02.07.2008	2009
19.02.2008		75000	1075000	2007-08	30.06.2008	02.07.2008	2009
19.02.2008		225000	1300000	2007-08	30.06.2008	02.07.2008	2009
31.07.2008		50000	1350000	2008-09	16.05.2009	18.05.2009	1693
31.07.2008		50000	1400000	2008-09	16.05.2009	18.05.2009	1693
28.08.2008		230000	1630000	2008-09	16.05.2009	18.05.2009	1693
28.08.2008		70000	1700000	2008-09	16.05.2009	18.05.2009	1693
21.03.2006	Reliance Communication Ltd	150000	150000	2005-06	18.05.2006	20.05.2006	2771
21.03.2006		50000	200000	2005-06	18.05.2006	20.05.2006	2771
21.03.2006		50000	250000	2005-06	18.05.2006	20.05.2006	2771
21.03.2006		200000	450000	2005-06	18.05.2006	20.05.2006	2771
21.03.2006		50000	500000	2005-06	18.05.2006	20.05.2006	2771
09.06.2006		200000	700000	2006-07	21.05.2007	23.05.2007	2408
09.06.2006		300000	1000000	2006-07	21.05.2007	23.05.2007	2408
25.02.2008		375000	375000	2007-08	30.06.2008	02.07.2008	1774
25.02.2008	Reliance Power Ltd	3125000	3500000	2007-08	30.06.2008	02.07.2008	1774
31.03.2008		-2000000	1500000	2007-08	30.06.2008	02.07.2008	1774
31.03.2008		-1400000	100000	2007-08	30.06.2008	02.07.2008	1774
30.05.2008		60000	160000	2008-09	16.05.2009	18.05.2009	1458

4. It was also observed during inspection that the portfolio manager viz. RCAM had provided the client reports periodically to the Noticee stating the holdings of the Noticee with the Portfolio Manager. It was alleged that the Noticee did not inform the company or stock exchanges about the purchase / increase of shares in her account. It was, therefore, alleged that the Noticee being the promoter in all the three companies, viz. Reliance Capital Limited, Reliance Communications Limited and Reliance Power Limited has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

5. Shri. Sura Reddy was appointed as the Adjudicating Officer, vide Order dated April 15, 2014 under section 15-I of SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as 'SEBI Act') for the alleged violation by the Noticee. Pursuant to the transfer of Shri. Sura Reddy, the proceedings were transferred to Shri. Prasad Jagadale. Pursuant to the transfer of Shri. Prasad Jagadale, the proceedings were transferred to the undersigned vide Order dated December 14, 2016 and the proceedings were received on February 09, 2017.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

6. A Show Cause Notice (hereinafter referred to as 'SCN') dated May 09, 2014 was issued by the previous Adjudicating Officer Shri. Sura Reddy to the Noticee under the provisions of Rule 4 of the Adjudication Rules calling upon the Noticee to show cause as to why an inquiry should not be held against her and why penalty should not be imposed on her under the provisions of section 15A (b) of the SEBI Act for the alleged violations. The said SCN dated May 09, 2014, was sent via Speed Post Acknowledgement Due. The proof of delivery of the same is on record.

7. In response to the SCN issued to the Noticee, Advocate Shri. Deepak Sanchety, her Authorized Representative (hereinafter referred to as 'AR'), *inter-alia*, made the following submissions on behalf of the Noticee vide letter dated May 21, 2014:

“ .....

*I would request you to kindly grant me inspection of the documents and records referred to and relied upon by you while issuing the said show cause notice, including reference received for initiating the adjudication proceedings, at your convenient date and time. You are also requested to provide certified copies of all the documents and records referred to and relied upon by SEBI while issuing the said show cause notice, particularly those evidencing alleged “holding” of the shares mentioned in the SCN by Smt Kokila D Ambani.*

*It is also requested that the date from which the provisions of regulation 13 (4A) mentioned in the SCN came into effect may also be intimated.*

*It is only after this inspection and receipt of copies of all documents and records that I will be in position to reply to aforesaid show cause notice for Mrs Kokila D Ambani.*

.....

....”

8. In response to the reply letter dated May 21, 2014, the previous Adjudicating officer acceded to the request of the Noticee and granted an opportunity of inspection of documents and records to the Noticee and the same was communicated to the Noticee vide letter dated June 23, 2014. In response to the letter dated June 23, 2014, the AR made the following submissions on behalf of the Noticee vide letter dated June 27, 2014:

*“.....It is requested that inspection of all the materials / documents / records / information relied upon by SEBI while issuing the said SCN may kindly be granted at the earliest. Following is an inclusive list of material and documents which is needed to be inspected in this matter-*

- 1. Reference received by the Adjudicating Officer (“A0”)/sent to the A0 for initiating the Adjudication Proceedings;*

2. *The proposal made to the Whole Time Member for initiating Adjudication Proceedings in this matter indicating the said violation;*
3. *File notings on initiation of Adjudication Proceedings;*
4. *The reports sent by the portfolio manager to the noticee and proof of receipt of the same by the noticee;*
5. *All documents that provide evidence that the noticee held the alleged shares/voting rights in Reliance Capital Limited, Reliance Communication Ltd. and Reliance Power Limited from the dates given in the SCN;*
6. *Documents indicating whether the noticee had any role in the relevant investment decisions;*
7. *Client agreement obtained by the portfolio manager from noticee;*
8. *Copies of the ballot notices sent by the respective companies in connection with the alleged voting rights/shares acquired;*
9. *Any documentary evidence indicating that any alleged voting rights were exercised by the noticee at any point of time; and*
10. *Copies of any power of attorney or any such other document obtained by the portfolio management service from the noticee.*

.....”

9. CFD granted an opportunity of inspection of documents to AR on July 28, 2014.

The record of inspection reads as under:

*“The original file was made available for inspection and was inspected by the aforesaid person.*

*Further, during inspection, the authorized representative requested for copies of following document(s):*

1. *The entire file containing documents from page no. 1 to 92 as forwarded to the Adjudicating Officer;*
2. *Email dated January 29, 2014 received from the portfolio manager, RCAM (part of the file) along with the attachments.”*

*The above copies of the documents as requested by Authorized representative will be sent to the following address:*

.....

.....”

10. Pursuant to the above, CFD vide letter dated July 30, 2014 provided photocopies of certain documents sought by AR during the course of inspection. The AR vide

e-mail dated August 14, 2014 informed that none of the documents sought vide letters dated May 21, 2014 and June 27, 2014 were provided for inspection. Subsequently, vide letter dated September 05, 2014, the Noticee through her AR submitted her preliminary reply to the SCN dated May 09, 2014. The same reads as under:

“ .....

*C. On behalf of the Noticee, the undersigned had sought inspection of documents and records in the abovementioned matter. The undersigned's letter dated June 27, 2014 contained a list of documents that were required to reply to the allegations made in the SCN. The Noticee has not been given a copy of any of these documents. The Noticee has only been given a copy of the file that was forwarded by SEBI to the Adjudicating Officer.*

*D. It is submitted that the order appointing Adjudicating Officer dated April 15, 2014 of the Whole Time Member (WTM) is erroneous. There is no material on record on the basis of which the WTM could have come to a conclusion that there are enough grounds to enquire into the affairs and adjudicate upon the alleged violations by the Noticee.*

*E. At the outset, it is submitted that regulation 13(4A) is not applicable to the transactions and holding of Discretionary Portfolio Managers.*

*F. The SCN makes allegations regarding non-compliance of a provision that was not even in existence during the period mentioned in the SCN.*

*G. Regulation 13(4A) and subsequent amendment in regulation 13(5) were inserted by SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 with effect from 16th August, 2011. The Board Memorandum of SEBI introducing the aforementioned amendment clearly states that before this amendment, any person who was a promoter or part of promoter group and did not hold more than 5% of the shares of a company was not required to inform any change in his shareholding even when such change was beyond the thresholds specified in PIT Regulations and Takeover Regulations. Exhibit "A" is the copy of the said Board Memorandum of SEBI discussed in the SEBI Board Meeting on July 28, 2011 as available on the SEBI website on the link <[http://www.sebi.gov.in/boardmeetings/13 8/regulationamend.pdf](http://www.sebi.gov.in/boardmeetings/13%20regulationamend.pdf)>.*

*H. Without prejudice to what is stated above at Paragraph E, it is submitted that the Noticee did not hold more than 5% of the shares of any of the companies mentioned in the SCN when the transactions mentioned in the Show Cause Notice were carried out by the Discretionary Portfolio Manager ("DPM").*

*I. The Hon'ble Securities Appellate Tribunal in the case of SPS Share Brokers (P) Ltd. v. SEBI dated August 27, 2013 has held that "It is, therefore, clear that the appellant cannot be held guilty of violating a substantive provision which came into force on 9-9-2002 for an alleged violation which took place on 9-4-2001 and 8-5-2001. No retrospective effect is given to the amended regulation 7. In fact it appears that the passing of the impugned order relying on a provision clearly inserted post the happening of the alleged violation exhibits a sort of pre-conceived inclination on the respondent's part to impose a penalty on the appellant without really considering whether or not such an act of the respondent might be sustained in law...Moreover, as discussed earlier it is evident that the mandatory requirement of disclosing relevant information at every single stage of the acquisition after the 5% benchmark is crossed, viz., ten percent or fourteen percent or fifty four or seventy four percent, was introduced w.e.f. September 9, 2002. The respondent seems to have disregarded this fact while holding the appellant guilty of a provision of law not even in existence when the acquisitions in question took place." Exhibit "B" is the copy of order in the case of SPS Share Brokers (P. ) Ltd. v. SEBI dated August 27, 2013.*

*It is understood that this order has not been challenged by SEBI.*

*J. In the case of Indian Cardboard Industries Ltd. v. Collector Of Central Excise (1992 (58) ELT 508 Cal), the Hon'ble Calcutta High Court has laid down the situations in which the court will interfere with the show cause notice. "On the basis of the decisions cited it appears that the court in exercise of its jurisdiction under Art. 226 of the Constitution will interfere with a show cause notice in the following circumstances:*

- (1) When the show cause notice ex facie or on the basis of admitted facts does not disclose the offence alleged to be committed;*
- (2) When the show cause notice is otherwise without jurisdiction;*
- (3) When the show cause notice suffers from an incurable infirmity;*
- (4) When the show cause notice is contrary to judicial decisions or decisions of the Tribunal;*
- (5) When there is no material justifying the issuance of the show cause notice."*

*K. Therefore, on the face of the proceedings, it is obvious that the initiation of proceedings is without jurisdiction and authority of law. There is no material on record on the basis of which the WTM could have come to the conclusion that there are sufficient grounds to enquire into the affairs and adjudicate upon the alleged violations by the Noticee.*

*L. In light of the above, the Adjudicating Officer may kindly decide on the preliminary issue of jurisdiction. The SCN issued to the Noticee may kindly be dropped/withdrawn as it has been issued without jurisdiction and authority of law.*

*M. The Noticee has only made preliminary submissions before the Hon'ble Adjudicating Officer in this reply. The Noticee reserves the right to file additional submissions along with documentary evidences. The Noticee also reserves the right to seek inspection of additional documents and personal hearing. The Noticee also reserves the right to challenge the SCN on these grounds or any other grounds.*

*You are requested not to pass any order or proceed against the Noticee in any manner without giving a personal hearing.*

*....."*

11. Considering the facts and circumstances of the case and reply of the Noticee to the SCN, I am of the opinion that no prejudice would be caused to the Noticee in the given matter if opportunity of hearing under Rule 4(3) of Adjudication Rules is not provided to her before me and certain issues raised by AR as brought out in earlier paragraphs of this order are not gone into and I deem it appropriate to decide the matter on the basis of facts/material available on record.

### **CONSIDERATION OF ISSUES**

12. After perusal of the material available on record, I have the following issues for consideration, viz.,
- I. Whether the Noticee has violated the provisions of Regulation 13(4A) read with regulation 13(5) of the PIT Regulations?
  - II. If the answer to issue at I is in affirmative, then whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act ?
  - III. If the answer to issue at II is in affirmative, then what quantum of monetary penalty should be imposed on the Noticee?

### **FINDINGS**

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

***Issue I: Whether the Noticee has violated the provisions of Regulation 13(4A) read with regulation 13(5) of the PIT Regulations?***



14. I note that the allegation against the Noticee is that she has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations as brought out in detail at para 2, 3 and 4 above. The provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations read as under:

*"13*

*(1).....*

*.....*

*.....*

*Continual disclosure*

*(3) .....*

*(4) .....*

*<sup>1</sup>[(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 <sup>2</sup>[(3), (4) and (4A)] shall be made within <sup>3</sup>[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."*

15. I note that the Noticee vide her reply dated September 05, 2014 has, *inter alia*, contended that "*Regulation 13(4A) and subsequent amendment in regulation*

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<sup>1</sup> Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

<sup>2</sup> Substituted for the symbols, numbers and word "(3) and (4)" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

<sup>3</sup> Substituted for the number "4" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008.

13(5) were inserted by SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 with effect from 16th August, 2011". The Noticee has also cited the following observation of Hon'ble Securities Appellate Tribunal in the case of SPS Share Brokers (P) Ltd. v. SEBI (Order dated August 27, 2013) in support of her contention:

*".....It is, therefore, clear that the appellant cannot be held guilty of violating a substantive provision which came into force on 9-9-2002 for an alleged violation which took place on 9-4-2001 and 8-5-2001. No retrospective effect is given to the amended regulation 7. In fact it appears that the passing of the impugned order relying on a provision clearly inserted post the happening of the alleged violation exhibits a sort of pre-conceived inclination on the respondent's part to impose a penalty on the appellant without really considering whether or not such an act of the respondent might be sustained in law. ....".*

16. As brought out at para 3 of this order, I note that the alleged transactions pertain to the years 2006 and 2008 and the alleged due dates for compliance with the disclosure requirements for the said transactions pertain to the years 2006, 2007, 2008 and 2009.

17. I note that Regulation 13(4A) of the PIT Regulations and consequential amendment to Regulation 13(5) of the PIT Regulations were notified vide SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 and have come into effect from August 16, 2011. Thus, the amended regulations did not exist on the date of alleged transactions or the alleged due dates for compliance. I also do not find any provision in the said amendment for the retrospective effect of the said amended provisions. Since the dates of transactions / due dates for compliances alleged in the matter precede the coming into force of the regulatory provisions alleged to have been violated by more than two years, the said regulatory provisions are not applicable in the facts and circumstances of the instant matter.

18. From the findings recorded at para 15 to 17 above, I conclude that the allegation that the Noticee has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations is not tenable.

***Issue II: If the answer to issue at I is in affirmative, then whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act?***

19. From the conclusions arrived at para 18 above, I further conclude that the Noticee is not liable for monetary penalty under Section 15A (b) of the SEBI Act.

***Issue III. If the answer to issue at II is in affirmative, then what quantum of monetary penalty should be imposed on the Noticee?***

20. Since the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

## **ORDER**

21. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against Smt. Kokila Dhirubhai Ambani vide SCN dated May 09, 2014.

22. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy each of this order is being sent to Noticee at her address at Sea Wind Building, 39, Cuffe Parade, Mumbai – 400005 and also to the Securities and Exchange Board of India, Mumbai.

**Place: Mumbai**  
**Date: March 23, 2018**

**SURESH GUPTA**  
**ADJUDICATING OFFICER**