

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 192/2009]

**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

AKSHAY PRAVIN SANGHAVI

(PAN. ALQPS2784Q)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of Innovision eCommerce Limited (hereinafter referred to as “**ICL**”) whose shares witnessed a sharp rise from Re.0.39 on November 10, 2003 to Re.0.76 on January 28, 2004 (hereinafter referred to as “**investigation period**”) reaching a high of Rs.1.10 on January 20, 2004. The face value of the shares of ICL was reduced from Rs.10 per share to Re.1 per share with effect from September 2002.
2. It was alleged that Akshay Pravin Sanghavi, Managing Director of ICL, (hereinafter referred to as “**Noticee**”) violated the provisions of regulation 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”) and therefore, liable for monetary

penalty under section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated April 7, 2008 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violations of provisions of SEBI Act and PIT.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No. EAD-5/VSS/JR/137757/2008 dated September 15, 2008 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN.
5. Vide letter dated November 27, 2008 the Noticee made the following submissions:

You have alleged that I had not made required disclosures as required under reg 13(4) & 13(5) of SEBI(PIT) REGULATIONS 1992.

In respect of the above, I would like to state that the documents and facts of the case are contrary to the allegation made in the show cause.

As a director of Innovision eCommerce Ltd. I had made the required disclosures as required under reg 13(4) & 13 (5) of SEBI(PIT) REGULATIONS 1992 to the company. The company has also acknowledged receipt of the same.

I had made 5 disclosures on 28/1/2004, 09/11/2003, 22/08/2003, 12/08/2003 and 10/6/2003. The copies of the disclosures form 3 & 4 and covering letter sent to company are enclosed as Annexure I.

Please note that the seal of the company showing the acknowledgement is proof of my compliance with 13 (4) and 13 (5) of SEBI(PIT) REGULATIONS 1992.

6. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on December 18, 2008 at SEBI, Head Office, Mumbai vide notice dated November 18, 2008. The Noticee appeared. During the hearing, the Noticee reiterated the submissions made vide letter dated November 27, 2008.

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(4) and 13(5) of PIT?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 A (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 will be appropriate to refer to the relevant provisions of PIT, which reads as under:

13. Continual Disclosure

(4) Any person who is a director or officer of a listed company, shall disclose to the company, 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 4 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.

9. Upon careful perusal of the documents available on record, I find that the charges against the Noticee have been made based on the following:
 - a. The financial results of ICL for the quarter ended December 31, 2003 showed a total income Rs.132.26 million as against Rs.18.32 million in the previous year, an increase by **622%**. The Listing Committee of BSE advised ICL to explain this phenomenal increase. ICL failed to give any satisfactory explanation for the same to BSE. Hence, BSE shifted ICL to “Z” category with effect from February 5, 2004. Thus, declaration of such phenomenal financial results by ICL was without any justification.
 - b. The holding of the Noticee reduced from 2,09,88,000 (22.09%) as on September 2003 to 1,89,28,000 (19.92%) as on December 2003 and increased to 2,11,15,000 (22.23%) as on March 2004.
 - c. Before declaration of such unjustified phenomenal financial results the Noticee transferred 1 crore shares (off market) to Right Finstock Pvt. Ltd. (hereinafter referred to as “**RFPL**”), on January 02, 2004. Consequent to the said transaction, as the change in the shareholding exceeded the number/percentage/value specified in regulation 13 (4) of PIT, the Noticee ought to have made disclosures as required under the said regulation. It was alleged that the Noticee had failed to do so.
10. I have perused the documents submitted by the Noticee. I find that the Noticee had made 5 disclosures to the company dated January 28, 2004, November 09, 2003, August 22, 2003, August 12, 2003 and June 10, 2003 disclosing to the company the change in his shareholding. The receipt of the disclosures has also been acknowledged by ICL.

11. I find that the shares of ICL were transferred off-market to RFPL on **January 2, 2004**. However, ICL was intimated about the transfer only on **January 28, 2004**, which is beyond the permissible time limit specified in regulation 13(5) of PIT.
12. The object of the PIT 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(4) of PIT disclosure is required to be made to the company. The requirement is that complete information should reach the person to whom it is meant within a specified time period, i.e., within 4 working days of the acquisition or sale of shares. The fact that complete information should be timely disclosed to the company is also evident from the provisions of regulation 13(6) of PIT which casts an obligation on the company to disclose to the stock exchanges within 5 days of receipt of information from the director or officer of the company. Failure to disclose full details on the specific aspects within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked.
13. In view of the above, I am not inclined to view that the disclosure made by the Noticee vide letter dated January 28, 2004 is sufficient compliance with the requirements of provisions of regulations 13(4) and 13(5) of PIT. Accordingly, I hold that the Noticee has violated the provisions of the said regulations.
14. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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... ”.

15. 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, which reads as under:

15A. 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;

16. 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.”*

17. 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. The Noticee, being the Managing Director of ICL had more responsibility in ensuring the compliance of disclosure norms. The change in the shareholding of the Noticee and timely disclosure thereof, were of some importance from the point of view of outside shareholders/other

investors as that would have prompted them to buy or sell shares of ICL. Due to the non-disclosure by the Noticee in the scrip of ICL, genuine investors were attracted to trade in the shares of ICL. By not complying with the regulatory obligation of making the disclosure when the change in the shareholding of the Noticee exceeded 2%, he had concealed the vital information from the investors. The object of the PIT mandating disclosure of acquisition/sale 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 such information is required. 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.

18. I find from the material available on record that the transfer of shares by the Noticee (who was the Managing Director of ICL) to RFPL through off-market was effected on January 2, 2004, which was just before the announcement of the quarterly results on January 20, 2004. The financial results for the quarter ended December 31, 2003, showed that the income of the company had increased by 622% as compared to the same quarter in the previous year. I also find, on perusal of the demat statement of RFPL, that it had sold part of the said shares received from the Noticee, in the market after the announcement of the aforesaid price sensitive information.

19. RFPL indulged in fraudulent, unfair and manipulative practices as detailed below which helped the Noticee to dispose of his shares:
- a. During the investigation period, RFPL bought 3,38,600 shares (3.75% of the trading volume) and sold 30,19,944 shares (33.47% of the trading volume).
 - b. During January 07-09, 2004, RFPL sold 300 shares at circuit price of Re.0.58, Re.0.63 and Re.0.69 respectively. On January 08-09, 2004 only 100 shares were traded daily. RFPL sold the shares through the broker, viz., Parklight Investment Pvt. Ltd. (hereinafter referred to as "**PIPL**"). The buying broker was AKD Securities Pvt. Ltd.
 - c. These trades were executed at upper circuit rate. Since then, the volume as well as the price increased.
 - d. The perusal of the extract of the order log showing orders of 1,00,000 shares or more placed and deleted by PIPL, on behalf of RFPL, reveals that PIPL had placed several large quantity buy-orders and deleted the same subsequently, i.e. within a time gap of around 30-40 minutes. PIPL had placed 9 large buy orders for 48.80 lakh shares during January 13-23, 2004 and deleted orders for 48.30 lakh shares. PIPL had confirmed to the IA that such placing of orders and subsequent deletion, was done at the behest of RFPL. Thus, RFPL created an artificial buying pressure in the scrip. These large buy orders gave an impression of huge demand of the scrip which was otherwise illiquid.
 - e. PIPL had also placed 6 large sell orders for 18 lakhs during January 13-23, 2004 and deleted orders for 14.07 lakh shares. Large number of such orders was found on January 21, 2004, which was immediately after the declaration of the results for the quarter ended December 31, 2003 by the company on January 20, 2004. PIPL had confirmed to the IA that such placing of orders and

subsequent deletion was done at the behest of RFPL. Thus, RFPL, through PIPL, created an artificial buying pressure in the scrip after declaration of favourable results by the company and sold shares which it received from the Noticee.

- f. Mostly, the buy-orders were deleted for the entire quantity for which they were placed i.e. they remained unexecuted, however, the sell orders were deleted for the balance unexecuted quantity.
- g. The details of such placement of orders and subsequent deletion are as under:

Orders placed by the member Parklight Investment Pvt. Ltd. (Clg. No. 407) for 1,00,000 shares or more													
Memb	trdid	S	type	rate	qty	Avgty	aud	cacl	Date	Time	err	ordid	client
407	1	S	L	0.82	500000	50000	A	30	13-Jan-04	11:21:01	0	40700100010051449	N042
407	1	S	L	0.82	200000	20000	A	30	13-Jan-04	11:22:21	0	40700100010051451	N042
407	1	B	L	0.68	1000000	1000000	A	30	13-Jan-04	11:24:29	0	40700100010051452	N042
407	1	B	L	0.70	500000	500000	A	30	13-Jan-04	11:25:01	0	40700100010051453	N042
407	1	B	L	0.00	1000000	1000000	D	30	13-Jan-04	11:43:11	0	40700100010051452	
407	1	B	L	0.00	500000	500000	D	30	13-Jan-04	11:43:12	0	40700100010051453	
407	1	S	L	0.00	166800	20000	D	30	13-Jan-04	12:04:19	0	40700100010051451	
407	1	B	L	0.68	200000	200000	A	30	13-Jan-04	12:04:34	0	40700100010051479	R079
407	1	B	L	0.00	200000	200000	D	30	13-Jan-04	12:59:31	0	40700100010051479	
407	1	S	L	0.75	200000	20000	A	30	13-Jan-04	12:59:49	0	40700100010051511	R079
407	1	S	L	0.72	300000	300000	A	30	13-Jan-04	14:11:02	0	40700100010051526	R079
407	1	S	L	0.00	181600	181600	D	30	13-Jan-04	14:22:22	0	40700100010051526	
407	1	B	L	0.70	500000	500000	A	30	13-Jan-04	14:22:39	0	40700100010051529	R079
407	1	B	L	0.72	300000	300000	A	30	13-Jan-04	14:22:44	0	40700100010051530	R079
407	1	B	L	0.75	100000	100000	A	30	14-Jan-04	09:59:33	0	40700100010051616	R079
407	1	B	L	0.73	200000	200000	A	30	14-Jan-04	09:59:53	0	40700100010051618	R079

407	1	S	L	0.89	300000	30000	A	30	14-Jan-04	10:10:24	0	40700100010051622	R079
407	1	S	L	0.00	171920	9000	D	30	14-Jan-04	10:46:59	0	40700100010051622	
407	1	S	L	1.05	500000	50000	A	30	21-Jan-04	09:55:11	0	40700100010052215	R079
407	1	B	L	1.00	180000	180000	A	30	21-Jan-04	09:55:12	0	40700100010052216	R079
407	1	B	L	1.00	200000	200000	A	30	21-Jan-04	09:56:39	0	40700100010052218	R079
407	1	S	L	0.00	439000	39400	D	30	21-Jan-04	09:58:25	0	40700100010052215	
407	1	B	L	0.87	2000000	2000000	A	30	21-Jan-04	10:18:23	0	40700100010052235	R079
407	1	B	L	0.90	400000	400000	A	30	21-Jan-04	10:18:29	0	40700100010052236	R079
407	1	B	L	0.00	130000	130000	D	30	21-Jan-04	10:22:10	0	40700100010052216	
407	1	B	L	0.00	200000	200000	D	30	21-Jan-04	10:22:11	0	40700100010052218	
407	1	B	L	0.00	2000000	2000000	D	30	21-Jan-04	10:22:12	0	40700100010052235	
407	1	B	L	0.00	400000	400000	D	30	21-Jan-04	10:22:13	0	40700100010052236	
407	1	B	L	0.87	100000	100000	A	30	21-Jan-04	10:22:35	0	40700100010052245	R079
407	1	B	L	0.00	100000	100000	D	30	21-Jan-04	11:39:54	0	40700100010052245	
407	1	S	L	1.02	200000	20000	A	30	22-Jan-04	09:55:08	0	40700100010052318	R079
407	1	S	L	1.03	300000	30000	A	30	22-Jan-04	09:55:10	0	40700100010052319	R079
407	1	B	L	0.86	200000	200000	A	30	22-Jan-04	10:23:46	0	40700100010052342	R079
407	1	B	L	0.00	200000	200000	D	30	22-Jan-04	11:43:22	0	40700100010052342	
407	1	S	L	0.00	147300	15000	D	30	22-Jan-04	11:44:44	0	40700100010052318	
407	1	S	L	0.00	300000	30000	D	30	22-Jan-04	11:44:45	0	40700100010052319	
407	1	B	L	0.81	200000	200000	A	30	23-Jan-04	09:57:06	0	40700100010052451	R079
407	1	B	L	0.00	200000	200000	D	30	23-Jan-04	12:22:59	0	40700100010052451	
407	1	B	L	0.85	100000	10000	A	30	23-Jan-04	12:35:54	0	40700100010052490	R079

h. The aforesaid leads to the finding that RFPL set the benchmark price for the trades in the market initially and when the price rose gradually, it sold the shares received from the Noticee.

- i. The foregoing sequence of events leads to the finding that RFPL manipulated the market which enabled the Noticee to dispose of his shares. The Noticee used RFPL as conduit.
20. Under these circumstances, the compliance with the disclosure requirements under PIT assumes significance and the Noticee's failure to do so has to be viewed seriously and accordingly, punished in an exemplary manner.

ORDER

21. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on the Noticee which will be commensurate with the default committed by him.
22. 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 shall be forwarded to Ms. Barnali Mukherjee, General Manager, Investigation Department - Division – ID6, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.
23. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: **November 13, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER