BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 112/2010]

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

M/s PASUPATI SPINNING & WEAVING MILLS LIMITED

(PAN. AAACP0164H)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination into the affairs relating to dealing in the shares of M/s Pasupati Spinning & Weaving Mills Limited (hereinafter referred to as **"Noticee/Company/PSWML"**). Trading in the scrip was suspended on Bombay Stock Exchange (hereinafter referred as **"BSE"**) in February 2003. However, it is observed that, after suspension of trading, corporate announcement relating to the company were being published by the stock exchange.

2. The examination conducted by SEBI revealed that, the shareholding of Pasupati Fincap Ltd (promoter group entity of Noticee) prior to September 11, 2009 was 1,62,120 shares (2.31% of total equity paid-up capital). Upon acquisition of 2,80,000 shares (3.967% of total equity paid-up capital) of PSWML from Shailja Investments Limited

(promoter group entity) through off market transactions on September 11, 2009 the shareholding of Pasupati Fincap Ltd increased to 4,42,120 shares (6.27% of total equity paid-up capital). Pasupati Fincap Ltd while crossing the threshold limit of 5% specified under regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations")**, had made the required disclosure to the company on September 11, 2009 in the prescribed format.

3. Further it was observed that, the shareholding of Shailja Investments Ltd. (promoter group entity of Noticee) prior to September 11, 2009 was 18,26,135 shares (25.88% of total equity paid-up capital). Upon selling of 2,80,000 shares (3.967% of total equity paid-up capital) of PSWML to Pasupati Fincap Limited through off market transactions on September 11, 2009, the shareholding of Shailja Investments Ltd decreased to 15,46,135 shares (21.91% of total equity paid-up capital). Thus, there was a change of more than 2% of shareholding of Shailja Investments Ltd in PSWML. Shailja Investments Ltd had made the required disclosure to the company on September 11, 2009 in accordance with the provisions of regulations 13(3) & (5) of PIT Regulations.

4. Thus, in the above two transactions Noticee was required to make disclosure to the stock exchanges where the shares of the Noticee are listed under regulation 13(6) of the PIT Regulations. It was alleged that the Noticee had failed to make necessary disclosure with regard to the aforesaid transactions to Bombay Stock Exchange (hereinafter referred to as **'BSE'**) resulting in violation of regulation 13(6) of PIT and consequently, liable for penalty under section 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer vide order dated February 15 , 2010 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 violation of provisions of the aforesaid Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-7/PB/AK/7738/2010 dated June 08, 2010 (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 and penalty be not imposed under section 15A (b) of SEBI Act for the alleged violations specified in the said SCN.

7. The Noticee replied vide letter dated June 22, 2010 furnishing, inter alia, details of the disclosure made by it to BSE and denied the allegations made against it.

8. 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 July 15, 2010 vide notice dated July 01, 2010. Mr. Balveer Singh Choudhary, Choudhary & Singhvi, Chartered Accountant, Authorized Representative, (hereinafter referred to as "**AR**") appeared on behalf of the Noticee. During the hearing, the AR reiterated the submissions made vide letter dated June 22, 2010 and requested a time of 7 days to submit additional written submission. The request of the Noticee was acceded. The Noticee submitted additional written submission vide letter dated July 26, 2010. The

Noticee in para 4 of its reply dated June 22, 2010 stated that *"we are not aware of any examination conducted by SEBI into the dealing in the shares of our scrip and we have not been furnished with a copy of the investigation Report relating to such purported examination or findings therein"*. During the course of the hearing it was clarified to the AR that the adjudication proceedings were not pertaining to any investigation which had been conducted by SEBI regarding the movement in the scrip of PSWML.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
   a) Whether the Noticee had violated regulation 13(6) 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?

10. Before moving forward, it is pertinent to refer to the provisions of regulation 13 of PIT Regulations which reads as under:

Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A], the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

(a) the receipt of intimation of allotment of shares; or

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

(2) ……..

Continual disclosure

(3) Any person who holds more than 5% shares or 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.

(4)……..

(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.

Disclosure by company to stock exchanges

(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

11. As per regulation 13(1) of PIT Regulations, any person whose shareholding is in excess of 5% in any listed company has to make the required disclosure to the company in a prescribed format within 4 working days from (a) the receipt of intimation of allotment of shares, or (b) the acquisition of shares or voting rights. As per regulations 13 (3) & (5) of PIT Regulations, any person who is holding more than 5% of shares or voting rights in any listed company has to make the required disclosure to the company if there is any change in

shareholding of such person by more than 2% of total shareholding or voting rights in the company, in a prescribed format, within 4 working days from (a) the receipt of intimation of allotment of shares or (b) the acquisition of shares or voting rights, as the case may be.

12. As per regulation 13(6) of PIT Regulations, on receipt of any information by the listed company under regulation 13 (1), (2), (3) & (4) of PIT Regulations, such company has to disclose such information in the prescribed format to all stock exchanges on which the company is listed, within five days of receipt of such information by the company.

13. The charge against the Noticee is that it had delayed in making the required disclosure in the prescribed format to BSE, thus, had violated the provisions of regulation 13(6) of PIT Regulations. I find from the submissions of the Noticee that it has not disputed the fact that Pashupati Fincap Limited had acquired 2,80,000 shares of PSWML from Shailaja Investments Limited through off market transactions. Further, I find that Noticee had also not disputed the fact that, the promoter group entities i.e. Pashupati Fincap Ltd and Shailja Investments Ltd had made the required disclosure in respect of their change in shareholding due to abovementioned off market transaction, to the Noticee in a prescribed format on September 11, 2009 as per regulation 13(1) and regulation 13(3) of PIT Regulations.

14. The Noticee vide it reply dated June 22, 2010 and July 26, 2010, contended that it had made the disclosure in the prescribed format within the time limit specified under regulation 13(6) of PIT Regulations. Further, Noticee emphasizes on the point that it had dispatched the said disclosure in a prescribed format to the BSE under Certificate of Posting (“UPC”) on September 12, 2009 i.e. one

day after receipt of information from the acquirer and seller. Noticee had submitted the proof of dispatch i.e. a copy of the cover bearing the seal of New Delhi Connaught Place Post Office.

15. The Noticee vide its reply dated June 22, 2010, had relied on the judgment pronounced by the Bihar High Court in *Dineshwar Prasad Singh Vs. Manorama, AIR 1978 Pat 256,* in which the Hon'ble Court had interpreted section 27 of General Clauses Act, 1897, that a letter sent under certificate of Posting can be presumed to have been delivered to the addressee. "*Therefore once the packet containing the said format was deposited by us with the Post Office at Connaught place, New Delhi under certificate of Posting, the law permits a presumption that the same was delivered to the BSE"*.

16. I have noted the submission of the Noticee that Pasupati Fincap Limited and Shailaja Investments Limtied are both promoter group entities and the total shareholding of the promoter group remained unchanged for the quarter ending September 2009. Thus, no material change adversely affecting the investing public has occurred on account of the alleged non delivery of the letter dated September 12, 2009 to BSE. I have also noted the submission of the Noticee that company is declared a sick company under Sick Industrial Companies Act vide order dated July 21, 2005 by Board for Industrial and Financial Reconstruction and the company is making earnest efforts to recover from the financially weak position.

17. During the course of hearing on inquiring the Noticee about whether it had proof of delivery, in reply to it Noticee asserted that it had proof of dispatch only and the disclosure was dispatched to BSE under Certificate of Posting on September 12, 2009. Further, Noticee had requested the undersigned to take a lenient view in the matter.

18. In view of the above, from the documents available on record I find that Noticee had made the disclosure on December 18, 2009 i.e. only after the intimation by SEBI to the Noticee that it had not made the required disclosure as per regulation 13(6) of PIT Regulations within the stipulated time, in relation to the off market transaction which took place between the promoter group entities. In relation to this Noticee had replied that the disclosure made on December 18, 2009 was a copy of the disclosure dispatched to BSE on September 12, 2009. Thus, the Noticee had implicitly admitting the fact that the disclosure was made on December 18, 2009 i.e. with a delay of 93 days, to BSE.

19. Further, the Noticee admitted that it has only the proof of dispatch and not the proof of delivery. In this regard, it will be appropriate to refer to the observations of The Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001. The Hon'ble 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 a 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."

20. In the light of the above, I have also perused the copy of the cover bearing the seal of New Delhi Connaught Place Post Office dispatched under certificate of posting dated September 12, 2009 which was submitted by the Noticee. If the facts of the present case are tested with the aforesaid observations of the Hon'ble High Court, it would follow 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. In other words, in the instant case, the Noticee ought to have ensured that the communication reportedly sent by it had reached BSE. Thus, the burden of proving the delivery of the communication is squarely upon the Noticee. The Noticee could not produce any proof in support of delivery of the said communication to BSE. Therefore, at best, the said receipts could be considered only as proof of dispatch and not of delivery. The Noticee has admitted

that it does not have the proof of delivery. Therefore, I do not find merit in the submissions of the Noticee in this regard.

21. 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(6) of PIT Regulations, disclosure is required to be made by the company to the stock exchange/s. "Disclose" according to Websters Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Blacks 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 to whom it is meant. The fact that complete information should be disclosed to the stock exchange/s is also evident from the provisions of clause 8 of Code of Corporate Disclosure Practices for Prevention of Insider Trading read with regulation 12(2) of PIT Regulations which casts an obligation on the stock exchanges to publish the information received from the companies on the website of the stock exchange instantly and disseminate the same to the investors in a quick and efficient manner through its network. Failure to make disclosure within in the stipulated time provided in the regulation cannot be considered as trivial or of no consequence to be overlooked, as claimed by the Noticee.

22. In view of the above, I am not inclined to accept the contention of the Noticee that the letter containing the disclosure, dispatched to BSE under certificate of posting on September 12, 2009 as sufficient compliance with the requirements of provisions of regulation 13(6) of PIT Regulations, as the said letter had never reached the BSE.

23. In view of the foregoing, I hold that the allegation of violation of the provisions of regulation 13(6) of PIT Regulations by the Noticee stands established.

24. The Hon'ble SAT, in Appeal No.66 of 2003 order dated April 15, 2005 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, has also 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. We cannot therefore subscribe to the view that the violation was technical in nature".*

25. The next issue for consideration is whether the violation 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.

26. 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) ……

27. 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…".*

28. 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.

29. 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."

30. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the persons having substantial stake, promoter-group and persons in control over the Company and timely disclosure thereof, were of some importance from the point of view of investors as that would have prompted them to buy or sell shares of the Company. The disclosure made under regulation 13(6) of PIT Regulations by a Company is made public only through Stock Exchange. Therefore, it is mandatory for the Company to give the required information under the aforesaid regulation to the Stock Exchange, so that the said information becomes known to all the investors at large. I find from the documents available on record that the disclosure under PIT Regulations was displayed on the website of BSE but with delay, due to the failure on the part of Noticee. The object of the PIT Regulations 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. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures in accordance with the provisions of PIT Regulaions, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the

regulatory obligation of making the disclosure, it had concealed the vital information from the investors.

ORDER

31. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of ₹ 20,000/- (Rupees twenty thousand only) on the Noticee which will be commensurate with the default committed by it.

32. 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 Mr. Avarjeet Singh, Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

33. 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: October 28, 2010 **PARAG BASU**
Place: Mumbai **ADJUDICATING OFFICER**