BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 58/2009]

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

Mrs. Premlata Ramesh Saraogi

(PAN.ASMPS2400E)

FACTS OF THE CASE IN BRIEF

1. The shares of Channel Guide India Limited (hereinafter referred to as '**CGIL/Company'**) are listed at Bombay Stock Exchange (hereinafter referred to as '**BSE'**). The total paid-up equity share capital/voting capital of the Company was 60,00,000 as filed by the Company for the quarter ended March 2007.

2. Mrs Premlata Ramesh Saraogi (hereinafter referred to as **'Noticee'**) traded in the scrip of CGIL during the period April 01, 2007 to March 31, 2008. The details of transactions done by her in the scrip of CGIL are mentioned below:

Trade Date	Gross Purchase Quantity	Gross Sell Quantity	Net Quantity	Cumulative holding	Percentage of paid up Capital
24-Dec-07	20000	0	20000	20000	0.33

26-Dec-07	10798	0	10798	30798	0.51
27-Dec-07	81202	0	81202	112000	1.87
1-Jan-08	**200000**	**0**	**200000**	**312000**	**5.20**

3. With the acquisition of 2,00,000 shares on January 1, 2008, the Noticee's shareholding in CGIL increased from 1,12,000 (1.87%) to 3,12,000 shares (5.20%) of CGIL which was more than 5% shareholding/voting capital of the Company.

4. Since the Noticee had acquired more than 5% shares/voting rights in CGIL and did not make necessary disclosure under 7(1) and 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **"SAST"**) and 13 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT"**), it was alleged that she had violated the said provisions and consequently, liable for monetary penalty under section 15A (b) of SEBI Act, 1992 (hereinafter referred to as the **"Act"**)

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer under Section 19 of the Act read with Section 15 I of SEBI (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Rules"**) vide order dated September 15, 2008 to inquire into and adjudge under Section 15A(b) of the Act for the alleged violation of SAST and PIT.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice No.EAD-5/VSS/TZ/146050/2008 dated November 28, 2008 (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 against her and penalty be not imposed under section 15A(b) of SEBI Act for her failure to comply with the provisions of regulations 7(1) read with 7(2) of SAST and 13 (1) of PIT.

7. The Noticee vide letter (received on December 16, 2008) submitted, inter-alia, that she had made the required disclosures to CGIL as well as to BSE.

8. In order to verify the authenticity of the claim made by the Noticee, clarification was sought from BSE vide e-mail dated March 6, 2009. BSE vide its e-mail dated March 6, 2009 replied that *"No disclosures were found in the Exchange records w.r.t acquisition of 2,00,000 equity shares as on January 1,2008 of the captioned company by Ms. Premlata Ramesh Saraogi in terms of Regulation 7(1) read with 7(2) of SEBI Substantial Acquisition of Shares & Takeover Regulations, 1997."*

9. 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 April 2, 2009 vide notice dated March 9, 2009. A copy of the aforesaid e-mails was also sent to the Noticee.

10. The Noticee vide letter dated March 30, 2009 replied, inter-alia, that *"Not only all the applicable rules, regulations have been complied with by me in toto but even the respective changes were carried out on http:/www.bseindia.com/ under the Shareholding patterns of Channel Guide India Ltd."* Mr. Balvantsinh A. Parmar and Mr. Ramesh Saraogi, appeared on behalf of the Noticee as Authorized Representatives (hereinafter referred to as **"ARs"**). During the hearing, the ARs reiterated the submissions made vide letter dated December 16, 2008 and March 30, 2009 and further submitted the following:

- *A copy of proof of despatch of the disclosure to Bombay Stock Exchange bearing the stamp 'January 02, 2008 has been submitted vide our letter dated December 16, 2008.*

- *The proof of delivery of disclosure to BSE has been inadvertently misplaced.*

- *With regard to disclosure under 13 (1) of PIT to the Company, the same has been inadvertently not done. However, it is submitted that the compliance made with Takeover Regulations as stated above may please be deemed to be compliance with the Insider Trading Regulations, the reason being that the disclosure of information under both the provisions are more or less the same. Since the purpose of disclosure having been met under Takeover Regulations, the same should be treated as compliance under Insider Trading Regulations as well.*

- *The investor is an individual and not a corporate. She has been making investments for long term purposes. She is not a very regular trader in the stock exchange. During the relevant point of time she had dealt with 3-4 scrips. Only in this scrip her holding had crossed the threshold limit of 5% and that too, because the listed capital of the company is very low. In support of this, we undertake to submit the Beneficiary Owner Account maintained with HDFC bank for the Financial Year – April 01, 2007 to March 31, 2008. This information will be furnished on or before April 10, 2009.*

- *The holding of 5.2% by Ms. Premlata has been disclosed as part of the shareholding pattern of Channel Guide. A print out of the same taken from the BSE website is submitted in this regard.*

- *There is no unlawful gain, no investor has been put to any loss and also this is the only offence. Moreover, we have substantially complied with the law and if at all, there is any lapse, the same is purely technical and unintentional. Therefore, you are requested to take a lenient view in the matter and not levy any penalty.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the written and oral submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

a. Whether the Noticee attracted the disclosure requirements under regulations 7(1) read with 7(2) of SAST and if so, whether complied or not?
b. Whether the Noticee attracted the disclosure requirements under regulation 13(1) of PIT and if so, whether complied or not?
c. Does the non-compliance, if any, attract monetary penalty under section 15A(b) of SEBI Act?
d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

12. ALLEGED VIOLATION OF 7(1) READ WITH 7(2) OF SAST

(a) The provisions of regulations 7(1) read with 7(2) of SAST read as under:

SAST

7. Acquisition of 5 per cent or more shares or voting rights of a company

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that

company to the company and to the stock exchanges where shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

(b) I find that the requirement of regulation 7(1) read with 7(2) of SAST are two fold i.e. disclosure to the company and the Stock Exchange in case of acquisition of more than 5% shares or voting rights in a company, within two working days of, viz., the receipt of intimation of allotment of shares as well as the acquisition of shares or voting rights, as the case may be.

(c) I have verified and noted the disclosure made by the Noticee to the Company under regulation 7(1) of SAST vide its letter dated January 2, 2008, duly received and acknowledged by the Company.

(d) With regard to the disclosure to the Stock Exchange, i.e. BSE, I have noted the shareholding pattern of CGIL under the category "Public and holding more that 1% of the Total No. of Shares" published on BSE website for quarter ended March 2008. However, since the Noticee crossed the 5% threshold on January 1, 2008, she was under the obligation to disclose the same under regulations 7(1) read with 7(2) within two working days thereof. Therefore, the aforesaid shareholding pattern of CGIL for the quarter ended March 2008 cannot be taken as proof of disclosure and compliance by the Noticee under the said regulations of SAST.

Moreover, the Noticee has failed to furnish any proof of delivery of any disclosure to BSE.

(e) Thus, the allegation of violation of the provisions of regulations 7(1) and 7(2) of SAST stands established.

13. ALLEGED VIOLATION OF REGULATION 13(1) OF PIT

(a) The provisions of regulation 13(1) PIT reads as under:

> ***13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – 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.*

(b) In terms of regulation 13(1) of PIT, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company in Form A, the number of shares or voting rights held by such within 4 working days of (i) the receipt of intimation of allotment of shares, (ii) the acquisition or sale of shares or voting rights, as the case may be.

(c) There is no dispute on the fact that the Noticee informed the Company regarding the change in the voting rights vide letter dated January 2, 2008. The question is whether the contention of the

Noticee that compliance with regulation 7(1) read with 7(2) can be considered as compliance with regulation 13(1) of PIT also?

(d) The disclosure under regulation 13(1) of PIT is required to be made in Form A. The following details are contained in Form A :

a) Name and address of the shareholders
b) Shareholding prior to acquisition/sale
c) No. and % of shares /voting rights acquired/sold
d) Date of receipt of allotment/ advice. Date of acquisition
e) Date of intimation to company
f) Mode of acquisition on (market purchase/public/rights/ preferential offer, etc.)
g) Shareholding subsequent to acquisition.
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

(e) It is not in dispute that the Noticee was holding more than 5% of the voting capital of CGIL as on January 1, 2008 and therefore, attracted the provisions of regulations 13(1) of PIT and ought to have disclosed the details of the transaction in Form A to CGIL, to be compliant with the said regulations.

(f) On comparison of the contents of the aforesaid form A of PIT and the format for disclosure under regulation 7(1) of SAST, I find that certain additional information have to be disclosed under PIT, which are as under:

a) Trading member through whom the trade was executed.
b) SEBI registration No. of the trading member
c) Exchange on which the trade was executed
d) Buy quantity
e) Buy value

(g) In terms of regulation 13(1) of PIT disclosure is required to be made to the company. "Disclose to the company" is the clue. "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 obligation does not end by simply furnishing a part of the information through a letter when specific format for disclosure of full and complete information is prescribed for the purpose. 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.

(h) In view of the above, I am not inclined to accept the contention of the Noticee that the disclosure made under regulation 7(1) of SAST to the Company vide letter dated January 2, 2008 can be deemed as compliance with the provisions of regulation 13(1) of PIT.

(i) Thus, the allegation of violation of the provisions of regulation 13(1) of PIT stands established.

14. The non-compliance with the provisions of regulations 7(1) and 7(2) of SAST and 13(1) of PIT attracts monetary penalty under section 15 A (b) of SEBI Act , which reads as under:

15A. <u>Penalty for failure to furnish, information , return etc.</u>

If any person, who is required under this Act or any rules or regulations made thereunder, -

(a)…

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

15. 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…".*

16. 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."*

17. 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.

18. 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."

19. 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. 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. 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 on time, 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.

20. I have noted the submission of the Noticee that she is not a regular trader in the stock exchange and that she only dealt with 3-4 scrips during the relevant point of time. I have also perused the Beneficiary Owner Account Statement of the Noticee for the period April 1, 2007 to March 31, 2009, submitted vide letter dated April 6, 2009 and find that during the said period she had traded in 6 scrips.

21. I also note that in the case of P.K. Tayal Vs. SEBI (Appeal No. 89 of 2007), the Hon'ble SAT upheld a penalty of Rs.1 lakh on the appellant for violation of regulations 7 (1) and 7 (2) of the SAST Regulations.

Also, in the matter of Mega Resources and Others Vs. SEBI, (Appeal No. 138/2003, 138 A to 138F/2003) the Hon'ble SAT reduced the penalty of Rs.3 lakhs to Rs.1.5 lakhs on seven entities for the violation of Regulation 7 (1) and 7 (2) of the SAST Regulations

ORDER

22. After taking into consideration all the facts and circumstances of the case and on a judicious exercise of the powers conferred upon me, I hereby impose a monetary penalty of Rs.50,000/- (Rupees Fifty thousand only) {Rs.25,000/- for the violation of regulations 7(1) and 7(2) of SAST and Rs.25,000/- for the violation of regulation 13(1) of PIT} under section 15A(b) of the Act, on the Noticee, which will be commensurate with the violation committed by her.

23. The Noticee shall pay the said penalty of Rs.50,000/- (Rupees Fifty thousand only) 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 Shri S. Ramann, Officer on Special Duty, 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.

24. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **April 22, 2009** **V.S.SUNDARESAN**

Place: **MUMBAI** **ADJUDICATING OFFICER**