

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO/14/2014-15]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

Shaukat SulemanTharadra

PAN - AAAPT6872B

In the matter of Raj Oil Mills Limited

Background

1. Raj Oil Mills Limited (**company**) was incorporated on October 17, 2001. The company was formed to undertake the business of buying, selling, manufacturing and processing of edible oils, edible oil seeds and other related products. Securities and Exchange Board of India (SEBI) examined into the shareholding of the promoter director of the company namely Shaukat SulemanTharadra (**Noticee**). The said examination revealed that the Noticee had pledged certain shares of the company and the pledge was subsequently invoked. Besides, the Noticee had also executed a few off-market transactions. The shareholding of the Noticee had undergone changes consequent upon the invocation of the pledge on such shares and also on account of the off-market transactions. It was observed that the Noticee was required to make disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations**) regarding such change in the shareholding, to the company and to the exchange and the Noticee had not made the required disclosures.

2. SEBI has, therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (**SEBI Act**) to inquire into and adjudge under section 15A(b) of the SEBI Act, the alleged violations of the provisions of regulations 13(3), 13(4) & 13(4A) read with regulation 13(5) of PIT Regulations and the provisions of regulation 29(2) read with 29(3) and regulations 31(2) read with 31(3) of SAST Regulations committed by the Noticee.

Appointment of Adjudication Officer

3. The undersigned was appointed as Adjudicating Officer vide order dated January 16, 2014 under section 15-I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violations of the provisions of regulations 13(3), 13(4) & 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) and regulations 31(2) read with 31(3) of SAST Regulations committed by the Noticee.

Show Cause Notice, Reply and Personal Hearing

4. Show Cause Notice dated March 04, 2014 (**SCN**) was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed against him under section 15A(b) of the SEBI Act for the alleged violations specified in the SCN.
5. The Noticee vide letter dated April 09, 2014 filed reply to the SCN. Thereafter, the Noticee was granted an opportunity of hearing on May 08, 2014 when Ms. Shailashri Bhaskar, Shri Ajit K Sharma and Shri Amit R Dadheech, all Practicing Company Secretaries appeared as Authorised Representatives (ARs) on behalf of the Noticee. The ARs re-iterated the submissions already made on record and requested time for filing additional submissions. Accordingly, time till May 09, 2014 was granted to the Noticee

for filing additional submissions. The Noticee, vide letter dated May 08, 2014 filed additional submissions.

6. The main contentions of the Noticee are as under:

- The company ran into financial difficulties and has been a loss making company for the last three years.
- Assets of the company had been pledged in order to provide additional security and also that the complete shareholding of the Noticee has been pledged.
- The lender invoked the pledge on shares of the company, when the company started defaulting the payments.
- The Noticee was not aware of the disclosure requirements and also that he not having competent professional help to assist him making timely disclosures.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the material available on record, written and oral submissions made by the Noticee.

8. The issues that arise for consideration in the instant case are:

- a. Whether the Noticee has violated the provisions regulations 13(3), 13(4) & 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) and regulations 31(2) read with 31(3) of SAST Regulations?.
- b. Do the violation, if any, on the part of the Noticee attract penalty under section 15A (b) of SEBI Act?
- c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. The relevant provisions of PIT Regulations are as under:

PIT Regulations

Regulation 13

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure

(1).....

(2).....

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in [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) Any person who is a director or officer 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 and his dependents (as defined by the company) 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.

4(A) 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 holding of such person from the last disclosure made under the Listing agreement or under 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 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.

SAST Regulations.

Regulation 29. Disclosure of acquisition and disposal.

(1)

(2) Any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such 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.

Regulation 31.

Disclosure of encumbered shares.

(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

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

(b) the target company at its registered office.

FINDINGS

The issues for examination in this case and the findings thereon are as follows:

a) Whether the Noticee has violated the provisions regulations 13(3), 13(4) & 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) and Regulations 31(2) read with 31(3) of SAST Regulations?.

10. From the material available on record, I note that Raj Oil Mills Limited is a company listed on the BSE Limited (BSE) and the National Stock Exchange Limited (NSE) and the Noticee is a director and promoter of the company. I note that the Noticee had pledged certain shares of the company, and the pledge was subsequently invoked on various dates. Also, the Noticee had executed a few off-market transactions. The shareholding of the Noticee had undergone changes consequent upon the invocation of the pledge on such shares and also on account of the off-market trades. As the change in the shareholding had exceeded the benchmark limit as applicable to the Noticee being promoter and director of the company, the Noticee was under obligation to make disclosure to the company and to the stock exchange under the relevant provisions of PIT Regulations and SAST Regulations. The details of all such transactions pertaining to the Noticee, involving the invocation of pledge and also changes in his shareholdings in excess of the benchmark limit, which required disclosure by the Noticee under PIT Regulations and SAST Regulations are tabulated below:

Date	Nature of Transaction	Quantity	Holding after transaction	As a % of share capital	Disclosure required under PIT	Disclosure required under SAST
Holding before transaction			7707557	10.85		
13-08-2012	Pledge Invocation	1700000	6007557	8.46		
13-08-2012	Pledge Invocation	47800	5959757	8.39	13(3), 13(4) & 13(4A) read with 13(5)	31(2) read with 31(3) and 29(2) read with 29(3)
16-08-2012	Pledge Invocation	45	5959712	8.39		31(2) read with 31(3)
17-08-2012	Pledge Invocation	452486	5507226	7.76	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
21-08-2012	Pledge Invocation	40010	5467216	7.7	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
28-08-2012	Pledge Invocation	40707	5426509	7.46	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
29-08-2012	Pledge Invocation	400000	5026509	7.08	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
11-09-2012	Pledge Invocation	18267	5008242	7.05		31(2) read with 31(3)
12-09-2012	Pledge Invocation	998	5007244	7.05		31(2) read with 31(3)
13-09-2012	Pledge Invocation	43256	4963988	6.99	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
18-09-2012	Pledge Invocation	5855	4958133	6.98		31(2) read with 31(3)
20-09-2012	Pledge Invocation	50000	4908133	6.91	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
22-09-2012	Pledge Invocation	21688	4886445	6.88		31(2) read with 31(3)
25-09-2012	Pledge Invocation	21480	4864965	6.85		31(2) read with 31(3)
25-09-2012	Pledge Invocation	158829	4706136	6.63	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
26-09-2012	Pledge Invocation	75206	4630930	6.52	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
26-09-2012	Pledge Invocation	841171	3789759	5.34	13(3),13(4) & 13(4A) read with	31(2) read with 31(3)

					13(5)	
27-09-2012	Pledge Invocation	600	3789159	5.34		31(2) read with 31(3) & 29(2) read with 29(3)
03-10-2012	Pledge Invocation	258024	3531135	4.97	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
04-10-2012	Pledge Invocation	65000	3466135	4.88	13(4) & 13(4A) read with 13(5)	31(2) read with 31(3)
06-12-2012	Off market Transaction	250000	3216135	4.53	13(4) & 13(4A) read with 13(5)	NA
07-12-2012	Off market Transaction	50000	3166135	4.46	13(4) & 13(4A) read with 13(5)	NA
19-12-2012	Off market Transaction	200000	2966135	4.18	13(4) & 13(4A) read with 13(5)	NA

11. On perusal of the reply of the Noticee, I find that the Noticee has not disputed any of the transactions nor the allegations made against him in the SCN. I also find that the Noticee failed to make the requisite disclosures in respect of the transactions listed in the above table, wherein he had statutory obligation to disclose to the company and to the stock exchanges under both the PIT and SAST Regulations. I note that the Noticee has made certain disclosures recently i.e, after the issuance of SCN to him and just before the date of hearing in the present matter. In this regard, it is pertinent to state here that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay.

12. The submission of the Noticee that he was not aware of the disclosure requirements under PIT and SAST Regulations has no merit. Being promoter and director of the company, the Noticee should have been conversant about the disclosure requirements and he cannot simply act ignorant of such regulatory requirements. It is noted that *Ignorantia juris non excusat*, that is to say, ignorance of law is not an excuse. Ignorance of law of the state does not exclude any person from the penalty for the breach of it, because every person is bound to know the law, and is presumed so to do. If any individual should infringe the law of the country through ignorance or carelessness, he must abide by the consequences of his error. Hence, I do not find any merit in

the submissions of the Noticee that he was ignorant about the disclosure requirements.

13. On the basis of the foregoing discussion, I find that the Noticee has committed default in as many as 15 instances in violation of the provisions of regulations 13(3), 13(4) & 13(4A) read with 13(5) of PIT Regulations and 19 instances in violation of the provisions of regulations 29(2) read with 29(3) and 31(2) read with 31(3) of SAST Regulations.

b. Do the violation, if any, on the part of the Noticee attract penalty under section 15A (b) of SEBI Act?

14. In this context, I would like to quote the observations of Hon'ble Supreme Court in the matter of *SEBI Vs. Shri Ram Mutual Fund*, {[2006] 5 SCC 361} wherein it was, inter alia held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."*
15. As the violation of the statutory obligation under regulation 13(3), 13(4) & 13(4A) read with 13(5) of PIT Regulations and regulations 29(2) read with 29(3) and 31(2) read with 31(3) of SAST Regulations has been established against the Noticee as stated above, I am convinced that it is a fit case for imposing monetary penalty under section 15A(b) SEBI Act, which reads as under:-

SEBI Act

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 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.

(c)

c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

16. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.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. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by not making the specified disclosures on the due dates. However the fact remains that by not making the required disclosures, the Noticee had deprived the investors of important information at the relevant time. It is pertinent to mention here that our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market.

18. Further, there are numerous instances of non- disclosure and hence the violation committed by the Noticee is repetitive in nature.

Order

19. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹ 35,00,000/-(Rupees Thirty Five Lakh only) on the Noticee, Shaukat Suleman Tharadra, in terms of section 15A(b) of the SEBI Act. The above mentioned penalty will be commensurate with the violation committed by the Noticee.
20. The penalty shall be paid by way of a duly crossed demand draft drawn 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 the Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
21. In terms of the 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: May 19, 2014
PLACE: Mumbai

A SUNIL KUMAR
ADJUDICATING OFFICER