

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO-26/2009]

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

M/S RIGHT FINSTOCK LIMITED

(PAN.AAACR9277R)

FACTS OF THE CASE IN BRIEF

1. The shares of Innovision E-Commerce Limited (hereinafter referred to as “**IECL/ company**”) are listed on Bombay Stock Exchange (hereinafter referred to as “**BSE**”), Pune Stock Exchange (hereinafter referred to as “**PSE**”) and Bangalore Stock Exchange (hereinafter referred to as “**BGSE**”). SEBI conducted an investigation into the affairs relating to buying and selling and dealing in the shares of IECL. The investigation covered the period from July 29, 2004 to August 09, 2004.
2. The investigation conducted by SEBI revealed that M/s Right Finstock Limited (hereinafter referred to as “**RFL/Noticee**”) had failed to comply with regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**SEBI**”).

(PIT)"). It was alleged that the Noticee had violated the provisions of the said regulations and therefore, liable for monetary penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. Mr. Piyoosh Gupta was appointed as Adjudicating Officer, vide order dated January 17, 2007 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 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violation of regulation 13(3) read with regulation 13(5) of SEBI (PIT).
4. Consequent upon the transfer of Mr. Piyoosh Gupta, the undersigned was appointed as the Adjudicating Officer vide order dated November 19, 2007.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice (EAD-5/VSS/SS/129410/2008) dated June 20, 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 him and penalty be not imposed under section 15A(b) of SEBI Act for his failure to comply with the provisions of regulations 13(3) read with 13(5) of SEBI (PIT).
6. The Noticee did not reply to the SCN.

7. 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 November 21, 2008 vide notice dated October 24, 2008. Ms. Bharati Daga appeared on behalf of the Noticee and submitted, *inter alia*, as under:

- Shares were held by RFPL on behalf of its clients. RFPL was on a bonafide assumption that if the shares were held on behalf of the clients it was not covered under the requirement of Insider Trading Regulations and therefore, no disclosure was made. As of now RFPL is not engaged in any activity and there is no one to respond to the communication received from SEBI. Therefore, requested to take a lenient view in the matter.
- We do not have any documentary evidence to substantiate the aforesaid submission of holding the securities on behalf of the clients.

CONSIDERATION OF ISSUES AND FINDINGS

8. 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 :

- (i) Whether the Noticee was holding more than 5% of the shares of IECL prior to sale of the shares?
- (ii) Whether the Noticee attracted the disclosure requirements under regulation 13(3) read with regulation 13(5) of SEBI (PIT)?
- (iii) If so, whether the Noticee had complied with the same or not?

(iv) Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?

(v) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

9. Before moving forward, it will be appropriate to refer to the relevant provisions of SEBI (PIT), which reads as under:

13(3) Any person who holds more than 5% shares for 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 (1); and such change exceeds 2% of total shareholding or voting rights in the company.

13(5) The disclosures made 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.

10. I find from the distribution schedule of IECL that as on June 30, 2004 (which was given as Annexure to the SCN to the Noticee) as submitted by IECL and also available on the website of BSE, the Noticee was holding 65,41,956 shares of IECL which constituted 6.89% of the issued capital of the company. Thus, it is evident that the Noticee was holding more than 5% of the shares of the company prior to offloading of the shares.

11. I find from the material available on record that RFL sold 37,32,400 shares constituting 3.93% of the total issued capital of the company (9,50,00,000 shares) in the following manner:

Date	Buy	Sell	Gross trade	Sale as % of total issued capital	Cumulative Sale
04/08/2004	0	1520500	1520500	1.60	1.60
05/08/2004	0	999500	999500	1.05	2.65
06/08/2004	0	1020600	1020600	1.08	3.73
09/08/2004	0	191800	191800	0.20	3.93
Total	0	3732400	3732400	3.93	3.93

12. As per clause 35 of the Listing Agreement, company has to file with the exchange distribution schedule on a quarterly basis within 15 days of end of the quarter. Such distribution schedule should consist of name, number of shares held and percentage shareholding of entities/persons holding more than 1 per cent of the shares of the company. I find from the distribution schedule of IECL submitted by BSE to SEBI as on September 30, 2004 (which was given as Annexure to the SCN to the Noticee) that the name of RFL did not feature in the distribution schedule.

13. In terms of regulation 13(3) read with 13(5) of SEBI (PIT), any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights under 2 circumstances as detailed below:

- a) If such change results in shareholding falling below 5%:
- b) If there has been change in such holdings from the last disclosure made under regulation 13(1) or under regulation 13(3) and such change exceeds 2% of total shareholding or voting rights in the company.

14. I find that with the sale of 9,99,500 shares on August 05,2004, the cumulative sale of the Noticee crossed the limit of 2% specified in the aforesaid regulations. Further, with the said sale, the shareholding of

the Noticee came down from 6.89% to 4.24%. Thus, the Noticee had attracted the disclosure requirements under regulations 13(3) and 13(5) of SEBI (PIT).

15. The next issue for consideration is whether the Noticee had complied with the disclosure requirements under regulation 13(3) read with regulation 13(5) of SEBI (PIT).
16. The Noticee had admitted that it had not made the requisite disclosure. However, it has submitted that the shares were held by it on behalf of the clients and it was on a bonafide assumption that if the shares were held on behalf of the clients it was not covered under the requirement of Insider Trading Regulations and therefore, no disclosure was made. In order to verify the veracity of this submission, the Noticee was advised to furnish documentary evidence. The Noticee did not produce any documentary evidence in support of the contention despite having been given sufficient opportunities to do so. Hence, I hold that the Noticee had not complied with the disclosure requirements of regulations 13(3) and 13(5) of SEBI (PIT). Therefore, the violation of the said provisions stands established.
17. The next issue for consideration is as to whether failure on the part of the Noticee to comply with the provisions of SEBI (PIT) 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.
18. 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)

19. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* 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*”.

20. 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.

21. 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.”*

22. 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 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 IECL. I find that the Noticee sold 37,32,400 shares of IECL in the price ranging between Rs.0.42 to 0.73 per share. Due to the non-disclosure by the Noticee in the scrip of IECL, genuine investors were attracted to trade in the shares of IECL. The genuine investors who had bought these shares have no exit route today. By not complying with the regulatory obligation of making the disclosure when the change in the shareholding of the Noticee exceeded 2% and it fell below 5%, it had concealed the vital information from the investors. The object of the SEBI (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.

ORDER

23. 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.2,00,000/- (Rupees Two lakh only) on the Noticee which will be commensurate with the default committed by him.
24. 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. G. Ramar, Deputy General Manager, Investigation Department - Division – ID3, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.
25. 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: **March 04, 2009**

Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER