BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. - SRP/RK/AO: 185/2011]

UNDER SECTION 15 I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23 I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Parsoli Corporation Limited

(PAN: AABCP9030F)

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigations into the alleged irregularities in the affairs, trading and dealings in the shares of Parsoli Corporation Limited (hereinafter referred to as '**Company/PCL/Noticee**') whose shares witnessed abnormal increase in the price and volume traded during the period March 11, 2005 to July 18, 2005 at the Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**).

2. The investigations, prima facie, revealed that the promoters and directors of the Company had transferred their stake in the Company in off-market deals during the quarters ending on March 31, 2005 and June 30, 2005 however, it was not reflected in the shareholding pattern of the Company filed by it with BSE for the quarters ending on March 31, 2005 and June 30, 2005. Therefore, it is alleged that the Noticee, has violated the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') read with clause 35 of the listing agreement with BSE which, if established, makes it liable for penalty under section 23H of the SCRA.

3. It is also alleged that during the course of the investigations the Noticee was summoned by the Investigating Authority of SEBI to furnish certain information/documents under the provisions of section 11C (3) and 11 C (5) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) which it allegedly failed to comply with. The alleged failure on the part of the Noticee to comply with the aforesaid provisions of the SEBI Act, if established, makes it liable for penalty under section 15A(a) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri V. S. Sundaresan was appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to inquire into and adjudge under section 15A(a) of the SEBI Act, the alleged violation of the provisions of the SEBI Act, and under section 23I of the SCRA read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 to inquire into and adjudge under section 23H of the SCRA the alleged violation of the provisions of the SCRA. Consequent to the transfer of Shri V. S. Sundaresan, the undersigned has been appointed as Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. EAD-1/SRP/RK/189646/2010 dated January 5, 2010 (hereinafter referred to as **'SCN'**) was issued to the Noticee to show cause as to why an inquiry be not held against it and penalty be not imposed under –
    a) section 23H of the SCRA for the alleged violation of the provisions of section 21 of the SCRA read with clause 35 of the listing agreement; and/or
    b) section 15A (a) of the SEBI Act for the alleged violations of the provisions of section 11C(2) and 11C(3) of the SEBI Act.

6. The Noticee replied to the SCN vide letter dated January 21, 2010. The summary of the reply is as under –
    - *During the enquiry into the matter by BSE the Company had informed BSE vide letter dated April 26, 2006, that the promoters had not sold the shares but pledged those for availing financial assistance.*
    - *Vide letter dated May 2, 2006, PCL forwarded copies of various share pledge agreements entered into between the promoters and pledgees to BSE and vide its letter*

dated May 10, 2006 informed BSE about the circumstances under which the promoters of the Company had to pledge their shares to raise funds from private financiers. (Copy of such letters was enclosed alongwith the reply).

- *The promoters of the Company had pledged their shares with private financiers for a sum of ₹ 82 lakh. The promoters had to agree with all the terms and conditions of the private financiers, accordingly, the promoters handed over signed off-market delivery instruction slips without mentioning transferee's name to the financiers in respect of the pledged shares. It was agreed between them that the said shares would be given back to the pledgors when the loan would be repaid. Thus, the Noticee has submitted that the promoters continued to be the owners of the said shares as the transaction was that of pledge and therefore, it was not reflected in the shareholding pattern of the Company. The promoters in turn gave the money to the Company which is shown as unsecured loan in the balance sheet of the Company.*
- *The financiers later dishonestly transferred these shares to other entities about which the Company or promoters/directors were not aware. During the investigation by BSE, the Company had informed the exchange about the correct shareholding pattern of the promoters.*
- *With regard to the allegation of failure to furnish documents/information to the investigating authority the Noticee has stated that it had furnished all the documents/information which was available with it.*

In support of its above submissions the Noticee has submitted certain documents vide letter dated January 27, 2010.

7. In the meantime, while the adjudication proceedings were in progress, the Noticee, vide application dated January 25, 2010 applied to SEBI for settlement of the matter through consent proceedings. However, its consent application was rejected as the consent terms proposed by it were not acceptable to the concerned authority and the Noticee was accordingly informed by SEBI about the said rejection vide letter dated June 29, 2010.

8. Thereafter, in order to conduct inquiry into the matter the undersigned granted an opportunity of hearing to the Noticee on October 28, 2010. However, vide letter dated October 25, 2010 the Noticee requested to postpone the date of hearing by at least seven days. Accordingly, another opportunity of hearing was granted to the Noticee on November 16, 2010 vide notice dated November 2, 2010. The Notice was delivered to the Noticee but nobody appeared for the hearing on behalf of the Noticee on the said date. In the interest of natural justice one

more opportunity of hearing was granted to the Noticee on January 13, 2011 vide notice dated December 23, 2010. This notice was also delivered to the Noticee but no one appeared for the hearing. The Noticee neither responded to the notice nor has furnished any reason or grounds for non appearance. I am of the view that sufficient opportunities have already been given to the Noticee to make its submissions and to appear before me for the personal hearing. While it has filed its written reply, it has chosen not to avail of the opportunity of hearing. Therefore, in the facts and circumstances of the case, I am compelled to proceed with the matter on the basis of documents available on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the details of allegations against the Noticee, the reply filed by it and the documents/evidences available on record. The issues that arise for consideration in the present case are as under:
   a) Whether the Noticee, has violated/contravened the provisions of section 21 of the SCRA read with clause 35 of the listing agreement?
   b) Whether the Noticee has failed to comply with the summons issued by the investigating authority and thereby, violated the provisions of sections 11C (2) read with 11C (3) of the SEBI Act?

10. Before moving forward, it would be appropriate to succinctly state the facts relevant for the purpose of the inquiry. SEBI had conducted investigations into the buying, selling and dealings in the scrip of PCL, whose shares had witnessed abnormal increase in the price and the volume traded on BSE during the period March 11, 2005 to July 18, 2005.

11. Mr. Zafar Sareshwala, Mr. Uves Sareshwala, Mohamedyunus Mohammedhabib Sareshwala, Saleha Yunus Sareshwala, Taskeen U Sareshwala, Talha Vajiha Sareshwala, Juveria Puthawala, Aaliya Sareshwala were the persons belonging to promoter group of the Company. The shareholding pattern of promoters, as reported to the BSE by the Noticee, for the quarters ended on December 31, 2004, March 31, 2005 and June 30, 2005 is as under:

	Dec 31, 2004	**March 31, 2005**	**June 30, 2005**
Promoter's Holding			
Indian Promoters	10823500 (80.09%)	10823500 (80.09%)	10823500 (80.09%)
Foreign Promoters	-		
Persons acting in concert	1013705 (7.50%)	1013705 (7.50%)	1013705 (7.50%)
Sub total	**11837205 (87.59%)**	**11837205 (87.59%)**	**11837205 (87.59%)**
Non Promoter's holding	**-**		
Others			

PCBs	48650 (0.36%)	685741 (5.07%)	710217 (5.26%)
Indian Public	1504845 (11.13%)	947854 (7.01%)	946853 (7%)
NRIs/OCBs	124200 (0.92%)	44100 (0.33%)	20625 (12.41%)
Sub-Total	**1677695 (12.41%)**	**1677695 (12.41%)**	**1677695 (12.41%)**
Grand total	**13514900 (100%)**	**13514900 (100%)**	**13514900 (100%)**

12. However, it was observed during the investigations that there was change in actual shareholding of the promoter group entities during the aforesaid quarters and it was not reflected in the shareholding pattern reported to the exchange. The details regarding the alleged off-market transfer of shares of PCL by the said promoter group entities during the quarters ended on December 31, 2004, March 31, 2005 and June 30, 2005 are as under:

Name of the promoters/ directors	No of shares held as on December 31, 2004	No of shares transferred via off market deal	Date of transfer
Uves Yunus Sareshwala	1,84,800	3,12,000	1,00,000 shares on 14/03/05; 50,000 shares on 15/03/05; 31,000 shares on 17/03/05; 3,000 shares on 09/06/05; 80,000 shares on 30/6/05; 10,000 shares on 16/06/05 and 38,000 shares on 17/06/05.
Juveria Puthawala	75,100	82,100	57,100 shares on 21/05/05 and 25,000 shares on 08/06/05.
Saleha Yunus Sareshwala	1,48,200	1,09,200	90,000 shares on 21/03/05; 1,000 shares on 09/06/05; 500 shares on 18/06/05; 10,000 shares on 04/07/05; 7,700 shares on 11/07/05.
Aalia Sareswala	72,900	72,000	17/05/05
Taskeen Uves Sareshwala	72,100	72,100	10,000 shares on 11/03/05; 19,000 shares on 17/03/05 and 43,100 shares on 21/03/05.
Umer Uves Sareshwala (minor) S/o Uves Sareshwala	62,200	62,000	10,000 shares on 11/03/05; 50,000 shares on 18/03/05 and 2,000 shares on 06/09/05.
Asma Uves Sareshewala (minor) D/o Uves Sareshwala	59,900	49,900	39,900 shares on 21/03/05 and 10,000 shares on 21/05/05.
Ahmed Zafar Sareshwala (minor) S/o Zafar Sareshwala	44,000	44,000	21/03/05.
Khadija Zafar Sareshwala (minor) D/o Zafar	39,700	39,700	21/03/05.

Sareshwala			
Fatema Uves Sareshwala (minor) D/o Uves Sareshwala	20,200	20,200	10,000 shares on 11/03/05 and 10,200 shares on 21/03/05.
Sumaiya Talha Sareshwala (minor) D/o Talha Sareshwala	48,000	17,100	9,000 shares on 25/04/05; 600 shares on 05/05/05; 6,000 shares on 02/06/05; 1,000 shares on 09/06/05 and 500 shares on 18/06/05.
Qudsiya Talha Sareshwala (minor) D/o Talha Sareshwala	53,100	12,500	7,500 shares on 12/05/05; 4,000 shares on 02/06/05 and 1,000 shares on 18/06/05.

13. The investigations has found that the total off-market deals by the promoter/ directors, were for 10,44,350 shares out of which the net transfer by the promoters/directors were of 9,35,650 shares during the period of investigation. The investigations has also found that out of the 8,86,000 shares transferred by the promoters/directors, 7,36,615 shares were in physical mode and dematerialized by them and as per information received from Pinnacle Share Registry Pvt. Ltd. (RTA to the Company), 6,63,600 shares were transferred from other shareholders to the promoters in off market deals.

14. In view of the above incorrect shareholding pattern filed with the BSE by the Company it has been alleged that the Noticee has violated the provisions of section 21 of the SCRA read with clause 35 of the listing agreement.

15. In its reply the Noticee has contended that the shares were not transferred in off-market deals by the promoters as alleged but it were pledged with M/s. Amin Distributors and Prathmesh Investment and Trading Private Limited (PITPL) in lieu of a consideration of ₹ 82 lakh and the promoters handed over signed off-market delivery instruction slips without mentioning the name of the transferee to the financiers. These financiers later dishonestly transferred the shares to other entities about which the Company or promoters/directors were not aware. In support of his contention that the shares were pledged, the Noticee has relied upon the copy of letters written by Amin Distributors and PITPL to promoters of PCL.

16. In this regard it is observed that Mr. Zafar Sareshwals (Managing Director of PCL) and Mr. Uves Sareshwala (Joint Managing Director of PCL), who were also promoters of the Company and related to the persons belonging to promoter group, in their statement recorded on June 03, 2009 have stated (in response to Q. 9) that:

"All off-market transfers were in the demat mode. We have not made any off-market transfers or pledge in physical form during this period. … … …"

17. Thus, during the period of investigation the promoters/directors of PCL were holding and have transacted in shares of PCL in dematerialized form only. It has been claimed by the Noticee that the promoters had pledged their shares with some financiers. In this regard, it is observed that one of the fundamental requirements for creation of a valid pledge is 'delivery of goods' by the pledgor so as to put the goods in effective control of the pledgee and outside the control of the pledgor. Where securities are held in dematerialized form it is not possible to 'deliver' the shares physically, therefore, the manner and procedure for creation of pledge of securities in dematerialized form has been laid down in section 12 of the Depositories Act, 1996 and regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996. The law in this regard ensures that when dematerialized securities are pledged, they remain in the pledgor's beneficial ownership account or demat account but they are blocked so that they can not be used for any other transaction. As the law has laid down a procedure to be followed for creation of pledge of securities in dematerialized form therefore, it must be followed for creating a valid pledge in cases of dematerialized securities. Some of the demat account statement of the promoters available on record do not indicate that any pledge on shares of PCL was created. Demat account statements clearly indicate change in beneficial ownership of those shares. Further, the Noticee has not produced any detail or evidence which may suggest that the prescribed procedure for creation of pledge for dematerialized securities were followed. Therefore, in light of the above facts, I am of firm view that no pledge was created.

18. With regard to the reliance placed by the Noticee upon letters written by Amin Distributors and PITPL to claim that the shares were pledged by them, I find that the Noticee has claimed that the shares of the promoter group were pledged for an amount of ₹ 82 lakh, however, the available documents indicate that in this regard only ₹ 75,01,300 were paid to the promoters. It is apparent that the promoters have not made any attempt to recover the balance amount. They have also not provided the investigating authority with the name and address of the partners/proprietors of Amin Distributors from whom lakhs of rupees were received by them. It is also observed that the prevailing market price as on May 06, 2005 (the date of agreement with Amin Distributors was May 07, 2005) was ₹ 14.01 and the financiers even agreed to pledge/transfer the shares at unreasonably high rate of ₹ 20.65. Further, the agreements were either on plain sheet of paper or on letter heads and the letters sent by

Amin Distributers do not indicate that the said terms were agreed upon by the promoters. Thus, these circumstances also make the plea of the Noticee unreliable.

19. The Noticee has contended that it was not aware about the transfers done by financiers. I am of the view that handing over signed off-market delivery instruction slips by the promoters and receiving consideration leaves no doubt that the transactions entered into by the promoters with the counterparties were not pledge but it were off-market transfer of shares. It is also pertinent to mention here that PCL is a registered stock broker of BSE and NSE and in this circumstance it can not be said that its directors and promoters did not know about the procedure for creation of pledge held in dematerialized form or about the effect of signed off-market delivery instruction slips. Further, the Noticee has also submitted that the promoters in turn gave the money to it which is shown as unsecured loan in the balance sheet of the Company. Thus, in the circumstances, I am of the view that the plea of the Noticee that the shares were pledged and it was not aware about the off-market transfer of those shares of PCL is in-correct.

20. In this regard, it is also pertinent to mention that Zafar Sareshwala, MD of the Company and Uves Sareshwala, Joint MD of the Company stated the following during the recording of their statement before the investigating authority on June 03, 2009, *"---- we had admitted this bonafide mistake and verbally had assured the BSE in May 2006 that within 6-8 months we will make our shareholding pattern as required under Listing Agreement. … … … ."*

21. In light of all the above facts and circumstances of the case, I am of the opinion that the Noticee has failed to file correct shareholding pattern of the Company to the exchange in terms of clause 35 of the listing agreement for the quarters ending on March 31, 2005 and June 30, 2005. Section 21 of the SCRA imposes a statutory obligation on issuer of securities listed on a recognized stock exchange to comply with the conditions of the listing agreement entered into by it with a stock exchange. As the Noticee has failed to comply with the listing agreement therefore, I am of the view that it has violated the provisions of section 21 of the SCRA and hence, liable for monetary penalty under section 23H of the SCRA.

22. With regard to the allegation of the Noticee's non-compliance with the summons and directives of the investigating authority, I have noted that in connection with the aforesaid investigations, summons dated May 25, 2009 was issued to the Noticee under section 11C (3) and 11C (5) of the SEBI Act by the investigating authority of SEBI requiring it to appear through a representative and to furnish certain information/documents before him

(investigating authority). Vide letter dated May 27, 2009 the Noticee sought extension of time till June 03, 2009. On June 03, 2009 the Managing Director and Joint managing Director of the Company appeared on behalf of the Noticee but did not produce the documents sought from the Noticee. On June 03, 2009 the Noticee agreed to provide, inter alia, the following documents/information to the investigating authority by June 10, 2009:

(i) Details of off-market transfer by the promoters.

(ii) Details regarding net transfer of 9,94,450 shares which accounted for around 54% of the total listed capital held by them during the period of investigation.

(iii) Share Pledge agreements with counter parties.

(iv) Details, name and addresses of counter parties to whom shares were transferred.

(v) Date wise, counter-party wise off market transfers of each promoters and any party associated with the promoters.

(vi) Details explaining unsecured loans of Rs.82 lakh to the company.

(vii) Details (Names and amount) of other advances of Rs.2,00,17,258 on March 31, 2006.

(viii) Details as to whether about 11.3 lakh shares were fraudulently transferred by promoters and associates to other entities. Rectified shareholding pattern of the subsequent quarters.

23. It has been alleged that the Noticee failed to comply with the aforesaid summons and did not furnish the required information/documents. Hence, it has been observed by the investigating authority that the Noticee has been uncooperative and has failed to furnish documents and information. Based on the above, it has been alleged that the Noticee has failed to furnish the required information/documents in response to the summons issued by the investigating authority, and the same is in violation of the provisions of sections 11C (2) and 11C (3) of the SEBI Act, which makes the Noticee liable for penalty under section 15A (a) of the SEBI Act.

24. It is observed that the aforesaid summons and letters were received by the Noticee. The Noticee has not disagreed with the fact regarding its non-submission of the required information/documents to the investigating authority. The Noticee has submitted before me that the information/documents were not submitted as the same were not available with it. I am of the view that as the Noticee had earlier not raised this issue before the investigating authority therefore, it is an afterthought. This apart, it is observed from the above that some of the required information/ documents pertain to loans and advances by/to the Company, details regarding transfer of shares, correct shareholding pattern of the Company, etc. It is observed that the Noticee was under an obligation to preserve and produce these

documents and provide information to the investigating authority as sought from him. The information / documents sought by the investigating authority were vital for conducting the investigations and had the Noticee provided the required information/ documents, the investigations could have been conducted in a more effective manner. Further, it was not possible for the investigating Authority to obtain the said information / documents through any other source but from the Noticee. Non-cooperation with the Investigating Authority and not providing of the relevant details/documents sought by him, have definitely hampered the investigations to a great extent. Therefore, in light of the facts and circumstances of the case and the material on record, I hold the Noticee guilty of violation of section 11C (2) read with section 11C (3) of the SEBI Act, for which it is liable for penalty under section 15A (a) of the SEBI Act.

25. Therefore, on the basis of the charges established against the Noticee I am of opinion that the Noticee is liable for imposition of penalty under sections 15 A (a) of the SEBI Act and also under section 23H of the SCRA. These provisions are as under:

> ***15A. Penalty for failure to furnish information, return, etc.***
>
> *If any person, who is required under this Act or any rules or regulations made thereunder,-*
>
> *(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to 36[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*
>
> ***23H. Penalty for contravention where no separate penalty has been provided.***
>
> *Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

26. While determining the quantum of penalty under sections 15A(a) of the SEBI Act and under section 23H of SCRA, it is important to consider the following factors:

    (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.

27. Regarding penalty under section 15A (a) of the SEBI Act and under section 23H of the SCRA for indulging in above said violations, the investigations have not revealed the unlawful gains

made by the Noticee. It is also not possible from the information/details available with me to arrive at the figures for the profit made by the Noticee or the loss suffered by the investors. Further, there is nothing on record to establish that the default has been repetitive. However, I have noted that the disclosures made by the Company to the stock exchange regarding shareholding pattern was incorrect and the markets and investors at large were misguided by such untrue details. Therefore, taking into consideration the nature of violations, the adverse impact of such acts of the Noticee in misleading the investors and intentional disregards/unheeding to the regulator on several counts, it is necessary that a deterrent penalty is imposed on it to meet the ends of justice.

28. Therefore, based on the facts and circumstances of the case, I am of the opinion that a penalty of ₹ 2,00,000/- (Rupees two lakh only) under the provisions of section 15A(a) of the SEBI Act and a penalty of ₹ 3,00,000/- (Rupees three lakh only) under section 23 H of the SCRA, on the Noticee shall commensurate with the violations committed by it.

ORDER

29. In exercise of the powers conferred upon me under Section 15 I of the SEBI Act and 23 I of the SCRA, I impose a penalty of ₹ 5,00,000/- (Rupees five lakh only) on the Noticee under the provisions of sections 15A(a) of the SEBI Act and section 23 H of the SCRA. The Noticee shall pay the said amount of penalty by way of demand draft in favor 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 the Chief General Manager, IVD – ID 7, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

30. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **March 08, 2011** **Satya Ranjan Prasad**

Place: **Mumbai** **ADJUDICATING OFFICER**