

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. BM/AO- 129 /2013]

**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
Sudhir Kumar Srivastava
(PAN: AKPPS7908C)
In the matter of Bank of Rajasthan Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the affairs of Bank of Rajasthan Ltd. (hereinafter referred to as '**BoR**') during the period June 2007 to December 2009 (hereinafter referred to as the '**investigation period**'). Investigations revealed that the promoters of BoR led by Mr. Pravin Kumar Tayal, along with some companies that were connected to Mr. Pravin Kumar Tayal and/ or his relatives, by way of their continuous disclosure, publicly announced that their stake had come down from 44.18% as on quarter ending June 2007 to 28.61% as on quarter ending December 2009. However, it was alleged, though as per disclosure their holding seemed to have reduced, but in reality the holding of the promoters actually increased with the active collusion of front entities. It was alleged that the promoter companies of BoR and some companies that were connected to Mr. Pravin Kumar Tayal and/ or his relatives transferred shares of BoR in the off market and funds to other connected/ related companies and also made third party payments to certain brokers as consideration for purchase of shares of BoR by related/ connected companies from the market. Thus, it was alleged that the shareholding of the promoters of BoR with persons acting in concert (PACs) had increased from 46.80% in June 2007 to 63.15% in December 2009. It was alleged that while the promoters conveyed the impression that they were reducing their shareholding, they did not dilute their controlling stake in BoR. On the contrary they had actually increased their holding in a deceptive manner

with the active collusion of their front entities and allegedly made wrong disclosures to the exchange.

2. In view of the above it was alleged that **Sudhir Kumar Srivastava** (hereinafter referred to as '**the Noticee**'), as a director of Cyber Infosystems and Technologies Pvt. Ltd. (hereinafter referred to as '**Cyber Infosystems**'), a Promoter group company of BoR, through the above actions violated Section 12 A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation, 2003 (hereinafter referred to as '**PFUTP Regulations**'). The above violations make the Noticee liable for monetary penalty under Section 15 HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer, vide order dated January 25, 2012, 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 15 HA of the SEBI Act for the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Vide common Show Cause Notice dated June 18, 2012 (hereinafter referred to as '**SCN**') issued under Rule 4 of the Rules, the Noticee was asked to show cause as to why an inquiry should not be held against him and penalty not be imposed under Section 15 HA of the SEBI Act for the alleged violations specified in the SCN.
5. The Noticee replied to the SCN stating therein that he was not and had never been a director of Cyber Infosystems. The Noticee also submitted that he was a director in a company named Cyber Infoservices Pvt. Ltd. (hereinafter referred to as '**Cyber Infoservices**'). The Noticee also stated in his reply that he has no relation with Cyber Infosystems. Thereafter, the Noticee was advised to submit evidence in support of his submission that he was not a director in Cyber Infosystems, since as per the details available on the website of the Ministry of Corporate Affairs (MCA) the Noticee's name was appearing as a director of Cyber Infosystems. The Noticee submitted Annual Returns for 2006- 2010 filed by Cyber

Infosystems, stating that his name is not appearing as director in the annual report. He also submitted that his name had been included in the MCA data base by error, and that he was taking up the matter with the concerned Registrar of Companies (RoC) for rectification.

6. The Noticee was granted an opportunity of personal hearing before me on January 10, 2013. Subsequently, the hearing was rescheduled to be held at Delhi on January 3, 2013, and on the scheduled date, the Noticee along with Mr. Harsh Consul, the authorized representative of the Noticee, appeared for the hearing, and made submissions before me on behalf of the Noticee, reiterating the earlier written submissions, and undertaking to submit a detailed reply by January 14, 2013. Thereafter, the Noticee made further written submissions, enclosing therewith certified copies of the Memorandum and Articles of Association of Cyber Infosystems as well as the Annual Returns (2006-2012) filed by Cyber Infosystems. The Noticee has submitted that he is named neither as a first director nor as a director in subsequent Returns filed by Cyber Infosystems. The Noticee has also submitted that the RoC has been intimated to initiate corrective measures and has prayed that he cannot be held liable for the alleged violations, merely because his name erroneously appears on the MCA website as a director of Cyber Infosystems.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have examined the SCN, the reply of the Noticee and the documents available on record. I observe that the allegation in the SCN is that the promoters of BoR and their PACs, by their act of concealment of correct disclosure, defrauded the investors of BoR and the market at large. Cyber Infosystems was alleged to be a PAC and the Noticee was alleged to be a director of Cyber Infosystems. Through the above actions, the Noticee, as a director of the above named company, was alleged to have violated Section 12 A (a), (b) and (c) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of the PFUTP Regulations.
8. Now the issues that arise for consideration in the present case are :
 - a. Whether the Noticee was a director of the company Cyber Infosystems, and if so whether he violated Section 12 A (a), (b) and (c) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of the PFUTP Regulations?

- b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 HA of the 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 the SEBI Act?
9. Before moving forward, it will be appropriate to refer to the relevant provisions of the SEBI Act and PFUTP Regulations, which read as under:

PFUTP Regulations

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

- (a) *buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*
- (c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely :—*
 - (f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities.*

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

12A. No person shall directly or indirectly-

- (a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange,*

any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

10. I would discuss the issue of the Noticee's directorship in the company Cyber Infosystems. In reply to the SCN and during the hearing Noticee submitted that he was never a director of the company Cyber Infosystems and Technologies Pvt. Ltd. From the certified copies of the Annual Returns (2006-2012), Memorandum and Articles of Association of Cyber Infosystems submitted by the Noticee, I observe that he is not named as a director of Cyber Infosystems. While the adjudication proceedings were in progress information was sought from the company Cyber Infosystems with regard to the details of its directors during incorporation and also between January 2007 and December 2009. The company in reply submitted the names of the directors who were appointed during the incorporation and also of those who were directors during 2007 to 2009. From the reply of the company I observe that the name of the Noticee was not appearing as a director of Cyber Infosystems during the period asked for as stated above. Further, Cyber Infosystems has also stated that the names of directors that were wrongly appearing on the MCA website have been removed and submitted a copy of the print taken from the MCA website, from where I note that the name of the Noticee does not appear as director of the company.
11. From the documents and records available before me I observe that the Noticee was not a director of Cyber Infosystems during the relevant period.
12. In view of the above facts I am of the opinion that charges of violation of the provisions of Section 12 A (a), (b) and (c) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of the PFUTP Regulations do not stand established. I, therefore, absolve the Noticee of the charges as alleged above.

ORDER

13. After taking into consideration all the facts and circumstances of the case and material available on record, I do not find it a fit case to impose any monetary penalty. The case is accordingly disposed of.
14. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee also to the Securities and Exchange Board of India.

Date: **February 18, 2013**

Place: **Mumbai**

BARNALI MUKHERJEE
ADJUDICATING OFFICER