BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/BS/AO/107/2017-18]

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956, READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005, IN THE ADJUDICATION PROCEEDINGS INITIATED IN RESPECT OF RANA SUGARS LIMITED [PAN: AABCR6744C].

BACKGROUND

1. Securities and Exchange Board of India **(SEBI)** vide its order dated July 18, 2017 initiated adjudication proceedings against Rana Sugars Limited ***(hereinafter referred to as "Noticee/RSL")*** for the alleged violation of Section 21 of Securities Contracts (Regulation) Act, 1956 ***(hereinafter referred to as "SCRA")*** read with Clause 36 (7) of the Listing Agreement.

2. RSL was incorporated as a public limited company on July 30, 1991. The Company came out with its first public issue during September 1993. The scrip of RSL is listed on Bombay Stock Exchange ('BSE') and the National Stock Exchange ('NSE').

3. SEBI conducted Investigation in the matter of disclosures by RSL in respect of its Global Depository Receipt (GDR) issue. Pursuant to investigation, it is observed that RSL issued 24,55,662 (2.45 million) Global Depository Receipts (GDRs) with 2,45,56,620 underlying equity shares of Rs.10/- each aggregating

to US$ 18,000,002 (US $18 million) on May 15, 2006. Seazun Limited (in short **'Seazun'**) was the only entity who subscribed to the entire issue of GDRs amounting to US $18 million issued by RSL and the subscription amount was paid by Seazun by obtaining a loan (i.e. through Credit agreement) from Banco Efisa, S.F.E., S.A. (in short **'Banco'**), a bank based in Lisbon Portugal. Simultaneously, an account charge agreement was executed between RSL and Banco pledging the proceeds of the GDR issue to Banco. The account charge agreement was an integral part of the aforesaid Credit agreement entered into between Seazun and Banco. These agreements enabled Seazun to avail a loan from Banco for subscribing to the GDRs of RSL. It is alleged that the Noticee failed to disclose to the Stock exchange the account charge agreement entered with Banco. Subsription of GDRs of the RSL by Seazun was possible through arrangement of Credit agreement and the account charge agreement.

4. Further it is also alleged that the Noticee failed to disclose immediately to stock exchange, outcomes of the Board Meetings held on October 05, 2005 and May 15, 2006 in which decisions regarding approval of issuance of GDRs and allotment of GDRs were taken by the board.

APPOINTMENT OF ADJUDICATING OFFICER

5. Initially Shri S.V. Krishnamohan was appointed as the Adjudicating Officer in the matter. Subsequently, the undersigned was appointed as Adjudicating Officer vide order dated September 15, 2017 to inquire into and adjudge under Section 23E of SCRA, 1956, the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice dated October 18, 2017 ***(hereinafter referred to as "SCN")*** was issued to the Noticee in terms of Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 ***(hereinafter referred to as "SCR Adjudication Rules")*** read with Section 23-I of SCRA, 1956 to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 23E of SCRA, 1956, for the alleged violation of Section 21 of SCRA read with Clause 36 (7) of the Listing Agreement by the Noticee.

7. Vide letter dated 13.11.2017, Noticee requested for extension of time to file reply to the SCN, however till the end of November 2017 Noticee did not submit any reply to the SCN. Therefore, the Noticee was granted an opportunity of personal hearing to appear before me on December 11, 2017. Vide letter dated December 04, 2017, the Noticee requested for adjourning the hearing scheduled on 11.12.2017 and also requested for a date of hearing after December 18, 2017. Considering the above request of the Noticee hearing scheduled on 11.12.2017 was adjourned and another opportunity of personal hearing was granted to the Noticee on December 20, 2017. Again, vide email dated 18.12.2017 M/s Dhru & Company, Advocates and Solicitors on behalf of the Noticee requested for the adjournment of the hearing scheduled on 20.12.2017. Subsequently, the Noticee was granted another opportunity of personal hearing on 10.01.2018.

8. Mr. Nirman Sharma –Counsel, Dhru & Co., Mr. Mitesh Naik – Advocate, Dhru & Co. and Mr. Suresh Kumar –appeared for the personal hearing on January 10, 2018 on behalf of the Noticee and further filed a reply dated January 10, 2018. Extracts of the submissions made in the reply dated January 10, 2018 are reproduced hereunder.

- *"It is submitted that the allegations in the Notice pertain to actions taken in the year 2006. There is no justification or explanation found in the Notice for the enormous delay of more than 11 to 12 years for initiating the present proceedings against the Noticee. This unexplained delay of more than 11 to 12 years itself is fatal to the entire proceedings and on this ground alone, the present Notice ought to be dropped. In this regard, the decision of the Securities Appellate Tribunal in the case of HB Stockholdings Limited vs Securities and Exchange Board of India is squarely applicable where it has been held that unexplained delay and laches in initiating show cause proceedings ought to result in quashing of the proceedings.*

- *There is not even a remote allegation of any adverse impact on the market or investors. On the contrary, shareholders of RSL have fully benefitted from the receipt of foreign inflow within few months in the year 2006 itself.*

- *It is submitted that the regulatory provisions in relation to issuance of GDRs have been enacted and administered by the Reserve Bank of India. Given the fact that the Reserve Bank of India is exclusively empowered to administer the provisions of the Reserve Bank of India Act, 1934 and other connected legislations, the present proceedings are entirely without jurisdiction.*

- *Noticee has at all times complied with all regulatory requirements for all corporate decisions and has promptly intimated the same to applicable stock exchanges and other concerned authorities .*

- *The disclosures made to stock exchanges contained full information of what was fully known to the Noticee. Any information which was either*

piecemeal or unclear could not have possibly been disclosed as the same would have been entirely reckless.

- *The underlying shares to the GDRs were held by the domestic custodian bank and a non-resident would hold the GDR. These GDRs were listed on an overseas stock exchange, (Dubai International Financial Exchange Limited in the present case). These GDRs were in the nature of transferable receipts and the manner in which the GDR regulations are structured, the issuer company has no interface with the GDR holder, who are non-resident investors on stock exchange abroad. The only occasion when the identity of the GDR holder becomes relevant to the issuer or the Indian market is on conversion of the GDR into shares. Till the time the GDR holder becomes a shareholder/ member in the issuer company the identity of the GDR holder is entirely immaterial and the only relevant fact for the issuer company, its shareholders and the Indian market is the subscription of the GDRs and the inflow of foreign currency. In the present case, apart from the fact that all compliances have been undertaken, there is no dispute whatsoever that the foreign currency to the tune of 18 million dollars forming part of the GDR issue was issued by the issuer company and was utilized by the issuer company, for the purpose for which it was raised. The proceeds of the GDR issue have been fully utilized for the purpose of which the same were raised i.e. for setting up two new sugar mill units in the State of Uttar Pradesh. These two sugar mill units have been set up and are presently operating at a capacity to crush 5000 tonnes of sugarcane per day and facility for Co-generation of 20 MW of power. In other words, the issuer company and its shareholders have fully benefited from the GDR issue which has been effected in accordance with law.*

- *As per the information available, Seazun was not to be the sole subscriber but the initial allottees were to be as follows:*
  - *(i) Lamya Real Estate, 102, Al Najoum Bldg., Behind Dhnata Port, Saeed, P.O. Box- 4452, Dubai;*
  - *(ii) Fundabilis, GmbH, Munstergasse, 12, 8001, Zurich;*
  - *(iii) Contifina SA, Rue Albert-Gos 2, CH 1206, Geneve;*
  - *(iv) Unicom Asset Management Ltd, Bellerivestrasse 21, 8008, Zurich;*
  - *(v) Investic Bank (Switzerland) AG Talacker 41, CH-8039, Zurich; and*
  - *(vi) Innovation Advertising, 108, Al Najoum Bldg., Behind Dhnata Port, Saeed, P.O. Box-4452, Dubai;*

- *The purpose of entering into the Account Charge Agreement dated 15th May 2006 was a part of overall set of documents which were executed by the Company on advise of the consultants and intermediaries who were implementing the transaction. Since the Noticee is not a professional lead manager and is not aware of complex transaction documents required for a GDR issue, all documents as prescribed by the advisors were executed bona fide as a part of the larger transaction. At the time of entering into this Agreement, Noticee was not aware that Seazun would be the only subscriber but was under the impression that above mentioned entities would be the subscribers. However, as stated above, since the identity of the GDR holder is not required to be known to the issuer company and is generally not known, there was no reason for any specific disclosure to the stock exchanges in relation to the identity of the GDR subscriber.*

- *In the circumstances assuming without admitting Seazun was ultimately the only subscriber, (which identity was entirely immaterial) any disclosure specifically mentioning Seazun as a subscriber would have been rendered immaterial or misleading if the GDR was transferred on the same day by Seazun.*

- *As regards the allegation that Noticee failed to inform the stock exchanges about the Account Charge Agreement, it is submitted that any ancillary documentation/arrangement entered into by the Company in furtherance of its commitment to proceed with the GDR issue is not entirely material or mandatory for the purposes of disclosure. It is submitted that the Account Charge Agreement only facilitates the modalities for subscription and once the GDRs have been issued and the foreign currency has subsequently been received by the issuer company, the allegation of attempt to mislead the investors is entirely misconceived.*

- *As regards the allegation of delay in intimation to stock exchange of two days for meeting dated 5th October 2005 and one day for meeting dated 15th May 2006, it is submitted that there is a factual inaccuracy in the assertion in the Notice that there was a delay of two days in the disclosure for meeting dated 5th October 2005. Noticee had forwarded the disclosure on the same day i.e. 5th October 2005 by way of fax at 17.00. This is evident from the fax transmission report available in records that there is absolutely no delay and the allegation is factually incorrect, which is matter of few hours since the meeting concluded in the evening.*

- *It is submitted that the meeting dated 15th May 2006 was held at 4:00 p.m. and the disclosure was made at the earliest possible opportunity i.e. within 22 hours. The records as available today do not clearly make out what time the meeting concluded in the evening of 15th May, 2006. A period of 22 hours taken to disclose the actual allotment of GDRs cannot be said to be irregular in view of diligent and prompt disclosure of the entire process of the GDR issue from September 2005 till May 2006. It is submitted that disclosure within 22 hours is clearly in full compliance with the requirements of the Listing Agreement and SCRA. Moreover, the disclosure in the present case within 22 hours passes muster with the*

requirement of "immediate disclosure", particularly, when three disclosures of meetings convened for considering the GDR issue, Board of Director's approval and shareholder's approval have already been made.

- *No amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the alleged default by the Noticee. There is no amount of loss caused to an investor or group of investors. It is submitted that this is the only matter where any proceedings have been initiated against the Noticee in the entire securities market.*

9. Vide letter dated January 16, 2018, Noticee submitted a copy of a document dated August 21, 2006 filed with ROC referring to name of 'Deutsche Bank Trust Company Americas' as allottee of underlying shares and Lamya Real Estate, Fundabilis, GmbH, Contifina SA, Unicom Asset Management ltd, lnvestic Bank (Switzerland) AG and Innovation Advertising as GDR holders. Further, the Noticee filed a copy of Annual Report for the year 2006-2007 dated December 04, 2007 and Annual Report for the year 2007-2008 dated December 04, 2008 contending that GDR proceeds were utilized for setting up two new sugar mill units in the State of Uttar Pradesh.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the reply to the SCN, 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 has violated the provisions of Section 21 of SCRA read with Clause 36 (7) of the Listing Agreement?

b) Whether the Noticee is liable for monetary penalty under Section 23E of SCRA, 1956?

c) If yes, then what should be the quantum of monetary penalty?

11. In respect of the contention of the Noticee for delay in initiating the current proceedings against the Noticee, I find that SEBI initiated the investigation as soon as information regarding malafide actions came to its notice. Further, under the Securities and Exchange Board of India Act, 1992 there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. Delay in initiating the proceedings itself should not be a ground for discharging the Noticee

12. Before moving forward, it is pertinent to mention here the relevant provisions of SCRA and Listing Agreement, allegedly violated by the Noticee:-

Section 21 of SCRA, 1956 - Conditions for listing:

"Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

Clause 36 (7) of Listing Agreement:

"The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information."

.....

.....

(7) *Any other information having bearing on the operation/performance of the company as well as price sensitive information,*

The above information should be made public immediately."

13. I note that the allegation levelled against the Noticee is that it has failed to inform Stock exchange with regard to account charge agreement entered with Banco for subscription of GDRs of RSL by Seazun through arrangement of Credit agreement and further the Noticee failed to disclose immediately to stock exchange, outcomes of the Board Meetings dated October 05, 2005 and May 15, 2006 regarding approval of issuance of GDRs and allotment of GDRs respectively.

14. Summary of the aforesaid GDR issue as submitted by RSL vide its letter dated June 22, 2015 is tabulated below.

GDR issue date	No. of GDRs Issued (mn.)	Capital raised (US$mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited.	GDRs listed on
15-May-2006	2.45	18	ICICI Bank Ltd., Mumbai	2,45,56,620 equity shares of FV Rs.10 (1 GDR=10 equity share)	The Bank of New York	Chartered Capital and Investment Ltd., Ahmedabad	Banco Efisa	Dubai International Financial Exchange.

15. BSE and NSE had given approval for listing and trading of 2,45,56,620 shares of Rs.10 each underlying the aforesaid GDRs on May 15, 2006. The aforesaid GDRs were also listed on Dubai International Financial Exchange (in short **'DIFX'**) on May 18, 2006.

16. Following is the shareholding pattern of RSL, available on BSE site for the quarter ended March 2006, June 2006 and September 2006.

	Quarter ended March 2006		Quarter ended June 2006		Quarter ended Sep 2006	
Particulars	**No. of Shares**	**%**	**No. of Shares**	**%**	**No. of Shares**	**%**
Promoter Holding	2,33,62,103	46.85	2,33,62,103	31.39	2,33,62,103	31.39
Non Promoter Holding	2,64,98,897	53.15	2,64,98,897	35.61	3,74,48,897	50.33
Shares held by custodians and against which Depository Receipts have been issued			2,45,56,620	33.00	1,36,06,620	18.28
Total no. of issued shares	**4,98,61,000**	**100**	**7,44,17,620**	**100.00**	**7,44,17,620**	**100.00**
Annexure		**2.1**		**2.2**		**2.3**

17. From the above shareholding pattern, it was observed that the total number of issued shares for the quarter ended June 2006 was increased by 2,45,56,620 equity shares as compared to quarter ended March 2006. The aforesaid increase in total number of shares was due to issue of 24.55 million shares underlying of 2.45 million GDRs issued at US $7.33 per GDR on May 15, 2006.

18. The Noticee has raised the contention that the underlying shares of the GDRs were held by the domestic custodian bank and a non-resident would hold the GDR. These GDRs were listed on an overseas stock exchange, (Dubai International Financial Exchange Limited in the present case). These GDRs were in the nature of transferable receipts and the manner in which the GDR regulations are structured, the issuer company has no interface with the GDR holder, who are non-resident investors on stock exchange abroad. The only occasion when the identity of the GDR holder becomes relevant to the issuer or the Indian market is on conversion of the GDR to shares. Till the time the GDR holder becomes a shareholder/ member in the issuer company the identity of the GDR holder is entirely immaterial and the only relevant fact for the issuer company, its shareholders and the Indian market is the subscription of the GDRs and the inflow of foreign currency. The proceeds of the GDR issue have been fully utilized for the purpose of which the same were raised i.e. for setting up two new sugar mill units in the State of Uttar Pradesh. In this regard I note that RSL informed to the Indian investors that the GDRs issued by RSL fully subscribed. However, if the information that the entire GDRs has been subscribed by a single entity was disclosed to the investors then they might have taken a different decision. These price sensitive information form a very important criterion for the public to make their investment decisions. But this was not disclosed to the investors that is nothing but the disclosure violations by RSL under the listing agreement.

19. With regard to the contention that the Seazun was not the only entity to have subscribed the entire issue of GDRs amounting to US $18 million of RSL. It is observed from the information submitted by the Banco through Comissãso do Mercado de Valores Mobiliãrios, Portugal (in short **'CMVM'**) [i.e. Portuguese Securities Market Commission] that Seazun signed a **Credit Agreement dated April 12, 2006** with Banco for payment of GDRs subscription amount of US $18 million. Further, RSL executed **Account Charge Agreement dated May 15, 2006** with Banco for pledging the GDR proceeds as collateral against the loan availed by Seazun. Credit agreement and account charge agreement not disputed by the Noticee.

20. Seazun had entered into credit agreement dated April 12, 2006 with Banco for subscription of GDRs of RSL. While going through the said credit agreement it is observed that as per para 3.1 of the said credit agreement, Seazun shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto $18,000,000 issued by RSL. It clearly indicates that Seazun would be provided a loan only for subscription of GDRs issued by RSL.

21. A drawdown notice dated April 12, 2006 which would be required to avail the loan facility was given by Seazun to Banco requesting for an amount of US $18 million under the aforesaid credit agreement. The drawdown request was signed by M/s. Corporate & Chancery Group Limited (management company for Seazun) represented by Mr. Samuel Ernest Hurley. Credit agreement further states that the drawdown notice is irrevocable.

22. From the above referred credit agreement and drawdown notice both dated April 12, 2006, it is observed that Seazun had availed a loan of US $18 million from Banco for subscription of GDRs of RSL.

23. Copy of ‘certificate of incorporation of RSL, copy of Memorandum & Articles of Association of RSL and certified true copy of the resolution passed at the meeting held on January 31, 2006 of Board of RSL, inter-alia, were annexed to the aforesaid credit agreement as per conditions precedent (i.e. as per schedule 1) to the credit agreement. The said documents belong to the RSL which were annexed to the credit agreement between Seazun (The only subscriber of GDRs) and Banco which shows that the RSL was not only aware of the agreement but also aided the subscriber in obtaining the loan.

24. An account charge agreement was executed between RSL and Banco. Mr. Rana Inderpratap Singh, Managing Director of RSL signed the said account charge agreement with Banco. The account charge agreement was an integral part of the aforesaid Credit agreement entered between Seazun and Banco. These agreements enabled Seazun to avail a loan from Banco for subscribing to the GDRs of RSL. As per Account Charge Agreement, RSL shall deposit in its designated account with Banco an amount not exceeding loan availed by Seazun for subscription of GDRs of RSL as security for all the obligations of Seazun under the Credit Agreement. It is observed that only upon payment of all or part of the amounts due under the Credit Agreement, the Company could withdraw an equivalent amount from the bank account with Banco.

25. Further, from the Deposit Account Application and other client documents in respect of RSL’s bank account with Banco, it is observed that deposit account (a/c no: 6266880) was opened in the name of Rana Sugars Limited.

26. The aforesaid charge against designated bank account of RSL with Banco was registered with Companies House (United Kingdom's registrar of companies) and description of the charge is mentioned as follows:

    - *Amount secured by the mortgage or charge*

All obligations of Seazun Limited under a loan agreement dated 12 April 2006 and made with the Bank (the Secured Obligations)

- *As continuing security for payment of the Secured Obligations, the company with full title guarantee and by way of first fixed charge, assigns to and charges in favour of the Bank all its rights, title, benefit and interest in its designated account with the Bank (the Account) and all monies from time to time standing to the credit of the account and interest thereon (together the Deposit).*

- *The company undertakes that unless the Bank otherwise agrees it will not purport to withdraw the Deposit or any part thereof or sell, assign, mortgage, charge or otherwise encumber the Deposit or any part of it or attempt or agree to do so."*

27. It is evident from the above that RSL, pledged GDR proceeds to secure the rights of Banco against the loan given to Seazun for subscription to GDR issue.

28. It is, further observed from the minutes of the Board meeting dated January 31, 2006 of RSL that the Board of the RSL had authorised Mr. Rana Inder Pratap Singh, Managing Director of RSL to sign the account charge agreement and to use the funds so deposited in its bank account with Banco, as security in connection with loans for which any charge is granted.

29. I note that RSL on May 16, 2006 informed BSE that *"the Board of Directors of the Company at its meeting held on May 15, 2006, has allotted 24,55,662 Global Depositary Receipts (GDRs) underlying 2,45,56,620 equity shares of Rs. 10/- each aggregating to US$ 18,000,002."* While, the Board of RSL was aware of the fact that Seazun was the only entity to have subscribed to GDRs and the Board of RSL has authorised Mr. Rana Inder Pratap Singh to sign the account charge agreement (dated May 15, 2006). However, the RSL did not disclose this to BSE. Hence, RSL misled the investors in India by concealing material facts that GDRs were subscribed by Seazun. As mentioned above, this was done through arrangement of credit agreement as well as account charge agreement.

30. RSL received the GDR proceeds from overseas bank account to Indian bank account which was dependent on the repayment of loan by Seazun. Further, repatriation of GDR proceeds by RSL at its convenience cannot mitigate the dubious mechanism employed by the RSL for subscription of GDR issue.

31. Therefore, I find that the Noticee has failed to inform the stock exchange with regard to account charge agreement entered with Banco for subscription of GDRs of RSL by Seazun, the only subscriber of the GDRs through arrangement of credit agreement which was indeed a price sensitive information and would have impacted the price of the scrip in violation of Section 21 of SCRA, 1956 read with Clause 36 (7) of the Listing Agreement.

CORPORATE ANNOUNCEMENTS:

32. Following are the details of major corporate announcements made by the RSL to BSE with regard to GDR issue, and the same was disseminated by BSE on its website.

<table>
<tr><th>Date of announcement on BSE</th><th>Announcement</th><th>Price movement in the scrip of RANA</th><th>Impact on price</th></tr>
<tr><td>28-Sep-05 @ 17:10:00</td><td>Informed BSE that a meeting of the Board of Directors of the Company will be held on October 05, 2005, to consider the issue of Global Depository Receipts (GDR) by the Company.</td><td>BSE:
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>28-Sep-05</td><td>32.00</td><td>32.35</td><td>31.05</td><td>31.15</td><td>1,26,999</td></tr><tr><td>29-Sep-05</td><td>32.50</td><td>35.40</td><td>31.75</td><td>32.90</td><td>6,39,110</td></tr></table>NSE:
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>28-Sep-05</td><td>32.45</td><td>32.45</td><td>31.10</td><td>31.25</td><td>1,61,298</td></tr><tr><td>29-Sep-05</td><td>32.40</td><td>35.50</td><td>32.40</td><td>32.85</td><td>10,15,752</td></tr></table></td><td>On September 29, 2005, the scrip closed 5.64% above its previous day closing price on BSE and 5.12% above its previous day closing price on NSE.</td></tr>
<tr><td>07-Oct-05 @ 13:59:00</td><td>Informed BSE that the Board of Directors of the Company at its meeting held on October 05, 2005, has approved the issue of Global Depository Receipts (GDRs) convertible into equity shares for 5,00,00,000 equity shares at a price of Rs 33/- per share subject to the approval of shareholders in the forthcoming Annual General Meeting of the Company to be held on November 03, 2005.</td><td>BSE:
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>06-Oct-05</td><td>32.80</td><td>32.80</td><td>31.60</td><td>31.80</td><td>1,75,336</td></tr><tr><td>07-Oct-05</td><td>32.55</td><td>33.00</td><td>31.25</td><td>31.90</td><td>2,92,062</td></tr></table>NSE:
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>06-Oct-05</td><td>33.00</td><td>33.00</td><td>31.55</td><td>31.90</td><td>2,67,047</td></tr><tr><td>07-Oct-05</td><td>32.20</td><td>33.10</td><td>31.35</td><td>32.05</td><td>4,37,538</td></tr></table></td><td>On October 07, 2005, the scrip closed 0.31% above its previous day closing price on BSE and 0.47% above its previous day closing price on NSE.</td></tr>
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<table>
<tr><th>Date of announcement on BSE</th><th>Announcement</th><th>Price movement in the scrip of RANA</th><th>Impact on price</th></tr>
<tr><td>08-Nov-05 @ 19:07:00</td><td>Informed BSE that the shareholders of the Company have passed the resolution under section 81, 81(1-A) regarding issue of Global Depositary Receipts (GDR) for 5,00,00,000 equity shares @ Rs 33/- per share in the Fourteenth Annual General Meeting of the Company held on November 03, 2005.</td><td>BSE:<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>08-Nov-05</td><td>26.90</td><td>27.50</td><td>26.60</td><td>27.35</td><td>54,543</td></tr><tr><td>09-Nov-05</td><td>28.10</td><td>29.00</td><td>27.45</td><td>27.65</td><td>1,03,935</td></tr></table>NSE:<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>08-Nov-05</td><td>26.75</td><td>27.80</td><td>26.55</td><td>27.40</td><td>1,11,381</td></tr><tr><td>09-Nov-05</td><td>27.9</td><td>28.25</td><td>27.25</td><td>27.50</td><td>1,31,520</td></tr></table></td><td>On November 09, 2005, the scrip closed 1.10% above its previous day closing price on BSE and 0.36% above its previous day closing price on NSE.</td></tr>
<tr><td>16-May-06 @ 14:13:00</td><td>Informed BSE that the Board of Directors of the Company at its meeting held on May 15, 2006, has allotted 2455662 Global Depositary Receipts (GDRs) underlying 24556620 equity shares of Rs 10/- each aggregating to US $ 18000002.</td><td>BSE:<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>15-May-06</td><td>37.50</td><td>37.50</td><td>34.40</td><td>34.55</td><td>1,13,983</td></tr><tr><td>16-May-06</td><td>33.70</td><td>35.00</td><td>32.85</td><td>33.25</td><td>97,364</td></tr></table>NSE:<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>15-May-06</td><td>36.00</td><td>36.50</td><td>34.45</td><td>34.55</td><td>1,13,426</td></tr><tr><td>16-May-06</td><td>34.55</td><td>36.00</td><td>32.85</td><td>33.35</td><td>77,949</td></tr></table></td><td>On May 16, 2006, the scrip closed 3.76% below its previous day closing price on BSE and 1.20% above its previous day closing price on NSE.</td></tr>
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33. It was further alleged that the Noticee has failed to intimate immediately the outcomes of the Board Meetings dated October 05, 2005 and May 15, 2006 regarding approval of issuance of GDRs and allotment of GDRs respectively, which were price sensitive information.

34. It is an admitted fact that the outcome of Board Meeting dated October 05, 2005 regarding approval of issuance of GDRs was displayed on BSE website on October 07, 2005 at 13:59 hours and the outcome of Board Meeting dated May 15, 2006 regarding allotment of GDRs was displayed on BSE website on May 16, 2006 at 14:13 hours.

35. It is observed that on September 28, 2005, the Noticee informed BSE that a meeting of the Board of Directors of the Company will be held on October 05, 2005, to consider the issue of GDRs by the Company. Therefore, the information with regard to the Board meeting to consider the approval of GDRs were already in public domain which was subsequently displayed on the website of BSE on October 07, 2005. Further in respect of the allegation of delayed intimation of the outcome of the Board meeting, the Noticee has submitted a letter no. RSL/05-

06/CS-24308 dated October 05, 2005, addressed to the Stock Exchange, Mumbai with regard to the outcome of the Board meeting dated October 05, 2005 along with fax transmission report. The Noticee has claimed that the said letter dated October 05, 2005 was forwarded to the stock exchange immediately by way of fax on October 05, 2005 at 17.00 hours and filed the fax transmission report in support of its claim. Though from the fax transmission report it is not clearly discernible as to whether the details stated by the Noticee are correct or not. However, no contrary evidence is available on record. Considering the above, I am inclined to give benefit of doubt to the Noticee in this regard.

36. With regard to the outcome of Board meeting held on 15th May 2006, it is submitted by the Noticee that the meeting was held at 4:00 p.m. and the disclosure was made at the earliest possible opportunity i.e. within 22 hours. The Noticee has contended that the records as available today do not clearly make out what time the meeting concluded in the evening of 15th May, 2006. A period of 22 hours taken to disclose the actual allotment of GDRs cannot be said to be irregular in view of the entire process of the GDR issue from September 2005 till May 2006. The Noticee submitted that the fact that disclosure is made within 22 hours is clearly in full compliance with the requirements of the Listing Agreement and SCRA. The disclosure in the present case within 22 hours should be considered as complying with the requirement of "immediate disclosure", particularly, when three disclosures of meetings convened for considering the GDR issue, Board of Director's approval and shareholder's approval have already been made. Considering the said submissions of the Noticee and considering the fact that disclosure of outcome of the Board meeting made within 22 hours, a lenient view may be taken in this regard.

37. With regard to the contention of the Noticee in respect of jurisdiction of SEBI over the aforesaid violations, I note that the Noticee is a listed Company and was under an obligation in terms of section 21 of SCRA, 1956, to comply with the conditions of Listing Agreement. Specifically, Clause 36 (7) of the Listing Agreement mandates the listed companies to immediately inform the Exchange any other information having bearing on the operation/performance of the company as well as price sensitive information. Needless to say, the Noticee was required to make true and correct disclosure for subscription of GDRs of RSL by Seazun through arrangement of credit agreement and account charge agreement. The disclosures under Clause 36 of the listing agreement serve a very important purpose of informing the market and the investors about the operation/performance of the company as well as price sensitive information. These price sensitive information form a very important criterion for the public to make their investment decisions. In terms of Section 21 of SCRA, 1956 and Clause 36 of Listing Agreement, the obligation for compliance is on the Company for such disclosures.

38. The Hon'ble Supreme Court of India vide a judgment dated July 6, 2015, in the matter of ***SEBI vs. Pan Asia Advisors Limited and Another (Civil Appeal No. 10560/2013)***, while deciding whether SEBI had jurisdiction relating to the GDR issue held that *"We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company."* Therefore I note that if any entity uses the GDR route in a way that may have an impact on Indian markets or be detrimental to the interest of shareholders, SEBI certainly have the power to step in and take coercive and enforcement actions. Hence, the contention of the Noticee with regard to the jurisdiction of the SEBI on the GDR issue is devoid of merit.

39. In view of the forgoing, I conclude that the Noticee has not informed Stock exchange with regard to subscription of GDRs by Seazun through arrangement of credit agreement and account charge agreement with Banco. Further the Noticee failed to disclose names of the actual subsribers to the GDR. Failure to disclose such information stems from a deep rooted conspiracy and the irregular modalities adopted by the Noticee as well as Seazun to mislead the investors in India. Therefore, I hold that the Noticee violated the provisions of Section 21 of SCRA, 1956 read with Clause 36 (7) of the Listing Agreement.

40. The provisions of the Listing Agreement have now been rescinded and the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 has been promulgated and Regulation 103 of the said Regulations read as follows- :

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
Repeal and Savings

103. (1) On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.

(2) Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

41. The aforesaid contravention of the provisions of Section 21 of SCRA, 1956, read with Clause 36 (7) of the Listing Agreement by the Noticee attract monetary penalty under Section 23E of the SCRA, 1956, which reads as follows:

Section 23E of SCRA, 1956:- Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

"If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees."

42. While determining the quantum of penalty under Section 23E of SCRA, it is important to consider the factors stipulated in Section 23J of SCRA, which reads as under:-

"23J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 23-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

43. Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}* held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

44. It is noted that available records do not specify the specific loss suffered by the investors due to such non-disclosure of information to Stock Exchange. However, it can be observed that the GDRs issue would not have been subscribed had the RSL not given any such security towards the loan taken by the Seazun. The RSL reported to the stock exchange that "the Board of Directors of the Company at its meeting held on May 15, 2006, has allotted 24,55,662 GDRs underlying 2,45,56,620 equity shares of Rs 10/- each aggregating to US$ 18,000,002." In fact, the Board was aware of the fact that Seazun was only entity to have subscribed to GDRs and the Board has authorised Mr. Rana Inder Pratap Singh to sign the account charge agreement dated May 15, 2006. However, the same was not disclosed to BSE on May 15, 2006. Thus, it can be inferred that, the RSL and the Board had a pre-meditated plan to provide financial assistance by means of pledge of entire GDR subscription proceeds for the purpose of ensuring the issuance and subscription of its GDRs.

45. The arrangement of credit agreement and account charge agreement which resulted in subscription of issue of GDR by RSL as well as the real subscribers to the GDR and the aforesaid arrangement were not disclosed to the Stock Exchange. Further, RSL reported misleading disclosures to the stock exchange which contained incorrect information and this might have influenced the decision of investors. The Hon'ble Securities Appellate Tribunal vide order dated 25/10/2016 in Appeal no 126/2013 Pan Asia Vs SEBI, wherein a similar modus operandi adopted by appellants held that

"It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious

method introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances, decision of SEBI that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted."

46. Certainly, the instant case involves severe gravity and taking into account aforesaid aspects, I am of the view that the violation committed by the Noticee has to be viewed seriously and the same warrants imposition of monetary penalty.

ORDER

47. After taking into consideration the nature and gravity of the charges established, the mitigating factors as discussed in the preceding paragraphs, I in exercise of the powers conferred upon me under Section 23-I of the SCRA, 1956 read with Rule 5 of the SCR Adjudication Rules, 2005, hereby impose a penalty of Rs.10,00,000/- (Rupees Ten Lakhs Only) on the Noticee namely M/s Rana Sugars Limited in terms of Section 23E of the SCRA, 1956 for violation of the provisions of Section 21 of SCRA, 1956, read with Clause 36 (7) of the Listing Agreement.

48. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief

(Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

49. In terms of Rule 6 of the SCR Adjudication Rules, 2005, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : February 28, 2018 **Biju. S**
Place : Mumbai **Adjudicating Officer**