

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NOS. ASK/AO/62-67/2014]

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

| Name of the entity | PAN | Order No. |
|-------------------------------------|------------|----------------|
| 1.M/s MAN Industries(India) Limited | AAACM2675G | ASK/AO/62/2014 |
| 2.R C Mansukhani | AACPM2146H | ASK/AO/63/2014 |
| 3.J C Mansukhani | AACPM2147G | ASK/AO/64/2014 |
| 4.J L Mansukhani | AAOPM3800G | ASK/AO/65/2014 |
| 5.R C Jindal | AAMPJ4632M | ASK/AO/66/2014 |
| 6.Sujal Sharma | AJIPM5196N | ASK/AO/67/2014 |

In the matter of MAN Industries (India) Limited

Background

1. Securities and Exchange Board of India (**SEBI**) conducted investigation into the dealings in the shares of MAN Industries (India Limited) (**company**) for the period from April 15, 2009 to May 14, 2009. The investigation inter alia revealed that the company (Noticee No.1) , R.C Mansukhani, Chairman (Noticee No.2), J C Mansukhani, Vice Chairman and Managing Director (Noticee No.3), J L Mansukhani, Executive Director (Noticee No.4), R C Jindal, Executive Director (Noticee No.5) & Sujal Sharma, Company Secretary & Compliance Officer (Noticee No.6) [**collectively Noticees**] had allegedly delayed in disseminating price sensitive information to the stock exchanges regarding bagging of certain orders and also had not amended the Model Code of Conduct as specified in Schedule I of SEBI (Prohibition of

Insider Trading) Regulations, 1992 (**PIT Regulations**) pursuant to amendment in PIT Regulations. It was, thus, alleged that the Noticees had violated the provisions of regulations 12(2) & 12(3) read with Clause 2.1 of Schedule II of PIT Regulations and regulations 12 (1) & 12 (3) read with Clause 1.2 of Part A of Schedule I of PIT Regulations.

Appointment of Adjudication Officer

2. Shri Piyoosh Gupta was appointed as Adjudicating Officer vide order dated April 12, 2013 under section 15-I of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 ("**Rules**") to inquire into and adjudge under section 15HB of the SEBI Act the alleged violation of the provisions of regulation 12(1) & 12(3) read with Clause 1.2 of Part A of Schedule I of PIT Regulations and regulation 12 (2) & 12 (3) read with Clause 2.1 of Schedule II of PIT Regulations. Consequent upon the transfer of Shri Piyoosh Gupta, I have been appointed as Adjudicating Officer vide order dated November 08, 2013.

Show Cause Notice, Reply and Personal Hearing

3. Show Cause Notices dated September 04,2013 ("**SCN**") were issued to the Noticees under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed against the Noticees under section 15HB of the SEBI Act for the alleged violations specified in the SCN.
4. In response to the SCN, Noticee No. 1 filed response vide letter dated October 14, 2013. While making submissions on merits, Noticee No.1 stated that Shri RC Jindal (Noticee No.5) & Ms Sujal Sharma (Noticee No. 6) have left the company and Shri J L Mansukhani (Noticee No. 4) has expired. No response was received from other Noticees. In order to conduct inquiry in the matter, vide letters dated November 22, 2013, Noticees except Shri J L

Manukhani were advised to appear for hearing on December 06, 2013. Noticee No.1 was advised to file proof of death of Shri J L Mansukhani.

5. On December 06, 2013 Shri Rishikesh Vyas appeared as Authorized Representative (**AR**) on behalf of Noticee Nos. 1 & 2. The AR sought time till December 17, 2013 for filing additional submissions. During the hearing, the AR was also advised to file certified copy of the death certificate of Shri J L Masukhani. The next date of hearing was fixed on December 19, 2013.
6. Vide letter dated December 06, 2013, Noticee No. 1 submitted certified copy of the death certificate of J L Mansukhani. It was also stated in the said letter that the reply of the company dated October 14, 2013 was filed on behalf of the company (Noticee No.1), R C Mansukahni (Noticee. No.2), R C Jindal, (Noticee No.5) & Sujal Sharma (Noticee No.6).
7. On the date of hearing on December 19, 2013, Dr. S D Israni, Advocate, Ms Pinky Chainani, Advocate, Shri Rishikesh Vyas company secretary, and Ms Rachna Kokal Asst. company secretary appeared as ARs for Noticees Nos 1 & 2 when they were inter alia asked to produce letters of authority from Noticee Nos. 5 & 6 to adopt the reply of the company dated October 14, 2013 on their behalf also. Thereafter, vide letters dated December 23, 2014 & January 05, 2014 R C Jindal (Noticee No.5) & Sujal Sharma (Noticee No.6) submitted their respective authority letters authorizing Noticee No.1 and their authorized representatives to appear and make submissions on their behalf. Subsequently, vide letters dated December 20, 2013 fresh opportunity of hearing was granted to Noticee Nos. 5 & 6 on January 08, 2014 when Dr. S D Israni, Advocate, and Ms Rachna Kokal Assistant Company Secretary appeared as ARs on their behalf.
8. As no reply to SCN was received from J C Mansukhani, opportunity for hearing was granted on December 06, 2013. However, the said letter returned undelivered with a remark 'refused to accept'. Another opportunity of hearing was given on December 19, 2013. Vide e-mail dated December 16, 2013, J C

Mansukhani, while denying all the charges leveled against him vide the SCN, requested for copies of certain documents for enabling him to file reply to the SCN. On December 19, 2013, Shri. Aditya Bansali, Partner of Mindspright Legal and Ms Ruchi sharma, Company Secretary, MAN Infraprojects Limited appeared as ARs on behalf of JC Mansukhani. The ARs submitted that a request for specific documents will be sent by December 23, 2013 and reply to the SCN would be submitted within one week of receipt of response from SEBI. Vide letter dated December 23, 2013, J C Mansukhani sought copies of certain documents. Vide letter dated January 21, 2014 the documents sought by J C Mansukhani have been furnished to him and was also advised to appear for hearing on February 04, 2014. Vide letter dated January 31, 2014, J C Mansukhani requested for an extension of time and accordingly the hearing scheduled for February 04, 2014 was postponed to February 12, 2104. On February 12, 2014, Shri. Aditya Bansali, Partner of Mindspright Legal and Ms Ruchi Sharma, Company Secretary, MAN Infraprojects Limited appeared as ARs and submitted reply on behalf of J C Manukahani. The ARs also sought time till February 14, 2014 for filing additional submissions. Vide letter dated February 14, 2014 additional submissions have been submitted on behalf of J C Mansukhani.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the documents available on record and written submissions made by the Noticees.

10. The issues that arise for consideration in the present case are:
 - a. Whether the Noticees have violated the provisions of regulations 12(2) & 12(3) read with Clause 2.1 of Schedule II of PIT Regulations and regulations 12 (1) & 12 (3) read with Clause 1.2 of Part A of Schedule I of PIT Regulations?.

- b. Do the violations, if any, on the part of the Noticees attract penalty under section 15HB of SEBI Act?
- c. If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act?

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

PIT Regulations.

Regulation 12(1) All listed companies and organizations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds:

(b) the self regulatory organizations recognized or authorized by the Board:

(c) the recognized stock exchanges and clearing house or corporations:

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956 and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedure and conduct as near thereto the Model Code specified in Schedule I of these regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedure to enforce the codes specified under sub-regulations (1) and (2).

Part A of Schedule I to regulation 12 (1) of PIT Regulations:

Clause 1.2 The compliance officer shall be responsible for setting forth policies and procedures and monitoring adherence to the rules for the preservation of "Price Sensitive Information, pre-clearing of all the designated employees and their dependants trades (directly or through respective department heads as decoded by the organization /firm), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Schedule II of regulation 12 (1) of PIT Regulations:

Clause 2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

12. Before proceeding on merits, I note that the company (Noticee No.1) has, vide letter dated October 14, 2013, submitted that Shri J L Manukhani (Noticee No. 4) has expired. Vide letter dated December 06, 2013, Noticee No. 1 has submitted certified copy of Death Certificate dated November 17, 2011 issued by Municipal Corporation of Greater Mumbai certifying that Shri J L Mansukhani had expired on October 31, 2011. In view of the same, I am of the view that the present Adjudication Proceeding against Shri J L Mansukhani would be abated. In this context I would like to quote the observations of Hon'ble Supreme Court, in *Girijanandini Vs Bijendra Narain (AIR 1967 SC 2110)*, wherein the court observed that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply. I note that the SCN against him was issued on September 04, 2013 and the record shows that he died on October 31, 2011. Thus, the proceedings were initiated against the personal acts of omission and commission of a person who was no more to face the said charges. In view of the above, I hereby abate the instant proceedings initiated against Shri J L Mansukhani vide SCN dated September 04, 2013.

13. Now I deal with the matter on merits as far the other Notices are concerned. First, I deal with the alleged violation of the provisions of regulations 12(2) & 12(3) read with Clause 2.1 of Schedule II of PIT Regulations.
14. From the material available on record, I note that an ISO - 9001 company, MAN Industries India Limited was incorporated on 19th May, 1988 with a project to manufacture Aluminum Extrusions and was a manufacturer and exporter of large diameter Carbon Steel Line Pipes for various high pressure transmission applications for Gas, Crude Oil, Petrochemical Products and Potable Water. The shares of the company are listed on The BSE Limited (BSE), The National Stock Exchange of India Limited (NSE) and the GDRs of the company are listed with NASDAQ Dubai Limited.
15. It was observed that the company had, vide separate letters dated April 29, 2009 addressed to BSE and NSE, made certain corporate announcements to the exchanges inter alia stating that "Man Industries bags order of Rs 1340 crores from Middle East". The details of the announcement made vide letters dated April 29, 2009, number of shares traded on April 28, 2009 and on April 29, 2009 and the price impact are as under:

| S.No | Date and Time | Announcement/News | Price Impact/Shares Traded (NSE) | | | | Remarks |
|--------------------------------|-----------------------------|---|----------------------------------|-------|-------|-------|---|
| 1 | On April 29, 2009@ 11:35 AM | Man Industries (India) Ltd. has informed the Exchange regarding a press release dated April 29, 2009, titled "Man Industries bags order of Rs. 1340 crores from Middle East". | 28/04/09 | | | | The scrip closed at 4.74 % higher price than the opening price on 29/04/09. |
| | | | O | H | L | C | |
| | | | 31.25 | 31.70 | 28.55 | 28.95 | |
| | | | No. of shares Traded:- 120446 | | | | |
| | | | 29/04/09 | | | | |
| | | | O | H | L | C | |
| 30.60 | 32.05 | 28.90 | 32.05 | | | | |
| No. of shares traded: 2,64,668 | | | | | | | |

It was observed that the said orders were obtained by the company through enquiry and negotiation and the contract with Niroo Gustar Institute Iran (Niroo Gustar) was signed on March 01, 2009 and the contract with Green Refinement Company (GRC) was signed on April 22, 2009.

16. In this regard, it was alleged in the SCN that the dissemination of information to the stock exchanges regarding the bagging of the said orders was done by the company only on April 29, 2009 with certain delay. The details of delay is as shown under.

| Sr. no | Event | Value of Contract | Date of agreement | Date of information to the exchange | Delay in days. |
|--------|--------------|-------------------|-------------------|-------------------------------------|----------------|
| 1 | Niroo Gustar | 90 million euros | March 01, 2009 | April 29, 2009 | 59 days |
| 2 | GRC | 112 million euros | April 22, 2009 | April 29, 2009 | 7 days |

Thus, the allegation relates to delay in disclosing price sensitive information concerning orders procured by the company, in violation of the provisions of 12(2) & (3) read with clause 2.1 of Schedule II of PIT Regulations which mandates prompt disclosure of price sensitive information to the exchanges and dissemination of the same on a continuous and immediate basis.

17. Now, before moving further, it is to be determined as to whether the information relating to bagging of orders constitutes 'price sensitive information' within the meaning of provisions of regulation 2(ha) of the PIT Regulations. As per regulation 2(ha) of the PIT Regulations "price sensitive information' means *any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*

Explanation.- The following shall be deemed to be price sensitive information:-

- (i) periodical financial results of the company;
- (ii) intended declaration of dividend (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects;
- (v) amalgamation, mergers and takeovers;
- (vi) disposal of the whole or substantial part of the undertaking; and
- (vii) significant changes in policies, plans or operations of the company".

I note that the definition of 'price sensitive information' is broad enough to cover within its ambit any information which if published is likely to materially affect the price of securities of a company. In this regard, what is relevant to be seen is that (i) whether the information directly or indirectly related to the company and (ii) whether the information, if published, is likely to materially affect the price of securities of a company. If the answers to these two questions are in affirmative, then the information has to be construed as price sensitive information irrespective of actual price witnessed post disclosure of the information.

In the instant matter, from the material available on record, I note that the company has vide its letters dated April 29, 2009 made corporate announcement to both NSE and BSE wherein they announced securing a prestigious order worth Rs 1340 crores from Middle East. These orders comprise of two separate orders - one with Noroo Gustar for a value of 90 million euro and the other with GRC for a value of 112 million euro. It is also noted that the company recorded net sales turnover of 1883.42 crore for the year ended March 2009 and of Rs 1505.96 crores for the year ended March 2010. Thus, it is evident that these orders constituted a substantial % of turnover of the company. The company itself had stated in its letter to exchanges that "MAN Industries (India) Limited, one of the leading Large Diameter Pipe Manufacturing companies in the country, today announced securing a prestigious order worth Rs. 1340 crore from middle east during the current year". The enormity and the magnitude of the orders is such that it clearly constitutes price sensitive information and certainly it is impossible for anyone to treat the information relating to bagging of orders of this magnitude as one not materially affecting the share price of the company which has received the orders. As such, in the instant case there cannot be any hesitation in holding that the information about the bagging of orders was directly relating to the company and would materially affect the price if published.

In this regard, I further note that the Noticees themselves have considered bagging of orders of this kind would affect the price. For example, MAN industries (Noticee No.1), vide its reply dated December 16, 2013, while explaining /defending the delay in disseminating the information has stated as under:

".....it needs to be appreciated that any premature disclosure of information about any order that is yet to attain finality would not be the interest of the company or even the investors as the same could boomerang on our clients as they would be held liable for intentionally misleading the investors by disclosing information about such an order that is yet to be finalized".

J C Mansukahni (Noticee No.3) in his reply dated February 11, 2014 has stated as under:

".....there were several other distinguishing factors regarding the order of Niroo Gustar Institute as compared to any other Client, which required the company to be more cautious and to disclose to the public at large the details of the order, once the company was confident of its execution. Some of the factors are as under:

- i. The order from Niroo Gustar Institute was a significant order to the tune of 90 million Euros.***
- ii. The order entailed huge raw material cost.***
- iii. Niroo Gustar Institute is located in Iran and at the relevant time there were many restrictions imposed on trade with Iran.***
- iv. Niroo Gustar Institute was a new client and hence sine kind of financial commitments in tune with the Article 7 of the agreement was required to n treat the order as executable.***
- h. From the above factors it is clear that the contract of Niroo Gustar Institute was an important contract and as a matter of abundant caution required to be disclosed to the investors at large since the sane a significant order....."***

Thus, admittedly, when the company bagged the orders of this magnitude, there existed a price sensitive information.

Further the company itself chose to inform the stock exchanges regarding the bagging of the said orders and this fact only shows that the company had, undisputedly, considered information relating to bagging of orders to be constituting price sensitive information. I also note that the scrip of the company closed at 4.74 % higher price than the opening price on April 29, 2009 and there was also a quantum jump in the volume traded in the scrip from 1,20,446 shares to 2,64,668 shares.

Thus, I hold that the information relating to bagging of orders by the company as stated above was indeed a price sensitive information.

18. Having found that information relating to bagging of the orders by the company was a price sensitive information, now let me examine if there was a delay in disseminating the information to the exchange. As mentioned earlier, the relevant provision is contained in Clause 2.1 of Schedule II under regulation 12 (2) & (3) of Code of Corporate Disclosure Practices for prevention of insider trading. It relates to prompt disclosure of price sensitive information. The price sensitive information shall be given by the listed companies to stock exchanges and disseminated on a continuous and immediate basis.
19. In this regard, it was alleged in the SCN that the information relating to bagging of order from Niroo Gustar was filed with the exchanges with a delay of 59 days and of GRC was filed with a delay of 7 days. I note that the contract with Niroo Gustar was signed on March 01, 2009 and the contract with GRC was signed on April 22, 2009. The information in this regard was given by the company to the stock exchanges on April 29, 2009.
20. The Noticees have vehemently contended that there was no delay in disseminating the information. The contentions of the Noticees in this regard are as under:
 - Regarding the contract with Niroo Gustar, it was contended that the contract dated March 01, 2009 was further amended on April

20, 2009 as there was a change in the value of the contract and there was a strong likelihood of the order being amended further. It has been further stated that Niroo Guitar was a new client and it was not in a position to treat the order as final and conclusive unless the company received some financial commitment from the Niroo Gustar. Otherwise, it would have been premature or even misleading on the part of the company to disclose the information at that stage. It has been stated that on receiving commitment of first advance of 15 million Euro, the company disclosed the receipt of the order on April 29, 2009.

- Regarding GRC, it was contended that the said contract required a consensus about the order between GRC and PEDEC, another company and the company received the information of between the said parties only on April 28, 2009 accordingly the disclosure was made on April 29, 2009. It has also been stated that any premature disclosure of information about any order that is yet to attain finality would not be in the interest of the company or the investor.

21. On perusal of the documents submitted by the Noticees including the contract entered by the company with Niroo Gustar, I find that the contract has been signed by J C Mansukhani (Noticee No.3) who was the Vice-Chairman and Managing Director at the relevant time. I further note that Article 7 of the said contract reads as under:

" Article 7: EFFECTIVENESS, COMMENCEMENT DATE & DURATION OF THE CONTRACT

This contract shall become effective and binding upon signing of the contract by the Parties".

The contract was signed by the company on March 01, 2009. Going by the terms of aforesaid Article 7, the contract became effective and binding on

both the parties on March 01, 2009 i.e, the date they signed the contract. Therefore, the contract had reached finality on the day of its execution i.e, March 01, 2009. Simply because there was a subsequent amendment to the contract on April 20, 2009 , it is not correct to say that no valid and binding contract existed on March 01, 2009. For that matter, any contract is subject to subsequent amendments by mutual agreement of the parties to it and when there is such an amendment, it cannot be said that there existed no contract prior to the amendment. In the instant case, on a perusal of the subsequent amendment (Amendment No. One) to the contract, I note that the same related to change in the total contract price from Euro 102,930,667.50 to Euro 90,000,000 which by itself may warrant a separate disclosure. In any case, the requirement if any, of disclosure obligation in respect of UPSI arising out of such an amendment is not subject matter of instant Adjudication and I do not think it necessary for me to deal with the same.

It was also contended that the company was in position to treat the order as final and conclusive unless it received some financial commitment from Niroo Gustar which the company had stated to have received subsequently upon which the disclosure regarding the order was made. In this regard also, as aforesaid, the contract had got its finality on the day of its execution and the defense that the company was to get some financial commitment from Niroo Gustar and then only the contract was treated as final is devoid of merit. In any case, advance payment by Niroo Gustar is merely discharge of its obligation arising out of the valid contract executed between the parties. In view of the above, I reject the contentions of the Noticees.

The fact however, remains that there came into existence a valid and binding contract with Niroo Gustar for value amounting to Euro 102,930,667.50 on March 01, 2009 and there existed price sensitive information on March 01, 2009, which the Noticees ought to have informed to the stock exchanges and disseminated immediately. It is not in dispute that the disclosure in respect of the information in respect of bagging of orders from Niroo Gustar was filed

on April 29, 2009. I, therefore, find that there was a delay of 59 days on the part of the company in filing the information with the exchanges.

As regards with the contract with GRC, I note that the same was signed by the parties on April 22, 2009. In this regard, the Noticees have contended that the said contract required a consensus about an order between GRC and another company PEDEC. The company has contended that it received the information of the consensus between the aforementioned parties on April 28, 2009 and accordingly made the disclosure on April 29, 2009.

In this regard, again, on perusal of the contract with GRC, I note that as per Article 7, "the contract shall become effective and binding upon signing of the contract by the parties". There was no explicit provision in the contract that it required or is subject to a consensus about an order between GRC and another company PEDEC. Therefore, the contention of the Noticees are devoid of any merit and it can be conclusively stated that the contract between the Noticees and GRC became effective and binding on April 22, 2009 i.e the date of its execution. Since the company, admittedly, filed the information on April 29, 2009, I find that there was a delay of 7 days on the part of the Noticees in filing the information.

22. In any case, the contracts executed by the parties on March 01, 2009 & April 22, 2009 conveyed reasonable crystallization of the orders which is price sensitive and the Noticees should have made disclosures based on the said contracts.
23. A company being a legal entity cannot act by itself, rather it acts through its directors and officers. As such directors and officers are expected to exercise utmost care, skill and diligence in all the activities of the company. I note that the Securities Appellate Tribunal, in the case of N. Narayanan vs Adjudicating Officer, SEBI (Appeal No. 29 of 2012 decided on October 05, 2012) has observed as under:

".....with the changing scenario in the corporate world, the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company, but, taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running approach in the running of the company and take up responsibility not only for the achievements of the company, but, also failings thereto"

Thus, I hold that the Noticees have violated the provisions of regulation 12(2) & (3) read with clause 2.1 of Schedule II of PIT Regulations which mandates prompt disclosure of price sensitive information to the exchanges and disseminations of the same on a continuous and immediate basis.

24. Now I proceed to deal with the other allegation in the SCN that the Model Code of Conduct specified under PIT Regulations was not amended by the Noticees pursuant to an amendment in the PIT Regulations and thereby the Noticees have violated the provisions of regulation 12(1) & 12(3) read with Clause 1.2 of Part A of Schedule I of PIT Regulations. As per the provisions of regulation 12 (1) & (3) of PIT Regulations, all listed companies are required to frame a Code of Internal Procedures and Conduct as near thereto the Model Code specified in Schedule I of PIT Regulations, 1992, without diluting it in any manner and to ensure compliance of the same. I note that the PIT Regulations were amended and notified in official gazette on November 19, 2008. This amendment *inter alia* relates to inclusion of dependants of directors/officers/designated employees whose trades are required to be pre-cleared in terms of the prescribed model code. As such, the company was required to amend its internal code in tune with the said amendment. The effect of this amendment is that the dependants of directors/officers/designated employees are also required to seek pre-clearance of trades.
25. In the case on hand, it was observed that Ms.Priyal Mansukhani, daughter of J C Mansukhani (Noticee No.3), had traded in the scrip of the company and had not sought pre-clearance for certain trades. It was alleged that company

had not amended the model code accepted by it in tune with the amendment in PIT Regulations which would have required Priyal Mansukhani to seek pre-clearance of her trades. Thus, it was alleged that the Noticees have violated the provisions of regulation 12(1) & (3) read with Clause 1.2 of Part A of Schedule I of PIT Regulations.

26. In this regard, I note that the Noticees have contended that it had effected the amendments in the Code of Conduct immediately after the amendments to PIT Regulations were notified and the company has stated that it had sent circulars dated November 21, 2008 to its various offices located at different places of the country and hence there was no default committed by the company in this regard. Now, the issue for examination is whether the model code of the company was amended in tune with the amendments to PIT Regulations.
27. On perusal of the documents submitted by the company, I note that the company has submitted the photocopies of a document called "circular' dated 21.11.2008 claiming that it had informed all its branches that the company's code of conduct has been amended in terms of the amendments in PIT Regulations. It has also produced the so called "amended Code of Conduct". In the light of the said submission/documents of the company and on perusal of the material on record, I note that the allegation in the SCN that the company had not amended its code of conduct in pursuance of PIT Regulations was based on the observation that Priyal Mansukhani, dependant of Managing Director and Noticee No.3 had not sought pre-clearance of certain trades. However, this material alone is not adequate to prove the allegation that the code was not amended then. In the absence of any sufficient evidence in this regard, I give benefit of doubt to the Noticees regarding the said charge. Hence, I drop the charge of violation of the provisions of regulation 12(1) & (3) read with Clause 1.2 of Part A of Schedule I of PIT Regulations of leveled against the Noticees.

28. Thus, to conclude, I hold that the Noticees have violated the provisions of regulation 12(2) & (3) read with clause 2.1 of Schedule II of PIT Regulations which mandates prompt disclosure of price sensitive information to the exchanges and disseminations of the same on a continuous and immediate basis.
29. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** 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."*
30. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15HB of the SEBI Act which reads thus:

15HB. Penalty for contravention where no separate penalty has been provided.-

"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees"

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

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default."*

32. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses

suffered by the Investors. I note that securities market is based on free and open access to information, the integrity of market is predicated on the quality and the manner on which information regarding the company is made available to the market. An informed investor is always is on an advantageous position and can always make wise decisions while investing. The Noticees by their failure to disseminate price sensitive information promptly, deprived the investors of the significant information at the reelvant time.

33. In the instant case, as found above, there arose disclosure obligations on two occasions, and on both the occasions, the default has been committed. In the past too, SEBI found the company to have similar default of non-disclosure of UPSI on prompt and immediate basis as in the present case, and imposed penalty. In the appeal (Appeal No. 208 of 2011- MAN Industries (India) Limited vs SEBI decided on 30.03.2012), Hon'ble Securities Appellate Tribunal (SAT) upheld the findings of SEBI related to delay in making disclosure of price sensitive information and inter alia observed that " it is incumbent upon a listed company to make disclosure on a continuous and immediate basis so that price sensitive information is in public domain and is available to the shareholders for taking on formed decisions". 'It is not the case that the noticee was not unaware of the purpose of these regulations as well as the consequences of its default. Yet the company had chosen to disregard its compliance and offered unjustifiable defence which has been rejected hereinabove. The violation committed is undoubtedly deliberate. It only reflects the callous attitude on the part of the company and its directors and officers who hold position of responsibility and accountability. Thus the violation committed by the noticees is not only repetitive in nature but also deliberate. The same deserves to be dealt with seriously.

Order

34. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticees. I, in exercise of the powers conferred upon me under

section 15-I(2) of the SEBI Act, impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakh only) jointly and severally on the Noticees namely MAN Industries (India) Limited (Noticee No.1), R C Mansukhani (Noticee No.2), J C Mansukhani, (Noticee No.3), R C Jindal, (Noticee No.5) & Sujal Sharma (Noticee No.6) in terms of Section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the violation committed by the Noticees.

35. As mentioned in paragraph 12 above, the present Adjudication Proceedings against Shri J L Manuskhani has been abated.
36. The penalty shall be paid by way of a duly crossed demand draft drawn in favour of "SEBI- Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the General Manager, Investigation Department (ID-3), Securities and Exchange Board of India, Plot no.C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.
37. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: March 28, 2014.
PLACE: Mumbai

A SUNIL KUMAR
ADJUDICATING OFFICER