BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/AO/33-37/2013-14]

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

1. **Shri K.S. Ramakrishna. (PAN: ADIPK7411Q)**
2. **Ms. Anitha Karuturi. (PAN: AABCR6958A)**
3. **M/s Rhea Holdings Pvt. Ltd. (PAN: AABCR6958A)**
4. **M/s Simply Class Fashions Pvt. Ltd. (PAN: AALCS0077K)**
5. **Shri Anil T. (PAN: ACIPT0857E)**

In the matter of
Karuturi Global Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in the trading in the shares of M/s Karuturi Global Limited (hereinafter referred to as 'KGL') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and various rules and regulations made there under.

2. The investigation inter-alia revealed that the shares of KGL are listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE). Entities mentioned at Sl. No. 1 to 5 shall hereinafter be referred to as 'Noticee No.1 to 5' respectively and collectively is

referred to as ‘Noticees’. Noticees No. 1 to 4 are promoter group entities and Noticee No.5 is one of the directors of KGL. Further Noticee No. 1 is the Managing Director. KGL issued 34 lakh and 6 lakh share warrants respectively to Noticee No.4 and 5 on December 17, 2005 and the same were converted into equity shares on November 29, 2006. Consequent to the conversion of warrants into equity shares on November 29, 2006, the aggregate shareholding of the Noticees went up from 38.94% to 53.44% i.e. by 14.5%. Upon such acquisition of shares of KGL, the Noticees were required to make public announcement of offer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations') but they failed to do so.

3. SEBI has, therefore, initiated adjudication proceedings under the Act against the Noticees to inquire into and adjudge the alleged violation of the provisions of Regulation 11(1) of the SAST Regulations.

Appointment of Adjudicating Officer

4. SEBI vide order dated July 16, 2012 appointed Shri Parag Basu as the Adjudicating Officer under section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘Adjudication Rules’) to inquire into and adjudge under Section under section 15H of the SEBI Act, the alleged violation of the abovementioned provisions of SAST Regulations by the Noticees. Consequent to the transfer of Shri Parag Basu, SEBI vide Order dated August 16, 2012 appointed me as the Adjudicating Officer.

Notice, Reply & Personal Hearing

5. A Notice dated September 11, 2012 (hereinafter referred to as ‘SCN’) was issued to the Noticees in terms of Rule 4 of the Adjudication Rules to

show cause as to why an inquiry should not be held against them for the alleged violations. The SCN was sent to the Noticees by Registered Post which was delivered and acknowledged by the Noticees. It was alleged in the SCN that the Noticees failed to make public announcement of offer as required under Regulation 11(1) of SAST Regulations.

6. The Noticees vide letters dated October 02 to 05 2012 sought extension of time for filing reply to the SCN. However the Noticees did not submit any reply to the SCN.

7. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules the Noticees were granted an opportunity of personal hearing on November 26, 2012 vide notice dated November 06, 2012. The personal hearing notice was sent to the Noticees by Registered Post which were delivered and acknowledged by the Noticees. The Noticees vide letters dated November 19 & 20, 2012 requested for postponement of hearing. Another opportunity of personal hearing was granted to the Noticees on January 31, 2013 vide notice dated January 16, 2013. The Authorized Representative's (AR's) of the Noticees appeared for the hearing, filed identical written submissions dated January 29 & 30, 2013 and inter alia denied all the allegations made against them. The AR reiterated the said submissions at the time of personal hearing. The salient point of submissions made by the Noticees are as follows:

   (a) The Noticees are the promoters of KGL since inception and have been in control and management. Over the years the company had steadily grown, expanded manifold and also gained acceptability. KGL has handsomely rewarded the shareholders with bonus issues and regular dividends which also reinforces promoters/management's commitment towards the shareholders.

(b) They have always maintained transparency in business and affairs and taken care of shareholders interest. They have a clean track record and no action has been taken against them by SEBI save and except the present notice under reply.

(c) KGL, for the expansion/diversification programme of the business raised funds by issuing 40 lakhs warrants out of which 34 lakhs warrants were issued to Noticee No. 4 and the remaining 6 lakhs warrants were issued to Noticee No. 5 at a price of ` 87.24 per warrant.

(d) The pricing of the warrants was done in accordance with the then applicable SEBI (DIP) Guidelines, 2000. Pursuant to provisions of section 81(1A) of the Companies Act, 1956 the allotment of 40 lakh warrants was approved by the shareholders of the company in the Extra Ordinary General Meeting held on December 17, 2005. Necessary disclosures in this regard were made to the Stock Exchanges by KGL. The shares so converted from warrants, were listed on BSE with effect from June 01, 2007. Necessary disclosures in this regard was made to the Stock Exchange and a public notice dated May 31, 2007 was also issued by BSE for the information and record on listing of new securities of the KGL. So, the factum of issuance of warrants, identity of allottees, price at which warrants were issued was in the knowledge of the public shareholders and within the knowledge of the stock exchanges.

(e) Consequent to the conversion of warrants, there was no change in the control, management and composition of KGL and the then promoters/Board continued the control and management of KGL.

(f) The Noticees have submitted that the alleged failure to make public announcement offer under Regulation 11 (1) of SAST Regulations consequent to the conversion of warrants was an error of advertence and the alleged violation is merely technical.

8. In view of the above, I am proceeding with the inquiry taking into account of the submissions made before me, the documents and material as available on record.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges against the Noticees mentioned in the SCN, submissions made by them, the materials and documents as available on record. The issues that arise for consideration in the present case are:

   a) ***Whether the Noticees have violated the provisions* of Regulation 11(1) of SAST Regulations.**
   b) ***Does the violation, if any, on the part of the Noticees attract any penalty under Sections 15H of the SEBI Act?***
   c) ***If yes, what should be the quantum of penalty?***

10. Before moving forward, it will be appropriate to refer to the relevant provisions of SAST Regulations which read as under:-

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997

Regulation 11

(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent., in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

11. As per Regulation 11(1) of SAST Regulations any acquirer along with persons acting in concert together holding 15 percent or more but less than 55 percent of shares and voting rights in a company would be able to acquire additional shares or voting rights in excess of 5% in any financial year ending 31st March, only if such acquirer makes a public

announcement of offer to acquire shares in accordance with the SAST Regulations.

12. I find from the material available on record, the quarterly disclosures under the category of promoter and promoter-group (BSE website), that the Noticees were holding 31,15,184 shares constituting 38.94% of the total number of shares issued by KGL. Consequent to the conversion of warrants into equity shares the shareholding of Noticees went up from 38.94% to 53.44% i.e. by 14.5%. The breakup shareholding is as under:

S.NO.	Noticee No.	Shareholding as on September 30, 2006	Shareholding post conversion of warrants as on November 29, 2006
1.	1	13,23,963	4,12,363
2.	2	1,620	1,420
3.	3	17,89,600	19,99,600
4.	4	0	34,00,000
5.	5	1	6,00,001
Total % holding		38.94	53.44

13. I find that during the financial year 2006-07 Noticee No.1 purchased 2,81,000 shares and sold 11,73,500 shares, Noticee No.2 purchased 4,33,600 shares and sold 7,26330 shares and Noticee No. 3 purchased 29,10,600 shares and sold 9,11,000 shares. Noticee No. 1 and 2 are common directors of Noticee No. 3 and Noticee No. 4 is a promoter group entity. Noticee No. 5 is a director of KGL. Therefore, the Noticees are persons acting in concert in terms of Regulation 2(1)(e) of SAST Regulations. The Noticees as promoters and persons acting in concert acquired shares beyond 5% with a common interest and objective by conversion of warrants into equity shares on November 29, 2006. It was also an admitted case that the Noticees have not made a public announcement of offer in terms of Regulation 11(1) of SAST Regulations.

14. I do not accept the contention of the Noticees that the violation is technical in nature and was a result of inadvertence as the reasons cited by the Noticees, do not, in any way, absolve the Noticees of their failure to comply with the statutory requirements of making an open offer for acquisition of shares by the Noticees beyond 5%. It is therefore, established beyond doubt that the Noticees violated Regulation 11(1) of SAST Regulations warranting imposition of monetary penalty under section 15H of the SEBI Act.

15. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow"*.

16. As the violation of the statutory obligation under Regulation 11(1) of SAST Regulations, 1997 by the Noticees stand established, I hold that the Noticees are liable for monetary penalty under section 15 H of SEBI Act.

17. The provisions of Section 15 H of the SEBI Act read as follows:

> ***Penalty for failure to furnish information, return, etc.***
>
> ***15H*** *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*
>
> *(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or*
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> *(ii) make a public announcement to acquire shares at a minimum price; or*
>
> *(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or*
>
> *(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer*
>
> *he shall be liable to a penalty [54][of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher].*

18. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:

> ***15J - Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
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> *(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.*

19. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default is not quantifiable. However, I have also considered the following mitigating factors as submitted by the Noticees while determining the quantum of penalty:

i) The factum of issuance of warrants, identity of allottees, price at which warrants were issued was in the knowledge of the public shareholders and within the knowledge of the stock exchanges and that there was no change in the control and management of KGL.

ii) Pursuant to provisions of section 81(1A) of the Companies Act, 1956 the allotment of 40 lac warrants was approved by the shareholders of the company in the Extra Ordinary General Meeting held on December 17, 2005. Thus, it can safely be presumed that it was a silent acquisition with the concurrence of the remaining shareholders.

iii) The acquisition did not involve any outsider and the funds raised by sale of the securities were flowed into the company for the developmental and expansion activities of the company which is beneficial to all the shareholders.

Order

20. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ` 15,00,000/- (Rupees Fifteen Lakhs Only) on the Noticees under Section 15 H of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticees. The Noticees shall be jointly and severally liable to pay the said monetary penalty.

21. The penalty amount as mentioned above shall be paid by the Noticees through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Regional Manager, Northern Regional Office, Bank of Baroda Building, 5th Floor, 16 Sansad Marg, New Delhi -110 001.

22. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: July 02, 2013 **P K KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**