BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AK/AO- 157-160/2013]

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

In respect of

Lakshmi Kant J. Tanna	AAAPT4050B
Tushar T Tanna	AAAPT3519M
Dipak K. Tanna	AABPT0587E
Trisect Investments & Trading Pvt. Ltd,	AAACT1366P

In the matter of

M/s. Kamalakshi Finance Corporation Ltd

FACTS OF THE CASE IN BRIEF

1. M/s. Kamalakshi Finance Corporation Ltd is a company incorporated under the Companies Act (hereinafter referred to as “the company”). M/s. Vector Viniyog Private Limited (hereinafter referred to as “the Acquirer”) had entered into a Share Purchase Agreement (hereinafter referred to as SPA) on June 04, 2012 with the Seller of the Company to acquire fully paid up equity shares of Rs. 10/- each, representing 74.52% of the issued, subscribed, paid up and voting capital of the company at a price of Rs. 10/- per share aggregating to Rs. 3,72,600/-. The above proposed acquisition pursuant to SPA, resulted in the Acquirer triggering the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011. An offer document (letter of offer) to acquire 25.48% of the paid up equity share capital and voting capital of the company at a price of Rs. 12/- per fully paid up equity share was filed by the Acquirer before the Securities and Exchange Board of India (hereinafter

referred to as **“SEBI”**). The Public Announcement of the Open Offer was made by the Acquirer on June 04, 2012.

2. While examining the letter of offer document of the Acquirer to acquire the shares of the company (M/s. Kamalakshi Finance Corporation Ltd.) it was observed that Shri Lakshmi Kant J. Tanna, Shri Tushar T Tanna, Shri Dipak K. Tanna and M/s. Trisect Investments and Trading Pvt. Ltd., promoters of the company (herein after referred to as Noticees) had failed to comply with provisions of regulation 30(1) and 30(2) read with regulation 30(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to a**s "Takeover Regulations"**) within stipulated time. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of SEBI Act, 1992 (hereinafter referred to as “Act”) were initiated against the Noticees under Sec 15 A(b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violation of the provision of 30(1) and 30(2) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Smt. Barnali Mukherjee was appointed as Adjudicating Officer on May 20, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **‘SEBI Rules’**) to inquire into and adjudge the alleged violations committed by the Noticees.

4. Consequent upon the transfer of Smt. Barnali Mukherjee, I was appointed as the Adjudicating Officer, vide order dated August 08, 2013 under Section 15-I of the SEBI Act read with rule 3 of SEBI Rules to inquire into and adjudge under Section 15 A(b) of the SEBI Act for the alleged violation of Regulations 30(1) and 30(2) of Takeover Regulations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice (hereinafter referred to as "**SCN**") Ref. No. EAD/BM/VRP/17893/2013, EAD/BM/VRP/17903/2013, EAD/BM/VRP/17896/2013 and EAD/BM/VRP/17899/2013 dated July 22, 2013 was issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below. A copy of status of compliance document was also sent along with the SCN.

Sl.no.	Regulation/ Sub-Regulation	Due date of compliance	Actual date of compliance	Duration of non-compliance (Number of Days)
1	30(1)	12.04.2012	28.05.2012	46
2	30(2)	12.04.2012	28.05.2012	46

6. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.

7. The Noticees submitted its reply to the SCN. Letter dated August 06, 2013 was received from Shri Lakshmi Kant J. Tanna, letter dated August 07, 2013 was received from Shri Tushar T Tanna, letter dated August 07, 2013 was received from Shri Dipak K. Tanna and letter dated August 06, 2013 was received from M/s. Trisect Investments and Trading Pvt. Ltd.

8. Shri Lakshmi Kant J. Tanna, one of the Noticees has inter alia submitted that he had been submitting the disclosures under Regulation 30(1) and 30(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to the company on time on behalf of himself and the other shareholders, being his close relatives, family members and joint holders, from the time the aforesaid regulations were notified in 1997. He has further submitted that the disclosures for the year ended March 31, 2012 were also sent by him in the same manner to the company, without realizing that the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 had been amended and replaced by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover

Regulations), which required that the promoters should personally file the disclosures with the Stock Exchanges. However, he has claimed that once this was pointed out to him, he immediately filed the disclosures with the BSE Ltd. (BSE), which in the meantime resulted in a delay of 46 days. Shri Lakshmi Kant J Tanna has submitted that the delay in disclosure was purely unintentional and occurred due to being unaware of the change in the regulations. He has further submitted that during the period of delay, he had not transacted in any shares of the Company, and, the delay has been a technical delay with no undue advantage or loss to any other third person. In view of the same, Shri Lakshmikant Tanna has inter alia requested to drop any further proceedings against him and the other family members, on whose behalf he normally files the disclosures.

9. Among the other Noticees, Shri Tushar T Tanna and Shri Dipak K. Tanna have *inter alia* submitted that they understood that Shri Lakshmi Kant J. Tanna had been submitting the disclosures under Regulations 30(1) & 30(2) of Takeover Regulations to the company on behalf of the joint holders and have forwarded a copy of the reply dated August 06, 2013 submitted by Shri Lakshmi Kant J Tanna for taking the same on record. M/s. Trisect Investments and Trading Pvt. Ltd., the other Noticee in its reply has merely reiterated the submissions of Shri Lakshmi Kant J Tanna and the other two Noticees.

10. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees was granted an opportunity of hearing on August 23, 2013 vide notice dated August 14, 2013 and the said notice was duly acknowledged by all the Noticees. Accordingly, Ms. Shailashri Bhaskar Company Secretary, Mr. Vishnu Agarwal and Mr. Sanjay Jain Charted Accountants, Authorized Representatives (**hereinafter referred to as 'ARs'**), appeared on behalf of the Noticees and reiterated the submissions made vide their replies dated August 06 and 07, 2013. The ARs further reiterated that delay in filing under regulation 30(1) & 30(2) of the Takeover Regulations by 46 days was due to lack of knowledge and absence of professionals. The ARs further submitted that as per the Companies Act only first holder is responsible for making the disclosures and that only first holder receives dividend, bonus and exercises voting rights.

CONSIDERATION OF ISSUES

11. I have carefully perused the written submissions of the Noticees and the documents available on record. It is observed that the allegation against the Noticees is that they have failed to make the relevant disclosure under the provisions of Regulations 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations.

12. The issues that therefore arise for consideration in the present case are:
    a. Whether Lakshmi Kant J. Tanna, Tushar T Tanna, Dipak K. Tanna and M/s. Trisect Investments and Trading Pvt. Ltd are required to make the relevant disclosure under the provisions of Regulations 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations?
    b. If so, whether the Noticees have violated the provisions of Regulations 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations for the year 2012?
    c. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
    d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15-J of SEBI Act?

FINDINGS

13. Before moving forward, it is pertinent to refer to the provisions of Regulations 30(1) and 30(2) read with Regulation 30(3) of Takeover Regulations, which reads as under:

Continual disclosures.

30 (1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

30 (2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

30 (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

14. The first issue for consideration is whether the Noticees are required to make the relevant disclosure under the provisions of Regulations 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations. From the provisions of takeover regulations, filings made by the company with the stock exchange and other records, I note that the Noticees fall under the category "Promoter and Promoter Group" of the company, and hence, required to make the relevant disclosure under the provisions of Regulations 30(2) read with Regulation 30(3) of the Takeover Regulations. The alleged noncompliance on the part of the Noticees does no trigger Regulation 30(1) of the Takeover Regulation and the Noticees are absolved from charge of noncompliance of Regulation 30(1) of the Takeover Regulations.

15. The next issue for consideration is whether the Noticees have violated the provisions of Regulations 30(2) read with Regulation 30(3) of the Takeover Regulations for the year 2012. In respect of the alleged non-compliance of regulation 30(2) by the Noticees, the Noticees who form a part of the "Promoter and Promoter Group" were required to disclose their aggregate shareholding and voting rights as of the 31st day of March in the prescribed format to every stock exchange where the company's shares are listed and to the company at its registered office within seven working days from March 31, 2012.

16. I find from the letter of offer that the entire issued, subscribed, paid up and voting equity capital of the Company is listed on BSE and that the trading in equity shares of the Company was suspended by BSE with effect from December 21, 2004, due to non-compliance of the listing agreement. Further, that the Company received in-Principle approval from BSE for revocation of suspension in trading of equity shares vide its letter dated February 02, 2012. From the replies filed by the Noticees, I find that the Noticee Shri Lakshmi Kant J Tanna has *inter alia* stated that the disclosures for the year ended March 31, 2012 were sent by him to the company, without realizing that the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 had been amended and replaced

by the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(Takeover Regulations), which required that the promoters should personally file the disclosures with the Stock Exchanges. However, I find from the copy of documents submitted to the Exchange and the company that the disclosure to the company was also delayed and was made only vide letter dated May 25, 2012 i.e. the same date when it was sent to the Exchange. I further find that the Noticees had sold 12,150 shares i.e. 24.30% of the paid-up capital in off-market on September 16, 2011 i.e. during the relevant financial year. Hence, I find that the Noticees claim that they had not transacted in the shares of the Company during the period as also not acceptable.

17. From the table given above it is observed that for the year 2012, the due date for compliance by the Noticees as per the Takeover Regulations was April 12, 2012 and the actual date of compliance was May 28, 2012, therefore the disclosure was made with a delay of 46 days and the same is specifically admitted by the Noticees in their replies. Thus, I find that the Noticees have admitted violation of 30(2) read with Regulation 30(3) of the Takeover Regulations for the year 2012.

18. Further, I find that Shri Tushar T Tanna, Shri Dipak K. Tanna and M/s. Trisect Investments and Trading Pvt. Ltd. have all submitted that as per the Companies Act, only first holder receives dividend, bonus and exercises voting rights, therefore, Shri Laxmi Kant J Tanna is responsible for making the disclosures on behalf of other joint holders. As per Regulation 91 (1) of Table A of Schedule I of the Companies Act, I find that any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. Also, as per Regulation 57 of Table A of Schedule I of the Companies Act I find that in the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders and for this purpose, seniority is determined by the order in which the names stand in the register of members. However, at the same time, I find that as

per Regulation 15 of Table A of Schedule I of the Companies Act , the joint holders of a share are jointly and severally liable to pay all calls in respect thereof. Further, I also find that the Memorandum and Articles of Association of the company also make the joint holders liable severally as well as jointly for and in respect of calls and other payments which ought to be made in respect of such shares, whereas, it allows any one of such persons to be given effectual receipts for any dividends, or, other moneys payable in respect of such share to such joint holders. Thus, extending the same further, I am of the view that the joint holders are liable severally and jointly in complying with all obligations, including regulatory compliances required under takeover regulation. Also, the Takeover Regulations does not provide any exemption as claimed by the three Noticees. After taking into consideration of all the facts and circumstances of the case, it is established that the Noticees has violated the provisions of Regulation 30(2) read with Regulation 30(3) of Takeover Regulations for the year 2012.

19. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…"*. Further in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*."

20. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less

21. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of 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:-

(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.

22. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection.

23. The Noticees being Promoters and part of the Promoter Group of a listed company had a responsibility in ensuring compliance to disclosure norms under the Takeover Regulations. I find that the Noticees made a delayed disclosure to the company and the exchange, and hence, there was delay in dissemination of information to the general investor as regards changes, if any, inter alia with respect to the holdings of promoters or person(s) having control over the company. However, I find that the paid up capital of the company is only 50,000 shares of Rs. 10/- each aggregating Rs. 5,00,000/-, and, the dilution of the promoters holding during the year was done to meet the 25% public holding requirement. Further, it has been submitted that there are only about 200-300 public investors holding 25% of the paid up capital of the company. Also, I find that the trading in equity shares of the company was suspended with effect from December 21, 2004, which was revoked by the Exchange only with effect from April 16, 2012.

ORDER

24. After taking into consideration all the facts and circumstances of the case, I impose a penalty of □ 50,000/- (Rupees fifty thousand only) under Section 15 A(b) on the Noticees (jointly and severally) which will be commensurate with the violations committed by them.

25. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Shri V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

26. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: 20.09.2013	**ANITA KENKARE**
Place: **Mumbai**	**ADJUDICATING OFFICER**