WTM/PS/18/CFD/MAY/2016

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 read with Section 12A of the Securities Contracts (Regulation) Act, 1956 in the matter of non-compliance with the requirement of minimum public shareholding by Andhra Pradesh Tanneries Limited.

In respect of Mr. Sanjiv N. Shah

Date of Hearing:	**March 28, 2016**
Appearances:	**Mr. Sanjiv N. Shah appeared in person along with Mr. Prakash Shah, Advocate and Mr. Meit Shah**
For SEBI:	**Dr. Anitha Anoop, General Manager; Mr. Pradeep Ramakrishnan, Deputy General Manager, Mr. Pradeep Kumar, Assistant General Manager and Mr. Rohan Vijay, Assistant Manager.**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had passed an *interim order* dated June 04, 2013 (hereinafter referred to as the '*interim* order') with respect to 105 listed companies who did not comply with the Minimum Public Shareholding ('MPS') norms as stipulated under Rules 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as 'SCRR') within the due date i.e., June 03, 2013. In terms of the said rule, the listed companies are statutorily mandated to have a minimum of 25% shareholding by the public. **Andhra Pradesh Tanneries Limited** (hereinafter referred to as '**the Company**') was one such company against whom the *interim* order was passed. The equity shares of the Company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE') and erstwhile Hyderabad Stock Exchange Limited. The scrip of the Company is suspended for trading at BSE. Vide the said *interim* order, the following directions were issued:

"*a. direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding in the*

above mentioned non-compliant companies, till such time these companies comply with the minimum public shareholding requirement.

i. *For the purpose of above direction, proportionate promoter/ promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60% shall be frozen till the minimum public shareholding requirement is complied with.*

ii. *In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess promoter holding of 60% shall be allocated as follows:*

1. *A:- (60% multiplied by [45%/45%+35%+10%]) = 30.00%*
2. *B:- (60% multiplied by [35%/45%+35%+10%]) = 23.33%*
3. *C:- (60% multiplied by [10%/45%+35%+10%]) = 06.67%*

Total = 60.00%

b. *prohibit the promoters/ promoter group and directors of these non-compliant companies from buying, selling or otherwise dealing in securities of their respective companies, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time these companies comply with the minimum public shareholding requirement.*

c. *restrain the shareholders forming part of the promoter/promoter group in the non-compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement;*

d. *restrain the directors of non-compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement*."

The *interim* order was passed without prejudice to the right of SEBI to take any other action, against the non-compliant companies, their promoters and/ or directors or issuing such directions in accordance with law. The *interim* order was to be treated as a show cause notice by the Company.

2. Pursuant to the passing of the *interim* order, an opportunity of personal hearing was afforded to the Company on July 04, 2014 and July 08, 2015. Thereafter, SEBI while considering the oral submissions made during the course of personal hearing and the written submissions dated July 14, 2014 and July 20, 2015, passed an order dated January 07, 2016 (hereinafter referred to as 'confirmatory order') confirming thereby the directions issued vide the *interim* order dated June 04, 2013, against the Company, **Andhra Pradesh Tanneries Limited**, its directors, promoters and promoter group.

3. Pursuant to the same, one Mr. Sanjiv N. Shah preferred an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'). Hon'ble SAT vide its order dated March 15, 2016, remanded the matter back to SEBI, with a direction to pass fresh order on merits and in accordance with law within a period of 8 weeks.

4. I note that Mr. Sanjiv N. Shah vide his letter dated September 01, 2014, had replied to the *interim* order, wherein it was stated that he had resigned (from the position of Independent Director) from the Company w.e.f. from December 10, 2013. Later, vide another letter dated June 18, 2015, he again submitted the written submissions, while requesting that the directions contained in para 17d of the *interim* order should not be made applicable to him.

5. An opportunity of personal hearing was also granted to him on March 28, 2016. On the date fixed Mr. Sanjiv N. Shah appeared in-person along with Mr. Prakash Shah, Advocate and Mr. Meit Shah and made oral submissions, while relying on the case laws. An extract of annual report of the Company for the Financial Year 2013-14 was also submitted during the course of personal hearing, which was taken on record.

6. The submissions of Mr. Sanjiv N. Shah made vide letters dated September 01, 2014 and June 18, 2015 are as under:

a. He was appointed as an Independent Non-Executive Director of the Company on March 25, 2004, when no activity was carried out by the Company. He had put in his best efforts and resources for the revival of the Company, however, the same could not fructify.

b. During the financial year 2004-2005, the Company had come out with a preferential issue of 16,26,100 shares to the promoters at par in compliance with all statutory requirements. However, as the net worth of the Company was negative, the depositories (CDSL and NSDL) had rejected its application for dematerialization of the shares and the said 16,26,100 shares were not listed.

c. Out of the total paid up capital of 22,00,000 shares, only 5,73,900 shares (26.09%) are listed. Further out of the said 5,73,900 shares, 3,15,872 shares (i.e. 55.04% of listed shares) are held by the Promoters. The same is 14.35% of the total paid up capital of the Company. The remaining 16,26,100 shares (i.e. 73.92% of the total paid up capital of the Company) are not listed.

d. The shares of the Company were traded only during the financial year 1999, in physical form. Thereafter for last more than 15 years, no trading in the shares of the Company have taken place. The Company is regularly complying with all the disclosure requirements.

e. He was invited by the Company to join as an Independent Non-Executive Director to assist and guide the Company on its revival plan. Based on his qualification and experience, he had rendered his services to the Company and helped it to raise necessary finance for the Company. However, the Company could not revive its business plan and its shares had remained suspended from trading at the Stock Exchange.

f. He was never involved in the day to day management of the Company. He was regularly making request for relieving from the directorship, however, the management was reluctant to accept his resignation. Later, on December 10, 2013, his resignation was accepted and was also taken on record by the Company.

g. He had no role and responsibility for dilution of the shareholding of the Company even when he was functioning as an Independent Non-Executive Director of the Company. Further, after resignation, he has no connection with the Company of any nature whatsoever.

h. As an Independent Non-Executive Director, he should not be held responsible for the alleged non-compliances. He should not be held liable in personal capacity or punished for any acts and omission of the Company, on its no-compliance with MPS requirements.

7. In compliance with the order of Hon'ble SAT, I have considered the submissions of the Mr. Sanjiv N. Shah and the material available on record. I note that the *interim* order had issued directions against the Company, its promoters/ promoter group and directors as these were non-compliant with the provisions of Rule 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of the Securities Contract (Regulation) Act, 1956 ('SCRA'), by not maintaining the minimum level (of 25%) of public shareholding as of June 03, 2013.

The directions issued vide the *interim* order were also made applicable to Mr. Sanjiv N. Shah who was appointed as an Independent Non-Executive Director of the Company on March 25, 2004.

8. Mr. Sanjiv N. Shah in his submissions has mainly argued that he was not involved in the day to day management of the Company. It has also been said that at the time of his joining, there was no activity in the Company and he was invited in the Company to assist and guide it on its revival plan. However, the Company could not revive its business plan.

9. From the extract of annual report of the Company for the Financial Year 2013-14, submitted during the course of personal hearing, the following is noted:

a. The Company is not fully in operation.

b. The Non-Executive Directors of the Company were not paid any remuneration and none of these had held any shares in the Company.

c. Independent directors are not related to the promoters or management at the Board level and they review the legal compliance report prepared by the Company in every board meeting.

d. Mr. Sanjiv N. Shah was part of the Audit Committee, remuneration committee and shareholders/ investors grievance committee of the Company.

e. Mr. Sanjiv N. Shah had resigned from the Company on December 10, 2013.

10. I note that the Independent Directors are expected to act as voice of the minority shareholders in the company. From the discussion in the paragraph above, it is noted that Mr. Sanjiv N. Shah was admittedly a director of the Company and had resigned only on December 10, 2013, i.e. after passing of the *interim* order. While proceeding further, I note that Mr. Sanjiv N. Shah, in his submissions has argued that as the net worth of the Company was negative, NSDL and CDSL had rejected the application for dematerialization of its shares. In this regard, I note that the net-worth criteria for the companies seeking to admit their securities with 'depositories' was relaxed since November 2011. From the available records, it is noted that during his tenure of directorship in the Company, no effective steps are shown to have been taken towards the dematerialization of the shares of the Company. Mr. Sanjiv N. Shah has argued that he had no role and responsibility for dilution of the shareholding of the Company at the time when he was acting as an Independent Non-Executive Director of the Company. However, as per the extract of annual report, the Independent Directors were reviewing the legal compliance report prepared by the Company in every board

meeting. The same suggests that the directors of the Company were aware of the legal compliances and they were expected to take steps towards the regulatory compliances, especially when the net worth requirements were relaxed by the depositories in the year 2011.

11. I note that the Independent Directors do have important role and responsibility. They are expected to guide the management so that the interest of the Company and the minority shareholders are protected. The appellant has not indicated any initiative from his side to convince the Company's board about the necessity of compliance with the MPS norms. Even his resignation came after passing of the *interim* order. In my view, Mr. Sanjiv N. Shah ought to have tried to ensure that the functioning of the Company was carried on in full compliance with the applicable laws including the provisions of Securities Contracts (Regulation) Rules, 1957. In this regard, I place my reliance on the order of Hon'ble High Court of Madras in the matter of *Madhavan Nambiar* Vs. *Registrar of Companies* [2002 108 Comp Cas 1 Mad] wherein it was observed that

> *"13. It may be that the petitioner may not be a whole-time director, but that does not mean he is exonerated of the statutory obligations which are imposed under the Act and the rules and he cannot contend that he is an ex officio director and, therefore, he cannot be held responsible. There is substance in the contention advanced by Mr. Sridhar, learned counsel since the petitioner a member of the Indian Administrative Service and in the cadre of Secretary to Government when appointed as a director on the orders of the Government to a Government company or a joint venture company, he is expected not only to discharge his usual functions, but also take such diligent care as a director of the company as it is expected of him not only to take care of the interest of the Government, but also to see that the company complies with the provisions of the Companies Act and the rules framed thereunder. Therefore, the second contention that the petitioner cannot be proceeded against at all as he is only a nominee or appointed director by the State Government, cannot be sustained in law. A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.*
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> *14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956.*
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> *15. Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.*
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> *16. Section 29 of the Companies Act provides the general power of the board and ……..... Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner.*

> *17. As regards the first contention, it is contended by Mr. Arvind P. Datar, learned senior counsel appearing for the petitioner that the company or its board had resolved that Thiagaraj S. Chettiar shall be the director in charge of the company of all its day-to-day affairs and, therefore, the petitioner, an ex officio chairman and director, cannot be expected to attend to the affairs on a day-to-day basis. This contention though attractive cannot be sustained as a whole. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible."*
> **[Emphasis supplied]**

I note that the position of a 'director' in a Company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such director or face the consequences for any violation or default thereof.

12. However, considering the fact of resignation of Mr. Sanjiv N. Shah from the Company on December 10, 2013, no relation with the promoters or management of the Company, absence of any allegation regarding his connection with the Company after his resignation and the period of restraint already undergone by him, I find it appropriate and reasonable to vacate the directions issued to him vide the *interim* order with a warning that just by being an Independent Director, his responsibility in the non-compliance of the regulatory compliances is not diminished in any way and advise him to be cautious in future.

13. Accordingly, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(2)(j), 11(4) and 11B thereof and Section 12A of the Securities Contracts (Regulation) Act, 1956, hereby vacate the directions issued vide the *interim* order dated June 04, 2013, against Mr. Sanjiv N. Shah and warn him to be cautious in future.

14. Copy of this Order shall be served on the Stock Exchanges and Depositories for their information and necessary action.

Date: MAY 02, 2016
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA