

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. AO/SG-VS/EAD/68/2017]**

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**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**  
**Dadimaa Capital Pvt. Ltd.**  
**(PAN No. AABCD2140E)**  
201, Indrapuri, Govind Nagar,  
Sodawala Lane,  
Borivali (west), Mumbai - 400092

**In the matter of Insta Finance Limited**

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an examination in respect of buying, selling and dealing in the shares of Insta Finance Limited (hereinafter referred to as 'IFL'). The shares of IFL are listed on BSE Limited (hereinafter referred to as 'BSE').
2. It was observed by a department of SEBI (hereinafter referred to as 'ISD') that the shareholding of Dadimaa Capital Private Limited (hereinafter referred to as 'Noticee') in IFL as on August 01, 2013 was 7,34,400 shares (i.e. 3.67% of total shareholding of IFL). Upon acquisition of 4,21,624 (i.e. 2.11%) shares on August 12, 2013 by the Noticee in off-market, its shareholding had increased to 11,56,024 shares (i.e. 5.78% of total shareholding of IFL). It was alleged that Noticee on crossing the threshold limit of 5% on August 12, 2013, was required to make the disclosures to IFL and to BSE as per regulation 29(1) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 2011 (hereinafter referred to as 'SAST Regulations, 2011') i.e. within two days from the

date of acquisition, which Noticee is alleged to have failed to do. Thus, it is alleged that Noticee has violated the provisions of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011.

3. It was further alleged that Noticee while crossing the threshold limit of 5% specified under regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations'), was required to make the disclosures to IFL as per regulation 13(1) of PIT Regulations i.e. within two working days from the date of acquisition, which the Noticee is alleged to have failed to do. Thus, it is alleged that Noticee has violated the provisions of regulation 13(1) of PIT Regulations.
4. It was further observed by ISD that the shareholding of the Noticee in IFL prior to November 21, 2013 was 10,96,024 shares (i.e. 5.48% of total shareholding of IFL). Upon selling of 10,00,000 shares (5.00%) of IFL by the Noticee on November 21, 2013 in off-market, its shareholding in IFL had decreased to 96,024 shares (i.e. 0.48% of total shareholding of IFL). It was alleged that the Noticee was required to make the disclosures to IFL and to BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations 2011 i.e. within two working days from the date of transaction, which Noticee is alleged to have failed to do. Thus, it is alleged that Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations 2011.
5. With respect to the change of more than 2% of shareholding of the Noticee in IFL on November 21, 2013, the Noticee was required to make the disclosures to IFL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of transaction which Noticee is alleged to have failed to do. Thus, it is alleged that Noticee has violated the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.

### **APPOINTMENT OF ADJUDICATING OFFICER**

6. Shri Jayanta Jash was appointed as Adjudicating Officer (hereinafter referred to as 'AO') vide order dated June 18, 2014 under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO Rules') to inquire into and adjudge the alleged violation under the provisions of Section 15A(b) of SEBI Act. Consequent upon transfer of Shri Jayanta Jash, the undersigned has been appointed as AO vide order dated June 22, 2015 to inquire and adjudge the matter.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

7. A Show Cause Notice dated September 05, 2014 (hereinafter referred to as 'SCN') was issued by the previous AO to the Noticee, under Rule 4 of the AO Rules calling upon it to show cause as to why an inquiry should not be held and penalty be not imposed on it under section 15A(b) of SEBI Act for the alleged violations of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011, regulation 13(1) of PIT Regulations, regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(3) read with regulation 13(5) of PIT Regulations.
8. From the documents available on records, It is noted that the SCN issued to the Noticee was sent at "201, Indrapuri, Govind Nagar, Sodawala Lane, Borivali (West), Mumbai - 400092" through hand delivery and the same was returned undelivered with remark "consignee shifted".
9. Pursuant to the appointment of the undersigned, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the AO Rules, the Noticee was granted an opportunity of hearing on October 12, 2015, vide notice of hearing dated September 11, 2015 at SEBI, Head Office, Mumbai. The notice of hearing dated September 11, 2015, along with a copy of SCN dated September 05,

2014 was served upon the Noticee at the address mentioned at para 8 above, through affixture in accordance with Rule 7(c) of AO Rules. However, the Noticee failed to submit any reply to the SCN and also failed to appear for the hearing on October 12, 2015.

10. Further, the Noticee was granted an opportunity of hearing on June 19, 2017, vide notice of hearing dated May 25, 2017 at SEBI, NCL Building, Mumbai and a copy of SCN dated September 05, 2014 was also enclosed. Vide the said Notice, the Noticee was also advised to submit a reply to the SCN on or before June 16, 2017. The said Notice was delivered at the address mentioned at para 8 above by way of hand delivery. Proof of service is on record. However, the Noticee failed to submit any reply to the SCN and also failed to appear for the hearing on June 19, 2017.

11. In view of the aforesaid steps taken and as per Rule 4(7) of AO Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons for doing so. Thus, the undersigned is proceeding with the matter on the basis of material available on record.

### **CONSIDERATION OF ISSUES AND FINDINGS**

12. After perusal of the material available on record, I have the following issues for consideration viz.

- I. Whether the Noticee has violated the provisions of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011, regulation 13(1) of PIT Regulations, regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(3) read with regulation 13(5) of PIT Regulations?

- II. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee?

## **FINDINGS**

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

***ISSUE I: Whether the Noticee has violated the provisions of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011, regulation 13(1) of PIT Regulations, regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(3) read with regulation 13(5) of PIT Regulations?***

14. I note the provisions of regulations 29(1), 29(2) and regulation 29(3) of SAST Regulations, 2011 read as under:-

### ***Disclosure of acquisition and disposal***

- 29. (1)** Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.
- (2)** Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.
- (3)** The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,-
- (a) every stock exchange where the shares of the target company are listed ;
  - and
  - (b) the target company at its registered office.

...

15. The provisions of regulation 13 of PIT Regulations are reproduced hereunder:-

***Initial Disclosure***

*(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:—*

- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be.*

...

***Continual Disclosure.***

*(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company..*

...

*(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

...

16. The alleged violation of provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011 and Regulation 13(1) of PIT Regulations is owing to the shareholding of the Noticee crossing 5% of the shares of IFL on August 12, 2013.

17. Further, the alleged violation of provisions of regulation 29(2) read with 29(3) of SAST Regulations, 2011 and regulation 13(3) read with 13(5) of PIT Regulations is owing to the change of more than 2% in Noticee's shareholding in IFL on November 21, 2013 while holding more than 5% shares of IFL.
18. I note that the SCN and the notice of hearing have been duly served on the Noticee by way of affixture and hand delivery as noted above. However, the Noticee has neither replied to the SCN nor has appeared for the hearing. It is also noted that vide its email dated February 05, 2014 to ISD, BSE has stated that it had not received any disclosures under PIT Regulations or SAST Regulations, 2011 from the Noticee for its transactions on August 12, 2013 and November 21, 2013. Further, with respect to said 2 transactions, it is also noted that, IFL vide its letter dated March 06, 2014 to ISD has stated, "*..there is no question of disclosure under SEBI Regulations.*"
19. In this regard, I refer to the following observation made by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter Akriti Global Traders Limited. Vs SEBI (Appeal No. 784 of 2014 decided on September 30, 2014):
- "..Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired."*
20. From the observations made at paras 14, 15, 16, 18 and 19 above, it is concluded that the Noticee was required to make disclosures under the regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations and it has failed to do so.

21. From the observations made at paras 15, 17, 18 and 19 above, it is concluded that the Noticee was required to make disclosures under the regulation 13(3) read with regulation 13(5) of PIT Regulations and has failed to do so.

22. As regards the alleged violation of provisions of regulation 29(2) read with 29(3) of SAST Regulations, 2011, I note that Hon'ble SAT in the matter of Mr. Ravi Mohan et.al. vs. SEBI ( Appeal no 97/2014 decided on December 16, 2015) has observed as follows:

" .....

*29. ....Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants.*

.....

*33. For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-*

*a).....*

*b) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained.*

*....."*

23. Keeping in view the text of the regulation 29(2) read with 29(3) of SAST Regulations, 2011, I note that the ratio of the aforesaid decision of the Hon'ble SAT is also applicable to the instant regulations. Therefore I conclude that the allegation that the Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 is not tenable.



24. In view of the conclusions arrived at paras 20 and 21 above, I conclude that the Noticee has violated the provisions of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011, regulation 13(1) of PIT Regulations and regulation 13(3) read with regulation 13(5) of PIT Regulations.

***ISSUE II. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act?***

25. From the conclusions arrived at para 24 above, I further conclude that the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act. The text of the said provision is as follows:

***15A. Penalty for failure to furnish, information, return etc.***

*If any person, who is required under this Act or any rules or regulations made thereunder, -*

*(a)...*

*(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.*

*...*

***ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee ?***

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

***SEBI Act***

***Factors to be taken into account by the adjudicating officer***

***15J. 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 a group of investors as a result of the default ;*
- c) *the repetitive nature of the default*

27. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

28. With respect to the conclusion arrived at para 24 above regarding the regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations, I also note that Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs. SEBI (Appeal No. 118 of 2013 decided on September 04, 2013) has *inter alia* observed, "*It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other*". In light of the aforesaid Order by Hon'ble SAT, the said ratio is applicable to the facts and circumstances of the instant case with respect to the violation of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations by the Noticee.

29. In view of the abovementioned conclusion along with notings made at para 28 above after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee under Section 15A (b) of the SEBI Act for the violation of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT

Regulations and a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee under Section 15A (b) of the SEBI Act for the violation of regulation 13(3) read with regulation 13(5) of PIT Regulations, which is appropriate in the facts and circumstances of the case.

### **ORDER**

30. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a consolidated penalty of ₹2,00,000/- (Rupees Two Lakh only) on Dadimaa Capital Pvt. Ltd in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of regulations 29(1) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 by it.

31. Dadimaa Capital Pvt. Ltd shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into the Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

or by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai.

32. Dadimaa Capital Pvt. Ltd shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai :

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:	Penalty

33. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy each of this order is being sent to Dadimaa Capital Pvt. Ltd. at 201, Indrapuri, Govind Nagar, Sodawala Lane, Borivali (west), Mumbai - 400092 and also to the Securities and Exchange Board of India, Mumbai.

**Place: MUMBAI**  
**Date: SEPTEMBER 19, 2017**

**SURESH GUPTA**  
**ADJUDICATING OFFICER**