

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/PM-AA/AO/21-22/2017-18]

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

Sr. No.	Name of the Entity	PAN
1	Prime Capital Market Ltd.	AABCP9313M
2	Warner Multimedia Ltd	AABCC0225H

In the matter of
Blue Circle Services Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) conducted investigation into the trading activities of certain entities in the scrip of Blue Circle Services Limited (hereinafter referred to as '**BCSL / Company**') during the period from October 21, 2011 to March 31, 2013 (hereinafter referred to as '**investigation period**'). The shares of the company are listed on Bombay Stock Exchange Ltd. (**BSE**).
2. Investigation revealed that Prime Capital Market Ltd. (hereinafter referred to as "**Prime**") was promoter of BCSL during the investigation period and there were changes in its shareholding in the company exceeding Rs. 5 lakh in value on 3 occasions i.e. 22.02.2012, 23.02.2012 and 07.02.2013. It was observed that no requisite disclosures were made by Prime to the company as well as to BSE within two working days as stipulated under Regulation 13(4A) read with Regulation 13(5) of SEBI (Prohibition of

Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations, 1992**”).The details of such changes in the shareholding of Prime in BCSL are as under:

Disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations						
Date of transaction	Name of the Promoter entity	Buy / Sale	Number of shares sold	Trade Value	Date on which disclosure was required to be made	Date on which disclosure made to Company/Exchange
22.02.12	Prime Capital Market Ltd.	Sale	1,17,403	89,18,878	24.02.12	No disclosure made
23.02.12	Prime Capital Market Ltd.	Sale	7,597	5,74,488	27.02.12	No disclosure made
07.02.13	Prime Capital Market Ltd.	Sale	1,70,000	54,65,500	11.02.13	No disclosure made

3. It was also observed that M/s. Warner Multimedia Ltd. (hereinafter referred to as “**Warner**”) was part of the promoter group of BCSL during the investigation period since Prime held 25,03,000 shares i.e. 13.49% of paid-up capital of Warner during FY 2012-13. Investigation revealed that there were changes in the shareholding of Warner in BCSL exceeding Rs. 5 lakh in value on 8 occasions i.e. 21.12.2012, 24.12.2012, 26.12.2012, 28.12.2012, 31.12.2012, 02.01.2013, 03.01.2013 and 04.01.2013. It was observed that no requisite disclosures were made by Warner to the company as well as to BSE within two working days as stipulated under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.The details of such changes in the shareholding of Warner in BCSL are as under:

Disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations						
Date of transaction	Name of the Promoter entity	Buy / Sale	Number of shares purchased	Trade Value	Date on which disclosure was required to be made	Date on which disclosure made to (Company/Exchange)
21.12.12	Warner Multimedia Ltd.	Buy	15,000	9,02,250	26.12.12	No disclosure made
24.12.12	Warner Multimedia Ltd.	Buy	1,02,000	59,32,350	27.12.12	No disclosure made
26.12.12	Warner Multimedia Ltd.	Buy	87,564	50,91,272.9	28.12.12	No disclosure made
27.12.12	Warner	Buy	54,050	30,41,812.5	01.01.13	No disclosure made

& 28.12.12	Multimedia Ltd.					
31.12.12	Warner Multimedia Ltd.	Buy	1,12,678	60,96,714.4	02.01.13	No disclosure made
01.01.13 & 02.01.13	Warner Multimedia Ltd.	Buy	78,000	41,64,700	04.01.13	No disclosure made
03.01.13	Warner Multimedia Ltd.	Buy	69,900	37,34,660	07.01.13	No disclosure made
04.01.13	Warner Multimedia Ltd.	Buy	1,10,000	57,18,349.4	08.01.13	No disclosure made

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Anita Kenkare was appointed as Adjudicating Officer under section 15I of the 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 Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 by Prime and Warner (hereinafter individually referred to by name and jointly as “**Noticees**”). Subsequently, vide order dated October 04, 2017, I have been appointed as Adjudicating Officer in place of Ms. Anita Kenkare in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notices no. EAD-6/AK/VV/12486 & 12488/2016 dated April 29, 2016 (hereinafter referred to as “**SCN**”) were issued to Prime and Warner respectively under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed against them under section 15A(b) of the SEBI Act, 1992 for the alleged violations of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 as specified in the SCN. Copies of the documents relied upon in the SCN were provided to Noticees along with the SCN.

6. Vide individual letters each dated July 18, 2016, *inter alia*, Noticees sought for opportunity of inspection of documents. Vide letter dated August 11, 2016, they were requested to send by August 19, 2016 the list of documents that they desired to inspect. However, no reply was received from them. Vide letter dated April 12, 2017 Noticees were asked to file reply to the SCN and they were also provided the following documents as Annexures:
- i. The copy of relied upon part of the correspondence that SEBI exchanged with BCSL, Prime and Warner as **Annexure- A**.
 - ii. The correspondence that SEBI exchanged with BSE and copy of the data taken from BSE website, which had been relied upon in the SCN as **Annexure- B**.
 - iii. The relevant trade log of BSE indicating the sale of shares by the promoter entity Prime and purchase of shares by Warner enclosed in a Compact Disc (CD) as **Annexure- C**.

Submissions of Prime

7. Vide letter dated May 22, 2017, received by SEBI on May 30, 2017, Prime filed its reply to the SCN. The main submissions of Prime with respect to specific charges alleged in the SCN are as follows:
- i. *With regard to alleged non-disclosure for sale transaction on 22.02.2012, it is submitted that we had intimated to the company in Form D on 25.02.2012. Inadvertently, we had missed making disclosure regarding the same to the stock exchange. Based on the disclosure made by us, the company had made the disclosure regarding our sale transaction to the stock exchange. Thus, the disclosure regarding the sale transaction was already in the public domain. The non-disclosure to the stock exchange was an honest / unintentional mistake which has not affected anybody's interest, including the shareholders.*
 - ii. *With regard to alleged non-disclosure for sale transaction on 23.02.2012, it is submitted that we were under bonafide impression that no disclosure was required since the quantum of sales was exceedingly insignificant being less than 25,000 shares and also less*

than 1%. Inadvertently, we missed the fact that the value of transaction exceeded Rs. 5 lakh and warranted disclosure.

- iii. With regard to alleged non-disclosure for sale transaction on 07.02.2013, it is submitted that all the relevant disclosures under Regulation 13(4A) were made by us on 08.02.2013 to both the company and to the stock exchange.*
- iv. We have been disclosed as promoter of the Company (i.e. pre-sales and post-sales).*
- v. The alleged violation is not deliberate and intentional and is at the highest a technical, procedural and venial breach. We have not made any gain or gained any unfair advantage as a result of the alleged violation.*
- vi. The alleged violation has not caused any loss to any investor and has also not adversely affected the shareholders of the company or the securities market. Our shareholding was always disclosed in public domain by the company by way of quarterly disclosures. Further, there are no shareholder/ investor's complaints in this regard.*

Submissions of Warner

8. Vide letter dated May 08, 2017, received by SEBI on May 30, 2017, Warner filed its reply to the SCN. The main submissions of Warner with respect to specific charges alleged in the SCN are as follows:

- i. With regard to alleged non-disclosure for buy transactions on 21.12.2012, 24.12.2012, 26.12.2012, 28.12.2012, 31.12.2012, 02.01.2013, 03.01.2013 and 04.01.2013, it is submitted that we had intimated to the company in Form D on the same day as the date of transaction. Inadvertently, we had missed making disclosure regarding the same to the stock exchange. However, we may point out that based on the disclosure made by us to the company, the company had made the disclosure regarding our sale transaction to the stock exchange. Thus, the disclosure regarding the sale transaction was already in the public domain. The non-disclosure to the stock exchange was an honest / unintentional mistake which has not affected anybody's interest, including the shareholders.*
- ii. We have been disclosed as part of the Promoter Group at all times in the Annual Reports of the Company. It is not the case that we have fully exited the Company. Further, the transactions done by us in the*

ordinary course of business during the relevant period have also not impacted the price or volume of the scrip of the company.

iii. In any event, the said inadvertent non-disclosure has already been cured by us by making the disclosure regarding the impugned transactions, albeit belatedly i.e. May 29, 2017.

9. Noticees were given opportunities of personal hearing on May 31, 2017, July 13, 2017, August 01 & 18, 2017 vide notices dated April 12, 2017, June 15, 2017, July 14, 2017 and August 03, 2017 respectively which they failed to avail. The undersigned, after being appointed as Adjudicating Officer in the present matter, also gave an opportunity of hearing to them on November 20, 2017. Vide letter dated *nil*, received by SEBI on November 14, 2017, BCSL referring to the replies to the SCN, stated that they have nothing further to say in the matter and also submitted copies of the letters dated August 01, 2017 of Prime and Warner stating that they do not wish avail personal hearing.

CONSIDERATION OF ISSUES AND FINDINGS

10.I have perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

- a. Whether Noticees had violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992? and
- b. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

PIT Regulations, 1992

“Continual disclosure.

13. (4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or

voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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.”

Issue I - Violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992

12. Regulation 13(4A) read with 13(5) of PIT Regulations inter alia requires disclosure in Form D to the company and to the Stock Exchange by any person who is a promoter or part of promoter group of a listed company, of the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings which exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of acquisition or sale of shares or voting rights, as the case may be.

13. Upon perusal of the documents available on record, I find that it is not in dispute that Prime and Warner were Promoter and Part of Promoter Group respectively of BCSL and that being the case they are required to make disclosure about any change in their shareholding which exceeds ₹ 5 lakh in value as stipulated under Regulation 13(4A) of PIT Regulations, 1992. Further, the transactions in question as specified in the SCN have also not been disputed and so also the dates when the disclosures were required to be made to the stock exchanges.

14. Prime had submitted that as regards its sale transaction dated i) 22.02.2012, it made the requisite disclosure to the Company but not to BSE, ii) 23.02.2012, it neither made disclosure to the company nor to

BSE ; and iii) 07.02.2013, it made requisite disclosures to the Company as well as to BSE. Thus, out of alleged non-disclosure on 3 occasions by Prime, it had admittedly failed to make requisite disclosures on 2 occasions. Further, I have also noted that as regards the sale transaction dated 07.02.2013, disclosure for the same under Regulation 13(4A) of PIT Regulations, 1992 is available on the website of BSE under the seal of the Prime signed by its Director. Accordingly, I find that Prime had made the requisite disclosures under Regulation 13(4A) of PIT Regulations, 1992 for its sale transaction dated 07.02.2013, however, it failed to make disclosures on 2 occasions as mentioned above.

15. Warner had submitted that for all its buy transactions, it made requisite disclosures to the Company but not to BSE. He made the disclosures to BSE belatedly on May 29, 2017. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance. Timeliness is the essence of disclosure under the PIT Regulations and delayed disclosure by promoters does not serve the purpose for which the obligation is cast on them in these Regulations. Thus, out of alleged non-disclosure on 8 occasions by Warner, it had admittedly failed to make requisite disclosures to the Stock exchange on all the 8 occasions. Accordingly, I find that Warner failed to make requisite disclosures under Regulation 13(4A) of PIT Regulations, 1992 on 8 occasions as alleged in the SCN.

16. Noticees have contended that the said disclosures were already in the public domain as based on the disclosures made by them to the company, the company had made the disclosure to the stock exchange. In this regard, I note that under regulation 13(4A) of PIT Regulations, 1992 there is an independent and separate statutory obligation on

promoters of making disclosure regarding change in their shareholding exceeding the limits prescribed in the said Regulation. The disclosure by the company does not absolve the promoter from making the requisite disclosures to the stock exchange under the afore-mentioned regulation. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal (**SAT**) in *Ambaji Papers Pvt. Ltd. V. The Adjudicating Officer, SEBI (Appeal no. 201 of 2013, order dated January 15, 2014)*, wherein similar contention of information being in the public domain was raised by the appellant under Takeover Regulations. SAT observed "*.... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well.*" I am of the view that the observation made by the Hon'ble SAT in the aforesaid matter applies with full force on the facts of the case in the instant matter.

17. In this context, I would also like to rely on observation of Hon'ble SAT in *Premchand Shah and Others V. SEBI* dated February 21, 2011, wherein it was held that "*.....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments.....*"

18. I note that for the purpose of Regulation 13(4A) of PIT Regulations, 1992, what is relevant is change in shareholding of the person who is promoter or part of promoter group and once such change exceeds the limits prescribed therein, the disclosure obligation gets triggered. In the instant matter, it is an admitted fact that there was change in the shareholding of Prime and Warner exceeding Rs. 5 lakh in value on 2 and 8 occasions respectively. That being the case, they ought to have made the requisite disclosures to the stock exchange within two days as stipulated under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 which they failed to make.

19. In view of the aforesaid discussion, I hold that Prime and Warner failed to make the requisite disclosures to the stock exchange within the timeline as stipulated under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 about change in their shareholding exceeding Rs. 5 lakh in value on 2 and 8 occasions respectively.

Issue II - Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?

20. By not making the disclosures on time, Noticees failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

21. As the violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 is established, the Noticees are liable for monetary penalty under section 15A(b) of SEBI Act, which, at the time of violation, read as under:

"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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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;

22. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J 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."

23. 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 quantified in the material available on record. Considering that there has been failure in making disclosure to the stock exchange by Prime and Warner on 2 and 8 occasions respectively, the same are treated as repetitive. It is important to note that the details of the shareholding of the promoters and changes thereto is an important element for the proper functioning of the securities market and timely disclosure thereof to the stock exchanges etc. are of significant importance from the standpoint of

investors. The purpose of these disclosures is to bring about transparency in the transactions of Promoters and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of *M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 2014), as regards the importance of disclosure, observed *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

24. It is contended by the Noticees that the non-compliance was unintentional, that there was no undue benefit derived by him and no harm was caused to the investors. In this regard, I note that Hon'ble SAT, through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT Regulations. However, they are nevertheless treated as mitigating factors while arriving at the quantum of penalty.

25. Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* (Appeal No. 78 of 2014 order dated September 30, 2014), observed that *"Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay"*.

26. In the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), observed that “..... *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.*”

ORDER

27. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose following penalties on the respective noticees under section 15A(b) of SEBI Act, 1992:

Name of the Noticee	Violation	Penalty Amount
Prime Capital Market Ltd.	Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992	₹ 2,00,000/- (Rupees Two Lakh Only)
Warner Multimedia Ltd.		₹ 8,00,000/- (Rupees Eight Lakh Only)

28. The amount of penalty shall be paid ***either by way of demand draft*** in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, ***or by e-payment*** in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. - 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code - SBIN0004380 within 45 days of receipt of this order.

29. The Noticees shall forward the Demand Draft or the details / confirmation of penalty so paid through e-payment to “The Chief General Manager,

Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.” as per the following format.

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

Date: January 01, 2018
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer