

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 194/2009]

**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

TUSHAR G. SHAH

(PAN. AAOPS7204A)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of Innovision eCommerce Limited (hereinafter referred to as “**ICL**”) whose shares witnessed a sharp rise from Re.0.39 on November 10, 2003 to Re.0.76 on January 28, 2004 (hereinafter referred to as “**investigation period**”) reaching a high of Rs.1.10 on January 20, 2004. The face value of the shares of ICL was reduced from Rs.10 per share to Re.1 per share with effect from September 2002.
2. It was alleged that Tushar G. Shah, (hereinafter referred to as “**Noticee**”) violated the provisions of regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”) and therefore, liable for monetary penalty under section 15A(b)

of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated April 7, 2008 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 ‘**Rules**’) to inquire into and adjudge the alleged violations of provisions of SEBI Act and PIT.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notice No. EAD-5/VSS/JR/137905/2008 dated September 16, 2008 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN.

5. Vide letter dated November 3, 2008 the Noticee made the following submissions:

Without prejudice to the said denial, I wish to state that I was under the bonafide belief that I was not required to disclose the change in shareholding or voting rights to the company since the shares were transferred through off-market deal. Further, I was under a genuine belief that transfers, whether off-market or otherwise, between promoters inter se, do not fall under the disclosure requirements of Regulation 13 (3) and 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992.

6. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal

hearing on December 18, 2008 at SEBI, Head Office, Mumbai vide notice dated November 18, 2008. Vide letter dated December 15, 2008, the Noticee sought an extension. Second opportunity of hearing was given to the Noticee to appear on February 13, 2009 vide letter dated January 29, 2009. Mr. Deepak Shah, Authorized Representative of the Noticee (hereinafter referred to as “AR”) appeared. During the personal hearing, the AR made the following submissions:

Mr. Tushar Shah was having a Private Limited Company. Innovision eCommerce Limited (ICL) purchased the business of this Private Limited Company. As a part consideration of this purchase, a sum of approximately Rs.10,00,000/- was due. As a security, Mr. Akshay Sanghavi, the then Managing Director of ICL, gave 1,12,50,000 shares belonging to him to Mr. Shah. Subsequently, Mr. Sanghavi issued post-dated cheques for the said amount from his Private Limited Company and in turn advised Mr. Sanghavi to return the shares. Mr. Shah signed the DIS and gave in to Mr. Sanghavi. Mr. Sanghavi in turn put the name of Nyalchand Finance as the transferee and accordingly the shares were transferred from Mr. Shah's account to Nyalchand Finance's account. There was no other relationship between Mr. Shah and Nyalchand Finance.

Though the volume involved was 1,12,50,000 shares (11.84%) the value of the same was approximately Rs.10,00,000/-, which was the loan taken by Mr. Sanghavi from Mr. Shah. Thus, Mr. Shah was not aware as to the requirement of compliance with the provisions of Insider Trading Regulations. Consequently, he did not make any disclosure as pointed out in the show cause notice.

7. The Noticee made further submissions vide letter dated February 21, 2009, stating, inter alia, the following:

Mr. Akshay Sanghavi had told me not to deposit the cheque unless he makes necessary arrangements for funds.

On the cheque becoming invalid due to expiry of time he issued further undated cheques towards repayment of his dues.

The name of the Private Limited company was MCD E-Commerce Limited.

8. Mr. Akshay Pravin Sanghavi, vide letter dated March 4, 2009, was advised to clarify the aforesaid submissions and allegations made by the Noticee. Mr. Akshay Pravin Sanghavi replied vide letter dated July 10, 2009 stating, inter alia, the following:

Regarding MCD E-Commerce Ltd. (Manipal Control Data E-Commerce Limited) it is clarified that it was not Mr. Tushar Shah's private limited company but a company owned by the Pai family of Manipal that was acquired by ICL.

Please note that these blank cheques were signed by me as a director of a public limited company CSV Ltd. Mr. Shah himself was a founding director of that company CSV Ltd.

The cheques were not issued from "from my private limited company" but from a public limited company CSV Ltd. A public limited company (in which Mr. Shah was also a director) can not issue cheques as compensation for the transfer of another companies shares owned by Mr. Shah and which have nothing to do with the public limited company.

These blank cheques were signed by me and were in possession of Mr. Tushar Shah were issued for CSV Ltd's internal work. They have nothing to do with ICL or any ICL matter.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
 - a) Whether the Noticee has violated regulations 13(3) and 13(5) of PIT?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 A (b) of SEBI Act?
 - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
10. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT, which reads as under:

Continual Disclosure

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 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.

(4)...

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.

11. I have noted the submissions of the Noticee stating, inter alia, the circumstances under which the shares of ICL were acquired by him. The Noticee had also made certain allegations against Mr. Akshay Pravin Sanghavi. Following the principles of natural justice, Mr. Akshay Pravin Sanghavi was given an opportunity to submit his views in this regard. I have perused his reply also.
12. On perusal of the submissions of the Noticee with regard to the acquisition of the business of MCD E-Commerce Limited of the Noticee by ICL and receipt of consideration for the same in the form of shares of ICL as well as cheques and the submissions of Mr. Akshay Pravin Sanghavi, I find that both are not in conformity with each other. There is variance between the versions of these 2 entities. It is not my brief to adjudicate on this dispute, which, apparently, is due to personal and commercial differences between them.
13. Having held so, upon careful perusal of the documents available on record, I find that the Noticee held 1,12,50,000 shares (11.84%) of ICL as on quarter ended December 2003. He has not denied the same. He had transferred his entire shareholding to H Nyalchand Finance Services Limited through off-market on January 19, 2004. He had not denied this also. He did not make any disclosure as required under PIT. He had not denied this as well. However, the Noticee had cited ignorance as the reason for his non-compliance.

14. The object of the PIT mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. In terms of regulation 13(3) of PIT disclosure is required to be made to the company. The requirement is that complete information should reach the person to whom it is meant within a specified time period, i.e., within 4 working days of the acquisition or sale of shares. The fact that complete information should be timely disclosed to the company is also evident from the provisions of regulation 13(6) of PIT which casts an obligation on the company to disclose to the stock exchanges within 5 days of receipt of information from the director or officer of the company. Failure to disclose full details on the specific aspects within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked.
15. In the present case, the Noticee did not deny that (a) he held 11.84% of the shares of ICL, (b) he had transferred his entire shareholding to H Nyalchand Finance Services Limited and (c) he had not made the required disclosures. I am not inclined to accept the submission of Noticee that he was ignorant about the need to comply with the rule of law.
16. '*Ignorantia juris non excusat*', that is to say, ignorance of law is not an excuse. Ignorance of law of the state does not exclude any person of the age of discretion from the penalty for the breach of it, because every person of the age of discretion is bound to know the law, and is presumed so to do. If any individual should infringe the statute law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent to him to aver in a Court of Justice that he

was ignorant of the law of the land, and Court of Justice is not at liberty to receive such a plea.

17. A mistake of law is never accepted as a defence in actions, whether civil or criminal. The basis of this rule is said to be another maxim in the law of evidence, namely, “every man is presumed to know the law”. Austin, the famous jurist explained two reasons of the rule, i.e., ‘Ignorance of law is no excuse’, thus,
 - (i) If ignorance of law were admitted as a ground of exemption, the Courts will be involved in questions, which it were scarcely possible to solve, and which would render the administration of justice next to impracticable.
 - (ii) If ignorance of law were admitted as a ground of exemption, ignorance of law would always be alleged by the party by way of defence, and the Court, in every case, would be bound to decide the point, whether the party was really ignorant of the law. And for the purpose of determining the cause of his ignorance, it would be incumbent upon the Court to unravel it’s precious history and to search his whole life for the elements of just and correct solution.
18. In view of the foregoing, the reason cited by the Noticee for his failure to comply does not hold good. Therefore, the allegation of violation of regulations 13(3) read with 13(5) of PIT stands established.
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...*”.

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:

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

(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;

21. While determining the quantum of monetary penalty under section 15A (b), I have considered 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.”*

22. 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 Noticee. The change in the shareholding of the Noticee and timely disclosure thereof, were of some importance from the point of view of outside shareholders/other investors as that would have prompted them to buy or sell shares of ICL. Due to the non-disclosure by the Noticee in the scrip of ICL, genuine investors were attracted to trade in the shares of ICL. The genuine investors who had bought these shares have no exit route

today. By not complying with the regulatory obligation of making the disclosure when the change in the shareholding of the Noticee exceeded 2% it had concealed the vital information from the investors. The object of the PIT mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding of the Noticee. The Noticee could not pre-judge the reaction of the investors. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time.

ORDER

23. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticee which will be commensurate with the default committed by him.
24. 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 shall be forwarded to Ms. Barnali Mukherjee, General Manager, Investigation Department - Division – ID6, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

25. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: **November 16, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER