

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MC/DPS/2019-20/4615]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **M/s Odyssey Corporation Limited** (PAN No. AAACO0463C) having address at – 3, Hemu Castle, Nr. Goklibai School, Dadabhai Road, Vile Parle (W), Mumbai – 400056

In the matter of M/s Syncom Formulations (India) Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) conducted examination in the scrip of M/s Syncom Formulations (India) Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period January 01, 2014 to June 30, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed that M/s Odyssey Corporation Limited, (herein after referred to as the “**Noticee**”), was in violation of Regulation 7(1) r/w 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as ‘**SAST Regulations, 1997**’), Regulation 29 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(hereinafter referred to as ‘**SAST Regulations, 2011**’) and and Regulation 13(1) and 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT Regulations**’).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as “**AO**”) vide order dated May 31, 2019 to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide order dated June 4, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD-5/MC/DPS/18600/2019 dated July 23, 2019 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A(b) of the SEBI Act for the aforesaid alleged violations of PIT Regulations and SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
5. It was observed that Noticee was allotted 18,00,000 shares (i.e. 8.07% of holding) through preferential allotment on February 25, 2011, thereby becoming a shareholder with more than 5% shareholding in the company, which triggered disclosure requirement under Regulation 7 (1) r/w 7 (2) of SAST Regulations, 1997 and Regulation 13(1) of PIT Regulations. Noticee disclosed the said transaction to the Company on March 5, 2011 and to BSE on March 7, 2011. As the Noticee failed to disclose the said transaction to the Company and to the BSE within two working days of allotment, Noticee was alleged to have violated Regulation 7(1) r/w 7(2) of SAST Regulations, 1997 and Regulation 13(1) of PIT Regulations.

6. Further, it was also observed that Noticee's shareholding changed from 8.07% as on August 27, 2013 to 5.93% as on June 30, 2014, the details of which are given below:-

Date of transaction	Total Purchase	Total Sale	Closing Holding	Share Capital	% of share capital
27.08.2013			63000000	780652180	8.07
03.09.2013	0	2500000	60500000	780652180	7.75
04.09.2013	0	2500000	58000000	780652180	7.43
11.09.2013	0	2500000	55500000	780652180	7.11
14.09.2013	0	2000000	53500000	780652180	6.85
18.09.2013	0	700000	52800000	780652180	6.76
19.09.2013	0	800000	52000000	780652180	6.66
25.10.2013	0	750000	51250000	780652180	6.57
18.12.2013	0	1700000	49550000	780652180	6.35
20.12.2013	0	150000	49400000	780652180	6.33
21.12.2013	0	156000	49244000	780652180	6.31
24.12.2013	0	18000	49226000	780652180	6.31
31.12.2013	0		49226000	780652180	6.31
15.01.2014	0	1600000	47626000	780652180	6.10
17.01.2014	0	450000	47176000	780652180	6.04
23.01.2014	0	105000	47071000	780652180	6.03
30.01.2014	0	576000	46495000	780652180	5.96
07.04.2014	0	11495000	35000000	780652180	4.48
10.04.2014	0	35000000	0	780652180	0.00
30.06.2014	46313785		46313785	780652180	5.93

7. The aforesaid transactions of the Noticee on January 17, 2014, April 10, 2014 and June 30, 2014 exceeded 2% of total shareholding, which triggered disclosure under Regulations 29(2) of SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations. The Company vide its email dated November 7, 2014 informed that no disclosures were received from the Noticee under SAST Regulations and PIT Regulations during the period June 2013 to July 2014. Further, BSE also vide email dated November 12, 2014 informed that no disclosures were received from the Noticee under SAST Regulations and PIT Regulations during the period June 2013 to July 2014. In view of the same, it was alleged that Noticee, has not made the said disclosures to BSE under Regulations 29(2) of SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations.

8. In view of the above, Noticee failed to disclose change in its shareholding to the BSE as well as to the Company; in alleged violation of Regulation 7(1) r/w 7(2) of SAST Regulations, 1997, Regulation 29(2) of SAST Regulations, 2011 and Regulation 13(1) and 13(3) of PIT Regulations. The aforesaid regulations are reproduced as under;

PIT Regulations

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13(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

13(3) Any person who holds more than 5% shares for 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.

SAST Regulations, 1997

Acquisition of 5 per cent and more shares or voting rights of a company.

7(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

7(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent 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.

29(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.

9. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act.

10. In response to the SCN, the Noticee filed its reply dated September 11, 2019. An opportunity of hearing was provided to the Noticee on September 17, 2019 vide notice dated August 26, 2019. Hearing on September 17, 2019 was attended by Mr. Hiten Mehta and Mr. Jayant Thakur, the Authorised Representatives of the Noticee (AR). AR of the Noticee reiterated the submissions made in its reply dated September 11, 2019 and stated that they will be submitting additional documents within one week. Noticee vide email dated September 23, 2019 made additional submissions.

11. The key submissions of the Noticee are summarized as below:

- a) Noticee had acquired 18 lakhs shares of Syncom on February 25, 2011 and made the said disclosures to the company and exchange on March 7, 2011.
- b) The allotment of shares took place on February 25, 2011, which was a Friday. Assuming that the company posted the letter of allotment on the very next working day, i.e., 28th February 2011, Monday, then taking into account 2-3 working days for delivery of letter to Noticee, the letter

of allotment would have been received on 3rd (Thursday) or 4th (Friday) of March 2011. The SEBI SAST Regulations 1997 (and the SEBI PIT Regulations) required the Noticee to file intimation within two working days of receipt of letter of allotment. Even assuming that Noticee received the letter at the earliest date of 3rd March 2011 (Thursday), it was required to send intimation by 7th March 2011. The actual filing of the intimation, as the SCN itself specifies and as the records also show, was on 7th March 2011. Owing to lack of clarity, which details Noticee did not have as of today, in the filings with exchanges, Noticee mentioned the date of allotment as the date of receipt of intimation which thus was a typo. Therefore there was no delay in filing such intimation as required under Regulations 7(1) read with 7(3) of the SEBI SAST Regulations 1997 or Regulation 13(1) of the PIT Regulations, and no violation in compliance of either of these provisions.

- c) Noticee sold 4.50 Lakhs shares of Syncom on January 17, 2014 and made disclosure on July 26, 2016. The delayed disclosure was unintentional and there was no malafide motive involved.
- d) With regard to the transaction of sale of 3,50,00,000 shares of Syncom on April 10, 2014 and purchase of 4,63,13,785 shares of Syncom on June 30, 2014, the Noticee submitted that 3.50 crores shares of Syncom were transferred to its registered stock broker, Alacrity Securities Limited on April 10, 2014 to be kept in beneficiary account. None of the shares were transferred by the stock broker pursuant to this to the market.
- e) On June 30, 2014, Noticee again requested the stock broker Alacrity to transfer the shares of Syncom held in beneficiary account to back to its demat account. The total quantity of shares of Syncom held on that day on its behalf in client beneficiary account was 4,63,13,785 shares. The whole of these shares were transferred to its demat account. However, these did not represent any purchase of shares. No delivery of these shares was received from the stock exchange. This was the exact quantity lying in the beneficiary demat account and thus transferred to its account.

- f) These merely represented transfer to and fro to the stock broker to be held on behalf of Noticee in beneficiary account.
- g) There is no broker sale or purchase note issued by the stock broker for such 'sale'/'purchase'. The shares continued to be owned by the Noticee.
- h) Noticee also submitted Certificate from its auditors that it had not sold 3.50 crores shares of Syncom on April 10, 2014 and that it had not purchased 4,63,13,785 shares of Syncom on June 30, 2014. The certificate also specifically states that no such sale/purchase of the respective quantity of shares have been shown for tax purposes.
- i) Noticee also submitted Certificate from auditors of Alacrity Securities Limited, its registered stock broker stating that the 3.50 crores shares transferred by it to them is not on account of sale and are to be held and were held in client beneficiary account on its behalf. Similarly, the 4,63,13,785 shares transferred to it are not on account of purchase by it but on account of transfer of its own shares held by the stock broker back to it.
- j) Noticee submitted a copy of its client beneficiary account held by its stock broker where it is shown that the said shares have been held on its behalf and importantly remain in demat account and not transferred to the stock exchange. Similarly, the 4,63,13,785 transferred to it on 30th June 2014 were again those shares held by them in their beneficiary account for it and transferred back to it. These shares do not represent purchases and have not been delivered from the stock exchange on account of such purchases.
- k) Since there was no such sales or purchases as alleged in the SCN the question of disclosure do not arise.
- l) Noticee submitted that it had not received or paid directly any amount in respect of the said shares transferred or retransferred from the stock broker.
- m) Noticee submitted certificate and confirmation from Alacrity, its stock broker, confirming that no consideration has been paid or received in

respect of the 3.50 crores Equity Shares of Syncom Formulations (India) Limited ("Syncom") transferred by it to Alacrity on April 10, 2014 or in respect of the 4,63,13,785 Equity Shares of Syncom transferred by Alacrity to Noticee account on 30th June 2014. The transfers were to and fro the client beneficiary account of Alacrity and not on account of delivery for purchase or sale and hence payment of purchase/sale consideration does not arise.

CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee had failed to make mandated disclosures under the Regulation 7 (1) r/w 7 (2) of SAST Regulations, 1997, Regulation 29 (2) of SAST Regulations, 2011 and Regulation 13(1) and 13(3) of PIT Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticee had failed to make mandated disclosures under the Regulation 7(1) r/w 7(2) of SAST Regulations, 1997, Regulation 29 (2) of SAST Regulations, 2011 and Regulation 13(1) and 13(3) of PIT Regulations as alleged in the SCN?**

13. I note that Noticee was allotted 18,00,000 shares (i.e. 8.07% of holding) through preferential allotment on February 25, 2011, thereby becoming shareholder with more than 5% shareholding in the company, which triggered disclosure requirement under Regulation 7(1) r/w 7(2) of SAST Regulations, 1997 and

Regulation 13(1) of PIT Regulations. Noticee disclosed the said transaction to the Company on March 5, 2011 and to BSE on March 7, 2011.

14. I note that as per Regulation 7(2) of SAST Regulations and 13(1) of PIT Regulations, the disclosure is required to be made within two working days of receipt of intimation of allotment. As the allotment of shares took place on February 25, 2011, which was a Friday, I am inclined to accept the Noticee's submission that intimation of allotment would have been received by 3rd of March, allowing 3 working days for the same i.e. February 28, 2011, Monday, to March 03, 2011, Thursday, as March 02, 2011 shows up as a holiday on account of Shivratri. Assuming that letter of intimation of allotment was received on March 3, 2011 (Thursday), it required Noticee to send intimation by 7th March 2011. Therefore, there was no delay in filing such intimation as required under Regulations 7(1) read with 7(3) of the SEBI SAST Regulations 1997 or Regulation 13(1) of the PIT Regulations. Hence, I am of the view, that the Noticee is not in violation of Regulations 7(1) read with 7(3) of the SEBI SAST Regulations 1997 and Regulation 13(1) of the PIT Regulations.

15. Noticee on January 17, 2014, April 10, 2014 and June 30, 2014 exceeded 2% of total shareholding, which triggered disclosure under Regulations 29(2) of SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations. The details of which are given below:-

Date of transaction	Total Purchase	Total Sale	Closing Holding	Share Capital	% of share capital
27.08.2013			63000000	780652180	8.07
17.01.2014	0	450000	47176000	780652180	6.04
23.01.2014	0	105000	47071000	780652180	6.03
30.01.2014	0	576000	46495000	780652180	5.96
07.04.2014	0	11495000	35000000	780652180	4.48
10.04.2014	0	35000000	0	780652180	0.00
30.06.2014	46313785		46313785	780652180	5.93

16. Noticee in its reply admitted the fact that they have sold 4.50 Lakhs shares of Syncom on January 17, 2014 and such change exceeded 2% of total shareholding and hence triggered disclosure under Regulations 29(2) of SAST

Regulations, 2011 and Regulation 13(3) of PIT Regulations. Noticee also submitted that it had made disclosure on July 26, 2016. The delayed disclosure was unintentional and there was no malafide motive involved. I note that Noticee has admitted the fact it had made delayed disclosure with a delay of 2 years and 6 months.

17. In view of the aforesaid, it is established that the Noticee had failed to make disclosure in a timely manner as required under Regulations 29(2) of SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations in respect of sale transaction carried out on January 17, 2014.

18. With regard to the transaction of sale of 3,50,00,000 shares of Syncom on April 10, 2014 and purchase of 4,63,13,785 shares of Syncom on June 30, 2014, the Noticee in its reply has stated that these transactions were not purchase and sale transactions, but were shares transferred to the beneficiary account of its stockbroker Alacrity Securities Limited. To support this contention, Noticee has submitted Certificate from its auditors and auditors of Alacrity Securities Limited, its registered stockbroker that Noticee had not sold 3.50 crores shares of Syncom on April 10, 2014 and that it had not purchased 4,63,13,785 shares of Syncom on June 30, 2014. It has also been confirmed by the auditor as well as stock broker that no consideration has been paid or received for the said transactions. The certificate also specifically states that no such sale/purchase of the respective quantity of shares have been shown for tax purposes. Noticee also submitted statement of client beneficiary account held by its stock broker. On perusal of the client beneficiary account I note that the 3.50 crores shares have been transferred from its account to client beneficiary account on April 10, 2014 and 4,63,13,785 shares were again transferred from the client beneficiary account to its account on June 30, 2014. Hence, I am of the considered view that the said off-market transactions executed on April 10, 2014 and June 30, 2014 did not involve any purchase or sale of shares but instead was a transfer of shares to the client beneficiary account held with its registered broker. Hence no disclosures were required to be made for the transaction executed on April

10, 2014 and June 30, 2014 under Regulations 29(2) of SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

&

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

19. Since failure of the Noticee in making timely disclosures to the Company and to BSE under Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations, 2011 is established in respect of sale transaction of 4.50 lakh shares of Syncom carried out on January 17, 2014, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

“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.”

20. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

21. I have perused the statement of shareholding pattern of the Company, available on the website of the BSE for the financial quarters ending March 2014. I have noted that the information regarding the Noticee shareholding was reflected as 4,64,95,000 shares (5.96% of holding) as on quarter ending March 2014, which was in public domain by April 7, 2014.

22. While it is established that the Noticee did not make timely disclosures to Company as well as to BSE under Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations, 2011 in respect of sale of 4.50 lakh shares on January 17, 2014, I have taken note of the fact that relevant information was available in public domain by quarter end. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation.

23. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹1,00,000/- (Rupees One Lakh only) will be commensurate with the violations committed.

ORDER

24. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh only) upon the Noticee, i.e. M/s Odyssey Corporation Limited, under Section 15A(b) of the SEBI Act for violation of Regulation 13(3) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011.

25. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online

payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

26. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

27. Copies of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: SEPTEMBER 26, 2019

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER