

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-2 /DSR/VVK/12/2013]

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

**Against
Cementex (India) Private Limited
PAN NO. (AAACC 9265A)**

In the matter of Venus Power Ventures (India) Limited

FACTS OF THE CASE IN BRIEF

1. The scrip of Venus Power Ventures (India) Limited (hereinafter referred to as the " **VPVL**") is listed at The Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**"). BSE on the basis of an internal alert conducted an investigation in the said Scrip for the period from 01/04/2012 to 31/01/2013.The BSE vide its letter dated April 17,2013 informed the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), that there was a decrease in the holding , inter alia, of Cementex (India) Private Limited ("**Noticee**") which required disclosures under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,2011 and SEBI (Prohibition of Insider Trading) Regulations,1992, which CIPL had allegedly not filed under the aforesaid Regulations to the Stock Exchange viz. BSE .

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide Order dated 24th September,2013, I was appointed as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act,1992 (hereinafter referred to as the "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the violation of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the said "**SAST Regulations**") and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the said " **PIT Regulations**") alleged to have been committed by Noticee, under Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE. HEARING AND REPLY

3. A Show Cause Notice No. EAD-2/A&E/DSR-VVK/ 27256 /2013 dated 23/09/2013 (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 and why penalty be not imposed on the Noticee, in respect of the violation alleged to have been committed by the Noticee in this regard.
4. The Noticee vide its reply dated the 6th November,2013 . *inter alia*, submitted as follows:

" we respectfully submit that during the period January,2012 to January,2013, we have not made any disclosures either to the company or to the stock exchange in terms of Regulation 29 of the SAST Regulations and Regulation 13 of the PIT Regulations;

** We were not aware of the provisions under which the disclosures are required to be made to the company and stock exchange. It is an unintentional mistake on our part, we, therefore, request SEBI to kindly pardon us for the lapse and henceforth, we would take utmost care and ensure compliance of securities laws".*

5. Vide personal hearing notice dated the 18th November, 2013, the noticee was granted an opportunity of hearing on 25th November, 2013 at 11:30 a.m. at Local Office of SEBI at Hyderabad .However, the noticee failed to appear for the hearing. However, the noticee vide its letter dated the 22nd November,2013 in response to the aforesaid Notice of Hearing submitted, *inter alia*, that " we do not have other information or additional submissions to be made before esteemed authority and therefore company request good office to kindly consider the previous correspondence on the subject and take a lenient view on the lapses were taken place out of ignorance of law but not intentional."

CONSIDERATION OF EVIDENCE AND FINDINGS

6. It was alleged in the SCN that the Noticee had not filed disclosures for the change in its holdings for June,2012 quarter, therefore, the noticee has violated the provisions of the SAST Regulations and the PIT Regulations. The said change in the noticee's holdings is reproduced in detail in a tabular form as mentioned below:-

For June, 2012 Quarter :

Name of the Entities	31st Dec, 2012		30th Sep, 2012		30th Jun, 2012		31st Mar, 2012	
	No. of shares	Shares as a % total no. of shares	No. of shares	Shares as a % to total no. of shares	No. of shares	Shares as a % to total no. of shares	No. of shares	Shares as a % to total no. of shares
Cementex India Private Limited (Public)	—	—	—	—	—	—	1890000	12.43

7. I have taken into consideration the facts and circumstances of the case and the material made available on record. I note that the allegation was that the noticee had failed to make disclosures to the stock exchange and the company with respect to its dealings during the aforesaid quarter in the scrip of VPVL as mandatorily required under the said Regulations.
8. I note that the Company vide its reply dtd.6th November,2012 submitted that they have not made any disclosures either to the company or to the stock exchanges in terms of SAST Regulations and the PIT Regulations during the June,2012 Quarter, therefore, admitted their failure in complying with the said Regulations.
9. The text of the provisions of regulation 29(2) read with regulation 29(3) of the SAST Regulations and regulation 13(3) read with regulation 13(5) of the PIT Regulations is reproduced as below :-

**SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS)
REGULATIONS, 2011**

29 - Disclosure of acquisition and disposal.

" (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."

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial & 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;

(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. "

10. The said failure of the noticee in making disclosures under the aforesaid regulations attracts penalty under Section 15A(b) of the SEBI Act which provides that :

Section 15A(b) of the SEBI Act,1992 reads as under :-

" **15-A.** *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;"*

11. At this juncture, it is noteworthy to quote the observations of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shriram Mutual Fund [2006] 68 SCL 216(SC)* 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....".

12. The provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that, while adjudging the quantum of penalty, 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

13. I observe that, from the material available on record, it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee. In the instant case, the default is not repetitive in nature. It is worth emphasizing here that the basic purpose of disclosure requirement is to bring about transparency in the securities market vis.a.vis price discovery to enable investors to take well-informed investment or disinvestment decisions. In view of the above, I am convinced that the present case warrants imposition of penalty as per the provisions of the SEBI Act.

ORDER

14. In view of the above, after considering all the facts and circumstances of the case and in exercise of the powers conferred under Section 15-I(2) 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 penalty of ₹ 1,00,000/- (Rupees one lakh only) on the noticee Viz., Cementex (India) Private Limited for

the aforesaid violations. In my view, the penalty is commensurate with the default committed by the Noticee.

15. The above penalty amount shall be paid by the Noticee by way of a Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45(forty five) days of receipt of this order. The said demand draft shall be forwarded to the Deputy General Manager, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G'- Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
16. In terms of the provisions of Rule 6 of the said Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai
Date : November 28, 2013

D. SURA REDDY
ADJUDICATING OFFICER