

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PKB/AO-90 /2009]**

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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**  
**M/s. Orbit Securities Pvt. Ltd.**  
(Pan No. Not Available)

**In the matter of M/s. Shalibhadra Infosec Ltd.**

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**I. BACKGROUND**

1. Towards the middle and last week of June 2002, Securities and Exchange Board of India (hereinafter referred to as "SEBI") observed several advertisements in newspapers in respect of certain companies. Quite a few of such advertisements glossed over the Company's past activities, projected an exceptionally buoyant picture of the company's future and then proceeded to announce that the board of the company was about to consider corporate actions such as- Buyback of Shares, Preferential allotment, Bonus issue etc. It was also noticed that such advertisements were not required by any regulations and the companies were voluntarily publishing them.
2. In view of the aforesaid, it appeared that the purpose of such advertisements was to attract investor interest in illiquid scrips and induce them to trade in such scrips. Therefore, a formal investigation was initiated into the matter. It was observed that one such company which had issued such advertisements was Shalibhadra Infosec Ltd. (hereinafter referred to as "Company") based in Ahmedabad. The Company had issued an advertisement in newspapers on

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*Adjudication Order in respect of Orbit Securities Pvt. Ltd. in the matter of Shalibhadra Infosec Ltd.*

June 19<sup>th</sup>, 20<sup>th</sup> and 24<sup>th</sup> of 2002 to the effect that a meeting of its Board of Directors was to be held shortly to inter alia, consider buyback of 35,00,000 shares at Rs. 10 per share and carried a geographical representation of rising profits of the Company.

3. Further, it was observed that these misleading advertisements were part of an elaborate scheme devised to attract trading interest in the shares of the moribund and loss making Company, induce common investors to transact in the shares of the Company and facilitate the offloading of large quantity promoter shares to innocent investors.
4. On analysis of the trading details in the scrip of the Company, it was alleged that an entity viz., Tushar Jhaveri had allegedly entered into numerous off-market transactions with various entities to assist the promoters in off loading the shares of the Company and Orbit Securities Pvt. Ltd. (hereinafter referred to as "Noticee") was one such entity.
5. Further, it was observed that there were substantial off market transactions in the demat account of the Noticee. It was alleged that the Noticee had acquired 24.93 lakh shares (7.12%) of the Company on 12.04.02. It was also alleged that the Noticee had not intimated the Company under Regulation 7 of SEBI (Substantial acquisition of Shares & Takeovers) Regulations, 1997 (hereinafter referred to as "Takeover Regulations") and thereby violated Regulation 7(1) of the Takeover Regulations. In addition, it was also alleged that there was non-compliance with Regulation 13 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") since the Noticee had sold 24.93 lakh shares (more than 2% of the voting capital) on 13.04.02 but did not inform the Company.
6. To ascertain the facts, the Investigating Authority of SEBI issued summonses, each dated June 24, 2003, January 14, 2004 and March 12, 2004 to the Noticee seeking it's presence along with information as listed in the annexure to the summonses in addition to other documents material for the purpose of investigation. It is alleged that the Noticee failed to comply with the summonses issued by the Investigating Authority and submit the information/documents to the Investigating Authority.

7. Accordingly, Adjudication Proceedings under Chapter VI A of the Act were initiated in respect of the Noticee. Shri S.V. Krishnamohan was appointed as the Adjudicating Officer vide Order dated July 20, 2004 to inquire into and adjudicate under Section 15A of the Act, the failure on the part of the Noticee to furnish information in response to SEBI Summonses.
8. Subsequent to the transfer of Shri S.V. Krishnamohan, Shri A. Chandrasekhar Rao was appointed as Adjudicating Officer vide Order dated December 7, 2004. Subsequent to the transfer of Shri A. Chandrasekhar Rao, Shri Amit Pradhan was appointed as Adjudicating officer vide Order dated December 20, 2005. Pursuant to the transfer of Shri Amit Pradhan, Shri D. Sura Reddy was appointed as Adjudicating Officer vide Order dated July 19, 2007. Pursuant to the transfer of Shri D. Sura Reddy, I have been appointed as the Adjudicating Officer vide Order dated December 10, 2008.

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

9. Show Cause Notice (hereinafter referred to as "SCN") dated February 3, 2005 was issued to the Noticee under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") calling upon the Noticee to show cause why inquiry should not be held against the Noticee in terms of Rule 4 of the Adjudication Rules for the alleged non-compliance with SEBI summonses arising out of failure to furnish the documents and information as listed in the annexure to the said summonses and to appear in person and why penalty should not be imposed in terms of section 15A(a) of the Act. The SCN was duly received by the Noticee, acknowledgement of receipt of which (signed RPAD receipt) is available on record.
10. The Noticee did not reply to the SCN. Therefore, vide Notice of Inquiry dated March 14, 2005 an opportunity of personal hearing was given to the Noticee which was scheduled to be held on April 4, 2005. The Notice of Inquiry was returned undelivered with the remark "left".

11. Subsequently, Notice of Inquiry dated March 14, 2005 was arranged to be delivered through Investigation Department of SEBI. No acknowledgment of receipt of this Notice of Inquiry is available on record.
12. Therefore, pursuant to my appointment as the Adjudicating Officer, Notice of Inquiry dated January 16, 2009 was issued to the Noticee vide which personal hearing was scheduled to be held on February 9, 2009 and the same was arranged to be delivered through Ahmedabad Stock Exchange. The Notice of Inquiry was delivered by the Ahmedabad Stock Exchange and the signed acknowledgment of receipt of the same by the Noticee is available on record. It was brought to the attention of the Noticee vide the Notice of Inquiry dated January 16, 2009 that we were not in receipt of any reply from the Noticee to the SCN duly received by it. Further, it was specifically mentioned that *"As the proceedings as informed above are in progress, you are advised to keep the undersigned informed about the change in your correspondence address, if any, till the proceedings are complete"*.
13. The Noticee vide letter dated January 29, 2009 replied and acknowledged the receipt of the Notice of Inquiry dated January 16, 2009 and stated that it intended to avail the process of consent and therefore, would make the consent application accordingly. Thereafter, it is observed from records that the Noticee has till date not made any application in terms of SEBI Circular no. EFD/ED/Cir-1/2007 dated April 20, 2007.
14. Vide letter dated March 25, 2009 addressed to the Noticee, the Enforcement Department of SEBI reminded the Noticee that even after the lapse of two months from the Noticee's letter vide which it desired to avail the consent process, no consent application from the Noticee has been received and that the provisions of the SEBI Circular no. EFD/ED/Cir-1/2007 dated April 20, 2007 including keeping the proceedings in abeyance would be applicable only after the consent application from it would be received. However, the letter sent by RPAD was returned undelivered with the remark "refused" (copy of the envelope bearing the remark available on record). However, I observe that till date the Noticee has not filed the consent application, nor has sought extension to file the same neither has conveyed any reason for delay in filing.

15. However, in the interest of principles of natural justice, another opportunity of personal hearing was accorded to the Noticee vide Notice of Inquiry dated July 3, 2009 whereby the personal hearing was scheduled to be held on July 15, 2009. However, the same was returned undelivered with the remark "left". The Notice was sent on the same address from where the Noticee had written vide letter dated January 29, 2009 about its intention to avail consent process. I find that the Noticee had last corresponded from the same address only and it was also obliged to intimate the change in address, if any, to me as required by my notice dated January 16, 2009. This shows the continuing non-cooperative attitude of the Noticee.
16. In this regard, I observe that the Notice of Personal Hearing dated January 16, 2009 has been duly received by the Noticee. However, neither the Noticee nor his authorized representative appeared and sought a fresh date. On the contrary the Noticee showed desire to settle the matter by way of consent process and it is observed from records that even after a lapse of around 6 months no application to this effect has been made by the Noticee.
17. Therefore, I note here that the Noticee was provided reasonable time in respect to either appear for hearing or make consent application, but the Noticee failed to appear for personal hearings despite opportunities provided to it and also failed to make the consent application. In this context I note that vide letter dated January 29, 2009, in reply to our notice of hearing dated January 16, 2009, the Noticee categorically stated *"we intend to avail the process of Consent and therefore will make the consent application accordingly. In the meantime you are requested to keep in abeyance the present proceedings till fate of our consent application is decided by the Board"*.
18. Moreover, SEBI followed up with the Noticee vide letter dated March 25, 2009 and advised the Noticee to file the consent application since it wished to do so. The said letter came back with a remark "Refused". However, I observe that till date the Noticee has not filed the consent application, nor has sought extension to file the same neither has conveyed any reason for delay in filing. Therefore, the inquiry is proceeded with taking into account the facts and material available on record.

### III. ISSUES FOR CONSIDERATION

19. On perusal of the material available on record, I have the following Issues for consideration, viz.,

1. Whether the Noticee has violated section 11C(2) of the Act arising out of non-compliance with summonses issued by SEBI and failure to furnish information and documents to SEBI?
2. Whether the Noticee is liable for monetary penalty under section 15A(a) of the Act?
3. What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in section 15J of the Act?

### IV. FINDINGS

20. 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 1: Whether the Noticee has violated section 11C(2) of the Act arising out of non-compliance with summonses issued by SEBI and failure to furnish information and documents to SEBI?***

21. The provisions of section 11C(2) of the Act reads,

*“(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956(1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.”*

22. To decide the allegation of non-compliance with the summonses issued by SEBI, the foremost requisite is to find if the same were duly received by the Noticee. It is observed that SEBI had issued three summonses, each dated June 24, 2003, January 14, 2004 and March 12, 2004 to the Noticee, non compliance with which have resulted in the Adjudication Proceedings in respect of the Noticee.

23. Therefore, with respect to service of each of the summonses, it is noted that the SCN dated February 3, 2005 had alleged that the summons dated June 24, 2003 was delivered through courier. However, the proof of the same is not available on record. The question with respect to service of summons dated March 12, 2004, sent through Khandwala Integrated Financial Services Pvt. Ltd. (hereinafter referred to as "Khandwala") is irrelevant as the SCN has itself alleged that Khandwala had vide letter dated March 17, 2004 stated that they had not received the acknowledgment of receipt of the summons by the Noticee.
24. With respect to the service of summons dated January 14, 2004 as alleged by SCN to be delivered through Khandwala, I find that the summons sent by Khandwala through speed post on January 23, 2004 was duly received by the Noticee, proof of service of which (signed Speed Post receipt) is available on record. And the same has been reiterated by Khandwala in its letter dated March 17, 2004 that it did not receive the acknowledgment of the receipt of summons dated March 12, 2004 but the Noticee had already received the summons on January 27, 2004. However, the Noticee failed to comply with the summons by not appearing before the Investigating Authority and furnish information as required by the summons. Therefore, in this case, the Noticee clearly did not comply with the summons.
25. Further, I note that the address to which the summons dated January 14, 2004 was issued, was the address of the Noticee wherein the Notice of Inquiry dated January 16, 2009 was duly received by the Noticee to which it replied vide letter dated January 29, 2009 categorically stating that it was in receipt of our Notice of Inquiry dated January 16, 2009. Therefore, in this respect I observe beyond doubt that the summons dated January 14, 2004 was served to the Noticee. Hence, I observe that the Noticee has not complied with summons dated January 14, 2004.
26. From the above, I find that though three summonses were issued to the Noticee, the acknowledgment of receipt of only one summons i.e. summons dated January 14, 2004 is available on record. I also note that though the other two summonses i.e. each dated 24.06.03 and 12.03.04, have not been returned

undelivered, acknowledgment of receipts thereof by the Noticee are not available on record. In the absence of acknowledgment of these two summonses, I tend to give benefit of doubt to the Noticee as far these two summonses are concerned.

27. However, I find that there is no dispute about the service of the summons dated January 14, 2004 for which the acknowledgment duly signed by the Noticee is available on record. This has also not been disputed by the Noticee despite enough opportunities provided to him.

28. Further, it is observed that the summons clearly stated that if the Noticee failed to comply with the summons, criminal prosecution may be launched against the Noticee under Section 11C(6) which provides for a punishment with imprisonment for a term which may extend to one year or with fine which may extend to one crore, or with both and also with a further fine which may extend to 5 lakh rupees for each day after the first during which the failure or refusal continues. It was also stated that if the Noticee omits to attend and give evidence or to produce the books of accounts and/or documents as required, SEBI would initiate adjudication proceedings against it under Section 15A of Act.

29. Therefore, it is observed that the Noticee has not complied with the summons dated January 14, 2004. The second question for deciding the non-compliance with summonses issued by SEBI after adjudging the proof of service of the summonses is to find out the relevance of the information sought by the summons dated January 14, 2004 which the Noticee has not provided.

30. Vide summons dated January 14, 2004 issued under section 11(3) of the Act, the Noticee was summoned to appear before the Investigating Authority and bring documents including those specified in the Annexure in support of its defense or which may be material for the purpose of the investigation into the scrip of the Company. The details specified in the Annexure are given below:

1. Personal Details

- Full name, complete address & Telephone numbers, photograph and photo identification papers.



- Names and addresses of all the Companies (both listed and unlisted) in which the Noticee holds directorships
  - The entities/companies, wherein the Noticee hold a stake of 15% or more.
  - The entities/companies that are either individually or jointly controlled by the Noticee
2. Trading Details: date wise summary of all trades executed by/on behalf of the Noticee in the scrip of the Company.
  3. Bank and DP Details: Details of all bank accounts and DP accounts of the Noticee.

31. It is observed that the Company had issued advertisements in newspapers on June 19<sup>th</sup>, 20<sup>th</sup> and 24<sup>th</sup> of 2002 to the effect that a meeting of its Board of Directors was to be held shortly to inter alia, consider buyback of 35,00,000 shares at Rs. 10 per share and carried a geographical representation of rising profits of the Company.

32. Further, it was observed that these misleading advertisements were part of an elaborate scheme devised to attract trading interest in the shares of the moribund and loss making Company, induce common investors to transact in the shares of the Company and facilitate the offloading of large quantity promoter shares to innocent investors.

33. Further, it was alleged that an entity viz., Tushar Jhaveri had entered into numerous off-market transactions with various entities to assist the promoters in off loading the shares of the Company and the Noticee was one such entity.

34. Further, it was observed that there were substantial off market transactions in the demat account of the Noticee. It was alleged that the Noticee had acquired 24.93 lakh shares (7.12%) of the Company on 12.04.02. It was also alleged that the Noticee had not intimated the Company under Regulation 7 of the Takeover Regulations and thereby violated Regulation 7(1) of the Takeover Regulations. In addition, it was also alleged that there was non-compliance with Regulation 13 of PIT Regulations since the Noticee had sold 24.93 lakh shares (more than 2% of the voting capital) on 13.04.02 but did not inform the Company.

35. In this backdrop, it can't be denied, as it stands firmly established that the information sought from the Noticee was important and non submission of

the same impaired the investigation and indeed, the information was required to find out the truth in the matter to protect the interest of the investors in the securities market and conclude the investigation.

36. Therefore, had the information sought from the Investigating Authority would have been made available to it, the Investigating Authority would have been in a better position to ascertain possible violations of the provisions of Act and Rules and Regulations made thereunder. Further, the information sought was required to investigate the off market transactions entered into by the various entities in order to assisting the offloading of shares of the Company by the promoters of the Company following the misleading advertisements to induce demand in the scrip of the Company. In this context, it can be established beyond doubt that the information which was not provided by the Noticee was relevant to find the truth in the matter and acted as a spoke in the whole Investigation Process.

37. From the forgoing paragraphs it is observed that the Noticee failed to provide information to the Investigating Authority. The said information which was sought vide the summons dated January 14, 2004 was very relevant and important in the whole Investigation process. Therefore, it is conclusively established that the Noticee did not comply with the summons dated January 14, 2004.

38. In view of the above, I find that the Noticee did not comply with the summons dated January 14, 2004 and it has violated the provisions of section 11C(2) of the Act and the information sought by the Investigating Authority was absolutely relevant in the Investigation Process.

***ISSUE 2: Whether the Noticee is liable for monetary penalty under 15A(a) of the Act?***

39. The provisions of section 15A(a) of the Act reads,

***“Penalty for failure to furnish information, return, etc.***

***15A. If any person, who is required under this Act or any rules or regulations made thereunder, –***

*(a) to furnish any document, return or report to the Board, fails to furnish the same, 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;"*

40. The Noticee under section 11(3) of the Act was required to produce details mentioned in the annexure to summons. In view of non compliance with the summons dated January 14, 2004 and Noticee's failure to submit the relevant information and documents, the Noticee is liable for penalty under section 15A(a) of the Act.

***ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee, taking into consideration the factors mentioned in section 15J of the Act?***

41. Section 15J prescribes the factors to be taken into account by the Adjudicating Officer while adjudging the quantum of penalty under section 15-I of the Act, the provisions of which read,

*"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."*

42. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default. Further, the amount of loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data. Even though the exact monetary loss to the investors can not be computed, the failure to supply information by the Noticee impaired the investigation into the matter of offloading of the promoter shares of the moribund Company to innocent investors and such acts not only affect those investors who have been affected but also erodes investor confidence in the market. It is of utmost importance that a sense of fair play be maintained in the market so that innocent investors do not find themselves at the receiving end of market manipulators. However it is pertinent to note that out of three summonses, proof of service of only one

summons is available on record and hence, it can't be conclusively stated that the Noticee has defaulted repetitively.

43. In the forgoing paragraphs it is now established that the Noticee failed to provide necessary information / documents to the Investigating Authority of SEBI in response to the summons issued in terms of Section 11(3) of the Act. The said information was very relevant and important in the whole Investigation Process. Thereby, it is established beyond doubt that the Noticee tried to evade the information from Investigating Authority, which hampered the Investigation Process. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of Rs. 2,00,000/ (Rupees Two Lakh only) on the Noticee would be commensurate with the violation of Section 11C(2) of the Act done by the Noticee.

## **V. ORDER**

44. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A(a) of Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on M/s. Orbit Securities Pvt. Ltd. for non compliance with summons issued by Investigating Authority.

45. The penalty shall be paid by way of demand draft drawn 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 (ID8), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

46. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and to SEBI.

**Date: July 31, 2009**

**Pace: Mumbai**

**P. K. Bindlish**

**Adjudicating Officer**