BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PG/AM/AO–18/2013

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

In respect of:
Shri Bharath Chandan
(PAN – AADPC0168J)
In the Matter of:
Sanguine Media Limited

BACKGROUND

1. Securities and Exchange Board of India **(SEBI)** conducted investigation into the trading in the scrip of M/s. Sanguine Media Limited**, (Company/SML)** for the period from April 1, 2009 to June 17, 2009 **(Investigation Period)**. It was observed that 14,50,000 shares of the Company were pledged with Shri Bharath Chandan **(Noticee)** by Shri C V Ravi (**CVR**) promoter/director of the Company. This pledge was closed and recreated for the same quantity on February 25, 2009.

2. It was observed that on June 30, 2009, 12,50,000 pledged shares of the Company (8.87% of the total share capital) were transferred to demat account of the Noticee from the demat account of CVR on account of 'pledge invocation'. It was also observed that on July 07, 2009, the said 12,50,000 shares were transferred back by the Noticee to the demat account of CVR and a pledge was created by him on the same date. It was alleged that even though the Noticee was the beneficial owner of these shares from June 30, 2009 to July 07, 2009, the Noticee did not make any disclosures.

3. From the shareholding pattern of the Company for the quarter ended June 30, 2009 uploaded on the website of Bombay Stock Exchange **(BSE)**, it was observed that the name of the Noticee appeared in the category titled 'Public and holding more than 1% of the Total No. of Shares' with a holding of 12,50,000 shares (8.87%) of the Company.

4. It was observed that the Noticee dealt substantially in the shares of the Company, but failed to make disclosures as required under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 **(SAST Regulations)** and SEBI (Prohibition of Insider Trading) Regulations, 1992 **(PIT Regulations)**. In view of the aforesaid it was alleged that the Noticee had violated the provisions of Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations.

5. The undersigned was appointed as the Adjudicating Officer vide Order dated January 13, 2011 to inquire into and adjudicate under Section 15A(b) of the SEBI Act, 1992, the alleged violation of provisions of Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations.

SHOW CAUSE NOTICE, HEARING & REPLY

6. A Show Cause Notice **(SCN)** in terms of the provisions of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 **(Adjudication Rules)** was issued to the Noticee on February 21, 2011, calling upon him to show cause why an inquiry should not be held against him in terms of Rule 4 of the Adjudication Rules for the alleged violations.

7. The Noticee vide letter dated March 09, 2011 acknowledged the receipt of the SCN and, *inter alia*, made the following submissions:
   - *On 25th February 2009, Mr C V Ravi created the pledge of 14,50,000 equity shares of SML as security for the loan provided by the undersigned.*
   - *On 30th June, 2009, the undersigned, by oversight the pledge was revoked instead of extending the date of pledge. On realization, the error was rectified with extension of time of pledge.*
   - *The undersigned wishes to state that the wrongful invocation of pledge of 12,50,000 shares in the Company was purely accidental*

and due to lack of advertence. There was no intention of acquiring the beneficial ownership of the shares.

- *The mistake was neither willful nor intentional and without any malafide motive on the part of the undersigned.*
- *Taking into consideration the above explanations, the undersigned humbly prays the following:-*
    - *The undersigned humbly requests that no penalty be imposed or the contraventions alleged as above and that the undersigned be warned to be careful in its compliances with all the relevant statutes strictly.*
    - *The undersigned be warned to be careful in its compliances with all the relevant statutes strictly.*
    - *It is requested to kindly withhold the inquiry against the undersigned in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1996.*
- *The undersigned would further like to inform you that he wish to avail of the consent process for passing of consent orders, as prescribed by SEBI in this regard and he is in the process of making the application in the prescribed form.*

8. Subsequently, Hearing Notice dated March 25, 2011 was issued to the Noticee vide which the Noticee was advised to appear before the undersigned for personal hearing on April 06, 2011. However, vide Notice dated April 01, 2011 the said hearing was rescheduled and the Noticee was advised to appear before the undersigned for personal hearing on April 19, 2011. It is observed that vide letter

dated April 12, 2011 the Noticee submitted that he would like to avail the opportunity of consent process for which he will be sending consent application. It is also observed that vide letter dated April 18, 2011 the Noticee, *inter alia*, made the following submissions:

- *Mr. C.V.Ravi had created Pledge of 12,50,000 shares of M/s. Sanguine Media Ltd. held by him in favour of us for the loan extended by us.*
- *On expiry of the pledge instead of extending the same we had inadvertently revoked the pledge. On realization of the error it was rectified within a week and status Quo restored.*
- *We had not transacted in the said shares nor had any intention of trading over the shares, wherein it was purely because of inadvertency.*
- *We request you to take into account the above mentioned points and condone the unintentional non manified error.*

9. Subsequently, the Noticee submitted his application for consent. SEBI, vide its communication dated February 21, 2013 advised rejection of the consent application. In the interest of natural justice, one final opportunity of personal hearing was granted to the Noticee on March 15, 2013 vide Hearing Notice dated March 06, 2013. It was observed that vide letter dated March 07, 2013 the Noticee requesting a change of date and place of hearing. The request of the Noticee was duly considered and vide letter dated March 08, 2013 the Noticee was advised to appear for personal

hearing on March 12, 2013 at Mumbai. Mr. Bharat B Shah, Authorised Representative of the Noticee appeared for hearing on the scheduled date and made submissions vide letter dated March 11, 2013 which *inter alia*, contained the following:

- *Mr. C V Ravi had taken a loan of Rs.25,00,000/-from me by pledging 12,50,000 shares of M/s. Sanguine Media Ltd.*
- *On expiry of the pledge on 30thJune, 2009 instead of extending the same we inadvertently revoked the pledge.*
- *To rectify the mistake done same was reversed back in the account of Mr. C V Ravi on 7th July, 2009 within 7 days (D P Instructions encl).*
- *In the D P instructions dt. 30thJune, 2009 it was clearly mentioned that this is a Pledge type of Instructions (D P Instruction encl).*
- *I was never holding any shares of M/s. Sanguine Media Ltd before or after this particular loan transactions.*
- *I have never traded in the scrip of M/s. Sanguine Media Ltd any time.*
- *We are not at all connected person or insider and we do not have any other interest in the Company. Our interest was restricted only to money landed to Mr. C V Ravi.*
- *We have neither acquired nor sold the shares of the M/s. Sanguine Media Ltd either from open market or from off the market nor we had acquired or interested in any voting rights.*
- *We are medium scale dealers in Computers.*

Sir, as a result of these

- *We have not earned any gain or unfair advantage.*

- *This has not created any loss to investors since this transaction was never reflected in volume or price of the scrip.*
- *This has not affected the transparency since no transaction was carried out in the market or off the market to reflect false picture about M/s. Sanguine Media Ltd.*
- *This is first time and only one entry was done it is not of repetitive nature.*

Sir , based on these facts it is clear that we have not violated any regulation since D P request was clearly showing this as a pledge documents. Whatever we have done is to earn only interest and safety of money landed by us without anticipating any unfair advantage/gain or putting innocent investors to any loss.

Sir, considering the facts of the case we request you to kindly drop the charges framed against us in the matter.

ISSUES FOR CONSIDERATION

10. After perusal of the material available on record, I have the following issues for consideration, viz.,

A. Whether the Noticee has violated provisions of Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations?

B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

11. 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 provisions of Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations?

12. The provisions of Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations read as under:

SEBI (Substantial Acquisition of Shares and Takeovers) 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.

SEBI (Prohibition of Insider Trading) Regulations, 2003

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

(2)…….

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.*

13. From the material available on record, it is observed that on June 30, 2009 12,50,000 pledged shares of the Company were transferred to the demat account of the Noticee on account of 'pledge invocation' from the demat account of CVR and on July 07, 2009, the said 12,50,000 shares were transferred back by the Noticee to the demat account of CVR and a pledge was created on the same date. I also note that the aforesaid transaction of the Noticee amounted to acquisition of shares comprising 8.87% of the total share capital of the Company. Therefore, the Noticee was liable to make necessary disclosures under Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations.

14. I note that in his reply, the Noticee has neither denied nor disputed the fact of not making necessary disclosures under provisions of Takeovers Regulations and PIT Regulations, but, *inter alia*, submitted that by oversight the pledge was invoked instead of extending the date of pledge and on realization, the error was rectified with extension of time of pledge. The Noticee has further submitted that the wrongful invocation of pledge of 12,50,000 shares in the Company was purely accidental and he had no intention of acquiring the beneficial ownership of the shares. The Noticee has also submitted that he was never holding any shares of the Company before or after this transaction and that he has never traded in the scrip of the Company.

15. From the copy of the Depository Participant (**DP**) instruction slip of DP, Yoha Securities Limited dated June 30, 2009 (Annexed to SCN as Annexure – A) I note that the Noticee had given instructions for invocation of the pledge in respect of 12,50,000 shares of the Company. Similarly, from the copy of the instruction slip of DP Yoha Securities Limited dated July 07, 2009 (Annexed to SCN as Annexure – B), I note that the Noticee had given instructions for off market transfer of 12,50,000 shares of the Company to CVR. At this juncture, it is pertinent to mention that the DP instruction slip dated July 07, 2009 had a column for reasons/purpose wherein it is mentioned that "Pledge invocation shares are returned back to client after payment....." and nowhere is it mentioned that the pledge was erroneously invoked. It is abundantly clear that 12,50,000 shares of the Company were received by the Noticee on June 30, 2009 and the same number of shares were transferred off-market by the Noticee to CVR on July 07, 2009. Therefore, the Noticee had acquired beneficial ownership of 12,50,000 shares of the Company on June 30, 2009 and was holding the same till July 07, 2009. The same is also evident from the shareholding pattern of the Company for the quarter ended June 30, 2009 uploaded on the website of BSE wherein name of the Noticee is appearing in the category titled 'Public and holding more than 1% of the Total No. of Shares' with a holding of 12,50,000 shares (8.87%) of the Company. Hence, I do not agree with the submissions of the Noticee because the fact remains that the Noticee had acquired beneficial ownership of 12,50,000 shares of the Company on June

30, 2009 and was holding the same till July 07, 2009. Besides, the submissions of the Noticee that acquisition of 12,50,000 shares of the Company by virtue of invocation of pledge was an inadvertent act, cannot be accepted as plausible reason for acting in violation of securities law and not making necessary disclosures.

16. In view of the above it is now clear that the Noticee had acquired 12,50,000 shares, comprising 8.87% of the total share capital of the Company on June 30, 2009. Since, the Noticee had acquired and was holding more than 5% shares of the Company, the Noticee was under an obligation to make disclosure about his shareholding to the Company and to the stock exchange in which the shares of the Company are listed in terms of Regulation 7(1) of Takeovers Regulations and also to the Company in terms of Regulation 13(1) of PIT Regulations. Further, since the Noticee transferred back 12,50,000 shares of the Company on July 07, 2009 which amounted to transfer of shares comprising 8.87% of the total share capital of the Company, the Noticee was under obligation to make disclosure to the Company in terms of Regulation 13(3) of PIT Regulations. However, no such disclosures were made by the Noticee to the Company or to BSE. Hence, I hold that the Noticee has violated the provisions of Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

17. The provisions of Section 15 A(b) 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, –*

(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;"

18. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has 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 regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

19. As already observed, the Noticee dealt substantially in the shares of the Company, but failed to make disclosures as required under Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

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?

20. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the 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."*

21. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. In this regard, the Noticee has submitted that he has not earned any gain or unfair advantage. The Noticee has also submitted his transaction in the shares of the Company had not created any loss to investors since this transaction was never reflected in volume or price of the scrip. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, he had concealed

the vital information which is detrimental to the interest of investors in securities market. At this juncture, I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which Hon'ble SAT has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market*". Considering the facts of the case, the default of the Noticee is repetitive in nature. However, I also note that the Noticee did not trade in the shares of the Company in the market and that he held them for only one week.

22. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosure under Regulation 7(1) of Takeovers Regulations and Regulation 13(1) & 13(3) of PIT Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee would be commensurate with the violations committed by the Noticee.

ORDER

23. Considering the facts and circumstances of the case, in terms of the provisions of section 15A(b) of Act and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on Shri Bharath Chandan for not making necessary disclosures under Regulation 7(1) of Takeovers Regulations read with Regulation 35 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(1) & 13(3) of PIT Regulations.

24. 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 the Division Chief, Investigation Department (IVD – ID7), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

25. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: March 21, 2013 **Piyoosh Gupta**
Place: Mumbai **Adjudicating Officer**