

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. DSR/AO-02/2009]

**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**

Against

**Celica Developers Private Limited
(PAN No. AABCC3820O)**

FACTS OF THE CASE :

1. Magma Shrachi Finance Limited {Formerly known as Magma Leasing Limited and hereinafter referred to as “company”} is a company engaged in financing utility vehicles, commercial vehicles, cars and construction equipment. The company has its registered office in Kolkata and its shares are listed on Bombay Stock Exchange Limited(hereinafter referred “BSE”), National Stock Exchange of India Limited(hereinafter referred to as “NSE”) and Calcutta Stock Exchange (hereinafter referred to as “CSE”). The shares of the company were delisted from CSE with effect from 20.09.2006. The Examination in the scrip of the company was taken *suo-motu* by BSE after two alerts were received from the surveillance department of BSE on June 6, 2006 and June 13, 2006 respectively.

2. Thereafter, investigation into the affairs relating to buying and selling or dealing in the shares of the company was conducted by SEBI in order to ascertain as to whether any provisions of the SEBI Act, 1992 and various rules and regulations made there under, had been violated. The investigation period was taken from June 01, 2006 to July 31, 2006.
3. It was observed that pursuant to grant of approval to the scheme of arrangement by the Hon'ble Calcutta High Court, 54,62,101, shares representing 37.95% of the share capital of the company were transferred on May 18, 2006 to Celica Developers Private Limited(hereinafter referred to as "Noticee") which were earlier being held by Stratus Developers Private Limited.
4. NSE vide its letter dated August 29, 2006 informed SEBI that the disclosure regarding acquisition of shares was received by them on September 11, 2006 while the acquisition took place on May 18, 2006. Therefore, it was alleged that the Noticee has violated Regulation 7(1) of SEBI(Substantial Acquisition of Shares and Takeover), Regulations, 1997 (hereinafter referred to as "SAST") and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT') which reads as under:

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.

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 4 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.

APPOINTMENT OF AO:

5. I was appointed as Adjudicating Officer vide order dated June 6, 2008 to inquire into and adjudge under Section 15 A(b) of the Securities and Exchange Board of India Act, 1992, the alleged violation of Regulation 7(1) of SAST and Regulation 13(1) of PIT, committed by the Noticee.

SHOW CAUSE NOTICE, REPLIES AND HEARING:

A show cause notice (hereinafter referred to as “SCN”) dated June 11, 2008 was issued to the Noticee under SEBI (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 (hereinafter referred to as “the said Adjudication Rules”).

6. Subsequently, an opportunity of hearing was granted to the Noticee on December 5, 2008. The Noticee vide letter dated November 27, 2008 informed that they had not yet received the show cause notice and sought adjournment of the hearing. Therefore, a copy of the show cause notice dated June 11, 2006 was handed over to the Noticee on December 5, 2008 and the hearing was accordingly adjourned.

7. A detailed reply was filed by the Noticee vide letter dated December 16, 2008. The Noticee, *inter-alia*, contended that there was no violation of Regulations as alleged in the said SCN. The Noticee further submitted that 54,62,101 shares were transferred to them pursuant to the Scheme of Arrangement in accordance with section 391 and 394 of Companies Act, 1956 and the same was also approved by the Hon'ble High Court of Calcutta vide order dated January 25, 2006. Thereby, there was no positive act on their part to acquire the said shares from Stratus Developers Private Limited.
8. Further, the Noticee also submitted that the information (with respect to the said scheme of arrangement through which the Noticee acquired the shares) was already in public domain and as such no further disclosure was required to be made and hence there was no violation of Regulation 7(1) of SAST and Regulation 13(1) of PIT. The Noticee also submitted that, in good faith and out of abundant caution, the disclosure in accordance with Regulation 7(1) of SAST and Regulation 13(1) of PIT was made to the company and to the exchanges on September 6, 2006. An opportunity of personal hearing was granted to the Noticee on 18.03.2009 and the authorized representative of the Noticee appeared and reiterated the submissions already made vide letter dated 16.12.2008. The Noticee also submitted a copy of the letter dated 04.08.2006 purported to have been submitted to the company, *inter-alia*, disclosing that they were holding 50,76,401 equity shares representing 35.27% of the paid-up capital of the company.

CONSIDERATION OF ISSUES AND FINDINGS THEREOF:

9. I have perused the entire material available on record and also carefully examined the arguments made by the Noticee.

10. I note that Regulation 7(1) of SAST casts an obligation on the Noticee (as he was **holding** more than 5% shares of the company) to disclose to the company and also to the stock exchange(s) the number of shares/ voting rights so acquired within 2 days of the receipt of intimation of allotment of shares; or the acquisition of shares or voting rights, as the case may be.
11. I also note that Regulation 13(1) of PIT casts an obligation on the Noticee (as he was **holding** more than 5% shares of the company) to disclose to the company the number of shares/ voting rights held within 4 days of the receipt of intimation of allotment of shares; or the acquisition of shares or voting rights, as the case may be.
12. In the instant case, I note that subsequent to the order of the Hon'ble High Court of Calcutta, 54,62,101, shares representing 37.95% of the share capital of the company were transferred to the Noticee on May 18, 2006. I also note that the Noticee had sent the information in terms of Regulation 7(1) of SAST to the company and to the Stock Exchanges on September 6, 2006, i. e with a delay of 107 days.
13. Further, I also note that the Noticee had sent the information in terms of Regulation 13(1) of PIT to the company on September 6, 2006 with a delay of 105 days. The said information was displayed in the NSE website on September 11, 2006.
14. I am also not convinced with the Noticee's claim that there was no positive act to acquire the shares and therefore there was no onus on their part to make requisite disclosure to the company and the Stock Exchanges. On going through Regulation 7(1) of SAST and 13(1) of PIT, I note that there was an obligation on

the part of the Noticee to make the requisite disclosures as the notice was “holding” more than 5% of the shares/ voting capital of the company.

15. At this juncture, I note that in the matter of Arun Kumar Bajoria Vs SEBI, the Hon’ble High Court of Calcutta held as under:

“In Regulation 7 of the said Regulations , when such persons together acquires 5 per cent shares in a company , they are required to inform the company accordingly and the company is required to inform the Stock Exchanges where the shares of the said company are listed. The object Regulation 7 of the said Regulations is two fold. Firstly, as soon as a group of persons in league with each other acquires 5 per cent shares in a company, they must disclose their identity to the company indicating how many shares of the company they have acquired and the second object is to compel the company to disclose the same to the Stock Exchanges on which the shares of the said company are listed, so that the investors of the said company are aware in regard to the identity of such group which is holding 5 per cent shares in the company. This is really a lock gate for the purpose of giving a forwarning to the investors in the concerned company. In absence of Regulation 7 of the said Regulations four individuals, though acting in concert or league with each other, may individually acquire 14 per cent shares in a company and without the knowledge of the investors in the said company take the management of the company in their hand. For this reason the Regulation 7 has been inserted for the benefit of the investors. The information to the company is required to be made within four working days of the acquisition of shares or the receipt of information of allotment of shares. Although it was urged that fixation of time limit of four working days is bad, but then no such specific plea was taken in the pleadings , and on the facts , as disclosed, it being the contention of the petitioner that he has complied with his obligation of disclosure in time, such contention is not entertainable. However, it was not urged what would be reasonable time to make the disclosure. When the shares are freely available in the market , one, who has acquired 5 per cent shares in a company on a given day, may acquire within four days thereafter 9 more per cent of the shares in the self same

company if the shares of the said company are available for sale. Still then four working days limit has been imposed despite the fact that by reason of modern technology, such disclosure may be in no time by using Fax or by sending an E-mail or by sending a letter through Express Courier. There is, therefore, no just reason to contend that fixation of four working days limit was arbitrary. If reflection of information in the records of the depository is compliance with the obligations of the Regulation 7 of the said Regulations and discharges the obligation of the acquirer under the said Regulation, then the matter may be decided in accordance therewith, but it cannot be said that by reason of introduction of dematerialized form of shares the provisions of Regulation 7 have become redundant."

16. I have also carefully examined the copy of the letter dated 04.08.2006 purported to have been submitted to the company (inter-alia, disclosing to the company that they were holding 50,76,401 equity shares representing 35.27% of the paid-up capital of the company) and found that the said letter does not bear any seal of the company as an acknowledgement, therefore, the authenticity of the said letter is doubtful, hence, the same cannot be relied upon.
17. In view of my above findings, the contentions of the Noticee are devoid of merit. Further, I also note that the very purpose of Regulation 7(1) of SAST and Regulation 13(1) of PIT is to ensure that the information is disseminated to the public through the Stock Exchanges as per the stipulated time frame provided therein. I am convinced that the delay on the part of the notice in making disclosure to the company and to the respective stock exchanges hampered timely dissemination of information to the public.
18. In view of the above, I am convinced that the Noticee has violated the provisions of Regulation 7(1) of SAST and Regulation 13(1) of PIT and same attracts penalty under law i.e. Section 15 A (b) of SEBI Act, 1992 which reads as under :

Penalty for failure to furnish information, return, etc.

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

(a)

(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.*

(c)

18. I note that the Hon'ble Supreme Court, while dealing with the penalty levied under Chapter VIA of SEBI Act, in the matter of SEBI vs. Shri Ram Mutual Fund (2006) 68 SCL 216(SC) held that penalty is attracted as soon as the contravention of the statutory obligation is established since the penalties are imposed for breach of the civil obligations under SEBI Act.

19. While determining the quantum of penalty under Section 15A (b), I have considered the following factors as provided under section 15 J of SEBI Act, 1992 viz. (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 and (c) the repetitive nature of the default. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not computable from the material available on record. There is also nothing on record to suggest that the default is repetitive in nature.

20. In the facts and circumstances of the case, I hereby impose a monetary penalty of Rs.1,00,000/- (Rupees one lakh only) on the Noticee. The said penalty will commensurate with the defaults committed by the Noticee.

21. The said amount of 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 demand draft should be forwarded to Shri. S. Ramann, Officer on Special Duty, ISD, Securities and Exchange Board of India, SEBI Bhavan, V Floor, A Wing, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

In terms of Rule 6 of the said Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: 16.06.2009
Place: Mumbai

D.S. Reddy
Adjudicating Officer