

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/03/2015]

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:

Nature India Communique Limited

(PAN No. AACCP7010Q)

FACTS OF THE CASE

1. M/s Nature India Communique Limited(hereinafter referred to as “**Noticee / NICL / company**”) is a public company listed with Delhi Stock Exchange Ltd (hereinafter referred to as ‘**DSE**’). In anticipation of delayed disclosures under regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as ‘**SAST Regulations**’) the Noticeesuo moto filed a consent application bearing Registration No. 2727/2013 with the Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’) on May 06, 2013 to settle the action of non-compliance/delayed compliance of regulation 8(3) of the SAST Regulations during the period 1998 to 2011. After scrutiny of the matter, the settlement amount as offered by the Noticee during consent proceeding (viz. ₹6,33,750/-)was accepted by HPAC / Competent Authority of SEBI. Accordingly, a communique dated August 30, 2013 was issued by SEBI to the Noticee to pay the settlement amount within a period of 15 days. However, the Noticee failed to pay the settlement amount within the stipulated time, and upon such failure, the consent application of the Noticee was rejected and intimation to that effect was sent to the Noticeeby SEBI vide letter and email dated November 22, 2013.

2. Pursuant to the rejection of said consent application on account of non payment of the settlement amount within 15 days from the receipt of said communique, SEBI taking into account the irregularities of Noticee in regulation 8(3) of SAST Regulations since 1998 to 2011 initiated adjudication proceedings against the Noticee under Section 15A(b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri D. Ravi Kumar was appointed as Adjudicating Officer vide order dated April 21, 2014 under Section 15 - I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violations of regulation 8(3) of SAST Regulations committed by the Noticee. Subsequently, vide order dated December 09, 2014, the undersigned has been appointed as Adjudicating Officer in the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAO/RA/DPS/8563/2015 dated March 23, 2015 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15A(b) of the SEBI Act for the alleged violation of regulation 8(3) of SAST Regulations.
5. It was alleged in the SCN that Noticee has failed to make required disclosure under the provision of regulation 8(3) of SAST Regulations, for the period 1998 to 2011 as detailed below:

Sl. No.	Regulation	Due Date of compliance	Actual date of filing	Delay in no. of days
1.	8(3)	30.04.1998	08.08.2012	5,214
2.	8(3)	30.04.1999	08.08.2012	4,849

3.	8(3)	30.04.2000	08.08.2012	4,483
4.	8(3)	30.04.2001	08.08.2012	4,118
5.	8(3)	30.04.2002	08.08.2012	3,753
6.	8 (3)	30.04.2003	08.08.2012	3,388
7.	8 (3)	30.04.2004	08.08.2012	3,022
8.	8 (3)	30.04.2005	08.08.2012	2,657
9.	8 (3)	30.04.2006	08.08.2012	2,292
10.	8 (3)	30.04.2007	08.08.2012	1,927
11.	8 (3)	30.04.2008	08.08.2012	1,561
12.	8 (3)	30.04.2009	08.08.2012	1,196
13.	8 (3)	30.04.2010	08.08.2012	831
14.	8 (3)	30.04.2011	08.08.2012	466

6. Vide letter dated April 06, 2015, Noticee filed a reply to the SCN. In order to conduct an inquiry in terms of rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on May 07, 2015 vide notice dated April 17, 2015. Mr. Shanti Bhushan Nirmal, appeared as Authorized Representative (AR) on behalf of the Noticee and reiterated the submissions as made in reply dated April 06, 2015 by the Noticee. During the course of hearing, AR of the Noticee also made additional submissions which were recorded. The salient submissions of Noticee are as follows:

- NICL / Noticee is a public company listed with DSE and the equity shares of the company were not traded on the stock exchange since its listing, as there is no trading platform provided by the stock exchange yet.
- The promoter shareholding has remained the same over the years, so by virtue of the delayed submissions, there has been no disproportionate gain or unfair advantage to the promoters.
- The company was unable to deposit settlement amount during consent proceedings of ₹6,33,750/- as the financial position of the company was very weak and suffered losses from last many years.
- Since there was no competent person having an adequate knowledge of reporting requirements under the erstwhile SEBI Regulations, 1997, no such report was filed with the respective regulatory authorities. Immediately after being informed about the violation, it had belatedly submitted the required compliance papers and the

compliance status was reported by the Company to the SEBI with Consent Application.

- Delayed intimation is purely technical in nature and without any malafide. The delayed intimation is neither deliberate nor wilful, but has occurred inadvertently and to the best of our knowledge and understanding has not caused any loss, financial or economical to any of the shareholders or anybody otherwise thereto.
- No economic benefit has occurred to the Noticee or to its management and no loss can be assumed to have caused to any of the investors on account of delayed submissions of disclosures.
- On the grounds Noticee / company request for not to initiate any inquiry against the company and allow them to deposit ₹6,33,750/- as earlier consented.
- During the hearing, AR of Noticee referred the Order of the Hon'ble SAT in the matter of Shri Maganlal M. Doshi&Ors.v/s SEBI (Appeal No. 72 of 2002)dated May 18, 2004 and prayed that the consent amount and additional token penalty only be imposed upon Noticeetaking liberal view.

CONSIDERATION OF ISSUES

7. I have carefully perused the oral and written submissions of the Noticee and the documents available on record. It is observed that the allegation against the Noticee is that it has failed to make the required disclosure under the provisions of regulation 8(3) of the SAST Regulations during the period from 1998 to 2011. The issues that arise for consideration in the present case are :

- a. Whether the Noticee had failed to make the alleged disclosures for the period 1998 to 2011. If yes, then whether such act of the Noticee is in violation of regulation 8(3) of SAST Regulations?
- b. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?

- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

FINDINGS

8. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 1997 which reads as under:-

Regulation 8

(1).....

(2).....

(3) *Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.*

9. The issues for examination in this case and the findings thereon are as follows:

10. As per Regulation 8(3) of SAST Regulations, Noticee was required to make yearly disclosure within 30 days from the financial year ending March 31, to stock exchanges on which the shares of the company were listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

11. The Noticee being a listed company at DSE was under an obligation to comply with the requirement of making yearly disclosures under regulation 8(3) of SAST Regulations. Upon perusal of submissions of the Noticee and documents available on record, I find that Noticee was required to make disclosures as per regulation 8(3) of SAST Regulations, by April 30, 1998 to

April 30, 2011. However, admittedly the Noticee failed to make disclosure during that period and it had made disclosure only on August 08, 2012 after a delay of 5,214 days.

12. I find from reply of the Noticee it had admitted that there has been a delay in making the disclosures under regulation 8(3) of SAST Regulations during the aforesaid period. In the matter, I note that Regulation 8(3) is in the form of mandatory annual disclosures to be filed by a company to the stock exchanges on which the shares of the company are listed, the shareholding of the persons referred to under sub-regulation (1) of regulation 8 of SAST Regulations and also with respect to the holdings of the promoters or persons(s) having control over the company, so that investors are made aware of the changes, if any, in the holdings of these persons so as to enable them to take an informed investment decision. It is pertinent to state that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. I am of the view that when mandatory time period is stipulated for doing a particular activity, it must be complied with within said period to serve the purpose and much delayed compliance would not absolve the notice from the irregularity continued from long time. Therefore, I find that there was certainly a continuous violation by the Noticee of regulation 8(3) of SAST Regulations, for 14 years i.e. from 1998 to 2011.

13. The Noticee has submitted that the equity shares of the company had not been traded on the DSE since its listing as there is no trading platform provided by the stock exchange and the promoter shareholding has remained the same over the years. The Noticee also stated that delayed intimation is purely technical in nature and without any malafide, as the Noticee was not having competent person having an adequate knowledge of reporting requirements under the Erstwhile SEBI Regulations. The Noticee further stated that delayed intimation is neither deliberate nor wilful, but has occurred inadvertently and has not caused any loss, financial or economical to any of the shareholders or anybody otherwise thereto.

14. I do not accept the aforesaid contentions of the Noticee. The contention of the Noticee regarding trading at DSE since listing is not material to the issue involved in the case. It is settled position of law the ignorance of law is not an excuse. I do not agree that such a long noncompliance cannot result any loss to investors, etc. The purpose and consequence of such required disclosure has already been explained in para 12 above.
15. Here I refer the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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 Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.
16. In view of the same, the argument put forth by the Noticee that as there was no competent person, no change in promoter shareholding, no loss or damage was caused to the public shareholders in general or any other person, shares were not traded, etc. does not hold good in the given case.
17. I note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Komal Nahata Vs. SEBI* (Date of judgment- January 27, 2014) has observed that:
- "Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."*
18. I can not ignore the material fact that the Noticee suo moto filed an application for consent before SEBI to settle the action of non-compliance of regulation 8(3) of SAST Regulations and also failed to pay the settlement amount of ₹6,33,750/- within the stipulated time. It is an admitted fact that the Noticee in its reply dated April 06, 2015 and during hearing prayed for depositing

₹6,33,750/- which was arrived during consent proceedings and also additional token penalty only.

19. The judgement of SAT relied by the Noticee in the matter of Shri Maganlal M. Doshi & Ors. and prayer that the consent amount and additional token penalty only be imposed taking liberal view, cannot be accepted as the facts and circumstance of referred Order are different from the facts/ circumstance of the present case. As mentioned above that there was continuous noncompliance for 14 years by the Noticee which is severe in nature therefore plea of Noticee cannot be accepted.

20. As a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose so that the investors could take a decision whether to buy, sell, or hold the Noticee's securities. Noncompliance with disclosure requirements by a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

21. As the violation of the statutory obligation under regulation 8(3) of SAST Regulations, 1997 has been established, I am convinced that it is a fit case for imposing monetary penalty under section 15A(b) of SEBI Act, 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)

22. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI 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.”*

23. From the material available on record, it is not possible to ascertain the exact unfair gain made by the Noticee and monetary loss to the investors on account of non-compliance by the Noticee. The main objective of the SAST Regulations is to afford fair treatment to shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating of timely disclosure and adequate information to the public/ investor/ shareholder to enable them to make an informed decision to be part of / or not to be part of companies due to such change in control. True and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions.

24. In view of above, it would be necessary to impose appropriate penalty to commensurate the gravity of violation committed by the Noticee to meet the ends of justice.

ORDER

25. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Adjudication Rules, 1995,

I hereby impose a penalty of ₹ 8,00,000/-(Rupees Eight Lakh only) on Noticee/ Nature India Communique Limited having PAN No.AACCP7010Q under the provisions of Section 15A(b) of the SEBI Act, for failure/ delayed disclosures under regulation 8(3) of SAST Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the noticee.

26. 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 Chief General Manager, Division of Corporate Restructuring, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, BandraKurla Complex, Bandra (E), Mumbai – 400051.

27. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Nature India Communique Limited having registered office at 22, Rajindra Park, New Delhi - 110060 and also to the Securities and Exchange Board of India, Mumbai.

DATE: MAY 21, 2015

PLACE: MUMBAI

RACHNA ANAND

ADJUDICATING OFFICER