BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/ VVK/ 317 /2014]

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

Consolidated Securities Limited

(PAN AAACC0122C)

In the matter of Asian Oilfield Services Limited

1. Securities and Exchange Board of India **(** hereinafter referred to as "**SEBI")** observed certain non-compliances of Regulation 8(1) and Regulation 7(1) & 7(1A) read with regulation 7(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 **(** hereinafter referred to as **" Takeover Regulations, 1997 ")** committed by Consolidated Securities Limited **(** hereinafter referred to as **"Noticee")** for the year 2007 and 2008 respectively in the scrip of Asian Oilfield Services Limited (hereinafter referred to as **"AOSL / Company"**). The shares of the AOSL are listed at The Bombay Stock Exchange Ltd. (**BSE**).

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer vide order dated 21st April, 2014 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violation of the provisions of Regulation 8(1) for the year 2007 and Regulation 7(1) & 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997 for the year 2008 committed by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

3. A Show Cause Notice **(SCN)** dated 31st July, 2014, in terms of the provisions of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 **(** hereinafter referred to as the "**Adjudication Rules")** was issued to the Noticee calling upon the Noticee to show cause as to why an inquiry should not be held against it and penalty be not imposed under Section 15A(b) of the SEBI Act, 1992 for the alleged violations. The noticee filed its reply vide letter dated 22nd September, 2014, inter alia, contending as follows:

" *(a) We have not violated any provisions of SEBI Regulations. The alleged delay(s) as listed in the SCN have neither been intentional nor deliberate.*

(b) The Noticee company has been alleged for the following violations :-

Regulation (SAST 1997)	**Due date for compliance**	**Actual date of compliance (BSE)**	**No. of days of delay**
8(1)	**21.04.07**	23.04.07	**2**
7(1A)	**18.01.08**	02.02.08	**16**
7(1A)	**13.07.08**	13.09.08	**62**
7(1A)	**10.08.08**	13.09.08	**34**
7(1)	**27.11.08**	28.11.08	**1**

(c) Submissions pertaining to allegation made under 8(1) : W.r.to due date 21/04/2007 - w.r.to the delay of 2 days in making continual disclosure under Regulation 8(1). The alleged delay is of merely 2 days. That the said 2 days happened to be Saturday and Sunday - that is non-working days. Since Saturday the due date of the disclosure being a non-working day, the disclosure cannot be made and hence filed the disclosure immediately on Monday. The disclosure referred herein is an yearly disclosure and there has not been any change in shareholding during the period. By making the disclosure as on 23/04/2007 which was a working day, the Company has duly complied with the requirement under Regulation 8(1) of the SEBI (SAST) Regulations. There was neither any malafide intent nor did it cause any harm to any public shareholder.

(d) *Submissions pertaining to allegation made under Reg.7(1A)* : With regard to due date 18th January,2008. With respect to alleged delay in filing the disclosure u/r. 7(1A) w.r.t. acquisition of 4.91% shares by way of conversion of warrants, it is at the outset submitted that there was no delay in making the disclosure for the said transaction and that due disclosure was duly made as on 18th January,2008 and the proof of dispatch is made available. Though the disclosure was duly made in time, it later came to the notice of the Company that the % as provided in the disclosure format was calculated on the basis of post-conversion paid-up capital rather than on the pre-conversion paid up capital, also the %age with respect to differential was also inadvertently erroneously calculated on the basis of post conversion paid up capital and pre-conversion number of shares were also erroneously mentioned. Thereby, on becoming aware of such inadvertent clerical mistake, a rectified disclosure was duly made. The number of equity shares acquired was correctly disclosed in the disclosure and it was only the %age which was inadvertently calculated wrongly on the post issue paid up capital instead of the pre-issue capital. Thus, a revised disclosure was filed on 02.02.2008 immediately on identification of the inadvertent mistake. That the disclosure as made on 02/02/2008 was therefore only a revised disclosure and should not be taken as the date of compliance since the due compliance was duly made on the due date i.e. 18th January,2008. There is no actual delay in making the necessary disclosures.

(e) *Submissions pertaining to allegation made under Reg.7(1A)* : With regard to due date 13th July, 2008. It pertains to the transaction carried by us on 11th July,2008 wherein we acquired 3,70,000 equity shares of the target company by way of conversion of warrants into equity shares. The due disclosure was to be made as on 13th July,2008 though the same was filed late due to the Company Secretary of the company being on leave during the period in which the disclosure was triggered as she was suffering from serious health problems. Due to her absence from the office, the transaction did not come to her notice and the due date of filing expired. On becoming aware of the said disclosures to be made, arranged for the filing of the necessary disclosures. The delay of 62 days was merely on account of the non-availability of the

Company Secretary. No loss was caused to any investor, nor any undue advantage accrued to us due to the inadvertent delay in filing the disclosure.

(f) *Submissions pertaining to allegation made under Reg.7(1A)* : With regard to due date 10th August, 2008. We have not defaulted nor delayed the filing of disclosure under regulation 7(1A) on sale of 5.54% equity shares of the target company in the open market. The disclosure was duly made before the due date i.e. on 8/8/2008, though inadvertently the pre-sale shareholding was incorrectly mentioned which resulted in the incorrect calculation of the %age sale of shares figure and of the post sale shareholding figure. Acting in good faith, we rectified the error and intimated the revised disclosure to the target company and to the exchange on 13/9/2008. It is put forth that 13/09/2008 is the date of rectified filing and not the date of actual filing. That the compliance was done before the due date i.e. 08/08/2008, though due to inadvertent error and the copy of the revised disclosure as made on 13/09/2008 submitted.

(g) *Submissions pertaining to allegation made under Reg.7(1)* : With regard to due date 27/11/2008. The transaction is with respect to acquisition of 1.23% equity shares by way of conversion of warrants into shares. There is no actual delay in filing the disclosure document since the disclosure document was dispatched from our office on a day prior to due date itself i.e. on 26/11/2008 through Courier, though it reached the exchange only on 28/11/2008 and hence it is being shown as a delay in the records. The copy of the disclosure to SE as made on 26/11/2008 is submitted. Since long time has elapsed since 2008, i.e. more than 5 years now, the POD of courier is no longer available in the records of the company.**"**

4. Subsequently, the Noticee was granted an opportunity of personal hearing on 10th November,2014. The noticee was represented by its authorised representatives who reiterated the submissions made vide reply dated the 22nd September,2014 & filed additional submissions dated the 11th November, 2011 in the matter.

ISSUES FOR CONSIDERATION

5. I have carefully perused the charges against the Noticee as per the SCN, reply, additional written submissions and the material available on record. The issues that arise for consideration in the present case are :-

A. Whether the Noticee has violated the provisions of Regulation 7(1), 7(1A) read with Regulation 7(2) and Regulation 8(1) of the Takeover Regulations, 1997.

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

C. If so, 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

6. At this juncture, I note that Regulation 7(1), 7(1A) read with regulation 7(2) and Regulation 8(1) of the Takeover Regulations, 1997 reads as under :-

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 percent 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.*

(1A) *Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 or under second proviso to sub-regulation (2) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges*

where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

***Explanation**- for the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.*

***(2)** The disclosures mentioned in sub-regulation (1) and (1A) shall be made within two days, -*

(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be.

Continual disclosures
8.(1)** Every person, including a person mentioned in Regulation 6 who holds more than fifteen per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March. **"

7. From the material available on record, it was observed that the noticee's shareholding was 16,50,000 on 16th January, 2008 constituting 23.55%. The noticee acquired 9,00,000 shares constituting 4.91% on 16th January,2008 & as a result the noticee's shareholding increased to 25,50,000 constituting 28.46% of share capital of the AOSL. The noticee was under an obligation to disclose its shareholding under regulation 8(1) for the year 2007 and under regulation 7(1),7(1A) read with regulation 7(2) of the Takeovers Regulations,1997 for the year 2008.

8. The details of the acquisition of shareholding by the noticee and the delayed reporting to the AOSL by the noticee are given below in a tabular form :-

Regulation	Date of transaction	No. and % of shareholding before the date of transaction	No. and % of shares acquired/ sold	No. and % of shares after the transaction	Due date for compliance	Actual date of compliance (BSE)	No. of days of delay
8(1)	NA	NA	NA	NA	**21.04.07**	23.04.07	**2**
7(1A)	16.01.08	**16,50,000 (23.55%)**	**9,00,000 (4.91%)**	25,50,000 **(28.46%)**	**18.01.08**	02.02.08	**16**
7(1A)	11.07.08	**17,50,000 (16.73%)**	**3,70,000 (3.42%)**	21,20,000 **(19.57%)**	**13.07.08**	13.09.08	**62**
7(1A)	08.08.08	**21,20,000 (19.57%)**	**6,00,000 (5.54%)**	15,20,000 **(14.03%)**	**10.08.08**	13.09.08	**34**
7(1)	25.11.08	**14,83,389 (13.16%)**	**1,38,659 (1.23%)**	16,22,048 **(14.39%)**	**27.11.08**	28.11.08	**1**

9. As regards the allegation of violation of Reg.8(1) of the Takeover Regulations,1997, I note that the noticee could not file the disclosures on the due date of 21st April,2007 but filed the same on 23rd April, 2007 as alleged. With regard to the said allegation, the noticee contended that the due date of disclosure falls on Saturday i.e 21st April,2007 which was a non-working day and the requirement was to file within two working days, accordingly, it was filed on the working day i.e. 23rd April,2007. Hence, the noticee contended there was no delay in filing the same. I see merit in the submission of the noticee that the disclosures were filed within two working days i.e. within the specified period i.e. on 23rd April,2007 being working day. Therefore, I find that the allegation of violation of regulation 8(1) of the Takeover Regulations,1997 does not stand established.

10. As regards the allegation of violation of regulation 7(1A) of the Takeover Regulations, 1997 for the transaction on 16th January, 2008, the allegation is that the noticee filed disclosures with a delay of 16 days. The noticee contended that the

disclosure was duly filed on the due date i.e. on 18th January,2008. The noticee further contended that though the disclosure was duly made in time, it later came to the notice of the Company that the % as provided in the disclosure format was calculated on the basis of post-conversion paid-up capital rather than on the pre-conversion paid up capital, also the %age with respect to differential was also inadvertently erroneously calculated on the basis of post conversion paid up capital and pre-conversion number of shares were also erroneously mentioned. On noticing such inadvertent clerical mistake, a rectified disclosure was duly made. The noticee further submitted that the number of equity shares acquired was correctly disclosed in the disclosure and it was only the %age which was inadvertently calculated wrongly on the post issue paid up capital instead of the pre-issue capital. Thus, a revised disclosure was filed on 02.02.2008 immediately on identification of the inadvertent mistake. I do not see any merit in the submissions of the noticee inasmuch as the noticee should have acted diligently and filed the said disclosures with accurate figures within the stipulated time period. I hold the noticee guilty on this count.

11. As regards the violation of regulation 7(1A) of the Takeover Regulations, 1997for the transaction on 11th July,2008, the allegation is that the noticee filed the disclosures with a delay of 16 days. The noticee contended that the disclosure was to be made on 13th July, 2008 though the same was filed belatedly due to the Company Secretary of the company being on leave during the period. I do not see any merit in the submission of the noticee in as much as the noticee should have acted promptly & diligently in filing the disclosures in terms of the Takeover Regulations, 1997. I hold the noticee guilty on this count also.

12. As regards the next violation of regulation 7(1A) of the Takeover Regulations, 1997 for the transaction on 8th August,2008, the allegation is that the noticee filed disclosures with a delay of 34 days. The noticee contended that the disclosure was made before the due date on 10th August, 2008 though inadvertently the pre-sale shareholding was incorrectly mentioned which resulted in the incorrect calculation of the % sale of shares figure and of the post sale shareholding figure and that they rectified the error and

intimated the revised disclosure to the target company and to the stock exchange on 13th September,2008. I note that the noticee further contended that 13th September, 2008 is the date of rectified filing and not the date of actual filing. I do not find merit in the contention of the noticee inasmuch as the noticee should have acted diligently and filed the said disclosures with accurate figures within the stipulated time period. I hold the noticee guilty on this count .

13. As regards the violation of regulation 7(1A) of the Takeover Regulations, 1997 for the transaction on 25th November, 2008, the allegation is that the noticee filed disclosures with a delay of 1(one) day. The noticee contended that there was no dalay in filing the disclosure document since the disclosure document was dispatched from the office on a day prior to due date itself i.e. on 26th November, 2008 through Courier though it reached the exchange only on 28th November, 2008.

14. At this juncture, it would be apt to note the observations made by the Hon'ble High Court of Calcutta in W.P. No. 33/2001- Arun Kumar Bajoria Vs SEBI and others as under:

"As aforesaid the object of Regulation 7 is to inform the investors that an individual has acquired 5 per cent shares in the company concerned. If the Page 7 of 8 *acquisition has been made by more than one individual in association with each other, it is also obligatory on the part of such individuals to disclose their identity. This can only be done when the information is given to the company. If after the company has received the information, its officer do not read the information and in consequence thereof no information is given to the investors through the concerned Stock Exchanges, the company is to be blamed but unless the company receives the information , the question of the officers of the company reading the information and then transmitting such information to the investors through the Stock Exchanges concerned does not, nor can at all arise. Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In Law, anyone sending written information through the agency of someone else appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect of a letter sent by Registered Post. In all other circumstances, the post office acts as a mere agent of the sender of the letter. The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressees. In the event it is*

contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said Regulation cast a duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of transmission in as much as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent.

In view of the above, I hold the noticee guilty on this count also.

15. The provisions of Section 15A(b) of the SEBI Act, 1992, read 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 thereunder,—*

(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;"

16. The Hon'ble Supreme Court of India in the matter of ***Chairman, SEBI v. Shriram Mutual Fund*** **[2006]** 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

The Hon'ble Securities Appellate Tribunal in the matter of **Milan Mahindra Securities Private Limited vs SEBI** (Order dated November 15, 2006 in Appeal No. 66 of 2003) observed that **"** the purpose of these disclosures is to bring about transparency in the

transactions and assist the Regulator to effectively monitor the transactions in the market."

The Hon'ble SAT in the matter of **Komal Nahata Vs. SEBI** (Order dated 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 15-J of the 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."

The Hon'ble SAT in the matter of **Gulab Impex Enterprises Ltd. Vs. SEBI** (Order dated 3rd November,2014 in Appeal No.330 of 2014) has observed that :-

" The disclosure is meant for the benefit of all concerned by giving full opportunity to shareholders / investors to take an informed decision either exit or invest. In fact, we have repeatedly held that such disclosure requirement is necessary for bringing about transparency in the transaction of a company inasmuch as it leads to dissemination of proper information to all concerned. Therefore, disclosure requirement in any regulation is crucial for the development and growth of a healthy capital market apart from the protection of investors' interest."

17**.** While determining the quantum of penalty under Section 15A(b) of the SEBI Act,1992, it is important to consider the factors stipulated in Section 15-J of the SEBI Act,1992 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."*

18**. I**t is not possible, from the material available on record, to quantify any disproportionate 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. The default of the noticee in the instant case is repetitive in nature inasmuch as the noticee made disclosures belatedly in the year 2008 as established in para no.10,11,12&13 herein above thus liable for penalty under Section 15A(b) of the SEBI Act, 1992.

ORDER

19. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I(2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹10,00,000/- (Rupees ten lakh only) for violation of Regulation 7(1), 7(1A) read with Regulation 7(2) of the Takeover Regulations,1997 on the noticee viz. Consolidated Securities Limited under Section 15A(b) of the SEBI Act, 1992. In my view, the penalty is commensurate with the defaults committed by the Noticee.

20**.** The 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" and payable at Mumbai, within 45 (forty five) days of receipt of this order. The said Demand Draft should be forwarded to the Division Chief, Corporation Finance Department (CFD) , Division of Corporate Restructuring (DCR), Securities and Exchange Board of India,

SEBI Bhavan, Plot No. C4 -A, 'G' Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: December 17, 2014
Place: Mumbai

D. SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER