

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/CB/1/2018]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Dadimaa Capitals (P) Ltd. (PAN No. AABCD2140E) having address at – 24, Jalaram Nagar, Opp. Chamunda Circle, Ganjawala Lane, Borivali (West), Mumbai – 400 091

In the matter of *Sunbright Stock Broking Ltd.*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) had conducted examination in the scrip of Sunbright Stock Broking Ltd. (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period January 01, 2015 to March 31, 2015 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(1) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) by M/s Dadimaa Capitals (P) Limited (hereinafter be referred to as, the “**Noticee**”) on not making disclosures upon change in its shareholding in the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) vide order dated August 02, 2016 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the alleged violation of aforesaid

provisions of PIT Regulations and SAST Regulations. Subsequent to superannuation of Mr. Suresh Gupta, the undersigned was appointed as the Adjudicating Officer on May 29, 2018 which was communicated *vide* order dated June 19, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/SG/VS/31180/2017 dated December 12, 2017 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A (b) of the SEBI Act for the alleged violations of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) The shareholding of the Noticee changed from 3.85% (460700 shares) to 5.13% (615700 shares) by buying 155000 shares (1.29%) in off market transaction on March 26, 2015.
 - b) The Noticee was required to submit disclosure to the Company and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations and to the Company under Regulation 13(1) of the PIT Regulations. However, the Noticee, allegedly, failed to submit disclosure to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations and to the Company under Regulation 13(1) of the PIT Regulations.
 - c) The BSE, *vide* e-mail dated July 02, 2014 confirmed that no disclosures were made by the Noticee under the PIT Regulations or SAST Regulations in relation to the increase in shareholding of the Noticee during the Examination Period. Similarly, the Company, *vide* e-mail dated July 03, 2015 confirmed that no disclosures were made by the Noticee under the PIT Regulations.
 - d) It was alleged that the aforesaid non-disclosure regarding increase in its shareholding by the Noticee was in violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

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.

SAST Regulations:

29. Disclosure of acquisition and disposal

(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(3). The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

5. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act.
6. The aforesaid SCN was served upon the Noticee by way of Speed Post with Acknowledgment Due (hereinafter be referred to as, the “**SPAD**”) at the address of the Noticee on December 18, 2017. Acknowledgment of receipt of the SCN at the address is available on record. I note that at paragraph 7 of the SCN, the Noticee was advised to furnish its reply, if any, towards the SCN within 15 days of its receipt, failing which, it shall be presumed that the Noticee has no reply to submit and the matter will be proceeded on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. However, no reply had been received from the Noticee in respect of the SCN.

7. After considering the facts and circumstances of the case, the erstwhile Adjudicating Officer granted an opportunity of personal hearing to the Noticee on January 25, 2018 *vide* Notice of Hearing dated January 08, 2018. The aforesaid Notice of Hearing dated January 08, 2018 was served upon the Noticee by way of SPAD at the address of the Noticee on January 12, 2018 and delivery proof of which is available on record. *Vide* the aforesaid Notice of Hearing, the Noticee was also advised to submit its reply towards the SCN by January 22, 2018. It was also clearly mentioned in the aforesaid Notice of Hearing that in case the Noticee fails to attend the hearing, the matter shall be proceeded on the basis of material available on record. However, no appearance was made by the Noticee on the aforesaid date of hearing.
8. Thereafter, *vide* Notice of Hearing dated March 01, 2018 which was served upon the Noticee by way of SPAD on March 06, 2018 (delivery proof of which is available on record), another opportunity of hearing before the erstwhile Adjudicating Officer was provided to the Noticee on March 15, 2018. The Noticee was also advised to submit its reply, if any, towards the SCN by March 14, 2018. However, the Noticee did not submit any reply towards the SCN nor did he appear before the Adjudicating Officer on the date of hearing.
9. On appointment of the undersigned as the Adjudicating Officer in the instant matter, a final opportunity of hearing was provided to the Noticee on July 16, 2018 for the purpose of inquiry in the instant matter *vide* Notice of Hearing dated June 29, 2018. The aforesaid Notice of Hearing dated June 29, 2018 was served upon the Noticee by way of SPAD on July 05, 2018, delivery proof of which is available on record. The Noticee was further advised to submit its reply towards the SCN by July 13, 2018. *Vide* the aforesaid Notice of Hearing, it was also communicated to the Noticee that if no appearance is made or no reply is furnished by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules.
10. I note that sufficient time to submit reply and opportunities to appear for personal hearing have been given to the Noticee. However, the Noticee has failed to submit any reply towards the SCN and to appear in the instant matter. At this juncture, I find it relevant to refer to judgment dated December 08, 2006 of the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of

Classic Credit Ltd. v. SEBI (Appeal No. 68 of 2003), wherein, it observed, “...the appellants did not file any reply to the second show-cause. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them”. I also find it pertinent to refer to order of the Hon’ble SAT in the matter of **Sanjay Kumar Tayal & Ors. v. SEBI** (Appeal No. 68 of 2013 dated February 11, 2014), wherein, it *inter alia* held that, “...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”. In view of the aforesaid facts, circumstances and settled position of law, I am of the view that the Noticee has deliberately failed to respond to the SCN and various Notices of Hearing despite due service of the notices upon him. Moreover, in absence of any response towards the SCN and various notices of hearing from the Noticee, it is concluded that the allegations and charges have been admitted by the Noticee.

11. I also find it pertinent to refer to the observation of the Hon’ble SAT in the matter of **Dave Harihar Kiritbhai v. Securities and Exchange Board of India** (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it observed, “...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”. Keeping the aforesaid in mind, the adjudication proceedings against the Noticee are undertaken *ex-parte* on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I **Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?**

13. The details relating to change in the shareholding of the Noticee as alleged in the SCN are not in dispute in absence of any reply from the Noticee. The details of change in shareholding of the Noticee in the scrip of the Company, as provided to the Noticee by way of Annexure B and C to the SCN, are as follows:

Financial Quarter	Shareholding	
	No. of shares	% of the total share capital of the Company
October - December, 2014	365,200	3.040
January - March, 2015	615,700	5.13

It is also observed from the Annexure D of the SCN that the Noticee acquired 155000 shares of the Company on March 26, 2015 by way of off market acquisition which led to increase in his shareholding in the Company to 5.13% of the latter's total share capital.

14. Regulation 13(1) of the PIT Regulations requires any person who holds more than 5% shares in a company to disclose to the company in Form A, number of shares or voting rights held by him on becoming such holder within 2 working days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights. Similarly, Regulation 29(1) read with 29(3) of the SAST Regulations requires an acquirer, who acquires shares or voting rights in a target company aggregating to five per cent or more of shares of such target company to disclose their aggregate shareholding and voting rights in such target company to every stock exchange where the shares of the target company are listed and to the target company within 2 days of such acquisition.

- 15.** On perusal of the available records and the table reproduced in paragraph 13 hereinabove, it is observed that consequent to the off-market acquisition of 155000 shares by the Noticee on March 26, 2015, the aggregate shareholding of the Noticee reached more than 5% of the total share capital of the Company. On the aforesaid increase, the Noticee ought to have disclosed such acquisition in terms of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
- 16.** I note from the Annexure D of the SCN that the Noticee, *vide* letter dated March 27, 2015 had made a disclosure of the aforesaid acquisition dated March 26, 2015 under Regulation 29(1) read with 29(3) of the SAST Regulations to the Company. It is also noted from the Annexure F of the SCN (e-mail confirmation of the BSE dated July 09, 2015) that the Company had furnished the aforesaid disclosure under Regulation 29(1) of the SAST Regulations which was displayed on the website of the BSE.
- 17.** However, I also note from the Annexure E to the SCN that the Noticee had not made any disclosure in terms of Regulation 13(1) of the PIT Regulations to the Company. I further note from the Annexure F to the SCN that the no disclosures relating to acquisition of shares of the Company were made to the BSE in terms of SAST Regulations by the Noticee.
- 18.** In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under Regulation 13(1) of the PIT Regulations to the Company and under Regulation 29(1) read with 29(3) of the SAST Regulations to the BSE.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

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Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

- 19.** Since failure of the Noticee in making disclosures to the Company under Regulation 13(1) of the PIT Regulations and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations is established, I am of the view that it warrants imposition of

monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

“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.”*

20. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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. I take note of the fact that the Noticee had made a disclosure of acquisition of shares in terms of Regulation 29(1) read with 29(3) of the SAST Regulations to the Company within 2 days of such acquisition, which was in turn forwarded by the Company to BSE, and thereafter, was made public by the BSE by displaying on its website under the head, “Corporate Announcements” on July 03, 2015. I have also perused the statement of shareholding pattern of the Company, available on the website of the BSE for the financial quarter January – March 2015 (which was forwarded to the Noticee as Annexure C of the SCN) and have noted that the information regarding acquisition of shares in the Company by the Noticee was in public domain by April 09, 2015.

22. While it is established that the Noticee did not make disclosure to the Company under Regulation 13(1) of the PIT Regulations and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations, I cannot ignore the fact that the necessary information was made available in public domain. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. From the material available on record, repetitive nature of default could also not be ascertained.

23. I also find it relevant to refer to the order of Hon'ble SAT in the matter of **Vitro Commodities Private Limited, Kolkata v. Securities and Exchange Board of India, Mumbai**, wherein it held, *"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."* Considering the aforesaid *ratio decendi*, I am of the view that the aforesaid violations of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations be considered as single violation for the purpose of imposition of penalty on the Noticee.
24. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹1,00,000 will be commensurate with the violations committed. .

ORDER

25. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh only) upon the Noticee, i.e. M/s Dadimaa Capitals (P) Ltd. under Section 15A(b) of the SEBI Act for violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India

Beneficiary A/c No.	31465271959
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27. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

28. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date : July 31, 2018

Place : Mumbai

(Maninder Cheema)

Adjudicating Officer