

BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO: EAD-12/AO/SM/EE/76-80/2017-18]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT 1956 READ WITH RULE 5 OF SECURITIES AND CONTRACT REGULATION (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

S.No	Name of the Entity	S.No	Name of the Entity
1	M/s DMC Institute of Capital Market Private Ltd (PAN No. AADCD3276D)	2	Shri Bharat Gupta (PAN No. AIUPG6533C)
3	Shri Sham Sunder Gupta, Managing Director & Compliance Officer of DMC Education Limited (PAN No. AISPG6871B)	4	M/s DMC Education Limited, (PAN No. AACCD5023B)
5	Ms. Saroj Gupta, Director of DMC Education Limited, (PAN No. AAPPG3976N)		

In the matter of

M/s BLB Ltd  
And  
M/s DMC Education Ltd

**Facts Of The Case:**

- Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), had conducted investigation to ascertain whether there was any violation of the provisions of SEBI Act, 1992, Rules and Regulations made thereunder with regard to the trading of certain entities in the scrip of M/s BLB Ltd and M/s DMC Education Ltd (hereinafter referred to as "Company/BLB Ltd and Company/DMC Ltd") during the period April 01, 2011 to September 08, 2011 (hereinafter referred to as "Investigation Period/IP"). The shares of BLB Ltd is listed at Bombay Stock Exchange Ltd (hereinafter referred to as "BSE") and National Stock Exchange Ltd (hereinafter referred to as "NSE"). DMC Ltd is listed at BSE.
- During the IP, SEBI observed violation by the following entities(collectively called as "Noticees"):
  - M/s DMC Institute of Capital Market Private Ltd (**hereinafter referred to as "Noticee No. 1"**) and Shri Bharat Gupta (**hereinafter referred to as "Noticee No. 2"**) has violated the provision of Section 12A(a) ,(b),(c) of SEBI Act read with Regulation 3(a),(b), (c), (d) read with Regulations 4(1), 4(2)(a),(g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to

Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations in the scrip of M/s BLB Ltd.

- 2.2. Shri Sham Sunder Gupta (**hereinafter referred to as “Noticee No.3**) has violated the provision of Clause 3.3.1 & 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12 (1) of SEBI(Prohibition of Insider Trading) Regulations, 1992(hereinafter referred to as the "PIT Regulations 1992") read with Clause 6(C) of Code of conduct adopted by the company (to be read with Regulation 12 of PIT Regulations 2015, Clause 35 of Listing agreement read with section 21 of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as “SCRA”) , Regulation 12(1) read with Clause 1.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations 2015 in the scrip of DMC Ltd.
- 2.3. M/s DMC Education Ltd (**hereinafter referred to as “Noticee No. 4”**) has violated the provision of Clause 35 of equity listing agreement read with section 21 of SCRA and Regulations 12(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 in the scrip of DMC Ltd.
- 2.4. Ms Saroj Gupta (**hereinafter referred to as “Noticee No. 5”**) has violated the provision of Regulation 12(1) read with Clause 1.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 in the scrip of DMC Ltd.
3. Based on the findings of the investigation, SEBI initiated Adjudication Proceedings against the Noticee:
  - a) **Noticee No. 1 and Noticee No. 2** ; under Section 15HA of SEBI Act for the alleged contravention of provisions of law;
  - b) **Noticee No. 3**; under Section 15HB of SEBI Act and under Section 23A of SCRA for the alleged contravention of provisions of law;
  - c) **Noticee No. 4**: under Section 15HB of SEBI Act, Section 23A and Section 23E of SCRA for the alleged contravention of provisions of law; and
  - d) **Noticee No. 5**: under Section 15HB of SEBI Act for the alleged contravention of provisions of law.

#### **Appointment of Adjudicating officer**

4. Vide order dated June 12, 2015, Shri D.S. Reddy was appointed as Adjudication Officer in terms of Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as Rules) read with section 15-I of SEBI Act, 1992 and Section 23-I of SCRA to inquire and adjudge under Section 15HA of SEBI Act by Noticee No. 1 and Noticee No. 2; and under Section 15 HB of SEBI Act 1992 and under Section 23 A of SCRA 1956 by Noticee No. 3, Section 15 HB of SEBI Act 1992, Section 23 A and Section 23 E of SCRA by Noticee No. 4 and under Section 15 HB of SEBI Act 1992 against Noticee No. 5 for the aforesaid alleged contravention of provisions of Law. Subsequent to transfer of the case, I have been appointed as Adjudicating Officer vide order dated May 18, 2017 to inquire and adjudge under the provisions as enumerated above.

#### **Issuance of Show Cause Notice, Reply and Personal Hearing:**

5. Show cause notice (hereinafter referred to as 'SCN') dated October 09, 2015 was issued to Noticee No. 1, Noticee No. 2, Noticee No. 3 and Noticee No. 4 under the provisions of Rule 4 (1) of the Rules by the erstwhile Adjudicating Officer to show cause as to why an inquiry should not be initiated against the Noticees and penalty be not imposed under the provisions of under Section 15HA of SEBI Act by Noticee No. 1 and Noticee No. 2 and under Section 15 HB of SEBI Act 1992 and under Section

23 A of SCRA by Noticee No. 3, Section 15 HB of SEBI Act 1992, Section 23 A and Section 23 E of SCRA by Noticee No. 4 and under Section 15 HB of SEBI Act 1992 against Noticee No. 5.

**5.1. Allegation stated in SCN in regard to Noticee No. 1 and 2 in the scrip of BLB Ltd:**

- i. On analysis of the trading activity in the scrip of BLB Ltd, it was alleged that the price of the scrip opened at Rs. 9.30 on April 01, 2011 and reached a high of Rs. 10.89 on April 05, 2011, touched a low price of Rs. 3.40 on August 23, 2011 and the closing price of Rs. 3.68 on September 08, 2011.
- ii. it was alleged that Noticee No. 1 and Noticee No. 2 had entered into self-trades, the details of the same is as under:

**Self – trades executed by Noticee No. 1:**

*(Table No. 1- NSE )*

Entity Name	Buy Broker	Sell Broker	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
DMC Institute Of Capital Market Private Ltd.	Amrapali Aadya Trading & Investment Private Limited	SMC Global Securities Ltd.	10096	64	1	0.292	0
DMC Institute Of Capital Market Private Ltd.	SMC Global Securities Ltd.	Amrapali Aadya Trading & Investment Private Limited	4474	6	1	0.129	0
<b>DMC Institute of Capital Market Private Ltd. (Total)</b>			<b>14570</b>	<b>70</b>	<b>2</b>	<b>0.421</b>	<b>0</b>

**Self – trades executed by Noticee No. 2 in BSE:**

*(Table No. 2)*

Entity Name	Buy Broker	Sell Broker	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
<b>BSE</b>							
Bharat Gupta	CPR Capital Services Ltd.	Shriram Insight Share Brokers Ltd.	700	1	1	0.021	0.00
Bharat Gupta	Shriram Insight Share Brokers Ltd.	CPR Capital Services Ltd.	12800	11	5	0.387	-0.1

Entity Name	Buy Broker	Sell Broker	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
<b>BSE</b>							
Bharat Gupta	Shriram Insight Share Brokers Ltd.	Shriram Insight Share Brokers Ltd.	410	3	3	0.012	-0.31
<b>(Total)</b>			<b>13910</b>	<b>15</b>	<b>9</b>	<b>0.42</b>	<b>-0.41</b>

<b>NSE</b>							
Entity Name	Buy Broker	Sell Broker	Total Self Trade Volume	Total Self Trade Count	No of days on which self trades done	% Of Self Traded Qty. To Market Vol.	Net LTP contribution by self trades
Bharat Gupta	Shriram Insight Share Brokers Limited	Shriram Insight Share Brokers Limited	15	2	2	0	-0.1
<b>Bharat Gupta (Total)</b>			<b>15</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>-0.1</b>

iii. It was alleged that Noticee No. 1 and Noticee No. 2 has violated the provisions of Section 12A(a) ,(b),(c) of SEBI Act read with Regulation 3(a),(b), (c ), (d) read with Regulations 4(1), 4(2)(a),(g) of the PFUTP Regulations in the scrip of M/s BLB Ltd.

**6. Reply to SCN:**

The Noticee No. 1 and Noticee No. 2 did not file any reply to the SCN and a reminder was issued along with the hearing notice.

**7. Allegation stated in SCN in regard to Noticee No. 3, Noticee No. 4 and Noticee No. 5 in the scrip of DMC Ltd:**

i. The directors of the company during the IP were as under:

Name	Designation	Date of Appointment
Babu Lal Vijay	Chairman	04.05.2010
Sham Sunder Gupta	Managing Director	28.09.2005
Saroj Gupta	Whole-time Director	06.10.2009
Prem Kumar Awasthi	Director	30.09.2005

- ii. The stockholding pattern of the company was as under:

(Table No. 3)

Particular	Quarter ended March 2011			Quarter ended June 2011			Quarter ended Sep 2011		
	No of share holders	No of shares	%	No of share holders	No of shares	%	No of share holders	No of shares	%
Promoter Holding	294	9071737	39.79	239	7644683	33.53	224	7450050	32.68
Non Promoter Holding	8939	13725063	60.21	8976	15152117	66.47	8986	15346750	67.32
Total Share Capital	9233	22796800	100.00	9215	22796800	100.00	9210	22796800	100.00

**Wrong disclosure of promoters holding**

- iii. It was alleged that the promoter shareholding of the company decreased from 39.79% in March 2011 to 32.68% in September 2011.
- iv. Based on the information received from BSE and DMC Ltd, it was found that an unlisted company M/s Swen Realty & Media Ltd got merged with DMC International Limited (Now known as DMC Education Limited) in the year 2008 pursuant to Hon'ble Delhi High Court's order. It was observed that all the shareholders of the merged company (being an unlisted company) were included as part of promoter group of DMC Education Ltd. These promoters have sold shares in the market. Regarding this, DMC stated that the decision to include all the shareholders of Swen Realty & Media Limited as the promoters of DMC were made as per BSE direction.
- v. In reply to the specific query, BSE informed that the Exchange vide its letter dated March 06, 2006 informed the company of the then prevailing Governing Board norms of the Exchange and advised the company to ensure that non-promoter holding should be at least 25% of the post amalgamation capital. For this purpose, the entire holding of the shareholders of the transferor company is required to be excluded. It was further stated that it was with a view to ensure compliance with the Minimum Public Shareholding requirement for the purpose of listing, in compliance with the aforesaid Governing Board Norms of the Exchange, that the company was advised that the shares allotted to the transferor companies should be classified under promoter's category.
- vi. Hence, it was alleged that the company has made wrong disclosures of shareholding of promoter and promoter group since Quarter Ended June 2009–Quarter Ended September 2014 (shareholding pattern not available on BSE after Quarter Ended September 2014),

**Wrong disclosure of one of the Promoters shareholding**

- vii. It was alleged for the Quarter ended 31st March 2011, the number of shares held by one of the promoter Noticee No. 3 as shown in BSE website were 9504 shares. it was alleged

that the Noticee No. 3 did not hold any shares in physical or DEMAT form and hence wrong promoters shareholding was disclosed

- viii. It was confirmed by Broker of Noticee No. 3 that it was holding 8004 shares of DMC Education Ltd in the client beneficiary account on behalf of Noticee No. 3. Hence, it was found that Noticee No. 3 was holding 8004 shares of the scrip as on March 31, 2011 instead of 9504 shares as was disclosed on BSE.
- ix. Thus, Noticee No. 3, Managing Director & Compliance Officer of the company and Noticee No. 4 violated clause 35 of equity listing agreement read with section 21 of SCRA 1956.

#### **Opposite transactions**

- x. It was alleged that Noticee No. 3, was continuously buying and selling the shares during the IP. The Noticee No. 3 has bought 96685 shares and sold 100522 through Shriram Insights Share Brokers Ltd., thereby the entity sold 3837 shares on net basis.
- xi. The details of the transactions of Noticee No. 3 is tabulated as under:

**(Table No. 4)**

Date	Purchased Quantity	Sold Quantity
18/04/2011	1874	2274
25/04/2011		100
03/05/2011	2850	
04/05/2011	200	
10/05/2011	4201	4234
16/05/2011	44813	45500
17/05/2011	60	2020
18/05/2011	9500	12000
19/05/2011	600	2000
23/05/2011	1000	1000
24/05/2011	5000	5000
25/05/2011	1812	1850
06/06/2011	300	
16/06/2011		700
22/06/2011		2572
23/06/2011		960
04/07/2011	881	
05/07/2011	13510	5150
06/07/2011		3400
11/07/2011	3700	
18/07/2011	5244	5388
28/07/2011	889	4149
29/07/2011		600

Date	Purchased Quantity	Sold Quantity
02/08/2011		250
03/08/2011	25	25
17/08/2011		150
23/08/2011	50	100
29/08/2011	176	1000
05/09/2011		100

- xii. From the above table, it is alleged that Noticee No. 3 bought 96685 shares and sold 100522 shares during the period from April 01, 2011 to September 08, 2011 and has entered into opposite transactions on various dates given in the table except on 03.05.2011, 04.05.2011, 06.06.2011, 04.07.2011 & 11.07.2011(where he entered into purchase transaction). As the Managing director and compliance officer of DMC , Noticee No. 3 had entered into opposite transactions within a period of 6 months and is in violation of the Clause 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies in terms of Regulation 12 (1), Schedule I, Part A of PIT Regulations, 1992.
- xiii. The company was asked to provide information with regard to the model code of conduct for Prevention of Insider Trading adopted by the company, the dates when the trading windows were closed for the period from April 2011 to September 2011 and details of pre-clearance obtained by Noticee No. 3 for his trades. Vide letter dated January 05, 2015, the company provided the dates on which the trading window was closed during the IP. Further, the company stated that no disclosures have been made by the compliance officer of the company due to lack of ignorance of SEBI Regulations. The company did not mention whether pre-clearance of trades was taken by Noticee No. 3 before trading in the scrip of DMC Education Ltd. Hence, it was alleged that no pre-clearance of trades was taken by Noticee No. 3.

**Failure to set policies as stipulated under PIT Regulations**

- xiv. Noticee No. 3, the Managing Director & Compliance Officer of DMC Education Ltd, had to ensure Compliance with the Code of Conduct for Prevention of Insider Trading under the overall supervision of the Board which he has failed to ensure. In view of the same, it was alleged that the Noticee No. 3 , whole time director Noticee No. 4 and Noticee No. 5 have failed to ensure compliance with the Code of Conduct for prevention of Insider Trading mentioned in Regulations 12(1) of the PIT Regulations, 1992.



xv. In view of above, it was alleged that the following:

- i. **Noticee No. 3** has violated the provisions of Clause 3.3.1 & 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations, 1992 read with Clause 6(C) of Code of conduct adopted by the company read with Regulation 12 of SEBI PIT Regulations, 2015, Clause 35 of Listing agreement read with section 21 of SCRA, Regulation 12(1) read with Clause 1.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.
- ii. **Noticee No. 4** has violated Clause 35 of equity listing agreement read with section 21 of SCRA 1956, Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.
- iii. **Noticee No. 5** has violated the provisions of Regulation 12(1) read with Clause 1.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

#### **8. Reply to SCN:**

Notice No. 3, Noticee No. 4 and Noticee No. 5 did not file any reply to the SCN and a reminder was also issued along with the hearing notice.

#### **9. Opportunity of Personal Hearing:**

**9.1.** In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, the Noticees were granted an opportunity of personal hearing before the undersigned on September 15, 2017 at SEBI, Mumbai.

**9.2.** Mr. D.N. Chaturvedi, Advocate, Authorized Representative (hereinafter referred to as "AR"), appeared before the undersigned on behalf of the above Noticees.

**9.3.** No oral or written submissions were made by AR during hearing.

**9.4.** AR agreed to submit detailed reply by September 22, 2017 and Pan Copy of the Noticees.

**9.5.** A reminder was sent on October 16, 2017 to AR, that no submission has been made by the Noticees and was requested to file the reply by October 23, 2017. No reply was received.

#### **10. Consideration of Issues and Findings:**

I have carefully perused the charges levelled against the Noticees as per the SCN, and the materials/documents available on record. The issues that arise for consideration in the present case are

**I. Whether Noticees had violated the following provisions as mentioned in para 2 above:**

**II. Does the violations, if any, attract monetary penalty as mentioned in para 3 above :**

**III. If so, what should be the quantum of monetary penalty?**



**Issue No. 1** Before proceeding further, I would like to refer to the relevant provisions of SEBI Act, SEBI PFUTP Regulations and SEBI PIT Regulations, 1992 and SEBI PIT Regulations, 2015, SCRA and Listing Agreement.

**SEBI (PFUTP) Regulations:**

**Relevant Provision of SEBI Act, 1992**

***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

**12A.** No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

**3. Prohibition of certain dealings in securities under PFUTP Regulations 2003**

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

**4. Prohibition of manipulative, fraudulent and unfair trade practices**

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security

## **PIT Regulation 1992**

### **SCHEDULE I [Under Regulation 12(1)] PART A** **MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES Under PIT Regulations 1992**

#### **Compliance Officer**

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

- (i) officers comprising the top three tiers of the company management
- (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

#### **3.3 Pre-clearance of trades**

3.3.1 All directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

#### **Other restrictions**

" 4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time."

### **Code of internal procedures and conduct for listed companies and other entities Under PIT Regulations 1992**

12. (1) All listed companies and organisations associated with securities markets including :
- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
  - (b) the self-regulatory organisations recognised or authorised by the Board;
  - (c) the recognised stock exchanges and clearing house or corporations;
  - (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
  - (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

## **PIT Regulations, 2015**

### **Repeal and Savings.**

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(2) *Notwithstanding such repeal,—*

(a) *the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

(b) *anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

(3) *After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

### **Clause 35 of Listing Agreement**

35. *The issuer company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-*

a) *One day prior to listing of its securities on the stock exchanges.*

b) *On a quarterly basis, within 21 days from the end of each quarter.*

c) *Within 10 days of any capital restructuring of the company resulting in a change exceeding +/- 2% of the total paid-up share capital”*

### **Conditions for listing under SCRA 1956**

21. *Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

### **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.

### **Findings in regard to Noticee No. 1 and Noticee No. 2:**

11.1. I note that self-trade percentage volume of the Noticee No. 1 compared to the total market volume in NSE is 0.42 % (total 70 trades in 2 days) and by Noticee No. 2 it is 0.42%(total 15 trades in 9 days) during the IP. The LTP contribution by the self-trades of Noticee 1 & 2 is Rs 0 and Rs -0.42 respectively

- 11.2. I note that though the Noticees had entered into self-trades on multiple occasions, yet the volume of self-trades compared to total volume in the scrip of BLB Ltd is not significant. No mala fide intention behind self-trades executed by the Noticees has been brought out in investigation report.
  - 11.3. I also note that no adverse observations regarding synchronized trading, reversal trading or executing orders varying from LTP or High Price etc. was alleged in the Investigation Report. In addition to same, no fraudulent pattern / modus operandi was explained under the Investigation Report regarding self-trades.
  - 11.4. I note with meagre contribution of 0.42% each, it is difficult to arrive at the conclusion that these self-trades were executed with the intent to create misleading appearance in the securities market. . The LTP contribution of these trades is negligible. Taking into account miniscule volume of self-trades as compared to the total market volume during the investigation period and negligible LTP contribution, no such malafide intention can be established in the present case.
12. Since the manipulation, malpractices or violation of aforesaid provisions of PFUTP Regulations, are not established, therefore considering the facts and circumstance of the case, it is concluded that the violation of Section 12A(a) ,(b),(c) of SEBI Act read with Regulation 3(a),(b), (c ), (d) read with Regulations 4(1), 4(2)(a),(g) of the PFUTP Regulations in the scrip of M/s BLB Ltd against the Noticee No. 1 and Noticee No. 2 does not stand established on the basis of the material placed before me in this proceeding

#### **Findings in regard to Noticee No. 3, Noticee No. 4 and Noticee No. 5:**

13. I note from the material available on record, that Noticee No. 3, had entered into opposite transactions on various dates (details as per table No. 4 above), As a Director of M/s DMC Ltd, had entered into opposite transactions within a period of 6 months and also had not taken pre-clearance of trades while buying and selling the shares of the company. Despite specific query of SEBI, DMC had not confirmed whether Noticee No. 3 had taken pre-clearance of trades (as mentioned in Table 4 above). However since DMC in its reply to SEBI had mentioned that Company was ignorant of SEBI Regulations and during personal hearing as well, AR did not make any submission in this regard. Also, I note that Noticee No. 3 himself was the Managing Director and Compliance Officer of the company. Hence, it is evident that no clearance was taken by Noticee No. 3 from DMC before entering into the trades as mentioned in Table No. 4 above.
- 13.1. It was alleged from the record available and allegation made in the SCN about inclusion of 616 shareholders of Swen Realty and Media Ltd. in the promoter group of DMC Education Ltd .By including the promoters of the transferor company under the promoter category of the transferee company (M/s DMC Ltd), the company made wrong disclosures of shareholding of promoter and promoter group since Quarter Ended June 2009 –Quarter Ended September 2014. M/s DMC Ltd has stated in its letter dated September 20, 2014 inter-alia *“due to miscommunication with BSE, they may be allowed to file the revise Shareholding Pattern of the company since June 2009 till date after bifurcation the actual promoter of the company”*. DMC has also wrongly reported the shares held by its Managing director in the Shareholding pattern available on BSE website.
  - 13.2. Shareholding of Noticee No. 3 was wrongly disclosed on BSE website for the quarter ended March 31, 2011. Hence, I find Noticee No. 3 guilty of violating the provision of Clause 3.3.1 & 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12 (1) of PIT 1992 read with Regulation 12 of PIT Regulations, 2015 and Clause 35 of the listing agreement read with Section 21 of SCRA
  - 13.3. In view of the above violations relating opposite transactions by Managing Director and not seeking pre clearance of trades , I find that Noticee No. 3, Noticee 4 and Noticee No. 5 have failed to ensure

compliance with the Code of Conduct for prevention of Insider Trading mentioned in Regulations 12(1) read with Clause 1.2 of Model of Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015.

14. Hence, I find that Noticee No. 3 and Noticee No. 4 guilty by making wrong disclosures of the shareholding of the promoters group to the stock exchange and thereby has violated clause 35 of Equity listing agreement read with Section 21 of SCRA 1956.

**Issue No. II Does the violations, if any, attract monetary penalty for**

- a) **Noticee No. 1 and Noticee No. 2** ; under Section 15HA of SEBI Act for the alleged contravention of provisions of law;
- b) **Noticee No. 3**; under Section 15HB of SEBI Act and under Section 23A of SCRA for the alleged contravention of provisions of law;
- c) **Noticee No. 4**: under Section 15HB of SEBI Act, Section 23A and Section 23E of SCRA for the alleged contravention of provisions of law; and
- d) **Noticee No. 5**: under Section 15HB of SEBI Act for the alleged contravention of provisions of law.

**Violation if any, attract penalty for Noticee No. 1 and Noticee No. 2:**

15. I note the provisions of Section 15HA of SEBI Act as applicable to the facts and circumstances of the case read as under:

**Penalty for fraudulent and unfair trade practices.**

*15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher*

**Since allegation against noticee 1 & 2 does not established, hence not applicable**

**Violation if any, attract penalty for Noticee No. 3, Noticee No. 4 and Noticee No. 5:**

I note the provisions of Section 15HB of SEBI Act, Section 23A of SCRA and Section 23E of SCRA as applicable to the facts and circumstances of the case read as under:

**Penalty for contravention where no separate penalty has been provided.**

*15HB : Whoever fails to with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**23. Penalty for failure to furnish information, return, etc. under SCRA 1956**

23A. Any person, who is required under this Act or any rules made thereunder,—

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws



of the recognized stock exchange, 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 for each such failure;

(b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, 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.

**Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds under SCRA 1956**

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

16. From the conclusions arrived at para No.13, I conclude that the Noticee No. 3, Noticee No. 4 and Noticee No. 5 are liable for penalty under Section 15HB of SEBI Act, Section 23A of SCRA and Section 23E of SCRA.

*The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} 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..."*

**If so, what should be the quantum of monetary penalty?**

17. While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the SEBI Act and Section 23 J of SCRA, which reads as under :

**SEBI Act**

**Factors to be taken into account by the adjudicating officer**

15J. 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 a group of investors as a result of the default ;
- c) the repetitive nature of the default.

[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section].

**Factors to be taken into account by adjudicating officer.**

23J. While adjudging the quantum of penalty under section 23-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.

*[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section]*

18. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15J of the SEBI Act and 23J of SCRA stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee No. 3, Noticee No. 4 and Noticee No. 5. Further, no monetary loss to investors has been brought on record and it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticees. I also note from the documents available on record that the violations reported are not of repetitive nature.

**ORDER**

19. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticee No. 3, Noticee No. 4 and Noticee No. 5, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of Rules and Section 23-I read with Rule 5 of SCRA Rules I hereby drop the Adjudication Proceedings against M/s DMC Institute of Capital Market Private Limited and Shri Bharat Gupta and impose a monetary penalty on the following Noticees:

Noticee Name	Penalty Amount
Shri Sham Sunder Gupta, Managing Director & Compliance Officer of DMC Education Limited	Under Section 15 HB of SEBI Act Rs 6,00,000 (Rs Six Lakhs only) Under Section 23A of SCRA Rs 2,00,000 (Rs Two Lakhs only)
M/s DMC Education Limited	Under Section 15 HB of SEBI Act Rs 2,00,000 (Rs Two Lakhs only) Under Section 23E of SCRA , Rs 2,00,000 (Rs Two lakhs only)
Ms. Saroj Gupta, Director of DMC Education Limited	Under Section 15 HB of SEBI Act Rs 2,00,000 (Rs Two Lakhs only)

20. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor 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



**21.** The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the Deputy General Manger (Enforcement Department - DRA- II) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	Departme nt of SEBI	Name of Intermediary/other Entity	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.	Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	Bank Name and Account Number from which payment is remitted	UTR No

**22.** In terms of Rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date:   October 31 , 2017**  
**Place: Mumbai**

**SAHIL MALIK**  
**ADJUDICATING OFFICER**