

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

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

**AGAINST
DYNAMIC SECURITIES LIMITED.
PAN: [NOT PROVIDED]**

**IN THE MATTER OF
IQ INFOTECH LIMITED**

The undersigned was appointed as the Adjudicating Officer vide order of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated December 10, 2008 under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of Securities and Exchange Board of India (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudicating Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged failure to file requisite disclosures under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

(hereinafter referred to as 'Takeover Code') by Dynamic Securities Limited (hereinafter referred to as 'DSL'/'Noticee').

2. A notice to show cause dated February 26, 2009 under Rule 4 of the Adjudicating Rules was issued to the Noticee asking it to show cause as to why an enquiry should not be held against it and the prescribed penalty for the alleged violation of PIT Regulations and the Takeover Code not be imposed under Section 15A (b) of SEBI Act. The said Notice to show cause was sent by Registered Post Acknowledgment Due, under rule 7(b) of the Adjudicating Rules and was returned with the comments "no such address to sender". Subsequently the show cause notice was served on the Noticee under rule 7(c) of the Adjudicating Rules on June 9, 2009.
3. Thereafter, a Notice for Hearing dated August 26, 2009, under Rule 4 of the Adjudication Rules was issued to the Noticee, fixing the hearing on 7th September, 2009 at 4:00 PM and sent via Regd. Post. The said Notice was also served on the Noticee in terms of Rule 7(c) of the of the Adjudication Rules on September 01, 2009.
4. In the instant matter the following issues arise for consideration:
 - a. Whether the Noticee had violated regulation 13(3) of the PIT Regulations?
 - b. Whether the Noticee had violated regulation 7(1) of the Takeover Code?
 - c. Whether the Noticee is liable for imposition of monetary penalty under section 15A (b) of the SEBI Act?
5. Following are the relevant provisions of the PIT Regulations and the Takeover Code which read as under:

PIT Regulations:

“13(3) Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.”

Takeover Code:

“Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.”

6. SEBI conducted investigation into the trading in the shares of IQ Infotech Limited (hereinafter referred to as the ‘Target Company’) and into possible violations of the provisions of the SEBI Act and various rules and regulations made thereunder. During the course of investigations it was observed that the Noticee had purchased 8,986 shares & sold 9,28,600 shares of the Target Company. From off-market data it was observed that DSL had received 9,86,094 shares from Mega Channel Computers Ltd. on December 08, 2004. It was further observed that as on December 31,

2004, DSL was holding 9,86,094 shares which was 9.26% of the share capital of the Target Company and that its share holding had reduced to zero by March 31, 2005.

7. During investigation by SEBI it was alleged that the disclosures under Regulation 13(3) of the PIT Regulations and Regulation 7 (1) of the Takeover Code were not made by the Noticee.
8. I have carefully gone through the charges set out in the show cause notice and other documents on record. It is clear that the Noticee had purchased 9,86,094 shares from the off-market on December 8, 2004 which constituted 9.26% of the Target Company's share capital. Regulation 7(1) of the Takeover Code mandates disclosure in case a person acquires more than 5% of the shares in a company.
9. It is clear from the language of regulation 7(1) of the Takeover Code that DSL was mandated to disclose the purchase of shares to the Target Company as it would entitle it to more than 5% shares in the share capital of the Target Company. Under this regulation it is mandatory to disclose such acquisition to the Target Company and as well as the exchange and whether or not such disclosure was made is a question of fact. During investigation by SEBI it was alleged that no such disclosures were made to the Target Company.
10. It is also evident that as on December 31, 2004 DSL was holding 9,86,094 shares and by March 31, 2005, the shareholding had reduced to zero. 9,86,094 shares constitute 9.26% of the Target company and under regulation 13(3) any person who holds more than 5% of the share capital of a company has to disclose any change in that shareholding exceeding 2%.

11. It is clear from a plain reading of regulation 13(3), that the Noticee was required to disclose the change in its shareholding in the Target Company. The violation of regulation 13(3) is a question of fact; whether the Noticee had made disclosures under regulation 13(3) or not. During investigation by SEBI it was alleged that no such disclosures were made to the Target Company.
12. Further, the noticee did not file any reply to the show cause notice issued by the undersigned. Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Limited Vs. SEBI (APPEAL NO. 68 OF 2003, date of decision December 8, 2006) regarding the significance of the filing the reply to the show cause notice, stated as follows “ *the appellant did not file any reply to the second show cause Notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them.*”
13. In the instant matter as the Noticee has failed to file any reply to the show cause notice, I am inclined to conclude that the Noticee had failed to make the mandatory disclosures under the PIT Regulations and the Takeover Code and therefore violated the provisions of regulation 13(3) and regulation 7(1) of the PIT Regulations and the Takeover Code respectively. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that “*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*”
14. Thus, I conclude that the Noticee is liable for monetary penalty under Section 15A (b) of the Act which states 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,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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;”

15. Further, on the determination of the quantum of penalty under section 15A (b), it is required to consider the factors stipulated in section 15J of the Act, which reads as under:-

“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 group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

16. From the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage to the Noticee, which may have accrued due to the aforesaid violation. However, it is established that the Noticee had failed to disclose the acquisition of shares and the change in its shareholding pattern to the Target Company and consequently proper disclosures were not made to the exchange. Correct and timely

disclosures are an essential part of the proper functioning of the securities market and any failure to do so results in preventing the investors from taking a well-informed decision. Further, I do not find that the nature of the violation in this case is repetitive.

ORDER:

17. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I(2) of the Act, I hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on Dynamic Securities Ltd. u/s 15A (b) of the SEBI Act. I am of view that the said penalty is commensurate with the violations made by Dynamic Securities Ltd.

18. The above penalty amount shall be paid through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra(East), Mumbai- 400 051.

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

Dt: November 12, 2009
MUMBAI

J. Ranganayakulu
Adjudicating Officer