

**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 Payal Jayeshbhai Madiyar (PAN- AORPM9664D) in the matter of Excel Castronics Ltd.**

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**BACKGROUND**

1. Securities and Exchange Board of India (**'SEBI'**) instituted adjudicating proceedings to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992 (**'SEBI Act'**) against Payal Jayeshbhai Madiyar (**'Payal/Noticee'**) in the matter of Excel Castronics Ltd. (**'Excel/Script/Company'**), shares are listed at the Bombay Stock Exchange (**'BSE'**), for the examination period (**'IP/Examination Period'**) May 01, 2014- October 31, 2014, for the alleged violations of provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (**'PIT Regulations'**) and under SEBI (Substantial Acquisition and Takeovers) Regulations, 2011 (**'SAST Regulations'**), which are detailed below:

Findings in brief	Alleged violations of provisions
i) Payal's holdings on August 18, 2014 increased to 4,20,762 shares, which is 5.167% of the share capital of the Company.	i) Regulation 13(1) read with 13(5) of PIT Regulations and
ii) With respect to change in holdings, Payal required to file disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 ( <b>'PIT Regulations'</b> ) and under SEBI (Substantial Acquisition and Takeovers) Regulations, 2011 ( <b>'SAST Regulations'</b> ).	ii) Regulation 29(1) read with Regulation 29(3) of SAST Regulations

**APPOINTMENT OF ADJUDICATING OFFICER**

2. Adjudicating Officer was appointed vide order dated February 15, 2018 under Section 15-I read with Section 19 of **SEBI Act** and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**'Adjudicating Rules'**), to inquire into and adjudge under Section 15A(b) of SEBI Act for the aforesaid alleged violation against Payal.

## SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice ('**SCN**') in terms of provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act was issued on March 15, 2018 to Payal calling upon the noticee to show cause as to why an inquiry should not be held against her under Rule 4 of the Adjudication Rules and penalty should not be imposed for the alleged violation. The said SCN was issued to Payal to the address available at our end i.e. "*Sadguru Colony, Flat No. G-1, Near Vrundavan Soc., Kalawad Road, Rajkot- 360005, Gujarat*", the address from which Payal has communicated to SEBI during the examination. The SCN was duly delivered on March 19, 2018.
4. Since, no reply to the SCN was received, vide letter dated April 12, 2018, Payal was informed to file reply to the SCN on or before April 24, 2018 and also an opportunity to appear for personal hearing on May 11, 2018. The said letter was duly delivered on April 16, 2018. However, Payal failed to file reply to the SCN and also to appear for the hearing.
5. Subsequently, vide letter dated June 01, 2018, Payal was once again informed to file reply to the SCN on or before June 14, 2018 and also an opportunity to appear for the hearing on June 19, 2018. The said letter was duly delivered on June 06, 2018. However, Payal once again failed to file reply to the SCN and also to appear for the hearing.
6. Further, on the date of hearing, telephonic calls were made to Payal to the number 088667 98777 available on records. However, no response was received. In this regard, vide letter dated June 19, 2018, Payal was once again informed to file reply to the SCN on or before June 28, 2018 and also last and final opportunity to appear before for personal hearing on July 03, 2018. The letter dated June 19, 2018 was returned undelivered with remarks "left".
7. A copy of the letter dated June 19, 2018 was forwarded to [payalmadiyar@gmail.com](mailto:payalmadiyar@gmail.com); [jayesh.madiyar@gmail.com](mailto:jayesh.madiyar@gmail.com) and info@sampatigroup.in, the email ids available on

records. Also, the letter dated June 19, 2018 was uploaded in SEBI website under the heading "Unserved Notices/SCN".

8. It is pertinent to mention that all the referred SCN/letters were issued to the same address from which Payal has communicated to SEBI during the examination. However, the SCN and letters dated April 12, 2018 and June 01, 2018 were duly delivered to Payal while the letter dated June 19, 2018 was returned undelivered.
9. On the date of hearing, Payal failed to appear for the hearing and also to file reply to the SCN. It is clear from records that the SCN/notices have been delivered on the addresses available on records, including the email address and an attempt were also made to reach out Payal on telephone. Thus, it is determined that despite providing enough opportunities, Payal failed to file reply to the SCN and appeared for hearing and accordingly the matter is determined fit to proceed in terms of Rule 4(7) of the AO Rules based on the information and documents earlier filed by noticee and information available on records.

#### **CONSIDERATION OF ISSUES AND FINDINGS:-**

10. Charges levelled against Payal as per SCN and the documents available on record have been perused. The issues that arise for consideration are :
  - a) Whether, Payal failed to disclose the change in holdings in the Company in terms of SAST and PIT Regulations?
  - b) Does the violation, on the part of Payal attract monetary penalty under section 15A(b) of SEBI Act?
  - c) If yes, what quantum of monetary penalty should be imposed on Payal taking into consideration the factors mentioned in Section 15J of the SEBI Act?

#### **Issue a) Whether, Payal failed to disclose the change in holdings in the Company in terms of SAST and PIT Regulations?**

11. During the period May 01, 2014- October 31, 2014, Payal had acquired shares of the Company, which is evident from the demat account of Payal. The same is

corroborated from certain disclosures of Payal made available on the Exchange website.

12. It is observed that SEBI during the examination, Payal was advised vide email dated September 10, 2014, to provide the proof of disclosure along with acknowledgment for the disclosure made in terms of SAST Regulations to the Company and to BSE for the shares acquired in the Scrip during the period June 2014 to August 2014.
13. In this regard, Payal vide letter dated September 10, 2014, while replying to an email from SEBI, has provided a copy of the disclosure made on September 10, 2014 to BSE and to the Company for the change in her holdings of 5% and above of the share capital of the Company. These disclosures seem to be prompted by the SEBI email seeking compliance with the disclosure norms under the SAST Regulations.
14. It is observed that the letter of Payal dated September 10, 2014 was received by the Company. However, the date of the receipt of the document by the company as recorded in hand is August 06, 2014. It is indeed intriguing as to how a document which was signed and addressed by Payal on September 10, 2014 could have been received by the company on August 06, 2014.
15. Given the above discrepancy of the documents were compared with the facts based on the demat holdings and the disclosures on the exchange website. Central Depository Services (I) Ltd ("**CDSL**") had provided a copy of the following demat statements of Payal in the scrip for the period July 01, 2014 to August 30, 2014 and the same was provided to Payal as part of the SCN:

Sr. No.	Demat Account Nos.
1	12033200-01975552
2	12064600-00012471
3	12070200-00212039
4	12067400-00072594
5	12027700-00383552
6	12010900-05314931

It is observed that Payal has not held any shares of the Company with the Depository Participants of National Securities Depositories Ltd. (“**NSDL**”) during the period July 01, 2014 to August 30, 2014.

16. The details of holdings of Payal in the Scrip as per the demat account are as follows:

<b>Demat Acc No.</b>	<b>Date of transaction</b>	<b>No. of Shares</b>	<b>Credit / Debit</b>	<b>Current Bal.- Total</b>	<b>Change in holdings (in %)</b>
12064600-00012471	01/01/14- opening bal.	0	-	0	0
12064600-00012471	01/07/2014	1,809	Credit	1,809	0.22
12064600-00012471	02/07/2014	1,809	Debit	0	0
12064600-00012471	01/08/2014	1,92,524	Credit	1,92,524	2.36
12067400-00072594	06/08/2014	1,99,008	Credit	3,91,532	4.81
12064600-00012471	18/08/2014	29,230	Credit	4,20,762	5.17

No holdings in the Scrip were observed in the remaining four demat accounts of Payal during the period January 01, 2014- August 18, 2014.

17. From the above, it is observed that on August 18, 2014, the holdings of Payal in the scrip increased from 3,91,532 shares to 4,20,762 shares, which is 5.167% of the Share Capital of the Company (81,42,700 shares – share capital of the Company during quarters of June 2014 and September 2014).

18. Thus, the change in the holdings of 5% and above of Payal in the company triggers the requirement of disclosures to be made in terms of Regulation 29(1) read with Regulation 29(3) of SAST Regulations to the Company and to BSE, within two days of the receipt of shares i.e. August 18, 2014. The said change in holdings also requires to be disclosed by Payal in terms of PIT Regulations to the Company. It is observed that there is no such intimation in the entire month of August 2014 as per the email of the Exchange. The only disclosure that has been made is in the month of September 2014.

**Disclosure made by Payal in terms of SAST Regulations**

19. It is observed that Payal claims to have made disclosures in terms of Regulation 29(1) read with Regulations 29(3) of SAST Regulations.
20. These disclosures appear to be an afterthought as firstly the holdings of Payal does not match with the depository holding as on that particular date i.e. August 18, 2014. Secondly going solely by the demat statement, it is not clear as to how Payal could have made a disclosure on August 05, 2014 and the same was received and accepted by the Company on August 06, 2014 of a letter dated September 10, 2018 and for a trigger which was to be happen on August 18, 2014. Further, it is observed from the "Corporate Announcements" Section of the BSE, that the Company has reported the disclosure of Payal made under Regulation 29(1) of SAST Regulations on September 11, 2014.
21. In view of above and given the constraints of the noticee not replying to the SCN (despite delivery of the SCN/letter to the same address to which the earlier correspondence has been replied), it is to be concluded that the records speak otherwise and tilt in favour of the proposition that the disclosures that were made are indeed an afterthought.
22. These could have been considered as delayed disclosure provided the correct figures would have been reflected by Payal even in the delayed holdings. However as mentioned above the figures in the demat holdings do not match those for which she claims to have made the disclosures. Given this it is being held that no disclosures have been made.
23. Thus, Payal have failed to disclose the change in holdings and the disclosure made by Payal to the Company and BSE cannot be considered as a compliance of SAST Regulations. Thus, it is concluded that Payal had violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

**Disclosure in terms of PIT Regulations.**

24. Payal, was also required to disclose the said change in holdings to the Company in terms of PIT Regulations. It is observed that Payal has not filed any documents/ records during the examination or during these proceedings to substantiate relevant disclosures were made in terms of PIT Regulations. Further, it is observed that no such disclosure were observed in BSE for the said change in holdings.
25. During these proceedings, even though enough opportunity was provided, Payal failed to file any response and to appear before the Adjudicating Officer. Thus, Payal have not co-operated at all during these instant proceedings. Also, there are not records available on records suggesting that Payal had made disclosure in terms of PIT Regulations.
26. In this regard, it is pertinent to note that the Hon'ble Securities Tribunal ("SAT") in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter-alia, observed that, "*..... the appellants 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*". It is also pertinent to note that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed 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...*".
27. Thus, for the change in holdings, Payal failed to make disclosures in terms of SAST Regulations and PIT Regulation, hence, it is held that Payal had violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.
28. With respect to allegation of non-compliance of Regulation 13(5) of PIT Regulations by Payal, it is stated that there is no information available on records to substantiate the alleged violation of Regulation 13(3), 13(4) and 13(4A) of PIT Regulations. Hence,

the charges of non-compliance of Regulation 13(5) of PIT Regulations is disposed off.

**Issue B: Does the violation, on the part of Payal attract monetary penalty under section 15A(b) of SEBI Act?**

29. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was 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.*"

30. As the violation of provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations by Payal has been established, it is held that Payal are liable for monetary penalty under Section 15A(b) of SEBI Act.

31. The aforesaid provisions 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,—*

*...  
(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;"*

32. Given the above, it is concluded that the present case is a fit case for imposing penalty upon Payal under Section 15A(b) of the SEBI Act, 1992.

**Issue C- what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?**

33. While determining the quantum of penalty under section 15A(a), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

***"15J - Factors to be taken into account by the adjudicating officer***



*While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*

*(c) the repetitive nature of the default.”*

*<sup>1</sup>[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.*

34. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by Noticee as a result of default nor has any such allegations made out against the Noticee.

35. It is on records that the non-compliance continues even as on date.

36. Therefore, taking into consideration the facts / circumstance of the case and above mitigating factors, a justifiable penalty is determined to be imposed upon Payal.

## **ORDER**

37. After taking into consideration all the facts and circumstance of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against Payal J Madiyar stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, a monetary penalty of **Rs. 4,00,000 (Four Lakhs Rupees Only)** is imposed upon Payal J Madiyar under Section 15A(b) of SEBI Act, 1992.

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<sup>1</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

38. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

39. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - II [ EFD1-DRA-II ], SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name:
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

40. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Payal Jayeshbhai Madiyar and also to SEBI.

**Date: September 21, 2018**  
**Place: Mumbai**

**Jeevan Sonparote**  
**Adjudicating Officer**