

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ISD/ AG/AO/DRK-DS/EAD3-358/24-2013]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against
Ms. Anubha Gupta
[PAN No. AONPS7858D]
8, Tara Nagar, Civil Lines, Ajmer Road,
Jaipur – 302006
Rajasthan

FACTS OF THE CASE IN BRIEF

1. SEBI had conducted an examination into the scrip of Palsoft Infosystems Limited (hereinafter referred to as 'Palsoft/company'). The scrip of the company is listed at the Bombay Stock Exchange Ltd (hereinafter referred to as 'BSE').

APPOINTMENT OF ADJUDICATING OFFICER

2. I was appointed as the Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') the alleged violation of the provisions of Regulation 13(4) read with Regulation 13(5) of the Securities and Exchange Board of India (Prevention of Insider Trading)

Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') in respect of the dealings of Ms. Anubha Gupta (hereinafter referred to as the noticee/she/her) in the scrip of Palsoft.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice dated January 03, 2013 was served on the noticee in terms of the provisions of Rule 4 of the Rules, requiring her to show cause as to why an inquiry should not be held against her and why penalty, if any, should not be imposed on her under Section 15A(b) of the SEBI Act for the alleged violation of the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.
4. During the examination in the scrip of the company it was observed that the noticee as a Whole-Time Director of the company had acquired 81,350 shares of the company amounting to 2.17% of the total share capital of the company on January 07, 2010. The noticee made the aforesaid disclosure to BSE on April 13, 2010 i.e. with a delay of 100 days.
5. Therefore it was alleged that the noticee had failed to make the necessary disclosure of change in shareholding in the company to the company and to the stock exchange within the stipulated time. In view of same, it was alleged that the notice had violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.
6. The SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record.

7. The noticee, vide her reply dated January 22, 2013, made the following submissions:

- a) I have been appointed as Director in the company w.e.f. January 01, 2010.
- b) There was a family settlement and under the settlement 81,350 equity shares of the company have been transferred in my name on January 07, 2010.
- c) I have not purchased the shares from the stock market and the purchase is only an off market purchase.
- d) I have not earned any profit as there is no sale of above shares till date.
- e) Further, shares of the company were suspended for trading from Stock Exchange during this process.
- f) There was no loss to investor as there was no change in overall promoters holding. The change in shareholding was only the change of hands on account of family settlement.
- g) ...due to unawareness about the provisions of SEBI guidelines at that time, I could not file the declaration/disclosures in time.

8. Further as requested by the noticee, vide hearing notice dated April 12, 2013, the noticee was provided an opportunity of being heard and was advised to attend the hearing on April 26, 2013 at SEBI, Jaipur Local Office, First Floor, Stock Exchange building, JLN Marg, Malviya Nagar, Jaipur – 302-017. The noticee vide letter dated April 24, 2013 authorised Shri Inder Bhan Soni, CGM- Legal Palsoft, Shri Vishal Agarwal, Company Secretary, Autolite (I) Ltd. (a group company of Palsoft) and Miss Payal Gupta, Company Secretary, Palsoft to appear on her behalf for the hearing on April 26, 2013. The authorised representatives (ARs) of the noticee appeared for the hearing and made the following submissions:

- a. The transfer of shares was between one of the Promoters and the noticee under family settlement. Since there was no company secretary at that time and the noticee was not aware of the

relevant law, the noticee could not make the said disclosure within two working days of the acquisition of shares.

- b. The ARs also submitted that the trading in the scrip of the company was suspended at BSE since 2004 and in November 2011 the suspension was revoked.
 - c. The ARs had also undertaken to submit the clarification whether the said transaction was off market purchase for a consideration or transfer.
9. Vide letter dated April 26, 2013, the ARs furnished the clarification stating:
- a. The said transfer of 81,350 equity shares was under family settlement having no consideration from one promoter to the noticee. The said transaction was not a purchase involving any consideration but the transfer of shares under family settlement.
 - b. The transfer of shares from one promoter to the noticee under the family settlement effected directly and not through stock exchange as the share trading was suspended at BSE at that time.

CONSIDERATION OF EVIDENCE AND FINDINGS

10. I have taken into consideration the facts and circumstances of the case, and the material available on record.
11. It was alleged in the SCN that the noticee had failed in making the necessary disclosure of change in shareholding in Palsoft to the company and to the stock exchange within the stipulated time as required under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations.
12. As per the requirements of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations, any person who is a director or officer of a listed company shall disclose to the company and the stock exchange in Form

D within two working days of receipt of allotment of shares or acquisition of sale of shares or voting rights, the total number of shares held and change in shareholding of the company, if the change exceeds ₹5,00,000 in value or 25,000 shares or 1% of total shareholding or voting rights.

13. The noticee has submitted that she had acquired 81,350 shares of Palsoft under a family settlement. The noticee further submitted that the said settlement was not an off-market purchase but a transfer without any consideration. The noticee had further submitted that since there was no company secretary at that time and the noticee was unaware of the relevant law, she could not file the disclosures on time.
14. It is observed that the noticee made the aforementioned disclosures after a delay of 100 days.
15. In view of the facts and material made available on record, it can be concluded that the noticee had delayed in complying with the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations. The text of the said provision is as follows:-

"13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies

Continual disclosure.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value

or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be."

16. The aforesaid delay makes the noticee liable to penalty under Section 15A(b) of the SEBI Act which is reproduced below:

"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;"

17. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of the delay on the part of the noticee to make the disclosures are not made available on record. Further, it is difficult to quantify the unfair advantage made by the noticee or loss caused to the investors in a default of this nature.

19. Having considered the facts and circumstances of the case and after taking into account the factors under section 15J of the SEBI Act, 1992, I find that a penalty of ₹1,00,000 [Rupees One Lakh Only] on the noticee would be commensurate with the delay on the part of the noticee in making the mandatory disclosure in this case.

ORDER

20. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a penalty ₹1,00,000 [Rupees One Lakh Only] on Ms. Anubha Gupta in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the delay in complying with the provisions of Regulation 13(4) read with Regulation 13(5) of the Securities and Exchange Board of India (Prevention of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the failure of the noticee to make the disclosures.

21. The penalty shall be paid by way of Demand Draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai

within 45 days of receipt of this order. The said demand draft shall be forwarded to the Deputy General Manager, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Ms. Anubha Gupta and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: April 29, 2013

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**