

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/83/2018-19]**

**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:

**Omkar Overseas Limited
(PAN:AAACO1827C)**

In the matter of M/s. Omkar Overseas Limited

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to investigation into the trading activities of certain entities in the scrip of Omkar Overseas Limited (hereinafter referred to as "OOL/Company") for the period from October 01, 2009 to April 01, 2010 (hereinafter referred to as "Investigation period/IP"). Based on the observation of SEBI Investigation it was alleged that Omkar Overseas Ltd (hereinafter referred to as "Noticee") had failed to disclose change in shareholding of more than 2% furnished by promoters Mr. Ronit Satyanarayan Agarwal and Mr. Prashant Shankarlal Agarwal to BSE and thus violated Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the PIT Regulations)
2. In this order wherever PIT Regulations is mentioned it should be referred to as PIT 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

Appointment of Adjudicating Officer

3. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated May 08, 2015 under Section 19 of the SEBI Act, 1992 read Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as AO Rules) to inquire and adjudge under Section 15A (b) of SEBI Act on Noticee for the alleged provisions of law. Subsequently, pursuant to the transfer of the case, the undersigned have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017 for the aforesaid Noticee.

Show Cause Notice, Reply and Personal Hearing:

4. Show Cause Notice dated July 03, 2015 (hereinafter referred to as 'SCN') was served on Noticee in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against it and penalty under Section 15 A(b) of SEBI Act, 1992 should be not imposed on Noticee for the alleged provisions of law.

5. Allegation in the SCN broadly are as follows:

The shareholding of Ronit Satyanarayan Agarwal and Prashant Shankarlal Agarwal had reduced by more than 2% for which they made the disclosure to OOL on November 20, 2009 and January 30, 2010 respectively (within the prescribed time), However, it was alleged that Noticee delayed in making the said disclosure to the stock exchange and disclosed the above disclosures to BSE on January 15, 2013 and thus violated the provisions of Regulation 13(6) of the PIT Regulations.

6. Inspection of Documents:

Noticee had sought inspection of documents which was duly provided on November 05, 2015 and on July 08, 2016.

7. Filing of Settlement Application:

The Noticee had communicated that it has filed settlement application before SEBI. I note that the settlement application was rejected by SEBI as request of Noticee for the condonation of delay was not acceded by SEBI.

8. No reply was received from the Noticee.

9. 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, Hearing Notice was issued to Noticee on January 19, 2018 granting an opportunity of personal hearing before the undersigned on February 09, 2018 along with the reminder to reply to SCN. On behalf of the Noticee, the Authorized Representative (hereinafter referred to as "AR") appeared before me seeking an adjournment of Personal Hearing.
- 9.2. Further personal hearing opportunity was extended to the Noticee on February 26, 2018 and March 20, 2018 and on both of these dates, Noticee did not appear and had sought adjournment for medical reasons and for Inspection of documents respectively.
- 9.3. An e-mail was sent to Noticee stating inspection of documents was already conducted by them on November 06, 2015 and further documents sought by them was provided on July 08, 2016.
- 9.4. Noticee through its AR finally appeared before me on April 17, 2018 and made oral submission and informed that written submission would be made soon.
- 9.5. Noticee vide letter dated April 26, 2018 broadly made the following submission:
 - 9.5.1. *the necessary disclosures were made by OOL under the quarterly shareholding pattern which is sent to the stock exchanges within 21 days of the end of the quarter although the disclosure was not in the format as specified in SEBI (PIT) Regulations, 1992. In view of the same, it is submitted that the disclosure were made albeit a little late and OOL denies that there has been any non-disclosure.*
 - 9.5.2. *It is submitted that the concerned stock exchange accepted the disclosures and never took any cognizance within the limitation period and hence have ratified the action of the Noticee.*

10. ISSUES FOR CONSIDERATION/FINDINGS:

10.1. I have carefully perused the reply and submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are:

Issue I: Whether Noticee had violated Regulation 13(6) of PIT Regulations?

Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act, 1992 on Noticee?

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

10.2. Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations:

Disclosure by company to stock exchanges.

13(6) Every listed company, within two working days] of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

Relevant provision of 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;

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:

11.1. I note from the records available before me that on November 18, 2009 and January 28, 2010, the shareholding of Ronit Satyanarayan Agarwal and Prashant Shankarlal Agarwal reduced by more than 2% respectively, the same was disclosed by the Ronit Satyanarayan and Prashant Shankarlal Agarwal within the stipulated time as per Regulation 13(3) read with Regulation 13(5) of PIT Regulations to OOL. However, I note

that the disclosure by OOL in this regard under Regulation 13(6) of PIT 1992 was delayed as it was disclosed to BSE by Noticee on January 15, 2013. Hence I conclude that there was a delay in informing the stock exchange, thereby OOL has violated the timeline prescribed under Regulation 13(6) of PIT Regulation.

- 11.2. The submission made before me by the Noticee that the delay was unintentional and inadvertent but it had disclosed under the quarterly shareholding pattern which is sent to the stock exchanges within 21 days at the end of the quarter but not in the format prescribed under the Regulation is untenable. Since Regulation 13(6) states that *every listed company, within two working days of receipt of disclosures shall disclose to all the stock Exchanges on which company is listed in the respective formats specified in Schedule III*. I note that though disclosure of change in shareholding of Ronit Satyanarayan Agarwal and Prashant Shankarlal Agarwal were disclosed by it in the Quarterly Shareholding pattern, however, I note that such disclosure itself was delayed as requirement of disclosing change in shareholding is 2 days. However, in the instant case the disclosure made by the Noticee in the shareholding pattern was much later.
- 11.3. In this regard I would like to refer **Ashok Jain v/ SEBI (Appeal No. 79 of 2014 dated June 09, 2014)** wherein Hon'ble SAT has observed that "*Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations*". Timeliness is the essence of disclosure under Regulation and delayed disclosure, particularly where the delay is huge as in the present case would not serve the purpose for which the obligation is cast in the Regulation.
- 11.4. In view of the above, I hold that OOL was under obligation to make the required disclosures under Regulation 13(6) of PIT Regulation within the prescribed time limit, which OOL have failed to do. Therefore, the allegation of violation of provision of Regulation 13(6) of PIT Regulation by OOL to provide disclosures with regard change in the shareholding of Ronit Satyanarayan Agarwal and Prashant Shankarlal Agarwal to BSE stands established.

Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act, 1992 on Noticee?

Relevant provisions of the SEBI Act, 1992:

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,—*

(a)

(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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

12. The Hon'ble Supreme Court of India in the matter of *SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia held:*

"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."

13. Therefore, considering the facts of the case and law cited, I am of the view that a monetary penalty in terms of Section 15A(b) on Noticee needs to be imposed.

Issue III: If so, what should be the quantum of monetary penalty?

14. While determining the quantum of penalty under Section 15A(b), it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.

15. With regard to the above factors, it may be noted that the Investigation report has not quantified the profit/loss for the violations committed by the Noticee. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. The Noticee, by its failure to make true and correct disclosures, have severely impaired the integrity of the disclosure system put in place by the regulator and has deprived the investors of the significant information at the relevant time. However I note that disclosure was made by the Noticee in the quarterly shareholding report.

ORDER

16. 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, in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992, I hereby impose penalty on Noticee. Details are as under:

Name Of The Noticee	Violations Provisions	Penalty Provision under Section SEBI Act, 1992	Amount of Penalty (Rs.)
Omkar Overseas Ltd.	Regulation 13(6) of PIT Regulations, 1992	Under Section 15A(b) of SEBI Act, 1992	1,00,000 (Rs One Lakh only)

17. 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 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
RT GS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

18. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (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	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (Penalty)	
Bank Name and Account Number from which payment is remitted	
UTR No	

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

Date: August 13, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER