

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. DVS/ AO/ 01 of 2010]**

**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**

**M/s S G N TELECOMS LIMITED  
(PAN. AAFCS2045D)**

**FACTS OF THE CASE IN BRIEF**

1. SEBI had conducted an investigation into the dealings in the scrip of S G N Telecoms Limited (hereinafter referred to as "the Noticee") during the period August 24, 2004 to September 16, 2005. The investigation, inter alia, revealed that some of the Promoters-Directors of the Noticee viz., Mr. Devender Singh, Mr. Surinder Singh, Mrs. Parminder Kaur, Mrs. Paramjit Kaur (hereinafter referred as "the Promoters") had sold 1,86,20,000 shares of SGN Telecom Ltd. held by them during July & August 2005. These transactions of the promoters were not reported by the Noticee to the Bombay Stock Exchange Ltd (BSE) Ludhiana stock Exchange (LSE) and Delhi Stock Exchange (DSE), where the shares are listed, within five days of receipt of the information, from the said promoters which is in violation of regulation 13 (6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") and thereby liable for penalty under Section 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act").

**APPOINTMENT OF ADJUDICATING OFFICER**

2. The undersigned has been appointed as Adjudicating Officer by SEBI vide order dated August 25, 2009 under Section 15-I of SEBI

Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the alleged violations of provisions of the PIT Regulations.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. E&AO/DVS/179633/2009 dated October 12, 2009 (hereinafter referred to as "SCN") along with copies of all the documents relied upon in the SCN was issued to the Noticee under rule 4(1) of the Rules, calling upon the Noticee to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15A (b) of SEBI Act for the alleged violations.
4. The Noticee replied vide letter dated November 20, 2009 thereby denied the allegations leveled against it. The Noticee has also enclosed office copies of disclosures stated to have been made to BSE in compliance with the provisions of PIT Regulations and contended that the disclosures were made to LSE also. As the cause shown by the Noticee were not acceptable, it was concluded that an Inquiry is required to be held in the matter under the Rules. Accordingly, the Noticee was granted an opportunity of personal hearing on December 09, 2009 vide notice dated December 01, 2009. Upon the request of the Noticee, the hearing was adjourned to February 08, 2010. Mr. Surinder Singh, Chairman of the Noticee appeared on behalf of the Noticee. During the hearing, Mr. Surinder Singh reiterated the submissions made by the Noticee in its reply dated November 20, 2009 and refuted the charges leveled against the Noticee. The Noticee also sought further time to send additional detail/documents if any. The Noticee vide letter dated February 16, 2010 forwarded copies of the loan transaction documents of the promoters with 3<sup>rd</sup> parties.

## CONSIDERATION OF ISSUES AND FINDINGS

5. Based on the allegations levelled in the Show Cause Notice, reply of the Noticee and the documents relied, the following are the issues for my consideration in the present matter:
- Whether the Promoters of the Noticee sold any part of their holdings which requires disclosure in compliance with the provisions of PIT Regulations.
  - Whether the Noticee had disclosed the alleged transactions to the Stock Exchanges as required under regulation 13(6) of the PIT Regulations.
  - Whether the disclosures claimed to have been made by the Noticee under certificate of postings to BSE and under acknowledgements of LSE discharge the Noticee from the obligations of Regulation 13(6) of the PIT Regulations.
  - Whether the alleged non-disclosures by the Noticee attracts monetary penalty under Section 15A (b) of SEBI Act.
  - If so, what should be the monetary penalty.
6. It has been alleged in the SCN that the promoters of the Noticee had entered into the following Sale Transactions.

Name	Date of transaction	No. of Shares	
		Market Transactions	Off-market Transactions
Mr. Devender Singh	20.07.2005	-	8,00,000
	30.08.2005	61,00,000	-
Mr. Surinder Singh	20.07.2005		11,00,000
	24 - 29.08.2005	75,00,000	-
Ms. Parminder Kaur	20.07.2005	-	8,40,000
	24 .08.2005	17,40,000	-
Ms. Paramjit Kaur	20.07.2005	-	5,40,000
<b>Total</b>		<b>1,53,40,000</b>	<b>32,80,000</b>

7. It is admitted fact that the shares of SGN were listed on BSE, LSE and DSE. As per Regulation 13 (4) of PIT Regulations, any person who is director or officer of the listed company shall disclose to the company of

any change in the share holdings which exceeds Rs.5 lakh in value or 25000 shares or 1% of the total share holding or voting rights, whichever is lower. Therefore, the Promoters of the Noticee were required to disclose the aforesaid transactions to the Noticee. The Noticee had also admitted that the said Promoters have disclosed the aforesaid transactions promptly to the Noticee under Regulation 13(4) of PIT Regulations.

8. Further, regulation 13(6) of PIT Regulations reads as under:

*“13 (6):- Every listed company, within five 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 respective formats specified in Schedule III”.*

9. There is no dispute that the aforesaid transactions reported by the Promoters of the Noticee under regulation 13(4) were required to be reported to the Stock Exchanges by the Noticee under Regulation 13(6) of PIT Regulations. It has been admitted that the Noticee did not make any disclosure to DSE for the reason that the Noticee had applied for delisting from DSE which is pending. The contention of the Noticee is that it had already made the disclosures to BSE and LSE as required under the PIT Regulations.

10. In support of its submission that the disclosures were duly made to the Stock Exchanges, during investigation, the Noticee had produced and relied upon the following copies of the disclosures in Form D, Schedule III of PIT Regulations along with covering/forwarding letters addressed to the stock exchanges.

<b>Name</b>	<b>Date of sale</b>	<b>No. of shares</b>	<b>Letter No. &amp; Date of intimation by SGN to BSE</b>	<b>Letter No. &amp; Date of intimation by SGN to LSE</b>
<b>Mr. Deveinder Singh</b>	20.07.2005	892000	NR*	217/ 22.07.2005
	30.08.2005	6100000	211/ 31.08.2005	232/ 31.08.2005

<b>Mr. Surender Singh</b>	20.07.2005	1100000	NR*	217/ 22.07.2005
	24- 26.08.2005	7411208	209/ 29.08.2005	27.08.2005
	29.08.2005	88792	211/ 31.08.2005	232/ 31.08.2005
<b>Mrs. Parminder Kaur</b>	20.07.2005	840000	NR*	217/ 22.07.2005
	29.07.2005	631000	199/ 02.08.2005	30.07.2005
	22- 24.08.2005	4119000	199/ 02.08.2005	232/ 31.08.2005
<b>Mrs. Paramjit Kaur</b>	20.07.2005	540000	NR*	217/ 22.07.2005
	8- 11.08.2005	1464116	200/ 12.08.2005	12.08.2005
	12.08.2005	245884	200/ 12.08.2005	12.08.2005
	16- 19.08.2005	2299700	204/ 20.08.2005	22.08.2005
	19- 22.08.2005	2190300	205/ 22.08.2005	22.08.2005
	<b>Total</b>	2,79,22,000		

\* NR – Not Reported

Even though the version of Investigation is that a total of 1,86,20,000 shares were sold by the promoters, on perusal of the copies of disclosures stated to have been made to BSE and LSE, the Noticee itself admits that 2,79,22,000 shares were sold by the promoters during the period. From the above table, it could be seen that admittedly disclosures in respect of the transactions pertaining to 8,92,000 shares, 1100000 shares, 540000 shares and 84000 shares were not made to BSE as no document was produced by the Noticee. On this count itself, the Noticee could be made liable for violation of Regulation (6) of PIT Regulations.

11. It is noted that the documents produced by the Noticee along with its reply dated 20.11.2009 were same that of the documents relied on by it during the course of investigation.

12. In response to the request of SEBI, BSE vide its letter dated September 11, 2008 informed the investigating authority of SEBI that no disclosure in terms of Regulation 13 (6) of the PIT Regulations was submitted by the Noticee during the year 2005. Similarly, LSE also vide its letter dated August 25, 2008 informed SEBI that it did not receive any disclosure statement from the Noticee under Regulation 13 (6) of PIT Regulations. LSE had also informed that the receipt-stamps of the copies of the disclosures claimed to have been submitted to LSE appear to be forged. DSE vide its letter dated August 02, 2006 has informed SEBI that there had been no correspondences from the company since August 07, 2002. Copies of the letters received from all three exchanges were made available to the Noticee along with SCN.
13. On the aforesaid contention of BSE, the Noticee during the hearing stated that this was not the one instance where BSE denied receipt of the communication from the Noticee as in the past BSE sought certain information which were already furnished to them by the Noticee. To substantiate the contention, the Noticee has also produced copies of letters dated 17.11.2006 & 22.12.2009 of BSE and replies by Noticee dated 24.11.2006 & 05.01.2010 to BSE wherein BSE stated to have been called for the documents which were already furnished by the Noticee. I have perused the same. The said documents do not pertain to the matter under issue. Further, the said correspondences between BSE and the Noticee may not help the Noticee to contend that the reporting requirements under Regulation 13(6) of PIT Regulations were complied with the Noticee in the present case.
14. As regards the disclosures stated to have been made to BSE, the Noticee has contended that the said disclosures were sent by Certificate of Posting and furnished the office copies (in original) of forwarding covering letters addressed to BSE (listed in col.4 of Table at Para 10) along with Form 'D' and Certificate of Posting receipts.
15. Perusal of the documents furnished by the Noticee in respect of the disclosures stated to have been made to BSE under certificate of posting

raises strong doubts over the bonafides of the said documents for the following reasons:

- a. BSE vide letter dated September 11, 2008 stated that it did not receive the disclosures as claimed by the noticee in respect of the transactions done by the promoters during July-August 2005.
- b. The Noticee in its letter dated 23.08.2008 to SEBI informed that the mode of sending documents/information to BSE was through Courier/Fax/UPC. However, from the above documents it is clear that none of the aforesaid six forwarding/covering letters were sent by courier/fax but claimed to have been sent Under Certificate of Posting. Some of the postal slips attached with each of the covering/forwarding letters showing certificate of posting do not contain correct address of BSE than what is mentioned on the letters. It is also not possible to conclude that the said slips of UPC pertains to the disclosure statements forwarded by the Noticee to BSE, particularly, when BSE denied receipt of any of the aforesaid six letters attaching Form 'D' claimed to have been sent by the Noticee.
- c. It is a settled position of law that there is no conclusive presumption regarding receipt of a letter sent under certificate of posting.
- d. The covering/forwarding letters dated August 02, 2005, August 12, 2005, August 20, 2005, August 22, 2005, August 29, 2005 and August 31, 2005 addressed to BSE are bearing serial numbers 199, 200, 204, 205, 209 and 211 respectively. Whereas, the covering letter dated July 22, 2005 claimed to have sent to LSE is bearing serial number 217. It is pertinent to note that the letter dated July 22, 2005 to LSE was first in point of time than the letters dated August, 2005 addressed to BSE. However, it is observed that the letter addressed to the LSE bears a later serial number than the one appearing on the letters addressed to BSE, even

though the former is claimed to have been sent on earlier date. During the hearing, when the Noticee was questioned of this anomaly, it had no explanation for the same except to state that it could be because of not properly maintaining the outward numbers by the Notice or may be a typographical error. Further, I also note that there were over writings in respect of the serial numbers mentioned on all the covering/forwarding letters to BSE.

- e. In the enclosure to the letter dated August 23, 2008 of the Noticee to SEBI, it is noted that most of the letter/communications to BSE were made by courier during the relevant period. However, all the six covering/ forwarding letters claimed to have reported to BSE were made Under Certificate of Posting.

16. Even assuming for a moment that the Noticee has sent the disclosures in Form 'D' along with covering/forwarding letters under certificate of posting to BSE, unless and until the addressee of the such letters viz., BSE confirms the receipt of the said disclosures, the requirements under Regulation 13(6) of PIT Regulations cannot be treated as complied with for the following reasons:

- a. Regulation 13(6) requires that every listed company shall disclose the information received under regulation 13(4) in the prescribed format. Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting, the letter as claimed by the Noticee would have in the normal course to some extent met with such a requirement. But, regulation 13(6) requires the listed company (Noticee) to disclose the information received under regulation 13(4) to the stock exchanges. Therefore, the crucial question is whether the requisite disclosure has been made by the Noticee. For the purpose it is necessary to know what is meant by "disclosure" in the sense in which it is used in the PIT Regulations. Disclosure is required to be made to the Stock Exchanges. "Disclose" according to Webster's Encyclopaedic



Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus, the requirement is that the information should reach the person to whom it is meant. In the general sense 'under certificate of posting' is an evidence of posting the letter. The obligation does not end by simply posting the information in a letter box. The fact that the information should reach the stock exchanges is also evident from the provisions of Regulation 13(6) which casts an obligation on the Noticee to disclose to all the stock exchanges.

- b. The Hon'ble Securities Appellate Tribunal in Mega Resources Ltd Vs SEBI (Appeal No.49 of 2001 dated March 19, 2002 held as under:

*“In view of the above I am not inclined to view that by posting a letter under certificate of posting, stating the shareholding by itself is sufficient compliance of regulation 7(1). In my view the Appellant has failed to comply with the requirement of regulation 7(1), for the reason that it has failed to make the disclosure of the requisite information”.*

- c. The Hon'ble Supreme Court in M.S.Madhusoodhanan v. Kerala Kaumudi (P) Ltd.,(2004) 9 SCC 204 observed as under

*“Judicial notice has been taken that certificates of posting are notoriously 'easily' available”.*

- d. The Hon'ble Supreme Court in Shiv Kumar v. State of Haryana(1994) 4 SCC at 445 (para 6) also observed as under

*“we have not felt safe to decide the controversy at hand on the basis of the certificates (Certificate of Postings) produced before us, as it is not difficult to get such postal seals at any point of time.”*

17. On the observations of LSE that the “receipt stamps” on the documents produced by the Noticee to SEBI appears to be forged, the Notice neither

in its reply nor during the hearing denied or refuted the same. Though the alleged/suspected actions of the Noticee, such as, using forged stamps of LSE on the documents and producing before the Regulator implies the criminal mis-conduct of the Noticee which needs to be condemned, however, the present proceeding is only for the limited purpose of adjudication of the violations under Regulation 13(6) of PIT Regulations, I am not dealing with the same.

18. As regards the proof of submissions of the reportings with LSE, the Noticee failed to produce office copies (in original) of forwarding/covering letters and reporting Form 'D' stated to have been sent to LSE. However, during investigation xerox copies of covering/forwarding letters and Form 'D' claimed to have been sent to LSE were furnished by the Noticee. But, during the hearing the Noticee contended that the original office copies of the said letters to LSE were lost and a copy of report of police dated 26.09.2008 in this regard was produced by the Noticee. I observe that the Noticee for the first time during the hearing before me claimed that the file pertaining to the disclosures made to LSE was lost in September 2008. The Noticee had also in any of the earlier correspondences with SEBI or to me not brought out the same. Further, it cannot be ruled out that the Noticee may be intentionally avoiding production of office copies (in original), of the letters stated to have been sent to LSE as the same contain alleged forged seal of LSE. Therefore, in the absence of any documents, it is not possible to conclude that the Noticee had disclosed the transactions to LSE.
19. As regards disclosures to DSE, the contention of the Noticee that no reporting has been made for the reason that they applied for delisting will not hold good for the reason that as long as the securities are listed whether it is traded on DSE or not, the disclosures are required to be made under Regulation 13(6) of PIT Regulations.
20. I observe that the copies of loan transaction documents of the promoters sent vide letter dated February 16, 2010 do not in any way help the Noticee to show that the disclosures were made to the stock exchanges.

21. In view of the foregoing reasons, I have no hesitation to conclude that the Noticee failed to make disclosures as required under Regulation 13(6) of PIT Regulations for which penalty has been contemplated under Section 15A (b) of SEBI Act, which reads as under:-

**“15A. Penalty for failure to furnish information, return, etc. -** 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 of one lakh rupees for each day during which such failure continues or one crore rupees, which ever is less.”

22. I am therefore of considered view that it is a fit case to impose monetary penalty under section 15A (b) of the SEBI Act against the Noticee for its failure to make disclosure to the stock exchanges as required under the provisions of Regulation 13(6) of PIT Regulations.

23. While determining the quantum of monetary penalty under Section 15A (b), I have considered 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 the 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.*

24. I find that non compliance of prescribed disclosure requirements misleads the market participants to take an informed decision of their investment which further shakes their confidence in the market in respect of transparency and fair play. In such types of cases, it is difficult to quantify the actual gains made by the Noticee or loss caused to any of the investors. Acquisition or disposal of the holding of substantial stake in a

listed company by the Promoters has bearing on investment and disinvestment decision of the general investors.

**ORDER**

25. I, therefore, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 and rule 5 of Adjudication Rules, impose a penalty of Rs 2,00,000/- (Rupees Two lakhs only) on the Noticee having its address at E-58, 59, Phase VIII Eltop, SAS Nagar, Mohali, Punjab - 160055 in terms of the provisions of Section 15A(b) of the SEBI Act, 1992 for failure in complying with the provisions of Regulation 13(6) of PIT Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

26. The penalty should be payable 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, Investigation Department–IV, Securities and Exchange Board of India, Plot No.C4-A, G Block, Bandra Kurla Complex, Bandra (E), Mumbai–400 051.

27. In terms of the Provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee and SEBI.

**Place:Mumbai**  
**Date: 29<sup>th</sup> March 2010**

**D.V.Sekhar**  
**Adjudicating Officer**