

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/SM/148/2018]**

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

**In respect of:
Comfort Intech Limited (PAN: AAACC5567H)**

In the matter of M/s. Onesource Techmedia Limited

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip M/s Onesource Techmedia Limited (hereinafter referred to as "Company") had observed that Comfort Intech Limited (hereinafter referred to as "Noticee") had violated Regulation 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 (hereinafter referred to as the "SAST Regulations") and Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "PIT 1992") read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "PIT 2015")
2. SEBI's Surveillance Department has observed that Noticee was holding 400,000 shares of the company (constituting 6.16% of the paid up share capital) as on May 31, 2013 and the shareholding of the Noticee decreased to 180,000 shares (constituting 2.77% of the paid up capital of the company) on June 30, 2013. The change in shareholding of the Noticee by more than 2% triggered disclosure requirement under Regulation 29(2) read with 29(3) of SAST 2011 and Regulations 13(3) read with 13(5) of PIT 1992 read with Regulation 12(2) of PIT 2015.
3. Company vide email dated December 07, 2015 to SEBI, has confirmed that it had not received any disclosure for the aforesaid change in shares from the Noticee. Further, BSE vide email dated December 24, 2017 to SEBI, has informed that no disclosures were received from noticee during the month of June, 2013.
4. Hence it was alleged that Noticee had violated Regulation 29(2) read with 29(3) of SAST 2011 and Regulation 13(3) read with 13(5) of the PIT 1992 read with Regulation 12(2) of PIT 2015

Appointment of Adjudicating Officer

5. Vide order dated August 14, 2017, Ms. Anita Kenkare was appointed as Adjudicating Officer Rules to inquire into and adjudge under Section 15 I of SEBI Act and Rule 3 of the SEBI (Procedure of 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 SEBI Act for the alleged violation of Regulation 29(2) read with 29(3) of SAST 2011 and Regulation 13(3) read with 13(5) of the PIT 1992 read with Regulation 12(2) of PIT 2015 by the Noticee.
6. Subsequent to the transfer of the case, the undersigned was appointed as Adjudicating Officer vide order dated October 04, 2017.

Show Cause Notice, Reply and Personal Hearing

7. Based on the findings, Show Cause Notice dated November 21, 2017 ("SCN") was issued to the Noticee. SCN was duly delivered at the address of the Noticee.
8. Noticee vide letter dated December 07, 2017 has inter alia made the following submissions:

8.1 We submit and say that we subscribed in the IPO of Onesource and were allotted 4,00,000 shares in and around May 2013. We submit further that we are not a regular investor in securities market, we are not Promoters in this Company and were of the opinion that since the company is already doing adequate disclosures otherwise, we need not repeat the disclosures.

8.2 We submit and say that Regulation 29 (3) casts an obligation on the disclosures specified in sub regulation (2) to be made on receipt of intimation of allotment of shares or acquisition of shares or voting rights. We would like to bring to your kind attention that the allegation in the SCN is with regard to sale of shares and not allotment/ acquisition of shares, hence the Noticee was not liable to make the disclosures.

8.3 In this context, we would also like to bring to your kind attention judgement delivered by Hon'ble SAT in the matter of Mr Ravi Mohan and Ors vs SEBI (Appeal no 97/2014) decided on 16.12.2015

8.4 It is further submitted that the provisions of Regulation 29(2) of SEBI SAST Regulation and Regulation 13 (3) of SEBI PIT Regulations are not substantially different, since violation of first automatically triggers violation of second and hence a lenient view may be taken as regards imposition of penalty and penalty may not be imposed. The Regulation 29(1) of Takeover Regulations and Regulation 13 (1) of PIT Regulations are not stand alone regulations and one is corollary of other.

8.5 In this regard, we would like to bring to your kind notice the judgement delivered by Hon'ble Securities Appellate Tribunal (SAT) on 4.9.2013 in the case of 'Vitro Commodities Private Limited vs SEBI. The similar views may also be taken of Regulation 29(2) of SAST Regulations, and 13(3) of PIT Regulations as both the regulations puts an obligation on the shareholders already holding shares aggregating more than 5% of the share of the company to make disclosures upon changes in their shareholding aggregating to 2% or more.

- 8.6 The judgements passed by Hon'ble Courts/ Hon'ble SAT for levying penalty are as follows:*

8.6.1 Case of Reliance Industries Ltd. vs SEBI (SAT Appeal No. 39/2002)–

The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."

8.6.2 Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579

It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that :-Para 61:"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established".

8.6.3 *Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)*

"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

8.7 *We submit and say that there has been no malafide intention in not making the disclosures under the specific regulations. We did not have any intention to hide and conceal the information nor did we hide any information as the information would be in public domain through other requirements prescribed by SEBI. We submit further that we did not have any intention to hide nor did we hide any information from public at large, hence, a lenient view may be taken.*

Hearing:

9. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of Rules, the Noticee was granted an opportunity of personal hearing before the undersigned on January 16, 2018. Hearing notice was delivered to the Noticee.
10. The personal hearing was attended by Authorised Representatives (hereinafter referred to as "AR"). During the time of personal hearing, AR reiterated the written submission made vide letter dated December 07, 2017.

Consideration of Issues, Evidence and Findings

11. I have carefully perused the charge levelled against the Noticee in the SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination in respect of
 - I. Whether Noticee has violated Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT, 1992 read with Regulation 12(2) of PIT Regulations
 - II. Does the violations, if any, on the part of Noticee attract monetary penalty under Section 15A (b) of the Act?
 - III. If so, what would be the quantum of monetary penalty that can be imposed on noticee taking into consideration the factors mentioned in Section 15J of the Act?
12. Before proceeding further, I would like to refer to the relevant provisions of the SAST and PIT Regulations which read as under:

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29.(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, —

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons- Initial Disclosure.

Continual disclosure.

13(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 disclosures made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two workings 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.

PIT 2015

Repeal and Savings.

12. (1) -----

(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:

Whether Noticee has violated Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT, 1992 read with Regulation 12(2) of PIT 2015

13. I have carefully perused the allegations levelled in the SCN and the reply submitted by the Noticee. I find that the Noticee has not made required disclosures under Regulation 29(2) read with 29(3) of the SAST Regulations and Regulation 13(3) read with 13(5) of the PIT 1992 read with Regulation 12 of PIT 2015 and the same has been accepted by the Noticee in its reply and during hearing as well.

14. I note that the Noticee have relied upon the decision of the Hon'ble Securities Appellate Tribunal (SAT) in the case of Mr. Ravi Mohan & Ors Vs. SEBI (Appeal No. 97 of 2014 - dated December 16, 2015) wherein it was held as under:

“Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since, regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained.”

15. I note that Regulation 29(2) of the SAST Regulations casts an obligation on any acquirer who, together with persons acting in concert with him, holds shares or voting rights entitling them (together) to 5% or more of the shares or voting rights in a target company, to make disclosure of every acquisition or disposal of shares of such target company representing 2% or more of the shares or voting rights in such target company. Thus, I note that the said Regulation specifically mentions about acquisition or disposal of shares. However, Regulation 29(3) of the SAST Regulations, which prescribes the time line within which these disclosures are to be made to the stock exchanges and the target company itself, does not specifically state about the disposal of shares. As Regulation 29(2) of the SAST Regulations specifically casts an obligation for disclosure upon disposal of shares also, Regulation 29(3) has to be interpreted in accordance with the objective behind the said disclosure requirement. Therefore, I do not find any merit in the submissions of the Noticee that the said Regulations of the SAST Regulations do not cast any obligation on it to make disclosures for the disposal (sale) of shares.

16. At this juncture, I would like to rely the Order dated September 04, 2013 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Private Limited Vs. SEBI wherein the Hon'ble SAT had observed that:

“It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no

justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other".

17. In the light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(3) of the PIT 1992 and Regulation 29(2) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticee in the matter.

18. Further, I do not find any merit in the submissions of the Noticee that the non-disclosures were unintentional and not wilful. Also, I do not find any merit in the submissions of the Noticee that they have not made any illegal or undue profits. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order dated January 27, 2014 has observed that:

"Argument that no investor has suffered on account of nondisclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure."

19. Further, I also note that in Appeal No. 78 of 2014 in the case of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that:

"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".

20. Noticee has contended that for imposing monetary penalty mens rea has to be established. Here I would like to rely on the SEBI v. Cabot International Capital Corporation matter wherein it was held by the Bombay High Court that the scheme of penalty prescribed under the SEBI Act and the SEBI Regulations is penalty for failure of statutory obligation or breach of civil obligation. There is no element of any criminal offence as contemplated under criminal proceedings and hence mens rea is not an essential element for imposing penalty under the SEBI Act and SEBI Regulations. This view was subsequently upheld by the Supreme Court as well.

21. In view of the above, I find Noticee guilty of non-disclosure as required under Regulation 29(2) read with 29(3) of the SAST Regulations and Regulation 13(3) read with 13(5) of the PIT 1992 read with Regulation 12 of PIT 2015.

Does the violations, if any, on the part of Noticee attract monetary penalty under Section 15A (b) of the Act?

22. Since it is established that Noticee has violated the provisions mentioned supra and hence it is liable for penalty under Section 15A (b) of the Act.

The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

Section 15A(b) of the SEBI Act, 1992 reads 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 there under,-

b) to file any return or furnish any information, books or other documents within the time specified there for in the regulations, fails to file return or furnish the same within the time specified there for 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.

If so, what would be the quantum of monetary penalty that can be imposed on Noticee taking into consideration the factors mentioned in Section 15J of the Act?

23. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 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.

Explanation: For 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.

24. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the default of the Noticee is not repetitive in nature. I note that the Regulations seek to achieve fair treatment by, *inter alia*, mandating disclosure of timely and adequate information to enable shareholders to make an informed decision. Therefore, correct and timely disclosures play an essential part of the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed decision. I, therefore, conclude that the Noticee by failing to make the necessary disclosures as required

under the SAST Regulations and PIT 1992 read with PIT 2015 is liable for monetary penalty under the SEBI Act, 1992.

ORDER

25. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalties on the Noticee:

Name of the Noticee	Provisions of Law Violated	Penalty Provision	Penalty Amount (in Rs.)
Comfort Intech Limited	Regulation 29(2) read with 29(3) of the SAST 2011	Section 15A(b) of the SEBI Act	2,00,000 (Two lakhs only)
	Regulation 13(3) read with 13(5) of PIT 1992 read with Regulation 12(2) of PIT 2015		

26. Noticee shall remit/pay the said amount of penalty shall be paid within 45 days of receipt of this order either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment facility into Bank account the details of which are given below:

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

27. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " General Manager (Enforcement Department - DRA- I), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.

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)	

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

Date: January 17, 2018

Place: Mumbai

SAHIL MALIK

ADJUDICATING OFFICER