

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/PU/20/2013]

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.

Against

CG – Vak Software & Exports Ltd.

[PAN – AAACC8767M]

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received an examination report from the Bombay Stock Exchange (BSE), in the scrip of C G Vak Softwares & Exports Ltd. (hereinafter referred to as 'the Noticee') for the period from January 03, 2011 to February 04, 2011. The examination was based on the complaint received from one, Mr. K. Ramanathan. Upon examination of the BSE report, it was, inter alia, observed that the Noticee had failed to make disclosures to the Stock Exchanges, within the stipulated time, as required under Regulation 13 (6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the 'PIT Regulations').

Appointment of Adjudicating Officer

2. I have been appointed as the Adjudicating Officer (AO), vide order dated August 26, 2013 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of the SEBI (Procedure for Holding

Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “said Rules”) to inquire into and adjudge under 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticee.

Show cause Notice, Reply and Personal Hearing

3. A show cause notice dated September 20, 2013 (hereinafter referred to as “SCN”) was issued to the Noticee under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under 15A (b) of the SEBI Act for the alleged violation of the provisions of Regulation 13 (6) of the PIT Regulations.
4. The Noticee submitted a reply to the SCN vide letter dated October 28, 2013. In order to conduct inquiry, an opportunity of hearing was granted to the Noticee on November 27, 2013. Shri G. Suresh, Managing Director along with an authorized representative appeared on behalf of the Noticee on the said date and reiterated the written submission. They also submitted a copy of Visa of the Managing Director and copies of the PAN cards.

Consideration of Issues, Evidence and Findings

5. I have carefully perused the charges made against the Noticee as mentioned in the SCN, written and oral submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

- a. **Whether the Noticee has violated Regulation 13 (6) of the PIT Regulations?**
- b. **Whether the Noticee is liable for monetary penalty**

prescribed under Section 15 A (b) of the SEBI Act for the aforesaid violation?

c. If so, what should be the quantum of monetary penalty?

6. Before proceeding, I would like to refer to the relevant provisions of the PIT Regulations which read as under:

PIT Regulations

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

.....

“(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), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.”

7. It has been observed that the shares of CG-Vak are listed on both the BSE and the Coimbatore Stock Exchange (CSE). It has been alleged in the SCN that Shri C. Ganapathy, the Chairman of the Noticee Company, during the relevant period acquired 7.99% shares of CG-Vak from August 07, 2009 to April 30, 2010. Further, Shri G. Suresh, the Managing Director in addition to being a promoter in the Noticee company, during the relevant period, had acquired 10.92%, 12.7%, 14.26% and 15.39% shares of CG-Vak on October 26, 2009, from December 24, 2009 to January 15, 2010, from March 22, 2010 to May 17, 2010 and from July 27, 2010 to September 22, 2010 respectively. Allegedly, the Noticee had failed to make the disclosures to BSE, which fell due on May 06, 2010 in the case Shri C. Ganapathy and October 28, 2009, January 19, 2010, May 21, 2010 and September 24, 2010 as in the

case of Shri G. Suresh, to the Stock Exchange as required under Regulation 13 (6) of the PIT Regulations.

8. I find that the Noticee in its reply dated October 28, 2013 submitted that as regards Mr. C. Ganapathy, he was in possession of 379,300 shares (7.59%) prior to the acquisition of 25,050 shares of CG-Vak between the period August 07, 2009 to April 30, 2010 and post-acquisition his shareholding in the company became 404,350 shares (7.99%). It clarified that Mr. C. Ganapathy had acquired only 0.49% shares and not 7.99% shares as alleged in the SCN. It further submitted that the delay of one day in making disclosure to BSE had occurred due the intermittent problem it faced in getting connectivity through landline. It submits as regards Mr. G. Suresh, the Managing Director of CG – Vak, that he had only acquired 0.56%, 0.61%, 0.53% and 0.55% on October 26, 2009, from December 24, 2009 to January 15, 2010, from March 22, 2010 to May 17, 2010 and from July 27, 2010 to September 22, 2010, respectively as opposed to the 10.92%, 12.7%, 14.26% and 15.39% as alleged in the SCN. It further submitted that the delay of one day and two days in making disclosure to BSE had also occurred due the intermittent problem it faced in getting connectivity through landline. Furthermore, the Noticee submits that, as regards the 14 days of delay in making disclosures to BSE for the acquisition of 26, 903 shares by Mr. G. Suresh during the period from March 22, 2010 to May 17, 2010, the same was caused due to unavoidable circumstances and it was not intentional or willful. Additionally, it submitted as regards the delay of 31 days in making disclosures to BSE during the period from July 27, 2010 to September 22, 2010, the same was caused as Mr. G. Suresh went abroad on business purposes and

therefore the situation went beyond the Noticee's control. The Noticee requests a lenient and a sympathetic view to be taken keeping in mind that it has otherwise been making disclosures within the prescribed time and has always been prompt and regular in making such compliances.

9. I note that Mr. C. Ganapathy had acquired only 0.49% shares and not 7.99% and also that Mr. G. Suresh had only acquired 0.56%, 0.61%, 0.53% and 0.55% on October 26, 2009, from December 24, 2009 to January 15, 2010, from March 22, 2010 to May 17, 2010 and from July 27, 2010 to September 22, 2010, respectively as opposed to the 10.92%, 12.7%, 14.26% and 15.39%. I further note that the delay of one day and two days in making disclosure to BSE had also occurred due the intermittent problem the Noticee faced in getting connectivity through landline. I find merit in the submissions made by the Noticee in this regard and take a lenient view of the same.
10. As regards the delay of 14 days in making disclosures vis a vis the acquisition of 26,903 shares by Shri G. Suresh, the submission of the Noticee, that the delay was caused due to unavoidable circumstances and the same was not intentional or willful, is unacceptable. As regards the delay of 31 days, the submission of the Noticee that the same occurred due to its Managing Director, Mr. G. Suresh having travelled abroad is untenable. Therefore, admittedly there has been a lapse on the part of the Noticee by not making timely disclosures to BSE and as a result, the Noticee has failed to comply with Regulation 13 (6) of the PIT Regulations.

11. In view of the above and based on the documents available on record, I find that the Noticee admittedly did not comply with Regulation 13 (6) of the PIT Regulations for which it is liable for penalty under Section 15 A (b) of the SEBI Act.
12. At this instant, it is important to quote the observations of 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. Thus, the aforesaid violations by the Noticee makes it liable for penalty under Section 15 A (b) of the 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,-
.....
(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 37[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];
14. While imposing monetary penalty 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.”*

15. 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 defaults cannot be computed. It is imperative to emphasize that the basic purpose of disclosure requirement is to bring about transparency in the securities market and to keep the investors informed about shareholdings in a listed company. It is observed that the violation is repetitive in nature.

ORDER

16. 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 read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 3, 00, 000/- (Rupees Three Lakh Only) on the Noticee i.e C G Vak Softwares & Exports Ltd. under Section 15 A (b) of the SEBI Act. In my view, the penalty imposed on the Noticee is commensurate with the defaults committed by it.

17. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to The Division Chief, Corporate Finance Department - DCR (CFD-DCR), Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
18. In terms of the Rule 6 of the said Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: December 17, 2013

Place: Mumbai

**D. SURA REDDY
ADJUDICATING OFFICER**