

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. SRP/ DL/AO- 53/2010]

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

In respect of
M/s. Machino Finance Private Limited
(PAN: AABCM6967G)

In the matter of
M/s. Hydro S & S Industries Limited

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) has examined into the alleged irregularity in the trading/dealings in the shares of M/s. Hydro S & S Industries Ltd. (hereinafter referred to as “**HSSIL/ Company**”) during the period 2006 -07 and into possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and the Regulations made thereunder in regard to the acquisition of shares of the Company by M/s. Machino Finance Private Limited (hereinafter referred to as “**Noticee**”), M/s. Machino Techno Sales Ltd., Shri Murli Dhar Jindal, Mrs. Kamla Jindal and Mrs. Rashmi Jha (hereinafter jointly referred to as “**Acquirers**”). During the relevant period, the shares of HSSIL were listed on the Bombay Stock Exchange Ltd. (**BSE**) and also on the Madras Stock Exchange Ltd. (**MSE**).
2. The examination, prima facie, revealed that the aforesaid Acquirers, who were allegedly acting in concert, acquired shares/ voting rights of HSSIL during the period 2006-07 but did not comply with the requirements specified under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”). Relevant details of the aforesaid acquisition of shares are given below :

Pre-acquisition holdings of the Acquirers	% to the issued and paid-up capital	No. of Shares acquired	Date	Post acquisition holdings of the Acquirers	% to the issued and paid-up capital
324660	4.96	6100	03.11.2006	330760	5.05
651162	9.98	4211	17.04.2007	655373	10.04
851362	13.05	81969	20.07.2007	933331	14.30

3. It is thus alleged that by acquisition of shares of HSSIL as aforesaid, the aggregate shareholding of the Acquirers, who were allegedly acting in concert, crossed the threshold of 5%, 10% and 14% of the issued and paid up equity share capital of the Company on November 03, 2006, April 17, 2007 and July 20, 2007 respectively and therefore, the Noticee was under obligation under regulation 7 (1) of the SAST Regulations to disclose the details of the purchase and the aggregate shareholding at every stage of such acquisition to HSSIL and to the respective Stock Exchanges where the shares of HSSIL were listed. Further, as has been specified under regulation 7(2) of the said Regulations, such disclosures were to be made within 2-days of the receipt of the intimation of allotment of shares or the acquisition of shares. It has been alleged that the Noticee failed to comply with the aforesaid provisions of the law. It has also been alleged that on crossing the benchmark shareholding of 5 % the Noticee was under obligation to make the requisite disclosures as have been specified under regulations 13(1), 13(3) read with regulation 13(5) of the PIT Regulations as well, but it failed to do so.
4. The above violation/contravention of the provisions of the SAST Regulations and/or PIT Regulations, if established, makes the Noticee liable for penalty under section 15 A (b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned has been appointed as Adjudicating Officer vide order dated November 27, 2009 under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Rules**”) to inquire into and adjudge under section 15A (b) of the SEBI Act, the alleged violation/contravention of the provisions of the SAST Regulations and the provisions of the PIT Regulations, by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice No. EAD-1/SRP/DSL/187878/2009 dated December 18, 2009 (hereinafter referred to as “SCN”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry be not initiated against it and penalty be not imposed under sections 15A (b) of the SEBI Act for the alleged violation of the provisions of regulation 7(1) read with regulation 7 (2) of the SAST Regulations and regulations 13(1) and 13(3) read with regulation 13(5) of the PIT Regulations.
7. The Noticee replied to the SCN vide its letter dated January 06, 2010 and requested for a personal hearing in the matter. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of hearing on February 22, 2010 vide notice dated February 01, 2010. Hearing on the said date was attended by the authorized representative of the Noticee - Mr. Biraj Murmura, Director, Sumedha Fiscal Services Limited.
8. The written and oral submissions made by the Noticee are mainly to the following effect :
 - *That they had acquired 8, 91, 766 equity shares of the Company as a long-term investor from time to time, on different dates, out of which 96,045 shares have already been sold;*
 - *That as a Company they have small exposure to shares through secondary market;*
 - *That they being a long term investor and not regularly trading at the Stock Exchanges, have not been conversant with SEBI Laws towards compliances and accordingly there has been delay in submitting requisite information to the Company/ Exchange;*
 - *That neither they nor any person associated with them directly or indirectly has acquired any advantages due to delayed compliances. Belated reporting has neither resulted into any gain to them or loss to any body;*
 - *That the relevant compliances under SEBI Takeover code were fully complied with by them and that the delayed compliance under the provisions of Regulations, 7(1) read with 7(2) of SAST Regulations was totally unintentional and only technical in nature;*
 - *That with regard to disclosure under Regulations 13(1), 13(3) and regulation 13(5) of the PIT Regulations to the Company, the same has been inadvertently delayed due to their not being conversant with such laws;*

- *That subsequent to June 2007 i.e. from the date of first compliance, they have been complying with the law within stipulated time.*
- *That they have not gained any advantage nor caused any losses to anybody due to such unintended delay and therefore a lenient view may be taken in the matter.*

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the written and oral submissions made by the Noticee and the documents/material available on record. The issues that arise for consideration in the present case are :
 - I. Whether the Noticee has failed to comply with the provisions of regulation 7 (1) read with regulation 7 (2) of the SAST Regulations and/or regulations 13(1) and 13 (3) read with regulation 13 (5) of the PIT Regulations and whether non-compliance, if any, attract penalty under section 15A (b) of the SEBI Act?
 - II. If so, what would be the penalty that can be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?
10. Before moving forward, it would be appropriate to refer to the relevant provisions of the SAST and PIT Regulations :

SAST Regulations:

7. Acquisition of 5 per cent and more shares or voting rights of a company.

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

.... ..

(2) The disclosures mentioned in sub-regulations (1)... .. shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

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

PIT Regulations:

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

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

(a) the receipt of intimation of allotment of shares; or

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

Continual disclosure

(3) Any person who holds more than 5% shares or 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 disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

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

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

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

11. In the matter, I have noted from the information submitted by the Noticee and the other material available on record that in respect of acquisition of the shares of the Company as has been stated above, M/s. Machino Techno Sales Ltd., Shri Murli Dhar Jindal, Mrs. Kamala Jindal and the Noticee are 'the acquirer / the person acting in concert with the acquirer' (hereinafter jointly referred to as "**PAC**").

12. I have also noted the following from the documents and other materials that are available on record:

- i) After acquisition of 6,100 shares on November 03, 2006 the aggregate shareholding of the PAC in HSSIL had increased from 3, 24,660 shares to

3,30,760 shares i.e. from 4.96 % to 5.05% of the issued and paid up capital of the Company. But the required disclosures under the SAST regulations were made to the Company and to BSE and MSE vide letter dated 09.06.2007 i.e. after a delay of 215 days.

- ii) After acquisition of 4,211 shares on April 17, 2007 the aggregate shareholding of the PAC in HSSIL had increased from 6, 51,162 shares to 6, 55,373 shares i.e. from 9.98 % to 10.04% of the issued and paid up capital of the Company. But the required disclosures under the SAST regulations were made to the Company and to BSE and MSE vide letter dated 09.06.2007, i.e. after a delay of 63- days.
- iii) After acquisition of 81,969 shares on July 20, 2007 the aggregate shareholding of the PAC in HSSIL had increased from 8,51,362 shares to 9,33,331 shares i.e. from 13.05 % to 14.30 % of the issued and paid up capital of the Company. The required disclosures under the SAST regulations were made to the Company and to BSE and MSE vide letter dated 21.07.2007. The Company has informed that the same was received by them on July 26, 2007.
- iv) Similarly, I have noted that in regard to acquisition of shares/voting rights on November 24, 2006, February 19, 2007, April 26, 2007 and July 20, 2007 as well, the required disclosures under the PTI Regulations (except for acquisition made on July 20, 2007) have been made by the Noticee to the Company with significant delays. Relevant details in this regard are as under :

Shareholding of the Noticee	No. and % of shares voting rights acquired	Total acquisition (in terms of % shares / voting rights) of the Company	Date of acquisition	Date of intimation to the company	Delay in making the disclosures	Applicable provisions PIT for the Noticee
325549 (4.99%)	6265 (0.18%)	5.17%	24.11.2006	07.06.2007	190 - days	13(1)
452159 (6.93%)	4718 (0.07%)	7.00%	19.02.2007	07.06.2007	103-days	13(3)
585499 (8.97%)	2500 (0.04%)	9.01%	26.04.2007	07.06.2007	38-days	13(3)
755534 (11.58%)	81969 (1.25%)	12.83%	20.07.2007	21.07.2007	-	13(3)

13. Above details, clearly indicate that there have been significant delays on the part of the Noticee in making the required disclosures to the Company and to the Stock Exchanges

under the SAST Regulations and the PIT Regulations. The Noticee has not denied or disputed the abovementioned delays. It has attributed said non-compliances to be on account of its not being conversant with the SEBI laws. It has also submitted that the delays were not intentional and were only technical in nature and further that the belated reporting has neither resulted into any gain to them or loss to any body.

14. The Noticee has argued that it was not aware of the laws during the relevant time therefore, there has been delay in submitting the requisite disclosures. I am of the view that the aforesaid plea cannot absolve the Noticee of the alleged contravention. It is the well-known principle of law "*Ignorantia juris non excusat* or *Ignorantia legis neminem excusat* (Latin for "ignorance of the law does not excuse" or "ignorance of the law excuses no one") holding that a person who is unaware of a law may not escape liability for violating that law merely because he or she was unaware of its content. Therefore, I am of the opinion that this excuse does not enable the noticee to escape from the liability for violating the law.
15. The Noticee has also argued that the delays were not intentional and were only technical in nature and further that the belated reporting has neither resulted into any gain to them or loss to any body. In this regard, I am of the view that the basic purpose of disclosure requirement inherent in the abovementioned regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of shareholding by any body in a listed company. The Hon'ble SAT in the matter of ***Milan Mahendra Securities Pvt. Ltd. Vs SEBI*** (Appeal No. 66 of 2003 and Order dated November 15, 2006), regarding the importance of disclosures, has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature*".
16. The Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** held that "... 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...".
17. In light of all the above facts, I am of the opinion that the Noticee has violated/contravened the provisions of regulation 7 (1) read with regulation 7 (2) of the SAST Regulations and regulations 13 (1) and 13 (3) read with regulation 13 (5) of the PIT

Regulations, which makes it liable for monetary penalty under Section 15A (b) of the SEBI Act, which states 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 there under, -*

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.

18. While determining the quantum of penalty under section 15 A (b) of the SEBI Act , I have considered the factors stipulated under 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 result of the default;

(c) the repetitive nature of the default.”

19. In this regard, I would like to mention that from the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage which may have accrued to the Noticee or the loss that the investors would have incurred as a result of the aforesaid default by the Noticee. However, I am of the opinion that the change in the shareholding and timely disclosure thereof, is of prime importance from the point of view of shareholders/investors as that would have prompted them in making decision on investment or otherwise. It would also be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding. On account of failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the concerned stakeholders were deprived of the important information at the relevant point of time.

20. The material available on record suggest that at least on two occasions the Noticee has defaulted in making the required disclosures under the SAST Regulations and atleast on three occasions under the PIT Regulations and therefore the default of the Noticee is repetitive in nature. In this regard, I have considered the submission of the Noticee that subsequent to June 2007 i.e. from the date of first compliance, it has been regularly complying with the law within the stipulated time, and there have been no further defaults.
21. Therefore, in consideration of all the facts and circumstances of the case as well as the submissions made by the Noticee, I am of the view that a penalty of Rs.1, 25,000 on the Noticee shall be commensurate with the violations committed by it.

ORDER

22. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose penalty of Rs. 1,25,000/- (Rupees one lakh twenty five thousand only) on the Noticee in terms of the provisions of Section 15 A (b) of the Act for the violation of the provisions of regulation 7 (1) read with regulation 7 (2) of the SAST Regulations and violation of regulations 13(1) and 13(3) read with regulation 13(5) of the 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.
23. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to - The General Manager, Division of Corporate Restructuring, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
24. 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 : March 30, 2010

Place : Mumbai

Satya Ranjan Prasad

Adjudicating Officer