

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. : Order/SRP/AE/2019-20/2871-2872]

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

In respect of:

1. Sure Portfolio Services Pvt. (PAN AATCS2129L)
2. Steady Capital Advisory Services Pvt. Ltd. (PAN AATCS2130B)

In the matter of Emed.com Technologies Ltd.

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigations into the alleged irregularity in the trading and dealings in the shares of Emed.com Technologies Ltd. (hereinafter referred to as “**Company** or **Emed**”) during the period from August 26, 2013 to June 30, 2014 (hereinafter referred to as “**Investigation Period**”).
2. The Investigations, *prima facie*, revealed that the following 2 entities viz. Sure Portfolio Services Pvt. and Steady Capital Advisory Services Pvt. Ltd. (hereinafter collectively referred to as “**Noticees**” and individually by their respective name or as **Noticee No. 1 and 2**, respectively), who are considered as persons acting in concert (**PACs**) had allegedly acquired and disposed shares of Emed without making the requisite disclosures to the Company and BSE with regards to their change in shareholding, and had thus violated the provisions of Regulation 29(1) and 29(2) read with 29(3) of

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter collectively referred to as “**SAST Regulations**”).

APPOINTMENT OF THE ADJUDICATING OFFICER

3. Earlier, Shri S. V. Krishnamohan, Chief General Manager, was appointed as Adjudicating Officer (**AO**) vide Order dated February 15, 2017 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticees. Subsequently, Shri Biju S, Chief General Manager, was appointed as AO in the matter in place of Shri S. V. Krishnamohan. Consequent to transfer of Shri Biju S, the undersigned has been appointed as AO in the present matter vide Order dated July 06, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated March 17, 2017 (*hereinafter referred to as 'SCN'*) was issued to the Noticees by the erstwhile AO, Shri S V Krishnamohan, in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) for the alleged violation of Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.
5. The SCN were sent to the last known addresses of the Noticees as per record. From the available records, it is observed that the SCN was delivered to Noticee No. 1 (Sure Portfolio Services Pvt Ltd), however with respect to Noticee No. 2 (Steady Capital Advisory Services Pvt. Ltd) the SCN returned undelivered.
6. Subsequently, an opportunity of personal hearing was granted to the Noticees by the erstwhile AO, Shri Biju S, on April 19, 2018 vide Hearing Notice dated April 10, 2018, however, the said Hearing Notices could not be delivered.

7. Pursuant to appointment of the undersigned as AO, in terms of Rule 7 of the Adjudication Rules, a copy of the SCN was affixed at the last known addresses of the Noticees vide letter dated August 14, 2018. Further, the scanned copy of the SCN was also uploaded on the website of SEBI under the head "*Enforcement → Unserved summons/Notices*". Vide the aforesaid letter dated August 14, 2018, the respective Noticees were granted time till September 17, 2018 to submit reply to the SCN. However, as per the records, I note that no reply to the SCN was furnished by the Noticees.
8. Subsequently, the Noticees were granted an opportunity of personal hearing before the undersigned on October 25, 2018 vide Hearing Notice dated October 05, 2018, however, the said Hearing Notice could not be delivered. Accordingly, Noticees were granted one more opportunity of personal hearing on November 20, 2018 vide Hearing Notice dated October 25, 2018. In terms of Rule 7 of the Adjudication Rules, copy of the aforesaid Hearing Notice was affixed at the last known addresses of Noticees. However, the Noticees did not submit any reply to the SCN nor did they appear for the said hearing. From the above, it is noted that the Noticees were provided with ample opportunities to reply to the allegations made in the SCN as well as for appearing for personal hearing in the matter. Considering the same, I am inclined to proceed with the matter *ex-parte* taking into account the material available on record.
9. In this context, I would like to rely upon the observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. Vs. SEBI** (Appeal No. 68 of 2003 decided on December 08, 2006) wherein the Hon'ble SAT, *inter alia*, took the following view "*..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them.....*".
10. Similarly, I note that the Hon'ble SAT has again in the matter of **Sanjay Kumar Tayal & Others Vs. SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), *inter*

alia, observed that “.....as rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.....”

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully examined the allegations against the Noticees and the documents / material available on record. The issues that arise for consideration in the present case are :
- I. Whether the Noticees have violated the provisions of Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations?
 - II. Does the violation, if established, attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?
 - III. If yes, then what should be the quantum of penalty?

FINDINGS

12. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the PFUTP Regulations, alleged to have been violated by the Noticee. The same are reproduced below:

SAST Regulations

Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any acquirer, who together with person acting in concert with him, hold 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.*

Issue I : Whether the Noticees have violated the provisions of Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations?

13. I note that the allegations levelled in the SCN are to the effect that the Noticees had allegedly acquired and disposed of shares of Emed without making the requisite disclosures under the SAST Regulations to the Company and BSE with regards to their change in shareholding.
14. From the available records, I note that the Noticees have common address, two common directors and common promoters, and hence the Noticees are considered to be PACs in terms of Regulation 2(1)(q) of SAST Regulations.
15. From the materials available on record, I note that the details of acquisition and disposal of shares by the Noticees and consequent change in their shareholding are as follows –

Date	No. Of Shares held-Pre Acquisition/ Disposal	No. Of Shares Acquired/ (Disposed Off)	No. Shares Acquired/(Disposed Off As a % Of Paid up Capital	No. Of Shares held-Post Acquisition /disposal	% Shareholding held-post Acquisition / disposal	Mode (*)	Disclosure required under	Disclosure Made
11/10/13	157300 (4.65%)	18500	0.55%	175800	5.20%	On Mkt	29 (1)of SAST Reg.	No
23/10/13	236100 (6.95%)	9000	0.27%	245100	7.24%	On Mkt	29 (2)of SAST Reg.	No
12/11/13	307800 (9.10%)	6200	0.18%	314000	9.28%	On Mkt	29 (2)of SAST Reg.	No
18/11/13	326100 (9.64%)	-203300	-6.01%	122800	3.63%	On Mkt	29 (2)of SAST Reg.	No
29/11/13	159900 (4.73%)	19600	0.58%	179500	5.30%	On Mkt	29 (1)of SAST Reg.	No
06/12/13	231100 (6.83%)	16400	0.48%	247500	7.31%	On Mkt	29 (2)of SAST Reg.	No
18/12/13	236600 (6.99%)	-113900	-3.37%	122700	3.63%	On Mkt	29 (2)of SAST Reg.	No
26/12/13	158490 (4.68%)	13100	0.39%	171590	5.07%	On Mkt	29 (1)of SAST Reg.	No
17/01/14	234689 (6.94%)	13000	0.38%	247689	7.32%	On Mkt	29 (2)of SAST Reg.	No
06/02/14	310764 (9.18%)	17800	0.53%	328564	9.71%	On Mkt	29 (2)of SAST Reg.	No
26/02/14	294983 (8.72%)	-92800	-2.74%	202183	5.97%	On Mkt	29 (2)of SAST Reg.	No
10/03/14	166933 (4.93%)	-63600	-1.88%	103333	3.05%	On Mkt	29 (2)of SAST Reg.	No
14/03/14	153064 (4.52%)	16900	0.50%	169964	5.02%	On Mkt	29 (1)of SAST Reg.	No
24/03/14	233304 (6.89%)	5000	0.15%	238304	7.04%	On Mkt	29 (2)of SAST Reg.	No

16. From the above, it is noted that the shareholding of the Noticees has crossed 5% of the total share capital of Emed on 4 occasions i.e. on 11/10/2013, 29/11/2013, 26/12/2013 and 14/03/2014. Accordingly, the Noticees were required to make disclosures with regard to their acquisitions to the Company and Stock Exchanges (BSE) within 2 working days of their acquisitions as required under Regulation 29(1) read with Regulation 29(3) of SAST Regulations. However, the Noticees have failed to make the requisite disclosures. The facts regarding the non-disclosures have not been refuted by the Noticees. Accordingly, I find that the Noticees have violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

17. I further note that the Noticees were holding more than 5% of the share capital of Emed, and thereafter their shareholding changed by more than 2% on 10 occasions i.e. on 23/10/2013, 12/11/2013, 18/11/2013, 06/12/2013, 18/12/2013, 17/01/2014, 06/02/2014, 26/02/2014, 10/03/2014, and 24/03/2014, as has been detailed in the table above. Accordingly, the Noticees were required to make disclosures with regard to their change in shareholding to the Company and Stock Exchanges (BSE) within 2 working days as required under Regulation 29(2) read with Regulation 29(3) of SAST Regulations. However, the Noticees have failed to make the requisite disclosures. The

facts regarding the non-disclosures have not been refuted by the Noticees. Accordingly, I find that the Noticees have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

18. I note that adjudication proceedings were also initiated against the Noticees along with other connected entities in respect of alleged violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, and the same have been dealt in a separate Adjudication Order dated April 18, 2019.

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

19. I note that the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund held that *"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."*
20. I also note that in Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. vs. SEBI – the Hon'ble Securities Appellate Tribunal (**SAT**) 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"*. Further, in the matter of Ranjan Varghese vs. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow"*.
21. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory

obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that -

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

22. Thus, the violation of Regulations 29(1) and 29(2) read with 29(3) of SAST Regulations makes the Noticees liable for penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under –

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,—

(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;

Issue III : If yes, then what should be the quantum of penalty?

23. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Adjudication Rules, require that while adjudging the quantum of penalty, 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. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticees. I note that securities market is based on free and open access to information. As a result of the violation committed by the Noticees, the investors were deprived of valuable information which would have enabled them to take well informed decisions regarding their investments in the company. I note that Noticees have repeatedly not made disclosures as required under the provisions of Regulations 29(1) and 29(2) read with 29(3) of SAST Regulations with regards to their acquisitions/disposal in shares of Emed and the consequent change in their shareholding on 14 occasions, and thus contravened the aforesaid regulations.

ORDER

25. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and the factors stipulated in Section 15 J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules hereby impose a penalty of Rs. 14,00,000/- (Rupees Fourteen Lakh Only), to be paid jointly and severally, on the Noticees viz. Sure Portfolio Services Pvt Ltd. and Steady Capital Advisory Services Pvt. Ltd., in terms of Section 15A(b) of the SEBI Act, 1992 for violation of Regulations 29(1) and 29(2) read with 29(3) of SAST Regulations.

26. The amount of penalty shall be paid either by way of demand draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief (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 – 400 051.”

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

27. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: April 18, 2019

Satya Ranjan Prasad
Adjudicating Officer