

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. SVKM/AO/28/2015-16]

**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
Chirag Shah
(PAN: AGOPS5413P)

In the matter of
Proposed Rights Issue of Splash Media and Infra Limited

BACKGROUND IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) conducted investigation into the Proposed Rights Issue of Splash Media and Infra Limited (**SMIL**) with regard to certain irregularities and inconsistencies in the Draft Letter of Offer dated December 17, 2010 filed by SMIL with SEBI through Khandwala Securities Limited.
2. It was observed that Shri Chirag Shah (hereinafter referred to as “**Noticee**”) was one of the promoter and Director of SMIL and he was holding 1,41,387 shares of SMIL constituting 6.03% of the total share capital of SMIL. Shares of SMIL are listed at BSE. SMIL vide letter dated February 25, 2013 informed SEBI that the noticee had pledged his entire shareholding in SMIL to M/s Suvidha Securities Pvt. Ltd (**SSPL**) to avail some financial facility and on default by the noticee, the pledge was invoked by SSPL on November 05, 2009. Consequently, there was a change in the shareholding of the noticee in

SMIL triggering a disclosure obligation under Regulations 13(3) and 13(4) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**,”). It was also observed that noticee had not disclosed change in his shareholdings in i) Form C to SMIL and ii) Form D to SMIL and BSE in terms of Regulations 13(3) and 13(4) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyoosh Gupta, Chief General Manager, was appointed as Adjudicating Officer vide order dated April 3, 2013 to inquire and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”), the alleged violations of Regulations 13(3) and 13(4) of PIT Regulations by the noticee. Subsequently, upon the transfer of Shri Piyoosh Gupta, Shri A. Sunil Kumar, Chief General Manager, was appointed as Adjudicating Officer vide order dated November 08, 2013. Consequent to the transfer of Shri A. Sunil Kumar, the undersigned has been appointed as Adjudicating Officer, in the present matter, vide order dated June 17, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD-5/ADJ/ASK/AA/OW/22607/2014 dated July 31, 2014 (hereinafter referred to as “**SCN**”) was issued to the noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) read with section 15I of SEBI Act, 1992 to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act, 1992 for the violations specified in the SCN.

5. The said notice, sent by the mode of *Speed Post Acknowledgement Due*, was returned undelivered with the comment "*Adresse Absent Intimation*

Served". Copy of the said SCN was again sent to the last known address of the noticee by the mode of *Registered Post Acknowledgement Due* vide letter dated September 04, 2014. However, the letter alongwith the copy of said SCN also returned undelivered with the comment "*Left*". Thereafter, in terms of Rule 7 of the Adjudication Rules, copy of the said SCN was sent for affixture to the last known address of the noticee vide letter dated October 16, 2014. The said SCN was affixed on the last known address of the noticee on March 09, 2015 and Report of service of notice was obtained from SEBI Local Office, Indore. However, no reply to the SCN was submitted by the noticee within the time prescribed in the SCN.

6. Thereafter, Noticee was given an opportunity of personal hearing on April 17, 2015 vide notice dated April 01, 2015. The undersigned, after being appointed as Adjudicating Officer in the present matter, also gave an opportunity of hearing to the Noticee on July 07, 2015 vide notice dated June 23, 2015 by affixing notice on the last known address available with us on June 25, 2015. However, Noticee neither replied to the SCN nor attended the personal hearing. For the reasons mentioned above, I observe that the Noticee was provided with ample opportunity to reply to the allegations made in the SCN as well an opportunity of being heard which he failed to avail and hence, I am proceeding with the inquiry taking into account the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are :

- a. Whether Noticee violated the provisions of Regulations 13(3) and 13(4) of PIT Regulations, 1992?

- b. Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?

Issue I - Violation of provisions of Regulations 13(3) and 13(4) of PIT Regulations, 1992

8. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:

PIT Regulations, 1992

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

13 (1).....

(2).....

Continual disclosure.

(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 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.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower."

9. Upon perusal of the material available on record, I note, as per the declaration made by SMIL on February 09, 2009 to BSE under Regulation 13(6) of PIT Regulations, the noticee was appointed as a Director of SMIL on February 09, 2009 and as per the disclosure made by the noticee to SMIL under regulation 13(2) of PIT Regulations, the noticee was holding 1,15,237 shares of

SMIL as on that date. I find that as per the shareholding pattern available on the BSE website that as on quarter ending September 2009, the noticee as a promoter of SMIL was holding 1,41,387 shares of SMIL which constituted 6.03% of the total share capital of SMIL. I further note from the letter dated February 25, 2013 of SMIL that the noticee had on November 09, 2009 reported to SMIL transaction dated November 05, 2009 relating to invocation of pledged share under Regulation 8A(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations, 1997**”). I independently verified the said transaction with the details available on the BSE website and find that the said transaction was also duly reported by SMIL to BSE under Regulation 8A(4) of SAST regulations, 1997. However, no disclosure from the noticee under the PIT Regulations, 1992 was available on the BSE website. I find from the announcements available on the BSE website that SMIL on January 18, 2010 informed BSE about resignation of the noticee as Director of SMIL. Further, SMIL vide letter dated February 28, 2013 has submitted that apart from reporting received under Regulation 13(2) of PIT Regulation at the time of appointment of the noticee as Director of SMIL on February 09, 2009 (initial disclosure), it does not have any other compliances from the noticee under PIT Regulations relating to continual disclosure or otherwise.

10. I note that despite the SCN and hearing notices having been duly served upon the noticee, he failed to submit any reply to the SCN and has not refuted the charges. 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 it, inter alia, observed that - “..... *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”.

11. The Hon’ble SAT has again in the matter of *Sanjay Kumar Tayal & Others v 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.....”.

12. In so far as the obligation to make continual disclosures under Regulations 13(3) and 13(4) respectively of PIT Regulations, 1992 is concerned, I note that as a matter of general interpretation ‘any person’ would include all persons including a Director or officer of the listed company. However, since Directors and officers have been singled out as a class apart from other persons and treated differently under Regulation 13(4) of PIT Regulations, 1992 with more onerous responsibilities, it has to be assumed that by necessary implications they are excluded from the requirements of 13(3) of PIT Regulations, 1992. Directors of a company holds important position in the senior management and responsible for the policy making and control of the business and that is the reason why they have been treated differently and more onerous responsibility has been cast on them in respect of continual disclosures. Hence a separate provision for continual disclosure by directors and officer of listed company have been carved out under Regulation 13(4) of PIT Regulations, 1992. On plain reading of sub-regulation (3) and (4) of Regulation 13 of PIT Regulations, 1992, it becomes clear that the disclosure requirements are more detailed on the Directors under sub-regulation (4) than

for those governed under sub-regulation (3). They are not only required to disclose on continuous basis change of 1% in total shareholding or voting rights as against 2% in sub-regulation (3) but also required to disclose the change relating to value or number of shares if the change exceeds the limit stipulated under sub-regulation (4) of Regulation 13 of PIT Regulations, 1992. I am of the view that Director of a listed company has obligation to make continual disclosure only under sub-regulation (4) and not under sub-regulation (3) of Regulation 13 of PIT Regulations, 1992 which does not apply to Directors or officers.

13. On the basis of the aforesaid discussions, I find that the noticee had not disclosed the change in his shareholdings in Form D to SMIL and BSE as stipulated by Regulations 13(4) of PIT Regulations, 1992 and therefore, I hold that the Noticee has violated the aforementioned provision of PIT Regulations, 1992.

Issue II - Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?

14. By not making the disclosures on time, the Noticee failed to comply with its statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. There can be no dispute that compliance of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v. Shriram Mutual Fund* {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are*

of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."

15. As the violation of the statutory obligation under Regulation 13(4) of PIT Regulations, 1992 has been established, I hold that the Noticee is liable for monetary penalty 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 there under, -

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, whichever is less"

16. I have considered the factors mentioned in section 15J of SEBI Act, 1992 and I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. However, it is important to note that securities market operates on disclosure based regime and hence true and timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. The Noticee, whose shareholding has come down to zero from earlier holding of 6.03%, by his failure to make requisite disclosure under PIT Regulations, 1992 has prevented dissemination of valuable information to investors at the relevant point of time. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision.

ORDER

17. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of ₹ 6,00,000/- (Rupees Six Lakh only) under Section 15A(b) of SEBI Act for violation of Regulation 13(4) of PIT Regulations, 1992 on the noticee i.e. Chirag Shah.

18. I am of the view that the penalty imposed is commensurate with the violations committed by the Noticee. The penalty shall be paid 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 “The Division Chief (Enforcement Department - DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

19. 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: October 30, 2015
Place: Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer