

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ASK/AO-32/2014-15]

**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
Svaraj Trading and Agencies Limited
(PAN:AAACS5412R)

FACTS OF THE CASE IN BRIEF

1. An open offer was made by Ms. Rekha Soni, Mr. Harendra Gupta and Mr. Shankar Das Vairagi in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") to the shareholders of Svaraj Trading and Agencies Limited (hereinafter referred to as "**Noticee/Company**"), Target Company, through a public announcement dated September 03, 2012 for acquisition of 26,000 fully paid up equity shares of the face value of ₹10 each, representing 26% of the total paid up equity share capital / voting rights of the Target Company at a price of ₹75/- per share payable in cash. The shares of the Noticee are listed at BSE.

2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) examined the draft Letter of Offer filed pursuant to the afore-mentioned public announcement and alleged that the Noticee had violated the provisions of regulation 8(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “SAST Regulations, 1997”) for the years 2001 to 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyoosh Gupta was appointed as Adjudicating Officer vide order dated July 08, 2013 under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘Rules’) to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of provisions of regulation 8(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 by the Noticee. Subsequently, upon the transfer of Shri Piyoosh Gupta, I have been appointed as Adjudicating Officer, in the present matter, vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD-5/ADJ/ASK/AA/OW/373/2014 dated January 03, 2014 (hereinafter referred to as “SCN”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act for the alleged violation specified in the SCN. It was alleged in the SCN that Noticee has violated the provisions of regulation 8(3) of the SAST

Regulations, 1997 read with regulation 35 of SAST Regulations, 2011 during the years 2001 to 2011. The copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

5. Vide letter dated January 27, 2014 noticee filed its reply to the SCN. The main submissions of the noticee with respect to specific charges alleged in the SCN are as follows:

- *The shares of the company were suspended by the BSE with effect from February 17, 2003 due to non-submission of quarterly results and SEBI (SAST) Regulations, 1997. In order to revoke the suspension of the shares from trading on the BSE, the company complied with the Listing Agreement clauses and SEBI (SAST) regulations. Thereafter the company has received an In Principle approval from BSE vide its letter dated January 25, 2011 for revocation of suspension in trading of equity shares of the company. Thereafter the trading in equity shares was resumed by BSE w.e.f March 23, 2011.*
- *In order to comply with the non compliance of SEBI (SAST) Regulations, the company filed disclosures under regulation 8(3) for the years March 31, 2001 till March 31, 2011. However Regulation 8 (3) for the year ended March 31, 2001 and March 31, 2002 was filed under SEBI Regularization Scheme, 2002.*
- *The company has been a loss making company for year ended March 31, 2013 and made marginal profit for year ended March 31, 2012 and March 31, 2011. Also the Networth of the Company is negative as on year ended March 31, 2010 & March 31, 2011.*
- *For the period under consideration, due to oversight and lack of knowledge, there were delays in filing of the compliance papers under Regulation 8(3) of the Regulations. We would further like to state that the non-compliance did not result in any undue benefit being caused to the company - Promoter nor did the non compliance resulted in any loss or damage being caused to investor community or anyone else as there has been no trading done in the equity shares of the company between April 2001 to March 2013. The company also got trading approval from BSE on March 23, 2011 and shareholders are free to transfer their shares on Stock exchange after the revocation of suspension, but there has been no trading in*

the shares of the company between March 23, 2011 and March 31, 2013 by any public shareholders. Also there is no sale/transfer of equity shares of the company by the promoters to outside public between 2001 to 2013 which will suffice that there is no loss occurred to any public shareholders and no benefit has been claimed by any promoters during the non-compliance period. This would suffice that the company does not have any intention to harm any public shareholders or investors nor make any profit in trading of its shares.

- We have filed the reports under regulation 8(3) to the stock exchange and thereby the transparency requirement was fully met by us and it should not be concluded that we had deliberately held back reporting under regulation 8(3). Delay in reporting has neither resulted in any gain to the promoters/directors of the company nor caused any loss to anybody. We therefore humbly pray to your good office to kindly condone the delay and take a lenient view in the aforesaid matter.*

6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticee was granted an opportunity of personal hearing on March 06, 2014 vide Notice of Inquiry dated February 21, 2014. Mr. Nikesh Jain and Mr. Rishabh Jain, appeared as Authorized Representative (AR) on behalf of the Noticee and reiterated the submissions made in the reply to SCN. They admitted the charges leveled in the SCN and requested for lenient view. During the course of hearing Noticee was asked to submit the acknowledgement and discharge letter from SEBI under SEBI Regularization Scheme, 2002 with regard to its compliance with regulation 8(3) of SAST Regulations, 1997 for the years 2001 and 2002. Mr. Nikesh Jain, AR of the Noticee, vide email dated March 20, 2014 submitted the scanned copy of acknowledgement under Regulation 8(3) of SAST Regulations, 1997 for the year 2001 & 2002 filed with BSE under SEBI Regularization Scheme 2002.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
- a. Whether the Noticee had violated the provisions of regulation 8(3) of SAST Regulations, 1997 for the years 2001 to 2011?
 - b. Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
8. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 1997 which reads as under:-

SAST Regulations, 1997

“Continual disclosures.

8. (1)

(2)

(3) *Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.”*

Finding

The issues for examination in this case and the findings thereon are as follows:

Issue - (I) - Whether the Noticee had violated the provisions of regulation 8(3) of SAST Regulations, 1997 for the years 2001 to 2011?

9. I note that the Noticee being a listed company was under obligation in terms of regulation 8(3) of SAST Regulations, 1997, to make yearly disclosures to the stock exchange/s of the changes in respect of the holdings of the persons referred to under regulation 8(1) of SAST Regulations, 1997 and also holdings of promoters or persons having control over the company within 30 days from (i) the financial year ending March 31, as well as (ii) the record date for dividend declaration. Upon perusal of submissions of the Noticee and documents available on record I find that the noticee had made the disclosures required as per regulation 8(3) of SAST Regulations, 1997 with a delay, for the years 2001 to 2011. The details of delay in this regard are as under:

Sr. No.	Provision of SAST Regulations, 1997	Due date of compliance	Actual date of compliance	Delay (in no. of days)
1	8(3)	30.04.2001	31.03.2003	700
2	8(3)	30.04.2002	31.03.2003	335
3	8(3)	30.04.2003	29.07.2010	2647
4	8(3)	30.04.2004	06.08.2010	2289
5	8(3)	30.04.2005	06.08.2010	1924
6	8(3)	30.04.2006	06.08.2010	1559
7	8(3)	30.04.2007	06.08.2010	1194
8	8(3)	30.04.2008	06.08.2010	828
9	8(3)	30.04.2009	06.08.2010	463
10	8(3)	30.04.2010	06.08.2010	98
11	8(3)	30.04.2011	11.09.2012	500

10. The noticee in its reply dated January 7, 2014 as well as during personal hearing has also admitted that there was delay in making the disclosure under regulation 8(3) of SAST Regulations, 1997 for the years during the aforesaid period. However, the noticee has submitted that the disclosure

under Regulation 8(3) for the year ended March 31, 2001 and March 31, 2002 was filed under SEBI Regularization Scheme, 2002 and in this regard it has also submitted a letter dated March 31, 2003, duly acknowledged by BSE, alongwith various annexures showing that the disclosures under SAST Regulations, 1997 in the forms prescribed under SEBI Regularization Scheme, 2002 were filed with BSE.

11. In this regard, I note that during the year 2002 SEBI had introduced "SEBI Regularization Scheme, 2002 after observing that many listed companies and/or their promoters / shareholders have either not complied at all or have complied with the disclosure requirements under SAST Regulations, 1997 after the expiry of the time specified in the said regulations. Under the Scheme, the persons and companies who had not made disclosures or who made disclosures after expiry of the period as specified in the Takeover Regulations, 1997 were permitted to make disclosures to the company and the stock exchange as the case may be, and pay the lump-sum amount specified herein. The object of the scheme was to provide one time opportunity to enable the companies and the specified persons to comply with the law of the land. I note that the said scheme was in force up to March 31, 2003 and the Noticee had made the disclosure under regulation 8(3) of SAST Regulations, 1997 for the year 2001 and 2002 under SEBI Regularization Scheme, 2002 to BSE on March 31, 2003. Therefore, the noticee's obligation to file disclosure under regulation 8(3) of SAST Regulations, 1997 for the years 2001 and 2002 stood discharged.

12. As regards non-compliance for the years 2003 to 2011, I note that the Noticee has admitted that it failed to comply with its statutory obligation of

making the requisite disclosure under regulation 8(3) of SAST Regulations, 1997 within the time specified therefor in the afore-mentioned regulation during the years 2003 to 2011. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. In view of the same, I hold that the Noticee has violated regulation 8(3) of SAST Regulations, 1997 for the years 2003 to 2011.

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

13. By not making the disclosures on time, the Noticee failed to comply with its statutory obligation. There can be no dispute that compliance of regulations is mandatory and the timely disclosure is mandated for the benefit of the investors at large and it is duty of SEBI to enforce compliance of these regulations. 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 opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. 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....."*

14. As the violation of the statutory obligation under regulation 8(3) of SAST Regulations, 1997 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 ¹[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less]”

Issue - (III) - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

15. While determining the quantum of penalty under section 15A(b), 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.”

16. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the persons having substantial stake,

¹ Substituted by the SEBI (Amendment) Act, 2002, S. 9 (ii) (w.e.f. 29-10-2002), for “a penalty not exceeding five thousand rupees for every day during which such failure continues”.

promoter-group and persons in control over the Noticee and timely disclosure thereof, were of significant importance from the point of view of investors. The fact however remains that the investors were deprived of the important information at the relevant point of time. I further find that there are violations by the Noticee every year successively for nine years starting from 2003 to 2011 of regulation 8(3) of SAST Regulations, 1997. This indicates the repetitive nature of the default committed by the Noticee.

17. Noticee while admitting the non-compliance had requested for taking a lenient view in the matter. In this regard, Noticee had made certain submissions. I proceed to examine the submissions made by the Noticee:

- Noticee has submitted that it has been a loss making company for year ended March 31, 2013 and made marginal profit for year ended March 31, 2012 and March 31, 2011. Also its net worth is negative as on year ended March 31, 2010 & March 31, 2011. I am of the view that even if Noticee was a loss making company, the same cannot be an excuse for non-compliance with the statutory provisions of law.
- It has further submitted that the shares of the company was suspended w.e.f February 17, 2003 due to non-submissions of quarterly results and SEBI (SAST) Regulations and that the trading in equity shares was resumed by BSE w.e.f March 23, 201. In this regard, I note from the submissions made by the Noticee that trading in the shares of the company was suspended due to certain non-compliances by the company. It is evident that lack of trading in the shares of the company is directly attributable to the non-compliances by the Noticee. The Noticee, therefore, cannot claim relief on this count.

- Noticee has further submitted that the non-compliance did not result in any undue benefit being caused to the company - Promoter nor did the non compliance resulted in any loss or damage to investor community or anyone else. In this context, I would like to rely on following observation of Hon'ble Securities Appellate Tribunal (SAT) in the case of *Mrs. Komal Nahata vs. SEBI* (Appeal No. 5 of 2014 decided on January 27, 2014) *"Argument that no investor has suffered on account of non disclosure 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 non disclosure. Secondly, penalty under Section 15A(b) for non compliance of the regulation framed by SEBI is ₹ 1 lac for each day during which such failure continues or 1 crore rupees whichever is less."*
- I have considered other contentions raised by the Noticee in its reply and find no merit in them in the context of the facts and circumstances of the matter in hand.

ORDER

18. Therefore, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of **₹ 10,00,000/- (Rupees Ten Lakh only)** under Section 15A(b) of SEBI Act for the violation of regulation 8(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 on the Noticee i.e. Svaraj Trading and Agencies Limited. I am of the view that

the said penalty is commensurate with the violation committed by the Noticee.

19. 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 Division Chief (CFD-DCR), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

20. 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: June 03, 2014

Place: Mumbai

A. Sunil Kumar

Adjudicating Officer