**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(ADJUDICATION ORDER NO: AO/SBM/EAD-3/ 2 /2017)**

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**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:*

**Shri. Kirit V Dave**
**PAN: AHKPD0543J**

**in the matter of**
**M/s Splash Media & Infra Limited**

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## FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of Splash Media & Infra Limited. (hereinafter referred to as "**Company/SMIL**") during the period March 01, 2013 to March 31, 2013 (hereinafter referred to as "**examination period**"), observed that Shri **Kirit V Dave** (hereinafter referred to as **"Noticee**"), had failed to make timely disclosures pertaining to his acquisition of shares of SMIL during the examination period. It was observed that the Noticee had failed to comply with

the disclosure requirements specified under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

2. The company is listed on the Bombay Stock Exchange **(BSE)**. The company had changed its name to Luharuka Media Infra Ltd. The total paid up capital of the company as on March 31, 2013 was Rs. 9,37,20,000/- (represented by 9,37,20,000 shares of face value of Rs 1/- each).

3. It was observed during the course of examination by SEBI that the Noticee was holding 46,44,987 shares of SMIL , which represented 4.956% of the total share capital of the company. Noticee had sold 10,000 shares of SMIL on March 22, 2013 pursuant to which his shareholding in the company decreased to 4.945% as on March 22, 2013. Thereaftter, on March 25,2013, Noticee purchased 1,70,000 shares SMIL, which got credited to his Demat Account ( CDSL-00006866) on March 30, 2013. The shareholding of the Noticee in the company increased to 5.127% due to the aforementioned purchase of 1,70,000 shares.

4. In view of the fact that Noticee's shareholding in SMIL had crossed the threshold limit of 5% of the total paid up capital of the company, the Noticee was required to make necessary disclosures under the provisions of regulation 29(1) r/w regulation 29(3) of the SAST Regulations to the Stock Exchange ( i.e BSE) and to the Company within two working days of the acquisition of shares. Similarly, under the provisions of Regulation 13(1) of the PIT Regulations, the Noticee was required to make the necessary disclosure to the Company in the prescribed format (Form A) within two working days of his acquisition of shares. It is alleged that Noticee had failed to make these disclosures required under the aforementioned provisions of law. Therefore, adjudication proceedings were

initiated against the Noticee in terms of section 15 A (b) of the SEBI Act, 1992 ( hereinafter refered to as **SEBI Act**) for the alleged violation committed by the Noticee.

## APPOINTMENT OF ADJUDICATING OFFICER

5. Shri D. Ravikumar was appointed as the Adjudicating Officer, vide Order dated December 03, 2013 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of section 15A(b) of the SEBI Act for the alleged failure on the part of the Noticee to comply with the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations. Subsequently, upon the transfer of Shri D Ravikumar, the undersigned has been appointed as the Adjudicating Officer vide Order dated June 22, 2015.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. Show Cause Notice dated January 23, 2014 (hereinafter referred to as "**SCN**") was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated against him and penalty be not imposed under section 15 A (b) of the SEBI Act, 1992, for the aforesaid alleged contravention of the provisions of law by the Noticee. The SCN issued to the Noticee returned undelivered with remark 'addressee not known'. Thereafter, the SCN was served on the alternate address of the Noticee on November 30, 2016. Vide letter dated December 19, 2016, Noticee filed his reply to the SCN. The relevant excerpts of the reply submitted by the Noticee is mentioned hereunder:

(i) *At the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said notice except to the extent specifically admitted by me.*

(ii) *I submit that the fact that I acquired more than 5% shares in quarter ending March 2013 was available in public domain as the same was disclosed by Splash in the quarterly shareholding pattern filed by them under the category 'Shareholding belonging to the category "Public" and holding more than 5% of the Total No. of Shares'. I submit that the quarterly shareholding pattern filed under Clause 35 of the Listing Agreement is normally filed within 21 days of the end of the quarter and in this case also, the quarterly shareholding pattern must have been filed by Splash in and around 21st April, 2013.1 submit and reiterate that my shareholding was disclosed in the shareholding pattern filed under clause 35 of the Listing Agreement under the heading 'Shareholding belonging to the category "Public" and holding more than 5% of the Total No. of Shares' and the same was in public domain. Hence, I deny that there was any non-disclosure on my part. In view of the same, I deny that I have violated Regulation 13(1) of PIT Regulations and Regulation 29(1) read with 29(3) of Takeover Regulations.*

(iii) *I submit that I am a small time retail investor in the securities market, have always invested in small quantities. Hence, I was not aware of any disclosures to be made with regard to acquisition of shares in any company under Takeover & PIT Regulations. In view of the same, I would request you to kindly condone the failure to give adequate disclosures under Takeover & PIT Regulations and penalty stipulated under Section 15 A(b) of SEBI Act may not be imposed.*

(iv) *I submit that the main purpose of disclosure stipulated as per Takeover Regulations, 2011 and PIT Regulations is that the retail investor is immediately aware of any significant happening in a listed company so that he is able to take an informed decision. I further submit and reiterate that my shareholding was ,disclosed in the shareholding pattern filed under clause 35 of the Listing Agreement under the heading 'Shareholding belonging to the category "Public" and holding more than 5% of the Total No. of Shares' and the same was in public domain. Hence, I deny that there was non-disclosure on my part.*

(v) *I submit and reiterate that I have not filed the disclosures under the respective regulations in respective format but there has been no non-disclosure on my part. I further submit that due to not filing of the relevant disclosures no gain or advantage has occurred to me and no loss or harm has been caused to any investors. I submit and reiterate that not filing of relevant disclosures was due to the difference in understanding of the relevant regulations as interpreted by me and as interpreted by SEBI. I submit and reiterate that the information that I acquired a certain percentage of equity shares in Splash came in public domain in the quarterly shareholding pattern of quarter ending March 2013 somewhere in and around April 2013 and my last acquisition was somewhere in and around 25.03.2013.*

(vi) *It is further submitted that the provisions of Regulation 29(1) of SEBI SAST Regulation and Regulation 13 (1) of SEBI PIT Regulations are not substantially different, since violation of first automatically triggers violation of second and hence a lenient view may be taken as regards imposition of penalty and penalty may not be imposed. The Regulation 29(1) of Takeover*

*Regulations and Regulation 13 (1) of PIT Regulations are not stand alone regulations and one is corollary of other.*

(vii) *In this regard, I would like to bring to your kind notice the judgment delivered by Hon'ble Securities Appellate Tribunal (SAT) on 4.9.2013 in the case of Vitro Commodities Private Limited vs SEBI' wherein inter alia it has held that "It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.' The Hon'ble SAT was pleased to reduce the penalty of Rs 10 lakh to a token penalty of Rs 1 lakh for violation of Regulation 7(1) of Takeover regulations, 1997 (akin to Regulation 29(1) of Takeover regulations, 2011) and Regulation 13(1) of PIT Regulations.*

(viii) *In view of the above circumstances, I submit as follows:-*

- *I did not have any intention to conceal information and nor I have concealed any information, no unfair gain or advantage has occurred to me and also no harm or loss has been caused to retail investors.*

- *I deny that I have violated Regulation 13(1) of PIT regulations and Regulation 29 (1) read with 29 (3) of Takeover Regulations, 2011, as the disclosure came into public domain, albeit a little late.*

7. In terms of Rule 4(3) of the Adjudication Rules and in the interest of natural justice, the Noticee was provided with an opportunity of personal hearing on

January 24, 2017 vide notice dated December 26, 2016. Mr Balveer Singh Choudhary, Chartered Accountant (hereinafter referred to as "**AR**") appeared for the hearing on the stipulated date on behalf of the Noticee. During the course of the hearing, the AR made the following submissions:-

(a) that no disclosre was made by Noticee but the shareholding of Noticee was disclosed by the Company in their quarterly disclosure for the quarter ending March, 2013.

(b) that there was no impact of non-disclosure by Noticee on the scrip price. In support of his argument, the AR submitted price movement data for the period from March 01, 2013 to June 30, 2013.

(c) that no further hearing was required in the matter and the reply of the Noticee, dated December 19, 2016 may be taken on record for the purpose of the proceeding.

**CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:**

8. I have carefuly examined the written submissions made by the Noticee, the facts and circumstances of the case and the material available on record. I find that the allegation levelled against the Noticee is that he has failed to make the necessary disclosures in respect of his acquisition of shares of SMIL, as required under the relevant provisions of SAST Regulations and PIT Regulations.

9. Before moving forward, the relevant extracts of the provisions of the SAST Regulations and PIT Regulations allegedly violated by the Noticee are reproduced below

**SAST Regulations, 2011**

*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.*

*29 (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.*

**PIT Regulations, 1992**

*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 2 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.*

10. From the material/facts on record, I observe that the following table indicates the details of the transactions undertaken by the Noticee during the examination period

| **Particulars** | **Net purchases/sale** | **Cumulative share holding** | **% to share capital** |
|---|---|---|---|
| Holding as on March 01, 2013 | | 4644987 | 4.96% |
| Debit of shares of SMIL on March 22, 2013 | 10000 | 4634987 | 4.945% |
| Credit of shares of SMIL on March 30, 2013 (purchased on March 25, 2013) | **170000** | **4804987** | **5.13%** |

11. From the above table, I note that as on March 01, 2013, the Noticee was holding 46,44,987 shares of SMIL, which represented 4.96% of the total paid up capital of the Company. During the period March 01,2013 to March 31, 2013, the Noticee first sold 10,000 shares of SMIL and later on bought 1,70,000 shares of SMIL on March 25,2013, which resulted in the percentage of the shareholding of the Noticee increasing from 4.96% to 5.13% ( as on March 31, 2013).

12. I find that the disclosure requirements under the SAST Regulations and PIT Regulations are triggered when an entity's shareholding in a company crosses the threshold limit of 5% of the total paid up capital of the company. In the instant case, I find that the Noticee was holding less than 5% shares of SMIL on March 01, 2013 (i.e 46,44,987 shares representing 4.96% of the total paid up capital of the company viz. SMIL). As can be observed from the details mentioned above, the Noticee first sold 10,000 shares of the company on March 22,2013 and later on, bought 1,70,000 shares of SMIL on March 25, 2013, which resulted in Noticee's shareholding in the company crossing the threshold limit of 5% of the total paid up capital of the Company. Therefore, the Noticee was required to make the disclosures to the Company and BSE within two working days of his acquisition of the shares, in terms of Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations and to the Company within two working days of his acquisition of shares in terms of Regulation 13 (1) of the PIT Regulations. However, I find that the Noticee has failed to make these disclosures.

13. The Noticee in his reply dated December 19, 2016 has accepted the fact that he has not made the necessary discloures required under the aforementioned provisions of law. The same was also reiterated by the AR during the course of the hearing on January 24, 2017. Further, I find that the company and BSE have

also confirmed the fact that no disclosures were made by the Noticee under the relevant provisions of the PIT and SAST Regulations.

14. In this context, 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 with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI 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.*"

15. In view of the above, I hold that the Noticee has failed to make the disclosure required under Regulation 29 (1) r/w Regulation 29 (3) of the SAST Regulations and also under Regulation 13 (1) of the PIT Regulations. Therefore, the Noticee has violated the provisions of the aforementioned Regulations.

16. I find that the Noticee in his reply dated December 19, 2016 has stated that he was not aware of the disclosure requirements to be made under the PIT Regulations and SAST Regulations. It was also the case of the Noticee that he has not violated the provisions of SAST Regulations and PIT Regulations as his shareholding details were already available in the public domain in the form of quarterly filings made by the Company with the Stock Exchange under the

provisions of the Listing Agreement. I cannot agree with the contentions put forth by the Noticee. It is a settled principle that ignorance of law is no excuse. Further, the Noticee cannot take shelter under the argument that his shareholding details are already available in the public domain as per the information disseminated by the Company to the Stock Exchange in terms of the Listing Agreement. The company has made these disclosures to the stock exchange under the provisions of the Listing Agreement. The obligation to make the disclosures under the PIT Regulations and SAST Regulations within the prescribed time is on the Noticee and it was incumbent on the part of the Noticee to make these discloures. It is on record that Noticee has failed to make these discloures. I, therefore, conclude that the Noticee has violated the provisions of Reg 29 (1) r/w Reg 29(3) of SAST Regulations and Reg 13 (1) of the PIT Regulations.

17. In view of the violation of the provisions of law by the Noticee as established above, the Noticee is liable for monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, which reads as under :

***Penalty for failure to furnish information, return, etc***

***15A. 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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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. In this regard, the provisions of Section 15 J of the SEBI Act 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.*

**Explanation:**

For the removal of doubts,it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section"

19. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made 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 Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature.

20. By not making the disclosures on time,the Noticee has failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram*

*Mutual Fund { [2006]5 SCC 361 }* – where the Hon'ble Supreme Court of India held that *"In our considered opinion, 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….."*

21. Further, I also observe that Hon'ble Securities Appellate Tribunal (SAT) in its judgment on 4.9.2013 in the matter of Vitro Commodities Private Limited Vs SEBI had observed that "*It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.*' In light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Reg 13 (1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations committed by the Noticee can be considered as a single violation for the purpose of imposition of penalty on the Noticee, as violation of the first regulation would automatically trigger the violation of the second regulation.

22. I am of the view that the details of the shareholding of the persons acquiring substantial stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the Noticee having acquired more than 5% stake in the Company,

the timely disclosures of the same by the Noticee under the relevant provisions of SAST Regulations and PIT Regulations, were of significant importance from the point of view of the investors. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

**ORDER**

23. Having considered all the facts and circumstances of the case, the material available on record, the written submissions made by the Noticee and the mitigating factors mentioned in the preceeding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs 2,00,000/- (Rupees Two Lakhs only) on the Noticee viz. Shri Kirit V Dave ( PAN No AHKPD0543J) under the provisions of Section 15A(b) of the SEBI Act for his failure to make the necessary disclosures under Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 (1) and 12(2) (a) of SEBI ( Prohibition of Insider trading) Regulations, 2015. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

24. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account , the details of which are given below

| Account No. for remittance of penalties levied by Adjudication Officer | |
|---|---|
| Bank Name | State Bank of India |
| Branch | Bandra-Kurla Complex |
| RTGS Code | SBIN0004380 |
| Beneficiary Name | SEBI – Penalties Remittable To Government of India |
| Beneficiary A/c No | 31465271959 |

25. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department ( EFD) of SEBI. The format for forwarding details / confirmation of e-payments made to SEBI shall be in the form as provided at Annexure A of the Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is mentioned as under:

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

26. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee viz. Shri Kirit V Dave and also to Securities and Exchange Board of India.

**Place: Mumbai** **SURESH B MENON**
**Date: 18.05.2017** **ADJUDICATING OFFICER**