

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.EAD-5/BS/AO/ 36-40 /2017-18]**

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**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**

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**In respect of:**

<b>Sr. No.</b>	<b>Name</b>	<b>PAN</b>
<b>1.</b>	<b>Shri Akash Gupta</b>	<b>ALPPG0702K</b>
<b>2.</b>	<b>Ms. Rama Gupta</b>	<b>ACHPG6302Q</b>
<b>3.</b>	<b>Shri Anil Kumar</b>	<b>ADQPK7840M</b>
<b>4.</b>	<b>Tanvi Fincap Pvt. Ltd.</b>	<b>AAACT6871B</b>
<b>5.</b>	<b>CCL International Ltd.</b>	<b>AAACC2810K</b>

*In the matter of CCL International Ltd.*

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation into the alleged irregularities in the trading in the scrip of CCL International Ltd. for the period January 02, 2012 to March 21, 2013 (hereinafter referred to as Investigation Period) and into the possible violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as SAST Regulations, 1997), SEBI (Substantial Acquisition of Shares and

Takeovers) Regulation, 2011 (hereinafter referred to as SAST Regulations, 2011) and SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) by Shri Akash Gupta, Ms. Rama Gupta, Shri Anil Kumar, Tanvi Fincap Pvt. Ltd. and CCL International Ltd. (hereinafter referred to as Noticee Nos. 1 to 4 and company respectively and collectively as Noticees)

2. It is observed from the record that Noticee Nos. 1 to 4 are the promoters of the company. It was alleged that Noticees failed to disclose change in shareholding for the quarter ending June 30, 2012 to stock exchanges and thus, violated the provisions of PIT Regulations and SAST Regulations.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri S. V. Krishnamohan was appointed as Adjudication Officer vide order dated February 11, 2016 to inquire and adjudge under Section 15 A(b) of the SEBI Act, the alleged violation of
  - I. Regulation 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as SAST Regulations, 2011) and Regulations 13(1), (4A) read with (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) by Shri Akash Gupta and Ms. Rama Gupta (hereinafter referred to as Noticee Nos. 1 and 2 respectively);
  - II. Regulation 29(2) read with 29(3) of SAST Regulations, 2011 and Regulation (4A) read with (5) of PIT Regulations by Shri Anil Kumar and Tanvi Fincap Pvt. Ltd. (hereinafter referred to as Noticee Nos. 3 and 4 respectively);
  - III. Regulation 13(6) of PIT Regulations by CCL International Ltd. (hereinafter referred to as Noticee No. 5/company)
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S. V. Krishnamohan.

## **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A Common Show Cause Notice dated April 29, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 for the violations as specified in the SCN.
6. Vide letters dated May 14, 2016, Noticees sought time to file reply.
7. Vide separate but similarly worded letters dated July 23, 2016, Noticees filed reply to the SCN and made the following submissions:
  - I. *The requisite disclosures under Regulation 29(2) read with 29(3) was made by Tanvi Fincap Pvt. Ltd. for itself and for and behalf of Noticee Nos. 1 to 3 and for other persons of promoter group on March 24, 2012 to the company and to the Stock Exchanges i.e. DSE and BSE within the prescribed timelines.*
  - II. *The Noticees duly made all the compliances on its part and the records corroborates the fact of compliance being done by notices. It is significant to note that we got the disclosures hand delivered to the Target Company and DSE. We have acknowledged copies of DSE and the Target Company. Further the requisite disclosures were dispatched through courier to the BSE of which proof of dispatch is enclosed.*
8. Vide separate letters dated July 25, 2016, Noticees submitted that they have filed consent application. In the light of the consent application filed by the Noticees, the current adjudication proceedings were kept in abeyance. However, the said consent application was rejected by the High Powered Advisory Committee (HPAC) which was communicated to the undersigned vide internal note dated September 19, 2017.
9. Vide hearing notice dated October 16, 2017, Noticees were granted an opportunity of being heard on November 01, 2017. However, Noticees sought adjournment of the said hearing.
10. Subsequently vide hearing notice dated November 02, 2017, Noticees were granted final opportunity of personal hearing on November 22, 2017. The Authorised Representative (AR) of the Noticee appeared for the said hearing and reiterated the submissions made vide letter dated July 23, 2016. AR submitted that all the

disclosures were made well within the time specified in the SAST Regulations and PIT Regulations and submitted proof of delivery to the company and Delhi Stock Exchange (DSE). With respect to the disclosures to Bombay Stock Exchange (BSE), the AR submitted that the disclosures were also made to BSE well within the time prescribed under the Regulations and submitted the copy of courier receipts. However, it is noted from the records that the said disclosures regarding change of shareholding of the Noticees were not reflected on BSE's website.

### **CONSIDERATION OF ISSUES AND FINDINGS**

11. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
  - a. Whether Noticees failed to disclose the change in their shareholdings to the company and to stock exchanges and violated Regulation 29(2) read with 29(3) and Regulations 13(1), (4), (4A), (5), (6) of PIT Regulations as mentioned in para 3 of the instant order?
  - b. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?
  - c. If yes, then what should be the quantum of penalty?

### **FINDINGS**

12. Before I proceed with the matter, it is pertinent to mention the relevant provisions which are reproduced below:

#### ***SAST Regulations***

#### ***Disclosure of acquisition and disposal.***

*(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company,*

shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the 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.

### **PIT Regulations**

#### **“13. Disclosure of interest or holding in listed companies by certain persons. Continual disclosure. 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 subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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.

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

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

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

**Disclosure by company to stock exchanges.**

(6) Every listed company, within two working days] of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

13. The following shareholding pattern in the scrip was observed:

Particulars	Quarter ended March 2012			Quarter ended June 2012		
	No. of shareholders	No. of shares	%	No. of shareholders	No. of shares	%
Promoter Holding	4	78,57,634	23.21	11	2,82,12,634	29.40
Non Promoter Holding	1,509	2,60,02,866	76.79	2,020	6,77,50,366	70.60
<b>Total no. of shares</b>	<b>1,513</b>	<b>3,38,60,500</b>	<b>100.00</b>	<b>2,031</b>	<b>9,59,63,000</b>	<b>100.00</b>

14. AAR Infrastructure Ltd. (AIL) amalgamated with the company on March 23, 2012. Pursuant to the said amalgamation the total number of shares of the company increased from 3,38,60,500 to 9,59,63,000 as depicted in the table above.

15. Pursuant to the aforesaid amalgamation following change in the shareholding of the promoters was observed:

Name	Quarter ended	Quarters ended
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	Mar-12		Jun-12		Change in the shareholding
	No. of shares	% of shareholding	No. of shares	% of shareholding	
<b>Akash Gupta</b>	<b>6,11,500</b>	<b>1.81</b>	<b>55,82,750</b>	<b>5.82</b>	<b>49,71,250 (5.18%)</b>
<b>Anil Kumar</b>	<b>2,50,000</b>	<b>0.74</b>	<b>38,75,000</b>	<b>4.04</b>	<b>36,25,000 (3.77%)</b>
<b>Rama Gupta</b>	<b>2,07,500</b>	<b>0.61</b>	<b>52,86,250</b>	<b>5.51</b>	<b>50,78,750 (5.29%)</b>
<b>Tanvi Fincap P. Ltd.</b>	<b>67,88,634</b>	<b>20.05</b>	<b>82,88,634</b>	<b>8.64</b>	<b>15,00,000 (1.56%)</b>
Anil Kumar HUF			20,00,000	2.08	
Jyoti Gupta			1,61,250	0.17	
Karnam Trade Ventires P. Ltd.			15,15,000	1.58	
Munni Devi			11,60,000	1.21	
Priya Gupta			1,71,250	0.18	
Sunita Gupta			11,250	0.01	
Varun Gupta			1,61,250	0.17	
<b>Total Promoter Holding</b>	<b>78,57,634</b>	<b>23.21</b>	<b>2,82,12,634</b>	<b>29.40</b>	
<b>Total no. of shares</b>	<b>3,38,60,500</b>	<b>100.00</b>	<b>9,59,63,000</b>	<b>100.00</b>	

16. From the table above, it is observed that there was a change in the number promoters' shareholdings for the quarter ended June 2012.
17. As per Regulation 29(2) read with 29(3) of SAST Regulations and Regulations 13(1), 13(4A) read with 13(5) of PIT Regulations, Noticee Nos. 1 and 2 were required to make the disclosures with respect to the change in their shareholding within 2 working days. However, it is alleged that Noticee Nos. 1 and 2 failed to make the said disclosures.
18. Further as per Regulation 29(2) read with 29(3) of SAST Regulations and Regulation and Regulations 13(4A) read with 13(5) of PIT Regulations, Noticee Nos. 3 and 4 were required to make the disclosures with respect to the change in their shareholding within 2 working days. However, it is alleged that Noticee Nos. 3 and 4 failed to make the said disclosures.
19. Further it is also observed that pursuant to amalgamation of the company with AIL, Anil Kumar HUF, Ms. Jyoti Gupta, Karnam Trade Ventures P. Ltd, Ms. Munni Devi, Ms. Priya Gupta, Ms. Sunita Gupta and Shri Varun Gupta were allotted 51,80,000 shares (i.e. 5.40% of post issued paid up capital). However, it is alleged that Noticee No. 5 i.e. the company failed to disclose the same under Regulation 13(6) of the PIT Regulations.

20. Upon perusal of the reply of the Noticees and documents submitted along with that, it is noted that disclosures were made to the company by Noticee Nos. 1 to 4 and were received by the company herein Noticee No. 5. Noticee No. 5 has also not disputed the claims of Noticee Nos. 1 to 4. Thus, there is no dispute that disclosures were made to the company by Noticee Nos. 1 to 4.
21. Further with respect to the disclosures to the stock exchanges (BSE and DSE in the present case), the disclosures were stated to have been submitted vide the same letter. Though Noticees have produced the proof to acknowledgment of the disclosures by DSE, however, the Noticees have failed to produce any proof of service/delivery to BSE. On the other hand, vide email dated February 24, 2015, BSE had informed that it did not receive any disclosures from the Noticees.
22. At this juncture, it is pertinent to mention Hon'ble SAT in the matter of Mega Resources Ltd. v. SEBI (Appeal No. 49/2001) wherein it was observed:

*"Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement... Therefore the crucial question is whether the requisite disclosure has been made by the Appellant. For the purpose it is necessary to know what is meant by "disclosure" in the sense in which it is used in the regulation. Disclosure is required to be made to the Target Company. "Disclose to the company" is the clue. "Disclose" according to Websters Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."* (Emphasis supplied)



23. The requirement is not mere dispatch of the disclosures, but the disclosures should reach the recipient(s). In the present case BSE has submitted that it did not receive any disclosures from Noticees.
24. The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the Noticees have not placed on record any acknowledgement received from the BSE in this regard to the disclosures that were allegedly sent. On the other hand, an email from the BSE specifically stating that it did not receive the alleged disclosures from the Noticees is available on record.
25. Hon'ble Securities Appellate Tribunal in the matter of **Milan Mahindra Securities Private Limited v SEBI (Order dated November 15, 2006 Appeal No. 66 of 2003)** held the following:
- "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."*
26. As the letters dated March 24, 2012, March 26, 2012 and March 28, 2012 vide which the disclosures were submitted to DSE and BSE are common, it is not discernible from the facts of the present case as to how the same was not taken on record by BSE. If one may suspect that the disclosures made by the Noticees to BSE as an afterthought, it is not clear from the facts of the case how the acknowledgment stamp of DSE is affixed on the said common letters. From the facts and circumstances of the case as well as on the basis of evidence available on record, it is difficult to dispute the contentions raised by the Noticees. Considering the same, I am inclined to give benefit of doubt to the Noticees.
27. In view of the foregoing, the present adjudication proceedings against the Noticees is disposed of without any penalty. However, it is pertinent to mention that this order shall not prejudice the right of SEBI to initiate adjudication proceedings against the Noticees for the same violation, if the disclosures were found to have been not filed with DSE.

28. In view of my findings noted in the preceding paragraphs, I am of the view that the adjudication proceeding initiated against the Noticees vide SCN dated April 29, 2016 does not warrant any penalty. The matter is, accordingly, disposed of.
29. In terms of rule 6 of the Rules, copy of this order are sent to the Noticees and also to the Securities and Exchange Board of India

**Place: Mumbai**

**DATE: 30.11.2017**

**Biju. S**

**ADJUDICATING OFFICER**