

ADJUDICATION ORDER NO. EAD-8/JS/SP/68/2018

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 Xchanging Solutions Ltd. (formerly known as Cambridge Solutions Ltd. - PAN No: AAFCS9303L, CIN- L72200KA2002PLC030072, in the matter of Xchanging Solutions Ltd (formerly known as Cambridge Solutions Ltd.)

BACKGROUND

1. An letter of offer was filed by M/s. Xchanging (Mauritius) (Acquirer) along with Xchanging Ple (Person Acting in Concert) with Securities and Exchange Board of India ('**SEBI**') to acquire approximately 2.25 crore shares representing 20% shares of Xchanging Solutions Ltd.(formerly known as Cambridge Solutions Ltd.) ('**The Company/Xchanging/Noticee**').
2. The shares of the Company were listed on Bombay Stock Exchange Ltd. ('**BSE**'), The National Stock Exchange of India Ltd. ('**NSE**'), Ahmedabad Stock Exchange Ltd. ('**ASE**') and Madras Stock Exchange Ltd. ('**MSE**').
3. On perusal of the letter of offer, SEBI observed that M/s Scandent Holding Mauritius Ltd., promoter of the Company ('**Scandent**'), made an acquisition of approximately 5.24 crore shares on June 29, 2006 pursuant to merger, which resulted in change in its shareholding in the Company by 50.01% of the share capital of Xchanging. Scandent, claimed that it had disclosed the said acquisition of shares to Xchanging in terms of provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('**PIT Regulations**') and accordingly provided a copy of such disclosure made to Xchanging. BSE and NSE have confirmed that no such disclosure were received from Xchanging. Thus, it was alleged that Xchanging has failed to disclose the disclosure made by Scandent to Stock Exchange in terms of provisions of PIT Regulations.
4. Based on the aforesaid information with respect to non-compliance of PIT Regulations, as applicable, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 ('**SEBI Act**') were initiated against Xchanging inter alia under Section 15A(b) of SEBI Act, as applicable, to inquire into and adjudicate the alleged violation of the provision of PIT Regulations.

Appointment of Adjudicating Officer

5. An Adjudicating Officer was appointed vide order dated December 07, 2016 read with Section 19 of the Securities and Exchange Board of India Act, 1992 (**‘SEBI Act’**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (hereinafter referred to as **‘Adjudicating Rules’**), to inquire into and adjudge under Section 15A (b) of the SEBI Act. Consequent to transfer of proceedings, vide order dated October 04, 2017, these proceedings are now being continued further against Xchanging.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. A Show Cause Notice (**‘SCN’**) in terms of provisions of Rule 4 of the Adjudication Rules read with Section 15I of SEBI Act was issued on February 20, 2017 to Xchanging calling upon Xchanging to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation of the Takeover Regulations. Xchanging was also called upon to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15A(b) of the SEBI Act, as applicable, for the alleged violations committed by them, the details are as follows:

Date of receipt of disclosure of Scandent by Xchanging	No. of shares acquired by Scandent (date of acquisition by Scandent)	Regulation triggered	Due date of Compliance	Date of disclosure to Exchange
15/07/2014 to 17/07/2014 (letter of Scandent dt: 08/07/14)	5,24,70,000 (29/6/06)	13(6) of PIT Regulation	5 days from the receipt of the disclosure	17/07/2014

7. With respect to the disclosure to be made in terms of Regulation 13(6) of PIT Regulations, BSE and NSE vide emails dated November 20, 2015 and November 05, 2015 respectively, in reply to email dated November 03, 2015, has informed that *“no disclosures were received for the aforesaid transaction that had triggered disclosure requirement in terms of PIT Regulations, from Xchanging”*.
8. Xchanging, vide email dated November 26, 2015, in reply to email dated November 03, 2015 and letter November 18, 2015, provided copy of disclosure received from Scandent in terms of PIT Regulation for the aforesaid acquisition.
9. Xchanging, vide email dated March 03, 2017 had sought extension of time till March 20, 2017, to reply to the SCN. In this regard, vide email dated March 09, 2017, as requested, Xchanging was granted time to file reply by March 20, 2017.

10. Xchanging, vide letter dated March 20, 2017 has inter-alia submitted that:
- The said disclosure was sent by Scandent through postal route and the same was received by Xchanging between July 15, 2014 to July 17, 2014.*
 - The same disclosures, i.e. disclosure under Regulation 13(1), (3), & (6) of PIT, have been disseminated by BSE and NSE on July 17, 2014 and July 18, 2014, respectively.*
 - Therefore, it proves that Xchanging had filed the disclosures under Regulation 13(6) of PIT with BSE & NSE, which is received from Scandent.*
 - Accordingly, Xchanging, provided the screen shot of the disclosures made in BSE and NSE.*
11. Vide letter dated April 24, 2017, an opportunity of personal hearing was granted to Xchanging on May 24, 2017. Xchanging, vide letter dated May 18, 2017 has sought the following documents.
- Copies of the SCN/Notices issued by SEBI to Scandent;*
 - Copies of the proceedings sheet where the admissions are made by Scandent;*
 - Correspondence exchanged with the stock exchanges and SEBI post the submissions made by us where we provided the proof of disclosures published by the stock exchanges.*
 - Requested for an opportunity of cross examination of entities mentioned above.*
 - Reschedule the hearing any time in June 2017*
12. Accordingly Xchanging sought adjournment of hearing. Vide email dated May 23, 2017, adjournment of hearing was granted to Xchanging without detailing the future date of hearing.
13. Pursuant to the transfer of proceedings, vide letter dated November 29, 2017, another opportunity of personal hearing was granted to Xchanging on December 19, 2017. Since, Xchanging has informed that the disclosure of Scandent in terms of PIT Regulations was received by Xchanging between July 15, 2014 to July 17, 2014, Xchanging was requested to provide the documentary evidence to substantiate its submissions.
14. On the date of hearing, Mr. Mayank Jain, Company Secretary of Xchanging Solution was accompanied by an authorized representative at the scheduled hearing during which they provided the copy of proof of delivery of the disclosure made by Scandent to Xchanging.

CONSIDERATION OF ISSUES AND FINDINGS:

15. Before going forward with the proceedings, issue of cross examination of entities raised by Xchanging at para 11(d) above needs to be settled. It is to be mentioned that documents relied on have been provided to Xchanging. No written statement/ deposition made by parties are being used against the Noticee other than the documents which have already been provided to the Noticee, thus the request for cross examination is not found tenable.

16. Further, it is mentioned that the request for cross examination though preliminarily raised has not been pursued further by the Noticee after providing all the documents relied on in these proceedings. Consequently, the matter is now being proceeded forward on merits based on the information already on records and as provided to the Noticee.
17. Based on the information available on records, the charges levelled against Xchanging in the SCN, submissions of Xchanging and Scandent in reply to SCNs, the issues that arise for consideration are as follows :-
- Whether Xchanging had violated Regulation 13(6) of PIT Regulations.
 - If yes, does the violation, on the part of Xchanging attract monetary penalty under section 15A(b) of SEBI Act? And
 - If yes, what would be the monetary penalty that can be imposed upon Xchanging taking into consideration the factors mentioned in Section 15J of the SEBI Act.

Issue a) Whether Xchanging had violated Regulation 13(6) of PIT Regulations.

18. It is important to refer the following provisions alleged to have been violated:

“SEBI (PROHIBITION OF INSIDER TRADING REGULATIONS), 1992

Disclosure by Company to Stock exchanges.

"(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 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.

(5) The disclosure mentioned in sub-regulations (3) and (4) 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."

13(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulation (1), (2), (2A), (3), (4) in the respective formats specified in Schedule III. "

19. Thus, it is clear that the liability of the Noticee arises only on him being informed of the same by the acquirer. Given the same the disclosure and the date when the same were made by the acquirer are being elaborated upon herein below.

20. Scandant Group Ltd. Mauritius, promoter of Xchanging (**'Scandent Group'**), on June 29, 2006, acquired approximately 5.24 crore shares on preferential basis, which is 50.01% of the share capital of Xchanging. Prior to the acquisition, Scandent held 1,31,78,571 shares. Subsequent to such acquisition, the holdings of Scandent increased to 6,56,48,571 shares, which is 62.57% of share capital of Xchanging. Scandent Group and Scandent Mauritius Ltd. have since merged with Scandent Holdings Mauritius Ltd.
21. Meanwhile, based on the submission of Xchanging, BSE and NSE vide emails dated May 24, 2017 and June 06, 2017 respectively, were requested to clarify and confirm the facts with respect to the submissions of exchanges. BSE, vide email dated June 13, 2017, has confirmed that, vide letter dated July 17, 2014, Xchanging has filed the disclosure in terms of PIT Regulations, which was in respect of shares acquired by Scandent in June 29, 2006. Similarly NSE, vide email dated June 15, 2017, confirmed the receipt of such disclosure from Xchanging.
22. It is pertinent to mention that Xchanging in its submission has mentioned that the disclosure of Scandent dated July 08, 2014 was received in a date range of July 15, 2014 to July 17, 2014. In this regard, Xchanging was called upon to provide the exact date on which Xchanging have received the disclosure from Scandent along with documentary evidence in support of their submissions. Also, copies of emails of BSE and NSE dated June 13, 2017 and June 15, 2017 respectively were provided to Xchanging.
23. Xchanging, during the hearing on December 19, 2017, provided a set of documents which included a copy of the email written by Company Secretary of Xchanging on December 13, 2017 requesting presumably the Client Administrator of Scandent in Mauritius about the letter posted by them during the period July 07-17, 2014 to Xchanging. Administrator vide its email dated December 14, 2017 has provided a pdf file which shows the details of the date of dispatch and AWB# 9452931191 purportedly of a shipment booked to the Xchanging from the office of the Administrator. However the delivery status of the consignment is neither traceable on the website as provided in the email nor has the delivery status been provided by the Xchanging in its submissions. Thus, this part of the evidence is not reliable.
24. Meanwhile Scandent, vide letter dated December 29, 2017 has submitted that, *"they are unable to track the acknowledgement from Xchanging for filing the said form under the PIT Regulation. Accordingly, informed to go by the date of filing of the said disclosure under the PIT Regulations as reflected from the BSE website" i.e. July 17, 2014*".

25. Further, there is no evidence on record to clearly state the actual date of filing of disclosure by Xchanging to Scandent other than the submission of Scandent informing the date of filing of the disclosure as July 17, 2014.
26. It is noted that separate proceedings are already instituted against Scandent for delayed disclosure in terms of PIT Regulations and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.
27. Considering the facts and circumstance of the case, the case is fit for disposal as the alleged violations is not tenable against the Noticee.

Issue b) If yes, does the violation, on the part of Xchanging attract monetary penalty under section 15A(b) of SEBI Act? And

Issue c) If yes, what would be the monetary penalty that can be imposed upon Xchanging taking into consideration the factors mentioned in Section 15J of the SEBI Act.

28. As the violation are not established against Xchanging therefore, consequent issues b and c requires no further examination.

Order

29. For the aforesaid reasons, SCN EAD6/AK/SK/3919/2017 dated February 20, 2017 alleging violation of provisions of Regulation 13(6) of PIT Regulations by Xchanging is disposed of without imposing any penalty.
30. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Xchanging and also to the Securities and Exchange Board of India

Date: January 29, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer