BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PG/AM/AO–67/2012

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:
Gulistan Vanijya Private Limited
(PAN – AACCG5385R)
In the matter of:
Livingroom Lifestyle Limited
[Now known as Chisel and Hammer (Mobel) Limited]

BACKGROUND

1. A complaint was received from Shri Ashok Samani of M/s. Ashok C. Samani, Share and Stock Brokers, Mumbai that Livingroom Lifestyle Ltd. [now known as Chisel & Hammer (Mobel) Ltd.] (hereinafter referred to as "**Company**") had not informed the stock exchange about the terms/consideration for slump sale of its business effected on February 18, 2010. The complainant had also

requested that the Company may be directed to give this information to stock exchange. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination into the scrip of the Company for the period February 11, 2010 to Nov 25, 2010 (hereinafter referred to as "**investigation period**").

2. It was observed that the price of the scrip of the Company increased from ₹ 32 on April 06, 2010 to ₹ 280.65 on November 25, 2010. Hence an analysis for the period was carried out wherein Mr. Avishek Bose was observed to be the top client who contributed 9.95% to the gross market buy. It was further observed that Mr. Avishek Bose had 8.27% shareholding (constituting 1,00,000 shares of the Company) as on June 30, 2010. Mr. Avishek Bose had purchased these shares from the promoters Jehangir Nagree and Shakeera Nagree on April 13, 2010 and April 19, 2010.

3. It was observed that these one lakh shares of the Company were transferred by Mr. Avishek Bose to Gulistan Vanijya Pvt. Ltd. (hereinafter referred to as "**Noticee**") on November 08, 2010 and subsequently the Noticee transferred the shares to JMD Telefilms Industries Ltd. on November 09, 2010. However, except the promoters Jehangir Nagree and Shakeera Nagree, none of these entities including the Noticee had made any disclosure regarding their shareholdings.

4. It was observed that the Noticee was having substantial shareholding in the Company (8.27% shareholding constituting 1,00,000 shares) on November 08, 2010 which was subsequently transferred on November 09, 2010 but the Noticee failed to make disclosures as required under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "**PIT Regulations**") and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (hereinafter referred to as the "**SAST Regulations**"). In view of the aforesaid it was alleged that the Noticee violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri P. K. Bindlish was appointed as the Adjudicating Officer vide Order dated March 29, 2011 to inquire and adjudicate under Section 15A(b) of the SEBI Act, 1992 the alleged violation of the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations, committed by the Noticee. Subsequent to the transfer of Shri P. K. Bindlish, I was appointed as the Adjudicating Officer vide Order dated January 19, 2012.

SHOW CAUSE NOTICE, HEARING & REPLY

6. A Show Cause Notice (hereinafter referred to as "**SCN**") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") was issued to the Noticee on May 10, 2011, calling upon to show cause why an inquiry should not be held against the Noticee under Rule 4(3) of the Adjudication Rules for the alleged violations. The said SCN was duly delivered to the Noticee on May 18, 2011.

7. However, the Noticee failed to submit any reply to the SCN and therefore an opportunity of personal hearing was granted to the Noticee on June 15, 2011 which was subsequently rescheduled to June 23, 2011. Mr. Dhruva Narayan Jha, the Authorsied Representative of the Noticee appeared for personal hearing on June 23, 2011 and informed that the Noticee would be opting for consent proceedings in the matter. During the course of personal hearing on June 23, 2011 the Authorsied Representative of the Noticee also stated that the Noticee will be submitting reply by July 01, 2011.

8. However, as no reply was received from the Noticee, vide letter dated August 12, 2011 the Noticee was advised to submit its reply to the SCN on or before August 31, 2011. Subsequently, the Noticee filed consent application. The said consent application was rejected

and the rejection was communicated to the undersigned by SEBI vide communication dated September 11, 2012. Since no reply was received from the Noticee, Notice of Inquiry dated September 20, 2012 was issued to the Noticee under Rule 4(3) of the Adjudication Rules vide which another opportunity of personal hearing was given to the Noticee which was scheduled on October 04, 2012. The Noticee was advised to submit its reply, if any, on or before the date of hearing. However, vide letter dated October 04, 2012 (received by email on October 05, 2012) the Noticee requested for extension of time for hearing in the captioned matter. Hence, in order to conduct a fair inquiry, vide Notice of Inquiry dated October 12, 2012 another opportunity of personal hearing was granted to the Noticee on October 19, 2012.

9. Mr. Prakash Shah appeared as Authorised Representative on behalf of the Noticee on October 19, 2012 and made the following submissions:

"It is pertinent to note that 1,00,000 shares of Living Room Lifestyle Ltd. (now known as Chisel & Hammer (Model) Ltd (hereinafter, the "Company") were received / transferred / credited on November 8, 2010 from one Mr. Avishek Bose's demat account to the noticee's demat account and thereafter immediately on very next day, i.e. on November 9, 2010, the said shares were delivered/ transferred / debited from the noticee's demat account to the demat account of JMD Telefilms Industries Ltd. Thus only for a single day 1,00,000 shares of the Company remained in the demat account of the noticee. Thereby, the noticee remained merely a beneficial owner of the shares only for a day. It is on record and

undisputed fact that, on the said shares, noticee did not exercise any right of any nature whatsoever including voting right and did not exercise any control over the Company not only during the relevant time but at any point in time. Looking into the nature of transaction in the demat account , it is apparent that the beneficial ownership of the shares was transferred from one Mr. Avishek Bose to JMD Telefilms Industries Ltd. through the use of the demat account of the noticee. Thus impliedly, there was no acquisition of any shares of the Company by the noticee.

It is pertinent to mention that on the BSE website the total paid up capital of the company, assuming full conversion of warrants and convertible securities is shown as 30,09,554 shares in the shareholding pattern for the quarter ending December 2010. Further, it is understood from the BSE website that the said 18 lakh warrants were allotted on July 22, 2010 and were converted to equity shares on April 02, 2011.

Under the facts and circumstances of the case, the noticee was under the bonafide belief and had clearly reasonable ground to believe that, it was not required to comply with the provision of Regulation 7(1) and 7(2) of SEBI (Substantial Acquisition of shares and Takeovers) Regulation 1997 and Regulation 13 (1) and 13(3) of SEBI (Prohibition of Insider Trading) Regulation, 1992.

It is further clarified that the noticee do not get intimation of transactions effected in demat account on daily basis but gets demat account statement on periodical basis. It got intimation of both the debit and credit transaction together. It is further pertinent to mention that the time period

prescribed for the disclosure requirement under both the aforesaid regulations are two days whereas the shares of the Company remained with the noticee only for a day. Therefore whether warranted or not, in case of Noticee, both debit and credit entry of equal number of shares ought to have been disclosed together. Hence the said disclosure has no material / real effect on any stake holder of the Company. Effectively, no harm, loss, damage or injury of any nature whatsoever has been caused to any investor / stakeholder and even the Noticee has not benefitted in any manner by such non disclosure and did not derive any gain, advantage or profited in any manner whatsoever by such non disclosures. We are also relying on Hon'ble SAT's judgment in the matter of Reliance Industries Ltd. Dated August 31, 2004 and Contact Consultancy Services Pvt. Ltd. & Ors. dated November 17, 2004.

Hence it is humbly prayed that the adjudication proceedings initiated against the noticee be withdrawn and that no penalty be imposed on the Noticee."

ISSUES FOR CONSIDERATION

10. After perusal of the material available on record, I have the following issues for consideration, viz.,

A. Whether the Noticee has violated provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations?

B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations?

12. The provisions of Regulation 7(1) and 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations read as under:

Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

7. (2) *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

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

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.

Continual disclosure

13. (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.*

13. I note that the provisions of Regulation 7(1) of SAST Regulations is clear in its import and, *inter alia*, makes it obligatory to disclose acquisition which entitles a person to more than five per cent

shares or voting rights in a company, to the company and to the stock exchanges where shares of the company are listed. From the shareholding pattern of the Company as available on website[1] of Bombay Stock Exchange (hereinafter referred to as "**BSE**"); I note that for the quarters ended September 2010, December 2010 and March 2011, the paid up equity capital of the Company comprised of 12,09,554 shares. From the transaction statement of the Noticee (enclosed with SCN as Annexure – 2) I note that the Noticee had acquired 1,00,000 shares of the Company (representing 8.27% of the paid up capital of the Company) on November 08, 2010. Hence, the Noticee was under an obligation to make requisite disclosures under Regulation 7(1) of SAST Regulations within 2 working days of acquisition of the shares. However, vide email dated February 28, 2011 (enclosed with SCN as Annexure – 3), Bombay Stock Exchange (hereinafter referred to as "**BSE**") had confirmed that no such disclosure had been made by the Noticee to BSE under Regulation 7(1) of SAST Regulations.

14. Further, Regulation 13(1) of PIT Regulations, *inter alia*, requires a person holding more than 5% shares in any listed company to disclose to the company in Form A, the number of shares held by such person, on becoming such holder, within 2 working days of acquisition of the shares. Hence, the Noticee was also under an obligation to make requisite disclosures to the Company in terms of Regulation 7(1) of SAST Regulations and Regulation 13(1) of PIT

[1] http://www.bseindia.com/stock-share-price/chisel--hammer-(mobel)-limited/chisel/509011/ (as seen on October 22, 2012)

Regulations, which the Noticee has failed to do. Regulation 13(3) of PIT Regulations, *inter alia*, requires a person holding more than 5% shares in any listed company to disclose to the company in Form C, the number of shares held and change in shareholding; when such change exceeds 2% of total shareholding in the Company. As already observed, the Noticee had transferred 1,00,000 shares of the Company (representing 8.27% of the paid up capital of the Company) to JMD Telefilms Industries Ltd. on November 09, 2010. Hence, the Noticee was under an obligation to make requisite disclosures to the Company in terms of Regulation 13(3) of PIT Regulations, which the Noticee also failed to do.

15. I note that the Noticee has neither denied nor disputed the fact of not filing required disclosures under SAST Regulations and PIT Regulations but has, *inter alia*, submitted that the 1,00,000 shares of the Company remained in the demat account of the Noticee only for a single day and the Noticee was a beneficial owner of the shares only for a day. The Noticee has also submitted that, on the said shares, the Noticee did not exercise any right of any nature whatsoever including voting right and did not exercise any control over the Company not only during the relevant time but at any point in time. The Noticee has further submitted that the beneficial ownership of the shares was transferred from one Mr. Avishek Bose to JMD Telefilms Industries Ltd. through the use of the demat account of the Noticee and thus impliedly, there was no acquisition of any shares of the Company by the Noticee. In this regard, I

observe that Black's Law Dictionary defines the word 'acquisition'[2] as "*The gaining of possession or control over something*". As already observed, the Noticee had gained possession of 1,00,000 shares of the Company on November 08, 2010 and the said shares were under the control of the Noticee till the same were transferred to JMD Telefilms Industries Ltd. on November 09, 2010. I am of the considered opinion that since the Noticee had acquired and was holding more than 5% shares of the Company, even for a single day, the Noticee was under an obligation to make required disclosures under Regulation 7(1) of SAST Regulations and Regulation 13(1) of PIT Regulations. Similarly, the Noticee was under an obligation to make necessary disclosure under Regulation 13(3) of PIT Regulations when the 1,00,000 shares of the Company was disposed of by the Noticee and transferred to JMD Telefilms Industries Ltd.

16. The Noticee has stated that on the BSE website the total paid up capital of the company, assuming full conversion of warrants and convertible securities was shown as 30,09,554 shares in the shareholding pattern for the quarter ending December 2010. The Noticee has also stated that 18 lakh warrants were allotted on July 22, 2010 and the same were converted to equity shares on April 02, 2011. The Noticee has submitted that it was under the bonafide belief and had reasonable ground to believe that it was not required to comply with the provisions of Regulation 7(1) read with 7(2) of

[2] Black's Law Dictionary 24 (7th ed. 1999)

SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations. I find these submissions of the Noticee devoid of merit. From the shareholding pattern of the Company for the quarter ending December 2010, as available on BSE website[3] I note that the total paid up equity capital of the Company is mentioned as 12,09,554 shares. I also note that under the heading 'warrants', 18,00,000 warrants are mentioned and total paid up capital of the Company assuming full conversion of warrants and convertible securities is mentioned as 30,09,554. Since it is clearly mentioned that the paid up equity capital of the Company was 12,09,554 shares; there is no scope of any confusion as shares and warrants are two different securities. Further under the heading 'warrants', the words used are 'assuming full conversion', which clearly shows that the warrants had not been converted by then. Also, it has been Noticee's own submission that the said 18 lakh warrants were converted to equity shares only on April 02, 2011. Therefore, I am of the opinion that there was no ambiguity regarding the total number of shares of the Company and since the Noticee had acquired 8.27% shareholding (constituting 1,00,000 shares of the Company) and subsequently disposed of the same, the Noticee had no reasonable ground to not comply with the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations.

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[3] http://www.bseindia.com/corporates/ShareholdingPattern.aspx?scripcd=509011&flag_qtr=1&qtrid=67.00&Flag=New
(as seen on October 22, 2012)

17. I note that the Noticee has not denied that it had 1 lakh shares of the Company on November 08, 2010 but has submitted that it gets demat account statement on periodical basis and not on daily basis. Further, it has submitted that it got intimation of both the debit and credit transaction together.

As per operational procedure followed at the depository, the beneficial owner has to submit a duly executed delivery instruction slip (DIS) for any shares to be debited / transferred out of its account. Thus the Noticee must have issued a DIS for debit of 1,00,000 shares of the company from its account on November 09, 2010. Thus it can also be inferred that it was aware of the credit of 1,00,000 shares of the Company on November 08, 2010. Therefore it is clear that Noticee had timely information about the transactions in company's shares in its account.

18. The Noticee has further submitted that "*the time period prescribed for the disclosure requirement under both the aforesaid regulations are two days whereas the shares of the Company remained with the noticee only for a day. Therefore whether warranted or not, in case of Noticee, both debit and credit entry of equal number of shares ought to have been disclosed together*". I note that as per the provisions of Regulation 7(1) and 7(2) of SAST Regulations, the Noticee was under obligation to disclose the transaction carried out by it on November 08, 2010; within two working days of acquisition of shares to the Company and stock exchanges where the shares of the Company

are listed. Similarly, under Regulation 13(1) of PIT Regulations the Noticee was under obligation to disclose the transaction carried out by it on November 08, 2010, to the Company, within two working days of acquisition of shares, in Form A. For the transaction carried out by the Noticee on November 09, 2010, the Noticee was under an obligation to disclose the same to the Company, within two working days of disposing of the shares, in Form C, as per the provisions of Regulation 13(3) of PIT Regulations. I note that for these disclosures, separate formats are prescribed which, *inter alia*, require disclosure regarding number and percentage of shares acquired/sold, shareholding before and after acquisition/sale, mode of acquisition, etc. Hence, while the Noticee could have made the disclosures about acquisition and disposal (which happened on November 08, 2010 and November 09, 2010 respectively) simultaneously in appropriate forms, it would be inappropriate on its part to conclude that no disclosures were required to be made for such transactions.

19. The Noticee has further submitted that the said disclosures had no material/real effect on any stake holder of the Company and that no harm, loss, damage or injury of any nature whatsoever had been caused to any investor /stakeholder. I am of the opinion that this submission of the Noticee cannot be accepted as plausible reason for acting in violation of securities law. Further, the requirement of making disclosures on acquisition and subsequent disposal of shares of a listed company beyond certain threshold limit, as

prescribed under SAST Regulations and PIT Regulations is material information and has a bearing on the investment decisions of investors and hence, adequate and timely disclosures are in the interest of the investors.

20. In view of the aforesaid findings, I hold that the Noticee has violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

21. The provisions of Section 15A(b) of the SEBI Act, 1992 reads,

"Penalty for failure to furnish information, return, etc.
15A. *If any person, who is required under this Act or any rules or regulations made thereunder, –*
(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;"

22. I note that the Noticee has put reliance on some citations / case laws to plead its innocence. I fear that these citations may not come to the rescue of the Noticee keeping in view the facts of the present

case. Further, in the matter of *SEBI vs. Shri Ram Mutual Fund*,[4] the Hon'ble Supreme Court of India has 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 regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

23. As already observed, the Noticee had acquired and subsequently disposed of substantial number of shares of the Company (1,00,000 shares representing 8.27% shareholding), but failed to make disclosures as required under Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

24. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992, which reads as under:

[4] [2006] 68 SCL 216 (SC)

"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."*

25. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosures, the Noticee had concealed vital information which was detrimental to the interest of investors in securities market. Further, the records do not mention whether the default of the Noticee was repetitive. Nevertheless, while imposing monetary penalty, I have considered the Noticee's submission that the Noticee was holding the shares only for a day and has neither benefitted in any manner by such non disclosure nor has it derived any gain, advantage or

profited in any manner whatsoever by such non disclosures. Hence, I am inclined to take a lenient view in this matter.

ORDER

26. In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 15,000/- (Rupees Fifteen Thousand only) for violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations read with Regulation 35 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; a penalty of ₹ 15,000/- (Rupees Fifteen Thousand only) for violation of Regulation 13(1) of PIT Regulations and a penalty of ₹ 15,000/- (Rupees Fifteen Thousand only) for violation of Regulation 13(3) of PIT Regulations, i.e., a total penalty of ₹ 45,000/- (Rupees Forty Five Thousand only) under Section 15A(b) of SEBI Act, 1992 on the Noticee, Gulistan Vanijya Private Limited. Considering the facts and circumstances of the case the penalty shall be commensurate with the violations committed by the Noticee.

27. 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 Shri Sujit Prasad, Chief General Manager, Integrated Surveillance Department, Securities and

Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

28. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: October 31, 2012 **Piyoosh Gupta**
Place: Mumbai **Adjudicating Officer**