

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO.: AO/PJ/JAK/13/2016]  
UNDER SECTION 15 HB 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**

Shri. Firoz Asgar Khambati(PAN : AACPK8775C) in the case of M/s Coromandel International Limited, (erstwhile Liberty Phosphate Limited)

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as the SEBI) conducted an investigation into the alleged irregularity in the trading activity of one Shri Firoz Asgar Khambati(herein after referred as the Noticee) in the scrip of Coromandel International Limited, (erstwhile Liberty Phosphate Limited) (hereinafter referred to as LPL) into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') and various Rules, Regulations and Guidelines made there under for the period between September 05, 2012 to January 24, 2013.

2. SEBI observed that the noticee has violated clause 4.2 specified under Part A of Schedule I read with Regulation 12(1) of the SEBI(Prohibition of Insider Trading) Regulations(hereinafter referred as SEBI(PIT) Regulations) consequently, liable for monetary penalty under section 15 HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**').

**APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri D Sura Reddy was appointed as the Adjudicating Officer, vide order dated December 01, 2014, under section 19 of the SEBI Act read with section 15-I of the SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by

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Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15HB of SEBI Act, for the aforesaid alleged violation committed by the noticee. The case was transferred to the undersigned vide order dated June 22, 2015.

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

4. Common Show Cause Notice No. EAD-2/PU/13358/2015 dated May 12, 2015 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 against it and penalty be not imposed under section 15 HB of SEBI Act for the alleged violation committed by the Noticee. The SCN was sent by Registered Post.

5. The said SCN returned undelivered. Since the SCN returned undelivered, the same was affixed at the address as available on record on 28.05.2015. As principle of natural justice, the noticee was granted a personal hearing on November 20, 2015 vide hearing notice dated October 23, 2015 advising the noticee to send its reply by November 06, 2015. The Hearing Notice was sent by registered Post. The same returned undelivered with the remark "Not Known". The noticee was granted another opportunity of personal hearing on December 11, 2015 vide hearing notice dated November 30, 2015 advising the noticee to send its reply by December 09, 2015. The same was returned undelivered. The noticee was granted final opportunity of personal hearing on January 14, 2016 vide hearing notice dated December 29, 2016 advising the noticee to send its reply by January 11, 2016. Since the hearing notice returned undelivered, the same was affixed at the address as available on record on 01.01.2016. Noticee neither replied to the SCN nor availed the opportunity of personal hearing. For the reasons mentioned above, I observe that the Noticee was provided with enough opportunities to submit reply/ to be heard and hence, I am constrained to proceed ex-parte with the matter on the basis of the material available on record.

## CONSIDERATION OF ISSUES

6. I have carefully perused the documents available on record. The issues that therefore arise for consideration in the present case are:

- a. Whether the noticee has violated clause 4.2 specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations.
- b. Does the violations, if any, attract monetary penalty under Section 15 HB 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?

7. Before moving forward, it is pertinent to refer to the relevant provisions:

**Code of internal procedures and conduct for listed companies and other entities.**

*"12. (1) All listed companies and organisations associated with securities markets including :*

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*
- (b) the self-regulatory organisations recognised or authorised by the Board;*
- (c) the recognised stock exchanges and clearing house or corporations;*
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and*
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same."*

**CLAUSE:**

*"4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time."*

*In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted."*

8 .The charges leveled against the Noticee and my findings thereon are as under :

Due to a significant rise in the price in the scrip of LPL during the period from September 05, 2012 to January 24, 2013, SEBI had received alerts. It is observed that during the period under investigation, the price of the scrip of LPL opened at Rs. 70.05 on September 05, 2012 and increased to Rs. 213.00 on January 24, 2013. Further, an open offer was made on January 24, 2013, by Coromandel International Ltd. (Acquirer), to the equity shareholders of LPL to acquire 37,53,933 shares (26%) of the equity share capital of LPL in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and the acquirer had made a Public Announcement (PA). However, it was observed that the price of the scrip had experienced an upward trend significantly before the said PA. Hence, client level trading was examined to ascertain any suspicious trading that was carried out based on the Unpublished Price Sensitive Information (UPSI) for the period from September 05, 2012 to January 24, 2013.

9. It was observed that under a Share Purchase Agreement entered into on January 24, 2013 with the existing promoters of LPL namely, Shri Raoof Razak Dhanani and his associates, while Coromandel International Limited had further acquired 70,19,406 equity shares constituting 48.62% of the equity share capital of LPL from the promoters on March 07, 2013. Consequently, the Board of Directors were reconstituted with effect from March 07, 2013 along with the fresh appointment of Directors as mentioned under F.Y. 2012-13 and upon reconstitution of the Board, the directors mentioned under F.Y. 2011-12 had resigned from the Board with effect from March 07, 2013.

10. Upon analysis of the code of conduct adopted by the LPL for prevention of Insider trading for Listed Companies under the PIT Regulations, it is observed that the code of conduct forwarded by LPL was approved by the Board of Directors of LPL in its meeting held on November 11, 2011. Therefore, clarification was sought from LPL regarding code of conduct adopted by it prior to November 11, 2011 and further, LPL was advised

to submit a certified copy of the same. However, LPL, in its reply to the said clarification dated February 04, 2014, stated that *"the board of directors had adopted the code of conduct for prevention of insider trading in terms of Regulation 12 of the SEBI (PIT) Regulations, 1992 in its meeting held on November 11, 2011. Hence, there was no code of conduct prior to that date. Accordingly, we are unable to submit a copy of the same."* Further, it was noted that LPL was listed on BSE from May 22, 1995.

11. As the Schedule I Part A of Model Code of Conduct for Prevention of Insider Trading for Listing Companies under Regulation 12(1) came into effect on February 20, 2002, it creates an obligation on all the listed companies to adopt a Code of Conduct under the PIT Regulations which LPL allegedly failed to do. On further analysis, it is observed that the code of conduct adopted by LPL for Prevention of Insider Trading was not in compliance with the Model Code of Conduct for Prevention of Insider Trading as prescribed under the PIT Regulations as amended on November 19, 2008.

12. In terms of Regulation 12(1) of the PIT Regulations, *"All listed companies and organizations associated with the securities market shall frame a code of internal procedures and conduct as near thereto the Model Code specified in the Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same."* However, upon analysis of the code of conduct adopted by LPL it was observed that point no. 3 under the head 'Other Restrictions' of the Code of Conduct adopted by the company reads as follows:

*"All the directors/officers/designated employees shall hold their investments in securities for a minimum period of 30 days in order to be considered as being held for investment purposes."*

13. While Clause 4.2 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies under the PIT Regulations reads as *"All directors/officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction."*

14. It was observed that the noticee was an Independent Director of LPL for the period from July 31, 2006 to March 7, 2013 and had traded in the scrip of LPL during the period of investigation. It is observed that he had entered into reverse position (opposite transactions) by buying and selling equal number of shares on November 09, 2012 i.e. within a period of six months of his prior transaction which was executed on August 14, 2012. The trade details of Noticee on BSE are as given below:

Scrip Name	Trade Date	Buy Volume	Sell Volume	Buy Price	Sell Price	Net Volume	% of gross volume to total market volume
LPL	09/11/2012	250	250	175.00	174.7	0	0.18%
<b>Total</b>		<b>250</b>	<b>250</b>				

15. Clause 4.2 specified under Part A of Schedule I of Regulation 12(1) of the PIT Regulations requires that all the directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction.

16. It is also noted that point no. 3 of the Code of Conduct for prevention of Insider Trading as adopted by LPL reads as follows: '*All the directors/officers/designated employees shall hold their investments in securities for a minimum period of 30 days in order to be considered as being held for investment purposes....*' Upon perusal it is understood that the point no. 3 of the Code of Conduct for prevention of Insider Trading adopted by LPL, confers an obligation on all directors/officers/designated employees of LPL to refrain from making investments in securities for at least 30 days (in order to pre-clear the transactions by LPL) if the same is to be considered for the purpose of investment. It is observed from LPL's letter dated January 22, 2014 that the Noticee had not made any request to LPL towards pre clearance of his trades.

17. Therefore, it is alleged that the Noticee, by executing the trades as detailed above, is in violation of the Clause 4.2 specified under Part A of Schedule I read with

Regulation 12(1) of the PIT Regulations, both before and after its amendment on November 19, 2008, since the trades executed by him in the scrip of LPL are not in accordance with either of the laws.

18. It has been observed that the noticee did not reply to the SCN and did not avail opportunities of personal hearing.

**Findings :**

19. In view of the above, I am of the view that since the noticee has not replied to the SCN and has not availed opportunities of personal hearing, it can be concluded that the noticee has admitted the charges leveled against him and thus violated clause 4.2 specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations.

20. **The Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. vs. SEBI* (Appeal No. 68 of 2003 decided on December 08, 2006) wherein it, inter alia, observed that –**

*"..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the showcause notice were admitted by them".*

21. **The Hon'ble SAT has recently in the matter of *Sanjay Kumar Tayal & Others v SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), inter-alia, observed that –**

*".....As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices.....".*

22. In the light of the above facts and relying on the cited case laws, I am of the firm belief that it is established without doubt that the Noticee has violated the provisions violated clause 4.2 specified under Part A of Schedule I of Regulation 12(1) of the PIT Regulations.

23. In view of the above, i would like mention here that the Hon'ble Supreme Court of India in the matter of *SEBI Vs. ShriRam Mutual Fund* [2006] 68 SCL 216(SC) 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..."*.

24. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15 HB of the SEBI Act. The provisions of section 15 HB of SEBI Act is mentioned hereunder:-

***Penalty for contravention where no separate penalty has been provided***

***15HB.*** *Whoever fails to comply with any provisions of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

25. While imposing monetary penalty under section 15 HB of SEBI Act, 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."*



26. Based on the material available on record, it is observed that the Noticee has made a nominal loss by executing the above transactions and it is not possible to quantify the losses suffered by the investors.

27. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty:

1. As mentioned above the shares in transaction was 250 shares only and contributed only to the extent of 0.18% of the market volume.
2. The violation is stand alone and is not repetitive.

## **ORDER**

28. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.1,00,000/- (Rupees One Lac Only) on the Noticee viz Shri. Firoz Asgar Khambati which, in my view, will be commensurate with the default committed by the Noticee.

29. The Noticee shall pay the total penalty of Rs.1,00,000/- (Rupees One Lac only) under section 15HB of SEBI Act 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 Shri V S Sundaresan, Chief General Manager, CFD, SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex, Bandra(East), Mumbai – 400 051.

30. 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: **March 30, 2016**

Place: **Mumbai**

**PRASAD P JAGADALE**

**ADJUDICATING OFFICER**

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