

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. ID7/TFCL/AO/DRK-DS/EAD3-516/ 60 -2014]**

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**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

Against:

Twenty First Century (India) Limited  
Mercantile Building, 9/12, Lal Bazar Street,  
'B' Block, 3<sup>rd</sup> Floor, Kolkata – 700 001.

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the dealings in the shares of Silicon Valley Infotech Limited (hereinafter referred to as 'SVIL') during the period November 01, 2002 to April 23, 2003 (hereinafter referred to as the 'investigation period'). The shares of SVIL were traded on the Calcutta Stock Exchange Limited (hereinafter referred to as 'CSE') and the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE') during the investigation period.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. I was appointed as the Adjudicating Officer (subsequent to the transfer of previous Adjudicating Officer) by SEBI under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act) read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the Adjudication Rules), to inquire into and adjudge under Section 15A (b) of the SEBI Act, the violation of Regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "Takeover

Regulations") and Regulation 13(3) of the SEBI (Prohibition of Insider Trading), Regulations, 1992 (hereinafter referred to as "PIT Regulations"), alleged to have been committed by Twenty First Century (India) Ltd. (hereinafter referred to as 'the noticee/ Twenty First/ it') by failing to disclose the sale of shares of SVIL. The said appointment was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated December 10, 2008.

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

3. A Show Cause Notice No. A&E/SVIL/DRK/SS/162540/2009 dated May 07, 2009 (hereinafter referred to as the 'SCN') was issued to the noticee in terms of the provision of Rule 4(1) of the Adjudication Rules, requiring the noticee to show cause as to why an inquiry should not be held against the noticee in respect of the violations alleged to have been committed by the noticee.
4. The investigation report observed that the noticee being a person acting in concert (hereinafter referred to as PAC) with the promoters of SVIL had sold more than 2% of the share capital of SVIL during the investigation period without making the necessary disclosures under Takeover Regulations and PIT Regulations. As per the shareholding pattern of SVIL filed with BSE, it is observed that the shareholding of the promoters and the PACs as on September 30, 2002 was 61.48%, however, the said shareholding came down to 12.91% as on March 31, 2003. Further, the individual shareholding of the noticee was 12.28% as on September 30, 2002. However, the noticee was not shown as holding any shares in SVIL as on March 31, 2003. The copies of the aforesaid shareholding pattern of SVIL was provided to the noticee along with the SCN.
5. The SCN alleged that the noticee was a PAC with the promoters of SVIL and it had individually sold more than 2 percent of the share capital of SVIL without making any disclosures as required under Regulation 7(1A) of the Takeover Regulations. It was also alleged that the noticee was individually holding 12.28% shares of SVIL as on December 31, 2002, and had sold more than 2% of its holding during the period between December 31, 2002 and March 31, 2003 without making disclosure as required under Regulation 13(3) of the PIT Regulations.

6. The aforesaid SCN sent by Registered Post Acknowledgment Due (RPAD) was returned undelivered by postal authorities with a remark "left". Therefore, a copy of the SCN was sent to the stock broker of the noticee, Prakash Nahata & Co. for serving the same on the noticee. However, the said consignment was returned undelivered by postal authorities with a remark "Not Claimed". In order to ascertain the current address of the noticee, National Securities Depository Limited (NSDL) was requested vide email dated November 13, 2009 to provide the address available in its record. NSDL vide letter dated November 19, 2009 submitted that all four DP Accounts of the noticee with them are closed, but all of them had same/similar address as that mentioned in the SCN.
7. Subsequently, a hearing notice dated February 05, 2010 along with a copy of the SCN was sent to the noticee by courier and through CSE to the address available on the website of Ministry of Corporate Affairs. Vide aforesaid hearing notice, the noticee was granted a personal hearing on February 24, 2010 at SEBI Bhavan, Mumbai. CSE vide letter dated February 11, 2010 submitted proof of delivery of the said personal hearing notice along with the copy of the SCN and the same is on record.
8. However, the noticee neither attended the personal hearing scheduled on February 24, 2010 nor submitted any reply to the SCN inspite of service of the same. Considering the circumstances of the case, vide hearing notice dated February 26, 2010, final opportunity of personal hearing was granted to the noticee on March 11, 2010 at SEBI Bhavan, Mumbai. The aforesaid personal hearing notice was sent by courier and by hand delivery through CSE. CSE vide letter dated March 3, 2010 submitted proof of delivery of the said personal hearing notice.
9. In response to the personal hearing notice, an email was received on March 5, 2010 requesting for copy of the SCN in order to submit a consent application, from an email id [poonamcorp@yahoo.co.in](mailto:poonamcorp@yahoo.co.in). However, the sender of this mail failed to mention the capacity and designation under which the copy of the SCN against the noticee was requested. In spite of same, vide email dated March 10, 2010, a reply was sent to the noticee stating that a copy of the aforesaid SCN has already been served on the noticee on February 10, 2010 by CSE along with the first hearing notice dated February 05, 2010. It was informed that if a copy of the SCN is still required, the same may be provided on request.

10. However, it is noted from the records that the noticee submitted its consent application on March 10, 2010. While the consent application was pending, a personal hearing notice dated June 09, 2010 was sent to the noticee advising it to submit reply to the SCN on or before June 21, 2010 and also attend the hearing on June 29, 2010 at SEBI Bhavan, Mumbai. While granting opportunity of personal hearing, noticee was informed that adjudication proceedings will be continued in the matter except passing of the final order. The aforesaid hearing notice sent by Registered Post Acknowledgement Due (RPAD) and the proof of service of the same is on record.
11. The noticee again vide letter dated June 19, 2010 requested for copy of the SCN and Shri Murarka, Company Secretary of the noticee, telephonically requested for adjournment of personal hearing scheduled on June 29, 2010. Considering the request, an adjournment was granted and vide hearing notice dated June 25, 2010, the noticee was granted a final opportunity of personal hearing on July 9, 2010 at the Eastern Regional Office of SEBI at Kolkata. Further, as requested a copy of the SCN was also resent with the said hearing notice. While granting opportunity of personal hearing, noticee was informed that adjudication proceedings will be continued in the matter except passing of the final order till the completion of consent proceedings. The aforesaid hearing notice was sent by courier. The noticee again failed to appear for the hearing and vide letter dated July 6, 2010 again requested for an adjournment of hearing scheduled on July, 9, 2010. Noticee in the said letter submitted that its consent application is pending and thus requested for an adjournment of hearing on or after July 15, 2010.
12. Thereafter, another personal hearing notice dated August 10, 2010 was issued to the noticee advising it to attend the hearing on August 26, 2010 at SEBI Bhavan, Mumbai and since no reply was received so far, the noticee was again advised to submit a reply to the SCN on or before August 20, 2010. While granting the instant opportunity of personal hearing, the noticee was also informed that ample opportunities have already been granted to it to attend personal hearing and no further adjournments will be granted in the proceedings. Noticee was further informed that as its consent application is pending, the adjudication proceedings will be continued in the matter except passing of the final order. The aforesaid hearing notice sent by RPAD and email and the service of the same is on record.

13. Noticee again vide its email dated August 25, 2010 (along with a scanned letter dated August 25, 2010 signed by one of the directors of the noticee) requested for an adjournment of hearing on the ground that its Managing Director Shri Pradeep Garg is severely unwell. The noticee at last 15 months after issuance of the SCN, submitted its reply dated August 24, 2010. The noticee in its reply denied all allegations made in the SCN and submitted the following:

- a) The noticee is a company incorporated under the Companies Act with the main object of trading and investments in shares and securities. The noticee purchased and sold the shares of SVIL independently without acting in concert with anybody. The alleged violations of the provisions of Takeover Regulations is based on the assumption that the noticee was a PAC with the other shareholders of SVIL. The said assumption is totally incorrect and contrary to factual position.
- b) The noticee was not a PAC with the promoters of SVIL namely Arihant Limited, ATN International Limited, Dhansafal Vyapaar Pvt Limited, Sabera Tradelink Pvt Limited, Cascade Dealoom Pvt Limited, Divya Dealers, Hanurang Projects Pvt Limited, Arihant Limited, Acme Resources Limited, Herald Commerce Limited, Ojas Suppliers Limited, Divya Jyoti Trades Commerce Pvt Limited, Udgam Commercials Limited and Amluckie Investments Co. Limited.
- c) It cannot be concluded that the noticee was a PAC with the promoters of SVIL only because one of its directors is the retainer of ATN International Limited (promoter of SVIL) and two of its directors are related to the Managing Director of SVIL.
- d) The aforesaid basis is also limited to two companies viz ATN International Ltd (promoter of SVIL) and SVIL (the Target Company). There is no basis even alleged in so far as the other alleged promoter entities of SVIL are concerned.
- e) The fact that the noticee was not acting in concert with the promoters of SVIL is also borne out by the disclosure made by the SVIL to the stock exchanges.
- f) The noticee had no common objective pursuant to an agreement or understanding with anybody including the promoters of SVIL for

substantial acquisition of shares of SVIL. Even there is no such allegation made in this regard in the SCN.

- g) The noticee is not under the same management as SVIL or its promoters as alleged and no basis for the same are alleged in the SCN.
  - h) Holding of the noticee in SVIL is independent of the other shareholders and was never more than 15 % of the shares or voting rights in SVIL. For the applicability of Regulation 7(1A) the shareholding of the acquirer should be within the limits prescribed under Regulation 11(1) i.e. above 15% in the Target company. Since the shareholding of the noticee was never above 15%, it was not required to make disclosures under 7 (1A) of the Takeover Regulations.
  - i) The noticee had made the necessary disclosures under Regulation 13(3) of the PIT Regulations on February 01, .2003 and March 03, 2003 whenever there has been change in its shareholding in SVIL by more than 2%. The noticee had also enclosed copies of disclosures made by it to SVIL.
14. Vide office note dated February 08, 2011, the concerned department informed that the consent application filed by the noticee is rejected. Since, the noticee failed to appear for any personal hearings granted to it, vide hearing notice dated March 24, 2011, final opportunity of personal hearing was granted to the noticee on April 11, 2011 at SEBI Bhavan, Mumbai,. The said hearing notice was sent by RPAD and was served on the noticee. The proof of delivery is available on record. Vide the said hearing notice, the noticee was informed that no further extension/ adjournment would be granted in the matter. However, the noticee, being a listed company, failed to appear for the final hearing scheduled on April 11, 2011 without furnishing any reasons. It is noted that several opportunities were provided to the noticee to appear for the personal hearing but the noticee has failed to appear for any of the said personal hearings.

## **CONSIDERATION OF EVIDENCE AND FINDINGS**

15. I have taken into consideration the facts and circumstances of the case and the material made available on record. The issue which arises for consideration is whether the noticee failed to make necessary disclosures under Regulation 7(1A) of the Takeover Regulations and Regulation 13(3) of the PIT Regulations in respect of the shares of SVIL sold by it.
16. The SCN alleged that the noticee was a PAC with the promoters of SVIL and had individually sold more than 2% of the share capital of SVIL without making the necessary disclosure to SVIL, BSE and CSE under Regulation 7(1A) of the Takeover Regulations. The SCN observed that the noticee had sold 8,00,000 shares of SVIL between December 31, 2002 and March 31, 2003 which constitutes more than 2% of the share capital of SVIL. The noticee in its reply had admitted the sale of shares made by it. Regulation 7(1A) of the Takeover Regulations is reproduced in order to ascertain the obligation of the noticee to make disclosure regarding the sale of shares by it under the said provision.

### **Takeover Regulations**

**“7 (1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.**

### **Consolidation of holdings.**

**11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations. ”**

17. It is observed from the IR that Arihant Limited and ATN International limited were the promoters of SVIL. The Annual Report of Arihant Limited for the financial year 2002-2003 discloses that Shri. Surendra Kumar Jain was the Managing Director of Arihant Limited as well as the noticee during the said period. Therefore, Arihant Limited and the noticee were under the same management as per Section 370 (1B) of the Companies Act. As per Regulation 2(e)(2)(i) of the Takeover Regulations, companies under the same management are deemed to be PAC. In view of the same, Arihant Limited and the noticee were PAC during the relevant time i. e. 2002-2003.
18. It is observed from the shareholding pattern of SVIL for the quarter ending December 2002 that Arihant Limited was holding 7,05,800 shares of SVIL constituting 5.44% of the share capital and the noticee was holding 15,92,300 shares constituting 12.28%. The obligation to make disclosure under Regulation 7 (1A) of the Takeover Regulations arises when an acquirer who has acquired shares in accordance with Regulation 11 (1) of the Takeover Regulations, purchases or sells shares aggregating 2% or more of the target company. Regulation 11 (1) of the Takeover Regulations deals with a situation where the acquirer along with PAC, is holding between 15% and 55% of the share capital of the target company. It is observed that the noticee, being a PAC with Arihant Limited had a consolidated holding 17.72% of the share capital of SVIL as on the quarter ending December 2002. Therefore, the submission of the noticee that it was holding less than 15% of the share capital of SVIL and hence Regulation 7 (1A) of the Takeover Regulations would not apply to it is not in accordance with the aforesaid regulation. On comparing the shareholding of the noticee as on the quarter ending December 2002 and the quarter ending March 2003, it is observed that the said shareholding reduced by more than 2%, which required disclosure as specified under the Takeover Regulations. Admittedly, no disclosure as specified under Regulation 7(1A) of the Takeover Regulations was made by the noticee to the company and to the stock exchanges where the shares of SVIL are listed. Therefore, it is concluded that the noticee had failed to disclose the change in its shareholding in SVIL pursuant to sale of shares between the quarters ending December 2002 and March 2003 as mandated under Regulation 7(1A) of the Takeover Regulations.



19. The noticee was also alleged to have violated Regulation 13(3) of the PIT Regulations by not disclosing sale of more than 2% of the share capital during the period between December 31, 2002 and March 31, 2003 to SVIL. However, the noticee had submitted that it had made the necessary disclosures as required under the PIT Regulations whenever there was a change in its shareholding. The noticee submitted copies of letters dated February 1, 2003 and March 3, 2003 acknowledged by SVIL bearing the company stamp, whereby the disclosures (details provided in the following table) were claimed to have been made. However, the said acknowledgment by SVIL is without any date.

| Letter dated | No. of shares sold | Date of sale |
|--------------|--------------------|--------------|
| 01.02.2003   | 2,07,600           | 30.01.2003   |
| 01.02.2003   | 1,20,000           | 31.01.2003   |
| 03.03.2003   | 40,000             | 04.02.2003   |
| 03.03.2003   | 72,400             | 10.02.2003   |
| 03.03.2003   | 3,00,000           | 28.03.2003   |
| Total        | 7,40,000           |              |

20. The letter dated March 03, 2003 disclosed sale of 3,00,000 shares on March 28, 2003, which could be a typographical error. Therefore, it is observed that the above letters apparently establish the compliance by the noticee with the requirements under Regulation 13(3) of the PIT Regulations in respect of the sale of shares made by it.

21. Based on the submissions of the noticee and the documents submitted by the noticee in support of its submissions, it appears that the noticee had made the necessary disclosures of the change in its shareholding to SVIL as per the requirement of Regulation 13(3) of the PIT Regulations with a negligible delay. Hence, the allegation against the noticee that it had violated Regulation 13(3) of the PIT Regulations may not be established.

22. At this juncture, I would like to quote the order of Hon'ble Securities Appellate Tribunal in Milan Mahindra Securities Private Limited vs SEBI (Order dated November 15, 2006 Appeal No. 66 of 2003), wherein Hon'ble SAT observed that " *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.*"

23. Considering the facts and circumstances of the case and the material made available on record, it is concluded that the noticee has violated Regulation 7(1A) of the Takeovers Regulations. Violation of the above provision attracts penalty under Section 15A (b) of the SEBI Act which is reproduced as under:

*15A. Penalty for failure to furnish information, return, etc. -*

*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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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.*

24. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the 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.*

25. I have considered the guiding principles laid down under Section 15J of the SEBI Act to determine the quantum of penalty. The amount of disproportionate gain or unfair advantage made by the noticee and the amount of loss caused to the investors as a result of a default of this nature is not available on record.

26. In view of the findings hereinabove and on taking into account the circumstances of the case, I find that a monetary penalty of ₹ 20,00,000 /- (Rupees Twenty Lakhs only) for violation of Regulation 7 (1A) of the Takeover Regulations would commensurate with the violations.

## **Order**

27. In exercise of the powers conferred upon me under section 15-I of the SEBI 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, I hereby impose a monetary penalty of ₹ 20,00,000 /- (Rupees Twenty Lakhs only) on the noticee, namely Twenty First Century (India) Limited, for violation of Regulation 7 (1A) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Section 15A (b) of the SEBI Act, 1992.
28. The noticee shall pay the said amount of penalty 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 shall be forwarded to the Chief General Manager, Investigation Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051, India.
29. In terms of Rule 6 of the Adjudication Rules, copies of this order are being sent to Twenty First Century (India) Limited and also to the Securities and Exchange Board of India.

**Place: Mumbai**  
**Date: May 23, 2014**

**D. RAVI KUMAR**  
**CHIEF GENERAL MANAGER &**  
**ADJUDICATING OFFICER**