

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. PG/AO/74/2012]**

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

**Ms. K Nirmala**

**[PAN: AVQPK6264K]**

**In the matter of**

**Concurrent (India) Infrastructure Limited**

**(Now known as Shriniwas Power & Infrastructure Limited)**

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**Background of the case**

1. Securities and Exchange Board of India (SEBI) had received an email from CDSL regarding the high volume of trade of a client in the scrip of Concurrent (India) Infrastructure Ltd.(**CIIL**) (now known as Shriniwas Power & Infrastructure Ltd.) as compared to the market volume. During investigation, the quarterly shareholding patterns in the scrip from the Bombay Stock Exchange (BSE) website were examined. The said investigation revealed that Ms. K. Nirmala (**Noticee**), who was a promoter of CIIL had pledged certain shares of CIIL and her shareholding had undergone changes consequent upon the invocation of the pledge. It was also revealed that the Noticee had not made necessary disclosures as required under regulations 8(A)(2) and

8(A)(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (**SAST Regulations, 1997**), SEBI Circular No. SEBI/CFD/DCR/TO/152758/2009 dated 03/02/2009 read with Regulations 8A(1), 8A(2), 8A(3) and 8A(4) of SAST Regulations 1997, Regulations 29(2) read with 29(3), Regulation 31(2) read with 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations 2011**) and Regulation 13(3) read with 13(5) & Regulation 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**).

2. In view of the findings of the investigation as given above, SEBI, vide Order dated September 07, 2012 appointed the undersigned as Adjudicating Officer (**AO**) under Section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for holding inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) to inquire into and adjudge under Section 15A (b) of the SEBI Act, the alleged violation of provisions of SAST Regulations, 1997 & SAST Regulations, 2011 and PIT Regulations by the Noticee.

### **Show Cause Notice, Reply & Personal hearing**

3. Show Cause Notice dated October 11, 2012 (**SCN**) was issued to the Noticee in terms of the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against her in respect of the violations alleged to have been committed. The SCN alleged that the Noticee had not filed the necessary disclosures as required under the provisions of SAST Regulations 1997, SAST Regulations, 2011 and PIT Regulations. The disclosure dated 21.01.2012 made by the Noticee to CIIL, demat statement with

NSDL and copy of circular dated February 03, 2009 were furnished to the Noticee along with the SCN.

4. In response to the SCN, the Noticee, vide letter dated October 25, 2012 submitted reply. Subsequently the Noticee was, vide letter dated November 07, 2012, advised to appear before the AO for personal hearing on November 19, 2012. The Noticee or any authorized representative did not appear for personal hearing.
5. The salient submissions of the Noticee in response to the SCN, made vide letter dated October 25, 2012 are as under:
  - She has inadvertently not made disclosures as required under regulation 8(A) of SAST Regulations, 1997 for the creation /invocation/revocation of pledge of equity shares of CIIL from 29.06.2010 to 26.12.2011.
  - She has made a mistake in the disclosure made by her on 20.01.2012 by mentioning 151000 equity shares released on 26.08.2011 and 65000 equity shares invoked on 16.09.2011. She interpreted the said transaction statement wrongly. She should have mentioned 216000 equity shares as invoked on 18.07.2011 in the said disclosure.
  - She inadvertently failed to make the disclosures to CIIL as required under regulation 8A of SAST Regulations and to CIIL and stock exchanges under regulation 13 of PIT Regulations.

### **Consideration of Issues, Evidence and Findings**

6. I have carefully perused the documents available on record and written submissions made by the Noticee. The issues that arise for consideration in the present case are:

- a. Whether the Noticee has violated provisions of Regulations 8(A)(2) and 8(A)(3) of SAST Regulations, 1997, SEBI Circular No. SEBI/CFD/DCR/TO/152758/2009 dated 03/02/2009 read with Regulations 8A(1), 8A(2), 8A(3) and 8A(4) of SAST Regulations 1997, Regulations 29(2) read with 29(3), Regulation 31(2) read with 31(3) of SEBI SAST Regulations 2011?
  - b. Whether the Noticee has violated the provisions of regulation 13(3) read with 13(5) and Regulation 13(4A) read with 13(5) of PIT Regulations?
  - c. Do the violations, if any, on the part of the Noticee attract penalty under section 15A (b) of SEBI Act?
  - d. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?
7. The relevant provisions of the SAST Regulations and PIT Regulations are as follows:

***SAST Regulations , 1997***

***Regulation 8A. Disclosure of pledged shares***

(1).....

(2) *A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company.*

(3) *A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.*

*Explanation – For the purposes of sub-regulations (1), (2) and (3) the term “promoter” and “promoter group” shall have the same meaning as is assigned to them under Clause 40A of the Listing Agreement.*

## **SAST Regulations , 2011**

### **Regulation 29. Disclosure of acquisition and disposal.**

*(1) .....*

*(2) Any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such 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.*

### **Regulation 31. Disclosure of encumbered shares.**

*(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*

- (2) *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*
- (3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be 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***

#### ***Regulation 13- Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies- Initial disclosure***

(1).....

(2).....

#### ***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)....

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

(a) *the receipt of intimation of allotment of shares, or*

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

*(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.”*

8. From the material available on record, I find that the Noticee was a promoter shareholder of CIIL and she had pledged certain shares of CIIL. Her shareholding had undergone changes consequent upon the invocation / revocation of the pledge. The details of the shares pledged by the Noticee and invocation / revocation thereof are as under:

<b>Date of creation/invocation</b>	<b>Creation/Invocation of pledge</b>	<b>No. of shares pledged</b>	<b>Due date of disclosure by entity to CIL *</b>	<b>Actual date of disclosure by entity to CIL</b>	<b>Disclosure by CIL to the stock exchange</b>
29/06/2010	Creation	2,00,000	08/07/2010	20/01/2012	20/01/2012
27/10/2010	Creation	4,16,000	05/11/2010	20/01/2012	20/01/2012
28/10/2010	Creation	60,000	08/11/2010	20/01/2012	20/01/2012
16/12/2010	Creation	60,000	28/12/2010	20/01/2012	20/01/2012
4/2/2011	Invocation	200,000	15/2/2011	20/01/2012	20/01/2012
27/05/2011	Revocation	60,000	--	20/01/2012	20/01/2012
27/05/2011	Revocation	60,000	--	20/01/2012	20/01/2012
18/07/2011	Invocation	2,16,000	27/7/2011	20/01/2012	20/01/2012
16/09/2011	Creation	1,000,000	27/9/2011	20/01/2012	20/01/2012
23/12/2011	Invocation	1,000,000	3/1/2012	20/01/2012	20/01/2012
26/12/2011	Invocation	200,000	4/1/2012	20/01/2012	20/01/2012

*( \* - under SAST Regulations 1997 & SAST Regulations 2011)*

9. As shown in the table above, the Noticee made disclosures of the above mentioned transactions on 20/01/2012 which was much later than the due date for disclosure. Timely disclosures have not been made as required under Regulation 8 (A) (2) of SAST Regulations, 1997 for the transactions creating pledge on

29/06/2010, 27/10/2010, 28/10/2010, 16/12/2010 and 16/09/2011. Similarly, for the transactions invoking pledge on 4/2/2011 and 18/07/2011, disclosures have not been made as required under Regulation 8 (A) (3) of the SAST Regulations, 1997 and for the transactions invoking pledge on 23/12/2011 and 26/12/2011 as required under Regulations 31(2) read with Regulations 31(3) of SAST Regulations, 2011. I find that the Noticee was required to make the disclosures on creation/invoke/revocation of pledge in the formats specified. I further find that the Noticee made the disclosures on 20/01/2012 to CIIL only after CIIL received SEBI's letter dated 13/01/2012 seeking the details of disclosure made by the Noticee. In the said disclosures, I find that that the Noticee had disclosed that on 16/09/2011, pledge on 65,000 shares was invoked by Streamline Shipping Company Private Limited. However, I find from the demat account statement received from NSDL that on 18/07/2011, pledge on 2,16,000 shares was invoked by Streamline Shipping Company Private Limited and on 26/08/2011, 1,51,000 shares were credited through off-market to the account of the Noticee with the DP- IDBI Bank limited which is after more than one month of invocation. Hence the information provided by the Noticee even in the disclosure dated 20/01/2012 is incorrect. The Noticee has admitted the lapses vide her letter dated 25/10/2012.

10. Thus, I find that the Noticee has not made necessary disclosures to CIIL regarding the creation of pledge and invocation / revocation of pledge of shares within 7 working days from the date of creation of pledge and invocation / revocation of pledge on shares as required under the regulations. This is evident from the table shown above.



11. I further find that upon invocation of pledge, the shareholding of the Noticee had changed and necessary disclosures as required under PIT Regulations have not been made by the Noticee. The change in the shareholding upon invocation / revocation of pledge is as shown in the table below:

Date of creation/ invocation	Opening balance	No. of shares acquired/dissposed	Closing balance	% of the paid-up capital
			28,35,259	6.58%
4/2/2011	28,35,259	-200,000	26,35,259	6.12%
18/07/2011	26,35,259	-2,16,000	24,19,259	5.62%
26/08/2011	24,19,259	1,51,000	25,70,259	5.97%
23/12/2011	25,70,259	-10,00,000	15,70,259	3.65%
26/12/2011	15,70,259	-200,000	13,70,259	3.18%

*As on 31/03/2010, the paid up capital of CIIL was Rs 43,05,99,990 divided into 4,30,59,999 shares of Rs 10 each (source : CIIL annual report available on BSE web site).*

12. As per the Demat account statement of the Noticee with NSDL, 1,51,000 shares were credited to her account with the DP - IDBI Bank Limited on 26/08/2011. With that transaction, the holding of the Noticee increased by more than 25,000 shares. Further, consequent upon the invocation of pledge on shares on 23/12/2011 and 26/12/2011, the holding decreased by more than 25,000 shares. The Noticee was bound to make necessary disclosures under Regulation 13(4A) read with 13 (5) of PIT Regulations to the company and to the stock exchange. On 23/12/2011, the holding of the Noticee had decreased by more than 2% and the same should have been disclosed as per Regulation 13 (3) read with 13 (5) of PIT Regulations and also under Regulation 29(2) read with 29(3) of SAST regulations 2011. As the Noticee has not made disclosures as required under PIT Regulations and SAST Regulations, 2011, I find that she has violated the provisions of Regulation 13(3) read with 13(5), 13(4A) read with 13 (5) of PIT Regulations and Regulation 29(2) read with 29(3) of SAST Regulations 2011.

13. In her reply dated October 25, 2012 she has admitted to the violations committed by her. She has submitted that the non-filing of necessary disclosure was inadvertent. She has also stated that she made a mistake in the disclosure made by her on 20.01.2012 by mentioning 151000 equity shares released on 26.08.2011 and 65000 equity shares invoked on 16.09.2011. She has stated that the said transaction statement was interpreted wrongly.
14. I find that the Noticee has made disclosures to CIIL on 21.01.2012 after SEBI sent a letter to CIIL seeking the shareholding of the Noticee. These disclosures were made much after the transactions creating/invoking and releasing of the pledge. Such delayed disclosures are against the spirit of Regulations mandating disclosures. Disclosure of the holdings of the promoters and their transactions therein, on the websites of the exchanges, serve a very important purpose as these holdings are a barometer of the promoters' confidence in the future of the company. If such disclosures are not made within the time frame provided in the Regulations, it can only be considered as non-disclosure as it results in concealing vital information from the market and general investors.
15. In view of the foregoing discussion and the specific admission of the Noticee to the violations, I hold that the Noticee has violated the provisions of Regulations 8(A)(2) and 8(A)(3) of SAST Regulations, 1997, Regulations 29(2) read with 29(3), Regulation 31(2) read with 31(3) of SAST Regulations 2011 and the provisions of regulation 13(3) read with 13(5) and regulation 13(4A) read with 13(5) of PIT Regulations.

16. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."*

17. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15A(b) of the SEBI Act which reads thus:

**SEBI Act**

**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,-*

*(a).....*

*(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"*

18. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

***Factors to be taken into account by the adjudicating officer.***

*While adjudging quantum of penalty under S.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."*

19. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific

gains made by the Noticee by not making the specified disclosures on the due dates. Further it is also not possible to ascertain the loss to the investors in monetary terms. However the fact remains that by not making the required disclosures on time, the Noticee had deprived the investors of timely information. Further, since there was excessive delay in making disclosures on numerous occasions, I find the violations by the notice were repetitive in nature.

## **ORDER**

20. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹. 3,25,000/- (Rupees Three Lac Twenty Five Thousand only) on the Noticee, Ms. K Nirmala in terms of Section 15A(b) of the SEBI Act for violation of the provisions of Regulations 8(A)(2) and 8(A)(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011, Regulations 29(2) read with 29(3), Regulation 31(2) read with 31(3) of SEBI SAST Regulations 2011 and the provisions of regulation 13(3) read with 13(5) and Regulation 13(4A) read with 13(5) of PIT Regulations. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.
21. The penalty shall be paid by way of a duly crossed 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 Chief General Manager, Integrated Surveillance Department

Securities and Exchange Board of India, Plot no.C4-A, 'G'  
Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051.

22. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India. The matter is disposed of accordingly.

**DATE: November 30, 2012**  
**PLACE: Mumbai**

**PIYOOSH GUPTA**  
**ADJUDICATING OFFICER**