

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO/SPV/20/2015-16]

---

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.

In respect of  
Somerset India Fund  
(PAN: AAJCS8622A)

In the matter of  
M/s Austral Coke and Projects Limited

---

**Background**

1. Securities and Exchange Board of India (**SEBI**) conducted investigation into the alleged irregularities in the affairs of M/s Austral Coke and Projects Limited (**Company**). The investigation revealed that Somerset India Fund (**Noticee**) was holding 9.44% stake (2,74,00,000 shares) in the company as on September 30, 2009 and it off-loaded majority of its stake in the company during the period November 2009 - February 2010. The investigation revealed that the Noticee was required to make disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**) regarding such change in its shareholding, to the company and the Noticee had not made the required disclosure.

---

*Adjudication Order in respect of Somerset India Fund in the matter of Austral Coke and Projects Limited.*

*April 24, 2015*

*Page 1 of 10*

2. SEBI has, therefore, initiated adjudicating proceedings under the Securities and Exchange Board of India, 1992 (**SEBI Act**) to inquire into and adjudge under section 15A(b) of the SEBI Act, the alleged violations of the provisions of regulations 13 (3) of PIT Regulations committed by the Noticee.

#### **Appointment of Adjudication Officer**

3. The undersigned was appointed as Adjudicating Officer vide order dated July 21, 2014 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violations of the provisions of regulation 13 (3) of PIT Regulations by the Noticee.

#### **Show Cause Notice, Reply and Personal Hearing**

4. Show Cause Notice dated August 21, 2014 (**SCN**) was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed against it under section 15A(b) of the SEBI Act for the alleged violations specified in the SCN.
5. The Noticee vide letter dated October 21, 2014 filed reply to the SCN. Thereafter, the Noticee was granted an opportunity of hearing on January 08, 2015. Vide e-mail dated January 06, 2015, the Noticee requested for a short adjournment and accordingly the hearing was re-scheduled to January 14, 2015 when Shri Ankit Lohia & Shri Harshad Gada, Advocates appeared as Authorized Representatives (ARs) on behalf of the Noticee. The ARs re-iterated the submissions made by the Noticee vide letter dated October 21, 2014 and also undertook to submit the copies of acknowledgements of disclosures made to the company for 07.12.2009, 15.12.2009 & 24.12.2009. Vide letter dated January 19, 2015 additional documents were submitted on behalf of the Noticee.

---

*Adjudication Order in respect of Somerset India Fund in the matter of Austral Coke and Projects Limited.*

6. Based on the additional observations in connection with the transactions of the Noticee in the shares of the company during the period December 16, 2009 to December 24, 2009, a supplementary SCN dated January 29, 2015 was issued to the Noticee. Vide the said supplementary SCN, the Noticee was informed that it had off-loaded 6000000 shares of the company during the period December 16, 2009 to December 24, 2009 and consequent upon the said transaction, the shareholding of the Noticee in the company had changed by more than 2% shares on December 24, 2009 and the Noticee was required to make disclosure to the company as per the provisions of regulation 13(3) of PIT Regulations. It was alleged in the supplementary SCN that the Noticee had not made necessary disclosure for the said transaction to the company.
7. The Noticee, vide letter dated February 13, 2015 replied to the supplementary SCN. Thereafter, vide letter dated February 24, 2015 the Noticee was advised to appear for personal hearing on March 02, 2015 when Shri Harshad Gada, Advocate appeared as AR on behalf of the Noticee. The AR re-iterated the submissions made by the Noticee vide letter dated February 13, 2015 and also further requested for one week time for submitting additional documents. Vide e - mail dated April 07, 2015 the Noticee submitted additional documents.

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

8. I have carefully perused the material available on record, written and oral submissions made by the Noticee.
9. The issues that arise for consideration in the instant case are:
  - a. Whether the Noticee has violated the provisions of regulation 13 (3) of PIT Regulations?

- b. Does the violation if any, on the part of the Noticee attract penalty under section 15A (b) of SEBI Act?
- c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

10. The relevant provisions of PIT Regulations are as under:

***PIT Regulations  
Regulation 13***

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

(1) .....

(2).....

(3) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in [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.*

11. I note that Austral Coke and Projects Limited is a company listed on The Mumbai Stock Exchange Limited (BSE) and the National Stock Exchange Limited (NSE). During the period January 15, 2010 to February 01, 2010, the price of the scrip of the company fell by around 19%. This was just prior to the disclosure of results on February 01, 2010 for the quarter ended December 31, 2010. The Noticee was a shareholder of the company. The investigation conducted by SEBI revealed that the Noticee was holding 9.44% stake in the company, i.e, 2,74,00,000 shares as on September 30, 2009 and it off-loaded majority of its stake in the company during the period November 2009 - February, 2010. The day wise selling of the Noticee and change in the shareholding is as under:

Date	NSE sell	Avg. Price	BSE Sell	Avg. Price	Total sell	% Change	Cumulative % Change in holding
16-Nov-09	263284	10.05	439150	10.21	702434	0.24	
17-Nov-09	900000	9.45	0	0	900000	0.31	0.55
24-Nov-09	1200000	8.70	0	0	1200000	0.41	0.97
25-Nov-09	1200000	9.04	0	0	1200000	0.41	1.38
2-Dec-09	600000	7.55	400000	7.55	1000000	0.34	1.72
4-Dec-09	500000	7.85	277453	7.85	777453	0.27	1.99
<b>7-Dec-09</b>	<b>1000000</b>	<b>7.80</b>	<b>0</b>	<b>0</b>	<b>1000000</b>	<b>0.34</b>	<b>2.34</b>
8-Dec-09	1200000	7.75	0	0	1200000	0.41	2.75
9-Dec-09	1200000	7.80	0	0	1200000	0.41	3.16
10-Dec-09	500000	8.00	700000	8.00	1200000	0.41	3.58
14-Dec-09	1200000	8.45	0	0	1200000	0.41	3.99
<b>15-Dec-09</b>	<b>1200000</b>	<b>9.05</b>	<b>0</b>	<b>0</b>	<b>1200000</b>	<b>0.41</b>	<b>4.40</b>
16-Dec-09	195000	9.41	1005000	9.51	1200000	0.41	4.82
17-Dec-09	1200000	10.00	0	0	1200000	0.41	5.23
18-Dec-09	1200000	10.50	0	0	1200000	0.41	5.64
21-Dec-09	1200000	10.18	0	0	1200000	0.41	6.06
<b>24-Dec-09</b>	<b>1200000</b>	<b>9.13</b>	<b>0</b>	<b>0</b>	<b>1200000</b>	<b>0.41</b>	<b>6.47</b>
12-Jan-10	712439	9.70	0	0	712439	0.25	6.71
13-Jan-10	750000	9.43	450000	9.42	1200000	0.41	7.13
14-Jan-10	790000	9.55	410000	9.52	1200000	0.41	7.54
22-Feb-10	250000	6.30	691415	6.31	941415	0.32	7.87
23-Feb-10	970000	6.64	230000	6.65	1200000	0.41	8.28
<b>24-Feb-10</b>	<b>800000</b>	<b>6.55</b>	<b>400000</b>	<b>6.52</b>	<b>1200000</b>	<b>0.41</b>	<b>8.69</b>

-----  
*Adjudication Order in respect of Somerset India Fund in the matter of Austral Coke and Projects Limited.*

*April 24, 2015*

*Page 5 of 10*

12. It was further revealed that the shareholding of the Noticee in the company had changed by more than 2% shares on December 07, 2009, December 15, 2009, December 24, 2009 and February 24, 2010 and the Noticee ought to have disclosed such a change in its shareholding to the company as per regulation 13 (3) of PIT Regulations.
13. It was alleged in the SCN & supplementary SCN that the Noticee had not made disclosures for the change in its shareholding on December 24, 2009 and February 24, 2010 and hence it had violated the provisions of regulation 13 (3) of PIT Regulations.
14. In response to the allegations, the Noticee submitted that it had made requisite disclosures to the company and has now produced copies of the said disclosures (Form C) made by it on December 07, 2009, December 15, 2009 and December 30, 2009 as proof of its compliance. On perusal of the documents produced by the Noticee, I find that the disclosure purported to have been made by the Noticee to the company on December 30, 2009 does not bear any acknowledgment of the company to whom it is stated to have been intimated, and it does not even bear the signature of the Noticee. What it bears is only some initial without the name and authority of the person who has subscribed his/her initial. Attached to the said disclosure is copy of a document called 'sending confirmation' which the Noticee has relied upon as proof of sending the disclosure by fax to the company. Here again, it only appears to me that the said 'sending confirmation' is merely a word-typed document containing some details such as "date, name, tel, phone, pages, start time" etc/-. This kind of document i.e, 'sending confirmation' can be generated by anyone at anytime on a piece of paper. Regulation 13(3) clearly cast an obligation to make the disclosures in the manner and time specified therein and it is for person who is making such disclosure to ensure that the same reaches the company within the stipulated time. When a question is raised about the compliance under the said regulation the onus is on the person making the disclosure to prove that the requisite disclosure had

reached the company in time. The Noticee in the instant case has claimed, time and again, that it had made necessary disclosures to the company where as for the reasons mentioned herein above, I am unable to persuade myself to accept the documents produced by the Noticee as conclusive proof of delivery of disclosure to the company.

15. In this regard, I also made an attempt to compare the aforesaid disclosure purportedly made on December 30, 2009 with the other two disclosures made by the company on December 07, 2009 and December 15, 2009. The said disclosures bear the date of receipt, stamp and initial of the company and also bear certain other details which apparently indicate transmission of said disclosures by fax. Not only this, the said disclosures dated December 07, 2009 and December 15, 2009 are also available in public domain at stock exchange website, where as the disclosure dated December 30, 2009 is not appearing on the website. Thus, the disclosure in question i.e, December 30, 2009 more particularly with regard to proof its delivery to the company is clearly distinguishable from the disclosures dated December 07, 2009 and December 15, 2009. If someone claims that it had made/done a positive act, the fact of making/ or doing such a positive act is only in the knowledge of that person who is making it and hence, the burden of proving that it had made it lies on that particular person. For the above reasons, I cannot accept the documents produced by the Noticee as conclusive proof of delivery of disclosure made to the company and conclude that the Noticee has failed to make the requisite disclosures to the company when it clearly triggered the Regulations on December 24, 2009.

16. As regards the allegation of non-disclosure for the transactions done on February 24, 2010, the Noticee has submitted that as per the provisions of regulation 13 (3) of PIT Regulations, a person holding more than 5% of shares of a company has to make disclosure to the company and on December 24, 2009, when the last disclosure was made by the Noticee, its aggregate shareholding in the company was 2.97% which is much less than the

mandated limit of 5% as per the provisions of regulation 13(3) of PIT Regulations. The Noticee contended that there was no requirement of making disclosure for the change in the shareholding of the Noticee for the transactions done on February 24, 2010. In the instant case, as is rightly contended by the Noticee, the aggregate shareholding of the Noticee in the company after the transactions which led to the disclosure requirement on December 24, 2009, was only 2.97% which is much less than the statutory limit of 5%. Hence, I find merit in the contention raised by the Noticee as far as the allegation in the SCN that the Noticee had not made disclosure to the company for change in its shareholding on February 24, 2010.

17. On the basis of the foregoing discussion, I hold that the Noticee has violated the provisions of regulations 13(3) of PIT Regulations on December 24, 2009. At this juncture, it is relevant to quote the judgment of Supreme Court in the matter of *SEBI vs. Shri Ram Mutual Fund* wherein it was inter alia 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.”*
18. Thus, the aforesaid violation by the Noticee make it liable for penalty under section 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 there under,-*

*(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”.*



19. 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.”*

20. 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 also no material on record from which it is possible to assess the extent of specific gains made by the Noticee as a result of the default. However the fact remains that by not making the required disclosure, the Noticee had deprived the investors of important information at the relevant time. It is pertinent to mention here that our entire securities market stands on disclosure based regime. Accurate and timely disclosures are fundamental in maintaining the integrity and transparency of the securities market. However, the Noticee have failed to discharge the statutory obligation of making the requisite disclosure.

**Order**

21. After taking into consideration all the facts and circumstances of the case, I am convinced that this is a fit case for imposing monetary penalty on the aforesaid Noticee, Somerset India Fund. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty

---

*Adjudication Order in respect of Somerset India Fund in the matter of Austral Coke and Projects Limited.*

*April 24, 2015*

*Page 9 of 10*

of ₹.5,00,000/- (Rupees Five Lakh only) on the Noticee in terms of section 15A(b) of the SEBI Act. The above mentioned penalty will be commensurate with the violation committed by the Noticee.

22. 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 the Division Chief, Enforcement Department - DRA- II, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
23. In terms of the provisions of Rule 6 of the Rules, copies of this order are being sent to the Noticee and also to SEBI.

<b>DATE: April 24, 2015</b>	<b>A SUNIL KUMAR</b>
<b>PLACE: Mumbai</b>	<b>ADJUDICATING OFFICER</b>