

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 01/2012]

**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

M/s Sahil Electronics Limited

(PAN No. Not Available)

In the matter of A.V. Cottex Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination into the affairs relating to dealing, buying and selling in the shares of M/s A.V. Cottex Limited (hereinafter referred to as ‘**AVCL**’/‘**Company**’) which is listed on Bombay Stock Exchange (hereinafter referred to as ‘**BSE**’). The period of examination was from March 31, 2006 to November 30, 2006 (hereinafter referred to as ‘**Examination Period**’/‘**EP**’).
2. The findings of the examination led to the allegation that M/s. Sahil Electronics Limited (hereinafter referred to as “**Noticee**”) had violated regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT Regulations**’) and

therefore consequently, liable for monetary penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated August 17, 2011 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violation of provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-7/PB/AK/31684/2011 dated October 7, 2011 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN.
5. I find from the records that the SCN was issued through Speed Post with acknowledgement card (SPAD) at the last known address of the Noticee, at “3406, 2nd Floor, D.B. Gupta Road, Karol Bagh New Delhi – 110005”. However, the unsigned acknowledgement card was received back. Further, the aforesaid address was cross checked from the MCA website and the address was found to be the same. No reply to the SCN was received from the Noticee.
6. A press notification was issued in the English national daily “The Times of India” on January 05, 2012, as well as in the local newspaper “Nav Bharat Times” published in Hindi on January 05, 2012 about the SCN requiring the

Noticee or its authorized representative to collect the SCN from the office of Adjudicating Officer. It was also mentioned in the said notification that if the Noticee failed to reply to the SCN within 14 days from the date of publication, it shall be presumed that the Noticee does not have any reply to submit and the matter would be further proceeded ex-parte. The press notification was issued as a substitute service, for the Noticee. The copy of SCN was also uploaded on SEBI website i.e. www.sebi.gov.in. However, I find that Noticee neither collected SCN nor replied to the SCN.

7. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 24, 2012 at SEBI, Head Office, Mumbai vide notice dated December 12, 2011. The said notice was sent via SPAD to the aforesaid last known address of the Noticee. The notice was returned undelivered with remark "left". The copy of hearing notice was also uploaded on SEBI website i.e. www.sebi.gov.in. A press notification was also issued in the English national daily "The Times of India" on January 05, 2012, as well as in the local newspaper "Nav Bharat Times" published in Hindi on January 05, 2012 about the hearing notice requiring the Noticee to appear on January 24, 2012 at 02:30 P.M. The press notification was issued as a substitute service, for the Noticee. Pursuant to the uploading of hearing notice on SEBI website and advertisement in the newspapers, I note that the Noticee neither appeared on January 24, 2012 nor requested for adjournment of the hearing.
8. In view of the aforesaid steps taken, I am convinced that ample opportunities have been given to the Noticee to explain its case. As per rule 4(7) of the Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons therefor. Despite having been given ample opportunities, the Noticee had

failed to avail of the same. I am, therefore, compelled to proceed with the matter *ex-parte* based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

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

- a. Whether Noticee had violated the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations?
- b. Does the violation, if any, attract monetary penalty under section 15A(b) of the 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 the SEBI Act?

10. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, which reads as under:-

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

(1).

(2).

Continual Disclosure

(3) Any person who holds more than 5% shares or 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 4 working days of :

(a) the receipts of intimation of allotment of shares, or
(b) the acquisition or sale of shares or voting rights, as the case may be..
(6).....

11. As per regulations 13(3) & 13(5) of PIT Regulations, any person who is holding more than 5% of shares or voting rights in any listed company has to make the required disclosure to the company if there is any change in shareholding of such person by more than 2% of total shareholding or voting rights in the company, in a prescribed format, within 4 working days from (a) the receipt of intimation of allotment of shares or (b) the acquisition of shares or voting rights, as the case may be.
12. Upon perusal of the documents available on record I find that the shareholding of the Noticee in AVCL for the quarter ending March 2006 was 3,04,900 shares i.e. 5.089% of total shareholding of AVCL.
13. Further, from the documents submitted by AVCL, it is observed that the name of the Noticee does not appear in the top 75 shareholders of AVCL of June 2006 quarter. It is also observed from the top shareholders list that the last named person's holding in the quarter ending June 2006 was 0.002% of total shareholding of AVCL. Therefore, the shareholding of the Noticee in AVCL for the quarter ending June 2006 is not more than 0.002% of total shareholding of AVCL, whereas the shareholding of the Noticee in AVCL had reduced from 5.089% to at least 0.002% during June 2006 quarter. As there was a change of more than 2% of shareholding of the Noticee in AVCL, the Noticee was required to make the disclosures to the company i.e. AVCL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within four working days from the date of sale of shares, which Noticee had failed to do.
14. Further, AVCL in its letter dated June 06, 2011 mentioned that it does not have any documentary evidence to confirm about Noticee having made the

necessary disclosures required under regulation 13(3) read with regulation 13(5) of PIT Regulations to it. Thus, the Noticee had violated the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.

15. In terms of regulation 13(3) of PIT Regulations disclosures are required to be made to the company. "Disclose to the company and to the stock exchange" is the clue. "Disclose" according to Webster's Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus, the requirement is that complete information should reach the person for whom it is meant. The fact that complete information should be disclosed to the company and to the stock exchange is also evident from the provisions of regulation 13(5) of PIT Regulations which casts an obligation on the person whose shareholding crosses the specified threshold limits to disclose to the company the acquisition of shares within 4 working days, while disclosures in turn is made by the company to the stock exchange as per regulation 13(6) of PIT Regulations. Failure to disclose full details on the specific aspects provided in the Regulations cannot be considered as trivial or of no consequence to be overlooked.

16. The Noticee, therefore, ought to have made the relevant disclosures to the company as per the provisions of PIT Regulations. However, the Noticee failed to do so. By not making the disclosure, the Noticee failed to comply with its statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal has 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.”

17. Thus, in the light of above, the allegation of violation of regulation 13(3) read with regulation 13(5) of PIT Regulations stands established.

18. The provisions of section 15A (b) of SEBI Act is reproduced hereunder:

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 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.

(c).....

19. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* 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*”.

20. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A (b) of the SEBI Act.

21. While determining the quantum of monetary penalty under section 15A (b), I have considered 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.”*

22. The object of the PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. 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. The Noticee could not pre-judge the reaction of the investors. 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 disclosure, it had concealed the vital information from the investors. It may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 50,000/- (Rupees fifty thousand only) under section 15A (b) of the SEBI Act on the Noticee which will be commensurate with the violation committed by it.

24. The Noticee shall pay the said amount of penalty by way of demand 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 Mr. Sujit Prasad, Chief General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

25. 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: January 30, 2012

Place: MUMBAI

PARAG BASU

ADJUDICATING OFFICER