

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. PG/AM/AO-65/2012**

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**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:**

**AVISHEK BOSE**

**(PAN - AJGPB5565L)**

**In the matter of: Livingroom Lifestyle Limited  
[Now Known as Chisel and Hammer (Mobel) Limited]**

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**BACKGROUND**

1. A complaint was received from Shri Ashok Samani of M/s. Ashok C. Samani, Share and Stock Brokers, Mumbai stating that M/s. Livingroom Lifestyle Ltd. {now known as Chisel & Hammer (Mobel) Ltd.} (hereinafter referred to as “**Company**”) had not informed the stock exchange about the terms/consideration for slump sale of its business effected on February 18, 2010. The

complainant had also requested that the Company may be directed to give this information to stock exchange. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination into the scrip of the Company for the period February 11, 2010 to Nov 25, 2010 (hereinafter referred to as “**investigation period**”).

2. It was observed that the price of the scrip of the Company increased from ₹ 32 on April 06, 2010 to ₹ 280.65 on November 25, 2010. Hence an analysis for the period was carried out wherein Mr. Avishek Bose (hereinafter referred to as “**Noticee**”) was observed to be the top client who contributed 9.95% to the gross market buy. It was further observed that the Noticee had 8.27% shareholding (constituting 1,00,000 shares of the Company) as on June 30, 2010. The Noticee had purchased these shares from the promoters Jehangir Nagree and Shakeera Nagree on April 13, 2010 and April 19, 2010.
3. It was observed that these one lakh shares of the Company were transferred by the Noticee to Gulistan Vanijya Pvt. Ltd. on November 08, 2010 and subsequently Gulistan Vanijya Pvt. Ltd. transferred the shares to JMD Telefilms Industries Ltd. on November 09, 2010. However, except the promoters Jehangir Nagree and Shakeera Nagree, none of these entities including the Noticee had made any disclosure regarding their shareholdings.

4. It was observed that the Noticee was having substantial shareholding in the Company (8.27% shareholding constituting 1,00,000 shares) on April 21, 2010 which was subsequently transferred on November 08, 2010 but the Noticee failed to make disclosures as required under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the “**PIT Regulations**”) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (hereinafter referred to as the “**SAST Regulations**”). In view of the aforesaid it was alleged that the Noticee violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13 (1) and 13 (3) of PIT Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

5. Shri P. K. Bindlish was appointed as the Adjudicating Officer vide Order dated March 29, 2011 to inquire and adjudicate under Section 15A(b) of the SEBI Act, 1992 the alleged violation of the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations, committed by the Noticee. Subsequent to the transfer of Shri P. K. Bindlish, I was appointed as the Adjudicating Officer vide Order dated January 19, 2012.

## SHOW CAUSE NOTICE, HEARING & REPLY

6. A Show Cause Notice (hereinafter referred to as “SCN”) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) was issued to the Noticee on May 10, 2011, calling upon him to show cause why an inquiry should not be held against him under Rule 4(3) of the Adjudication Rules for the alleged violations. The said SCN was duly delivered to the Noticee on May 16, 2011.
7. However, the Noticee failed to submit any reply to the SCN and therefore an opportunity of personal hearing was granted to the Noticee on June 15, 2011 which was subsequently rescheduled to June 23, 2011. Mr. Dhruv Narayan Jha, Authorised Representative of the Noticee appeared for personal hearing on June 23, 2011 and informed that the Noticee would be opting for consent proceedings in the matter. During the course of personal hearing on June 23, 2011 the Authorised Representative of the Noticee also stated that the Noticee will be submitting reply by July 01, 2011.
8. However, as no reply was received from the Noticee, vide letter dated August 12, 2011 the Noticee was advised to submit his reply to the SCN on or before August 31, 2011. Subsequently, the Noticee filed consent application. The said consent application was rejected and the rejection was communicated to the undersigned by SEBI

vide communication dated September 11, 2012. Since no reply was received from the Noticee, Notice of Inquiry dated September 20, 2012 was issued to the Noticee under Rule 4(3) of the Adjudication Rules vide which another opportunity of personal hearing was given to the Noticee which was scheduled on October 04, 2012. The Noticee was advised to submit its reply, if any, on or before the date of hearing. From the material available on record, I note that the said Notice of Inquiry dated September 20, 2012 was duly delivered to the Noticee by Speed Post on September 24, 2012. However, the Noticee failed to submit the reply to the SCN and also failed to appear for hearing.

9. In this regard, I also note that subsequent to the delivery of the SCN in this matter, sufficient time and opportunities were given to the Noticee to submit reply and appear for personal hearing in compliance with the principles of natural justice. However, till date, the Noticee has not submitted his reply. Therefore, I note that the principles of natural justice have been duly complied with. Hence, I am proceeding with the inquiry taking into account the material available on record.

#### **ISSUES FOR CONSIDERATION**

10. After perusal of the material available on record, I have the following issues for consideration, viz.,

- A. Whether the Noticee has violated provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations?
- B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?
- C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

## **FINDINGS**

- 11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

***ISSUE 1: Whether the Noticee has violated provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations?***

- 12. The provisions of Regulation 7(1) and 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations read as under:

**SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997**

***Acquisition of 5 per cent and more shares or voting rights of a company***

***7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a***

company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

7. (2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of—

(a) the receipt of intimation of allotment of shares; or

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

**SEBI (Prohibition of Insider Trading) Regulations, 1992**

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

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:—

(a) the receipt of intimation of allotment of shares; or

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

***Continual disclosure***

13. (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.

14. I note that the provision of Regulation 7(1) of SAST Regulations is clear in its import and, *inter alia*, makes it obligatory to disclose acquisition which entitles a person to more than five per cent shares or voting rights in a company, to the company and to the stock exchanges where shares of the company are listed. From the shareholding pattern of the Company as available on website<sup>1</sup> of Bombay Stock Exchange (hereinafter referred to as “BSE”); I note that for the quarters ended September 2010, December 2010 and March 2011 the total equity capital of the Company comprised of 12,09,554 shares. From the transaction statement of the Noticee (enclosed with SCN as Annexure – 2) I note that the Noticee had acquired 50,000 shares of the Company on April 21, 2010 thereby taking his total shareholding in the Company to 1,00,000 shares (representing 8.27% of the paid up capital of the Company). Hence, the Noticee was under an obligation to make requisite disclosure to the stock exchange where the shares of the Company are listed within 2 working days of acquisition of the shares. However, vide email dated February 28, 2011 (enclosed with SCN as Annexure – 3) Bombay Stock Exchange (hereinafter referred to as “BSE”) had confirmed that no such disclosure had been made by the Noticee to BSE under Regulation 7(1) of SAST Regulations. I also note that under Regulation 7(1) of SAST Regulations, the Noticee was also under obligation to make the requisite disclosure to the Company, which the Noticee has failed to do.

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<sup>1</sup> [http://www.bseindia.com/stock-share-price/chisel-hammer-\(mobel\)-limited/chisel/509011/](http://www.bseindia.com/stock-share-price/chisel-hammer-(mobel)-limited/chisel/509011/)  
last seen on October 22, 2012



15. Further, Regulation 13(1) of PIT Regulations, *inter alia*, requires a person holding more than 5% shares in any listed company to disclose to the company in Form A, the number of shares held by such person, on becoming such holder, within 2 working days of acquisition of the shares. Hence, the Noticee was under an obligation to make requisite disclosure to the Company in terms of Regulation 13(1) of PIT Regulations, which the Noticee has failed to do.
16. Regulation 13(3) of PIT Regulations, *inter alia*, requires a person holding more than 5% shares in any listed company to disclose to the company in Form C, the number of shares held and change in shareholding; when such change exceeds 2% of total shareholding in the Company. As already observed, the Noticee had transferred 1,00,000 shares of the Company (representing 8.27% of the paid up capital of the Company) to Gulistan Vanijya Pvt. Ltd. on November 08, 2010. Hence, the Noticee was under an obligation to make requisite disclosure to the Company in terms of Regulation 13(3) of PIT Regulations, which the Noticee has failed to do.
17. As already observed, despite duly receiving the SCN and Notices of Inquiry, the Noticee has failed to submit any reply to the SCN and has not refuted the charges. The Hon'ble Securities Appellate Tribunal in *Classic Credit Ltd. vs. SEBI*<sup>2</sup> has, *inter-alia*, held – “the

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<sup>2</sup> Appeal No. 68/2003

*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 show-cause notice were admitted by them". The Order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I presume that the Noticee has admitted the charges alleged in the SCN.*

18. In view of the material available on record and the admission of the Noticee, I hold that the Noticee has violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) and 13(3) of PIT Regulations.

***ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?***

19. The provisions of Section 15 A(b) of the SEBI Act, 1992 reads,  
***"Penalty for failure to furnish information, return, etc.***

***15A.*** *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 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;"*

20. In the matter of *SEBI vs. Shri Ram Mutual Fund*,<sup>3</sup> the Hon'ble Supreme Court of India has 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 regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant"*.

21. As already observed, the Noticee was holding substantial number of shares of the Company (1,00,000 shares representing 8.27% shareholding), but failed to make disclosures as required under Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) of PIT Regulations. Further, the Noticee had transferred the 1,00,000 shares of the Company but failed to make disclosure as required under Regulation 13(3) of PIT Regulations. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

***ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?***

22. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992, 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:-*

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<sup>3</sup> [2006] 68 SCL 216 (SC)

- (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."*

23. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures, 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 disclosures, the Noticee had concealed the vital information which is detrimental to the interest of investors in securities market. Further, the records do not mention whether the default of the Noticee was repetitive.

## **ORDER**

24. In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 25,000/- (Rupees Twenty Five Thousand only) for violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations read with Regulation 35 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; a penalty of ₹ 25,000/- (Rupees

Twenty Five Thousand only) for violation of Regulation 13(1) of PIT Regulations and a penalty of ₹ 25,000/- (Rupees Twenty Five Thousand only) for violation of Regulation 13(3) of PIT Regulations, i.e., a total penalty of ₹ 75,000/- (Rupees Seventy Five Thousand only) under Section 15A(b) of SEBI Act, 1992 on Avishek Bose. Considering the facts and circumstances of the case the penalty shall be commensurate with the violations committed by the Noticee.

25. The penalty shall be paid by way of 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 Shri Sujit Prasad, Chief General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051.
26. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

**Date: October 31, 2012**  
**Place: Mumbai**

**Piyoosh Gupta**  
**Adjudicating Officer**