

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MC/DS/2019-20/6199]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **M/s Divine Waters Pvt. Ltd.** (PAN – AABCD2526J) having address at – Room No. 99 F B-Block, Surya Vihar, Old Gurgaon – 122016 and 1117/12, 3rd Floor, Naiwala, Karol Bagh, New Delhi – 110 005.

In the matter of M/s Secure Earth Technologies Limited.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) initiated adjudication proceedings under Section 15A(b) of SEBI Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) against M/s Divine Waters Pvt. Ltd. (hereinafter be referred to as, “**the Noticee**”) for the alleged violations of Regulation 13(3) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Ms. Rachna Anand, General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing

Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) *vide* order dated May 10, 2018 to inquire into and adjudge under Section 15A(b) of the SEBI Act against the Noticee for the aforesaid alleged violations. Subsequently, the undersigned was appointed as the Adjudicating Officer on May 10, 2018 which was communicated *vide* order dated October 22, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAD5/MC/CB/1371/2019 dated January 11, 2019 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15A(b) of SEBI Act, 1992, for the alleged violations of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) SEBI carried out examination in the trading / dealings in the scrip of M/s Secure Earth Technologies Ltd. (hereinafter be referred to as, the “**Company**”), which is a company listed on BSE Ltd. (hereinafter be referred to as, the “**BSE**”).
 - b) Examination revealed that as on financial quarter that ended in March 2014, the Noticee was holding 6,75,000 shares, comprising of 9.36% of the total share capital of the Company. However, during the financial quarter April – June 2014, the shareholding of the Noticee reduced to zero on account of sale of 6,75,000 shares of the company on June 13, 2014. The aforesaid reduction of 9.36% of the total share capital of the Company by Noticee required disclosures to be made to the Company and the BSE in terms of Regulation 13(3) read with 13(5) of the PIT Regulations and to the company as well to the BSE under Regulation 29(2) read with 29(3) of the SAST Regulations.

- c) Company vide email dated October 1, 2018, informed that relevant disclosures were filed in the Company on September 03, 2014 and September 18, 2014 and the exact details of receipt of such disclosures in the company is not known and in turn the said disclosures were forwarded to the BSE on September 19, 2014.
- d) BSE, vide e-mail dated September 12, 2014, confirmed that no disclosures were received from the Noticee in relation to change in its shareholding in the Company during the Examination Period. However, on perusal of disclosures received in the scrip of the Company which were available on the website of BSE, it was observed that disclosures in terms of PIT Regulations and SAST Regulations were made by the Noticee on September 18, 2014.
- e) In view of the aforesaid, it was alleged that the Noticee had delayed in making disclosures regarding change in its shareholding in the scrip of Company in terms of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations, and thereby, violated the same. The text of the aforesaid provisions is reproduced as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

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.*

....
- (3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 49[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.*
- (5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two 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.”

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

29. *(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and 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.

- f) Noticee was informed that alleged violation, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992, text of which is reproduced as under:-

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,-*

(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.”

5. The aforesaid SCN was served through Speed Post Acknowledgement Due (SPAD) to the Noticee at the addresses – M/s Divine Waters Pvt. Ltd., Room No. 99 F, B Block, Surya Vihar, Old Gurgaon Road, Gurugram – 122 016,

(Haryana) - as available from website of Ministry of Corporate Affairs (MCA) and M/s Divine Waters Pvt. Ltd., Rambhagat Bansal House, No. 329, Damdama Mohalla, Ward No. 10, Jhajjar – 124 103, (Haryana). The same were returned undelivered by the Postal Department with remark, “Not Known”.

6. An opportunity of hearing was provided to the Noticee on October 25, 2019 vide notice dated October 07, 2019 through SPAD to the Noticee at the address – M/s Divine Waters Pvt. Ltd., 1117/12, 3rd Floor, Naiwala, Karol Bagh, New Delhi – 110 005 and M/s Divine Waters Pvt. Ltd., Room No. 99 F, B Block, Surya Vihar, Old Gurgaon Road, Gurugram – 122 016, (Haryana), the same were returned undelivered by the Postal Department with remark, “Left”.
7. Therefore another opportunity of hearing was provided to the Noticee on December 4, 2019 vide notice dated November 5, 2019 through Affixture. The said SCN and Hearing Noticee was affixed on November 8, 2019 at the last known address of the Noticee – M/s Divine Waters Pvt. Ltd., 1117/12, 3rd Floor, Naiwala, Karol Bagh, New Delhi – 110005 and on November 9, 2019 at the last known address of the Noticee M/s Divine Waters Pvt. Ltd., Room No. 99 F, B Block, Surya Vihar, Old Gurgaon Road, Gurugram – 122 016, (Haryana).
8. The Noticee was also advised to file its reply, if any, by November 29, 2019. The Noticee, vide Notice of Hearing dated November 5, 2019 was also notified that if no reply and no appearance is made by the Noticee on the date of hearing, the matter would be decided further on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. However, the Noticee did not file any reply towards the SCN and did not appear in the hearing scheduled on December 4, 2019.
9. I note that sufficient time and opportunity to appear for personal hearing has been given to the Noticee. However, the Noticee has failed to submit any reply towards the SCN and to appear for hearing in the instant adjudication proceedings. At this juncture, I find it relevant to refer to the order of Securities Appellate Tribunal in the matter of **Sanjay Kumar Tayal & Ors. v. SEBI** (Appeal

No. 68 of 2013 dated February 11, 2014), wherein, it *inter alia* held that, “...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”. Thus, in absence of any response towards the SCN and notice of hearing from the Noticee, I am of the view that the allegations and the charges levied against the Noticee are not in dispute by them.

10. I also find it relevant to refer to the order of Hon’ble SAT in the matter of **Dave Harihar Kiritbhai v. Securities and Exchange Board of India** (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it observed, “...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”.

11. Keeping the aforesaid in mind, I decide to undertake the adjudication proceedings against the Noticee *ex-parte* on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules.

CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the instant matter are:

Issue No. I Whether Noticee had failed to make mandated disclosures under the Regulation 13(3) read with 13(5) of the PIT Regulations and

Regulation 29(2) read with 29(3) of the SAST Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether Noticee had failed to make mandated disclosures under the Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations as alleged in the SCN?**

13. The Noticee has not submitted any reply to the SCN. I note from the SCN that as on financial quarter that ended in March 2014, the Noticee was holding 6,75,000 shares, comprising of 9.36% of the total share capital of the Company. I note from the NSDL transaction statement that shareholding of the Noticee reduced by 6,75,000 shares on June 13, 2014, which triggered disclosure requirement under Regulation 13(3) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.

14. I note from the Annexure 5 of the SCN that Secure Earth Technologies Limited had confirmed vide email dated October 1, 2018 that it had received the relevant disclosures from the Noticee on September 3, 2014 and September 18, 2014, and in turn the said disclosures were forwarded to the BSE on September 19, 2014.

15. On perusal of disclosures available on the website of BSE, it was observed that disclosures in terms of PIT Regulations and SAST Regulations were made by the Noticee on September 18, 2014 i.e. with a delay of 3 months.

16. In view of the aforesaid, it is established that the Noticee failed to make disclosures within the time prescribed under Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

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Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

17. Since failure of the Noticee in making disclosures to BSE under Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

“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.”

18. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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. I note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. Similarly, from the material available on record, no past default by the Noticee could be ascertained. I note that the Noticee made delayed disclosure to BSE under Regulation 13(1), 13(3) read with 13(5) of the PIT Regulations on September 25, 2014 and Regulation 29(1) read with 29(3) of the SAST Regulations on September 18, 2014, i.e after a delay of 3 months.

20. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of ₹2,00,000 will be commensurate with the violations committed.

ORDER

21. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakh only) upon the Noticee, i.e. M/s Divine Waters Pvt. Ltd. under Section 15A(b) of the SEBI Act for violation of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.

22. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

23. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

24. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: DECEMBER 23, 2019

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER