

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**ADJUDICATION ORDER NO: AS/AO/01/2010**

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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**

**Against**

**Shri Krishan Kumar Goyal**  
**PAN: AATPG9785F**  
**Promoter and Managing Director,**  
**Modern Steels Ltd.**

**BRIEF FACTS OF THE CASE**

1. SEBI conducted investigation in the scrip of Modern Steels Ltd. (MSL) for the period June 29, 2004 to October 18, 2004. Analysis of price volume details during the said period revealed that the price of the scrip increased from Rs.8.75 on June 29, 2004 to Rs.50 on October 18, 2004. The scrip neared / touched the applicable circuit filter limit mainly in first trades. The total volume traded in the scrip during the investigation period was 5,37,747 shares. The scrip was traded for 79 days during the period of investigation with the volumes fluctuating from a high of 59927 shares to a low volume of 100 shares.
2. During the course of investigation, it was also alleged that Shri Krishan Kumar Goyal, Promoter and Managing Director, MSL (hereinafter referred to as the 'noticee') has violated the provisions of Regulation 3(3) & 3 (4) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations' and Regulation 13 (4) read with 13 (5) of

SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') for which the adjudication proceedings has been initiated. Therefore, the noticee is liable for monetary penalty for the alleged violations, as prescribed 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 was appointed as Adjudicating Officer vide order of SEBI dated April 22, 2009 under Section 15 I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the Adjudicating Rules) to inquire and adjudge under Section 15 A(b) of the SEBI Act, the alleged violations of SAST and PIT Regulations committed by the noticee.

**SHOW CAUSE NOTICE/REPLY/PERSONAL HEARING:**

4. A show cause notice (hereinafter referred to as 'notice') dated June 30, 2009 under Rule 4 of the Adjudicating Rules was issued to the noticee asking it to show the cause as to why an inquiry should not be held against it and why penalty as prescribed be not imposed under Section 15A(b) of SEBI Act for its violations of Regulation 3(3) & 3 (4) of SAST Regulations and Regulation 13(4) r/w 13(5) of PIT Regulations.
5. The noticee submitted its reply vide its letter dated 14<sup>th</sup> July, 2009 wherein it submitted as under:-

- 5.1. On 7.06.2004, the noticee, promoter and MD of MSL purchased 3,87,400 shares from M/s Shree Ganesh Investment & Industries Ltd, (SGIIL) which is also a promoter entity.

- 5.2. This was an inter se transfer which was done off market among the promoters and it was neither affecting the total shareholding of the promoters nor affecting the public at large without prejudice to the investor, as the same was not a price sensitive information.
- 5.3. The compliance was made by the noticee though late. The delay in filing these compliances was due to advertent ignorance and at the time when the company got a legal due-diligence done by an external agency to ensure all legal compliances and when these non compliances were pointed out, with an open mind and clear intention the noticee filed declarations under Regulation 3(3) & 3(4) of SAST Regulations and Regulations 13(4) r/w 13(5) of PIT were filed.
- 5.4. The noticee agreed that there is a delay in filing the above disclosures but he was having clear intention to abide by law and his late submission has neither affected the general public at large nor it was a price sensitive information, the transaction being an off market transaction.
6. The noticee was granted an opportunity of personal hearing on October 06, 2009 at Head office of SEBI. The noticee appeared before the undersigned for the personal hearing through his authorized representative. He did not make any additional submissions apart from what was submitted above and stated that it is only a procedural lapse on the part of the noticee and delay may be condoned.

## **CONSIDERATION OF ISSUES AND FINDINGS**

7. The relevant provisions of SAST Regulations & PIT Regulations alleged to have been violated and the penal provisions of SEBI Act read as under:-

### SAST Regulations

- 3(3) *In respect of acquisitions under clauses (e), (h) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding 5 per cent of the voting share capital of the company.*
- 3(4) *In respect of acquisitions under clauses (a), (b), (e) and (i) of sub-regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15 per cent or more of the voting rights in a company.*

### PIT Regulations

- 13(4) *Any person who is a director or officer of a listed company, shall disclose to the company 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 from the last disclosure made under sub-regulation (2) 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.*
- 13(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.*

## ***SEBI Act***

*S. 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 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;*

8. I have perused the Investigation report, replies provided and other documents available on record. I note that noticee being a promoter and MD of MSL, purchased 3,87,400 shares from another promoter entity Shree Ganesh Inv. & Inds. Ltd. on June 7, 2004. This amounts to 8.10% of total voting share capital of the company. As the transfer was in the nature of inter se transfer amongst the promoters and the acquisition exceeded 5% of the voting share capital of the company, the change in shareholding needed to be disclosed.
9. I note that as per Regulation 3(3) of SAST, in case of acquisition exceeding 5 per cent of the voting share capital of MSL, the noticee was required to notify the stock exchanges, where the shares of the company are listed, the date of the proposed acquisition at least 4 working days in advance of the proposed transaction. Further, as per Regulation 3(4) of Takeover Regulations, the noticee was required to submit a report to SEBI within 21 days from the date of acquisition.
10. Further, I note that as per Regulation 13(4) read with 13 (5) of PIT Regulations the noticee was required to intimate the above acquisition to MSL within 4 working days of acquisition of shares or voting rights.

11. I note that the noticee was required to make the above said disclosures under SAST and PIT Regulations within stipulated time after acquisition of said equity shares of MSL on June 7, 2004. However, I note that said disclosures were made only on June 5, 2006 i.e nearly two years after date of transaction.
12. I do not agree with the argument put forth by the noticee that it being a interse transfer amongst promoters was not a price sensitive information and did not affect the public at large. The purpose of disclosures, as mandated under various Regulations, is to bring about transparency in the securities market and any substantial change in the shareholding of large shareholders of the listed company. In the instant case, the noticee is a promoter as well as MD of a listed company, it has a greater obligation to inform the public about the change in the shareholding. MD is in charge of day to day affairs of the company and he governs the general conduct of the company vis-à-vis various stakeholders.
13. Hon'ble SAT in the matter of **Milan Mahendra Securities Pvt. Ltd. Vs SEBI** (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosures, 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". Thus, I am of view that although the transaction being an off market transaction and inter se among promoters, proper disclosure regarding the same cannot be ignored and onus lies on the noticee.
14. 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".

15. Therefore, in my opinion, it is a fit case to impose monetary penalty under section 15A (b) of the SEBI Act. However, for determining the quantum of monetary penalty under section prescribed under section 15J of the SEBI Act are to be considered 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; and*
- (c) the repetitive nature of the default.”*

16. There is no material available on record to ascertain the disproportionate gain or unfair advantage to the noticee or amount of loss caused to any other investor and the repetitive nature of default on part of the noticee. It is a fact that noticee failed to fulfill regulatory requirements under SAST and PIT Regulations. In the instant matter, I find the noticee guilty of violating the provisions of SAST and PIT Regulations, for which the noticee should be penalized.
17. In view of the findings mentioned herein above and in view of the facts and circumstances of the case, I find that a monetary penalty of Rs 50,000/- (Rs Fifty Thousand only) on the noticee viz. Sh Krishan Kumar Goyal would be commensurate with the violations. The fact that noticee has voluntarily made the said disclosures has also been taken into account while deciding the amount of penalty.

## **ORDER**

In exercise of the powers conferred upon me U/s 15-I(2) and 15 A(b) of the SEBI Act, 1992 read with Rule 5 of Adjudication Rules, I hereby impose a monetary penalty of Rs 50,000/- (Rs Fifty Thousand Only) on Sh Krishan Kumar Goyal, promoter and Managing Director, Modern Steels Ltd.

The above penalty amount shall be paid through a duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to The Deputy General Manager, Investigation Department-ID 8, Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, “G” Block, Bandra Kurla Complex, Bandra(East), Mumbai-400 051

In terms of the Rule 6 of the Adjudicating Rules, copies of this order are sent to the noticee and also to Securities and Exchange Board of India.

**Date : March 30, 2010**

**AVARJEET SINGH**

**Place : Mumbai**

**ADJUDICATING OFFICER**