

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/RGA/AO/103/2014-15]

**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 Santowin Corporation Ltd

(Pan No. AADCS95954)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the alleged irregularity in the trading in the shares of M/s Santowin Corporation Ltd. (hereinafter referred to as '**SCL/Company /Noticee**') and into possible violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') and various rules and regulations made there under, for the period from June 01, 2013 to September 30, 2013 (hereinafter referred to as '**examination period**').
2. The examination inter-alia revealed that the Noticee furnished wrong information to SEBI and also failed to make disclosure to the stock

exchange, thereby violated the provisions of section 15A(a) of SEBI Act, 1992 and regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated May 09, 2014 under section 15 I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A (a) and 15A(b) of the SEBI Act, 1992 for the aforesaid alleged violation.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. ASK/RGA/15713/2014 dated June 02, 2014 (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 (a) and 15A(b) of the SEBI Act, 1992 for the alleged violations specified in the SCN.
5. As per our records, Noticee filed a reply on June 25, 2014. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on August 20, 2014 vide notice dated July 21, 2014. Noticee sought adjournment of hearing. Another opportunity of personal hearing was granted to the Noticee on September 16, 2014 vide notice dated September 01, 2014. Noticee did not appear for the hearing. Further, another opportunity was granted to the Noticee on October 16, 2014 vide notice dated September 30, 2014. Noticee vide e-mail dated October 16, 2014 requested for adjournment of hearing.

Final opportunity of hearing was granted to the Noticee on November 14, 2014 vide notice dated November 03, 2014. The Noticee vide e-mail dated October 16, 2014 requested for re-scheduling the hearing on November 13, 2014. Accordingly, the hearing was rescheduled on November 13, 2014. The Authorized Representative (AR) appeared on behalf of the Noticee and reiterated the submissions made vide letter dated June 25, 2014. The AR also requested for one week's time for filing additional evidence in support of the submissions made vide letter dated June 25, 2014. Subsequently, time till November 20, 2014 was granted to the Noticee as a final opportunity. Accordingly, Noticee vide letter dated November 20, 2014 filed its further submissions.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

- a. Whether the Noticee had violated the provisions of section 15A(a) of SEBI Act, 1992 and regulation 13(6) of the PIT Regulations, 1992?
- b. Does the violation, if any, attract monetary penalty under section 15A (a) and 15A(b) of SEBI Act, 1992?
- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

7. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI Act, 1992 and PIT Regulations, 1992 which reads as under:-

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) to furnish any document, return or report to the Board, fails to furnish the same, 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;

Disclosure by company to stock exchanges

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations, (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

Finding

The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticee had violated the provisions of section 15A(a) of SEBI Act, 1992 and regulation 13(6) of PIT Regulations, 1992?

8. It was observed during the examination that

- The Noticee is a company listed on Bombay Stock Exchange (BSE). One of the promoters of the Noticee, Shri Akshat Ashok Gupta had acquired 7,85,886 shares of the company during the month of September 2013. In respect of the said acquisition, the promoter was required to make the disclosure to the company and to the stock exchange. Noticee on receipt of such information from the promoter was under an obligation to make the disclosure to the stock exchange under regulation 13(6) of PIT Regulations, 1992.
- In this context, vide e-mail dated February 24, 2014 SEBI had asked the company to confirm whether Shri Akshat Ashok Gupta had submitted necessary disclosures regarding the aforesaid acquisition to the company under regulation 13(4A) of PIT Regulations, 1992 and whether the same was communicated to the exchange. The company by an e-mail dated February 26, 2014 confirmed that necessary disclosure had been made by the promoter to the company and consequently necessary disclosure was also made to the exchange.

- Further, company vide e-mail dated March 04, 2014 sent scanned copy of proof of dispatch of disclosures, wherein Kalbadevi Post Office stamp impression was affixed. However, Bombay Stock exchange (BSE) vide an e-mail dated February 26, 2014 confirmed that no such disclosure was made by the company.
- Subsequently, for the purpose of cross verification, a letter dated March 10, 2014 was sent to Kalbadevi Post Office to confirm whether the said stamp impression was original and also whether the Post Office follows a practice of stamping on the duplicate copy of the letter posted. The post office vide letter dated April 03, 2014 confirmed that the stamp impression did not match with the Post Office impression. Further, it also stated that there was no practice in the Kalbadevi Post Office to give date stamp impression on the letters.

It was thus, alleged in the SCN that the Noticee furnished wrong and misleading information to SEBI in violation of section 15A(a) of the SEBI Act, 1992.

Violation of section 15A(a) of SEBI Act, 1992

9. In response to the SCN, the Noticee has submitted that the said disclosures were genuinely posted by the office clerk. The documents were posted by the ordinary post under postal certificate. Instead of providing typed copy of such receipt, the postal stamp impressions on the Xerox copy of the posted documents was given as a proof of submission of documents to the Indian Post. The Noticee has also submitted that the postal authorities in their letter to SEBI have failed to comment upon the authenticity of stamp impressions.
10. From the material available on record and the reply of the Noticee I note that the only evidence produced by the Noticee in support of his submissions of having made necessary disclosures to the stock

exchange is scanned copies of proof of dispatch vide its e-mail dated March 04, 2014. I have carefully perused the evidence produced by the Noticee. I find that there were four covering letters dated September 02, 03, 20 and 23, 2013, addressed to BSE wherein it was stated to have enclosed disclosures made by the promoter. However, no enclosure to the said letter containing the disclosure was submitted by the Noticee. Further, the said letter bears only stamp impression of Kalbadevi Post Office. There is no acknowledgment by way of signature of the receiving official of the post office. The Kalbadevi Post Office vide letter dated April 03, 2014 confirmed that the stamp impression did not match with the Post Office impression. Further, it also stated that there is no practice in the Kalbadevi Post Office to give date stamp impression on the letters. Moreover, it is noted that BSE vide its e-mail dated February 26, 2014 has also confirmed that no disclosure under regulation 13(4A) read with regulation 13(5) of PIT Regulations, 1992 has been made by the promoter Akshat Ashok Gupta.

11. In this regard, it is pertinent to quote the observations of the Hon'ble Securities Appellate Tribunal (**SAT**), in the case of **Kalindee Rail Nirman Engineers Limited** vs **SEBI** (decided on 19.07.2010) wherein Hon'ble SAT has observed that ".....the agency through which the document is sent acts as an agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the facts by clear and cogent evidence in this regard.....".

12. On one hand the Kalbadevi Post Office has confirmed that the stamp impression present on the evidence produced by the Noticee did not match with the Post Office impression and also that they do not have any practice of giving date stamp impression in lieu of posting of

letters. On the other hand, BSE vide its e-mail dated February 26, 2014 has also confirmed that no disclosure under regulation 13(4A) read with regulation 13(5) of PIT Regulations, 1992 has been made by the promoter Akshat Ashok Gupta. Moreover, it is hard to disbelieve the statement/confirmation of Kalbadevi Post Office and/or BSE.

13. The evidence produced by the Noticee does not inspire confidence in me and appears to be an afterthought. I have no hesitation to reject the evidence produced by the Noticee as fabrication. I am of the view that the Noticee has only attempted to circumvent the law by producing false/fabricated/manipulated documents/information and thereby attempted to mislead SEBI. Therefore, I find that the information furnished by the Noticee vide e-mail dated February 26, 2014 and March 04, 2014 was wrong, false and misleading.

14. In this context, it is relevant to quote the observation of Hon'ble SAT in the matter of **Siddhartha Agarwal vs. Adjudicating Officer, SEBI**; decided on 26-11-2008 wherein it observed that “.....*Making a false statement would amount to failure to furnish the information sought and would attract section 15A(a) of the Act.....*”.

15. Therefore, I hold that the Noticee has violated section 15A(a) of the SEBI Act, 1992.

Violation of regulation 13(6) of PIT Regulations, 1992

16. As per regulation 13 (6) of PIT Regulations, 1992 every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations, (2), (2A), (3), (4) and (4A) in the respective

formats specified in Schedule III.

17. It was alleged in the SCN that the promoter had acquired 7,85,886 equity shares during the month of September 2013. However, from the copies of disclosures available on record as submitted by the promoter and acknowledged by the Noticee, it is observed that the promoter had in fact acquired 9,00,886 equity shares during the month of September 2013, as per the details given below:

Date of acquisition	Date of Intimation to company	Buy Quantity
02.09.2013	02.09.2013	5,00,000
03.09.2013	03.09.2013	2,00,000
18.09.2013	20.09.2013	1,00,886
23.09.2014	23.09.2014	1,00,000

18. Admittedly, the Noticee has received disclosures from the promoter as required under regulation 13(4A) of PIT Regulations, 1992 in respect of all the aforesaid 4 acquisitions. Thus, Noticee, being a company listed on BSE was under an obligation to disclose to BSE, the information received from the promoter under regulation 13(6) of PIT Regulations, 1992 on all the 4 occasions. As discussed in the preceding paragraphs, the evidence produced by the Noticee in support of its submissions of having made disclosure to the BSE was found to be wrong false and misleading. Moreover, BSE has confirmed that no such disclosure was received by it from the Noticee. Therefore, I hold that the Noticee has violated regulation 13(6) of PIT Regulations, 1992.

(b) Does the non-compliance, if any, attract monetary penalty under section 15A (a) and 15A(b) of SEBI Act, 1992?

19. The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} 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 Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*”.

20. As the violation of the statutory obligation under section 15A(a) of SEBI Act, 1992 and regulation 13(6) of PIT Regulations, 1992 has been established, I am convinced that it is a fit case for imposing monetary penalty under section 15A(a) and 15A(b) of SEBI Act, 1992, which reads as under:-

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made there under,-

(a) to furnish any document, return or report to the Board, fails to furnish the same, 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;

(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)

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

21. While determining the quantum of penalty under section 15A(a) and 15A (b) of SEBI Act, 1992 , it is important to consider the factors stipulated in section 15J of 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:-

- (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. 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. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. There is no material on record which dwells on the extent of specific gains made by the Noticee as a result of default. However, the fact remains that by not making the required disclosures, the Noticee had deprived the investors of important information at the relevant time.

23. I find that the Noticee has committed default under regulation 13(6) of PIT Regulations, 1992 on 4 occasions. Therefore, the default is repetitive in nature.

ORDER

24. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 3,00,000/- (Rupees Three Lakh Only) for violation of section 15A(a) of SEBI Act, 1992, a monetary penalty of ₹ 7,00,000/- (Rupees Seven Lakh Only) for violation of regulation 13(6) of PIT Regulations, 1992 and thus a total monetary penalty of ₹ 10,00,000/- (Rupees Ten Lakh Only) on the Noticee. In my view the penalty is commensurate with the violation committed by it.

25. The Noticee shall pay the said amount of penalty by way of demand draft in favor 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 General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

26. 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: DECEMBER 24, 2014

PLACE: MUMBAI

A. SUNIL KUMAR

ADJUDICATING OFFICER