

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.EAD-5/SVKM/AO/10/2017-18]

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:

Shree Nath Commercial and Finance Ltd.
(Now known as Proaim Enterprises Limited)
(PAN – AADCS8871M)

E-109, Crystal Plaza, New Link Road,
Opp. Infinity Mall, Andheri (W),
Mumbai – 400053

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) initiated adjudication proceedings against Shree Nath Commercial and Finance Limited (Now known as Proaim Enterprises Limited) (*hereinafter referred as “**Company/Noticee**”*) for the alleged violation of the provisions of Regulation 7(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, (*hereinafter referred to as “**SAST Regulations**”*) read with Regulation 35(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “**PIT Regulations**”*) for the alleged failure to make disclosures to Bombay Stock Exchange (**BSE**) with regard to the disclosures received from four entities under Regulation 7(1) of SAST Regulations and Regulation 13(1) of PIT Regulations respectively.

BRIEF FACTS OF THE CASE

2. On December 09, 2009, the company made preferential allotment of 50,00,000 equity shares to 29 entities (promoters and non-promoters) at a price of ₹20/- per share. Out of these 29 entities, following 4 entities including one promoter entity namely M/s. Handful Investrade Pvt. Ltd. were allotted shares constituting more than 5% of total share capital of the Company as under:-

Sr. No.	Name of the allottee	No of shares allotted on preferential basis	% of shareholding to the total share capital
1	Anand Kamalnayan Pandit	8,00,000	13.38%
2	Aravind Dhanabhai Desai	4,00,000	6.69%
3	Kamini Aravindbhai Desai	4,00,000	6.69%
4	M/s Handful Investrade Pvt. Ltd.	7,00,000	11.71%
	Total Equity Shares of the Company (post preferential allotment)	59,80,000	100.00%

3. As acquisition of shares by each of these four entities exceeded by 5% of share capital, they were required to disclose their individual shareholdings to the company and also to the stock exchange under Regulation 7(1) of SAST Regulations, 1997 and under Regulation 13(1) of PIT Regulations, 1992. Further, as per information received from these four entities vide their letters dated October 1, 2014 these entities disclosed their acquisition to the company and also to the stock exchange.
4. In terms of Regulation 7(3) of SAST Regulations, 1997 and Regulation 13 (6) of PIT Regulations, 1992 a Company that receives information under Regulation 7(1) of SAST Regulations and 13 (1) of PIT Regulations, respectively from the acquirer has to inform the Stock Exchanges where its shares are listed.
5. It was alleged that, the Company has violated Regulation 7(3) of SAST Regulations, 1997 read with Regulation 35(2) of SEBI (SAST) Regulations, 2011 and Regulation 13(6) of PIT Regulations, 1992, as it failed to inform the disclosures received from the aforesaid entities to the stock exchange where its shares are listed.

APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned was appointed as Adjudicating Officer (**AO**) vide communication of Proceedings dated May 30, 2016 to inquire into and adjudge under Section 15A(b) of SEBI Act, 1992, the alleged violation of the aforesaid provisions by the noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice dated August 09, 2016 (hereinafter referred to as “**SCN**”) was issued to the noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) read with Section 15 I of SEBI Act, 1992, to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act, 1992, for the alleged contraventions as aforesaid.
8. Vide letter dated September 01, 2016, Noticee filed its reply to the SCN and submitted that the Company received the disclosures from the above four entities under Regulation 7(1) of SAST Regulations, 1997 and Regulation 13(1) PIT Regulations, 1992 on 9th December, 2009. Thereafter, it submitted the same to BSE on 10th December, 2009 under Regulation 7(3) of SAST Regulations, 1997 and Regulation 13(6) of PIT Regulations, 1992. The noticee has also filed office copy of the said disclosures filed with BSE bearing acknowledgement stamp of Inward Section of BSE dated 10-Dec-2009.
9. Noticee was granted an opportunity of personal hearing on February 17, 2017. Shri Balveer Singh Choudhary, Chartered Accountant appeared as Authorized Representative (**AR**) on behalf of the noticee and made the following submissions.
 - *The charges relate to non-disclosure of acquisition of shares by the Company in respect of four individuals namely (1) Anand K Pandit, (2) Arvind D Desai, (3) Kamini A Desai and (4) Handful Investrade Pvt. Ltd. each of whom have acquired more than 5% of the Share Capital of the Company through preferential allotment of December 09, 2009.*

- *These disclosures were required to be made by the noticee Company to the Bombay Stock Exchange under Regulation 7(3) of SAST Regulations, 1997 and under Regulation 13(6) of PIT Regulations where its shares are listed.*
- *It was submitted by the learned Authorized Representative that each of the aforesaid individuals have made necessary disclosures to the Company as well as to the Stock Exchanges under Regulation 7(1) of SAST Regulation on 10th December, 2009. There is no obligation under Regulation 13(1) for the preferential allottees to inform the Stock Exchanges.*
- *It is the contention of the Noticee that they did inform the BSE on 10th December, 2009 regarding the aforesaid acquisition by each of the four entities both under SAST as well as PIT Regulations.*
- *The learned Authorized Representative has referred to the letter dated 10th December, 2009 by the noticee Company to the Stock Exchange in this regard which bears a rubber stamp of BSE inward section with date 10th December, 2009 and signature thereto.*
- *However, BSE vide its email dated 31st December, 2014 addressed to Shri Dinesh Ravulapati of SEBI and some other Officers has informed that the Noticee Company has not filed any disclosure under Regulation 7 of SAST Regulations and Regulation 13 of PIT Regulations for the period 07th October, 2009 to 31st July, 2010. This email is issued by Shri Abhijit Pai, AGM, Listing Compliance (CRD) of BSE.*
- *Since this is an important document which contradicts the stand taken by the Noticee and as the Noticee has claimed that this email was not received by him although it is stated to have been enclosed to the Show Cause Notice, a copy of the said email is furnished to the Learned Authorized Representative in the course of the proceedings and he is also given an opportunity to make any further submissions based on the said email of BSE.*

10. In view of the contradictory stand of the noticee and BSE, it was considered necessary to seek clarification from BSE and Summons dated February 20, 2017 was issued to Shri Abhijit Pai, Assistant General Manager, Listing Compliance (CRD), BSE under Section 15 I (2) of SEBI Act, 1992, to appear in the present proceedings.
11. Shri Abhijit Pai, Assistant General Manager, BSE appeared on March 27, 2017 in response to the said summons dated February 20, 2017.
12. During the examination Shri Abhijit Pai made the following statements:-
- *He has confirmed that email dated December 31st 2014, was issued by him to SEBI in response to a query from Mr. Dinesh, Assistant Manager, SEBI. This email informs that BSE has not received the disclosures in terms of Regulation 7(3) of SAST Regulations, 1997 and Regulation 13(6) of PIT Regulations, 1992 from the Noticee.*
 - *It was submitted that in 2009 to which the matter pertains, the inward section in BSE was receiving the letters in physical form against acknowledgement. The witness was shown the letters dated December 10th 2009, from the noticee addressed to BSE and bearing stamp of BSE inward section. The witness has stated that it could be that at the entry level the correspondence was received but he could not identify the signature appended on the said letters.*
 - *In the cross examination, the witness was asked by the Authorised Representative of the noticee as to whether there is any other mode of service by listed company other than submitting the letter at inward desk at the relevant time.. The witness answered in the negative.*
 - *The Authorised Representative submitted that these letters were handed over at the entry level only. The witness has stated in the cross examination that these letters were not received in the listing department where it requires to be examined.*

13. After cross examination of witness, Shri Balveer Singh Choudhary, Authorized Represented of the noticee made the following submissions:-

- *The noticee has access only to the entry level of the stock exchange of BSE where the correspondence is received against acknowledgment. He has no access to the internal department. Therefore once it is established that the correspondence is submitted at entry level of BSE, he is discharged.*
- *It was further submitted that on earlier occasions also BSE misplaced the filings made by them and asked for the same document repeatedly thereafter. In this connection, it was submitted that the noticee has informed BSE regarding issuance of 50,00,000 Equity share to the promoters vide letter dated 11.12.2009. The copy of the said letter is filed which bears the inward stamp of BSE on 14.12.2009.*
- *Similarly noticee informed BSE regarding application for listing of 69,24,900 Equity share vide letter dated 01.11.12. A copy of the said letter is also filed which bears the inward stamp of BSE dated 5.11.2012.*
- *It was submitted that despite the noticee submitting above information, BSE again asked for the same details on 18.11.2015. And the noticee has replied on 23.11.2015. Both the letters are filed.*
- *In spite of submitting the same information as above, it was submitted that BSE vide email dated 22.03.17 has again asked for the same information stating that details are not traceable at their end. Email dated 22.03.2017 issued by Sunu Thomas of BSE to the noticee is filed in this regard.*

CONSIDERATION OF ISSUES AND FINDINGS

14. I have carefully perused the replies to the SCN, submissions of the Noticee, cross examination of witness and the documents available on record. The issues that arise for consideration in the present case are:

- a) Whether the Noticee has violated provisions of Regulation 7(3) of SEBI (SAST) Regulations, 1997, and Regulation 13(6) of SEBI (PIT) Regulations, 1992 for failure to make disclosures to BSE?
 - b) Does the violation, if any, on the part of Noticee attract any penalty under Section 15A(b) of the SEBI Act, 1992?
 - c) If yes, what should be the quantum of penalty?
15. I note that the noticee has submitted copy of acknowledgement which bears stamp of BSE inward section dated December 10, 2009 for filing of disclosures to BSE under Regulation 7(3) of SEBI (SAST) Regulations, 1997, and Regulation 13(6) of SEBI (PIT) Regulations, 1992.
16. During the cross examination, the witness, Shri Abijit Pai, Assistant General Manager, BSE has also admitted that in 2009, the inward section in BSE was receiving the letters in physical form against acknowledgement and it could be that at the entry level the correspondence was received. However, it was not received in the listing department where it requires to be examined.
17. I note that the noticee has access only to the entry level of the stock exchange of BSE where the correspondence is received against acknowledgment. It has no access to the listing department of BSE directly. The witness stated that it could have been received at the inward section of BSE by looking at the acknowledgement stamp of BSE. Therefore, the pre-pendence of probabilities lie in favor of the noticee and having regard to the acknowledgement by Inward Section of BSE as evidenced by the letter dated 10.12.2009 of the noticee, it cannot be said that the noticee failed to inform BSE and therefore noticee is discharged.
18. Notice can also be taken of the fact that in two separate and unrelated incidents also the filings of the noticee were misplaced by BSE which sought resubmission of the documents. It is observed from the documents filed by the noticee during the personal hearing that the noticee has informed BSE regarding issuance of 50,00,000 Equity shares to the promoters vide letter dated 11.12.2009. Similarly noticee informed BSE regarding application for listing of 69,24,900 Equity shares vide letter dated 01.11.12.

These letters also bear the acknowledgement stamp of BSE inward section. It was submitted by the noticee that despite submitting the above information, BSE again asked for the same details on 18.11.2015 and the noticee has replied on 23.11.2015. But thereafter, BSE vide email dated 22.03.17 has again asked for the same information stating that details are not traceable at their end and noticee has again filed the same to BSE. The letters filed by the noticee in this regard also contains acknowledgement stamp of BSE inward section. Mr. Sunu Thomas of BSE vide e-mail dated 22.03.2017 confirms that the documents are misplaced and accordingly seeks resubmission of these documents.

19. In light of the above discussion and submission of proof of disclosures made to BSE on December 10, 2009 by the noticee, the violation of Regulation 7(3) of SEBI (SAST) Regulations, 1997, read with Regulation 35(2) of SEBI (SAST) Regulations, 2011 and Regulation 13(6) of SEBI (PIT) Regulations, 1992 by the noticee is not established and therefore it is not a fit case for imposing of any penalty under section 15A (b) of SEBI Act, 1992.

ORDER

20. In view of the foregoing, considering the facts and circumstances of the case and evidence available on record, the alleged violation of the provisions of Regulation 7(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, read with Regulation 35(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 is not established against the noticee. Accordingly, no penalty is imposed under Section 15A (b) of SEBI Act, 1992.
21. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the noticee and also to the Securities and Exchange Board of India.

Date : May 08, 2017
Place : Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer