

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SJ/AO/92/2018-19]

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

In respect of

Mr. Yashwant T Sarkhot

(PAN: AEEPS2861K)

In the matter of Finalysis Credit & Guarantee Company Limited

FACTS OF THE CASE IN BRIEF

1. Investigation Department (hereinafter referred to 'OD') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation in the trading activities of certain entities in the scrip of Finalysis Credit & Guarantee Company Limited (hereinafter referred to as 'FCGCL / Target Company'). The said investigation revealed that Mr. Yashwant T Sarkhot (hereinafter referred to as 'Noticee') had not made required disclosures under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'SEBI (PIT) Regulations').

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said investigation, OD of SEBI initiated Adjudication Proceedings against the Noticee and appointed Ms Sangeeta Rathod as Adjudicating Officer, under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to Adjudication Order against Mr. Yashwant T Sarkhot in the matter of Finalysis Credit & Guarantee Company Limited.

inquire into and adjudge under section 15A(b) of SEBI Act the alleged violations of provisions of Regulations 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice dated September 25, 2017 (hereinafter referred to as SCN) was issued to the Noticee under rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against him and why penalty under section 15A(b) of SEBI Act be not imposed on him for the violations alleged and specified in the said SCN. The SCN was sent through the speed post acknowledgment due. The said SCN did not return undelivered, however, the acknowledgment of delivery has not been received. The Noticee is in receipt of SCN and vide letter dated October 06, 2017 replied to the said SCN.
4. It was alleged in the said SCN that the shares of the Target Company are listed at Bombay Stock Exchange Ltd. (**BSE**). OD of SEBI conducted investigation in the scrip of Target Company for the period March 28, 2012 to May 31, 2013 (hereinafter referred to as '**IP**'). However, wherever deemed necessary reference was made outside the IP also. The Noticee was one of the promoters of Target Company. The Noticee on July 27, 2013 disposed-off 1,00,000 shares of Target Company representing 1.82% of the total paid up capital of FCGCL. As, the change in shareholding of the Noticee was more than 25000 shares, he was under an obligation to make disclosure to BSE and FCGCL under Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. It is alleged that the Noticee failed to make disclosures to BSE and FCGCL under Regulation 13(4A) within two working days of July 27, 2013 and therefore, alleged to have violated Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. The above alleged violations and the transactions carried out by the Noticee are summarily depicted in the following table:

Date	No of shares held - pre Acquisition/ disposal	% of share holding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Mode	Date of disclosure to company	Date of disclosure to stock exchange	Violation of Regulation(s) under PIT
Yashwant T Sarkhot											
27/07/2013	100000	1.82%	(100000)	1.82%	NA	0	0.00%	Off-market	No disclosure made	No disclosure made under 13 (4A) of SEBI (PIT) Regulations	13 (4A) of SEBI (PIT) Regulations

5. I granted an opportunity of personal hearing to the Noticee on April 19, 2018. The Noticee himself appeared for the said hearing and reiterated the submissions made in his reply dated October 06, 2018. The summary of the Noticee's submission made in the said reply are as follows:

- a. FCGCL was controlled and managed by his elder brother Mr. Vinayak Sarkhot. Mr. Vinayak Sarkhot requested the Noticee to act as per his instructions. As Mr. Vinayak possessed all the expertise in the subject matter, the Noticee acted on his instructions and did all the acts as he asked the Noticee from time to time. Mr. Vinayak has expired and he used to go to all the statutory offices on his own and never deputed any professional who was aware of the development in the matter or could help the Noticee in the ongoing matter after his death.
- b. The Noticee is running a small pharmacy business in Dahanu. He had no knowledge, information and expertise in the matter and requested the Adjudicating Officer to excuse him from all the proceedings and look at the entire situation on humanitarian ground.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

6. I have carefully perused the charges levelled against the Noticee in the SCN, his reply and the material documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. *Whether the Noticee has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations?*
- b. *Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act for the alleged violations by the Noticee?*
- c. *If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?*

7. Before proceeding further, I would like to refer to the relevant provisions of SEBI (PIT) Regulations:

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

"Disclosure of interest or holding in listed companies by certain persons

13(4A) *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed 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 of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs.5 lakh in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower."*

13(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.*

FINDINGS:

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue a: *Whether the Noticee has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations?*

- i. I find that from the shareholding pattern of FCGCL for the quarter ending June 2013 that the Noticee was the one of the promoters of FCGCL. I further observe that the Noticee on July 27, 2013 disposed-off 1,00,000 shares of Target Company representing 1.82% of the total paid up capital of FCGCL. The Noticee has not disputed the disposal of 1,00,000 shares of Target Company but his contention is that he had only acted as per the instructions of his brother Mr. Vinayak Sarkhot who has expired and the said contention is not acceptable to me. As per Regulation 13(4A) of SEBI (PIT) Regulations, any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchanges where the securities are listed 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 of such person from the last disclosure and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. As, the change in shareholding of the Noticee was more than 25000 shares, he was under an obligation to make disclosure to BSE and FCGCL under Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. I find that the Noticee had not produced any proof that he made the disclosures under the said provisions to FCGCL and BSE. Further, BSE vide e-mail dated December 18, 2014 to OD of SEBI confirmed that no disclosures under SEBI (PIT) Regulations were received from the promoters (including the Noticee). Therefore, I hold that the Noticee failed to make disclosures to BSE and FCGCL under Regulation 13(4A) within two working days of July 27, 2013 and therefore, violated Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. In view of the above, the allegations levelled in the said SCN against the Noticee stand established for which the Noticee is liable for monetary penalty.

Issue b: Do the violations, if any, on the part of the Noticee attract any monetary penalty under section 15A(b) of SEBI Act?

- 9) Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure on the part of the Noticee to make required disclosures attracts the imposition of monetary penalty under Section 15A(b) of SEBI Act, 1992 which is reproduced below:

Penalties and Adjudication

"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,—*

(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 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.

Issue c - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

- 10) While determining the quantum of penalty under section 15J of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

SEBI Act, 1992

15J “Factors to be taken into account by the adjudicating officer-

While adjudging quantum of penalty under section 23 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.”

- 11) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. There is no evidence on record to show that the failure is repetitive.

- 12) Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for monetary penalty of Rs. 1,00,000/- (Rupees One Lakh only),

for his failure to make required disclosures under the aforesaid provisions of SEBI (PIT) Regulations.

ORDER

- 13) In exercise of the powers conferred under section 15-I of the SEBI Act and Rule 5 of the Adjudication Rules, I hereby imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Noticee under section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.
- 14) 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

- 15) The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No
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- 16) In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: January 30, 2019

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER