

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ISD / SICPA /AO/DRK-DS/EAD3- 545/ 89 -2014]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against
SICPA (India) Ltd.
(Presently known as SICPA India Pvt. Ltd.)
[PAN No. AADCS6121L]
308-312, Mercantile House,
K G Marg,
New Delhi – 110 019

FACTS OF THE CASE IN BRIEF

1. SEBI conducted examination in the scrip of Brushman (India) Ltd. (hereinafter referred to as "Brushman/ the company") during the period March 23, 2010 to May 17, 2010 (hereinafter referred to as "Examination Period"). It was observed that SICPA (India) Ltd. (hereinafter referred to as 'Noticee') did not make any disclosure with respect to sale of shares of the company.

APPOINTMENT OF ADJUDICATING OFFICER

2. I was appointed as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules'), to inquire into and adjudge under Section 15A(b) of the SEBI Act, the violation of Regulation 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") alleged to have been committed by the noticee. The said appointment was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated November 11, 2013.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice no. A&E/EAD-3/DRK-DS/2479/2014 dated January 22, 2014 (hereinafter referred to as 'SCN') was served on the noticee in terms of the provisions of Rule 4 of the Rules, requiring the noticee to show cause as to why an inquiry should not be held against the noticee and why penalty, if any, should not be imposed on it under Section 15A(b) of the SEBI Act for the alleged violation of the provision of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations.
4. It was alleged in the SCN that during the examination period the noticee had sold 18,74,000 shares amounting to 12.7% of the share capital of the company. The details are given in the following table:

Date	No. of shares sold	Opening Holding.	Closing Holding	As % of share capital
01-12-2009		1875000		12.71
25-03-2010	2550	1875000	1872450	12.69
26-03-2010	254	1872450	1872196	12.68
27-03-2010	28507	1872196	1843689	12.49
30-03-2010	2729	1843689	1840960	12.47
31-03-2010	20530	1840960	1820430	12.33
03-04-2010	75448	1820430	1744982	11.82
03-04-2010	70125	1744982	1674857	11.35
06-04-2010	54945	1674857	1619912	10.98
07-04-2010	43933	1619912	1575979	10.68
08-04-2010	53861	1575979	1522118	10.31
09-04-2010	187000	1522118	1335118	9.05
12-04-2010	119352	1335118	1215766	8.24
13-04-2010	107992	1215766	1107774	7.51
15-04-2010	90660	1107774	1017114	6.89
16-04-2010	162588	1017114	854526	5.79
17-04-2010	27962	854526	826564	5.60
20-04-2010	12445	826564	814119	5.52
21-04-2010	33923	814119	780196	5.29
22-04-2010	39220	780196	740976	5.02
23-04-2010	18045	740976	722931	4.90
24-04-2010	69408	722931	653523	4.43
27-04-2010	64877	653523	588646	3.99
28-04-2010	26111	588646	562535	3.81
29-04-2010	34705	562535	527830	3.58
30-04-2010	89576	527830	438254	2.97
03-05-2010	90350	438254	347904	2.36
06-05-2010	148186	347904	199718	1.35
08-05-2010	8600	199718	191118	1.29
11-05-2010	8600	191118	182518	1.24

12-05-2010	38147	182518	144371	0.98
13-05-2010	99141	144371	45230	0.31
14-05-2010	31000	45230	14230	0.10

5. It was alleged that the noticee did not make any disclosure with respect to the sale of 18,74,000 shares.
6. The SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record. The said SCN was sent through Registered Post Acknowledgement Due (RPAD) and was delivered to the noticee.
7. The noticee vide letter dated February 03, 2014 replied to the SCN and made following submissions:
 - a. *A loan of Rs. 5 Crores was taken by Brushman on 27.08.2008 from the noticee for a period of 3 months which was subsequently rolled over two times i.e. firstly on 27.11.2008 for a period of 3 months and secondly on 27.02.2009 upto 30.06.2009. The said loan was given on the basis of security which inter-alia included security by way of pledge of 18,75,000 shares of Brushman by its promoters namely Shri Kapil Kumar and Mrs. Raj Rani.*
 - b. *On the due date of repayment of Loan, Brushman failed to honour its commitment to repay the said loan.*
 - c. *On its failure to repay the loan, legal notice dated 27.07.2009 was issued to Mr. Kapil Kumar, MD of Brushman as well as copied to Pledgors i.e. the promoters of Brushman namely Shri Kapil Kumar and Mrs. Raj Rani for refund of loan amount together with accrued interest and all charges and taxes.*
 - d. *Another legal notice dated 27.07.2009 was issued to the promoters of Brushman i.e. Shri Kapil Kumar and Mrs. Raj Rani as well as a copy was marked to Mr. Kapil Kumar, MD of Brushman and Depository Participant Abhipra Capital Ltd. for sale of pledged shares.*
 - e. *Inspite of legal notices, Brushman and its MD failed to repay the loan, accordingly the pledge was invoked with prior intimation to the pledgors alongwith communication to sell and dispose off the pledged shares vide our letter dated 07.08.2009. The said letter was also marked to Mr. Vimal Chawla,*

Asst. Legal & Secretarial, Brushman, the Depository Participant – Abhipra Capital Ltd., BSE and DSE (in compliance of Regulation 7 of the SAST Regulations, 1997.)

- f. In spite of being a shareholder of Brushman, we never received any notices for general meeting, annual report etc. for which we protested.*
- g. In view of the continued default and ignoring the aforesaid correspondences, another letter dated 13.03.2010 was issued to the Pledgors i.e. Mr. Kapil Kumar and Mrs. Raj Rani as well as copied to Mr. Kapil Kumar, MD of Brushman giving prior intimation for sale of pledged shares.*
- h. SICPA is a closely held unlisted company. Although there is a technical omission to furnish the required information in prescribed form to Brushman about the acquisition and sale of shares as holder of more than 5% shares or voting rights in Brushman as well as its continual disclosure, however it is apparent that shares were pledged to us by the promoter of Brushman and therefore in substance Brushman is deemed to have such information which should otherwise be intimated to all stock exchanges by Brushman where it is listed as per Regulation 13(6) of PIT Regulations. .*
- i. Brushman was in de-facto in possession of such information. Further kindly note that the said omission to give information in prescribed Form to Brushman is only technical in nature with no mala fide intentions. We have indeed informed BSE, DSE, Abhipra Capital Ltd., Asst Vice President, Legal and Secretarial of Brushman by letter dated 07.08.2009 about invocation of pledge and to sell and dispose off the pledged shares.*
- j. No benefit accrued by the noticee by not furnishing information to Brushman in prescribed form since they were privy to such information about the shareholding pledged with us.*
- k. The company did not acquire shares by way of purchase from the open market in bulk deal but instead were pledged as security of the Loan by the promoters of Brushman.*
- l. The shares were sold in small lots over a period of time to avoid share price crash. At times there were also no buyers of the shares in the market.*
- m. Further it is submitted that our Company is not said to be connected person or person deemed to be a connected person or insider or access to unpublished price sensitive information within the meaning of PIT Regulations.*

8. Subsequently, vide hearing notice dated March 07, 2014, the noticee was granted an opportunity of personal hearing on March 21, 2014 at SEBI Bhavan, Mumbai. The said hearing notice was sent through RPAD and was served on the noticee.
9. Vide letter dated March 18, 2014, the noticee authorised Shri Aditya Mathur, Chief Finance Officer as Authorised Representative (AR) to attend the said hearing. AR of the noticee appeared for the hearing and made following submissions:
 - a. *The AR has reiterated the submissions made vide reply dated February 03, 2014.*
 - b. *The AR has undertaken to provide a copy of the letter/ email, if any, addressed to Brushman (India) Ltd. with respect to the sale of more than 2% shares (in compliance of Regulation 13(3) of the PIT, Regulations) after the actual sale of shares, within 10 days.*
10. Subsequently, the AR submitted the copies of following letters:
 - a) *Letter dated 01.06.2010 from the legal counsel of the noticee addressed to Brushman and also marked to Mr. Kapil Kumar as well as MD of Brushman wherein, it informed Brushman about the sale of 18,74,000 equity shares in the market during the period 23.03.2010 to 17.05.2010 thereby realizing approx ₹1.70 Crores.*
 - b) *Letter dated 15.06.2010 from Brushman acknowledging aforesaid letter.*
 - c) *Letter dated 06.07.2010 from the legal counsel of the noticee to Brushman in response to Brushman's letter dated 15.06.2010 furnishing the outstanding amount and the shares sold.*
 - d) *Letter dated 19.05.2010 to BSE also marked to SEBI as well as Brushman intimating about filing of winding up petition on 17.05.2010 with Hon'ble Delhi High Court subsequent to sale of shares.*
 - e) *Copy of SEBI letter dated 28.06.2010 stating that the said complaint does not come within the purview of SEBI. Accordingly, the complaint has been forwarded to MCA for necessary action.*

CONSIDERATION OF EVIDENCE AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case, and the material made available on record.
12. It was alleged in the SCN that the noticee did not make any disclosure with respect to the sale of shares.
13. As per the requirements of Regulation 13 (3) read with Regulation 13(5) of the PIT Regulations, the noticee was required to make the disclosures regarding the change in its shareholding in Form C of the PIT Regulations to the company within two working days of the sale of shares exceeding 2% of total shareholding or voting rights in the company.
14. On perusal of the data regarding sale of shares as provided in para no. 4, it is observed that the noticee was required to make disclosures on various dates i.e. within two working days of the sale of shares exceeding 2% of total shareholding of the company. The noticee has submitted that vide letter dated June 01, 2010, it had intimated the company about the sale of 18,74,000 equity shares in the market during the period March 23, 2010 and May 17, 2010. However, on perusal of the copies of the letters dt. March 13, 2010, June 01, 2010 and legal notices dt. 27.07.2009 forwarded by the noticee, it appears that the said communication is with respect to the dispute/ recovery of money from the pledgors and not about the disclosures as per the Form C of the PIT Regulations. The purported intimation was neither made in the required format i.e. Form C as prescribed under Regulation 13(3) of the PIT Regulations nor it was made within two working days of the sale of shares. Since, the said disclosure was not made in the prescribed format, the key informations like shareholding prior to sale, receipt of sale of shares, number and percentage of shares post sale, date of intimation to the company, trading member through whom the trade was executed with SEBI registration number and exchange on which the trade was executed etc. were not provided. Therefore, the claim of the noticee that the disclosures were made to the company is not established.
15. At this juncture I would like to quote the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Alpha Hi-Tech Fuel Limited v. SEBI* (Order dated December 04, 2009 in Appeal No. 142 of 2009) wherein the Hon'ble SAT held

that if the information was not furnished by the company in the prescribed formats, the provisions of the Regulations stand violated. This being so, penalty must follow.

16. In view of the above facts and material made available on record, it can be concluded that the noticee has failed to comply with the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. The text of the said provision is as follows:-

"13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies

(3) Continual disclosure.

Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 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) and (4) 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."

17. The aforesaid delay makes the noticee liable for penalty under Section 15A(b) of the SEBI Act which is reproduced below:

"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,—

...

(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;"

18. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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.*

19. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of the delay on the part of the noticee to make the disclosures are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticee or the loss caused to the investors in a default of this nature.

20. Having considered the facts and circumstances of the case, submissions made by the noticee and after taking into account the factors under section 15J of the SEBI Act, 1992, I find that a penalty of ₹5,00,000 [Rupees Five Lakhs Only] on the noticee would commensurate with the non-compliance on the part of the noticee in making the disclosures at relevant times in this case.

ORDER

21. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a penalty of ₹5,00,000 [Rupees Five Lakhs Only] on SICPA (India) Ltd. (*presently known as SICPA India Pvt. Ltd.*) in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the not complying with the provisions of Regulation 13(3) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the failure of the noticee to make the disclosures.

22. The penalty shall be paid by way of Demand Draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the General

Manager, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

23. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent SICPA (India) Ltd. (*presently known as SICPA India Pvt. Ltd.*) and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: June 30, 2014

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**