

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/ 273 /2018]

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 Butterfly Commotrade Private Limited
(PAN No. AADCB8174C)
Premises No. 07, Ganpat Bagla Road
Room No. 103B, Kolkata – 700007

In the matter of M/s Pradip Overseas Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the trading of the scrip of M/s Pradip Overseas Ltd (hereinafter referred to as '**Pradip / Scrip / Company**') from January 1, 2014 to January 31, 2014 (hereinafter referred to as '**examination period**'). The shares of the company are listed on Bombay Stock Exchange (BSE) and National Stock Exchange of India Ltd (NSE). Examination *inter – alia* revealed that no disclosures were made under Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations on the basis of Regulation 29(4) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') by **M/s Butterfly Commotrade Private Limited**, (hereinafter referred to as "**the Noticee / Butterfly**").

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated December 19, 2016, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2017/28349/1 dated November 16, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A(b) of the SEBI Act for the aforesaid alleged violation of SAST Regulations.
4. The observations made under the examination and the allegations levelled against the Noticee in the SCN are mentioned hereunder;
5. During the examination, it was observed that, during January 2014, the pledged of promoters of M/s Pradip Overseas Ltd got reduced as compared to December 2013. On further analysis it was observed that the reduction of pledge was for the company and not for the promoters. The details of holding statement of the company during December 2013 and January 2014 is given below:-

Date	Security Name	Issued Capital	Pledge shares	Pledge shares as %age of issued capital
31/01/2014	Pradip Overseas Ltd	48440183	28740952	59.33
31/12/2013	Pradip Overseas Ltd	48440183	33405112	68.96

6. During examination it was observed that the following pledged shares got released during January 2014 which caused the aforesaid change in holding of the Company.

Date	Client Name	Counterparty Client Name	Transaction Type	Debit / Credit	Quantity	Opening holding	Issued Capital	Released Shares as % of Issued Capital
06/01/2014	Pradip Petrofils Private Limited	Butterfly / Noticee	PLEDGE	Debit	2760000	4664160	48440183	5.70
06/01/2014	Pradip Petrofils Private Limited	Ontime Trading Private Limited	PLEDGE	Debit	1904160	4664160	48440183	3.93

7. In view of above, it is alleged that the Noticee by indulging in trading in the scrip triggered disclosure requirements under Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations on the basis of Regulation 29(4) of SAST Regulations. BSE and NSE also confirmed vide its email dated November 20, 2014 and once again on August 28, 2017 that no disclosures were received as per regulation 29 of SAST Regulations in the scrip of Pradip from Butterfly / Noticee (copy of BSE and NSE emails dated November 20, 2014 and August 28, 2017 was provided as **Annexure – 2** of SCN); and by not making the said disclosures, the Noticee had allegedly violated Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.

8. The aforesaid regulations are reproduced as under;

SAST Regulations

Disclosure of acquisition and disposal.

29(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

29(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this subregulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,-

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.

29(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

9. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15A(b) of the SEBI Act, which reads as follows:

SEBI Act:

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;*

10. SCN was issued through Speed Post Acknowledgement Due (SPAD) to the Noticee on November 16, 2017 at the registered address of the Noticee as per MCA website, viz. *Butterfly Commotrade Private Limited, Premises No. 07, Ganpat Bagla Road, Room No. 103B, Kolkata – 700007* and the same was delivered on November 20, 2017. The said SCN was also communicated to Noticee through email dated November 16, 2017 (at the e-mail ID: *commotradebutterfly@yahoo.in* - as available from website of Ministry of Corporate Affairs (MCA) under head of Company Master Data, which was duly digitally signed by the undersigned.

11. As sufficient time has been granted to the Noticee to file reply towards the SCN which he has failed to make till date, therefore, I assume that Noticee has nothing to submit and the matter can be proceeded further on the basis of evidences available on records. It is relevant to point out that the consequence of non-filing of reply has been clearly indicated at para 10 of the SCN which states that if no reply is received within 14 days from receipt of this SCN, then, it shall be presumed that you have no reply to submit and the matter would be decided further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules.

12. Keeping in view the principles of natural justice, an opportunity of hearing was provided to the Noticee on January 4, 2018 vide notice dated December 5, 2017 through Speed Post Acknowledgement Due (SPAD), which was delivered to the Noticee on December

11, 2017. The said hearing notice was also communicated to Noticee through email dated December 14, 2017 (at the e-mail ID: commotradebutterfly@yahoo.in - as available from website of Ministry of Corporate Affairs (MCA) under head of Company Master Data, which was duly digitally signed by the undersigned. It is relevant to point out that in the said hearing notice issued on December 5, 2017, as the Noticee has not submitted its reply towards the said SCN, the Noticee was asked to file its reply on or before December 26, 2017 and copy of SCN was also enclosed with the said notice. However, Noticee did not appear on the given date i.e. January 4, 2018.

13. As observed in pre paras that despite service of SCN and hearing notice through SPAD / digitally signed email, the Noticee neither submitted any reply towards the SCN nor appeared for hearing under inquiry. It is well settled position of law as well as held by the Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of *Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM)* *inter-alia* held that – “the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”.

14. The Hon'ble SAT also made such proposition in case of *Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. “....., appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices”.*

15. I am of the view that sufficient time has been provided to the Noticee to submit reply, which the Noticee had failed to make and also failed to appear for hearing and therefore, the undersigned is proceeding against the Noticee ex-parte on the basis of available records/evidence.

CONSIDERATION OF ISSUES AND FINDINGS:-

16. The issues that arise for consideration in the present case are :

- a. Whether the Noticee had failed to make the disclosures to BSE and the Venus in respect of its change in shareholding as stated at Para 4 – 6 of the SCN?
- b. If the disclosures were not made by the Noticee then, whether the Noticee is in violation of regulation 29(1) and 29(2) read with 29(3) of SAST Regulations on the basis of regulation 29(4) of SAST Regulations.
- c. If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act?
- d. If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?

17. From the perusal of the SCN at para 4 - 6, it was observed that, during January 2014, the pledged of promoters of Pradip Overseas Ltd got reduced as compared to December 2013. While further analyzing it was observed that the reduction of pledge was for the company and not for the promoters. The details of holding statement of the company during December 2013 and January 2014 is given below:-

Date	Security Name	Issued Capital	Pledge shares	Pledge shares as %age of issued capital
31/01/2014	Pradip Overseas Ltd	48440183	28740952	59.33
31/12/2013	Pradip Overseas Ltd	48440183	33405112	68.96

18. It was observed that the following pledged shares got released during January 2014 which caused the aforesaid change in holding of the Company.

Date	Client Name	Counterparty Client Name	Transaction Type	Debit / Credit	Quantity	Opening holding	Issued Capital	Released Shares as % of Issued Capital
06/01/2014	Pradip Petrofils	Butterfly / Noticee	PLEDGE	Debit	2760000	4664160	48440183	5.70

	Private Limited							
06/01/2014	Pradip Petrofils Private Limited	Ontime Trading Private Limited	PLEDGE	Debit	1904160	4664160	48440183	3.93

19. Thus from the above, I note that pledged shares as percentage of issued capital of company reduced during January 2014 as compared to previous month which was due to release of pledged shares by a non-promoter Pradip Petrofils Pvt Ltd during January 2014. The shares released to its counterparty Pradip Petrofils Pvt Ltd i.e. the Noticee (Butterfly) crossed 5% of the shareholding of the company, which triggered disclosure requirements under regulation 29(1) read with 29(3) of SAST Regulations on the basis of 29(4) of SAST Regulations. Further BSE and NSE vide its e-mail dated November 20, 2014 and August 28, 2017 confirmed that no disclosures have been received under regulation 29 of SAST Regulations for the said transactions. During adjudication proceedings Company / Pradip was also asked to confirm whether Noticee had made disclosures under regulation 29 of SAST Regulations for the said transaction vide email which was duly digitally signed by the undersigned, however, the company / Pradip failed to reply.

20. I note that Noticee had not disclosed about the change in shareholding to BSE as well as to the company (Pradip) as it *holds more than 5% shares* on January 6, 2014, also its shareholding *change exceeds 25,000 shares* on January 6, 2014 and further no change has been mentioned in the SCN, therefore it only triggered disclosure requirement under regulation 29(1) read with 29(3) of SAST Regulations on the basis of regulation 29(4) of SAST Regulations.

21. In view of the aforesaid, I note that the violation of aforesaid non disclosures occurred during the period January 2014 and as per records no disclosures were made by the Noticee despite the requirement of making the same within 2 working days. Therefore, I note that there is a delay of around 4 years in making the disclosure and the aforesaid

violation continues till date as the Noticee has not made the said disclosures till date to exchange (BSE) and to the company as appears from the BSE website and confirmed by BSE and NSE vide email dated November 20, 2014 and August 28, 2017.

22. In view of the aforesaid observation and established violations against the Noticee, it is a fit case for imposing monetary penalty upon the Noticee under Section 15A(b) of the SEBI Act which read as follows:

SEBI Act:

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;*

23. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, 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.”*

24. In the matter of *Gurmeet Singh Dhingra Vs. SEBI (Appeal No. 353 of 2014)* decided on **December 13, 2014** :- “...as per regulation 13(3) read with regulation 13(5) of the PIT Regulations, appellant was obliged to make disclosures within two working days of acquisition or sale of shares or voting rights as the case may be. In the present case, the appellant has neither made disclosure when regulation 13(3) got triggered on account of acquiring 2,49,300 shares of Trinity on September 28, 2009 nor the appellant has made disclosures on sale of shares on December 30, 2009, January 5, 2010, January 8, 2010 and January 23, 2010 when on all the four occasions the sale resulted in decrease in shareholding by more than 2%. Thus, on all the five occasions, it was obligatory on part of the appellant to make disclosure under regulation 13(3) within the time stipulated under Regulation 13(5) of the PIT Regulations. Penalty imposable under Section 15A(b) of SEBI Act for failure to make such disclosure is ₹1 lac each day during which such failure continues or ₹1 crore whichever is less. Since the appellant has failed to make disclosure on all the aforesaid five occasions, penalty imposable for aforesaid five violations would be ₹1 crore each i.e. ₹5 crore in all. As against penalty of ₹5 crore imposable on the appellant for not making disclosure under Regulation 13(3) read with Regulation 13(5) of PIT Regulations on the aforesaid five occasions, the adjudicating officer after considering all mitigating factors has imposed penalty of ₹5 lac which cannot be said to be excessive, arbitrary or unreasonable.

25. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticee, the specific loss suffered by the investors due to such violations; nor the violations as repetitive in nature. Thus before arriving to the quantum of penalty in the matter, it is necessary to refer the importance of such disclosures. The main objective of the SAST Regulations or PIT Regulations is to afford fair treatment to shareholders as regards their holdings in the company. The Regulation seeks to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such selling / acquiring in the company. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. Therefore, taking into consideration the

facts / circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

26. After taking into consideration all the aforesaid facts and circumstances of the case, and in exercise of the power conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I, hereby impose a penalty of ₹8,00,000/- (Rupees Eight Lakh only) on the Noticee / M/s Butterfly Commotrade Private Limited, in terms of the provisions of Section 15A(b) of the SEBI Act. I am of the view, that the said penalty would commensurate with the violations committed by the Noticee.

27. 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

28. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the “Enforcement Department (DRA-I) 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

29. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

DATE: JANUARY 10, 2018

PLACE: MUMBAI

RACHNA ANAND

ADJUDICATING OFFICER