

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO- 55/2010]

**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

Arvind Babulal Goyal

(PAN. ACIPG0193J)

In the matter of

Birla Capital & Financial Services Ltd.

(now known as Birla Leasing & Infrastructure Ltd.)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in respect of buying, selling and dealing in the shares of Birla Capital & Financial Services Ltd. (hereinafter referred to as “**BLIL/Company/ scrip**”), currently known as Birla Leasing & Infrastructure Ltd. which had witnessed a sudden increase in price of the scrip during the period from June 21, 2005 to July 11, 2005 (hereinafter referred to as “**investigation period**”) at the Bombay Stock Exchange Ltd. (hereinafter referred to as ‘**BSE**’).

2. The shares of BLIL are listed at Bombay Stock Exchange (BSE). Total paid-up equity share capital / voting capital of the Company was 78,12,000 shares as on June 30, 2005. It was observed that Mr. Arvind Babulal Goyal (hereinafter referred to as “ **Noticee**”) traded in the scrip of BLIL through Joindre Capital Services Ltd. (Member, BSE) during the period June 29, 2005 to July 29, 2005. As per records, the Noticee is staying at New Vora House, 2nd Floor, GP Road, Goregaon (West), Mumbai-400062. With the acquisition of 68,251 shares (0.88% of paid up capital) on July 06, 2005, the shareholding of the Noticee in BLIL increased from 3,60,383 (4.61%) to 4,28,634 shares (5.49%) of BLIL which was more than 5% shareholding/voting capital of the Company. Subsequently, the Noticee had sold certain shares and his shareholding came down below 5 % of the paid up capital of BLIL.
3. As a result of the abovementioned increase and subsequent decrease in the shareholding of the Noticee in the Company, the Noticee was under the obligation to make necessary disclosures under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”) as well as under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”). It was alleged that the Noticee had not made the necessary disclosures and thus violated the provisions of regulation 7(1) read with regulation 7(2) of SAST Regulations and regulations 13(1) & 13(3) read with 13(5) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated March 27, 2008, Mr. VS Sundaresan was appointed as Adjudication Officer in the said matter. Consequent to

the transfer of Mr. VS Sundaresan, the undersigned was appointed as Adjudicating Officer, vide Order dated November 12, 2009 under section 15I of SEBI Act, 1992 to inquire into and adjudge under section 15A(b) of SEBI Act, the alleged violations of the specified provisions of SAST Regulations and PIT Regulations by Arvind Babulal Goyal as observed during the investigation conducted by SEBI into the trading in the scrip of BLIL.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. A Show Cause Notice dated October 06, 2008 (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 held against the Noticee and penalty be not imposed under sections 15A(b) of SEBI Act for the alleged violations specified in the said SCN.
6. The said SCN was returned undelivered with remarks ‘person is not staying there’. Vide notice dated April 10, 2010, the same was published in the Hindustan Times (English newspaper) and Sakal (Marathi newspaper), and it was informed that the SCN has been made available on the SEBI website (www.sebi.gov.in) under the heading “Unserved Summons/Notice”. Moreover, the Noticee was also given an option to collect the aforesaid SCN from SEBI, Head Office.
7. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on June 17, 2010 vide Notice dated May 07, 2010. However, the same was returned undelivered with the remarks ‘person is not staying there’. The same was uploaded on SEBI web site under caption “Unserved Summons/Notices”. The details of the hearing were also published in the newspaper

“Hindustan Times” (English edition) on June 10, 2010 and in Hindi edition on June 11, 2010. However, the Noticee neither appeared nor made any submissions. Subsequently, another notice of hearing dated October 06, 2010 granting hearing on October 22, 2010 was forwarded for delivery at the last known address of the Noticee. As the noticee was not found, the same was affixed at the premises on October 08, 2010. The noticee neither appeared for the hearing nor made any submissions.

8. I am convinced that ample opportunities have been given to the Noticee to put forward his defense and explain his case. Despite being given ample opportunities, the Noticee has failed to file reply or appear for personal hearing. In view of this, I am compelled to proceed with the matter *ex-parte* according to rule 4(7) of the Rules and decide this case on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee attracted the disclosure requirements under regulations 7(1) and 7(2) of SAST Regulations and if so, whether it had complied or not?
 - b. Whether the Noticee attracted the disclosure requirements under regulation 13(1) of PIT Regulations and if so, whether complied or not?
 - c. Whether the Noticee attracted the disclosure requirements under regulations 13(3) read with 13(5) of PIT Regulations and if so, whether complied or not?
 - d. Does the non-compliance, if any, attract monetary penalty under section 15A(b) of SEBI Act?

- e. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. **ALLEGED VIOLATION OF REGULATION 7(1) READ WITH REGULATION 7(2) OF SAST REGULATIONS**

The provisions of regulation 7(1) and 7(2) of SAST Regulations read as under:

“7. Acquisition of 5 per cent or more shares or voting rights of a company

(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.”

11. The details of transactions and the holding of the Noticee in the scrip of BLIL are mentioned in the table below.

Broker	Client's Name	Date of Transaction	Purchase Quantity	Sales Quantity	Net Quantity	Cumulative net Shareholding	
						Number	%
Joindre	Arvind	29/06/05	3,50,000	0	3,50,000	3,50,000	4.48
Joindre	Arvind	30/06/05	12,900	78,150	-65,250	2,84,750	3.65
Joindre	Arvind	01/07/05	10,598	0	10,598	2,95,348	3.78
Joindre	Arvind	04/07/05	42,100	2,000	40,100	3,35,448	4.29
Joindre	Arvind	05/07/05	24,935	0	24,935	3,60,383	4.61
Joindre	Arvind	06/07/05	68,251	0	68,251	4,28,634	5.49
Joindre	Arvind	07/07/05	0	18,200	-18,200	4,10,434	5.25
Joindre	Arvind	08/07/05	13,775	47,857	-34,082	3,76,352	4.82
Joindre	Arvind	11/07/05	10,950	24,875	-13,925	3,62,427	4.64
Joindre	Arvind	12/07/05	9,450	91,579	-82,129	2,80,298	3.59
Joindre	Arvind	13/07/05	0	1,13,100	-1,13,100	1,67,198	2.14

12. It is observed from the above table that the Noticee, Arvind Babulal Goyal crossed the threshold of 5% shareholding in BLIL, i.e. 390600 shares, on July 06, 2005. As the noticee acquired more than 5% shares/voting rights in BLIL, he was under obligation to make disclosure under regulation 7(1) of SAST Regulations to the Company and to the Stock Exchange where the shares of BLIL are listed, within 2 days. However, it has been submitted by BSE and BLIL that no disclosures have been made by the Noticee in this regard. No submissions have been made by the Noticee in this regard before me. It is therefore held that the Noticee has violated regulation 7(1) read with regulation 7(2) of SAST Regulations.

13. ALLEGED VIOLATION OF REGULATION 13(1) AND 13(3) READ WITH 13 (5) OF PIT REGULATIONS

The said regulations read as under :

“13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Continual Disclosure

(3) Any person who holds more than 5% shares or 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.

(4)

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.”

14. In terms of regulations 13(3) read with regulation 13(5) of PIT Regulations, any person who holds more than 5% of shares or

voting rights in a listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights under the circumstances as mentioned below:

- If such change results in shareholding falling below 5%:
- If there has been change in such holdings from the last disclosure made under regulation 13(1) or under regulation 13(3) and such change exceeds 2% of total shareholding or voting rights in the company.

15. As mentioned above, It is observed that the Noticee crossed the threshold of 5% shareholding in BLIL, i.e. 390600 shares, on July 06, 2005. As the noticee acquired more than 5% shares/voting rights in BLIL, he was also under obligation to make disclosure under regulation 13 (1) of PIT Regulations to the Company within 4 working days of such acquisition. However, it has been submitted by BLIL that no disclosures have been made by the Noticee in this regard. Thus, the Noticee has violated regulation 13 (1) of PIT Regulations.
16. The Noticee held 4,28,634 shares of BLIL (5.49%) as on July 06, 2005. On July 13, 2005, after the sale of 1,13,100 shares of BLIL by the Noticee, the aggregate shareholding of the Noticee fell to 1,67,198 shares, as a result of which the Noticee's total shareholding/voting right percentage in the Company fell to 2.14%. This was a change of more than 2% of shareholding of the Noticee in the Company from his aggregate holding on July 06, 2005. As the change in shareholding exceeded the 2% limit specified in regulation 13(3) of PIT Regulations, the noticee ought to have made disclosure to the Company in the prescribed form within the

stipulated time. Since the Noticee failed to do so, it is held that regulation 13(3) read with regulation 13(5) of PIT Regulations has been violated by the Noticee.

17. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68SCL216(SC)*, the Hon'ble Supreme Court of India has held that 'penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant'.
18. Thus, the aforesaid violations by the Noticee make him liable for penalty under Section 15A(b) of SEBI Act, 1992 which reads as follows:

“15A. Penalty for failure to furnish, information , return etc.

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 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. “

19. 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.”*

20. 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. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. Further it is also not possible to ascertain the loss to the investors in monetary terms. However, the investors were definitely deprived of the information on time and were thus impaired from taking informed investment decisions due to this lapse by the Noticee. It is observed that the Noticee had exceeded the holding of 5 % for a short period of time. The Noticee failed to disclose the acquisition as well as the sale, both done at different points of time. This reflects the repetitive nature of default by him.

ORDER

21. In terms of provisions of rule 5(1) of the Rules, I impose a penalty of Rs. 1,00,000/- (Rupees One lakh only) under section 15 A(b) of SEBI Act, 1992 on the Noticee, Mr. Arvind Babulal Goyal, resident of New Vora House, 2nd Floor, GP Road, Goregaon (W), Mumbai 400 062, for the violation of regulation 7(1) read with regulation 7(2)

of SAST Regulations along with regulations 13(1), 13(3) & 13(5) of PIT Regulations. Considering the facts and circumstances of the case, this penalty will be commensurate with the violations committed by the Noticee.

22. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Mr. G Ramar, General Manager, Investigations Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
23. 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: **October 28, 2010**
Place: **MUMBAI**

PIYOOSH GUPTA
ADJUDICATING OFFICER