

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. MC/AO- 01/2012]

**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

1. E. Star Infotech Ltd.

In The Matter of

E.Star Infotech Ltd.

BRIEF BACKGROUND

1. The shares of E.Star Infotech Ltd. (hereinafter referred to as the company/ EIL) were listed on BSE, Ahmedabad Stock Exchange (ASE) and Hyderabad Stock Exchange (HSE). The shares were traded only on BSE during the period November 16, 2004 to January 18, 2005 (investigation period). SEBI conducted an investigation in respect of buying, selling and dealing in the shares of EIL during the aforesaid investigation period.
2. The price of the scrip increased from Rs.0.68 on 16/11/2004 to a high of Rs.2.50 on 10/1/2005 and closed at Rs1.76 on 18/1/2005. The average number of shares traded during the entire period were 15,58,843 shares. The scrip was traded in B2 group during the period from 16/11/2004 and was shifted to T group with effect from 6/12/2004.
3. The company made a profit of Rs.485.70 lacs, Rs.270.05 lacs and Rs.356.55 lacs during the financial year ending on 31st March, 2003, 31st March, 2004 and 31st March, 2005 respectively on paid up equity capital of Rs. 994.50 lacs. The company also reported profit of Rs.190.64 lacs and Rs.73.12 lacs as on 31st March, 2006 and 31st March, 2007 respectively. The company had not declared any dividend for the last 3 years prior to the investigation period
4. During the investigation period, various positive news relating to Strategic Business Agreement with M/s Raffles – Singapore, procurement of order, introduction of Nanotechnology etc appeared in Business Standard and were informed to the Exchange. The company had made the announcements which were at the proposal

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stage and there was no material development. These positive announcements, which were not implemented, resulted in the scrip trading at / near circuit limit around the days of announcement, thus leading to price rise. The price of the scrip was traded at / near circuit limit around the days of the announcements.

5. The company and promoter/director Mr. Mahesh Thanvi were asked to give details of off market transactions done by the promoters/directors and related persons/entities, demat account statements of promoters/directors, financing done by the company, details of the corporate announcement made, status of the implementation of the corporate announcements, details of disclosures under SEBI (SAST) Regulations and SEBI (PIT) Regulations.
6. The company while clarifying on the implementation status of the corporate announcements stated that during November-December-2004 it proposed to enter into a strategic business agreement with Raffle Consultants Pte. Ltd. (RCPL) based in Singapore. The company was advised to provide the copy of the agreement and all communications in this regard with the above entity. However, the company did not provide any evidence/documents supporting their supporting their proposal of entering into a strategic business agreement with RCPL.
7. The company also did not clarify on the corporate announcements for increase in authorized capital, issue of share on right basis, setting up a unit in Mumbai with an investment of Rs.2 crores and recruitment of 100 professionals. However, from Annual Reports of the company it was observed that there was no change in the authorized and paid up capital and hence it was concluded that these announcements were not implemented.
8. As the company and the Managing Director, Mahesh Thanvi, submitted partial information they were summoned to appear in person with the details relating to off market trades by Mahesh Thanvi, disclosure under SEBI Regulations, implementation status of the corporate announcements, details of the bank guarantee transactions. Mr. Mahesh Thanvi in his capacity as Managing Director of the company appeared personally on behalf of the company and himself.
9. Mr. Mahesh Thanvi, while recording statement confirmed to provide by 1st July, 2008 and 25th July, 2008, the information relating to non implementation of corporate announcement and its intimation to stock exchange, details of sub-broker Deepak Shah. However, even after reminders Mr. Mahesh Thanvi or the company did not provide the information. Thus, Mr. Mahesh Thanvi and the company were alleged to have partially complied with the summons.
10. By not furnishing the information as required by the summons, the company was alleged to have violated Section 11C(3) read with 11C(2) of the SEBI Act

APPOINTMENT OF ADJUDICATING OFFICER

11. I was appointed as Adjudicating Officer, vide order dated May 07, 2009, under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) to enquire into and adjudge the alleged violations of provisions of SEBI Act, 1992 by **M/s. E. Star Infotech Ltd.** (hereinafter referred to as ‘**EIL/Company/Noticee**’) as observed during the investigations conducted into the trading in the scrip of M/s. E. Star Infotech Ltd. for the period from November 16, 2004 to January 18, 2005.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. Show cause notice dated November 27, 2009 was issued to E. Star Infotech Ltd in the matter wherein the noticee was asked to show cause as to why an inquiry should not be held against it in terms of Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with section 15 I of SEBI Act 1992 and penalty be not imposed under section 15A(a) SEBI Act, 1992. No reply was received from the noticee in this regard.
13. A notice of inquiry was issued on May 20, 2011 and hearing was conducted in the matter on June 8, 2011. Shri Mahesh Thanvi, Managing Director, appeared on behalf of the company. The noticee, in the said hearing, re-iterated the submissions made by him during the investigation stage and submitted that he would give a detailed reply/ written submissions by July 29, 2011. However, no submissions were received from the noticee subsequently. Reminder was sent to the noticee on August 23, 2011 advising him to submit his reply latest by September 10, 2011. No reply was received from the noticee.

CONSIDERATION OF ISSUES

14. On perusal of the Show Cause Notice, and other material available on record, I have the following issues for consideration, viz,
 - (1) Whether the noticee has violated Section 11C(3) read with 11C(2) of the SEBI Act.
 - (2) Whether the noticee is liable for monetary penalty under sections. 15A (a) of SEBI Act, 1992.
 - (3) What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act

FINDINGS

15. On Perusal of the materials available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the noticee have violated Section 11C(3) read with 11C(2) of the SEBI act

“Investigation

11C.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956(1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation..

16. Regarding the implementation status of the corporate announcements Mr. Mahesh Thanvi stated that the intimations for non-implementation of corporate announcements were given to the stock exchange and further stated that he would provide the acknowledged copy of intimations by 25th July, 2008. However, even after reminders, Mr. Mahesh Thanvi failed to submit the same.
17. Mr. Mahesh Thanvi was holding 30.05% shares of the company and transferred 30.00% shares by off market trades which required disclosures under SEBI (PIT) Regulations. Clarifying on the same, Mr. Mahesh Thanvi stated that he sent the disclosures by fax only and the same may not be in the format prescribed by aforesaid Regulations. However, Mr. Mahesh Thanvi failed to provide the acknowledged copy of disclosures and when confirmed with exchanges, they denied receipt of any disclosure during the investigation period.

18. As the company and the Noticee submitted partial information they were summoned to appear in person with the details relating to off market trades by Mahesh Thanvi, disclosure under SEBI Regulations, implementation status of the corporate announcements, details of the bank guarantee transactions.
19. Mr. Mahesh Thanvi, in his capacity as Managing Director of the company appeared personally on behalf of the company and himself.
20. Mr. Mahesh Thanvi, while recording statement confirmed to provide by 1st July, 2008 and 25th July, 2008, the information relating to non implementation of corporate announcement and its intimation to stock exchange and details of sub-broker Deepak Shah. However, even after reminders, neither Mr. Mahesh Thanvi nor the company provided the information. Thus, Mr. Mahesh Thanvi partially complied with the summons
21. I therefore find that the company, by not furnishing the information as required by the summons, violated Section 11C(3) read with 11C(2) of the SEBI act

ISSUE 2: Whether the noticees are liable for monetary penalty under sections 15A (a) of SEBI Act, 1992

22. As the allegations against the company stand established, the noticee is liable for monetary penalty under Sections 15A (a) of the SEBI Act, 1992, which read 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) to furnish any document, return or report to the Board, fails to furnish the same, 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 3: What quantum of monetary penalty should be imposed on the noticee, taking into consideration the factors mentioned in section 15J of SEBI Act?

23. While deciding the quantum of penalty, the factors laid down under Section 15J of SEBI Act have to be given due regard, which are as follows –

- (i) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default,*
- (ii) *the amount of loss caused to an investor or group of investors as a result of the default and*

(iii) the repetitive nature of default.

24. From the material available on record, it is difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by the company and the consequent losses suffered by the investors.

25. While the amount of loss caused to investors cannot be quantified, considering the facts and circumstances of the case and the material available on record and the violation committed by the noticee, I find that penalty of Rs.5,00,000/-(Rs. Five lakh only) under Section 15A(a) of the SEBI Act will be commensurate with the violations committed by E.Star Infotech Ltd.

ORDER

26. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of Rs.5,00,000/-(Rs. Five lakh only) under Section 15 A (a).

27. E. Star Infotech Ltd as mentioned above 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. Biswajit Choudhury, Deputy General Manager, SEBI, SEBI Bhavan, C4-A, 'G' Block, Bandra Kurla Complex, Bandra (East). Mumbai- 400 051.

28. 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: March 05, 2012

Place: Mumbai

**Maninder Cheema
Adjudicating Officer**