

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

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**[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]**

**AGAINST  
TELESYS SOFTWARE LTD.  
PAN: [AABCT1582G]**

**IN THE MATTER OF  
IQ INFOTECH LIMITED**

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The undersigned was appointed as the Adjudicating Officer vide order of the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated December 10, 2008 under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Rule 3 of Securities and Exchange Board of India (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudicating Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged failure to make the requisite disclosures under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'), by Telesys Software Limited (hereinafter referred to as 'TSL'/'Noticee').

2. A notice to show cause dated February 26, 2009 under Rule 4 of the Adjudicating Rules was issued to the Noticee asking it to show cause as to why an enquiry should not be held against it and the prescribed penalty for the alleged violation of PIT Regulations not be imposed under Section 15A(b) of SEBI Act. The said Notice to show cause was sent by

Registered Post Acknowledgment Due, under rule 7(b) of the Adjudicating Rules and was returned with the comments "left". Subsequently the show cause notice was affixed as per rule 7(c) of the Adjudicating Rules on June 09, 2009.

3. Thereafter, a Notice for Hearing under Rule 4 of the Adjudication Rules was issued to the Noticee, fixing the hearing on 7<sup>th</sup> September, 2009 at 4:00 PM. Further efforts were made at this stage to deliver the Notice to the Noticee and after inquiring with the Noticee's Share Transfer Agent, the new address of the Noticee was obtained and the Notice for Hearing was accordingly served on 1<sup>st</sup> September, 2009. Subsequently, the Noticee vide letter dated 04.09.2009 submitted that they had not received the Show Cause Notice and that it was unaware of the details required. Therefore, in the interest of justice, vide letter dated 11.09.2009, the show cause notice was once again sent to the Noticee's address.
4. The Noticee's reply, dated 19.09.2009, to the show cause notice was received on 25.09.2009. Pursuant to that a notice of hearing was issued on 14.10.2009 and the hearing was accordingly held on 23.10.09 which was attended by Shri Heerachand Surana (Director of Noticee Company).
5. In the instant matter the following issues arise for consideration:
  - a. Whether the Noticee had violated regulation 13(3) of the PIT Regulations?
  - b. Whether the Noticee is liable for imposition of monetary penalty under section 15A (b) of the SEBI Act?
6. Following is the relevant provision of the PIT Regulations which read as under:

***“13(3) Continual disclosure.***

*(3) 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.”*

7. SEBI conducted investigation into the trading in the shares of IQ Infotech Limited (hereinafter referred to as the 'Target Company') and into possible violations of the provisions of the SEBI Act and various rules and regulations made thereunder. During the course of investigations it was observed that the Noticee had purchased 5,000 shares & sold 6,16,981 shares of the Target Company. Noticee's Demat a/c transaction statement showed that it had 6,65,600 shares in its account as on October 20, 2004 which amounted to 6.25% of the share capital of the Target Company. However by April 12, 2005 its holding had reduced to zero. It was observed that the majority of the shares were sold in February-March 2005.
8. During the investigation conducted by SEBI, it was alleged that no disclosures were made by the Noticee under section Regulation 13(3) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.
9. The Noticee in its reply dated 19.09.2009 submitted the following:
  - a. That TSL had intimated the target company, vide form A under Regulation 13(1) of the PIT Regulations, the details of 5% or more

shares/voting rights in the company within 4 working days of becoming such shareholder (A copy of Form A along with courier receipt was enclosed).

- b. That TSL had intimated the target company, vide form C under Regulation 13(3) of the PIT Regulations, the details of change since the last disclosure made in the shareholding or voting rights exceeding 2% of the total shareholding or voting rights in the company within 4 working days of such change (A copy of Form C along with courier receipt was enclosed).
- c. That in light of the above two submissions, TSL had not violated the provisions of 13(1) and 13(3) of the PIT Regulations and therefore an inquiry should not be held against it in terms of Rule 4 of Adjudication Rules.

10. As regards the Noticee's submission at para (a) above, such violation of regulation 13(1) was not alleged in the show cause notice and therefore the same is irrelevant for the purposes of these proceedings.

11. As regards the submission made in para (b) and (c) above, it is observed that Investigation by SEBI had alleged that no disclosures were made to the target company in terms of regulation 13(3) and therefore the same allegation was made in the show cause notice. The Noticee has, however, stated that it had made the disclosure within 4 working days as required by Regulation 13(3) to the target company. It also submitted a copy of Form C along with courier receipt evidencing dispatch of the same. I find that the receipt as submitted by the Noticee has no record of the date on which it was dispatched. In any case the receipt provided by the Noticee is not evidence enough to prove compliance with Regulation 13(3) of the PIT Regulations. The Noticee was not able to provide any proof evidencing receipt of Form C by the target company.

12. The hearing was conducted on the 23<sup>rd</sup> of October, 2009 where Shri Heerachand Surana (Director of TSL) reiterated the submission made in the written reply dated September 19, 2009.
13. I have also gone through the Demat a/c statement of the Noticee for the relevant period and also perused the charges set out in the show cause notice and other documents on record. As per the Demat a/c statement of the Noticee it is clear that the Noticee had 6,65,600 shares in its account as on October 21, 2004 which amounted to 6.25% of the Target Company's share capital. Further, by April 12, 2005 its holding had reduced to zero. The majority of the shares were sold in the months of February and March 2005.
14. As it is clear from a plain reading of the relevant regulation, the Noticee was required to disclose the change in its shareholding in the Target Company. The violation of regulation 13(3) is a question of fact; whether the Noticee had made disclosures under regulation 13(3) or not. The Noticee's reply to the show cause notice and the documents submitted by it do not evidence making of the mandatory disclosure under Regulation 13(3) of the PIT Regulations.
15. In the instant matter as the Noticee has failed to establish that disclosures were made under Regulation 13(3) of the PIT Regulation, therefore I am inclined to conclude that the Noticee had failed to make the mandatory disclosures under the PIT Regulations and therefore violated the provisions of Regulation 13(3). The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

16. Thus, I conclude that the Noticee is liable for monetary penalty under Section 15A (b) of the Act which states as under :-

***“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;”*

17. Further, on the determination of the quantum of penalty under section 15A (b), it is required to consider the factors stipulated in section 15J of the Act, which reads as under:-

***“Factors to be taken into account by the adjudicating officer.***

*15J. 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.”*

18. From the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage to the Noticee, which may have accrued due to the aforesaid violation. However, it is established that the Noticee had failed to disclose the change in its shareholding pattern to the

Target Company and consequently proper disclosures were not made to the exchange. Correct and timely disclosures are an essential part of the proper functioning of the securities market and any failure to do so results in preventing the investors from taking a well-informed decision. Further, I do not find that the nature of the violation in this case is repetitive.

**ORDER:**

19. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me U/s 15-I(2) of the Act, I hereby impose a penalty of Rs.50,000/- (Rupees Fifty Thousand Only) on Telesys Software Ltd. u/s 15A (b) of the SEBI Act. I am of view that the said penalty is commensurate with the violations made by Telesys Software Ltd.
20. The above penalty amount shall be paid through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Securities and Exchange Board of India, SEBI Bhavan, Plot No, C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400 051.
21. In terms of the Rule 6 of the Adjudicating Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Dt: November 12, 2009  
MUMBAI

J. Ranganayakulu  
Adjudicating Officer