

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/ 56 /2017-18/ 1088]**

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

In respect of:

**Dadima Capital Private Limited (PAN:
AABCD2140E)**

In the matter of KCCL Plastic Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to examination in the scrip KCCL Plastic Limited (hereinafter referred to as "KCCL/ company") had observed that Dadima Capital Private Limited (hereinafter referred to as "Noticee ") have violated provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") read with SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations 2015")
2. It was observed that the Noticee was holding 9,14,655 shares of the company (constituting 1.74% of the paid up share capital) before April 21, 2015. On April 21, 2015 Noticee had acquired 20,24,202 shares of the company (constituting 3.84% of the paid up share capital) and its shareholding increased to 29,38,857 shares of the company (constituting 5.58% of the paid up share capital). For the abovementioned acquisition, the Noticee was to make disclosure under regulations 29(1) read with 29(3) of SAST Regulations and regulation 13(1) of PIT Regulations. It was alleged that required disclosures were not made by Noticee. Hence, this makes it liable for penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act").

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide an order of the Competent Authority, SEBI, dated March 7, 2017, Mr. D Sura Reddy was appointed as the Adjudicating Officer under section 19 of the SEBI Act read with section 15 I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the alleged violations of provisions of SAST Regulations and PIT Regulations. Pursuant to the transfer of the case, the undersigned has been appointed as the Adjudicating Officer in the matter.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings by SEBI, a Show Cause Notice dated June 9, 2017 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 15A (b) of SEBI Act for the alleged violations. The SCN could not be delivered (at 201, Indrapuri Building, Govind Nagar, Sodawala Lane, Boriwali (W), Mumbai 400092) as the door was locked but the intimation was served. Another attempt of the delivery of the SCN was made to a new address of the Noticee (at 24, Jalaram Nagar, Opp. Chamunda Circle, Ganjawala Lane, Briwali (W), Mumbai 400091). The SCN was duly delivered. However, no reply was received from the Noticee.
5. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on October 6, 2017 vide notice dated September 21, 2017. Although the notice was duly delivered, no one appeared on the scheduled date of hearing. Another opportunity of personal hearing was given to the Noticee on October 23, 2017 vide letter dated October 10, 2017. No one appeared on the stipulated date even after the notice was duly delivered.
6. Enough opportunity was given to the Noticee to represent its case by way of reply to SCN and also by appearance for personal hearing. I am constrained to proceed with the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
- (a) Whether the Noticee has violated the provisions of regulation 29(1) read with 29(3) of SAST Regulations and regulation 13(1) of PIT Regulations read with regulation 12(2) of PIT Regulations, 2015?
 - (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of SEBI Act?; and,
 - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?
8. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations and PIT Regulations.

Relevant provisions of PIT Regulations:

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (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 2 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.

Relevant provisions of PIT Regulations, 2015:

Repeal and Savings

(2) Notwithstanding such repeal,—

- (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any

such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

Relevant provisions of 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.(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.

9. I note from the documents on record that Noticee was holding 9,14,655 shares of the company (constituting 1.74% of the paid up share capital) before April 21, 2015. On April 21, 2015 Noticee had acquired 20,24,202 shares of the company (constituting 3.84% of the paid up share capital) through off-market transactions and its shareholding increased to 29,38,857 shares of the company (constituting 5.58% of the paid up share capital).
10. BSE, vide email dated July 09, 2015 to SEBI confirmed that Noticee did not make any disclosure to the exchange under PIT Regulations and SAST Regulations for the aforesaid acquisition of shares.
11. Although several opportunities were given to the Noticee, it failed to make any submission. In this regard, I would like to rely upon the findings of the Hon'ble SAT in the matter of Sanjay Kumar Tayal Vs. SEBI (Appeal No. 68 of 2013 order dated February 11, 2014, regarding the significance of filing the reply to the SCN, in which it stated that "*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.”

12. In view of the above, I find that the allegation of violation of regulation 29(1) read with 29(3) of SAST Regulations and regulation 13(1) of PIT Regulations by the Noticee stands established.
13. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”*.
14. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which read as under:-

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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.*

15. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors as a result of non-disclosure of change of shareholding.

ORDER

16. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers

conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stand established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on the Noticee.

17. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - I [**EFD-DRA-1**] SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) 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

18. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.
19. 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 Entity	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of payment (including the period for which payment)	Bank Name and Account Number	UTR No
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							was made e.g Quarterly, annually)	from whic h paym ent is remit ted	

20. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : October 24, 2017
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER