

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ID/SIL/AO/DRK/MD/EAD-3/98/09 – 1/2010]

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE
BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING
PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

Against

Systel Infotech Limited

Add- 18, Medon House, Vanka Mohalla, 4th Floor,

Dr. M. B. Welkar Street, Chira Bazar, Mumbai – 400 002

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation in the scrip of Systel Infotech Ltd. (hereinafter referred to as “SIL”) on the basis of an investigation conducted by Bombay Stock Exchange Limited (hereinafter referred to as “BSE”) for the period from 31st December 2004 to 15th April 2005. BSE in its observations revealed that Promoters were the major sellers who sold 4,75,000 shares at an average rate of Rs. 23 per share, through the stock broker Renaissance Securities Ltd. Shri Jitendranath Alluri, sold 4,00,000 shares through the stock broker Renaissance Securities Ltd. and Ms. Rajeshwari Alluri sold 75,000 shares also through the stock broker Renaissance Securities Ltd.
2. Based on the above facts, investigation was initiated by SEBI, relating to buying, selling or dealing in the shares of the company. The period from December 31, 2004 to April 15, 2005 has been taken up as period of investigation. From the shareholding pattern available on BSE website it was observed that promoters held 16,76,030 shares (52.38%) as on December 31, 2004 which decreased by 4,00,000 shares to 12,76,030 shares (39.88%) as on quarter ending March 31, 2005.

3. As noted from the IR that during the period (December 31, 2004 to March 31, 2005) Shri Jitendranath Alluri one of the promoters reduced his shareholding by 4,00,000 shares from 4,48,640 shares (14.02%) as on December 31, 2004 to 48,640 shares (1.52%) as on March 31, 2005. The aforesaid sale of 4,00,000 shares representing 12.5% of the equity share capital of the company in the month of February 2005. Further it is noted from the IR and demat statements that during the period (December 31, 2004 to March 31, 2005) Ms. Rajeshwari Alluri another promoter reduced her shareholding by 75,000 shares from 4,09,100 shares (12.78%) as on December 31, 2004 to 3,34,100 shares (10.44%) as on March 31, 2005.
4. The aforesaid sale of 4,00,000 & 75,000 shares respectively by the promoter group representing 12.5 % & 2.34% of the equity share capital of the company and on the basis of information furnished by BSE it is alleged that Systel Infotech Ltd. (hereinafter referred to as “noticee / SIL”) has failed to file disclosures to BSE, for the sale of 4,75,000 shares by its promoters as mentioned above.
5. Thus it is alleged that Systel Infotech Limited (hereinafter referred to as ‘the noticee’) has failed to file necessary disclosures as required under Regulation 13 (6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT Regulations**’) and Regulation 8 (3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as ‘**SAST Regulations**’).

APPOINTMENT OF ADJUDICATING OFFICER.

6. I was appointed as the Adjudicating Officer under section 15 I of 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 ‘Rules’) to inquire into and adjudge under Section 15A(b) of the SEBI Act, the violations of Regulation 13 (6) of the SEBI PIT Regulations and Regulation 8 (3) of the SEBI SAST Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

7. A show cause notice A&E/DRK/MD/171532/2009 dated July 30, 2009 (hereinafter referred to as ‘SCN’) was issued to the noticee in terms of Rule 4 of the Rules seeking reply as to why an inquiry should not be held

against it for failure to comply with the disclosure requirements enumerated under the provisions of Regulation 13 (6) of the SEBI PIT Regulations and Regulation 8 (3) of the SEBI SAST Regulations, alleged to have been committed by the noticee.

8. The aforesaid SCN was sent at two addresses, one as available on the BSE website and the second at the address shown on the website of Ministry of Corporate Affairs by "Hand Delivery Acknowledgement Due". The noticee received the SCN sent to the BSE address. Proof of delivery of the aforesaid SCN is on record. However the noticee failed to reply to the aforesaid SCN. Considering the facts and circumstances of the case, it has been decided to conduct an inquiry in the matter and an opportunity of personal hearing was granted to the noticee on December 16, 2009 vide hearing notice dated November 18, 2009. In the aforesaid hearing notice, noticee was again given an opportunity to submit its reply to the SCN latest by November 30, 2009. The hearing notice was sent by "Hand Delivery Acknowledgement Due". The aforesaid hearing notice returned undelivered with a remark "**Letter not accepted**". Following the refusal by the noticee to accept the hearing notice an attempt was made to serve the same through Fax on the number available on the BSE Website. The hearing notice could not be served and the fax generated an error report with a remark "Busy / No signal". Subsequently in terms of Rule 7 (C) of Adjudication Rules the hearing notice was affixed on the address at which SCN was delivered which happens to be the same address as available on the BSE Website.
9. The noticee neither submitted any reply to SCN nor attended the personal hearing scheduled on December 16, 2009 without furnishing any reason. In the interest of natural justice, noticee was given another opportunity of personal hearing on December 31, 2009 vide final hearing notice dated December 16, 2009 and again time was granted to submit its reply latest by December 24, 2009. This hearing notice was also sent by "Hand Delivery Acknowledgement Due" and the same was returned undelivered with a remark "Office Shifted". However the final hearing notice was also affixed in terms of Rule 7 (C) of Adjudication rules at the available address as per BSE website. The noticee again failed to reply to the SCN and attend the personal hearing without furnishing any reason. In this scenario, I am compelled to pass an ex-parte order against the noticee based on the materials made available on record.

CONSIDERATION OF EVIDENCE AND FINDINGS

10. The allegation against the noticee is that it had violated Regulation 13 (6) of the SEBI PIT Regulations and Regulation 8 (3) of the SEBI SAST Regulations. The text of these regulations are as follows:-

Regulation 13 (6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. (1)
(2)

Continual disclosure.

- (3).....
(4)
(5)

Disclosure by company to stock exchanges.

- (6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

Regulation 8 (3) of the SEBI SAST Regulations

Continual disclosures.

8. (1)
(2)
(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

- 11 a) It is noted from IR that Shri Jitendranath Alluri was holding 4,48,640 shares of SIL amounting to 14.02 % of the equity capital of SIL as on December 31, 2004. It is further noted from IR that as on March 31, 2005 the number of shares held by him decreased by 4,00,000 i.e. from 4,48,640 shares to 48,640 shares. Thus Shri Jitendranath Alluri sold 4,00,000 shares (2 lakh shares each of 16th and 25th February, 2005) representing 12.5% of the equity capital of the company in the month of February 2005.

- b) Further it is noted from IR that Ms. Rajeshwari Alluri was holding 4,09,100 shares of SIL amounting to 12.78 % of the equity capital of SIL as on December 31, 2004. It is further noted from IR that as on March 31, 2005 the number of shares held by Ms. Rajeshwari Alluri decreased by 75,000 i.e. from 4,09,100 shares to 3,34,100 shares. Thus Ms. Rajeshwari Alluri sold 75,000 shares on 9th March, 2005 representing 2.34% of the equity capital of the company as on December 31, 2004.
- 12 a) It is further noted from the IR that noticee / Systel Infotech Limited has not submitted disclosures under SEBI PIT Regulations and SEBI (SAST) Regulations, 1997 during the period from December 31, 2004 to April 15, 2005. In this regard I have noted that noticee i.e. Systel Infotech Limited vide its letters dated 21st February, 2005 and 28th February, 2005 informed BSE that shri Jitendranath Alluri one of the promoters, sold 2,00,000 shares each on two occasions through off market deals in the month of February 2005, which was also acknowledged by BSE on February 21st 2005 and March 1st 2005 respectively. The copy of the aforesaid letters is on record. So from the aforesaid letters it can be concluded that the noticee had informed about the sale of 4,00,000 shares by shri Jitendranath Alluri to BSE as per PIT Regulations.
- b) With regard to sale of 75,000 shares of SIL by the other promoter Ms. Rajeshwari Alluri, from the available records it can be concluded that noticee failed to inform BSE about the sale of shares as required under Regulation 13 (6) of the SEBI PIT Regulations and Regulation 8 (3) of the SEBI SAST Regulations.
- 13 Further on the basis of the investigation certain discrepancy was observed in the shareholding of Jitendranath Alluri and Rajeshwari Alluri the promoters of SIL. As per the information available with BSE, Jitendranath Alluri had 4,48,640 shares of SIL as on December 31, 2004 and he sold 4,00,000 shares in the month of February 2005 and thus he was left with 48,640 shares of SIL. As per the information available with Registrar and Share Transfer

Agent and demat statement available on record, it is established that Jitendranath Alluri had 4,09,200 shares of SIL as on December 31,2004 and he sold 4,00,000 shares in the month of February 2005 and thus he was left with 9,200 shares of SIL. So it can be concluded that notice had submitted wrong disclosures to BSE with regard to the promoters shareholding and subsequent changes therein.

- 14 It is alleged in the IR that clarification was sought from the company on the shareholding of the promoters and the changes therein but the company / noticee did not respond to SEBI's letters dated August 09, 2006 and April 11, 2007. In this regard I have noted that the aforesaid letters/ reminders were received by the noticee and proof of delivery of the same is on record. Thus it can be concluded that noticee failed to submit any details / explanations as sought by SEBI.
- 15 The noticee had informed BSE vide its letter dated 21st February, 2005 and 28th February 2005 that Jitendranath Alluri sold 400,000 shares through off market deals, but it is noted from the investigation report that the trades were carried out in the market. So it can be concluded that noticee had again submitted wrong disclosures to BSE with regard to manner of sale of shares by promoters.
- 16 It is further alleged in the IR that on personal visit by the SEBI officer at the address of the company it appeared that the company was not operational from the said address as no person for the company was available, although the same address is being publicized on the BSE Website.
- 17 Thus it can be concluded from the above that for shri Jitendranath Alluri, the noticee had failed to comply with the provisions of Regulation 8 (3) of the SEBI SAST Regulations and for Ms. Rajeshwari Alluri, noticee had failed to comply with both the provisions of Regulation 8 (3) of the SEBI SAST Regulations and Regulation 13 (6) of the SEBI PIT Regulations.

18 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.

19 I would also like to quote the judgement of Hon'ble SAT, in Appeal No. 152 of 2009 – *Mr. Ranjan Verghese v. The Adjudicating Officer, Securities and Exchange Board of India*, dated 22-09-2009 in which the Hon'ble Tribunal has observed that-

“Once it is established that the mandatory provisions of the Takeover Code were violated, the penalty must follow”

20 Further Hon'ble SAT, in Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, has also observed, “the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”

21 Non compliance with the disclosure regulations mentioned above attracts penalty under Section 15 A (b) of SEBI Act, 1992 which reads as under:

Penalty for failure to furnish information, return, etc.

Section 15A (b) of the SEBI Act,1992 reads:-

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,-

(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, which ever is less;

22 In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;

- a) the amount of disproportionate gains 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 and;
- c) the repetitive nature of the default.

- 23 It is also to be noted that as per the Investigation report no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage, amount of loss caused to an investor or group of investors as a result of the non disclosures by the noticee, as stipulated under Regulation 13 (6) of the SEBI PIT Regulations and Regulation 8 (3) of the SEBI SAST Regulations. I have also noted that noticee failed to submit information in response to SEBI's letter / reminder dated August 09, 2006 and April 11, 2007 even though these letters were received by the noticee and failed to respond to SCN & hearing notices without furnishing any reason. I have also noted that noticee being a listed company failed not only to respond to the regulator but also failed to co-operate / refused to accept the letter in quasi judicial proceedings against it which is not expected from a list company.
- 24 In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of section 15A (b) of the SEBI Act, 1992. Having considered the facts and circumstances of this case and after taking into account the factors under section 15J of the SEBI Act, 1992, I find that a penalty of Rs. 15,00,000 (Rs. Fifteen Lakhs) only would be commensurate with the default by the noticee in this case.

ORDER

- 25 Considering the facts and circumstances of the case, in terms of the provisions of Section 15 A (b) of the SEBI Act and Rule 5 of the Rules, I, hereby impose a penalty of Rs. 15,00,000 (Rs. Fifteen Lakhs) only against Systel Infotech Limited having address at 18, Medon House, Vanka Mohalla, 4th Floor, Dr. M. B. Welkar Street, Chira Bazar, Mumbai – 400 002 for failure to comply with Regulation 13 (6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 8 (3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Considering the facts and circumstances of the case, I am of the view that this penalty is justified and appropriate.

- 26 The penalty shall be paid by way of Demand Draft drawn 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 shall be forwarded to General Manager, Investigation Department, ID-8, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
- 27 In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Systel Infotech Limited and to Securities and Exchange Board of India, Mumbai.

PLACE: MUMBAI
January 12, 2010

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER