

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/RG/496/2015]

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
Naksh Media Private Limited [PAN: AADCC8593Q]

In the matter of
CDI International Limited
(Formerly known as Compact Disc India Limited)

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the irregularity in trading in the shares of CDI International Limited (Formerly known as 'Compact Disc India Limited' and hereinafter referred to as 'CDI'), a company listed on the Bombay Stock Exchange (BSE), for the period from January 01, 2011 to June 30, 2013 and into the possible violation of the provisions of the SEBI Act, 1992 (herein after referred to as the Act) and various Rules and Regulations made there under.
2. The examination revealed that one of the shareholders of the company namely, Naksh Media Private Limited (hereinafter referred to as the Noticee), had acquired preferential shares of CDI on December 31, 2012, other than on cash basis. It was observed that it on June 23, 2012, the Noticee had acquired 31,50,000 shares constituting for 24.76% of the total equity capital of CDI. Upon acquiring the said shares, the Noticee was under an obligation to make necessary disclosures as prescribed under Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT

Regulations') and Regulation 29(1) read with Regulation 29(3) of the SEBI (Substantial Acquisition of shares and Takeover) Regulations, 2011 (hereinafter referred to as SAST Regulations). Further, on April 01, 2013, the Noticee had sold 22,00,000 and 8,98,000 shares by way of two off market transactions. Upon the said sale, the shareholding of the Noticee in CDI decreased by more than 2% i.e. from 24.76% to 7.45% (upon sale of 22,00,000 shares) and 0.41% (upon sale of 8,98,000 shares), respectively, thereby making it liable to make necessary disclosures under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. However, it was noted that the Noticee had failed to do so.

3. SEBI has, therefore, initiated adjudication proceedings under the Act to inquire into and adjudge the alleged violation of the abovementioned provisions of law by the Noticee.

Appointment of Adjudicating Officer:

4. The undersigned has been appointed as the Adjudicating Officer vide SEBI Order dated May 28, 2014 under Section 15-I of the Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the Act, the alleged violation of the provisions of law by the Noticee.

Notice, Reply & Personal Hearing:

5. Accordingly, a notice dated July 11, 2014 (hereinafter referred to as the 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring it to show cause as to why an inquiry should not be held against it for the alleged violation. The said SCN was sent to the Noticee by Registered Post and the same was duly delivered. However, it was noted that the Noticee had not filed any reply to the said SCN. Thereafter, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on March 26, 2015. Shri Suresh Kumar, Chairman of CDI, attended the said hearing on the scheduled date on behalf of the Noticee and made oral submissions. Further,

Shri Suresh Kumar sought time to file a reply in the matter and accordingly, the Noticee was advised to file its reply, if any, on or before April 06, 2015. However, vide letter dated April 04, 2015, the Noticee requested for time till April 15, 2015 to file its reply. Accordingly, vide letter dated April 15, 2015, the Noticee submitted its reply in the matter. Further, vide letter dated April 30, 2015, the Noticee stated that it had some more documents and evidence to support that it had not violated the provisions of the disclosure requirements and requested time to submit the same. Also, vide letter dated May 14, 2015 and May 25, 2015, the Noticee requested for another opportunity of personal hearing and that it has engaged a legal counsel to represent it in the matter. Accordingly, the said request was acceded to and vide notice dated May 27, 2015, another opportunity of personal hearing was granted to the Noticee on June 15, 2015. However, vide e-mail dated June 10, 2015, a request to reschedule the said hearing was received from the legal representative of the Noticee. Therefore, the said personal hearing was rescheduled to June 19, 2015. The legal representative attended the hearing on the said date and made oral submissions. Further, he requested for time to file additional submissions in the matter. Accordingly, the Noticee was granted time till June 24, 2015 to make its additional submissions. However, vide e-mail dated June 25, 2015, the Noticee requested for few more days to submit its reply. Vide letter dated June 25, 2015, the Noticee filed its additional submissions in the matter.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges against the Noticee as per the SCN, written submissions and the materials as available on record. The issues that arise for consideration in the present case are:

a) Whether the Noticee has violated the provisions of Regulation 13(1) and 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(1) and 29(2) read with Regulation 29(3) of the SAST Regulations?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A(b) of the SEBI Act?

(c) If yes, what should be the quantum of penalty?

7. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations and SAST Regulations which read as under:-

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.

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.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

- (a) the receipts if intimation of allotment of shares, or
- (b) the acquisition or sale of shares or voting rights, as the case may be.

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.

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two

per cent or more of the shares or voting rights in such target company in such form as may be specified.

(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.

- 8.** I find from the SCN that CDI is a listed company and the shares of the company are traded on BSE. Further, during the period of examination, it was alleged that the Noticee had transacted in the shares of CDI and the details of the same are as under:

Date	Counterparty Client Name	Transact -ion Type	Dr/ Cr	Holding prior to transaction	Transacted quantity	Holding after transaction	Change in holding in term of %
22/06/12				0	0	0	0
23/06/12	NAKSH MEDIA PRIVATE LIMITED	DEMAT	C	0	3150000	3150000	24.76
1-Apr-13	PARISCOPE FINANCIAL ADVISORS PRIVATE LTD	OFF MKT	D	3150000	2200000	950000	7.45
1-Apr-13	SEENGAL CAPITAL ADVISORS PVT LTD	OFF MKT	D	950000	898000	52000	0.41

- 9.** From the above table, I find that the Noticee had, on June 23, 2012, acquired 31,50,000 shares constituting 24.76% of the total equity capital of CDI. Upon acquiring the said shares and upon the said change in the shareholding, the Noticee was under an obligation to make necessary disclosures as prescribed under Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations. Further, on April 01, 2013, I note that the Noticee had sold 22,00,000 and 8,98,000 shares by way of two off market transactions. Upon the said sale, its shareholding in CDI had decreased by more than 2% i.e. from

24.76% to 7.45% (upon sale of 22,00,000 shares) and 0.41% (upon sale of 8,98,000 shares), respectively, thereby, making the Noticee liable to make necessary disclosures under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. However, it was alleged that the Noticee had failed to do so.

10. Vide letter dated April 15, 2015, the Noticee submitted reply to the SCN and stated that complete disclosures were made to the stock exchange through company announcements including details of weekly trades with quantities. Also, in support of the said submission, the Noticee submitted the following letters:

(a) letter dated July 01, 2013 issued to BSE and Ludhiana Stock Exchange stating that Pariscope Financial Advisors Pvt. Ltd has transferred 964356 equity shares of CIL on July 07, 2013 to Global Resort & Spa Limited to sell the said shares in the market on behalf of the Noticee

(b) another letter dated April 02, 2013 issued to BSE and Ludhiana Stock Exchange stating that the Noticee has transferred 898000 equity shares of CIL to Seengal Capital Advisors Pvt. Ltd on April 01, 2013.

(c) letter dated April 02, 2013 issued to BSE and Ludhiana Stock Exchange stating that the Noticee has transferred 2200000 equity shares of CIL to Pariscope Financial Advisors Pvt. Ltd on April 01, 2013.

11. Further, vide letter dated June 25, 2015, the Noticee submitted its additional submissions in the matter enclosing letters dated April 02, 2013 submitted to the company CDI enclosing disclosures made under the PIT Regulations and SAST Regulations for the transactions executed in the shares of CDI.

12. From the foregoing and the material available on record, I find that the Noticee is one of the promoter entities in CDI and had transacted in the shares of the company which did require it to make necessary disclosures to the company and the stock exchange in the prescribed formats under the relevant provisions of the

PIT Regulations and SAST Regulations. Upon further perusal of the documents as available on record, I find that vide e-mail dated January 30, 2014 and July 14, 2014, BSE has confirmed that the Noticee has not made the requisite disclosures and that it has not received any disclosures from the Noticee. Further, I find that the letters enclosed with the reply dated April 15, 2015 are nothing but some company announcement intimation letters sent to the Corporate Relations department of BSE and Listing Department of Ludhiana Stock exchange. I find that the said documents have no relevance with respect to present proceeding of non-compliances with the disclosure requirements by the Noticee and therefore, cannot be considered.

- 13.** Further, I find from the additional submission and documentary evidence provided by the Noticee that vide letter dated April 02, 2013 the Noticee had made the disclosure to the company on April 02, 2013 in Form C as required under Regulation 13(3) and 13(6) of the PIT Regulations upon sale of 30,98,000 shares on April 01, 2013. Also, I find that disclosures for the said sale of shares have been made to the company under Regulation 29(2) of the SAST Regulation in the prescribed format. However, no disclosure for the said sale of shares has been made to the stock exchange by the Noticee as required under Regulation 13(3) of the PIT Regulations and Regulation 29(2) of the SAST Regulations. Further, I find that upon acquiring 31,50,000 shares of CDI on June 23, 2012, the Noticee was under an obligation to make disclosures to the company as required under Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations. However, upon perusal of the disclosures so made, I find that the Noticee had made disclosures to the company under Regulation 29(1) of the SAST Regulations only on April 02, 2013 i.e. with a delay of almost 9 months. Also, I note that the said disclosure has only been made to the company and not to the stock exchange as prescribed under the said Regulation. Further, I also find that no disclosures have been made by the Noticee under Regulation 13(1) of the PIT Regulations for the said acquisition.

14. In view of the same and on the basis of the material available on record, I conclude that the Noticee, by not making the necessary disclosures to the company, has violated the provisions of Regulation 13(1) of the PIT Regulations. Further, I find that the allegation of failure to make disclosure to BSE stands established inasmuch as the Noticee has not produced any documentary evidence in support thereof and also in view of the denial of receipt of any such disclosure by BSE. Therefore, I conclude that the Noticee has violated the provisions of Regulation 29(1) & 29(2) read with Regulation 29(3) of the SAST Regulations thus, liable for monetary penalty as prescribed under Section 15A(b) of the SEBI Act which reads as under:

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

If any person who is required under this Act or any rules or regulations made there under:-

(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.

15. I note that the objective of the disclosure provisions laid down under the SAST and PIT Regulations is to keep the investors and public at large informed of the change in the holdings of any company. Further, proper disclosures beyond acquisition / sale of shares is to give equal opportunity to the shareholders and the investors at large. The said Regulations are framed to have transparency in the market and to further facilitate in keeping the integrity of the market intact.

16. Here, I note that in Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* –the Hon'ble SAT has observed that, “*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.*”

17. The Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Funds* [2006] 68 SCL (216) SC held that “*once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of*

violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow".

18. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the 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.

19. I observe that from the material available on record, it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee. However, I note that the defaults of the Noticee are repetitive in nature.

ORDER

20. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I impose a penalty of ₹30,00,000/- (Rupees Thirty Lakh Only) on the Noticee viz. Naksh Media Private Limited under Section 15A(b) of the SEBI Act in the matter. In my view, the penalty is commensurate with the default committed by the Noticee.
21. The penalty amount as mentioned above shall be paid by the Noticee 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 the Division Chief, ISD,

Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

- 22.** In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to Noticee and also to Securities and Exchange Board of India.

Date: July 31, 2015

Place: Mumbai

**D. SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER**