

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/82/2018-19]**

**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:

**Omkarmal Gopiram Agarwal
(PAN No.:AELPA8277L)**

In the matter of M/s. Omkar Overseas Limited

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to investigation into the trading activities of certain entities in the scrip of Omkar Overseas Limited (hereinafter referred to as "OOL/company") for the period from October 01, 2009 to April 01, 2010 (hereinafter referred to as "Investigation period/IP") had observed that:
 - 1.1. Shri Omkarmal Gopiram Agarwal (hereinafter referred to as "Omkarmal") being the promoter of the company had failed to disclose change in his shareholding over 2% under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the SAST Regulations) as Person Acting in Concern (PAC) in the scrip of OOL and thus violated Regulation 7(1A) of SAST Regulations;
 - 1.2. Omkarmal had traded in the shares of OOL while having access to unpublished price sensitive information (UPSI). Hence it was alleged that Omkarmal had violated regulation 3 (i) of SEBI Prohibition of Insider trading Regulations, 1992 (hereinafter referred to as PIT 1992)
2. In this order wherever PIT 1992 is mentioned it should be referred to as PIT 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
3. In this order wherever SAST 1997 is mentioned it should be referred to as SAST 1997 read with Regulation 35(2) of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Appointment of Adjudicating Officer

4. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated May 08, 2015 under Section 19 of the SEBI Act, 1992 read Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as AO Rules) to inquire and adjudge under Section 15A (b) and 15G of SEBI Act, 1992 on Omkarmal for the alleged provision of the

law. Subsequently, pursuant to the transfer of the case, the undersigned have been appointed as Adjudicating Officer, vide order dated May 18, 2017.

Show Cause Notice, Reply and Personal Hearing:

5. Show Cause Notice dated July 03, 2015 (hereinafter referred to as 'SCN') was issued to the Omkarmal under rule 4 of the AO Rules to show cause as to why an inquiry should not be initiated against Omkarmal and penalty not be imposed upon it under Section 15 A(b) and 15G of SEBI Act, 1992 for the alleged provisions of law and the same was delivered.

Allegation in the SCN:

6. Disclosures to be made by promoter entities on BSE

- 6.1. It was alleged that all the promoters entities of OOL were connected persons and related to each other and hence they were required to make disclosures as per requisite provisions of SAST whenever their cumulative shareholding changed by more than 2%..It was alleged that the cumulative percentage shareholding of promoter entities acting as PACs changed by more than 2% on various dates. Therefore, the promoter entities who have contributed to this change were required to collectively make disclosures under Regulation 7(1A) of the SAST Regulations within 2 working days in case of any change in the shareholding aggregating 2 % or more of the share capital of the company. However, it was alleged that Omkarmal being the promoter had not made disclosures under SAST Regulations thereby violating Regulation 7(1A) of the SAST Regulations.
 - 6.2. It was alleged that during January 30, 2010 – July 30, 2010 when quarterly results of December 2009 was unpublished, Omkarmal had sold 87,744 shares of OOL while having access to the UPSI of quarterly results of December 2009. Hence it was alleged that being insider he had traded in the scrip of OOL during window closure period in violation of Regulation 3(i) of PIT Regulations
7. No reply was received from Omkarmal.

8. Personal Hearing:

- 8.1. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Omkarmal on January 19, 2018 granting an opportunity of personal hearing before the undersigned on February 09, 2018 along with the reminder to reply to SCN.
- 8.2. On behalf of Omkarmal, the Authorized Representative attended the personal hearing and provided letter dated February 06, 2018 from Smt. Krishnadevi Omkarmal Agarwal, wife of Omkarmal wherein it was stated Omkarmal passed away on June 08,2015. The copy of death certificate in this respect was attached with the letter.

ISSUES FOR CONSIDERATION and FINDINGS:

9. I have perused the death certificate submitted in the matter and find that Noticee Omkarlal has passed away on June 08, 2015. Before proceeding further in the matter on merit, it would be in the fitness of things to first decide as to whether on the death of the noticee, the present adjudication proceedings against him would continue or abate.
10. In this respect, I note that in *Girijandini vs. Bijendra Narain* (AIR 1967 SC 2110), the Hon'ble Supreme Court, inter-alia, observed that in case of personal action, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.
11. The Hon'ble Securities Appellate Tribunal has also held in *Chandravadan J Dalal Vs. SEBI* that "The appeal abates since the appellant during the pendency of the appeal died on 29th November, 2004. The appeal accordingly abates."

ORDER

12. I am of the view that the proceedings initiated against Omkarmal shall abate. Therefore, the SCN dated July 03, 2015 with respect to Omkarmal is disposed of accordingly without going into the merits of the case.
13. In terms of Rule 6 of the AO Rules, a copy of this order is being sent to Smt. Krishnadevi Omkarmal Agarwal, wife of Late Mr. Omkarmal Agarwal and also to the Securities and Exchange Board of India.

Date: August 09, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER