

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

**[ADJUDICATION ORDER NO. AK/AO- 14 /2015]**

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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**

In respect of

**M/s. Kemoil Limited**

In the matter of

M/s California Software Company Limited

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter of offer from M/s Singfuel Investment Pte. Ltd. (hereinafter referred to as '**Acquirer**') to acquire upto 24,73,002 fully paid up equity shares of face value Rs 10/- each representing 20% of the Voting Capital of M/s. California Software Company Limited (hereinafter referred to as '**the Company**'). The public announcement of the same was made on February 27, 2010 and the shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') and National Stock Exchange of India Ltd. (hereinafter referred to as '**NSE**').
2. On perusal of the letter of offer, SEBI observed that the promoter of the company viz. M/s. Kemoil Ltd. (hereinafter referred to as the **Noticee/you**) had failed to comply with regulation 7(1A) r/w 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers)

Regulations, 1997 (hereinafter referred to as '**Takeover Regulations**') within the due date during the years 2005 and 2006.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned was appointed as the Adjudicating Officer vide order dated September 02, 2013 under Section 15 I of SEBI Act read with Regulations 44 and 45 of Takeover Regulations 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 under Section 15A (b) of the SEBI Act, the alleged violations of the provisions of Takeover Regulations by the Noticee within the due date during the years 2005 and 2006.

#### **SHOW CAUSE NOTICE, HEARING AND REPLY**

4. A Show Cause Notice no. EAD-6/AK/VRP/4652/2014 dated February 11, 2014 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4 of the Rules. The Noticee was called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations. The said SCN was received by Kemoil Pvt. Ltd. as per records.
5. Thereafter hearing notice dated March 20, 2014 was sent to the Noticee granting an opportunity of personal hearing before me on April 01, 2014. However, the same could not be delivered to the Noticee as it was noted that the Noticee's office had shifted. Hence, the mailing address and email id of the Noticee was obtained from the company and vide e-mail dated April 10, 2014, the SCN was emailed to the Noticee. The same was acknowledged by the Noticee vide email dated April 17, 2015.
6. The Noticee vide the said email also forwarded letter dated April 16, 2014 and sought time upto May 09, 2014 to reply to the SCN, which was acceded to. Subsequently, vide hearing notice dated April 21, 2014, the Noticee was granted an opportunity of personal hearing on May 15, 2014.

7. Further to the same, the Noticee vide letter dated May 08, 2014 admitted that there was a slight delay in complying with the Takeover Regulations as stated in the SCN, which was neither intentional nor deliberate. It was also informed that they intended to avail the settlement process under the SEBI (Settlement of Administrative Proceeding) Regulation, 2014. However, the Noticee did not appear for the hearing scheduled on May 15, 2014.
8. Subsequently vide email dated June 23, 2014, the Noticee forwarded letter dated June 23, 2014 *inter alia* intimating that there were some deficiencies in the settlement application submitted by them and that they had sought time upto August 24, 2014 to re-submit the rectified consent application. However, neither further intimation regarding filing of duly rectified settlement application was received from the Noticee, nor, was any reply received to the SCN issued to it. Hence, vide hearing notice dated October 27, 2014, the Noticee was advised to furnish its reply to the SCN by November 17, 2014. Also an opportunity of personal hearing was granted to the Noticee on November 25, 2014.
9. The Noticee replied to the SCN vide its letter dated November 14, 2014 which was emailed on November 17, 2014. Vide the said reply the Noticee *inter alia* reiterated the submission made earlier vide letter dated May 08, 2014. The Noticee admitted that as stated In the SCN it had made delayed disclosure under Regulation 7(1A) read with 7(2) of the Takeover Regulations on two occasions viz. with respect to sell of 2,70,000 equity shares of the company on September 16, 2005 by two days and with respect to sell of 1,00,000 equity shares of the company on January 03, 2006 by five days. The Noticee vide the said letter also reiterated that the delay was unintentional. The Noticee further stated that it had been regular in making the disclosures as required by SEBI and these were the only two occasions when there had been a marginal delay. The Noticee also reiterated that no gain or advantage, leave alone disproportionate gain or unfair advantage had accrued to the company nor acquirer because of the delayed disclosure and no loss was caused to any investor. Also reference was made to the decision of ***Hon'ble High Court of Bombay in the***

***matter of SEBI Vs. Cobot International*** to highlight the Court's opinion to the effect that *"the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bonafide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc."* The Noticee *inter alia* further submitted that the alleged delay in disclosure under Regulation 7(1A) read with 7(2) of the Takeover Regulations would at the most be a venial breach.

10. Mr. S. Chandrasekar and Mr. Ramachandran K., Authorized Representative (hereinafter referred to as '**ARs**') of the Noticees appeared for the hearing on the scheduled date and reiterated the submissions of the Noticees made in their reply dated November 14, 2014. The ARs also *inter alia* stated that the transactions done on September 16, 2005 and on January 03, 2006 (*inadvertently mentioned as January 30, 2006 in the minutes of the hearing*) as stated in the SCN were done on market. Further during the course of hearing, the ARs submitted that they would rectify the deficiencies brought out by SEBI in the Settlement Application filed by them earlier and a revised settlement application would be submitted latest by December 10, 2014 and a copy thereof would be forwarded to the Adjudicating Officer for information.

11. However, no such information was received from the Noticee. Therefore, a final opportunity of hearing on January 27, 2015 was granted to the Noticee vide hearing notice dated January 05, 2015.

12. Mr. Ramachandran K and Mr. Jitendra Kumar Pal, Authorized Representatives (hereinafter referred to as '**ARs**') of the Noticees appeared for the hearing on the scheduled date and informed that their settlement application was time barred and hence they desired to go ahead with the adjudication proceeding. The ARs further re-iterated their submissions made earlier vide their letter dated November 14, 2014.

## **CONSIDERATION OF ISSUES AND FINDINGS**

13. I have examined the SCNs and the supplementary SCNs, the submissions made by the Noticees in their replies and during the personal hearings and the documents available on record. I observe that the allegation against the Noticee is that they have delayed making the relevant disclosures under the relevant provisions of the Takeover Regulations.

14. The issues that, therefore, arise for consideration in the present case are:

- a. Whether the promoter of the company viz. M/s Kemoil Limited has violated the provisions of Regulation 7(1A) read with Regulation 7(2) of the SAST Regulations, 1997?
- b. Do the violations, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?
- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

## **FINDINGS**

15. Before moving forward, it is pertinent to refer to the relevant provisions of the Takeover Regulations, which read as under:

### ***Regulation 7 (1A), 7 (2) of the SAST Regulations, 1997***

*7.(1)...*

*(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale. Explanation.— For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.*

*(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.*

*11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than <sup>1</sup>[ fifty five per cent (55%)] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than <sup>2</sup>[5% of the voting rights], <sup>3</sup>[in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*

16. The first issue for consideration is whether the promoter has violated the provisions of Regulation 7(1A) read with Regulation 7(2) of Takeover Regulations. Regulation 7(1A) states that any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company and the stock exchanges where the shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale. Regulation 7(2) states that such disclosures should be made within two days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be. The acquirer includes persons acting in concert.

17. In the extant case, the violation by the Noticee as set out in the SCN, in brief, is as under:

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<sup>1</sup> Substituted for "75%" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2005, w.e.f. 3-1-2005.

<sup>2</sup> Substituted for "10% of the voting rights" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 1-10-2002. Earlier it was substituted for "5% of the voting rights" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2001, w.e.f. 24-10-2001.

<sup>3</sup> Substituted for the words "in any period of 12 months" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002.

Name of the promoter/seller	Violated Regulation	Date of acquisition	No. of Shares Sold	Share holding of the seller & (%)		Change in % of the Seller/promoter	Total Promoter Share holding (%)		Due date of compliance	Actual date of compliance	Delay (No. of Days)
				Before	After		Before	After			
Kemoil Ltd	7(1A) r/w 7(2)	16.09.2005	2,70,000	35.37%	29.88%	5.49%	35.37%	29.88%	18.09.2005	20.09.2005	2 days
Kemoil Ltd	7(1A) r/w 7(2)	03.01.2006	1,00,000	29.88%	27.85%	2.03%	29.88%	27.85%	05.01.2006	10.01.2006	5 days

18. From the same, I note that M/s Kemoil Ltd. sold 2,70,000 shares and 1,00,000 shares of the company on September 16, 2005 and January 03, 2006 respectively. Prior to the sale, the shareholding of the Noticee stood at 35.37%, which fell to 29.88% and to 27.85%, post the sale of shares on September 16, 2005 and January 03, 2006 respectively. Since the cumulative holding of the promoters was between 15% and 55% of the paid-up capital of the company, it fell within the ambit of Regulation 11(1) of the Takeover Regulations. The sale was for 5.49% and 2.03% on these two occasions, hence, disclosures ought to have been made under Regulation 7(1A) read with 7(2) of the Takeover Regulations within two days on each such occasion. However, the disclosures with respect to sale of 2,70,000 shares and 1,00,000 shares of the company on September 16, 2005 and January 03, 2006 were made with a delay of two (2) days and five (5) days respectively. With regard to the aforesaid non-compliance, the promoter Noticee in its submission has stated that the lapses/delay in compliance of making disclosures was purely unintentional. Thus, I note that the Noticee promoter has admitted to the delay in complying with the provisions of Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations within the stipulated time for the transactions referred to above. The numbers of days of non-compliance in respect of the same have been enumerated in the table at Para 17 above.

19. 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...". Further in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "Once it is established that the mandatory provisions of takeover code was violated the penalty must follow."*

20. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads 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 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.*

21. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of 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."*

22. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on



account of default by the Noticee. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection.

23. As per Section 15A (b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, I note that ***the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)*** has observed that:

*“Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”*

In view of the same, the argument put forth by the Noticee that no loss was caused to any investor due to the delayed disclosures made by the Noticee is not relevant for the given case.

24. In the matter, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that:

*“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”*

In view of the same, the argument put forth by the Noticees that no gain or advantage, leave alone disproportionate gain or unfair advantage had accrued to the company nor the acquirer because of the delayed disclosure as a result of the sale, and further, that the delay was unintentional is not relevant for the given case.

25. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the Company at the relevant point of time; b) the trading volumes of the Company's shares on the exchange where the shares were listed during the relevant period; and c) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of the Takeover Regulations.

26. The market capitalization of the company at the relevant point of time was around Rs. 47 crore. The average daily trading volumes on BSE during the relevant point of time was approx. 16,000 shares. I further note that the promoter Noticee had failed to make

disclosures under Regulations 7(1A) read with 7(2) of the Takeover Regulations on two occasions in a span of less than four months. Though the Noticee has stated that it had been regular in making the disclosures as required by SEBI and these were the only two occasions when there had been a marginal delay, as a promoter of a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Delayed compliance with disclosure requirements by a promoter of the listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

27. I also note that reference has been made to the decision of *Hon'ble High Court of Bombay in the matter of SEBI Vs. Cobot International* to highlight the Court's opinion to the effect that *"the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bonafide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc."*. However, any transaction which requires compliance of the Takeover Regulations, if not complied, is always a serious matter, and cannot be considered a mere 'technical' violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information.

## **ORDER**

28. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 3,00,000/- (Rupees Three lakhs only)** under Section 15A(b) on the **Noticee viz. M/s. Kemoil Limited**, which will be commensurate with the violations committed by the Noticee for violation of Regulation 7(1A) r/w 7(2) of the Takeover Regulations.
29. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Mr. V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

30. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

**Date: February 26, 2015**

**Place: Mumbai**

**Anita Kenkare**

**Adjudicating Officer**