

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 84 /2012]

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 AND SECTION 23 I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956.

Against

Sunday Exports Limited (PAN No. AADCS1501J)

In the matter of

Sunday Exports Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into alleged irregularity in the trading in the scrip of Sunday Exports Ltd. (hereinafter referred to as the Noticee), a company listed on the Bombay Stock Exchange (BSE), for the period from April 15, 2010 to July 21, 2010. The investigation, inter alia revealed that the Noticee had not framed the Model Code of Conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under Section 12(1) of the SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as the 'PIT Regulations').
2. Further, the Board of the Noticee approved the unaudited financial accounts for the quarter ended June 2010 in the meeting held on July 06, 2010. As per

Clause 41(f) of the Listing Agreement, the financial results (including quarterly results) of the company are to be submitted to the stock exchange within 15 minutes of conclusion of the meeting of the Board or committee in which they are approved. However, it was observed that SEL submitted the approved quarterly financial results to BSE vide its letter dated July 07, 2010 which was confirmed by BSE. Therefore, it was alleged that the Noticee had violated Clause 41(f) of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the SCRA) and Clause 2.0 as specified in Schedule II of Code of Corporate Disclosures practice for prevention of Insider trading read with Regulation 12(2) of PIT Regulations.

Appointment of Adjudicating Officer:

3. SEBI vide Order dated May 03, 2012 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI 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') and Section 23-I of the SCRA read with Rule 3 of Securities Contracts (Regulations) (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 to inquire into and adjudge under Section 15HB of the SEBI Act, 1992 and Section 23A(a) of the SCRA for the alleged violation of the abovementioned provisions of PIT Regulations and Listing Agreement by the Noticee.

Notice, Reply & Personal Hearing

4. The AO issued notice dated May 30, 2012 (hereinafter referred to as 'SCN') to the Noticee in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against it for the alleged violations as mentioned above.

5. The SCN was sent to the Noticee by Registered Post Acknowledgment Due and the same was duly delivered. The Noticee, vide letter dated June 12, 2012, replied to the SCN. 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 August 22, 2012. The Authorized Representatives (AR) attended the scheduled hearing and made oral submissions. Further, the Noticee made written submissions vide letter dated August 21, 2012.
6. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges against the Noticee mentioned in the SCN, the written & oral submissions made by it and the documents as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated Clause 1.2 of the Code of Conduct as specified under Part A of Schedule I of the PIT Regulations read with Section 12(1) and 12(3) of the SEBI Act, 1992 and Clause 41(f) of the Listing Agreement read with Section 21 of the SCRA and Clause 2.0 as specified in Schedule II of Code of Corporate Disclosures practice for prevention of Insider trading read with Regulation 12(2) of PIT Regulations?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under 15HB of the SEBI Act, 1992 and Section 23A(a) of the SCRA?

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

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

Relevant provisions of PIT Regulations:-

Code of internal procedures and conduct for listed companies and other entities.

12(1) All listed companies and organizations associated with securities markets including:

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
- (b) the self-regulatory organizations recognized or authorised by the Board;
- (c) the recognized stock exchanges and clearing house or corporations;
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2);

Schedule I:- (PART A)

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of “Price Sensitive

Information”, pre-clearing; of designated employees’ and their dependents’ trades

(directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term ‘designated employee’ shall include :—

- (i) officers comprising the top three tiers of the company management ;
- (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

Schedule II:-

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to the stock exchanges and disseminated on a continuous and immediate basis.

2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving Investor access to their public announcements.

Relevant provisions of Listing Agreement:-

Submission and Disclosure of Interim and Annual Financial Results

41. The company agrees to comply with the following provisions:

(I) Preparation and Submission of Financial Results

(a).....

(b).....

(c).....

(d).....

(e).....

(f) The financial results covered under this sub-clause shall be submitted to the stock exchange within fifteen minutes of conclusion of the meeting of the Board or Committee in which they were approved pursuant to sub clause (II), through such mode as may be specified by the stock exchange.

Relevant provisions of SCRA:-

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

- 9.** It is alleged in the SCN that the Noticee had not framed the internal policy on code of conduct for prevention of Insider Trading prior to November 25, 2010 as prescribed under Section 12(1) of the PIT Regulation. I find that the Noticee vide its letter dated June 12, 2012 admitted that as the secretary Late Shri. Laxmikant J. Patel was undergoing cancer treatment and that there was no one to give proper advise to the company, there was a delay in framing the internal model code of conduct. The Noticee submitted that though the specific code of conduct was not framed by the company, the same was enforced by it as the disclosures under the model code of conduct were made by the directors/promoters of the company from time to time.

- 10.** On the basis of the above submissions and material available on record, I find that there was non-compliance in adoption of the Model Code of Conduct by the Noticee. I conclude that compliance of such mandatory requirements are essential not only for the smooth and fair functioning of the securities market but it also prevents unscrupulous elements from taking undue advantage of such situations at the cost of other investors and shareholders. Therefore, such non-compliances cannot be treated as technical in nature and are in violation of the PIT Regulations attracting monetary penalty.
- 11.** Further, it is alleged that the Noticee submitted the approved quarterly financial results to the stock exchange with a delay of two days, thereby, violating Clause 41(f) of the Listing Agreement. As per Clause 41(f) of the Listing Agreement, the financial results (including quarterly results) of the company are to be submitted to the stock exchange within 15 minutes of conclusion of the meeting of the Board or committee in which they are approved. The Noticee in its written submissions has submitted that the compliance officer of the company is entrusted with the responsibility to comply with all the compliances as prescribed under the Listing Agreement and the Companies Act, 1956. Further, the Noticee also submitted that the BSE has not issued any circular specifying the mode of submission of quarterly results pursuant to Clause 41(f) of the Listing Agreement and has even not issued any notice for the alleged delay in submission of the quarterly results. As a matter of fact, the approved quarterly financial results so submitted by SEL have been taken on record by the stock exchange.
- 12.** I find that SEL had in fact submitted the approved financial results approved in the meeting held on July 06, 2010 to the stock exchange vide letter dated July 07, 2010 which was received by the exchange only on July 09, 2010. Since, the requirement is to submit the financial results within 15 minutes of conclusion of the Board meeting; the excuse of the Noticee that the stock exchange has not specified the mode of submission is not acceptable. The time frame of 15 minutes implies the importance and seriousness of this

particular clause and the Noticee should have communicated the approved financial results to the stock exchange by using any mode of communication like fax, e-mail, etc. which would have ensured that the same is transmitted to the exchange well in time.

13. In light of the abovementioned facts and circumstances of the case, I am of the view that the Noticee has violated the provisions of Clause 1.2 of the code of conduct specified under Part A of the Schedule I read with Regulations 12 (1) and 12 (3) of the PIT Regulations and Clause 41(f) of the Listing Agreement read with Section 21 of the SCRA and Clause 2.0 as specified in Schedule II of Code of Corporate Disclosures practice for prevention of Insider trading read with Regulation 12(2) of PIT Regulations warranting imposition of penalty under section 15HB of the SEBI Act and Section 23A(a) of the SCRA, which reads as under:

15HB. Penalty for contravention where no separate penalty has been provided

“Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees”.

23A(a) Penalty for failure to furnish information, return etc.

Any person, who is required under this Act or any rules made thereunder -

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognized stock exchange, shall be liable to a penalty of one lakh for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

14. While determining the quantum of penalty under section 15HB 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.*

- 15.** 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 or to ascertain whether the defaults are repetitive in nature.

Order

- 16.** 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 hereby impose a penalty of ₹ 1,00,000 (Rupees one lakh only) under Section 15HB of the SEBI Act and ₹ 1,00,000 (Rupees one lakh only) under Section 23A(a) of the SCRA thus, a total of ₹ 2,00,000 (Rupees two lakhs only) on the Noticee. In my view, the penalty is commensurate with the default committed by the Noticee.
- 17.** 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,

IVD-ID8, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block,
Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

- 18.** In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 01, 2012

Place: Mumbai

P K KURIACHEN
ADJUDICATING OFFICER