

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/BD/VS/2019-20/6894

**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) RULES, 1995**

In respect of:

Shri S Krishnan
PAN: AEWPK3287K
H No. 107,
Ushas Apartment,
4th Block, Jayanagar
Bangalore – 560 041.

In the matter of M/s Centum Electronics Limited

BACKGROUND

1. National Stock Exchange of India Ltd (hereinafter referred to as “**NSE**”) and BSE Ltd. (hereinafter referred to as “**BSE**”) forwarded a joint examination report in the trading activities of Bharat Patel Group in certain scrips on the basis of alerts generated by surveillance system and complaint received from Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”). On receipt of the aforesaid joint examination report and referral by ISD, an investigation was carried out by SEBI to ascertain whether there was any violation of the provisions of Section 12A of SEBI Act, 1992, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003, SEBI (substantial acquisition of shares and takeover) Regulations, 2011 (hereinafter referred to as “**SEBI (SAST) Regulations, 2011**”) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**SEBI (PIT) Regulations, 1992**”) by the trading activities of Bharat Patel Group in the scrip of Centum Electronics Limited (hereinafter referred to as ‘**CEL**’/ ‘**Company**’) during the period between December 15, 2011 to October 09, 2014 (hereinafter referred to as “**Investigation Period**”). However, wherever deemed necessary, reference was also made outside the Investigation Period.
2. Based on the findings of the investigation, following are *inter alia* the observations with respect to the Noticee:

Examination of violation of disclosure requirements under the provisions of SEBI (PIT) Regulations, 1992.

Promoter entities

3. On analysis of the change in shareholding of the promoter entities and the disclosures requirements under SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011, it was observed as under:
 - a) During the quarter June 2012, promoter entity S Krishnan (hereinafter referred to as “Noticee”) acquired 83 shares. During the quarter ended September 2012, he disposed the said shares, in the quarter ended December 2012 he again acquired 83 shares following which, in the quarter ended March 2013, he disposed the said shares. The said entity was observed to have failed to make disclosures as required under Regulation 13 (2A) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015, which stipulates that any person who is a promoter or person belonging to promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.
4. From the above, it was alleged that the Noticee had violated the provisions of Regulation 13(2A) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned has been appointed as the Adjudicating Officer (‘AO’) vide order dated May 29, 2019 under section 15 I of SEBI Act, 1992 to inquire into and adjudge the alleged violation of Regulation 13(2A) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice bearing number EAD/BJD/VS/2564/1/2020 dated January 20, 2020 (hereinafter referred to as ‘SCN’) was issued to the Noticee with respect to the

aforesaid allegations mentioned at para above calling upon the Noticee to show cause why an inquiry should not be held against him in accordance with Rule 4 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Inquiry Rules**”) and penalty be not imposed under Section 15A(b) of the SEBI Act, 1992 . The SCN issued to the Noticee was duly served on him as noted from the record. In response to the same, the Noticee vide his letter dated January 29 2020 submitted his reply inter alia stating as under:

- a) That he was neither a promoter nor belonged to the promoter group of CEL.
- b) That he was associated with CEL as its independent director from September 11, 2007 till the date of his reply.
- c) That during the period 2012-13 that is alleged in the SCN, he had not done any trade (buy/sell) in the shares of CEL
- d) That his shareholding in CEL (through IPO subscription in 1994) was 100 and which was subsequently reduced to 83 by virtue of Demerger in 2007 and Merger in 2010 respectively.
- e) That till date, he had not done any buying or selling in the market with respect to the shares of CEL and continue to hold 83 shares in the company.

The Noticee attached the demat statement for the aforesaid period 2012-13 along with his reply.

7. Further, vide email dated February 4, 2020, a screenshot from the shareholding pattern for CEL for the quarter ending June, 2012 as available in the public domain of BSE website at _____ the _____ address _____ : https://www.bseindia.com/corporates/shpPromoters_60.aspx?scripcd=517544&qtrid=74&CompName=CENTUM%20ELECTRONICS%20LTD%20&QtrName=June%202012 was sent to the Noticee seeking his additional submissions in this regard. Furthermore, considering the reply of the Noticee and in view of the facts and circumstances of the case, the undersigned was of the opinion that an inquiry should be held in the matter and for that purpose vide Notice dated February 4, 2020, the Noticee was provided with an opportunity of hearing on February 14, 2020. In response to the same, the Noticee vide his reply dated February 5, 2020 reiterating his earlier submission further submitted that he had disclosed his shareholding as a part of Director’s annual disclosure in Form 24AA as per the erstwhile companies Act, 1956 for both the years i.e. 31.03.2012 and

31.03.2013. He further submitted that CEL had reported in its annual governance report disclosures that the Noticee had been its independent director. Further, that the company had disclosed his holdings in the category of promoter for one quarter by oversight which had been rectified by the Company in the subsequent quarterly disclosures. Submitting all the above, the Noticee expressed his inability to appear for the hearing.

8. In view of the aforesaid submissions by the Noticee, vide email dated February 11, 2020, CEL was asked to comment on the disclosure of Noticee as a promoter for the quarter ending June, 2012. In reply, CEL vide its email dated February 14, 2020 *inter alia* submitted as under:

“....

- *Mr. S Krishnan was not a Promoter or person belongs to Promoter Group during the said period/ any of the period*
- *Mr. S Krishnan has been appointed as an Independent Director of our Company since from 11th September, 2007*
- *Mr. S Krishnan is serving on the Board of our Company purely as a Independent Director and he does not belongs to the category of Promoter/ Promoter Group of our Company*
- *While filing the Shareholding pattern for the quarter ended 30th June, 2012, it was by oversight, Mr. S Krishnan's shareholding was showed under the Category of Promoter/ Promoter Group. Inadvertently, this was wrongly categorised only for that particular quarter.*

....”

9. Further, no appearance was made by the Noticee on the date of hearing. Considering the facts and circumstances of the instant case along with the submission of the Noticee, I am of the opinion that no prejudice would be caused if no further opportunity is granted to the Noticee and therefore I deem it fit to proceed further based on the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

10. After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. Whether the Noticee has violated the provisions of Regulation 13(2A) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015?
- II. Whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act, 1992?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

Issue I: Whether the Noticee has violated the provisions of Regulation 13(2A) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015?

12. I note that the allegation against the Noticee is that he has failed to make disclosures as per the provisions of Regulation 13(2A) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 during the examination period which reads as under:

SEBI (PIT) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (1).....

....

2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.

SEBI (PIT) Regulations, 2015

Repeal and Savings.

12.(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, —

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations

13. From the provision of the aforementioned Regulations, I note that any person who is a promoter or a part of the promoter group of a company is under an obligation to disclose in Form B to the said company, the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group. In the instant case, I note from the record that the Noticee is shown to be the promoter of CEL in the quarterly disclosure filed for the quarter ending on June 2012 who held 83 shares of CEL. In this regard, I have perused the submissions of the Noticee whereby he has contended vide his submissions dated January 29, 2020 and February 5, 2020 that he has been associated with CEL only in the capacity of being an independent director since his appointment on September 11, 2007. He has also submitted that neither he was a promoter of CEL nor did he ever belong to any promoter group and that his name being mentioned in the promoter group for a quarter was purely an oversight on the part

of CEL. In support of his contention, the Noticee has produced before me the annual disclosure documents pertaining to 2012 and 2013 whereby the Noticee has been mentioned as an independent director of CEL for the said financial years.

14. Further, I find that the statement of CEL vide its email dated February 14, 2020 (in reply to the query) is also in corroboration with the submissions of the Noticee whereby CEL has stated that the Noticee did not belong to the promoter group of CEL and only acted as its independent director and that the mentioning of Noticee among the promoters in the quarterly disclosure pertaining to the quarter ending on June 2012 was an act of oversight. In view of all the above, I am inclined to accept the submission of the Noticee that he was never a part of the promoter group during the period of examination pertaining to the allegation.

15. I note that the disclosure requirement in terms of provisions of Regulation 13(2A) of SEBI (PIT) Regulations, 1992 is applicable only to the persons acting in the capacity of promoters of a company. However, as already noted above, there is no evidence forthcoming to show that the Noticee was a promoter of CEL. Therefore, I conclude that the allegation that Noticee violated the provisions of Regulation 13(2A) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 does not stand established.

ISSUE II. Whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act, 1992?

16. In view of the conclusion arrived at para 15 above, I conclude that the instant issue doesn't survive for consideration.

ISSUE III. If so, what quantum of monetary penalty should be imposed on the Noticee?

17. Since the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

18. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against Shri S Krishnan in the matter of M/s Centum Electronics Limited vide Show Cause Notice bearing number EAD/BJD/VS/2564/1/2020 dated January 20, 2020.

19. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules 1995, a copy of this order is being sent to Shri S Krishnan at his address on record and also to the Securities and Exchange Board of India, Mumbai.

February 24, 2020
Mumbai

B J Dilip
Adjudicating Officer