

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/5957-5958]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,
1995**

In respect of:

**Vijay Mehta (PAN: AAKPM1588M)
Mefcom Capital Markets Ltd. (PAN: AAACC3529P)**

In the matter of Mefcom Agro Industries Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of Mefcom Agro Industries Limited (hereinafter referred to as "**Mefcom/ company**") observed that Vijay Mehta (hereinafter referred to as "**Vijay/ Noticee 1**") and Mefcom Capital markets Ltd. (hereinafter referred to as "**MCML/ Noticee 2**") (collectively known as "**Noticees**") together as person acting in concert (hereinafter referred to as "**PAC**") acquired more than 15% shareholding during January 1, 2006 to June 30, 2007 (hereinafter referred to as "**investigation period**") and allegedly violated regulation 7(1A) read with 7(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations, 1997**") read with regulation 35(2) of Securities and Exchange Board of India (Substantial Acquisition of

Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations, 2011**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated April 28, 2017 appointed Shri Jeevan Sonparote as the Adjudicating Officer under section 15 I of Securities Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**AO Rules**”) to inquire into and adjudge the aforesaid allegations under section 15A(b) of the SEBI Act. Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice/s dated February 21, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under Section 15A (b) of SEBI Act for the alleged violations. Noticee 1 replied on behalf of himself and Noticee 2 vide letter dated March 28, 2018 stating, inter alia, the following:

- *That since the time of IPO, I myself along with my group entity, held shares in the Target Company as promoters.*
- *That even in October 2001 and September 2002 (when the amendments were made in the SAST regulations), I myself and MCML held shares in the Target Company representing 4.04% and 48.17% of the total share capital of the Target Company respectively.*
- *Further during 2006, I along with MCML sold our holding in the Target Company in the open market, details of such change in shareholding during March, 2006 to June, 2006 is herein given below. Moreover, in the SCN, it is alleged that myself, MCML and Harsh Mehta were the promoters during the period and sold shares. In this regard, we clarify so as to avoid any confusion, that though Harsh Mehta was never a promoter (as per the prospectus of the Company), you have also covered his sale transactions in your SCN.*
- *Pursuant to aforesaid sale transactions, we have, from time to time made disclosures to the stock exchange and the Target Company within due course of time under SEBI*

(Prohibition of Insider Trading) regulations, 1992 (“PIT Regulations”). That the aforesaid fact has been mentioned in your SCNs as well.

- *That from the aforesaid, it is apparent that the information as to the change in the shareholding of the Promoters was in due knowledge of the market at large.*
- *It is further pertinent to note that the information about the change in shareholding was duly available in the record of the Target Company and the stock exchanges in view of the disclosures made by the Target Company to BSE under Clause 35 of Listing Agreement. The shareholding pattern for the period ended December 2005; March 2006 and June 2006 reflects the change in our shareholding under Promoters and Promoters group category.*
- *Further with respect to the observation in Para 17 of the SCN, we herein deny the averment that the other Noticees provided exit to us. In this regard it is herein submitted that we had merely sold our shares in the open market and had no association or relation with the other Parties.*
- *The Regulation 7(1A) is applicable only with respect to shares which were acquired pursuant to Regulation 11(1). Herein the shares were held by us much prior to the notification of the SEBI (SAST) Regulations and hence the shares so held cannot be said to be acquired under Regulation 11(1) and thus the provisions of Regulation 7(1A) does not trigger.*
- *In light of the abovesaid reiterated provisions, it is clearly specified in Regulation 7(1A) of Takeover Regulations that “Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11”. Hence, it is amply clear from the text of aforesaid provision that the applicability to make disclosure as per Regulation 7(1A) is only and only on the acquirer who has acquired shares or voting rights pursuant to Regulation 11(1) of Takeover Regulations. As already stated above in our submission, we did not acquire a single share pursuant to Regulation 11(1) of Takeover Regulations. Therefore, as we did not qualify to be an Acquirer as per Regulation 11(1) of Takeover Regulations, the obligation to make any disclosure under Regulation 7(1A) does not fall upon us in any manner.*
- *It is a general practice of law that the sections/ regulations connected to each other shall be read together. Therefore, applicability of Regulation 7(1A) can only be defined when it is read with Regulation 11(1) of Takeover Regulations, the fact that we did not acquire any share under Regulation 11(1) of Takeover Regulations keeps us out of the purview of disclosure obligation under Regulation 7(1A) of Takeover Regulations.*

4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticees on June 26, 2019 vide notice dated June 13, 2019 by the erstwhile Adjudicating Officer. The Noticees appeared on the scheduled date of hearing and reiterated the submission made vide letter dated March 28, 2018. Pursuant to the transfer of the case to the undersigned, another opportunity of personal hearing was given to the Noticees. At their request, personal hearing via

video conferencing from SEBI, Northern Regional Office, was conducted on October 25, 2019. The Noticees appeared and undertook to make further submissions on or before November 10, 2019. The Noticees, vide letter dated November 1, 2019 made submissions stating, inter alia, the following:

- *That even during October 2001 and September 2002 (when the amendments were made in the SAST regulations), I myself and MCML held shares in the Target Company representing 4.04% and 48.17% of the total share capital of the Target Company respectively.*
- *Further during 2006, I alongwith MCML sold our holding in the Target Company in the open market, during March, 2006 to June, 2006. In the SCN, it is alleged that myself, MCML and Harsh Mehta were the promoters during the period and sold shares.*
- *Pursuant to aforesaid sale transactions, we have, from time to time made disclosures to the stock exchange and the Target Company within due course of time under SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations"). That the aforesaid fact has been mentioned in your SCNs as well.*
- *In light of the aforesaid reply on allegations and Legal Submission, you will please appreciate that we cannot be held liable for the violation under Regulation 7(1A) r/w 7(2) of Takeover regulations. That in respect of such sale transactions and resultant change in shareholding, we have complied with all the provisions of law as already mentioned above. There was no malafide intention to suppress the change in shareholding. The change in our shareholding and information about such sale transactions was duly available in the public domain for the investors at large through disclosure made under PIT Regulations and Listing Agreement.*

CONSIDERATION OF ISSUES AND EVIDENCE

5. I have carefully perused the charges levelled against the Noticees in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- (a) Whether the Noticees have violated the provisions of regulation 7(1A) read with 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011.
- (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of SEBI Act for the alleged violation?; and,

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

6. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations, 1997 and SAST Regulations, 2011.

Relevant provisions of SAST Regulations, 1997:

Acquisition of 5 per cent and more shares or voting rights of a company 7. (1) Initial Disclosures.

7 (1).....

(1A) Any acquirer who has acquired shares or voting rights of a company under sub- regulation (1) of regulation 11, or under second proviso to sub-regulation (2) 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.

Relevant provisions of SAST Regulations, 2011:

35. Repeal and Savings:

(2) Notwithstanding such repeal, –

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, an 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;

(b) 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 has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

7. I note from the documents on record that the Noticees had sold their shareholding the following manner:

Entity	Date	No of shares held - pre Disposal as PAC	% of shareholding held - pre disposal as PAC	No of shares disposed off	No of shares disposed off as a % of paid up capital	Value of transaction > Rs 5 lac	No of shares held - post disposal as PAC	% of shareholding held - post / Disposal as PAC	Mode() Market/off-market	Violation of Reg(s) under SAST 1997
Vijay Mehta	16/03/2006	1497595	53.89%	10000	0.36%	Y	1487595	53.53%	market	N.A
Vijay Mehta	17/03/2006	1487595	53.06%	50000	1.78%	Y	1437595	51.27%	market	7(1A) r/w 7(2)
MCML	17/03/2006	1437595	51.27%	50000	1.78%	Y	1387595	49.49%	market	N.A
Vijay Mehta	12/04/2006	1387595	49.49%	50000	1.78%	Y	1337595	47.71%	market	7(1A) r/w 7(2)
MCML	12/04/2006	1337595	47.71%	50000	1.78%	Y	1287595	45.92%	market	N.A
MCML	19/04/2006	1287595	45.92%	75000	2.67%	Y	1212595	43.25%	market	7(1A) r/w 7(2)
MCML	20/04/2006	1212595	43.25%	25000	0.89%	Y	1187595	42.36%	market	N.A
MCML	21/04/2006	1187595	42.36%	100000	3.57%	Y	1087595	38.79%	market	7(1A) r/w 7(2)
MCML	02/05/2006	1087595	38.79%	175000	6.24%	Y	912595	32.55%	market	7(1A) r/w 7(2)

MCML Harsh Mehta	05/05/2006	912595	32.55%	190500	6.79%	Y	722095	25.75%	market	7(1A) r/w 7(2)
Harsh Mehta	08/05/2006	722095	25.75%	3000	0.11%	N	719095	25.65%	market	N.A
MCML Harsh Mehta	09/05/2006	719095	25.65%	111000	3.96%	Y	608095	21.69%	market	7(1A) r/w 7(2)
MCML	10/05/2006	608095	21.69%	10000	0.36%	N	598095	21.33%	market	N.A
MCML Harsh Mehta	11/05/2006	598095	21.33%	50500	1.80%	Y	547595	19.53%	market	7(1A) r/w 7(2)
Harsh Mehta	17/05/2006	547595	19.53%	6900	0.25%	N	540695	19.28%		N.A
MCML Harsh Mehta	16/05/2006	540695	19.28%	31000	1.11%	Y	509695	18.18%	market	N.A
Harsh Mehta	17/05/2006	509695	18.18%	1000	0.04%	N	508695	18.14%		N.A
MCML	05/06/2006	508695	18.14%	264471	9.43%	Y	244224	8.71%	market	7(1A) r/w 7(2)
MCML	06/06/2006	244224	8.71%	101499	3.62%	Y	142725	5.09%	market	N.A
MCML	07/06/2006	142725	5.09%	122520	4.37%	Y	20205	0.72%	market	

8. It is alleged that the Noticees have not made the requisite disclosure for the change in shareholding under SAST Regulations. However, it is observed from the website of BSE that the Noticees have made the requisite disclosure for the change in their shareholding under the PIT Regulations. Therefore, the market was already aware that the promoters were selling their shareholding.

9. The main reason behind such disclosures was that the other shareholders and the market at large should be aware of the shareholding of the Target Company. As the Noticees had already made the requisite disclosure, that purpose was served.
10. Hon'ble SAT in its order dated September 4, 2013, in the matter of Vitro Commodities Private Limited v SEBI stated that *"It may be noticed that provisions of Regulations 7(1) of Takeover regulations, 1997 and regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second..."*
11. I note that the Noticees have failed to file requisite disclosure under the regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997. However, as per material available on record, it is noted that the Noticees have made disclosure under PIT Regulations with respect to the same transaction which was required to be disclosed under regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997. Therefore, the total facts and circumstances of the case and the mitigating factors need to be looked into. Investigation report has not mentioned any gain to the Noticees or corresponding loss to the investors due to the non-disclosure under SAST Regulations, 1997. Moreover, the requisite information had been timely disseminated to general investor on the stock exchange platform.
12. Therefore, the objective of disclosure under regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 has been fulfilled by the Noticees through disclosure under PIT Regulations.
13. In view of the aforesaid and considering the mitigating factors as pleaded by the Noticee, I note that although there was failure on the part of the Noticee with respect to disclosure under the SAST Regulations 1997, the Noticees had complied with the disclosure requirement under PIT Regulations which served the purpose of disclosure requirement under regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997.

14. Under the above circumstances, the Noticees need not be visited with any penalty for the reasons as stated above.

ORDER

15. In view of the above, after considering all the facts and circumstances of the case, the material available on record and the submission made by the Noticee, in exercise of the powers conferred upon me under section 15I of SEBI Act, I hereby dispose of the SCN in the matter without any penalty.

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

Date : December 9, 2019
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER