

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ASK/AO/19/2014]

**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
Bindal Synthetics Private Limited
(PAN: AAACB0686Q)

In the matter of
Blue Blends (India) Limited

FACTS OF THE CASE IN BRIEF

1. An open offer was made by Mr. Anand Arya, Mrs. Indu Arya, Mr. Aman Arya and M/s Cressida Traders Pvt. Ltd. to the equity shareholders (other than Promoters) of Blue Blends (India) Limited (hereinafter referred to as "**BBIL/Company**"), Target Company, through a public announcement dated July 25, 2012 for acquisition of 89,81,450 fully paid up equity shares of the face value of ₹ 10 each, representing 26% of emerging voting share capital at a price of ₹ 2/- per share payable in cash. Shares of BBIL are listed at Bombay Stock Exchange (BSE), National Stock Exchange (NSE), Ahmadabad Stock Exchange (ASE), Madras Stock Exchange (MSE) and Delhi Stock Exchange (DSE).

2. While examining the Draft Letter of Offer filed pursuant to the aforementioned public announcement, it was observed that Bindal Synthetics Private Limited (hereinafter referred to as "**Noticee**"), who was part of the Promoter group of BBIL at the relevant period had sold 4,43,580 shares of BBIL on March 28, 2006 constituting more than 2% of share capital in BBIL which required a disclosure within 2 days of transaction as stipulated by regulation 7(1A) read with regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations, 1997**"). However, no disclosures as stipulated under Regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 for the said transactions was made by the Noticee to BBIL and exchanges where the company is listed.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyoosh Gupta was appointed as Adjudicating Officer vide order dated July 08, 2013 under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of provisions of Regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**"). Subsequently, upon the transfer of Shri Piyoosh Gupta, I have been appointed as Adjudicating Officer, in the present matter, vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated November 28, 2013 (hereinafter referred to as “SCN”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act for the alleged violation specified in the SCN. It was alleged in the SCN that Noticee has failed to make disclosure regarding sale of more than 2% of the share capital of BBIL to BBIL and to stock exchanges within 2 days of transaction and thereby violated Regulation 7(1A) read with regulation 7(2) of the SAST Regulations, 1997. The copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

5. Vide letter dated December 27, 2013, Noticee filed its reply to the SCN. The Noticee’s main submissions in respect of the charges in the SCN are given as under :

- Noticee is a promoter group company which had sold 4,43,580 shares of BBIL (representing 2.92% of share capital of BBIL) to Mr. Anand Arya, who is also part of the promoter group on 28.03.2006 and the said transaction was inter se transfer between promoters. Further, as a result of this transaction there was no change in the overall promoter shareholding in the shareholding pattern of BBIL.
- Noticee made the requisite disclosures as stipulated under Regulation 13 (3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations) on the date of sale itself and notice never had any intention to conceal any transaction from the

investors. A copy of the disclosures made under PIT Regulations was also enclosed.

- Mr. Anand Arya, who was also part of the promoter group, have made requisite disclosures under SAST Regulations, 1997. As the Noticee has already disclosed under PIT Regulations and Mr. Anand Arya, who was part of promoter group disclosed in SAST Regulations, 1997, we are of the view that Noticee need not give separate disclosure under SAST Regulations, 1997 as we are part of same promoter group.
- Trading in the shares of BBIL were placed under suspension from 10th September, 2001 to 2nd December, 2012 and the suspension was revoked only on 3rd December, 2012. The above mentioned transaction also took place during the period when the scrip was under suspension and hence there was no intention of promoters to derive any undue benefit by not disclosing the said transaction under SAST Regulations, 1997.
- As both the entities belonged to promoter group of BBIL, this being inter se transfer between promoters and one of the entities, who was part of the promoter group, has already made the requisite disclosures and the trading in the scrip was also placed under suspension, we are of the opinion that disclosure on our part under SAST Regulations, 1997 is not required as it will not materially make any difference to the price of the scrip as the information was already in public domain and trading in the scrip was already suspended.
- Mr. Anand Arya was one of the acquirers in the open offer made by all the Acquirers in terms of SAST Regulations, 2011 to the equity

shareholders (other than promoters) of BBIL through public announcement dated July 25, 2012. The above disclosures regarding non compliance of SAST Regulations, 1997 by the Noticee were disclosed voluntarily by the acquirers vide the draft letter of offer filed by the acquirers.

- We submit and reiterate that none of the promoters of BBIL have had any intention to hide and conceal the information and the acquirers only brought this non compliance to the notice of SEBI when they filed the offer document for open offer. Hence, the Noticee did not have any intention to hide nor did it hide any information from general investors as the transaction already came in public domain on the same day itself albeit under separate regulation of SEBI and not SAST Regulations, 1997 for which the notice has been issued.
- The networth of BBIL has eroded much prior to the date of transaction carried out by us and the intrinsic value of the share of BBIL was negative at that point in time and that BBIL was declared a sick company and had filed a scheme of reconstruction with BIFR way back in 2002.
- Neither notice had any unfair gain or advantage nor any loss or harm was caused to the investors with non reporting of said information as information regarding sale was already disclosed by notice under PIT Regulations and information regarding purchase was reported by Mr. Anand Arya.
- Provisions of Regulation 7(1A) of SAST Regulations, 1997 and regulation 13(3) of PIT Regulations are not substantially different, since violation of first automatically triggers violation of second and

hence a lenient view may be taken as regards imposition of penalty and penalty may not be imposed. The Regulation 7(1A) of SAST Regulations, 1997 and regulations 13(3) of PIT Regulations are not stand alone regulations and one is corollary of other. The Noticee has already disclosed the information under PIT Regulations. The same has been held by Hon'ble SAT in a similar and identical case of "Vitro Commodities Pvt Ltd.", order of which was passed on 4.9.2013.

- The Noticee has always followed all the procedures, as stipulated by any regulatory authority, follow all rules/ regulations/ instructions etc. issued by any government agency, and our intention has always been to comply with rules/ regulations/filings etc.. and not to conceal any information. Noticee has never been penalized by any regulatory authority and have got clean track record till date.
- In view of the above circumstances and as we neither have any intention to conceal information nor we concealed any information, no unfair gain or advantage has occurred to Noticee and also no harm or loss has been caused to retail investors, the trading in the scrip was under suspension and principles laid down by Hon'ble SAT in the order of "Vitro Commodities Pvt Ltd" your goodself is kindly requested to take a lenient view in the matter and penalty stipulated under Section 15 A(b) of SEBI Act, 1992 may not be imposed.

6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticee was granted an opportunity of personal hearing on January 20, 2014 vide notice dated January 03, 2014. Ms.

Shailashri Bhaskar, Practicing Company Secretary, appeared as Authorized Representative (AR) on behalf of the Noticee and reiterated the submissions made in the reply to SCN.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the oral and written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
- a. Whether the Noticees had violated the provisions of regulation 7(1A) read with regulation 7(2) of the SAST Regulations, 1997?
 - b. Does the violation, if any, attract monetary penalty under section 15A (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?
8. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 1997, as on the date of alleged violation, which reads as under:-

SAST Regulations, 1997

“Acquisition of 5 per cent and more shares or voting rights of a company.

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."

" Consolidation of holdings.

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 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 5% of the voting rights in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations."

Finding

The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticees had violated the provisions of regulation 7(1A) read with regulation 7(2) of the SAST Regulations, 1997?

9. As per provisions of regulation 7(1A) of the SAST Regulations, 1997 any acquirer who has acquired shares or voting rights and the acquisition is

within the limits provided under regulation 11(1) of the SAST Regulations, 1997 and subsequently there is change in shareholding exceeding two percent of the share capital of the target company by way of purchase or sale then, in terms of the provisions of regulation 7(1A) read with regulation 7(2) of the SAST Regulations, 1997, the acquirer whose shareholding has so changed is under obligation to make disclosures, within two days, to the target company and to the stock exchange where the shares of the company are listed regarding such sale or purchase.

10. Upon perusal of submissions of the Noticee and documents available on record, I find that Noticee was admittedly part of the promoter group which was acting in concert in exercising control over BBIL at the relevant period and the company has been disclosing the shareholding of the Noticee under the category of promoters. I further find that prior to the transaction in question, promoter group held 47.91% of the share capital of BBIL, which was within the limits specified under regulation 11(1) of SAST Regulations, 1997. Noticee, as being part of the promoter group which exercised control over BBIL, thus was an acquirer within regulation 2(b) of the SAST Regulations, 1997.

11. It is also not in dispute that the Noticee had sold 4,43,580 shares of BBIL on March 28, 2006 which was 2.92% of the share capital of BBIL. As the said sale transaction exceeded the benchmark limit of 2%, the Noticee ought to have made a disclosure within 2 days of transaction as stipulated by regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997. It is also an admitted fact that the Noticee has not made any disclosure under the afore-mentioned regulations for the transaction dated March 28, 2006.

12. However, Noticee has contended that the said transaction was inter se transfer between promoters and as a result of this transaction there was no change in the overall promoter shareholding in the shareholding pattern of BBIL. In this regard, I note that the regulation 7(1A) of SAST Regulations, 1997 does not provide for any exemptions for the acquirers from making disclosures for the shares acquired or disposed by way of inter se transfers. In this context, it is pertinent to mention here that regulation 3(1)(e) of SAST Regulations, 1997 merely exempts certain eligible persons from the requirement of making public announcement as stipulated under regulations 10, 11 and 12 SAST Regulations, 1997 in case of inter se transfer of shares amongst them. I note that even for availing the exemption from public announcements transferors and transferee are required to comply with disclosure requirement under regulations 6, 7 and 8 of the SAST Regulations, 1997. Therefore, the argument of the Noticee about the transaction dated March 28, 2006 being inter se transfer between promoters would not be of any help to the Noticee.

13. Noticee further contended that it had made the requisite disclosures as stipulated under Regulation 13(3) of PIT Regulations, 1992 on the date of sale itself and noticee never had any intention to conceal any transaction from the investors. In this regard, I note that the disclosures requirement under PIT regulations, 1992 and SAST regulations 1997 are independent of each other and the disclosure made under PIT Regulations, 1992 does not absolve the person from making the relevant disclosure under the SAST Regulations. Therefore, the argument of the Noticee that it had made the disclosure under PIT Regulations, 1992 is also without merit.

14. Noticee further contended that and since the acquirer of the shares Mr. Anand Arya did make the requisite disclosure under SAST regulations, 1997, the disclosure on part of the Noticee under SAST Regulations, 1997 was not required as it will not materially make any difference to the price of the scrip as the information was already in public domain. In this regard, I note that under regulation 7(1A) of SAST Regulations, 1997 there is an independent and separate statutory obligation of making disclosure on purchaser as well as seller of the shares and disclosure by purchaser of shares does not absolve the seller or vice versa from making the relevant disclosure under the afore-mentioned regulation. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal (SAT) in *Ambaji Papers Pvt. Ltd. V. The Adjudicating Officer, SEBI* dated January 15, 2014, wherein similar contention of information being in the public domain was raised by the appellant. SAT observed "*.... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well.*"

15. In this context, I would also like to rely on observation of Hon'ble SAT in *Premchand Shah and Others V. SEBI* dated February 21, 2011, wherein it was held that "*.....When a law prescribes a manner in which a thing is to*

be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments..... "

16. In view of the above and based on the available documents and records before me, I find that there has been a lapse on the part of the Noticee, and thus, the violation of regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 stands established in respect of transaction dated March 28, 2006.

(b) Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?

17. I note that the Noticee, while admitting lapse on its part in complying with the disclosure requirement under regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997, has placed reliance on the order dated September 04, 2013 passed by Hon'ble SAT in the case of "*Vitro Commodities Pvt Ltd. V SEBI*". However, the reliance placed by the Noticee on the afore-mentioned case does not support its case as in the referred case the non-disclosure by the appellant occurred mostly by not as active action by appellant but as a result of bonus shares, shares allotted due to amalgamation and again by issue of bonus shares. However, in the instant matter, Noticee has admittedly indulged in the transaction of sale of shares to Mr. Anand Arya above the benchmark limit specified under regulation 7(1A) of SAST Regulations, 1997.

18. The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v. Shriram Mutual Fund* {[2006] 5 SCC 361} 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..."*.

19. I have considered other contentions raised by the Noticee in their reply and find no merit in it. As the violation of the statutory obligation under regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 has been established, I hold that the Noticees are liable for monetary penalty under section 15A(b) of SEBI Act, which reads as under:-

"15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made there under, -

a)... ..

b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor 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"

(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?

20. While determining the quantum of penalty under section 15A (b), it is important to consider the factors stipulated in section 15J 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.”*

21. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Regulation 7(1A) of SAST Regulations, 1997 was brought in specifically so that the investors and the public is aware of the change in shareholding of promoters/acquirers who fall under the realm of Reg. 11(1) of SAST Regulations, 1997 as the acquirers falling under its ambit have significant shareholding and would wield a strong influence on the company. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. However, the Noticee, by not complying with the regulatory obligation of making the disclosures, has deprived investors of the important information at the relevant point of time.

ORDER

22. Considering all the facts and circumstances of the case, it is established that the Noticee had failed to make disclosure as required by regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011. Therefore, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 4,00,000/- (Rupees Four Lakh only) under Section 15A(b) for failure to make disclosures regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 on the Noticee i.e. Bindal Synthetics Private Limited. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

23. 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 The Division Chief (CFD-DCR), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

24. 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: January 31, 2014

Place: Mumbai

A. Sunil Kumar

Adjudicating Officer