

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/SPV/75/2012]

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 BY ADJUDICATING OFFICER) RULES, 1995.

Ms. K Nirupama

[PAN: ALPPK8928F]

In the matter of

Concurrent (India) Infrastructure Limited

(Now known as Shriniwas Power & Infrastructure Limited)

Background of the case

1. Securities and Exchange Board of India (SEBI) had received an e-mail from CDSL regarding the high volume of trade of a client in the scrip of Concurrent (India) Infrastructure Ltd.(**CIIL**) (now known as Shriniwas Power & Infrastructure Ltd.) as compared to the market volume. During investigation, the quarterly shareholding pattern in the scrip from the Bombay Stock Exchange (BSE) website were examined. The said investigation revealed that Ms. K Nirupama (**Noticee**), who was a promoter of CIIL had pledged certain shares of CIIL and her shareholding had undergone changes consequent upon the invocation of the

pledge. It was also revealed that the Noticee had not made necessary disclosures as required under the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (**SAST Regulations**) and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**).

2. In view of the findings of the investigation as given above, SEBI, vide Order dated September 07, 2012 appointed the undersigned as Adjudicating Officer (**AO**) under Section 15 I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for holding inquiry and (**Adjudication Rules**) to inquire into and adjudge under section 15A (b) of the SEBI Act, the alleged violation of provisions of Regulations 8(A)(2) and 8(A)(3) of SAST Regulations and Regulations 13(3) read with 13(5) of PIT Regulations by the noticee.

Show Cause Notice, Reply & Personal hearing

3. Show Cause Notice dated October 11, 2012 (**SCN**) was issued to the Noticee in terms of the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against her in respect of the violations alleged to have been committed. The SCN alleged that the Noticee had not filed the necessary disclosures as required under the provisions of SAST Regulations and PIT Regulations. The disclosure dated 20.01.2012 and the transaction statement from CDSL were furnished to the Noticee along with the SCN.
4. Even though the SCN has been duly served on the Noticee on October 15, 2012 (as per signed AD card), the Noticee has not

responded to the SCN. Subsequently the Noticee was, vide notice dated November 07, 2012 advised to appear before the AO for personal hearing on November 19, 2012. The hearing notice was duly delivered to the Noticee on November 12, 2012. However, the Noticee or her representative did not appear for personal hearing nor made any submissions. Another opportunity of hearing was given on November 26, 2012 vide notice dated November 19, 2012 which was sent vide speed post AD and delivered on November 22, 2012. A copy of the hearing notice was also sent through CIL. However the Noticee or her representative did not appear for personal hearing nor made any submissions this time also.

Consideration of Issues, Evidence and Findings

5. I have carefully perused the documents available on record. At the outset, I find that the Noticee has not submitted any response to the allegations made in the SCN and has not attended the hearings scheduled on November 19, 2012 and November 26, 2012. I find that the SCN and the hearing notices have been duly served on the Noticee. In the absence of any response from the Noticee, I proceed with the matter ex-parte based on the documents on record.
6. The issues that arise for consideration in the present case are:
 - a. Whether the Noticee has violated the provisions of Regulation 8(A) (2) and 8(A) (3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations?
 - b. Does the violation, if any, on the part of the Noticee attract penalty under section 15A (b) of SEBI Act?

- c. If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

7. The relevant provisions of the SAST Regulations and PIT Regulations are as follows:

SAST Regulations , 1997

Regulation 8A. Disclosure of pledged shares

(1).....

- (2) *A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company.*
- (3) *A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.*

PIT Regulations

Regulation 13- Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies- Initial disclosure

(1).....

(2).....

Continual Disclosure

- (3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*
- (5) *The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :*

(a) the receipt of intimation of allotment of shares, or
(b) the acquisition or sale of shares or voting rights, as the case may be.

8. From the material available on record, I find that the Noticee was a promoter shareholder of CIIL and she had pledged certain shares of CIIL. Her shareholding had undergone changes consequent upon the invocation of pledge on the shares pledged by her. The details of the shares pledged by the Noticee and invocation / revocation thereof are as under:

Date of creation/in vocation	Creation/Invocation of pledge	No. of shares pledged	Due date of disclosure by entity to CIL	Actual date of disclosure by entity to CIL	Disclosure by CIL to the stock exchange
06/09/2010	Creation	9,00,000	16/09/2010	20/01/2012	20/01/2012
27/09/2010	Creation	3,50,000	06/10/2010	20/01/2012	20/01/2012
23/12/2010	Creation	2,00,000	03/01/2011	20/01/2012	20/01/2012
22/01/2011	Creation	2,50,000	02/02/2011	20/01/2012	20/01/2012
17/03/2011	Invocation	4,50,000	28/03/2011	20/01/2012	20/01/2012
18/03/2011	Invocation	12,50,000	29/03/2011	20/01/2012	20/01/2012
25/05/2011	Creation	1,00,000	03/06/2011	20/01/2012	20/01/2012
31/05/2011	Creation	1,00,000	09/06/2011	20/01/2012	20/01/2012
02/06/2011	Creation	1,00,000	13/06/2011	20/01/2012	20/01/2012
03/06/2011	Creation	1,00,000	14/06/2011	20/01/2012	20/01/2012
18/07/2011	Invocation	4,00,000	27/07/2011	20/01/2012	20/01/2012

As shown in the table above, the Noticee had created pledge on 06/09/2010, 27/09/2010, 23/12/2010, 22/01/2011, 25/05/2011, 31/05/2011, 02/06/2011 & 03/06/2011 and pledge on certain shares was invoked on 17/03/2011, 18/03/2011 and 18/07/2011. I find that the Noticee was required under Regulation 8 (A) (2) & (3) of SAST Regulations to disclose creation/invocation of pledge within 7 working days of such creation/invocation. As shown in the table, the Noticee actually disclosed the said

information on 20.01.2012, much after the actual transactions had taken place. I further find that the disclosures on 20.01.2012 were made only after CIIL received a letter from SEBI seeking the shareholding of the Noticee. In view the above, I find that the Noticee has violated the provisions of Regulations 8(A) (2) and 8(A) (3) of SAST Regulations.

I further find that due to invocation of pledge of shares as mentioned in the table above i.e., on 17/03/2011 (4,50,000 shares) and on 18/03/2011 (12,50,000 shares) the shareholding of the Noticee has come down by more than 2% i.e., from 6.84% to 2.89%. The change in the shareholding pattern is shown as under:

Date	Opening balance	No. of shares acquired/disp osed	Closing balance	% of the paid-up capital
01/01/2011	29,43,664			6.84%
17/03/2011	29,43,664	-4,50,000	24,93,664	5.79%
18/03/2011	24,93,664	-12,50,000	12,43,664	2.89%

As on 31/03/2010, the paid up capital of CIIL was Rs 43,05,99,990 divided into 4,30,59,999 shares of Rs 10 each (source : CIIL annual report available on BSE web site).

As mentioned in the table above, the shareholding has come down from 6.84% to 2.89% upon invocation of pledge and the Noticee was required to make necessary disclosures as required under Regulation 13(3) read with 13(5) of PIT Regulations. As the Noticee has not made the said disclosure, I am of the view that the Noticee has violated said provisions of PIT Regulations.

9. I find that the Noticee has made disclosure to CIIL on 20.01.2012 after SEBI sent a letter to CIIL seeking the shareholding of the Noticee. This disclosure was made much after the transactions creating/invoking of the pledge on the said shares. Such delayed disclosures are against the spirit of Regulations mandating disclosures. Disclosure of the holdings of the promoters and their transactions therein on the websites of the exchanges serve a very important purpose as these holdings are a barometer of the promoters' confidence in the future of the company. If such disclosures are not made within the time frame provided in the Regulations, it can only be considered as non-disclosure as it results in concealing vital information from the market and general investors.
10. As already mentioned above, the Noticee has neither responded to the SCN nor appeared for personal hearing. Hence, I presume that the Noticee has no explanation to offer as far as the charges levelled against her in the SCN . I therefore presume that she has admitted to the said charges. In this regard, reliance is being placed upon the observation of Hon'ble SAT in the matter of Classic Credit Limited Vs.SEBI (Appeal No. 68 of 2003 - decided on 08.12.2006). SAT observed thus: *".....the appellant did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted"*.
11. In view of the foregoing discussion, I hold that the Noticee has violated the provisions of Regulation 8(A) (2) and 8(A)(3) of SAST Regulations and Regulations 13(3) read with 13(5) of PIT Regulations.

12. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."*

13. Thus, the aforesaid violations by the Noticee make him liable for penalty u/s. 15A(b) of the SEBI Act which reads thus:

SEBI Act

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

(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"

14. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under S.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. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by not making the specified disclosures on the due dates. It is also not possible to ascertain the loss to the investors in monetary terms. However the fact remains that by not making the required disclosures on time, the Noticee had deprived the investors of timely information. While there is only one instance of violation of provisions of Regulations 13(3) read with 13(5) of PIT Regulations, there are numerous instances of violation of the provisions of Regulations 8(A)(2) and 8(A)(3) of SAST Regulations.

Order

16. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticee. I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act, impose a penalty of ₹.3,00,000/- (Rupees Three lacs only) on the Noticee, Ms. K Nirupama in terms of Section 15A(b) of SEBI Act for violation of the provisions of Regulation 8(A)(2) & 8(A)(3) of SAST Regulations read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulations 13(3) read with 13(5) of PIT Regulations. I am of the view that the said penalty is commensurate with the violations committed by the Noticee.
17. The penalty shall be paid by way of a duly crossed demand draft drawn 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 shall be forwarded to The Chief General Manager, Integrated Surveillance Department, 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 the Securities and Exchange Board of India. The matter is disposed of accordingly.

DATE: November 30, 2012
PLACE: Mumbai

PIYOOSH GUPTA
ADJUDICATING OFFICER