

ADJUDICATION ORDER NO. JS/DJ/04/2017

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:

Shyam Sunder Beriwal K/o Shyam Sunder Punit Kumar (HUF)

(PAN – AAFHS3894B)
10/11, Sarvapriya Vihar
New Delhi 110017

In the matter of Vipul Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), during investigations into dealings in shares of Vipul Limited (hereinafter, referred to as "**Company**"), observed that during quarter ending December 2014, shareholding of promoter Shyam Sunder Beriwal K/o Shyam Sunder Punit Kumar (HUF) (hereinafter, referred to as "**Noticee**") in the company reduced by 15,965 shares on account of sale of shares by the Noticee.
2. It was alleged that the above change in shareholding of the Noticee by 15,965 shares amounting to Rs. 6.25 lakh in terms of value, required him to make disclosure to the company and Stock Exchange under regulations 13(4A) read with regulations 13(5) of the SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter, referred to as "**PIT Regulations, 1992**") read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter, referred to as "**PIT Regulations, 2015**"). However, allegedly, there was failure on part of the Noticee to make the aforesaid necessary disclosure.
3. The details of alleged violation by the Noticee are brought out in following table:

Table: Determination of trigger for disclosures requirements under PIT Regulations 1992

Date	No of shares held by - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares Acquired / (disposed off)	No of shares Acquired / (disposed off) as a % of paid up capital	Sell Value (Rs)	Sell Value (Rs) Cumulative	No of shares held - post Acquisition / disposal	% of shareholding held - post Acquisition/ Disposal	Violation of Reg(s) under SEBI(PIT) Regulations 1992
10/12/2014	93,55,000	7.80%	(5,000)	(5,000)	-0.004%	1,92,500	1,92,500	93,50,000	7.79%	NA
12/12/2014	93,50,000	7.79%	(5,965)	(10,965)	-0.005%	2,36,714	4,29,214	93,44,035	7.79%	NA
15/12/2014	93,44,035	7.79%	(5,000)	(15,965)	-0.004%	1,96,250	6,25,464	93,39,035	7.78%	13(4A) r/w 13(5) of PIT

4. Based on the information provided by the Company and the Stock Exchange (BSE), it was confirmed that the Noticee did not make disclosure with respect to the aforesaid change in shareholding.
5. Thus, it has been alleged that Noticee, being promoter of the company, failed to disclose change in shareholding as per regulations 13(4A) read with regulations 13(5) of the PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015 for change in shareholding exceeding Rs. 5 lakh in terms of value.

APPOINTMENT OF ADJUDICATING OFFICER

6. Given the above, SEBI, appointed an Adjudicating Officer on May 17, 2017 under section 19 of the SEBI Act, 1992 (hereinafter, referred to as “**SEBI Act**”), read with section 15-I(1) of the SEBI Act and Rule 3 of SEBI(Procedure for holding inquiry and imposing penalties by adjudicating officer) rules, 1995 (hereinafter, referred to as “**SEBI Adjudication Rules**”), to inquire and adjudge under section 15A(b) of the SEBI Act in respect of the Noticee.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

7. Show Cause Notice No. SEBI/HO/EAD-8/JS/DJ/OW/ P/19324/1/2017 dated August 12, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the SEBI Adjudication Rules detailing the allegations made against the Noticee and to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations.
8. Noticee, vide e-mail dated September 2, 2017, acknowledged the receipt of SCN and submitted that he was out of India and returned on August 31, 2017, hence, he sought extension of time by two weeks to file reply to the SCN. Vide e-mail dated September 4, 2017, Noticee was granted the requested extension of time as he provided relevant evidential documents to consider the request.
9. Subsequently, Noticee vide his e-mail dated September 19, 2017, sought extension of time by another week to submit reply to the SCN and also sought opportunity of personal hearing after submission of reply. In this regard, requested extension of time was granted to the Noticee vide e-mail dated September 21, 2017.

10. Noticee vide e-mail dated September 25, 2017 submitted his reply to the SCN, which has following key submissions:

"Noticee has sold 15,965 shares during period QE Dec 2014 and QE Mar 2015.

Noticee is a 77 years old and these are very old investment of Noticee.

Since the sales realisation of the sale was too small, Noticee was not aware that the provisions of Regulation 13(4A) of the SEBI (Prohibition of Insider Trading) Regulation, 1992 were required to be complied with, which has now been complied. The default in filing has now been regularised and copy of disclosures made is attached for information and records.

The non-compliance in making the disclosure has happened inadvertently, you will kindly note that the Noticee has in past duly complied with the applicable provisions of the aforesaid statutes as and when the provisions were attracted.

The failure was with no mala fide intention on part of the Noticee. That, the failure in compliance as stated in the show cause notice is absolutely non intentional and also not of repetitive nature."

11. In terms of rule 4(3) of the Rules, and as sought for by the Noticee, a hearing was granted vide hearing notice ref. no. SEBI/HO/EAD-8/JS/DJ/OW/ P/ 23331/1/2017 dated September 26, 2017, on October 9, 2017. Noticee, vide e-mail dated October 4, 2017 confirmed that his authorised representative will attend the hearing.
12. The authorised representative made further additional written submissions on behalf of the Noticee, vide e-mail dated October 7, 2017, wherein, key submissions are as follows:

"Chronological details of the sale of shares during December 12, 2014 to September 16, 2016 is provided. Before the transaction dated December 15, 2014, all the transactions undertaken by the Noticee were within the limit as prescribed under the PIT Regulations. The transaction that has taken place on 15.12.2014 crossed the prescribed limit, due to inadvertent error on part of the Noticee, the necessary disclosure could not be made.

Non-disclosure resulting into non-compliance of prescribed regulations is pursuant to lack of knowledge and old age of the Noticee and the same is an inadvertent mistake. Noticee didn't had any intention of not disclosing this transaction.

Inadvertent non-compliance has not benefited the undersigned in any manner and there is no question of any unlawful gain or benefit accruing to him.

Non-compliance on part of the Noticee is merely technical and no actual loss has been caused either to the company, the general public or the government exchequer. It would be in the interest of justice to carve out an exception and close the present proceedings against the Noticee, in view of the clarifications made in e-mail dated 25.09.2017 as well as the present representation."

13. Authorised Representative of the Noticee attended the hearing on scheduled date and time for hearing, and made following submissions:

"We wish to reiterate the submissions made in our written submission forwarded through e-mail dated October 7, 2017. Original copy of the said written submission is submitted therewith in person today. We further request you to take a lenient view in the matter."

CONSIDERATION OF ISSUES AND FINDINGS

14. Having examined the SCN, the reply of the Noticee to SCN, submissions made in the personal hearing, the issues that arise for consideration in the present case are:
- Whether the Noticee has failed to disclose the change in his shareholding as per regulations 13(4A) read with regulations 13(5) of the PIT Regulations, 1992 read with regulations 12(2) of PIT Regulations, 2015 as alleged?
 - If yes, does the violation attract monetary penalty under Section 15A(b) of the SEBI Act?
 - If yes, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

15. The relevant provisions of the PIT Regulations, 1992 & 2015 which are alleged to have been violated, are mentioned below:

Regulation 13(4A) and Regulation 13(5) of PIT Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Continual Disclosure

"13(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be."

Regulation 12(2) of 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;”

16. The above provisions enjoins the Noticee to disclose change in shareholding within two working days. It is an admitted fact by the Noticee that he had indeed sold the shares in excess of Rs 5 lakhs and also that he had failed to make the above required disclosure due to inadvertent error, ignorance, etc. Further that he disclosed it on September 25, 2017, after taking note of the show cause notice issued in the present matter.
17. The Noticee has pleaded that the alleged non-compliance was inadvertent, due to lack of knowledge and, old age, without any mala fide intention, not repetitive, merely technical and caused no actual loss to company, general public or government, etc and Noticee requested to make an exception and close the instant proceedings without any imposition of penalty.
18. I note that it is settled position of law that ignorance of law is not an excuse. Further that intention or otherwise of gaining or others losing is neither a case that has been alleged nor is it required to be so. It would also be appropriate to refer here the observations made by the Hon^{ble} Securities Appellate Tribunal (SAT) in the following cases:
 - a) In the matter of **Komal Nahata Vs. SEBI decided on January 27, 2014**:- “Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”
 - b) Further, in the matter of **Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014** :- “... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”

19. The judgement of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund (Appeal no. 9523-9524)** decided on May 23, 2006, is very clear that *"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..."*.
20. In view of the aforesaid observation and established violation against the Noticee, I note that it is a fit case for imposing monetary penalty upon the Noticee under Section 15A(b) of the SEBI Act which read as follows:

"Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;"*

21. 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:-

"Factors to be taken into account by the adjudicating officer

15J. *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."*

22. The available records neither reveals any disproportionate gains/ unfair advantage made by the Noticee, the specific loss suffered by the investors due to such violations and nor has such allegations against the Noticee. Further while the Noticee has mentioned that this omission is not repetitive, SEBI too has observed the same.
23. Therefore, taking into consideration the facts / circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

24. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty of Rs.1,50,000/- (Rupees one lakh fifty thousand) upon Noticee Shyam Sunder Beriwalla K/o Shyam Sunder Punit Kumar (HUF) under Section 15A(b) of SEBI Act, 1992.
25. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

26. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - IV [EFD1-DRA-IV], SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
1. Case Name :
 2. Name of Payee:
 3. Date of payment:
 4. Amount Paid:
 5. Transaction No:
 6. Bank Details in which payment is made:
 7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)
27. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: October 17, 2017
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer