

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/ VVK/104/2014]**

**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
Bengal Finance and Investment Pvt. Ltd.
(PAN AABCB7225Q)**

Background :

Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") observed that Bengal Finance and Investment Pvt. Ltd. (hereinafter referred to as "**BFIPL / acquirer / Noticee** ") had acquired shares of Kajaria Ceramics Limited (hereinafter referred to as "**KCL/ Target company**"). The shares of the KCL are listed at the Multi-Commodity Exchange-SX (hereinafter referred to as "**MCE-SX**") and the National Stock Exchange of India Limited (hereinafter referred to as "**NSE**").

2. It was observed that that the Noticee had acquired 4126427 shares of KCL @ 95.10 each (average rate) from the open market between 4th May, 2011 and 17th August, 2011 aggregating to 5.61% of the total issued and paid up capital of KCL. As a result of the purchase of shares by the noticee in KCL, the holding was more than 5% of total issued and paid up capital of KCL, therefore, the noticee was required to make disclosures under Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "**PIT Regulations,1992**") to the target company within the specified days which it allegedly failed to comply with.

Appointment of Adjudicating Officer :

3. In view of the above, SEBI vide order dated the 19th December,2013 appointed the undersigned as the Adjudicating Officer to inquire into and adjudge under Section 15-I of the Securities and Exchange Board of India Act,1992 (hereinafter referred to as the '**SEBI Act,1992**') read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules,1995 (hereinafter referred to as "**the Rules**") the violation of the provisions of the PIT Regulations,1992 alleged to have been committed by BFIPL.

Notice, Reply & Personal Hearing:

4. Accordingly, a Show Cause Notice dated the 26th February,2014 (hereinafter referred to as the '**SCN**') was issued to the Noticee in terms of Rule 4 of the Rules requiring it to show cause as to why an inquiry should not be held for the alleged violations. The Noticee vide letter dated 24th March, 2014 replied to the said SCN and, *inter alia*, contended as follows :-

" - We are not connected with the M/s.Kajaria Ceramics Ltd. (target company) as a Director or officer and the Insider Trading Regulations are attracted for holding the 5% and above shares of the target company. This is the first ever incidence for acquisition above 5%.

" the disclosure under Insider Trading Regulations has remained to be filed inadvertently."

5. In the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on 7th April, 2014. The Authorized Representatives of the noticee attended the hearing and reiterated the contents of the reply dtd. the 24th March, 2014 and made additional written submissions with enclosures thereto vide their letter dated the 7th April, 2014, the contents thereof are, *inter alia*, reproduced as below :-

" - The intention of the company was never to violate any regulations or harm investor's interest.

- We have now filed the disclosures with KCL as required by regulation 13(1) of the SEBI PIT Regulations, 1992. " The relevant disclosure filed with the target company i.e. KCL is dated 4th April, 2014.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges against the Noticee as per the SCN, reply and additional written submissions and the other material available on record.

The issues that arise for consideration in the present case are :-

(a) Whether the Noticee has violated the provisions of Regulation 13(1) of the PIT Regulations, 1992?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A(b) of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

7. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations, 1992 which read as under :-

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

"13.(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working 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."

8. I observe that the Noticee had acquired 4126427 shares of KCL @ 95.10 each (average rate) from the open market between 4th May, 2011 and 17th August, 2011 aggregating to 5.61% of the total issued and paid up capital of KCL. As a result of the purchase of shares by the noticee in KCL, the holding was more than 5% of the total issued and paid up capital of KCL. Since there was a change in the Noticee's shareholding being more than 5% viz. 5.61%, therefore, it admittedly failed to make the necessary disclosure in terms of regulation 13(1) of the PIT Regulations,1992.

9. It is observed from the additional submissions of the Noticee dated the 7th April, 2014 and the documents enclosed thereto that the Noticee made disclosures to the target company on 4th April, 2014 instead of 22nd August, 2011. Since the Noticee committed a delay of 31 months and 13 days in making the required disclosures, the same is in violation of regulation 13(1) of the said PIT Regulations,1992. It is pertinent to state that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance.

10. In view of the above, I conclude that the Noticee, by not making the necessary disclosures within the specified two working days, has violated the provisions of Regulation 13(1) of the PIT Regulations, 1992 thus warranting monetary penalty under Section 15A(b) of the SEBI Act,1992.

11. Section 15A(b) of the SEBI Act,1992 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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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. "

12. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shriram Mutual Funds** [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".

The Hon'ble Securities Appellate Tribunal in the matter of **Milan Mahindra Securities Private Limited vs SEBI** (Order dated November 15, 2006 in Appeal No. 66 of 2003) observed that " the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."

13. While determining the quantum of penalty under Section 15A(b) of the SEBI Act,1992, it is important to consider the factors stipulated in Section 15-J of the SEBI Act,1992 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.*

14. It is difficult, as per the material available on record, to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee. The disclosures made under Regulation 13(1) of the PIT Regulations, 1992 are made public only through Stock Exchange. 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. The disclosures made by companies listed on the stock exchanges are the means to attain such end and therefore, dissemination of true and complete information is required.

ORDER

16. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I(2) of the SEBI Act, 1992 read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 3,00,000/- (Rupees three lakh only) on Bengal Finance and Investment Pvt. Ltd. under Section 15A(b) of the SEBI Act, 1992. In my view, the penalty is commensurate with the default committed by the Noticee.

17. The penalty amount shall be paid by the Noticee through a Demand Draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 (forty five) days of receipt of this order. The said Demand Draft should be forwarded to the Division Chief, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 -A, ‘G’ Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date : April 22, 2014
Place: Mumbai

D.SURA REDDY
ADJUDICATING OFFICER