

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/VVK/ 250/2014]**

**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

SAMARA CAPITAL PARTNERS FUND I LIMITED(PAN: AAKCS6756Q)

In the matter of

Asian Oilfield Services Limited

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the draft letter of offer filed by Samara Capital Partners Fund I Limited (hereinafter referred to as "**Samara**"), a promoter of Asian Oilfield Services Limited (hereinafter referred to as "**AOSL**") to acquire 26% of the Paid up / voting equity capital of AOSL, a company listed on The Bombay Stock Exchange Limited ("**BSE**").
2. Upon examination it was, *inter alia*, observed that the Noticee had failed to make necessary disclosures, within the specified time period, of its aggregate shareholding to the Stock Exchanges and the target company i.e.AOSL under regulation 30(1) and 30(2) read with regulation 30(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "**Takeover Regulations, 2011**") for the year 2012. However, the noticee made the disclosures with a delay thereby violated the aforesaid provisions of

law. The details of delayed disclosures made by the noticee are given as below :-

Regulation	Due date for compliance	Actual date of compliance (BSE)	No. of days of delay
30(1) and 30(2)	10.04.2012	12.06.2013	428

Appointment of Adjudicating Officer

3. SEBI has, therefore, initiated Adjudication proceedings and I have been appointed as the Adjudicating Officer vide order dated April 21, 2014 under Section 15 I of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992** ") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the said "**Rules**") to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 the alleged violation of the provisions of regulation 30(1) and 30(2) read with regulation 30(3) of the Takeover Regulations, 2011 for the year 2012 by the Noticee.

Show Cause Notice, Reply and Personal Hearing

4. A Show Cause Notice dated July 10, 2014 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed under Section 15A(b) of the SEBI Act, 1992 for the alleged violation of the provisions of law. The noticee in response to the said SCN, vide its letter dated 30th July, 2014 made the submissions which are, *inter alia*, reproduced as below :-

" - Samara invested in AOSL by way of preferential allotment of 40,50,000 Equity Shares (constituting 26.42% of the then expanded Equity Share Capital of AOSL). the said acquisition triggered an Open Offer and Samara, in compliance with the Regulations 10 and 12 of SEBI (SAST) Regulations, 1997, made an Open Offer for

acquisition of Shares coupled with Change in Management and became the Promoter of the AOSL.

- *Post this Open Offer, Samara became the largest Promoter shareholder of AOSL holding 55,66,700 Equity Shares constituting 36.33% of the total Equity Share Capital of AOSL at that time.*

- *Since then, the shareholding of Samara in AOSL, has remained static and no change had taken place until September,2013 when an additional 70,00,000 shares were issued on preferential basis to Samara.*

- *Post the completion of this Open Offer until this date, Samara holds 1,25,72,600 Equity Shares, constituting 56.32% of the current Equity Share Capital of AOSL.*

- *As regards the required disclosures in AOSL, Samara missed out the annual disclosures due to sheer lack of internal familiarity with the compliance requirements for a listed entity. Samara had missed this compliance inadvertently and there was no intention to delay / conceal any information or gain any advantage from this non-compliance. On our realization almost after 14 months, in June,2013, we immediately made the required disclosures.*

- *Samara, as a reputed Private Equity Fund, always strives hard to be compliant in every manner and this lapse of compliance for a particular year was an unintentional and undesired one, which we deeply regret.*

- *We assure you that such an instance shall not be repeated in future."*

5. Thereafter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the said Rules, the noticee was granted an opportunity of personal hearing on 22nd September, 2014. However, the noticee vide its letter dated the 22nd September, 2014 sought extension of time which was acceded

to and hearing was adjourned to September 29, 2014. The noticee through its Authorized Representative M/s. Wadia & Ghandy & Co., Advocates and Solicitors appeared on behalf of the noticee on 29th September, 2014 and reiterated the submissions made vide their reply dated 30th July, 2014.

Consideration of Issues, Evidence and Findings

6. I have carefully perused the charges leveled against the Noticee in the SCN and the reply of the noticee, the oral submissions and the documents available on record. In the instant case, the following issues arise for consideration and determination :-

a. Whether the Noticee has violated the provisions of Regulation 30(1) & 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 for the year 2012.

b. Whether the Noticee is liable for monetary penalty prescribed under Section 15A(b) of the SEBI Act, 1992 for the aforesaid violations.

c. If so, what should be the quantum of monetary penalty ?

7. Before proceeding further, it is pertinent to refer to the relevant provisions of the Takeover Regulations , 2011, which read as under :-

Takeovers Regulations, 2011 :

" Continual disclosures.

30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office. "

Findings:

8. It was alleged in the SCN that the Noticee who was under an obligation to disclose the aggregate shareholdings to the stock exchange i.e. BSE and to AOSL for the year 2012 on 10th April, 2012 under regulation 30(1) & 30(2) read with regulation 30(3) of the Takeover Regulations, 2011. However, the said disclosures were made by the Noticee only on 12th June, 2013 i.e. with a delay of 428 days.

9. I find that the noticee in its reply has admitted the delay made in the filing of disclosures relating to their shareholding in AOSL under the Takeover Regulations, 2011 and submitted that the delayed disclosures were inadvertent and unintentional. The Noticee also submitted that there was absolutely no change in their shareholding in AOSL during the period February 2010 to September, 2013.

10. Thus, I find that the Noticee has failed to comply with regulation 30(1), 30(2) read with regulation 30(3) of the Takeover Regulations, 2011 for the year 2012. As the violation of the statutory obligation under the aforesaid regulations by the Noticee has been established, I hold that the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, 1992 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 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;*

11. The disclosures made by the Noticee under the Takeover Regulations, 2011 are made public only through Stock Exchange and 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 vital information. The disclosures made by companies listed on the stock exchanges are the means to attain such end and, therefore, the dissemination of complete information is required. However, the Noticee in this case has neglected the duty of making timely disclosures in compliance with Regulations 30(1), 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011.

The Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Komal Nahata Vs. SEBI** (Date of judgment- January 27, 2014) has observed that :

“ 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.”

In the matter of Hybrid Financial Services Limited v. SEBI (Appeal No.119 of 2014 and Order dated June 12, 2014), the Hon'ble SAT has, *inter alia*, observed as follows:

" even if, there was no change in the shareholdings it was obligatory on the part of the appellant to make disclosures in each of the financial years..... "

In Appeal No. 66 of 2003 - **Milan Mahendra Securities Pvt. Ltd. Vs SEBI** – the Hon'ble SAT has 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."*

At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, *inter alia*, held: *"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."*

12. While imposing monetary penalty, it is important to consider the factors stipulated in

Section 15J of 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."*

13. I observe from the material available on record that any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is observed that the violation is not repetitive in nature.

ORDER

14. 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 monetary penalty of ₹20,00,000/- (Rupees twenty lakh) on the Noticee viz. "Samara" under Section 15A(b) of the SEBI Act, 1992. In my view, the penalty imposed is commensurate with the defaults committed by the Noticee.

15. The above penalty amount shall be paid by the Noticee by 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 shall be forwarded to the Division Chief, Corporate Finance Department - Division of Corporate Restructuring, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: October 10, 2014

Place: Mumbai

**D. SURA REDDY
ADJUDICATING OFFICER**