

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: EAD-9/AO/SM/37/2018-19]**

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

**In respect of:
M/s Basic Soft Solutions Private Limited
(PAN No. AADCB0215C)**

In the matter of M/s Alchemist Realty Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted investigation into the alleged irregularity in the trading of the scrip of M/s Alchemist Realty Ltd (hereinafter referred to as 'Alchemist/Company/ARL'). The examination period during investigation was January 01, 2006 to March 31, 2011 (hereinafter referred to as "Investigation Period"). Alchemist is listed at Bombay Stock Exchange (hereinafter referred to as "BSE").
2. During the course of investigation, it was found that M/s Basic Soft solutions Private Limited (hereinafter referred to as "Noticee/BSL")) have violated Regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "SAST 1997) and Regulation 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT 1992")
3. In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

4. In this order wherever SAST 1997 is mentioned it should be referred to as SAST 1997 read with Regulation 35(2) of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Appointment of Adjudication Officer:

5. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated November 28, 2014 under Section 19 of the SEBI Act, 1992 read with Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as AO Rules) to inquire and adjudge under section under Section 15A (b) of SEBI Act on noticee for the alleged provisions of law. Subsequently, pursuant to the transfer of the case, the undersigned have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017 for the aforesaid Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice dated March 12, 2015 (hereinafter referred to as 'SCN') was served upon the Noticee in terms of Rule 4 (1) of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against it under section under Section 15A (b) of SEBI Act for the alleged provisions of law.

7. Status of the SCN:

- 7.1. The SCN issued to Noticee was undelivered, however reply was received from it on April 02, 2015 seeking extension of time to reply to SCN.
- 7.2. No reply was received thereafter and reminder for the same was sent on June 16, 2017 at the last address known of the Noticee. The letter issued was undelivered and attempt was made through Alchemist Reality Limited to serve the Notice to the noticee. On June 30, 2017, ARL agreed to provide the correct address of the Noticee. ARL served the noticee to the noticee.

8. Allegations in the SCN broadly are as follows:

- 8.1. *It was observed from the corporate announcements of ARL dated February 8, 2007 and April 25, 2007, noticee was allotted 2,46,000 shares and 2,57,000 shares respectively by way of preferential allotment and conversion of warrants. Thus, the total shareholding of noticee as on June 27, 2007 was 5,03,000 shares (7.14%) of the share capital of ARL of 7(1) of SEBI (SAST) Regulations, 1997. Further, Noticee has acquired 1,91,775 shares on October 17, 2007 which resulted in increase in its shareholding by 2.72% and therefore requires disclosures in terms of PIT Regulations, 1992.*
- 8.2. *It was alleged that noticee has violated Regulation 7(1) of SEBI (SAST) Regulations, 1997 and Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 by failing to make disclosures both to the stock exchange and to the company within 2 working days from the date of acquisition of shares of ARL.*

Personal Hearing:

9. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticee on July 06, 2017 granting an opportunity of personal hearing before the undersigned on August 03, 2017 along with the reminder to reply to SCN. Noticee didn't appeared for the personal hearing.
10. Noticee vide its letter dated July 22, 2017 submitted its reply and *interalia* stated the following:
- 10.1. *During the Financial Year 2007-08 the Company M / s Alchemist Realty Limited had issued Bonus Shares in the Ratio of 1:1 and the same was informed to relevant stock exchange. During the quarter ending June 2008 the Company M / s Alchemist Realty Limited has exercised stock split option in the Ratio of 1:5. The enhance shareholding of our Company for M / s Alchemist Realty Limited is because of Bonus Shares and thereafter their entitlement of extra shares due to stock split.*
- 10.2. *The change in shareholding is duly informed to the Stock Exchange.*

11. Another chance of personal hearing was granted on September 20, 2017 but the same was postponed due to the email followed by letter dated September 14, 2017 received from the Noticee, where it had requested for adjournment of hearing.

Last and final opportunity of Personal Hearing:

12. Personal hearing was granted on March 23, 2018 to the Noticee and the hearing notice was also issued through E-mail with digital signature, which was duly delivered.

13. **Reply of Noticee dated March 23, 2018:** *Noticee reiterated the submission made on July 22, 2017.*

Consideration of Issues, Evidences and Findings:

14. I have carefully perused the charges levelled against the Noticee as per the SCN and written submissions made by the Noticee and the materials/documents available on record. The issues that arise for consideration in the present case are :

Issue I: Whether noticee has violated Regulations 7(1) of the SEBI SAST Regulations and Regulation 13(3) read with 13(5) of PIT 1992;

Issue II: Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act against Noticee;

Issue III If so, what should be the quantum of monetary penalty?

15. Before proceeding further, it is pertinent to refer to the relevant provisions of the SAST Regulations and PIT Regulations which read as under:

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

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

Relevant provision of PIT Regulations, 1992:

Continual disclosure.

13(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.

13(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.

Relevant provision of SAST Regulations, 2011:

Repeal and Savings.

35.(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, 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;

(b) 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 has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

Relevant provision 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;

Findings

16. I note that it was alleged that noticee has not made disclosure under Regulation 7(1) of SAST and Regulation 13(3) read with Regulation 13(5) of the PIT, 1992 as mentioned above, however in its reply to the SCN noticee has claimed that it has made all desired disclosures on time. I note noticee has not produced any evidence to support its claim and I do not find details of disclosure made by the noticee for the aforesaid shareholding on BSE website. In the light of the same, I do not find merit in

the submission of the noticee and conclude that it has violated Regulation 7(1) of SAST and Regulation 13(3) read with Regulation 13(5) of the PIT, 1992.

17. Here I rely on the SAT's Ruling in *Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, wherein 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."

18. **Issue II: Does the violation, if any, attract monetary penalty** under section 15A (b) of SEBI Act against Noticee.

Section 15A(b) of the SEBI Act reads as under:

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 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.

19. Since it is concluded that Noticee has violated Regulation 7(1) of SAST 1997 and Regulation 13(3) read with Regulation 13(5) of the PIT, 1992 and hence it is liable for penalty under Section 15A (b) of the SEBI Act.

20. By not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was 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"

21. Issue III If so, what should be the quantum of monetary penalty?

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 read 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.

22. With regard to the above factors, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticee. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. The Noticee, by its failure to make true and correct disclosures, have severely impaired the integrity of the disclosure system put in place by the regulator and has deprived the investors of the significant information at the relevant time. Hence its actions warrant the imposition of penalty.

ORDER

23. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticee and factors mentioned in the provisions of Section 15J of the SEBI Act, I in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the AO Rules, conclude that the proceedings against the noticee stands established in terms of the provision 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 1,00,000 (Rupees one lakh only) on the Noticee.

24. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to

Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RT GS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

25. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA-IV) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	
Bank Name and Account Number from which payment is remitted	
UTR No	

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

Date: May 25, 2018

Place: Mumbai

SAHIL MALIK

ADJUDICATING OFFICER