

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/MC/DPS/2019-20/ 5747 ]**

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UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **M/s Secure Earth Technologies Limited** (PAN – AABCS9108H) having address at – 407, Dalamal Tower, Free Press Journal Road, Nariman Point, Mumbai – 400 021.

In the matter of M/s Secure Earth Technologies Limited.

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) initiated adjudication proceedings under Section 15A(b) of SEBI Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) against M/s Secure Earth Technologies Limited (hereinafter be referred to as, “**the Noticee/ Company**”) for the alleged violations of Regulation 13(6) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”). Noticee was listed on Bombay Stock Exchange (BSE).

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed Ms. Rachna Anand, General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) vide order dated May 10, 2018 to inquire into and adjudge under Section 15A(b) of the SEBI Act against the Noticee for the

aforesaid alleged violations. Subsequently, the undersigned was appointed as the Adjudicating Officer on May 10, 2018 which was communicated *vide* order dated October 22, 2018.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. EAD/EAD5/MC/CB/1370/2019 dated January 11, 2019 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15A(b) of SEBI Act, 1992, for the alleged violations of Regulations 13(6) of PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
  - a) Noticee had failed to make disclosures to BSE in terms of Regulation 13(6) of the PIT Regulations regarding information received from Mr. Jaswant Behl under Regulation 13(1) of the PIT Regulations during the period January 01, 2014 to June 30, 2014.
  - b) Examination revealed that Mr. Jaswant Behl acquired 700000 shares of the Company on April 03, 2014, as a result of which, his cumulative shareholding in the Company increased to 4000000 shares comprising of 5.55% of the total share capital of the Company.
  - c) Noticee vide e-mail dated January 08, 2015, confirmed that Mr. Jaswant Behl had informed it of the acquisition of 700000 shares of the Company on April 05, 2014.
  - d) On perusal of list of disclosures available on the website of the BSE, it was observed that disclosure of the information received from Mr. Jaswant Behl was done in terms of Regulation 13(6) of the PIT Regulations only on July 07, 2014.
  - e) Regulation 13(6) of the PIT Regulations requires a company to disclose the information received under Regulation 13(1) of the PIT Regulations, inter alia, to all the stock exchanges where its shares are listed within 2

working days of the receipt of information under Regulation 13(1) of the PIT Regulations. In view of the same, it was alleged that the Noticee had delayed in making disclosures of the information received under Regulation 13(1) of the PIT Regulations from Mr. Jaswant Behl and thereby, violated Regulation 13(6) of the PIT Regulations. The text of the aforesaid provisions is reproduced as under:

**SEBI (Prohibition of Insider Trading) Regulations, 1992**

13. ....

***Disclosure by company to stock exchanges.***

(6) *Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.*

- f) Noticee was informed that alleged violation, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992, text of which is reproduced as under:-

**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,-***

***(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.”***

5. The aforesaid SCN was served through Speed Post Acknowledgement Due (SPAD) to the Noticee at the address – M/s Secure Earth Technologies Limited, 407, Dalamal Tower, Free Press Journal Road, Nariman Point, Mumbai – 400 021, an acknowledgment of which is available on record. At paragraph 11 of

the SCN, the Noticee was advised to furnish its reply, if any, towards the SCN within 14 days of its receipt, failing which, it would be presumed that the Noticee had no reply to submit and the matter would be proceeded with on the basis of the material available on record. However, no reply towards the SCN was received from the Noticee.

6. An opportunity of hearing was provided to the Noticee on October 24, 2019 vide notice dated October 07, 2019 through SPAD on October 12, 2019 to the Noticee at the address – M/s Secure Earth Technologies Limited, 407, Dalamal Tower, Free Press Journal Road, Nariman Point, Mumbai – 400 021, acknowledgement of which is available on record, and through email at mandarjoshiandco@gmail.com. The Noticee was also advised to file its reply, if any, by October 23, 2019. The Noticee, vide Notice of Hearing dated October 07, 2019 was also notified that if no appearance is made by the Noticee on the date of hearing, the matter would be decided further on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. However, the Noticee did not file any reply towards the SCN and did not appear in the hearing scheduled on October 24, 2019.
7. I note that sufficient time and opportunity to appear for personal hearing has been given to the Noticee. However, the Noticee has failed to submit any reply towards the SCN and to appear for hearing in the instant adjudication proceedings. At this juncture, I find it relevant to refer to the order of Securities Appellate Tribunal in the matter of **Sanjay Kumar Tayal & Ors. v. SEBI** (Appeal No. 68 of 2013 dated February 11, 2014), wherein, it *inter alia* held that, “...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”. Thus, in absence of any response towards the SCN and notice of hearing from the Noticee, I am of the view that the allegations and the charges levied against the Noticee are not in dispute by them.

8. I also find it relevant to refer to the order of Hon'ble SAT in the matter of **Dave Harihar Kiritbhai v. Securities and Exchange Board of India** (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it observed, "...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...".
9. Keeping the aforesaid in mind, I decide to undertake the adjudication proceedings against the Noticee ex-parte on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules.

## **CONSIDERATION OF ISSUES AND FINDINGS**

10. The issues that arise for consideration in the instant matter are:

**Issue No. I** Whether Noticee had failed to make mandated disclosures under the Regulation 13(6) of PIT Regulations as alleged in the SCN?

**Issue No. II** If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

**Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

**Issue No. I** **Whether Noticee had failed to make mandated disclosures under the Regulation 13(6) of PIT Regulations as alleged in the SCN?**

11. The Noticee has not submitted any reply to the SCN. It had earlier, vide e-mail dated January 08, 2015, confirmed that it had received disclosures from Mr. Jaswant Behl on April 5, 2014 about its acquisition of 700000 shares of the Company on April 03, 2014 under Regulation 13(1) of PIT Regulations. I note from the website of the BSE, that disclosure of the information received from Mr. Jaswant Behl was done in terms of Regulation 13(6) of the PIT Regulations only on July 07, 2014.

12. Regulation 13(6) of the PIT Regulations requires a company to disclose the information received under Regulation 13(1) of the PIT Regulations, inter alia, to all the stock exchanges where its shares are listed within 2 working days of the receipt of information under Regulation 13(1) of the PIT Regulations. However, the Noticee made the disclosures with a delay of 3 months.

13. In view of the aforesaid, it is established that the Noticee failed to make disclosures within the time prescribed under Regulation 13(6) of the PIT Regulations.

**Issue No. II      If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?**

**&**

**Issue No. III      If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

14. Since failure of the Noticee in making disclosures to BSE under Regulation 13(6) of the PIT Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

**SEBI Act**

*“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 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.”*

15. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

16. I note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. Similarly, from the material available on record, no past default by the Noticee could be ascertained. It is established that the Noticee made delayed disclosure to BSE under Regulation 13(6) of PIT Regulations on July 07, 2014, i.e after a delay of 3 months.

17. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹2,00,000 will be commensurate with the violations committed.

#### **ORDER**

18. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakh only) upon the Noticee, i.e. M/s Secure Earth

Technologies Limited under Section 15A(b) of the SEBI Act for violation of Regulation 13(6) of the PIT Regulations.

19. 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 favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link

**ENFORCEMENT → Orders → Orders of AO → PAY NOW**

20. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

21. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**DATE: NOVEMBER 28, 2019**

**PLACE: MUMBAI**

**MANINDER CHEEMA**

**ADJUDICATING OFFICER**