

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. PG/AM/AO-42/2012

**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:

Sonal International Limited

(PAN – AACCS1185R)

In the matter of:

ACIL Cotton Industries Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) carried out an examination into buying, selling and dealing in the shares of ACIL Cotton Industries Limited (hereinafter referred to as “**Company**”). It was observed that Sonal International Limited (hereinafter referred to as “**Noticee**”) transacted substantially in the shares of the Company thereby increasing its shareholding to more than 5% of the share capital of the Company on two occasions, i.e., on March 08, 2011 and March 17, 2011. However, it was alleged that that the Noticee failed to make disclosures to the Company and Stock Exchange where the shares of the Company are listed,

as required under Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") and Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer vide order dated March 20, 2012 and the said appointment was conveyed vide proceedings of the Whole Time Member dated May 29, 2012 to inquire and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as "**SEBI Act, 1992**"), the alleged violations of provisions of Regulation 13(1) of PIT Regulations and Regulation 7(1) and 7(2) of SAST Regulations read with Regulation 35 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 committed by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

3. Show Cause Notice (hereinafter referred to as "**SCN**") in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") was issued to the Noticee on June 07, 2012, calling upon the Noticee to show cause why an inquiry should not be held against it under Rule 4(3) of the Adjudication Rules for the alleged violations.

4. The aforesaid SCN was duly delivered to the Noticee on June 11, 2012. Since no reply was received from the Noticee, vide Notice of Inquiry dated July 16, 2012; the Noticee was given an opportunity of personal hearing on July 24, 2012. The said Notice of Inquiry was also duly delivered to the Noticee on July 20, 2012. However, the Noticee failed to appear for personal hearing on the scheduled date. I note that the Noticee failed to submit the reply to the SCN and also failed to appear for hearing and therefore, the inquiry is proceeded with exparte, taking into account the material available on record.

ISSUES FOR CONSIDERATION

5. After perusal of the material available on record, I have the following issues for consideration, viz.,
 - A. Whether the Noticee has violated provisions of Regulation 13(1) of PIT Regulations and Regulation 7(1) read with 7(2) of SAST Regulations?
 - B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?
 - C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

6. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(1) of PIT Regulations and Regulation 7(1) read with 7(2) of SAST Regulations?

7. The provisions of Regulation 13(1) of PIT Regulations and Regulation 7(1) and 7(2) of SAST Regulations read as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in 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.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

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.

7 (2) *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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. From the material available on record, I note that the total share capital of the Company as on March 31, 2011 was 11,08,15,000 shares. From the depository statement of the Noticee (enclosed with the SCN as "Annexure I"), I note that on March 08, 2011 the Noticee acquired 2,15,887 shares taking its total shareholding in the Company to 56,94,241 shares (5.14% of the share capital). I also note that the Noticee sold 5,00,000 shares of the Company on March 14, 2011 thereby reducing its shareholding to 54,57,445 shares (4.95% of the share capital). Subsequently, on March 17, 2011 the Noticee purchased 1,45,000 shares thereby taking its total shareholding in the Company to 56,02,445 shares (5.06% of the share capital). I further note that as on March 31, 2011, the Noticee was holding 59,63,556 shares (5.38% of the share capital) of the Company.
9. From the above it is evident that the Noticee was holding more than 5% of the equity capital of the Company on March 08, 2011 and again on March 17, 2011. Hence, the Noticee was under obligation to make disclosures under Regulation 13(1) of PIT Regulations to the Company. However, no such disclosures had been made by the Noticee under the aforesaid regulations. I note that since the Noticee was holding more than 5% of the shares of the Company, in terms of Regulation 7(1) of SAST Regulations, the Noticee was also under obligation to disclose the aggregate of his shareholding in the Company to the Company and to the

stock exchanges where shares of the Company were listed on both occasions. However, no such disclosures had been made by the Noticee under Regulation 7(1) of SAST Regulations.

10. I note that despite duly receiving the SCN and Notice of Inquiry, the Noticee has not submitted any reply to the SCN and also has not refuted the charges. The Hon'ble Securities Appellate Tribunal in *Classic Credit Ltd. vs. SEBI*, Appeal No. 68/2003 has, *inter-alia*, held – “the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”. The Order passed by Hon'ble SAT is relied upon in this case for guidance. Therefore, I presume that the Noticee has admitted the charges alleged in the SCN.
11. In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(1) of PIT Regulations to the Company and under Regulation 7(1) of SAST Regulations to the Company and to the Stock Exchange, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(1) of PIT Regulations and Regulation 7(1) read with Regulation 7(2) of SAST Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

12. The provisions of Section 15A(b) of the SEBI Act, 1992 read as under:

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

15A (b): *If any person, who is required under this Act or any rules or regulations made thereunder 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.*

13. As already observed, the Noticee transacted substantially in the shares of the Company but failed to make disclosures as required under Regulation 13(1) of PIT Regulations and Regulation 7(1) of SAST Regulations. The Noticee had a significant shareholding in the Company. It was, therefore, important that the Company and the general investors should have been aware of the shareholding of the Noticee. Hence, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: *What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?*

14. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J 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."

15. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, as stated earlier, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, the Noticee had concealed the vital information which is detrimental to the interest of investors in securities market. Since the Noticee has failed to make the disclosures on two occasions, its default can be said to be repetitive.
16. In the forgoing paragraphs it is now established that the Noticee failed to make necessary disclosures under Regulation 13(1) of PIT Regulations and Regulation 7(1) of SAST Regulations. Considering the facts and circumstances of the case and the violation committed by the Noticee, I find that imposing a penalty of ₹1,00,000/- (Rupees One Lakh only) for violation of Regulation 7(1) of SAST Regulations and ₹ 1,00,000/- (Rupees One Lakh only) for violation of Regulation 13(1) of PIT Regulations on the Noticee would be commensurate with the violations committed by it.

ORDER

17. In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) under Section 15A(b) of SEBI Act, 1992 for violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations and ₹ 1,00,000/- (Rupees One Lakh only) under Section 15A(b) of SEBI Act, 1992 for violation of Regulation 13(1) of PIT Regulations; i.e, a total penalty of ₹ 2,00,000/- (Rupees Two Lakhs only) on Sonal International Limited.
18. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Division Chief, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
19. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: July 25, 2012

Place: Mumbai

Piyoosh Gupta
Adjudicating Officer