

ADJUDICATION ORDER NO. EAD-8/JS/SP/98/2017-18

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 Cressida Traders P Ltd.- PAN AAACC2388; CIN-U51900MH1985PTC035117 in the matter of Vishwamitra Financial Services Ltd. - formerly known as Blue Blends Finance Ltd.

BACKGROUND

1. Securities and Exchange Board of India ('SEBI') observed that certain disclosures which ought to have been made by Cressida Traders P Ltd. ('Cressida/Noticee') for change in its shareholding in Vishwamitra Financial Services Ltd. (earlier known as Blue Blend Finance Ltd., ('Company') during the period March 01, 2013 to June 30, 2014 ('Investigation period/IP'), in terms of relevant provisions as mentioned in following table, were not made. In this regard, nature of findings along with alleged violations of relevant provisions in respect of Cressida, is as follows:

Findings in brief	Alleged violations of provisions
i) Cressida, held 5,48,700 shares of the Company, which is 7.88% of the share capital of the Company. The Noticee sold shares resulted in change in holdings of 2% and above of the shares of the Company.	i) Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition and Takeovers) Regulations, 2011 (hereinafter referred to as 'Takeover Regulations')
ii) With respect to change in holdings, Cressida was required to file disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 and under SEBI (Substantial Acquisition and Takeovers) Regulations, 2011 to Company and Bombay Stock Exchange (BSE), however, as per intimation received from BSE, no disclosure were made by Cressida.	ii) Regulation 13(3) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter, referred to as 'PIT Regulations')

2. In view of the above, SEBI initiated adjudication proceedings against Cressida to inquire and adjudge under section 15A(b) of SEBI Act, 1992 (hereinafter, referred to as "**SEBI Act**") the alleged violations as mentioned in the aforementioned table.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed vide order dated February 26, 2016 under Section 15-I read with Section 19 of the Securities and Exchange Board of India Act, 1992 ('**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing

Penalties by Adjudicating Officer) Rule, 1995 ('**Adjudicating Rules**'), to inquire into and adjudge under Section 15A(b) of SEBI Act. Consequent to transfer vide Office Order dated October 04, 2017, the proceedings are now being continued further for the aforesaid alleged violations against Cressida.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ('SCN') in terms of provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act were issued on November 23, 2017 and January 15, 2018 to Cressida calling upon the Noticee to show cause as to why an inquiry should not be held against it under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. The details of change in shareholding of Cressida, its alleged violations and the compliance if any in terms of Takeover Regulations and PIT Regulation are as follows:

Date of the transaction	Sale (-ve)/ purchase	Shareholding of the Noticee		Shareholding of Noticee (post acq/sale) (in % to Share Cap.)	Due date of compliance	Whether disclosure made	Alleged Violations
		Before acq/sale	After acq/sale				
30-Oct-13	(30,000)	5,48,700	5,18,700	7.45	-	-	-
03-Dec-13	(1,58,700)	5,18,700	3,60,000	5.17	05/12/13	Yes on 30/9/15 in terms of reg. 29(2) of SAST	Delay in disclosure of Reg. 29(2) r/w Reg. 29(3) of SAST Reg. and Reg. 13(3) r/w Reg. 13(5) of PIT Regulations
18-Jan-14	(1,16,400)	3,60,000	2,43,600	3.50	-	-	-
23-Jan-14	(35,500)	2,43,600	2,08,100	2.99	27/1/14	-	Reg. 29(2) r/w Reg. 29(3) of SAST Regulations and Reg. 13(3) r/w Reg. 13(5) of PIT Regulations.
25-Jan-14	(1,100)	2,08,100	2,07,000	2.97	-	-	-
28-Jan-14	(34,000)	2,07,000	1,73,000	2.48	-	-	-
6-Feb-14	(64,000)	1,73,000	1,09,000	1.57	-	-	-
13-Feb-14	(1,09,000)	1,09,000	-	0	17/2/14	-	Reg. 29(2) r/w Reg. 29(3) of SAST Regulations and Reg. 13(3) r/w Reg. 13(5) of PIT Regulations.

5. In this regard, the Noticee vide letters dated December 08, 2017, January 11, 2018 and January 29, 2018 has submitted that:

- a. Cressida was holding 7.88% in the Company and the same holding is reduced to 2.48% till January 2014 but due to lack of knowledge on the part of the Management the same is not disclosed with the Stock Exchanges required under Regulation 13(3) and 13(5) of SEBI PIT Regulations and 29(2) and 29(3) of Takeover Regulations, 2011, but the said violation has been made good by the management by coming to the notice of such violations.
- b. As there was an unintentional delay and there was not a guilty intention on the part of the management or to earn the profit by manipulating the price of the shares of the Company. Thus, the said proceeding against Notice should be disposed off.
- c. The details of disclosure made under Regulation 29(2) as follows:

Sr.No.	Holding % to Share Capital	Regulation	Reported to Stock Exchange on
1	7.88	29(2)	2/7/2013
2	5.16	29(2)	30/09/2015
3	3.49	29(2)	30/09/2015
4	2.99	29(2)	8/2/2017

- d. The delay in submitting disclosure was technical in nature, and due to inadvertence, which was devoid of any malafide intention. Further, no harm is caused to any investor due to our non disclosure as the details regarding the change in our shareholding was disclosed in the shareholding pattern filed by the Company.
- e. The provisions of Regulation 29(2) of Takeover Regulation and Regulation 13(3) of PIT Regulations are not substantially different, since violation of first automatically triggers violation of second and hence a lenient view may be taken as regards imposition of penalty and penalty may not be imposed. The Regulation 29(2) of Takeover Regulations and Regulation 13(3) of PIT Regulations are not stand alone regulations and one is corollary of other.
- f. In this regard, we would like to bring to your kind notice the judgement delivered by Hon'ble Securities Appellate Tribunal (SAT) on 4.9.2013 in the case of '**Vitro Commodities Private Limited vs SEBI**' wherein interalia it has been held that "It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other." The Hon'ble SAT was pleased to reduce the penalty of Rs 10 lakh to a penalty of Rs 1 lakh for violation of Regulation 7(1) of Takeover regulations, 1997 (akin to Regulation 29(1) of Takeover regulations, 2011) and Regulation 13(1) of PIT Regulations.
- g. The similar views may also be taken of Regulation 29(2) of SAST Regulations and 13(3) of PIT Regulations as both the regulations puts an obligation on the shareholders already holding shares aggregating more than 5% of the share of the Company to make disclosures upon changes in their shareholding aggregating to 2% or more.
- h. Considering the above, the Ld. Adjudicating Officer vide his order no NP/SJ/AO-34/2017 dated May 11, 2017, after taking into considering all the fact and circumstances of the case imposed penalty of Rs. 1 lakh only for violation of Regulation 13(1) and SEBI PIT Regulations and Regulation 29(1) read with 29(3) of SAST Regulations.
- i. Therefore, it is duly submitted that, your goodself could see, that we have not committed any wrong and no change has been established against us even prima facie, to warrant any action.
- j. The judgements passed by Hon'ble Courts/ Hon'ble SAT for levying penalty are as follows:

Case of Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)–

The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."

Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579

It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that :-Para 61:"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mensrea has to be established".

Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)

The Hon'ble Supreme Court held that:-"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

- k. *We submit and say that there has been no malafide intention in not making the disclosures on time under the specific regulations. We did not have any intention to hide or conceal the information nor did we hide any information as the information would be in public domain through other requirements prescribed by SEBI. Hence, a lenient view may be taken.*
 - l. *We submit, say and reiterate that we have always followed all the procedures, as stipulated by a regulatory authority, follow all rules/regulations/instructions etc. issued by any government agency, and our intentions has always been to comply with rules/ regulations/ filling etc. and not to conceal any information.*
 - m. *No unfair gain or advantage has occurred to us and also no harm or loss has been caused to other investors, and kindly requested to take a lenient view in the matter and penalty stipulated under Section 15A(b) of SEBI Act may not be imposed.*
6. Accordingly, Cressida, vide letter dated December 08, 2017, has submitted the copies of the disclosures now made to the BSE and to the company in respect of the above mentioned changes in the shareholdings for the transactions dated December 03, 2013 and January 23, 2014.
7. It is noted that Cressida, vide letter dated October 05, 2015, in reply SEBI's Notice dated August 06, 2015 has provided a copy of disclosure made to the exchange in terms of SAST Regulations, for the change in holdings of 2% and above date December 03, 2013.
8. Subsequently, Cressida was granted a personal hearing on December 27, 2017. Cressida sought an adjournment of the hearing on the ground that their authorized representatives were not available on the said date. Another hearing was scheduled on January 12, 2018. The same was confirmed by Cressida, along with the intimation that the authorised representatives (AR) have now been changed.

9. The AR reiterated the submissions made in the earlier written submissions and listed out the mitigating factors for making a case for a reduced penalty.

CONSIDERATION OF ISSUES AND FINDINGS:-

10. Charges levelled against Cressida as per SCN, submissions of Cressida in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration are :
- a) Whether, Cressida have violated the respective provisions as alleged in the SCN?
 - b) If yes, does the violation, on the part of the Cressida attract monetary penalty under section 15A(b) of SEBI Act?
 - c) If yes, what quantum of monetary penalty should be imposed on Cressida taking into consideration the factors mentioned in Section 15J of the SEBI Act?

Issue a) Whether, Cressida have violated the respective provisions as alleged in the SCN?

11. The relevant provisions alleged against Cressida to have been violated are quoted as under:

PIT Regulations

Disclosure of interest or holding in listed companies by certain persons- Initial Disclosure.

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 disclosures 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), (4) and (4A) shall be made within two workings 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.

Takeover Regulations, 2011

Disclosure of acquisition and disposal.

29 (2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the 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 two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, — (a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office.

- 12.** Cressida held 7.88% (5,48,700 shares) of shares/voting rights of the Company which was subsequently reduced to 5.17% (3,60,000 shares) on December 03, 2013 and to 2.99% (2,08,100 shares) on January 23, 2014 and reduced to nil holdings on February 13, 2014, due to these change in holding, the disclosures requirement in terms of Takeover regulation and PIT Regulation were triggered.
- 13.** It is an admitted fact that Cressida subsequent to the SEBI Notice dated August 06, 2015 had made partial disclosure, for the change in its holdings from 7.88% to 5.17% of the share capital, on September 30, 2015 to BSE in terms of Takeover Regulation i.e. Twenty two (22) months delay in filing the disclosure. With respect to disclosure requirements in terms of PIT Regulations, Cressida filed disclosure to BSE on December 08, 2017 along with the disclosure for the decrease in holding of Cressida i.e. 5.17% to 2.99% (on January 23, 2014) in terms of Takeover Regulation and PIT Regulation. For the change in holdings i.e. from 2.99% to 0% (on February 13, 2014), no disclosure were filed in terms of Takeover Regulations and PIT Regulations by Cressida.
- 14.** It is noted that Cressida filed disclosures on December 08, 2017, subsequent to the SCN dated November 23, 2017 issued to Cressida.
- 15.** It is clear from the facts as mentioned by Cressida that indeed the appropriate disclosures were not made at the relevant point of time. Though now on December 08, 2017 Cressida has made the disclosure as is evident from the acknowledged copy of the letters to the BSE and the company. Thus, admittedly there is a delay/ non-disclosure of the change in its holdings.
- 16.** It is pertinent to state that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. It is clear that when mandatory time period is stipulated for a doing a particular activity, it must be complied within the said period to serve the purpose and delayed compliance would not absolve Cressida.
- 17.** With respect to the submission of Cressida, that the delay was unintentional and there was not a guilty intention on the part of the management or to earn the profit by manipulation the price of the shares of the Company and therefore the proceedings against Cressida should be disposed off, is without any merit, because the intention or otherwise of gaining or losing is neither a case that has been alleged nor is it required to be so. Firstly, penal liability arises as soon as provisions under the

Regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.

18. It would also be appropriate to refer here the observations made by the Hon'ble Securities Appellate Tribunal (SAT) in the following case:

- a) Further, in the matter of Akriti Global Trades Ltd. Vs SEBI (Appeal No. 78 of 2014) decided on September 30, 2014:- *"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

19. Given the above, there it is concluded that the Cressida has violated the provisions as alleged.

Issue b) If yes, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?

20. In view of the above conclusion drawn, it now remains to be determined whether the violation attracts the monetary penalty under section 15A(b) of the SEBI Act. In this regards the provisions of Section 15A(b) is quoted as follows:

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

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 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;"*

21. Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence,once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

22. Based on the above it is determined that it is a fit case for imposition of monetary penalty on the Noticee

Issue c) If yes, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

23. 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 reads as under:-

“Factors to be taken into account by the adjudicating officer

15J. 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.”*

24. The available records neither reveals any disproportionate gains/ unfair advantage made by Cressida, the specific loss suffered by the investors due to such violations and nor has such allegations been made against Cressida.

25. The factors set out the in the Order of the Hon'ble Securities Appellate Tribunal in *Ashok Jain V. SEBI (Appeal no. 79 of 2014 decided on June 09, 2014)*, have been considered as under *"..... Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations..."*

26. As regards the delayed disclosures made, it is noted that the Hon'ble Securities Appellate Tribunal in the matter of *Yogi Sungwon (India) Ltd. Vs SEBI* dated May 04, 2001 in the appeal No. 36 of 2000 has observed that: *".....that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay."*

27. As regards the contention that due to non-disclosures no loss has been caused to the investors, Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Komal Nahata Vs. SEBI* dated January 27, 2014 held that: *“Argument that no investor has suffered on account of non-disclosureis 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.”*

28. The submissions of Cressida w.r.t the ratio decided in the order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Vitro Commodities P Ltd* is found tenable.

29. Therefore, taking into consideration the facts / circumstance of the case and above factors, a justifiable penalty needs to be imposed upon Cressida to meet the ends of justice.

ORDER

30. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against Cressida stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, a monetary penalty of **Rs.10,00,000 (Rupees Ten Lakhs only)** is imposed upon Cressida Traders P Ltd. under Section 15A(b) of SEBI Act, 1992.

31. Cressida shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

32. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - IV [EFD1-DRA-I], SEBI Bhavan, Plot No.C4-A, ' G ' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

33. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: January 31, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer