

ADJUDICATION ORDER NO. AO/JS/VRP/09/2018

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:

**Maitru Agro Marketing Private Limited
CIN: U51101MH2007PTC170715
PAN No. AAFCM0778B**

In the matter of Le Waterina Resort and Hotels Limited

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) observed that during the period of October 01, 2010 to March 05, 2012 (**investigation period**) the entity viz. Maitru Agro Marketing Private Limited (**Noticee**) had allegedly violated Regulation 7(1) r/w Regulation 7(2) of SEBI (SAST) Regulation, 1997 r/w Regulation 35 of SAST Regulation, 2011 and Regulation 29(2) of SAST Regulation, 2011 and Regulation 13(1) and Regulation 13(3) of SEBI (PIT) Regulation, 1992 r/w Regulation 12(2) of SEBI (PIT) Regulation, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

2. An Adjudicating Officer was appointed vide order dated February 07, 2017 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (**SEBI Act, 1992**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**Adjudication Rules**), to inquire into and adjudge under Section 15A(b) of SEBI Act, 1992. Consequent to transfer, the proceedings are now proceeded with in terms of Order dated May 18, 2017 to inquire into and adjudge under Sections 15A(b) the alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice Ref. No. EAD-8/JS/VRP/OW/P/2017/23665/1 (**SCN**) at its registered Sohan B Kumawat, C-301, Sarita PL, Opposite Gulfam Hotel, Ghartan Pada no.2, W,E Highway, Dahisar (East), Mumbai- 400068 in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on September 28, 2017 to the Noticee calling upon the Noticee to show cause as to why an inquiry should not be held against the Noticee under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. The SCN was returned undelivered with a remark "Left". The copy of the said SCN was resent at another address vide letter Ref. No. EAD-8/JS/VRP/OW/27033/2017 dated November 03, 2017 at Turf Estate, 204, 2nd

Floor, Shakti Mills Lane Off Dr. E. Moses Road, Mahalaxmi Mumbai-400011. The said copy of the SCN returned undelivered with a remark "Left". Thereafter, the scan copy of the said SCN was sent through email at email id: tapasda3@gmail.com available at Ministry Of Corporate Affair website (www.mca.gov.in).

4. An opportunity of personal hearing in terms of Rule 7(d) of the Rules, was granted to the Noticee on January 25, 2018 at SEBI, Head Office, Mumbai, vide newspaper publication on January 12, 2018 in the local newspaper circulated in all Mumbai Editions i.e., Times of India in English language and Navbharath Times in Hindi language and Maharashtra Times in Marathi language.
5. It was also published in the said newspaper publications that the Noticee shall collect the Show Cause Notice from Enquiry and Adjudication Department-8 (EAD-8), Securities and Exchange Board of India, SEBI Bhavan, C-4 A, G Block, BKC, Bandra (E) Mumbai 400051. It was further published that the said SCN has been published/ uploaded for on www.sebi.gov.in under the section Enforcement: Unserved Summons/ Notices' and Noticee are also advised to take note of the same.
6. It is to mention that there has been no communication from the Noticee to the SCN and the hearing notices despite delivery of notices in terms of the Rules.
7. The Noticee have not submitted its reply to the SCN nor have availed the opportunity of personal hearing despite notice through paper publications. Hence, the matter is proceeded in terms of Rule 4(7) of the Adjudication Rules after taking into account the facts and material available on record.

ISSUES FOR CONSIDERATION

8. After perusal of the material available on record, the following issues arise for consideration, viz.,
 - I. **Whether the Noticee had violated of the provisions of the Regulation 7(1) r/w Regulation 7(2) of SEBI (SAST) Regulation, 1997 r/w Regulation 35 of SAST Regulation, 2011 and Regulation 29(2) of SAST Regulation, 2011 and Regulation 13(1) and Regulation 13(3) of SEBI (PIT) Regulation, 1992 r/w Regulation 12(2) of SEBI (PIT) Regulation, 2015.**
 - II. **Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?**
 - III. **If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992?**

FINDINGS

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, the findings are hereunder.

ISSUE I: Whether the Noticee had violated of the provisions of the Regulation 7(1) r/w Regulation 7(2) of SEBI (SAST) Regulation, 1997 r/w Regulation 35 of SAST Regulation, 2011 and Regulation 29 (2) of SAST Regulation, 2011 and Regulation 13(1) and Regulation 13(3) of SEBI (PIT) Regulation, 1992 r/w Regulation 12(2) of SEBI (PIT) Regulation, 2015.

10. It is noted that the Noticee a non-promoter entity had bought and sold shares of Le Waterina Resort and Hotels Limited (**Company**) on December 16, 2010, February 04, 2011, September 21, 2011 and October 24, 2011 during the investigation period. Following are the details of transactions where the Noticee failed to comply with disclosure requirement under SAST Regulations, 1997 and PIT Regulations, 1992 :

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
											SA ST	PIT
16/12/10	1,43,000	2.15	2,00,000	3,43,000	5.15	3.00	Off market	07/12/2012 29(1) & 13(1)	07/01/2013 29(1)	Not made	7(1)	13(1)
04/02/11	3,43,000	5.15	-3,00,000	43,000	0.65	4.50	Off market	07/12/2012 13(3)	NA	Not made		13(3)
21/09/11	24,32,324	3.65	27,00,000	5,132,324	7.70	7.06	Off market	07/12/2012 29(1) & 13(1)	07/01/2013 29(1)	Not made	7(1)	13(1)
24/10/11	42,32,324	6.35	-5,00,000	3,732,324	5.60	2.10	Off market	07/12/2012 13(3)	Not made	Not made	29(2)	13(3)

11. It is noted from the above table that the Noticee had acquired 2,00,000 lakh through off market on December 16, 2010 and its shareholding increased from 2.15% to 5.15%.

12. It terms of Regulation 7(1) of SAST Regulations, 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 within two working days.

13. Similarly, under Regulation 13(1) of PIT Regulations, 1992 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 the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.
14. It is noted from the above instance that the Noticee had disclosed to the company under Regulation 29(1) of SAST Regulations, 2011 and under Regulation 13(1) of PIT Regulations, 1992 on December 07, 2012 that is almost after 2 years. Hence, it is noted that there is delay of 2 years in making disclosures for the transaction dated December 16, 2010
15. In terms of Regulation 13(3) of PIT Regulations, 1992, 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.
16. On February 04, 2011 the Noticee had sold 3,00,000 shares and its shareholding reduced from 5.15 % to 0.65 % and the change in shareholding was 4.50% that is more than 2%. It is noted that the Noticee had disclosed to the company on December 07, 2012 under Regulation 13(3) of PIT Regulations, 1992 that is almost 1 year 10 months, thus the delay.
17. It is noted that the Noticee had acquired 27,00,000 shares on September 21, 2011 and its shareholding increased from 3.65% to 7.70% and the change in shareholding crossed 5%. It is noted that the Noticee had disclosed to the company on December 07, 2012 under Regulation 29(1) of SAST Regulations, 2011 and under Regulation 13(1) of PIT Regulations, 1992 that is almost after 15 months. Hence, it is noted that there is delay of more than 15 months in making disclosures for the transaction dated September 21, 2011.
18. In terms of Regulation 29(2) of SAST Regulations, 2011, any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company with in two working days of receipt of intimation of allotment of shares or acquisition of shares of voting rights in the target company.

19. It is noted that the Noticee had sold 5,00,000 shares on October 24, 2011 and its shareholding reduced from 6.35 % to 5.60 % and there was change in shareholding by more than 2%. It is noted that the Noticee had disclosed to the company on December 07, 2012 under Regulation 13(3) of PIT Regulations, 1992 that is almost 14 months, however the Noticee had not made the disclosure under Regulation 29(2) of SAST Regulations, 2011. Hence, it is noted that there is delay of 14 months in making disclosures for the transaction dated October 24, 2010 under Regulation 13(3) of PIT Regulations, 1992 and there is no disclosure under Regulation 29(2) of SAST Regulations, 2011.

20. It is noted that the Noticee had not replied to the SCN. In respect of non-submission of the replies by the Noticee, reliance is placed on the judgment of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others v SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), inter-alia, observed that –

“.....As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, 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.....”.

21. In view of the above facts and the legal pronouncement, the Noticee have violated Regulation 7(1) r/w Regulation 7(2) of SEBI (SAST) Regulation, 1997 r/w Regulation 35 of SAST Regulation, 2011 and Regulation 13(1) of SEBI (PIT) Regulation, 1992 r/w Regulation 12(2) of SEBI (PIT) Regulation, 2015 for the transactions dated December 16, 2010 and September 21, 2011. Further, the Noticee have violated Regulation 13(3) of SEBI (PIT) Regulation, 1992 r/w Regulation 12(2) of SEBI (PIT) Regulation, 2015 for the transaction dated February 04, 2011 and October 24, 2011 and violated Regulation 29(2) of SAST Regulation, 2011 for the transaction dated October 24, 2011.

ISSUE II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?

22. The violations referred at para 21 on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992. The text of the said provision is 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 ¹[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];

.....

23. In this respect the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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 and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992?

24. 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.*

²*[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

The above explanation to Section 15J of SEBI Act, 1992 was inserted vide amendment dated April 26, 2017 in the Finance Act, 2017

25. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee.
26. There is material on records to state that the violation of the Noticee is repetitive in nature as there have been four instances of violation. While non-disclosure of one transaction continues even as on date.
27. Given the above, an appropriate penalty is justified to be imposed in the present case.

¹ Substituted for "a penalty not exceeding five thousand rupees for every day during which such failure continues", by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002.

² Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

ORDER

28. After taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of SEBI Act, 1992. I impose a penalty of Rs 5,00,000/- (**Rupees Five Lakh only**) under Section 15 A(b) on the Noticee Maitru Agro Marketing Private Limited, which in my opinion, will be commensurate with the violations committed by the Noticee.

29. 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 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
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

30. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. 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)

31. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: June 15, 2018

Place: Mumbai

Jeevan Sonparote

Adjudicating Officer