

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 48 /2013-14]

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

Against

Shri Subash Chandran

[PAN: AAHPC0075G]

In the matter of

Satyam Computer Services Limited

Background:

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') examined into the irregularity in trading in the shares of Satyam Computer Services Limited (hereinafter referred to as 'SCSL'), a company listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE), for the period from August 01, 2012 to September 14, 2012 and into the possible violation of the provisions of the SEBI Act, 1992 (hereinafter referred to as the Act) and various Rules and Regulations made there under.
2. The examination, inter alia, revealed that Shri Subash Chandran (hereinafter referred to as the Noticee) was a designated associate with SCSL and the Vice President of CSG Domain Competencies. Mrs. Neeta Subash Chandran, wife and a dependant of the Noticee had sold 6400 shares of

SCSL on August 28, 2012 for a value of ₹ 6,16,381/-. Since, the said transaction exceeded ₹ 5,00,000 lakhs in value, the Noticee is mandated to make the necessary disclosure to the company / SCSL and the stock exchanges where the shares of the company were listed as prescribed under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the PIT Regulations). However, the Noticee failed to do so.

3. SEBI has, therefore, initiated adjudication proceedings to inquire into and adjudge the alleged violations of the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations against the Noticee.

Appointment of Adjudicating Officer:

4. In view of the above, SEBI vide Order dated January 10, 2013 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee.

Notice, Reply & Personal Hearing:

5. Accordingly, the undersigned issued a notice dated January 22, 2013 (hereinafter referred to as the 'SCN') to the Noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against him for the alleged violations. The SCN was duly delivered to the Noticee. The Noticee vide letter dated February 07, 2013 replied to the SCN. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee vide notice dated June 19, 2013 on July 05, 2013. The Noticee attended the said hearing and made oral submissions. He also reiterated the submissions made by him in his reply dated February 07, 2013.

6. In view of the above, I am proceeding with the inquiry taking into account the reply of the Noticee and the documents and material as available on record.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges against the Noticee as per the SCN, oral and written submissions and the materials and documents as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of Regulations 13(4) read with 13(5) of the PIT Regulations?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A (b) of the SEBI Act?

(c) If yes, what should be the quantum of penalty?

8. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

Relevant provisions of PIT Regulations:-

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies -

Continual disclosure

(3)

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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.

9. I find from the SCN that the Noticee was a Designated Associate of SCSL and Vice President of CSG Domain Competencies. Mrs. Neeta Subash Chandran

is the wife of the Noticee and is also a dependant of him. On August 28, 2012, Mrs. Neeta Subash Chandran had sold 6400 shares of SCSL for a value of ₹ 6,16,381/- constituting 0.0003% of the issued capital. As per the disclosure requirement prescribed under Regulation 13(4) of the PIT Regulations, any person who is a director or officer of a listed company has to disclose to the company and the stock exchanges, the total number of shares or voting rights held and change in shareholding or voting rights of such person and his dependants, if there has been a change in such holdings which exceeds ₹ 5 lakhs in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower. The said transaction value exceeded ₹ 5 lakhs in value and therefore, the Noticee was required to make the necessary disclosures which he failed to do. SEBI vide e-mail dated October 17, 2012 sought information from SCSL as to whether disclosures were made by the Noticee for the said transaction. SCSL vide its reply dated October 25, 2012 stated that no such disclosures were made.

10. The Noticee vide his reply dated February 07, 2013 submitted that in May 2012, all Vice Presidents of SCSL were included as designated employees, as against only Senior Vice Presidents earlier. Therefore, the Noticee's name was also included as a designated employee even though his role was only technical in nature. The transaction in question was done by his wife in August 2012 i.e. about three months after he became the designated associate. The Noticee submitted that his wife was unaware of the disclosure requirements as applicable to designated employees and their dependants. As soon as the Noticee became aware of the said lapse to comply with the disclosure regulations, he informed SCSL by an e-mail on September 11, 2012 and filled up and signed Forms D and G which were submitted to the company on September 14, 2012. The Noticee stated that the said non-compliance was inadvertent and there was no malafide intention.
11. I note that the Noticee admitted the allegations / charges leveled against him in the SCN. Though the Noticee has submitted that disclosures were made to SCSL on September 14, 2012, as per the reply received from the company

vide its e-mail dated October 25, 2012, the company has denied any disclosure being made by the Noticee for the said transaction. The Noticee has not produced before me any documentary evidence to support his submission. In the absence of any documentary evidence, I do not accept the submission of the Noticee and conclude that no disclosures have been made by him for the said transaction. Therefore, I conclude that the Noticee has violated the provisions as prescribed under Regulation 13(4) read with regulation 13(5) of the PIT Regulations and has indeed failed to adhere by the statutory requirements under the law warranting imposition of monetary penalty under Section 15A(b) of the Act.

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

15A. Penalty for failure to furnish information, return, etc.

If any person who is required under this Act or any rules or regulations made there under:-

(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 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. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".
14. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, 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. I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee or to ascertain whether the defaults are repetitive in nature. In this context I note the submissions of the Noticee that the omission was inadvertent / unintentional and he has since retired from the services of SCSL.

Order

16. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 50,000 (Rupees Fifty Thousand only) on Shri Subash Chandran under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.
17. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

- 18.** In terms of the Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: July 23, 2013

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**