

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/RGA/AO/104 /2014-15]

**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

Mr. Akshat Ashok Gupta

(Pan No. AMYPG2411K)

In the matter of M/s Santowin Corporation Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the alleged irregularity in the trading in the shares of M/s Santowin Corporation Ltd. (hereinafter referred to as '**SCL/Company**') and into possible violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and various rules and regulations made there under for the period from June 01, 2013 to September 30, 2013 (hereinafter referred to as '**examination period**').
2. The examination inter-alia revealed that one of the promoters of SCL, Akshat Ashok Gupta (hereinafter referred to as '**Noticee**') made

acquisitions in excess of the benchmark limit requiring him to make disclosure to the company and to the stock exchange, but failed to make such disclosure to the stock exchange, in violation of the provisions of regulation 13(4A) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated May 09, 2014 under section 15 I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the aforesaid alleged violation.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. ASK/RGA/15710/2014 dated June 02, 2014 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act, 1992 for the alleged violation specified in the SCN.
5. As per our records, Noticee filed a reply on June 25, 2014. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on August 20, 2014 vide notice dated July 21, 2014. Noticee sought adjournment of hearing. Another opportunity of personal hearing was granted to the Noticee on September 16, 2014 vide notice dated September 01, 2014. Noticee did not appear for the

hearing. Further, another opportunity was granted to the Noticee on October 16, 2014 vide notice dated September 30, 2014. Noticee vide e-mail dated October 16, 2014 requested for adjournment of hearing. Final opportunity of hearing was granted to the Noticee on November 14, 2014 vide notice dated November 03, 2014. The Noticee vide e-mail dated October 16, 2014 requested for re-scheduling the hearing on November 13, 2014. Accordingly, the hearing was rescheduled on November 13, 2014. The Authorized Representative (AR) appeared on behalf of the Noticee and reiterated the submissions made vide letter dated June 25, 2014. The AR also requested for one week's time for filing additional evidence in support of the submissions made vide letter dated June 25, 2014. Subsequently, time till November 20, 2014 was granted to the Noticee as a final opportunity. Accordingly, Noticee vide letter dated November 20, 2014 filed further submissions.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had violated the provisions of regulation 13(4A) read with 13(5) of the PIT Regulations, 1992 ?
 - b. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act, 1992?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?
7. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

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

13 (1)

(2)

(3).....

(4).....

(4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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) and (4A) 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.

Finding

The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticee had violated the provisions of regulation 13(4A) read with 13(5) of the PIT Regulations, 1992?

8. Noticee is a promoter of SCL which is a company listed on Bombay Stock Exchange (BSE). Noticee had acquired 7,85,886 equity shares during the month of September 2013. Consequently, shareholding of the Noticee increased from 16,39,976 shares constituting 1.66% of share capital of SCL to 24,25,862 shares constituting 2.46% of share capital of SCL.

9. In this regard, I note that as per the provisions of regulation 13(4A) read with 13(5) of PIT Regulations, 1992 any person who is a promoter or part of the promoter group of a listed company has to disclose to the company and to the stock exchange where the securities are listed,

within two working days, if change in holding of such person from the last disclosure exceeds ₹ 5 Lakh in value, or 25,000 shares or 1% of the total shareholding or voting rights whichever is lower. In the instant case, it was observed during examination that the Noticee failed to make disclosure to the stock exchange under regulation 13(4A) of PIT Regulations, 1992. It was alleged in the SCN that as a result of his failure to make the disclosure the Noticee has violated regulation 13(4A) of PIT Regulations, 1992.

10. It was alleged in the SCN that the Noticee had acquired 7,85,886 equity shares during the month of September 2013. However, from the copies of disclosures available on record as submitted by the Noticee and acknowledged by the company, it is observed that the Noticee had acquired 9,00,886 equity shares during the month of September 2013. The details of the said acquisitions are as under:

Date of acquisition	Buy Quantity	Buy Value	%
02.09.2013	5,00,000	2,45,788.40	0.51
03.09.2013	2,00,000	91,000	0.20
18.09.2013	1,00,886	49,410.72	0.10
23.09.2014	1,00,000	47,000	0.10

11. The acquisitions made by the Noticee on 4 occasions exceeded the benchmark limits prescribed under regulation 13(4A) of PIT Regulations, 1992, therefore, the Noticee was under an obligation to make the disclosure to the stock exchange under regulation 13(4A) of PIT Regulations, 1992 on each of the abovementioned 4 occasions.

12. In response to the SCN, the Noticee has submitted that the necessary disclosures were submitted to the stock exchange through ordinary post immediately after such acquisition but did not produce any evidence whatsoever, in support of his submission of having made the disclosure to the exchange. The Noticee has only produced copies of letters containing the disclosures, addressed to the stock exchange with a copy marked to company. The said letters bears only acknowledgment with rubber stamp by the company. There is no evidence of proof of delivery of the disclosure to the stock exchange. Moreover, vide its e-mail dated February 26, 2014, BSE has confirmed that no disclosures were received by it in respect of the acquisitions made by the Noticee. Therefore, the submission of the Noticee in this regard cannot be accepted.

13. The obligation to make disclosures under regulation 13(4A) of PIT Regulations, 1992 is mandatory. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the stakeholders.

14. In the instant case, I find that the Noticee failed to make disclosure to the stock exchange under regulation 13(4A) read with 13(5) of PIT Regulations, 1992 on 4 occasions. Therefore, I hold that the Noticee has violated regulation 13(4A) read with 13(5) of PIT Regulations, 1992.

(b) Does the non-compliance, if any, attract monetary penalty under section 15A (a) and 15A(b) of SEBI Act, 1992?

15. The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} 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...”.

16. As the violation of the statutory obligation under regulation 13(4A) of PIT Regulations, 1992 has been established, I am convinced that it is a fit case for imposing monetary penalty under section 15A(b) of SEBI Act, 1992, which reads as under:-

Penalty for failure to furnish information, return, etc.

15A. 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 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.

(c)

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

17. While determining the quantum of penalty under section 15A (b) of SEBI Act, 1992 , it is important to consider the factors stipulated in section 15J of 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.”*

18. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. There is no material on record which dwells on the extent of specific gains made by the Noticee as a result of default. However, the fact remains that by not making the required disclosures, the Noticee had deprived the investors of important information at the relevant time.

19. I find that the Noticee has committed default under regulation 13(4A) of PIT Regulations, 1992 on 4 occasions. Therefore, the default is repetitive in nature.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 7,00,000/- (Rupees Seven Lakh Only) on the Noticee which will be commensurate with the violation committed by it.

21. The Noticee shall pay the said amount of penalty by way of demand draft in favor of “SEBI - Penalties Remittable to Government of India”,

payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: DECEMBER 24, 2014

PLACE: MUMBAI

A. SUNIL KUMAR

ADJUDICATING OFFICER