

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/ AO/DSR/ BKM/630 /2017]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY
ADJUDICATING OFFICER) RULES, 1995**

In respect of:

Prime Capital Market Limited (PAN: AABCP9313M)

In the matter of Blue Circle Services Limited

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to the detection of a huge rise in the traded volumes and/or price of the shares of Blue Circle Services Limited (hereinafter referred to as 'BCSL/company'), a company listed at Bombay Stock Exchange Limited (BSE), conducted an investigation into the alleged irregularity in the trading in the shares of BCSL and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'Act') and various Rules and Regulations made there under during the period from July 21, 2010 to October 20, 2011(hereinafter referred to as the 'IP').
2. The investigation, *inter alia*, revealed that Prime Capital Market Limited (hereinafter referred to as the 'PCML/Noticee') had failed to make disclosures for the change in shareholding as required under Regulation 13(3) read with 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "PIT Regulations, 1992") and Regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the "SAST Regulations, 1997").

Appointment of Adjudicating Officer

3. SEBI has, therefore, initiated adjudication proceedings against the Noticee and I have been appointed as Adjudicating Officer (AO), vide order dated April 2, 2014 under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15A (b) of the Act, the alleged violation of the provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

4. A show cause notice dated July 17, 2014 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 15A (b) of the SEBI Act for the alleged violation of the provisions of law.
5. The Noticee submitted its reply to the SCN vide letter dated August 8, 2014. Thereafter, in order to conduct inquiry, vide letter dated December 2, 2015 an opportunity of personal hearing was granted to the Noticee on December 14, 2015. An email dated December 8, 2015 was also sent to the Noticee scheduling the personal hearing on December 14, 2015.
6. The Noticee vide letter dated December 16, 2015 acknowledged the receipt of the hearing notice and requested to reschedule the date of hearing to any date post the third week of January, 2016. The request of the Noticee was partly acceded to and another opportunity of personal hearing was granted to the Noticee on January 8, 2016. However, the Noticee did not attend the hearing on January 8, 2016. Further one more opportunity of personal hearing was granted on May 09, 2017 which was attended by the Authorized Representative (AR) of

the Noticee and the AR reiterated the submissions already made vide letter August 08, 2014.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges levelled against the Noticee in the SCN, written submissions made and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:
 - a. **Whether the Noticee has violated Regulation 13(3) read with 13 (5) of PIT Regulations, 1992 and Regulation 7(1) of the SAST Regulations, 1997?**
 - b. **Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the Act?**
 - c. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the Act?**
8. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations, 1992 and SAST Regulations, 1997 which read as under:

Disclosure of interest or holding in listed companies by certain persons – Continual disclosure under PIT Regulations 1992

13(3) Any person who holds more than 5% shares or 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.

(5) The disclosure mentioned in sub-regulations (3), (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.

Acquisition of 5 per cent and more shares or voting rights of a company under SAST Regulations, 1997

Regulation 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.

9. From the SCN, I note that the change in the shareholding of PCML was on account of preferential allotment as on September 14, 2010 and allegedly no disclosures were made by the Noticee in terms of 13(3) read with 13 (5) of PIT Regulations, 1992 and Regulation 7(1) of SAST Regulations, 1997.

Submissions made by the Noticee:

10. The Noticee, vide his letter dated August 8, 2014 denied all the charges leveled against it in the SCN. The Noticee submitted as under:
- (i) That the percentage of the shareholding of the Noticee in BCSL reduced from 20.08% in June 2010 to 5.06% in September by virtue of shares offered on preferential basis which was approved by the shareholders of BCSL in its Extra Ordinary General Meeting (EGM) held on 30th August, 2010 by passing a special resolution. The above transaction resulted in decrease from 20.08% to 5.06%.
 - (ii) That on the allegation of violation of Regulation 7(1) of SAST Regulations 1997, the Noticee submitted that it is the Promoter of the Company who was already holding 20.08% of share capital of BCSL and it has already got more than 15% of share capital of BCSL in the quarter ending June 2010. Since its shareholding was already more than 15%, it did not fall under purview of Regulation 7(1) but its transaction in BCSL falls under the purview of Regulation 7(1A) of

SAST Regulations 1997, hence the allegation levelled is void ab initio.

- (iii) That the Noticee has not acquired shares or voting rights which entitled it to more than 5%, 10% etc. shares or voting rights and on the contrary its holding in BCSL decreased from 20.08% in June 2010 to 5.06% in September 2010.
- (iv) That on the alleged violation of Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992 the Noticee submitted that it did not acquire or sold any shares of BCSL so as to attract the provisions of Regulation 13(3) read with regulation 13(5) of PIT Regulations 1992.
- (v) The Noticee submitted that as per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the explanatory statement forwarded to shareholders u/s 173 of the Companies Act, 1956 inter alia includes shareholding pattern of BCSL before and after the preferential issue, the identity of the proposed entities who were offered shares on preferential basis, the percentage of post preferential issue capital that may be held by them and change in control, if any.
- (vi) That the Notice of the AGM includes the shareholding pattern as per Clause 35 of Listing Agreement before and after the preferential issue, identity of the entities who were offered shares of BCSL including PCML, percentage of the post preferential issue capital that may be held by BCSL etc. This Notice of EGM would have been sent to all the shareholders by BCSL and also to the stock exchanges. The same has also been displayed on website of the stock exchange.
- (vii) The required information that PCML was being offered shares on preferential basis and also its approval and the details of shareholding pattern of BCSL post preferential issue was in the public domain and all the compliances related to the same were done in timely manner.
- (viii) That the Noticee has not filed the disclosures under the respective regulations in respective format as it was not required to as its

shareholding had changed by virtue of preferential offer and also that there has been no non disclosure on the part of the Noticee. Due to non filing of relevant disclosures no gain or advantage has occurred to PCML and no loss or harm has been caused to any investors.

- (ix) That non filing of relevant disclosures was due to the difference in understanding of the relevant regulations as interpreted by PCML and as interpreted by SEBI since it occurred not as active action by the Noticee but as a result of preferential offer. The Noticee did not have any intention to hide nor did it hide any information from general investors. Neither the Noticee had got unfair gain or advantage nor any loss or harm was caused to the investors.
- (x) That the provisions of Regulation 7(1) of SAST and Regulation 13(1) of PIT Regulations 1992 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.

FINDINGS:

11. From the shareholding pattern, I note that i.e. during the quarter June 2010, the share capital of the company was 747000 shares. The same was increased to 20347000 shares on account of Preferential allotment to Promoter/Non-promoters. The details of the preferential issue are as under:
- i. 1,21,00,000 equity shares were allotted to Promoters and others at an issue price of Rs.15/- on September 14, 2010. The securities were listed on BSE w.e.f. October 21, 2010 and 1,16,00,000 shares were under lock-in till September 13, 2011 and 5 lac shares allotted to Promoters were under lock-in till September 13, 2013.
 - .ii. 75,00,000 equity shares of Rs.10/- each issued at par and allotted to other than Promoters on a preferential basis on March 14, 2011. The securities were listed on BSE w.e.f. May 6, 2011 and were under Lock in till March 23, 2012.

The details of Shareholding pattern of the company prior to and during the period of I.P. is as under:

Particulars	Quarter ended Jun 2010		Quarter ended Sep 2010		Quarter ended Dec 2010		Quarter ended Mar 2011	
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding
Promoter Holding *	150000	20.08	650000	5.06	650000	5.06	650000	3.19
Non Promoter Holding	597000	79.92	12197000	94.94	12197000	94.94	19697000	96.81
Total share capital	747000	100	12847000	100	12847000	100	20347000	100

** Prime Capital Market Ltd*

Particulars	Quarter ended Jun 2011		Quarter ended Sep 2011		Quarter ended Dec 2011	
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding
Promoter Holding *	650000	3.19	650000	3.19	6500000	3.19
Non Promoter Holding	19697000	96.81	19697000	96.81	196970000	96.81
Total share capital	20347000	100	20347000	100	203470000	100

** Prime Capital Market Ltd*

12. I note that there was a change in the shareholding of promoters and others during the quarter ended September 2010 pursuant to the preferential allotment. During the quarter ended September 2010, the promoter's shareholding in BCSL reduced from 20.08% to 5.06%. The details are as under:

Name of Promoter	Quarter ended Jun 2010		Quarter ended Sep 2010		Quarter ended Dec 2010		Quarter ended Mar 2011	
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding
Prime Capital Markets Ltd.	150000	20.08	650000	5.06	650000	5.06	650000	3.19

Name of Promoter	Quarter ended Jun 2011		Quarter ended Sep 2011		Quarter ended Dec 2011	
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding
Prime Capital Markets Ltd.	650000	3.19	650000	3.19	6500000	3.19

13. I note from above that the Noticee as a promoter had been allotted 5 Lac shares. Had the Noticee not acquired the shares by way of preferential allotment its total percentage of shareholding would have been less than 5.06%. In view of this, the submission of the Noticee that it had not acquired any shares during the relevant period is devoid of fact.
14. The averment of the Noticee that it did not acquire or sold any shares of BCSL so as to attract the provisions of Regulation 13(3) read with regulation 13(5) of PIT Regulations 1992 is also not acceptable because it is evident from the provisions of Regulation 13(3) that once a person holds more than 5% shares or 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 .Since the Noticee was also holding 5.06% even after preferential allotment, it was under an obligation to disclose the same in terms of Regulation 13(3) read with regulation 13(5) of PIT Regulations 1992 which read as under.

Disclosure of interest or holding in listed companies by certain persons – Continual disclosure under SEBI (Prohibition of Insider Trading) Regulations 1992

(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 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

(5) The disclosure mentioned in sub-regulations (3), (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.

15. I note that Regulation 7(1) and 7(1A) of SAST Regulations 1997 read as under:

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

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation

(2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

.....

(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

16. I find merit in the submission of the Noticee that their transaction does not fall under the purview of Regulation 7(1) and the same falls under the purview of Regulation 7(1A) of SAST Regulations, 1997 since they were already holding more than 15% of the share capital of BCSL before the preferential allotment. Therefore, it can be concluded that the violation of Regulation 7(1) of SAST Regulations, 1997 is not established.
17. Further, as regards the violation of the provisions of Regulation 13(1) read with 13 (5) of PIT Regulations 1992 is concerned ,I do not find merit in the contentions of the Noticee inasmuch as the noticee vide e-mail dated March 20,2014 admitted the violation of the provisions of law during the relevant period. Therefore, it can be concluded that the Noticee has failed to comply with the provisions of Regulation 13(1) read with 13 (5) of PIT Regulations 1992, thus, liable for monetary penalty as prescribed under Section 15A(b) of the Act.
18. Section 15A(b) of the Act (as existed during the period of violation) 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 thereunder,-*

(a) to furnish any document, return or report

(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 there for 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.

19. Here, it is important to refer to the observation of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was 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..."

20. 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 read 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.*

21. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. The default is not repetitive in nature. I note that, in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the*

transactions and assist the Regulator to effectively monitor the transactions in the market."

ORDER

- 22.** 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 of the Act and Rule 5 of Rules, I hereby impose a monetary penalty of 2,00,000 (Rupees two Lakh Only) on the Noticee viz. Prime Capital Market Limited under Section 15A (b) of the Act. In my view, the penalty imposed is commensurate with the default committed by the Noticee.
- 23.** The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India ", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " The Division Chief (Enforcement Department - DRA-), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.

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)	

- 24.** 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: June 14, 2017

Place: Mumbai

**D. SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER**