

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.ISD/ICSA/AO/DRK-CS/EAD-3/493/37-14]

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

In respect of:

Shri Gopu Bala Reddy

PAN: ACPPG5476K

Plot No. 838, Vivekanand
Nagar Colony, Kukatpally,
Hyderabad, 500072

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "*SEBI*"), conducted an examination of trading in the shares of ICSA India Ltd. (hereinafter referred to as "*ICSA*") during December 13, 2012 to December 19, 2012 and observed non-disclosure of change in shareholding by Shri Gopu Bala Reddy (hereinafter referred to as "*Gopu Bala*" / "*Noticee*"). The shares of ICSA were listed at Bombay Stock Exchange Ltd. (hereinafter referred to as "*BSE*") and National Stock Exchange of India Ltd. (hereinafter referred to as "*NSE*").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as "SEBI Act"*) read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as the "Rules"*), to inquire into and adjudge under section 15A(b) of the SEBI Act and the said appointment order was communicated vide proceedings of appointing Adjudicating Officer dated August 19, 2013 for the alleged violation of the provisions of Regulations 31(2) read with 31(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (*hereinafter referred to as the "SAST Regulations"*) and Regulations 13(4) and 13(4A) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as the "PIT Regulations"*).

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated September 16, 2013 (hereinafter referred to as "SCN") was sent to the Noticee by "SPAD" in terms of the provisions of Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on the Noticee under Section 15A(b) of the SEBI Act. In the said SCN, it was alleged that:

- It was observed from the shareholding pattern for the quarter ending September 2012 and December 2012 that the holding of the promoter and Managing Director i.e. Noticee had come down from 33,42,227 shares (6.94%) for the quarter ending September 2012 to 26,48,269 shares (5.50%) for the quarter ending December 2012. It was alleged that the pledged shares of the Noticee were invoked due to which the shareholding had come down from 6.94% to 5.50%. The details are as given as below:

Sr. No.	Date of invocation	Shares invoked	Shareholding before/ after invocation	As a % of total share capital	Delay in Disclosure required under regulation 31(2) r.w. 31(3) SAST (no. of days approx.)
			33,42,227	6.94	
1.	13.12.2012	2,29,077	31,13,150	6.47	38
2.	14.12.2012	46,394	30,66,756	6.37	36
3.	17.12.2012	1,17,884	29,48,872	6.13	35
4.	18.12.2012	1,34,603	28,14,269	5.85	34
5.	19.12.2012	1,66,000	26,48,269	5.50	33

- On an analysis of the trading in the scrip of ICSA an email dated January 28, 2013 was written to the company to provide the details of the disclosures made by the Noticee to the company since October 1, 2012 till January 28, 2013.

Noticee vide his letter dated January 29, 2013 enclosed the copy of disclosure in terms of regulation 31(2) of SAST Regulations.

- Further, as per regulation 13(4) and 13(4A) read with 13(5) of the PIT Regulations, Noticee was required to disclose to the company and to the stock exchanges within two working days the change in shareholding as the invocation of shares on abovementioned dates led to the change by more than 25,000 shares. However, with respect to above regulations Noticee did not make any disclosure till date.
4. In response to the SCN, the Noticee vide his letter dated October 4, 2013 sought additional period of two weeks to file its reply as he was collecting the information to reply to the SCN. Acceding to the request of the Noticee, an opportunity of hearing was granted to the Noticee vide hearing notice dated November 12, 2013, to appear on December 6, 2013. The said hearing was rescheduled for December 24, 2013. Shri V. Harish Kumar, Advocate, Ms. V. Sheila, Advocate appeared as Authorised Representative on behalf of the Noticee. During the course of hearing, ARs admitted that there was a delay in making disclosure under SAST Regulations, however as the Noticee was not well at that point of time, he could not attend office and therefore made delayed disclosure. The ARs have further submitted that there was no need to make any disclosure under PIT Regulations as there was neither any acquisition nor sale of shares or allotment of shares rather it was invocation of pledge. Noticee has also submitted his reply dated December 23, 2013 wherein he has reiterated the submissions made during the personal hearing. Noticee has submitted his additional reply dated January 31, 2014, wherein, he has submitted the medical certificate in support of its contention.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

5. I have taken into consideration the facts and circumstances of the case and the material made available on record. Before moving forward, it would be pertinent to refer to the following provisions, which reads as under-

SAST Regulations

Disclosure of encumbered shares.

- 31 (2)** *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*

- (3)** *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—*
- (a) every stock exchange where the shares of the target company are listed;*
 - and*
 - (b) the target company at its registered office.*

PIT Regulations

13[(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.]*

13(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.*

13 (5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

- a. the receipt of intimation of allotment of shares, or*
- b. the acquisition or sale of shares or voting rights, as the case may be.*

6. Upon perusal of the documents available on record, it is observed that due to invocation of the pledged shares, the shareholding of the Noticee had come down from 33,42,227 (6.94%) for the quarter ending September 2012 to 26,48,269 (5.50%) for the quarter ending December 2012. The detail is mentioned in the table at page no 3. During the course of hearing AR/ Noticee had also admitted that there was a delay in making the disclosure as per regulation 31(2) read with 31(3) of SAST Regulations. The contention of the Noticee that the delay in disclosure was due to his illness has been taken on record.

7. With respect to, Noticee's contention, that there was no need to make any disclosure under PIT Regulations as there was neither any acquisition/ sale of shares/ allotment of shares, it is stated that, regulations 13(4) and 13 (4A) read with 13 (5) of the PIT Regulations stipulates that any person who is a director or officer of a listed company or promoter of a listed company has to disclose to the company and the stock exchange/s the change in the shareholding exceeding Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights. In the present case, as per PIT Regulations Noticee being the Managing Director and promoter of ICSA, was required to disclose to the company and to the stock exchanges within two working days the change in shareholding due to invocation of shares on the dates mentioned in the table at page 3 which led to the change of more than 25,000 shares. However, with respect to PIT regulations, Noticee has failed to make any disclosure.
8. In this context, I would like to quote Mr. Pranav Ansal vs. SEBI, decided on 7.01.2014, wherein Hon'ble SAT has held that " *Regulation 13 read with Form D of PIT Regulations, 1992 make it abundantly clear that every promoter director is obliged to disclose within two days any change in his shareholding inter-alia on account of sale of shares.*"
9. At this juncture, I would like to quote the judgement of Hon'ble Securities Appellate Tribunal in *Milan Mahendra Securities Pvt. Ltd. Vs SEBI*, SAT Order dated April 15, 2005, wherein it was held that, *"the purpose of these disclosures so as to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*
10. Therefore, in view of the above, the allegation of the non-compliance of the provisions of regulations 31(2) read with 31(3) of the SAST Regulations, within the stipulated time and regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations, stands established against the Noticee.
11. In this context, the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow"*.
12. The provisions of sections 15A(b) of SEBI Act are reproduced hereunder:
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 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.

13.While determining the quantum of monetary penalty, it is important to consider the factors stipulated in section 15J of 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.”*

14.It is noted from the available records, that the quantum of penalty has not been quantified. I observe that from the material available on record it is difficult to quantify the amount of gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the delay in complying with the aforesaid provision. Therefore, in view of the abovementioned conclusions and after considering all the factors mentioned under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 3,00,000 (Rupees Three Lakh Only) on the Noticee for delay in compliance of the provisions of regulations 31(2) read with 31(3) of the SAST Regulations and non-compliance of regulation 13(4) and 13(4A) read with regulation 13(5) of PIT Regulations, under Section 15A (b) of the Securities and Exchange Board of India Act, 1992, which is appropriate in the facts and circumstances of the case.

ORDER

15.In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer)

Rules, 1995, I hereby impose a penalty of ₹ 3,00,000 (Rupees Three Lakh Only) on the Noticee in terms of the provisions of Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the delay in compliance of the provisions of regulation 31(2) read with 31(3) of the SAST Regulations and non-compliance of regulation 13(4) and 13(4A) read with regulation 13(5) of PIT Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the delayed compliance/non-compliance by the Noticee.

16. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI– Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to General Manager- ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

17. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copy of this order is being sent to *Shri Gopu Bala Reddy, Plot no. 838, Vivekanand Nagar Colony, Kuatpally, Hyderabad, 500072* and also to the Securities and Exchange Board of India Mumbai.

Place: Mumbai

Date: March 21, 2014

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**