BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO-16/2014-15]

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

Shree Satyanarayan Properties Pvt. Ltd.

(PAN:AACCS2112A)

in the matter of

Svaraj Trading and Agencies Limited

FACTS OF THE CASE IN BRIEF

1. An open offer was made by Ms. Rekha Soni, Mr. Harendra Gupta and Mr. Shankar Das Vairagi in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") to the shareholders of Svaraj Trading and Agencies Limited (hereinafter referred to as **"STAL/Company"**), Target Company, through a public announcement dated September 03, 2012 for acquisition of 26,000 fully paid up equity shares of the face value of ₹10 each, representing 26% of the total paid up equity share capital / voting rights of the Target Company at a price of ₹75/- per share payable in cash. The shares of STAL are listed at BSE.

2. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) examined the draft Letter of Offer filed pursuant to the afore-mentioned

public announcement and observed that Shree Satyanarayan Properties Pvt. Ltd. (hereinafter referred to as **"Noticee"**), which was a promoter of STAL at the relevant period, had disposed 20,000 shares of STAL on June 30, 2012 by way of inter se transfer to Mr. Susheel Somani. Vide the said transaction the shareholding of the Noticee in STAL decreased from 20,000 (20.00%) shares to *nil* shares. Prior to the said transaction, the Noticee was holding more than 5% of the shares of the STAL and the said transaction resulted into disposal of more than 2% of the shares of STAL by the Noticee. As a consequence, it required a disclosure from the Noticee within 2 working days of transaction i.e. by July 03, 2012, as stipulated by regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011. However, it was observed that the Noticee made the disclosure for the aforesaid disposal only on July 10, 2012 after a delay of 7 days.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyoosh Gupta was appointed as Adjudicating Officer vide order dated July 08, 2013 under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) 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 for the alleged violations of provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 by the Noticee. Subsequently, upon the transfer of Shri Piyoosh Gupta, I have been appointed as Adjudicating Officer, in the present matter, vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD-5/ADJ/ASK/AA/OW/387/2014 dated January 03, 2014 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 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 for the alleged violation specified in the SCN. It was alleged in the SCN that Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 during the year 2012. The copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

5. Vide letter dated January 23, 2014 noticee requested for three weeks time to prepare and submit appropriate response to the SCN. Vide letter dated February 28, 2014, Mindspright Legal filed reply to the SCN on behalf of the Noticee. The summary of over all submissions of the noticee with respect to specific charges alleged in the SCN are as follows:

   - *Our client was the promoter of the company holding 20% shares in the share capital of STAL.*
   - *The act of disposition of share capital was a pure business decision and had no ulterior motive or intention behind the same.*
   - *Due to the said disposal of shares, there was no change in the overall control of the promoters, and therefore, our client was under the bonafide belief that it did not have the obligation to disclose the said transaction. However, on receiving the advice and realizing the inadvertent mistake, our client immediately made a disclosure;*
   - *Our client's act of delay in disclosure was not the result of any pre mediated plan or scheme to evade the nuances of law or a scheme to keep the other share holders/investors in dark;*
   - *The delay in disclosure by our client was an error of judgment and, at best, an error of understanding of the law. It was an erroneous interpretation of law flowing from a bonafide and inadvertent belief that the stipulations provided therein need not be followed;*

- *The said error was rectified by our client on receiving an advice to make the relevant disclosure, following which our client duly made the appropriate disclosure to the Stock exchange.*
- *Our client had neither accrued any illegal or undue profits nor caused loss to any investor owing to its disposal of shares in STAL;*
- *The delay in disclosure was of meagre five days and was a venial fault which should be considered liberally;*
- *In the absence of any wilful default or deliberate defiance as is presented in above case laws and submissions, penalty ought not to be imposed on our client for the delay in disclosure under SAST Regulations, 2011;*
- *Adjudicating Officer is not obligated to impose penalty on our client because the law warrants so. You need to prudently consider the factors in the above mentioned relevant case laws in arriving at a meaningful conclusion.*
- *Therefore it is submitted that our client's delay in disclosure under SAST Regulations, 2011 was a bonafide error in lieu of which our client should not be subjected to any harsh or unwarranted penalty.*
- *Reference was made to the judgments in Pramod Jain v. SEBI, Reliance Industries Ltd. v. SEBI, Akbar Badrudin Badrudin Jiwani v. Collector of Customs, Bombay, Director of Enforcement v. MCTM Corporation Pvt. Ltd., Hindustan Steel Ltd. v. State of Orissa, Bajrang Oil Mills v. Income tax Office, Kensigton Investment Ltd v. SEBI, Brent field Holdings Ltd. v. SEBI, Bhagat Ram v. State of Himachal Pradesh and Ranjit Thakur v. Union of India*

6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticee was granted an opportunity of personal hearing on March 06, 2014 vide Notice of Inquiry dated February 21, 2014. Vide letter dated February 28, 2014, Mindspright Legal, on behalf of the noticee, requested for a fresh date of hearing after March 17, 2014. Another opportunity of hearing was granted to the noticee on march 27, 2014 vide Notice of Inquiry dated March 13, 2014. Vide letter dated March 25, 2014, Mindspright Legal, on behalf of the noticee, requested for reschedulement of the hearing on the ground that the person dealing with the matter was ill. Another opportunity of hearing was granted to the noticee on April 15, 2014

vide Notice of Inquiry dated April 01, 2014. The said hearing was rescheduled on April 16, 2014. On the date of hearing, Mr. Aditya Bhansali, Mr. Amit Dey and Ms. Jenisha Shah, appeared as Authorised Representatives on behalf of the noticee and reiterated the submissions made vide letter dated February 28, 2014 in their reply to SCN. Additionally they undertook to make further submissions in a week's time.

7. Vide letter dated April 28, 2014, Mindspright Legal filed additional reply to the SCN on behalf of the Noticee. The main additional submissions made in respect of the charges in the SCN are given as under :

    - *It is submitted that Our Clients were under bonafide that they were not bound to make any disclosure, however, since the SAST Regulations were amended by SEBI, Our Client thought it fit to get a clarification from an expert and not to rely on their own lay man understanding. Mr. Punit Kumar Goyal, gave an opinion, opining that Our Client were required to make a disclosure under regulations 29(2) and 29(3). The copy of the said opinion was provided alongwith the reply. Therefore, upon clarification from the expert in the field, our Client realized the inadvertent mistake aimed at no ulterior motive but a pure business decision. Upon consultation and advice from the experts, Our Clients immediately filed the disclosure, wasting no more time.*
    - *The delay in disclosure by Our Client was an error of judgment and, at best, an error of understanding of the law. It was an erroneous interpretation of law flowing from a bonafide and inadvertent belief that the stipulations provided therein need not be followed. The said error was rectified by Our Client by taking a legal opinion over the ambiguity and once the ambiguity was resolved, Our Clients duly made the appropriate disclosures to the Stock Exchange.*

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the oral and 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 29(2) read with regulation 29(3) of SAST Regulations, 2011 during the year 2012?

   b. Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act?

   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?

9. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 2011 which reads as under:-

SAST Regulations, 2011

*"**Disclosure of acquisition and disposal.***
29.(1).....

(2) 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 in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office."

Issue - (I) - Whether the Noticee had violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 during the year 2012?

10. Upon perusal of the submissions and documents available on record, I find that the Noticee was admittedly promoter of STAL and held 20% shares in the share capital of STAL. It is also not in dispute that the Noticee disposed 20,000 shares of STAL on June 30, 2012 by way of inter se transfer to Mr. Susheel Somani, another promoter of STAL, and the said transaction resulted into the shareholding of the Noticee in STAL decreasing from 20,000 (20.00%) shares to *nil* shares. Prior to the said transaction, the Noticee was holding more than 5% of the shares of STAL and the transaction dated June 30, 2012 resulted into disposal of more than 2% of the shares of STAL by it. Noticee was consequently required to make a disclosure to the Company and stock exchanges within 2 working days of transaction i.e. by July 03, 2012, as stipulated by regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011. It is also an admitted fact that for the aforementioned transaction, Noticee has made the disclosure only on July 10, 2012 after a delay of 7 days.

11. However, Noticee has contended that the said transaction was inter se transfer between promoters and as a result of this transaction there was no change in the overall control of the promoters. In this regard, I note that the regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 does not provide for any exemptions for the acquirers from making disclosures for the shares acquired or disposed by way of inter se transfers. Therefore, the argument of the Noticee about the transaction dated June 30, 2012 being inter se transfer between promoters is devoid of any merit.

12. Noticee has further contended that there was delay of 5 days in making the disclosure and not 7 days as has been alleged in the SCN as there was intervening Saturday and Sunday which should not be counted. Be that as it may, I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. Since, the Noticee in the instant case has not complied with regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011, in totality, I do not find any merit in the contention of the Noticee.

13. In view of the above, I find that the Noticee did not make the requisite disclosure regarding the disposal of 20.00% of the share capital of STAL on June 30, 2012 within the time specified therefor and thereby has violated regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011.

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

14. By not making the disclosures on time, the Noticee failed to comply with its statutory obligation. There can be no dispute that compliance of regulations is mandatory and the timely disclosure is mandated for the benefit of the investors at large and it is duty of SEBI to enforce compliance of these regulations. I note that the Noticee, while admitting lapse on their part in complying with the disclosure requirement under regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011, has placed reliance on the judgments in Pramod Jain v. SEBI, Reliance Industries Ltd. v. SEBI, Akbar

Badrudin Badrudin Jiwani v. Collector of Customs, Bombay, Director of Enforcement v. MCTM Corporation Pvt. Ltd., Hindustan Steel Ltd. v. State of Orissa, Bajrang Oil Mills v. Income tax Office, Kensigton Investment Ltd v. SEBI, Brent field Holdings Ltd. v. SEBI, Bhagat Ram v. State of Himachal Pradesh and Ranjit Thakur v. Union of India. It was stressed that in the absence of any wilful default or deliberate defiance penalty ought not to be imposed for the delay in disclosure under SAST Regulations, 2011 and that the Adjudicating Officer is not obligated to impose penalty because the law warrants so.

15. In my opinion the aforesaid judgments are of no assistance to the Noticee. The position has since been clarified by the Hon'ble Supreme Court in its order dated May 23, 2006 in the case of *Chairman SEBI vs. Shriram Mutual Fund and Anr. {[2006] 5 SCC 361}* wherein it was held that decision in case of Hindustan Steel Ltd. relating to criminal/quasi criminal proceedings would not apply to imposition of civil liabilities under SEBI Act and Regulations made thereunder. In the said case the Hon'ble Supreme Court also held that *"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

16. In this context, I would also like to rely on following observation of Hon'ble Securities Appellate Tribunal (SAT) in the case of *Mrs. Komal Nahata vs.*

SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) "*Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure. Secondly, penalty under Section 15A(b) for non compliance of the regulation framed by SEBI is ₹ 1 lac for each day during which such failure continues or 1 crore rupees whichever is less."*

17. I have considered other contentions raised by the Noticee in its reply and find no merit in them in the context of the facts and circumstances of the matter in hand. As the violation of the statutory obligation under regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 has been established, I hold that the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, which 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"

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

18. 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 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."

19. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Further, there is no material on record to indicate that such default was repetitive. However, it is pertinent to mention here that our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Hence, the violations of the Noticee cannot be viewed lightly.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) under Section 15A(b) for violation of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 by the noticee viz. Shree Satyanarayan Properties Pvt.

Ltd. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

21. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to The Division Chief (CFD-DCR), Securities and Exchange Board of India, 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 SEBI.

Date: May 30, 2014 **A. Sunil Kumar**

Place: Mumbai **Adjudicating Officer**