

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD-7/BJD/NJMR/109-112//2017-18

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

1. Shark Communications Pvt., Ltd., (PAN: AAACS4876P) H 108, 2 nd Floor, New Asiatic Building, Opp: Hotel Marina Connaught Place New Delhi – 110001.	2. Sham Sunder Gupta (PAN: AISPG6871B) A-22, Shalimar Colony Adarsh Nagar Ajmer – 305001.
3. Saroj Gupta (PAN: AAPPG3976N) 215, DDA Flats Gulmohar Enclave New Delhi – 110049.	4. DMC Education Ltd., (PAN: AACCD5023B) (Earlier known as DMC International Ltd.,) H-108, 2 nd Floor, Opp: Hotel Marina, New Asiatic Building Connaught Place New Delhi – 110001.

In the matter of DMC International Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the scrip of DMC International Ltd., (*hereinafter referred to as "**DMCIL**" / "**Company**"*) (*name changed to DMC Education Ltd.*) for any possible violation of the provisions of SEBI Act and the Regulations framed thereunder, during the period April 1, 2010 to September 30, 2010 (*hereinafter referred to as ("**Investigation Period**")*). During the investigation, it was inter-alia observed by SEBI that the promoters / Directors of DMCIL viz., Shark Communications Private Ltd., Sham Sunder Gupta & Saroj Gupta and the Company DMC Education Ltd., (*hereinafter referred to as "**Noticees**"*) had violated the provisions of SEBI (Prohibition of Insider Trading Regulations), 1992 & 2015 (*hereinafter referred to as "**PIT Regulations**"*) and SEBI (Substantial

Acquisition of Shares & Takeovers), 1997 & 2011 (*hereinafter referred to “SAST Regulations”*), as applicable. The summary of findings in brief observed during the course of investigation in respect of the Noticees and the corresponding violations of respective Regulations are furnished hereunder.

Sl. No.,	Name of the Noticee	Nature of findings in brief	Violations observed
1	Shark Communications Pvt., Ltd.,	Failed to disclose the increase of shareholding to 14% in the scrip of DMCIL	Regulation 7 (1) read with Regulation 7 (2) of SAST Regulations, 1997 and Regulation 35 of SAST Regulations, 2011).
2	Sham Sunder Gupta	Failed to disclose the trades done in the scrip of DMCIL, which were over and above 25,000 shares. Entered into opposite transactions within a period of 6 months. Not obtained pre-clearance trades for trading in the scrip of DMCIL. Non-compliance of code of conduct specified for prevention of insider trading.	Regulation 13 (4) read with Regulation 13 (5) of PIT Regulations and Regulation 12 of PIT Regulations, 2015. Clause 3.3.1, 4.2, 6 (C) and 1.2 of Code of Conduct, adopted by the Company read with Regulation 12 (1) of PIT Regulations, read with Regulation 12 (1) of PIT Regulations, 2015.
3	DMC Education Ltd.,	Non-compliance of code of conduct specified for prevention of insider trading.	Regulation 12 (1) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015.
4	Saroj Gupta	Non-compliance of code of conduct specified for prevention of insider trading.	Clause 1.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I of SEBI(PIT) Regulations, 1992 Regulation 12(1) read with and Regulation 12 of SEBI (PIT) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticees and appointed Ms. Anita Kenkare as the Adjudicating Officer vide Order dated October 26, 2015 under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudicating Rules**”) to inquire into and adjudge under Sections 15A(b), 15HB of SEBI Act in respect of Noticee 1 & 2 and under Section 15HB of SEBI in respect of the Noticee 3 & 4, for the alleged violation of the provisions of SEBI (PIT) Regulations and SEBI (SAST) Regulations (as applicable).
3. Pursuant to internal restructuring, the undersigned has been appointed as Adjudicating Officer vide Order dated May 18, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice (hereinafter referred to as “SCN”) bearing ref. no. EAD/BJD/NJMR/26857/2017 dated October 31, 2017 was served upon all the Noticees, under Rule 4 of SEBI Adjudicating Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 A (b) Section 15HB of SEBI Act, 1992 (as applicable) for the violation alleged to have been committed by them.
5. I note from the records that the Noticees have not filed their reply to the SCN. In the interest of natural justice and in terms of Rule 4 (4) of Adjudicating Rules, vide letter dated June 20, 2018, the Noticees were given an opportunity of personal hearing before me, on July 12, 2018. I note that the notice of hearing was served upon all the Noticees. Further, in terms of Rule 7 of Adjudicating Rules, the notice of hearing was also sent to all the Noticees through electronic mail digitally signed. I note that the email sent to the Noticees did not bounce. On the scheduled date of hearing i.e., July 12, 2018 all the Noticees did not turn up for the personal hearing.

6. However, vide email (corporatejudisllp@gmail.com) dated July 12, 2018, on behalf of the Noticees 2, 3 and 4, Corporate Judis LLP, Legal Counsel requested for short adjournment of personal hearing. Accordingly, vide email dated July 12, 2018, it was informed to Corporate Judis LLP, Legal Counsel at the aforesaid email ID, that the personal hearing has been adjourned to July 17, 2018. I note that neither the Noticees 2, 3 and 4 availed the opportunity of personal hearing on July 17, 2018 nor submitted any reply to the SCN till date.
7. In this connection, I would like to note that the Noticees 2, 3 and 4 have not submitted any authorization letter duly authorizing Corporate Judis LLP as their Authorised Representative for the purpose of attending personal hearing. I also note neither the Corporate Judis LLP attended the hearing nor submitted any reply. Having waited for around two weeks since the adjournment of personal hearing to July 17, 2018, the Noticees 2, 3 and 4 failed to file their reply to the charges alleged in the SCN and also did not avail the opportunity of personal hearing.
8. In this context, I would like to rely upon the observations of The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) wherein it, inter alia, observed that - *"..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them"*.
9. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), inter alia, observed that – *".....As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices....."*.

10. In view of the above, I am of the opinion that the SCN has been duly served upon all the Noticees, but the Noticees failed to reply and also failed to avail the opportunity of personal hearing. The principles of natural justice has been duly followed in the matter, as enough opportunities were provided to the Noticees to reply to the SCN and appear for hearing. Therefore, I am proceeding further in the matter based on the facts and documents made available.

CONSIDERATION OF ISSUES

11. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have failed the provisions of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations *(as applicable)*.

After perusal of the material available on record, I have the following issues for consideration, viz.,

- a. Whether the Noticees have violated the relevant provisions of SEBI (PIT) Regulations, 1992 & 2015 and SEBI (SAST) Regulations, 1997 & 2011?*
- b. Does the violation, if any, attract monetary penalty under Section 15A(b) and 15HB 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?*

ISSUE-1: Whether the Noticees have violated the relevant provisions of SEBI (PIT) Regulations, 1992 & 2015 and SEBI (SAST) Regulations, 1997 & 2011?

12. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992 & 2015 and SEBI (SAST) Regulations, 1997 & 2011 alleged to have been violated the Noticees, which reads as under:

Regulation 7 (1) of SEBI (SAST) Regulations, 1997

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.

Regulation 13 (4) of SEBI (PIT) Regulations, 1992

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 ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Regulation 7 (1A) of SEBI (SAST) Regulations, 1997

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.

Regulation 35 of SEBI (SAST) Regulations, 2011

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as

aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Regulation 12 (1) of SEBI (PIT) Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities.

(1) All listed companies and organisations associated with securities markets including:

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations [without diluting it in any manner and ensure compliance of the same].

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations

Regulation 12 of SEBI (PIT) Regulations, 2015

The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as

aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

13. The Directors of the Company during the period of investigation were as follows:

Name	Designation	Date of Appointment
Sham Sunder Gupta	Managing Director	28.09.2005
Prem Kumar Awasthi	Chairman	30.09.2005
Saroj Gupta	Whole-time Director	06.10.2009
Babu Lal Vijay	Director	04.05.2010
Mr. Dhruv Kumar Agarwal *	Director	28.09.2005

** Resigned w.e.f July 31, 2010*

14. Details of quarterly shareholding of Promoters and promoter group during the period of investigation as per disclosure on BSE website is tabulated below:

Quarter Ended	Promoter			Non- Promoter			Total Shares
	No. of Shares	%	No. Of Shareholders	No. of Shares	%	No. Of Shareholders	
Mar-10	1,37,16,390	61.52	443	85,80,410	38.48	5421	2,22,96,800
Jun-10	1,22,82,156	55.08	352	1,00,14,644	44.92	6394	2,22,96,800
Sep-10	1,20,31,676	53.96	355	1,02,65,124	46.04	7290	2,22,96,800
Dec-10	92,93,382	40.77	303	1,35,03,418	46.04	8,846	2,27,96,800

It was observed that the promoter shareholding of the company decreased from 61.52% in March 2010 to 53.96% in September 2010.

15. It was observed that two of the original promoter entities viz., Shark Communications Pvt., Ltd., and Sham Sunder Gupta (also Director of the

company), of DMCIL were observed to have traded during the period of investigation.

Findings w.r.t Shark Communications Pvt., Ltd.,

16. It was observed that for the quarter ended March 31, 2010, the no., of shares held by Shark Communications Pvt., Ltd., (SCPL) as shown on BSE website were 26,28,590 shares.

17. I note that SCPL was carrying out its trades through Abhipra Capital Ltd., Stock Broker with Client ID: D1090. I note from the records that Abhipra Capital Ltd., Stock Broker vide email dated November 18, 2014 submitted that it was holding 3,01,514 shares of DMCIL in client's running account which belongs to SCPL (Client ID: D1090) as on April 1, 2010. Further, vide the aforesaid email, Abhipra Capital Ltd., also submitted the statement of holdings of SCPL in the scrip of DMCIL for the period April 1, 2010 to September 30, 2010, which is reproduced as under.

Date	Opening Balance	Gross Buy	Gross Sell	Net Buy/Sell	Closing Balance
(01-04-2010)	301514	28250	0	28250	329764
(05-04-2010)	329764	44792	0	44792	374556
(06-04-2010)	374556	0	6231	-6231	368325
(07-04-2010)	368325	0	24000	-24000	344325
(08-04-2010)	344325	0	14000	-14000	330325
(09-04-2010)	330325	20000	0	20000	350325
(13-04-2010)	350325	0	20000	-20000	330325
(15-04-2010)	330325	15000	15156	-156	330169
(16-04-2010)	330169	0	2091	-2091	328078
(19-04-2010)	328078	30000	30000	0	328078
(20-04-2010)	328078	88293	128793	-40500	287578
(21-04-2010)	287578	75000	15500	59500	347078
(22-04-2010)	347078	57500	0	57500	404578
(23-04-2010)	404578	20924	20924	0	404578
(26-04-2010)	404578	60009	84708	-24699	379879
(27-04-2010)	379879	57837	34287	23550	403429
(28-04-2010)	403429	97842	102341	-4499	398930
(29-04-2010)	398930	234010	287345	-53335	345595
(30-04-2010)	345595	233581	145046	88535	434130
(03-05-2010)	434130	77000	75749	1251	435381
(04-05-2010)	435381	119096	69847	49249	484630
(05-05-2010)	484630	0	91131	-91131	393499
(06-05-2010)	393499	140000	0	140000	533499
(14-05-2010)	533499	0	158800	-158800	374699

(17-05-2010)	374699	0	30000	-30000	344699
(18-05-2010)	344699	0	3250	-3250	341449
(31-05-2010)	341449	90488	31550	58938	400387
(02-06-2010)	400387	0	20000	-20000	380387
(04-06-2010)	380387	0	5000	-5000	375387
(07-06-2010)	375387	0	5000	-5000	370387
(17-06-2010)	370387	3000	54811	-51811	318576
(01-07-2010)	318576	0	55000	-55000	263576
(12-07-2010)	263576	0	15434	-15434	248142
(20-08-2010)	248142	1000	1000	0	248142
(29-09-2010)	248142	9750	0	9750	257892

18. I have perused the statement of holding and I note that SCPL was purchasing and selling the shares of DMCIL from April 1, 2010 to September 29, 2010. Further, as per the statement of holding furnished by Abhipra Capital Ltd., the opening balance of shares in respect of SCPL as on April 1, 2010 was 3,01,514 shares.

19. As per the details of demat statement of SCPL, it was holding 26,28,590 shares as on March 31, 2010 (also reflected in the BSE website) while it was also holding shares with the stock broker in running account (i.e. shares that are not transferred to demat account of the SCPL but held with Broker on its behalf) and as on April 1, 2010 it was holding 3,01,514 shares. Thus, considering the shares held in its demat account and also with the stock broker (running account) I note that total actual holding of SCPL as on April 1, 2010 was 29,58,354 shares instead of 26,28,590 share as disclosed in the public domain (BSE website). In terms of percentage of shareholding, I note that 29,58,354 shares constituted 13.27% of total shareholding of the Company.

20. It is noted that during the period April 1, 2010 and May 6, 2010, the holding of SCPL increased from 13.27% (29,58,354 shares) to 14.18% (31,62,089 shares) i.e., an increase of 2.09% (2,31,985 shares), which is corroborated from the extracts of trade log (which was provided to SCPL along with SCN) for the aforesaid period.

21. In terms of Regulation 7 (1) of SAST Regulations, 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

22. It is observed that pursuant to increase of shareholding to 14% in the scrip of DMCIL, SCPL was required to disclose its change in shareholding to the Company and to the BSE. From the disclosures made to BSE, I note from the BSE's email dated December 4, 2014, that there was no such disclosure was made by SCPL. I also note from the BSE website that SCPL had not made any disclosure regarding change in shareholding of more than 14%. There is no record to demonstrate that SCPL had made any such disclosure regarding its change in shareholding to the Company as well.

23. The object of requiring disclosures to be made, which are prescribed in SAST Regulations, is with a view to ensure that there is no abuse on account of investors being not aware of such in shareholding of a Promoter / Director. If the necessary disclosures are not made as per the SAST Regulations, which are event based, the investors are deprived of taking an informed decision in investing in the scrip of the said Company.

24. In view of the above, I find that the Noticee 1 i.e., Shark Communication Pvt., Ltd., by not disclosing the change in shareholding beyond 14% of the total shareholding, to the Company and to BSE, had violated the provisions of Regulation 7 (1) read with Regulation 7 (2) of SEBI (SAST) Regulations, 1997 read with Regulation 35 of SEBI (SAST) Regulations, 2015.

Findings w.r.t Sham Sunder Gupta, Saroj Gupta & DMC Education Ltd.,

25. It was observed that for the quarter ended March 2010, the number of shares held by Sham Sunder Gupta as shown in BSE website were 2,37,200 shares.

26. I note that during the period April 22, 2010 and September 24, 2010, Sham Sunder Gupta was continuously buying and selling the shares in the scrip of

DMCIL. He had bought 3,58,998 shares and sold 5,38,946 shares through Shriram Insights Share Brokers Ltd., which resulted into sale of 1,79,948 shares on net basis.

27. The day wise calculation of holdings of Sham Sunder Gupta is given as under:

Date	Gross Buy	Gross Sell	Opening Balance	Net Buy/Sell	Closing Balance	Cumulative Change	% Shareholding	Change in % Shareholding
22/04/2010	500	600	237200	-100	237100	-100	1.063381	
26/05/2010	0	5000	237100	-5000	232100	-5100	1.040957	-0.02242
01/06/2010	0	30030	232100	-30030	202070	-35130	0.906274	-0.13468
07/06/2010	0	10000	202070	-10000	192070	-45130	0.861424	-0.04485
10/06/2010	0	36926	192070	-36926	155144	-82056	0.695813	-0.16561
11/06/2010	0	36150	155144	-36150	118994	-118206	0.533682	-0.16213
24/06/2010	103915	8764	118994	95151	214145	-23055	0.960429	0.426747
05/07/2010	0	155500	214145	-155500	58645	-178555	0.26302	-0.69741
09/07/2010	126032	1500	58645	124532	183177	-54023	0.821539	0.55852
14/07/2010	43050	44500	183177	-1450	181727	-55473	0.815036	-0.0065
20/07/2010	3200	3901	181727	-701	181026	-56174	0.811892	-0.00314
27/07/2010	0	10000	181026	-10000	171026	-66174	0.767043	-0.04485
29/07/2010	0	50000	171026	-50000	121026	-116174	0.542795	-0.22425
30/07/2010	0	5000	121026	-5000	116026	-121174	0.520371	-0.02242
11/08/2010	0	10400	116026	-10400	105626	-131574	0.473727	-0.04664
13/08/2010	0	45000	105626	-45000	60626	-176574	0.271904	-0.20182
30/08/2010	0	500	60626	-500	60126	-177074	0.269662	-0.00224
09/09/2010	0	1500	60126	-1500	58626	-178574	0.262935	-0.00673
13/09/2010	32000	500	58626	31500	90126	-147074	0.40421	0.141276
14/09/2010	0	25000	90126	-25000	65126	-172074	0.292087	-0.11212
15/09/2010	0	1500	65126	-1500	63626	-173574	0.285359	-0.00673
16/09/2010	0	22000	63626	-22000	41626	-195574	0.18669	-0.09867
20/09/2010	15449	0	41626	15449	57075	-180125	0.255978	0.069288
24/09/2010	34852	34675	57075	177	57252	-179948	0.256772	0.000794
Grand total	358998	538946						

28. The details of the transactions of Sham Sunder Gupta (who was a Director of DMC International Ltd.,) and the dates when the disclosures were to be made is placed below:

Date	Purchased Quantity	Sold Quantity	Dates by when disclosures where to be made to the stock exchanges as per Regulation 13(4) of SEBI (PIT) Regulation, 1992
22/04/2010	500	600	
26/05/2010	0	5000	
01/06/2010	0	30030	June 03, 2010
07/06/2010	0	10000	
10/06/2010	0	36926	June 14, 2010

Date	Purchased Quantity	Sold Quantity	Dates by when disclosures where to be made to the stock exchanges as per Regulation 13(4) of SEBI (PIT) Regulation, 1992
11/06/2010	0	36150	June 15, 2010
24/06/2010	103915	8764	June 28, 2010
05/07/2010	0	155500	July 07, 2010
09/07/2010	126032	1500	July 13, 2010
14/07/2010	43050	44500	
20/07/2010	3200	3901	
27/07/2010	0	10000	
29/07/2010	0	50000	August 02, 2010
30/07/2010	0	5000	
11/08/2010	0	10400	
13/08/2010	0	45000	August 17, 2010
30/08/2010	0	500	
09/09/2010	0	1500	
13/09/2010	32000	500	September 15, 2010
14/09/2010	0	25000	September 16, 2010
15/09/2010	0	1500	
16/09/2010	0	22000	
20/09/2010	15449	0	
24/09/2010	34852	34675	

29. I verified with the trade and order log (which was provided to SCPL along with SCN) that aforesaid transactions were executed on the stock exchange platform in the client account of D128S1, maintained with Shriram Insight Share Brokers Ltd., Stock Broker.

30. In terms of Regulation 13 (4) of SEBI (PIT) Regulations, 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, 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 ₹ 5 lakhs in value of 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. This disclosure is required to be made by the person to the Company and to the Stock Exchange where the shares are listed, within two days from the date of transaction.

31. It was observed that during the period June – September, 2010, Sham Sunder Gupta pursuant to his trades in the scrip of DMCIL where his holding changed to the tune of 25,000 shares (*purchase / sale*) on 10 occasions, as mentioned in the above table, had not made any disclosures to the Company and to the BSE. Vide letter dated January 5, 2015, the Company had confirmed that it has not received any disclosures from the Noticee 2 regarding his purchase / sale of shares beyond the threshold limits prescribed in the SEBI (PIT) Regulations.
32. The information regarding sale of shares by promoter is price sensitive in nature and therefore material and relevant for investors to assess the company and its state of affairs. SEBI (PIT) Regulations specifically provides for the manner and timing of disclosure to be made by promoters, substantial shareholders and person who have control over the company. Such specific disclosures are timely disseminated by stock exchanges for public information. If the necessary disclosures are not made within the requisite number of days as per the respective Regulations, which are event based, the investors are deprived of taking an informed decision in investing in the scrip of the said Company.
33. In view of the above, I find that the Noticee 2 Sham Sunder Gupta, being Director of DMCIL, by not disclosing his dealings in the scrip of DMCIL beyond the threshold limits had violated the provisions of Regulation 13(4) r/w Regulation 13(5) of SEBI (PIT) Regulations, 1992, (to be read with Regulation 12 of SEBI (PIT) Regulations, 2015 as applicable).

Findings w.r.t to implementation of Code of Conduct

34. Further, from the above table, it is also observed that Sham Sunder Gupta bought 3,58,998 shares and sold 5,38,946 shares during the period April 22, 2010 and September 24, 2010 and has entered into opposite transactions on every date mentioned in the table above excluding September 20, 2010 (where he entered into purchase transaction). As per the clause 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations, 1992 (to be read with Regulation 12 of SEBI (PIT) Regulations, 2015 as applicable), all directors/ officers/ designated employees who buy or sell any number of shares

of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time. However, it is noted from the above table that Sham Sunder Gupta being a Director of DMCIL entered into opposite transactions within a period of 6 months.

35. The company was asked to provide information with regard to the model code of conduct for Prevention of Insider Trading adopted by the company, the dates when the trading windows were closed for the period from April 2011 to September 2011 and details of pre-clearance obtained by Mr. Sham Sunder Gupta for his trades. Vide letter dated January 05, 2015 received by email on January 06, 2015, the company provided the code of conduct adopted by the company. Further, the company stated that no disclosures have been made by the Compliance Officer of the company due to ignorance of SEBI Regulations. The company did not mention whether pre-clearance of trades was taken by Sham Sunder Gupta before trading in the scrip of DMCIL. As per the Code of Conduct ('CoC') adopted by the company to prevent insider trading ('CoC - PIT'), pre-clearance of trade needs to be obtained for all trades above ₹ 5,00,000 in value or 30,000 shares or 1% of total shareholding or voting rights, whichever is lower per transaction and the same shall be valid only for a week and if transactions are required to be entered into after a week, fresh pre-clearance is required. In view of the fact that the Noticee 2 was ignorant of SEBI Regulations, I am of the opinion that no pre-clearance of trades was obtained by the Noticee 2 for all the trades, which falls in the threshold limits prescribed by the Company. Further, I note that the Noticee also did not submit any documents of having taken pre-clearance of trades.

36. In terms of Clause 1.2 of Code of Conduct for prevention of insider trading, the Compliance Officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades, monitoring of trades and the implementation of the code of conduct

under the overall supervision of the Board of the Listed Company. Being a Compliance Officer, Sham Sunder Gupta had not obtained pre-clearance of trades, carried out by him and entered into opposite transactions within a period of 6 months. It is also evident that no disclosures were made by the Noticee 2 to the Company.

37. I note that for orderly conduct of securities market, it is of utmost importance that the Key Managerial Personnel of all listed companies and intermediaries including the Board of directors should at all times strictly adhere to the statutory code on Insider Trading and any failures to adhere with any of the provisions of PIT regulations cannot be viewed leniently. This is necessary to ensure a sense of fair play amongst all the market participants and that there is no asymmetry of information. In the instant case, I find that the Noticee 2 i.e., Sham Sunder Gupta being a Managing Director & Compliance Officer of DMCIL had failed to abide by the code of conduct prescribed for prevention of insider trading, by not obtaining pre-clearance of shares and by taking opposite position within 6 months from the earlier transaction. From the above, it is clear that the Noticee 2 besides being Managing Director & Compliance Officer of DMCIL had neither ensured compliance of code of conduct nor implemented the same.

38. Therefore, I conclude that the Noticee 2 by not adhering to Clause 1.2, 3.3.1, and 4.2 of code of conduct specified for prevention of insider trading has violated the provisions of Regulation 12 (1) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015. I also note that the Noticee 2 had not complied with its own Clause 6 (C) of the Code of Conduct, relating to pre-clearance of trades adopted by DMCIL for prevention of insider trading.

39. Further, Sham Sunder Gupta (MD & Compliance Officer) of DMCIL had to ensure Compliance with the Code of Conduct for Prevention of Insider Trading under the overall supervision of the Board. However, it is noted from above paragraphs that Code of Conduct has not been complied with, which is evident from the fact of trading activities carried out by the Noticee 2 without adhering to the Code of Conduct prescribed under SEBI (PIT) Regulations. It is the

responsibility of the Compliance Officer of a listed company to ensure implementation of the code of conduct prescribed for prevention of insider trading, under the overall supervision of the Board of the listed company. In the instant case, I note that there was no compliance of Regulatory requirements by the Managing Director, who happens to be the Compliance Officer also of the Company. I note that the Noticee 4 i.e., DMC Education Ltd., has been charged for violating the provisions of Regulation 12 (1) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015. I am of the view it is the responsibility on the Compliance Officer under the overall supervision of the Board of Directors for implementation of code of conduct and therefore the Company cannot be made liable for such lapses. Therefore, I hold the Board of Directors (non-independent) viz., Sham Sunder Gupta (Compliance officer and MD) and Saroj Gupta (Non-Independent Director) liable for the lapses in implementation of code of conduct for prevention of insider trading. In view of the above, I hold the Noticees 2, and 3 violative of the provisions of 1.2 of Code of Conduct for prevention of Insider Trading read with Regulation 12 (1) of SEBI (PIT) Regulations to be read with Regulation 12 of SEBI (PIT) Regulations, 2015. Since, the charge against the Noticee 4 is not established, the SCN issued to the Noticee 4 is disposed of.

ISSUE – 2: Does the violation, if any, attract monetary penalty under Section 15 A (b) and 15HB of SEBI Act.?

40. It is a well-known fact and practice that as per the requirements of SEBI (SAST) and (PIT) Regulations, there is a requirement of timely disclosure of change in shareholding beyond certain threshold by Promoter / Director. It is obligatory on the part of the Promoter / Director to make timely disclosures to Stock Exchange and to the Company. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. There can be no dispute that compliance with the provisions of the Regulations is mandatory and it is the duty of SEBI to enforce compliance of these Regulations. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. By not making the requisite disclosures under SEBI (SAST) and (PIT)

Regulations, the Noticees 1 and 2 are liable for monetary penalty under Section 15 A (b) of SEBI Act.

41. Hon'ble SAT in the case of Coimbatore Flavors & Fragrances Ltd. V. SEBI (Appeal No. 209 of 2014) observed *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* (Emphasis supplied).

42. The Noticee 2, being the Managing Director and Compliance Officer of DMCIL had failed to discharge his duties as envisaged under the SEBI (PIT) Regulations by not complying with the Code of Conduct adopted by the Company for prevention of Insider Trading. The Company and its Non-Independent directors had failed to ensure due compliance of code of conduct prescribed in SEBI (PIT) Regulations, for prevention of insider trading. In this connection, the observation of the Hon'ble Supreme Court in the matter of N Narayanan Vs. Adjudicating Officer, SEBI in Civil Appeal Nos., 4112-4113 of 2013 (Order dated April 26, 2013) is worth mentioning, which reads as under.

"SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and „market security" is our motto. People with power and money and in management of the companies, unfortunately often command more respect in

our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors individual and collective, against opportunistic behaviour of Directors and Insiders of the listed companies so as to safeguard market's integrity".

In view of the above, as the alleged violation against the Noticees 2, and 3 stands established, they are liable for monetary penalty under Section 15HB of SEBI Act.

43. The provisions of Section 15A(b) and Section 15HB of SEBI Act are reproduced hereunder.

Penalty for failure to furnish information, return, etc.

Section 15A of SEBI Act– *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 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees*

Penalty for contravention where no separate penalty has been provided

Section 15HB of SEBI Act - *"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."*

ISSUE – 3 - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

44. While determining the quantum of monetary penalty under Section 15 A (b) and 15HB of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 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.*

45. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. However, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision.

46. There is no dispute that the Noticees 1 and 2 failed to make the requisite disclosures to the BSE and the Company in terms of SEBI (SAST) and SEBI (PIT) Regulations respectively, which would have deprived investors in taking informed decision. Any lapse in such matters would be detrimental to the interest of investors. Therefore, any lapse on the part of the Promoters / Directors has to be dealt by SEBI in order to protect the interests of investors in securities market. Therefore, I consider appropriate for imposition of penalty on Noticee 1 & 2 for violation non-disclosure of their holdings in terms of SEBI (SAST) and SEBI (PIT) Regulations, respectively. As regards the violation of Regulation 12 (1) of SEBI (PIT) Regulations by the Noticees 2, and 3 it is clear that these provisions are intended to prevent the possible abuse of unfair insider practices by the Company's management. Therefore, I am not inclined to view the lapse on the part of the Noticees 2, and 3 leniently and consider it

necessary to impose monetary penalty which would act as deterrent to the Noticees 2, and 3.

ORDER

47. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty on the Noticees as under:

Sl. No.,	Name of the Noticee	Penalty amount in ₹	Violation of Regulatory provisions	Imposition of penalty under
1	Shark Communications Pvt., Ltd.,	2,00,000 (Rupees Two lakhs only)	Regulation 7 (1) read with Regulation 7 (2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SAST Regulations, 2011).	Section 15 A (b) of SEBI Act
2	Sham Sunder Gupta	2,00,000 (Rupees Two lakhs only)	Regulation 13 (4) read with Regulation 13 (5) of PIT Regulations and Regulation 12 of PIT Regulations, 2015.	Section 15 A (b) of SEBI Act
		4,00,000 (Rupees Four lakhs only)	Clauses 1.2, 3.3.1, 4.2 and 6 (C) of Code of Conduct, adopted by the Company for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I of read with Regulation 12 (1) of PIT Regulations, read with Regulation 12 of PIT Regulations, 2015.	Section 15HB of SEBI Act
3	Saroj Gupta	1,00,000 (Rupees One lakh only)	Clause 1.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Part A of Schedule I of SEBI(PIT) Regulations, 1992 Regulation 12(1) read with and Regulation 12 of SEBI (PIT) Regulations, 2015.	Section 15HB of SEBI Act

48. The said penalty imposed on the Noticees, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

49. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

50. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department-1, DRA-II, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	

51. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: 31 July 2018

Place: Mumbai

B J DILIP

Adjudicating Officer