

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/28/2012]

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

Against

Shri Prakash Jain

[PAN: Not Available]

In the matter of

Zigma Software Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has conducted investigation in to the alleged irregularity in the trading in the shares of Zigma Software Limited (hereinafter referred to as 'ZSL' or the 'company'), and into the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there-under for the period from June 01, 2005 to September 30, 2005. ZSL is a public company listed at the Bombay Stock Exchange and Calcutta Stock Exchange.
2. Investigation revealed that ZSL made various corporate announcements/actions during the investigation period. The trading window for shares of ZSL was closed during the period July 18-19, 2005 for the purpose of bonus issue and dividend declaration. The trading window was also closed during September 05-06, 2005 for the announcement of

development of real estate project at Bangalore. Further, it was revealed that Shri Prakash Jain (hereinafter referred to as the 'Noticee'), Assistant Accountant in ZSL, had traded during the period of trading window closure and allegedly violated Clauses 3.2.2, 3.3.1 and 3.3.3 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies (Model Code) prescribed in the Schedule-I of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations').

3. SEBI has therefore initiated adjudication proceedings under the SEBI Act against the Noticee to inquire into and adjudge the alleged violations as above.

Appointment of Adjudicating Officer

4. SEBI vide order dated April 20, 2009 appointed Shri Deepak Trivedi as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15HB of the SEBI Act, the alleged violation of the provisions of Clauses 3.2.2, 3.3.1 and 3.3.3 of Model Code prescribed in Schedule-I of the PIT Regulations by the Noticee. SEBI vide order dated January 04, 2012 appointed the undersigned as the AO in this matter.

Show Cause Notice, Reply and Personal Hearing

5. The AO issued notice dated September 03, 2009 (hereinafter referred to as the 'SCN') under Rule 4 of the Adjudication Rules to the Noticee to show cause as to why an inquiry should not be held against him and penalty be not imposed under Section 15 HB of the SEBI Act for his alleged violation of the abovementioned provisions of the Model Code prescribed in Schedule-I under PIT Regulations.
6. The SCN was sent by 'Registered Post Ack. Due' and the same was duly delivered to the Noticee. However, the Noticee failed to reply to the SCN. The AO sent a reminder letter dated April 28, 2010 to the Noticee subsequent to

which the Noticee submitted a reply to the SCN vide letter dated July 12, 2010. After considering the reply submitted by the Noticee, the AO decided to conduct an inquiry in the matter and accordingly granted an opportunity of personal hearing to him on October 04, 2011 vide letter dated August 30, 2011. The Noticee failed to appear for the said hearing but vide letter dated December 26, 2011 requested for another opportunity of hearing at Mumbai. The Noticee was granted personal hearings by the undersigned on February 06, 2012 and February 23, 2012 vide letters dated January 20, 2012 and February 13, 2012 which were delivered to the Noticee. However, the Noticee failed to attend the personal hearings.

7. In view of the above, I proceed with the inquiry taking into account the written submissions of the Noticee and material as available on record.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges against the Noticees mentioned in the SCN, the written submissions of the Noticee and all the materials and documents as available on record. The issues that arise for consideration in the present case are:

- a) Whether the Noticee has violated the provisions of Clauses 3.2.2, 3.3.1 and 3.3.3 of the Model Code prescribed in Schedule-I under PIT Regulations?*
- b) Do the violations, if any, on the part of the Noticee attract any penalty under Section 15HB of the SEBI Act?*
- c) If yes, what should be the quantum of monetary penalty?*

9. The provisions of Clauses 3.2.2, 3.3.1 and 3.3.3 of the Model Code prescribed in Schedule-I under PIT Regulations read as under:

3.2-2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.3 Pre-clearance of trades

3.3-1 *All directors/officers/designated employees of the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.*

3.3-3 *An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable :*

(a) *That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.*

(b) *That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.*

(c) *That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.*

(d) *That he/she has made a full and true disclosure in the matter.*

10. The Noticee in his reply to the SCN has inter alia submitted that he was holding the office of an Assistant Accountant and was working at lower management cadre. His routine work was limited, clerical in nature and in no way gave him any scope to interact directly or indirectly with the management. He was not in possession of any insider or price sensitive information. He was on long absenteeism from his work as he was ill. He was not in office during June 2005 to September 2005 and was not aware/informed about closure of trading window and about requirement to take pre-clearance. He sold shares of ZSL out of urgency because he needed funds for his treatment. The alleged violation, if any, happened inadvertently and only once in life, out of ignorance and to meet genuine requirement to save his life.
11. I find from available records that the trading window for shares of ZSL was closed during the period July 18-19, 2005 for the purpose of bonus issue and

dividend declaration. The trading window was also closed during September 05-06, 2005 for the announcement of development of real estate project at Bangalore. As per the submissions made by ZSL, none of the employees of the company traded in the shares of the company during the window closure period. However, as per the available records, the Noticee bought a total of 10,000 pre-split shares on July 12, 2005 @ Rs.32 per share and sold the said 1,00,000 shares post split @ Rs.3.86 per share during July 18-19, 2005, when the trading window was closed by ZSL (the shares of ZSL with face value of Rs.10 each were split into shares with face value of Re.1 each). He had purchased 50,000 shares at an average price of Rs.4.38 per share during August 04, 2005 and September 01, 2005. He had sold 25,000 shares @ Rs.4.74 per share on September 05, 2005 when the trading window was closed. The above transactions earned him a profit of approximately Rs.84,000/-. The Noticee has admitted that he sold the shares during the trading window closure and had not taken any pre-clearance from ZSL for the said sales. Further, the contention of the Noticee that he had sold the shares for meeting his medical expenses is not entirely acceptable as he had purchased 10,000 shares (pre-split) and 50,000 shares (post split) of ZSL during the investigation period.

12. In view of the above-mentioned observations and finding, I conclude that the allegation of violation of provisions of Clauses 3.2.2, 3.3.1 and 3.3.3 of the Model Code prescribed in Schedule-I under Insider Trading Regulations by the Noticee stands established beyond reasonable doubt which makes him liable for penalty under Section 15HB of the SEBI Act.
13. The provisions of Section 15HB of the SEBI Act read as follows:

Penalty for contravention where no separate penalty has been provided.

15HB. *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.*

14. While imposing 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.”*

15. I observe that from the material available on record that the Noticee has made an approximate profit of ₹ 84,000/- on the shares sold by him during the window closure. It is difficult to quantify the extent of loss suffered by the investors as a result of the default and whether the default is repetitive in nature.

Order

16. 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 (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) under Section 15HB of the SEBI Act on the Noticee. In my view, the penalty is commensurate with the defaults committed by the Noticee.
17. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of ‘SEBI – Penalties Remittable to Government of India’ and payable at Mumbai, within 45 days of receipt of this order. The said demand draft shall be forwarded to the Division Chief, IVD-ID8, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

18. In terms of the provisions of Rule 6 of the Adjudication Rules the copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: March 29, 2012

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**