

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ISD/SICOM/AO/DRK-CS/EAD-3/544/88-14]

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

Against:
SICOM Ltd.

Solitaire Corporate Park, Building No. 4,
6th Floor, Guru Hargovindji Road
(Andhari-Ghatkopar Link Road), Chakala,
Andheri (E), Mumbai- 400093

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 Vas Infrastructure Ltd. (hereinafter referred to as "*VIL*") during November 1, 2011 to May 30, 2012. The shares of VIL are listed in Bombay Stock Exchange Limited (hereinafter referred to as BSE). The examination report observed that a few entities of the promoter group of VIL, had pledged their shares with SICOM Ltd. (hereinafter referred to as "*SICOM*" / "*Noticee*") in tranches during April 2010 to January 2011. On February 23, 2012 SICOM had invoked 37,53,200 shares pledged with it.

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 same was communicated vide proceedings of appointing Adjudicating Officer dated June 13, 2013 for the alleged violation of the provisions of Regulations 29(1) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "*SAST Regulations*") and regulations 13(1) of 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 No. A&E/EAD-3/DK-BM/2189/2013 dated August 29, 2013 (hereinafter referred to as "SCN") was sent to the Noticee by "RPAD" 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:
 - a. the entities forming part of the promoter group of VIL, namely Vasparr Trading Private Limited, Pushpanjali Drums Private Limited, Precision Containeurs Limited, Yashraj Containeurs Limited and Vasparr Shelters Limited had pledged their shares with the Noticee in tranches during April 2010 to January 2011. 37,53,200 shares pledged with the Noticee were observed to have been invoked by the Noticee on February 23, 2012. It is further observed that Noticee's name was not appearing in the list of persons holding more than 1% of the share capital of VIL as on the quarter ending December 2011. However, shareholding of the Noticee in VIL as on the quarter ending March 2012 was 37,53,200 shares constituting 28.59% of the share capital.
 - b. the Noticee failed to disclose the acquisition of shares of VIL amounting to more than 5% of the share capital of VIL as required under Regulations 29 (1) read with 29 (3) of SAST Regulations and regulation 13 (1) of the PIT Regulations.
4. In response to the SCN, the Noticee submitted its reply dated September 12, 2013, wherein it was stated as follows:
 - a. *SICOM is a public Financial Institution under the provisions of Section 4A of the Companies Act and Non deposit taking NBFC. We have provided financial assistance to Yashraj Containeurs Ltd. (which is a borrower company) for an amount of ₹25Cr. Yashraj Containeurs Ltd. had offered us collateral security in the form of pledge of shares of Vas Infrastructure Ltd., its group company. As we had observed discrepancies/ defaults in the conduct of account of Yashraj Containeurs Ltd. We had no alternative but to invoke the shares, which were pledged to us in February, 2012 by Vas Infrastructure Ltd. as a part of recovery measure.*

b. We are not bound by Disclosure of interest or holding in listed companies by certain persons-initial disclosure- u/s 13(1) of PIT Regulations as the shares were invoked since the company failed to make payments to us.

5. An opportunity of hearing was granted to the Noticee vide hearing notice dated January 3, 2014 to appear on January 23, 2014, at SEBI Bhavan, Mumbai. Noticee authorised Mrs. Sujata M. Navare, Senior Manager (Legal) & Mrs. Pallavi Joshi, Senior Manager to appear as its Authorised Representatives (ARs). During the course of personal hearing, ARs while reiterating the submissions made vide reply dated September 12, 2013 and January 23, 2014 submitted that

"We would like to draw your kind attention to Regulation 29(4) of SAST Regulations which states as under

"For the purpose of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosure shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

The requirement of disclosure of interest under regulation 13(1) of PIT Regulations is applicable only if a member of the Board of Directors or an employee of a public financial institution as defined in Section 4A of the Companies Act, 1956 has acquired or holds more than 5% shares or voting rights in any listed company. Therefore, regulation 13(1) is not applicable as it does not fit in the definition of "person is deemed to be a connected person" under the regulation 2(h) of PIT Regulation. We further state that SICOM Ltd. is neither a "connected person" as defined in regulation 2(c) nor it is an "insider" as defined in the regulation 2(e) of the PIT Regulations.

6. During the course of hearing, ARs had undertaken to file the additional reply within one week. The additional reply filed by the Noticee was received on January 29, 2014, wherein, it was stated as follows:

As shares are liquid instruments, when the same were invoked by us, the owners of the same were shown as SICOM in the shareholding pattern submitted by Vas Infrastructure Ltd. to BSE at the end of each quarter. However, SICOM does not show them as part of its investment note to SICOM's balance sheet. The facility sanctioned and disbursed to the company is shown as a part of "Bill discounting facilities".

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

7. 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 Regulation 2011

- 29.(1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and 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.*

PIT Regulations

13. (1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A], the number of shares or voting rights held by such person, on becoming such holder, within [2 working days] of :—*
- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be.*
8. Regulations 29 (1) read with 29 (3) of the Takeover Regulations stipulates that an acquirer shall make disclosure on acquisition of shares which results in holding of 5% or more of the share capital to the target company and the stock exchange/s where the shares are listed. Further, Regulations 13 (1) of the PIT Regulations stipulate that disclosure is required to be made by a person acquiring shares amounting to more than 5% of the share capital of a company to such company.
9. It is observed that as per the regulation 29(1) read with 29(3) of the SAST Regulations, Noticee was required to disclose the change in shareholding (change of more than five percent), to the target company and to the stock exchange/s within two working days as its shareholding in VIL increased to 28.59%. It is further observed that as per regulation 13(1) of PIT Regulations, Noticee, on becoming a holder of 28.59% (more than 5% shares) was required to disclose the number of shares held with it to the company, within two working days.

10. On perusal of the reply, submissions made during personal hearing and additional reply submitted by the Noticee, it is observed that Noticee has contended that it is a public financial institution under regulation 29(4) of SAST Regulations (page 2 para 4) and therefore it is exempted from making any disclosure under regulation 29(1) read with regulation 29(3) of SAST Regulations. It is observed that the Noticee had invoked the shares pledged with it due to certain discrepancies/ default in the conduct and as part of recovery measure.
11. Regulation 29(4) of SAST Regulations states that shares taken by way of encumbrance shall be treated as an acquisition and release of encumbrance shall be treated as a disposal and disclosures have to be made accordingly. The proviso to the above regulation exempts PFIs as pledgee with a pledge of shares for securing indebtedness in the ordinary course of business. In other words, the benefit of exemption is available to a bank/PFI at the time they take shares as a pledgee. In fact, in terms of sub regulation 4 of Regulation 29, taking of shares under encumbrance amounts to acquisition requiring disclosure under sub-regulation 1 & 2 of regulation 29. However, proviso to regulation 29 gives exemption to bank/PFI from disclosure requirement in respect of such taking of shares under encumbrances. i.e. to say, when the shares were taken by the Noticee under pledge, the Noticee had the benefit of exemption from disclosure requirement, provided under proviso to regulation 29.
12. In the instant case, the Noticee has invoked the pledge and got the shares transferred in its name. The Noticee has become the beneficial owner of the shares entitling it to exercise voting rights in respect of those shares held in its name, consequent to invocation of pledge. In short, the Noticee has acquired the shares and can no longer be said to be holding shares under encumbrance as pledgee. Taking of shares by way of encumbrance as pledgee is different from acquisition of shares by way of invocation of pledge. It is only in respect of the former type of transactions/acquisitions, exemption is available to a bank/PFI. As such, no benefit of exemption from disclosure requirement is available to the Noticee at this stage when it has already become the beneficial owner of the shares and has the voting rights in those shares. As per proviso to regulation 29(4) of SAST Regulation the SAST requirements would not be applicable to public financial institution as pledgee. However, on such invocation of shares, the Noticee no more remains to be a pledgee and becomes a beneficial and absolute owner. Therefore, the submission of the Noticee that they are exempted from the requirements of regulation 29(1) read with 29(3) of SAST Regulations is not accepted.

13. Noticee has further contended that regulation 13(1) of PIT Regulations is not applicable to it for the reasons mentioned at page 4 para 5. It is observed that the contention is incorrect as regulation 13(1) of SAST Regulation is applicable for any person who holds more than five percent shares or voting rights in a company and not just for directors, employees etc. as contended by the Noticee. The Noticee as it invoked the shares on February 23, 2012 was holding 28.59% shares of VIL. Therefore, Noticee was required to disclose the same to the company within two working days. However Noticee has failed to do so.
14. Therefore, in view of the above, the allegation of the non-compliance of the provisions of regulations 29(1) read with 29(3) of the SAST Regulations and regulation 13(1) of the PIT Regulation, within the stipulated time, stands established against the Noticee.
15. It is pertinent to refer to the judgement of Hon'ble Securities Appellate Tribunal in *G. Suresh vs. SEBI* dated 29.04.2014, wherein it was held that *"True and timely disclosures by an acquirer of shares in a company or an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company."*
16. 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."*
17. 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"*.
18. 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.

19. 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.”*

20. 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 provisions. 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 ₹ 5,00,000 (Rupees Five Lakh Only) on the Noticee for the non-compliance of the provisions of regulations 29(1) read with 29(3) of the SAST Regulations and regulation 13(1) 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

21. 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 ₹5,00,000 (Rupees Five 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 non-compliance of the provisions of regulations 29(1) read with 29(3) of the SAST Regulations and regulation 13(1) of PIT Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the non-compliance by the Noticee.

22. 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.

23. 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 SICOM Ltd. and also to the Securities and Exchange Board of India Mumbai.

Place: Mumbai

Date: June 27, 2014

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