

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/KS/MKG/AO/95/2017-18]

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

IFCI Venture Capital Fund Ltd.

[PAN: AAACR3037R]

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the scrip of Varun Industries Limited (hereinafter referred to as '**VIL**'), which is listed on BSE and NSE.
2. It is noted from Investigation Report (hereinafter referred to as '**IR**'), individual shareholding of IFCI Venture Capital Fund Limited (hereinafter referred to as the '**Noticee/Company**') pursuant to invocation of pledged shares, had crossed the threshold limit of 5% to the total share capital of the VIL. In this regard, it was observed that the Noticee had failed to make relevant disclosures to Stock Exchanges as required under the relevant provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI, vide communication order dated July 17, 2017, appointed the undersigned 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 SEBI

(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15A(b) of SEBI Act, the alleged violation of the provisions of law by Noticee.

Show Cause Notice, Reply and Personal Hearing

4. A show-cause notice (hereinafter referred to as '**SCN**') no. SEBI/EAD/KS/MKG/26953/2017 dated November 02, 2017 was issued to the Noticee under rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty not be imposed upon it under section 15A(b) of SEBI Act respectively for the alleged violations specified in the said SCN. The Noticee was given 15 days of time to make its submission in respect of the allegations made in the SCN.
5. It is observed in the SCN that Mr. Kiran Kumar Mehta, Promoter of VIL encumbered/pledged a part of his shareholding in VIL, with Noticee for the purpose of borrowing money. In this regard, it was alleged that the Noticee violated the provisions of PIT Regulations and SAST Regulations while invoking the pledged shares. The transactions which gave rise to the alleged violation/ non-compliance are as given below:

Table - 1

Sr. No.	Date of invocation	No of shares invoked	Date of invocation	% to total share capital of VIL	Holding of Noticee post invocation as a % of Paid-up share capital of Company
1	22-Aug-12	50,000	22-Aug-12	0.17	5.15
2	22-Aug-12	250,000	22-Aug-12	0.86	6.01

- a. It was alleged in the SCN that these encumbered shares were partly invoked by the Noticee on several occasions and the transactions referred to in the above table being acquisition(s) exceeding 5% of the paid-up share capital of VIL, and reached as high as 6.01% of total paid-up share capital of the

Company on August 22, 2012, triggered the disclosure provisions of PIT Regulations and SAST Regulations.

- b. It was also alleged that the above mentioned transactions required to be disclosed within two working days of invocation (acquisition) of pledge of shares to VIL in terms of Regulation 13(3) read with Regulation 13(5) of PIT Regulations were not disclosed.
 - c. It was also alleged that the Noticee was required to disclose its shareholding in VIL within 2 working days of the said acquisition to the Company (i.e., to VIL) as well as to both the exchanges (BSE and NSE as per the IR) in terms of Regulation 29(1) read with Regulation 29(3) of SAST Regulations which Noticee has failed to make. Therefore, it was alleged that Noticee had also violated Regulation 29(1) read with 29(3) of SAST Regulations.
6. The Noticee, vide email and letter dated November 24, 2017, sought extension of time for filing reply to the aforesaid SCN, which was acceded to on the same day. Thereafter the Noticee, vide letter dated December 05, 2017, replied to the SCN and *inter-alia* made the following submissions:
- i) *Noticee is a subsidiary of IFCI Limited which is a government company under the administrative control of Department of Financial Services, Ministry of Finance.*
 - ii) *Noticee was setup in 1975 with the objective to broaden entrepreneurship base in India by providing risk capital mainly to first generation entrepreneurs under "Risk Capital Scheme".*
 - iii) *Noticee is registered with RBI as a systematically important Non-Banking Financial Company and provides financial assistance to corporates engaged in various sectors also Public Financial Institution under Section 2(72) of the Companies Act, 2013. The said financial assistance is generally secured by pledge of listed shares and/or mortgage of immovable properties.*

- iv) Noticee is law abiding citizen and has utmost respect and the dignity to the legal framework in which it operates. Noticee has a consistent track record of good compliance relating to the securities market. Noticee has not been found guilty of violating any provisions of companies act or SEBI Regulations or any other applicable Regulations or rules in force since its incorporation.
- v) Noticee further stated that the Company had provided credit facilities to VIL to the tune of Rs. 10.00 crore against pledge of shares by their promoters. Subsequently, due to non-payment of the dues of Noticee by the promoters, the Company had invoked the 17,50,000 pledged shares on April 12, 2012 and recovered amount Rs. 7,90,68,719/-. It is submitted that the purpose of obtaining pledge shares from the promoters/pledgers is to secure the repayment of the facility granted by Company.
- vi) Noticee added that as regards the disclosures requirements under Regulation 29 of SEBI(SAST) Regulations, 2011, It was of the genuine belief and opinion that the said requirement does not applies to the 'Public Financial Institution', in terms of the proviso to Regulation 29(4). There was no occasion for IFCI Venture to either wilfully or otherwise harbouring any attempts to disobey or violate the regulatory provisions. Being a Public financial Institution, IFCI Venture has the highest regards for statutory compliances and the regulatory stipulations.
- vii) Noticee submitted that it believed that if at all there was any requirement of disclosing the invocation it was on the owner of the shares i.e. Mr. Kiran Kumar Mehta, promoter of Varun Industries Limited. Hence, Noticee in full bona fide believed that the exemption under the proviso applied to it and hence could not make the necessary disclosures. Further it also submitted that the failure to disclose to the Stock exchange is neither deliberate nor intentional but is only borne out by its understanding of the said regulatory provisions.
- viii) In View of the above, Noticee requested to kindly consider that the Noticee is a subsidiary of IFCI Limited, a Government of India Undertaking. Being a Public Financial Institution within the meaning of Section 2(72) of the Companies Act, 2013, the sole objective of Noticee was recovery of public money from the

borrower who has failed to repay the dues of Noticee. Further, the Company had no intention to take over the management of the VIL, hence does not amount to violation of the basic principles of SEBI (Prohibition of Insider Share and Take over) Regulations, 2011 and SEBI (Prohibition of Insider Trading) 1992. Noticee had not derived any economic benefits from avoiding of giving such disclosure in compliance to the Stock Exchanges/ Target Company and the only aim of Noticee was to recover its outstanding dues from the Borrower.

ix) Noticee was of the Genuine belief and opinion that the said requirement does not applies to the 'public Financial Institutions', in terms of the proviso to Regulation 29(4) of SEBI (SAST) Regulations, 2011. Under the circumstances explained above, Noticee requested to kindly consider the reply given by it satisfactory and spare Noticee from further proceedings in the matter.

7. Considering the principles of natural justice, an opportunity of personal hearing was provided to the Noticee on December 13, 2017 vide hearing notice dated December 06, 2017. Further, the Noticee vide email dated December 12, 2017, sought adjournment of the scheduled hearing. In pursuance to which the Noticee was granted final opportunity of hearing on December 21, 2017, vide email dated December 13, 2017. The Authorized Representatives of Noticee - Shri Madhur Bajaj, Associate General Manager and Shri Mukesh Giridhar, Company Secretary of the Noticee, attended the hearing on December 21, 2017 and reiterated the submissions made vide letter dated December 05, 2017.
8. Further, after hearing Noticee vide email dated December 29, 2017 submitted that it has made stipulated disclosures to both the exchanges. In this regard, Noticee sent copy of covering email dated December 29, 2017 addressed to BSE and NSE as an attachment.

Consideration of Issues, Evidence And Findings

9. 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 :

I. **Whether Noticee has violated Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations?**

II. **Does the violation, if any, attract monetary penalty under Sections 15 A (b) of SEBI Act.**

III. **If so, what should be the quantum of monetary penalty?**

10. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations and PIT Regulations which read as under:

Relevant provisions of SAST Regulations:

Disclosure of acquisition and disposal

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.

(2)

(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.

Relevant provisions of PIT Regulations:

Disclosure of interest or holding in listed companies by certain persons –

Initial Disclosure

13. (1)

(2)

(2A)

Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-Regulation (1) or under this sub-Regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(4).....

(4A).....

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

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Issue I: Whether Noticee has violated Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations

Findings:

11. Upon perusal of submissions of the Noticees and other documents available on record, I observe that Noticee is a Public Financial Institution. Promoter of VIL, Mr. Kiran Kumar Mehta encumbered/pledged a part of his shareholding in VIL with the Noticee for the purpose of borrowing money. Thereafter, these encumbered shares were partly invoked by the Noticee. The two transactions as shown in Table – 2 gave rise to disclosure obligations and this fact of the matter is not disputed by the Noticee.

Table - 2

Sr. No.	Date of invocation	No of shares invoked	Date of invocation	% to total share capital of VIL
1	August 22, 2012	50,000	22-Aug-12	0.17
2	August 22, 2012	2,50,000	22-Aug-12	0.86

12. I also note from records that BSE vide email dated February 03, 2016 and NSE vide email dated February 04, 2016 replied to SEBI confirming non receipt of any disclosure in VIL under SAST Regulations and PIT Regulations from the Noticee during the period from February 01, 2009 to September 30, 2012.
13. As per available records, nothing has been brought out regarding disclosures to VIL by the Noticee. Incidentally, I also note from the available records that VIL has been wound up pursuant to an order Hon'ble High Court of Bombay dated September 30, 2014.
14. Further, I note that Noticee vide email dated February 07, 2016 addressed to SEBI has admitted that it has not filed any disclosure under PIT Regulations during the period March 01, 2012 to September, 2012 in the scrip of Varun Industries Limited. Also, in its reply letter dated December 05, 2017, the Noticee has confirmed non disclosure.
15. As the holding statements of the Noticee were not provided with the IR, the transaction and holding statements of all the Beneficial Ownership accounts (hereinafter referred to as "BO accounts") of the Noticee were sought from National Securities Depository Limited (hereinafter referred to as "NSDL") and Central Depository Services Limited (hereinafter referred to as "CDSL") vide email dated February 14, 2018. I note from the reply received from CDSL vide email dated February 14, 2018 and February 21, 2018 that Noticee has been holding five BO accounts with CDSL. I further note that CDSL vide its email dated February 21, 2018 has confirmed that the Noticee *"has not transacted in the demat accounts in the scrip of VIL since the inception till February 20, 2018."*

16. Further, I note from the reply received from NSDL, vide email dated February 15, 2018, that Noticee has been holding five BO accounts with NSDL. However, I observe that only two BO accounts of the Noticee (viz. IN30081210491814 and IN30088814483267) had transactions in respect of the shares of VIL during the period of invocation of shares of VIL by the Noticee. I note that the Noticee has invoked shares of VIL on various dates and received the said shares in its BO account IN30088814483267. The Noticee has then transferred the said shares to its other BO account IN30081210491814 on the same date. Thus, the Noticee was ultimately holding the invoked shares of VIL in one BO account viz. IN30081210491814. I also note from the transaction statements provided by the NSDL that the Noticee started invoking shares of VIL from March 22, 2012 and its shareholding in VIL reached a maximum level of 11,50,000 shares (3.949% of the paid up share capital of VIL at the relevant time) on April 12, 2012. However, I also note that the Noticee has disposed off its entire shareholding in VIL on April 13, 2012. Thereafter, the Noticee has again been invoking more shares of VIL during the period April 20, 2012 to August 22, 2012 and has also disposed off some shares of VIL during the same period as per the table below:

Table - 3

Date	Description	Opening Balance	Debit	Credit	Closing Balance	Closing Balance as % of Paid up share capital of VIL
22-Mar-2012	By Stock Hldg Corp Of I Ltd / 14483267	0	0	100,000	100,000	0.34348
23-Mar-2012	By Stock Hldg Corp Of I Ltd / 14483267	100,000	0	200,000	300,000	1.03043
12-Apr-2012	By Stock Hldg Corp Of I Ltd / 14483267	300,000	0	850,000	1,150,000	3.95000
13-Apr-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213009	1,150,000	575,000	0	575,000	1.97500
13-Apr-2012	To CM Stock Hldg Corp Of I Ltd, Normal / 2012069	575,000	575,000	0	0	0.00000
20-Apr-2012	By Stock Hldg Corp Of I Ltd / 14483267	0	0	200,000	200,000	0.68696
04-May-2012	By Stock Hldg Corp Of I Ltd / 14483267	200,000	0	100,000	300,000	1.03043

Date	Description	Opening Balance	Debit	Credit	Closing Balance	Closing Balance as % of Paid up share capital of VIL
23-May-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213037	300,000	4,000	0	296,000	1.01669
23-May-2012	To CM Stock Hldg Corp Of I Ltd, Normal / 2012096	296,000	14,723	0	281,277	0.96612
24-May-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213038	281,277	9,525	0	271,752	0.93341
24-May-2012	To CM Stock Hldg Corp Of I Ltd, Normal / 2012097	271,752	3,350	0	268,402	0.92190
25-May-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213039	268,402	2,031	0	266,371	0.91493
25-May-2012	To CM Stock Hldg Corp Of I Ltd, Normal / 2012098	266,371	16,000	0	250,371	0.85997
29-May-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213041	250,371	30,000	0	220,371	0.75693
29-May-2012	To CM Stock Hldg Corp Of I Ltd, Normal / 2012100	220,371	35,000	0	185,371	0.63671
31-May-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213043	185,371	1,160	0	184,211	0.63272
31-May-2012	To CM Stock Hldg Corp Of I Ltd, Normal / 2012102	184,211	1,773	0	182,438	0.62663
22-Aug-2012	By Stock Hldg Corp Of I Ltd / 14483267	182,438	0	250,000	432,438	1.48533
22-Aug-2012	By Stock Hldg Corp Of I Ltd / 14483267	432,438	0	50,000	482,438	1.65707
23-Aug-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213101	482,438	11,954	0	470,484	1.61601
23-Aug-2012	To CM Stock Hldg Corp Of I Ltd, Trade For Trade / 2012160	470,484	7,375	0	463,109	1.59068
27-Aug-2012	To CM Stock Hldg Corp Of I Ltd, Rolling Mkt Lot / 1213103	463,109	10,565	0	452,544	1.55439
27-Aug-2012	To CM Stock Hldg Corp Of I Ltd, Trade For Trade / 2012162	452,544	16,600	0	435,944	1.49737

17. I observe from the above table that even though on a gross basis the Noticee has invoked more than 5% of share capital of VIL, the shareholding of the Noticee in VIL has never crossed 5% due to the fact that the Noticee has also disposed off shares of VIL during the same period. The investigation report has not taken into consideration the disposal of VIL shares by the Noticee during the period of invocation of shares. In view of the same, I conclude that the shareholding of the Noticee in VIL did not cross 5% during the said period.

18. It was alleged in the SCN that the Noticee had violated the provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(3) read with Regulations 13(5) of PIT Regulations. However, disclosure requirements under Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(3) read with Regulations 13(5) of PIT Regulations are triggered only when an entity holds / crosses 5% of paid up share capital of a company. In the instant case, as noted above, the shareholding of Noticee in VIL did not reach 5% during the period of invocation and therefore the disclosure requirements under Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(3) read with Regulations 13(5) of PIT Regulations were not applicable for the Noticee. In view of the above, I conclude that the allegation of violation of Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(3) read with Regulations 13(5) of PIT Regulations is not established against the Noticee and therefore, do not attract any monetary penalty under Section 15A(b) of the SEBI Act.

ORDER

19. In view of my findings noted in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose off the Adjudication Proceedings initiated against the Noticee viz. IFCI Venture Capital Fund Limited vide SCN dated November 02, 2017.

20. In terms of Rule 6 of the Rules, copies of this order are being sent to IFCI Venture Capital Fund Limited and also to the Securities and Exchange Board of India.

Date: February 23, 2018
Place: Mumbai

K SARAVANAN
ADJUDICATING OFFICER