

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

(ADJUDICATION ORDER NO. DT/AO/05/2011)

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING ENQUIRY AND IMPOSTING
OF PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In Respect Of

- i. Mr. Anil Gandhi (PAN ACIPG8954B)
- ii. Anil Gandhi (HUF) (PAN AABHG6852M)
- iii. Mr. Amrutlal Gandhi
- iv. Mrs. Sudhaben Gandhi
- v. Mrs. Priti Anil Gandhi(PAN ACIPG8956D)
- vi. Ms. Pooja Anil Gandhi(PAN AHSPG5744L)
- vii. M/s. Presilco Impex Limited(PAN AACCP4844L)

In the matter of Zigma Software Limited

BRIEF FACTS OF THE CASE

1. SEBI conducted investigation in respect of buying, selling and dealing in the shares of Zigma Software Limited (herein after referred to as ZSL/the company) for the period June 01, 2005 to September 30, 2005 (herein after referred to as Investigation Period). The shares of ZSL were listed on Calcutta Stock Exchange Limited (herein after referred to as CSE) and the Bombay Stock Exchange (herein after referred to as BSE). However during the period of investigation, the shares were traded at BSE only. The script of ZSL witnessed

sudden spurt in the volumes followed by corporate announcements like stock split, issue of bonus shares, etc by the company during June 01, 2005 to September 30, 2005. The price spurt in the said scrip took place in two sets of period i.e. from June 01,2005 to July 12, 2005 (the pre-stock split period) and July 13, 2005 to September 30, 2005 (the post stock split period). The scrip was split from ₹10 to ₹1 w.e.f. July 13,2005.

2. During the investigation period, the broker Galaxy Broking Limited was having major concentration in gross purchase, gross sales, net purchase and net sales prior to stock split. The clients connected/related to Anil Gandhi (Director of Galaxy Broking Limited) dealt through three brokers and totally bought 40,45,933 shares accounting for 30.93% and sold 40,80,587 shares accounting for 31.20% of total traded volumes during the pre stock split period and also bought 10,00,78,342 shares accounting for 21.23% and sold 11,86,09,651 shares accounting for 25.16% of the total traded volumes after post stock split period. The total trading volume during the pre split period was 1,30,78,376 shares and post split period was 47,12,82,989 shares.
3. The investigation revealed that Mr. Anil Amrutlal Gandhi (Director) of Galaxy Broking Ltd.) Anil Amrutlal Gandhi (HUF), Mrs. Priti Anil Gandhi, Ms. Pooja Anil Gandhi, Mr. Amrutlal Gandhi, Mrs. Sudhaben Amrutlal Gandhi and Presilco Impex Ltd. (herein after referred to as noticees and “Anil Gandhi Group”) dealt in the scrip through Galaxy Broking Ltd.
4. During the pre-stock split period, Anil Gandhi Group traded for 27 days, purchased 34,05,080 shares (26% of the pre-split traded volume) in the price range of ₹ 24.25 to ₹ 32 and sold 32,64,018 shares (24.95% of the total traded volume) in the price range of ₹ 23.7 to ₹ 32. After stock split, the group traded for 54 days, purchased 10,00,78,312 shares (21% of the traded volume) in the price range of ₹ 2.97 to ₹ 4.71 and sold 11,20,02,239 shares (23.76% of the total traded volume in the price range of ₹ 2.89 to ₹ 4.99. It was also observed that on consideration of the bonus issue shares the major buying and selling broker was Galaxy trading for its group clients who were connected. On July 12, 2005 Anil Gandhi Group purchased 13,59,128 shares (37 % of the day's volume) and sold 15,14,298 shares (41% of the day's volume) and their presence (either buy or sell) was 75.3% of the total trades at the exchange on that day. It is also noticed that on the day when Anil Gandhi Group had not traded at the stock exchanges, daily average volumes prior to stock split were 74,161 shares as compared to 4,73,397 shares on the day when Anil Gandhi group traded in the scrip.
5. Investigation further revealed that Anil Gandhi group was counter party buyer for 5,49,527 shares (14.13% of the total traded quantity during June 01-05) to the total sale of 7,58,444 shares made by the promoter G. R. Magnates Limited, during June 01-15, 2005.
6. It is observed from the details submitted by the group during the investigation period that, as on May 31,2005, the consolidated holding of the group was about 14.27 % of the total equity of 1,48,18,800 shares of ZSL.

Name of the person	No. of shares held as on 31/05/2005	% of total equity
Anil Gandhi	5,70,274	3.85%
Priti A. Gandhi	4,21,370	2.84%
Amrutlal Gandhi	3,34,800	2.26%
Pooja A Gandhi	3,13,000	2.11%
Presilco Impex Ltd.	2,21,794	1.50%
Sudhaben Gandhi	1,41,668	0.96%
Anil Gandhi (HUF)	1,11,150	0.75%
Total	21,14,056	14.27%

7. Further, they purchased 54,601 shares on June 02, 2005 in addition to their above holding and purchases on June 1, 2005, exceeded 15% of the total equity of ZSL i.e. 1,48,18,800 shares. They continued to buy shares in the market and their holding reached 20.33%. of share holding in ZSL on July 19,2005. On very next day they sold around 9.3% stake in the market. The above noticees who can be termed as PAC acquired more than 15% of the shares of the company and did not make any public offer as required under Regulation 10 of SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 1997.
8. Investigation also revealed that Presilco Impex Pvt. Ltd. purchases crossed 5% stake in the company on July 15, 2005 and Mrs. Preeti Anil Gandhi purchases crossed 5% stake in the company on August 29, 2005 and their holding was reduced by more than 2% of equity capital on account of subsequent sale of shares and did not make disclosures to the company & stock exchanges under Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 1997 and Regulation 13(1) & 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

APPOINTMENT OF AO

9. The undersigned has been appointed as Adjudicating Officer, vide Order dated April 20,2009 to enquire into the alleged violation of the provisions of Securities and Exchange Board of India Act, 1992 (herein after referred to as "SEBI Act"), SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 1997 [herein after referred to as SAST Regulations 1997] & SEBI (Prohibition of Insider Trading) Regulations, 1992 {herein after referred to as PIT Regulations 1992} by the noticees as observed during the investigations conducted in the scrip of ZSL.

SHOW CAUSE NOTICE, REPLY AND HEARING

10. A show cause notice dated September 04, 2009 was issued to the noticees (1 to 7) calling upon to show cause as to why an inquiry should not be held against him in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 and penalty be not imposed under Section 15H of the SEBI Act, 1992 for the alleged contravention of SAST Regulations ,1997 & PIT Regulations, 1992.

11. Vide letter dated November 06, 2009 the noticees (1 to 6) submitted the following.

- (i) The noticees are not connected with Presilco Impex Limited.
- (ii) While providing the details of the holding to the Board, the noticees had incorrect information. As broker Galaxy Broking Limited was undergoing suspension and its staff was retrenched on account of which the noticees could not get the complete information.
- (iii) As per the correct information, the noticee no.1 was holding 419706 shares as on 31 May 2005 amounting to 2.83% of total equity of ZSL.
- (iv) After 31st May, 2005 the group has purchased and sold the shares as per the information submitted.
- (v) Based on the holding submitted it may be noted that the group never touched to 15% and hence the contention raised in the show cause notice is not applicable.

12. In terms of Rule 4(3) of the Securities and Exchange Board of India (Procedure for holding inquiry and imposing penalty by Adjudicating Officer) Rules, 1995, a hearing was conducted on April 26, 2011 for Shri Anil Gandhi and Anil Gandhi HUF which was attended by Shri Anil Gandhi who submitted the following:

- (i) He was a director of Galaxy Broking Limited (hereinafter referred to as GBL).
- (ii) He was authorized signatory of the GBL.
- (iii) He was shareholder of the GBL.
- (iv) He was director of the Presilco Impex Limited in the year 2000 for four months and joined them for a project.
- (v) He does not know the Promoter / Other Director of Presilco.
- (vi) Presilco Impex Limited is client of GBL.

Hearing opportunity was provided to Mrs. Priti Anil Gandhi on March 24, 2011 which was attended by Ms. Vasanthi Nagda, the authorised representative of Ms. Priti Gandhi. She submitted the following.

- (i) Mr. Anil Gandhi is the spouse of Ms. Priti Gandhi. She has done all the dealings through Galaxy Broking.
- (ii) As per the show cause notice, she was holding 58,32,913 shares as on 26.8.2005. On 29.08.2005 she made an additional purchase of 24,50,000 shares taking a total holding to 82,82,913 shares (5.59%). On advising to reconfirm the above figures, she informed that she does not accept the figures and she has no reasons to substantiate the figures.
- (iii) On confirmation regarding whether the above referred shares were lying in her beneficiary account, she submitted that the shares were lying in the beneficiary account of Galaxy Broking Ltd.

Hearing opportunity was provided to Ms. Pooja Anil Gandhi on March 24, 2011 which was attended by Ms. Vasanthi Nagda, the authorised representative of Ms. Pooja Gandhi. She submitted the following.

- (i) Mr. Anil Gandhi is the father of Ms. Pooja Gandhi.
- (ii) She is a student
- (iii) She is not connected with Galaxy Broking. However, her father is the director of Galaxy Broking
- (iv) In the reply dated 28.6.2006 to SEBI, she had submitted that she is holding 3,13,000 shares as on 31.05.2005. Subsequently in her reply dated 07.11.2009 she submitted having -27,664 shares. When asked to explain the contradiction, it was submitted that since Galaxy Broking Limited provided wrong information earlier, Pooja Gandhi relied on the data submitted by Galaxy Broking. Now the correct data is submitted.

Hearing opportunity was provided to Presilco Impex Ltd. on April 26, 2011, May 27, 2011 and July 21, 2011. However, they failed to appear on any of these days. In view of the same, I am proceeding against Presilco Impex Ltd. based on the documents available on records.

Hearing opportunity was provided to Mr. Amrutlal Gandhi on March 24, 2011. However, vide letter dated March 19, 2011 he submitted that he had nothing more to add to the written submissions already submitted by him vide letter dated November 6, 2009 and he will not appear for the personal hearing.

Hearing opportunity was provided to Mrs. Sudha Gandhi on March 24, 2011. However, vide letter dated March 19, 2011 she also submitted that she had nothing more to add to the written submissions already submitted by her vide letter dated November 6, 2009 and she will not appear for the personal hearing.

ISSUES FOR CONSIDERATION AND FINDINGS:

13. I have perused the entire material available on record. Regarding the contention of the noticees that Presilco is not a part of Anil Gandhi Group, during the hearings, Mr. Anil Gandhi submitted that he was director in the Presilco in the year 2000. Further Presilco is also a client of Galaxy. Mr. Anil Gandhi has also confirmed that he was a shareholder and director of Galaxy. I note from the records available that Mr. Anil Gandhi resigns from the board of Presilco Impex Ltd. w.e.f. October 15, 2000. In view of these facts, Presilco Impex Ltd. cannot be considered as part of Anil Gandhi group for the purpose of violation of Regulation 10 of SAST Regulations, 1997. Hence I conclude that noticee1-6 only are part of Anil Gandhi group. It is also noted that all these six noticees submitted common reply dated November 6, 2009.

Mr. Anil Gandhi is Karta of Anil Gandhi (HUF). Mr. Anil Gandhi is the spouse of Ms. Priti Gandhi and father of Ms. Pooja Gandhi. Mr. Amrutlal Gandhi is father of Mr. Anil Gandhi. Mrs. Sudha Gandhi is wife of Mr. Amrutlal Gandhi. Thus, all six noticees are family members except HUF and termed as Anil Gandhi group.

14. Since Presilco Impex Ltd. is excluded from Anil Gandhi Group, the table stated at para 6 would be read as follows:

Name of the person	No. of shares held as on 31/05/2005	% of total equity
Anil Gandhi	5,70,274	3.85%
Priti A. Gandhi	4,21,370	2.84%
Amrutlal Gandhi	3,34,800	2.26%
Pooja A Gandhi	3,13,000	2.11%
Sudhaben Gandhi	1,41,668	0.96%
Anil Gandhi (HUF)	1,11,150	0.75%
Total	18,92,262	12.77%

The Annexure 3 enclosed with the show cause notice discusses cumulative trading by Anil Gandhi group. As on May 31,2005, the group submitted that the cumulative holding was 18,92,262 shares (12.77%). The group entities traded in the market subsequently and crossed 15% of the share capital on June 13,2005 when Mrs. Sudha Gandhi acquired 55100 shares. With this acquisition, the shareholding of the group becomes 15.21 % of the share capital and required to make open offer under Regulation 10 of SAST Regulations, 1997. Since no open offer was made, the violation of aforesaid violation against Anil Gandhi group (six entities) stands established.

15. During the hearing, the authorised representative of Mrs. Preeti Gandhi denied the charges of acquired more than 5% of the share capital, as stated in Annexure 4 of the show cause notice dated September 4,2009 and also informed about submitting information subsequently. But no information is submitted by her. Thus, it is also established that Mrs. Priti Gandhi has acquired more than 5% of the share capital and her holding also reduces by more than 2 % resulting in violation of Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 1997 and Regulation 13(1) & 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

Similarly Presilco also has denied the allegations vide reply dated November 16,2009 and stated that since their shareholding was reduced from 5.57 % to 2.46%, they were under impression that such disclosures were not required. Further, such disclosure is unwarranted because they do not want exercise control over ZSL. Thus, Presilco Impex Ltd. has also violated Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Take Over) Regulations, 1997 and Regulation 13(1) & 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

16. Regarding the contention of the noticees that they could not give the authentic data as Galaxy Broking was not in operation and now they are submitting the revised data, I observe that they are not able to give any documentary evidence of the authenticity of data submitted now. Further, based on the various submissions, it can be observed that Mr. Anil Gandhi was in the active management of Galaxy Broking and could have access to the records of Galaxy. He was not a mere client of Galaxy Broking.

17. It is alleged that the noticees have violated Regulation 10 of SEBI (SAST) Regulations, 1997 (entities at serial no 1 to 7) and Regulation 7(1) read with (2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) and 13(3) read with 13(5) of SEBI (PIT) Regulations (entities mentioned at serial no 5 and 7).

10. Acquisition of fifteen per cent or more of the shares or voting rights of any company

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

7. Acquisition of 5 per cent or more shares or voting rights of a company

(1) 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 shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company to the company

(2) The disclosures mentioned in sub-regulation (1) shall be made within four 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

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure

(1) Any person who hold more than 5% shares or voting rights in any listed company shall disclose to the company, the number of shares or voting rights held by such person, on becoming such holder, within 4 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

Continual Disclosure

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 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

....

(5) the disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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

18. In view of the aforesaid discussion, I am of the opinion that the noticees who acquired shares failed to make necessary disclosure and make an open offer. The noticees subsequently reduced their holdings, which indicate that they were not intending to acquire majority control. However, this does not absolve them from violations committed. Thus, noticees have violated Regulation 10 of SEBI (SAST) Regulations, 1997 (entities at serial no 1 to 6) and Regulation 7(1) read with (2) of SEBI (SAST) Regulations, 1997 and Regulation 13(1) and 13 (3) read with 13 (5) of SEBI (PIT) Regulations, 1992 (entities mentioned at serial no 5 and 7).
19. I am of the view that, for the aforesaid violation/contravention of the SAST Regulations and PIT Regulations, the noticees are liable for imposition of monetary penalty under the provisions of 15H(ii) & 15A(b) of the SEBI Act, 1992 which reads as under:

15H. Penalty for non-disclosure of acquisition of shares and takeovers

If any person, who is required under this Act or any rules or regulations made thereunder, fails to –

- (i); or***
- (ii) make a public announcement to acquire shares a minimum price; or***
- (iii) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer, he shall be liable to a penalty of twenty five crore rupees or three times the amount of profits make out of such failure, whichever is higher.***

15A. Penalty for failure to furnish information, return etc. –

If any person, who is required under this Act or any rules or regulations made thereunder-

- (a)***
- (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the period specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less***
- (c) ...***

20. The next issue for consideration is as to what would be the monetary penalty that can be imposed on the noticee for the violation of the aforementioned provisions of the Regulations. While determining the quantum of penalty to be imposed upon the noticees, I have also duly considered the factors as laid down under section 15J of SEBI Act, 1992 viz.

- (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 and;*
- (c) The repetitive nature of the default.*

21. I find that the disproportionate gain accrued by the noticees cannot be accurately quantified on the basis of the material on record. The amount of loss caused to investors cannot be quantified on the basis of the information available on record. Even though the exact monetary loss cannot be computed, the accused or the notices remain liable for the violation of regulations.

ORDER

22. Considering the facts and circumstance of the case and the material available on record and the violations committed by the noticees, I find the following amount would be commensurate with the violations committed by the noticees:

- a. ₹ 500,000/- (Rupees Five Lakhs only) on noticee no. (i) to (vi) under section 15H(ii) of the SEBI Act to be paid ; The Noticees (i) to (vi) shall be jointly and severally liable to pay the said monetary penalty.
- b. ₹ 50,000/- (Rupees Fifty Thousand only) on noticee no. (v) under section 15A(b) of the SEBI Act ; &
- c. ₹ 50,000/- (Rupees Fifty Thousand only) on noticee no. (vii) under section 15A(b) of the SEBI Act.

23. The penalty amount should be paid through a 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 should be forwarded to General Manager, ID-2, Investigation Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

24. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the noticee and also to the Securities and Exchange Board of India.

Date: December 15, 2011
Place: Mumbai

Deepak Trivedi
Adjudicating Officer