

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO-117/2014

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:

M/s. Vizwise Commerce Private Limited

(PAN – AABCS7660J)

In the Matter of: Seasons Textiles Limited

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) conducted an examination in the scrip of Seasons Textiles Limited (**Company**). The shares of the Company are, *inter alia*, listed on the BSE Limited (**BSE**). It was observed that Vizwise Commerce Private Limited (**Noticee**) was holding 7,21,346 shares (representing 9.63% of paid-up capital of the Company) for quarter ending March 31, 2013 which came down to 80,765 shares (representing 1.08% of paid up capital of the Company) for quarter ending on June 2013.
2. It was observed that the Noticee disposed 2,50,000 shares of the Company (representing 3.34% of the shareholding of the Company) on June 18, 2013 and 2,98,000 shares of the Company (representing 3.98% of the shareholding of the Company) on June 25, 2013. However, the Noticee did not make the necessary disclosures and therefore it was alleged that the Noticee violated provisions of Regulation 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 (**SAST Regulations**) and Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**).

3. The undersigned was appointed as the Adjudicating Officer vide order dated April 10, 2014 and the said appointment was conveyed vide proceedings of the Whole Time Member dated April 10, 2014 to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violations of provisions of Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations.

SHOW CAUSE NOTICE, HEARING & REPLY

4. Show Cause Notice (**SCN**) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**Adjudication Rules**) was issued to the Noticee on July 10, 2014, calling upon the Noticee to show cause why an inquiry should not be held against it under Rule 4(3) of the Adjudication Rules and penalty be not imposed under Section 15A(b) of the SEBI Act, 1992 for the alleged violations.
5. The aforesaid SCN was duly delivered to the Noticee on July 15, 2014. Vide letter dated July 24, 2014 the Noticee acknowledged receipt of the SCN and requested for further 15 days' time for making submissions. Vide Notice dated August 08, 2014 the Noticee was granted time till August 26, 2014 for submission of reply and the Noticee was also granted an opportunity of personal hearing on August 26, 2014. Vide letter dated August 20, 2014 the Noticee submitted its reply and *inter alia* made the following submissions:
- *On perusal of your letter, we came to know that Bombay Stock Exchange has not received the Disclosures sent by us under the provisions of Regulation 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 and Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*
 - *It is to inform you that we have already complied with the provisions of above mentioned SEBI Regulations within time lines as mentioned in the regulations. It seems that Bombay stock Exchange has not received the Disclosures till date of issuing the letter to your good office.*
 - *We would like to mention that company M/s Vizwise Commerce Private Limited has passed a board resolution in the month of June 2013 for sale of its investment held in Seasons Textiles Limited, as the company was in need of funds for its working capital and operational expenses.*
 - *Mr. Ashok Agarwal was engaged in day to day running of business of company and was the main controlling director of company; however he was not well during the month of June 2013 and was admitted to*

hospital for treatment of Cancer. Mr. Ashok Agarwal, Promoter Director of the Company, was solely responsible for operating the De-mat Account on behalf of the company.

- *Accordingly in compliance of provisions of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 1992, Mr. Ashok Agarwal on behalf of board of company had intimated to stock exchange and company in the following manner:*

Trade Date	Net Sell Quantity	% to share capital as on March, 2013	Holding after sale	Date of intimation to stock exchange and Seasons Textiles Limited	Mode of intimation	No. of days Delay in Intimation
18/06/2013	2,50,000	3.34%	4,71,346	27/06/2013	Registered Post	6 days
25/06/2013	2,98,000	3.98%	1,73,346	27/06/2013	Registered Post	Nil

- *However, as evident from your notice that such disclosure sent by Mr. Ashok Agarwal on behalf of board has not been received by stock exchange, so we have again dispatched the copies of such disclosures duly signed by Late Shri Ashok Agarwal.*
- *Accordingly, we would like to submit that company has not defaulted in compliance of Disclosures under Regulation 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 and Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 except for 6 days delay in first sale of shares on 18th June 2013, which also happened because of the reason that company was trying to sell the scrip on daily basis but there was no buyer of shares in the market and such desired sale of shares could be achieved in total three days during the month of June 2013. Mr. Ashok Agarwal due to his illness missed to send disclosure for the transaction of sale executed on 18th June 2013 within due dates as prescribed. However such delay was rectified by sending such disclosures on June, 27th, 2013 to stock exchange and STL.*

6. On August 26, 2014 Shri Arun Gupta, Advocate, appeared as Authorised Representative **(AR)** on behalf of the Noticee and made the following submissions:

"We are submitting our reply vide letter dated August 20, 2014. The contents are reiterated. We understand that the default is only of 6 days for the transaction on June 18, 2013 as we had dispatched the necessary disclosures on June 27, 2013. For abundant caution, we have again sent the disclosures on August 19, 2014. A lenient view may please be taken as we did not have any intention to not disclose. We have no further submissions to make in the matter."

ISSUES FOR CONSIDERATION

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

- A. Whether the Noticee has violated provisions of Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations?
- B. Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act, 1992?
- C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated provisions of Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations?

9. The aforesaid provisions of SAST Regulations and PIT Regulations read as under:

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Disclosure of acquisition and disposal.

29. (1)

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or 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.

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons ***Continual disclosure.***

13.

(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.*
- (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.*

10. From the material available on record, I note that the Noticee was holding substantial shares of the Company (7,21,346 shares – representing 9.63% of paid-up capital of the Company). On June 18, 2013 the Noticee sold 2,50,000 shares of the Company (representing 3.34% of the shareholding of the Company) and on June 25, 2013 the Noticee sold 2,98,000 shares of the Company (representing 3.98% of the shareholding of the Company). The aforesaid transactions of the Noticee, individually resulted in a change in shareholding of the Noticee in the Company, exceeding 2% of the shareholding of the Company. Hence, the Noticee ought to have made the required disclosures within two working days of disposal/sale of shares to BSE and Company under provisions of Regulation 29(2) of SAST Regulations and to the Company under provisions of Regulation 13(3) of PIT Regulations. However, the Noticee had failed to make the disclosures as required under provisions of Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3) r/w 13(5) of PIT Regulations. The transactions of the Noticee and the violations committed can be summarized as follows:

Trade Date	Net Sell Qty	% to share capital as on March 2013	Disclosure required under SAST	Disclosure required under PIT
18-06-2013	250000	3.34%	29(2) r/w 29(3)	13(3) r/w 13(5)
25-06-2013	298000	3.98%	29(2) r/w 29(3)	13(3) r/w 13(5)

11. Regarding not making the required disclosures, the Noticee in its reply has submitted that disclosures for both the transactions under the provisions of Regulation 29(2) of SAST Regulations and Regulation 13(3) of PIT Regulations was sent to the stock exchanges on June 27, 2013. The Noticee has submitted copies of payment slips of India Post as proof of dispatch. During the course of personal hearing the AR of the Noticee also stated that the default was only of 6 days for the transaction on June 18, 2013 as it had dispatched the necessary disclosures on June 27, 2013. However, from copy of BSE's letter dated July 29, 2013 (as enclosed with the SCN) it is clear that the Noticee had not made the required disclosures to BSE. The purported proof submitted by the Noticee only shows that

certain documents were posted to BSE, Calcutta Stock Exchange Ltd. and the Company on June 27, 2013. The same no way leads to any conclusion that the required disclosures were duly made to the Company and stock exchanges.

12. Hence, the Noticee should have made the required disclosures under Regulation 29(2) of SAST Regulations and Regulation 13(3) of PIT Regulations for the transaction carried out on June 18, 2013 within two working days, i.e., by June 20, 2013. Similarly, the Noticee should have made the required disclosures under Regulation 29(2) of SAST Regulations and Regulation 13(3) of PIT Regulations for the transaction carried out on June 25, 2013 within two working days, i.e., by June 27, 2013. The required disclosures should have reached the Company / stock exchanges by June 20, 2013 and June 27, 2013 for the transactions carried out on June 18, 2013 and June 25, 2013 respectively; which did not happen in the present case. Hence, I hold that the Noticee has failed to make the required disclosures to BSE/Company for the transactions carried out in the scrip of the Company on June 18, 2013 and June 25, 2013. Therefore, the Noticee has violated the provisions of Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3) r/w 13(5) of PIT Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act, 1992?

13. The provisions of Section 15A(b) and Section 15HB of the SEBI Act, 1992, read as under:

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,—*

(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 time 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.*

14. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has held that "*In our considered opinion,*

penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant”.

15. As already observed, the Noticee failed to make disclosures as required under Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3) r/w 13(5) of PIT Regulations for the transactions carried out on June 18, 2013 and June 25, 2013. Therefore, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

16. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the 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.”

17. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. However, the fact remains that the Noticee transacted in substantial number of shares of the Company, but failed to fulfill its duty of making necessary disclosures under the provisions of SAST Regulations and PIT Regulations. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. However, the Noticee, by not complying with the regulatory obligation of making the disclosures, has deprived investors of the important information at the

relevant point of time. Since the Noticee has failed to make the required disclosures to BSE and the Company as specified under the relevant provisions of SAST Regulations and PIT Regulations on two occasions, the default of the Noticee can be said to be repetitive.

18. In view of the aforesaid paragraphs, it is now established that the Noticee has violated the provisions of Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3) r/w 13(5) of PIT Regulations for which I find that imposing a penalty of ₹ 4,00,000/- (Rupees Four Lakhs only) on the Noticee would be commensurate with the violation committed.

ORDER

19. Considering the facts and circumstances of the case, in terms of the provisions of SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 4,00,000/- (Rupees Four Lakhs only) under Section 15A(b) of the SEBI Act, 1992 for violation of provisions of Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3) r/w 13(5) of PIT Regulations on Vizwise Commerce Private Limited.
20. 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 the Division Chief, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
21. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: August 28, 2014
Place: Mumbai

Jayanta Jash
Adjudicating Officer