

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/SR/SM/AO/2019-20/5780/130]**

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

In respect of

**Pravinbhai Mohanbhai Kheni**

(PAN – AFZPK3277P)

(Address: 2101 Raheja Empress,  
392 Veer Savarkar Marg, Opp Siddhivinayak Temple,  
Prabhadevi, Mumbai 400025)

In the matter of Cupid Trades & Finance Ltd.

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**BACKGROUND**

1. A department (hereinafter referred to as **OD**) of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an examination in the scrip of Cupid Trades & Finance Ltd. (hereinafter referred to as **Company/Cupid**) for the period January 06, 2010 to December 31, 2014 (hereinafter referred to as Investigation Period). The Company was listed at Bombay stock Exchange (BSE) during the period of investigation. OD observed that Pravinbhai Mohanbhai Kheni (hereinafter referred to as **Noticee**) had made some transactions in the scrip of Cupid and was required to make disclosures under the provision of regulation 29(2) of SEBI (Substantial Acquisition of Shares and takeovers) Regulations, 2011 (hereinafter referred to as **SAST regulations, 2011**) and regulations 7(1) read with (r/w) 7(2) of SEBI (Substantial Acquisition of Shares and takeovers) Regulations, 1997 (hereinafter referred to as **SAST regulations, 1997**) and regulation 13(1) and regulations 13(3) r/w 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**). Noticee failed to make the said disclosures within the prescribed time as per the said Regulations and Noticee is alleged to have violated the said provisions of SAST Regulations, 1997, SAST Regulations, 2011 and PIT Regulations, 1992.

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. Based on the said investigation, OD of SEBI initiated Adjudication Proceeding against the Noticee and appointed the undersigned as an Adjudicating Officer, under section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992** r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992, the alleged violations of provisions of regulations regulation 7(1) r/w 7(2) of SAST Regulations, 1997, regulation 29(2) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations, 1992 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992. The same was conveyed to the undersigned vide communique dated January 09, 2019.

## **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A show cause notice dated July 10, 2019 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against him and why penalty under section 15A(b) of the SEBI Act, 1992, be not imposed on them for the violations alleged and specified in the said SCN. The allegations in the SCN are as follows:

*a) During the course of investigation, OD observed that the Noticee, had made some transactions in the scrip of Cupid in the market and the details of transaction provided to the Noticee in the below tabular format:*

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired	No of shares disposed off	Net Shares acquired/d isposed off	No of shares Acquired/ (disposed off) as a % of paid up capital	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal
21/07/2010	0	0.00	4500		4500	0.47	4500	0.47
27/07/2010	4500	0.47	4500		4500	0.47	9000	0.94
04/08/2010	9000	0.94	4500		4500	0.47	13500	1.41
05/08/2010	13500	1.41	4500		4500	0.47	18000	1.88
06/08/2010	18000	1.88	4500		4500	0.47	22500	2.34
09/08/2010	22500	2.34	4500		4500	0.47	27000	2.81
10/08/2010	27000	2.81	4500		4500	0.47	31500	3.28

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired	No of shares disposed off	Net Shares acquired/d isposed off	No of shares Acquired/ (disposed off) as a % of paid up capital	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal
11/08/2010	31500	3.28	4500		4500	0.47	36000	3.75
12/08/2010	36000	3.75	4500		4500	0.47	40500	4.22
17/08/2010	40500	4.22	4500		4500	0.47	45000	4.69
17/09/2010	45000	4.69	25000		25000	2.60	70000	7.29
02/02/2012	70000	7.29		25854	25854	2.69	95854	9.98
03/02/2012	95854	9.98		501	501	0.05	96355	10.04
08/02/2012	96355	10.04		20000	20000	2.08	116355	12.12

OD observed that the percentage of shareholding of the Noticee crossed 5% of share capital of Cupid on September 17, 2010. Hence, Noticee was required to make disclosure under the provision of regulation 7(1) r/w 7(2) of SAST Regulations, 1997 to the Company i.e. Cupid and BSE and under regulation 13(1) of PIT Regulations, 1992 to the Company. However, from the reply received from Cupid, it was observed by OD that the Noticee failed to make required disclosures under the said provisions of SAST Regulations, 1997 and PIT Regulations, 1992. Further, as per reply from BSE, it is observed by OD that the Noticee did not make the required disclosure to BSE within the stipulated time period as specified under regulation 7(1) r/w 7(2) of SAST Regulations, 1997.

- b) Further, OD observed that on February 02, 2012 and February 08, 2012, the shareholding of the Noticee increased by more than 2% of the total shareholding of the Company. Hence, the Noticee was required to make disclosure under regulation 29(2) of SAST Regulations, 2011 to the Company and BSE and under regulation 13(3) r/w 13(5) of PIT Regulations, 1992 to the Company. However, as per replies received from Company and BSE, the entity has failed to make disclosure for the said transactions to the Company and BSE under SAST Regulations, 2011 and PIT Regulations, 1992. Copy of the replies from the company and BSE provided to the Noticee.
- c) As the Noticee failed to make disclosure within the prescribed time for the aforesaid transactions, the Noticee is alleged to have violated regulations 7(1) r/w 7(2) of SAST Regulations, 1997 and regulation 13(1) of PIT Regulations, 1992. Further, for the transactions made on February 02, 2012 and February 08, 2012, the Noticee failed to make disclosure within the prescribed time to the Company and BSE and hence, alleged to have violated the provisions of regulation 29(2) of SAST Regulations, 2011 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992.

4. The SCN was sent through the speed post acknowledgment due (SPAD) at two addresses as per available record i.e. *K kantilal Euports, 1205, Pancharatna Opera house, Mumbai – 400004* and *57, Brijkuan 67, Neapean Sea Road, Rungta Lane, Mumbai - 400006*. The said SCN returned undelivered and the proof is on record. Subsequently, an e-mail was sent to the depositories for any updated address and contact details of the Noticee if any. Upon receipt of the e-mail id of the Noticee from the depository, the soft copy of SCN was sent to the Noticee through e-mail at: [mkheni@hotmail.com](mailto:mkheni@hotmail.com) on August 05, 2019 and also in the said e-mail Noticee was requested to provide the current address for the delivery of the SCN. Accordingly, vide letter dated August 06, 2019, the copy of SCN along with the Annexures forwarded to the Noticee vide letter dated August 06, 2019 through SPAD at the address “*2101 Raheja Empress, 392 Veer Savarkar Marg, Opp Siddhivinayak Temple, Prabhadevi, Mumbai – 400025*” and the same was delivered to the Noticee. The delivery proof is on record.
5. Vide hearing Notice dated September 17, 2019, an opportunity of hearing was granted to the Noticee on October 16, 2019 and also Noticee was advised to submit reply to the SCN by September 30, 2019. The said hearing notice was sent through SPAD and also by e-mail. The same was delivered to the Noticee and the delivery proof is on record. The authorized representative (AR) on behalf of the Noticee attended hearing on the scheduled date i.e. October 16, 2019 and submitted reply letter dated October 05, 2019 to the SCN during the proceedings of hearing. AR requested for additional time to submit additional information in the instant matter and acceding to the request of AR, time given to provide additional information by October 24, 2019. Hearing minutes are on record. Noticee vide letter dated October 23, 2019 submitted the additional information in the instant matter. Reply of the Noticee is summarized below:
- a) Noticee replied that he was an investor in the stock market and used to trade / invest in other scrips also at the relevant time. He is a non-promoter shareholder and somehow came to hold the quantity of shares. He replied that the equity capital of Cupid at the relevant time was 9,60,000 equity shares which is miniscule in quantity and hence small number of acquisition also results into trigger of the disclosures.
- b) Noticee replied that the captioned SCN was issued on July 10 2019 and the investigation period in the said scrip is between January 06, 2010 to December 31,

2014 whereas his buy transactions pertain to the year 2010. Therefore, a delay of almost 9 years in issuance of the SCN which is not even explained. This delay has caused prejudice to him. Noticee cited the matter of HB Stockholdings Limited versus Securities and Exchange Board of India. (Appeal No.114of 2012), Hon'ble SAT while observing that *'the alleged trades took place in the year 2000. The first show cause notice itself was issued by the Respondent on September 2, 2005 i.e. after a period of more than five years had already lapsed. There is not even a whisper in the impugned order to explain away such a long delay in issuing the SCN'* observed that, *"At this point we find it pertinent to note that human memory has a short shelf life. Allowing matters to go on and on for years together by the Respondent serves no purpose, rather it risks loss of evidence such as important documents which may get destroyed while the issue gathers dust. Such systemic failures occur to the disadvantage of all parties concerned and lead to consequences such as genuine violators being allowed to function normally in the capital market for year together, whereas in same situations the reputation of innocent entities gets tarnished as they wait for the wheels of justice to turn a bit faster than the pace at which they seem to be going. "On this line Hon'ble Tribunal concluded that: Thus, the existence of unnatural and unexplained delay of more than a decade and prejudice caused due to such under delay is writ large in the matter. Therefore, the impugned order deserves to be quashed on this ground as well."*

- c) Noticee submitted that he was holding 45000 (4.69%) shares of Cupid as on 17.08.2010 and through market he purchased / acquired few more shares of Cupid. Further, on 17.09.2010, he acquired some 25,000 shares and his holding increased to 7.29% (70,000 shares). He had made the required disclosures to the company as well as BSE on 18.09.2010 which are duly reflected on BSE's website. The company has uploaded the disclosure on 18.09.2010 which is evident from the corporate announcements made by the company. Also, the disclosure is made under SAST disclosures on BSE Website.
- d) Noticee also cited the case law of Hon'ble SAT judgement dated August 22, 2019 in the matter of Ashok Rupani & Ors. Vs. SEBI w.r.t the disclosures made under PIT and SAST Regulations.
- e) Further, Noticee replied that on February 02, 2012 and February 08, 2012, he sold 25854 shares and 20000 shares respectively. The SCN has wrongly taken the shares sold as shares purchased and added the purchases to my earlier holding. Thus, there is a gross error in the SCN considering my sales as purchases. Noticee provided the copies of contract notes of 02.02.2012 and 08.02.2012 showing sale of shares. Therefore, as there is no increase of more than 2% of the total shareholding of company, there is no violation of regulation 29(2) of SAST Regulations, 2011 or regulation 13(3) r/w 13(5) of PIT Regulation, 1992 as alleged in the SCN.
- f) Noticee replied that the company in its quarterly disclosures for the quarter ended December 2011 disclosed my holding as 7.29% which was subsequently reduced

to 2.46% in the quarter ending March 2012. Noticee provided the copies of company's share holding pattern for the quarters ended, December 2011 and March 2012 (downloaded from BSE Website.)

g) Noticee replied that he had made due disclosures and have not violated the said provisions of PIT Regulations, 1992, SAST Regulations, 1997 and SAST Regulations, 2011 as alleged in SCN.

6. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other evidences available on record, I hereby proceed to decide the case on merit.

### **CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS**

7. The issues arising for consideration in the instant proceedings before me are:-

**a. Whether the Noticee violated the provisions of regulations 7(1) r/w 7(2) of SAST Regulations, 1997, regulation 29(2) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations, 1992 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992?**

**b. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?**

**c. If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?**

8. Before proceeding further, I would like to refer to the relevant provisions of SAST Regulations, 1997, SAST Regulations, 2011 and PIT Regulations, 1992:

#### ***SAST Regulations, 1997***

##### ***Acquisition of 5 per cent and more shares or voting rights of a company.***

**7(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 or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

**7(2)** The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

### **SAST Regulations, 2011**

#### **Disclosure of acquisition and disposal.**

**29(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

### **SEBI (PIT) Regulations, 1992**

#### **Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure**

**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.

#### **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.

**13(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.

### **FINDINGS:**

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

**Issue a: Whether the Noticee violated the provisions of regulations 7(1) r/w 7(2) of SAST Regulations, 1997, regulation 29(2) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations, 1992 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992?**

- a) It is alleged in the said SCN that Noticee made transactions in the scrip of Cupid for which Noticee was required to make disclosures under the provisions of PIT Regulations, 1992, SAST Regulations, 1997 and SAST Regulations, 2011. However, by not making the relevant disclosures for the said transactions as alleged in SCN Noticee is alleged to have violated the relevant provisions of PIT Regulations, 1992, SAST Regulations, 1997 and SAST Regulations, 2011.
- b) Upon perusal of record I find that the shareholding of the Noticee crossed 5% of the share capital of Cupid on September 17, 2010. Hence Noticee was required to make disclosure under the provision of regulation 13(1) of PIT Regulations, 1992 and regulations 7(1) r/w 7(2) of SAST Regulations, 1997. In this regard, from the available record, it is observed that Noticee made the required disclosures to the BSE within specified time as specified under the provisions of regulations 7(1) r/w 7(2) of SAST Regulations, 1997. However, Noticee did not make the disclosure under the provision of regulation 13(1) of PIT Regulations, 1992. In this regard, I am of the view that disclosures under the regulations 7(1) r/w 7(2) of SAST Regulations, 1997 and regulation 13(1) of PIT Regulations, 1992 are not very different. Under regulations 7(1) r/w 7(2) of SAST Regulations, 1997, acquirer needs to file disclosure to the Company and to the Stock Exchange on which the shares of the Company are listed whereas under regulation 13(1) of PIT Regulations, 1992, any person who holds more than 5% shares in any listed Company needs to file disclosure to the Company. Hence, Regulation 7(1) of SAST Regulations, 1997 and regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.
- c) In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Ashok Rupani and Others Vs. SEBI *"It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST*



*Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature.*

- d) In view of the above facts and the case law I am of the view that since the Noticee made disclosure under the said provision of SAST Regulations, 1997, which also includes disclosure to the Company i.e. the same is in regulation 13(1) of PIT Regulations, 1992., violation of regulation 13(1) of PIT Regulations, 1992 does not stand established against the Noticee for the transactions made on September 17, 2010.
- e) Further, it is alleged in the SCN that Noticee's shareholding increased by more than 2% of the total shareholding of the Company on February 02, 2012 and February 08, 2012. In this regard, Noticee replied that he did not make any purchase in the said dates rather he had sold the said shares on February 02, 2012 and February 08, 2012. Noticee provided the copies of contract notes for the said dates showing the sale of said shares in the Company. As against the evidentiary proof of contract notes provided by Noticee, there is no evidence on record from OD that counters the submissions of the Noticee, hence, I accept the contention of Noticee. Further, as per the copy of shareholding pattern of the Noticee on BSE website as on quarter ending March 2012, available on record, Noticee was holding 23,645 shares having 2.46% of the total number of shares of the Company which shows that the shareholding of the Noticee reduced. Further, by considering the shares sold by the Noticee on February 02, 2019 and February 08, 2019, as per allegations of OD in the table shown in the SCN, the holding of the Noticee in the Company comes to 23,645 shares i.e. {70,000 – (25854+501+20000)}, which is same with the no. of shares held by the Noticee as on quarter ending March 2012 as per the website of BSE. Therefore, the allegation against the Noticee regarding the shareholding of the Noticee increased by more than 2% of the total shareholding of the Company on February 02, 2012 and February 08, 2012 does not stand established.
- f) In light of the above paragraphs, I am of the view that the allegations against the Noticee in the instant adjudication proceedings are not established and hence, issues (b) and (c), do not require consideration.

## **ORDER**

10. In view of the above, I hereby dispose of adjudication proceedings initiated against the Noticee i.e. Pravinbhai Mohanbhai Kheni vide SCN dated July 10, 2019 without imposing any monetary penalty.
11. In terms of the rule 6 of the Adjudication Rules, 1995, copy of this order is being sent to the Noticee and also to Securities and Exchange Board of India.

**Date: November 28, 2019**

**SANGEETA RATHOD**

**Place: Mumbai**

**ADJUDICATING OFFICER**