

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
Cosmo Corporate Services Ltd.
(PAN No.: AAACC3529P)

In the matter of
Mefcom Agro Industries Limited
CIN No.: U29211WB1995PLC071741

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (“SEBI”) conducted examination in the scrip of in the scrip of Mefcom Agro Industries Limited (hereinafter also referred to as Mefcom and/or the company), a company listed at Bombay Stock Exchange Limited (‘BSE’), during the period of January 1, 2006 to June 30, 2007 (investigation period). During the period of investigation it was observed that entities Vishvas Securities Ltd, Master Finlease Limited, Avisha Credit Capital Ltd and Cosmo Corporate Services Ltd. (Noticee) were persons acting in concert (PACs) and collectively acquired more than 15% shareholding in Mefcom during June 2006 and failed to comply with Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 1997 (hereinafter referred to as “SAST”).
2. During the period of Investigation, SEBI Investigating Authority sought certain information, which was relevant for the purpose of conducting investigation. Further, since, the Noticee did not comply with summons issued to it and did not provide the relevant information, the current proceedings were initiated against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed under section 15I of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and under Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) to inquire into and adjudge under section 15A(a) of SEBI Act, 1992 for the violations of Section 11C(2) and 11(C)(3) of SEBI Act, 1992 by Cosmo Corporates Services Limited (Noticee).

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

4. A Show Cause Notice (SCN) dated February 21, 2018 was issued under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (AO Rules) in the matter to the Noticee. However, since the aforesaid SCN had returned undelivered, therefore, the above mentioned SCN along with the Hearing Notice (HN) (in terms of Rule 4(3) of AO rules) was issued to the Noticee by way of affixture on March 20, 2018, in terms of rule 7(c) of AO rules, affording him the opportunity of personal hearing on April 05, 2018. Further, the said Notices were duly affixed at the last known address of the Noticee. The said notices were also uploaded on SEBI website under the head Enforcement->Unserved summons/Notices.
5. However, the Noticee neither submitted their response to the SCN nor availed opportunity of personal hearing till the date of passing of this order.
6. During the instant proceedings, despite giving ample opportunity to the Noticees to file reply to the SCN and to appear for personal hearing on several occasions, Noticee has neither submitted their reply to the SCN nor availed opportunity of personal hearing till the date of passing of order in the current proceedings. In view of the same, the matter is being proceeded ex-parte in terms of Rule 4(7) of AO Rules 1995.

ISSUES FOR CONSIDERATION

7. After perusal of the material available on record, the following issues arise for consideration;
 - I. Whether the Noticees have violated 11C (2) read with 11C (3) of the SEBI Act, 1992?
 - II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (a) of the SEBI Act, 1992?
 - III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

FINDINGS

8. The texts of the said provisions are reproduced as under :-

Investigation, 11C.

(1) Where the Board has reasonable ground to believe that—

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

Issue No. I: Whether the Noticees have violated 11C (2) read with 11C (3) of the SEBI Act, 1992?

9. Investigation was conducted into suspected violation of provisions of SEBI (PFUTP) Regulations, SEBI (SAST) Regulations & SEBI (PIT) Regulations in the scrip of Mefcom Agro Industries Limited.
10. It is observed that certain entities namely Avisha Credit Capital Ltd., Cosmo Corporate Ltd., Master Finlease Limited (MFL) and Vishvas Securities Ltd., were connected with each other as per the details given herein below:-

Sr.No	Entities	Connection
1	Master Finlease Ltd (MFL)	Entities at Sr No.1 and 2 (Master Finlease and Avisha Credit Capital) have submitted vide letters dated March 10, 2014 each (Ann.32) that they were related to each other and not related to other entities. Master Finlease and Avisha Credit Capital Shares new address of the company ("606 Kailash Building, KG Marg, New Delhi) and have common directors among themselves viz. Vijay Jhindal and Shuba Jhindal.
2	Avisha Credit Capital (Avisha)	
3	Vishvas Securities Ltd	Entities at Sr No.3 <ul style="list-style-type: none"> ➤ Shared same address as that of Mefcom during the Investigation period (viz., 912 Kailash Building KG Marg Delhi) ➤ Off market transaction with Master Finlease and Avisha ➤ From the shareholding details of Vishvas available with MCA website shows that Master and Avisha together were holding 45% shareholding in Vishvas as on 30/9/2006. (Ann 27) ➤ From the list of present directors of Vishvas, it was observed that Shri Atul Joshi is a common director in Vishvas and Mefcom.
4	Cosmo Corporate Ser Ltd	Entities at Sr No.4 <ul style="list-style-type: none"> ➤ Entered into Off Market trade with Master Finlease ➤ Shares the telephone number 23739999 which is registered in the name of Vijay Jindal, director of Master and Avisha and with new address of Mefcom

11. It is further observed that aforesaid entities together acquired more than 15% shareholding in Mefcom, during IP. Further, it is noted from the Shareholding pattern of Mefcom as available with BSE for the quarter ended June 2006 that following entities, connected with Mefcom group had acquired more than 15% in the company during quarter ended June 2006, the details of which are given below:

Demat A/c Credit Date	Name of Entity / Shareholding					Total	Violation of Reg(s) under SAST 1997
	Avisha Credit Capital Ltd*	Cosmo Corporate Ser Ltd	Master Finlease Limited	Vishvas Securities Ltd	Total shareholding as PAC		
31/03/2006	0	0	189292	13205	202497	7.22%	NA
04/04/2006	0	0	94271	13205	107476	3.83%	NA
05/04/2006	0	0	94021	13205	107226	3.82%	NA
07/04/2006	0	0	93821	13205	107026	3.82%	NA
21/04/2006	0	25000	93821	13205	132026	4.71%	NA
25/04/2006	0	59971	93821	13205	166997	5.96%	Reg 7(1) r/w 7(2),
04/05/2006	0	134971	93821	13205	241997	8.63%	NA
09/05/2006	0	94971	93821	13205	201997	7.20%	NA
11/05/2006	0	259742	93821	13205	366768	13.08%	Reg 7(1) r/w 7(2),
18/05/2006	0	141971	93821	13205	248997	8.88%	NA
05/06/2006	0	141971	93821	13205	248997	8.88%	NA
06/06/2006	0	141971	93821	13205	248997	8.88%	NA
07/06/2006	125000	141971	93821	13205	373997	13.34%	NA
08/06/2006	142000	141971	93821	139505	517297	18.45%	Reg 7(1) r/w 7(2), Reg 10
09/06/2006	142000	141971	93821	139505	517297	18.45%	NA
10/06/2012	140000	141971	93821	139505	515297	18.38%	NA
12/06/2006	140000	139971	93821	139505	513297	18.31%	NA
22/06/2006	140000	139971	93821	139505	513297	18.31%	NA
23/06/2006	138000	89971	93821	139505	461297	16.45%	Reg 7(1A) r/w 7(2)
05/09/2006	138000	67924	93821	139505	439250	15.67%	NA

12/09/2006	138000	62924	93821	139505	434250	15.49%	NA
13/09/2006	138000	59924	94021	139505	431450	15.39%	NA
14/09/2006	138000	56924	94021	139505	428450	15.28%	NA
15/09/2006	138000	52924	94021	139505	424450	15.14%	NA
20/09/2006	138000	47924	94021	139505	419450	14.96%	NA
26/09/2006	138000	77513	94021	139505	449039	16.02%	NA
27/09/2006	138000	31189	85346	139505	394040	14.05%	Reg 7(1A) r/w 7(2)

12. Subsequently, investigating authority (IA) was appointed vide order dated January 20, 2014 and summons were issued to the Noticee on February 28, 2014 asking it to comment on regarding Noticee being 'person acting in concert' (PAC) based on the connection (which was also brought out in the summons itself) with Mefcom group and that they together had acquired more than 15% shareholding in Mefcom during the quarter ended June 30, 2006 and failed to comply with provisions of Regulation 10 of SAST Regulations. It is observed that Summons to the Noticee was affixed at its last known address. However, the Noticee and Vishvas Securities Ltd. did not respond to the summons.
13. It is further observed that Second summons dated March 06, 2014, was issued to the Noticee and per the records, this summon was also duly delivered to the Noticee. However, this time also Noticee did not respond to summons. Further, as per the available records, the Noticee was also issued third summons on March 06, 2014 and the same was also duly delivered to the Noticee. However, on ground of lack of acknowledgment / receipt of the summons dated March 06, 2014, by the Noticee, available on record, the same is not taken into consideration for the purpose of instant proceedings.
14. Following are the details of summons issued and duly delivered to the Noticee:

Date and Detail of the Summons	Date and Time of Affixture	Status
IVD/ID7/HSV/TVB/6579/2014 dated February 28, 2014	March 08, 2014 at 07:30 PM	Affixed
IVD/ID7/OW/HSV/1271/2015 dated February 28, 2014	January 23, 2015 At 04:00PM	Affixed

15. It is clear from records that the information sought from the Noticee vide above-mentioned summons, were specific to the Noticee. The nature of the information suggests that this information was available only with the Noticee and that such information could not have been procured from any other source.
16. It is further noted that it was clearly mentioned in the summons that in case Noticee failed to submit the sought information, the investigation proceedings shall continue against the Noticee and that SEBI may also initiate adjudication proceedings against the Noticee under which Noticee be levied a penalty.

17. It is however observed that throughout the period of investigation or during instant proceedings no response was received by any of the above-mentioned entities including Noticee, despite giving ample opportunities to do so at the time of investigation and during instant proceedings.
18. It is understood that the core subject matter of investigations was the acquisition by the Noticee which triggered provisions of takeover code. It is clearly brought out that the crucial information was not submitted by the Noticees to SEBI despite granting sufficient time and latitude by the IA in aiding him in concluding the investigations. This has hampered and delayed the investigations and its subsequent processes which were detrimental to the interest of the investors in general and investors of the company in specific.
19. It is pertinent to mention here that it is the responsibility of every person from whom information is sought vide summons to fully co-operate with Investigating Authority and promptly produce all documents, records, information, etc., to the Investigating Authority. If persons are allowed to flout the summons issued to them during the course of the investigation, SEBI, as the watchdog of the securities market, will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. The information was sought from the Noticees against the background of serious irregularities.
20. Non submission of the requisite information has adversely affected the investigation process. The Hon'ble Securities Appellate Tribunal in its Order dated 22.10.2013, in the matter of Rich Capital & Financial Services Limited and Mr. Shashwat Agarwal vs. SEBI observed that-

"We note that requisite information and relevant records are pre-requisites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."

21. In this context, it is also important to refer to the judgment of the Hon'ble SAT in the case of Asian Films Production and Distribution Ltd. (earlier known as K.C. Bokadia Films vs. SEBI (Appeal No.203 of 2010, Date of Decision:19.01.2011) wherein it has been held that:

"Non-compliance with the summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides

that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market.”

22. Further, The Hon’ble SAT in Appeal No.95/04 in Mayfair Paper & Board Pvt. Ltd. V SEBI observed that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act 1992.
23. Given the above, there is no hesitation to hold that the Noticees have violated the provisions of 11C (2) and C(3) of the SEBI Act by not complying with the summons issued thereunder.

Issue No. II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (a) of the SEBI Act, 1992?

24. Provisions of Section 15A (a) of SEBI Act, 1992, are reproduced hereunder:-

“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) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to [a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];”

25. As regards the Noticee, it is clear that it is liable for imposition of penalty as is drawn from the Hon’ble Supreme Court of India Order in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) has also 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 Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”

Issue No. III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

26. While determining the quantum of penalty under Section 15A (a), 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.

Explanation: For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

27. In this regard, reference is also drawn upon the judgment of the Honble Securities Appellate Tribunal (SAT) in Appeal no.114/2005-Nokia Finance International Finance Pvt. Ltd. Vs. SEBI (date of decision-20/09/05) wherein, SAT inter alia observed :

"The appellant could have availed the opportunity of submitting the required information and come clean, but he failed to do so. We, therefore, feel that there is no violation of natural justice in this particular case and the penalty has been imposed as per the regulations. The impugned order indicated that various factors to be reckoned under Section 15 J of the SEBI Act, 1992 were duly considered before deciding on the quantum of penalty imposed. In view of the fact that appellant has failed to give necessary information to the respondent for conducting investigation into a very serious irregularity in the market, we are inclined to uphold the impugned order and dismiss the appeal."

28. Reference is also drawn towards Bhanuben Jaisukhlal Shah vs. SEBI, decided on March 05, 2010, wherein it was held by Hon'ble SAT that:

"During the course of the investigations, the appellant did not respond to the letters written to him by the investigating officer and he failed to furnish the requisite details of the transactions. When the adjudication proceedings commenced, the appellant had an opportunity to file a reply to the show cause notice and he could have taken this plea therein. He did not file any reply to the show cause notice either. The adjudicating officer provided the appellant with yet another opportunity when he called him for personal hearing and recorded his submissions. Even then the appellant did not take the stand that the shares were got transferred by Mahendra Shah from the demat account of Alpha Haren Shah towards the settlement of the amount due from him to the appellant. Further, no such plea has been taken even in the memorandum of appeal. We cannot, therefore, accept the ipse dixit of the learned authorized representative of the appellant during the course of the hearing."

29. At this juncture, it is also relevant to refer to the observation of the Hon'ble SAT in the matter of Dave Harihar Kiritbhai v. Securities and Exchange Board of India (Appeal No. 181 of 2014 dated

December 19, 2014), wherein, it was observed that, “...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/ letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim no receipt of notice and do not appear and/ or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal...”

30. It is noted that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees’ default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default. However, any delay or hurdle in investigation due to non-cooperation by any entity is detrimental to the interest of investors in securities market and the same shall be liable for a penalty under Section 15A (a) of SEBI Act, 1992.
31. It is to be mentioned that noncompliance with the summons issued by the IA is the gravest of nature of offence as by committing this offence the Noticee has effectively snowballed the efforts of the SEBI to know the facts of the case at hand and thus delayed the process of restitution of the interests of the investors in the securities of the company.
32. Given the above, it is clear that non-cooperative attitude of the Noticee viz. Cosmo, hampered the investigation of SEBI. Therefore, an appropriate penalty is liable to be imposed on the Noticee in the matter.

ORDER

33. After taking into consideration the facts and circumstances of the case, in term of Section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, a penalty of Rs. 15,00,000/- (Fifteen Lakh Only) under Section 15A (a) of the SEBI Act, 1992, for the violation of Section 11C (2) read with Section 11C (3) of SEBI Act, 1992 is imposed on the Noticee.
34. The above Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India

Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

35. The above Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI (EFD-DRA-IV). The Format for forwarding details/ confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

- 1.Case Name :
- 2.Name of Payee:
- 3.Date of payment:
- 4.Amount Paid:
- 5.Transaction No:
- 6.Bank Details in which payment is made:
- 7.Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

36. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: January 25, 2019
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer