

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/CB/2018-19/35]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Vinsri Cement Industries Pvt. Ltd. (PAN: AACCR4129C) having address at – H. No. 7-1-821/118, 138 R T, Sanjeeva Reddy Nagar, Hyderabad – 500 038 (Telangana). E-mail : psiyyengar@gmail.com

In the matter of *Bheema Cements Ltd.*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) had conducted examination in the scrip of Bheema Cements Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period January 01, 2013 to June 30, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(3) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) by M/s. Vinsri Cement Industries Private Limited (hereinafter be referred to as, the “**Noticee**”) upon not making disclosures upon change in its shareholding in the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication**”).

Rules”) vide order dated August 04, 2016 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations and SAST Regulations. Subsequently, the undersigned was appointed as the Adjudicating Officer on April 26, 2018 which was communicated vide order dated May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. E&AO/MC/JP/15775/2018 dated May 29, 2018 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against him under Section 15A (b) of the SEBI Act for alleged violations of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) The shareholding of the Noticee in the Company changed from 6.11% (1728353 shares) to 2.82% (797353 shares) through one off market transaction of sale of 931000 shares (i.e. 3.3% of the total share capital of the Company) on February 22, 2014.
 - b) As a result of such transaction, the Noticee was required to submit relevant disclosures to the Company and to the BSE under Regulation 29(2) read with 29(3) of the SAST Regulations and to the Company under Regulation 13(3) read with 13(5) of the PIT Regulations within 2 days of such change in its shareholding. However, the Noticee, allegedly, failed to submit disclosure required under the SAST Regulations and the PIT Regulations.
 - c) The BSE, vide e-mail dated August 10, 2017 confirmed that no disclosures were made by the Noticee under the PIT Regulations or SAST Regulations in relation to the reduction in shareholding of the Noticee during the Examination Period. Similarly, the Company, vide e-mail dated September 05, 2017 confirmed that no disclosures were made by the Noticee under the PIT Regulations or SAST Regulations.
 - d) It was alleged that the aforesaid non-disclosure regarding reduction in its shareholding by the Noticee was in violation of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

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.

SAST Regulations:

29. Disclosure of acquisition and disposal

(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.

5. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act. The SCN was served upon the Noticee by way of Speed Post with Acknowledgment

Due (hereinafter be referred to as, the “**SPAD**”) at the address of the Noticee on June 02, 2018, an acknowledgment of which is available on record. The Noticee was also advised to file his reply, if any, within 14 days from the receipt of the SCN. However, no reply towards the SCN was received from the Noticee.

6. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on September 12, 2018 *vide* Notice of Hearing dated August 31, 2018. However, the aforesaid notice of hearing dated August 31, 2018 was returned undelivered with the comments, “not claimed”. On account of non-delivery of the Notice of Hearing dated August 31, 2018, another notice of hearing dated October 03, 2018 was served upon the Noticee under Rule 7 of the Adjudication Rules by way of e-mail wherein, the undersigned granted an opportunity of hearing to the Noticee on October 15, 2018. The Noticee was also advised to file its reply, if any, by October 12, 2018. The Noticee, *vide* Notice of Hearing dated October 03, 2018 was also notified that if no appearance is made by the Noticee on the date of hearing, the matter would be decided further on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. However, the Noticee did not file any reply towards the SCN and did not appear in the hearing scheduled on October 12, 2018.
7. I note that sufficient time and opportunity to appear for personal hearing has been given to the Noticee. However, the Noticee has failed to submit any reply towards the SCN and to appear for hearing in the instant adjudication proceedings. At this juncture, I find it relevant to refer to the order of Securities Appellate Tribunal in the matter of **Sanjay Kumar Tayal & Ors. v. SEBI** (Appeal No. 68 of 2013 dated February 11, 2014), wherein, it *inter alia* held that, “...*appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*”. Thus, in absence of any response towards the SCN and notice of hearing from the Noticee, I am of the view that the allegations and the charges levied against the Noticee are not in dispute by them.
8. I also find it relevant to refer to the order of 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 observed, “...*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 non-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...".

9. Keeping the aforesaid in mind, I decide to undertake the adjudication proceedings against the Noticee *ex-parte* on the basis of material available on record in terms of Rule 4(7) of the Adjudication Rules.

CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the instant matter are:

- Issue No. I** Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?
- Issue No. II** If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?
- Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

- Issue No. I** **Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?**

11. On account of absence of reply from the Noticee, I note that the details relating to the change in shareholding of the Noticee are not in dispute. Thus, the details of change in shareholding of the Noticee in the scrip of the Company (also provided to the Noticee as Annexure III to the SCN), as provided to the Noticee in the SCN, are as follows:

Date	Transaction Type	Debit / Credit	Traded Quantity	Closing Holding	Holding as % of the share capital
30/09/2013	Holding Before Transactions			1728353	6.11%
22/02/2014	Off Market	Debit	931000	797353	2.82%
		TOTAL	931000		

Thus, it is observed from the SCN that the Noticee sold 931000 shares of the Company on February 22, 2014 by way of off market acquisition which led to a reduction in his shareholding in the Company by 3.3% of the latter's total share capital.

12. Regulation 13(3) of the PIT Regulations requires any person who holds more than 5% shares or voting rights in any listed company to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, if there has been change in such holdings from the last disclosure made under Regulation 13(1) or under this sub-regulation; and such change exceeds 2% of the total shareholding or voting rights in a company within two working days. Similarly, Regulation 29(2) of the SAST Regulations requires any acquirer holding shares or voting rights entitling him for five percent or more of shares or voting rights in a target company to disclose the number of shares or voting rights held and change in shareholding or voting rights, if there has been change in such holdings from the last disclosure and such change exceeds two percent of the total shareholding or voting rights in a target company, even if such change results in shareholding falling below five percent.
13. On perusal of the available records and the table reproduced in paragraph 11 hereinabove, it is observed that consequent to the off-market sale of 931000 shares by the Noticee on February 22, 2014, the aggregate shareholding of the Noticee reduced by 3.3% of the total share capital of the Company. On the aforesaid reduction, the Noticee ought to have disclosed such reduction in terms of Regulation 13(3) read with 13(5) of the PIT Regulations to the Company and Regulation 29(2) read with 29(3) of the SAST Regulations to the Company and the Exchange.
14. I note from the e-mail confirmation of the Company dated September 05, 2017 which was provided to the Noticee by way of Annexure V to the SCN that the Noticee had not made any disclosure in terms of Regulation 13(3) read with 13(5) of the PIT Regulations to the Company. I further note from the e-mail confirmation of the BSE

dated August 10, 2017 which was provided to the Noticee by way of Annexure IV to the SCN that the no disclosures relating to acquisition of shares of the Company were made to the BSE in terms of SAST Regulations by the Noticee. I also note that no disclosures relating to the transaction mentioned in paragraph 11 above could be found on the website of the BSE.

- 15.** In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under Regulation 13(3) read with 13(5) of the PIT Regulations to the Company and under Regulation 29(2) read with 29(3) of the SAST Regulations to the Company as well as the BSE.

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

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Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

- 16.** Since failure of the Noticee in making disclosures to the Company under Regulation 13(3) read with 13(5) of the PIT Regulations and to the Company as well as the BSE under Regulation 29(2) read with 29(3) of the SAST Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

“15A. If any person, who is required under this Act or any rules or regulations made thereunder—

.....

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.”

- 17.** While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:
- 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.

- 18.** I note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. Similarly, from the material available on record, no past default by the Noticee could be ascertained. However, I am of the view that non-compliance of statutory obligations, i.e. disclosures requirements mandated under Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations needs to be followed by levy of monetary penalty.
- 19.** While it is established that the Noticee did not make disclosure to the Company under Regulation 13(3) read with 13(5) of the PIT Regulations and to the Company and the BSE under Regulation 29(2) read with 29(3) of the SAST Regulations, I cannot ignore the fact that the necessary information was made available in public domain by way of shareholding pattern of the Company on April 12, 2014, i.e. after about 2 months of the acquisition.
- 20.** Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹1,00,000 will be commensurate with the violations committed. .

ORDER

- 21.** After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh only) upon the Noticee, i.e. M/s. Vinsri Cement Industries Private Limited under Section 15A(b) of the SEBI Act for violation of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.
- 22.** The Noticee 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

23. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

24. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date : November 30, 2018

Place : Mumbai

(Maninder Cheema)

Adjudicating Officer