

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/4628/110]

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

Probus Capital Limited

PAN: AAECF5806E

Address: Villa no. 74
Indu Fortune Fields
KPHB Colony Phase 13
Hyderabad- 500072

In the matter of Ybrant Digital Limited

FACTS OF THE CASE IN BRIEF

1. A Department (hereinafter referred to as **OD**) of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted examination in the scrip of Ybrant Digital Limited (hereinafter referred to as **YDL / Company**). During the examination, OD observed certain non-compliances with regard to Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**). OD observed that one of the promoter of YDL viz. Probus Capital Limited (hereinafter referred to as **Noticee / you**) has failed to make disclosures to the YDL and Bombay Stock Exchange Ltd. (**BSE**) under regulation 13(4A) of PIT Regulations, 1992 with respect to the transactions within the stipulated time as prescribed under regulation 13(5) of PIT Regulations, 1992. The shares of the YDL were listed at BSE at the time of alleged violation.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said examination, OD initiated Adjudication Proceedings against the Noticee. In this regard, Ms Sangeeta Rathod (undersigned) has been appointed as the Adjudication Order in respect of Probus Capital Limited in the matter of Ybrant Digital Limited

Adjudicating Officer in the matter under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act, 1992**) and 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 SEBI Act, 1992, the alleged violations of provisions of regulation 13(4A) read with (r/w) regulation 13(5) of PIT Regulations, 1992. The appointment was communicated vide communique dated January 28, 2019. Further, PIT Regulations, 1992 have been repealed and SEBI (Prohibition of Insider Trading) Regulations, 2015 have come into force. The present proceedings against the Noticee is initiated in terms of PIT Regulations, 1992 r/w SEBI (Prohibition of Insider Trading) Regulations, 2015 (specifically Regulation 12 (2) under the head 'Repeal and savings').

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show cause notice SEBI/HO/EAD/E&AO/SR/PP/OW/10493/2019 dated April 24, 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 it and why penalty under section 15A(b) of SEBI Act, 1992 be not imposed on it for the violations alleged and specified in the said SCN.

4. Details of the SCN are given as under:

OD of SEBI conducted examination in the scrip of YDL for the period between January 01, 2013 to March 19, 2013 (hereinafter referred to as **Examination Period / IP**) and observed that the shareholding pattern of Noticee changed by more than 25000 shares several times from December 2012 to December 2014. The Noticee was one of the promoters of YDL on the date of the alleged transaction. OD observed following instance on which Noticee has allegedly violated the provisions of regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992 as tabulated below-

Table-I

Sl. no.	Date	No. of shares	Debit/Credit	violation
1	21/01/2013	185192	Credit	Regulation 13(4A) r/w 13(5) of PIT Regulations, 1992
2	10/10/2014	693482	Debit	

In view of the said transactions of shares of YDL, this had resulted in change in shareholding exceeding 25,000 shares, and hence Noticee was required to make disclosures to YDL and BSE under regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992. It is alleged that the Noticee has failed to make the required disclosures to YDL and BSE within the required time frame, therefore it has violated regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992.

5. The SCN sent to the Noticee through the speed post acknowledgment due. The said SCN sent to Noticee has returned undelivered at the address available on record with the comment “no such office in this plot”. Thereafter, another attempt to serve the SCN upon the Noticee was made through affixture in terms of Rule 4 of Adjudication Rules, 1995. However, affixture report also returned back with the comment “entity not found at the address” as affixture could not be done. Thereafter, SCN was uploaded on the SEBI website under “Unserved Summons / Notices” on February 08, 2019. Subsequently, by way of release of public notice vide newspaper publication dated September 06, 2019, the SCN was served on the Noticee by way of publication in terms of Rule 7(d) of the Adjudication Rules and the paper clippings is on record. The Noticee was advised to file its reply to the SCN and was also provided with an opportunity of hearing on September 25, 2019. Newspaper publication were released on September 06, 2019 in the newspapers detailed hereunder-

S.No	Name of the newspaper	Language	Edition
1.	Deccan Chronicle	English	Hyderabad Edition
2.	Sakshi	Telugu	Hyderabad Edition
3.	Daily Hindi Milap	Hindi	Hyderabad Edition

6. However, the Noticee has neither filed a reply to the SCN nor availed of opportunity of hearing fixed on the stipulated date. In view of the above reasons, I am compelled to proceed further in the matter on the basis of facts/material available on record.
7. After taking into account, the allegations levelled in the SCN, and other evidences / material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN and the materials available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. Whether the Noticee have violated the provisions of regulations 13(4A) 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?**

9. Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations, 1992:

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

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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:

10. 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 have violated the provisions of regulations 13(4A) r/w 13(5) of PIT Regulations, 1992?*

11. Upon a perusal of shareholding of YDL as available in statement showing holding of securities in the BSE website, it is noted that the Noticee belongs to the category Adjudication Order in respect of Probus Capital Limited in the matter of Ybrant Digital Limited

Promoter and Promoter Group. Further, the Noticee is alleged to have violated provisions of regulations 13(4A) r/w 13(5) of PIT Regulations, 1992 for the transactions detailed in the transaction statement of CDSL for Probus Capital Limited / Noticee.

I find that opportunities were given to the Noticee to submit reply to the said SCN and also to appear for personal hearing in the instant adjudication proceedings. However, the Noticee neither replied to the SCN nor attended the personal hearing granted to it. In this regard, it is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed that "... *the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against it in the show cause notice were admitted by it*". I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that "...*As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to it nor availed opportunity of personal hearing offered to it in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against it in the show cause notices...*"

Therefore, in view of the above case laws, it is presumed that the Noticee has admitted the charges levelled against it in the said SCN. However, in the interest of natural justice, I still proceed to decide the matter on merits.

12. As per Regulation 13(4A) of PIT Regulations, 1992 any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchanges where the securities are listed the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. I observe from the material available on record that on two instances Noticee had transacted for more than 25000 shares. In this regard, BSE's email dated January 19, 2015 is on record wherein BSE stated that it BSE has not received any disclosures under PIT Regulations, 1992 from the entities mentioned in OD's email dated January 14, 2015 in the scrip of YDL for the period mentioned in the said email. Further, with regard to the disclosure to the company by the Noticee for the above mentioned transaction in the capacity of

promoter, I observed from the available records that the email sent to YDL on January 22, 2015 and reminder emails dated February 03, 2015 and February 06, 2015, however, YDL has failed to provide the requisite information as sought by OD. Therefore, I find that there is no material on record, to show that the Noticee has made disclosures under the said provisions to BSE and YDL. Noticee being the promoter of YDL, was responsible for the disclosures to be made under PIT Regulations, 1992 as the change in shareholding of the promoter had exceeded 25,000 shares. Therefore, Noticee was under an obligation to make the required disclosures to the Company and BSE under regulation 13(4A) r/w regulation 13(5) of the PIT Regulations, 1992. Therefore, I hold that the Noticee has failed to make disclosures to BSE and YDL under regulation 13(4A) within two working days of October 10, 2014 and therefore, violated regulation 13(4A) r/w regulation 13(5) of SEBI (PIT) Regulations, 1992. In view of the above, the allegations levelled in the said SCN against the Noticee stand established.

Issue b: Do the violations, if any, on the part of the Noticee attract any monetary penalty under section 15A(b) of SEBI Act, 1992?

13. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and material available on record, I am of the view that the said failure on the part of the Noticee to make required disclosures under the relevant provisions discussed above attracts imposition of monetary penalty under section 15A(b) of SEBI Act, 1992 which is reproduced below:

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,—*

(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.*

Issue c - 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?

14. While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules which reads as under:-

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.”*

- i. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Further, material available on record does not show that the said failure is repetitive.
- ii. The object of the PIT Regulations, 1992 mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.
- iii. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014:- *“...penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”* In Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI—the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”* Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *“Once it is*

established that the mandatory provisions of Takeover Code was violated, the penalty must follow.”

- iv. I conclude that the aforementioned violation of provisions of regulations 13(4A) r/w 13(5) of PIT Regulations, 1992 attracts monetary penalty and therefore, taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticee is liable for a monetary penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) for violating the said provisions of PIT Regulations, 1992.

ORDER

15. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 r/w rule 5 of the AO Rules, 1995, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) upon the Noticee, i.e. Probus Capital Limited under section 15A(b) of the SEBI Act, 1992 for violation of regulations 13(4A) r/w 13(5) of PIT Regulations, 1992.
16. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
- a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai
17. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in
- a) Case Name
 - b) Name of the 'Payer/Noticee'
 - c) Date of Payment
 - d) Amount Paid
 - e) Transaction No.
 - f) Bank Details in which payment is made
 - g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
19. 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: September 27, 2019

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER