

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/252-253/2018]**

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

In respect of:

Names of the Entities	PAN No.
Madhukar Sheth	ANXPS1972P
India Infoline Ltd.	AAACI7397D

In the matter of M/s. Shree Ashtavinayak Cine Vision Ltd

Facts of the case:

1. Securities and Exchange Board of India ("SEBI") pursuant to examination in the scrip of M/s. Shree Ashtavinayak Cine Vision Ltd ("SACL"/Company) had observed that
 - a. Madhukar Sheth ("Madhukar") had violated provisions of Regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations, 2015")
 - b. India Infoline Ltd ("IIFL") had violated provisions of Regulation 13(1) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations, 2015 and Regulation 7(1) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulations, 1997" read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations, 2011").
2. Securities and Exchange Board of India (hereinafter referred to as the SEBI) had conducted investigation in the scrip of SACL during August 3, 2009 to June 28, 2011 (hereinafter referred to as 'period of investigation' or 'investigation period').
3. During investigation the following was observed:

Madhukar Seth

4. The shareholding of Madhukar during the investigation period was verified from the demat statements and on verification following disclosure related violation under Regulation 13(3) of

PIT Regulations 1992 was observed and it was alleged that Madhukar had not made required disclosure about his changed shareholding as per Regulation 13(3) of PIT 1992.

Date	No of shares held - pre disposal	% of shareholding held - pre disposal	No of shares disposed off	No of shares disposed off as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post disposal	% of shareholding held - post disposal
09/04/2009	638809	6.10%	-600,000	-5.73%	0	38,809	0.37%

IIFL

- The shareholding of IIFL during the investigation period was verified from the demat statements and on verification following disclosure related violations under SAST Regulations, 1997 and PIT Regulations 1992 were observed and it was alleged that IIFL had not made required disclosure about its changed shareholding as per Regulation 13(1 & 3) of PIT 1992 and 7(1) of Substantial Acquisition and Takeover of Shares Regulations 1997.

PIT Regulations, 1992

Date	No of shares held - pre Acquisition /disposal	% of shareholding held - pre Acquisition/disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/(disposed off) as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/disposal	Violation of Regulation(s) under SAST, 1997 / PIT, 1992
09/04/2009	0	0.00%	600,000	5.73%	0	600,000	0.00%	13(1) PIT
06/10/2009	5,398,155	5.15%	-5,397,750	-5.15%	0	405	0.00%	13(3) PIT

SAST Regulations, 1997

Date	No of shares held - pre Acquisition/disposal	% of shareholding held - pre Acquisition/disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post Acquisition/disposal	% of shareholding held - post Acquisition/disposal	Mode (*)	Date of disclosure to company	Date of disclosure to stock exchange	Violation of Regulation(s) under SAST, 1997 / PIT, 1992
09/04/2009	0	0.00%	600,000	5.73%	0	600,000	0.00%	off market	Not disclosed	Not disclosed	7(1) SAST

- In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

7. In this order wherever SAST Regulations, 1997 is mentioned it should be referred to as SAST Regulations, 1997 read with Regulation 35 of SEBI (Acquisition of Shares and Takeovers) Regulations, 2011.

Appointment of Adjudicating Officer

8. SEBI had initiated adjudication proceedings against the noticees mentioned above and appointed Shri S V Krishna Mohan as Adjudicating Officer vide order dated February 7, 2017 under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge Madhukar Seth and IIFL under Section 15A(b) of the Act for the alleged violation of the provisions of law by the entities. Pursuant to the transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017.

Show Cause Notice, Reply and Personal Hearing

9. Show Cause Notice ("SCN") dated July 13, 2017 was issued against Madhukar and IIFL under the provisions of Rule 4 (1) of the Rules to show cause as to why an inquiry should not be initiated against the Entities and penalty should not be imposed under Sections 15A(b) of the Act for the alleged violations as stated above.

Reply of Madhukar Sheth

10. In response to the SCN vide email dated July 31, 2017 sought time to file his reply. Subsequently submitted the reply vide letter dated September 6, 2017 which inter-alia states that :

- *While pointing out some error in % of his holding, he sought the details of demat account which is involved in the alleged violation. It is stated that alleged transfer of 6, 00,000 shares to IIFL was towards margin and without consideration and change of ownership.*
- *6,00,000 shares were drawn from his account by IIFL towards margin deposit and the shares were legally / beneficially owned by me and all the corporate actions/ benefits thereon were accruing and received by me. The said shares were drawn to the specified "client beneficiary account" in terms of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.*

Reply of IIFL

11. In response to SCN, IIFL vide letter dated sought time to file reply and accordingly filed its reply vide letter dated September 14, 2017 which inter-alia states that:

- *The shares were transferred in connection with margin requirement and kept in a separate account called "Designated Client Beneficiary" (DCB) Account and in support also provided the trail of share movement from receipt to pledge to NSE to release of pledge to crediting back to client account.*
- *The allegation in the SCN are based on incorrect assumptions of transfer of beneficial ownership in the SACV shares in IIFL favour and IIFL had acted only as a broker to the client*

and the receipt of SACV shares by IIFL were purely incidental and obligatory and with a view to comply with the requirement as per the risk management policy for providing exposure and margin deposit by clients with brokers.

- Not making disclosures as per PIT Regulations, 1992 and SAST 1997 is in line with and as per true facts regarding the ownership of shares which at all times belonged to the client who transferred them in IIFL's DCB account maintained by client towards margin. In support referred to orders of Hon'ble Adjudicating officers where brokers were exonerated in similar matters from the applicability of disclosures under PIT Regulations and SAST 1997.*

Hearing

12. Pursuant to the transfer of the case, I granted to all entities an opportunity of personal hearing, as detailed below in terms of Rule 4(3) of AO Rules :

- a. The hearing scheduled on September 6, 2017 was adjourned at the request of Madhukar to November 3, 2017 and on that day Madhukar appeared before me and reiterated the submissions made vide his letter dated September 3, 2017 and also undertook to provide client ledger for the relevant period. Pursuant to the hearing vide email dated November 5, 2017 he stated that the details of pledge will be provided upon receipt of the same from IIFL. However till date no information was provided.*
- b. The hearing scheduled on September 6, 2017 was adjourned at the request of IIFL to November 3, 2017. On the day of hearing the Authorised Representatives ("ARs") of IIFL appeared before me and reiterated the submissions made vide their letter dated September 14, 2017 and also assured to submit further details by November 10, 2017. Accordingly, vide letter dated November 10, 2017 DP transaction statement, exposure / trading details of Madhukar during 01.04.09 to 06.10.09, copy of DPM system for DP account no. 14424151 belonging to NSCC were submitted.*

Consideration issues, Evidences and Findings

13. I have carefully perused the charges levelled against the entities in the SCN and written submissions made in response to SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

- I. Whether Madhukar has violated Regulation 13(3) of PIT Regulations and IIFL has violated Regulations 13(1) of PIT Regulations and Regulation 7(1) of SAST Regulations, 1997?**
- II. Does the violation, if any, on the part of the entities attract monetary penalty under Section 15A(b) of the Act?**
- III. If so, what would be the quantum of monetary penalty that can be imposed on the entities taking into consideration the factors mentioned in Section 15J of the Act?**

14. Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations 1992, PIT Regulations 2015, SAST Regulations 1997 and SAST Regulations 2011 which read as under:

Relevant provisions of SAST Regulations, 1997:

Acquisition of 5% and more shares 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 percent. 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

Relevant provisions of SAST Regulations, 2011:

Repeal and Savings.

35.(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

- (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
- (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;
- (c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations. After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Relevant provisions of PIT Regulations:

Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 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.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 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) and (4) 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.

PIT Regulations, 2015

Repeal and Savings.

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(2) *Notwithstanding such repeal,—*

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and
(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations

FINDINGS

Whether IIFL have violated Regulation 13(1) of PIT Regulations, 1992 and Regulation 7(1) of SAST Regulations, 1997?

15. In view of the foregoing, I find merit in the submissions of IIFL and I am of the view that the IIFL does not fall within the ambit of the term 'acquirer' as defined in Regulation 2(1)(b) of SAST. Consequently, compliance with provisions of regulation 7(1) did not arise. Therefore, when regulation 7(1) was not attracted, the question of its violation cannot arise.
16. As regards regulation 13 (1) of PIT, the disclosure has to be made in Form A by any person who holds more than 5% shares. On perusal of Form A, I find that the person is required to disclose the details of acquisition of 5% or more shares in a listed company. The term 'acquisition' has not been defined either under PIT or SAST. Black's Law Dictionary, Sixth Edition, defines the term 'Acquisition' as "the gaining of possession or control over something". Thus, the primary requirement for acquisition is to acquire something, thereby making the person an "acquirer" as defined under SAST. However, IIFL has not acquired anything while Madhukar transferred his shares into the Margin Account of IIFL. Therefore, IIFL does not fall within the ambit of the term "Acquirer" as defined under SAST and therefore, it cannot be said to have acquired the shares.
17. In the given fact / situation, IIFL has submitted that it has neither acquired shares nor is the beneficial owner of the shares of SACL but had received those shares towards margin requirement from Madhukar and to support the same the IIFL has submitted

evidence in the form of Delivery Instruction Slip. Further, IIFL has also submitted that the effect stock Split in the ratio of 1:10 was given effect while returning shares to Madhukar and also the dividend of Rs 6, 48,000 received by IIFL was duly transferred to Madhukar in August 2009 when the said shares were held by IIFL

18. IIFL has submitted copy of ledger account of Madhukar in support of its submission. In addition to it, IIFL has presented before me the transaction statement of its margin account confirming that shares were transferred by Madhukar and in turn from this account those shares were pledged with NSCCL towards Margin. In the given background, IIFL's submission that making disclosures under the aforesaid SAST Regulations and PIT Regulations would tantamount to wrong / false disclosures as IIFL was not the beneficial owner of the shares is acceptable. In the light of the aforesaid events, I conclude that Madhukar continues to be the beneficial owner of the said shares
19. I am inclined to refer the SAT judgement in the matter of Galaxy Broking v/s SEBI wherein it was held that *"Appellant kept the shares in its own account by way of margin, In view of the matter, the appellant was not required to make any disclosures under SAST and PIT Regulations."*
20. Based on the foregoing I conclude that the shares were transferred to IIFL's specific account towards margin purpose and were further transferred to NSCCL for pledge purpose and actual or constructive beneficial ownership in SACV shares remained with Madhukar.
21. Accordingly, there was no acquisition by IIFL which needed to be disclosed under regulation 13(1) of PIT and 7(1) of SAST 1997. Accordingly Madhukar was under no obligation to make disclosure under 13(3) of PIT 1992 as he continued to be the beneficial owner of the shares of SACL despite transferring the shares into the margin account of IIFL.

ORDER

22. In view of the above, after considering all the facts and circumstances of the case, the material available on record, I, in exercise of the powers conferred upon me under 15-I of the SEBI Act read with Rule 5 of Rules, hereby drop the Adjudication proceedings against Madhukar Sheth and India Infoline Ltd and accordingly disposed of the SCNs issued.
23. In terms of Rule 6 of the Rules, copy of this order are sent to the Entities and also to Securities and Exchange Board of India.

Date: March 28, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER