

ADJUDICATION ORDER NO. EAD-8/JS/SP/54 /2018-19

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 Sampati Financial Services Ltd. (PAN- AAOC2986G) in the matter of Excel Castronics Ltd.

BACKGROUND

1. Securities and Exchange Board of India (**'SEBI'**) instituted adjudicating proceedings to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992 (**'SEBI Act'**) against Sampati Financial Services Ltd. (earlier known as Sampati Broking Ltd.) (**'Sampati/Noticee'**) in the matter of Excel Castronics Ltd. (**'Excel/Script/Company'**), shares are listed at the Bombay Stock Exchange (**'BSE'**), for the examination period (**'IP'**) May 01, 2014- October 31, 2014, for the alleged violations of provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (**'PIT Regulations'**) and under SEBI (Substantial Acquisition and Takeovers) Regulations, 2011 (**'SAST Regulations'**), which are detailed below:

Findings in brief	Alleged violations of provisions
i) Sampati held 0.61% (50,000 shares) of the share capital of the Company, subsequently, increased to 5.31% (4,32,897 shares) of the share capital of the Company on August 14, 2014. ii) With respect to change in holdings, Sampati required to file disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations') and under SEBI (Substantial Acquisition and Takeovers) Regulations, 2011 ('SAST Regulations').	i) Regulation 13(1) read with 13(5) of PIT Regulations and ii) Regulation 29(1) read with Regulation 29(3) of SAST Regulations

APPOINTMENT OF ADJUDICATING OFFICER

2. Adjudicating Officer was appointed vide order dated February 15, 2018 under Section 15-I read with Section 19 of **SEBI Act** and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**'Adjudicating Rules'**), to inquire into and adjudge under Section 15A(b) of SEBI Act for the aforesaid alleged violation against Sampati.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice ('**SCN**') in terms of provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act was issued on March 14, 2018 to Sampati calling upon the noticee to show cause as to why an inquiry should not be held against it under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. The said SCN was issued to Sampati to the following address available at our end, "*Office no. 104-105, 106, Heera Panna Complex, Dr. Yagnik Road, Rajkot- 360 001, Gujarat and 212- Mahalaxmi Complex, Near KKV Hall, Kalawad Road, Rajkot- 36005, Gujarat*", however, the SCN was returned undelivered.
4. Subsequently, vide letter dated March 27, 2018, another attempt was made to deliver the SCN along with annexures to the address available in our record, i.e. "*B-301/302, 3rd Floor, Opp. Big Bazar, 150 Feet Ring Road, Rajkot, Gujarat- 360 005*" and the same was delivered to Sampati on March 31, 2018.
5. Since, no reply was received from Sampati, vide letter dated April 23, 2018, the noticee was informed to file reply to the SCN latest by May 04, 2018 and to appear before the Adjudicating Officer for personal hearing on May 18, 2018. The letter dated April 23, 2018 was delivered to Sampati on April 26, 2018. However, Sampati failed to reply to the SCN and also to appear for the hearing.
6. Subsequently, vide letter dated June 01, 2018, Sampati, was once again informed to file reply to SCN latest by June 14, 2018 and an opportunity to appear for hearing was granted on June 19, 2018. However, the letter was returned undelivered with remarks 'Unclaimed'. Subsequently, a copy of the notice was uploaded in SEBI website under the heading "Unserved Notices/SCN".
7. Further, on the date of hearing, telephonic calls were made to Sampati to the numbers (0281-2581611, 0281-2587539, 0281-3042548, 09428010635, 09825934502 and 09898145434) available on records. However, no response was received. Sampati, vide letter dated June 19, 2018 was granted final opportunity to appear for the hearing on July 03, 2018 and informed to file reply to SCN on or before June 28, 2018. The

said notice was affixed in terms of Rule 7 (c) of the AO Rules on the address mentioned above. Also, a copy of the letter dated June 19, 2018 was forwarded to info@sampatibroking.com; info@sampatigroup.in; and jayesh_madiyar@sampatibroking.com, the email ids through which the noticee communicated to SEBI during the examination and available on record. However, Sampati failed to appear for the hearing and also to file reply to the SCN.

8. Thus, inspite of providing enough opportunities of hearing, Sampati failed to file reply to the SCN and to appear for the hearing. Hence, the matter is being proceeded based on the information and documents available on records in terms of Rule 4(7) of the AO Rules.

CONSIDERATION OF ISSUES AND FINDINGS:-

9. Charges levelled against Sampati as per SCN and the documents available on record have been perused. The issues that arise for consideration are :
- a) Whether, Sampati failed to disclose the change in holdings in the Company in terms of PIT and SAST Regulations?
 - b) Does the violation, on the part of Sampati attract monetary penalty under section 15A(b) of SEBI Act?
 - c) If yes, what quantum of monetary penalty should be imposed on Sampati taking into consideration the factors mentioned in Section 15J of the SEBI Act?

Issue a) Whether, Sampati failed to disclose the change in holdings in the Company in terms of PIT and SAST Regulations?

10. During the period May 01, 2014- October 31, 2014, Sampati had acquired shares of the Company, which is evident from the demat account statement of Sampati. The same is corroborated from certain disclosures of Sampati made available on the Exchange website.
11. It is observed that SEBI during the examination, vide email dated September 03, 2014, Sampati was advised to provide the proof of disclosures along with

acknowledgement for the disclosure made in terms of SAST Regulations to the Company and to BSE for the shares acquired in the Scrip during the period June 2014 to August 2014.

12. In this regard, Sampati, vide its email info@sampatigroup.in dated September 03, 2014 had forwarded a copy of letter dated September 03, 2014, wherein it had stated that “it had submitted compliance under Regulation 29(1) of SAST Regulations and also under Regulation 13(2) of PIT Regulations to the Company and to the Stock Exchange Mumbai”. Sampati also provided a copy of the disclosure dated July 25, 2014 with acknowledgement of the Company dated July 26, 2014 made in terms of Regulation 29(1) of SAST Regulations.
13. As against this contention it is on records that the disclosures to this effect were in the public domain on the stock exchange only on September 11, 2014.
14. Given the above discrepancy the documents were compared with the facts based on the demat holding and the disclosures on the exchange website. Central Depository Services (I) Ltd. (“**CDSL**”) provided copy of the following demat statements of Sampati in the Scrip for the period January 01, 2014 to August 30, 2014 and the same was provided to Sampati as part of the SCN:

Sr. No.	Demat Account Nos.
1	12064600-00003528
2	12010900-05166248

It is observed that Sampati does not hold demat account with Depository Participant of National Securities Depositories Ltd. (“**NSDL**”).

15. On perusal of the demat statements of Sampati, it is observed that the holdings of Sampati in the Scrip is as follows:-

Demat Acc No.	Date of transaction	No. of Shares	Credit / Debit	Current Balance-total	Change in Holdings (in %)
12064600-00003528	01/01/14- opening balance	0	-	0	0
12064600-00003528	07/08/2014	50,000	Credit	50,000	0.614%
12064600-00003528	08/08/2014	50,000*	Debit	0	0
12010900-05166248	08/08/2014	50,000@	Credit	50,000	0.614%
12064600-00003528	14/8/2014	3,82,897	Credit	4,32,897	5.31%

*Transferred to demat account of Sampati (acc no- 1201090-05166248)

@Shares received from demat account of Sampati (acc No: 12064600-00003528)

16. From the above, it is observed that holding of Sampati increased from 50,000 shares, which is 0.614% share capital of the Company (81,42,700 shares – share capital of the Company during quarters of June 2014 and September 2014) to 4,32,897 shares, which is 5.31% of the share capital of the Company.
17. Thus, change in the holdings of 5% and above of Sampati in the Scrip triggers the filing of disclosure in terms of Regulation 29(1) read with Regulation 29(3) of SAST Regulations to the Company and to BSE, within two days of the receipt of shares i.e. August 14, 2014. The said change in holdings requires to be disclosed by Sampati in terms of PIT Regulations also to the Company. It is observed that there is no such intimation in the entire month of August 2014 as per the email of the Exchange. The only disclosure that has been made is in the month of September 2014 which also

Disclosures made by Sampati in terms of SAST Regulations

18. It is observed that Sampati claims to have made disclosures to the Company in terms of Regulation 29(1) read with Regulation 29(3) of SAST Regulations.
19. These disclosures appear to be an afterthought as firstly the holdings of Sampati does not match with the depository holding as on that particular date i.e. August 14, 2014. Secondly, going solely by the demat statement, it is not clear as to how Sampati could

have made a disclosure on July 25, 2014 and the same was received and accepted by the Company on July 26, 2014 for a trigger which occurred only on August 14, 2014. Also, the submission of Sampati does not narrate how the referred disclosure was filed with the Company since it does not contain any covering letter of Sampati to the Company, the date on which the disclosure was communicated to the Company. Further, it is observed from the "Corporate Announcements" Section of the BSE, that the Company has reported the disclosure of Sampati made under Regulation 29(2) of SAST Regulations on September 11, 2014.

20. In view of above and given the constraints of the noticee not replying to the SCN (despite delivery/ affixture of the SCN/letter to the same address to which the earlier correspondence has been replied), it is to be concluded that the records speak otherwise and tilt in favour of the proposition that the disclosures made are indeed an afterthought. Further credence is lent to this proposition by the documents available on records as analysed above. Thus, Sampati have failed to disclose the change in holdings and the disclosure made by Sampati to the Company and BSE cannot be considered as a compliance of SAST Regulations. Thus, it is concluded that Sampati had violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

Disclosure in terms of PIT Regulations.

21. Sampati, was also required to disclose the said change in holdings to the Company in terms of PIT Regulations. It is observed that Sampati has not filed any documents/ records during the examination or during these proceedings to substantiate relevant disclosures were made in terms of PIT Regulations. Further, it is observed that no such disclosure were observed in BSE for the said change in holdings.
22. During these proceedings, even though enough opportunity was provided, Sampati was failed to file any response and to appear before the Adjudicating Officer. Thus, Sampati have not co-operated at all during this instant proceedings. Also, there are no records available on records suggesting that Sampati had made disclosure in terms of PIT Regulations.

23. In this regard, it is pertinent to note that the Hon'ble Securities Tribunal ("SAT") in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter-alia, 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 them in the show cause notice were admitted by them*". It is also pertinent to note that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed 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...*".
24. Thus, for the change in holdings, Sampati failed to make disclosures in terms of SAST Regulations and PIT Regulation, hence, it is held that Sampati have violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.
25. With respect to allegation of non-compliance of Regulation 13(5) of PIT Regulations by Sampati, it is stated that there is no information available on records to substantiate that the alleged violation of Regulation 13(3), 13(4) and 13(4A) of PIT Regulations. Hence, the charges of non-compliance of Regulation 13(5) of PIT Regulations is disposed off.

Issue B: Does the violation, on the part of Sampati attract monetary penalty under section 15A(b) of SEBI Act?

26. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*"

27. As the violation of provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations by Sampati has been established, it is held that Sampati are liable for monetary penalty under Section 15A(b) of SEBI Act.

28. The aforesaid provisions read as under:

"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;"*

29. Given the above, it is concluded that the present case is a fit case for imposing penalty upon Sampati under Section 15A(b) of the SEBI Act, 1992.

Issue C- what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

30. 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."

¹[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.

¹ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

31. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the 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 Noticee as a result of default nor has any such allegations made out against the Noticee.
32. It is on records that the non-compliance continues even as on date.
33. Therefore, taking into consideration the facts / circumstance of the case and above mitigating factors, a justifiable penalty is determined to be imposed upon the Noticee.

ORDER

34. After taking into consideration all the facts and circumstance of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against Sampati Financial Services Ltd stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, a monetary penalty of **Rs. 4,00,000 (Rupees Four Lakhs Only)** is imposed upon Sampati Financial Services Ltd under Section 15A(b) of SEBI Act, 1992.
35. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

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

36. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - II [EFD1-DRA-I], SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. 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)

37. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Sampati Financial Services Ltd. and also to SEBI.

Date: September 19 , 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer