

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD/PM-AA/AO/17-20/2017-18]

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; AND

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of

Sr. No.	Name of the Entity	PAN
1	Blue Circle Services Limited	AAACB2131L
2	Shri Anil Purohit	AGOPP5498D
3	Shri Dhruva Narayan Jha	ACVPJ2857K
4	Shri Pravin Sawant	ANTPS3885K

In the matter of  
**Blue Circle Services Limited**

**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (**SEBI**) conducted investigation into the trading activities of certain entities in the scrip of Blue Circle Services Limited (hereinafter referred to as '**BCSL / Company/Noticee no.1**') during the period from October 21, 2011 to March 31, 2013 (hereinafter referred to as '**investigation period**'). The shares of the company are listed on Bombay Stock Exchange Ltd. (**BSE**'). During the relevant point of time, Shri Anil Purohit ('**Noticee no.2**'), Shri Dhruva

Narayan Jha ('**Noticee no.3**') and Shri Pravin Sawant ('**Noticee no.4**') held the following position in the company:

Shri Anil Purohit	Chairman and Managing Director
Shri Dhruva Narayan Jha	Executive Director
Shri Pravin Sawant	Compliance Officer

2. Investigation revealed that the Company had made the following corporate announcement to BSE:
  - i. **February 21, 2012**: at the time of acquisition of Enelek Power Pvt. Ltd. ('**Enelek**'), *inter alia*, stating therein that after the acquisition, Enelek will become a subsidiary of BCSL and that BCSL planned to invest about Rs. 20 crore in this subsidiary and grow its business.
  - ii. **December 12, 2012**: at the time of signing of Joint Venture with Aadhar Infra Projects Pvt Ltd. ('**Aadhar Infra**'), *inter alia*, stating therein that important terms of the Joint Venture with Aadhar Infra included investment of Rs. 150 crore for a period of 3 years and profit sharing ratio of 75% for BCSL & 25% for Aadhar Infra.
3. However, it was observed that the Cancellation / Termination of both these deals were not disclosed by the Company to the stock exchange. In view of the same, it was alleged that i) Noticee no.1, 2 & 3 violated Clause 2.1 of Schedule II under Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**") and Clause 36 of the Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**{SC(R) Act, 1956}**") and ii) Noticee no. 4 violated Clause 3.2 of Schedule II under Regulation 12(2) of PIT Regulations, 1992.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. Ms. Anita Kenkare was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter

referred to as “**SEBI Act**”) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘**Adjudication Rules**’) and 23I of SC(R) Act, 1956 read with rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 2005 (hereinafter referred to as the ‘**SCR Rules**’) to inquire into and adjudge under section 15HB of the SEBI Act and 23A(a) SC(R) Act, 1956, the alleged violations of Clause 2.1 of Schedule II under Regulation 12(2) of PIT Regulations, 1992 and Clause 36 of the Listing Agreement read with Section 21 of SC(R) Act, 1956 by Noticee no.1, 2 & 3 and Clause 3.2 of Schedule II under Regulation 12(2) of PIT Regulations, 1992 by Noticee no.4. Subsequently, vide order dated October 04, 2017, I have been appointed as Adjudicating Officer in place of Ms. Anita Kenkare in the present matter.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A Common Show Cause Notice dated April 29, 2016 (hereinafter referred to as “**SCN**”) was issued to the Noticees under Rule 4 of the Adjudication and SCR Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15HB of the SEBI Act and 23A(a) of SC(R) Act, 1956 for the alleged violations specified in the SCN. Copies of the documents relied upon in the SCN were provided to the Noticees along with the SCN.
6. Noticees through their various letters sought grant of additional time to submit their replies to the SCN and they were given additional time of four weeks to file the reply in the matter. Subsequently, Noticee no. 1, 2 & 3 vide individual letters each dated July 18, 2016 and Noticee no.4 vide letter dated July 20, 2016 had, *inter alia*, sought for opportunity of

inspection of documents. Vide letter dated August 11, 2016, Noticees were requested to send by August 19, 2016 the list of documents that they desire to inspect. However, no reply was received from the Noticees, except from Noticee no.1 vide its letter dated August 29, 2016.

7. Vide letter dated October 19, 2016, copies of the relevant documents sought by Noticee no. 1 were provided and an opportunity of inspection of documents was also provided on November 09, 2016. However, Noticee no. 1 failed to appear for inspection. Another opportunity of inspection was also given to Noticee no. 1 on December 09, 2016 vide letter dated November 22, 2016, however, they again failed to appear for inspection.
8. Vide letter dated April 12, 2017 Noticees were asked to file reply to the SCN and Noticee no. 2, 3 & 4 were also supplied the copies of the relevant documents which was sought by Noticee no.1. Vide letters dated May 08, 2017, received by SEBI on May 30, 2017, Noticees filed their reply to the SCN. The main submissions of the noticees with respect to specific charges alleged in the SCN are as follows:
  - i. *All the deals and corporate announcement made by the company were bonafide and were made transparently with full disclosures in the ordinary course of business. The deals did not fructify due to circumstances beyond the control of the company and there was no ulterior motive for cancellation of the same. The cancellation / termination of the aforesaid deals was inadvertently not disclosed to BSE due to oversight.*
  - ii. *There has been no impact on the price of the scrip or any loss during the relevant period and the same has also been not alleged in the notice.*
  - iii. *In any event, the said inadvertent non-disclosure has already been cured by the company by making disclosures to BSE regarding the impugned corporate announcements albeit belatedly on May 29, 2017.*

- iv. *The alleged violation is not deliberate and intentional and is at the highest a technical, procedural and venial breach.*
  - v. *The alleged violation has not caused any loss to any investor and has also not adversely affected the shareholders of the company or the securities market. Further, there are no shareholder/ investor's complaints in this regard.*
9. Noticees were given opportunities of personal hearing on May 31, 2017, July 13, 2017, August 01 & 18, 2017 vide notices dated April 12, 2017, June 15, 2017, July 14, 2017 and August 03, 2017 respectively which they failed to avail. The undersigned, after being appointed as Adjudicating Officer in the present matter, also gave an opportunity of hearing to the Noticee on November 20, 2017. Vide letter dated *nil*, received by SEBI on November 14, 2017, Noticee No.1 referring to their replies to the SCN, stated that they have nothing further to say in the matter and also submitted copies of the letters dated August 01, 2017 stating that they do not wish avail personal hearing.

### **CONSIDERATION OF ISSUES AND FINDINGS**

10.I have perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

- I. Whether Noticee no.1, 2 & 3 violated Clause 2.1 of Schedule II under Regulation 12(2) of PIT Regulations, 1992 and Clause 36 of the Listing Agreement read with Section 21 of SC(R) Act, 1956?
- II. Whether Noticee no.4 violated Clause 3.2 of Schedule II under Regulation 12(2) of PIT Regulations, 1992?
- III. Do the violations, if any, attract monetary penalty under section 15HB of SEBI Act and 23A(a) of SC(R) Act, 1956?

**Issue I - Violation of Clause 2.1 of Schedule II under Regulation 12(2) of PIT Regulations, 1992 and Clause 36 of Listing Agreement read with Section 21 of SC(R) Act, 1956 by Noticee No. 1, 2 & 3**

11. Regulation 12(2) of PIT Regulations, 1992, inter alia, requires all listed companies to abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations. Clause 2.1 of the Schedule II of PIT Regulations, 1992 provides that price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis. Clause 36 of Listing Agreement, inter alia, requires that the listed companies will also immediately inform the Exchange of all the events which will have bearing on the performance/operations of the company as well as price sensitive information. Section 21 of SC(R) Act, 1956 enjoins listed companies to comply with the conditions of the listing agreement with that stock exchange.
12. Upon perusal of the documents available on record, I note that Noticee no. 2 & 3 were Chairman & Managing Director and the Director of BCSL respectively at the relevant time. I further note that as per Annual Report of the BCSL for the financial year (FY) 2012-13, the Company at the relevant point of time was in the business of providing Advisory Services to clients, trading of software, investing its surplus funds in Capital and money markets as well as doing financing for Corporate Clients and HNIs. BCSL made corporate announcement dated February 21, 2012 at BSE stating that it gets into the renewable energy space through its acquisition of Enelek and planned to invest about Rs. 20 crore in this subsidiary and grow its business. BCSL made another corporate announcement dated December 12, 2012 at BSE stating that the Board of Directors of the company have decided to sign the Joint Venture with Aadhar Infra and Company expects a 5000% jump in their Profit for the next 3 financial years. Further, the important terms of the Joint Venture

with Aadhar Infra included investment of Rs. 150 crore for a period of 3 years and profit sharing ratio of 75% for BCSL & 25% for Aadhar Infra.

13. I am of the view that the said corporate announcements by the BCSL had bearing on its performance / operations as well as they were price sensitive information as it dealt with major expansion plans of the company and executions of new projects by it. I find from the documents available on record that the Board of Directors of the company in its meeting held on April 02, 2012 decided to cancel the deal with Enelek. Further, the Board of Directors of the company decided to terminate the MOU with Aadhar Infra in its meeting held on February 14, 2013. It is not in dispute that the Cancellation / Termination of both these deals were not disclosed by the Company to the stock exchange. Noticee no. 1, 2 & 3 have also admitted the non-disclosure of the Cancellation / Termination of both these deals in their replies to the SCN stating that the deals did not fructify due to circumstances beyond the control of the company and was inadvertently not disclosed to BSE due to oversight. They also stated that they have made disclosures to BSE regarding the impugned corporate announcements on May 29, 2017 post the issuance of SCN in the present matter.

14. I am of the view that information regarding Cancellation / Termination of both these deals were "price sensitive information" as defined in regulation 2(ha) of the PIT regulations and it was necessary for the company to inform the stock exchange(s) about it immediately as stipulated under Clause 2.1 of the Schedule II of PIT Regulations, 1992 and Clause 36 of Listing Agreement so that it becomes public. Timeliness is the essence of disclosure under the PIT Regulations and delayed disclosure does not serve the purpose for which the obligation is cast in these Regulations.

15. I am of the view that since Noticee no. 2 & 3 were Directors of BCSL at the relevant time of Cancellation / Termination of both the deals, they should have ensured proper and strict compliance with the regulatory norms prescribed under the afore-mentioned clauses. I note that Section 27(1) of the SEBI Act makes it abundantly clear that every officer in charge of the functioning of the company in default, and responsible for the same shall be held liable for any misdemeanor committed under the provisions of the SEBI Act.

16. In this regard, I would like to refer to the order of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Almondz Global Securities Ltd. vs. SEBI* (Appeal No. 129 of 2014, order dated May 13, 2016), wherein it made the following observation as regards Section 27 of the SEBI Act:

*"41B. On a perusal of the section, it is borne out that any person responsible for the conduct of a company will be held liable along with the company for an offence committed in contravention of the SEBI Act. The only defense allowed to such a person responsible for the functioning of a company is twofold: first, that the person in-charge proves satisfactorily that the offence was committed without his knowledge or second, that he had exercised due diligence to prevent the offence from occurring...."*

*41C. Therefore, it emerges on a plain reading of Section 27(1) that any person in the position of an MD and CEO of a company and actually discharging responsibilities in that position, and who is not a mere figurehead, will attract the relevant penalty for any contravention committed by his company of the SEBI Act."*

17. In view of the above, I hold that since the disclosure of information regarding Cancellation / Termination of both deals were not made immediately to the stock exchange, Noticee no. 1, 2 & 3 violated Clause 2.1 of Schedule II under Regulation 12(2) of the PIT Regulations, 1992



and also clause 36 of the Listing Agreement read with Section 21 of SC(R) Act, 1956.

**Issue II - Violation of Clause 3.2 of Schedule II under Regulation 12(2) of PIT Regulations, 1992 by Noticee No. 4**

18. Clause 3 of Schedule II of Regulations 12(2) of PIT 1992 relates to Overseeing and co-ordinating disclosure. Clause 3.1 requires all listed companies to designate a senior official (such as compliance officer) to oversee corporate disclosure. Further, Clause 3.2 states that “This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure”.

19. Based on the submission of the Noticee no.4, I note that that it is an admitted position that he was compliance officer of BCSL at the relevant time of Cancellation / Termination of both the deals. As per the regulations, compliance officer is responsible to ensure that company complies with continuous disclosure requirement and also coordinates disclosure of price sensitive information. The role of Compliance Officer is to independently identify all events which are in the nature of price sensitive and guide the Board to ensure continuous disclosure. As noted in the previous paragraphs, the event of Cancellation / Termination of both the deals were price sensitive in nature and hence required to be disclosed immediately to stock exchange as stipulated under Clause 3.2 of Schedule II of Regulations 12(2) of PIT 1992. However, the admitted fact is that the Stock Exchange was not informed immediately regarding Cancellation / Termination of deals. Therefore, I am of the view that

Noticee no.4 failed in his responsibility of ensuring that the company complies with continuous disclosure requirements.

20. In view of the above, I hold that Noticee no.4 failed to ensure disclosure of information regarding Cancellation / Termination of both deals immediately to the stock exchange and thereby violated Clause 3.2 of Schedule II under Regulation 12(2) of the PIT Regulations, 1992.

**Issue III - Does the non-compliance, if any, attract monetary penalty under section 15HB of SEBI Act and section 23A(a) of SC(R) Act, 1956?**

21. By not making the disclosures on time, Noticees failed to comply with their mandatory statutory obligation. 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."*

22. As the violation of Clause 2.1 of Schedule II under Regulation 12(2) of the PIT Regulations, 1992 and Clause 36 of the Listing Agreement read with Section 21 of SC(R) Act, 1956 by Noticee no. 1, 2 & 3 is established, they are liable for monetary penalty under section 15HB of SEBI Act, 1992 as well as under 23A(a) of SC(R) Act, 1956. Further, the violation of Clause 3.2 of Schedule II under Regulation 12(2) of the PIT Regulations, 1992 by Noticee no.4 is also established, he is liable for monetary penalty under section 15HB of SEBI Act, 1992. The aforesaid provisions, at the time of violation, read as under:

**SEBI Act, 1992**

***"15HB. Penalty for contravention where no separate penalty has been provided.-***

*Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."*

**SC(R) Act, 1956**

***"23A. Penalty for failure to furnish information, return, etc. — Any person, who is required under this Act or any rules made thereunder,—***  
*(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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 for each such failure;"*

23. While determining the quantum of penalty under section 15HB of SEBI Act, 1992 and Section 23A(a) of SC(R) Act, 1956, it is important to consider the following factors stipulated in section 15J of SEBI Act and 23J of SC(R) Act, 1956:-

- (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.

24. The amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default is not quantified in the material available on record. Considering that there has been delay in making disclosure on two occasions, the same are treated as repetitive. It is important to note that in the disclosure based regime, the disclosures of material information that have a bearing on the performance/operation of the company and that are price sensitive

information not only enable the investors to take informed investment decisions in the securities of the company but also provide the necessary tool for the regulators to ensure effective regulation, supervision and enforcement. I am of the view that any casual approach regarding disclosure of material information by the listed company and/or any person who are responsible to the company for the conduct of its business, adversely affects the interest of investors as well as the markets.

25. Hon'ble SAT in the case of *M/s. Helios and Matheson Information Technology Limited vs. SEBI* (Appeal No. 69 of 2011, order dated November 16, 2011), as regards the importance of disclosure of price sensitive information, observed *"Price sensitive information when published is likely to materially affect the price of the securities of a company and it is for this reason that clause 36 of the listing agreement mandates that such information should be made public at the earliest. This is also the requirement of clause 2.1 of the Code of Corporate Disclosure Practices for Prevention of Insider Trading in schedule II to the PIT regulations which provides that "price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis". Disclosure of such information prevents insider trading. It is pertinent to mention that PIT regulations prohibit a person from trading when he is in possession of unpublished price sensitive information. Non-disclosure of price sensitive information is, thus, viewed seriously."*

26. It is contended by the Noticees that the non-compliance was unintentional, that there was no undue benefit derived by him and no harm was caused to the investors. In this regard, I note that Hon'ble SAT,

through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT Regulations. However, they are nevertheless treated as mitigating factors while arriving at the quantum of penalty.

27. Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* (Appeal No. 78 of 2014 order dated September 30, 2014), observed that *“Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, 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”*.

## **ORDER**

28. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, and 23I (2) of SC(R) Act, 1956 read with Rule 5 of the SCR Rules, hereby impose following penalties on the respective noticees:

<b>Name of the Noticee</b>	<b>Violation</b>	<b>Penalty Amount</b>
Blue Circle Services Limited	Clause 2.1 of Schedule II under Regulation 12(2) of the PIT Regulations, 1992 and Clause 36 of the Listing Agreement read with Section 21 of SC(R) Act, 1956	₹ 6,00,000/- (Rupees Six Lakh Only) to be paid jointly and severally
Shri Anil Purohit		
Shri Dhruva Narayan Jha		
Shri Pravin Sawant	Clause 3.2 of Schedule II under Regulation 12(2) of the PIT Regulations, 1992	₹ 2,00,000/- (Rupees Two Lakh Only)

29. The amount of penalty shall be paid ***either by way of demand draft*** in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, ***or by e-payment*** in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

30. The Noticees shall forward the Demand Draft or the details / confirmation of penalty so paid through e-payment to “The Chief General Manager, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.” as per the following format.

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

31. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to Noticees and also to the Securities and Exchange Board of India.

**Date: December 27, 2017**  
**Place: Mumbai**

**Prasanta Mahapatra**  
**Adjudicating Officer**