

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/ 304 /2018]

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:

M/s Dadima Capital Private Limited
(PAN No. AABCD2140E)
201, Indrapuri Building, Govind Nagar,
Sodawala Lane, Borivali (W),
Mumbai – 400092

In the matter of KCCL Plastics Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the trading of the scrip of KCCL Plastics Limited (hereinafter referred to as '**KCCL / Scrip / Company**') from July 1, 2014 to December 31, 2014 (hereinafter referred to as '**examination period**'). The shares of the company are listed on Bombay Stock Exchange (BSE). Examination *inter – alia* revealed that no disclosures were made under regulation 13(1), 13(3) read with 13(5) of SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and regulation 29(1), 29(2) read with 29(3) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') by **Dadima Capital Private Limited**, (hereinafter referred to as "**the Noticee / Dadima**").

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned 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 the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated March 07, 2017, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of regulation 13(1), 13(3) read with 13(5) of PIT Regulations and regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2018/644/1 dated January 8, 2018 (hereinafter referred to as "**SCN**") was issued to 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 under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations and SAST Regulations.
4. The observations made under the examination and the allegations levelled against the Noticee in the SCN are mentioned hereunder;
5. During the examination, it was revealed that Noticee had not disclosed about the change in its shareholding to the exchanges as well as to the company and hence, alleged to have violated regulation 13(1), 13(3) read with 13(5) of PIT Regulations and regulation 29(1), 29(2) read with 29(3) of SAST Regulations. The details of which are given below:-

Date	Debit / Credit	Total Quantity	Holding after trasaction	As a % of share capital	No Disclosures made as required under PIT	No Disclosures made as required under SAST
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Holding as on September 30, 2014			1177521	2.24		
16-Oct-14	Cr	2830145	4007666	7.61	13(1)	29(1) r/w 29(3)
20-Nov-14	Dr	4000000	7666	0.01	13(3) r.w.13(5)	29(2) r/w 29(3)

6. In view of above, it was alleged that the Noticee by indulging in trading in the scrip has resulted in change in its shareholding, which triggered disclosure requirements. BSE confirmed vide its email dated January 20, 2015 and KCCL also confirmed vide January 27, 2015 that no disclosures were received under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations during the period July 01, 2014 to December 31, 2014 in the scrip of KCCL from Dadima / Noticee (copy of BSE email dated January 20, 2015 was provided as **Annexure – 2** and KCCL letter dated January 27, 2015 was provided as **Annexure – 3** of SCN); and by not making the said disclosures, the Noticee had allegedly violated regulation 13(1) and 13(3) read with 13(5) of PIT Regulations and regulation 29(1) and 29(2) read with 29(3) of SAST Regulations. The aforesaid regulations are reproduced as under;

PIT Regulations

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

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

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.

13(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

Disclosure of acquisition and disposal.

29(1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

29(2) *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent 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.*

29(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.

7. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15A(b) of the SEBI Act, which reads as follows:

SEBI Act:

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;

8. SCN was issued through Speed Post Acknowledgement Due (SPAD) to the Noticee on January 8, 2018 at the registered address of the Noticee as per MCA website, viz. *Dadima Capital Private Limited, 201, Indrapuri Building, Govind Nagar, Sodawala Lane, Borivali (W), Mumbai – 400092*, and the same was returned undelivered with remark, “*Door Locked – Intimation served / Unclaimed*”. Affixture of SCN dated January 8, 2018 was done on January 15, 2018 at its registered address i.e. *Dadima Capital Private Limited, 201, Indrapuri Building, Govind Nagar, Sodawala Lane, Borivali (W), Mumbai – 400092*, as available from website of Ministry of Corporate Affairs (MCA) under head of Company Master Data.
9. As sufficient time has been granted to the Noticee to file reply towards the SCN which he has failed to make till date, therefore, I assume that Noticee has nothing to submit and the matter can be proceeded further on the basis of evidences available on records. It is relevant to point out that the consequence of non-filing of reply has been clearly indicated at para 8 of the SCN which states that if no reply is received within 14 days from receipt of this SCN, then, it shall be presumed that you have no reply to submit and the matter would be decided further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules.
10. Keeping in view the principles of natural justice, an opportunity of hearing was provided to the Noticee on February 15, 2018 vide notice dated January 31, 2018 through Speed Post Acknowledgement Due (SPAD), and the same was returned undelivered with remark, “*Left*”. Affixture of hearing notice dated January 31, 2018 was done on February 1, 2018 at its registered address i.e. *Dadima Capital Private Limited, 201, Indrapuri Building, Govind Nagar, Sodawala Lane, Borivali (W), Mumbai – 400092*, as available from

website of Ministry of Corporate Affairs (MCA) under head of Company Master Data. It is relevant to point out that in the said hearing notice issued on January 31, 2018, as the Noticee has not submitted its reply towards the said SCN, the Noticee was asked to file its reply on or before February 12, 2018 and copy of SCN was also enclosed with the said notice. However, Noticee did not appear on the given date i.e. February 15, 2018.

11. As observed in pre paras that despite service of SCN and hearing notice by way of affixture at the last known address and also SCN and hearing notice was also uploaded on SEBI website under the head of "Rulings/Orders - Unserved Summons/Notices", the Noticee neither submitted any reply towards the SCN nor appeared for hearing under inquiry. It is well settled position of law as well as held by the Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of *Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM)* *inter-alia* held 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*".
12. The Hon'ble SAT also made such proposition in case of *Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. "....., 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 levelled against them in the show cause notices"*.
13. I am of the view that sufficient time has been provided to the Noticee to submit reply, which the Noticee had failed to make and also failed to appear for hearing and therefore, the undersigned is proceeding against the Noticee ex-parte on the basis of available records/evidence.

CONSIDERATION OF ISSUES AND FINDINGS:-

14. The issues that arise for consideration in the present case are :

- a. Whether the Noticee had failed to make the disclosures to BSE and the KCCL in respect of its change in shareholding as stated at Para 4 – 5 of the SCN?
- b. If the disclosures were not made by the Noticee then, whether the Noticee is in violation of regulation 13(1) and 13(3) read with 13(5) of PIT Regulations and regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.
- c. If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act?
- d. If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?

15. From the perusal of the SCN at para 4 - 5, it was observed that, the Noticee had not disclosed about the change in its shareholding to the exchange (BSE) as well as to the company and hence, alleged to have violated regulation 13(1), 13(3) read with 13(5) of PIT Regulations and regulation 29(1), 29(2) read with 29(3) of SAST Regulations and. The details of which are given below:-

Date	Debit / Credit	Total Quantity	Holding after trasaction	As a % of share capital	No Disclosures made as required under PIT	No Disclosures made as required under SAST
Holding as on September 30, 2014			1177521	2.24		
16-Oct-14	Cr	2830145	4007666	7.61	13(1)	29(1) r/w 29(3)
20-Nov-14	Dr	4000000	7666	0.01	13(3) r.w.13(5)	29(2) r/w 29(3)

16. Thus from the above, I note that Noticee had not disclosed about the change in shareholding to BSE as well as to company (KCCL), as its purchase of shares of KCCL on October 16, 2014, crossed 5% of shareholding of the company and sold shares on November 20, 2014, also crossed 2% of shareholding of the company, which triggered

disclosure requirements under regulation 13(1), 13(3) read with 13(5) of PIT Regulations and regulation 29(1), 29(2) read with 29(3) of SAST Regulations for the said transactions. Further, BSE vide email dated January 20, 2015 and company (KCCL) vide letter dated January 27, 2015, confirmed that no disclosures were received under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations during the period July 01, 2014 to December 31, 2014 in the scrip of KCCL from the Noticee.

17. In view of the aforesaid, I note that the violation of aforesaid non disclosures occurred during the period October – November, 2014 and as per records no disclosures were made by the Noticee despite the requirement of making the same within 2 working days. Therefore, I note that there is a delay of around 3 years in making the disclosure and the aforesaid violation continues till date as the Noticee has not made the said disclosures till date to exchange (BSE) and to the company and as confirmed by BSE vide email dated January 20, 2015 and company (KCCL) vide letter dated January 27, 2015.

18. In view of the aforesaid observation and established violations against the Noticee, it is a fit case for imposing monetary penalty upon the Noticee under Section 15A(b) of the SEBI Act which read as follows:

SEBI Act:

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;*

19. While determining the quantum of penalty under section 15A(b), 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.”*

20. In the matter of *Gurmeet Singh Dhingra Vs. SEBI (Appeal No. 353 of 2014) decided on December 13, 2014* :- “...as per regulation 13(3) read with regulation 13(5) of the PIT Regulations, appellant was obliged to make disclosures within two working days of acquisition or sale of shares or voting rights as the case may be. In the present case, the appellant has neither made disclosure when regulation 13(3) got triggered on account of acquiring 2,49,300 shares of Trinity on September 28, 2009 nor the appellant has made disclosures on sale of shares on December 30, 2009, January 5, 2010, January 8, 2010 and January 23, 2010 when on all the four occasions the sale resulted in decrease in shareholding by more than 2%. Thus, on all the five occasions, it was obligatory on part of the appellant to make disclosure under regulation 13(3) within the time stipulated under Regulation 13(5) of the PIT Regulations. Penalty imposable under Section 15A(b) of SEBI Act for failure to make such disclosure is ₹1 lac each day during which such failure continues or ₹1 crore whichever is less. Since the appellant has failed to make disclosure on all the aforesaid five occasions, penalty imposable for aforesaid five violations would be ₹1 crore each i.e. ₹5 crore in all. As against penalty of ₹5 crore imposable on the appellant for not making disclosure under Regulation 13(3) read with Regulation 13(5) of PIT Regulations on the aforesaid five occasions, the adjudicating officer after considering all mitigating factors has imposed penalty of ₹5 lac which cannot be said to be excessive, arbitrary or unreasonable.

21. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticee, the specific loss suffered by the investors due to such violations; nor the violations as repetitive in nature. Thus before arriving to the quantum of penalty in the matter, it is necessary to refer the importance of such disclosures. The main objective of the SAST Regulations or PIT Regulations is to afford fair treatment to shareholders as regards their holdings in the company. 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 selling / acquiring in the company. 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. Therefore, taking into consideration the facts / circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

22. After taking into consideration all the aforesaid facts and circumstances of the case, and in exercise of the power conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I, hereby impose a penalty of ₹ 15,00,000/- (Rupees Fifteen Lakh only) on the Noticee / Dadima Capital Private Limited, in terms of the provisions of Section 15A(b) of the SEBI Act. I am of the view, that the said penalty would commensurate with the violations committed by the Noticee.

23. 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

24. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the “Enforcement Department (DRA-I) of SEBI”. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID - tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

25. In terms of rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to the SEBI.

DATE: FEBRUARY 21, 2018

PLACE: MUMBAI

RACHNA ANAND

ADJUDICATING OFFICER