

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/ 126 /2013]

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

Against

Shri A.B Satyavas Reddy

[PAN: ACCPA8788R]

In the matter of

Bartronics India Limited

- 1.** Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation in the matter of Bartronics India Limited (hereinafter referred to as 'BIL'), a company listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE), for the period from June 16, 2010 to September 30, 2010 to ascertain whether there was any violation of the provisions of the SEBI Act and various Rules and Regulations made there under.

- 2.** The investigation revealed that Shri A.B Satyavas Reddy (hereinafter referred to as the 'Noticee') had transferred 400532 shares of BIL from his demat account to the demat account of one Shri Raghu Daripalli on January 13, 2009 in off-market transaction. The Noticee is the promoter and director of BIL during the relevant period. The said transaction was treated as Pledge which was even disclosed by BIL to the stock exchanges in the quarterly shareholding pattern for the quarter ended March 31, 2009. This transaction

was further recognized as sale by invoking the Pledge transaction on April 20, 2009. The Noticee allegedly did not make the necessary disclosures for the said transactions thereby violating Regulation 8A(1) and 8A(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as SAST Regulations).

3. Further, the shareholding in BIL of the Noticee decreased from 38,06,900 shares (13.14%) to 34,06,368 shares (11.76%) consequent to the above sale transaction. The Noticee allegedly did not make the necessary disclosures as required under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations).

Appointment of Adjudicating Officer:

4. In view of the above, SEBI vide Order dated May 02, 2012 appointed the undersigned as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 for the alleged violation of the abovementioned provisions of PIT Regulations and SAST Regulations by the Noticee.

Notice, Reply & Personal Hearing:

5. Accordingly the undersigned issued a notice dated May 14, 2012 (hereinafter referred to as the 'SCN') to the Noticee in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against him for the alleged violations. The SCN was duly delivered to the Noticee. The Noticee vide letter dated May 29, 2012 replied to the SCN. The Noticee also sent the reply via e-mail bearing e-mail ID - absr@sify.com. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee vide notice dated September 21, 2012 on October 08, 2012. The said

hearing notice was returned undelivered. Accordingly, the Noticee was granted two more opportunities of personal hearing on November 02, 2012 and November 19, 2012. The said notices were also sent to the Noticee at his e-mail ID mentioned above. However, the Noticee neither appeared for the hearing nor made any correspondence in this regard.

6. In view of the above, I am proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges against the Noticee as per the SCN, written submissions and the materials & documents as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of Regulation 8A(1) & 8A(3) of the SAST Regulations and Regulations 13(4) read with 13(5) of the PIT Regulations?

(b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A (b) of the SEBI Act?

(c) If yes, what should be the quantum of penalty?

8. Before moving forward, it will be appropriate to refer to the relevant provisions of PIT Regulations which read as under:-

Relevant provisions of PIT Regulations:-

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies -

Continual disclosure

(3)

(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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) 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.

Relevant provisions of SAST Regulations:-

Disclosure of pledged shares.

8A. (1) *A promoter or every person forming a part of the promoter group of any company shall, within 7 working days of commencement of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) (Amendment) Regulations, 2009, disclose details of shares of that company pledged by him, if any, to that company.*

(2).....

(3) *A promoter or every person forming a part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.*

Explanation: For the purpose of sub-regulation (1), (2) and (3) the terms "promoter" and "promoter group" shall have the same meaning as is assigned to them under clause 40A of the Listing Agreement.

9. The disclosure requirement of Regulation 8A(1) and 8A(3) of SAST Regulations implies that a promoter or any person forming part of the promoter group has to make disclosures to the company, within 7 days of creating pledge/invocation of shares of the company. Further, I note that the requirement of Regulation 13(4) read with 13(5) of the PIT Regulations are twofold, i.e., disclosure to the company and to the Stock Exchange by any person who is a director or officer of a listed company, 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 which exceeds ₹ 5 lakhs in value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two days working days of receipt of intimation of allotment of shares or the acquisition or sale of shares or voting rights.
10. I find from the SCN that the Noticee is the promoter and director of BIL. The Noticee had transferred 400532 shares of BIL from his demat account (NSDL A/c IN300394-11775134) to the demat account of one Shri Raghu Daripalli

(CDSL A/c 1203070000200737) on January 13, 2009 in off-market transfer. According to the Noticee the said transaction was treated as Pledge which was disclosed by BIL to the stock exchanges in the quarterly shareholding pattern for the quarter ended March 31, 2009. This transaction was further recognized as sale transaction on April 20, 2009 and consideration for the same was decided as ₹ 3.28 crores (400532*82). As a result, for the quarter ended June 30, 2009, in the shareholding pattern submitted by BIL to the stock exchanges, the Noticee's shareholding was shown to have reduced by 400532 shares and the same belonged to Shri Raghu Daripalli.

11. I find that with regards to the pledge of 400532 shares of BIL to Shri. Raghu Daripalli on January 12, 2009 and subsequent invocation of pledge on April 20, 2009, the Noticee was required to file disclosures under the provisions of Regulation 8A(1) and 8A(3) of the SAST Regulations. BIL was required to file disclosures under Regulation 8A(4) of the SAST Regulations to the stock exchanges. BIL submitted that the Noticee inadvertently missed to disclose the details of the pledge of shares to the company and hence, no disclosures were filed to the stock exchanges with regard to the said Pledge. NSE in its e-mail dated March 20, 2012 confirmed that no disclosure was filed by BIL under Regulation 8A(4) of the SAST Regulations.
12. Further, I find that the Noticee is a director of BIL. His shareholding in BIL prior to and post the sale transaction dated April 20, 2009 of 38,06,900 shares (13.14% of total shareholding) and 34,06,368 shares (11.76% of total shareholding) respectively. The change in his shareholding amounts to 1.38% of the then total number of shares of BIL which stood at 28,977,456 shares. The sale transaction exceeded 25000 shares in volume, the value of transaction exceeded ₹ 5 Lakhs and also the change in the shareholding exceeded 1% of total shares of BIL. Thus, for this transaction the Noticee was required to file disclosure to the company and the stock exchanges under Regulation 13(4) read with Regulation 13(5) of PIT Regulations.

13. The Noticee in his reply dated May 29, 2012 has admitted that he is the Promoter Director of BIL. He transferred 400532 shares to Mr. Raghu Daripalli on January 13, 2009 as pledge at the request of Bistrolia Asia Inc towards short term loan of 3 months instead of funds. Bistrolia could not return the shares to the Noticee and therefore, on April 20, 2009, the pledge transaction was made into sale and consideration for the same was decided as ₹ 3.28 crores. The Noticee further submitted that inadvertently he could not make the relevant/required disclosures as per Regulations 8A(1) and 8A(3) of SEBI SAST Regulations (for the pledge) and Regulation 13(4) read with 13(5) of the PIT Regulations. Further, he submitted that the said non-submission was not intentional and he does not have any track records of non-submission of disclosures in the past.
14. I note from the submissions made by the Noticee that he has not denied the allegations made against him in the SCN and has admitted all the charges. I find from the facts available on records, that the Noticee did not make the necessary disclosures as were required for the said pledge transaction entered into by him and later invoked and also the change in the shareholding pattern and it is amply clear that he has failed to adhere by the statutory requirements under the law. Therefore, I conclude that the Noticee has violated the provisions of Regulation 8A(1) and 8A(3) of the SAST Regulations for non-disclosure of pledge created and invoked subsequently and also Regulation 13(4) read with Regulation 13(5) of the PIT Regulations for non-disclosure of the change in the shareholding warranting monetary penalty under Section 15A(b) of the Act.
15. Section 15A (b) of the SEBI Act, reads as under:
- 15A. Penalty for failure to furnish information, return, etc.**
- If any person who is required under this Act or any rules or regulations made there under:-*
- (a).....*
- (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.

16. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Funds [2006] 68 SCL (216) SC held that " *once a violation of statutory regulation is established, imposition of penalty becomes sine qua non of violation and the intention of the parties committing such violation becomes totally irrelevant. Once the contravention is established then penalty is to follow*".
17. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the 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.*

18. I observe that from the material available on record it is difficult to quantify any gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default of the Noticee or to ascertain whether the defaults are repetitive in nature.

Order

19. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of

the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 2,00,000 (Rupees Two Lakhs only) on Shri A.B. Satyavas Reddy under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.

20. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, IVD-ID1, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
21. In terms of the Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: January 09, 2013

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**