

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO- 49/2010]

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. Vintage Cards and Creations Limited

(PAN –AAACV5615K)

in the matter of

M/s. Vintage Cards and Creations Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation into the trading in the scrip of Vintage Cards and Creations Limited (hereinafter referred to as “**company/VCCL/Noticee**”) during the period August 19, 2008 to September 05, 2008.
2. It was observed that Mr Rajesh Vaishnav was part of the promoter group and the Managing Director of VCCL. The trading in the shares of the company was stopped w.e.f. January 23, 2008 after the company fixed January 30, 2008 as Record date to give effect

to the scheme of arrangement between the shareholders and its creditors. Trading in the shares of VCCL recommenced on August 19, 2008.

3. During the period August 19, 2008 to September 05, 2008, it was observed that Mr Rajesh Vaishnav sold 78,546 shares of VCCL constituting 1.71% of the share capital of the company. It was alleged that VCCL failed to disclose the same to the stock Exchange in violation of regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") and, therefore, was liable for penalty under sections 15A(b) and 15HB of Securities and Exchange Board of India Act 1992 (hereinafter referred to as "**SEBI Act**").

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated June 30, 2009 under section 15 I of the 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 '**Rules**') to inquire into and adjudge the abovementioned violations under sections 15A (b) and 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice No. MIRSD/PG/ADJ/178606/2009 dated September 30, 2009 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held against it and penalty be not imposed under sections 15A (b) and 15HB of SEBI Act for the alleged violations specified in the said SCN.

6. SEBI, vide its note dated November 25, 2009 advised to keep the adjudication proceedings in abeyance as the Noticee had filed for consent proceedings. Thereafter, vide note dated April 05, 2010, it was advised that the said adjudication proceedings may be revived.
7. The Noticee vide letters dated October 16, 2009 and November 12, 2009 sought further time to reply to the said SCN. Thereafter, the Noticee vide letter dated November 18, 2009 replied to the said SCN and inter alia submitted as under:
 - *Mr. Vaishnav was reappointed as the Managing Director of the Company vide resolution passed by the board of directors of VCCL in their meeting held on 30th June 2007. (In support of this the Noticee has submitted Agreement dated 5th July, 2007 executed between Mr. Vaishnav and VCCL).*
 - *Mr Vaishnav stopped functioning as the Managing Director and intimated to several authorities about submission of resignation w.e.f. 1st April 2008, which the Company has not accepted nor the Company has accepted the unilateral termination of the Agreement dated 5th July 2007 referred above.*
 - *Mr. Vaishnav. during the period 19th August,2008 to 5th September, 2008, sold 75,546 equity shares of Rs.10 each of the Company on stock exchange and intimated this fact by fax dated 25th August, 2008 signed by Mrs Shaswati Vaishnav and by fax dated 8th September,2008 signed by Rajesh Vaishnav. The Company received the confirmatory copy of these fax messages on 10th September 2008.*
 - *We request you to kindly appreciate this situation wherein an action of the Managing Director/Promoter, both of not co-operating with the Company and just intimating about sale of shares without details has resulted in technical non-compliance and a lenient view deserves to be taken in such circumstances.*

- *The disclosures made by fax dated August 25, 2008 and 8th September, 2008 by Mr.Vaishnav was not in the prescribed form and thus the Company was not required to comply with the Regulation 13(6) of PIT Regulations as the requisite details to complete Form No. D, in which the intimation is required to be filed was not expected to be available with the Company due to non-cooperative approach adopted by the Ex-Managing Director/Promoter.*
- *We submit that non-submission of the information by the Company about sale of shares of Mr. Vaishnav in the prescribed form occurred due to several actions/inactions on the part of the Promoter Mr.Vaishnav and the Company should not be compelled to undergo the process of enquiry as proposed as the technical non-compliance as alleged, has not resulted in any gain to the Company or any of its Promoters other than Mr.Vaishnav, nor it has caused, in the submission of the Company, any loss to any investor or group of investors, nor such failure or technical compliance is a repetitive in nature. We wish to submit that the alleged violation is not intentional and more so it may kindly be observed that the information was made available to the market immediately. The Company is now complying with its obligations.*

8. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on July 23, 2010, vide notice dated July 07, 2010. The Noticee vide letter dated July 19, 2010 expressed its inability to appear for the hearing and requested for rescheduling the hearing to some other date. Hence, another opportunity of hearing was granted to the Noticee on August 16, 2010 vide Notice dated August 04, 2010.

9. Mr. Nitin Naik, Executive Director, Vintage Cards and Creations Limited, Mr. Govind Patil, Practicing Company Secretary and Mr. S.A. Gundecha, Advocate appeared for hearing on August 16, 2010 as Authorized Representatives of the Noticee (hereinafter referred to as “ARs”). During the hearing, the ARs submitted as under:
1. *The concerned person has not given intimation in the prescribed form ‘D’.*
 2. *Obligation to comply with sub-regulation 6 of Regulation 13 of the relevant Regulations arise only when intimation received in the prescribed form.*
 3. *Intimation addressed to company secretary when the concerned person knew that company secretary has resigned.*
 4. *Information given in the capacity as ex-promoter and not a director or officer.*
 5. *Company filed information with the stock exchanges and some evidence now available which is culled out from the website of BSE.*
 6. *Non-compliance, technical, non-recurring, no gains either to the company or any other person than the concerned official, no loss to the investor, information was available to the public through the disclosure made to the stock exchanges.*
 7. *Non-compliance, non-repetitive.*
 8. *Sufficient evidence of despatch of intimation to stock exchanges submitted.*

CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the present case are :
- a. Whether the Noticee had violated Regulation 13(6) of PIT Regulations?
 - b. Does the non-compliance, if any, attract monetary penalty under sections 15A (b) and 15HB of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

11. Before moving forward, it is pertinent to refer to the provisions of Regulation 13(6) of PIT Regulations, which reads as under:-

“Regulation 13(6): “Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) 46 [in the respective formats specified in Schedule III.]”

12. Upon perusal of the documents available on record, I find the following:
13. Mr Rajesh Vaishnav, MD, of VCCL had sold 78,546 shares of VCCL constituting 1.71% of the share capital of the company and VCCL failed to disclose the same to the stock Exchange as per Regulation 13(6) of PIT Regulations.
14. Upon perusal of fax dated August 25, 2008 and 8th September, 2008 sent to the Noticee by Mr. Rajesh Vaishnav regarding the sale of shares of VCCL by him, I find that the Noticee was in receipt of information pertaining to the sales made by Rajesh Vaishnav in the scrip of VCCL.
15. As regard Noticee’s contention that the disclosure made by Rajesh Vaishnav was not as per Form No. D and therefore, it was unable to make the disclosure to the stock exchanges, I am of the view that, the same does not absolve the Noticee from complying with its obligation to disclose to the stock exchange under Regulation 13(6) of PIT Regulations, especially when it was in receipt of the information pertaining to the sales made by Rajesh Vaishnav. If the information was not in the proper format, it could have taken steps to obtain the same. However, the noticee has not submitted any evidence to indicate that it took any steps to obtain the same.

16. The Noticee has also contended that it had made disclosures regarding the sales made by Rajesh Vaishnav under Regulation 7(3) of the SEBI (Substantial Acquisition of Shares and Takeovers Regulations) 1997 (“**SAST**”). However, I find that the said regulation was not triggered and therefore, the requirement of the said disclosure did not arise. I am of the view that the disclosure under SAST cannot be considered to be same as disclosure under PIT Regulations as both the regulations have different purpose/objective behind its compliance.
17. Further, I find that the Noticee has also admitted its non compliance with the disclosure requirements under Regulation 13(6) of PIT Regulations by stating that it was merely a technical non-compliance on its part.
18. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that “*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*”.
19. Thus, the aforesaid violation makes the Noticee liable for penalty under section 15A(b) of SEBI Act which read as follows:
- “15A. Penalty for failure to furnish information, return, etc.-** *If any person, who is required under this Act or any rules or regulations made thereunder,-*
- (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.”

20. 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 read 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.”*

21. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the persons having substantial stake, promoter-group and persons in control over the Company and timely disclosure thereof, were of some importance from the point of view of investors as that would have prompted them to buy or sell shares of the Company. The disclosure made u/r 13(6) of PIT Regulations by a Company is made public only through Stock Exchange. Therefore, it is mandatory for the Company to give the required information under the aforesaid regulation to the Stock Exchange, so that the said information becomes known to all the investors at large. The object of the PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To

translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors. Although Rajesh Vaishnav executed many sales transactions however it was informed to the Noticee through a common report. Therefore, I am of the view that the violation by the Noticee was not repetitive.

22. I am further of the view that the violation by the Noticee is liable for penalty under section 15A (b) of SEBI Act only.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of ₹1,00,000 /- (Rupees One Lakh only) under section 15A(b) of SEBI Act, on the Noticee which will be commensurate with the violation of Regulation 13(6) of PIT Regulations committed by it.
24. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri Avarjeet Singh, Deputy General Manager, Integrated Surveillance

Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

25. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **September 28, 2010**
Place: **Mumbai**

Piyoosh Gupta
Adjudicating Officer