BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER: EAD-9/VKV/GSS/2020-21/8689]

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) RULES, 1995.

In respect of:
Raj kumar (PAN No. AKKPS1106R)

In the matter of Maximaa Systems Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted an examination with respect to trading in the scrip of Maximaa Systems Limited (herein after referred to as the "Target Company") listed on BSE limited ("BSE") for the quarter ended in March 2017, wherein it was observed that the entity namely; Raj Kumar (hereinafter referred to as "Noticee" or by his individual name) did not make requisite disclosure under regulation 29(1) r/w regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations, 2011") for the quarter ended in March 2017.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide communication order dated March 17, 2020, the undersigned has been appointed as Adjudicating Officer in the matter under Section 15 I (1) of Securities and Exchange Board of India Act, 1992 ("**SEBI Act"**) to inquire and adjudge the alleged violations and if satisfied that the Noticee is liable for imposition of penalty, may impose such penalty in terms of rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred as **'AO Rules'**) and under the provisions of section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings of SEBI, a Show Cause Notice (SCN) dated June 16, 2020, was issued with digitally signed email to the Noticee on June 16, 2020, at the following e-mail IDs:
kumarraj_66@yahoo.in, raj_kumar@hotmail.com, rk_662003@yahoo.co.in , advising Noticee to file its reply within fourteen days of receipt of SCN. It is pertinent to mention here that these email IDs were already available on record and that correspondence was received from the Noticee from aforesaid email IDs during the period of examination by SEBI in the matter. However, Noticee did not submit any response to the SCN till the date of issuance of this order.

4. Subsequently, Hearing Notice (HN) dated July 02, 2020, was issued with digitally signed email to the Noticee on July 02, 2020, wherein Noticee was advised to attend the virtual hearing through Webex on July 22, 2020 at 02:30 p.m, in view of the ongoing COVID-19 situation. However, the same was not attended by the Noticee.

5. In view of principle of Natural Justice, another opportunity of hearing was granted to the Noticee vide e-mail dated July 22, 2020, wherein Noticee was given both the options of attending either virtual hearing through Webex or personal hearing at SEBI Bhavan-II on July 29, 2020. Noticee was clearly advised vide the aforesaid e-mail that it was the last opportunity of hearing granted to the Noticee, failing which the matter shall be proceeded further on the basis of material available on record. However, again neither the Noticee submitted any reply to the SCN nor attended the hearing. In view of the same, the matter is being proceeded ex-parte in terms of Rule 4(7) of AO Rules 1995.

6. At this juncture, it relevant to refer to the observation of the Hon'ble SAT in the matter of *Dave Harihar Kiritbhai v. Securities and Exchange Board of India (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it was observed that, "…further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim nonreceipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal…"*

Keeping the aforesaid in mind, the adjudication proceedings against the Noticee are undertaken ex-parte on the basis of material available on record.

ISSUES UNDER CONSIDERATION

7. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:

   I. Whether the Noticee has violated regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011?

   II. Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?

   III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

FINDINGS

8. Before Proceeding further, the provisions as applicable, are reproduced as under:

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011

"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.
(2) …
(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 [or the disposal] 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."

Issue no. I: Whether the Noticee has violated regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011?

9. It is observed from the shareholding pattern available at BSE website that the equity share capital of the company for the quarter ended in December 2016 was 5,05,86,255, out of which the Noticee was holding 20,47,279 shares (4.05%) of the Target Company in public category.

10. It is further observed that the Noticee by virtue of transaction dated January 24, 2017, acquired 5,00,000 (0.99%) equity shares of the Target Company. Thus, with the aforesaid acquisition of shares by the Noticee, the shareholding of the Noticee increased from 4.05% to 5.04% in the Target Company as shown in the table below;

Date of acquisition	Shareholding before Acquisition	No. of shares Acquired	Shareholding after Acquisition
January 24, 2017	4.05%	5,00,000 (0.99%)	5.04%

11. Thus, it is clear that as a result of aforesaid acquisition the Noticee was obligated to make disclosure to the exchange, where shares of the company were listed i.e. BSE and the Target Company as stipulated under regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011.

12. It is observed that pursuant to the aforesaid acquisition, at the abovementioned date i.e. January 24, 2017, the Noticee was required to make disclosure under regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011 to the exchange, where securities of the Target Company were listed and to the Target Company, within 2 working days of the acquisition of shares in the Target Company i.e. by January 27, 2017.

13. It is observed that SEBI, vide email dated November 30, 2019 and December 05, 2019, sought clarification from the Target Company with respect to the abovementioned alleged non-disclosure. Subsequently, the Target

Company vide its emails dated December 03, 2019 and December 05, 2019, submitted that the Noticee had acquired 5,00,000 shares between the period from 21st to 27th January 2017.

14. It is also a matter of record that the Target Company, vide its email dated January 13, 2020, submitted that it did not receive any disclosure by the Noticee for the aforementioned transaction.

15. Thereafter, SEBI, vide e-mails dated December 04, 2019 and January 08, 2020 and letter dated January 07, 2020, sought clarification from the Noticee with respect to the abovementioned alleged non-disclosure. It is noted that the Noticee vide email dated January 18, 2020 sought extension of time from SEBI to reply. Further, Noticee vide letter dated February 07, 2020 submitted to SEBI that it is not able to get record of disclosure with respect to the aforesaid transaction. As such, it is observed that the Noticee, neither at the time of examination nor under current proceeding, despite of giving ample time, was not able to submit any evidence of making disclosure with respect to the transaction under reference (Para 10).

16. It has also been observed from BSE website that the Noticee has not made any disclosure for the aforesaid change in shareholding, till date. Therefore, from the foregoing, it is observed that the Noticee, by not making required disclosures, has violated regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011.

Issue No. II: Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act?

17. Referring to the judgment in the matter of SEBI vs. Shriram Ram Mutual Fund 2006 SCL 216(SC), wherein Hon'ble Supreme Court held that*; "In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. 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. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not"*

18. In view of the foregoing, it is concluded that the Noticee has violated the provisions of regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011. Therefore, it is a fit case to impose monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, which reads 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 there under-;

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

Issue No. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

19. In this regard, while determining the quantum of penalty, 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.

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."

20. It is noted that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee. However, it is also a matter of record that by virtue of aforementioned transaction, Noticee was required to make disclosures, within two days, under provisions of SAST Regulations 2011, to the company & stock exchange, which the Noticees did not make till the date of passing of order. Therefore, this non-compliance continues even as on date.

21. Thus, it is noted that disclosure requirements as per laws under reference serve a purpose and are not mere technical obligations. The purpose is to make investors aware of the changes in the substantial shareholding of persons enabling them to take informed investment decisions. Thus, the disclosures requirements prescribed in the provisions in question cannot be termed as non-consequential. Therefore, appropriate penalty need to be imposed on the Noticees for the alleged violations.

22. Here, it is pertinent to draw reference to *Yogi Sungwon (India) Ltd. v/s SEBI - Appeal No. 36 of 2000, Order dated May 04, 2001, wherein Hon'ble Securities Appellate Tribunal ("SAT") had observed that "……On perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that 'he may impose such penalty' is of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. 'The Adjudicating Officer shall have due regard*

to the factors' stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even it is established that the person has failed to comply with the provisions of any of the sections specified in the sub-section (1) of section 15-I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case….."

In view of the above, I am of the opinion that the case in hand deserves an appropriate penalty as stipulated under section 15A(b) of the SEBI Act, 1992.

ORDER

23. After taking into consideration the facts and circumstances of the case and factors enumerated in section 15J of the SEBI Act, an appropriate penalty for the non-disclosure by the Noticee and violation of regulation 29(1) r/w regulation 29(3) of SAST Regulations 2011 (as enumerated in preceding paras above), in exercise of powers conferred under section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, is imposed on the Noticee, under Section 15 A (b) of the SEBI Act, 1992, for the alleged violations of non-disclosure, as mentioned below;

Name of the Noticee	Penalty Amount (in Rs.)
Raj kumar (PAN No. AKKPS1106R)	2,00,000/- (Two lakhs Only)

24. 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 and 1) the said DD should be forwarded to the Division Chief, Enforcement Department 1(EFD), Division of Regulatory Action - I [EFD 1-DRA-1] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

1.	Case Name	
2.	Name of the 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)	

25. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

26. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

27. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: August 21, 2020
PLACE: MUMBAI

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER