

SECURITIES AND EXCHANGE BOARD OF INDIA

UNDER SECTIONS 11(2)(j); 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECTION 12A OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956, IN THE MATTER OF NON-COMPLIANCE WITH THE REQUIREMENT OF MINIMUM PUBLIC SHAREHOLDING BY LISTED COMPANIES.

IN THE MATTER OF –

	COMPANY	CIN
1.	STARCOM INFORMATION TECHNOLOGY LIMITED	L67120KA1995PLC078846
	PROMOTER	DIN
2.	MR. ZIAULLA SHERIFF	00002098

BACKGROUND –

- 1.1 Starcom Information Technology Limited (“**Starcom**”) is a public listed company, incorporated under the provisions of the Companies Act, 1956, on February 17, 1995. The Registered Office of Starcom is at 73/1, Sheriff Centre, 5th Floor, St. Marks Road, Bangalore–560001. The shares of Starcom are listed on BSE Limited (“**BSE**”) and the Ahmedabad Stock Exchange (“**ASE**”).
- 1.2 Vide letter dated November 7, 2012, SEBI directed the CEO/Managing Director alongwith Company Secretary/Compliance Officer of Starcom to ensure adherence with the requirement of minimum public shareholding of 25%, in listed companies. The aforesaid letter *inter alia* stated -
1. “... Ministry of Finance vide Notifications dated June 4, 2010 and August 9, 2010, amended the Securities Contracts (Regulation) Rules, 1957 (“**SCRR**”) to provide for minimum and continuous public shareholding requirements in listed companies. This was done with a view that a dispersed shareholding structure is essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices.
 2. Accordingly, all listed companies (other than PSUs) shall have minimum 25% public shareholding and whose public shareholding is less than 25%, shall raise the same to the minimum by June 3, 2013.
 3. Under Clause 40A of the Listing Agreement, SEBI has specified the following methods which listed companies can avail to achieve the said minimum public shareholding:

- i. Issuance of shares to public through prospectus;
- ii. Offer for sale of shares held by Promoters to public through prospectus;
- iii. Sale of shares held by Promoters through the secondary market i.e. OFS through Stock Exchange;
- iv. Institutional Placement Programme (IPP);
- v. Rights Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their rights entitlement;
- vi. Bonus Issues to public shareholders with Promoters/Promoter Group shareholders foregoing their bonus entitlement;
- vii. Any other method as may be approved by SEBI on a case-to-case basis.”

1.3 Vide a subsequent letter dated April 15, 2013, SEBI *inter alia* informed Starcom as under –

- 4. “... As per information furnished by the company, it was required to increase the public shareholding by at least 15.67% to meet the minimum public shareholding requirement.
- 5. In order to provide clarifications, if any, and to elicit plan of action from Company for meeting minimum public shareholding requirement, an opportunity of meeting with SEBI officials was provided to you vide communications November 8, 2012; December 2, 2012 and February 1, 2013. After examining the information available on record, it appears that the company has not complied with minimum public shareholding requirement under SCRR
- 6. ...
- 7. In view of the above, we advise you to take appropriate steps immediately to ensure compliance within the stipulated timeline.”

AD—INTERIM EX PARTE ORDER DATED JUNE 4, 2013 –

1.4 Thereafter, vide an Order dated June 4, 2013 (“**Interim Order**”), SEBI issued the following directions against Starcom and its Promoter, on the basis of details furnished by BSE, for having failed to meet the minimum public shareholding requirement by June 3, 2013 [Refer to point 2 of paragraph 1.2], –

- 17. “Hence, in exercise of the powers conferred upon me by virtue of Section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) read with Section 12A of Securities Contracts (Regulation) Act, 1956 (“**SCRA**”), pending passing of the final order in these cases, I hereby:

- a. *Direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding in the above mentioned non – compliant companies, till such time these companies comply with minimum public shareholding requirement.*
- i. *For the purpose of above direction, proportionate promoter/promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60%, shall be frozen till the minimum public shareholding requirement is complied with.*
- ii. *In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess promoter holding of 60% shall be allocated as follows:*
1. *A: (60% multiplied by [45%/45%+35%+10%]) = 30.00%*
 2. *B: (60% multiplied by [35%/45%+35%+10%]) = 23.33%*
 3. *C: (60% multiplied by [10%/45%+35%+10%]) = 06.67%*
- Total = 60.00%*
- b. *Prohibit the promoter/promoter group and directors of these non – compliant companies from buying, selling or otherwise dealing in securities of their respective companies, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time these companies comply with the minimum public shareholding requirement.*
- c. *Restrain the shareholders forming part of the promoter/promoter group in the non – complaint companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.*
- d. *Restrain the directors of non – compliant companies from holding any new position as a director in any listed company, till such time these companies comply with the minimum public shareholding requirement.*

18. *This Order is without prejudice to the right of SEBI to take any other action, including the following against the non – compliant companies, their promoters and/or directors or issuing such directions in accordance with law:*
 - a. *Levying monetary penalty under adjudication proceedings;*
 - b. *Initiating criminal proceedings by way of prosecution proceedings;*
 - c. *Moving the scrip to trade – to – trade segment;*
 - d. *Excluding the scrip from F&O segment;*
 - e. *Any other action/direction as may be deemed appropriate.*
19. *The Board/Audit Committee of these non – compliant companies shall, at the end of each quarter, submit compliance report to the stock exchanges where the shares of the company are listed, giving the extent to which compliance has been achieved and the efforts taken therefor.*
20. *...*
21. *The entities/persons against whom this Order is being passed may file their replies, if any, within 21 days from the date of this Order. The entities mentioned herein may also, if they so desire, indicate in their replies whether they wish to avail of the opportunity of personal hearing before SEBI on a date and time to be fixed on a specific request.*
22. *For the purpose of paragraph 18 above, this Order shall be treated as show cause notice.”*

CONFIRMATORY ORDER DATED FEBRUARY 27, 2015 –

- 1.5 Pursuant to the Interim Order dated June 4, 2013, Starcom filed its reply vide letter dated June 24, 2013, *inter alia* stating:
 - a. *“The Company was in compliance with the MPS requirement on the date of the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010 (“SCR Amendment Rules”).*
 - b. *Pursuant to a Share Purchase Agreement, Mr. Ziaulla Sheriff, Promoter of the Company, had on February 3, 2011, acquired 35,60,280 fully paid-up equity shares of Rs.10/- each, representing 71.20% of the total equity share capital of the Company from the erstwhile Promoters through bulk deal on the BSE at an average price of Rs.20.40/- per fully paid-up equity share. The Share Purchase Agreement dated February 2, 2011 triggered the open offer in accordance with Regulation 10 and 12 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“Takeover Regulations, 1997”). In the Open Offer made on July 11, 2011, the Promoter had further acquired 8,76,175 fully paid-up equity shares of Rs.10/- representing 17.52% of the total*

equity of the Company. Consequent to the above acquisitions, the Promoter's shareholding increased to 88.72%.

- c. We are confident of achieving the requirement of minimum public shareholding by July 2013.
- d. Rule 19A(2) of the SCRR [and not Rule 19A(1)] is applicable to the Company, as the Company was compliant earlier and had become non-compliant only on July 21, 2011 when the public shareholding fell below 25% because of the acquisition of shares by its Promoter through the Share Purchase Agreement and the Open Offer. Therefore, in terms of Rule 19A(2), the Company had time till July 21, 2012 to raise its public shareholding.
- e. The Promoter also attempted to achieve compliance with MPS requirement on June 5, 2013 by offering 6,86,005 fully paid-up equity shares representing 13.72% of total equity under Offer for Sale ("OFS"). However, response was negligible as bids were received for only 29 shares ..."

1.6 An opportunity of personal hearing was granted to Starcom on August 14, 2014.

1.7 Thereafter, vide letter dated September 4, 2014, Starcom *inter alia* submitted:

- a. "As on June 30, 2013, Mr. Ziaulla Sheriff, the sole Promoter of the Company holds 44,36,426 equity shares representing 88.72% of the total equity shares of the Company.
- b. To comply with the minimum public shareholding requirements, the Promoter undertook two OFS (first OFS on June 5, 2013 and the second OFS on August 27, 2014). Post such offers, the Promoter's shareholding was reduced to 38,36,857 equity shares representing 76.72%. According to the Company, despite such efforts by its Promoter, the minimum public shareholding level of 25% could not be complied with.
- c. The Promoter needs to further dilute 86,407 equity shares in order comply with minimum public shareholding requirement."

1.8 Subsequent to the aforementioned, the following directions were issued vide SEBI's Order dated February 27, 2015 ("**Confirmatory Order**") –

7. "The Company, vide its letter dated September 4, 2014, has requested permission for its promoter to sell his stake (i.e. 86,407 equity shares) to an investor through secondary market transaction. This proposal has been made after more than a year of passing of the interim order against the Company for non-compliance with the MPS norms. Such proposal should have been made before June 3, 2013 for being considered by SEBI. Further, this is a quasi-judicial proceeding, wherein such proposals cannot be considered. As observed, the Company has taken

steps (two OFS – first OFS on June 5, 2013 and the second on August 27, 2014) towards compliance only after the due date (i.e., June 3, 2013).

8. *Considering the non-compliance by the Company with the MPS requirements till date in breach of Rule 19A of the SCRR and Clause 40 A of the Listing Agreement read with Section 21 of the SCRA, and such non-compliance being continuous in nature, it becomes necessary for SEBI, to confirm the directions issued vide the interim order against the Company, its Directors and Promoters/Promoter Group. Further, in respect of the continuous nature of the violations committed by the Company and for proper regulation of the securities market, SEBI may also initiate other action, as appropriate in law, against the Company, its Directors and Promoters.*
9. *Accordingly, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(2)(j), 11(4) and 11B thereof and Section 12A of the Securities Contracts (Regulation) Act, 1956, hereby confirm the directions issued vide the interim order dated June 4, 2013 against the company, Starcom Information Technology Limited, its Directors, Promoters and Promoter Group.”*

PROCEEDINGS PURSUANT TO THE CONFIRMATORY ORDER DATED DECEMBER 11, 2015 –

- 2.1 Vide a letter dated July 11, 2016, Starcom made *“an application for grant of permission in terms of Clause 2(vii) of the SEBI Circular dated November 30, 2015, to sell off Promoter shares on the floor of the Stock Exchange in order to comply with minimum public shareholding requirement.”*
- 2.2 Clause 2(vii) of the SEBI Circular dated November 30, 2015 [CIR/CFD/CMD/14/2015], *inter alia* states –
 2. *“In order to achieve the minimum level of public shareholding specified in Rule 19(2)(b) and/or Rule 19A of the Securities Contracts (Regulation) Rules, 1957, the Listed Entity shall adopt any of the following methods:*
 - viii. *Any other method as may be approved by SEBI on a case to case basis. For this purpose, the listed entities may approach SEBI with appropriate details. SEBI would endeavor to communicate its decision within 30 days from the date of receipt of the proposal or the date of receipt of additional information as sought from the company.”*
- 2.3 Vide a subsequent letter dated September 16, 2016, Starcom withdrew the aforementioned application for exemption dated July 11, 2016, *inter alia* stating:

“In spite of having two OFSs, Company could not meet minimum public shareholding requirement; therefore, Company had made an exemption application to SEBI on July 11, 2016. We have since been advised that our application may not meet the letter and spirit of the provisions of the Circular dated November 30, 2015 and other applicable Regulations in relation to complying with minimum public shareholding requirement.

Therefore, in order to dilute/offload Promoter’s holding in Company in a transparent manner with wider participation, the Promoter has decided to dilute/offload the excess Promoter stake of 1.73% through an OFS under the Stock Exchange mechanism in terms of the SEBI Circular dated July 18, 2012 (Subject: Comprehensive Guidelines on OFS of Shares by Promoters through the Stock Exchange Mechanism).

In view of the above, it is the Promoter’s desire to withdraw the exemption application.”

2.4 Vide an e-mail dated April 26, 2017, SEBI sought information from Starcom regarding the status of the abovementioned OFS. Vide a reply dated May 19, 2017, Starcom informed SEBI that it proposed to complete the aforesaid OFS by June 15, 2017.

2.5 Vide a reminder dated July 6, 2017, SEBI again sought information from Starcom regarding the status of the abovementioned OFS. In its reply dated September 7, 2017, Starcom *inter alia* informed SEBI as under –

- a. *“Vide letter dated August 31, 2017, the Company has informed (BSE) about completion of OFS on August 23, 2017. Thus, the Company has achieved minimum public shareholding compliance on August 23, 2017. A copy of the intimation is enclosed.*
- b. *Company has adopted OFS method for achieving minimum public shareholding requirement.”*

CONSIDERATION OF ISSUES, RELEVANT PROVISIONS OF LAW AND FINDINGS –

- 2.5.1 I have considered the submissions made by Starcom vide letter dated September 7, 2017, alongwith all relevant material available on record. I shall now proceed to deal with the issues under consideration in the instant proceedings –
- 2.5.2 **Whether Starcom is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19A of the SCRR?**
- 2.5.3 It is reiterated that vide Notifications dated June 4, 2010 and August 9, 2010, the Ministry of Finance amended the SCRR to provide for minimum and continuous public shareholding requirements in listed companies as it was felt that a dispersed shareholding structure was essential for the sustenance of a continuous market for listed securities, to provide liquidity to the investors and to discover fair prices.
- 2.5.4 A result of the aforementioned Notifications was that all listed companies (other than PSUs) were mandated to have minimum public shareholding of 25%. Further, in listed companies where the public shareholding was less than 25%, such companies were mandated to raise the same to the minimum of 25% by June 3, 2013.
- 2.5.5 From the material on record, the following is noted –
- a. As on the date of commencement of the SCR Amendment Rules in respect of Rule 19A of the SCRR i.e. August 9, 2010, Starcom was in compliance with minimum public shareholding requirement. In other words, the public shareholding in Starcom was more than 25%.
 - b. On February 3, 2011, Mr. Ziaulla Sheriff acquired 71.20% of total equity shares capital of the company from the erstwhile Promoters of the company pursuant to a Share Purchase Agreement dated February 2, 2011. The acquisition pursuant to the Share Purchase Agreement triggered an Open Offer in accordance with Regulations 10 and 12 of the Takeover Regulations, 1997.
 - c. Pursuant to the Open Offer (vide Letter of Offer dated May 30, 2011), Mr. Ziaulla Sheriff further acquired 17.52% of total equity shares of Starcom on July 11, 2011. Consequently, the shareholding of Mr. Ziaulla Sheriff reached 88.72% as on July 11, 2011. Mr. Ziaulla Sheriff became the Sole Promoter of Starcom.

d. The provisions of law attracted in the instant proceedings are reproduced as under –

A. Rule 19A of the SCRR states –

(1) *“Every listed company other than public sector company shall maintain public shareholding of at least twenty five per cent.:*

Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India. ...

(2) *Where the public shareholding in a listed company falls below twenty five percent at any time, such company shall bring the public shareholding to twenty five percent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.”*

B. Regulation 38 of the Listing Regulations 2015, states –

“The listed entity shall comply with the minimum public shareholding requirements specified in Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 in the manner as specified by the Board from time to time:

Provided that provisions of this regulation shall not apply to entities listed on institutional trading platform without making a public issue.”

C. Section 21 of the SCRA states –

“Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.”

D. Regulation 21(2) of the Takeover Regulations, 1997, states –

“If the acquisition made in pursuance of a public offer results in the public shareholding in the target company being reduced below the minimum level required as per the Listing Agreement, the acquirer shall take necessary steps to facilitate compliance of the target company with the relevant provisions thereof, within the time period mentioned therein.”

- E. Regulation 7(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**Takeover Regulations, 2011**"), states –
- "In the event the shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to the level specified and within the time permitted under SCRR."*
- e. As stated in its letter dated June 24, 2013, Starcom admittedly became non-compliant with minimum public shareholding requirement with effect from July 21, 2011 (upon payment of consideration to public shareholders subsequent to closure of Open Offer). However, in accordance with Rule 19A(2), Starcom and its Promoter had time till July 20, 2012, to comply with minimum public shareholding requirement.
- f. The methods by which listed companies could ensure compliance with the requirement of 25% minimum public shareholding were specified by SEBI under Regulation 38 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Listing Regulations 2015**") [erstwhile Clause 40A of the Listing Agreement] read with the aforementioned SEBI Circular dated November 30, 2015, one of which included the following –
- *Sale of shares held by Promoters through the secondary market i.e. OFS through Stock Exchange.*
- g. Accordingly, Mr. Ziaulla Sheriff undertook *OFS through Stock Exchange* on June 5, 2013 and August 27, 2014, respectively, subsequent to which the Promoter shareholding in Starcom was reduced to 76.73%.
- h. Thereafter, Mr. Ziaulla Sheriff undertook another *OFS through Stock Exchange* on August 22, 2017 and August 23, 2017, wherein the Promoter shareholding in Starcom was reduced to 75% from 76.73%.

2.5.6 The shareholding pattern of Starcom as obtained from the BSE website as on the following Quarters ended and on September 1, 2017, is reproduced below –

- December 31, 2014 i.e. prior to the Confirmatory Order dated February 27, 2015;
- June 30, 2017 and
- September 1, 2017

STARCOM'S SHAREHOLDING			
	DATE	PROMOTER GROUP SHAREHOLDING IN %	PUBLIC SHAREHOLDING IN %
1.	31.12.2014	76.73	23.27
2.	30.06.2017	76.73	23.27
3.	1.09.2017	75.00	25.00

2.5.7 From the preceding paragraph, it is observed that Starcom is now compliant with the requirement of minimum public shareholding as stipulated under Rule 19A of the SCRR with effect from August 23, 2017 (date of completion of *OFS through Stock Exchange*) i.e. when the public shareholding in the Company increased to 25% from 23.27%. Vide an e-mail dated September 12, 2017, BSE also confirmed to SEBI that Starcom achieved minimum public shareholding compliance on August 23, 2017. I note that though Starcom ensured compliance with minimum public shareholding requirement, it is with a delay of more than 5 years i.e. from July 21, 2012 till August 23, 2017.

2.6.1 **Whether any further action as contemplated under the Interim Order dated June 4, 2013 read with the Confirmatory Order dated February 27, 2015, is warranted against Starcom, its Promoter alongwith its Directors?**

2.6.2 It is reiterated that as per the Notifications dated June 4, 2010 and August 9, 2010, all listed companies were required to have minimum public shareholding of 25% and where the public shareholding in such companies was less than 25%, the same was required to be raised to the minimum of 25% by June 3, 2013. Further, where the public shareholding in a listed company falls below 25% at any time, such company shall bring the public shareholding to 25% within a maximum period of twelve months from the date of such fall in the manner specified by SEBI.

2.6.3 As noted at paragraph 2.5.7, Starcom subsequently ensured compliance with the requirement of minimum public shareholding with effect from August 23, 2017.

2.6.4 In this context, I note that Starcom, its Promoters and Promoter Group alongwith its Directors, have undergone the restraint/prohibition etc. directed vide the Interim Order dated June 4, 2013 read

with the Confirmatory Order dated February 27, 2015, for a period of approximately 4 years and 4 months.

- 2.6.5 Considering the fact that the Promoter's shareholding in Starcom has been brought at 75% thereby ensuring minimum public shareholding at 25%, I am of the considered view that the directions issued against Starcom, its Promoter alongwith its Directors, vide the interim Order June 4, 2013 read with the Confirmatory Order dated February 27, 2015, need not be continued.
- 2.6.6 As noted at paragraph 2.5.7, the delay by Starcom in ensuring compliance with minimum public shareholding requirement is in violation of Rule 19A of the SCRR read with Regulation 38 of the Listing Regulations 2015 and Section 21 of the SCRA. Additionally, Mr. Ziaulla Sheriff has violated Regulation 21(2) of the Takeover Regulations, 1997 read with Regulation 7(4) of the Takeover Regulations, 2011.

ORDER –

- 3.1 In view of the foregoing and in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(2)(j), 11(4) and 11B of the SEBI Act and Section 12A of the SCRA, the directions issued against Starcom Information Technology Limited, its Promoter alongwith its Directors, if any, vide the Interim Order dated June 4, 2013 read with the Confirmatory Order dated February 27, 2015, shall hereby stand revoked.
- 3.2 This Order is without prejudice to any other action that SEBI may initiate under securities laws including adjudication proceedings, as deemed appropriate, against Starcom Information Technology Limited for the delay in ensuring compliance with minimum public shareholding requirement and against its Promoter for violation of the Takeover Regulations, 1997 read with the Takeover Regulations, 2011.

3.3 This Order shall come into force with immediate effect.

3.4 A copy of this Order shall be served on the Stock Exchanges and Depositories for their information and necessary action.

Place: Mumbai
Date: October 18, 2017

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA