

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/5800-5803]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES,
1995**

In respect of:

**Avisha Credit Capital Ltd. (PAN: AAACA5715D)
Cosmo Corporate Services Ltd. (PAN: AAACC3529P)
Master Finlease Ltd. (PAN: AAACM6050D)
Vishvas Securities Ltd. (PAN: AAACV2921N)**

In the matter of Mefcom Agro Industries Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of Mefcom Agro Industries Limited (hereinafter referred to as "**Mefcom/ company**") observed that Avisha Credit Capital Ltd. (hereinafter referred to as "**Avisha/ Noticee 1**"), Cosmo Corporate Services Ltd. (hereinafter referred to as "**Cosmo/ Noticee 2**"), Master Finlease Ltd. (hereinafter referred to as "**Master/ Noticee 3**") and Vishvas Securities Ltd. (hereinafter referred to as "**Vishvas/ Noticee 4**") (collectively known as "**Noticees**") together as person acting in concert (hereinafter referred to as "**PAC**") acquired more than 15% shareholding during January 1, 2006 to June 30, 2007 (hereinafter referred to as "**investigation period**") and allegedly violated regulation 7(1A) read with 7(2) of Securities and Exchange

Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations, 1997**”) read with regulation 35(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations, 2011**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI vide order dated April 28, 2017 appointed Shri Jeevan Sonparote as the Adjudicating Officer under section 15 I of Securities Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**AO Rules**”) to inquire into and adjudge the aforesaid allegations under section 15A(b) of the SEBI Act. Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice/s dated February 21, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under Section 15A (b) of SEBI Act for the alleged violations. SCN issued to Noticee 2 and 4 returned undelivered. Noticee 1 and 3 vide separate letter/s dated April 7, 2018 sought inspection of documents. I note that all the relied upon documents were already provided to Noticee 1 and 3 along with the SCN. No reply was received from any of the Noticees on merits of the case.
4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticees on September 18, 2019 vide notice dated August 30, 2019. The said hearing notice was delivered to Noticee 1 and 3. However, no one appeared on the scheduled date of personal hearing. Another opportunity of personal hearing was given to all the Noticees on October 24, 2019. The hearing notice was

delivered to Noticee 1 and 3 and was affixed at the last known address of Noticee 2 and 4. Once again, no one appeared on the scheduled date of personal hearing.

5. Enough opportunities were given to the Noticees to represent their case by way of reply to SCN and also by appearance for personal hearing. In order to complete the proceeding timely, I am constrained to proceed with the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES AND EVIDENCE

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

- (a) Whether the Noticees have violated the provisions of regulation 7(1A) read with 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011.
- (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of SEBI Act for the alleged violation?; and,
- (c) 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?

7. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations, 1997 and SAST Regulations, 2011.

Relevant provisions of SAST Regulations, 1997:

Acquisition of 5 per cent and more shares or voting rights of a company 7. (1) Initial Disclosures.

7 (1).....

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation-For the purposes of sub-regulations (1) and (1A), the term "acquirer shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

Relevant provisions of SAST Regulations, 2011:

35. Repeal and Savings:

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, an adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

8. I note from the documents on record that the Noticees were connected to each other as per the details given herein below:

Sr.No	Entities	Connection
1	Master Finlease Ltd (MFL)	Entities at Sr No.1 and 2 (Master Finlease and Avisha Credit Capital) have submitted vide letters dated March 10, 2014 each that they were related to each other and not related to other entities. Master Finlease and Avisha Credit Capital Shares new address of the company ("606 Kailash Building , KG Marg, New Delhi) and have common directors among themselves viz. Vijay Jhindal and Shuba Jhindal.
2	Avisha Credit Capital (Avisha)	
3	Vishvas Securities Ltd	Entities at Sr No.3 ➤ Shared same address as that of Mefcom during the Investigation period (viz., 912 Kailash Building KG Marg Delhi) ➤ Off market transaction with Master Finlease and Avisha ➤ From the shareholding details of Vishvas available with MCA website shows that Master and Avisha together were holding 45% shareholding in Vishvas as on 30/9/2006. ➤ From the list of present directors of Vishvas, it was observed that Shri Atul Joshi is a common director in Vishvas and Mefcom.
4	Cosmo Corporate Ser Ltd	Entities at Sr No.4 ➤ Entered into Off Market trade with Master Finlease ➤ Shares the telephone number 23739999 which is registered in the name of Vijay Jindal, director of Master and Avisha and with new address of Mefcom

9. The details of the shareholding of the Noticees during the investigation period is as under:

Demat A/c Credit Date	Name of Entity / Shareholding				Total shareholding as PAC	Total	Violation of Reg(s) under SAST 1997
	Avisha Credit Capital Ltd*	Cosmo Corporate Ser Ltd	Master Finlease Limited	Vishvas Securities Ltd			
31/03/2006	0	0	189292	13205	202497	7.22%	NA
04/04/2006	0	0	94271	13205	107476	3.83%	NA
05/04/2006	0	0	94021	13205	107226	3.82%	NA
07/04/2006	0	0	93821	13205	107026	3.82%	NA
21/04/2006	0	25000	93821	13205	132026	4.71%	NA
25/04/2006	0	59971	93821	13205	166997	5.96%	NA
04/05/2006	0	134971	93821	13205	241997	8.63%	NA
09/05/2006	0	94971	93821	13205	201997	7.20%	NA
11/05/2006	0	259742	93821	13205	366768	13.08%	NA
18/05/2006	0	141971	93821	13205	248997	8.88%	NA
05/06/2006	0	141971	93821	13205	248997	8.88%	NA
06/06/2006	0	141971	93821	13205	248997	8.88%	NA
07/06/2006	125000	141971	93821	13205	373997	13.34%	NA
08/06/2006	142000	141971	93821	139505	517297	18.45%	Reg 7(1) r/w 7(2), Reg 10
09/06/2006	142000	141971	93821	139505	517297	18.45%	NA
10/06/2012	140000	141971	93821	139505	515297	18.38%	NA
12/06/2006	140000	139971	93821	139505	513297	18.31%	NA
22/06/2006	140000	139971	93821	139505	513297	18.31%	NA
23/06/2006	138000	89971	93821	139505	461297	16.45%	Reg 7(1A) r/w 7(2)
05/09/2006	138000	67924	93821	139505	439250	15.67%	NA
12/09/2006	138000	62924	93821	139505	434250	15.49%	NA

13/09/2006	138000	59924	94021	139505	431450	15.39%	NA
14/09/2006	138000	56924	94021	139505	428450	15.28%	NA
15/09/2006	138000	52924	94021	139505	424450	15.14%	NA
20/09/2006	138000	47924	94021	139505	419450	14.96%	NA
26/09/2006	138000	77513	94021	139505	449039	16.02%	NA
27/09/2006	138000	31189	85346	139505	394040	14.05%	Reg 7(1A) r/w 7(2)

10. From the documents on record, it is observed that the Noticees have acquired 15% or more of the shareholding of the company on June 8, 2006. The total shareholding of the Noticees was 18.45% on that day. It is observed that on June 23, 2006, the shareholding of the Noticees was 4,61,297 shares i.e. 16.45% of the total shareholding of the company. Hence there is a difference of 2% of its total shareholding. The Noticees ought to have made disclosure under regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 within two days of its change of shareholding. However, no such disclosure was made by the Noticees.
11. Subsequently, on September 27, 2006, the shareholding of the Noticees was 3,94,040 shares i.e. 14.05% of the total shareholding of the company. There was a difference of more than 2% from the last deemed date of disclosure, i.e. June 23, 2006. As the shareholding on June 23, 2006 was 16.45% and shareholding on September 27, 2006 was 14.05%, it is observed that there was change in shareholding of more than 2% of the share capital of the company.
12. Therefore, it is observed that though the Noticees were required to make disclosures within 2 days of their change in shareholding both on June 23, 2006 and September 27, 2006, the Noticees failed to make such disclosures on both the occasions.
13. It is of utmost importance that any change of shareholding of persons holding more than 15% are made aware to the public. The investors have a right to know the details of the shareholding of the target company and such disclosures also help in enhanced scrutiny of the securities market by the regulator.
14. The Hon'ble Securities Appellate Tribunal, in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, has also observed that, "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. We cannot therefore subscribe to the view that the violation was technical in nature”.

15. It is observed that the Noticees did not submit any reply to the SCN issued to them.

Hon’ble Securities Appellate Tribunal, in Appeal no. 68 of 2013 in *Sanjay Kumar Tayal and others v SEBI*, vide its order dated February 11, 2014 have stated that “*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.*”

16. In view of the above, I find that the allegation of violation of regulation 7(1A) read with regulation 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011 by the Noticees stands established and the Noticees are liable for penalty under regulation 15A(b) of the SEBI Act which 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 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 of one crore rupees, whichever is less.

17. 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... ”.*

18. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act which read as under:-

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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.*

19. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticees and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticees failed to make the relevant disclosure on more than one occasion. Hence, violation is repetitive in nature.

ORDER

20. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lacs only) jointly and severally on the Noticees viz. Avisha Credit Capital Ltd., Cosmo Corporate Services Ltd., Master Finlease Ltd. and Vishvas Securities Ltd. in terms of section 15A(b) of the SEBI Act, for the violation of the provisions of regulations 7(1A) read with regulation 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011 for non-disclosure of change in shareholding.

PENALTY PAYMENT OPTIONS

21. The Noticees 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 - III [**EFD 1-DRA-3**] 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:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

OR

22. 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>

23. 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.

24. 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 : November 29, 2019
Place : Mumbai

VIJAYANT KUMAR VERMA
ADJUDICATING OFFICER