BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/18/2010]

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

Against

Mr. Vijay Suryavanshi
PAN : Not Available

In the matter of M/s. Karuna Cables Ltd.

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has investigated into the dealings in the scrip of Karuna Cables Ltd. (hereinafter referred to as 'KCL') for the period February 10, 2005 to September 16, 2005.

2. SEBI has initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), against Mr. Vijay Suryavanshi (hereinafter referred to as the 'Noticee') on account of his failure to furnish to Investigating Authority appointed by SEBI, information / documents regarding his dealings in the scrip of KCL.

3. It is alleged that the Investigating Authority of SEBI issued summons dated March 20, 2007 and April 05, 2007 to the Noticee requiring the Noticee to explain the nature of transactions which indicated the Noticee's involvement in

manipulation in the market and offer Noticee's comments in detail alongwith the required information/documents. It is alleged that the Noticee failed to comply with the said summons and failed to submit the information/documents to the Investigating Authority.

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Babita Rayudu was appointed as the Adjudicating Officer vide order of SEBI dated August 31, 2007 under section 15-I of the Act r/w rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules,1995 (hereinafter referred to as the Adjudicating Rules) to inquire into and adjudge under Section 15A(a) of the SEBI Act, the alleged violation of the provisions of Section 11C(2) & 11C(3) of the SEBI Act.

5. Consequently, the then Adjudicating Officer was sent on deputation and thereafter the undersigned was appointed as the Adjudicating Officer in the instant matter vide SEBI order dated November 23, 2007.

SHOW CAUSE NOTICE/ REPLY

6. A show cause notice bearing no.EAD-2/SD/PM/123857/2008 in terms of the provisions of Rule 4(1) of the Adjudicating Rules was issued to the Noticee on April 25, 2008 seeking reply of the Noticee as to why an inquiry should not be held against the Noticee in respect of the violations alleged to have been committed by him. The said notice was received by the Noticee and acknowledgment of the same is available on record.

7. However, it is noted that no reply has been received from the Noticee inspite of the receipt of the same. On considering the facts of the case, it was decided to conduct an inquiry in the matter and the Noticee was granted an opportunity of personal hearing and accordingly was advised to attend the hearing on January 12, 2009. The said notice of personal hearing was sent at the same address where show cause notice was duly received by Noticee.

8. As the Noticee failed to submit proper reply to the show cause notice despite being given sufficient time, the inquiry is proceeded with taking into account the facts and material available on record.

CONSIDERATION OF EVIDENCE AND FINDINGS

9. Brief facts giving rise to the present proceedings are as under:

a) It was observed that during the period February 10, 2005 to September 16, 2005, a group of clients including the Noticee were observed to be transferring shares among themselves in off market and dealing in the said scrip of KCL in the market. These clients were found to be connected to each other and some of these clients were also observed to be connected to the company KCL. The group purchased 81,02,185 shares accounting for 24.43% of gross purchases and sold 64,13,786 shares accounting for 19.45% of gross sales of the market. The group was also observed to be involved in 228 trades which were executed at a price difference of 0.5% or more than the last traded price or last closing price.

10. The allegation against the Noticee is that he failed to comply with the summons dated March 20, 2007 and April 05, 2007 issued by the Investigating Authority and in view of the same, the Noticee is liable to the penalty prescribed under Section 15 A (a) of the SEBI Act. In this regard it is pertinent to note that Section 11 C(2) of the SEBI Act empowers the Investigating Authority of SEBI to require a manager, managing director, officer and other employee of a company and every intermediary or any person associated with the securities market to furnish such information or to preserve and produce all the books, registers, other documents and record of the company or the intermediary, as may be required by the Investigating Authority. Further, Section 11 C (3) empowers the Investigating Authority of SEBI to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person

authorized by it in this behalf as it may consider necessary if the furnishing of such information or documents are necessary.

11. It is noted that Investigating Authority issued Summons along with a letter enclosed dated March 20, 2007 to the Noticee seeking certain information/documents. The queries contained in the said letter are the following:
    i. Relationship with the company KCL, its promoters, directors and associate companies and all individuals/entities mentioned in Annexure A.
    ii. Details of purchase, sale and off market transactions done in the scrip of KCL for the period from January 01, 2005 to December 31, 2005 including date, name of counter party, quantity and price and also copies of demat accounts for the said period.
    iii. All bank account statements for the period January 01, 2005 to December 31, 2005 showing details of payments made/received for the purchase/sale of shares of KCL and financing received, if any, for the purchase of shares.

12. The Noticee was required to furnish the said details by March 27, 2007. The Noticee was also informed that his personal appearance was not required at that stage of inquiry and providing information would be considered as compliance of summons. It is noted that the Summons dated March 20, 2007 along with Letter was sent by Hand Delivery and the acknowledgment of the same is available on record. However, It appears from the records that the Noticee failed to submit any information/documents/reply to the said summons.

13. As no information was received from the Noticee, Investigating Authority of SEBI issued another similar summons dated April 05, 2007 along with copy of said letter requiring the said information/documents from the Noticee. The Noticee was advised to submit the same latest by April 11, 2007. The Noticee was also informed that his personal appearance was not required at that stage of inquiry and providing required information would be considered as compliance of summons. The said summons was sent by Hand Delivery and

was received by the Noticee as the acknowledgement of the same is available on records. It appears from the records that the Noticee failed to submit any information/documents/reply to the said summons also.

14. It is noted from the records available with me that in all two summons were sent to the Noticee and the acknowledgments of same are available on records and hence there is sufficient proof of delivery of Summons dated March 20, 2007 and April 05, 2007. Further, as it is seen that no reply had been received from the Noticee it is concluded that the Noticee failed to comply with the above stated summons dated March 20, 2007 and April 05, 2007.

15. It is noted from the details stated in the preceding paragraphs that the Investigating Authority was seeking explanation as to the nature of transactions which indicated his involvement in the manipulation in the market and offer the Noticee's comments in detail along with the Noticee's relationship with KCL, its promoters, directors and associate companies and all individuals mentioned in Anneure A, details of purchase, sale and off market transactions done in the scrip of KCL for the period from January 01, 2005 to December 31, 2005 including the date, name of the broker , name of the counter party, quantity and price, also copies of Demat accounts for the said period, all bank accounts statements for the period January 01, 2005 to December 31, 2005 showing the details of payments made/received for the purchase/sale of shares of KCL and financing received, if any, for the purchase of shares of KCL.

16. In this regard, it is pertinent to note that the Noticee was also informed that the personal appearance was not required at that stage of inquiry and providing information would be considered as compliance of summons. In spite of the above, the Noticee failed to provide even such basic details to the Investigating Authority. It is also pertinent to note that the Noticee also failed to submit proper reply to the show cause notice and also failed to appear for personal hearing before me. The said actions of the Noticee are clearly

indicative of his non co-operative attitude and also the fact that the Noticee deliberately wants to avoid any inquiry in the said matter.

17. In this regard, it is pertinent to mention that timely submission of information is very important for concluding Investigation Proceedings and non co-operation by an entity can be detrimental to the interest of investors and securities market on account of any delay in the investigation. As the Noticee failed to reply to the show cause notice during the course of adjudication proceedings, on the basis of the facts of the case and on perusal of the evidence available on record it is concluded that the Noticee failed to provide the required information to the Investigating Authority.

18. It is further noted that as the information sought by the Investigating Authority was pertaining to the Noticee and though the same was available with the Noticee, he failed to furnish the said information / documents to Investigation Authority. In view of the same, I find him guilty and his failure to comply with the summons attract penalty under Section 15A(a) of the SEBI Act.

19. I observed that the Noticee has failed to file any reply to the said SCN and has not refuted the charges. The Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. …v/s… SEBI [2007] 76 SCL 51 (SAT - MUM.)** **inter-alia held – "the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".** Thus, in the instant matter I presumed that the Noticee has admitted the charges alleged in the said SCN.

20. In view of the above, the next issue for consideration is as to what would be the monetary penalty that can be imposed on the Noticee for the violation of Sec. 11C(2) & 11C(3) of the SEBI Act.

21. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC) interalia held that "once the violation of statutory regulations is established, imposition of penalty**

becomes *sine qua non* of violation and the intention of parties committing such violation becomes totally irrelevant. Thus, as the violation of statutory obligations by the Acquirers has been established, I hold that they are liable for monetary penalty."

22. The Honorable Securities Appellate Tribunal in **Appeal No.95/04 in Mayfair Paper & Board Pvt. Ltd., Vs SEBI held that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under Section 15A of the SEBI Act.**

23. The provisions of section 15A(a) of SEBI Act as prevailing at the relevant time is reproduced hereunder :

"Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) *to furnish any document, return or report to the Board, fails to furnish the same, 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;"*

24. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of 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."

25. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default. Further, the amount of loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data. However, with regard to the repetitive nature of the default it is noted that the Investigating Authority had issued two summons to the Noticee and the Noticee failed to furnish the required information to the Investigating Authority of SEBI. The failure on the part of the Noticee to furnish necessary information to SEBI despite being granted two opportunities to do so indicate that the default committed by the Noticee is repetitive in nature.

26. The failure on the part of the Noticee in providing the information has to be viewed in this context. It is not possible to quantify the gains made by the Noticee or the loss caused to investors as a result of the failure on his part to provide information. The Honourable Securities Appellate Tribunal had occasion to consider a similar factual situation in **Appeal No: 114 of 2005 *Nokia Finance International Pvt. Ltd. v. SEBI*. In the said appeal, the Honourable Securities Appellate Tribunal had occasion to scrutinize the failure on the part of the appellant who dealt in the excess dematerialized shares, to provide necessary information to the Investigating Authority of SEBI. In the said matter, while upholding the penalty imposed by the adjudicating officer, the Honourable Tribunal observed that in a serious case of excess dematerialized shares than the authorized capital being traded in the market, the appellant could have availed the opportunity to submit the required information, however he failed to do so and the penalty has been imposed in terms of the provisions of law.** The order passed by the Securities Appellate Tribunal is relied upon in this case for guidance. Viewed in the context of the observations of the Tribunal, the failure on the part of the Noticee in furnishing necessary information to SEBI has to be viewed seriously.

27. It is seen from the facts available on records, the Noticee failed to comply with the summons dated March 20, 2007, April 05, 2005. In view of the same, the

failure on the part of the Noticee can be termed as repetitive in nature. Facts of the case indicate that Noticee has been deliberately avoiding any inquiry in the matter. Hence the violation committed by the Noticee has to be viewed seriously and attract penalty prescribed under Section 15A(a) of the SEBI Act.

ORDER

28. Considering the facts and circumstances of the case it is established that Noticee failed to provide necessary information to the Investigating Authority of SEBI in response to the summons issued by it. Considering the facts and circumstances of the case and the violation committed by the Noticee, I impose a penalty of Rupees Two Lakhs only (Rs. 2,00,000/-) on Noticee viz. Vijay Suryavanshi in terms of the provisions of Section 15 A (a) of the SEBI Act, 1992 for failure to provide necessary information to Investigating Authority, SEBI. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violation committed by Shri Vijay Suryavanshi.

29. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to Division Chief, Investigation Department (ID1), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

30. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are sent to Noticee and also to Securities and Exchange Board of India.

Date: March 11, 2010 **SANDEEP DEORE**

Place: Mumbai **ADJUDICATING OFFICER**