BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/52/2009]

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

Vijay Suryavanshi **PAN: AYNPS6546C**

In the matter of

M/s. Mega Corporation Limited

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 Mega Corporation Limited (hereinafter referred to as 'MCL') for the period January 2005 to September 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 the Investigating Authority appointed by SEBI, information/documents regarding his dealings in the scrip of MCL and thus, did not cooperate with the Investigating Authority.

3. It is alleged that the Investigating Authority of SEBI issued summons/notices dated March 16, 2007 & April 4, 2007 to the Noticee requiring the Noticee to explain the nature of transactions which indicated the Noticee's involvement in manipulation in the market & offer Noticee's comments in detail along with the production of relevant information/documents which are received by the Noticee. It is alleged that the Noticee failed to comply with the said summons/Notices 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 June 19, 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 15 A(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 in terms of the provisions of Rule 4 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.

7. It is noted that no reply has been received from the Noticee. 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, subsequently another opportunity was granted and the Noticee was advised to appear on February 19, 2009. However, the Noticee outrightly refused to accept the notices though he was available at the said address on the envelope as the envelope returned to SEBI with remarks written on it which reads 'mother told that son does not stay at that address and refused to accept the notice'. However, I find that the Noticee received the show cause notice and the summons/letters which were sent to the same address where the Notices of hearing have been sent. According to me, such refusal by the Noticee amounts to denial and delaying the adjudication proceedings and therefore I am inclined to take a serious note of the same. Further the Noticee even failed and not bothered to submit any kind of reply to the show cause notice which he has already received.

8. As the Noticee failed to submit proper reply to the show cause notice despite being given sufficient time and also failed to accept the hearing notices twice for personal hearing, 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 from January 2005 to September 2005 the price of the scrip of MCL moved from Rs.5.25/- to Rs.41.10/-. And the volume in the scrip also shot up dramatically. Entities suspected to be connected with the company viz., Nirmal Jain, Laxman Saijari, Mahendra Gopal Gorivale, Patric Xess and Deepak Sharma purchased around 1,31,65,000 shares of the captioned entity on March 5, 2005 and transferred 80 lacs shares in the off market to clients viz., Dadasaheb Gavhane, Prakash Hanumant Yadav and Umesh Choukekar belonging to Mahesh Mistry Group who have heavily dealt in the market as well as in the off market during the period January to September 2005 apparently to create buying interest in the scrip and were also found to be involved in influencing the price of the scrip. The shares received from company connected persons were ultimately utilized towards fulfilling market obligations of other connected clients of the Mahesh Mistry group including the Noticee. The details of trading of the connected group of clients are contained in Annexure A annexed to the SEBI letter dated February 13, 2007 available on record. The connected group of clients accounted for 60.23% and 54.60% of gross purchases and gross sales respectively during the period January 25, 2005 to September 16, 2005. Out of this, about 55% of gross purchases and 61.77% of gross sales of these connected clients were among themselves. These clients were also involved in 60 structured trades among themselves with a total traded volume of 2894051 shares accounting for 2.37% of gross traded quantity wherein buy and sell order rates and quantities were same and time difference between buy and sell orders was less than one minute.

10. The allegation against the Noticee is that he failed to comply with the summons/Notices dated March 16, 2007 & April 4, 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 dated March 16, 2007 & April 4, 2007 to the Noticee seeking certain

information/documents. The queries contained in the said summons are as following:

i. Relationship with the company MCL, its promoters, directors & associate companies & all individuals/entities mentioned in Annexure A annexed to the SEBI letter dated February 13, 2007 available on the record.
ii. Details of purchase, sale & off market transactions done in the scrip of MCL for the period from January 01, 2005 to December 31, 2005 including date, name of broker, name of counter party, quantity & 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 MCL & financing received, if any, for the purchase of shares.

12. The Noticee was required to furnish the said details by March 22, 2007 and April 11, 2007 for summons dated March 16, 2007 & April 4, 2007 respectively. 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 all three summons are received by the Noticee as the acknowledgments of the same are available on record. The summons/letter dated March 16, 2007 was sent by Registered A.D. and summons/letter dated April 4, 2007 was sent by hand delivery.

13. As no information was received from the Noticee, the Investigating Authority of SEBI issued another summons dated April 4, 2007 along with the copy of letter requiring the documents/information to the Noticee, informing the Noticee that the information/documents sought vide its earlier Summons & Letter dated February 13, 2007 has not been received till date & requiring the Noticee to submit the details latest by April 11, 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 appears from the records that the Noticee failed to submit any information/documents/reply to the said summons.

14. It is noted from the above facts available on record that two summons were sent to the Noticee. And acknowledgments are available on record and hence there is sufficient proof of delivery of summons. 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/notices. 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 & offer Noticee's comments in detail along with the Noticee's relationship with MCL, its promoters, directors & associate companies & all individuals mentioned in

Annexure A to the SEBI letter dated February 13, 2007, details of purchase, sale & off market transactions done in the scrip of MCL for the period from January, 2005 to September, 2005 including the date, name of the broker , name of the counter party, quantity & 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 MCL & financing received, if any, for the purchase of shares of MCL. 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 twice by refusing to accept the notices deliberately. 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. I have taken a serious note of the said attitude of the Noticee.

15. 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. 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 information. In view of the same, I find him guilty and his failure to comply with the summons/notices attract penalty under Section 15A (a) of the SEBI Act, 1992.

16. 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's 11C (2) & 11C (3) of the SEBI Act, 1992.

17. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund***[1] 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."

[1] [2006] 68 SCL 216(SC)

18. The Hon'ble Securities Appellate Tribunal in ***Mayfair Paper & Board Pvt. Ltd., Vs SEBI***[2] held that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under Section 15A of the SEBI Act.

19. 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;"*

20. 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."

21. 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 opportunity twice to do so apart from the opportunity to appear before the authority for a hearing, which was also given twice and outright non-acceptance of the said hearing notices indicate that the default committed by the Noticee is repetitive in nature.

[2] SAT Appeal No.95/2004

22. 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 Hon'ble Securities Appellate Tribunal had occasion to consider a similar factual situation in ***Nokia Finance International Pvt. Ltd. v. SEBI***[3]**.** In the said appeal, the Hon'ble 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 Hon'ble 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.

23. Further, I have examined the appeal of ***DKG Buildcon Pvt. Ltd. v. SEBI***[4]*, the Hon'ble Securities Appellate Tribunal has interalia stated as follows: '…By not responding to the summons, the representative(s) of the appellant did not appear before the investigating officer as a result whereof their statements could not be recorded. This obviously, hampered the investigations…………'.* Viewed in the context of the observations made by the Tribunal, the failure on the part of the Noticee in furnishing necessary information to SEBI has to be viewed seriously.

24. It is seen from the facts available on record that the Noticee failed to comply with the summons/notices dated March 16, 2007 & April 4, 2007. 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, 1992. In addition to that the Noticee also failed to reply to the show cause notice issued by me and avoided to appear before me in spite of giving two opportunities by deliberate non-acceptance of the notices, which I cannot ignore and viewed the same seriously.

ORDER

25. Considering the facts and circumstances of the case it is established that Shri Vijay Suryavanshi 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

[3] SAT Appeal No: 114 of 2005
[4] SAT *Appeal No.106 of 2006 decided on January 7, 2009*

the violation committed by the Noticee, I impose a penalty of Rupees Ten Lakhs only (Rs. 10,00,000/-) on 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.

26. 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 Dr. Pradnya Sarvade, Officer on Special Duty, Investigation Department (ID1), Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

27. 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 Shri Vijay Suryavanshi and also to Securities and Exchange Board of India.

Date: May 6, 2009 **SANDEEP DEORE**

Place: Mumbai **ADJUDICATING OFFICER**