BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2023-24/29764]

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

M/s Santowin Corporation Ltd
(PAN: AADCS9595G)

In the matter of Santowin Corporation Ltd

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the alleged irregularity in the trading in the shares of M/s Santowin Corporation Ltd. (hereinafter referred to as **'SCL/Company/Noticee'**) and into possible violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act**') and various rules and regulations made there under, for the period from June 01, 2013 to September 30, 2013 (hereinafter referred to as '**examination period'**).

2. The examination*, inter-alia*, revealed that the Noticee had furnished wrongful information to SEBI and also failed to make disclosure to BSE, thereby violating the provisions of Section 15A(a) of SEBI Act and Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations'**).

3. Based on the findings of examination, SEBI initiated adjudication proceedings against Noticee and vide order dated May 09, 2014, Shri A. Sunil Kumar (hereinafter referred to

as "**erstwhile Adjudicating Officer**") was appointed as the Adjudicating Officer under Section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules'**) to inquire into and adjudge under Section 15A (a) and 15A(b) of the SEBI Act, the alleged violations of Section 15A(a) of SEBI Act and Regulation 13(6) of PIT Regulations respectively by Noticee.

4. Show Cause Notice No. ASK/RGA/15713/2014 dated June 02, 2014 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against it and penalty be not imposed upon it under Section 15A(a) and 15A(b) of the SEBI Act for the alleged violations specified in the SCN. The SCN was duly delivered to Noticee.

5. Thereafter, considering the submissions made by Noticee during the adjudication proceedings and material available on record, Adjudication Order bearing reference no: ASK/RGA/AO/103/2014-15 was passed by the erstwhile Adjudication Officer on December 24, 2014 wherein by allegations against the Noticee in the SCN were confirmed and a monetary penalty of Rs. 3,00,000/- (Rupees Three Lakh Only) for violation of Section 15A(a) of SEBI Act and Rs. 7,00,000/- (Rupees Seven Lakh Only) for violation of Regulation 13(6) of PIT Regulations, totaling to Rs. 10,00,000/- (Rupees Ten Lakh Only) was imposed on Noticee.

6. Subsequently, an appeal, bearing Appeal No. 176 of 2015, was filed by Noticee before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"), challenging the aforementioned Adjudication order. Hon'ble SAT vide order dated March 16, 2016, (hereinafter referred to as "**SAT Order**"), after taking into consideration the decision of Hon'ble Supreme Court in SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas.186 (S.C.), quashed the adjudicating order dated December 24, 2014 and the matter was remitted back to the Adjudicating Officer to pass a fresh order on merits and in accordance with law. An extract of SAT Order is reproduced hereunder:

   " 1. In the light of the judgment of Apex Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas.186 (S.C.), counsel for the parties state that the order impugned in the appeal be quashed and set aside and the matter be restored to

the file of the Adjudicating Officer of SEBI for passing fresh order on merits and in accordance with law by leaving all contentions open.

2. Accordingly, order impugned in the appeal is quashed and set aside and matter is restored to the file of Adjudicating Officer of SEBI for passing fresh order on merits and in accordance with law. All contentions of both parties are kept open."

7. Pursuant to SAT Order, vide order dated September 01, 2023, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and Rule 3 of Adjudication Rules to inquire into and adjudge, the violations alleged to have been committed by Noticee as specified in paragraph 3 of this Order.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Vide email/letter dated September 21, 2023, the appointment of undersigned as the Adjudicating Officer in the matter was communicated to Noticee along with the copies of SCN, communique dated September 05, 2023, SAT order dated March 16, 2016 and records pertaining to the adjudication proceedings conducted by the erstwhile Adjudicating Officer including the reply submitted by Noticee. The letter/email dated September 21, 2023 was duly served on Noticee and the proof of service is on record. Noticee was advised to provide its reply to SCN within 14 days of receipt of the aforementioned letter/email. However, no reply has been received from Noticee till date.

9. Thereafter, in the interest of natural justice, vide hearing notice dated October 09, 2023, Noticee was granted an opportunity of personal hearing before the undersigned on October 16, 2023. The aforesaid hearing notice was sent to Noticee through digitally signed email as well as through SPAD on October 09, 2023 and was duly served upon it. However, Noticee failed to appear for the said hearing on the scheduled date. It is noted from records that Noticee also did not file any reply to the SCN. Vide email dated November 01, 2023, Noticee was granted another opportunity of hearing on November 08, 2023. The aforementioned email was duly delivered to Noticee. However, Noticee once again failed to appear for the hearing on the scheduled date.

10. In this regard, it is pertinent to note that the Hon'ble SAT in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, *inter alia,*

held that, "...*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*".

11. Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, *inter alia*, held 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 leveled against them in the show cause notices*..."

12. Additionally, the same position reiterated by the Hon'ble SAT in the matter of Dave Harihar Kirtibhai vs SEBI (Appeal No. 181 of 214 dated December 19, 2014), wherein it has been stated 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 non-receipt 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..."

13. It is noted that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite service of notices upon it. In the facts and circumstances of this case, I am of the view that the Noticee has nothing to submit and in terms of Rule 4(7) of the Adjudication Rules, the matter can be proceeded ex parte on the basis of material available on record. In the absence of any response from the Noticee to the SCN, I presume that the Noticee has admitted to the charges levelled against it.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

14. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are :

Issue No. I : Whether Noticee has violated the provisions of Section 15A(a) of SEBI Act and Regulation 13(6) of the PIT Regulations?

Issue No. II: Do the violations, if any, attract monetary penalty under Section 15A(a) and 15A(b) of SEBI Act?

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

Findings

Issue No. I : Whether Noticee has violated the provisions of Section 15A(a) of SEBI Act and Regulation 13(6) of PIT Regulations?

15. It has been stated in the SCN that Shri Akshat Ashok Gupta, one of the promoters of Noticee at the relevant time, had acquired 7,85,886 shares of the company during the month of September 2013. However, it has been alleged in the SCN that Noticee has provided wrong and misleading information to SEBI that it had forwarded the disclosure received from Shri Akshat Ashok Gupta to BSE regarding the aforementioned acquisition of shares and thereby has violated Section 15A(a) of SEBI Act. It has also been alleged in the SCN that since Noticee has failed to disclose information received by it from Shri Akshat Ashok Gupta to BSE, it has violated Regulation 13(6) of PIT Regulations.

16. Even though it is alleged in the SCN that Shri Akshat Ashok Gupta had acquired 7,85,886 equity shares during the month of September 2013, I note from the copies of disclosures submitted by him to Noticee that he had in fact acquired 9,00,886 equity shares during the month of September 2013. The details regarding the same are given below:

Date of acquisition	Date of Intimation to company	Buy Quantity
02.09.2013	02.09.2013	5,00,000
03.09.2013	03.09.2013	2,00,000
18.09.2013	20.09.2013	1,00,886
23.09.2014	23.09.2014	1,00,000

17. Regulation 13(4A) of PIT Regulations states that "*Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower*." Thus, in terms of Regulation 13(4A) of PIT Regulations, Shri Akshat Ashok Gupta, being a promoter of Noticee at the relevant time, was under an obligation to disclose his acquisitions dated September 02, 2013, September 03, 2013, September 18, 2013 and September 23, 2013 which exceeded 25,000 shares to Noticee as well as to BSE. In this regard, during the examination, I note that Noticee vide its emails dated February 25, 2014 and February 26, 2014 to SEBI had confirmed that it had received disclosures regarding the aforementioned acquisitions from Shri Akshat Ashok Gupta.

18. Regulation 13(6) of PIT Regulations mandates a listed company to disclose to all stock exchanges on which the company is listed, information received by it under Regulation 13(1),(2) (2A), (3), (4) and (4A) within two working days of receipt of such information. Thus, in the present case, Noticee, on receiving the disclosures under Regulation 13(4A) of PIT Regulations from Shri Akshat Ashok Gupta for acquisitions dated September 02, 2013, September 03, 2013, September 18, 2013 and September 23, 2013 was under an obligation to forward the same to BSE as per Regulation 13(6) of PIT Regulations.

19. In this regard, I note from the email dated February 24, 2014 by SEBI to Noticee that SEBI had asked Noticee to confirm whether it had disclosed to BSE, the information

received from Shri Akshat Ashok Gupta in accordance with Regulation 13(6) of PIT Regulations. Noticee vide email dated March 04, 2014 to SEBI had submitted scanned copies of four covering letters dated September 02, 03, 20 and 23, 2013, addressed to BSE wherein Kalbadevi Post Office stamp impression was affixed to show that it had forwarded the disclosures received from Shri Akshat Ashok Gupta to BSE. I also note that Noticee has not submitted enclosures to the said letters to SEBI.

20. I note that in contrary to Noticee's submission to SEBI, BSE vide an e-mail dated February 26, 2014 to SEBI had stated that no such disclosure was made by Noticee to it.

21. I note that in light of the discrepancies observed between the submission of BSE and that of Noticee, a letter dated March 10, 2014 was sent by SEBI to Kalbadevi Post Office to confirm whether the said stamp impression was original and also whether the Post Office followed a practice of stamping on the duplicate copy of the letter posted. The aforementioned letter was sent for the purpose of cross verification of the submission made by Noticee to SEBI. I note that Kalbadevi Post Office vide letter dated April 03, 2014 confirmed that the stamp impression in the proof of dispatch submitted by Noticee did not match with the Post Office impression. Further, it was also stated in the aforementioned letter that there was no practice in the Kalbadevi Post Office to give date stamp impression on the letters. I also note from the proof of disclosure submitted by Noticee that it bears only the stamp impression of Kalbadevi Post Office and there was no acknowledgment by way of signature of the receiving official of the post office. In light of the aforementioned, I am of the view that the proof of dispatch of disclosures submitted by Noticee to SEBI was a fabricated one.

22. I also note that other than the covering letter, no other proof of delivery of disclosures under Regulation 13(6) of PIT Regulations is available on record. In this context, I find it pertinent to cite the decision of Hon'ble SAT in in the case of Kalindee Rail Nirman Engineers Limited vs SEBI (decided on 19.07.2010) wherein Hon'ble SAT has observed that "...............*the agency through which the document is sent acts as an agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the facts by clear and cogent evidence in this regard......".*

23. Considering submissions made by BSE and Kalbadevi Post Office and in the absence of any cogent evidence in favor of Noticee, I conclude that the submission made by Noticee to SEBI that it had forwarded disclosure made by Shri Akshat Ashok Gupta to BSE was wrong and misleading. Therefore, I find that since Noticee did not forward the disclosure made by Shri Akshat Ashok Gupta to BSE, the allegation in the SCN that Noticee has violated Regulation 13(6) of PIT Regulations stands established.

24. The SCN has alleged that submission of wrong, false and misleading information to SEBI amounted to violation of Section 15A(a) of SEBI Act. In this regard, I note that Hon'ble SAT in the matter of Siddhartha Agarwal vs. Adjudicating Officer, SEBI; decided on 26-11-2008 has held that "………*Making a false statement would amount to failure to furnish the information sought and would attract section 15A(a) of the Act…….".* In light of the observations in the preceding paragraphs and the aforementioned decision of Hon'ble SAT, I find that allegation in the SCN that Noticee has violated Section 15A(a) of the SEBI Act stands established .

<u>Issue No. II: Does the violation, if any, attract monetary penalty under Section 15A (a) and 15A(b) of SEBI Act?</u>

25. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s 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...…*".

26. Therefore, in view of the above judgment and considering that Noticee has violated Regulation 13(6) of PIT Regulations and Section 15A(a) of the SEBI Act, as established in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under Section 15A(a) and Section 15A(b) of the SEBI Act. The text of the aforementioned provisions of SEBI Act, as applicable during the relevant time, is reproduced below:

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,-*

(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;

(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.

<u>Issue No. III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?</u>

27. While determining the quantum of penalty under section 15A(a) and 15A (b) of SEBI Act, 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.

111[Explanation.—For the removal of doubts, it is clarified that the power 112[...] 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.

111 Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

112 Omitted the words "of an adjudicating officer " by the Finance Act, 2018 w.e.f. 08-03-2019"

28. I note from the SAT order dated March 16, 2016 that Adjudication Order dated December 24, 2014 was remanded back in the light of the decision of Hon'ble Supreme Court in the case of SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas.186 (S.C.) The Apex Court in the aforementioned decision has held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). However, the decision of Hon'ble Supreme Court in SEBI vs. Roofit Industries Ltd was overruled in the subsequent decision in the Adjudicating Officer, SEBI vs. Bhavesh Pabari, wherein Hon'ble Supreme Court has held as under:

"*Therefore, to understand the conditions stipulated in clauses (a), (b) and (c) of Section 15-J to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/concede that in adjudications involving penalties under Sections 15-A, 15-B and 15-C, Section 15-J will have no application. Such a result could not have been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.*"

29. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in making disclosures or the consequent loss caused to investors as a result of the default. However, the fact remains that by not making the required disclosures, the Noticee had deprived the investors of important information at the relevant time. Further, I find that the Noticee has committed default under Regulation 13(6) of PIT Regulations, on 4 occasions. Therefore, the default is repetitive in nature. Further, Noticee has submitted wrongful information to SEBI. I am also conscious of the fact that cause of action in the instant matter was during the years 2013-14 and that more than 9 years has elapsed since then. The same can be considered as mitigating factor in the instant case.

Considering the delay involved in the matter, I am inclined to impose minimum penalty for the violations committed by Noticee.

ORDER

30. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty on Noticee as under:

Noticee	**Charging Provision**	**Penalty**
Santowin Corporation Ltd	Section 15A(a) of SEBI Act	Rs. 1,00,000/-(Rupees One Lakh Only)
	Section 15A(b) of SEBI Act	Rs. 1,00,000/-(Rupees One Lakh Only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

31. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

32. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - V, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of 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)	

33. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

34. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to the SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: November 17, 2023 **ADJUDICATING OFFICER**