

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AE/2020-21/9412]

UNDER SECTION 15-I OF THE 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 SHRI ANURAG AGARWAL (PAN – ACDPA4964G) IN THE MATTER OF STERLING GREEN WOODS LTD.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) carried out an investigation in the scrip of Sterling Green Woods Ltd (*hereinafter referred to as “Company / SGWL”*) during the period from November 06, 2009 to December 02, 2009 (**Investigation Period**). It was observed that Shri Anurag Agarwal (*hereinafter referred to as “Noticee”*) who was Managing Director of SGWL was the major net seller in the scrip of SGWL during the Investigation Period. It was observed that the Noticee was holding 5,00,000 shares (11.79% of the total paid up capital of the company) of SGWL as on September 2009 quarter. The Noticee sold 2,29,000 shares on November 30, 2009, 1,91,991 shares on December 01, 2009, and 75,038 shares on December 02, 2009. Thus, Noticee was observed to have sold a total of 4,96,029 shares on the aforesaid 3 dates, and subsequently, the remaining 3,971 shares were sold by the Noticee on December 09, 2009, thereby disposing all his holding in SGWL. It was observed that the Noticee was required to make necessary disclosures under Regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (*hereinafter referred to as “SAST Regulations, 1997”*)

with respect to his sale aggregating two percent or more of the share capital to the company and the stock exchanges. However, the Noticee has not done so. Thus, the Noticee was alleged to have violated the provisions of Regulation 7(1A) of SAST Regulations, 1997.

APPOINTMENT OF ADJUDICATING OFFICER

2. Initially, Ms. Barnal Mukherjee, Chief General Manager, was appointed as the Adjudicating Officer (**AO**) by SEBI vide communication order dated June 18, 2013 under Section 19 read with Section 15-I of SEBI Act, 1992 and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as, "**Rules**") to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violation alleged to have been committed by the Noticee. Subsequently, Ms. Anita Kenkare had been appointed as the AO in the matter vide communiqué dated August 08, 2013. Subsequently, Shri Sudeep Mishra and Shri Anindya Kumar Das were appointed as Adjudicating Officer in the matter. Vide Communication order dated June 20, 2019, the undersigned has been appointed as the AO in the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. EAD-6/BM/VS/17319/2013 dated July 15, 2013 (*hereinafter referred to as 'SCN'*) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Rules for the violations as specified in the SCN.
4. From the available records, it is noted that the erstwhile AO granted opportunities to the Noticee for submitting reply to the SCN and for personal hearing. However, it is noted that the Noticee has not filed reply to the SCN and has also not appeared for the hearing.

5. Pursuant to the appointment of the undersigned as AO and upon receipt of certain clarifications from SEBI, vide letter dated September 03, 2020 the Noticee was granted time till September 18, 2020 to submit his reply to the SCN. Further, vide the aforesaid letter, an opportunity of personal hearing was granted to the Noticee on September 21, 2020. However, it is noted that no reply has been received from the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :
 - I. Whether the Noticee has violated the provisions of Regulation 7(1A) of SAST Regulations, 1997?
 - II. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?
 - III. If yes, what should be the quantum of penalty?

FINDINGS

7. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same is reproduced below:

Regulation 7(1A) of SAST Regulations, 1997

7(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation(1) of regulation 11, shall disclose purchase or sale aggregating two percent. 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 alongwith 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.

Issue I) Whether the Noticee has violated the provisions of Regulation 7(1A) of SAST Regulations, 1997?

8. As per the SCN, the Noticee was holding 5,00,000 shares (11.79% of the total paid up capital of the company) of SGWL as on September 2009 quarter. The Noticee sold 2,29,000 shares (representing 5.40% of the total shares of SGWL) on November 30, 2009, 1,91,991 shares (representing 4.52% of the total shares of SGWL) on December 01, 2009, and 75,038 shares on December 02, 2009. Thus, Noticee was observed to have sold a total of 4,96,029 shares on the aforesaid 3 dates, and subsequently, the remaining 3,971 shares were sold by the Noticee on December 09, 2009, thereby disposing all his holding in SGWL.
9. It was alleged that the Noticee was required to make necessary disclosures under Regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (*hereinafter referred to as "SAST Regulations, 1997"*) with respect to his sale aggregating two percent or more of the share capital (i.e. transaction dates November 30, 2009 and December 01, 2009) to the company and the stock exchanges. From the material on record, it is noted that SGWL vide its letter dated August 31, 2011 to SEBI has stated that they have not received any disclosures under SAST Regulations, 1997 from the Noticee w.r.t the abovementioned transactions. I also note that BSE vide its email dated March 05, 2013 has confirmed to SEBI that they have also not received any disclosures under SAST Regulations, 1997 from the Noticee w.r.t the abovementioned transactions.
10. In terms of regulation 7(1A) of the SAST Regulations, 1997 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. In this regard, I would like to rely on the decision by the Hon'ble SAT in the matter Hon'ble Securities Appellate Tribunal ('SAT') in the matter of **Ravi Mohan & Ors. Vs SEBI** (Appeal No. 97 of 2014, date of decision: December 16, 2015) wherein it was inter alia observed that:

“Argument of the appellants that they have not acquired shares of the target company under regulation 11(1) and hence regulation 7(1A) is not attracted is without any merit, because, regulation 11(1) does not prescribe any particular mode of acquiring shares but merely refers to acquisition of 15% or more but less than 55% of the shares by an acquirer together with persons acting in concert with him in accordance with the provisions of law. By referring to an ‘acquirer’ covered under regulation 11(1) in regulation 7(1A), it is made clear that an acquirer covered under regulation 11(1) i.e. an acquirer (either by himself or together with persons acting in concert with him) holding 15% or more but less than 55% shares of the target company when either by himself or together with persons acting in concert with him purchases or sells shares of the target company aggregating 2% or more of the share capital of the target company, then such acquirer shall make disclosure as provided under regulation 7(1A). Fact that the appellants in all these appeals held shares of the target company more than 15% but less than 55% in accordance with law as stipulated under regulation 11(1) is not in dispute. Therefore, appellants holding shares of the target company to the extent specified under regulation 11(1), when sold shares of the target company as persons acting in concert in excess of 2% of the share capital of the target company, were obliged to make disclosure under regulation 7(1A).”

11. Therefore, I Note that Regulation 7(1A) of the SAST Regulations, 1997 requires any acquirer who holds 15% or more but less than 55% of the shares or voting rights in a company to make disclosures about purchase or sale of 2% or more of the share capital along with the aggregate shareholding after such acquisition or sale. In the present case, I note that as per the investigation report, the Noticee was holding 11.79% of the total shares (5,00,000 shares) which reduced to Nil post his selling of shares on 4 days viz. November 30, 2009, and December 01, 02, and 09, 2009. Thus, in view of the above, I note that the sale of 11.79% shares of SGWL by the Noticee does not attract the provisions of Regulation 7(1A) of SAST Regulations, 1997 warranting imposition of any penalty as the violation has not been established.
12. Since the violations is not established, consequent issues II and III do not require any consideration.

ORDER

13. Accordingly, taking into account aforesaid observations and in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules and after considering all the facts and circumstances of the case and evidence on record, it is concluded that the allegations levelled against the Noticee are not established. Accordingly, the adjudication proceedings initiated against the Noticee vide the SCN dated July 15, 2013 stands disposed of without penalty.
14. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

DATE: October 20, 2020
PLACE: MUMBAI

K SARAVANAN
ADJUDICATING OFFICER