Singapore Exchange Securities Trading Limited
Listings Disciplinary Proceeding No: SGX-LDC-2021-001

IN THE MATTER OF A DISCIPLINARY PROCEEDING UNDER THE SGX-ST LISTING MANUAL CATALIST RULES

BETWEEN

SINGAPORE EXCHANGE SECURITIES TRADING LIMITED

(Company Registration No. 197300970D)

(the "Exchange")

AND

ASTAKA HOLDINGS LIMITED

DATO' ZAMANI BIN KASIM

PARTY A[1]

LEE SHIH YI

(collectively, the "Relevant Persons")

GROUNDS OF DECISION

17 August 2021

[1] The Relevant Person's identity is anonymized pursuant to paragraph 40 of this grounds of decision.

This document constitutes the written grounds of decision of the SGX Listings Disciplinary Committee ("LDC") as required under Catalist Rule 317(1), and is prepared for the Exchange and the Relevant Persons who are parties to SGX-LDC-2021-001 (the "Parties").

This document is confidential and meant to be read by the Parties and their legal representatives only, until such time as this grounds of decision is published by the Exchange pursuant to Catalist Rule 318(1).

I. CHARGES BROUGHT BY THE EXCHANGE

1. The Exchange brought three charges against Astaka Holdings Limited (Company Registration No. 200814792H), a company listed on the Catalist board of the SGX-ST (the "**Company**") for contraventions of Section B of the Catalist Rules for failing to promptly disclose three letters of demand received by Astaka Padu Sdn Bhd ("**APSB**"), its wholly-owned indirect subsidiary, from China State Construction Engineering (M) Sdn Bhd ("**CSCE**"), each dated 2 October 2018 (the "**1st Letter of Demand**"), 1 February 2019 (the "**2nd Letter of Demand**"), and 11 July 2019 (the "**3rd Letter of Demand**") (collectively, the "**Letters of Demand**").

Charge	**Relevant Catalist Rules ("Relevant Rules")**	**Short Description**
1st Charge	Catalist Rule 703(1)(a)	Breached Catalist Rule 703(1)(a) by failing to promptly disclose APSB's receipt of the 1st Letter of Demand.
2nd Charge	Catalist Rule 703(1)(a)	Breached Catalist Rule 703(1)(a) by failing to promptly disclose APSB's receipt of the 2nd Letter of Demand.
3rd Charge	Catalist Rule 703(1)(a)	Breached Catalist Rule 703(1)(a) by failing to promptly disclose APSB's receipt of the 3rd Letter of Demand.

2. The Exchange brought the same three charges against the following persons for causing the Company to breach the Relevant Rules, pursuant to Catalist Rule 302(6). The charged persons are as follows:

   (a) Dato' Zamani Bin Kasim ("**Zamani**"), Executive Director and former Chief Executive Officer ("**CEO**");

   (b) Party A; and

   (c) Ms. Lee Shih Yi ("**Lee**"), former Chief Financial Officer ("**CFO**").

II. RESOLUTION AGREEMENT

3. In the course of the proceedings, the Exchange and the Relevant Persons agreed on the terms for disposing of the disciplinary actions by means of no contest.

4. On 22 July 2021, a resolution agreement signed by the Parties ("**Resolution Agreement**") was submitted to the LDC for the LDC's approval.

5. The Resolution Agreement stated that:

   (a) the Company would plead guilty to the 3rd Charge of breaching Catalist Rule 703(1)(a) by failing to promptly disclose the receipt of the 3rd Letter of Demand, a piece of material information known to the Company which was necessary to avoid the establishment of a false market in the Company's securities;

   (b) Zamani, Party A, and Lee would plead guilty to the 3rd Charge of causing the Company (pursuant to Catalist Rule 302(6)) to breach Catalist Rule 703(1)(a) by failing to promptly disclose the receipt of the 3rd Letter of Demand, a piece of material information known to the Company which was necessary to avoid the establishment of a false market in the Company's securities; and

   (c) the Relevant Persons consented for the LDC to take into consideration the 1st and 2nd Charges against them for the purposes of determining the sanctions.

6. The Resolution Agreement also set out the relevant facts, the Exchange's regulatory concerns and the proposed sanctions which the Parties had agreed on.

III. PERTINENT FACTS

7. The Company has an ownership interest of 99.99% of Astaka Padu Limited, which in turn has an ownership interest of 100% of APSB. APSB appointed CSCE via a construction agreement as the main contractor to carry out construction works for the development of service apartments in Malaysia.

8. Subsequently, APSB was unable to make payment for outstanding progress claims and proposed to CSCE to treat the amounts owed as a loan that CSCE had extended to APSB. On 12 April 2017, by way of a loan agreement ("**Loan Agreement**"), CSCE agreed to grant an interest-free loan to APSB equivalent to the sums owing by APSB to CSCE under the construction agreement ("**Loan**"). The Loan was due to be repaid on or before 30 June 2017 ("**Due Date**") or upon APSB's receipt of written demand from CSCE, whichever was earlier. In the event APSB was unable to repay the Loan on such date, CSCE would, upon receipt of APSB's request, grant APSB a final extension of time until 30 September 2017 to repay the loan, provided that late interest be charged at the rate of 8.5% per annum on the outstanding Loan amount calculated from the expiry of the Due Date (or such period as stated in the written demand) until the date of full repayment of the Loan.

9. In this connection, APSB received three Letters of Demand from CSCE for the recovery of the outstanding sum due and owing from APSB:

   (a) the 1st Letter of Demand was received by APSB's lawyers on 2 October 2018, and forwarded to Zamani, Party A, and Lee. The letter stated for the lawyers of APSB to "kindly urge your clients to repay the Loan with the late payment interest thereon to our clients".

   The claim amount therein of RM51,476,535.19 represented 313.5% of the Group's cash and cash equivalents, 21.2% of the Group's net asset value ("**NAV**"), and 213.9% of the Group's net profit before tax;

   (b) the 2nd Letter of Demand was titled "Notice of Demand", and stamped "Received" on 13 February 2019. Zamani, Party A, and Lee were aware of this letter. The letter demanded for the outstanding amount plus interest to be paid within 60 days failing which CSCE would have to commence legal proceedings for the recovery of the same.

   The claim amount therein of RM113,541,215.79 represented 1,419.8% of the Group's cash and cash equivalents, 47.8% of the Group's NAV, and 838.3% of the Group's net profit before tax; and

   (c) the 3rd Letter of Demand dated 11 July 2019 was titled "Payment Claim made under the Construction Industry Payment and Adjudication Act 2012", and sent to APSB by courier and emailed to Zamani, Party A, and Lee. The letter stated that CSCE was thereby making a Payment Claim pursuant to and under the Construction Industry Payment and Adjudication Act.

   The claim amount therein of RM125,347,302.61 represented 659.3% of the Group's cash and cash equivalents, 62.4% of the Group's NAV, and 925.4% of the Group's net profit before tax.

10. None of the Letters of Demand were disclosed by the management team to the board of directors of the Company (the "**Board**") (less Zamani), upon receipt.

11. On 27 August 2019, the Audit Committee of the Company (the "**AC**") held a meeting, which was attended by Zamani, Party A, and Lee. The minutes of that meeting recorded that the AC asked whether the Group had received any legal letter of demand from creditors, and management confirmed that the Group had not received any legal letter of demand other than a letter from a supplier for an outstanding amount of approximately RM1,800,000.

12. On 5 September 2019, the Company's AC Chairman, sent an email to Lee, the CFO, seeking reconfirmation that the Group had not received any letters of demand from CSCE. Zamani, the CEO, then informed the AC Chairman of the Group's receipt of the three Letters of Demand.

13. On 5 September 2019, the Company released an SGXNET announcement relating to the receipt of the Letters of Demand, the need for the prior year adjustment on the under-recognition of interest expense, and the intention to appoint an independent reviewer to undertake a review of the matters that might have given rise to the oversight. The Company then requested for a voluntary suspension of the trading of its securities pending, amongst others, the resolution of the Letters of Demand, and the issues raised by the independent review to be undertaken. Trading in the Company's securities have remained suspended to date, and the Group is currently facing ongoing legal proceedings from one of its contractors and CSCE.

IV. CATALIST RULE BREACHES

Continuous disclosure obligations

14. Catalist Rule 703(1)(a) states:

"An issuer must announce any information known to the issuer concerning it or any of its subsidiaries or associated companies which is necessary to avoid the establishment of a false market in the issuer's securities."

15. Appendix 7A (Corporate Disclosure Policy) of the Catalist Rules provides at paragraph 4(a) that, inter alia, "[a] false market may exist if information is not made available that would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell the securities."

16. Paragraph 9 of Appendix 7A (Corporate Disclosure Policy) of the Catalist Rules further provides a non-exhaustive list of situations which are likely to require immediate disclosure. Amongst these, paragraph 9(l) provides that one such situation is where there is an "occurrence of an event of default under debt or other securities or financing or sale agreements".

17. With respect to these provisions in the Catalist Rules, the LDC agrees with the statements in the Resolution Agreement that:

    (a) A letter of demand that sets out a claim based on an issuer's default under a debt, prima facie falls under paragraph 9(l) of Appendix 7A (Corporate Disclosure Policy) of the Catalist Rules, as an event that is likely to require immediate disclosure;

    (b) In determining whether a letter of demand warrants immediate disclosure to avoid the establishment of a false market in the issuer's securities, it is appropriate to consider (i) whether there is any clear indication or reasonable grounds that the letter of demand is wholly without merit or bound to fail, and (ii) the impact of the claim amount against an issuer's key financial figures such as its NAV or net profit before tax; and

(c) Where such letter of demand (i) has no clear indication or reasonable grounds that it is wholly without merit or bound to fail, and (ii) concerns a claim that may result in substantial financial impact to the issuer, it may be concluded that the receipt of such a letter of demand by an issuer would constitute material information that, if not made available, would or would be likely to influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell the securities, and the omission or failure to disclosure this material information will result in market participants trading in the issuer's securities on an uninformed basis.

18. As for the facts of this case, the Resolution Agreement further stated, and the LDC noted that:

(a) There was no dispute that APSB was in default of the Loan. The amounts claimed under the Letters of Demand were based on the sum of RM46,532,461.19, which was due and outstanding to CSCE since the Due Date;

(b) The amounts claimed in the Letters of Demand constituted a significant proportion of the Group's assets. As such, satisfaction of the claim would result in a substantial outflow of the Group's cash, and in turn would result in a significant deterioration of its financial position and diminution in the value of its assets, and potentially affect the Group's ability to operate as a going concern; and

(c) Non-disclosure of the receipt of the Letters of Demand had resulted in investors and shareholders trading in the Company's securities without the knowledge that there in fact existed factors that would adversely affect the Company's value and prospects.

19. As such, the LDC finds that the non-disclosure of the Letters of Demand was a breach of Catalist Rule 703(1)(a).

Responsibility to ensure compliance with the rules

20. Catalist Rule 302(6) states:

"For the purposes of this Chapter, a Relevant Person is deemed to have contravened a Relevant Rule when a Relevant Person has caused another Relevant Person to omit to do an act which resulted in a breach of a Relevant Rule."

21. Under Catalist Rule 720(1), directors and executive officers of an issuer are required to provide personal undertakings that they shall, inter alia, use their best endeavours to comply with the requirements of the Exchange pursuant to or in connection with the Catalist Rules, and to procure that the issuer shall so comply.

22. In addition, paragraph 1.6 of the Code of Corporate Governance 2018 provides that the role of the management team is to provide the board of directors with complete,

adequate and timely information prior to meetings and on an on-going basis to enable them to make informed decisions, and discharge their duties and responsibilities.

23. Directors, in particular, executive directors who are actively involved in the day-to-day affairs of the issuer, are responsible for the issuer's compliance with the Catalist Rules in all cases:

    (a) Catalist Rule 104(2) provides that the directors are responsible for the issuer's compliance with the Catalist Rules. The rule states as follows:

        "An issuer shall ensure that its directors are responsible for the issuer's compliance with the Rules. …"; and

    (b) Catalist Rule 111 further underscores the responsibility of directors with regard to the issuer's compliance with the Catalist Rules as follows:

        "An issuer shall ensure that its directors accept responsibility, collectively and individually, for the issuer's compliance with the Rules."

24. With respect to the respective provisions in the Catalist Rules and the Code of Corporate Governance, the LDC agrees with the statements in the Resolution Agreement that the directors and executive officers of an issuer are expected to know the Catalist Rules well, and the responsibility of ensuring compliance with the Catalist Rules falls on the issuer, its directors and its executive officers.

25. Regarding the facts of this case, the Resolution Agreement stated, and the LDC noted that the Company's management team comprising Zamani, Party A, and Lee were at all material times aware of the receipt of each of the Letters of Demand. However, they had failed to promptly escalate the information to the rest of the Board, thereby causing the Company to fail to disclose the receipt of each of the Letters of Demand in a timely manner to avoid the establishment of a false market in the Company's securities.

26. Therefore, the LDC finds that, having regard to Catalist Rule 302(6), Zamani, Party A, and Lee had caused the Company to be in breach of Catalist Rule 703(1)(a).

V. THE EXCHANGE'S REGULATORY CONCERNS

27. The LDC noted the Exchange's regulatory concerns which are set out in this section.

Regarding the Company

28. The Company's admitted breach due to its non-disclosure of the receipt of the Letters of Demand had resulted in investors and shareholders trading in the Company's securities without the knowledge that there existed factors that would adversely affect the Company's value and prospects.

29. The matter in question had significant downstream impact on the Group, leading to an eventual ongoing lawsuit faced by the Group, as well as the emphases of matter raised by the independent auditors of the Company in their Independent Auditors' Reports in respect of the material uncertainty related to the Group's ability to continue as a going concern. The Company's securities are currently suspended from trading.

30. Shareholders rely on the issuer's management team and the board of directors to provide them with all pertinent information on the group. In this case, shareholders were not promptly apprised of the Letters of Demand (which, in themselves, could have materially affected the Company's value and prospects), and all the potential issues arising from the Letters of Demand which subsequently materialised when the Company's problems developed into lawsuits, resulting in a significant adverse impact on the value of their shareholdings.

31. There is a need to impose public sanctions in order to make clear the gravity of the Company's breach, and to assure the investing public that any failure in a listed issuer's obligation of disclosure will be met by robust regulatory action.

Regarding the executive director and CEO

32. When asked by the AC whether any legal letters of demand had been received by the Group, Zamani provided a confirmation to the AC that the Group had not received any legal letters of demand. As a result, the AC was misled, and the material information of the Letters of Demand was not promptly disclosed. This is deeply concerning. Zamani's actions in telling a deliberate falsehood to the AC in the face of a clear question cast serious doubt on his character and integrity, and whether he is fit and proper as an executive director of the Company. Zamani had continually assessed the Letters of Demand as being "immaterial" for disclosure, and this raises questions on whether he met the baseline standard of competence and conduct expected of a director of a listed company.

33. In this regard, Zamani fell short of his duty to ensure compliance with the Catalist Rules and departed from the reasonable standard of conduct and diligence expected of his position as the executive director and CEO of the Company. Public sanction is necessary to condemn such conduct, as well as to deter others from engaging in similar misconduct.

Regarding Party A and Lee

34. As key executives of the Company, Party A and Lee had provided personal undertakings to procure that the Company complies with the Catalist Rules, and their roles were to provide the Board with complete, adequate and timely information prior to meetings and on an on-going basis to enable the Board to make informed decisions and discharge their duties and responsibilities. In the course of their duties, they were made aware of critical information that would prima facie require disclosure under the Catalist Rules, and it is not sufficient or acceptable for them to say that they expected their fellow executive officer to do "right" by the Company. Moreover they held positions with direct access to the Board, whether in meetings or otherwise.

Accordingly, where they were of the view that the Board should be informed of certain information, it behoves them to directly inform the Board of such information.

35. As regards Lee, the CFO, she had explained that she had escalated the matter on several occasions to Zamani, particularly in relation to the 3rd Letter of Demand. However, where financial matters of a group are concerned, the CFO bears equal responsibility with the CEO in ensuring that financial reporting and disclosures are accurate. As set out in the Code of Corporate Governance 2018, one of the tenets of good governance is accountability and transparency. To this end, an issuer needs to maintain a sound system of risk management and internal controls to safeguard the interests of the issuer and its shareholders. Therefore, in an issuer's annual report the assurance on financial records is provided by both the CEO and the CFO. As the CFO and as a C-suite executive, Lee is expected to exercise independent judgement and have a mind of her own. It is not sufficient for her to merely surface concerns to Zamani, and defer all decision-making on disclosure obligations to him. Furthermore, where there is reason to believe that the Board has been misinformed, or is unaware of, material financial information concerning the Group, the CFO has a duty and obligation to raise such issues for the attention of the Board. For these reasons and the fact that Lee also has a direct obligation to ensure that the Company complies with the Catalist Rules, Lee had not sufficiently discharged her duties as a CFO by failing to bring the 3rd Letter of Demand to the attention of the rest of the Board, thereby causing the Company to breach Catalist Rule 703(1)(a).

36. Accordingly, Lee had departed from the reasonable standard of conduct and diligence expected of her position as the CFO of the Company. In this regard, there is a need to impose public sanctions to publicly deter others from engaging in similar misconduct.

37. With respect to Party A, Party A had been aware of the Letters of Demand, and Party A was present when the AC was being misled by Zamani. As an executive officer of the Company, Party A had a duty and had given a personal undertaking to procure that the Company complies with the Catalist Rules. Being an executive officer who was aware of the receipt of the Letters of Demand, Party A is therefore culpable for the consequent breaches of the Catalist Rules by the Company.

38. Nonetheless, as the Letters of Demand do not fall directly under the scope of work of Party A's office, there is no further need to impose public sanctions for deterrence.

VI. SANCTIONS IMPOSED BY THE LDC ON THE RELEVANT PERSONS

39. Having considered the Resolution Agreement and the Exchange's regulatory concerns included therein, the LDC has unanimously decided to impose the following sanctions on the Relevant Persons:

The Company

(a) A public reprimand is issued to the Company;

Zamani

(b) A public reprimand is issued to Zamani; and

(c) Zamani shall provide a signed written undertaking to the Exchange to resign from all his current positions and not to be appointed to any position in the Company for a period of two years from the date of this Grounds of Decision;

Lee

(d) A public reprimand is issued to Lee;

Party A

(e) A private warning is issued to Party A; and

(f) Party A shall undertake a mandatory education or training programme on listing rule obligations.

40. As the sanctions imposed on Party A involve a private warning, the LDC directs that Party A's identity be anonymised when this grounds of decision is published pursuant to Catalist Rule 318(1).

END