BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. - SRP/RK/AO: 251 /2011]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Atlanta Share Shopee Limited

Member Broker – BSE

(SEBI Registration No: INB 011270130)

PAN: AAFCA0584K

In the matter of
Sarang Chemicals Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) examined the trading activity of Atlanta Share Shopee Limited, a member broker of the Bombay Stock Exchange Ltd. (**BSE**), having SEBI registration No. - INB 011270130 (hereinafter referred to as "**the Noticee**") in the scrip of Sarang Chemicals Limited (**SCL/the Company**). It was, *prima facie*, observed that the issued and subscribed equity share capital of SCL in September 2009 was 17,50,00,000 shares, and its shares were listed on the National Stock Exchange of India Ltd. (**NSE**) and BSE (hereinafter jointly referred to as **' the Stock Exchanges'**). From the shareholding pattern of the Company, available on the website of the Stock Exchanges, it was observed that that the Noticee was holding 98,03,802 shares of SCL (5.6% of the issued share capital/voting rights of SCL) during the quarter ended on June 30, 2009 and it transferred 41,04,762 shares of

SCL (2.06% of the issued share capital/voting rights) to various entities by the quarter ended on December 31, 2009.

2. As the shareholding of the Noticee in SCL was more than 5% therefore, query was raised by SEBI regarding the statutory disclosures to be made in this connection to the Company and to the stock exchanges. The Noticee, vide latter dated November 03, 2009 and December 22, 2009 stated that it had not made any disclosure to the Company or to the stock exchanges. It was also stated that it had received 70 lakh shares of SCL in its beneficiary account on July 10, 2009 from one of its clients namely, Mr. Manish Mansukhlal Raja, for the purpose of dealing in the scrip of SCL on his behalf.

3. In view of the above, it was alleged that the Noticee had acquired and was holding more than 5% shares/voting rights in SCL however, it failed to make the required disclosures in terms of the provisions of regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **'SAST Regulations'**) and regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**). Further, as it is not a normal business practice of stock brokers to keep shares of its clients in their own beneficiary account for such a long period, therefore, it was also alleged that the Noticee has violated the provisions of clause A (2) of the Code of Conduct for Stock Brokers specified in Schedule II read with regulation 7 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as '**Brokers Regulations'**).

4. The aforesaid alleged contravention of the provisions of the SAST and the PIT Regulations and/or the Brokers Regulations, if established, make the Noticee liable for penalty under section 15A (b) and/or section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules"**) to inquire into and adjudge under section 15A (b) and 15HB of the SEBI Act, the alleged violation/ contravention of the aforesaid provisions of the SAST Regulations, PIT Regulations and the Brokers Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice dated August 01, 2011 (**SCN**) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry be not initiated against it and penalty be not imposed under sections 15A (b) and 15HB of the SEBI Act for the alleged violation of the provisions of regulation 7(1) of the SAST Regulations, regulation 13(1) of the PIT Regulations and clause A (2) of the code of conduct for stock brokers.

7. In response to the SCN, the Noticee filed its reply vide letter dated September 19, 2011. On perusal of the same, it was decided to conduct inquiry in the matter and for the purpose an opportunity of hearing was granted to the Noticee on October 31, 2011. The hearing was attended by the authorized representatives of the Noticee namely, Ms. Vasanti Alpesh Nagda and Mr. Balveer Singh Choudhary. The summary of the written and oral submissions made by the Noticee are as under:

- *On June 10, 2009, 70,00,000 shares of SCL were received by the Noticee in its beneficiary account in an off market transaction from one of its clients namely, Mr. Manish Mansukh Raja for the purpose of dealing in the scrip of the Company.*

- *On instructions from its clients the Noticee transferred 5,39,304 shares, 12,82,868 shares and 22,82,590 shares to Ayodhyapati Investment Pvt. Ltd., Baldevsinh Vijaysinh Jhala and Amrut Securities Limited respectively on September 9, 2009.*

- *It is maintaining two different types of beneficiary accounts - one is for its proprietary trades and the other is specifically for the shares received from clients for trading on their behalf. The seventy lakh shares of SCL were received in the beneficiary account of the Noticee towards trades of the aforesaid client as per his instruction. The shares were transferred in advance in its account as a precaution to avoid auction. Further, as the Noticee is not connected with any depository therefore, it is difficult for its client to give instructions frequently.*

- *The Noticee has also submitted copy of letters dated December 1, 2009, March 28, 2010, June 25, 2010, September 27, 2010 and December 27, 2010 by which it requested its client (Mr. Manish Mansukhlal Raja) to give instructions to sell the shares or to transfer the said shares back to his account. The said client gave instruction to transfer back only 8,00,000 shares vide his letter dated December 5, 2009 and the balance shares remained with the Noticee.*

- *The Noticee has also stated that as it was dealing on behalf of its client as a stock broker in the ordinary course of business, therefore, it is exempted from making the alleged disclosures in terms of regulation 3(1)(f)(i) of the SAST Regulations.*

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the allegations against the Noticee, the written and oral submissions made by it and the documents available on record. It has been alleged in the SCN that the Noticee had acquired more than 5% shares/voting rights in SCL and it failed to disclose the aggregate of its shareholding and voting rights in SCL to the Company and to the stock exchanges within the prescribed time, which is in violation of the provisions of regulation 7(1) of the SAST Regulations. It has also been alleged that the Noticee was holding more than 5% shares/voting rights in SCL and it failed to disclose to the Company in the prescribed form and within the prescribed time the number of shares held by it in terms of the provisions of regulation 13(1) of the PIT Regulations. These regulations are as under:

> ***Regulation 7(1) of SAST Regulations:-***
>
> ***7. Acquisition of 5 per cent and more shares or voting rights of a company.***
>
> *(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*
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> ***Regulation 13(1) of PIT Regulations:-***
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> ***13.****(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:-*
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> *(a) the receipt of intimation of allotment of shares; or*
>
> *(b) the acquisition of shares or voting rights, as the case may be.*

9. Regulation 7(1) of the SAST Regulations, *inter alia*, requires that any acquirer who 'acquires' shares or voting rights in a listed company, in any manner whatsoever, which entitles him to exercise more than five percent voting rights in the company, shall disclose, at every stage, the aggregate of his shareholding or voting rights in the company to the company and to the stock exchanges where the shares of the company are listed.

10. It is observed that the shares of SCL were listed on BSE and NSE and the Noticee was having 98,03,802 shares of SCL, constituting 5.6% of the issued and subscribed share capital/ voting rights of the Company, in its beneficiary account during the quarter ended on June 30, 2009. Thus, the Noticee was shown as 'beneficial owner' of these shares in the records of the depository. This being so, in view of the provisions of section 2(1)(a) of the Depositories Act, 1996 which defines a 'beneficial owner' to mean a person whose name is recorded as such with a depository, the Noticee was the beneficial owner of these shares. Section 10(3) of this Act further provides that the beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by the depository. It is thus clear that once the shares stand in the name of the Noticee in the records of the depository, it becomes the owner of those shares, therefore, the Noticee will be deemed to be acquirer of those shares for the purposes of SAST Regulations and as the acquisition/shareholding exceeds the threshold limit prescribed under regulation 7(1) of the SAST Regulations, the same should have been complied with by the Noticee.

11. Regulation 13(1) of the PIT Regulations requires a person holding more than five percent shares or voting rights in a company to make disclosure regarding the number of shares/voting rights held by him to the company in prescribed form within the prescribed time. In this regard it is observed that the aforesaid shares were lying in the beneficiary account of the Noticee and as it has been already said that the Noticee would be deemed to be the owner of those shares therefore, it can be concluded that the Noticee was the holder of those shares. Further, as its shareholding exceeded the 5% threshold limit prescribed under regulation 13(1) of the PIT Regulations, therefore, the disclosure in terms of the said regulation should have been made.

12. Thus, in law the Noticee was the acquirer and holder of the shares lying in its beneficial owner account. Further, the Noticee has not disputed that it has not made the required disclosures under regulation 7(1) of the SAST Regulations or under regulation 13(1) of the PIT Regulations. However, it has submitted that it was holding these shares on behalf of its clients in the ordinary course of its business as a stock broker and hence, it was exempted from making the alleged disclosures in terms of the provisions of regulation 3(1)(f)(i) of the SAST Regulations. This provision has no relevance with regard to disclosures under PIT Regulations. As far as disclosures under SAST Regulations is concerned, I do not find any merit in this submission of the Noticee because the opening words of regulation 3 of the SAST Regulations makes it amply clear that the exemptions are only in respect of making of public announcement in terms of the provisions of SAST

Regulations. No exemption has been provided for making disclosures. In view of the above, I hold that the Noticee has failed to make the disclosures within the prescribed time and manner in terms of the provisions of regulation 7(1) of the SAST Regulations and regulation 13(1) of the PIT Regulation after acquiring the shares of SCL on June 10, 2009.

13. During the examination/investigations the Noticee has stated in various communications to SEBI that from the shares in its beneficiary account, some 70 lakh shares of SCL belonged to one of its client who intended to sell those shares and therefore the shares were kept with it as a precaution to avoid auction. The shares were lying in the beneficiary account of the Noticee for a very long period. Therefore, it has also been alleged in the SCN that the Noticee lacked in due skill, care and diligence in the conduct of its business as a stock broker in violation of the provisions of clause A (2) of the code of conduct for Stock Brokers specified in schedule II read with regulation 7 of the Brokers Regulations. In this regard, it is observed that during the examination/investigations and also during the present proceedings the Noticee has stated in various communications to SEBI and its reply that, from the shares in its beneficiary account, some 70 lakh shares of SCL belonged to one of its clients. If this is the fact, then the Noticee, as a stock broker was under obligation to act with due skill care and diligence. From the documents available on record it is also observed that these shares remained in the beneficiary account of the Noticee for a very long period of approximately one and a half year. It cannot be accepted that it is part of the business activities of a stock broker to keep shares belonging to its clients in its beneficiary account for such a long period. Further, the name of the Noticee as substantial shareholder of SCL was also appearing on the website of the stock exchanges. Thus, the act of the Noticee has not only allowed its client to hide his shareholding in the Company, from the Company and other investors but also mislead them. Therefore, I hold that the Noticee has failed to exercise due skill, care and diligence in the conduct of its business as a stock broker and has thus contravened the provisions of clause A (2) of the code of conduct for Stock Brokers specified in schedule II read with regulation 7 of the Brokers Regulations.

14. Therefore, in light of the above mentioned facts and circumstances of the case, I hold the Noticee liable for violation of provisions of regulation 7(1) of the SAST Regulations and regulation 13(1) of the PIT Regulations. For these violations the Noticee is liable for imposition of penalty under section 15A (b) of the SEBI Act. Further, as has been stated above, the Noticee has also violated the provisions of clause A (2) of the code of conduct for stock brokers as specified under schedule II read with regulation 7 of the Brokers

Regulations, which make it liable for penalty under the provisions of section 15HB of the SEBI Act as well. These provisions are mentioned below:

> ***15A. Penalty for failure to furnish information, return, etc. -*** *If any person, who is required under this Act or any rules or regulations made there under, -*
>
> *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.*

> ***15HB. Penalty for contravention where no separate penalty has been provided***
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> *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided , shall be liable to a penaly which may extend to one crore rupees.*

15. While determining the quantum of monetary penalty under section 15 A (b) and 15HB of the SEBI Act, it is important to consider the factors stipulated under section 15J of the SEBI Act, which reads as under:-

> ***15J - Factors to be taken into account by the adjudicating officer***
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> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
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> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
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> *(b) the amount of loss caused to an investor or group of investors as result of the default;*
>
> *(c) the repetitive nature of the default.*

16. In this regard, I would like to mention that from the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage which may have accrued to the Noticee or the loss that the investors would have incurred as a result of the aforesaid default by the Noticee. However, the fact remains that failure on the part of the Noticee to take prompt and effective actions allowed its client to take substantial position in the shares of SCL without disclosing it to the Company or shareholders and also allowed misleading information to remain in public domain. It is also observed that change in the shareholding and timely disclosures thereof, is of prime importance from the point of view of shareholders/investors as that would have prompted them in making decision on investments or otherwise. It would also be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the said change in the shareholding. On account of failure on the part of the Noticee to make the

necessary disclosures on time and to take prompt and effective action, the fact remains that the concerned stakeholders were deprived of the important information at the relevant point of time. There is nothing on record to show that the default of the Noticee is repetitive.

ORDER

17. Therefore, after considering all the facts and circumstances of the case, in exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose on the Noticee a penalty of ₹ 2,00,000/- (Rupees two lakh only) in terms of the provisions of Section 15A(b) of the SEBI Act for the violation of the provisions of regulation 7(1) of the SAST Regulations and regulation 13(1) of the PIT Regulations and a penalty of ₹ 1,00,000/- (Rupees one lakh only) under section 15HB of the SEBI Act for the violation of the provisions of Code of Conduct for Stock Brokers (i.e. a consolidated penalty of ₹ 3,00,000/-). In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

18. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to - The Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

19. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date : December 20, 2011 **Satya Ranjan Prasad**

Place : Mumbai **Adjudicating Officer**