

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/RGA/AO/76/2014]

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

In respect of

M/s Virtuous Share Investments Pvt Ltd.

(Pan No. AAACV2933N)

In the matter of

M/s Sun Pharma Advanced Research 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 Sun Pharma Advanced Research Ltd. (hereinafter referred to as '**SPARL/company**') and into possible violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') and various rules and regulations made there under for the period from April 01,

2013 to April 30, 2013 (hereinafter referred to as '**examination period**').

2. The examination inter-alia revealed that the shares of SPARL are listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange Limited (NSE). M/s Virtuous Share Investment Ltd. (hereinafter referred to as '**Noticee**'), one of the promoter group entity of SPARL had violated provisions of regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated April 10, 2014 under section 15 I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A (b) of the SEBI Act, 1992 for the alleged violation of regulation 13(1) of PIT Regulations, 1992.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. ASK/RGA/15708/2014 dated June 02, 2014 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A (b) of the SEBI Act, 1992 for the alleged violation specified in the SCN.
5. Vide letter dated June 26, 2014, the Noticee filed a reply to the SCN. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of

personal hearing on August 20, 2014 vide notice dated July 21, 2014. The Authorized Representative appeared on behalf of the Noticee and reiterated the submissions of the Noticee and sought two days time for filing additional written submissions. Accordingly, vide letter dated August 25, 2014 the Noticee filed additional written submissions.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee had violated the provisions of regulation 13(1) of PIT Regulations, 1992?
 - b. Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?
7. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.

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 :—

- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be.*

Finding

The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticee had violated the provisions of regulation 13(1) of PIT Regulations, 1992?

8. It was observed during examination that
 - a) The Noticee is a promoter group entity of SPARL.
 - b) Pursuant to the Rights Issue, SPARL had allotted 16,49,653 partly paid-up shares to the Noticee on October 03, 2012. Consequently, shareholding of the Noticee increased from 1,03,18,427 constituting 4.98% of the share capital of SPARL to 1,19,68,080 shares constituting 5.06% of the share capital of SPARL. The intimation of receipt of allotment was received by the Noticee on October 10, 2012.
9. In this regard, I note that as per regulation 13(1) of PIT Regulations, 1992, any person who holds more than 5% shares or voting rights in any listed company, shall disclose to the company the number of shares or voting rights held by such person on becoming the holder within two working days of the receipt of allotment of shares or acquisition of shares or voting rights. In the instant case, consequent to the allotment of shares pursuant to Rights Issue shareholding of the Noticee increased from 1,03,18,427 constituting 4.98% of the share capital of SPARL to 1,19,68,080 shares constituting 5.06% of the share capital of SPARL. The intimation of receipt of allotment was received by the Noticee on October 10, 2012. The Noticee having exceeded the benchmark limit of 5% as specified under regulation 13(1) of PIT Regulations, 1992, was required to disclose its shareholding to the company i.e. SPARL on becoming such holder of 5% within two days from the receipt of intimation of allotment of shares

i.e. on or before October 12, 2012. On the basis of information submitted by the Noticee, it is observed that the Noticee had failed to make disclosure under regulation 13(1) of PIT Regulations, 1992. I find from the reply of the Noticee to the SCN that the Noticee has not disputed the allotment of shares through Rights Issue.

10. The Noticee has contended that it was under an assumption that since it was a part of promoter group of SPARL, the applicable regulation for disclosure was regulation 13(4A) of PIT Regulations, 1992. Accordingly, the Noticee has filed disclosure under regulation 13(4A) of PIT Regulations, 1992 in Form D and not under regulation 13(1) of PIT Regulations, 1992 in Form A. The disclosure under regulation 13(4A) of PIT Regulations, 1992 was made by the Noticee with a delay of more than a month. The particulars to be disclosed in Form A and Form D are almost identical and hence all the material information were available for the public at large.

11. I do not find merit in the contention of the Noticee. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal (SAT) in *Premchand Shah and Others V. SEBI* dated February 21, 2011, wherein it was held that *".....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments....."*

12. I find that the obligation to make disclosure under regulation 13(1) of PIT Regulations, 1992 is independent of obligation to make disclosure under 13(4A) of PIT Regulations, 1992. Also, there is a separate format prescribed for disclosure under each regulation. If a

person/entity triggers both the regulations, the obligation to make disclosure is under both the regulations separately. Notwithstanding this, even if one were to treat the compliance under regulation 13 (4A) of PIT Regulations, 1992 as compliance under regulation 13 (1) of PIT Regulations, 1992, as claimed by the Noticee, no relief can be granted to the Noticee for its non-compliance under regulation 13(1) of PIT Regulations, 1992, for the reason that even the disclosure under regulation 13 (4A) of PIT Regulations, 1992 was admittedly filed by the Noticee with a delay of more than a month.

13. Another contention of the Noticee is that the company has filed detailed shareholding pattern and distribution schedule on October 04, 2012, i.e. within one day of allotment of shares which provides a detailed shareholding pattern of SPARL. Failure to file Form A under regulation 13(1) of PIT Regulations, 1992 did not result in any gains for the company nor did it adversely affect the public shareholders of the company, as the shareholding was of the Noticee in SPARL was available on the website of the stock exchanges and other quarterly filings made by the SPARL under the Listing Agreement. The contention of the Noticee is not acceptable. Disclosures under Listing Agreement is filed by the company and not by the promoters/Noticee. The disclosure obligation of the Noticee under PIT Regulations, 1992 is mandatory and independent of the disclosure obligation by the company under Listing Agreement.

14. The Noticee in his additional submissions has stated that it has filed the necessary disclosure under regulation 13(1) of PIT Regulations, 1992 in Form A on August 23, 2014, i.e. post hearing. It is pertinent to state that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. I am of the view that when mandatory time period is stipulated for doing a particular activity,

completion of the same after that period would constitute default in compliance and not delay.

15. Therefore, I hold that the Noticee has violated regulation 13(1) of PIT Regulations, 1992.

(b) Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?

16. In this context, I would like to quote the observations of The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} 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 and hence the intention of the parties committing such violation becomes wholly irrelevant...*”.

17. As the violation of the statutory obligation under regulation 13(1) of PIT Regulations, 1992 has been established, I am convinced that it is a fit case for imposing monetary penalty under section 15A(b) of SEBI Act, 1992, which reads as under:-

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)

(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.

(c)

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

18. While determining the quantum of penalty under section 15A (b) of SEBI Act, 1992 , it is important to consider the factors stipulated in section 15J of SEBI Act, 1992, 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.”*

19. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by not making the specified disclosures on the due dates. However, the fact remains that by not making the required disclosures, the Noticee had deprived the investors of important information at the relevant time. It is noted that the violation is not repetitive in nature.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 3,00,000/- (Rupees

Three Lakh Only) on the Noticee which will be commensurate with the violation committed by it.

21. 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 General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. 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: AUGUST 27, 2014
PLACE: MUMBAI

A. SUNIL KUMAR
ADJUDICATING OFFICER