

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/867/2017]

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:

Ms. Mala R. Bhavnani (PAN: AAFPB1108B)

In the matter of

SAMRAT PHARMACHEM LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') had examined the trading in the scrip of Samrat Pharmachem Limited (hereinafter referred to as the 'target company' / 'SPL') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act, 1992') and various Rules and Regulations made there under during the period from January 01, 2014 to March 31, 2014.
2. During the relevant period, upon perusal of the quarterly shareholding pattern of SPL from the BSE website for the quarter ended December 2013, it was observed that Ms Mala Bhavnani (hereinafter referred to as the 'Noticee') was holding 1,47,865 shares of SPL representing 4.79% of the share capital of the company. Further, the shareholding pattern of SPL for the quarter ended March 2014 disclosed that the Noticee was holding 1,58,519 shares of SPL representing 5.13% of the share capital of the company.
3. Upon further examination, it was observed that the Noticee had purchased altogether 10,654 shares of SPL from January 01, 2014 to March 31, 2014. On perusal of the holding statement of the Noticee from January 01, 2014 to March 31, 2014, it was observed that there was a change in shareholding of the Noticee

from March 05, 2014 to March 06, 2014 i.e. her shareholding had crossed from 4.86% to 5.02% of the share capital of the company which required her to make necessary disclosures under Regulation 29(1) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the 'SAST Regulations') and Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations').

4. However, it was observed that the Noticee had not made any disclosures to the target company under the PIT Regulations. Further, with respect to the disclosures as required under the SAST Regulations, it was observed that the Noticee had made the requisite disclosures as required under Regulation 29(1) of the SAST Regulations with a delay i.e. on May 02, 2014 along with the other purchases to the BSE and SPL.
5. SEBI, therefore, initiated adjudication proceedings against the Noticee for the alleged violation of the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations by the Noticee in the matter of SPL.

Appointment of Adjudicating Officer

6. I have been appointed as the Adjudicating Officer, vide order dated August 02, 2016, under Section 15-I of the SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violation of the abovementioned provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

7. Accordingly, a show cause notice bearing no. EAD-2/DSR/RG/27656/1/2017 dated November 09, 2017 (hereinafter referred to as the 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring her to show cause as to why an inquiry should not be held against her for the alleged violation of provisions of law. Vide letter dated November 23, 2017, the Noticee, while admitting the violation of provisions of law, also sought an opportunity of personal

hearing in the matter. Since the Noticee has expressly admitted the violation of provisions of law, I proceed further in the matter.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges levelled against the Noticee as per the SCN, reply filed by her and the material as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations?

(b) Do the violations, if any, on the part of the Noticee attract any penalty under Section 15A (b) of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

9. Before proceeding further, it will be appropriate to refer to the relevant provisions of law which read as under:

Relevant provisions of PIT Regulations:

Disclosure of interest or holding in listed companies by certain persons -

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.

Relevant provisions of the SAST Regulations:

Disclosure of acquisition and disposal

29(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, --

- (a) Every stock exchange where the shares of the target company are listed; and
- (b) The target company at its registered address.

10. I find from the SCN that during the relevant period, upon perusal of the quarterly shareholding pattern of SPL from the BSE website for the quarter ended December 2013, it was observed that the Noticee was holding 1,47,865 shares of SPL representing 4.79% of the share capital of the company. Further, the shareholding pattern of SPL for the quarter ended March 2014 disclosed that the Noticee was holding 1,58,519 shares of SPL representing 5.13% of the share capital of the company. Upon further examination, it was observed that the Noticee had purchased altogether 10,654 shares of SPL from January 01, 2014 to March 31, 2014. On perusal of the holding statement of the Noticee from January 01, 2014 to March 31, 2014, it was observed that there was a change in shareholding of the Noticee from March 05, 2014 to March 06, 2014 i.e. her shareholding had crossed from 4.86% to 5.02% of the share capital of the company. The details of the trading activity of the Noticee are as under:

Date of transaction	Client Name	Counterparty Client Name	Transaction type	Bkng Quantity
03/03/2014	Mala Bhavnani R	Kotak Securities Limited	On market	1738
04/03/2014	Mala Bhavnani R	Kotak Securities Limited	On market	154
05/03/2014	Mala Bhavnani R	Kotak Securities Limited	On market	307
06/03/2014	Mala Bhavnani R	Kotak Securities Limited	On market	5000
07/03/2014	Mala Bhavnani R	Kotak Securities Limited	On market	2000
11/03/2014	Mala Bhavnani R	Kotak Securities Limited	On market	236
12/03/2014	Mala Bhavnani R	Kotak Securities Limited	On market	27
20/03/2014	Mala Bhavnani R	Kotak Securities Limited	Off market	1192

- 11.**The BSE website was verified to check whether the Noticee has made the requisite disclosures as required under the SAST Regulations and the PIT Regulations. Upon verification, it was observed that the Noticee had not made any disclosures under the PIT Regulations. Further, with respect to the disclosures as required under the SAST Regulations, it was observed that the Noticee had made the requisite disclosures under Regulation 29(1) of the SAST Regulations with a delay i.e. on May 02, 2014 along with the other purchases.
- 12.**I further find from the SCN that to ascertain whether the Noticee had made the requisite disclosures to the company, vide email dated July 16, 2014, SEBI had sought information from SPL. Vide reply dated July 18, 2014, SPL had informed SEBI that it did not receive any disclosures from the Noticee under Regulation 13(1) of the PIT Regulations. However, with respect to the disclosures under Regulation 29(1) of the SAST Regulations, the company submitted that it had received the requisite disclosures from the Noticee.
- 13.**It was, therefore, alleged in the SCN that the Noticee, by failing to make the necessary disclosures as required under Regulation 13(1) of the PIT Regulations and by making the requisite disclosures under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations belatedly had violated the said provisions of law.
- 14.**Vide letter dated November 23, 2017, the Noticee submitted her reply. The Noticee submitted that she had been acquiring shares of the company on BSE since August 03, 2011 until April 23, 2014. On March 06, 2014, she had purchased 5000 shares of SPL for ₹ 1,05,982/30 and admittedly her shareholding had crossed 5% in the company. The Noticee further stated that during the period from March 06, 2014 till April 23, 2014, she had purchased a total of 10,637 shares of SPL on BSE for a total sum of ₹ 2,22,540 / 91 (this included the 5000 shares purchased by her on March 06, 2014). The Noticee submitted that she has not purchased any more shares of the company since April 23, 2014 till date and the shares which were purchased by her were by way of investment.

15. With respect to the allegation of disclosures under Regulation 29(1) of the SAST Regulations, the Noticee admittedly has stated that the said disclosures were made by her to BSE on May 02, 2014 and to the company on May 05, 2014. In support of the said submission, the Noticee has submitted the acknowledged copies of the disclosures so made by her to the BSE and the company. Further, the Noticee submitted that with respect to the disclosures required to be made under Regulation 13(1) of the PIT Regulations, the same were brought to her notice by SEBI letter bearing Ref No. EFD/DRA-I/VK/PP/21584/2015 dated July 31, 2015 and thereafter, the Noticee had immediately made the said disclosures to the company on August 07, 2015. As the query was sent to the company before the said disclosures were made by the Noticee, the Noticee submitted that the company on July 16, 2014 had informed SEBI that no disclosures were received under PIT Regulations from the Noticee. The Noticee submitted that the delayed disclosures were inadvertently made and without any malafide.

16. I have carefully perused the SCN issued to the Noticee and the reply submitted by the Noticee in the matter. I find that the Noticee has, admittedly, made the requisite disclosures under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations belatedly i.e. on May 02, 2014 (to BSE) and May 05, 2014 (to SPL). Further, I find that the Noticee has submitted that the disclosures under Regulation 13(1) of the PIT Regulations were made by her to the company on August 07, 2015 i.e. after receipt of the letter issued by SEBI mentioning the said non-disclosure.

17. Thus, as the Noticee has admitted the said defaults on her part, I conclude that the Noticee, by making the necessary disclosures under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations belatedly has violated the said provisions of law and thus, is liable for monetary penalty as prescribed under Section 15A(b) of the 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 thereunder,--*

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or*

furnish the same within the time specified therefor 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.

18. In **Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI**—the Hon'ble SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”* Further, in the matter of **Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010)**, the Hon'ble SAT had observed *“Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow.”*

19. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, wherein, the Hon'ble Court, *inter alia*, held: *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”*

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

Explanation: *For removal of doubts, it is clarified that the power of an adjudicating officer 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.*

21. At this juncture, I would like to quote the **Order dated September 04, 2013 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Private Limited Vs. SEBI** wherein the Hon'ble SAT had observed that " *It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other* ".

22. In the light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticee in the matter.

23. I observe that, from the material available on record, it is not possible to ascertain any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default. I note that the default of the Noticee is not repetitive in nature. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision.

ORDER

24. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees One Lakh Only) under Section 15A(b) of the

SEBI Act, 1992 on Ms. Mala R. Bhavnani. In my view, the aforesaid penalty is commensurate with the default committed by the Noticee.

- 25.** The amount of penalties shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, BandraKurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai - 400 052."

1.	Case Name :	
2.	Name of Payee:	
3.	Date of Payment:	
4.	Amount Paid:	
5.	Transaction No:	
6.	Bank details in which payments is made :	
7.	Payment is made for: (like penalties/ disgorgement / recovery/ settlement amount and legal charges along with order details)	

- 26.** In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: November 29, 2017
Place: Mumbai

D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER