BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. EAD/BJD/NJMR/162-163/2017-18

UNDER SECTION15-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

1. Mayank Lakhani *(PAN: AFWPL4703L)* H.No. N-15, Third floor Panchsheel Park, Malviya Nagar, New Delhi – 110017.	2. Suman Lakhani *(PAN: AAGPL7939R)* 1339, Sector 14 Faridabad – 121007.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) while conducting an examination in the scrip of Lakhani India Ltd., (**"Lakhani" / "Company"**) on August 22, 2014 observed that there were inter-se transfer of 63,68,075 shares of the Company among the promoters viz., Mayank Lakhani and Suman Lakhani *(hereinafter referred to as **"Noticees")***. In view of the inter-se transfer of shares among the promoters, it was observed that the Noticees failed to make the necessary disclosures which were required to be made by them, in terms of the provisions of SEBI (Prohibition of Insider Trading Regulations), 1992 *(hereinafter referred to **"PIT Regulations")*** and SEBI (Substantial Acquisition of Shares & Takeovers), 2011 *(hereinafter referred to **"SAST Regulations")***. Therefore, it was alleged that the Noticees have violated the provisions of Regulation 13 (3), 13 (4A) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 and Regulation 29 (2) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated May 18, 2017 *(communicated vide Order dated November 7, 2017)* under Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"Adjudicating Rules")** to inquire into and adjudge under Section 15 A (b) of the SEBI Act for the alleged violation of provisions SEBI (PIT) Regulations and SEBI (SAST) Regulations.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice (hereinafter referred to as **"SCN"**) bearing ref. no. EAD/BJD/NJMR/1139/2018 dated January 11, 2018 was issued to the Noticee under Rule 4 of SEBI Adjudicating Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15 A (b) of the SEBI Act, 1992 for the violation alleged to have been committed by them.

4. It was alleged in the SCN that that there was an inter-se transfer of 63,68,075 shares amongst two promoters viz., Suman Lakhani and Mayank Lakhani in the scrip of Lakhani India Ltd., on August 22, 2014. It was observed that Mayank Lakhani had transferred 63,68,075 shares to Suman Lakhani through off-market. As a result, the shareholding of Suman Lakhani increased from 11.07% (14,89,510 shares) to 58.4% (75,57,585 shares) and shareholding of Mayank Lakhani decreased from 47.33% (63,68,075 shares) to 0% (NIL shares), of the total shareholding. It was observed that no disclosures were available on the website of Bombay Stock Exchange Ltd., (BSE), where the shares of Lakhani India Ltd., were listed. It was also confirmed by BSE vide email dated October 27, 2014 that no disclosures were received under Regulation 29 of SEBI (SAST) Regulations and Regulation 13 of SEBI (PIT) Regulations from the the two promoters viz., Suman Lakhani and Mayank Lakhani.

5. The SCNs sent to the Noticees at the four addresses in Faridabad and New Delhi by Speed Post acknowledgement due, returned undelivered with the remarks *"left".* The SCNs sent by digitally signed emails bounced.

6. Accordingly, in terms of Rule 7 (c) of Adjudicating Rules, the SCNs and the Notice of hearing dated February 7, 2018 were affixed on February 15 & 18, 2018 at the outer door of the premises, in which the Noticees known to have last resided or carried on business. The affixture reports witnessed by two persons is on record. Vide notice of hearing dated February 7, 2018, the Noticees were provided with an opportunity of personal hearing scheduled on March 6, 2018.

7. In the said SCNs it was specifically stated that, if the Noticees fails to submit their reply to the SCN within 14 days from the date of receipt of SCN, it will be presumed that the Noticees have no submissions to offer in their defence and the matter would be further proceeded with on the basis of the material available on record. I note that neither the Noticees submitted their reply to the SCN nor availed the opportunity of personal hearing scheduled on March 6, 2018. For the reasons mentioned above, I observe that the Noticees were provided with enough opportunities to submit their reply/ to be heard and in view of no reply / appearance for hearing, I am constrained to proceed ex-parte with the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES

8. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have failed to make disclosures under the relevant provisions of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011.

   After perusal of the material available on record, I have the following issues for consideration, viz.,

a. *Whether the Noticees have violated the provisions of Regulation 13 (3), 13 (4A) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (2) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011?*

b. *Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?*

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?*

ISSUE-1: Whether the Noticees have violated the provisions of Regulation 13 (3), 13 (4A) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (2) read with Regulation 29 (3) of SEBI (SAST) Regulations?

9. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992 and SEB (SAST) Regulations, 2011, which reads as under:

Regulation 13 (3) of SEBI (PIT) Regulations, 1992

Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

Regulation 13 (4A) of SEBI (PIT) Regulations, 1992

Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing

Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Regulation 13 (5) of SEBI (PIT) Regulations, 1992

The disclosures mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of

(a) the receipt of intimation of allotment of shares or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Regulation 29 (2) of SEBI (SAST) Regulations, 2011

Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

Regulation 29 (3) of SEBI (SAST) Regulations, 2011

The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the 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 office.

FINDINGS

10. Now, I deal with the allegations levelled against the Noticees and record my findings hereunder.

(a) I note that the shares of Lakhani were listed in Bombay Stock Exchange (BSE). As per the BSE's Notice no., 20060830-11 dated August 30, 2006, the scrip "Lakhani India Ltd.," was suspended for trading w.e.f October 20, 2006 for its failure to comply with various provisions of the Listing Agreement till quarters ended December 2005. I also note that Hon'ble High Court of Punjab & Haryana at Chandigarh vide Order dated April 21, 2015 and May 25, 2015 passed in C.P. No. 159 of 2013, had appointed the Official Liquidator attached to Hon'ble High Court of Punjab & Haryana at Chandigarh as the Provisional Liquidator of Lakhani India Ltd., and thereafter, Hon'ble High Court of Punjab and Haryana at Chandigarh pleased to pass Orders to wound up the Company vide Order dated August 24, 2015.

(b) I am of the view that since the Company has been order to be wound up, there is no restriction to proceed against its Directors for their failure to make the requisite disclosures in terms of SEBI (PIT) & SEBI (SAST) Regulations.

(c) I note that it is obligatory on the part of the Promoters / Directors to make the requisite disclosure to the Stock Exchange and to Company once the prescribed shareholding limits were exceeded, irrespective of the mode and manner of acquisition of the shares.

(d) I note that the Noticees were promoters of the Company Lakhani India Ltd., who were holding 63,68,075 shares (Mayank Lakhani) and 14,89,510 shares (Suman Lakhani), which constitutes 47.33% and 11.07% respectively, of the total shareholding of the Company. On August 22, 2014, Mayank Lakhani had transferred his entire shareholding of 63,68,075 shares to Suman Lakhani through off-market, which constitutes inter-se transfer of shares amongst the two promoters of the Company. Pursuant to inter-se transfer of shares, the shareholding of Mayank Lakhani decreased from 47.33% (i.e, 63,68,075 shares) to 0% (i.e, NIL shares) and the shareholding of Suman Lakhani increased from 11.07% (i.e., 14,89,510 shares) to 58.4% (i.e., 75,57,585 shares). Thus

the aforementioned inter-se transfer of shares *(through off-market)* amongst the Promoters of the Company triggered disclosure requirements under the relevant provisions of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011.

(e) In view of the above, there was change in shareholding of the Noticees, which was more than 2% of their total shareholding in the Company. Therefore, in terms of Regulation 13 (3) of SEBI (PIT) Regulations, 1992, the Noticees were under an obligation to make the necessary disclosures to the Company within two working days of the acquisition / sale of shares. Further, the Noticees being the promoters of the Company, the inter-se transfer of shares as mentioned above resulted in change in shareholding, which exceeded ₹ 5 lakhs in value or 25,000 shares or 1% of their total shareholding in the Company. Therefore, in terms of Regulation 13 (4A) of SEBI (PIT) Regulations, 1992, the Noticees were required to make the requisite disclosures to the Company & BSE. Similarly, in terms of Regulation 29 (2) of SEBI (SAST) Regulations, 2011, as the change in shareholding was more than 5% of their total shareholding in the Company, the Noticees were required to disclose the change in shareholding within two working days to the Company & BSE. I observe from the records made available to me that the Noticees had failed to make the necessary disclosures in terms of Regulation 13 (3), 13 (4A) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (2) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011 to the Company and to BSE *(as applicable).*

(f) I also note that pursuant to inter-se transfer of shares as stated above, no disclosures under SEBI (PIT) Regulations and SEBI (SAST) Regulations, were observed to have been made by the Noticees, as per BSE website. I also note that BSE vide email dated October 27, 2014 had confirmed that it has not received any disclosures from the Noticees in terms of SEBI (PIT) Regulations and SEBI (SAST) Regulations.

(g) Therefore, in view of the foregoing, I find that the Noticees had not made the requisite disclosures under the provisions of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011, to the Company and to BSE, *(as applicable)*.

11. The object of requiring such disclosure to be made with two days under SEBI (PIT) and SEBI (SAST) Regulations, is with a view to ensure that there is no abuse on account of investor being not aware of such change in shareholding of a Promoter / Director, who is an insider under SEBI (PIT) Regulations.

12. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that:
"*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.*"

13. In the matter of Ashok Jain Vs SEBI (Appeal No 79 of 2014 dated June 09,2014), Hon'ble SAT observed "…… under SAST Regulations 1997 as also under SAST *Regulations, 2011* *disclosures are liable to be made within specified days* *irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure* *within the time stipulated under those regulations*"*(Emphasis supplied).*

14. In view of the foregoing, I conclude that the Noticees by not making the requisite disclosures with regard to their change in shareholding in terms of

SEBI (PIT), 1992 and (SAST) Regulations, 2011 have violated the provisions of Regulation 13 (3), 13 (4A) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 and Regulation 29 (2) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011.

ISSUE – 2: Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?

15. It is a well-known fact and practice that as per the requirements of SEBI (PIT) Regulations, there is a requirement of timely disclosure of change in shareholding beyond certain threshold by Promoter / Director. It is obligatory on the part of the Promoter / Director to make timely disclosures to Stock Exchange and to the Company. By not making the requisite disclosures under SEBI (PIT) & (SAST) Regulations, the Noticees have failed to comply with the statutory requirements of Law. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. There can be no dispute that compliance with the provisions of the Regulations is mandatory and it is the duly of SEBI to enforce compliance of these Regulations. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all.

16. Hon'ble SAT in the case of Coimbatore Flavors & Fragrances Ltd. V.SEBI (Appeal No. 209 of 2014) observed *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same." (Emphasis supplied).*

17. As the violation of the statutory obligation under the provisions respective Regulations of SEBI (PIT) and (SAST) Regulations have been established

against the Noticees, the Noticee are liable for monetary penalty under Section 15 A (b) of SEBI Act.

18. The provisions of Section 15 A (b) of SEBI Act are reproduced hereunder.

Penalty for failure to furnish information, return, etc.

Section 15A of SEBI Act– *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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees*

ISSUE – 3 - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

19. While determining the quantum of monetary penalty under Section 15 A (b) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 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.

20. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to

investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. However, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision.

21. There is no dispute that the Noticees failed to make the requisite disclosures to the BSE and the Company in terms of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, which would have deprived investors in taking informed decision. Any lapse in such matters would be detrimental to the interest of investors. Therefore, I am not inclined to view the lapse on the part of the Noticees leniently and consider it necessary to impose monetary penalty which would act as deterrent to the Noticees in future.

ORDER

22. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of ₹ 2,00,000/- (Rupees Two lakhs only) each on the Noticees i.e., Mayank Lakhani and Suman Lakhani, {totalling ₹ 4,00,000/- Rupees Four lakhs only}, under the provisions of Section 15 A (b) of SEBI Act for violating the provisions of Regulation 13 (3), 13 (4A) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 and Regulation 29 (2) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011. The said penalty imposed on the Noticees, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

23. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI -

Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

24. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department, DRA-I, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	

25. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: 8 March 2018 **B J DILIP**

Place: Mumbai **Adjudicating Officer**