

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/SR/SJ/AO/43/2018-19]

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

Against

Mr. Abhishek Mehta

(PAN: AGCPM6239M)

In the matter of Acclaim Industries Limited

FACTS OF THE CASE IN BRIEF

1. Investigation Department (hereinafter referred to 'OD') of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigation in the trading activities of certain entities in the scrip of Acclaim Industries Limited (hereinafter referred to as '**AIL**' / '**target company**'). The said investigation revealed that Mr. Abhishek Mehta (hereinafter referred to as '**Noticee**') had not made required disclosures under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**SEBI (PIT) Regulations**') and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SEBI (SAST) Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said investigation, OD of SEBI initiated Adjudication Proceedings against the Noticee and appointed Shri Nagendraa Parakh as Adjudicating Officer, under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing

Adjudication Order against Mr. Abhishek Mehta in the matter of Acclaim Industries Limited.

Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under section 15A(b) of SEBI Act the alleged violations of provisions of Regulations 13(3), 13(4), 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations and Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations by the Noticee. Subsequently, the matter was transferred to me and I was appointed as the Adjudicating Officer vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice dated February 01, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticee under rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against him and why penalty under section 15A(b) of SEBI Act be not imposed on him for the violations alleged and specified in the said SCN. The SCN was sent through the speed post acknowledgment due. The said SCN has not return undelivered, however, the acknowledgment of delivery has not been received. Therefore, in the interest of justice, the copy of the SCN was uploaded on SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices and the said SCN was also affixed at the last known address of the Noticee. In this regard the affixture report is available on record.
4. It was alleged in the said SCN that the shares of the target company are listed at Bombay Stock Exchange Ltd. (**BSE**). The Noticee was one of the promoters and Managing Director of the target company. As on June 30, 2012 the Noticee was holding 15,37,700 shares of AIL representing 30.76% of the paid up capital of AIL. The Noticee sold 7, 44,918 shares of AIL during the period between July 11, 2012 and August 9, 2012. As a result of sale of said number of shares of AIL by the Noticee, his shareholding came down significantly from 30.76% to 15.85% of paid up capital of AIL. Further, on January 18, 2013, the Noticee sold 2,50,000 shares of AIL thereby reducing his shareholding to 10.86% of paid up capital of AIL. Finally, on February 07, 2013, the Noticee sold 30,000 shares of AIL and his shareholding reduced to 10.25% of paid up capital of AIL. The Noticee was required to make disclosures under Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(3), 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 at several occasions detailed in the table below. Details of the shares sold by the Noticee and

disclosure violations alleged to have been committed by him was provided to him in a following tabular format:

Date	No of shares held - pre Disposal as PAC	% of shareholding held - pre disposal	No of shares disposed off	No of shares disposed off as a % of paid up capital	Value of transaction > Rs 5 lac	No of shares held - post disposal	% of shareholding held - post / Disposal as PAC	Mode() Market/ off-market	Violation of Reg(s) under SAST Regulations	Violation of Reg(s) under SEBI (PIT) Regulations
11.07.2012	1537700	30.75%	200000	4.0%	Y	1337700	26.75%	market	29(2) r/w 29(3)	13(3), 13(4) & 13(4A) r/w 13(5)
20.07.2012	1337700	26.75%	151250	3.03%	Y	1186450	23.73%	market	29(2) r/w 29(3)	13(3), 13(4) & 13(4A) r/w 13(5)
23.07.2012	1186450	23.73%	10000	0.20%	N	1176450	23.53%	market	N.A	NA
24.07.2012	1176450	23.53%	2197	0.04%	N	1174253	23.49%	market	N.A	NA
25.07.2012	1174253	23.49%	194767	3.90%	Y	979486	19.59%	market	29(2) r/w 29(3)	13(3), 13(4) & 13(4A) r/w 13(5)
27.07.2012	979486	19.59%	77139	1.54%	Y	902347	18.05%	market	NA	13(4) & 13(4A) r/w 13(5)
30.07.2012	902347	18.05%	38660	0.77%	Y	863687	17.27%	market	29(2) r/w 29(3)	13(3), 13(4) & 13(4A) r/w 13(5)
01.08.2012	863687	17.27%	20000	0.40%	Y	843687	16.87%	market	NA	13(4) & 13(4A) r/w 13(5)
07.08.2012	843687	16.87%	25905	0.52%	Y	817782	16.36%	market	NA	13(4) & 13(4A) r/w 13(5)
09.08.2012	817782	16.36%	25000	0.50%	Y	792782	15.85%	market	NA	13(4) & 13(4A) r/w 13(5)
18.01.2013	792782	15.86%	250000	5%	Y	542782	10.86	market	29(2) r/w 29(3)	13(4) & 13(4A) r/w 13(5)
07.02.2013	542782	10.86%	30000	0.60%	Y	512782	10.25	market	NA	13(4) & 13(4A) r/w 13(5)

- It was further alleged that the Noticee, on several occasions as detailed above were required to make required disclosure under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations and Regulation 13(3), 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992. However, the Noticee failed to make the required disclosures within time under the above mentioned provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations, 1992. Even the Noticee vide email dated July 22, 2016 to OD of SEBI admitted that he had not made any disclosure with respect to change in shareholding during the period from July 01, 2012 to March 31, 2013. Further, BSE vide email dated July 19, 2016 to OD of SEBI submitted that it was not in receipt of any disclosures made by the Noticee with respect to change in his shareholding in AIL. The Noticee was therefore, alleged to have failed to make required disclosures to AIL as well as to BSE and alleged to have violated the abovementioned provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations, 1992.

6. The Noticee was also granted an opportunity of personal hearing vide hearing notice dated May 16, 2018 for hearing scheduled on June 28, 2018. The said hearing notice was affixed at the address of the Noticee and the affixture report is available on record. Further, a Public Notice was also given on May 30, 2018 in Times of India, Navbharat Times and Lokmat, all Mumbai Edition and Times of India and Sakal both Pune Edition. The said publication advised the Noticee to submit his reply within 14 days from the date of publication and to appear for Personal Hearing on June 28, 2018. However, neither did the Noticee appear on the scheduled date for personal hearing, nor has the Noticee filed any reply to the said SCN till date.

CONSIDERATION OF ISSUES

7. I have carefully perused the charges levelled against the Noticee in the SCN and the material documents available on record. In the instant matter, the following issues arise for consideration and determination:-
- Whether the Noticee has violated the provisions of Regulations 13(3), 13(4), 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations and Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations?*
 - Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act for the alleged violations by the Noticee?*
 - If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?*
8. Before proceeding further, I would like to refer to the relevant provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations:
- SEBI (SAST) Regulations:***
- Disclosure of acquisition and disposal.***
- 29.(1) ..*
- (2) Any acquirer, 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 every acquisition or disposal of shares of such target*

company representing two percent or more of the shares or more of the shares or voting rights in such target company in such form as may be specified.

(3) 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

SEBI (PIT) Regulations

Disclosure of interest or holding in listed companies by certain persons

Continual disclosure.

13(3) 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.

13(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13(4A) 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 Rs.5 lakh in

value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower.

13(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

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

EVIDENCES AND FINDINGS:

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue a: Whether the Noticee has violated the provisions of Regulations 13(3), 13(4), 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations and Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations?

- i. I find that opportunities were given to the Noticee to submit reply to the SCN and also to appear for personal hearing in the instant adjudication proceedings. However, the Noticee neither replied to the SCN nor attended the personal hearing granted to him. In this regard, it is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed "*... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".
- ii. I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that "*...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*"

- iii. Therefore, in view of the above case laws, it is presumed that the Noticee has admitted the charges levelled against him in the said SCN. However, in the interest of justice, I still proceed to decide the matter on the basis of material available on record. I find that the Noticee was the one of the promoters and Managing Director of AIL at the relevant time and as on July 10, 2012 was holding 15,37,700 shares of AIL representing 30.75% of the paid up capital of AIL. I observe from the table above mentioned on page 3 of this order that the Noticee on July 11, 2012 sold 2,00,000 shares of AIL representing 4% of the paid up capital of AIL. As the Noticee was holding more than 5% of the share capital of AIL, the change in his shareholding was more than 2% and or 25000 shares and the Noticee being the Managing Director and Promoter of AIL, he was required to make disclosure under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations and Regulations 13(3), 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.
- iv. Similarly, the Noticee on July 20, 2012 sold 1,51,250 shares of AIL representing 3.03% of the paid up capital of AIL. As the Noticee was holding more than 5% of the share capital of AIL, the change in his shareholding was more than 2% and or 25000 shares and the Noticee being the Managing Director and Promoter of AIL, he was required to make disclosure under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations and Regulations 13(3), 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.
- v. I further observe that on July 25, 2012, the Noticee sold 1,94,767 shares of AIL representing 3.90% of the paid up capital of AIL. As the Noticee was holding more than 5% of the paid up capital of AIL, the change in his shareholding was more than 2% and or 25000 shares and the Noticee being the Managing Director and Promoter of AIL, he was required to make disclosure under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, Regulations 13(3), 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.
- vi. Further, on July 27, 2012, the Noticee sold 77,139 shares of AIL representing 1.54% of the share capital of AIL. As the Noticee was holding more than 5% of the share capital of AIL and the change in his shareholding was more than 25000 shares and the Noticee being the Managing Director and Promoter of AIL, he was required to make disclosure

under Regulation 13(4) and Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.

- vii. Similarly, on July 30, 2012, the Noticee sold 38,660 shares of AIL representing 0.77% of the share capital of AIL. As the Noticee was holding more than 5% of the share capital of AIL and the change in shareholding of the Noticee from July 27, 2012 to July 30, 2012 was more than 2 % of the total shareholding, he was required to make disclosure under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, and as the change in shareholding on July 30, 2012 was more than 25000 shares and the Noticee being the Managing Director and Promoter of AIL, the Noticee was also required to make disclosures under Regulations 13(3), 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.
- viii. Further, on August 01, 07 and 09, 2012, the Noticee sold 20,000 shares, 25905 shares and 25000 shares of AIL respectively representing 0.40%, 0.52% and 0.50% of the paid up capital of AIL respectively. As the transaction value of the said shares sold by the Noticee on each of the three occasion was more than Rs. 5 lakh and the Noticee being the Managing Director and Promoter of AIL, he was under an obligation to make disclosure under Regulations 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.
- ix. Further, on January 18, 2013, the Noticee sold 2,50,000 shares of AIL representing 5% of the paid up capital of AIL. As the Noticee was holding more than 5% of the paid up capital of AIL, the change in his shareholding was more than 2% and or 25000 shares and the Noticee being the Managing Director and Promoter of AIL, he was under an obligation to make disclosure under Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations and Regulations 13(3), 13(4) and Regulations 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.
- x. Moreover, on February 07, 2013, the Noticee sold 30,000 shares of AIL representing 0.60% of the paid up capital of AIL. As the Noticee was holding more than 5% of the paid up capital of AIL, the change in his shareholding was more than 25000 shares and the Noticee being the Managing Director and Promoter of AIL, he was required to make

disclosure under Regulation 13(4) and Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.

- xi. I observe that the Noticee vide email dated July 22, 2016 to OD of SEBI admitted that he had not made any disclosure with respect to change in shareholding during the period from July 01, 2012 to March 31, 2013. Further BSE vide email dated July 19, 2016 to OD of SEBI submitted that it was not in receipt of any disclosures made by the Noticee with respect to change in shareholdings of the Noticee. I therefore, find that the Noticee did not make any disclosures under the said provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations for any of the above discussed transactions and therefore, conclude that the Noticee violated the said provisions of SEBI (PIT) Regulations and SEBI (SAST) Regulations. In view of this, the allegations levelled against the Noticee in the said SCN stand established.

Issue b: Do the violations, if any, on the part of the Noticee attract any monetary penalty under section 15A(b) of SEBI Act?

10. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure on the part of the Noticee to make required disclosures attracts the imposition of monetary penalty under Section 15A(b) of SEBI Act which is reproduced below:

Penalties and Adjudication

"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,—

(a)

(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.

Issue c - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

11. While determining the quantum of penalty under section 15J of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

SEBI Act

15J “Factors to be taken into account by the adjudicating officer-

While adjudging quantum of penalty under section 23 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.”

12. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to failure on the part of the Noticee to make required disclosures under the provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations. There is no evidence on record to show that the failure is repetitive.
13. I observe that in the matter of *Vitro Commodities Private Limited V SEBI Securities Appellate Tribunal* held 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”.

14. I find that the disclosures under Regulation 29 (2) of SEBI (SAST) Regulations and Regulation 13(3) of SEBI (PIT) Regulations are corollary to one another. Further, disclosures under Regulation 13 (4) and Regulation 13(4A) of SEBI (PIT) Regulations are also corollary to one another in the present case as the Noticee is Managing Director (Officer) and Promoter of AIL. It is also pertinent to note that the intention of both the Regulations is dissemination of information. Considering the same, I am inclined to take a lenient view in the matter. Therefore, taking into consideration the facts / circumstance of the case and the above order of Securities Appellate Tribunal, I am of the view that the Noticee is liable for monetary penalty of Rs. 10,00,000/- (Rupees Ten Lakh only), for his failure to make required disclosures under the aforesaid provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations.

ORDER

15. In exercise of the powers conferred under section 15-I of the SEBI Act and Rule 5 of the Adjudication Rules, I hereby imposed a penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) on the Noticee under section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.
16. The Noticee 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

17. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of

SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No
------	--------------------	--------------------------------------	----------------------	-----------------------------------	-----	-----------------	---	---	--------

18. In terms of the Rule 6 of the Adjudication Rules, copy of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: June 29, 2018

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER