

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/VS/888-890/2017]

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

- 1. Virat Shah (PAN No.: AAGPS1075B)**
- 2. Alok Shah (PAN No.: APAPS8116G)**
- 3. Rajan Shah (PAN No.: AAPPS9702A)**

In the matter of

SHREE SURGOVIND TRADELINK LIMITED

- 1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the irregularity in trading in the shares of Shree Surgovind Tradelink Limited (hereinafter referred to as 'SSTL/Company'), a company listed on Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') and into the possible violations of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992') by its promoters namely Virat Shah, Alok Shah and Rajan Shah (hereinafter collectively referred to as 'the Noticees') during the period September 01, 2013 to March 31, 2014 (hereinafter referred to as the 'Examination Period').**
- 2. SEBI vide letter dated August 28, 2015 had sought certain information from the Company alongwith increase/decrease in the holding of shares / voting rights of the promoters in the prescribed format for the period of March 31, 2013 to March 31, 2014. The Company vide letter dated September 04, 2015 has provided the shareholding details of promoters as under:**

Sr. No.	Name of the Promoter	Holding as on September 30, 2013		Holding as on December 31, 2013		Holding as on March 31, 2014	
		No. of shares	%	No. of shares	%	No. of shares	%
1	Virat Shah	314600	6.28	584500	11.67	773200	15.43
2	Alok Shah	351000	7.00	566000	11.29	711100	14.19
3	Rajan Shah	377300	7.53	730900	14.59	880900	17.58

3. The Company vide its letter dated September 4, 2015 has also submitted the details of the compliances by the promoters regarding aforementioned transactions. However, there is no mention of compliance under Regulation 13 (3) of PIT Regulations, 1992 by the promoters.
4. BSE vide email dated May 30, 2016 has confirmed that the Exchange did not receive the disclosures as required under PIT Regulations, 1992 for the aforementioned period from the entities and / or the Company. Hence, it is alleged that noticees failed to make disclosures in terms of PIT Regulations, 1992 and the details are as under:

Name of the Promoter	Holding before acquisition	No. of shares acquired	Date of acquisition	Change in holding	Violation of PIT Regulations, 1992
Virat Shah	289600 (5.78%)	25000	August 08, 2013	0.50%	13(4A) r/w 13(5)
	314600 (6.28%)	269900	September 30, 2013	5.39%	13(3) and 13(4A) r/w 13(5)
	584500 (11.67%)	188700	March 31, 2014	3.76%	13(3) and 13(4A) r/w 13(5)
Alok Shah	351000 (7.00%)	215000	September 30, 2013	4.29%	13(3) and 13(4A) r/w 13(5)
	566000 (11.29%)	145100	March 31, 2014	2.90%	13(3) and 13(4A) r/w 13(5)
Rajan Shah	377300 (7.53%)	353600	September 30, 2013	7.05%	13(3) and 13(4A) r/w 13(5)
	730900 (14.59%)	150000	March 31, 2014	3.00%	13(3) and 13(4A) r/w 13(5)

Appointment of Adjudicating Officer

5. I have been appointed as the Adjudicating Officer (hereinafter referred to as 'AO') vide Order dated November 15, 2017 under section 15 I of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act, 1992') read with Rule 3 of the 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 violations committed by the Noticees.

Show Cause Notice, Reply and Personal Hearing

6. A common Show Cause Notice dated November 29, 2017 (hereinafter referred to as 'SCN') was issued to the Noticees under Rule 4 of Adjudication Rules to show cause as to why an inquiry be not held and penalty be not imposed under section 15A(b) of SEBI Act, 1992 for the violations alleged to have been committed by the Noticees.
7. Mr. Virat Shah, submitted reply on his behalf and also on behalf of the other two noticees vide letter dated December 05, 2017, inter alia, submitted that

"...I request you to treat this as a reply on behalf of myself, Mr. Rajan Shah and Mr. Alok Shah. Necessary letters of authority from my brother Mr. Rajan Shah and my son Mr. Alok Shah is enclosed as Annexure 1.

At the outset I would like to state that I am surprised to receive such a letter from your office as we have made all the disclosures to the stock exchange and to the company. The company was promoted by Mr. Govindbhai Patel and Mr. Somabhai Virdas Patel and I acquired the shares after entering into an SPA with them on February 05, 2013 and making a public announcement and open offer in accordance with the provisions of the SEBI (SAST) Regulations, 2011. Further I acquired 25000 shares constituting 0.50% offered in the Open Offer by the public shareholders on August 08, 2013 as a part of the open offer formalities. Since I was not a promoter of the company at that time, I was not required to make any disclosure under regulation 13(4A) of the SEBI (PIT) Regulations, 1992. Further since there is no change by more than 2%, there was no requirement to file disclosures under Regulation 13(3) of the SEBI (PIT) Regulations, 1992 either. I would like to submit that we were classified as promoters of the company only after this date.

As regards the other acquisitions on September 30, 2013 and March 31, 2014, attached please find the acknowledgement copies of the disclosures made to the BSE, where the shares of the company, Shree Surgovind Tradelink Limited are listed as Annexure 2 to this letter. It is further submitted that the disclosures have also been made on time without any delay".

8. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the noticees on December 15, 2017. The Authorised Representative(hereinafter referred to as 'AR') appeared and reiterated the submissions made by the noticees vide letter dated December 05, 2017.

Consideration of Issues

9. I have carefully perused the charges levelled against the Noticees as per the SCN, written submissions made by the Noticees and the material available on record. The issues that arise for consideration in present case are:
- a) Whether the Noticees, have violated the provisions of Regulations 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992?
 - b) Do the violations, if any, on the part of the Noticees attract any penalty under Section 15A(b) of the SEBI Act?
 - c) If yes, what should be the quantum of monetary penalty that can be imposed on the Noticees?

Evidence and Findings

10. Before proceeding, it will be appropriate to refer to the relevant provisions of PIT Regulations, 1992 which read as under:

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.*

(4).....

(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 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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.

11. The noticee, Virat Shah vide letter dated December 05, 2017 inter alia, submitted that, “....I acquired 25000 shares constituting 0.50% offered in the Open Offer by the public shareholders on August 08, 2013 as a part of the open offer formalities. Since I was not a promoter of the company at that time, I was not required to make any disclosure under regulation 13(4A) of the SEBI (PIT) Regulations, 1992”. I observe from the shareholding pattern for the quarter ending September 2013, the names of the Noticees were not shown under the category "Promoter and Promoter Group". Therefore, the disclosures pertaining to acquisition of 25,000 shares on August 08, 2013 was not required to be disclosed under Regulation 13(4A) of PIT Regulations, 1992 and I find merit in the submissions of the Noticees in this regard.

12. I observe that for the transaction pertaining to September 30, 2013 and March 31, 2014, the Noticees have submitted the proof of disclosure duly acknowledged by the BSE. I observe that disclosure made by the noticees for the transaction on September 30, 2013 was within stipulated time. I also observe that the Noticees made disclosure to BSE pertaining to March 31, 2014 transaction with a delay of two days. The details of delayed disclosure to BSE are as under:

Sr. No.	Name of Noticee	Due date of compliance	Actual date of compliance	Delay (in day)
1	Virat Shah	02.04.2014	04.04.2014	2
2	Alok Shah	02.04.2014	04.04.2014	2
3	Rajan Shah	02.04.2014	04.04.2014	2

Therefore, I conclude that, the Noticees failed to comply with the Regulations 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992 as regards the transaction pertaining to March 31, 2014 and liable for penalty as prescribed under Section 15 A(b) (as existed during the period of violation) 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,—*

(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.*

13. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, wherein, the Hon'ble court, *inter alia*, held that: “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.”

14. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the 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 the 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*

15. I observe, from the material available on record, that it is not possible to quantify, any gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default of the Noticees. The default is not repetitive in nature.

ORDER

16. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty as under:

Sr. No.	Name	Penalty Amount (in ₹)
1	Virat Shah	1,00,000 /- (Rupees One Lakh Only) payable jointly and severally
2	Alok Shah	
3	Rajan Shah	

In my view, the said penalty is commensurate with the violation committed by the Noticees

17. The Noticees shall remit / pay the said amount of penalties within 45 days of receipt of this order either by way of Demand Draft in favor 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:

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

18. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052."

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

19.In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: December 18, 2017
Place: Mumbai

D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER