

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO.EAD-5/BS/AO/ 41/2017-18]**

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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 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

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In respect of:

**Suraj Limited**

**PAN : AAGCS6939M**

Suraj House, Ashram Road,  
Opp. Usmanpura Garden, Usmanpura,  
**Ahmedabad – 380 014**

*In the matter of Suraj Ltd.*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation into the trading in the scrip of Suraj Ltd. for the period April 01, 2011 to October 31, 2011 (hereinafter referred to as the Investigation Period) and into the possible violation of the provisions of SEBI (Substantial Acquisition of Shares and
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Takeovers) Regulation, 1997 (hereinafter referred to as SAST Regulations), SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations), Listing Agreement and Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA) by Suraj Ltd. (hereinafter referred to as Noticee/ the company).

2. It was alleged that the Noticee did not make correct/no disclosures to the Bombay Stock Exchange, (BSE) where the share of the company are listed (hereinafter referred to as the stock exchange).

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri S. V. Krishnamohan was appointed as Adjudication Officer vide order dated September 02, 2016 to inquire and adjudge under Section 15 A(b) of the SEBI Act and Section 23A(a) of the SCRA, the alleged violation of Regulation 7(3) of SAST Regulations read with Regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, Regulation 13(6) of PIT Regulations and Clause 35 of the Listing Agreement read with Section 21 of the SCRA by the Noticee.
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S. V. Krishnamohan.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A Show Cause Notice dated February 26, 2016 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 and Rule 4 of the SCR (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 read with Section 23I of SCRA, for the violations as specified in the SCN.

6. Vide letter dated March 07, 2016 Noticee sought 10 days' time file reply to the SCN. Subsequently vide letter received by SEBI on March 21, 2016, Noticee submitted its reply to the SCN and made the following submissions:
- I. We have sent Shareholding pattern as per Clause 35 of the Listing Agreement for the quarter ended December 2011 and March 2012 to BSE through courier dated 16.01.2012 and 13.04.2012 and in the Shareholding Pattern of Quarter ended December 2011 and March 2012 we have provided you correct details of Shareholding of Suraj Impex Pvt. Ltd. as per the Demat records. But it is displayed in the name of Suraj Enterprise Pvt. Ltd. on BSE website for the quarter ended December 2011 and March 2012 and for this error we think that there may be some typographical error as at the that time we sent the documents physically because online system is implemented in the year 2013. Further we have sent the correct shareholding pattern and also attached the copies of shareholding patterns and CDSL/NSDL records for the quarter ended December 2011 and March 2012.*
  - II. We have made disclosures to BSE as per the SAST Regulations and PIT Regulations. Copies of the disclosures made to BSE and courier receipts enclosed.*
7. Considering the reply the Noticee was granted an opportunity of personal hearing on November 08, 2017. The Authorised Representatives of the Noticee appeared for the hearing and reiterated the aforesaid submissions. Further the Noticee undertook to submit the rationale behind the transfer of shares between Suraj Impex Pvt. Ltd. and Suraj Enterprises Pvt. Ltd.
8. Vide letter dated November 11, 2017 Noticee sent the following submissions:
- I. Suraj Impex and Suraj Enterprise both are the group companies, so on 15.06.2011 management and promoters decided to transfer shares from bank by pledging the shares to develop and expand business activity. But after some time they did not require the loan, so again they transferred same shares from Suraj Enterprise Pvt. Ltd. to Suraj Impex Pvt. Ltd. on 11.11.2011.*

- II. *Further on 03.05.2012 again Suraj Impex Pvt. Ltd. had transferred shares to Suraj Enterprises Pvt. Ltd. for the same purpose as discussed above, but because of market condition and other factors, management was unable to execute the pledge of shares for the purposes of loan to develop business activity.*

## **CONSIDERATION OF ISSUES AND FINDINGS**

9. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
- a. Whether the Noticee has violated the provisions of Clause 35 of the Listing Agreement read with Section 21 of the SCRA?
  - b. Whether the Noticee has violated the provisions of Regulation 7(3) of SAST Regulations read with Regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, Regulation 13(6) of PIT Regulations?
  - c. Does the violation, if established, attract monetary penalty under Sections 15A(b) of SEBI Act, 1992 and 23A(a) of SCRA?
  - d. If yes, then what should be the quantum of penalty?

## **FINDINGS**

10. Before I proceed with the matter, it is pertinent to mention the relevant provisions alleged to have been violated by the Noticee which are reproduced below:

### ***LISTING AGREEMENT***

*“35. The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-*

- a. One day prior to listing of its securities on the stock exchanges.*
- b. On a quarterly basis, within 21 days from the end of each quarter.*
- c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital”*

## **SCRA**

*21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange*

## **SAST Regulations**

### ***“Acquisition of 5% and more shares of a company***

*7.(1) Any acquirer, who acquires shares or voting rights which(taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent. or fourteen percent. Or fifty four per cent. or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

*(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two percent. or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale alongwith the aggregate shareholding after such acquisition or sale.*

(3) Every company, whose shares are acquired in a manner referred to in sub-regulation(1) and (1A) shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations(1) and (1A).

### **PIT Regulations**

#### **Disclosure by company to stock exchanges.**

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

11. The issues for examination and the findings thereon are as follows:

#### **Issue a: Whether Noticee has violated the provisions of Clause 35 of the Listing Agreement read with Section 21 of the SCRA?**

12. Following changes in the shareholdings of Suraj Impex Pvt. Ltd. and Suraj Enterprise Pvt. Ltd. (both belonging to the promoter group of the company) were observed during March 2011 and June 2012:

Entity	Quarter ended March 2011		Quarter ended June 2011		Quarter ended Sep 2011		Quarter ended Dec 2011		Quarter ended Mar 2012		Quarter ended June 2012	
	No of shares	%	No of shares	%	No of shares	%	No of shares	%	No of shares	%	No of shares	%
<b>As per disclosures made to BSE</b>												
Suraj Enterprise Private Limited	0	0	1905250	9.89	1905250	9.89	2469000	12.82	2469000	12.82	1905250	9.89
Suraj Impex Private Limited	2469000	12.82	563750	2.93	563750	2.93	0	0	0	0	563750	2.93
<b>Total</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>
<b>Holdings as per demat transaction statements</b>												

Suraj Enterprise Private Limited	0	0	1905250	9.89	1905250	9.89	0	0	0	0	1905250	9.89
Suraj Impex Private Limited	2469000	12.82	563750	2.93	563750	2.93	2469000	12.82	2469000	12.82	563750	2.93
<b>Total</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>	<b>2469000</b>	<b>12.82</b>

13. Based on above, it was alleged that the shareholding held by Suraj Impex Pvt. Ltd. was not correctly disclosed to the BSE for the quarter ended December 2011 and March 2012 which is in violation of Clause 35 of the Listing Agreement read with Section 21 of the SCRA.

***Issue b: Whether Noticee has violated the provisions of Regulation 7(3) of SAST Regulations read with Regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, Regulation 13(6) of PIT Regulations?***

14. From the demat accounts of Suraj Enterprise Private Limited and Suraj Impex Private Limited, three off-market transfers observed between Suraj Enterprise Private Limited and Suraj Impex Private Limited and the details are as under:

Date	Transferor	Transferee	Quantity and Consideration
June 20, 2011	Suraj Impex Private Limited  Pre – transfer holding: 12.82% Post – transfer holding: 2.93%	Suraj Enterprise Private Limited  Pre – transfer holding: 0% Post – transfer holding: 9.89%	19,05,250 (9.89% of Share capital)
November 12, 2011	Suraj Enterprise Private Limited  Pre – transfer holding: 9.89% Post – transfer holding: 0%	Suraj Impex Private Limited  Pre – transfer holding: 2.93% Post – transfer holding: 12.82%	19,05,250 (9.89% of Share capital)
May 08, 2012	Suraj Impex	Suraj Enterprise	19,05,250

	Private Limited	Private Limited	(9.89% of Share capital)
	Pre – transfer holding: 12.82%	Pre – transfer holding: 0%	
	Post – transfer holding: 2.93%	Post – transfer holding: 9.89%	

15. From the above it was alleged that the notice did not make any disclosures with respect to the aforesaid transfers to the BSE, thus, violating Regulation 7(3) of SAST Regulations and Regulation 13(6) of the PIT Regulations.
16. As per the requirement of Clause 35 of the Listing Agreement, Noticee was required to make the disclosures mentioned in para 12 of the instant order to BSE within 21 days from the end of each quarter.
17. Noticee in its reply submitted that the disclosures under Clause 35 of the Listing Agreement were indeed made and also submitted a copy of the same. The Noticee has also submitted the copy of courier receipt.
18. The copies of the disclosures furnished by the Noticee are perused and it is noted that vide letter dated January 16, 2012 addressed to BSE, Noticee made the disclosures under Clause 35 of the Listing Agreement. It is noted from the aforesaid disclosures made to BSE that the disclosures under Clause 35 for the quarter ending December 2011 and March 2012 were made as per the Demat statements wherein the correct shareholding of Suraj Impex Pvt. Ltd and Suraj Enterprises Pvt. Ltd. was shown. There appears to be a mix-up with respect to the uploading of the said disclosure by the exchange and both the names of the companies were inter-changed. The disclosures were made available on the website of BSE, however, the names of the companies were inter-changed. Hence, considering the submissions of the Noticee that they have indeed submitted the correct information to the Stock Exchange and the mistake can be attributed to the Stock Exchange, it is seen that no other material is brought on record to negate such contention. In the facts and circumstances of the present case, the preponderance of probabilities lie in favour of the Noticee. And therefore, the



violation of Clause 35 of the Listing Agreement read with Section 21 of the SCRA is not established against the Noticee.

19. In respect of the disclosures under Regulation 7(3) of SAST Regulations and Regulation 13(6) of the PIT Regulations for the transactions dated June 20, 2011, November 12, 2011 and May 08, 2012, Noticee has submitted that the disclosures were made to the Stock Exchange. However vide email dated October 14, 2014, it was submitted by BSE that it did not receive any disclosure from the Noticee.
20. It is pertinent to note that the disclosures under Regulation 7(3) of SAST Regulations and Regulation 13(6) of the PIT Regulations can be traced to the same cause of action as Para 12. Therefore, the information was already in the public domain under Clause 35 of the Listing Agreement read with Section 21 of the SCRA, albeit with the incorrect promoter names which the Noticee submitted might have occurred at Stock Exchange.
21. It is pertinent to mention order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Milan Mahindra Securities Private Limited v SEBI (Appeal No. 66 of 2003) wherein it was 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."*
22. The change in shareholding was already available in the public domain under Clause 35 of the Listing Agreement read with Section 21 of the SCRA. Needless to say that the purport of the disclosures under each of the Regulations i.e. SAST Regulations, PIT Regulations as well the Listing Agreement are different and hence to be separately complied with by the Noticee, the fact that disclosures arising out of the impugned transactions were already submitted to the Stock Exchange cannot be ignored.
23. Therefore, taking into consideration the facts / circumstance of the case and material available on record, I am of the view that no penalty warranted on the Noticee.

24. In view of my findings noted in the preceding paragraphs, I am of the view that the adjudication proceeding initiated against the Noticee vide SCN dated February 26, 2016 does not warrant any penalty. The matter is, accordingly, disposed of.
25. In terms of rule 6 of the Rules, copy of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

**Place: Mumbai**

**DATE: 30.11.2017**

**Biju. S**

**ADJUDICATING OFFICER**