

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2019-20/2716]

**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:

Sarvodaya Impex Private Limited
(PAN No. AAHCS9753L)
40 Gopal Bhawan, 3rd Floor,
199 Shamal Das Gandhi Marg,
Mumbai-400002

In the matter of

Shree Shaleen Textile Limited

1. Shree Shaleen Textile Limited (hereinafter referred to as 'SSTL'), a company listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'). Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an examination in the scrip of SSTL during the period November 01, 2011 to November 30, 2014 (hereinafter referred to as 'investigation period') It was observed during the investigation that:-
- a) Sarvodaya Impex Private Limited (Sarvodaya) was the only promoter of SSTL during the investigation period. Pursuant to several corporate actions such as two preferential allotments to certain non – promoters , issue of bonus shares and share- spilt by SSTL there was consequential change in shareholding of Sarvodaya which triggered its disclosure obligation under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations'). The details of these corporate actions and consequential disclosure obligation pursuant to these corporate actions are given in the following table:-

Table-A:- Corporate Actions

Sl no	Date/ nature of corporate action	Number and %age of shares of Sarvodaya (One day prior to the date of allotment)	Acquired/disposal (number of share)	Number of shares and %age (One day after to the date of transaction)	Disclosure required under PIT Regulations
1	15/11/2011 (Pref. allotment)	95850 (47.92%)	Nil	95850 (14.2%)	Failed to make disclosure u/r 13(4A) of PIT Regulations as the holding (in %) decreased from 47.92% to 14.2% due to

					preferential allotment to non-promoters.
2	16/04/2012 (Issue of Bonus shares)	95850 (14.2%)	1821150	191700 (14.2%)	Failed to make disclosure u/r 13(4A) of PIT Regulations as the holding (in number of shares) increased by 1821150 shares due to bonus issue (19:1).
3	10/09/2012 (Pref. Allotment)	1917000 (14.2%)	Nil	191700 (11.52%)	Failed to make disclosure u/r 13(4A) of PIT Regulations, as the holding (in %) decreased from 14.2% to 11.52% due to preferential allotment to non-promoters.
4	28/02/2013 (Stock Split)	1917000 (11.52%)	76,68,000	9585000 (11.52%)	Failed to make disclosure u/r 13(4A) of PIT Regulations, as the holding (in number of shares) increased by 7668000 shares due to stock-split (₹10 to ₹2).

- b) In addition, Sarvodaya had transferred shares of SSTL in off-market on different dates during the investigation period. Pursuant to these transfers of shares its shareholding in SSTL changed which triggered its disclosure obligation under PIT Regulations and SEBI (Substantial Acquisitions of Shares and Takeover) Regulations, 2011 (hereinafter referred to as 'SAST Regulations'). The details of these transfers and consequential disclosure obligations are given in following table:

TABLE-B:- Off-Market Transfers

Sl no	Date of transfer	Number and % of shares of Sarvodaya (One day prior to the date of transfer)	Number/%age of shares transferred	Number and %age of shares (after the transfer)	Disclosure required under PIT Regulations and SAST Regulations
1	18/05/2013	9585000 (11.52%)	11,00,000 (1.32%)	8485000 (10.2%)	Made delayed disclosure to the exchange u/r 13(4A) of PIT Regulations on August 31, 2018. However, failed to make disclosure to SSTL u/r 13(4A) of PIT Regulations.
2	28/09/2013	8485000 (10.2%)	13,70,000 (1.65%)	7115000 (8.55%)	Made delayed disclosure to the exchange u/r 13(4A) of PIT Regulations and u/r 29(2) of SAST Regulations on August 31, 2018. However, failed to make disclosures to SSTL u/r 13(4A) of PIT Regulations and u/r 29(2) of SAST Regulations.
3	26/10/2013	7115000 (8.55%)	375000 (0.45%)	6740000 (8.1%)	Made delayed disclosure to the exchange u/r 13(4A) of PIT Regulations. However, failed to make disclosure to SSTL u/r 13(4A) of PIT Regulations.

- c) Sarvodaya, vide letter dated October 19, 2018 submitted the copy of disclosures made by it under Regulation 13(4A) of the PIT Regulations for the transfers made on May 18, 2013, September 28, 2013

and October 26, 2013 and under regulations 29(2) of the SAST Regulations for the transfers made on September 28, 2013 to the company and to BSE. It was observed that these disclosures were made belatedly to the stock exchange on August 31, 2018.

2. It has been alleged that, out of aforesaid 7 transactions, Sarvodaya had not made any disclosures with respect to the aforesaid 4 corporate actions as detailed in Table-A and had made delayed disclosures in the range of 4 years 8 months to 5 years 3 months for 3 off-market transactions to BSE under regulation 13(4A) read with regulation 13(5) of PIT Regulations as detailed in Table-B. In addition, with regards to off-market transaction dated September 28, 2013, Sarvodaya also failed to make requisite disclosure as stipulated under regulation of 29(2) read with regulation 29(3) of the SAST Regulations Further, it did not make any disclosure at all to SCTL with regard to any of the aforementioned 7 transactions under PIT Regulations.
3. In view of the above, SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid violations of regulation 13(4A) read with regulation 13(5) of PIT Regulations and regulation 29(2) read with regulation 29(3) of the SAST Regulations by the Noticee. By a *communication-order* dated February 05, 2019, the undersigned has been appointed as Adjudicating Officer to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of aforesaid PIT Regulations and SAST Regulations, by Sarvodaya. The relevant provisions of PIT Regulations and SAST Regulations are reproduced as follows:

“PIT Regulations, 1992

Continual disclosure.

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 ₹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.*

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29.(1) ...

(2) 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.

(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.”

4. Accordingly, the notice to show cause (hereinafter referred to as ‘SCN’) No. EAD-2/SS/VS/5541/2019 dated February 28, 2019 was issued to the Sarvodaya (the Noticee) in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘Adjudication Rules’) read with section 15I of the SEBI Act, with regard to alleged violations of the provisions of regulation 13(4A) read with regulation 13(5) of PIT Regulations and regulation 29(2) read with regulation 29(3) of SAST Regulations by the Noticee.

5. The Noticee vide its letter dated March 23, 2019 submitted its reply to the SCN and also availed the opportunity of personal hearing granted to it on March 27, 2019 in terms of rule 4(3) of the Adjudication Rules when Mr. Meit Shah, Authorised Representative (AR) of the Noticee appeared on its behalf and reiterated the submission on the lines of written reply on record. The replies/submissions of the Noticee are *inter alia* as following:

a) **With respect to transaction dated November 15, 2011:**

- i. The alleged transaction was due to preferential allotment to non-promoters by passing a Special Resolution at the Annual General Meeting (AGM) held on September 27, 2011.
- ii. As per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the explanatory statement forwarded to shareholders under section 173 (2) of the Companies Act, 1956 *inter alia* included shareholding pattern of SSTL before and after the preferential issue, the shareholding of the promoters before and after preferential issue, the shareholding of the promoters before and after the preferential issue, the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any.

- iii. The explanatory statement to the AGM Notice dated August 23, 2011 contained shareholding pattern before and after the proposed full allotment of equity shares which clearly reveals that the existing promoter shareholding is 95,850 shares (47.92%) and after the proposed full allotment of equity shares the shareholding would be 95,850 shares and 10.65% in terms of percentage.
- iv. Pursuant to allotment of shares to preferential allottees, a revised shareholding pattern as on November 15, 2011 was filed with BSE. The shareholding pattern as on November 15, 2011 clearly reveals that Noticee's shareholding was 14.2% and no non-disclosure can be alleged on its part. Hence, the information that its shareholding had reduce to 14.2% from 47.92% was in public domain and no non-disclosure can be alleged on its part.

b) With respect to transaction dated April 16, 2012:

- i. The alleged transaction was due to bonus issue by the SSTL, by passing an Ordinary Resolution at the Extra Ordinary General Meeting (EGM) held on March 21, 2012. The record date for the bonus was April 14, 2012.
- ii. Thereafter, immediately SSTL filed shareholding pattern with BSE on April 16, 2012 clearly reveals that its shareholding was 14.2%. Hence, the information that its shareholding had increased from 95,850 to 19,17,000 was in public domain and no non-disclosure can be alleged on its part.

c) With respect to transaction dated September 10, 2012:

- i. The alleged transaction was due to preferential allotment to non-promoters by passing a Special Resolution at the AGM held on August 16, 2012.
- ii. As per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the explanatory statement forwarded to shareholders under section 173 (2) of the Companies Act, 1956 *inter alia* included shareholding pattern of SSTL before and after the preferential issue, the shareholding of the promoters before and after preferential issue, the shareholding of the promoters before and after the preferential issue, the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any.
- iii. The explanatory statement to the AGM Notice dated July 16, 2012 contains shareholding pattern before and after the proposed full allotment of equity shares which clearly reveals that the existing promoter shareholding is 19,17,000 shares (14.20%) and after the proposed full allotment of equity shares the shareholding would be 19,17,000 shares and 11.25% in terms of percentage.
- iv. Pursuant to allotment of shares to preferential allottees, a revised shareholding pattern as on September 10, 2012 was filed with BSE. The shareholding pattern as on September 10, 2012

clearly reveals that its shareholding was 11.52% and no non-disclosure can be alleged on its part. Hence, the information that its shareholding had reduce to 11.52% from 14.20% was in public domain and no non-disclosure can be alleged on its part.

d) With respect to transaction dated February 28, 2013:

- i. The alleged transaction was due to share-split by the SSTL, an ordinary resolution passed at the EGM held on February 22, 2013. The record date for the share split was March 07, 2013.
- ii. Thereafter, SSTL filed shareholding pattern for quarter ending March 2013 with BSE, it clearly reveals that its shareholding was 11.52%. Hence, the information that its shareholding had increased from 17,17,000 to 95,85,000 was in public domain and no non-disclosure can be alleged on its part.
- iii. Further, Annual Disclosure as required under regulation 30(1) and 30(2) of the SAST Regulations had been made wherein its shareholding of 95,85,000 shares has been disclosed to general public.
- iv. Further, all the above transactions due to preferential issue, bonus issue and share split are passive in nature. The Noticee had not acquired any shares of SSTL from the market or otherwise. The only increase with respect to the number of shares and decrease in percentage of shareholding is due to corporate action of SSTL.

e) With respect to allegation of delayed disclosure on account of off-market transfer of 11,00,000, 13,17,000 and 3,75,000 shares:

- i. The shareholding patterns filed for quarter ending June 2013, September 2013 and December 2013 clearly revealed about change in shareholding of the Noticee in SSTL. Hence, the information with respect to its shareholding was in public domain.
- ii. Non-disclosure, if any, was technical in nature and due to inadvertence, devoid of any mala-fide intention.

f) Further, no harm has been caused to any investor nor any loss has occurred due to its non-disclosure, regarding the change in its shareholding was disclosed in the shareholding pattern filed by SSTL.

6. I have considered the allegation levelled against the Noticee, the replies/submissions of the Noticee and the relevant material available on record. It is undisputed fact that the Noticee was the sole promoter of the SSTL. It is also admitted positions that the consequential change in shareholding of the Noticee after aforesaid 4 corporate actions was not on account of any active acquisition/transfer of shares rather it was a passive change in percentage/ number of shares pursuant to corporate actions. From the combined reading of regulation 13(4A) and regulation 13(5) of PIT Regulations it is noted that the disclosure obligations thereunder are triggered only in the following events i.e. (a) allotment of shares to the person so obligated and (b) acquisition or sale of shares or voting rights by such person. In this case, admittedly

the aforesaid two preferential allotments were not to the Noticee and change in its voting rights was consequent to preferential allotment of shares by SSTL to non-promoters. In my view, such passive change in percentage of shareholding does not require any disclosure under regulation 13(4A) of the PIT Regulations. From the same logic allotment of bonus shares or increase in shareholding due to share-split could also not be technically termed as active acquisition or allotment of shares.

7. It is also noted that with regard to the preferential allotments/bonus shares/stock-split, the SSTL had made relevant disclosures to the stock exchange as stipulated in relevant regulations/listing agreement governing such corporate actions. In this regard, the Noticee has demonstrated that in the explanatory statement to the AGM and Extra-ordinary General Meeting (EGM), with regard to such corporate actions SSTL had already made disclosure to its shareholders and BSE about change of shareholding of the Noticee and such disclosures were in public domain as available on website of BSE. Further, the periodical disclosures of the revised shareholding patterns filed with BSE effectively disclosed the change in shareholding of the Noticee pursuant to the corporate actions within the reasonable time. Thus, the SSTL was completely aware of the change in shareholding of the Noticee pursuant to each of the corporate actions. The only fault on the part of the Noticee could be that the disclosures were not made by it in the prescribed Form-D under regulation 13(4A) of the PIT Regulations to the stock exchange when it acquired additional shares pursuant to the corporate actions of SSTL. However, it is undisputed fact that the material disclosures required in Form-D were disclosed by SSTL as aforesaid. Thus, the relevant disclosures, pursuant to change in shareholding of the Noticee on account of aforesaid corporate actions, were available with the company, its shareholders and the stock exchange at the relevant time and the failure in filing the disclosures in Form D is too technical and venial in the peculiar facts and circumstance of the case.
8. With regard to the failure of making relevant disclosures pursuant to the aforesaid 3 off-market transfers of shares by it, the Noticee has admitted delayed disclosures by it to the BSE under regulation 13(4A) of the PIT Regulations and that it did not make any disclosure under regulation 29(2) of the SAST Regulations to the SSTL with regard to its transaction dated September 28, 2013. The Noticee has, however, contended that the shareholding patterns filed for quarter ending June 2013, September 2013 and December 2013 by SSTL clearly revealed about the Noticee's changes in shareholding in SSTL and it was in public domain. In this regard, it is relevant mention that the filing of periodical shareholding pattern with the stock exchange is not a substitute of compliance of disclosure obligations within mandatory timelines specified under PIT Regulations and SAST Regulations. These disclosures if made in reasonable time could be though a mitigating factor for the purpose of adjudication. In this case, the disclosures in terms of the regulations were made after substantial delay of more than 4 years. In view of the above, I hold that the breach by the Noticee of the obligations under regulation 13(4A) read with regulation 13(5) of PIT

Regulations with regards to its off-market transaction dated May 18, 2013, September 28, 2013 and October 26, 2013 as found hereinabove is established in this case.

9. From the provisions of regulation 29(2) and 29(3) of SAST Regulations, it is noted that the disclosure obligation therein is transaction specific and relates to the date of transaction and not to periodic disclosure of consolidated shareholding of promoters. In this case, consequent to the transfer of shares by the Noticee on September 28, 2013 its shareholding in SSTL got reduced from 10.2% to 8.55% (reduction by 1.65%). As this transaction did not breach the threshold specified in regulation 29(2) the allegation in this regard does not sustain.
10. The statutory timeline stipulated in regulation 13(5) of the PIT Regulations is mandatory and thus, the obligation under regulation 13(4) is time imperative. The Noticee has made delayed disclosure after 4 years. Subsequent disclosures made by SSTL to the stock exchange in shareholding pattern though mitigate the charge but yet, the material disclosures mandated in regulation 13(4A) remained within knowledge of the Noticee alone. Noticee being sole promoter of the SSTL repeatedly transferred shares through off-market in opaque manner and knowingly withheld the details with itself failed to make timely disclosures to the stock exchange. Such transactions were thus done in clandestine manner. Thus, no allowance can be made for such lethargic indifference and needless procrastination on account of subsequent disclosures, if any, made in shareholding pattern by the SSTL. Considering these facts and circumstances, I hold that the violations as found in this case deserve imposition of monetary penalty upon the Noticee under Section 15A (b) of the SEBI Act which reads as following:

“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 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.”

11. For the purpose of adjudication of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines

provided by the legislature in section 15J. The factors stipulated in Section 15J of the SEBI Act, are as follows:-

“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 investor/ +s 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.”

12. Having regard to the factors listed in section 15J and the guidelines issued by Hon’ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that the provisions of section 15J has to be properly understood, and not to be mechanically applied and other factors reasonable for the facts of the case are also relevant to take into account for adjudging the quantum of penalty. As found hereinabove, the Noticee has committed repeated defaults with regard to its three off –market transfers but from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the loss, if any, suffered by the investors as a result of the default in this case are neither ascertainable. Further, the transactions are more than more than 5 years old and there is no allegation or no material on record suggesting any acts and omissions on the part of the Noticee that it had any fraudulent or manipulative purpose behind making delayed disclosures. Considering the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees One Lakh only) on Noticee viz., Sarvodaya Impex Private Limited under Section 15A(b) of the SEBI Act, 1992. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.
13. The Noticee shall remit/pay the 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 as follows:

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

14. 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-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052" and also to e-mail id :- tad@sebi.gov.in

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)	

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

Date: April 11, 2019
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer