

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/CB/3/2018]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Hemendra R Mehta (PAN AAVPM3169K) having address at – 3 E 901, Swagat CHSL, Damodar Park, LBS Marg, Ghatkopar (West), Mumbai – 400 077

In the matter of *Invicta Meditek Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted examination in the scrip of Invicta Meditek Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period December 01, 2013 to June 15, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(1) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) by Mr. Hemendra R Mehta (hereinafter be referred to as, the “**Noticee**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) vide order dated August 04, 2016 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations and SAST Regulations. Subsequent to superannuation

of Mr. Suresh Gupta, the undersigned was appointed as the Adjudicating Officer on April 26, 2018 which was communicated *vide* order dated June 19, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAD5/MC/CB/17676/1/2018 dated June 20, 2018 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A (b) of the SEBI Act for the alleged violations of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) The Noticee acquired 200000 and 200053 shares of the Company on January 29, 2014 and January 30, 2014 respectively, which amounted to 8.07% of the total share capital of the Company.
 - b) As a result of such acquisition, the Noticee was required to submit disclosure to the Company and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations and to the Company under Regulation 13(1) of the PIT Regulations. However, the Noticee, allegedly, failed to submit the same.
 - c) The BSE, *vide* e-mail dated July 03, 2014 confirmed that no disclosures were made by the Noticee under the PIT Regulations or SAST Regulations in relation to the increase in shareholding of the Noticee during the Examination Period. Similarly, the Company, *vide* e-mail dated June 25, 2014 confirmed that no disclosures were made by the Noticee under the PIT Regulations.
 - d) It was alleged that the aforesaid non-disclosure regarding increase in its shareholding by the Noticee was in violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

- 13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—*
- (a) the receipt of intimation of allotment of shares; or*
 - (b) the acquisition of shares or voting rights, as the case may be.*

SAST Regulations:

29. Disclosure of acquisition and disposal

(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and 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.

5. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act.
6. In response to the SCN, the Noticee filed a reply dated July 18, 2018. The submissions of the Noticee are summarized as below:
 - a) The Noticee submitted that non-disclosure had happened due to his ignorance and illness. The Noticee also submitted that there was no mala fide intention in this matter and he is not in a financial position to pay any penalty on account of his illness.
 - b) The Noticee also desired an opportunity of personal hearing in the instant matter, for which, he appointed Mr. N Rajkumar to be his authorized representative.
7. After considering the facts and circumstances of the case and in the interest of natural justice, an opportunity of personal hearing was provided to the Noticee on August 27, 2018 vide Notice of Hearing dated August 07, 2018.

8. The hearing scheduled on August 27, 2018 was attended by the authorized representative of the Noticee. During the course of hearing, the authorized representative of the Noticee reiterated written submissions dated July 18, 2018 submitted by the Noticee.
9. Since inquiry / hearing in the instant matter is concluded, keeping into account the allegations levelled in the SCN, submissions of the Noticee towards the SCN and material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I **Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?**

11. The details relating to change in the shareholding of the Noticee as alleged in the SCN are not in dispute in the reply received from the Noticee. Thus, the details of change in shareholding of the Noticee in the scrip of the Company, as provided to the Noticee by way of Annexure 3 and 4 to the SCN, are as follows:

Financial Quarter	Shareholding	
	No. of shares	% of the total share capital of the Company
October - December, 2013	0	0
January - March, 2014	400,053	5.55

I also note that the fact of acquisition of more than 5% shareholding in the scrip of the Company is not in dispute by the Noticee.

- 12.** Regulation 13(1) of the PIT Regulations requires any person who holds more than 5% shares in a company to disclose to the company in Form A, number of shares or voting rights held by him on becoming such holder within 2 working days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights. Similarly, Regulation 29(1) read with 29(3) of the SAST Regulations requires an acquirer, who acquires shares or voting rights in a target company aggregating to five per cent or more of shares of such target company to disclose their aggregate shareholding and voting rights in such target company to every stock exchange where the shares of the target company are listed and to the target company within 2 days of such acquisition.
- 13.** On perusal of the available records and the table reproduced in paragraph 12 hereinabove, it is observed that consequent to the acquisition of 200,000 shares on January 29, 2014 and 200,053 shares on January 30, 2014 by the Noticee, his aggregate shareholding reached more than 5% of the total share capital of the Company. On the aforesaid increase, the Noticee ought to have disclosed such acquisition in terms of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
- 14.** I note from the Annexure 5 of the SCN (e-mail confirmation of the Company dated June 25, 2014) that no disclosures in terms of Regulation 13(1) of the PIT Regulations were made to the Company by the Noticee. Similarly, I note from the Annexure 6 of the SCN (e-mail confirmation of BSE dated July 03, 2014) that no disclosures under Regulation 29(1) read with 29(3) of the SAST Regulations were made to the BSE by the Noticee. I also note that the Noticee has not disputed the aforesaid non-disclosures.
- 15.** In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under Regulation 13(1) of the PIT Regulations to the Company and under Regulation 29(1) read with 29(3) of the SAST Regulations to the BSE.

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

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Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

16. Since failure of the Noticee in making disclosures to the Company under Regulation 13(1) of the PIT Regulations and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

“15A. 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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.”

17. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

18. I note that the Noticee had submitted that the aforesaid non-disclosure of change of shareholding in the Company was not coupled with any mala-fide intention. At this juncture, I find it relevant to take into account the observation of the Securities Appellate Tribunal (hereinafter, the “**Hon’ble SAT**”) in the matter of **Ambaji Papers Private Limited & Ors. v. Adjudicating Officer, Securities and Exchange Board of India** (Appeal No. 201 of 2013 dated January 15, 2014) wherein, it held, “*To this extent, the appellants, though inadvertently and without any intention, have defaulted in*

complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless. This Tribunal has held time and again that the penalty levied on any wrong-doer ought to be commensurate with the gravity of the deviation effected.”

19. While it is established that the Noticee did not make disclosure to the Company under Regulation 13(1) of the PIT Regulations and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations, I note that the necessary information became available in public domain at the end of financial quarter, January – March, 2014. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. From the material available on record, repetitive nature of default by the Noticee could also not be ascertained.
20. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹1,00,000 will be commensurate with the violations committed by the Noticee.

ORDER

21. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh only) upon the Noticee, i.e. Mr. Hemendra R Mehta under Section 15A(b) of the SEBI Act for violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
22. 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

23. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the Noticee
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

24. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date : August 30, 2018

Place : Mumbai

(Maninder Cheema)

Adjudicating Officer