BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BS/AO/66/2018-19]

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:

Shri Sunny R Thakkar

PAN: ADLPT7862R
19/20/21, 3rd Floor,
Narayan Chamber,
Ashram Road,
Ahmedabad – 380 009

In the matter of Gujarat Meditech Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the trading in the scrip of Gujarat Meditech Ltd. (hereinafter referred to as GML) for the period June 01, 2011 to March 30, 2012 (hereinafter referred to as the Investigation Period) and into the possible violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as SAST Regulations) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) by Shri Sunny Rashmikant Thakkar (hereinafter referred to as the Noticee).

2. It was alleged that the Noticee did not make necessary disclosures to GML and the Bombay Stock Exchange, (BSE) where the shares of the company are listed in terms of the provisions of SAST Regulations and PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated November 09, 2017 to inquire and adjudge under Section 15 A(b) of the SEBI Act, the alleged violation of Regulations 7(1) and 7(2) of the SAST Regulations and Regulations 13(1) and 13(3) of the PIT Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated November 23, 2017 (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 15-I of SEBI Act, 1992.

5. Vide letter dated January 29, 2018, the Noticee replied to the SCN and submitted that he had made appropriate disclosure to the Company as well as to the Stock Exchange.

6. Vide hearing notice dated May 17, 2018, Noticee was granted an opportunity of being heard on June 13, 2018. The Authorised Representative (AR) of the Noticee appeared for the hearing and primarily reiterated the submissions made vide reply January 29, 2018. The AR also submitted Contract Notes with respect to the alleged transactions and sought a lenient view in the matter.

7. Vide subsequent letter dated June 19, 2018, Noticee made further submitted that he suffered loss of approx. Rs2.5 crores by trading in the scrip of the company.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :

   a. Whether Noticee has violated the provisions of Regulations 7(1) and 7(2) of the SAST Regulations and Regulations 13(1) and 13(3) of the PIT Regulations?

   b. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

   c. If yes, then what should be the quantum of penalty?

FINDINGS

9. 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:

SAST Regulations, 1997

"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.

…

(*2) The disclosures mentioned in sub-regulations (1) and (1A)] shall be made within two days, -*

(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be.

PIT Regulations

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

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.

…

Continual disclosure.

(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."

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

Issue a: Whether Noticee has violated the provisions of Regulations 7(1) and 7(2) of the SAST Regulations and Regulations 13(1) and 13(3) of the PIT Regulations?

11. From the demat accounts of Noticee, following transactions were observed:

Name of the entity	Date(s) of transa	Details of Transaction		Holding of entity post transaction **		Regulation Triggered SAST and PIT Regs	Disclosures given (Yes/No)
		Shares	%		%		
Op. Bal.				-	-		
	01/06/2011 @	61,600	1.5	61,600	1.5	No	N.A
	02/06/2011 @	42,300	1.03	103,900	2.53	No	N.A
	03/06/2011 @	33,100	0.81	137,000	3.34	No	N.A
	07/06/2011 @	100,000	2.44	237,000	5.78	Yes, 7 (1) of SAST 13(1) of PIT	No
	08/06/2011 @	76,300	1.86	313,300	7.64	No	N.A
	09/06/2011 @	42,400	1.03	355,700	8.67	Yes, 13(3) of PIT	No
	10/06/2011 @	62,700	1.53	418,400	10.2	Yes , 7(1) of SAST	Delayed Disclosure under SAST
	15/06/2011 @	94,200	2.29	512,600	12.49	Yes,13(3) of PIT	No
	25/07/2011 @	63,400	1.55	576,000	14.04	Yes, 7(1) of SAST	No
	12/09/2011	-25000	0.61	551000	13.43	No	N.A
	13/09/2011	-25000	0.61	526000	12.82	No	N.A
	14/09/2011	-135,000	-3.29	391,000	9.53	Yes, 13(3) of PIT	No
	22/09/2011	-100,000	-2.44	291,000	7.09	Yes, 13(3) of PIT	No
	23/09/2011	-143,900	-3.5	147,100	3.59	Yes, 13 (3) of PIT	No
	26/09/2011	-175,000	-3.59	0**	0**	No	No

*** It was observed that on September 26, 2011, Noticee sold 1,75,000 shares of GML while his holding was 1,47,100 shares i.e. Noticee sold 27,900 shares in excess than his holding on September 26, 2011, which were auctioned/closed out.*

@ Noticee vide letter dated 01/06/2011 given instruction to Amrapali Capital & Finance Services Ltd. to keep the shares bought by him in their beneficiary account and which were transferred by Amrapali Capital & Finance Services Ltd. to Noticee on 04/07/2011. So during 01/06/2011 to 03/07/2011, the shares were not found in the demat account of Noticee but Noticee was the owner of the shares.

12. From the above, it was alleged that the shareholding of the Noticee had crossed 5% on June 07, 2011 but he failed to make necessary disclosures in terms of the provisions of Regulation 7 (1) of SAST Regulations, 1997 to GML and BSE and under Regulation 13(1) of PIT Regulations to GML.

13. Further, his shareholding crossed 10% and 14% on June 10, 2011 and July 25, 2011 respectively. BSE vide email dated October 15, 2013 (copy provided to the Noticee along with the SCN) informed that the Noticee had made disclosure under SAST Regulations 1997, regarding acquisition of 5% and 10% shares of GML vide letter dated June 15, 2011 which was received by BSE on July 06, 2011 and however on perusal of the disclosures made, the disclosure appeared to be incorrect as it was made in the wrong Form.

14. On July 25, 2011, the Noticee had acquired 1.55% shares and crossed 14% shareholding of the company but the Noticee did not make any disclosure for the same. Further, the shareholding of the Noticee changed more than 2% on June 09, 2011, June 15, 2011, September 14, 2011, September 22, 2011 and September 23, 2011 for which it was alleged that the Noticee had failed to make disclosures under Regulation 13(3) of PIT Regulations, 1992 to GML.

15. The documents available on record and the disclosures forwarded by the Noticee have been perused. It is noted that though the Noticee has made the disclosures to the Company under Regulation 7(1) of the SAST Regulations but the Noticee has failed to produce any document/letter to prove that disclosures (disclosures for the transactions dated June 07, 2011, June 10, 2011 and July 25, 2011) were made to the BSE as well.

16. Further, Noticee has failed to produce any document that disclosures in Form C under Regulation 13(3) were indeed made for the transaction dated June 09, 2011.

17. For the transaction dated June 15, 2011, the disclosure was made in Form A instead of Form C.

18. For the transaction dated September 14, 2011, no disclosures under Regulations 13(3) of PIT Regulations were made by the Noticee.

19. However, for the transactions dated September 22 and 23, 2011, Noticee had made disclosure to the company.

20. It is pertinent to mention order of Hon'ble 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.*"

21. Further, in the matter of Premchand Shah & ors. Vs. SEBI, (Appeal No. 192 of 2010, Hon'ble SAT observed that:

"When law prescribes a manner in which a thing is to done, it must be done only in that matter or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and those are then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case. The fact that non-disclosure has been made penal makes it clear that the provisions of regulations 7(IA) of the takeover code and regulations 13(3) and 13(4) of the insider regulations are mandatory in nature. Non-disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making investments. Lapse on the part of the appellants is obvious and no faults can, therefore, be found with the impugned order holding them guilty of not making the necessary disclosures."

22. Further, it is also pertinent to mention order of Hon'ble SAT in G. Suresh v. SEBI dated April, 29 2014, wherein it was held that

"*True and timely disclosures by an acquirer of shares in a company are an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company."*

23. The Noticee in the present case did not make any disclosure to the exchange under SAST Regulations. Further, the disclosures dated June 15, 2011, made under PIT Regulations were incorrect as they were made in the wrong Form.

24. Based on above, it is concluded that Noticee has violated Regulations 7(1) and 7(2) of the SAST Regulations and Regulations 13(1) and 13(3) of the PIT Regulations.

(b) Does the non-compliance, if any, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

25. The aforesaid violations attract penalty under Section 15A(b) of the SEBI Act which reads as follows:

> **"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**,
>
> (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

26. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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

27. It may also be noted that the Investigation Report has not quantified the profit/ loss for the nature of violations committed by Noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors.

28. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was 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."*

29. Hon'ble SAT in the case of Coimbatore Flavors & Fragrances Ltd. Vs. SEBI (Appeal No. 209 of 2014), observed "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*." (Emphasis supplied)

30. I have considered the factors mentioned in Section 15J of SEBI Act, 1992 and I note that the material made available on record does not clearly indicate the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. However, it is important to note that securities market operates on disclosure based regime and hence true and timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose.

31. Therefore, taking into consideration the facts / circumstance of the case and above factors, I am of the view that penalty needs to be imposed on the Noticee for failure to make necessary disclosures. Timely disclosures to the company and stock exchanges are of significant importance from the standpoint of the investors. True and timely disclosures would facilitate the investors to take a more informed decision to invest or not to invest in a particular scrip. Such information, received by the investors in a time bound manner, would facilitate them immensely in taking a balanced investment decision as regards their holding in the Company. In the instant case, the Noticee, having acquired more than 5% stake in the Target Company, ought to have made timely disclosure of the same under the relevant provisions of SAST Regulations, 1997 and PIT Regulations within 2 working days of the transactions dated 07/06/2011, 09/06/2011, 10/06/2011, 15/06/2011, 25/07/2011 and 14/09/2011. The purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

ORDER

32. After taking into consideration the nature and gravity of the charges established, the mitigating factors as discussed in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakh Only) on the Noticee in terms of Section 15 A(b) of the SEBI Act, 1992 for the violation of Regulations 7(1) and 7(2) of the SAST Regulations and Regulations 13(1) and 13(3) of the PIT Regulations.

33. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Chief General Manager (Enforcement Department – 1- DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of 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)	

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

Place: Mumbai **BIJU. S**

DATE: 28.06.2018 **ADJUDICATING OFFICER**