

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/SG-DP/EAD/51/2017)**

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

In respect of:

Vista Pharmaceuticals Inc.
(PAN AACCV4892J)

H No 7-1-212/A/70, Plot No. 85,
Shivbagh, Ameerpet
Hyderabad – 500016

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation in dealings in the shares of Vista Pharmaceuticals Ltd. (hereinafter referred to as 'Company') during the period 2005-06 and 2011-12. The shares of the Company are listed at Bombay Stock Exchange (hereinafter referred to as 'BSE').
2. It was observed by a department of SEBI (hereinafter referred to as 'ISD') that the shareholding of Vista Pharmaceutical Inc. (hereinafter referred to as 'Noticee'), one of the entities belonging to the category of promoters and promoter group of the Company, had changed from 41.70% on 15.07.2005 to 30.92% on 21.07.2005. The subsequent disclosure for the transaction on 19.12.2005 showed the shareholding of the Noticee to be 24.26% prior to the transaction. It was alleged that no disclosure had been made by the Noticee under Regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations') for its change of holding between 21.07.2005 and 19.12.2005. Further, it was also alleged by ISD that Noticee had not made any disclosure

under Regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') for change of its shareholding from 30.92% on 21.07.2005 to 12.8% on 13.01.2006.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Jayanta Jash was appointed as Adjudicating Officer, *vide* Order dated 09.07.2014 under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Section 15 A(b) of SEBI Act for the alleged failure of the Noticee to make disclosures under Regulations 7(1A) read with 7(2) of SAST Regulations and Regulations 13(3) read with 13(5) of PIT Regulations. Subsequently, upon the transfer of Shri Jayanta Jash, the undersigned has been appointed as the Adjudicating Officer *vide* Order dated 22.06.2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated 17.11.2014 (hereinafter referred to as 'SCN') was served on the Noticee through SEBI's Hyderabad Local Office. The SCN was issued to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on it under the provisions of Section 15 A(b) of SEBI Act, for the alleged failure of the Noticee to make disclosures under the aforesaid provisions of SAST Regulations and PIT Regulations.
5. It was *inter alia* mentioned in the SCN that from the disclosures made under Regulation 7(1A) of SAST Regulations, it was observed that the shareholding of the Noticee had changed from 41.70% on 15.07.2005 to 30.92% on 21.07.2005. The subsequent disclosure for the transaction on 19.12.2005

showed the shareholding of the Noticee to be 24.26% prior to the transaction. It was alleged that no disclosure had been made by the Noticee under Regulation 7(1A) of SAST Regulations for its change of holding from 30.92% to 24.26% (between 21.07.2005 and 19.12.2005). The same is described in a tabular form below:

Date of Transaction	Holding prior to sale	In %	Sale	Holding after sale	In %
15.07.05	3097457	41.7	165000	2932457	39.5
18.07.05	2932457	39.5	225000	2707457	36.44
19.07.05	2707457	36.44	140000	2567457	34.56
20.07.05	2567457	34.56	200000	2367457	31.86
21.07.05	2367457	31.86	70000	2297457	30.92
NO DISCLOSURES MADE					
19.12.05	2117457	24.26	100000	2017457	23.11

6. Further, from the transactions carried out by the Noticee and the disclosures made, it was observed that the Noticee had made disclosures under Regulation 13(3) of PIT Regulations for change of its shareholding in the Company from 41.70% on 15.07.2005 to 30.92% on 21.07.2005. However, it was alleged that it had not made any disclosures under Regulation 13(3) of PIT Regulations for change of shareholding from 30.92% on 21.07.2005 to 12.8% on 13.01.2006. The same is described in a tabular form below:

Date of Transaction	Holding prior to sale	In %	Sale	Holding after sale	In %
15.07.05	3097457	41.7	165000	2932457	39.5
18.07.05	2932457	39.5	225000	2707457	36.44
19.07.05	2707457	36.44	140000	2567457	34.56
20.07.05	2567457	34.56	200000	2367457	31.86
21.07.05	2367457	31.86	70000	2297457	30.92
NO DISCLOSURES MADE					

7. The Noticee *vide* its letter dated 25.11.2014 acknowledged the receipt of SCN. The Noticee *vide* its letter dated 04.12.2014 made the following submissions:

“.....that we have verified all our records and found that the Company has sent following disclosures , from time to time. We herewith enclose copy thereof for your records along with copy of PAN Card of the company.

Under Regulation 7(1A) of SAST Regulations,1997

Sl. No.	Date of Sale	Holding Prior to Sale	No. of Shares Sold	In%	Holding After Sale	Reference for dispatch proof
1	17/08/05	22,97,457	8,200	0.11%	22,89,257	Annexure-A
2	23/08/05	22,89,257	1,36,800	1.84%	21,52,457	Annexure-B
3	25/08/05	21,52,457	30,000	0.34%	21,22,457	Annexure-C
4	26/08/05	21,22,457	5,000	0.06%	21,17,457	Annexure-D

Under Regulation 13 (3) of SEBI (Prohibition of Insider Trading) Regulations,1992:

Sl. No.	Date of Sale	Holding Prior to Sale	No. of Shares Sold	In%	Holding After Sale	Reference for dispatch proof
1	17/08/05	22,97,457	8,200	0.11%	22,89,257	Annexure-A
2	23/08/05	22,89,257	1,36,800	1.84%	21,52,457	Annexure-B
3	25/08/05	21,52,457	30,000	0.34%	21,22,457	Annexure-C
4	26/08/05	21,22,457	5,000	0.06%	21,17,457	Annexure-D
5	19/12/05	21,17,457	1,00,000	1.14%	20,17,457	Annexure-E
6	20/12/05	20,17,457	1,25,000	1.43%	18,92,457	Annexure-F
7	27/12/05	18,92,457	25,000	0.29%	18,67,457	Annexure-G
8	29/12/05	18,67,457	25,000	0.29%	18,42,457	Annexure-H
9	30/12/05	18,42,457	85,000	0.97%	17,57,457	Annexure-I
10	02/01/06	17,57,457	15,000	0.17%	17,42,457	Annexure-J
11	09/01/06 & 10/01/06	17,42,457	1,25,000 & 1,02,500	1.43% & 1.17%	15,14,957	Annexure-K
12	12/01/06 & 13/01/06	15,14,957	2,00,000 & 1,97,500	2.29% & 2.26%	11,17,457	Annexure-L

It is pertinent to note that the company was incorporated outside India having an office at Hyderabad. Our company does not have any qualified permanent staff and is managed by foreign Directors only.

The Company has photo copies of all dispatch proof (both Fax Confirmation and Courier Slip), which are enclosed herewith, for your ready reference, as per Annexures given in above table.

.....”

Annexures referred by the Noticee as aforesaid are on record.

8. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on 28.09.2015 at SEBI Bhavan, Mumbai vide hearing notice dated 31.08.2015. In response to the hearing notice, the Noticee vide its letter dated 15.09.2015 authorised Shri Suneel and Shri Manoj Kumar Koyalkar, Practicing Company Secretary to appear and represent on its behalf. At the time of the hearing the authorized representatives reiterated the submissions made in the Noticee’s reply dated 04.12.2014 and requested for 15 days time to make additional submissions in the matter, which was granted.
9. Vide letter dated 08.10.2015, Noticee made the following further submissions:

“

(ii) Facts under consideration:

- a. That the Applicant Company had received a notice from SEBI on 17th November, 2014 under Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 in the matter of sale of shares held by them in the Company during the period between 21/07/2005 and 19/12/2005.
- b. That the matter relates to non-disclosures of change in shareholding pattern from 30.92% to 24.26% under the erstwhile regulations of SEBI (SAST) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992, details of which are as under:

Details of change in shareholding from 30.92% to 24.26%

Date	Holding of shares prior to Sale (Nos)	Shares Sold	Holding of shares after Sale (Nos)	Percentage change	% change in each sale	Date of reporting
17/08/2005	22,97,457	8,200	22,89,257	30.92 to 30.81	0.11	17/08/2005
23/08/2005	22,89,257	1,36,800	21,52,457	30.81 to 28.97	1.84	23/08/2005
25/08/2005	21,52,457	30,000	21,22,457	24.66 to 24.31	0.35	25/08/2005
26/08/2005	21,22,457	5,000	21,17,457	24.31 to 24.26	0.05	26/08/2005
Total		180,000			2.35	

As informed to your kind office under hearing, we once again humbly submits that:

- a. That the Applicant Company vide its reply dated 04th December, 2014 to your office submitted that proper disclosures under Regulation No. 7(1 A) of SEBI (SAST) Regulations, 1997 and Regulation No. 13(3) of SEBI (PIT) Regulations, 1992 have also been made on time to Bombay Stock Exchange (the "Disclosures"). The Disclosures were made through courier and fax, copy thereof was already submitted to your office.*
- b. That above mentioned four sale transactions were done by the Applicant Company in a fair and transparent manner at the then prevailing market price on the date of sale and without any intention to defraud the public through its dealings.*
- c. That since above mentioned transactions were done during the year 2005, the Applicant Company do not have original courier slips and fax confirmation through which the Disclosures were made.*
- d. That the Applicant Company had made its best efforts to obtain acknowledgement from the office of BSE, as to receipt of Disclosures by BSE, but it was informed that during said period of 2005, BSE was not having any practice of issuing any formal acknowledgement to regular filings required by it.*
- e. That the Applicant Company vide its letter dated Oct 5, 2015, addressed to BSE had requested to BSE to share copy of acknowledgement of receipt of Disclosures, for which the Applicant Company had not received any formal reply.*

Keeping in view of above facts and submission, the Applicant Company hereby request your kind office to take lenient view in this matter and dispose of the matter in favour of the Applicant Company and oblige.
....."

10. Further, taking into account the submissions of the Noticee, a reference was made to ISD by enclosing documents submitted by the Noticee vide its reply dated 04.12.2014. In response to the same ISD, inter alia, observed that

".....
....These disclosures (Annexure A to K) were forwarded to BSE for its comments as to whether the exchange had received/not received the disclosures. BSE vide its mail dated 14.12.2015 has denied receiving the said disclosures.
....."

11. Additionally, the Noticee was granted an opportunity of making additional submissions, if any, on or before 12.06.2017 vide letter dated 25.05.2017. In

response to referred letter, the Noticee *vide* letter dated 07.06.2017 submitted as under –

“.....

We humbly submit to the Exchange that the Company do not have any additional submission to make to its written statements dated 04.12.2014, 08.10.2015 and personal hearing on 28.09.2015 and request SEBI to proceed with, on the information and documents submitted by the Company.

.....”

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

12. After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. Whether the Noticee has violated the provisions of Regulation 7 (1A) read with Regulation 7 (2) of SAST Regulations?
- II. If the answer to I is in affirmative, then whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?
- III. Whether the Noticee has violated the provisions of Regulation 13(3) read with 13(5) of PIT Regulations?
- IV. If the answer to III is in affirmative, then whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?
- V. If the answer to II or/ and IV is in affirmative, then what quantum of monetary penalty should be imposed on the Noticee?

ISSUE I: Whether the Noticee has violated the provisions of Regulation 7 (1A) read with Regulation 7 (2) of SAST Regulations?

13. In the instant matter, admittedly the Noticee had sold shares of the Company during 21.07.2005 and 19.12.2005 leading to change in its shareholdings from 30.92% to 24.26%. In this regard, the submissions of the Noticee are duly noted.

14. In this regard, I note that Hon'ble SAT in the matter of *Mr. Ravi Mohan et.al. vs. SEBI* (Appeal no 97/2014) decided on 16.12.2015 has observed as follows:

“.....

27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified in regulation 7(2). On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under regulation 7(1A). As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.

28. Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to be discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence on the happening of events specified under regulation 7(2). Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all.

29. Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants.

.....

33. For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-

a).....

b) *Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained.*

.....”

15. In view of the aforesaid decision made by the Hon'ble SAT, the allegation that the Noticee has violated the provisions of Regulation 7(1A) read with Regulation 7(2) of SAST Regulations is not tenable.

ISSUE II: If the answer to I is in affirmative, then whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?

16. In view of the findings arrived at para 15 above, this issue does not merit consideration.

ISSUE III: Whether the Noticee has violated the provisions of Regulation 13(3) read with 13(5) of PIT Regulations?

17. Regulation 13(3) of PIT Regulations, as it prevailed during the year 2005-06, reads as -

“(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.”

Further, Regulation 13(5) of PIT Regulations, as it prevailed during the year 2005-06, required such disclosures to be made to the Company in Form 'C' within 4 working days of the events specified in Regulation 13(3) of PIT Regulations.

18. In this regard, I note that allegation against the Noticee is that it had not made any disclosure under Regulation 13(3) of PIT Regulations for change of its shareholdings from 30.92% on 21.07.2005 to 12.8% on 13.01.2006. In support of this allegation, ISD has provided confirmation from BSE and also reply from the Company confirming certain disclosures under SAST Regulations. This reply from the Company is in response to an email dated 24.01.2014 from ISD to Company to provide copies of all disclosures made to it by promoters under SAST Regulations and PIT Regulations during the period 2005 to 2012.
19. I note that these allegations pertain to the year 2005-06 for which proceedings were initiated in the year 2014. It is also noted that no evidence in support of allegations except reply of the Company on SAST Regulations as mentioned at para 18 above and confirmation from BSE is on record. I, however, note that the obligation of disclosures under Regulation 13(3) of PIT Regulations cast upon the Noticee is towards the Company and not towards BSE.
20. The Noticee has submitted before me that it has sent various disclosures from time to time. The Noticee has also furnished copies of disclosures under Regulation 13(3) and 13(6) of PIT Regulations in Form C. It is noted that the date mentioned in these copies of disclosures is within stipulated period of four working days of transactions referred in the allegations. The Noticee has also submitted copies of courier receipts of one DTDC Courier addressed in turn by the Company to BSE and fax transmission reports transmitted to fax no 0091 22 22721334 by the Company, all of which are dated on or one day after the date mentioned in the aforesaid copies of disclosures.
21. In view of my findings as above, the allegation that the Noticee has violated the provisions of Regulation 13(3) read with 13(5) of PIT Regulations is not tenable.

ISSUE IV: If the answer to III is in affirmative, then whether the Noticee is liable for monetary penalty under Section 15 A(b) of the SEBI Act?

22. In view of the findings arrived at para 21 above, this issue does not merit consideration.

ISSUE V: If the answer to II or/ and IV is in affirmative, then what quantum of monetary penalty should be imposed on the Noticee?

23. Since, the Noticee is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

24. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against Vista Pharmaceutical Inc. *vide* Show Cause Notice dated 17.11.2014.
25. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to Vista Pharmaceutical Inc. HN 7-1-21/A/70, Plot No 85, Shivbagh, Ameerpet, Hyderabad -500016 and also to the Securities and Exchange Board of India, Mumbai.

Date: 22.08.2017
Place: Mumbai

Suresh Gupta
Adjudicating Officer