

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 3596/ 41/2019-20]**

**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:
Mr. Anant Agarwal
(PAN NO. AFSPA0559F)**

In the matter of M/s Superior Industrial Enterprises Ltd

1. Securities and Exchange Board of India ("SEBI") had conducted an investigation into the dealings in the scrip of M/s Superior Industrial Enterprises Ltd (hereinafter referred to as "SIEL") for the period from August 01, 2013 to August 31, 2013 (hereinafter referred to as "Investigation period/IP") listed on Bombay Stock Exchange Limited (hereinafter referred to as 'stock exchange'). Pursuant to investigation, it was alleged that Mr. Anant Agarwal(hereinafter referred to "Noticee"), son of the promoter Mr. Sanjeev Agarwal had made initial acquisition of shares of SIEL on September 19, 2013 and had failed to make disclosure under Regulation 13(2A) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter Referred to as "PIT Regulation") to SIEL and being part of promoter group had not made disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation to SIEL and stock exchange for the shares acquired by him.
2. Wherever SEBI (PIT) Regulations, 1992 is mentioned it should be read with Regulation 12 of SEB(PIT) Regulations, 2015.

Appointment of Adjudicating Officer

3. The undersigned has been appointed as Adjudicating Officer vide order dated December 27, 2018 under Section 19 of the SEBI Act read Section 15-I of SEBI Act" read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "AO Rules") to inquire and adjudge under Section 15A(b) of SEBI Act on Noticee for the alleged violation of aforesaid Regulation

Show Cause Notice, Reply ad Personal Hearing:

4. Based on the findings by SEBI, Show Cause Notice dated February 15, 2019 (hereinafter referred to as 'SCN') was served on Noticee in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against him and penalty should be not imposed under Section 15A(b) of SEBI Act, 1992 on Noticee for the alleged provisions of law. SCN was duly delivered to the Noticee.

Allegation in the SCN:

5. The allegation mentioned in the SCN are broadly stated below:

5.1. Noticee under the category of promoter/promoter group of SIEL had not made disclosure on the following instances:

Date	No of shares held - pre Acquisition /disposal	% of shareholding held - pre Acquisition /disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/disposal	Date of disclosure to company	Date of disclosure to stock exchange
19/09/2013	0	0	20000	0.14	779000	20,000	0.14	Non disclosure	Non disclosure
23/09/2013	20,000	0.14	14,795	0.11	6,28,787.5	34,795	0.25	Non disclosure	Non disclosure
04/10/2013	41,195	0.30	27799	0.20	15,28,945	68,994	0.50	Non disclosure	Non disclosure

5.2. From the above table, the following was observed with regard to the disclosures filed by Noticee:

5.2.1. SIEL vide its communication to SEBI dated March 27, 2018 informed that Noticee is the son of the promoter viz. Sanjeev Agrawal. Accordingly, he was part of promoter group, as per Regulation 2(1)(zb)(ii) of SEBI (Issue of Capital Disclosure Requirements) Regulations, 2009,

“promoter group” includes:

(i) the promoter;

(ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and

5.2.2. It was observed that Noticee had made the first acquisition of shares of SIEL on September 19, 2013 and accordingly was required to make disclosure under Regulation 13(2A) of SEBI (PIT) Regulations however, it was observed no disclosure was made to SIEL and it was also observed that no disclosure was made under Regulation 13(4A) of PIT Regulation to SIEL and stock exchange within two working days of acquisition of shares as the shares acquired and value of shares acquired was above the threshold limit mentioned in Regulation 13(4A) read with Regulation 13(5) of PIT Regulation

5.2.3. In view of the above, it was alleged that Noticee::

5.2.3.1. failed to file disclosure upon becoming the promoter of SIEL as required under Regulation 13(2A) of SEBI (PIT) Regulations.

5.2.3.2. failed to disclose the change in shareholding to SIEL and stock exchange under Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.

Reply pursuant to SCN:

6. Noticee sought for extension to submit the reply vide letter dated February 27, 2019.
- 6.1. Noticee vide March 29, 2019 inter-alia replied *“that after acquisition of shares, I duly complied with the provision of Regulation 13(2A), Regulation 13(4A) read with Regulation 13(5) of PIT Regulations by informing the changes in the shareholding to then compliance officer of SIEL. We have acted bona-fide and did not secure any disproportionate gain or unfair advantage by withholding any information.”*

Personal Hearing:

7. In the interest of natural justice and in terms of Rule 4 (3) of Rules, the Noticee was given an opportunity of personal hearing on April 05, 2019. On behalf of the Noticee the Authorized Representative (hereinafter referred to as “AR”) appeared before the undersigned on the said date. AR made oral submissions and informed that written submission has been forwarded to SEBI.

ISSUES FOR CONSIDERATION and FINDINGS:

Issue I: Whether the Noticee had violated Regulation 13(2A) and 13 (4A) read with Regulation 13(5) of PIT Regulations Noticee;

Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act on Noticee;

Issue III If so, what should be the quantum of monetary penalty?

Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations,

Violation of Relevant provisions of SEBI (PIT) Regulations are reproduced hereunder:

Regulation 13(2A)

“Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.”

Regulation 13(4A) of SEBI (PIT) Regulations:

“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 Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.”

Regulation 13(5) of SEBI (PIT) Regulations:

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.

Regulation 12 of SEBI (PIT) Regulations, 2015

Repeal and Savings.

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(2) *Notwithstanding such repeal,—*

(a) *the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

(b) *anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

(3) *After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

8. It is settled that Noticee is the son of one of the Promoter, Mr. Sanjeev Agarwal and he had acquired 20000 shares on September 19, 2013 for Rs. 7,79,000/-. On acquiring the shares and being son of the promoter, he falls under the category of Promoter Group as per Regulation 2(1)(zb)(ii) of SEBI (Issue of Capital Disclosure Requirements) Regulations, 2009 which inter-alia states ".....an immediate relative of the promoter (i.e.....child of the person)" hence he was required to make disclosure under Regulation 13(2A) of PIT Regulation to SIEL and was also required to disclose his shareholding under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation for the shares acquired on September 19, 2013, September 23, 2013 and October 04, 2013. I note that Noticee has submitted an evidence of acknowledgment from SIEL that he had made disclosure to SIEL about acquisition of shares on September 19, 2013 and thereafter acquisitions of shares on September 23, 2013 and October 04, 2013 to SIEL under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation. I find that Noticee has failed to provide evidence to the disclosure made under Regulation 13(2A) of PIT Regulation to SIEL of initial acquisition made on September 19, 2013. I also find that Noticee has not provided any evidence to show that he had made disclosure to stock exchange under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation.
9. Considering that Noticee had made disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation to SIEL for the shares acquired on September 19, 2013, I am inclined not to impose penalty for the disclosure not made by Noticee under Regulation 13(2A) of PIT Regulation to SIEL.
10. In view of the above, I conclude that Noticee had made disclosure to SIEL under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation but has failed to make disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation to stock exchange and hence liable for monetary penalty under Section 15A(b) of SEBI Act.

Issue II Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act

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.

11. The Hon'ble Securities Appellate Tribunal, in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, has also 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."*

12. The objective of the disclosures is to make public at large aware of the change in the shareholding of the promoter group of the company, which was missing in the present case.

Issue III If so, what should be the quantum of monetary penalty?

13. While determining the quantum of penalty under Section 15A(b) of SEBI Act, it is important to consider the factors stipulated in Section 15J of SEBI Act which read as under:-

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 investors as a result of the default;

(c) the repetitive nature of the default.

14. The defaults of the Noticee are repetitive in nature as the Noticee failed to make disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulation in three instances. I find from the material on record that the loss caused to an investors as a result of the said defaults cannot be quantified. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticee.

ORDER

15. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticee, in exercise of the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the AO Rules, hereby impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** under Section 15 A (b) of SEBI Act for violation of the provision of Regulation 13 (4A) read with Regulation 13(5) of PIT Regulations on Noticee.

16. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.
17. 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 favor 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
RT GS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

18. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- I) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment	Penalty
Bank Name and Account Number from which payment is remitted	
UTR No	

19. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
20. 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.

Date: July 11, 2019
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER