

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.ISD/AIL/KN/AO/DRK-CS/EAD-3/402/68-13]

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

Against:

Mrs. Komal Nahata

PAN No. ABIPN1577C

258 Block-B, Flat noSJ/4,

Laketown, Kolkata- 700089

West Bengal

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the trading of the scrip of Arvind International Ltd. (hereinafter referred to as "**AIL/ Company**"). The shares of AIL were listed at Bombay Stock Exchange Ltd. (hereinafter referred to as "**BSE**").
2. It was observed in the investigation report that on September 13, 2010 Mrs. Komal Nahata (hereinafter referred to as "**Noticee/KN/You**") had acquired 3,75,000 shares from Gujarat Metallic Coal & Coke Ltd. (formerly known as *Arvind Chemicals Ltd.*-hereinafter referred to as "**Gujarat Metallic/ACL**) and on October 26, 2010 sold 3,75,000 shares of AIL to Gujarat Metallic and did not make the relevant disclosures under SEBI (Substantial Acquisition of Shares & Takeover) Regulations 1997 (hereinafter referred to as "**SAST Regulations**") and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") on both the occasions.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer and the same was communicated vide proceedings of Whole Time Member appointing Adjudicating Officer dated November 15, 2012 under Section 15-I of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "**Rules**"), to inquire into and adjudge under Section 15A(b) of SEBI Act, for the violation of the provisions of regulation 7(1) read with regulation 7(2) of SAST Regulations and regulations 13(1) and 13(3) read with regulation 13(5) of PIT Regulations, alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice no. *A&E/DRK/CS/14455/2013* dated June 14, 2013 (hereinafter referred to as "**SCN**") was served on the Noticee by "SPAD" (acknowledged received) in terms of the provisions of Rule 4 of the Rules requiring the Noticee to show cause as to why an inquiry should not be held against her and why penalty, if any, should not be imposed on her under Section 15A(b) of the SEBI Act for the alleged violation of the provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations and regulations 13(1) and 13(3) read with regulation 13(5) of PIT Regulations. In the said SCN, it was stated/ alleged that:

a. On September 13, 2010 the Noticee had acquired 3,75,000 shares from Gujarat Metallic in off market. The details are given as below:

Date of Transaction	Entity	Preholding (no. of shares)	Purchased/ sold (no. of shares)	Post- holding (no. of shares)
13.09.2010	Gujarat Metallic	3,75,885	-3,75,000	885
13.09.2010	KN	0	+3,75,000	3,75,000

b. It was alleged that on September 13, 2010 Noticee had acquired 3,75,000 shares of AIL constituting 5.35 percent of the total shareholding of AIL. This acquisition led to an increase in her shareholding from NIL to 5.35% of the total shareholding of AIL. At this juncture, as per regulation 7(1) read with 7(2) of SAST Regulations and 13(1) read with 13(5) of PIT Regulations, Noticee was required to disclose her shareholding or voting rights to AIL and to the stock exchange as the shareholding has increased

to more than five percent of the total shareholding of AIL. However, Noticee had not made any disclosure to AIL and to the stock exchange of such acquisition as per the aforesaid regulations.

- c. It was further alleged that, on October 26, 2010 KN sold the same number of shares i.e. 3,75,000 shares to the same entity i.e. Gujarat Metallic in off-market constituting 5.35 percent of the total share capital of AIL. The details are given as below:

Date of Transaction	Entity	Preholding (no. of shares)	Purchased/sold (no. of shares)	Post-holding (no. of shares)
26.10.2010	KN	3,75,000	-3,75,000	0
26.10.2010	Gujarat Metallic	885	+3,75,000	3,75,885

- d. It was observed from the investigation report that no disclosure was made by the Noticee with respect to the above transaction as well. It was alleged that, as per the trading details on October 26, 2010. Noticee had sold 3,75,000 shares to Gujarat Metallic due to which her shareholding reduced to NIL. At this juncture, as per regulation 13 (3) read with 13 (5) of PIT Regulations, Noticee was required to disclose the number of shares or voting rights held and change in shareholding or voting rights as her shareholding reduced from 5.35% to NIL. However, Noticee has not made any disclosures to AIL of such change as required under regulation 13(3) read with regulation 13 (5) of the PIT Regulations.

5. Noticee had submitted her reply dated June 25, 2013, wherein it was stated as follows;

In this context, I humbly submit that pursuant to an understanding between ACL and KN for providing a commercial loan, the ACL was required to pledge the said equity shares of AIL in favour of KN as a security for the loan. However, ACL instead of making pledge of the shares had inadvertently transferred 3,75,000 equity shares of AIL to KN on 13.09.2010 off market. However, upon the said loan from KN not materializing, ACL called back the said shares of AIL from KN by way of re-transfer on 26.10.10 off market.

The above facts clearly show that the transfer of shares of AIL from ACL to KN and re-transfer from KN to ACL had not been resulted due to any transaction of

purchase or sale of shares, there was no contract either for said acquisition of shares or for subsequent reversal of transfer of said shares. Moreover, no monetary transaction were carried out for either for inward registration of transfer or for reversal of said transfer, as such KN was under the impression and understanding that no disclosure was required to be made pursuant to such transfer of shares under regulation 7(1) read with regulation 7(2) of SEBI (SAST) Regulations and Regulations 13(3) of SEBI (PIT) Regulations.

6. An opportunity of hearing was granted to the Noticee vide hearing notice dated August 5, 2013 to appear on August 26, 2013 at SEBI Bhavan, Mumbai. Noticee vide her letter dated August 20, 2013 requested to extend the date of hearing due to her pre-occupation and social obligations. Acceding to the request of Noticee, final opportunity of personal hearing was granted to the Noticee vide hearing notice dated September 5, 2013 to appear on September 23, 2013 at SEBI- Eastern Regional Office at Kolkata (SEBI-ERO) and the same was postponed and intimated vide letter dated September 12, 2013 to appear on September 27, 2013 at SEBI- ERO.
7. Noticee had authorised Mr. Prasanna Kumar Nahata, husband of KN to appear before the undersigned as her Authorised Representative (AR). AR had reiterated the submissions made vide reply dated June 25, 2013. AR has also submitted that it is a practice that whenever the Noticee has surplus in the account she would lend to the corporates, however, in the instant case, the loan repayment did not take place as scheduled from other borrower so the transaction could not go through with Gujarat Metallic, therefore shares were returned back. Therefore, as per their understanding no disclosure is required and hence no violation of the SAST and PIT provisions.
8. Noticee has submitted her additional reply dated September 27, 2013 wherein she has stated that "The transaction was for a very short period of less than one and half month and neither the shareholder of AIL was in any way suffered nor KN has taken any unfair advantage of any kind from such deal. KN is in no way connected to any of the Promoter group of AIL and ACL." Noticee has submitted the income and expenditure account for the year ended on 31.03.2013 and 31.03.2012 and the Income tax documents for the assessment years 2011-12 and 2012-13 and the same has been taken on record.

CONSIDERATION OF EVIDENCE AND FINDINGS

9. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegations in the present matter were that the Noticee had failed to comply with the provisions of disclosure as specified under regulation 7(1) read with regulation 7(2) under SAST regulations and 13(1) and 13(3) read with regulation 13(5) under PIT Regulations.
10. The texts of the provisions of regulations 7(1) and 7(2) of SAST Regulations, 1997 and 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations are reproduced hereunder:-

SAST Regulations:

Acquisition of 5 per cent and more shares or voting rights 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 percent or ten percent or fourteen percent or fifty four per cent or seventy four percent 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 of,—
- (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 or 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.
- (5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within [two] working days of :
- (a) the receipt of intimation of allotment of shares, or
 - (b) the acquisition or sale of shares or voting rights, as the case may be.

11. From the records it may be noted that the Noticee contends that Gujarat Metallic had called back the shares of AIL from her due to non-materialisation of the proposed loan. However, it is difficult to comprehend as to why there was a long gap of forty three days in transferring back the shares to the borrower. Noticee has not produced any detailed supporting documents in support of her claim, for example, correspondence with the borrower, resolution/ necessary approval from the borrower, terms and conditions of the proposed loan etc. In the absence of supporting evidence, Noticee's contention that the entire transaction is based on the proposed loan, does not seem plausible/ convincing. Since the shares were credited into the demat account of the Noticee, Noticee was the beneficial owner of said shares for forty three days till the shares were transferred back to Gujarat Metallic. The moment the shares were credited into the demat account of the Noticee which were subsequently debited, SAST and PIT Regulations were triggered.
12. Upon perusal of the documents available on record it is further observed that on September 13, 2010 Noticee had received/ acquired 3,75,000 shares of AIL and on October 26, 2010 Noticee had transferred/sold the same number of shares i.e. 3,75,000 shares of AIL to Gujarat Metallic in off-market.
13. On September 13, 2010 Noticee had received/ acquired 3,75,000 shares of AIL constituting 5.35 percent of the total shareholding of AIL. This transaction led to an increase in her shareholding from NIL to 5.35% of the total shareholding of AIL.
- a. In this context, regulation 7(1) read with 7(2) of SAST Regulations mandates an acquirer who acquires more than five percent shares in a company, in any manner whatsoever, to disclose at every stage the aggregate of his shareholding in that company to the company and to the stock exchanges within two days of the acquisition of shares. Therefore, as per regulation 7(1) read with 7(2) of SAST Regulations, Noticee on receiving/ acquiring 3,75,000 shares constituting 5.35 percent of the total shareholding of AIL, was required to disclose this acquisition to the company and to the stock exchange within two days.
 - b. Further, regulation 13(1) read with 13(5) of PIT Regulations mandates any person who holds more than five percent shares in any listed company to

disclose the number of shares held by such person within two working days of the acquisition of shares to the company. Therefore as per regulation 13(1) read with 13(5) of PIT Regulations as the Noticee was holding 5.35 percent of the total shareholding of AIL, she was required to disclose her shareholding within two working days of such acquisition to the company.

- c. It is observed that, at this juncture, as per abovementioned regulations Noticee was required to disclose her shareholding to AIL and to the stock exchange as it has increased to more than five percent of the total shareholding of AIL. However, Noticee had not made any disclosures to AIL and to the stock exchanges of such receipt of shares/change in shareholding as required under regulation 7(1) read with 7(2) of SAST and regulation 13(1) read with 13(5) of PIT regulations.

14. Further, on October 26, 2010, the Noticee had sold the same number of shares i.e. 3,75,000 shares to the same entity Gujarat Metallic in off-market constituting 5.35 percent of the total share capital of AIL. Due to this Noticee's shareholding reduced to NIL.

- a. Regulation 13(3) read with 13(5) of the PIT Regulations mandates any person who holds more than 5% shares in a listed company to disclose the number of shares held and change in shareholding, even if such change results in shareholding falling below 5%, and such change exceeds 2% of total shareholding in the company to the company. In the instant case, Noticee had sold 3,75,000 shares of AIL due to which her shareholding reduced to NIL from 5.35%. Therefore, as per regulation 13(3) read with 13(5) of the PIT Regulations, Noticee was required to disclose the same to the company within two working days of such change in shareholding. However, Noticee had not made any disclosure to the company.

15. Therefore, the allegations of violation of the provisions of regulations 7(1) and 7(2) of SAST Regulations, 1997 and 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations stand established against the Noticee.

16. At this juncture, I would like to quote the judgement of Hon'ble Securities Appellate Tribunal in *Milan Mahendra Securities Pvt. Ltd. Vs SEBI, SAT Order dated April 15, 2005*, wherein it was held that, "the purpose of these disclosures

so as to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”

17. The provisions of sections 15A(b) of SEBI Act are reproduced hereunder:

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 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.

(c).....

18. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* 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”.

19. While determining the quantum of monetary penalty under section 15A (b) , it is important to consider the factors stipulated in section 15J of SEBI Act, which reads 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.”*

20. It is noted from the investigation report that the quantum of penalty has not been quantified. I observe that from the material available on record it is difficult to quantify the amount of gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the delay in complying with the provisions of SAST Regulations. Therefore, in view of the abovementioned conclusions and after considering all the factors mentioned under Section 15J

of the SEBI Act, I hereby impose a penalty of ₹ 1,00,000 (Rupees One Lakh Only) on the Noticee under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the non-compliance of the provisions of regulations 7(1) and 7(2) of SAST Regulations, 1997 and 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, which is appropriate in the facts and circumstances of the case.

ORDER

21. In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹ 1,00,000 (Rupees One Lakh Only) on Mrs. Komal Nahata in terms of the provisions of Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the non-compliance of the provisions of regulations 7(1) and 7(2) of SAST Regulations, 1997 and 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the non-compliance by the Noticee.

22. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI– Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to Deputy General Manager- ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

23. 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, copy of this order is being sent to Mrs. Komal Nahata, 258 Block-B, Flat no. SJ/4, Laketown, Kolkata- 700089, West Bengal and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: September 30, 2013

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**