

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AKS/17/27/2018-19]

**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:

Ms. Anitha Alokam
(PAN No. AFCPA2142N)
201, Arman's Sukruthi towers,
Plot 56, Sarojini Naidu Nagar,
Near Society Office, Kakatiya Hills,
Madhapur, Hyderabad – 500081

In the matter of Covidh Technologies Limited

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination in the scrip of Covidh Technologies Limited (hereinafter referred to as 'the company') formerly known as Aptus Industries Limited, a company having its shares listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'), Ahmedabad Stock Exchange (hereinafter referred to as 'ASE') and Madras Stock Exchange (hereinafter referred to as 'MSE'), during the period October 01, 2014 to March 31, 2015. During such examination, change was observed in shareholding of promoter of the company Ms. Anitha Alokam (hereinafter referred to as 'the Noticee' or in her name) from 6.3% to 4.9% during the period January 01, 2014 to March 10, 2014 on account of her transactions in the shares of the company on three dates as described in the following table:-

Shareholding before transactions	Volume of transaction (shares)	Date of transaction	Shareholding post transactions
6,68,750 (6.3%)	64,800	January 01, 2014	5,13,950 (1.46%)
	75,000	January 03, 2014	
	15,000	March 10, 2014	

2. Vide letter dated January 07, 2015, BSE had informed SEBI that '*as per exchange record, no disclosures were received from the promoter entities under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') for the transactions carried out during examination period*'. Also vide email dated April 01, 2015, BSE

reiterated the same. In view of the same, SEBI observed that with regard to aforesaid transactions the Noticee had failed to make disclosures as required under regulation 13(4A) of PIT Regulations.

3. The Whole Time Member, SEBI *prima facie* felt satisfied that there are sufficient grounds to adjudicate upon the alleged violations by the Noticee in respect of the provisions of regulation 13(4A) read with 13(5) of PIT Regulations and appointed Shri Suresh Gupta, Chief General Manager, as Adjudicating Officer (AO) vide order dated January 31, 2017 to adjudge under rule 5 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and under section 15A (b) of the SEBI Act, for the said violations by the Noticee. The AO had remitted back the matter seeking evidence in support of the allegations. The concerned department undertook further inquiry in the matter. During such inquiry, the company had, vide its e-mail dated October 10, 2017, submitted that it had received the requisite disclosures from Anitha Alokam on January 3, 2014 for both the transactions dated January 01, 2014 and January 03, 2014. It had, vide its letters each dated January 05, 2015, furnished the disclosures under regulation 13(6) of the PIT Regulations to the concerned stock exchange/s. The company had also provided proof of dispatch of its letters dated January 05, 2015 to the concerned stock exchange/s through “The PROFESSIONAL Couriers”. However, vide email dated December 12, 2017, BSE had again informed SEBI that no disclosures under regulation 13(4A) of the PIT Regulations have been received by it from Ms. Anitha Alokam. It was also confirmed that allegation is with regard to transactions dated January 01, 2014 and January 03, 2014.
4. Subsequently, by a common communication- order dated April 02, 2018, this case has been transferred to me with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders ‘*shall remain unchanged and shall be in full force and effect*’ and that the “*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*”. Thus, the terms of reference before me are the same as was before erstwhile AO i.e. violation of the provisions of regulation 13(4A) read with regulation 13(5) of PIT Regulations with respect to aforesaid transactions in shares of the company by the Noticee.
5. Accordingly, in terms of rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and terms of reference as advised in above communication- order dated April 02, 2018 the notice to show cause no. EAD/SS/GSS/12623/1/2018 dated April 25, 2018 (hereinafter referred to as ‘the SCN’) was issued to the Noticee, calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The relevant provisions of PIT Regulations charged in this case and consequent penalty provided in section 15A (b) of the SEBI Act are reproduced hereinafter:

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (4A) 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 persons 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.

(5) 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.

Penalties and Adjudication

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 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

6. The SCN was duly served upon the Noticee but no reply was received from the Noticee. In terms of rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on June 08, 2018. The notice of hearing was duly served upon it. The Noticee, vide letter dated June 12, 2018 submitted that ‘I received the aforesaid SCN dated April 25, 2018 and Hearing notice dated May 22, 2018 through my neighbor’s. I am no longer the resident of old address as mentioned in aforesaid SCN and Hearing notice and I moved to new location’ and provided the address of new location thereof. The Noticee further requested for 15 days’ time to submit her reply to aforesaid SCN. The request was acceded to and another opportunity of personal hearing was granted to the Noticee on July 09, 2018. The notice of hearing was duly served upon it. Vide email dated July 06, 2018 the Noticee requested to reschedule the personal hearing on July 19, 2018. The final opportunity of personal hearing was granted to the Noticee on July 19, 2018, when Noticee was represented through its authorized representative (hereinafter referred to as ‘AR’). Learned AR tendered Noticee’s written reply to the SCN vide its letter dated July 18, 2018 during the hearing and made submissions on behalf of the Noticee on the lines of its reply as under:

- a. *The Noticee was under obligation to make requisite disclosures to the company and the stock exchange within two days of making transactions w.r.t. shares sold on January 01, 2014 and January 03, 2014. The Noticee would like to bring to the notice that disclosures for both the transactions under Regulation 13(4A) have been submitted to company and to the Stock Exchange on January 03, 2014 (The Noticee tendered copies of disclosures submitted to the company, duly acknowledged by the company, with company seal affixed on January 03, 2014 and copies of Form D sent to stock exchange along with proof of dispatch on January 03, 2014).*
 - b. *The Noticee complied with all required compliances w.r.t. above transactions to the company and stock exchange under regulations 13(4A) read with 13(5) of PIT Regulations.*
7. I have considered the allegations levelled in the terms of reference, the aforesaid submission of the Noticee, and the relevant material available on record. The allegation in this case is with regard to the transactions dated January 01, 2014 and January 03, 2014 wherein the Noticee had sold 64,800 shares of the company on January 01, 2014 and 75,000 shares on January 03, 2014. On both the occasions, the quantity sold by the Noticee was more than 25,000 shares and both these transactions triggered the obligation to make requisite disclosures to the company and the stock exchange/s under regulation 13(4A) read with regulation 13(5) of the PIT Regulations by January 3, 2014 and January 7, 2014; respectively.
8. In this case, there is no dispute as to the requisite disclosures made by the Noticee to the company under regulation 13(4A) read with regulation 13(5) of the PIT Regulations. The dispute is with regard to the requisite disclosures by the Noticee to the BSE. During the examination as well as further inquiry as aforesaid it has come to light that the Noticee had made disclosures to the company and had dispatched the requisite disclosure in the prescribed Form D to BSE through PROFESSIONAL COURIERS on January 03, 2014. However the BSE has denied the receipt of such disclosures made by the Noticee. The documents relied upon by the Noticee might show the dispatch by her but do not prove the receipt of the disclosure by the BSE for the purpose of dissemination thereof to public. In this case, there is no acknowledgement from the BSE on the disclosures made by the Noticee and the courier slip relied upon by her can only demonstrate that she might have sent the relevant disclosures to BSE, but does not prove that the disclosures about her aforesaid two sell transactions were received by BSE. In this regard, it is relevant to mention that Hon'ble Calcutta High Court in the matter of *Arun Kumar Bajauria vs SEBI* in writ petition no. 331 of 2001 decided on March 27, 2001 held that - it was for the appellant to establish by cogent material on record that it had sent the compliance report to BSE and that those had been received by it.

9. In this regard, it is also pertinent to mention that Hon'ble SAT, in the matter of **Mega Resources Ltd. v. SEBI (Appeal No. 49/2001)** has observed that,

"...regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement. But Regulation 7(1) requires the acquirer to disclose the aggregate of his holding in the Target Company to the company. Sub regulation (2) prescribes the time limit within which the disclosure is required to be made.....According to Black's Law Dictionary "Disclosure" means –act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."

10. Further in the matter of Kalindee Rail Nirman (Engineers) Limited vs SEBI decided on July 19, 2001, Hon'ble SAT held that -

"... As observed by the Calcutta High Court, the agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said documents has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgement received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant..."

11. Thus, mere dispatch of the disclosures is not sufficient to show compliance of the disclosure obligation. What is important is that the disclosures should actually reach the exchange. The onus in this regard is always on the sender to establish his/ her compliance. In the instant case, BSE has specifically confirmed that it did not receive any disclosures from the Noticee and the Noticee has failed to establish that she made disclosures with regard to her two sell transactions and that her Form D actually reached BSE and was received by it.
12. I, therefore, find that the Noticee had failed to disclose her shareholding as per regulation 13(4A) read with regulation 13(5) of the PIT Regulations in Form D to BSE with regard to her sell transactions dated January 01, 2014 and January 03, 2014 as alleged in this case. In the matter of **Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI**—the Hon'ble SAT, vide its order dated April 15, 2005 held 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."* In view of the above, I hold that the breach by the Noticee, as found hereinabove, attracts penalty as prescribed under Section 15A (b) of the SEBI Act.

13. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 which reads as follows:-

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.”*

Explanation.—*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

14. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is noteworthy that the Noticee had disclosed its sell transactions to the company. There are two sell transaction involved in this case and though they are more than three years old the fact remains that no disclosure has been made in public domain about such sell transactions till date. Such non disclosures as in this case would, thus, create information asymmetry, at relevant times.
15. It is also relevant to mention that after amendment in section 15J of the SEBI Act, vide Part VIII of Chapter VI of the Finance Act, 2017, it has been clarified that while the adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having regard to the factors specified in section 15J. It is also settled position that the words "shall be liable to" used in the context of "penalty in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the Magistrate to impose any penalty. Further, from the ratio of the Judgement of Hon'ble SAT in the matter of *M/s. Ushdev Trade Ltd. vs. SEBI (SAT Appeal No 106 of 2010- Order dated 14.9. 10)*, it is noted that the adjudicating officer is not bound to be always within the range specified in section 15H (ii) while imposing the penalty on a delinquent and he must exercise his discretion in imposing any penalty having regard to the factors listed in section 15J.
16. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 50,000/- (Rupees fifty thousand only) on the Noticee viz. Ms. Anitha Alokam under section

15A(b) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

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 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:

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

18. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 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)	

19. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: July 31, 2018

Place: Mumbai

Santosh Shukla

Adjudicating Officer