

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/PM-NK/AO/44/2018-19]

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

Air Travel Services Private Limited

(PAN: AABCA6361N)

In the matter of

Jay Energy and S. Energies Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India while investigating into the shareholding pattern of Jay Energy and S. Energies Limited observed certain non-compliances with regard to of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **SEBI (PIT) Regulations, 1992**) and SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 (hereinafter referred to as **SEBI (SAST) Regulations, 2011**). The Shares of Jay Energy and S. Energies Limited (hereinafter referred to as the **Company/ Jay Energy/JESE**) was listed on BSE Limited (hereinafter referred to as BSE). During examination of documents and records it was observed that the shareholding of Air Travel Services Private Limited (hereinafter referred to as the Noticee/ Air Travel) crossed 5% in Jay Energy and S Energies Limited and the same was not disclosed as required under the relevant provisions of the SEBI Regulations.

Investigation observed that shareholding of Air Travel Services Private Limited increased from 14,21,000 (4.18%) as on 01/04/2014 to 30,41,500 shares (8.94%) on 02/04/2014 and then decreased to 17,91,500 shares (5.27%) on 03/04/2014. The above increase in the shareholding from 4.18% to 8.94% is attributed to purchase of 16,20,500 shares in off-market transaction on 02/04/2014. Further, the decrease in shareholding from 8.94% to 5.27% is attributed to sale of 12,50,000 shares by way of market sale on 03/04/2014.

2. The above required disclosures by the Noticee in terms of Regulations 13(1) and 13(3) of the SEBI (PIT) Regulations read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 29(1) and 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 and the Noticee failed to disclose as mentioned above in accordance with the aforesaid Regulations.
3. In view of the above, it was alleged that the Noticee had not complied with the provisions of Regulations 13(1) and 13(3) of the SEBI (PIT) Regulations read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 29(1) and 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer under section 15I of the 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 Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘Adjudication Rules’) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violations of provisions of Regulations 13(1) and 13(3) read with Regulation 13(5) of **SEBI (PIT) Regulations, 1992** and Regulation 29(1) and 29(2) read with Regulation 29(3) of **SEBI (SAST) Regulations, 2011**.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice no. EAD/AO-PM/NK/12496/1/2018 dated April 23, 2018 (hereinafter referred to as “SCN”) was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty

be not imposed under section 15A(b) of the SEBI Act, 1992 for the alleged violations specified in the SCN. It was alleged in the SCN that the Noticee had violated the provisions of Regulations 13(1) and 13(3) read with Regulation 13(5) of **SEBI (PIT) Regulations, 1992** and Regulation 29(1) and 29(2) read with Regulation 29(3) of **SEBI (SAST) Regulations, 2011**. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

6. It is observed from the records that the SCN dated April 23, 2018 returned undelivered. Thereafter, the SCN was uploaded on the SEBI website under the caption unserved summons and Notices. It is observed that the Noticee is an unlisted company as per the MCA website and the status of the company as per the MCA website is active and therefore a scan copy of the SCN was also sent on the email id. of the Noticee available on the MCA website under the caption company master data. However, no response was received from the Noticee. Thereafter an opportunity of personal hearing was given to the Noticee vide letter dated July 11, 2018 which returned undelivered. Thereafter, the hearing Notice along with the SCN was sent on its email id. group_all10@yahoo.com obtained from the MCA website as mentioned above. However, the Noticee did not respond to either the SCN or the hearing notice. Therefore another opportunity of personal hearing and reply was given to the Noticee vide letter dated August 14, 2018. The hearing notice along with the SCN was sent to the above mentioned email id. However, the Noticee did not respond. It is observed that there was no failure notice in respect of the notices and the SCN sent on the above mentioned email id. In view of the above, I am convinced that the Noticee was given sufficient opportunity to present his case before me and that the principle of natural justice have been complied with respect to the Noticee's matter.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee in the SCN and the material/documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. *Whether the Noticee has violated the provisions of Regulations 13(1) and 13(3) read with Regulation 13(5) of **SEBI (PIT) Regulations, 1992** and Regulation 29(1) and 29(2) read with Regulation 29(3) of **SEBI (SAST) Regulations, 2011**?*
 - b. *Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?*
 - c. *If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?*
8. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992, and SEBI (SAST) Regulations, 2011 which reads as under:-

SEBI (PIT) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - 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), (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.*

SEBI (SAST) Regulations, 2011

Disclosure of acquisition and disposal.

- 29 (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.
- (2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the target company, in such form as may be specified.
- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, - (a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office

Issue a) - Whether the Noticee has violated the provisions of Regulations 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 29(1) and 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011;

9. I note that Regulation 13(1) of SEBI (PIT) Regulations, 1992 requires disclosure to the company in Form A, the number of shares or voting rights held by any person who holds more than 5% shares or voting rights in any listed company, within 2 working days of the receipt of intimation of allotment of shares; or the acquisition of shares or voting rights, as the case may be. Further Regulation 13(3) of SEBI (PIT) Regulations, 1992 requires that 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. Further, Regulation 13 (5) of the SEBI (PIT) Regulations 1992 requires the disclosures to be made within 2 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.

10. Regulations 29 (1) read with 29 (3) of SEBI (SAST) Regulations, 2011 inter alia requires disclosure by any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to; the company at its registered office and to the Stock Exchange (s) where the shares of the target company are listed. Similarly, Regulation 29 (2) read with 29 (3) of SEBI (SAST) Regulations, 2011 inter alia requires disclosure by any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall within two working days disclose every acquisition or disposal of shares of such target company representing two percent or more of the shares or more of the shares or voting rights in such target company to the company at its registered office and to the Stock Exchange (s) where the shares of the target company are listed.
11. Upon perusal of the documents available on record, I find that the Noticee has not submitted any reply to the SCN issued to it, neither it had availed the opportunity of personal hearing granted to it, even though ample opportunity of doing so was made available to the Noticee. In this regard, it is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003)** wherein, it observed "*... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*".

12. I also observe that the Hon'ble Securities Appellate Tribunal in the matter of **Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014)** had inter alia observed that “...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”
13. Therefore, in view of the above case laws and non-submission of any reply to the SCN issued in the matter and also not availing the opportunity of personal hearing before me, it can be safely presumed that the Noticee has admitted the charges levelled against him in the said SCN. However, in the interest of justice, I still proceed to decide the matter on the basis of material available on record. Upon perusal of the documents available on record, I find that the Noticee held 4.18% (14,21,000) shares of the company (Jay Energy and S. Energies Limited) as on 01/04/2018 which increased to 8.94 % (30,41,500) shares on 02/04/2014 consequent to off market purchase of 16,20,500 (4.76%) shares of Jay Energy. The shareholding of the Noticee then decreased to 5.27% (17,91,500) shares on 03/04/2014 consequent to market trades (sell transaction) of 12,50,000 (3.67%) shares on 03/04/2014. I find that the off market purchase by the Noticee of 16,20,500 shares on 02/04/2014 which represented 4.76% of the paid up share capital of the company, had triggered the disclosure requirements in terms of Regulation 13(1) read with 13(5) of SEBI (PIT) Regulations, 1992. The said transaction also triggered the disclosure requirements in terms of Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations, 2011. The Noticee, subsequently sold 12,50,000 shares through market trades, which represented 3.67% of the paid up share capital of the company. There was a change in the shareholding of the Noticee by more than 2% of the paid up share capital of the company and the same had triggered the disclosure requirements by the Noticee in terms of Regulation 13(3) read with 13(5) of the SEBI (PIT) Regulations, 1992 and Regulation 29(2) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011.
14. I also find from material available on record that the company (Jay Energy) has submitted during investigation that it had received the necessary disclosures from the Noticee in

terms of Regulation 29 (2) of the SEBI (SAST) Regulations 2011 and Regulations 13(1) & 13(2) of the SEBI (PIT) Regulations 1992. However, the company has not submitted any submitted documentary evidence in its support. I further find that Regulation 29(1) and 29(2) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011 also required the Noticee to disclose the aforesaid transactions to the exchanges on which the shares of the company were listed in addition to the disclosures made to the company. I find that the shares of the company were listed on the BSE Limited (BSE) and the BSE has confirmed that the exchange has not received any disclosure from the Noticee in respect of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011.

15. From the above, I note that Regulation 13(1) and 13(3) read with 13(5) of the SEBI (PIT) Regulation, 1992 required the Noticee to disclose its transactions to the company and not the exchange(s) where its shares were listed. I note that the company has admittedly received the said disclosures in accordance with the SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011 from the Noticee as prescribed. However, the exchange where the shares of the company (Jay Energy) was listed has admittedly not received any disclosures from the Noticee. Further, in absence of any submissions/representation from the Noticee or any other documents/material available on record suggesting otherwise, I am inclined to accept that the Noticee has not made any disclosure in accordance with the provisions of Regulations 29(1) and 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 to the stock exchange(s) where the shares of the company were listed.
16. In this regard, I refer to the observation of Hon'ble Securities Appellate Tribunal ('SAT') in **Ambaji Papers Pvt. Ltd. vs. the Adjudicating Officer, SEBI dated January 15, 2014**, wherein contention of information being in the public domain was raised by the appellant. Hon'ble SAT observed: *".... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by*

dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well”.

17. I would further like to refer to the observations of Hon’ble SAT in the matter of **Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014)**, wherein it was held that - “.. *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures*”.
18. In view of the aforesaid discussions, I am of the view that the Noticee can be given benefit of doubt, with respect to the disclosures requirement under Regulations 13(1) and 13(3) read with Regulation 13(5) of the SEBI (PIT) Regulations, 1992 and Regulations 29(1) and 29(2) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011 for as much as the disclosures requirements related to the company. However, I also find that the Noticee failed to make the requisite disclosures to the stock exchange(s) as stipulated under Regulation 29(1) and 29 (2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

Issue b) - Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act?

19. By not making all the required disclosures, the Noticee failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon’ble Supreme Court of India in the matter of **Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}** wherein it was held that “*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*”

20. As the violation of the provisions of Regulations 29(1) and 29 (2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 is established, the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, 1992 which, at the time of violation, read as under:

"15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-

(a);

Before 08.09.2014; *(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;*

With Effect from 08.09.2014; *(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;"*

Issue c) - The monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

21. While determining the quantum of 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.”

22. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to investors as a result of the default is not quantified in the material available on record. Considering that there has been no disclosure by the Noticee on two occasions, the same are treated as repetitive. It is important to note that the details of the shareholding of the promoters/Directors/majority shareholders and changes thereto are an important element for the proper functioning of the securities market and proper and timely disclosure thereof to the company and stock exchanges etc. are of significant importance from the standpoint of investors. The purpose of these disclosures is to bring about transparency in the transactions of Directors/Promoters/majority shareholders and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, as regards the importance of disclosure, 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."*
23. Hon'ble SAT in the matter of **Akriti Global Traders Limited vs. SEBI** (Appeal No. 78 of 2014 order dated September 30, 2014), observed that *"Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay"*.
24. In the matter of **Virendrakumar Jayantilal Patel vs. SEBI** (Appeal No. 299 of 2014 order dated October 14, 2014), observed that *"..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within*

the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.”

25. In this regard, Hon'ble Supreme Court of India in the matter of **Shriram Mutual Fund** refereed supra had observed that “... *imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations.*”
26. In view of all of the above I am of considered view that the Noticee has violated the provisions of Regulations 29(1) and 29 (2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 and that it is a fit case for imposition of penalty for violation of the aforesaid Regulations.

ORDER

27. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on the Noticee i.e. Air Travel Services Private Limited under section 15A(b) of SEBI Act, 1992 for violation of Regulations 29 (1) and 29 (2) read with 29 (3) of SEBI (SAST) Regulations, 2011.
28. 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:

Account No. for remittance of penalties levied by Adjudication Officer

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

29. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, DRA- I, Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/ disgorgement/recovery/Settlement amount and legal charges along with order details)	
Penalty	

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

Date: November 30, 2018
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer