

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. MC/CB/12/2018]**

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**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

*In respect of –*

**Mr. Sunil Dadha** (PAN AGHPD2867P) having address at – Shankeswara Towers, No. 22, Ramanan Road, F2, 6<sup>th</sup> Floor, Sowcarpet, Above IOB Bank, Chennai – 600 079 (Tamil Nadu)

*In the matter of SMS Techsoft (India) Limited*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) had conducted examination in the scrip of SMS Techsoft (India) Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period January - June, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(1) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) by Mr. Sunil Dadha (hereinafter be referred to as, the “**Noticee**”).

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) vide order dated July 21, 2016 to inquire into and adjudge under Section 15A

(b) of the SEBI Act against the Noticee for the alleged violation of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations. Subsequently, the undersigned was appointed as the Adjudicating Officer on May 29, 2018 which was communicated *vide* order dated June 19, 2018.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. EAD/SG/VS/2180/2017 dated January 19, 2018 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against him under Section 15A (b) of the SEBI Act for the alleged violations of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as under:
  - a) The shareholding of the Noticee changed from 4.76% (16700000 shares) to 5.37% (18831904 shares) by buying 21,31,904 shares on April 11, 2014.
  - b) On account of such acquisition, the Noticee was required to submit disclosure to the Company and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations and to the Company under Regulation 13(1) of the PIT Regulations. However, the Noticee, *allegedly*, failed to submit disclosure to the BSE and the Company under Regulation 29(1) read with 29(3) of the SAST Regulations, and to the Company under Regulation 13(1) of the PIT Regulations.
  - c) The BSE, *vide* e-mail dated July 11, 2014 confirmed that no disclosures were received from the Noticee under the PIT Regulations or SAST Regulations in relation to the increase in shareholding of the Noticee during the Examination Period. Similarly, the Company, *vide* letter dated August 29, 2014 confirmed that no disclosures were received from the Noticee under the PIT Regulations.
  - d) It was alleged that the aforesaid non-disclosure regarding increase in his shareholding by the Noticee was in violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

**SEBI (Prohibition of Insider Trading) Regulations, 1992**

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.*

**SAST Regulations:**

**29. Disclosure of acquisition and disposal**

*(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.*

*(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.*

5. It was stated in the SCN that the aforesaid alleged violations, *if established*, would make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act.
6. In response to the SCN, the Noticee submitted a letter dated February 06, 2018 requesting the erstwhile Adjudicating Officer to grant the Noticee time till February 20, 2018. The aforesaid request of the Noticee was acceded to by the erstwhile Adjudicating Officer and the Noticee was advised to file his reply till March 14, 2018 *vide* Notice of Hearing dated March 01, 2018. The Noticee was also granted an opportunity of hearing on March 15, 2018 *vide* the aforesaid letter.

7. The Noticee, *vide* letter dated March 08, 2018 submitted his reply towards the SCN. The core submissions of the Noticee are summarized as under:
- a) The Noticee admitted purchase of 2131904 shares of the Company on April 11, 2014. The Noticee submitted that he was not aware of the fact that his holding in the Company would cross the threshold of 5% as a result thereof and would require disclosures under relevant SEBI regulations.
  - b) The Noticee submitted that any violation of SEBI regulations was due to ignorance and was neither intentional nor deliberate.
  - c) The Noticee submitted to treat the violation as a 'technical error'. The Noticee also submitted that he had filed the required disclosures to stock exchange on May 23, 2016 and submitted copies of disclosures filed in this matter.
8. Thereafter, the Noticee, *vide* letter dated April 09, 2018 informed the erstwhile Adjudicating Officer of his wish to submit a Settlement Application and requested time till May 15, 2018 for preparing and submitting the Settlement Application in this matter.
9. Upon of appointment of the undersigned as the Adjudicating Officer in the instant matter, information in relation to settlement application of the Noticee was sought from the relevant department of SEBI. *Vide* e-mail dated June 29, 2018, it was informed to the office of the undersigned that settlement application was returned to the Noticee on account of non-submission of requisite documents.
10. Thereafter, the undersigned *vide* Notice of Hearing dated July 17, 2018 had granted an opportunity of hearing to the Noticee on August 03, 2018 for the purpose of inquiry in the instant matter. However, no appearance was made by the Noticee on the aforesaid date of hearing.
11. Keeping the interests of natural justice in mind, the undersigned granted a final opportunity of hearing to the Noticee on September 24, 2018, which was communicated to the Noticee *vide* Notice of Hearing dated August 31, 2018. The Noticee was also informed that if no appearance is made by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. The Notice of Hearing dated August 31, 2018 was served upon the Noticee in terms of Rule 4(3) of the Adjudication Rules by way of 'speed post with acknowledgment due' and was delivered to the Noticee on September 05, 2018; proof

of which is available on record. However, the Noticee did not appear before the Adjudicating Officer on the date of hearing.

12. The Noticee, in response to the Notice of Hearing dated July 17, 2018, had submitted a letter dated September 11, 2018 which was received on September 27, 2018. *Vide* the aforesaid letter, the Noticee stated that he had filed a consent petition *vide* letter dated June 16, 2018. However, I note from the paragraph 9 hereinabove that the Noticee has been notified of return of consent petition.

13. I note that the Noticee has already filed his submissions dated March 08, 2018 in response to the SCN and sufficient opportunities to appear for personal hearing have thereafter been given to the Noticee, which were not availed. Since Noticee's submissions dated March 08, 2018 towards the SCN are available on record, I hereby decide to undertake the adjudication proceedings against the Noticee on merit.

## **CONSIDERATION OF ISSUES AND FINDINGS**

14. The issues that arise for consideration in the instant matter are:

**Issue No. I** Whether the Noticee failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?

**Issue No. II** If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

**Issue No. III** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

**Issue No. I** **Whether the Noticee failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?**

15. The details relating to change in the shareholding of the Noticee as alleged in the SCN are not in dispute in the reply of the Noticee dated March 08, 2018. The details of change in shareholding of the Noticee in the scrip of the Company, as provided to the Noticee by way of Annexure B the SCN, are as follows:

Date	Gross Buy Volume	Shareholding	
		No. of shares	% of the total share capital of the Company
April 10, 2014	-	16700000	4.76
April 11, 2014	2131904	18831904	5.37

Thus, I note the fact of increase in the shareholding of the Noticee to the extent of 5.37% of the total share capital of the Company is established. .

16. Regulation 13(1) of the PIT Regulations requires any person who holds more than 5% shares in a company to disclose to the company in Form A, number of shares or voting rights held by him on becoming such holder within 2 working days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights. *Similarly*, Regulation 29(1) read with 29(3) of the SAST Regulations requires an acquirer, who acquires shares or voting rights in a target company aggregating to five per cent or more of shares of such target company to disclose their aggregate shareholding and voting rights in such target company to every stock exchange where the shares of the target company are listed and to the target company within 2 days of such acquisition.
17. On perusal of the available records and the table reproduced in paragraph 15 hereinabove, it is observed that consequent to the acquisition of 2131904 shares by the Noticee on April 11, 2014, the aggregate shareholding of the Noticee reached more than 5% of the total share capital of the Company. On the aforesaid increase, the Noticee ought to have disclosed such acquisition in terms of Regulation 13(1) of the PIT Regulations to the Company and to the Company as well as the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations.
18. I observe that the Company, *vide* letter dated August 29, 2014 (copy of which was provided to the Noticee by way of *Annexure C* to the SCN) had confirmed non receipt of any disclosures in relation to the increase in the shareholding (as stated in paragraph 15 hereinabove). Similarly, I also observe that the BSE, *vide* e-mail dated July 11, 2014 (copy of which was provided to the Noticee by way of *Annexure D* to the SCN) had confirmed that no disclosures were received in BSE from the Noticee in

relation to increase in the latter's shareholding in the Company (as stated in paragraph 15 hereinabove).

19. I also note that the Noticee, in his reply dated March 08, 2018, had submitted that non-compliance with Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations was on account of ignorance of SEBI Regulations on the part of the Noticee. However, I am of the view that it is a settled position of law that ignorance of law is no excuse. In fact, it is to prevent such ignorance of law that SEBI gives post-natal publicity by way of notification to all the rules and regulations made in the process of administrative rule making.

20. I observe that the Noticee had submitted that necessary disclosures were filed by him at the stock exchange on May 23, 2016. In view of the aforesaid admission of the Noticee, it is established that the Noticee did not make disclosures in terms of Regulation 13(1) of the PIT Regulations to the Company and under Regulation 29(1) read with 29(3) of the SAST Regulations to the BSE and thereby, had violated the same.

**Issue No. II                      If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

**&**

**Issue No. III                      If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

21. Since failure of the Noticee in making disclosures to the Company under Regulation 13(1) of the PIT Regulations and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations is established, I am of the view that imposition of monetary penalty on the Noticee is warranted under Section 15A(b) of the SEBI Act, text of which is reproduced as under:

***SEBI Act***

*"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 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.”*

22. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:
- a) amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
  - (b) amount of loss caused to an investor or group of investors as a result of the default;
  - (c) repetitive nature of the default.
23. No specific disproportionate gain or unfair advantage made by the Noticee or amount of loss caused to an investor or group of investors as a result of non-compliance with Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations could be ascertained from the material available on record. Similarly, no previous violation could be attributed to the Noticee on the basis of material available on record.
24. I also note that the Noticee had submitted that non-compliance with the provisions of PIT Regulations and SAST Regulations was unintentional and technical in nature. I note that the disclosure requirement is a statutory obligation where the intention of the parties is not relevant. Thus, I am of the view that the violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations by the Noticee warrants imposition of monetary penalty under Section 15A (b) of the SEBI Act regardless of the latter's intention.
25. I also find it relevant to refer to the order of Hon'ble SAT in the matter of **Vitro Commodities Private Limited, Kolkata v. Securities and Exchange Board of India, Mumbai** (Appeal No. 118 of 2013 dated September 04, 2013), wherein it held, *“It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed.”* Considering the aforeasid *ratio decendi*, I am of the view that the aforesaid violations of Regulation 13(1) of the PIT Regulations and Regulation 29(1)



read with 29(3) of the SAST Regulations be considered as single violation for the purpose of imposition of penalty on the Noticee.

26. While it is established that the Noticee did not comply with Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations, I note that information relating to shareholding of the Noticee was available in the public domain by way of shareholding pattern of the Company at the end of financial quarter ending in June, 2014.
27. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹2,00,000 will be commensurate with the violations committed by the Noticee.

## ORDER

28. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakhs only) upon the Noticee, i.e. Mr. Sunil Dadha under Section 15A(b) of the SEBI Act for violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.
29. 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:

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

**30.** The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the Noticee
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

**31.** Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**Date : September 28, 2018**

**Place : Mumbai**

**(Maninder Cheema)**

**Adjudicating Officer**