

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/PM/NK/2019-20/6172]

**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

Pradeep Kumar Jindal & Sons (HUF) (PAN: AAEHP9499Q)

In the matter of

Trading Activities of Certain Entities in the scrip of Pawansut Holdings Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the Trading Activities of Certain Entities in the scrip of Pawansut Holdings Limited (herein after referred to as 'Pawansut' or PHL or 'the Company') during the period June 11, 2013 to September 11, 2014 (hereinafter referred to as 'investigation period'/'period of investigation'). It was alleged that the promoter entity Pradeep Kumar Jindal & Sons (HUF) (one of the promoters of Pawansut) as PAC with Laxman Singh Satyapal failed to make disclosures on various instances in respect of the changes in the shareholding in the scrip of Pawansut during the investigation period in accordance with the disclosure requirements under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as SEBI (SAST) Regulations, 2011). The above, required disclosures by the Noticee in terms of provisions of Regulations

Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 which the Noticee failed to disclose as mentioned above in accordance with the aforesaid Regulations. In view of the above, it was alleged that the Noticee had not complied with the provisions of Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. 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 Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. EAD/AO- PM/NK/PHL/27279/2018 dated September 28, 2018 (hereinafter referred to as “SCN”) was inter alia 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.
4. It was alleged in the SCN that the promoter group entity Pradeep Kumar Jindal & Sons (HUF) as PAC with Laxman Singh Satyapal has failed to make disclosures on various instances in respect of the changes in their shareholding in the scrip of Pawansut during the investigation period in accordance with the disclosures requirements under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011. Details in this regard are given below:

Disclosure requirements under Regulation 29 of SEBI (SAST) Regulations, 2011 for promoter entity along with its PACs, for change in shareholding of Pawansut during the investigation period:

Date	Consolidated shareholding of promoters /PACs pre purchase / disposal	Consolidated % of shareholding held - pre purchase / disposal by promoter / PACs	Consolidated no of shares purchased /disposed by promoters / PACs	Purchase / Sell	Consolidated % of shareholding of shares purchased / disposed by promoter /PACs	Consolidated shareholding held - post purchase / disposal by promoter and PACs	Consolidated % of shareholding of promoters/PAC post purchase / disposal	Trigger for disclosures under Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011
11-Jun-2013	3721147	32.89	5,900	Sell	0.05	3715247	32.84	
12-Jun-2013	3715247	32.84	2,400	Sell	0.02	3712847	32.82	
19-Jun-13	3712847	32.82	7,000	Sell	0.06	3705847	32.75	
22-Jun-2013	3705847	32.75	16200	shares dematerialised	0.14	3722047		
26-Jun-2013	3722047	32.90	27,607	Purchase & Sell	0.24	3749654	33.14	
27-Jun-2013	3749654	33.14	33,491	Purchase	0.30	3783145	33.44	
28-Jun-2013	3783145	33.44	4,602	Purchase & Sell	0.04	3787747	33.48	
29-Jun-13	3787747	33.48	30,858	Purchase	0.27	3818605	33.75	
01-Jul-2013	3818605	33.75	25,065	Purchase	0.22	3843670	33.97	
03-Jul-2013	3843670	33.97	17,000	Purchase	0.15	3860670	34.12	
08-Jul-2013	3860670	34.12	4,500	Sell	0.04	3856170	34.08	
09-Jul-2013	3856170	34.08	752,000	Sell	6.65	3104170	27.44	Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011
11-Jul-2013	3104170	27.44	4,600	Sell	0.04	3099570	27.40	
25-Jul-2013	3099570	27.40	44,000	Sell	0.39	3055570	27.01	
8-Aug-13	3055570	27.01	4,500,000	Sell	0.04	3051070	26.97	
12-Aug-13	3051070	26.97	200000	Purchase & Sell	1.77	2851070	25.20	Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011
27-Aug-13	2851070	25.20	46550	Purchase	0.41	2897620	25.61	
3-Sep-13	2897620	25.61	45000	Sell	0.40	2852620	25.21	
12-Sep-13	2852620	25.21	20000	Sell	0.18	2832620	25.04	
13-Sep-13	2832620	25.04	50000	Sell	0.44	2782620	24.59	
20-Sep-2013	2782620	24.59	50,000	Sell	0.44	2732620	24.15	
30-Sep-13	2732620	24.15	434,555	Purchase	3.84	3167175	27.99	Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011

4-Oct-13	3167175	27.99	20,000	Purchase	0.18	3187175	28.17	
14-Oct-13	3187175	28.17	20,000	Sell	0.18	3167175	27.99	
31-Oct-13	3167175	27.99	323,127	Purchase	2.86	3490302	30.85	Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011
11-Nov-13	3490302	30.85	375,873	Purchase	3.32	3866175	34.17	---do--
12-Nov-13	3866175	34.17	95,000	Sell	0.84	3771175	33.33	
30-Nov-2013	3771175	33.33	4050	shares dematerialised	0.04	3775225	33.37	
11-Dec-2013	3775225	33.37	1250	shares dematerialised	0.01	3776475	33.38	
12-Dec-13	3776475	33.38	143940	Sell	1.27	3632535	32.11	Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011
16-Jan-2014	3632535	32.11	275725	Purchase	2.44	3908260	34.54	---do--
12-Mar-2014	3908260	34.54	488000	Sell	4.31	3420260	30.23	---do--
26-Mar-14	3420260	30.23	300000	Sell	2.65	3120260	27.58	---do--
29-Mar-2014	3120260	27.58	106246	Purchase	0.94	3226506	28.52	
31-Mar-2014	3226506	28.52	219444	Purchase	1.94	3445950	30.46	Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011
2-Apr-14	3445950	30.46	249311	Purchase & Sell	2.20	3695261	32.66	---do--
12-May-14	3695261	32.66	300000	Sell	2.65	3395261	30.01	---do--
13-Jun-14	3395261	30.01	163818	Sell	1.45	3559079	31.46	
24-Jun-14	3559079	31.46	131500	Purchase	1.16	3690579	32.62	Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations 2011
20-Jun-2014	3690579	32.62	242323	Purchase	2.14	3932902	34.76	---do--
8-Jul-14	3932902	34.76	75000	Sell	0.66	3857902	34.10	

5. The Noticee's reply dated October 30, 2018 to the SCN was received vide email dated October 31, 2018. The Noticee submitted that the SCN was received by him on October 15, 2018 and that the process of collating and compiling information has been initiated by him. The Noticee further requested for additional 4 weeks' time to reply to the SCN which was acceded to. However, the Noticee has not submitted his reply in the matter since then. Subsequently, an opportunity of personal hearing was granted to the Noticee on

June 4, 2019 vide letter dated May 10, 2019. The said hearing Notice returned undelivered with the envelope marked as “left”. Thereafter, another opportunity of personal hearing was granted on June 25, 2019 vide letter dated June 7, 2019. The said hearing notice also returned undelivered with the envelope marked as “left”. It is to be noted that address mentioned in the Noticee’s reply vide email dated October 31, 2018 was the same as that of the address on which the hearing notices were being sent. Further, the Noticee did not inform of any change in the communication address etc. Subsequently another opportunity of personal hearing was granted on July 22, 2019 vide letter dated June 28, 2019. The said hearing notice was also sent vide email to the Noticee provided vide email dated October 31, 2019. The same email id was used by the Noticee to communicate with SEBI while replying to the SCN vide letter dated October 30, 2018 and there was no failure notice in respect of the hearing notices sent on the above mentioned email id. The Noticee was granted a final opportunity of personal hearing on August 20, 2019 vide letter July 30, 2019 through post as well as email. I note that the Noticee has neither replied to the SCN nor responded to the multiple notice of personal hearing granted. Therefore, I am constrained to proceed with the present matter on the basis of material available on record.

6. 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. The issues that arise for consideration in the present case are:

- 1) *Whether the Noticee has violated provisions of Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011?*

- 2) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992?
- 3) If yes, 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 the SEBI (SAST) Regulations, 2011 which read as under:-

SEBI (SAST) Regulations, 2011

Disclosure of acquisition and disposal.

- 29 (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 1) - Whether the Noticee has violated the provisions of Regulation 13(4) and 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011?

9. I note that Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011 inter alia requires disclosure by any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent 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 percent, 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 percent of total shareholding or voting rights in the target company, in such form as may be specified. The aforesaid disclosure is required to be made within two working days to the company at its registered office and to the Stock Exchange (s) where the shares of the target company are listed.
10. Upon perusal of the documents/material available on record, I find that the Noticee has not submitted reply to the SCN issued to it, neither it has availed the opportunity of personal hearing granted to it, even though ample opportunity of doing so was made available to the Noticee. Upon perusal of material/documents available on record, I note that there is no document/material to suggest that the Noticee has acquired/disposed of shares of Pawansut during the investigation period and contributed to the change in the shareholdings of the Promoters and Promoters Group. I note that there is no conclusive evidence to establish that the Noticee has contributed to the changes in the shareholding in accordance with the provisions of Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011.
11. Having discussed as above, I find it relevant to refer to the observations of the Hon'ble SAT in the matter of **O.P. Gulati v. SEBI (Appeal No. 185 of 2011)** decided on January 11, 2012). The Hon'ble SAT in the matter observed as:

“In a given case, suppose there are 20 persons in a target company who may fall within the definition of ‘acquirer’ under the takeover code and say only two of them have purchased or sold shares aggregating two per cent or more of the share capital of the target company and these two persons are not acting in concert with any of the other

eighteen persons. If the argument of learned counsel for the respondent Board is accepted then all the twenty persons who fall within the definition of 'acquirer' are required to make disclosure to the company as well as to the concerned stock exchanges. Such additional disclosure by eighteen persons who have neither purchased nor sold shares, nor are persons acting in concert with the two acquirers, serves no purpose. It is settled legal principle that a court should adopt that interpretation which is just, reasonable and sensible rather than that which none of those things is. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (**Principles of Statutory Interpretation by G. P. Singh, 12th Edition 2010, pg.131- 132**). A reasonable construction agreeable to justice and reasons is to be preferred to an irrational construction. The statutory provision is to be read in a manner so as to do justice to all the parties. Any construction leading to confusion and absurdity must be avoided. The construction that results in hardship, serious inconvenience or anomaly or gives unworkable and impracticable results, should be avoided [**vide Corporation Bank v/s Saraswati Abharansala (2009) 1 SCC 540 and Sonic Surgical vs. National Insurance Co. Ltd. (2010) 1 SCC 135**]. The fact that Indra Gulati did not acquire any share of the target company during the period in question is not in dispute. The adjudicating officer has not recorded any finding that there was any understanding or agreement, direct or indirect between O. P. Gulati and Indra Gulati to acquire the shares of the target company. In the absence of any such finding or material on record, we are of the view that the adjudicating officer erred in holding Indra Gulati guilty of violating regulation 7(1A) of the takeover code".

12. In view of the decision of Hon'ble SAT in the matter of **O.P. Gulati v. SEBI (Appeal No. 185 of 2011** decided on January 11, 2012) and also that no documents/material is available on record to suggest any acquisition/disposal of shares of Pawansut by the Noticee during the investigation period and its contribution to the change in the shareholdings of the Promoters and Promoters Group or their meeting of minds or

common objective, I am of the considered view that the Noticee, despite being part of the promoters/promoter group, was not required to make disclosures with respect to the acquisitions made by other Promoters or entities of the Promoters Group.

13. In view of the discussion in Paras 8-12 above, and placing reliance upon Hon'ble SAT judgement as mentioned in Para 11, I am of considered view that the Noticee has not violated the provisions of the Regulation 29(2) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011.
14. Since it is concluded that the Noticee namely, Pradeep Kumar Jindal & Sons (HUF) has not violated the provisions Regulation 29(2) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011, the issues as mentioned in 2) and 3) of Para 7 require no consideration.

ORDER

15. For the aforesaid reasons, I hereby dispose of the Show Cause Notice EAD/AO-PM/NK/PHL/27279/2018 dated September 28, 2018 issued to the Noticee namely, Pradeep Kumar Jindal & Sons (HUF) without imposition of penalty.
16. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: December 18, 2019
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer