

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/AE/2019-20/6193-6194]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

- 1. Juniper Vinimay Private Limited (PAN: AACCCJ1851D)**
- 2. Marina Dealcom Private Limited (PAN: AAGCM0638M)**

In the matter of Arvind Remedies Limited.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) carried out an examination with regards to the dealings in the scrip of Arvind Remedies Limited. (*hereinafter referred to as “ARL”*). It was observed that the shareholding of the entities - Juniper Vinimay Private Limited (*hereinafter referred to as “Noticee No. 1”*) and Marina Dealcom Private Limited (*hereinafter referred to as “Noticee No. 2”*) in the shares of ARL had undergone the following changes –
 - i. The shareholding of Noticee No. 1 changed from 87,48,000 shares (12.84%) as on 30/07/2014 to 64,96,100 shares (9.54%) as on 08/09/2014. The shareholding of the said Noticee further reduced to 21,96,100 shares (3.22%) as on 08/10/2014.
-

- ii. The shareholding of Noticee No. 2 changed from 87,48,000 shares (12.84%) as on 04/04/2014 to 63,19,466 shares (9.28%) as on 08/09/2014. The shareholding of the said Noticee further reduced to 44,89,405 shares (6.59%) as on 07/10/2014. Subsequently, the shareholding of Noticee No. 2 reduced to 27,76,888 shares (4.08%) as on 16/10/2014.

Noticee No. 1 and 2 are hereinafter collectively referred to as “**Noticees**”

2. As each of the Noticees were holding more than 5% of the share capital of ARL and also the change in their respective shareholding was more than 2% of the share capital of ARL in the above mentioned instances, the Noticees were required to make requisite disclosure in this regard, within two working days of such change in holding, to the company under Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “**PIT Regulations, 1992**”*), and both to the company and stock exchanges under Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 (*hereinafter referred to as “**SAST Regulations, 2011**”*). However, disclosures under Regulation 29(2) read with 29(3) Regulations, 2011 were made by the Noticees only on December 04, 2014 and no disclosures as stipulated under the PIT Regulations, 1992 were made by the Noticees. In view of the above, the Noticees were alleged to have violated Regulation 29(2) read with 29(3) Regulations, 2011, and Regulation 13(3) read with 13(5) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. Initially, Shri Biju S, Chief General Manager was appointed as the Adjudicating Officer (**AO**) by SEBI to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticees. Thereafter, Shri Satya Ranjan Prasad was appointed as the AO in the matter, pursuant to the transfer of Shri Biju S. Pursuant to the transfer of Shri Satya Ranjan Prasad, the undersigned has been appointed as the AO in the matter by SEBI and the same was
-

communicated to the undersigned vide communique dated May 22, 2019. These proceedings are therefore been carried forward from where they had been left off by the previous AO.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notices dated March 13, 2018 (*hereinafter referred to as 'SCN'*) were issued earlier to the Noticees in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as "**Rules**"*) for the violations as specified in the SCN.
5. Vide their separate letters dated May 12, 2018, the Noticees requested for extension of time to submit their reply to the SCN and also an opportunity of personal hearing in the matter. In response, vide email dated May 14, 2018 the Noticees were granted time till May 25, 2018 to submit their reply to the SCN. Vide the aforesaid email, the Noticees were also granted an opportunity of personal hearing before the erstwhile AO, Shri Biju S on May 29, 2018. Subsequently, vide letters dated May 23 & 24, 2018, the Noticees requested for further extension of time to file their reply to the SCN and also an opportunity of personal hearing.
6. I note that vide their individual letters dated June 05, 2018, the Noticees submitted reply to the SCN. The main contentions made therein are summarized below –
 - i. Since the allegations against the Noticees pertain to the year 2014, they are unable to track the relevant information and documents. Because of such inordinate delay in issuing the SCN, they have been rendered handicapped in tracking many documents required to file effective reply.
 - ii. The change in the shareholding of the Noticees was available in the public domain vide the shareholding pattern submitted by ARL with BSE and NSE for the quarter ended September 30, 2014. It is submitted that the shareholding of the Noticee was therefore known to the public shareholders, investors and other stakeholders.

- iii.* The delay in making disclosure under the Takeover Regulations and not making any disclosure under the PIT Regulations as alleged in the SCN was inadvertent and unintentional. The alleged violations are technical, venial and procedural and have not caused any adverse consequences to anybody.
 - iv.* They have not made any disproportionate gain or gained unfair advantage. Further they have not caused any loss to investors or group of investors.
 - v.* They have never been penalized for any infraction or violation of any rules or regulations by SEBI.
 - vi.* The Adjudicating Officer is not under any statutory obligation to impose penalty. The Adjudicating Officer must have due regards to the factors mentioned in Section 15J of the SEBI Act, 1992, and in view of the said factors and the facts and circumstances any imposition of penalty on the Noticees would be unjustified and unwarranted. If any action is proposed against them, the same would adversely affect them and besmirch their reputation.
 - vii.* An opportunity of personal hearing to be granted in the matter.
7. Subsequently, a personal hearing was held in respect of the Noticees before the erstwhile AO, Shri Biju S on June 14, 2018. The authorized representatives (**ARs**) of the Noticees appeared in the said hearing and reiterated the submissions made by the Noticees vide their replies dated June 05, 2018. The ARs further submitted that the Noticees would be filing settlement application in the matter under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. In this connection, the Noticees vide their letters dated June 15, 2018 submitted a copy of their application filed with SEBI for settlement.
8. Subsequently, pursuant to the appointment of the undersigned as AO, the Noticees were granted an opportunity of personal hearing before the undersigned on July 10,
-

2019. However, vide their letters dated July 09, 2019, the Noticees requested for an extension of time to appear for the hearing. The Noticees were granted another opportunity of personal hearing on June 16, 2019. In the said hearing, the authorized representative (**AR**) of the Noticees appeared on behalf of the Noticees in the said hearing and reiterated the submissions made by the Noticees vide their reply dated June 05, 2018. The AR requested for additional time to proceed with Settlement Application in the matter, and accordingly, additional time was granted for the same. However, I note that no further communication with regards to settlement proceedings has been received from the Noticees.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the material available on record, and the submissions made by the Noticees. The issues that arise for consideration in the present case are :
 - I. Whether the Noticees have violated the provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011, and Regulation 13(3) read with 13(5) of PIT Regulations, 1992?
 - II. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?
 - III. Quantum of penalty.

FINDINGS

10. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees and the same is reproduced below:

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29.(1)...

(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 subregulation; 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.*

PIT Regulations, 1992

13. Disclosure of interest or holding in listed companies by certain persons.

...

Continual disclosure.

(3) Any person who holds more than 5% shares for 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*

Issue I) Whether the Noticees have violated the provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 and Regulation 13(3) read with 13(5) of PIT Regulations, 1992?

11. I note that the allegation against the Noticees is mainly to the effect that with regards to their change in shareholding in the shares of ARL, there was non-compliance of the disclosure requirements under the provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 by the Noticees, and Regulation 13(3) read with 13(5) of PIT Regulations, 1992.
12. As per the material available on record, I note that the change in holding of Noticees in ARL during the period from 01/01/2014 to 31/12/2014 and violations are as below –

TABLE 1 : NOTICEE NO. 1 (JUNIPER VINIMAY PVT LTD)

Date	Total Holding of Client	Total Holding as %age of Issued Capital	Disclosure Violation
30/07/2014	8748000	12.84	
31/07/2014	8948000	13.13	
01/08/2014	8759877	12.86	
13/08/2014	9668000	14.19	
14/08/2014	8748000	12.84	
04/09/2014	8248000	12.11	
05/09/2014	8248000	12.11	
08/09/2014	6496100	9.54	Regulations 13(3) of PIT Regulations, 1992 and 29(2) of SAST Regulations, 2011
07/10/2014	5296100	7.77	
08/10/2014	2196100	3.22	Regulations 13(3) of PIT Regulations, 1992 and 29(2) of SAST Regulations, 2011
13/10/2014	2096100	3.08	
16/10/2014	1531100	2.25	
17/10/2014	1456100	2.14	
20/10/2014	1206100	1.77	
21/10/2014	956100	1.40	
27/10/2014	946100	1.39	
07/11/2014	446100	0.65	

TABLE 2 : NOTICEE NO. 2 (MARINA DEALCOM PVT LTD)

Date	Total Holding of Client	Total Holding as %age of Issued Capital	Disclosure Violation
04/04/2014	8748000	12.84	
31/07/2014	8954800	13.14	
01/08/2014	8759825	12.86	
13/08/2014	8748000	12.84	
04/09/2014	8248000	12.11	
08/09/2014	6319466	9.28	Regulations 13(3) of PIT Regulations, 1992 and 29(2) of SAST Regulations, 2011
11/09/2014	6252207	9.18	
12/09/2014	6152207	9.03	
15/09/2014	6089405	8.94	
07/10/2014	4489405	6.59	Regulations 13(3) of PIT Regulations, 1992 and 29(2) of SAST Regulations, 2011
08/10/2014	3595629	5.28	
09/10/2014	3541888	5.20	
13/10/2014	3441888	5.05	
16/10/2014	2776888	4.08	Regulations 13(3) of PIT Regulations, 1992 and 29(2) of SAST Regulations, 2011
17/10/2014	2701888	3.97	
20/10/2014	2451888	3.60	
21/10/2014	2201888	3.23	
27/10/2014	2191888	3.22	
07/11/2014	1692098	2.48	
10/11/2014	810307	1.19	
11/11/2014	203705	0.30	
12/11/2014	197271	0.29	

13. From the above tables, it is observed that –

i. For **Noticee No. 1:**

(a) The shareholding has decreased from 87,48,000 shares (12.84% of the total shares of ARL) as on 30/07/2014 to 64,96,100 shares (9.54% of the total shares of ARL) as on 08/09/2014.

(b) The shareholding has further decreased to 21,96,100 shares (3.22% of the total shares of ARL) as on 08/10/2014.

ii. For **Noticee No. 2:**

(a) The shareholding has decreased from 87,48,000 shares (12.84% of the total shares of ARL) as on 04/04/2014 to 63,19,466 shares (9.28% of the total shares of ARL) as on 08/09/2014.

(b) The shareholding has further decreased to 44,89,405 shares (6.59% of the total shares of ARL) as on 07/10/2014.

(c) Subsequently, the shareholding has further reduced to 27,76,888 shares (4.08% of the total shares of ARL) as on 16/10/2014.

14. As each of the Noticees was holding more than 5% of the share capital of ARL and also the change in their shareholding was more than 2% of the share capital of ARL, the Noticees were required to make requisite disclosures in this regard, within two working days of such change in holding, to the company under Regulation 13(3) read with 13(5) of PIT Regulations, 1992, and both to the company and stock exchanges under Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011.

Alleged Violation of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011

15. It is observed that the Noticee No. 1 has made 2 disclosures to BSE under Regulation 29(2) read with 29(3) Regulations, 2011 on 04/12/2014, although the 2% change in holding were effected on 08/09/2014 and 08/10/2014 i.e. there is a delayed compliance (of less than 2 months) of aforementioned provisions of SAST Regulations, 2011.

It is similarly observed that Noticee No. 2 has made 3 disclosures to BSE under Regulation 29(2) read with 29(3) Regulations, 2011 on 04/12/2014, although the 2% change in holding were effected on 08/09/2014, 07/10/2014, and 16/10/2014 i.e. there is a delayed compliance (of less than 2 months) of the aforementioned provisions of SAST Regulations, 2011.

16. At this juncture, it is noted that the Hon'ble Securities Appellate Tribunal (**SAT**) vide order dated December 16, 2015 in the case of **Ravi Mohan and others vs. SEBI in Appeal No.97 of 2014**, and order dated May 27, 2019 in the case of **Mr. Rakesh Kathotia & Ors. vs. SEBI**, has observed that in case of selling of shares, entities cannot be charged and penalized for alleged violations of regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997 on the grounds that regulation 7(2) of SEBI SAST Regulations 1997 does not contemplate for disclosure relating to sale of shares. Further, the Hon'ble SAT vide its order dated July 02, 2019 in the case of **Murali Srinivasan Venkatraman and others vs. SEBI** has also similarly observed that in case of selling of shares, entities cannot be penalized for alleged violations of regulations 29(2) read with 29(3) of SEBI SAST Regulations 2011. Thus, considering the fact that the Noticees have already made the disclosures under the SAST Regulations, 2011 albeit with some delay and the observations of the Hon'ble SAT's aforesaid orders, I find that penalty may not be warranted on the Noticees in the present case for the alleged violation of Regulation 29(2) read with 29(3) Regulations, 2011, as a result of decrease in their shareholding.

Alleged Violation of Regulation 13(3) read with 13(5) of PIT Regulations, 1992

17. It is also alleged in the SCN that the Noticee No.1 has not made any disclosure in 2 instances and Noticee No. 2 has not made any disclosures in 3 instances with respect to their 2% change in shareholding under Regulation 13(3) read with 13(5) of PIT Regulations, 1992. The said facts have not been controverted by the respective Noticees. The Noticees in their reply dated June 05, 2018 to the SCN have inter alia submitted that the change in their shareholding was available in the public domain vide the quarterly shareholding pattern (for the quarter ended 30/09/2014) submitted by ARL to BSE and NSE. I note that such quarterly shareholding pattern cannot disclose the significant change in holding of the Noticees in a timely fashion, as the same is disseminated at the end of the particular quarter. Further, it is noted that the statutory requirement and responsibility to make the disclosures within 2 working days of the

transactions is cast on the respective Noticees and not on the company, and hence I do not find merit in the said contention of the Noticees.

18. The Noticees have further submitted that the delay in making the disclosures under the SAST Regulations and not making the disclosures under the PIT Regulations was inadvertent and unintentional. The Noticees have also stated that the alleged violations are technical, venial and procedural and have not caused any adverse consequences to anybody. In this regard, considering the nature of default by the Noticees in the facts and circumstances of the instant case, I find it pertinent to refer to the following observation of Hon'ble SAT in the case of **Mr. Ankur Chaturvedi vs. SEBI (Appeal No. 434 of 2014 decided on August 04, 2014)**:

“..As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty of Rs. 5 lac and Rs. 2 lac under section 15A(b)/15HB of the SEBI Act for violating the provisions of PIT Regulations and Model Code of Conduct respectively..”

19. In view of the above, I find that the Noticees have violated the provisions Regulation 13(3) read with 13(5) of PIT Regulations, 1992.

Issue II) Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

20. I note that the Noticees had submitted that they have not made any disproportionate gain or unfair advantage and that they have not caused any loss to investors or group of investors. In this regard, I note that 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.”

21. I also note that in Appeal No. 66 of 2003 - **Milan Mahendra Securities Pvt. Ltd. Vs. SEBI** – the Hon’ble SAT has observed 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”*.
22. In the context of disclosure related violations, I observe that Hon’ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation. The Hon’ble SAT in its Order dated September 30, 2014, in the matter of **Akriti Global Traders Ltd. Vs SEBI** had observed that -

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

23. Thus, the violation of Regulation 13(3) read with 13(5) of PIT Regulations, 1992 makes the Noticees liable for penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under –

SEBI Act, 1992

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,—

(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;

Issue III) Quantum of penalty.

24. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Rules, require that while adjudging the quantum of penalty, 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.
25. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticees. I also note that no prior default of the Noticees is available on record. I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. As a result of the violation committed by the Noticees, the investors were deprived of valuable
-

information which would have enabled them to take well informed decisions regarding their investments in the company. In the present matter, I note that Noticee No. 1 by not making the requisite disclosures in 2 instances, and Noticee No. 2 by not making the requisite disclosures in 3 instances have violated Regulations 13(3) read with 13(5) of PIT Regulations, 1992.

ORDER

26. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I hereby impose the following penalty on the Noticees under Section 15A(b) of SEBI Act, 1992 for the violations of the provisions of Regulation 13(3) read with 13(5) of PIT Regulations, 1992.

sl.	Noticee	Penalty Amount
1	Noticee No. 1 (Juniper Vinimay Pvt Ltd)	Rs. 1,00,000 /- (Rupees One Lakh Only)
2	Noticee No. 2 (Marina Dealcom Pvt Ltd)	Rs. 1,00,000 /- (Rupees One Lakh Only)

27. The Noticees 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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

28. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - 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.”. The Noticee shall also 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

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties
30. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: December 20, 2019
Place: Mumbai

G Ramar
Adjudicating Officer