

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. ORDER/SRP/HKS/2018-19/1313]**

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UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995, IN THE ADJUDICATION PROCEEDINGS INITIATED AGAINST M/S GUJARAT MEDITECH LIMITED [PAN: AABCG6112D].

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**BACKGROUND**

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), initiated adjudication proceedings against Gujarat Meditech Limited (hereinafter referred to as “**Noticee/GML**”) for the alleged violation of Regulation 7(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations**”) for their alleged failure to make timely disclosures to the Bombay Stock Exchange Ltd. (**BSE**) as specified under the said SAST Regulation in respect of the disclosures received by GML from Shri Sunny R Thakkar with regard to his acquisition of shares in the scrip of GML.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. Initially, Shri S. V. Krishnamohan was appointed as the Adjudicating Officer (**AO**) in the matter. Subsequently, Shri Biju. S was appointed as AO in place of Shri S. V. Krishnamohan and thereafter, the undersigned has been appointed as AO vide Order dated July 06, 2018, issued by SEBI to inquire into and adjudge under

Section 15A (b) of the SEBI Act, 1992, the aforesaid violation(s) alleged to have been committed by the Noticee.

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

3. A Show Cause Notice dated January 02, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15A (b) of the SEBI Act, on the Noticee for the alleged violation of Regulation 7(3) of SAST Regulations.
4. In the aforesaid SCN it was alleged that the Noticee had failed to make the timely disclosure under Regulation 7(3) of SAST Regulations, to BSE in respect of the disclosures received by GML from one Shri Sunny R Thakkar under Regulation 7(1) read with Regulation 7(2) of SAST Regulations, on June 15, 2011 regarding his acquisitions of shares in the scrip of GML.
5. The SCN was sent through speed post at the last known address of the Noticee. However, the Noticee failed to file any reply to the SCN.
6. In the interest of natural justice, the Noticee was granted an opportunity of Personal Hearing on October 27, 2018 vide Hearing Notice dated October 18, 2017. However, the Noticee failed to avail the said opportunity of Personal Hearing. Vide Hearing Notice dated May 17, 2018, Noticee was provided another opportunity of personal hearing on June 13, 2018, however, Noticee again failed to avail the same.

7. Subsequent to appointment of the undersigned as the Adjudicating Officer, the Noticee was provided another opportunity of personal hearing to appear before me on July 24, 2018, vide Hearing Notice dated July 11, 2018. The Notice of the Hearing returned undelivered. Therefore, vide Hearing Notice dated July 24, 2018, the Noticee was provided one more opportunity of personal hearing to appear on August 13, 2018. In the said Notice it was also mentioned that the Noticee may file written submissions in the matter, if any, latest by August 13, 2018. This Notice of hearing was affixed at the registered office address of the Noticee in terms of Rule 7(c) of the Adjudication Rules. However, despite all the above the Noticee failed to attend the said hearing and also did not file any reply in the matter.
8. I note that Noticee has been provided ample opportunities of Personal Hearing. However, till date, the Noticee neither availed the opportunities nor filed any reply to the SCN. Therefore, I am inclined to proceed with the matter on the basis of the material available on record.

### **ISSUES FOR CONSIDERATION AND FINDINGS**

9. I have carefully perused the SCN and the documents available on record. The issues that arise for consideration in the present case are:
  - 1) Whether the Noticee violated the provisions of Regulation 7(3) of SAST Regulations?
  - 2) Whether the Noticee is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act?
  - 3) If yes, then what should be the quantum of monetary penalty?

10. It is pertinent to mention here the relevant provisions of Regulation 7(3) of SAST Regulations allegedly violated by the Noticee:-

**SAST Regulations**

***Disclosure of acquisition and disposal.***

*“7. (3) Every company, whose shares are acquired in a manner referred to in sub regulations (1) and (1A), shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations (1) and (1A)”*

11. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 have been repealed by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In terms of Regulation 35 of the SAST Regulations, 2011, specifically, Regulation 35(2) (a) and (b), any obligation or liability acquired, accrued or incurred under SAST Regulations, 1997 or any legal proceedings initiated under the SAST Regulations, 1997 shall remain unaffected and proceeded with as if the SAST Regulations, 1997 have not been repealed. Provisions of Regulation 35 of SAST Regulations, 2011, are mentioned hereunder in this regard:-

**Repeal and Savings.**

*“35. (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.*

*(2) Notwithstanding such repeal,—*

- (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*
  - (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;*
  - (c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.*
- (3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.”*

12. I note that the allegation levelled in the SCN is to the effect that the Noticee failed to make the timely disclosure under Regulation 7(3) of SAST Regulations, to BSE in respect of the disclosures received from Shri Sunny R Thakkar under Regulation 7(1) read with Regulation 7(2) of SAST Regulations, on June 15, 2011 regarding his acquisitions of shares in the scrip of GML.

13. It is observed from the details available on record that Shri Sunny R Thakkar had bought 5,76,000 shares and sold 6,03,900 shares of GML in 2011. The summary of his holding in the scrip of GML is as follows:

Name of the entity	Date(s) of transaction	Details of Transaction		Holding post transaction	
		Shares	%		%
Op. Bal.				-	-
Sunny R Thakkar	01/06/2011	61,600	1.5	61,600	1.5
	02/06/2011	42,300	1.03	103,900	2.53
	03/06/2011	33,100	0.81	137,000	3.34
	<b>07/06/2011</b>	<b>100,000</b>	<b>2.44</b>	<b>237,000</b>	<b>5.78</b>
	08/06/2011	76,300	1.86	313,300	7.64
	09/06/2011	42,400	1.03	355,700	8.67
	<b>10/06/2011</b>	<b>62,700</b>	<b>1.53</b>	<b>418,400</b>	<b>10.2</b>
	15/06/2011	94,200	2.29	512,600	12.49
	<b>25/07/2011</b>	<b>63,400</b>	<b>1.55</b>	<b>576,000</b>	<b>14.04</b>
	12/09/2011	-25000	0.61	551000	13.43
	13/09/2011	-25000	0.61	526000	12.82
	14/09/2011	-135,000	-3.29	391,000	9.53
	22/09/2011	-100,000	-2.44	291,000	7.09
	23/09/2011	-143,900	-3.5	147,100	3.59
	26/09/2011	-175,000	-3.59	0**	0**

14. It is noted from the material available on record that on June 15, 2011, Shri Sunny R Thakkar made disclosure to GML under Regulation 7(1) read with Regulation 7(2) of SAST Regulations with respect to his acquisitions of shares in the scrip of GML. In terms of Regulation 7(3) of SAST Regulations, GML was required to make the disclosures to Stock Exchanges where its shares are listed regarding the aforesaid disclosure received from Shri Sunny R Thakkar under Regulation 7(1) read with Regulation 7(2) of SAST Regulations, within 7 - days (i.e. June 22, 2011) from the receipt of the said disclosure from Shri Sunny R Thakkar.
15. It is evident from BSE's email dated October 15, 2013, that BSE received the aforesaid disclosure from GML only on July 13, 2011, that is after 28 days from the disclosure filed by Shri Sunny R Thakkar to GML. Therefore, I find that the Noticee violated/contravened the provisions of Regulation 7(3) of SAST Regulations, by not submitting the disclosure received from Shri Sunny R Thakkar, under Regulation 7(1) read with Regulation 7(2) of SAST Regulations, within 7 - days (i.e. June 22, 2011) to BSE.

16. In this context, I observe that Hon'ble Securities Appellate Tribunal (**SAT**) has consistently held that the obligation to make disclosures within the stipulated time frame is mandatory and penalty is attracted for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of **Akriti Global Traders Ltd. Vs SEBI** observed that-

*"Obligation to make disclosures under the provisions contained in SAST Regulations, 1997 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."*

17. Further, Hon'ble SAT in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, observed that *"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."*

18. I note that the Noticee has not come forward to offer any reply in respect of the violations alleged in the SCN, though the Noticee has been provided sufficient opportunity to file reply to the SCN and to appear for the personal hearing in the matter. In this context, the silence on the part of the Noticee clearly indicate that

it does not want to answer any inquiry in respect of alleged violations stated in the SCN. Absence of any reply from the Noticee, despite being granted sufficient opportunities to do so, strengthen the presumption against the Noticee that it has failed to make the aforesaid disclosures to BSE within the stipulated time as alleged in the SCN. Therefore, in view of the forgoing, I hold that the Noticee has violated the provisions of Regulation 7 (3) of the SAST Regulations.

19. In view of the aforesaid violations committed by the Noticee, I am of firm view that the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act, which provides as under:-

***Penalty for failure to furnish information, return, etc.***

***“15A. If any person, who is required under this Act or any rules or regulations made there under-***

*(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.”*

20. While determining the quantum of penalty under Section 15A (b), it is important to consider the factors stipulated in Section 15J of the 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*

**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.”*

21. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the materials available on record have not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made 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 of the Noticee. Further, there is nothing on record to indicate that the default by the Noticee was repetitive in nature. I note that the Noticee made the delayed disclosures which are in contravention/violation of the requirements specified under Regulation 7(3) of the SAST Regulations.
22. Going by the facts and circumstances of the case, I am of firm opinion that by not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the Order of The Hon’ble Supreme Court in the matter of **Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 }** – where the Hon’ble Supreme Court of India held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.....”*

23. Needless to say that there is no exemption from making timely disclosures of the kind envisaged in Regulation 7 of the SAST Regulations as in the present case. Timely disclosures to Stock Exchanges as required under the SAST Regulations, would have helped dissemination of this important information to the general public in making their investment decisions.
24. Hence, on the basis of the facts and circumstances of the case and the material available on record the conclusion that can be drawn in the matter is that the Noticee failed to make the timely disclosure to BSE under Regulation 7(3) of SAST Regulations within 7 - days from the date of the receipt of the disclosure from Shri Sunny R Thakkar under Regulation 7(1) read with Regulation 7(2) of SAST Regulations regarding his acquisitions of shares in the scrip of GML. Therefore, I am of the firm view that the Noticee has violated the Provisions of Regulation 7(3) of SAST Regulations and is liable for imposition of penalty under Section 15A (b) of the SEBI Act. However, while considering the quantum of penalty I have taken into consideration the fact that the Noticee had subsequently filed the required disclosure to BSE.

### **ORDER**

25. Taking into consideration the aforesaid facts and circumstances of the case and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992, read with Rule 5 of the SEBI Adjudication Rules, 1995, I, hereby impose a penalty of Rs.2,00,000/- (Rupees Two Lakh Only) on the Noticee viz. Gujarat Meditech Limited in terms of Section 15A (b) of the SEBI Act, 1992, for the violation /contravention of the provisions of Regulation 7(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

26. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this Order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief (Enforcement Department-DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

1. Case Name :	
2. Name of 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)	

27. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

**Date : September 19, 2018**  
**Place : Mumbai**

**Satya Ranjan Prasad**  
**Adjudicating Officer**