

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/SM/161/2018]**

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

**In respect of:
Shri Manoj Agarwal (PAN: ADNPA4845R)**

In the matter of M/s. Arex Industries Ltd.

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip M/s Arex Industries Ltd. (hereinafter referred to as "Arex/Company") had observed that Manoj Agarwal (hereinafter referred to as "Noticee") had violated Regulation 29(1) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 (hereinafter referred to as the "SAST Regulations") and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "PIT 1992") read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "PIT 2015")
2. SEBI's Surveillance Department has observed that Noticee was holding 1,97,379 shares of the company (constituting 4.99% of the paid up share capital) as on March 21, 2015 and the shareholding of the Noticee increased to 2,02,250 shares (constituting 5.11% of the paid up capital of the company) on March 23, 2015. The change in shareholding of the Noticee (crossing 5%) triggered disclosure requirement under Regulation 29(1) read with 29(3) of SAST Regulations and Regulations 13(1) of PIT 1992 read with Regulation 12(2) of PIT 2015.
3. Company vide email dated August 16, 2017 to SEBI, has confirmed that it had not received any disclosure from the Noticee except for the intimation dated February 24, 2015. Further, BSE vide email dated August 25, 2015 to SEBI, has informed that it had not received any disclosure from the Noticee for the acquisition of shares on March 23, 2015.
4. Hence it was alleged that Noticee had violated Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of the PIT 1992 read with Regulation 12(2) of PIT 2015

Appointment of Adjudicating Officer

5. Vide order dated April 21, 2016, Ms. Anita Kenkare was appointed as Adjudicating Officer Rules to inquire into and adjudge under Section 15 I of SEBI Act and Rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") to inquire into and adjudge under

Section 15A(b) of the SEBI Act for the alleged violation of Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of the PIT 1992 read with Regulation 12(2) of PIT 2015 by the Noticee.

6. Subsequent to the transfer of the case, the undersigned was appointed as Adjudicating Officer vide order dated October 04, 2017.

Show Cause Notice, Reply and Personal Hearing

7. Based on the findings, Show Cause Notice ("SCN") dated November 21, 2017 was issued to the Noticee. SCN was duly delivered at the address of the Noticee.
8. Noticee vide letter dated December 05, 2017 has inter alia made the following submissions:

8.1 I have intimated both the company viz M/S Arex Industries Ltd and the concerned stock exchange as required by Regulation 29(1) of SAST Regulations on 24th February 2015 i.e. within 2 working days as required under SAST REGULATIONS Regulation vide my email to them of even date. The same was disseminated to all the investors and public at large by BSE on the same date 24th February 2015 through their notice board and web site.

8.2 Arex Industries Ltd has in reply to SEBI query as to whether disclosure was made or not has replied that disclosure under SAST REGULATIONS has been made by me on 24th March 2015.

8.3 As regards regulation 13(1) of PIT Regulation 1992 I admit that I have not intimated this information as required as I was not aware that Prevention of Insider Trading Regulation mandates even an outsider who is not an insider as I am in no way connected to the management of Arex Industries Ltd to intimate the relevant stock exchange and the Company on crossing 5% threshold of voting right in the Company.

8.4 However both the Regulations i.e. 29(1) of SAST REGULATIONS and 13(1) of PIT 1992 require that the disclosure should be made within 2 working days and I have made the disclosure under SAST 29(1) on 24th March 2015 i.e. within 2 working days of acquisition.

8.5 In this connection I would like to bring to your kind notice the judgement passed by the Hon'ble Securities Appellate Tribunal's judgement in the case of Pranav Ansal Vs SEBI Appeal No. 188 of 2013 dated 7th January 2014 where it was held that:

'Object of requiring such disclosure to be made within two days under PIT Regulations is with a view to ensure that there is no abuse on account of investors being not aware of such change in shareholding of a promoter director who is an insider under PIT Regulations. Disclosure made under SAST Regulations, 2011 on September 28, 2012 if considered as disclosure made under PIT Regulations, 1992, even then, it would amount to violating PIT Regulations, 1992, because such disclosure was not made within two days of change in shareholding of appellant in APIL '

8.6 In the above judgement the Hon'ble Securities Appellate Tribunal has held that, if disclosure is made within two working days as required under Rule 29(1) of SAST Regulations and disclosure was not made under Regulation 13(l) of PIT which also requires the disclosure to be made within 2 working days then no abuse or loss on account of investors being not aware of such change in shareholding of an insider under PIT can be presumed as disclosure was made within 2 working days under SAST and the change in shareholding was duly disseminated by the stock exchange on its notice board which was the object of these two regulations.

8.7 I also urge you to refer the Apex Court's judgement in the case of Hindustan Steel Ltd. vs State of Orissa reported in AIR 1970 SC 253 wherein the Hon'ble court held that:

A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

In the present case, those in charge of the affairs of the appellant, in failing to register it as a dealer, acted in the honest and genuine belief that the company was not a dealer; and therefore, assuming the appellant to be a 'dealer' no case for imposing penalty was made out."

8.8 It was further held by the Hon'ble Supreme Court in the above matter that:

"the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute"

8.9 I have acted in a bonafide manner and did not know that I had to make disclosure under PIT Regulation as I am not an insider and did not know that a non-insider needed to disclose in a Prevention of Insider Trading Regulation which I would have done as I had promptly done so under SAST Regulation.

8.10 Further no loss has been caused to any person/investors and no unfair gain has been made by me for nondisclosure under Regulation 13(1) of PIT 1992 as BSE had already disseminated the information within 2 days of my crossing

the 5% threshold to all through their notice board and web site as a result of my disclosure made under Regulation 29(1) of SAST REGULATIONS.

8.11 *I am an individual shareholder and have acted bona fide and have never intended to breach any applicable laws and regulations except the present proceeding no other case has been initiated against me by SEBI till date. I request your kind self to please take a lenient view in the matter and pardon me for the unintentional error if any.*

Hearing:

9. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of Rules, the Noticee was granted an opportunity of personal hearing before the undersigned on January 24, 2018. Hearing notice was delivered to the Noticee.

10. The personal hearing was attended by the Noticee. During the personal hearing, Noticee has informed that he has bought 3044 shares of Arex Industries Limited on February 24, 2015. However, his broker has transferred these shares in his Demat account on March 23, 2015. He has also made additional written submission at the time of hearing which inter alia states that:

10.1 *The disclosure under Regulation 13 (1) of PIT Regulation, 1992 and Regulation 29 (1) of SAST Regulations, 2011, are substantially the same and since I have already complied with disclosures requirement under Regulation 29(1) of SAST Regulations, 2011, it should be treated as sufficient disclosures under Regulation 13 (1) of PIT Regulations, 1992, as well. The formats for disclosures under both the Regulations and the information to be disclosed under both the Regulations are substantially the same and the transaction is also one. Accordingly, non-disclosure under Regulation 13 (1) of PIT Regulations, 1992, needs to be viewed leniently since the disclosure under Regulation 29(1) of SAST Regulations, which has the similar information has already been made.*

10.2 *In this connection reference may also be made to the Order of the Hon'ble Securities Appellate Tribunal (SAT) in Appeal no 118 of 2013 dated 04.09.2013 in the matter of Vitro Commodities Private Limited V/s SEBI wherein the Hon'ble SAT held 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. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not standalone Regulations and one is corollary of other.*

Consideration of Issues, Evidence and Findings:

11. I have carefully perused the charge levelled against the Noticee in the SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination in respect of

I. Whether Noticee has violated Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT, 1992 read with Regulation 12(2) of PIT Regulations

- II. Does the violations, if any, on the part of Noticee attract monetary penalty under Section 15A (b) of the Act?
- III. If so, what would be the quantum of monetary penalty that can be imposed on Noticee taking into consideration the factors mentioned in Section 15J of the Act?

12. Before proceeding further, I would like to refer to the relevant provisions of the SAST and PIT Regulations which read as under:

Relevant provisions of SAST Regulations:

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).....

(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.

Relevant provisions of PIT Regulation 1992

13 (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, 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.

Relevant provisions of PIT Regulation 2015

Repeal and Savings.

12. (2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered there under, 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 had never been repealed; and anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or

investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed

Findings:

Whether Noticee has violated Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT, 1992 read with Regulation 12(2) of PIT 2015

13. I have carefully perused the allegations levelled in the SCN and the replies submitted by the Noticee. I note that on February 24, 2015 itself the shares acquired and held by Noticee in Demat account had cumulatively crossed the threshold limit of 5% of share capital of Arex. Resultantly, proactively Noticee has made disclosure to the Company and BSE as per Regulation 29(1) of the SAST Regulations. The said disclosure is duly available on BSE website since February 24, 2015.
14. During hearing, Noticee has informed that he had bought 3044 shares of Arex on February 24, 2015, however his Stock Broker had transferred those shares into his Demat account on March 23, 2015 along with shares bought on other dates as well.
15. I understand that Noticee was maintaining a Running Account with his Stock Broker and pursuant to which shares purchased by Noticee were not transferred immediately into his Demat account. Here I have relied upon the Contract Notes issued by the Stock Broker (M/s Prabhat Financial Services Limited) and Demat statement of the Noticee to confirm the same.
16. Since the Noticee had already made the disclosure of his increased shareholding on February 24, 2015 therefore there was no requirement on him to make the said disclosure again on March 23, 2015 as alleged in the SCN.
17. Arex has confirmed the receipt of disclosure filed by the Noticee under Regulation 29(1) of SAST Regulation and said disclosure is available on BSE website since February 24, 2015 and resultantly public at large was aware of the fact that Noticee was holding more than 5% shares in Arex Industries.
18. Noticee was also obligated to make disclosure of his increased shareholding as per Regulation 13(1) of PIT 1992 read with 12(2) of PIT 2015. Noticee has accepted that he had not made the required disclosure under PIT Regulations, however he has quoted the SAT Judgements in the matter of Vitro Commodities v/s SEBI and Pranav Ansal Vs SEBI. I am inclined to agree with the said Judgements as public at the large was made aware by the Noticee by his disclosure made on February 24, 2015 and disclosure requirement under 13(1) of PIT Regulations were almost similar to that of disclosure requirement under 29(1) read with 29(3) of SAST Regulations.
19. In the light of the above, I find that the allegations levelled against Noticee for the violation of Regulation 29(1) read with 29(3) of SAST Regulations does not established and due to similarity of disclosure requirement of 29(1) of SAST Regulations and Regulation 13(1) of PIT 1992, lenient view has been taken as the objective of the legislature was achieved as the desired information of increased shareholding was available in the public domain in one or the other form.

Does the violations, if any, on the part of Noticee attract monetary penalty under Section 15A (b) of the Act?

Section 15A(b) of the SEBI Act, 1992 reads 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 there for in the regulations, fails to file return or furnish the same within the time specified there for 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. Since the allegation levelled against the Noticee is not established, no penalty is levied

If so, what would be the quantum of monetary penalty that can be imposed on Noticee taking into consideration the factors mentioned in Section 15J of the Act?

21. Not applicable.

ORDER

22. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby dispose of the SCN issued in the matter.

23. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: January 25, 2018

Place: Mumbai

**SAHIL MALIK
ADJUDICATING OFFICER**