

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/SM/28/2018]**

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:

Lekhraj Lalwani HUF (PAN AAAHL1352E)

In the matter of M/s. Aagam Capital Limited (erstwhile Subhkam Capital Limited)

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip M/s. Aagam Capital Limited (hereinafter referred to as "Company") had observed that Lekhraj Lalwani HUF (hereinafter referred to as "Noticee") had violated Regulation 29(1) and 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeover, 2011) Regulation, 2011 (hereinafter referred to as the "SAST 2011") and Regulation 13(1) and 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the "PIT 1992")
2. In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
3. It was observed that Noticee had traded in the scrip of the company during the period of July 01, 2013 to march 31, 2014 (hereinafter referred to as "Period of Examination"). The details in the change in shareholding of Noticee in the shares of the company is as follows:

| Sr. No | Transaction Date | Transaction Type | Quantity Transacted | Holding after Transaction | Holding % to Share Capital |
|--------|------------------|------------------|---------------------|---------------------------|----------------------------|
| 1. | 10/07/2013 | Buy | 1,00,000 | 1,00,000 | 2.00 |
| 2 | 11/07/2013 | Buy | 65,000 | 1,65,000 | 3.30 |
| 3 | 17/07/2013 | Buy | 1,13,750 | 2,78,750 | 5.58 |
| 4 | 25/11/2013 | Sell | 80,000 | 1,98,750 | 3.98 |
| 5 | 26/11/2013 | Sell | 36,000 | 1,62,750 | 3.26 |
| 6 | 29/11/2013 | Sell | 46,000 | 1,16,750 | 2.34 |
| 7 | 03/12/2013 | Sell | 49,830 | 66,920 | 1.34 |
| 8 | 05/12/2013 | Sell | 20,000 | 46,920 | 0.94 |
| 9 | 06/12/2013 | Sell | 46,920 | 0 | 0 |

4. From the above table, it was observed that the Noticee acquired 2,78,750 shares (cumulative) on July 17, 2013, which was 5.58% of the share capital of the company and

subsequently reduced its holdings to 3.26% of Share Capital of the company by selling shares on November 25, 2013 and November 26, 2013.

5. In the matter, Regulation 29(1) of SAST 2011 requires disclosure of any acquisition of shares exceeds 5% of the shares of such company. Further, under Regulation 29(3), this disclosure is required to be made to the target company as well to the stock exchange on which the shares of the company are listed, within two working days from the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights, as the case may be. Thus, the Noticee should have made the disclosure under Regulation 29(1) read with 29(3) of SAST 2011, due to its holding exceeding 5% of the shares/voting rights of the Company on July 17, 2013. The Noticee was also required to make corresponding disclosure to the Company within two working days of receipt of intimation of allotment or acquisition of shares or voting rights, as the case may be, under Regulation 13 (1) of the PIT 1992 pursuant to the holding exceeding 5% of the shares/voting rights of the Company.
6. It was also observed that on November 26, 2013, the shareholding of the Noticee fell to 3.26% of the share capital of the company resulting in change in shareholding of more than 2% from the last disclosure required to be made on July 17, 2013 when the Noticee held 5.58% of shares. The Noticee was required to make a disclosure under Regulation 29(2) read with 29(3) of SAST to the company and the stock exchange within two working days as a result of the said change. Also the above change in shareholding of the Noticee was required to be disclosed under Regulation 13(3) read with 13(5) of the PIT Regulations.
7. In this regard, the Company vide email dated May 09, 2014 has *inter alia* replied to the email of SEBI dated May 08, 2014, that the Company has not received any disclosure with respect to acquisition /sale of shares of the Company from the Noticee. Further, BSE vide email dated July 13, 2017, has stated that no disclosures were received from the Noticee. Hence it was alleged that Noticee has violated Regulation 29(1) 29(2) read with 29(3) of SAST 2011 and Regulation 13(1), 13(3) r/w. 13(5) of the PIT 1992.

Appointment of Adjudicating Officer

8. Vide order dated March 07, 2017, Ms. Anita Kenkare was appointed as Adjudicating Officer 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), 29(2) read with 29(3) of SAST 2011 and Regulation 13(1), 13(3) read with 13(5) of the PIT 1992 by the Noticee. 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

9. Based on the findings, Show Cause Notice dated July 14, 2017 ("SCN") was issued to the Noticee. SCN was duly delivered at the address of the Noticee.

Personal Hearing:

10. 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 December 11, 2017. Hearing notice was delivered to the Noticee.
11. The personal hearing was attended by Authorized Representative (hereinafter referred to as "AR").
12. During personal hearing, AR made submissions and also agreed to submit written submission by December 18, 2017.
13. Noticee vide letter dated December 19, 2017 has inter alia made the following submissions:
- i) *Incidentally our holding reached 5.58% i.e. it crossed the threshold limit of 5.00% by 0.58% because of purchase of (additional) 28,750 shares (0.58%). Thus, in our humble submission, present proceedings are initiated against us because of (additional) purchase of 28,750 shares (0.58%) on 17.07.2013 which triggered disclosure requirement under SAST Regulations and PIT Regulations. It is pertinent to mention that on 25.11.2013, we sold 80,000 shares whereby our holding in Aagam Capital was reduced to 3.98%. Thus, we would like to submit that our shareholding in Aagam Capital remained above the threshold limit of 5% only for the limited period of nearly 4 months i.e. from 17.07.2013 to 25.11.2013.*
 - ii) *We are a lay and ordinary retail investor and have limited knowledge about securities law. Besides we were not aware or made aware of applicability of relevant provisions of SAST Regulations and PIT Regulations as alleged to have been violated by us. It is only on receipt of SCN dated 14.07.2017, we realized that we were required to make disclosures for our purchase and sale of shares in Aagam Capital under SAST and PIT Regulations*
 - iii) *As regards sale of 3,600 shares on 26.11.2013, which triggered disclosure requirements under Regulation 29(2) r/w 29 (3) of SAST Regulations as alleged in the SCN, we submit that the sale of shares is not covered under the ambit of Regulation 29(2) r/w 29 (3) of SAST Regulations.*
 - iv) *As regards sale of 3,600 shares on 26.11.2013, which triggered disclosure requirements under Regulation 29(2) r/w 29 (3) of SAST Regulations as alleged in the SCN, we submit that the sale is not covered under the ambit of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.*
 - v) *Order passed by Hon'ble Securities Appellate Tribunal in the case of **Mr. Ravi Mohan and Others vs. SEBI, (Appeal no.97 of 2014 decided on 16.12.2015)**, wherein inter-alia the Hon'ble SAT has held as follows:- (Ref Para No. 33 on internal page no. 38 and 39 of the Order)"*
 - a. *Under regulation 7(1A) of the Takeover Regulations, 1997, an acquirer who, together with persons acting in concert with him has acquired 15% or more but less than 55% shares of the target company when purchases or sells shares of the target company together with the persons acting in concert with the acquirer, aggregating 2% or more of the share capital of the target company, then the said acquirer is required to make disclosure of such*

purchase or sale within two days of purchase or sale under regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997.

- b. *Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained."*
- vi) *Order dated 16.11.2016 passed by Hon'ble Securities Appellate Tribunal in the matter of Anarcon Resources Pvt Ltd wherein inter-alia it is held as follows:-(Ref. Para No. 2 on internal page no. 2 of the Order*

Quote

- vii) *"As regards the penalty of Rs.30 lac imposed on the Appellant nos. 1 to 6 for violating Regulation 7(1A) of the SAST Regulations, 1997 counsel for the parties stated that the said issue is covered in favour of the appellants by the decision of this Tribunal in the case of Mr. Ravi Mohan & Ors. Vs. SEBI (Appeal no.97 of 2014) decided on 16.12.2015 and Mr. Ratanlal Tamakhuwala & Ors. vs. SEBI (Appeal no.249 of 2014) decided on 1.7.2016. Accordingly, for the reasons stated in the aforesaid two decisions, penalty of Rs.30 lac imposed against the appellant cannot be sustained"*
- viii) *Reference to orders for levying penalty commensurate with the gravity of deviation/violation are as follows:*
- a. *In the case of **Refex Industries Limited** (formerly known as Refex Refrigerants Limited), Hon'ble WTM vide its order dated February 02, 2017 did not issue any directions against the promoter and director and inter-alia held that "that the violation is un-intentional and not for consolidation that the violation is technical and venial in nature; and that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation".*
- b. *Order dated 15.01.2014 passed by Hon'ble Securities Appellate Tribunal in the matter of Ambaji Papers Pvt Ltd & Ors*
- c. *Order dated 12.04.2010 (Ref: SRP/RK/AO-60/2010) passed by Adjudicating Officer, SEBI in respect of Dombivli Nagari Sahakari Bank Limited in the matter of Blue Coast Hotels and Resorts Limited*
- d. *Order dated 03.02.2015 (Ref: ISD/FIEM/AO/DRK-AKS/EAD3-681-684/06-09-2015) passed by Adjudicating Officer, SEBI in respect of Rahul Jain & Ors in the matter of FIEM Industries Limited*
- e. *Order dated 27.10.2017 (Ref: AO/SBM/EAD-3/79/2017) passed by Adjudicating Officer, SEBI in respect of Quantam Suppliers Pvt Ltd in the matter of Thirani Projects Limited*

14. Shri Ravi Lalwani(Legal heir of Shri Lekhraj Lalwani) vide letter dated March 29, 2018 has inter alia made the following submissions:

14.1 *On 06.01.2018 Lekhraj Lalwani, Karta of Lekhraj Lalwani HUF passed away.*

14.2 *In view thereof, I humbly request your kind selves to kindly withdraw Adjudication Proceedings initiated against Lekhraj Lalwan HUF.*

15. A supplementary Show cause notice was issued in the matter on April 05, 2018 and a personal hearing was granted on May 10, 2018. However, no one appeared on the said date.

Consideration of Issues, Evidence and Findings

16. 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), 29(2) read with 23(3) of SAST Regulations and;

Regulation 13(1), 13(3) read with 13(5) of PIT, 1992.

II. Does the violation, 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?

17. Before proceeding further, I would like to refer to the relevant provisions of the SAST regulations which read as under:

SAST Regulations, 2011

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) 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.

PIT Regulations, 1992

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

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.

Continual disclosure.

13(3) Any person who holds more than 5% shares or 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 disclosures made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of

- (a) the receipt of intimation of allotment of shares, or
- (b) the acquisition or sale 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 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 had never been repealed; and

(b) 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:

18. It is a matter of fact and duly admitted by the Noticee that required disclosures as per Regulation 29(1) read with 29(3) of SAST 2011 and Regulation 13(1), 13(3) read with 13(5) of PIT 1992 were not made to the Company and to the Stock Exchange.

19. I note that Regulation 29(2) of the SAST Regulations casts an obligation on any acquirer who, together with persons acting in concert with him, holds shares or voting rights entitling them (together) to 5% or more of the shares or voting rights in a target company, to make disclosure of every acquisition or disposal of shares of such target company representing 2% or more of the shares or voting rights in such target company. Thus, I note that the said Regulation specifically mentions about acquisition or disposal of shares. However, Regulation 29(3) of the SAST Regulations, which prescribes the time line within which

these disclosures are to be made to the stock exchanges and the target company itself, does not specifically state about the disposal of shares. As Regulation 29(2) of the SAST Regulations specifically casts an obligation for disclosure upon disposal of shares also, Regulation 29(3) of the SAST Regulations has to be interpreted in accordance with the objective behind the said disclosure requirement as per Regulation 29(2) of the SAST Regulations. Therefore, I do not find any merit in the submissions of the Noticee that the said Regulations of the SAST Regulations do not cast any obligation on it to make disclosures for the disposal (sale) of shares.

20. With regards to submission of notices on imposition of one penalty under SAST and PIT, I would like to rely the Order dated September 04, 2013 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Private Limited Vs. SEBI wherein the Hon'ble SAT had observed that:

"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. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other".

21. In the light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 29(1) of SAST 2011/ 13(1) of PIT and 13(3) of the PIT 1992/ Regulation 29(2) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticee in the matter.

22. Further, I do not find any merit in the submissions of the Noticee that the non-disclosures were unintentional and not wilful. Also, I do not find any merit in the submissions of the Noticee that they have not made any illegal or undue profits. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order dated January 27, 2014 has observed that:

"Argument that no investor has suffered on account of nondisclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure."

23. Further, I also note that in Appeal No. 78 of 2014 in the case of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that:

"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".

24. I note that Mr. Ravi Lalwani, Legal heir of Mr. Lekhraj Lalwani has requested that current proceedings to be withdrawn and abated against Lekhraj HUF as the Karta Mr. Lekhraj Lalwani had passed away on January 06, 2018 and the death certificate for the same has been produced. I note that the current proceedings are against Lekhraj Lalwani HUF not against Late Mr. Lekhraj Lalwani therefore proceedings cannot be abated due to the death of the Karta of HUF. In this regard, attention may be drawn to Sub Rule 2 of Rule 4 of Order 30 of Code of Civil Procedure, 1908 which states as under:

4 Rights of suit on death of partner

(2) nothing in sub-rule shall limit or otherwise affect any right which the legal representative of the deceased may have –

(a) to apply to be made a party to the suit ,or

(b) to enforce any claim against the survivor or survivors.

25. I would also like to rely on the order of Hon'ble High Court of Bombay in the matter of Nergish Minoo Rustomji Parvi & Anr. Vs. Pramod Kishanchand Gupta vide order dated September 07, 2009 has observed that:

“7.....In case of a HUF, if Karta dies during pendency of a suit/appeal the successor Karta will have to come forward, as contemplated by sub-rule (2) of Rule 4, and apply for bringing him on record.

8....It needs to be noted that a HUF cannot appear as a HUF, and the manager/Karta should, therefore, appear in his own name, though all subsequent proceedings could be continued in the name of HUF. A HUF need to be represented by its Karta/ manager in a suit/appeal and in the event of his death a successor Karta/ manager will have to represent the HUF and continue the proceedings. But, after disposal of a suit and at the time of filing an appeal if Karta/ manager, who was representing the HUF in the suit dies, the successor Karta will have to file the appeal. The appeal, in such eventuality cannot be filed in the name of HUF, showing the deceased Karta/ manager as its Karta/ manager. Such appeal would be a nullity.”

26. In the view of the above, the current adjudication proceeding is continued since the proceedings were initiated against Lekhraj Lalwani (HUF) before the death of Mr. Lekhraj Lalwani (Karta of HUF). Further, the successor Karta/ manager was given an opportunity of hearing on May 10, 2018 however no one appeared before me.

27. In view of the above, I find Noticee guilty of non-disclosure as required under Regulation 29(1) 29(2) read with 29(3) of SAST 2011 and Regulation 13(1) ,13(3) read with 13(5) of PIT 1992

28. 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.*

29. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 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 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.

ORDER

30. 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 impose the following monetary penalties on the Noticee:

| Name of the Noticee | Provisions of Law Violated | Penalty Provision | Penalty Amount (in Rs.) |
|----------------------------|---|--------------------------------|--------------------------------|
| Lekhraj Lalwani HUF | Regulation 29(1) and 29(2) read with 29(3) of the SAST 2011 | Section 15A(b) of the SEBI Act | Rs 1,00,000 (Rs One lakh only) |
| | Regulation 13(1) and 13(3) read with 13(5) of PIT 1992 | | |

31. Noticee shall remit/pay the said amount of penalty shall be paid within 45 days of receipt of this order either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment facility into Bank account the details of which are given below:

| | |
|--------------------|--|
| 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 |

32. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " General Manager (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 - 400 052.

| | | |
|---|---|--|
| 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) | |

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

Date: May 14, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER