

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD-7/BJD/NJMR/2019-20/3527**

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

T Lakshminarayanan
(PAN: AAAPL5942J)
B-3, Pranavam Apartments
2, Kamadhenu Street
Mugappair East
Chennai – 600037

In the matter of Andhra Petrochemicals Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed from the periodic examination of DWBIS alerts that in the scrip of Andhra Petrochemicals Ltd., (*hereinafter referred to as "Target Company"*) a non-disclosure based alert was generated by the system, which mentioned about increase in shareholding by one public entity namely T Lakshminarayanan (*hereinafter referred to as "Noticee"*) in the target company from 4.41% to 5.33% by way of series of transactions in the month of January 2017.
2. Pursuant to examination, it was observed that the dealings of the Noticees in the target company upon acquiring more than 5% of shares, had triggered disclosure requirements under SEBI (Substantial Acquisition of Shares & Takeovers), 2011 (*hereinafter referred to "SAST Regulations"*). It was observed that the Noticee failed to make the requisite disclosures under SEBI (SAST) Regulations to the Stock Exchange where the shares of the target company are listed i.e., BSE and to the target company. Therefore, it was alleged that the Noticee had violated the provisions of Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to examination, SEBI initiated Adjudication Proceedings against the Noticee and appointed the undersigned as the Adjudicating Officer vide Order dated May 24, 2019 under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “SEBI Adjudication Rules”) to inquire into and adjudge the alleged violation committed by the Noticee, under Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as “SCN”) bearing ref. no. EAD-7/BJD/NJMR/14641/2019 dated June 12, 2019 was served on the Noticee under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against him in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Section 15 A (b) of the SEBI Act, 1992 for the violation alleged to have been committed by him.
5. The Noticee vide letter dated June 22, 2019 submitted his reply, which is summarized hereunder.

(a) I am neither a trader nor a speculator nor an acquirer of shares out to take control of the company, but a genuine long time investor and supporter of existing management. There is no supporter being a destabiliser of the management. There is no bar for substantial acquisition of shares and such acquisition does not warrant the presumption that it would be only for the purpose of securing control over the company, when evidence is to the contrary.

(b) Failure to disclose the shareholding at the threshold level of 5% is due to my ignorance. Ignorance of Statutory Rules and Regulations may not be accepted by Courts. Accepting my procedural lapse, I am prepared to pay

a sum of ₹5,00,000/- towards penalty for my ignorance, without prejudice to my right to agitate on substantial issues in appropriate fora.

6. I note from the reply furnished by the Noticee that he did not seek an opportunity of personal hearing although an option was given to him which was communicated to him in the SCN dated June 12, 2019. I am convinced that in view of the submissions made by the Noticee, the instant matter can be decided without being heard, as no prejudice shall be caused to the Noticee. Accordingly, I am proceeding further in the matter and record my findings hereunder.

CONSIDERATION OF ISSUES

7. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that he has failed to make the requisite disclosures under the relevant provisions of SEBI (SAST) Regulations, 2011.

After perusal of the material available on record, I have the following issues for consideration, viz.,

- a. Whether the Noticee has violated the provisions of Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011?*
- b. Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?*
- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

ISSUE-1: Whether the Noticee has violated the provisions of Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations?

8. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (SAST) Regulations, 2011, which reads as under:

Regulation 29 (1) of SEBI (SAST) Regulations, 2011

“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”.

Regulation 29 (3) of SEBI (SAST) Regulations, 2011

“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”.

9. I note that it is obligatory on the part of the Directors / Any person who holds more than 5% of shareholding, to make the requisite disclosure to the Stock Exchange and to Company once the prescribed shareholding limits were exceeded.
10. I note that the Noticee is a shareholder of Andhra Petrochemicals Ltd., As per the transaction statement made available by NSDL vide its letter dated July 30, 2018, I note that as on December 31, 2016, the Noticee was holding 36,81,924 shares in the target company, which was 4.41% of the total shareholding of the target company. I note that the Noticee acquired 12,60,524 shares in the month of January 2017, thereby increasing his shareholding in the target company to 49,42,448 shares, which was 5.33% of the total shareholding of the target company. Pursuant to crossing 5% threshold limit of acquisition of shares, the Noticee is obligated to make the requisite disclosures in terms of Regulation 29 (1) of SEBI (SAST) Regulations

to BSE and to the target company. I note from the documents that the Noticee vide his letter dated September 20, 2018 submitted that no disclosure was made by him to BSE and to the target company, which was reiterated by him while replying to the SCN also. I also note from the email received from BSE on December 6, 2018 that no disclosures were received by it from the Noticee pursuant to his acquiring more than 5% shareholding in the target company.

11. From the above findings and also from the submissions made by the Noticee, it is established that the Noticee failed to make the requisite disclosures under Regulation 29 (1) of SEBI (SAST) Regulations pursuant to acquiring more than 5% shareholding in the target company.
12. I note from the submissions made by the Noticee that non-compliance with the disclosure requirement in respect of acquisition of more than 5% shares in the target company was due to ignorance and without any intention to take control of the company. It is trite Law that ignorance of Law will not excuse the Noticee to escape the liability of violating the Law and therefore I find no merit in the contention raised by the Noticee.
13. 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.”

14. In view of the foregoing, I conclude that the Noticee by not making the requisite disclosures upon crossing more than 5% of shareholding in the target company had violated Regulation 29 (1) read with Regulation 29 (2) of SEBI (SAST) Regulations.

ISSUE – 2: Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?

15. It is a well-known fact and practice that as per the requirements of SEBI (SAST) Regulations, there is a requirement of timely disclosure of change in shareholding beyond certain threshold limits. It is obligatory on the part of the person to make timely disclosures to Stock Exchange and to the Company. By not making the requisite disclosures under SEBI (SAST) Regulations, the Noticee failed to comply with the statutory requirements of Law. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. Any delay in disclosing such a fact is detrimental to the interest of the investors at large when the regulations specifically state that disclosure should be made within two days which is the outer limit; anything beyond is a violation and such a violation is admitted. There can be no dispute that compliance with the provisions of the Regulations is mandatory and it is the duty of SEBI to enforce compliance of these Regulations.
16. Since the violation of the statutory obligation under the provisions of SEBI (SAST) Regulations has been established against the Noticee, the Noticee is liable for monetary penalty under Section 15 A (b) of SEBI Act. The provisions of Section 15 A (b) of SEBI Act are reproduced hereunder.

Penalty for failure to furnish information, return, etc.

Section 15A of SEBI Act– *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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

ISSUE – 3 - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

17. While determining the quantum of monetary penalty under Section 15 A (b) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 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.*

18. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. However, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision.

19. Therefore, I am not inclined to view the lapse on the part of the Noticee leniently and consider it necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

ORDER

20. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, hereby impose a penalty of ₹ 5,00,000/- (Rupees Five Lakhs only) on the Noticee for violation of Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011, under Section 15 A (b) of SEBI Act.
21. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.
22. The Noticee 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

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

23. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department-1, DRA-III, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

24. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: 28 June 2019

Place: Mumbai

B J DILIP
Adjudicating Officer