

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.ISD/AIL/GMCCL/AO/DRK-CS/EAD-3/403/69-13]

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

Against:
Gujarat Metallic Coal & Coke Ltd.
(Formerly known as Arvind Chemicals Ltd.)
PAN No.- AACCA5707F
15, Ganesh Chandra Avenue,
Kolkata -700013,
West Bengal

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the trading of the scrip of Arvind International Ltd. (hereinafter referred to as "**AIL/ Company**"). The shares of AIL were listed at Bombay Stock Exchange Ltd. (hereinafter referred to as "**BSE**").
2. It was observed in the investigation report that on September 13, 2010 Gujarat Metallic Coal & Coke Ltd. (hereinafter referred to as "**Gujarat Metallic/Noticee/You/ACL**") sold 3,75,000 shares of AIL to Mrs. Komal Nahata (hereinafter referred to as "**KN**") and further on October 26, 2010 acquired 3,75,000 shares of AIL from KN and did not make the relevant disclosures under SEBI (Substantial Acquisition of Shares & Takeover) Regulations 1997 (hereinafter referred to as "**SAST Regulations**") and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") on both the occasions.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer and the same was communicated vide proceedings of Whole Time Member appointing Adjudicating Officer dated November 15, 2012 under Section 15-I of the Securities and

Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "**Rules**"), to inquire into and adjudge under Section 15A(b) of SEBI Act, for the violation of the provisions of regulations 13(1) and 13(3) read with regulation 13(5) of PIT Regulations and of regulation 7(1) read with regulation 7(2) of SAST Regulations, alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice no. *A&E/DRK/CS/9324/2013* dated April 17, 2013 (hereinafter referred to as "**SCN**") was served on the Noticee by "SPAD" (acknowledged received) in terms of the provisions of Rule 4 of the Rules requiring the Noticee to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on the Noticee under Section 15A(b) of the SEBI Act for the violation of the provisions of regulations 13(1) and 13(3) read with regulation 13(5) of PIT Regulations and regulation 7(1) read with regulation 7(2) of SAST Regulations. In the said SCN, it was stated/ alleged that:

a. Gujarat Metallic sold 3,75,000 shares to KN in off-market constituting 5.35 percent of the total share capital of AIL. The details of the transaction are as follows:

Date of Transaction	Entity	Pre-holding (no. of shares)	Purchased/ sold (no. of shares)	Post-holding (no. of shares)
13.09.2010	Gujarat Metallic	3,75,885	-3,75,000	885
13.09.2010	KN	0	+3,75,000	3,75,000

b. As per the trading details on September 13, 2010 Noticee was holding 3,75,885 shares of AIL constituting 5.36 percent of the total shareholding of AIL. Noticee had sold 3,75,000 shares to KN due to which its shareholding reduced to 885 shares i.e. 0.01% of the total shareholding of AIL. At this juncture, as per regulation 13 (3) of PIT Regulations Noticee was required to disclose the number of shares or voting rights held and change in shareholding or voting rights as its shareholding reduced from

5.36% to 0.01% i.e. below 5%. However, Noticee had not made disclosures to AIL of such change as required under regulation 13(3) read with regulation 13 (5) of the PIT Regulations.

- c. It was further observed that, Gujarat Metallic acquired 3,75,000 shares in off market on October 26, 2010 from KN. The details are given as follows:

Date of Transaction	Entity	Preholding (no. of shares)	Purchased/sold (no. of shares)	Post-holding (no. of shares)
26.10.2010	KN	3,75,000	-3,75,000	0
26.10.2010	Gujarat Metallic	885	+3,75,000	3,75,885

- d. It was observed during the investigation that on October 26, 2010 Noticee was holding 885 shares constituting 0.01% of the total shareholding of AIL and acquired 3,75,000 shares of AIL constituting 5.35 percent of the total shareholding of AIL. This acquisition led to an increase in its shareholding from 0.01% to 5.36% of the total shareholding of AIL. At this juncture, as per regulation 7(1) read with 7(2) of SAST Regulations and 13(1) of PIT Regulations Noticee was required to disclose its shareholding to AIL and to the stock exchange within two days as it has increased to more than five percent of the total shareholding of AIL. However, Noticee had not made any disclosure to AIL and to the stock exchanges of such acquisition as required under regulation 7(1) read with 7(2) of SAST and regulation 13(1) read with 13(5) of PIT regulations.

5. Noticee had submitted its reply dated May 18, 2013, wherein it was stated as follows;

On the subject matter, we humbly submit that ACL pursuant to the understanding of a loan from Komal Nahata was required to make pledge of the equity shares of AIL in favour of Komal Nahata as a security in connection therewith. However, ACL instead of making pledge of the shares had inadvertently transferred 3,75,000 equity shares of AIL to KN on 13.09.2010 off market. However, upon the said loan from Komal Nahata not materializing, ACL has turned down the loan proposal and called back the said shares of AIL from Komal Nahata.

The above facts show that the transfer of subject shares by ACL to KN and re-transfer from KN to ACL had not been resulted due to any agreement/ transaction of purchase or sale of subject shares, and therefore, ACL was under impression and understanding that no disclosure was required to be made

pursuant to such transfer of shares by ACL under Regulation 7(1) read with Regulation 7(2) of SEBI(SAST) Regulations and Regulation 13(3) of SEBI (PIT) regulations.

6. An opportunity of hearing was granted to the Noticee vide hearing notice dated August 5, 2013 to appear on August 26, 2013 at SEBI Bhavan, Mumbai and the same was postponed vide hearing notice dated September 5, 2013 to appear on September 27, 2013 at SEBI- Eastern Regional Office at Kolkata (SEBI-ERO).
7. In response to the same, Noticee vide its letter dated 26.10.2013 had authorised Mr. Gopal Sharma, Company Secretary to appear as its Authorised Representative (AR). AR has reiterated the submissions made vide reply dated May 18, 2013. AR has also submitted that by mistake they did not fill the pledge form for taking loan and since loan was not materialized, so the shares were transferred back from KN. AR was further queried as to why it took so long to transfer back the shares, AR could not reply/ expressed his unawareness. When AR was further asked about the interest part of loan, AR stated since rate of interest was 18% which was on the higher side for the Noticee, therefore they did not borrow the loan.

CONSIDERATION OF EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material made available on record. The allegations in the present matter were that the Noticee had violated the provisions as specified under 13(1) and 13(3) read with regulation 13(5) under PIT Regulations and regulation 7(1) read with regulation 7(2) under SAST regulations.
9. The texts of the provisions of regulations 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations and regulations 7(1) and 7(2) of SAST are reproduced hereunder:-

PIT Regulations:

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - 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.

- (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) and (4) 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.*

SAST Regulations:

Acquisition of 5 per cent and more shares or voting rights of a company

- 7.(1) *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent or ten percent or fourteen percent or fifty four per cent or seventy four percent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*
- (2) *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.*
10. From the records it may be noted that the Noticee contends that by mistake they did not fill the pledge form for taking loan and since loan was not materialized, so the shares were transferred back from KN. However, it is difficult to comprehend as to why there was a long gap of forty three days in transferring back the shares. Noticee has not produced any detailed supporting documents in support of its claim, for example, correspondence with the lender, resolution/ necessary approval, terms and conditions of the proposed loan etc. In the absence of supporting evidence, Noticee's contention that the entire transaction is based on the proposed loan, does not seem plausible/ convincing. The moment the shares were debited from its account, thereby leading to a change in shareholding from 5.36% to 0.01% and further credited back into its demat account thereby leading to change in shareholding/acquisition from 0.01% to 5.36%, PIT Regulations and SAST Regulations were triggered.
11. Upon perusal of the documents available on record it is observed that on September 13, 2010 Noticee had transferred/sold 3,75,000 shares of AIL to KN in off market and on October 26, 2010 had received/ acquired the same number of shares of AIL from KN in off market.

12. On September 13, 2010 Noticee had transferred/sold 3,75,000 shares of AIL to KN in off-market constituting 5.35 percent of the total share capital of AIL. Due to this Noticee's shareholding reduced to 0.01%.

- a. Regulation 13(3) read with 13(5) of the PIT Regulations mandates any person who holds more than 5% shares in a listed company to disclose the number of shares held and change in shareholding, even if such change results in shareholding falling below 5%, and such change exceeds 2% of total shareholding in the company to the company. In the instant case, Noticee had sold 3,75,000 shares of AIL due to which its shareholding reduced to 0.01% from 5.36%. Therefore, as per regulation 13(3) read with 13(5) of the PIT Regulations, Noticee was required to disclose the same to the company within two working days of such change in shareholding. However, Noticee had not made any disclosure to the company.

13. Further, on October 26, 2010, the Noticee had received/ acquired the same number of shares i.e. 3,75,000 shares of AIL from the same entity KN constituting 5.35 percent of the total shareholding of AIL. This transaction led to an increase in its shareholding from 0.01% to 5.35% of the total shareholding of AIL.

- a. In this context, regulation 7(1) read with 7(2) of SAST Regulations mandates an acquirer who acquires more than five percent shares in a company, in any manner whatsoever, to disclose at every stage the aggregate of his shareholding in that company to the company and to the stock exchanges within two days of the acquisition of shares. Therefore, as per regulation 7(1) read with 7(2) of SAST Regulations, Noticee on receiving/ acquiring 3,75,000 shares constituting 5.35 percent of the total shareholding of AIL, was required to disclose to the company and to the stock exchange within two days.
- b. Further, regulation 13(1) read with 13(5) of PIT Regulations mandates any person who holds more than five percent shares in any listed company to disclose the number of shares held by such person within two working days of the acquisition of shares to the company. Therefore as per regulation 13(1) read with 13(5) of PIT Regulations as the Noticee was

holding 5.36 percent of the total shareholding of AIL, it was required to disclose its shareholding within two working days to the company.

- c. It is observed that, at this juncture, as per abovementioned regulations Noticee was required to disclose its shareholding to AIL and to the stock exchange as it has increased to more than five percent of the total shareholding of AIL. However, Noticee had not made any disclosures to AIL and to the stock exchanges of such receipt of shares/change in shareholding as required under regulation 7(1) read with 7(2) of SAST and regulation 13(1) read with 13(5) of PIT regulations.

14. Therefore, the allegations of the violation of the provisions of regulations 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations and regulation 7(1) and 7(2) of SAST Regulations, 1997 stand established against the Noticee.

15. At this juncture, I would like to quote the judgement of Hon'ble Securities Appellate Tribunal in *Milan Mahendra Securities Pvt. Ltd. Vs SEBI, SAT Order dated April 15, 2005*, wherein it was held that, *"the purpose of these disclosures so as to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

16. The provisions of sections 15A(b) of SEBI Act are reproduced hereunder:

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, -

(a)

(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.*

(c).....

17. 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"*.

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

19. It is noted from the examination report that the quantum of penalty has not been quantified. I observe that from the material available on record it is difficult to quantify the amount of gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the delay in complying with the provisions of PIT Regulations and SAST Regulations. Therefore, in view of the abovementioned conclusions and after considering all the factors mentioned under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 1,00,000 (Rupees One Lakh Only) on the Noticee under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the non-compliance of the provisions of regulations 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations and regulations 7(1) and 7(2) of SAST Regulations, 1997, which is appropriate in the facts and circumstances of the case.

ORDER

20. In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹ 1,00,000 (Rupees One Lakh Only) on Gujarat Metallic Coal & Coke Ltd. (*Formerly known as Arvind Chemicals Ltd.*) in terms of the provisions of Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the non-compliance of the provisions of regulations 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations and regulation 7(1) and 7(2) of SAST Regulations. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the non-compliance by the Noticee.

21. The penalty shall be paid by way of Demand Draft drawn in favour of “SEBI– Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to Deputy General Manager- ISD, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

22. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copy of this order is being sent to Gujarat Metallic Coal & Coke Ltd., (*Formerly known as Arvind Chemicals Ltd.*) 15, Ganesh Chandra Avenue, 2nd floor, Kolkata- 700013, West Bengal and also to the Securities and Exchange Board of India Mumbai.

Place: Mumbai

Date: September 30, 2013

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**