

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.EAD-5/BS/AO/ 09 /2017-18]**

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**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**

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**In respect of:**

**Shri Sandip Laxmanbhai Bhamani**

28G, Devdasnagar Society,

D Cabin Sabarmati Kali,

**Ahmedabad – 380 019**

*In the matter of Gujarat Terce Laboratories Ltd.*

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation into the trading in the scrip of Gujarat Terce Laboratories Ltd. (hereinafter referred to as GTL) for the period February 04, 2014 to June 30, 2014 (hereinafter referred to as the Investigation Period) and into the possible violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred to as SAST Regulations) and SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) by Shri Sandip Laxmanbhai Bhamani (hereinafter referred to as Noticee).

2. It was alleged that Noticee did not make necessary disclosures to Bombay Stock Exchange, where the share of the company are listed (hereinafter referred to as the stock exchange" as well as to GTL within two working days of his shareholding crossing 5% in the company.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri S V Krishnamohan was appointed as Adjudication Officer vide order dated September 02, 2016 to inquire and adjudge under Section 15 A(b) of the SEBI Act, the alleged violations of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations by the Noticee.
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S. V. Krishnamohan.

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

5. A Show Cause Notice dated October 21, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 for the violations as specified in the SCN. The said SCN was served on the Noticee and the proof of delivery is available on record.
6. Though no reply was received from the Noticee, vide hearing notice dated March 21, 2017, the Noticee was granted an opportunity of personal hearing on March 30, 2017. However, the Noticee did not appear for the said hearing.
7. Later vide hearing notice dated September 20, 2017, Noticee was granted another opportunity of personal hearing on October 05, 2017. However, the said hearing notice returned undelivered.

8. Subsequently, vide hearing notice dated October 06, 2017, Noticee was granted another opportunity of being heard on October 23, 2017. As the Noticee was not available at his address, the said notice of hearing was affixed at the premises of the Noticee.

### **CONSIDERATION OF ISSUES AND FINDINGS**

9. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
- a. Whether Noticee has violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations?
  - b. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?
  - c. If yes, then what should be the quantum of penalty?

### **FINDINGS**

10. The issues for examination and the findings thereon are as follows:

***Issue a: Whether Noticee has violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations?***

11. Before I proceed with the matter, it is pertinent to mention the relevant provisions which are reproduced below:

#### ***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.*

...

*(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***

#### ***Disclosure of interest or holding by directors and officers and substantial shareholders in 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.*

12. It was alleged in the SCN that during January 01, 2013 to June 30, 2014, the Noticee had traded in the scrip of GTL as follows:

Date	Client Name	Gross Buy Volume	Gross Sell Volume	Net Traded Volume	Holding	% to share capital
08/11/2013	SANDIP LAXMANBHAI BHAMANI	10600	0	10600	10600	0.14
11/11/2013	SANDIP LAXMANBHAI BHAMANI	10000	0	10000		0.28

					20600	
12/11/2013	SANDIP LAXMANBHAI BHAMANI	14574	0	14574	35174	0.47
13/11/2013	SANDIP LAXMANBHAI BHAMANI	15000	0	15000	50174	0.68
14/11/2013	SANDIP LAXMANBHAI BHAMANI	16000	0	16000	66174	0.89
22/11/2013	SANDIP LAXMANBHAI BHAMANI	10100	0	10100	76274	1.03
17/12/2013	SANDIP LAXMANBHAI BHAMANI	20000	0	20000	96274	1.30
18/12/2013	SANDIP LAXMANBHAI BHAMANI	21000	0	21000	117274	1.58
19/12/2013	SANDIP LAXMANBHAI BHAMANI	21000	0	21000	138274	1.86
20/12/2013	SANDIP LAXMANBHAI BHAMANI	36500	0	36500	174774	2.36
24/12/2013	SANDIP LAXMANBHAI BHAMANI	20000	0	20000	194774	2.62
14/02/2014	SANDIP LAXMANBHAI BHAMANI	30760	0	30760	225534	3.04
17/02/2014	SANDIP LAXMANBHAI BHAMANI	29000	0	29000	254534	3.43

18/02/2014	SANDIP LAXMANBHAI BHAMANI	62000	0	62000	316534	4.27
19/02/2014	SANDIP LAXMANBHAI BHAMANI	49350	0	49350	365884	4.93
<b>20/02/2014</b>	<b>SANDIP LAXMANBHAI BHAMANI</b>	<b>35050</b>	<b>0</b>	<b>35050</b>	<b>400934</b>	<b>5.40</b>
28/02/2014	SANDIP LAXMANBHAI BHAMANI	35000	0	35000	435934	5.87
07/03/2014	SANDIP LAXMANBHAI BHAMANI	35000	0	35000	470934	6.35
12/03/2014	SANDIP LAXMANBHAI BHAMANI	0	5289	-5289	465645	6.28
13/03/2014	SANDIP LAXMANBHAI BHAMANI	20000	300	19700	485345	6.54
14/03/2014	SANDIP LAXMANBHAI BHAMANI	0	100	-100	485245	6.54
18/03/2014	SANDIP LAXMANBHAI BHAMANI	29155	0	29155	514400	6.93
24/03/2014	SANDIP LAXMANBHAI BHAMANI	15000	0	15000	529400	7.13
26/03/2014	SANDIP LAXMANBHAI BHAMANI	15000	0	15000	544400	7.34
14/05/2014	SANDIP LAXMANBHAI BHAMANI	0	7988	-7988	536412	7.23

13. In terms of Regulation 29(1) read with 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations, the Noticee was required to make necessary disclosure to the stock exchange as well as to GTL within two working days of his shareholding crossing 5% in the company i.e. two working days from February 20, 2014.
14. Therefore, it was alleged in the SCN that Noticee did not make the necessary disclosure to the Stock Exchange and also to GTL, thus, violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.
15. Vide letter dated August 14, 2014, GTL confirmed that no disclosures were made by the Noticee with respect to the aforesaid acquisition. Further vide email dated August 19, 2014, BSE had also confirmed that no disclosures were received by it with respect to the aforesaid acquisition. I note that there is nothing on record to establish anything contrary to the above. It is also pertinent to mention that the Noticee failed to reply to the SCN and also did not avail the opportunities for hearing granted in the matter.
16. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) wherein it, inter alia, observed that

*"... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".*

17. Further, it is also pertinent to mention order of Hon'ble SAT in G. Suresh v. SEBI dated April, 29 2014, wherein it was held that

*"True and timely disclosures by an acquirer of shares in a company are an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they*

*help investors to take an informed decision in investing in the scrip of said company."*

18. Further, Hon'ble SAT in the matter of Milan Mahindra Securities Private Limited v SEBI (Appeal No. 66 of 2003) held the following:

*"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

19. Based on above, it is concluded that Noticee has violated Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations by not disclosing the change in their shareholding to the stock exchanges.

**(b) Does the non-compliance, if any, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?**

20. The aforesaid violations attract penalty under Section 15A(b) of the SEBI Act which reads as follows:

**“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,**

(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.

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. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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
22. It may also be noted that the Examination Report has not quantified the profit/loss for the nature of violations committed by Noticees and no quantifiable figures 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.
23. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia 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.”*
24. Hon'ble SAT in the case of Coimbatore Flavors & Fragrances Ltd. V. SEBI (Appeal No. 209 of 2014 ), observed *“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.”* (Emphasis supplied)

25. In this connection reference may also be made to the Order of the Hon'ble SAT in Appeal no 118 of 2013 dated 04.09.2013 in the matter of Vitro Commodities Private Limited v 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 stand alone Regulations and one is corollary of other."*
26. Both the disclosures under Regulation 29 (1) of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992 are quite similar in nature. It is also pertinent to note that the purpose of both the Regulations is dissemination of information. The disclosures under Regulation 29 (1) of SAST Regulations, 2011, are similar to the erstwhile Regulation 7 (1) of SEBI (SAST) Regulations, 1997.
27. I have considered the factors mentioned in section 15J of SEBI Act, 1992 and I note that the material made available on record does not clearly indicate 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. However, it is important to note that securities market operates on disclosure based regime and hence true and timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose.
28. Therefore, taking into consideration the facts / circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

## **ORDER**

29. After taking into consideration the nature and gravity of the charges established, the mitigating factors as discussed in the preceding paragraphs and in exercise of the

powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of ₹ 2,00,000 /- (Rupees Two Lakhs Only) on the Noticee in terms of Section 15 A(b) of the SEBI Act, 1992 for the violation of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.

30. 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 Chief General Manager (Enforcement Department - 1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 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)	

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

**Place: Mumbai**

**DATE: 30.10.2017**

**Biju. S**

**ADJUDICATING OFFICER**