BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-5/SVKM/AO/41-42/2017-18]

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

Name of the Entity	PAN	Order No.
Sandeep R Deora	AAEPD3143P	SVKM/AO-41/2017-18
Shruti S Deora	AFOPD4903J	SVKM/AO-42/2017-18

In the matter of

Santowin Corporation Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (SEBI) conducted investigation into the irregular trading in the scrip of Santowin Corporation Limited (hereinafter referred to as "**SCL / Company**"). It was observed that that there was change in 'control' of the SCL at 26th Annual General Meeting held on August 17, 2010 wherein members designated Mr. Ashok Gupta and Mr. Ankush Gupta as new promoters of the company in place of Sandeep R Deora and Ms. Shruti S Deora (hereinafter individually referred to as "**Noticee No.1 and 2**" respectively and collectively as "**Noticees**").

2. Noticee No. 1 and 2 became Directors of SCL on September 15, 2004 and continued as such till September 24, 2011 and August 31, 2010 respectively. On August 30, 2010 the noticees disposed of their entire shareholding in SCL as under:

Name of promoter	Director on the date of transaction (Y/N)	Opening Holding	Opening Holding as % to total holding	Mode of Transaction	Decrease	Change in terms of value of shares (Rs.)	closing holding at the end of day	% change in share holding
Sandeep R Deora	Y	181000	14.48	Physical Transfer	181000	1081000	0	-14.48
Shruti S Deora	Y	150000	12	Physical Transfer	150000	108000	0	-12

3. The disposal of shares of SCL by the noticees, who were Directors of the SCL as on the date of sale of shares, and the resultant change of their shareholdings in SCL were required to be disclosed to SCL as well as to the Stock exchange, where the shares of SCL are listed, as stipulated under Regulation 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**"). It is alleged that the Noticees violated the said Regulations by not making necessary disclosure.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act, 1992"**) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire and adjudge under section 15A(b) of the SEBI Act, 1992, the alleged violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice dated December 11, 2015 (hereinafter referred to as "**SCN**") was issued to the Noticees under Rule 4 of the

Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act, 1992 for the alleged violations specified in the SCN. It was alleged in the SCN that Noticees violated Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992. As per the said Regulations, any change of shareholding which exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; has to be disclosed to the company and stock exchanges. Copies of the documents relied upon in the SCN were provided to the Noticees along with the SCN.

6. Noticees vide similarly worded letters dated January 06, 2016 replied to the SCN and stated that *"Change in shareholding of the Noticees are due to change in control of the management of the company pursuant to Regulation 12 of the SAST Regulations, 1997. Company had conveyed Annual General Meeting for passing resolution for the same and also had made required disclosure on BSE i.e. Notice of AGM and outcome of AGM."* Vide letter dated January 22, 2016, Noticees submitted copies of AGM notice and outcome of AGM declaring change in management of the company.

7. Thereafter, Noticees were given opportunities of personal hearing on February 24, 2016, March 11, 2016 and April 20, 2016. Ms. Rinku S Valanju, Advocate attended the personal hearing on March 11, 2016 and April 20, 2016 on behalf of the Noticees. During the course of hearing on April 20, 2016, she submitted a copy of the Noticee's reply dated April 11, 2016 in response to SCN and reiterated the same. Vide letter dated May 11, 2016, Noticees also submitted a copy of bank

details showing the receipt of amount in their bank account in consideration of sale of the shares of the company.

8. Considering that more than three months had lapsed since the conclusion of the hearing, Noticee were given opportunity of making additional written submissions, if any, vide letter dated May 03, 2017. In response thereto, Noticees vide letters dated May 19, 2017 referred to the order of the Hon'ble Supreme Court in Bharjatiya Steel Industries vs. Commissioner, Sales Tax, and Uttar Pradesh and submitted that in view of efflux of 7 years and their previous submissions, no useful purpose will be served if any penalty is levied at this juncture.

9. The summary of submissions are as follows:

   - *SCN has been issued by AO after a lapse of 5 years from the date of non-compliance of PIT Regulation without stating any cogent reason or explanation of issuance at such a belated stage causing grave prejudice and disadvantage.*
   - *It was denied that the Noticees disposed their entire shareholding on August 30, 2010 as alleged in the SCN. It was stated that that the Noticees had in principle agreed to pass on their control in respect of the company to the new management –"Ashok Gupta" in and around June 2010. Pursuant to an oral agreement to hand over control of the company on 20.08.2010, the Noticee no.1 & 2 had handed over transfer documents for 1,81,000 / 1,50,000 shares respectively to the buyers/acquirers. So it is incorrect to conclude that the Noticees disposed their shareholding on August 20, 2010. Noticee no.1 & 2 received due consideration of ₹12,67,000/- and ₹10,20,000/- respectively in the month of October 2010.*
   - *Noticees became directors of the company in the year 2004 by which time, the operation of the company were at stand still. The entire shareholding of the company then was existing in physical form.*
   - *Trading in SCL remained suspended on BSE for a long period of about 10 years (from 2001 till 2010) when Deoras were holding the company and consequently there was no trading/liquidity on BSE*

platform in the company's shares. The suspension in the trading of shares of SCL was revoked in 2010 and the shares became liquid and marketable.

- *As the company's operations were closed since many years, the company could not afford Secretarial department which was required to look after regulatory compliances etc. The secretarial work / normal compliances if any were taken up on a need based basis through a practicing company secretary, Mr. Bharat Shah, who was working from his residence. Mr. Shah passed away in November 2011 and on account of his untimely demise, the company and the Noticees were facing several difficulties in retrieving secretarial and compliance related records and are unable to ascertain with certainty as to whether alleged non-compliance as made in SCN are factually incorrect or not. Without prejudice to the above, Noticees have made the requisite disclosures to the company and the BSE on April 11, 2016.*
- *SCL had informed BSE on 19.08.2010 that its members at 26th AGM held on 17.08.2010 had inter alia accorded its approval to effect change in control under Regulation 12 of Takeover Regulations, 1997 by designating Mr. Ashok Gupta and Mr. Ankush Gupta as new promoter directors of the company and its management in place of the Noticees Company in its quarterly shareholding for September 2010 also showed that the noticees are no more promoter director of the company.*
- *It was stated that the Noticees had not made any disproportionate gain or unfair advantage by not making the purported disclosures under PIT Regulations. There is no loss caused to an investor or group of investors as a result of Noticees' purported non-disclosure as SCL's shares had not been traded on the exchange since last many years. Further, the purported non-disclosure was not repetitive in nature.*
- *Noticees also referred to the judgment of Hon'ble Supreme Court in Bharjatiya Steel Industries vs. Commissioner, Sales Tax, Uttar Pradesh and order of Hon'ble SAT in Alpha Hi Tech Fuel Ltd. vs SEBI.*

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

    a. Whether Noticees had violated Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992? and

    b. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

PIT Regulations, 1992

"Continual disclosure.

13. (4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) 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."

Issue I – Violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992

12. Regulation 13(4) read with 13(5) of PIT Regulations inter alia requires disclosure in Form D to the company and to the Stock Exchange by any person who is a Director or Officer of a listed company, of the total

number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings which exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of acquisition or sale of shares or voting rights, as the case may be. Upon perusal of the documents available on record, I find that it is not in dispute that the Noticees were directors of SCL and that as on August 30, 2010 they had disposed of their entire shareholding in the company.

13. However, it was contended that the Noticees did not dispose of their entire shareholding on August 30, 2010 as alleged in the SCN. Rather it was pursuant to an oral agreement to hand over control of the company on 20.08.2010, the Noticee no.1 & 2 handed over transfer documents for 1,81,000 / 1,50,000 shares respectively to the various buyers/acquirers. Here, I find from the transfer deeds submitted by the noticees that shares were transferred by them to various entities including the new management vide share transfer deeds dated August 19 and 20, 2010. Be that as it may, there is no dispute that the Noticees had disposed of their entire shareholding by August 30, 2010 which resulted into change of their shareholding in SCL from 1,81,000 (14.48%) / 1,50,000 (12%) to nil. Since this change in their shareholdings in SCL was more than ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights of SCL, they were required to disclose to SCL as well as to the Stock exchange, where the shares of SCL are listed, about such change in his/her holding as stipulated under Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992.

14. Now the next question is whether the requisite disclosures were made by the Noticees to SCL and BSE. Noticees have contended that they are unable to ascertain with certainty as to whether alleged non-compliance as made in SCN are factually incorrect or not since the company was not having any Secretarial department which was required to look after regulatory compliances etc. and the secretarial work / normal compliances, if any, were taken up on a need based basis through a practicing company secretary, Mr. Bharat Shah, who passed away in November 2011. Further, without prejudice to the above, Noticees have made the requisite disclosures to the company and the BSE on April 11, 2016 i.e. when the present proceedings are underway. Noticees' action of making disclosure post issuance of SCN does not purge their failure to disclose within 2 days of transaction as per the requirements of the Regulation. Time is the essence of disclosure under the Regulations and delayed disclosure would not serve the purpose for which the obligation is cast in the Regulations.

15. Here I note from the Annexure IV to the SCN that the BSE vide email dated December 29, 2014 had informed, inter alia, that no disclosure was received under Regulation 13 of PIT Regulations, 1992 from the noticees. Noticees could not effectively rebut the evidence of BSE which was supplied to them with SCN. They tried to explain away the failure by shifting the blame to the deceased company secretary. The factum of non-disclosure to the BSE in terms of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992, is established.

16. Noticees have submitted that the Company had informed BSE on 19.08.2010 about change of management and that the market was aware of the happenings in the company. In this regard, I note that the

obligation to make disclosure under PIT Regulations is a mandatory statutory obligation on the noticees themselves. That the company has informed BSE about the same does not absolve the noticee directors of their statutory duties. Further, information to BSE is not complete and while the transaction is dated August 30, 2010, the information dated August 19, 2010 only relates to an agenda item which may or may not be consummated. Hon'ble Securities Appellate Tribunal (**SAT**) in *Premchand Shah and Others* V. *SEBI* dated February 21, 2011, held that "…….*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.…….Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments*…… "

17. In view of the aforesaid discussion, I find that the Noticees failed to make the requisite disclosures as stipulated under Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 about change in their shareholding to BSE when they sold their entire shareholding in August 2010 and exited the SCL.

Issue II - Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?

18. By not making the disclosures on time, Noticees failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such*

violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."

19. The noticees have referred to the following observation made by Hon'ble Supreme Court of India in *Bharjatiya Steel Industries v Commissioner of Sales Tax, U.P.* {(2008) 11 SCC 617} regarding absence of mens rea as a ground for non-levy of penalty.

    "it is therefore difficult to accede to the contention of Mr. Banerjee that under no circumstances absence of mens rea would not be a plea for levy of penalty. An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. If it has the discretion not to levy penalty, existence of mens rea becomes a relevant factor."

20. However, the reliance placed by the Noticees on the afore-mentioned case does not support their case as in the very same case the Hon'ble Supreme Court of India has also observed that *"Furthermore, the question as to whether mens rea is an essential ingredient or not will depend upon the nature of the right of the parties and the purpose for which penalty is sought to be imposed."* I am of the view that in the Shriram Mutual Fund case referred supra, the Hon'ble Supreme Court while interpreting the provisions of the SEBI Act, 1992 has made it abundantly clear that as soon as contravention of the statutory obligation as contemplated by the Act and the Regulation is established then the penalty has to follow and only the quantum of penalty is discretionary. It further held that "… *imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the*

Regulations." In view of the same, the aforesaid judgment is of no assistance to the Noticees.

21. As the violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 is established, the Noticees are liable for monetary penalty under section 15A(b) of SEBI Act, which, at the time of violation, read as under:

"15A. Penalty for failure to furnish information, return, etc.- *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 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"

22. While determining the quantum of 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."

23. There is no material available on record that quantifies the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default. 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.

Hon'ble SAT in the case of *M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 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."*

24. It is contended by the Noticees that the non-compliance was unintentional, that there was no undue benefit derived by them, no harm was caused to the investors, there was no trading in the scrip of company and that the scrip was suspended at BSE during the period of 2001 to 2010. Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* (Appeal No. 78 of 2014 order dated September 30, 2014), Hon'ble SAT 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*". (Emphasis supplied).

25. In the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), observed that *"……. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within*

the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures." (Emphasis supplied).

26. I note that reference to the SEBI circular dated December 01, 2015 is not of much assistance to the Noticees as the same has been issued much after the date of violation of PIT Regulations, 1992 by the Noticees. Moreover, the said circular was intended to be implemented in phases and in the first phase the system was expected to run in parallel with existing system.

27. Pleading for the lenient view in the matter, Noticees have further referred to the order of Hon'ble SAT in *Alpha Hi-Tech Fuel Limited vs. SEBI* (Appeal No. 142 of 2009 vide order dated December 04, 2009) wherein SAT reduced the penalty of ₹ 5 Lakhs imposed by the Adjudicating Officer, SEBI on the Appellant therein for violation of Regulation 13(6) of PIT Regulations, 1992 to ₹ 2 Lakhs on the ground that the failure on the part of the appellant to furnish the detailed information as per the prescribed format was not really very serious.

28. In view of the series of orders of Hon'ble SAT as discussed earlier, the various contentions of the noticees are not valid grounds to totally avoid liability. However, the submissions that there was no undue benefit to the noticees, no adverse impact on the market since the scrip was suspended for trading, that there was no loss caused to the investors etc. are treated as mitigating factors while arriving at the quantum of penalty in view of the order of the Hon'ble SAT in the case of

Virendrakumar Jayantilal Patel and *Alpha Hi-Tech Fuel Limited* referred earlier.

29. Noticees have further submitted that there is an unexplained delay of about 5 years in issue of the SCN which is in gross violation of principles of natural justice. Here I note that the undersigned has been appointed as Adjudicating Officer in the present matter on June 11, 2015 and the SCN has been issued on December 11, 2015. Noticees were given opportunity of personal hearing on February 24, 2016, March 11, 2016 and April 20, 2016. The noticees sought adjournment of hearing scheduled on February 24, 2016 and March 09, 2016. Therefore, there is some delay attributable to the noticees as well. Further, clarity on the issue of interpretation of Section 15(a) and like provisions of SEBI Act in view of the 2 conflicting judgments of Supreme Court in Roofit and Chaturvedi cases has come about vide Finance Act 2017 through notification dated April 26, 2017. Therefore, delay in initiating the proceedings by itself cannot be a ground for discharging the Noticees when the noticees also contributed for the same by seeking repeated adjournments. Moreover, I find that under the SEBI Act there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder.

ORDER

30. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a impose following penalties on the Noticees under section 15A(b) of SEBI Act, 1992:

Violation	Name of the Noticee	Penalty Amount
Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992	Sandeep R Deora	₹ 2,00,000/- (Rupees Two Lakh Only)
	Shruti S Deora	₹ 2,00,000/- (Rupees Two Lakh Only)
Total		**₹ 4,00,000/- (Rupees Four Lakh Only)**

31. 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, 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 payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

Date: June 30, 2017
Place: Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer