BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 107/2014]

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

Mr.Dipak Kalyanji Tanna (PAN AABPT0578E)

In the matter of

M/s. Looks Health Services Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) observed that in the scrip of M/s. Looks Health Services Ltd. (hereinafter referred to as **'the company'**), Mr. Deepak Kalyanji Tanna (hereinafter referred to as **'the Noticee'**), a public shareholder holding above 1% of the paid up capital, had failed to make the relevant disclosures as required under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'), as applicable.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer vide order January 28, 2014 under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violation of the SAST Regulations, 2011 and PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. SEBI *inter alia* observed that there was a decrease by more than 2% in the shareholding of the Noticee during the period June 28, 2013 to July 24, 2013. The shareholding of the Noticee as at quarter ending March 2013 was 4,50,000 shares comprising 7.5% of the paid-up capital of the company. During the period June 28, 2013 to July 24, 2013, it was observed that the Noticee had sold 1,72,000 shares comprising 2.87% of the paid-up capital. However, the Noticee had failed to file the disclosures under Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations, 2011.

4. Accordingly, Show Cause Notice No. EAD6/AK/VG/11683/2014 dated April 23, 2013 (hereinafter referred to as **'SCN'**) was issued under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'the Rules'**), the Noticee was advised to show cause as to why an inquiry should not be held against him and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violations specified in the SCN.

5. As no reply to the SCN was received from the Noticee within the time stipulated in the SCN, a Notice of Hearing dated May 9, 2014 was sent to the Noticee granting him an opportunity of personal hearing on June 12, 2014. Thereafter vide email dated May 13, 2014, the Noticee filed his reply to the SCN. The following submissions have *inter alia* been made by the Noticee vide his aforesaid reply to the SCN:
   a. *That he was allotted 4,50,000 shares of the company in March 2012 in private placement much prior to the IPO, which details at the time of initial allotment in the IPO were in public domain, and subsequently, the quarterly shareholding pattern under clause 35 of the listing agreement was being filed;*
   b. *That he neither had any malafide intention in not making the disclosures under the specific regulations, nor, any intention to hide any information from the public at large;*

c. *That the Noticee is not a regular investor in the securities market and was not aware that the disclosures are required to be made under the SAST Regulation, 2011 and PIT Regulations;*
d. *That pursuant to the sale of shares by the Noticee in June-July 2013, the price of the scrip increased. That the sale of the Noticee did not have any impact on the price of the scrip and that he had an opportunity loss by selling the shares at a lower price;*
e. *The Noticee did not make any unfair gain nor cause any harm or loss to the investors because of the non disclosures.*

6. Further, vide letter dated June 4, 2014, the Noticee requested that the hearing be adjourned by atleast two weeks. The request of the Noticee was acceded to and the personal hearing was rescheduled for July 1, 2014. Shri Balveer Singh Choudhary, CA, Authorized Representative (hereinafter referred to as '**AR**') of the Noticee, appeared for the hearing on the scheduled date. The AR reiterated the submissions made in the reply dated May 13, 2014. The AR admitted that there had been a lapse, as alleged in the SCN, and disclosures had not been made by the Noticee. Further, the AR confirmed that the impugned sales were made on the open market. The AR also submitted that there were no past non-compliance/s of the SEBI Act and Regulations by the Noticee and no action had been taken by SEBI in the past against the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have examined the SCN, the submissions made by the Noticees in their replies and during the personal hearing and the documents available on record. I observe that the allegation against the Noticees is that he failed to make the relevant disclosures under the PIT Regulations and SAST Regulations, 2011.

8. The issues that arise for consideration in the present case are:

a. Whether Mr. Deepak Kalyanji Tanna had failed to file disclosures under the Regulation 13(3) read with 13(5) of the PIT Regulation and Regulation 29(2) read

with 29(3) of the SAST Regulations, 2011 pursuant to decrease in his shareholding by more than 2% during the period from June 28, 2013 to July 24, 2013?;

b. Whether further the failure on the part of the Noticee to comply with the aforesaid provisions of the SAST Regulations, 2011 and PIT Regulations attracts monetary penalty under section 15A(b) of SEBI Act?, and;

c. If so, what would be the monetary penalty that can be imposed on the Noticees?

9. Before moving forward, it will be appropriate to refer to the relevant provisions of the PIT Regulations and SAST Regulations, 2011, which read as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure
13. *(1)*

Continual disclosure.
(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 51[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), (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.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Disclosure of acquisition and disposal.
29.(1)

(2) Any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or 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.

10. The first issue for consideration is whether the Noticee had failed to file disclosures under the Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations, 2011 pursuant to decrease in his shareholding by more than 2% during the period from June 28, 2013 to July 24, 2013. I note from the shareholding pattern of the company as available on the BSE website that for the quarter ended March 2013, the Noticee held 4,50,000 shares representing 7.5% of paid-up capital of the company. Further, between June 28, 2013 and July 24, 2013, in particular, I find that the Noticee had sold 1,72,000 shares comprising 2.87% of the total paid up capital as shown in the table below:

Trade Date	Net Sell Quantity	% to Paid-up capital
28-Jun-13	12,000	0.20
4-July-13	30,400	0.51
5-Jul-13	9,600	0.16
16-Jul-13	24,000	0.40
18-Jul-13	9,600	0.16
19-Jul-13	27,200	0.45
22-Jul-13	23,200	0.39
23-Jul-13	24,000	0.40
24-Jul-13	12,000	0.20
	1,72,000	**2.87**

11. Since the Noticee held 7.5% shares (more than 5%) and offloaded 2.87% shares (thus exceeding the 2% threshold), he was under Regulation 13(3) read with 13 (5) of PIT Regulations, required to make the relevant disclosure to the company within two working days of the said sale of shares. Similarly, Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 requires that acquisition or disposal of shares representing two per cent or more of the shares or voting rights of the company must be disclosed to every stock exchange where the shares of the company are listed and to the company within two working days of the receipt of

intimation of allotment of shares, or the acquisition or sale of shares, as the case may be. With regard to the aforesaid non-compliances, the Noticee in his submission has stated that he neither had any malafide intention in not making the disclosures under the specific regulations, nor, any intention to hide any information from the public at large. Thus, I note that the Noticee has admitted to the non-compliance with the respective alleged provisions of PIT and SAST Regulations, 2011. Hence, I conclude that the Noticee has violated Regulation 13(3) read with 13(5) of the PIT Regulations as well as Regulation 29 (2) read with 29 (3) of SAST Regulations, 2011.

12. The next issue for consideration as to whether the failure on the part of the Noticee attracts monetary penalty under section 15A(b) of SEBI Act, and, if so, what would be the monetary penalty that can be imposed on the said Noticees. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has held that:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…". Further in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow."

13. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on the Noticee under section 15A(b) of the SEBI Act, which reads as under:

15A(b). <u>Penalty for failure to furnish information, return, etc.-</u>

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.

14. While determining the quantum of penalty under Section 15A (b) of SEBI Act, 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."

15. In view of the charges as established, the facts and circumstances of the case and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by these Noticees. However, the disclosures under Regulation 13 of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. Further, the main objective of the SAST Regulations, 2011 is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of both SAST Regulations, 2011 and PIT Regulations is investor protection. Besides, I

note that the Hon'ble Securities Appellate Tribumal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014) has observed that:

"Argument that no investor has suffered on account of non disclosure 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 non disclosure."

In view of the same, the argument put forth by the Noticee that the Noticee did not make any unfair gain nor cause any harm or loss to the investors because of the non disclosures is not relevant for the given case.

16. Further, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on the exchanges, where the shares were listed, during the relevant period; and c) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the SAST Regulations/ PIT Regulations, as applicable.

17. I find that the scrip was listed on Bombay Stock Exchange Limited (BSE). The market capitalization of the company during the relevant period when the disclosure was required to be made was approx. Rs. 170 crore. Further, as per the BSE website as at quarter ended March 2013, about 26% of the paid-up capital of the company was held by the Promoters and about 74% was held by the Public Shareholders, comprising about 100 odd shareholders. Further, I note that during the relevant period when the information was required to be disclosed to the stock exchange/ company, as applicable, under the applicable provisions of PIT Regulations/ SAST Regulations, 1997/ 2011, the average daily trading volume of the company on BSE was approx. 35,000 shares. Further, presuming that the Noticee had made disclosure under the PIT Regulations/ SAST Regulations, 2011 at the relevant point of time, I find that he would have been required to make disclosure on one (1) occasion under

PIT Regulations and on one (1) occasion under the SAST Regulations, 2011. However, I find that the Noticee failed to make the relevant disclosures.

18. The Noticee has *inter alia* claimed that the company was filing the quarterly shareholding pattern under clause 35 of the listing agreement. I find that the filings claimed to be made by the company to the stock exchanges under clause 35 of the listing agreement have not been supported by documental proof to demonstrate that such filings were indeed made by the company within the stipulated time. Besides, the Noticee cannot absolve himself of the mandatory disclosures required to be made under the PIT Regulations and SAST Regulations, 2011 by claiming that the disclosures were made by the company under listing agreement, as the purpose and intent of the laws are different. Further, under Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations, 2011, disclosure to the company/ stock exchange, as applicable, are required to be made within two working days of the receipts of intimation of allotment of shares, or, the acquisition or sale of shares or voting rights, as the case may be, whereas disclosure under clause 35 of the listing agreement is done on a quarterly basis, within 21 days from the end of each quarter. Besides, I note that the Noticee has stated that he had an opportunity loss by selling the shares at a lower price as pursuant to the sale of shares by the Noticee in June-July 2013, the price of the scrip increased. However, disclosures required to be made under the aforesaid provisions of PIT Regulations and/ or SAST Regulations, 2011 are irrespective of profit/ loss made.

19. I further note that the Noticee has *inter alia* claimed ignorance of the law as the reason for not making disclosures under the relevant provisions of SAST Regulations, 2011 and the PIT Regulations. However, ignorance of law cannot be a defense to get exemption from liability arising under law due to such non-compliance. Besides, any transaction which requires compliance of the SAST Regulations, 2011 and/ or the PIT Regulations, if not complied, is always a serious matter and the Noticee cannot claim ignorance of law to avoid liability, since the shareholders/ investors were deprived of the information. Further, I note that under Section 15A(b) of the SEBI Act, for

violation of the aforesaid Regulations, the prescribed penalty is one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I impose the following penalties under Section 15A (b) of the SEBI Act, which will be commensurate with the violations committed by the Noticee:

Name of the Noticee	Regulation Violated	Penalty (Rs.)
Mr. Dipak Kalyanji Tanna	Regulation 13(3) read with 13(5) of the PIT Regulations	**2,00,000**
	Regulation 29(2) read with 29(3) of the SAST Regulations	**2,00,000**

21. The Noticee shall pay the respective amount of penalty by way of demand draft 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 should be forwarded to Shri. Debashis Bandhyapadhyay, Deputy General Manager, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **July 25, 2014** **Anita Kenkare**

Place: **Mumbai** **Adjudicating Officer**