

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SJ/AO/33/2017-18]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Valecha Investments Private Limited

(PAN: AAACV2759G)

In the matter of Valecha Engineering Limited

FACTS OF THE CASE IN BRIEF

1. Integrated Surveillance Department (hereinafter referred to as '**OD**') of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted examination of the shareholding of Valecha Investments Private Limited (hereinafter referred to as '**Noticee**') in the scrip of Valecha Engineering Limited (hereinafter referred to as '**VEL / target company**') for the period January 01, 2015 to July 08, 2015 for the possible violations of provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**SEBI (PIT) Regulations**'). The said examination, inter-alia, revealed that the Noticee had not made required disclosures under the provisions of SEBI (PIT) Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said examination, OD of SEBI initiated Adjudication Proceedings against the Noticee and the Competent Authority appointed the undersigned as Adjudicating Officer, under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and rule 3 of SEBI (Procedure for Holding Inquiry

and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**AO Rules**') to enquire into and adjudge under section 15A(b) of SEBI Act the alleged violations of Regulations 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations, by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice dated December 07, 2017 (hereinafter referred to as SCN) was issued to the Noticee under rule 4 of the AO Rules to show cause as to why an inquiry should not be held against it and why penalty under section 15A(b) of SEBI Act be not imposed on it for the violations alleged and specified in the said SCN. The SCN was sent through the speed post acknowledgment due and the same has been received by the Noticee.
4. It was inter-alia alleged in the said SCN that the shares of the target company are listed at Bombay Stock Exchange Ltd. (**BSE**) and the National Stock Exchange (**NSE**). The Noticee was one of the promoters of the target company. From the shareholding pattern for the quarter ending December 2014, it was alleged that the Noticee was holding 77,79,105 shares representing 39.83% of the share capital of VEL. During the examination period, the Noticee sold a total of 8,34,356 shares of VEL amounting 4.27% of the share capital of VEL. The Noticee sold 71,000 shares of VEL on January 12, 2015, 2,18,356 shares on January 15, 2015, 3,35,000 shares on January 16, 2015, 90,000 shares on April 01, 2015, 90,000 shares on April 06, 2015 and 30,000 shares on April 09, 2015. As per Regulation 13(4A) of SEBI (PIT) Regulations, any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchanges where the securities are listed 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 from the last disclosure and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. As, the Noticee was one of the promoters of VEL and the change in its shareholding was more than 25,000 shares on each of the above dates of transactions, the Noticee was under an obligation to make disclosure to VEL, BSE and NSE under Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. It was alleged that the Noticee failed to make disclosures to VEL, BSE and NSE under

Regulation 13(4A) within two working days of sale of shares of VEL by the Noticee and therefore, alleged that to have violated Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. The above alleged violations and the transactions carried out by the Noticee were summarily provided to the Noticee in the following tabular format:

Date	Sell Volume	Sell Value	Initial Holding (%)	Final Holding (%)	Change (%)	Violation of SEBI (PIT) Regulations
12/01/2015	71,000	7,223604.80	39.83	39.47	-0.36	Regulation 13(4A) of SEBI (PIT) Regulations
15/01/2015	218,356	24,287,125.70	39.47	38.35	-1.12	Regulation 13(4A) of SEBI (PIT) Regulations
16/01/2015	335,000	35,264,712.35	38.35	36.63	-1.72	Regulation 13(4A) of SEBI (PIT) Regulations
01/04/2015	90,000	8,036,005.05	36.63	36.17	-0.46	Regulation 13(4A) of SEBI (PIT) Regulations
06/04/2015	90,000	8,721,000	36.17	35.71	-0.46	Regulation 13(4A) of SEBI (PIT) Regulations
09/04/2015	30,000	3,102,024.20	35.71	35.56	-0.15	Regulation 13(4A) of SEBI (PIT) Regulations

5. The Noticee was given fourteen days' time to make submission against the SCN. The Noticee vide letter dated December 19, 2017 sought time till January 21, 2018 to file reply to the said SCN. The Noticee vide letter dated January 19, 2018 replied to the said SCN. Further, in the interest of natural justice, I granted an opportunity of personal hearing to the Noticee on January 31, 2018. The Authorized representatives (ARs) of the Noticee appeared before me on the said date. On the said date, the ARs reiterated the submissions made in the reply dated January 19, 2018 and submitted an adjudication order in the matter of Brescon Advisors and Holdings Limited for my consideration and requested me to take a lenient view. Further, the Noticee vide letter dated February 02, 2018 submitted another adjudication order no. EAD/BJD/BKM/128/2017-2018 dated January 31, 2018 in the matter of L & T Finance

Holdings Limited for my consideration. The Noticee also quoted para 16 of the said Adjudication order in its aforesaid letter and requested me to take a lenient view.

6. The summary of the replies / submissions of the Noticee is provided below:-

- *It had duly filed disclosures in Form C under Regulation 13(3) read with 13(5) of SEBI (PIT) Regulations under the mistaken belief that the said sale transactions called for disclosure under said Regulation and the same may be at the most be deemed as an inadvertent lapse.*
- *Subsequent upon filing of disclosure in Form C under Regulation 13(3) of SEBI (PIT) Regulations, the VEL had duly filed disclosures under Regulation 13(6) of SEBI (PIT) Regulations.*
- *The required information of said sale transactions was published within the statutory time and was forthwith available in public domain. Thus, the twin objects of timely disclosure and simultaneous dissemination of the same to the public were complied with. However, the information remained to be transmitted in the Form that had been mandated for the purpose.*
- *There is no allegation that the Noticee has taken any undue advantage. Further, general public has also not suffered any loss by its omission to file disclosures under regulation 13(4A) of SEBI (PIT) Regulations as disclosures were filed in Form C instead of in Form D.*
- *The intent behind formulation of Regulation 13 of SEBI (PIT) Regulations was duly met in spirit.*
- *No adverse inference may be drawn against it and the said technical lapse be viewed leniently.*
- *The Noticee also relied on judgment of the Hon'ble Bombay High Court in SEBI Versus Cabot International Capital Corporation, 2004 and quoted paragraph numbers 25(G) and 26 of the said judgment to indicate that the adjudicating officer may refuse to impose penalty for justifiable reasons like the default occurred due to the bonafide belief or there was too technical or venial breach.*
- *There was no intention to suppress any material information from the shareholders or the public as disclosures in Form C was filed. There was a genuine effort to disclose and there is no defiance of law in the compliance albeit in Form C instead of Form D.*

- *The alleged lapse was totally inadvertent and non-repetitive in nature.*
- *The Noticee prayed that said lapse of filing incorrect format be viewed leniently and that no penalty be imposed and the proceedings against it be dropped.*

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee in the SCN, its replies / additional submissions, cases relied on by the Noticee and the material documents available on record. In the instant matter, the following issues arise for consideration and determination:-

1. *Whether the Noticee has violated the provisions of Regulations 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations?*
2. *Does the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act for the alleged violations by the Noticee?*
3. *If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the AO Rules?*

8. Before proceeding further, I would like to refer to the relevant provisions of the SEBI (PIT) Regulations:

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

"Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure.

13.(1) ..

..

13(4A) *Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs.5 lakh in*

value or 25000 shares or 1% of total shareholding or voting rights, whichever is lower."

13(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.

FINDINGS:

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

ISSUE 1: Whether the Noticee has violated the provisions of Regulations 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations?

- i. I observe that the Noticee was one of the promoters of VEL at the relevant time. It is not in dispute that the Noticee sold 71,000 shares of VEL on January 12, 2015, 2,18,356 shares on January 15, 2015, 3,35,000 shares on January 16, 2015, 90,000 shares on April 01, 2015, 90,000 shares on April 06, 2015 and 30,000 shares on April 09, 2015. It is also not in dispute that the Noticee was required to make disclosures of the said sale of shares under Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations to VEL, BSE and NSE. In this regard, the Noticee submitted that it filed timely disclosures under regulation 13(3) of SEBI (PIT) Regulations and company (VEL) had filed disclosures under Regulation 13(6) of SEBI (PIT) Regulations and therefore, the twin object of timely disclosures and simultaneous dissemination to public has been achieved. Further, the Noticee submitted that information in Form C and Form D are almost entirely identical and therefore, this lapse is only technical in nature. I do not accede to these submissions of the Noticee as Regulation 13(3) of SEBI (PIT) Regulations is different from Regulation 13(4A) of SEBI (PIT) Regulations. I find that following are the differences between Regulation 13(3) and 13(4A) of SEBI (PIT) Regulations.

Areas	Regulation 13(3)	Regulations 13(4A)
Applicability	Any Person	Any Person, who is promoter or group of promoter
Disclosure obligation	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 such change exceeds 2% of total shareholding or voting rights in the company.	if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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.
Form for disclosure	Form C	Form D

- ii. Further, Regulation 13(4A) has been inserted to SEBI (PIT) Regulation by way of an amendment. i.e. Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011. The purpose of such amendment is that the general public becomes aware of change in shareholding of particular class of persons (i.e. promoters / promoter group). Therefore, the purpose and object of both the provisions of Regulations 13(3) and 13(4A) of SEBI (PIT) Regulations are different. Moreover, Form C relates with the information related to the person who is a shareholder but the information in Form D relates to the person who is the promoter. Insertion of Regulation 13(4A) of SEBI (PIT) Regulations clearly aims at ensuring disclosure regarding change in shareholding of special class of persons (i.e. promoters) for the benefit of the others including investors. The sale of stake by the promoters can affect the investment decisions of the investors regarding that company. Thus, disclosures under Regulation 13(4A) of SEBI (PIT) Regulations can be construed very differently from disclosure under Regulation 13(3) of SEBI (PIT) Regulations.
- iii. Further, the Noticee did not make disclosures under Regulation 13(3) of SEBI (PIT) Regulations to BSE and further with respect to disclosures under Regulation 13(3) of SEBI (PIT) Regulations to NSE is concerned, I find that there are delays of certain days with respect to the said disclosure about sale of shares of the target company. The Noticee sold 90,000 shares of VEL on April 01, 2015 whereas the disclosure of the same to NSE under Regulation 13(3) of SEBI (PIT) Regulations was made on April 08, 2015. Further, disclosure of sale of 30,000 shares of VEL (sale on April 09, 2015) under

Regulation 13(3) of SEBI (PIT) Regulations was made on April 15, 2015 with a delay of few days.

- iv. Further, Noticee's submission with respect to the disclosure to BSE under Regulation 13(6) of SEBI (PIT) Regulations is concerned, I find that the Noticee's name was just shown as seller and not as a promoter who sold the shares of the target company and therefore, the public would not have come to know about the change in shareholding of the promoters. Therefore, even though the disclosure was available under Regulation 13(6) of SEBI (PIT) Regulations but the same was made only to BSE and not to NSE. The scrip of VEL was listed both at BSE and NSE. Further, the disclosure did not specify that the seller was the promoter of the VEL.
- v. I find that the Noticee quoted two adjudication orders for the consideration of the undersigned. I find that the adjudication order dated January 24, 2018 of the Ld. Adjudicating Officer in the matter of Brescon Advisors and Holding Limited is altogether different as the same deals with only delay in filing disclosures whereas in the instant matter there is no question of delay but non-filing of the required disclosures under Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. In view of this, I do not find any relevance of the aforesaid Adjudication order with the present matter and therefore, the said order of the Ld Adjudicating Officer is distinguishable on the grounds of facts.
- vi. As far as second adjudication order dated January 31, 2018 of the Ld. Adjudicating Officer in the matter of L & T Finance Holdings Limited, I find that in the said case, the entity filed disclosures under special class i.e. under Regulation 13(4A) of SEBI (PIT) Regulations whereas it was required to file disclosures only under Regulation 13(3) of SEBI (PIT) Regulations. Under Regulation 13(3) of SEBI (PIT) Regulations the disclosure is to be filed only to the target company whereas under Regulation 13(4A) of SEBI (PIT) Regulations, the disclosure is to be filed not only with the target company but also with the stock exchanges on which the shares of the target company are listed. In the instant case, the Noticee filed disclosures only under Regulation 13(3) and that too only on NSE and not on BSE. Further, with respect to said disclosures under Regulation 13(3) to NSE, the delay was observed with respect to two sale transactions

of the Noticee. In view of this, this adjudication order is also distinguishable from the instant case and therefore, the Noticee could not take benefit of the same.

- vii. The Noticee also relied on the judgment of the Hon'ble Bombay High Court in the matter of SEBI versus Cabot International Capital Corporation, 2004 to take the benefit of non-levy of monetary penalty. I find that the facts of the said case are totally different from the instant case and even the Hon'ble High Court observed that the authority may refuse to impose the penalty for justifiable reasons. The reasons submitted by the Noticee for the non-disclosures are not justifiable for not levying any monetary penalty for the reasons recorded above. Therefore, I am of the firm view that the Noticee has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations.

Issue 2: Do the violations, if any, on the part of the Noticee attract any monetary penalty under Section 15A(b) of the SEBI Act?

10. In respect of imposition of monetary penalty, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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"*.
11. It is relevant to mention here that said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.

12. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticee and analysing the aforesaid case laws, I am of the view that the said violations of provisions of Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations by the Noticee attracts the imposition of monetary penalty upon the Noticee under Section 15A(b) of the SEBI Act, which is reproduced below:

Penalties and Adjudication

"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 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 - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

13. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

SEBI Act

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.”

14. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to non-disclosures under Regulation 13 (4A) read with Regulation 13(5) of SEBI (PIT) Regulations. From the documents available on record, it is noted that the failure is not repetitive. However, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 :-

“...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.”

15. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for penalty for violating Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations .

ORDER

16. In exercise of the powers conferred under section 15 I of the SEBI Act and Rule 5 of the Adjudication Rules, I hereby imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the Noticee viz. Valecha Investments Private Limited under section 15A(b) of SEBI Act for the violation of the provision of Regulation 13(4A) read with Regulation 13(5) of SEBI (PIT) Regulations. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.
17. 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

18. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

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

Date: February 12, 2018

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER