

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-6/AO/PM/NK/002/2019-20]

**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

Vikram Sharma (PAN: AMXPS1768G)

In the matter of

**Trading Activities of Certain Entities in the Scrip of Pankaj Piyush Trade
and Investments Limited**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') examined/investigated the trading activities of certain entities in the scrip of Pankaj Piyush Trades and investments Private Limited (hereinafter referred to as **PPTIL/Company**) for the period from December 28, 2011 to October 28, 2013 (hereinafter referred to as Investigation Period). It was alleged that the shareholding of Mr. Vikram Sharma (hereinafter referred to as the **Vikram / Noticee**) in the company exceeded 5% on 19/06/2012. The Noticee was therefore, required to make disclosure under Regulation 13(1) of SEBI Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **SEBI (PIT) Regulations, 1992**) to the company and under Regulation 29 (1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations,

2011 to the company and to the stock exchange (BSE) within 2 working days of the date of the transaction. However, the Noticee failed to make the disclosures as required in accordance with the relevant regulations.

2. In view of the above, it was alleged that the Noticee has violated the provisions of Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 29 (1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the ‘Adjudication Rules’) to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of provisions of Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 29 (1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice no. EAD/AO-PM/NK/17833/2017 dated July 31, 2017 (hereinafter referred to as “SCN”) was issued to the Noticee under Rule 4 of the Adjudication 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 the Noticee had violated the provisions of Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 29 (1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.
5. The Noticee vide letter dated December 5, 2017 replied to the SCN and submitted that to bring an amicable end to the captioned proceedings, he would file settlement application in accordance with SEBI (Settlement of Administrative and Civil Proceedings) Regulations 2014. However, the Noticee did not file for the settlement application even after lapse of considerable time. Thereafter the Noticee vide letter dated January 29, 2019

was given an opportunity of personal hearing on February 21, 2019. The Noticee in response to the abovementioned hearing notice, vide email dated February 19, 2019 submitted that he has shifted to a new address and that the information sought vide letter dated December 5, 2017 may be provided to the new address. The Noticee vide letter dated February 26, 2019 was given one more opportunity of personal hearing on March 14, 2019. The Noticee did not respond to the abovementioned hearing notice. The Noticee vide letter dated March 26, 2019 was provided with all the documents/information relied upon while issuing the SCN and also a final opportunity of reply to the SCN and personal hearing in the matter on April 15, 2019. The Noticee did not respond to the aforesaid hearing notice.

6. In view of the above, I am convinced that the Noticee was given sufficient opportunity to present his case before me and that the principle of natural justice have been complied with respect to the Noticee's matter.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee in the SCN and the material/documents available on record. In the instant matter, the following issues arise for consideration and determination:-
 - a. *Whether the Noticee has violated the provisions of Regulation 13(1) of SEBI (PIT) Regulations, 1992 and Regulation 29 (1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011?*
 - b. *Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?*
 - c. *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 Adjudication Rules?*
8. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011 which reads as under:-

SEBI (Prohibition of Insider Trading) Regulations, 1992:

Adjudication Order in respect of Vikram Sharma in the matter of Trading Activities of Certain Entities in the Scrip of Pankaj Piyush Trade and Investments Limited

Disclosure of interest or holding [in listed companies by certain persons] - 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.

SEBI (Prohibition of Insider Trading) Regulations, 2015:

12. (2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

SEBI (SAST) Regulations, 2011:

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*

Issue 1) - *Whether the Noticee has violated the provisions of Regulation 13(1) of SEBI (PIT) Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011;*

9. I note that Regulation 13 (1) of SEBI (PIT) Regulations, 1992 requires that any person who holds more than 5% shares/voting rights in a listed company to disclose in the prescribed format to the company within 2 working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be. Further, Regulation 29 (1) read with 29 (3) of SEBI (SAST) Regulations, 2011 inter alia requires disclosure by 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 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; the company at its registered office and to the Stock Exchange (s) where the shares of the target company are listed.
10. I take note of the Noticee's reply seeking details of his own acquisition from SEBI. I find that the SCN was issued to the Noticee in July 2017 to which the Noticee replied in December 2017 stating that it intended to file settlement application in accordance with SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. However, the Noticee did not file any settlement application nor did it approach SEBI for any further information. Thereafter, when notice for personal hearing was issued on January 29, 2019, the Noticee did not attend the personal hearing instead reverted seeking details of

his own acquisition. I note that another opportunity was given to the Noticee to present his case before me. However, the Noticee did not avail the said opportunity of presenting his case for the second time also. It is also noteworthy to mention here that the Noticee has not denied the charges levelled in the SCN. I note that the Noticee vide letter dated March 26, 2019 was provided with all the documents/information requested and also a final opportunity of reply to the SCN and personal hearing in the matter on April 15, 2019. I find that the Noticee has neither filed his reply to the SCN nor has availed any of the multiple opportunities of personal hearings granted to him.

11. I note that quarterly shareholding patterns are filed by the company (PPTIL) with the stock exchange (BSE). I find that the shareholding pattern are disseminated on the stock exchange (BSE) website and the information contained in same are in public domain. I note that the Noticee was being shown as public shareholder holding more than 1% shares in the company (PPTIL). I find that the Noticee was being shown as holding 15000 (3.75%) shares of PPTIL at the end quarter ending March 31, 2012. Further, from the shareholding pattern of PPTIL for the quarter ending on June 30, 2012, I find that the shareholding of the Noticee in PPTIL has increased from 15000 (3.75%) shares to 25000 (6.25%) shares. I note that the shareholding of the Noticee in PPTIL has increased by 10000 (2.5%) shares between March 31, 2012 and June 30, 2012. I find that the name of the Noticee was not appearing in the list of public shareholders holding more than 1% of the share capital of PPTIL at the end of quarter ending December 31, 2011.
12. I also note from the details of share transfers (Physical Shares transfer Register) obtained from the Registrar & Transfer Agents (RTA). I find from the said records that the Noticee had acquired physical shares of PPTIL on two occasion. I find that on March 1, 2012, 15000 (3.75%) shares of PPTIL (share distinctive nos. from 269501 to 274500 and from 289501 to 299500) were transferred from Shreyansh H Parikh to the Noticee. I find that on June 19, 2012, further 10000 (2.50%) shares of PPTIL (share distinctive nos. from 109501 to 114500 and from 319501 to 329500) were transferred from Rajat Choudhary to the Noticee.

13. In view of the above, I find that all the acquisitions of shares of PPTIL by the Noticee was during 6 months period (December 31, 2011 to June 30, 2012). I find that the Noticee got 15000 (3.75%) shares of PPTIL transferred in its name on March 1, 2012 and another 10000 (2.50%) shares of PPTIL on June 19, 2012. Therefore, the Noticee on June 19, 2012 had crossed the threshold limit of 5% as stipulated in Regulation 13(1) of SEBI (PIT) Regulations, 1992 and Regulation 29(1) of the SEBI (SAST) Regulations, 2011. I find from the above that the Noticee, with the above acquisition of shares of PPTIL had triggered the disclosure requirements stipulated under Regulation 13(1) of SEBI (PIT) Regulations, 1992 and Regulation 29(1) of the SEBI (SAST) Regulations, 2011.
14. I note that the Noticee has not made the requisite disclosure under Regulation 13 (1) of the SEBI (PIT) Regulations, 1992 and Regulation 29 (1) read with 29 (3) of the SEBI (SAST) Regulations, 2011. In this regard, I refer to the observation of Hon'ble Securities Appellate Tribunal ('SAT') in **Ambaji Papers Pvt. Ltd. vs. the Adjudicating Officer, SEBI dated January 15, 2014**, wherein similar contention of information being in the public domain was raised by the appellant. Hon'ble SAT observed: *".... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well"*.
15. I would further like to refer to the observations of Hon'ble SAT in the matter of **Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014)**, wherein it was held 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”.

16. In view of the aforesaid discussion, I find that the Noticee has failed to make the requisite disclosures in respect of his acquisition of shares PPTIL and his shareholding in PPTIL to the company and to the stock exchanges as stipulated under Regulation 13(1) of SEBI Prohibition of Insider Trading) Regulations, 1992 and Regulation 29 (1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

Issue 2) - Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act?

17. By not making the disclosures, the Noticee 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."*
18. As the violation of the provisions of Regulation 13(1) of SEBI Prohibition of Insider Trading) Regulations, 1992 and Regulation 29 (1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 is established, the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, 1992 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);

Before 08.09.2014; (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;

With Effect from 08.09.2014; *(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;"*

19. 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."

20. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to investors as a result of the default is not quantified in the material available on record. Considering that there has been no disclosure by the Noticee on two occasions, the same are treated as repetitive. It is important to note that the details of the shareholding of the promoters/Directors and changes thereto is an important element for the proper functioning of the securities market and proper and timely disclosure thereof to the company and stock exchanges etc. are of significant importance from the standpoint of investors. The purpose of these disclosures is to bring about transparency in the transactions of Directors/Promoters 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), as regards the importance of disclosure, 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."*

21. 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."*
22. In this regard, Hon'ble Supreme Court of India in the matter of **Shriram Mutual Fund** refereed supra had observed 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."*
23. In view of all of the above, I am of considered view that the Noticee has violated the provisions of Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulation 29 (1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and that it is a fit case for imposition of penalty for violation of the aforesaid Regulations.

ORDER

24. 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 total monetary penalty of Rs. 6,00,000/- (Rupees Six Lakh Only) on the Noticee i.e. Vikram Sharma under section 15A(b) of SEBI Act, 1992, Rs. 3,00,000 (Rupees Three Lakh only) for violation of the provisions of Regulation 13(1) of SEBI Prohibition of Insider Trading) Regulations, 1992 and Rs. 3,00,000 (Rupees Three Lakh only) for violation of Regulation 29 (1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

25. 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

26. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, DRA- III, Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	

Bank Details in which payment is made	
Payment is made for (like penalties/ disgorgement/recovery/Settlement amount and legal charges along with order details)	
Penalty	

27. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: April 26, 2019
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer