

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 25/2014]

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

Shri Sarat Chander Manocha(PAN: AGCPM0448E)

In the matter of

M/s. Lanco Infratech Limited

FACTS OF THE CASE

1. SEBI examined the trading activities in the scrip of Lanco Infratech Ltd (hereinafter referred to as **“The Company”**). It was observed that one of its Director, Mr Sarat Chander Manocha (hereinafter referred to as **“The Noticee”**) had sold 2,00,000 shares between 03.04.2012 to 25.06.2012 resulting in change in shareholding of the Noticee by 25,000 share on several occasions since the last disclosure. The shares of the company were listed at Bombay Stock Exchange Ltd. (hereinafter referred to as **‘BSE’**) and National Stock Exchange of India Ltd. (hereinafter referred to as **‘NSE’**).
2. Investigation observed that the Noticee was under an obligation to make disclosures under Regulation 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **‘PIT Regulations’**). However allegedly no such disclosure was made by the Noticee to the company and the stock Exchange under Regulation 13(4) read with 13(5) of PIT Regulations. It was therefore alleged that through the aforesaid act, the Noticee violated Regulation 13(4) read with 13(5) of PIT Regulations. Consequently, the Noticee was liable for penalty under Section 15 A(b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. Smt. Barnali Mukherjee was appointed as Adjudicating Officer on 13.03.2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Rules**') to inquire into and adjudge the alleged violations committed by the Noticee.
4. Consequent upon the transfer of Smt. Barnali Mukherjee, I was appointed as the Adjudicating Officer, vide order dated 08.08.2013, under Section 15-I of the SEBI Act read with rule 3 of SEBI Rules to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of PIT Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as "**SCN**") Ref. No. EAD/BM/VRP/7012/2013 dated 21.03.2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of PIT Regulations as detailed below:

Date of sale	Quantity Sold*	Remarks
03.04.2012	10,000 shares	Sold more than 25000 shares
18.04.2012	10,000 shares	
27.04.2012	10,000 shares	
30.04.2012	10,000 shares	Sold more than 25000 shares
07.05.2012	10,000 shares	
08.05.2012	10,000 shares	
15.05.2012	20,000 shares	Sold more than 25000 shares
16.05.2012	20,000 shares	
21.05.2012	20,000 shares	Sold more than 25000 shares
31.05.2012	10,000 shares	
01.06.2012	10,000 shares	Sold more than 25000 shares
04.06.2012	10,000 shares	
08.06.2012	10,000 shares	
12.06.2012	10,000 shares	Sold more than 25000 shares
19.06.2012	10,000 shares	
25.06.2012	20,000 shares	

*BSE and NSE taken together

6. The Noticee was called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.
7. The Noticee vide reply dated 02.04.2013 to the SCN has submitted that he had been allotted equity shares under employee stock option plan as a part of incentive. The Noticee has stated that as on 01.04.2012, he held 6,05,120 equity shares and during the financial year 2012-13, 7,01,097 equity shares were opted by him under company's ESOP policy on 09.08.2012. The Noticee has further *inter alia* stated that he had been selling 40,000 to 50,000 shares every month to meet his commitment of equated monthly installments (EMI) towards housing loan, irrespective of the price levels prevailing in the market. The Noticee vide the aforesaid letter has also stated that the shares were liquidated purely to meet the aforesaid financial commitment and the disposal of shares was done mostly in the lots of 10,000 shares. The Noticee has claimed *inter alia* that the alleged violation committed by him was purely inadvertent, and, there were no malafide intention on his part and requested to condone the penalty. The Noticee has further added that he had sold the shares at a loss.
8. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on 16.05.2013 vide notice dated 06.05.2013. The said notice was duly acknowledged by the Noticee. The Noticee vide email dated 15.05.2013 requested to reschedule the hearing after 07.06.2013. Thereafter, another opportunity of hearing was granted on 02.09.2013 vide letter dated 14.08.2013. The noticee vide letter dated 29.08.2013 again requested to fix another date from the week starting 09.09.2013. Accordingly the hearing was re-scheduled to 17.09.2013 vide letter dated 03.09.2013. The Noticee vide email dated 16.09.2013 then once again reiterated the submission made vide letter dated 02.04.2013 and requested vide the said email to exempt him from attending the personal hearing that was fixed for 17.09.2013.

CONSIDERATION OF ISSUES

9. I have carefully perused the written submissions of the Noticee and the documents available on record. It is observed that the allegation against the Noticee is that he has failed to make the relevant disclosure under the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations.
10. The issues that therefore arise for consideration in the present case are:
 - a. Whether the Noticee has violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations by sale of 2,00,000 shares during the investigation period i.e., 02.04.2012 to 30.06.2012?
 - b. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

11. Before moving forward, it is pertinent to refer to the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations, which reads as under:

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

Regulation

13. (1).....

(2).....

Continual disclosure.

(3).....

(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) and (4) shall be made within two working days o :

(a) the receipt of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

12. The issue for consideration is whether the Noticee failed to make the relevant disclosures under Regulation 13(4) read with 13(5) of the PIT Regulations by sale of 2,00,000 shares between 02.04.2012 to 30.06.2012. As per Regulation 13(4) of PIT Regulations, I find that any person who is a director or officer of a listed company has to disclose to the company and the stock exchange where the securities are listed, within two working days, if change in holdings of such person from the last disclosure exceeds Rs. 5 lakh in value, or, 25,000 shares, or, 1% of total shareholding or voting rights, whichever is lower. I find from the annual report for the year 2012-13 that the Noticee was the Deputy Managing Director of the company and the fact has not been disputed by the noticee in his reply dated 02.04.2013.
13. I find from the reply of the Noticee that the Noticee had been allotted equity shares under the employee stock option plan as part of an incentive, and, as on 01.04.2012, the Noticee held 6,05,120 shares, and further, that during the financial year 2012-2013, the Noticee had opted for 7,01,097 shares under the employee stock option plan. I further note that Noticee had sold 2,00,000 share from 03.04.2012 to 25.06.2012, which triggered Regulation 3(4) of PIT Regulation on several occasions as brought out in tabular form at para (5) above. The said facts have not been disputed by the Noticee in his replies dated 02.04.2012 and 16.09.2013. I, thus, observe from records that the Noticee has failed to make disclosure under Regulation 13(4) read with 13(5) of the PIT Regulations with respect to sale of the aforesaid shares. I further find from replies of the Noticee that he has admitted to have inadvertently contravened the PIT Regulations. Thus, from all of the above, it is established without doubt that the Noticee has violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations.

14. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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..."*. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

15. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J 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."

16. In view of the charges as established, the facts and circumstances of the case and the judgment 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. The main objective of the PIT Regulation in respect of the disclosure norms is to bring about the transparency

in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Correct and timely disclosures are an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of the PIT regulations is investor protection.

17. Continual disclosure under Regulation 13 (4) read with 13 (5) of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. Being in the position of a Deputy Managing Director of the company, the Noticee had an obligation to disclose his acquisitions, especially since the regulatory position required disclosure of such acquisitions within a stipulated time. Despite the same, I find that the Noticee had contravened the provisions of Regulation 13(4) read with 13 (5) of the PIT Regulations.
18. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. I also do not find any material on record to show that sell of 2,00,000 shares by the Noticee (comprising sell of more than 25,000 shares on six (6) occasions) was based on any confidential or price sensitive information obtained by the Noticee while performing his corporate duties.
19. In addition to the aforesaid, 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 BSE, where the shares were listed during the relevant period; c) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of PIT Regulations.

20. I find that the market capitalization of the company during the said period was approx. Rs. 3,000 crore. I further note from the BSE website that there were about 2,34,741 shareholders in public shareholding category holding 66,87,78,596 shares representing 27.78% of total paid-up capital of the Company as on March 31, 2012. Out of the same, 10.70% was held by Institutions including Mutual Funds/ Financial Institutions / Banks and Foreign Institutional Investors, and, 2,30,485 Individual Shareholders holding nominal share capital up to Rs. 1 lac constituted about 8.83% of the paid-up capital of the company. Further, I note that during the relevant period April-June 2012 when the Noticee had sold the shares without making disclosures under the PIT Regulations, the average daily trading volumes on BSE was approx. 50 lac shares. Similarly, the average daily trading volumes on NSE was approx. 2.95 crore shares. Presuming that the Noticee would have made continual disclosure under the PIT Regulations at the relevant point of time, I find that the Noticee would have been required to make disclosure on 6 occasions as a result of sell of 2,00,000 share from 03.04.2012 to 25.06.2012. However, I find that the Noticee has failed to make the relevant disclosure under PIT Regulations on each such occasion. This non-disclosure by the Noticee undermines the investor interest relating to the effectiveness of purpose of continuous disclosures.
21. I find that the Noticee has *inter alia* claimed that the violation committed by him was purely inadvertent. However, any transaction which requires compliance of the PIT Regulations, if not complied, is always a serious matter, and cannot be considered a mere "technical" violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information. In the given case, I find that the violation has been committed by the Deputy Managing Director of the Company.
22. Further, I note that the Noticee was appointed as a Director of the company on 14.08.2010. The instant non-compliance under regulation 13(4) read with 13(5) of PIT Regulations is for the period 03.04.2012 to 25.06.2012. However, during the course of the present adjudication proceedings, it has come to notice that the Noticee had not made any disclosure to the company under the appropriate provisions of Takeover Regulation and/or PIT Regulation, as applicable, during the period from 16.08.2010 to 31.03.2012 as

well, with respect to 4,92,000 shares sold by the Noticee for an approx. value of Rs. 95,18,223/- during the period from 16.08.2010 to 30.03.2012. Thus, it is observed that the Noticee has not made any disclosures under the relevant provisions of Takeover/ PIT Regulations, as applicable, since his appointment as Director in the company. This repetitive nature of the Noticee's default despite being a director in the company is a cause of concern for the regulator.

ORDER

23. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) under Section 15 A(b) on the Noticee which will be commensurate with the violations committed by the Noticee.
24. The Noticee shall pay the said 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 Bandyopadhyay, Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
25. 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: **February 26, 2014**

Place: **Mumbai**

Anita Kenkare
Adjudicating Officer