

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER/SS/VS/2018-19/604]**

**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:

**Anumati Distributors Pvt. Ltd.**

**(Anumati Stock Broking Pvt. Ltd. PAN No. AAGCA0999K)**

In the matter of

**Nikki Global Finance Limited**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination in the scrip of Nikki Global Finance Limited (hereinafter referred to as 'NGFL'), a company having its shares listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'), during the period April 2014. During such examination, it was observed that shareholding of Anumati Distributors Pvt. Ltd. (PAN AAGCA0999K) also known as Anumati Stock Broking Pvt. Ltd. (hereinafter referred to as 'the Noticee') had increased from 3.16% to 8.07% during the period April 02, 2014 to April 17, 2014 on accounts of its transactions in shares of NGFL on three dates as described in the following table:-

<b>Shareholding before acquisition</b>	<b>%age of Shareholding before acquisition</b>	<b>No. of shares acquired</b>	<b>Date of acquisition</b>	<b>%age of increase</b>	<b>% age of shareholding after acquisition</b>
1,08,201	3.16%	70,000	April 02, 2014	2.05%	5.21
1,78,201	5.21%	90,000	April 03, 2014	2.63%	7.84
2,68,201	7.84%	79,00	April 17, 2014	0.23%	8.07

2. The aforesaid observations were on the basis of alert received in SEBI's DWBIS system. NGFL, vide its email dated July 03, 2015, had also submitted that no disclosures were made by the Noticee to it with regard to aforesaid acquisitions. It was observed that the Noticee had failed to make disclosures as required under regulation 13(1) and regulation 13(3) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') and regulation

29(1) and regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 (hereinafter referred to as 'SAST Regulations').

3. In view of the above, the Whole Time Member, SEBI felt satisfied that there are sufficient grounds to adjudicate upon the aforesaid alleged violations by the Noticee and appointed Shri Suresh Gupta, Chief General Manager, as Adjudicating Officer (AO) vide order dated August 02, 2016 to adjudge under section 15A (b) of the SEBI Act for the alleged violations by the Noticee. The AO had sought certain clarification and evidence from the concerned department. SEBI collected further evidence and vide e- mail dated April 19, 2017 sought clarification from BSE as to whether the Noticee has made requisite disclosures under PIT Regulations and SAST Regulations. The BSE , vide its e-mail dated April 20, 2017 confirmed that no disclosures were made by the Noticee under PIT Regulations and SAST Regulations with regard to its aforesaid transactions in the scrip of NGFL. NSDL, vide its letter dated June 28, 2017, also confirmed that the aforesaid transactions were carried out by the Noticee on aforesaid respective dates in its own Beneficiary Account (Client Id: 10006669).
4. Thereafter, vide communication dated April 02, 2018, this case was transferred to me. The terms of reference in this case as noted from records is alleged violation of the provisions of regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations and regulation 29(1) and regulation 29(2) read with regulation 29(3) of SAST Regulations with respect to aforesaid increase in shareholding of the Noticee in NGFL based upon the DWBIS report, e-mail dated July 07, 2015 of NGFL, e-mail dated April 20, 2017 of BSE and letter dated June 28, 2017 of NSDL.
5. Accordingly, in terms of rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and terms of reference as advised in above communication dated April 02, 2018 the notice to show cause no. EAD/SS/VS/12088/2018 dated April 20, 2018 (hereinafter referred to as 'the SCN') was issued to the Noticee, calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The relevant provisions of PIT Regulations and SAST Regulations charged in this case and possible consequence therefor provided in SEBI Act are reproduced hereinafter:

**PIT Regulations, 1992**

***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.*

*(2).....*

***Continual disclosure.***

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

*(4)...*

*(4A)....*

*(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.*

**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.*

*(2) Any person, 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 the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the 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.*

## **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*

*(c) .....*

6. The Noticee, vide letter dated May 10, 2018 received by SEBI on May 14, 2018 filed its reply and with regard to increase in its shareholding from 3.16% to 8.07% during the period April 02,2014 to April 17,2014 submitted that :

*“...We are a stock broking company primarily engaged in purchase and sale of shares and securities on behalf of our clients. Accordingly, the shares of M/s. Nikki Global Finance Ltd. were purchased by us on behalf of our various clients. We have no other substantial / financial interest in the shares of the Nikki Global Finance Ltd.”*

7. In terms of rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on May 21, 2018. The notice of hearing was duly served upon it. The Noticee, vide email dated May 21, 2018 reiterated its earlier submission and denied that it had violated the provisions of PIT Regulations and SAST Regulations as alleged. The Noticee also waived the opportunity of personal hearing.
8. I have considered the allegations levelled in the terms of reference, the aforesaid submissions of the Noticees and the relevant material available on record. In this case, it is undisputed fact that the Noticee had acquired shares in NGFL on three dates as described hereinabove. The Noticee, which is a registered stock broker, has claimed that the aforesaid acquisitions of NGFL shares by it were on behalf of its various clients. However, it has not substantiated its claim by support of any evidence. Merely because the Noticee is a stock broker cannot lead to demonstrate that its acquisitions were on behalf of its clients as claimed; since the Noticee can acquire shares for itself i.e. proprietary trades and also for its clients. It is noted from the DWBIS Report and transaction statement provided by NSDL vide its letter dated June 28, 2017 that the Noticee held shares of NGFL in its Beneficiary account as alleged in this case. I, therefore, am not inclined to accept such claim of the Noticee. It is undisputed fact that with regard to its acquisitions, the Noticee has not

made any disclosures under respective regulations of PIT Regulations and SAST Regulations, as applicable.

9. It is noted that on April 02, 2014 when the Noticee acquired 70,000 shares of NGFL its shareholding in the company increase from 3.16% to 5.21%. Under the provisions of regulation 13(1) of the PIT Regulations, a person who holds more than 5% shares in any listed company is obligated to make requisite disclosures, 'on becoming such holder', in specified Form within 2 working days of acquisition of shares. The Noticee, who became shareholder of more than 5% shares in NGFL on April 02, 2014 was, thus, under obligation to disclose to the company in specified Form A, the number of shares held by it pursuant to this acquisition on or before April 04, 2014. Similarly, in terms of regulation 29(1) read with regulation 29(3) of the SAST Regulations, the Noticee was obligated to disclose its aggregate shareholding on or before April 04, 2014 to NGFL and BSE. The Noticee has, however, failed to make any disclosure in this regard till date.
10. On April 03, 2014, when the Noticee acquired 90,000 shares of NGFL its shareholding in the company increase from 5.21% to 7.84%. In terms of provisions of regulation 13(3) of the PIT Regulations a person who holds more than 5% shares in any listed company is under obligation to disclose in specified Form C to the company, in case of any change in his shareholding and such change exceeds 2% of total shareholding or voting rights in the company. Similarly, under regulation 29(2) such person is obligated to make disclosures of such change in shareholding to the concerned company and stock exchange. This acquisition of the Noticee was squarely covered in the provisions of regulation 13(3) of the PIT Regulations and regulation 29(2) of the SAST Regulations and it was under obligation to make requisite disclosures within two working days of the acquisition as provided under regulation 13(5) of the PIT Regulations and regulation 29(3) of the SAST Regulations. The, Noticee, however, has failed to make any such disclosures till date.
11. It is noted that the aforesaid acquisition dated April 17, 2014 resulted in increase in the shareholding of the Noticee in NGFL by 0.23% i.e. less than the percentage requiring trigger of disclosure obligations under regulation 13(3) of the PIT Regulations and regulation 29(2) of the SAST Regulations.
12. I, therefore, find that the Noticee had failed to disclose his aggregate shareholding as per regulation 13(1) and regulation 13(3) read with regulation 13(5) of the PIT Regulations and regulation 29(1) and regulation 29(2) read with regulation 29(3) of the SAST Regulations with regard to its acquisitions dated April 02 and 03, 2014, respectively as found herein above.
13. In the matter of **Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI**—the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"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.”*

Further, in the matter of **Ranjan Varghese vs. SEBI (Appeal No. 177 of 2009)**, the Hon’ble SAT, vide its order dated April 08, 2010 held that - *“Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow.”* Further, the Hon’ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, wherein, the Hon’ble court, *inter alia*, held that: *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”*

14. In view of the above, I hold that the breach by the Noticee as found hereinabove attracts penalty as prescribed under Section 15 A (b) of the SEBI Act.
15. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 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.”*

***Explanation.***—*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section;*

16. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. However, it is noteworthy that the Noticee continued its default at the time of its each consecutive acquisitions. Further, it repeated the default second time when increase in its shareholding crossed the prescribed threshold again on account of its second acquisition on April 03, 2014. Being a registered stock broker it was expected to be more vigilant and to comply with statutory requirements.
17. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of Rs. 2,00,000/- (Rupees Two Lac only) on the Noticee viz. Anumati Distributors Pvt. Ltd. under section 15HB of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

18. 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:

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

19. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.”

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

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

**Date: May 31, 2018**

**Place: Mumbai**

**Santosh Shukla**

**Chief General Manager &  
Adjudicating Officer**