

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**ADJUDICATION ORDER NO. EAD/AO/BJD/VS/2018-19/2448**

**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:**

**N Srinivas  
(PAN: ABKPN8799A)  
C/o SANKHYA INFOTECH LTD  
Plot No. 8-2-686/DB/19,  
Mount View Enclave,  
Road No 12, Banjara Hills  
Hyderabad – 500 034.**

**In the matter of Sankhya Infotech Ltd.**

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**BACKGROUND**

1. An examination was conducted into the alleged irregularities in the scrip of Sankhya Infotech Ltd (hereinafter referred to as 'SIL') and the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") and various Rules and Regulations made thereunder during the period from August 1, 2014 to January 31, 2015.
2. Upon perusal of the holding and transaction statement of the promoters of the company, it was observed that during the period Aug 2013- Dec 2014, N Srinivas (hereinafter referred to as 'Noticee') had inter alia created the pledge of securities and the same was invoked. The details of the aforesaid are as under :

<b>Date</b>	<b>Client Name</b>	<b>Transaction Type</b>	<b>Counterparty Name</b>	<b>No. of shares</b>
21/8/2013	N Srinivas	Pledge	IDBI Bank Ltd	351953

22/12/2014	N Srinivas	Pledge Invoke	IDBI Bank Ltd	351953
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3. Further, the shareholding of the aforementioned promoters prior to pledge creation date and % change subsequent to invocation of pledge by IDBI Bank Ltd is as under:

Date	Promoter Name	Sharehold ing pre pledge	Shareholdin g post invocation	Disc. Required
December 22, 2014	N Srinivas	352953 (3.14%)	1000(0.01% )	31(1) & 31(2) of SAST Regulations,13(4A) of PIT Regulations

4. It was observed that aforesaid transactions involving creation of pledge on August 21, 2013 and subsequent invocation of pledge on December 22, 2014 required the Noticee to make disclosures under Regulation 31(1) & 31(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "SAST Regulations, 2011") and Regulations 13(4A) of SEBI (Prohibition of Insider Trading) Act, 1992 (hereinafter referred to as "PIT Regulations, 1992").
5. In view of the above, information was sought from BSE to verify whether necessary disclosures were made by the entities. BSE in their reply dated March 12, 2015 submitted that they have not received any disclosure from the promoter entities including the Noticee.
6. From the above, it is alleged that the Noticee has violated the provisions of Regulation 31(1) and 31(2) of the SAST Regulations, 2011 and Regulations 13(4A) of PIT Regulations, 1992.

### **APPOINTMENT OF ADJUDICATING OFFICER**

7. The undersigned has been appointed as the Adjudicating Officer vide order dated May 16, 2017 under section 15 I of SEBI Act, 1992 to inquire into and adjudge the alleged violation of Regulation 31(1) and 31(2) of the SAST Regulations, 2011 and Regulations 13(4A) of PIT Regulations, 1992 by the Noticee in the scrip of SIL.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

8. A Show Cause Notice dated February 1, 2019 bearing number EAD/BJD/VS/3212/2019 (hereinafter referred to as 'SCN') was issued to the Noticee with respect to the aforesaid allegations mentioned at para above. In response to the same, the Noticee vide his undated letter received on February 28, 2019 acknowledged the receipt of the Notice and sought further time to submit his reply.
9. Further, considering that no reply was received from the Noticee within the time provided as per the SCN and in view of the facts and circumstances of the case, vide Notice dated February 28, 2019, the Noticee was provided with an opportunity of hearing on March 18, 2019 along with another opportunity to submit his reply. In response to the same, the Noticee vide letter dated March 12, 2019 *inter alia* submitted his reply which are dealt in the later part of this Order.
10. Further, Mr. Sarveswar Reddy Sanivarapu along with Mr. Sridhar Krishna (hereinafter referred to as 'ARs') appeared *inter alia* on behalf of the Noticee. During the hearing, the ARs reiterated the submissions dated March 12, 2019 and further sought 2 days time to submit documents with respect to Disclosures filed to the Company by the Noticee under SAST Regulations, 2011. The hearing proceedings were concluded therewith. Further, vide email dated March 19, 2019, SIL submitted the disclosures received by SIL under SAST Regulations, 2011 by the promoters of SIL.

## **CONSIDERATION OF ISSUES AND FINDINGS**

11. After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. Whether the Noticee has violated the provisions of Regulation 31(1) and 31(2) of the SAST Regulations, 2011 and Regulation 13(4A) of PIT Regulations, 1992?
- II. Whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act, 1992?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee?

## **FINDINGS**

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

***Issue I: Whether the Noticee has violated the provisions of Regulation 31(1) and 31(2) of the SAST Regulations, 2011 and Regulation 13(4A) of PIT Regulations, 1992?***

13. From the holding and transaction statement of SIL that is available on record, I note the following transactions involving pledge creation and invocation pertaining to the Noticee:

<b>Date</b>	<b>Client Name</b>	<b>Transaction Type</b>	<b>Counterparty Name</b>	<b>No. of shares</b>
21/8/2013	N Srinivas	Pledge	IDBI Bank Ltd	351953
22/12/2014	N Srinivas	Pledge Invoke	IDBI Bank Ltd	351953

14. I note from the above that the Noticee had created a pledge of 351953 shares in favour of IDBI Bank Limited on August 21, 2013. In this regard, it is observed that the Noticee was required to make disclosure under Regulation 31(1) of the SAST Regulations, 2011. Further I note that the aforementioned 351953 shares pledged by the Noticee in favour

of IDBI Bank Limited on August 21, 2013 were later invoked by IDBI Bank on December 22, 2014. With respect to the same, it has been alleged that the Noticee has failed to submit disclosure under Regulation 31(2) of SAST Regulations, 2011 and Regulation 13(4A) of PIT Regulations, 1992. I refer to the provisions of the said Regulations which read as under:

**SAST Regulations, 2011**

***Disclosure of encumbered shares***

- 31.** (1) *The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*
- (2) *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified*
- (3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,-*
- (a) every stock exchange where the shares of the target company are listed; and*
  - (b) the target company at its registered office.*

**PIT Regulations, 1992**

***Initial Disclosure***

**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 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

*(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.*

15. While it is not in dispute that the Noticee was one of the promoters of SIL at the time of creation of aforesaid pledge in favour of IDBI Bank Ltd on August 21, 2013 and its further invocation by IDBI Bank on December 22, 2014, I note that in terms of the aforesaid Regulation 31(1) of SAST Regulations, 2011, the Noticee, on creation of abovementioned pledge was required to submit disclosures with respect to encumbered shares within 7 working days. Further, I refer to email communication from BSE with respect to the disclosures received by it from the Noticee. It is noted from the record that BSE vide its email dated March 12, 2015 submitted that they had not received any disclosure from the Noticee. Further, the Noticee vide his reply dated March 12, 2019, in response to the allegation of non-disclosure to the Exchange, claimed that he subsequently submitted the disclosures to the Exchange. In this regard, he further submitted that *"BSE has taken on record the disclosures filed under SEBI (SAST) Regulations on 18.10.2016. However, the said disclosures were found later removed from its website citing that the same were submitted in the new format as against the required old format. Again, the promoters filed the disclosures in the format as advised by the BSE on 24.09.2018 (N. Sridhar) and 25.01.2019 (remaining 4 promoters)...The screenshot from BSE website acknowledging the receipt of the disclosures as per SEBI (SAST) Regulations is enclosed."* I have perused the documents produced before me by the Noticee. From the same, I note that the Noticee has produced a copy of disclosures filed under PIT Regulations, 2015 with SIL dated September 28, 2016 and a copy of the disclosures *inter alia* under Regulations 13(4A) of PIT Regulations, 1992, dated January 25, 2019, submitted to the Exchange. Further, the Noticee has also submitted an undated screenshot of the BSE website in support of his submission as noted in this paragraph above. In this regard, I note that the Noticee has not produced any proof of disclosures under 31(1) and 31(2) of SAST Regulations, 2011 being submitted to the Exchange with respect to the creation and invocation of the pledge of 351953 shares. It is the submission of the Noticee that the disclosures were submitted to the Exchange on September 28, 2016 however, he has also further submitted that the said disclosures were filed in the new format as against the old format that existed as on the date of transaction which were admittedly taken off subsequently from the website of BSE. In this regard, I find it pertinent to note the observation made by Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on February 21, 2011) whereby it stated that *"When law prescribes a manner in which a thing is to be done, it must be done*

*only in that manner or not at all.*" In view of the above, I am of the opinion that the said claimed disclosures cannot be considered as the compliance with the requirements of the SAST Regulations, 2011. Further, while it has been submitted that disclosures under the required format was submitted on January 25, 2019, however, I note that no documentary evidence is brought on record by the Noticee in support of the said submission. Further, also on perusal of the screenshots of the Exchange submitted by the Noticee in support of his claim, I note that no disclosures under SAST Regulations, 2011 is reflecting on the exchange with respect to the creation of pledge on August 21, 2013 and its invocation on December 22, 2014. Therefore I am inclined to conclude that the Noticee failed to submit disclosures under Regulation 31(1) and 31(2) of SAST Regulations, 2011 with respect to the creation of pledge of 351953 shares on August 21, 2013 in favour of IDBI Bank and subsequent invocation of those shares by IDBI Bank on December 22, 2014 respectively.

16. Further, I note that Regulation 13(4A) of the PIT Regulations, 1992 *inter alia* stipulates disclosure requirement on a promoter where there has been change exceeding Rs. 5 lakh in value or 25,000 shares or 1% in his shareholding of his total shareholding or voting rights in the target company subsequent to the previous disclosure.
17. In the instant case, from the documents available on record including Noticee's letter dated January 25, 2019 to BSE which is brought on record before me by the Noticee himself vide his reply dated March 12, 2019, I note that the shareholding of the Noticee in SIL prior to the invocation of pledge by IDBI Bank was 352953 shares amounting to 3.14% and the same came down to 1000 shares amounting to 0.01% pursuant to the invocation of pledge by IDBI. In light of the same, I note that Noticee was a promoter of SIL and there has been a change in Noticee's shareholding in SIL amounting to more than 25000 shares pursuant to invocation of pledge. Further, I also take due note of the fact that the Noticee has admitted the alleged pledge creation and subsequent invocation which triggered the disclosure requirement under Regulation 13(4A) of PIT Regulations, 1992. As noted above, it is the matter of record that BSE vide its email dated March 12, 2015 has submitted that it had not received any disclosures from the Noticee and the Noticee has submitted that he has subsequently submitted disclosures *inter alia* under Regulation 13(4A) of PIT Regulations, 1992. I note that the same is reflecting on the website of BSE which mentions as the transactions with respect to the invocation of

pledge on December 31, 2014 were reported to BSE under Regulation 13(6) of PIT Regulations, 1992 on January 25, 2019 by the Noticee. Considering that the common disclosure under 13(4), 13(4A) and 13(6) was submitted by the Noticee to the Exchange, I opine that the disclosure was carried out by the Noticee under Regulation 13(4A) of PIT Regulations, 1992 however with a considerable delay.

18. I note that the intent of Regulation 31(1) and 31(2) read with 31(3) of SAST Regulations and Regulations 13(4A) is to make public at large aware of the status of shares encumbered by the promoters of the company. While the quarterly shareholding are disclosed in public domain, the details of the encumbered shares form part of the significant information that is to be disseminated in the public for an investor to take a reasoned decision in his dealings in the market. Any failure in submitting timely disclosures of the encumbered shares and their further invocation leads to a case of misinformation among the gullible investors and a scope of them getting adversely affected thereby resulting in affecting the integrity of the market. Such being the case, I am of the opinion that a default in the nature as in the instant case with respect to the Noticee cannot be viewed leniently.

19. Further, I note that the Notice in relation to the pledge has submitted, *"The entire amount of loan taken by the promoters was kept utilized towards execution of the identified project but not for personal use.*

.....

*However, the above contract failed to start due to reasons beyond and outside the control of the company and as a result the company suffered a huge cash loss of over f 10 crores. Due to this, our cash flows were stressed and we had a small overdue in servicing our interest. Due to RBI's aggressive pursuit of overdue amounts in banks IDBI has taken unwarranted and drastic steps with regard to our account even though the overdue amount was small and it was the first time that the company's account has become overdue. Despite IDBI being aware of the reasons for our cash flow problems (as they gave a bank guarantee towards the Govt, project) they have taken coercive steps of transferring our shares on their name. This action was taken by IDBI without any intimation and without any fair and just opportunity for us to defend our case."*



20. I note that aforesaid submission does not merit any consideration in favour of the Noticee as the Noticee has admitted the creation of pledge in favour of IDBI and subsequent invocation of the same by IDBI. When an event of creation of encumbrance and invocation of the same has taken place, irrespective of the reasons for the same, the Noticee was obligated to submit the disclosures as per the requirements of the Regulations he is bound by.

21. Further, with respect to his default in submitting timely disclosures, the Noticee has submitted, *"we agree that it is an unintentional lapse and was neither deliberate nor willful on our part to comply with the requirement and that there was no malafide intention at any point of time in the failure of disclosure. Also, we have not caused any loss or harm to any investor or society at large. We have not made any undue gain out of the above non-disclosures."* In this regard, I refer to the observation of Hon'ble SAT in the case of *Mrs. Komal Nahata vs. SEBI* ( Appeal No. 5 of 2014 decided on January 27, 2014 ) *"...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. "* Therefore the contention of the Noticee that no loss or harm is caused to any investor due to his default is not tenable.

22. Further, with respect to the submission of the Noticee that the said non-disclosure was unintentional and that no gain was made by him on account of the default, I note the following observation Made by Hon'ble SAT in the matter of *Akriti Global Traders Ltd. Vs. SEBI* (Appeal No. 78 of 2014 decided on September 30, 2014):

*"...Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, 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.."*

23. Therefore in the facts and circumstances of the instant case, I note that the disclosure requirements were failed to be complied by the Noticee and I am also not inclined to accept the submission of the Noticee with respect to such failure on his part to comply with the provisions of the SAST Regulations, 2011 and PIT Regulations, 1992 for the reasons mentioned above. In view of the foregoing, I conclude that the Noticee has violated the provisions of Regulation 31(1) and 31(2) of the SAST Regulations, 2011 and Regulation 13(4A) of PIT Regulations, 1992.

***ISSUE II. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act?***

24. From the conclusions arrived at para above, I further conclude that the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act. The text of the said provision is as follows:

***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];***

***\*Substituted for “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” by the Securities Laws (Amendment) Act, 2014 w.e.f. September 08, 2014.***

***ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee?***

25. While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the SEBI Act, which reads as under :

## **SEBI Act**

### **Factors to be taken into account by the adjudicating officer**

**15J.** 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 a group of investors as a result of the default ;
- c) the repetitive nature of the default

26. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

### **ORDER**

27. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a consolidated penalty of ₹2,00,000/- (Rupees Two Lakhs only) on N Srinivas in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 31(1) and 31(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(4A) of SEBI (Prohibition of Insider Trading) Regulations, 1992 by him.

28. N Srinivas shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into the 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

or by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai.

29. N Srinivas shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai and details of such payment shall also be intimated at e-mail ID - tad@sebi.gov.in:

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for:	Penalty

30. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy each of this order is being sent to N Srinivas and also to the Securities and Exchange Board of India, Mumbai.

**Mumbai**  
**March 26, 2019**

**B J Dilip**  
**Adjudicating Officer**