

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO-174-176/2014

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:

Name	PAN	Order Number
Ms. Kokilaben Patel	AWOPP8899A	JJ/AM/AO-174/2014
Ms. Sushila Purushottambhai Patel	ANZPP9934A	JJ/AM/AO-175/2014
Mr. Purushottambhai Tulsidas Patel	ACMPP3103H	JJ/AM/AO-176/2014

In the Matter of:

Shree Surgovind Tradelink Limited

BACKGROUND

1. An Open Offer was made by Mr. Virat Sevantilal Shah, Mr. Alok Virat Shah and Mr. Rajan Sevantilal Shah (**Acquirers**) to acquire 26% shares of Shree Surgovind Tradelink Limited (**Target Company**) in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations, 2011**) to the shareholders of the Target Company and Public Announcement for the same was issued on February 05, 2013. The shares of the Target Company are listed at Bombay Stock Exchange (**BSE**) and Ahmedabad Stock Exchange (**ASE**).
2. While examining the offer document pertaining to the afore-mentioned Open Offer, SEBI observed the following non compliances of Regulation 7(1A) read with 7(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (**SAST Regulations, 1997**).
3. Following non-compliances with regard to provisions of Chapter II of the SAST Regulations, 1997 was observed.

By Promoter Group:

Name of the acquirer	Regulation	Due date for compliance	Actual date of compliance	Delay (in no of days)
Kokilaben Patel	7(1A)/7(2)	18.01.2009	08.06.2012	1237
Sushila Purushottambhai Patel	7(1A)/7(2)	21.03.2009	08.06.2012	1175
Purushottambhai Tulsidas Patel	7(1A)/7(2)	02.08.2009	08.06.2012	1041

4. Shri Piyoosh Gupta was appointed as the Adjudicating Officer vide order dated July 24, 2013 and the said appointment was conveyed vide proceedings of the Whole Time Member dated August 19, 2013 to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992, the violations of provisions of Regulation 7(1A) read with 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 alleged to have been committed by Ms. Kokilaben Patel (**Kokilaben**), Ms. Sushila Purushottambhai Patel (**Sushilaben**) & Mr. Purushottambhai Tulsidas Patel (**Purushottambhai**) (collectively referred as **Promoter Group / Noticees**). Pursuant to the transfer of Shri Piyoosh Gupta, the undersigned was appointed as Adjudicating Officer vide Order dated November 08, 2013.

SHOW CAUSE NOTICE, HEARING & REPLY

5. Show Cause Notices (**SCNs**) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") were issued to the Noticees on September 17, 2013, calling upon the Noticees to show cause why an inquiry should not be held against them under Rule 4(3) of the Adjudication Rules for the alleged violations and penalty be not imposed under Section 15A(b) of SEBI Act, 1992.
6. The aforesaid SCNs were duly sent to the Noticees by Speed Post. SCN issued to Kokilaben got delivered, however, SCNs issued to Sushilaben and Purushottambhai returned undelivered. Subsequent to the appointment of the undersigned, copies of the SCNs were duly forwarded to Sushilaben and Purushottambhai vide letters dated January 31, 2014 and the same was served by way of affixture on February 14, 2014. As no reply was received from the Noticees, vide Hearing Notices dated July 22,

2014, opportunity of personal hearing was granted to the Noticees on August 07, 2014. The said Hearing Notices were duly delivered to Sushilaben and Purushottambhai by way of affixture. However, the Hearing Notice issued to Kokilaben returned undelivered.

7. Subsequently, vide Hearing Notices dated December 05, 2014, opportunity of personal hearing was granted to the Noticees on December 23, 2014. Vide letter dated December 15, 2014 the Noticees expressed their inability to attend the hearing and *inter alia* made the following submissions:

We would like to mention that we faced badly due to the business of the company, which resulted in our poor financial position.

The transfer transaction was carried out by us to meet the financial pressure that was received from the other party (investor). Also we were not aware about the SEBI guidelines, as a result we did not received guidance from any professionals. Hence, the filing of disclosure was not made on time. At, present, we have no record with us, regarding the disclosures made with SEBI.

We stay in a small town Named unjha, Near Mehsana and there is no Correspondence office in Ahmadabad, in operating mode since last 5 years. Company Surgovind Tradelink Limited was not operative in Ahmadabad Stock Exchange and Bombay Stock Exchange. The Sale and Purchase of Shares of the Company was not Easily Executed and the investors were in much difficulty.

Company's Position was as such that it was unable to pay the annual filing fees regularly, with the stock exchanges. The transaction which you have mentioned in your notice has not caused any harm to the other investors and our intension was not to do anything wrong or increase or decrease the price or control in the Company.

The Transactions were carried out without any bad intentions. At Present, The Company is in the hands of other Promoters.

We are suffering from financial crises and medically too. We are not fit. I Purushottambhai is retired person having age of 60 years and a heart patient. Also Sushilaben is also retired & 58 yrs old and also do farming. Kokilaben is also required & 60 yrs old and also do farming.

We are enclosing herewith our PAN copies, so that you can verify our income and our Financial Status. We are not physically fit to attend the hearing on 23rd December; 2014. We would like to bring to your notice, that in the state of Gujarat, people are not much aware about the SEBI norms. Also, our share were delisted in stock exchanges couple of years back, due to some non-compliances.

Because of the Pressurization from small investors for encashment, we help them by transferring these shares. At this time, it is not justified on the part of SEBI to penalize fines and prosecute us. The Capital of the Company was small and the transactions in stock exchanges were negligible.

We executed the sale transaction with clear intention to save the interest of small investors. But somewhere we made the mistake by not filing the disclosures on time with SEBI.

We regret that we won't be able to attend the hearing as we are not medically fit and so we leave all the decision for you. But you kindly go through our request and take appropriate Action.

8. In view of the reply of the Noticees, I am proceeding with the inquiry taking into account the material available on record.

ISSUES FOR CONSIDERATION

9. After perusal of the material available on record, I have the following issues for consideration, viz.,
- A. Whether the Noticees have violated provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997?
 - B. Whether the Noticees are liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?
 - C. What quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

10. 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 1: Whether the Noticees have violated provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997?

11. The provisions of Regulation 7(1A) and 7(2) of SAST Regulations, 1997 read as under:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997

Continual disclosures

- 7 (1A)** *Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

12. From the material available on record, I note that the shareholding of the Promoter Group had changed as a result of the transactions mentioned below:

Name of the Acquirer	Date of the transaction	Sale (-ve)/ purchase	Shareholding of the acquirer (in %)		Total promoters shareholding in %	
			Before acquisition	After acquisition	Pre-acquisition	Post-acquisition
Kokilaben Patel	16.01.2009	-162,500 (3.24%)	3.24	0.00	29.84	26.60
Sushila Purushottambhai Patel	19.03.2009	-175,000 (3.49%)	3.99	0.05	26.60	23.10
Patel Purushottambhai Tulsidas	31.07.2009	-169,300 (3.38%)	3.38	0.00	23.10	19.72

13. From the aforesaid table I note that all the three Noticees had sold substantial quantity of shares on different dates and had taken their holding to zero after the transactions. Kokilaben sold more than 3% of the shareholding of the Target Company on 16.01.2009; Sushilaben sold more than 3% of the shareholding of the Target Company on 19.03.2009 and Purushottambhai sold more than 3% of the shareholding of the Target Company on 31.07.2009. The Noticees were required to make the necessary disclosures under Regulation 7(1A) of SAST Regulations, 1997 within two days of the sale of shares. However, the Noticees failed to make the disclosures within the prescribed time limit. I note that the Noticees have accepted their default of not making the disclosures on time by submitting that *“The transfer transaction was carried out by us to meet the financial pressure that was received from the other party (investor). Also we were not aware about the SEBI guidelines, as a result we did not received guidance from any professionals. Hence, the filing of disclosure was not made on time”*.

14. I note that the Noticees have neither denied nor disputed the transactions, as mentioned in the SCN, but have *inter alia* submitted that *“Because of the Pressurization from small investors for encashment, we help them by transferring these shares. At this time, it is not justified on the part*

of SEBI to penalize fines and prosecute us. The Capital of the Company was small and the transactions in stock exchanges were negligible". However, I do not find any merit in the submissions of the Noticees. The fact that the Noticees had a legal duty of making the disclosures under Regulation 7(1A) of SAST Regulations, 1997 within the prescribed time limit and that such non disclosure has been made penal, it is clear that the provisions of Regulation 7(1A) of SAST Regulations, 1997 are mandatory in nature and the Noticees cannot escape their liability.

15. Since, in the instant case, all the Noticees had individually sold shares representing more than two per cent of the share capital of the Target Company, they should have made disclosures under Regulation 7(1A) of SAST Regulations, 1997 within 2 days of their transaction; which they have failed to make. Hence, I hold that the Noticees have violated the provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997.

ISSUE 2: Whether the Noticees are liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?

16. The provisions of Section 15A(b) of the SEBI Act, 1992 read 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,—

(a).....

(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;"

17. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has 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 regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant"*.

18. As already observed, the Noticees violated the provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997. Therefore, I find that the Noticees are liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

19. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the 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. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. I note that in the reply dated December 15, 2014 the Noticees have *inter alia* submitted that *“The transaction which you have mentioned in your notice has not caused any harm to the other investors and our intension was not to do anything wrong or increase or decrease the price or control in the Company”*. But, the fact remains that the Noticees had failed to make the necessary disclosures on time. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Further, I note that the Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of *Mrs. Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)* has observed that: *“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.”* The Noticees being members of the Promoter Group of a listed company had a responsibility in ensuring compliance with the disclosure norms under the SAST Regulations, 1997. Also, the Noticees had made the disclosures after a delay of more than one thousand days, which clearly shows the lackadaisical attitude of the Noticees. Hence, the violation of the Noticees cannot be viewed lightly.

21. In the forgoing paragraphs, it is now established that the Noticees have violated the provisions of Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997. Considering the facts and circumstances of the case and the violation committed by the Noticees, I find that imposing a penalty of ₹ 3,00,000/- (Rupees Three Lakhs only) on Kokilaben; ₹ 3,00,000/- (Rupees Three Lakhs only) on Sushilaben & ₹ 3,00,000/- (Rupees Three Lakhs only) on Purushottambhai would be commensurate with the violations committed by them.

ORDER

22. Considering the facts and circumstances of the case, in terms of the provisions of Section 15A(b) of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 3,00,000/- (Rupees Three Lakhs only) on Ms. Kokilaben Patel; ₹ 3,00,000/- (Rupees Three Lakhs only) on Ms. Sushila Purushottambhai Patel & ₹ 3,00,000/- (Rupees Three Lakhs only) on Mr. Purushottambhai Tulsidas Patel for violation of Regulation 7(1A) read with 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011.

23. The penalty shall be paid by way of demand draft drawn 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 shall be forwarded to the Division Chief, Corporate Finance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

24. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticees and also to Securities and Exchange Board of India.

Date: December 31, 2014
Place: Mumbai

Jayanta Jash
Adjudicating Officer