BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/GR/AE/2019-20/3881]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 IN RESPECT OF SHRI ARUN GOVIL [PAN: AKVPG8378A] IN THE MATTER OF DYNACONS TECHNOLOGIES LTD.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as "**SEBI**"*) observed that an open offer was made by Shri Arun Govil (*hereinafter referred to as "**Noticee**"*) in terms of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "***SAST Regulations, 2011***") to the shareholders of the target company, Dynacons Technologies Ltd (hereinafter referred to as "***DTL***"), through a public announcement dated August 08, 2014 for acquisition of 2,03,90,006 fully paid up equity shares of ₹ 1 each, representing 26% of the paid up capital of DTL at a price of ₹ 1.30/- per share. The shares of DTL are listed at Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE).

2. While examining the Letter of Offer filed pursuant to the afore-mentioned public announcement, it was observed that the Noticee had previously acquired 1,90,00,000 equity shares of DTL, representing 24.23% of issued capital of DTL on preferential basis on December 28, 2013. As the acquisition of 1,90,00,000 shares of DTL by Noticee was 24.23% of issued capital of DTL, it required a disclosure within two working days of transaction as stipulated by regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011. However, it was observed that the Noticee made the

disclosure on February 26, 2014 with a delay of 57 days. Accordingly, it was alleged that the Noticee had violated the provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. Initially, Shri S V Krishnamohan, Chief General Manager was appointed as the Adjudicating Officer **(AO)** vide order dated February 07, 2017 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee. Subsequently, Shri Biju S, Chief General Manager was appointed as the AO in the present matter in the place of Shri S V Krishnamohan, vide order dated September 15, 2017. Thereafter, Shri Satya Ranjan Prasad was appointed as the AO in the matter, pursuant to the transfer of Shri Biju S. Pursuant to the transfer of Shri Satya Ranjan Prasad, the undersigned has been appointed as the AO in the matter by SEBI and the same was communicated to the undersigned vide communique dated May 22, 2019. These proceedings are therefore been carried forward from where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated March 15, 2017 (*hereinafter referred to as '**SCN**'*) was issued earlier to the Noticee in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "***Rules***") for the violations as specified in the SCN.

5. From the available records, I note that vide Hearing Notice dated October 13, 2017, an opportunity of personal hearing was granted to the Noticee by the erstwhile AO on October 25, 2017, Shri Biju S. However the same was adjourned at the request of the Noticee.

6. The written submissions of the Noticee in the matter was submitted vide email dated October 13, 2017. The main contentions made therein are reproduced as below –

III. SUBMISSIONS MADE BY THE NOTICEE

1. *We say that the Noticee had acquired 24.23% of the total share capital of the Company on December 26, 2013 ("Acquisition") thereby exceeding the five percent threshold and triggering the obligation stipulated under Regulation 29(1) read along with Regulation 29 (3) of the SEBISAST Regulations to disclose the Acquisition to the Company and the Stock Exchanges in the manner provided there under.*
2. *On perusal of the records of the Company, we note that the Noticee had made the relevant disclosures with the Company and the Stock Exchanges, albeit a delay of a few days. A copy of the duly acknowledged disclosure dated February 12, 2014 filed by the Noticee with !he Company and the duly acknowledged disclosure dated February 21, 2014 filed by the Noticee with the Stock Exchanges is annexed hereto as Annexure "A" and Annexure "B" to these written submissions.*
3. *On conducting a review of the corporate announcements made by the Company as available on the website of the Stock Exchanges, we note that the Company has made a detailed corporate announcement with respect to the Acquisition within a period of two working days from the date of the Acquisition. A copy of the corporate announcement as appearing on the website of BSE Limited on December 30, 2013 is annexed hereto as Annexure "C" to the written submissions.*
4. *For ease of reference, we have reproduced the text of the corporate announcement made by the Company on BSE Limited as under:*
   "Outcome of the Board Meeting:
   Dynacons Technologies Limited has informed BSE that the Board of Directors of the Company at its meeting held on December 28, 2013, has approved the issuance of 1,90,00,000 Equity shares of Re. 1 each at its face value Re. 1 each to Mr. Arun Govil on a preferential basis as per the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and after obtaining shareholders approval under Section 81(1A} of the Companies Act, 1956."
5. *Thus, we say that the details of the Acquisition had been informed to the Stock Exchanges in the form of a corporate announcement within the time frame of two working days as prescribed under Regulation 29(3) of the SEBISAST Regulations. Moreover, the aforesaid corporate announcement made by the Company on December 30, 2013 provides for all the information that would have been disclosed by the Noticee in event that timely disclosure was made*

under Regulation 29(1) read along with Regulation 29(3) of the SEBI SAST Regulations.

6. *Taking into consideration the fact that the aforesaid corporate announcement was made by the Company on December 30, 2013, we say that since the requisite information was made available in public domain within a period of two working days from tt1e date of the Acquisition, we say that no information has been suppressed from the existing and future shareholders ot the Company, if any and the delayed compliance has in no way caused any prejudice to their interests or that of the general public at large.*

7. *In view of what is stated above, we agree and acknowledge that there has been a minor delay in filing the disclosure under Regulation 29(1) read along with Regulation 29(3) of the SEBI.SAST Regulations with the Stock Exchanges. However, we humbly submit that such delay was purely due to inadvertence and without any deliberate intention to violate the letter and spirit of law.*

8. *Moreover, we say that the delay has not caused any harm to the interest of the shareholders of the Company or the public at large as the necessary information was already made available in public domain within the time frame of two working days from the date of the Acquisition.*

9. *We further say that the Noticee had no malafide intention to hide or suppress any information from the general public nor did he derive any disproportionate gain or unfair advantage or benefit as a result of the delay in complying with these regulations;*

10. *Lastly, we request tt1e Adjudicating Officer to take into consideration the fact that this delay is a onetime delay and not a recurring one and apart from this, the Noticee has a clean track record and have never committed any deliberate breach of any regulations of SEBI in the past.*

11. *Without prejudice to what is stated aforesaid and its right under law and equity, having regard to the facts and circumstances in the present matter, the Noticee has come to SEBI with clean hands and any purported default under the SCN was not intentional and merely circumstantial.*

IV. RELIEFS SOUGHT

In view of what is stated above and with due regard to the underlying facts and circumstances of the case, we humbly seek that the SCN be quashed and set aside with immediate effect.

We trust that our written submissions will be considered by the Adjudicating Officer favorably and a suitable order will be passed after giving due regards to the underlying facts, circumstances and principles of natural justice. ”

7. From the mater available on record, I note that pursuant to the adjournment of the hearing scheduled on October 25, 2017, another opportunity of personal hearing was granted to the Noticee by the erstwhile AO, Shri Biju S on November 07, 2017. In the said hearing, the authorized representatives (**ARs**) appeared on behalf of the Noticee and reiterated the contentions made in the aforesaid written submissions, and submitted that there were many mitigating circumstances which warrant condonation of the delay in making the disclosures. The ARs further requested for time to avail the option to file a settlement application or to file further submissions in the matter. Accordingly, the Noticee was granted time till November 28, 2017 for filing additional reply, if any. However, vide emails dated November 28th, 29th, and 30th, 2017, the ARs requested for additional time in the matter. Subsequently, vide email dated December 05, 2017, the ARs informed that they would be filing Settlement Application in the matter under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. From the available records, I note that the Noticee had filed application for settlement, however the same was returned by SEBI vide letter dated 11.10.2018.

8. Subsequently, pursuant to the appointment of the undersigned as AO, the Noticee was granted an opportunity of personal hearing on July 15, 2019. In the said hearing, the authorized representative of the Noticee appeared on behalf of the Noticee and reiterated the written submissions made earlier in the matter by the Noticee vide email dated October 31, 2017.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :

   I. Whether the Noticee has violated the provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011?

II. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

III. Quantum of penalty.

FINDINGS

10. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same is reproduced below:

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)...

(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 I) **Whether the Noticee has violated the provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011?**

11. I note that the allegation against the Noticee is mainly to the effect that there was delayed compliance of the provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011 by the Noticee.

12. As per the material available on record, I note that the Noticee had made an open offer in terms of SAST Regulations, 2011 to the shareholders of the DTL through a public

announcement dated August 08, 2014 for acquisition of 2,03,90,006 fully paid up equity shares of ₹ 1 each, representing 26% of the paid up capital of DTL at a price of ₹ 1.30/- per share.

13. Upon examination of the aforesaid open offer, SEBI observed that the Noticee had previously acquired 1,90,00,000 equity shares of DTL on preferential basis on December 28, 2013. As the acquisition of 1,90,00,000 shares of DTL by Noticee was 24.23% of issued capital of DTL, it required a disclosure within two working days of transaction as stipulated by Regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011.

14. Further, on perusal of the documents available on record viz. the status of compliance with the provisions of Chapter V of the SAST Regulations 2011 as submitted in the Noticee's letter dated August 19, 2014, the following non-compliance is observed–

Sr. No.	**Provision of SAST Regulations, 2011**	**Due date of compliance**	**Actual date of compliance**	**Delay (in no. of days)**
1	29(1) read with 29(3)	30.12.2013	26.02.2014	57

15. From the above, I note that the Noticee acquired more than 5% of share capital of DTL on December 28, 2013. The due date for making the disclosures was within 2 working days, i.e. December 30, 2013. However, the Noticee has made the disclosures under SAST Regulations, 2011 on February 26, 2014 i.e. a delay of 57 days.

16. With regards to the aforesaid allegation, the Noticee in its written submissions submitted vide email dated October 13, 2017 has *inter alia* stated that "*On perusal of the records of the Company, we note that the Notiicee had made the relevant disclosures with the Company and Stock Exchange, albeit with a delay of few days*". From the same, I note that the Noticee has admitted the delay in making disclosures. Thus, I find that the Noticee has not complied with the provisions of Regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011.

17. The Noticee has further submitted that the company i.e. DTL had made a detailed corporate announcement dated December 30, 2013 with respect to the aforementioned acquisition within a period of two working days which contained all the information that would have been disclosed by the Noticee in the disclosures under 29(1) read with regulation 29(3) of SAST Regulations, 2011. In this regard, I note that the provisions of the Regulation 29(1) and 29(3) of SAST Regulations, 2011 cast a statutory obligation on the Noticee (and not the company) to make the disclosure. I further note that the aforesaid provisions stipulate that the disclosures regarding the acquisitions are to be made in the prescribed format. I would also like to rely on the observations of the Hon'ble Securities Appellate Tribunal (**SAT**) in ***Premchand Shah and Others V. SEBI*** dated February 21, 2011, wherein it was held that *"…….When a law prescribes a manner in which a thing is to be done, it must* be *done only in that manner.…….Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments…… ".* In view of the same, I don't find merit in the above contentions of the Noticee.

18. In view of the above, I hold that the Noticee has violated the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations, 2011.

Issue II) **Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?**

19. I note that the Noticee had submitted that it had not malafide intention to hide or suppress any information from the general public nor did he derive any disproportionate gain or unfair advantage or benefit as a result of the delay in complying with these regulations. In this regard, I note that the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** 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.*"

20. I also note that in Appeal No. 66 of 2003 - ***Milan Mahendra Securities Pvt. Ltd. Vs. SEBI*** – the Hon'ble SAT has observed 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 v. SEBI*** (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "*Once it is established that the mandatory* provisions *of Takeover Code was violated, the penalty must follow*".

21. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of ***Akriti Global Traders Ltd. Vs SEBI*** had observed that -

> *"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore,* irrespective *of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."*

22. Thus, the violation of Regulation 29(1) read with 29(3) of SAST Regulations, 2011 makes the Noticee liable for penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under –

> **SEBI Act, 1992**
>
> **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 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;

Issue III) **Quantum of penalty.**

23. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the Rules, require that while adjudging the quantum of penalty, 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.

24. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticee. I also note that no prior default of the Noticee is available on record. I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. As a result of the violation committed by the Noticee, the investors were deprived of valuable

information which would have enabled them to take well informed decisions regarding their investments in the company. In the present matter, I note that Noticee has made delayed disclosure under Regulation 29(1) read with 29(3) of SAST Regulations, 2011 with a delay of 57 days.

ORDER

25. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on the Noticee viz. Shri Arun Govil under Section 15A(b) of SEBI Act, 1992 for the violations of the provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011.

26. 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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

27. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

28. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties

29. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: August 06, 2019 **G Ramar**

Place: Mumbai **Adjudicating Officer**