

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/SBM/EAD-1/323/2018)**

UNDER SECTION 15- I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

**Mr. Kirit Vinodbhai Vaghela
(PAN: AFYPV3534R)
No 1491, Opp. Kahan Flat
Sarangpura
Ahmedabad**

In the matter of

**SMS Techsoft (I) Ltd.
Regd off: 325, Patel Road
Ramnagar, Coimbatore – 641009
Tamil Nadu**

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereafter referred to as '**SEBI**') noticed that during the period February – March 2013, several Short Text Messages (**SMSs**) were sent to the investors, with predominantly buy recommendations that were made in the scrip of SMS Techsoft (India) Ltd (hereinafter referred to as '**STL**'/'**Company**'). In view of the SMSs mentioning predominantly buy recommendations in the scrip of STL, SEBI conducted an examination in the matter and based on the observations contained therein, an interim order dated November 05, 2013 (followed by a corrigendum dated November 18, 2013) was passed against 38 persons/entities wherein, the 38 persons/entities named in

the interim order were, *inter alia* , restrained from accessing securities market and also prohibited from buying, selling or dealing in the market, either directly or indirectly, in any manner whatsoever, till further directions.

2. Thereafter, SEBI undertook an investigation in the matter for the period March 13, 2013 to November 05, 2013 (hereafter referred to as '**investigation period**'/'**relevant period**') and consequent to the completion of the investigation, enforcement actions were initiated by SEBI against the persons/entities mentioned in the aforementioned interim order and also against Mr. Kirit Vinodbhai Vaghela (hereinafter referred to as "**the Noticee**"). It was observed during the course of investigations that the Noticee had failed to make the necessary disclosures under Regulation 29(1) r/w Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') w.r.t his acquisition of shares of the company during the relevant period.
3. It is observed that STL was listed only on the Bombay Stock Exchange (**BSE**) during the relevant period and the total paid up capital of the Company during the relevant period was 35,05,72,000 shares of face value of Rs 1/- per share. It is alleged that the Noticee failed to make the necessary disclosures to the Company and to the BSE w.r.t his acquisition of shares of STL on October 24, 2013, which were required to be made by him within two working days of the acquisition of shares, in terms of the aforementioned provisions of SAST Regulations. In view of the above observations, adjudication proceedings were initiated against the Noticee under the provisions of section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer vide an order dated October 11, 2017 under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15A(b) of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice ref. A&E/EAD-3/SBM/32493/2017 dated December 21, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty, if any, be not imposed on the Noticee for his alleged failure to make the necessary disclosures under Regulations 29(1) r/w 29(3) of the SAST Regulations with respect to his transactions in the scrip of STL on October 24, 2013.
6. The allegations levelled against the Noticee in the SCN are summarized as under:-
- (a) It is observed from the trade data provided by the BSE that the Noticee has acquired shares of STL which aggregated to more than five percent of the total share capital of the company during the investigation period, the details of the transactions are mentioned as under-

Table- I Details of changes in shareholding of Kirit Vinodbhai Vaghela

Sr. No.	Date of transaction	No. of shares transacted	Type of Transaction	Shareholding post transaction	% Shareholding post transaction	Disclosures required under Regulations
1	23/10/2013	9977605	Buy	10004305	2.85%	-
2	24/10/2013	7895513	Buy	17899818	5.10%	29(1) r/w 29(3) of SAST, 2011

(b) Hence, the Noticee was under an obligation to make the necessary disclosures under Regulation 29 (1) read with Regulation 29 (3) of SAST Regulations w.r.t his acquisition of shares to the BSE and also to the Company within two working days of the acquisition of shares. It is alleged that the Noticee has failed to make the disclosures within the prescribed time period and therefore, had violated the provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.

(c) It was stated in the SCN that the aforesaid alleged violation, if established, would make the Noticee liable for monetary penalty under the provisions of section 15A (b) of the SEBI Act.

7. Vide letter dated January 18, 2018, Noticee submitted his reply to the SCN, details of which in brief are as under:

- (a) As I am the small investor person unaware of law and regulations of SEBI and BSE Rules and Regulations as I missed to approach SAST in the matter as I came to know only after your impugned notice;*
- (b) I have not gained any money out of the share market small work as carried out by me.*

8. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, Noticee was granted an opportunity of personal hearing on August 24, 2018 at SEBI, Western Regional Office, Ahmedabad. The Noticee was represented by his Advocate, Mr. Bhruvish Brahmbhatt (as Authorized Representative (**AR**)) during the course of the hearing. The AR reiterated the submissions made by the Noticee vide his letter dated January 18, 2018. Thereafter, Noticee also made additional submissions in the matter, vide his letter dated August 28, 2018 and , inter alia, made the following submissions :-

- a. The impugned notice is issued to us for the non-disclosure of the information for holding of 5% or more than 5% shares of SMS Techsoft Limited and the same been the liability and responsibility of the brokers dealing with the*

- sahres and securities and hence we are not lisble for the lack of the information not provided to bse as required under the SEBI Rules*
- b. *We further state that that Delhi High Court on the judgment of Anilkumar Jain versus SEBI and other catens of Judgment we are not liable for any offence.*

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the submissions of the Noticee (both oral and written) in the said matter, the facts and circumstances of the case and the material on record.
10. Before dealing with the aforesaid charges in seriatim, the relevant legal provisions, which have been mentioned in the SCN issued to the Noticee are as under:

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

(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.

FINDING

11. The issue for examination in this case and the findings thereon are as follows:-

Whether the Noticee has violated the provisions of Regulations 29(1) r/w 29(3) of the SAST Regulations, 2011 with regard to his transactions in the scrip of STL during the relevant period?

As per the material made available, which also includes the trade data submitted by the BSE, it is observed that the Noticee who was already holding 99,77,605 shares of STL (which represented 2.85% of the total share capital of the company) had further purchased 78,95,513 shares of STL on October 24, 2013 through market transaction. This transaction of the Noticee on October 24, 2013 resulted in the total shareholding of the Noticee in STL increasing from 2.85 % to 5.10 % as on October 24, 2013. The details of the transactions of the Noticee in the scrip of STL during the relevant period are mentioned in the following table:-

Sr. No.	Date of transaction	No. of shares transacted	Type of Transaction	Shareholding post transaction	% Shareholding post transaction	Disclosures required under Regulations
1	23/10/2013	9977605	Buy	10004305	2.85%	-
2	24/10/2013	7895513	Buy	17899818	5.11%	29(1) r/w 29(3) of SAST, 2011

12. In terms of the requirements laid down under Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, an acquirer, who acquires shares or voting rights in a target company aggregating to five per cent or more of shares of such target company has to make the necessary disclosures regarding his aggregate shareholding and voting rights in such target company, to every stock exchange where the shares of the target company are listed and also to the target company, within 2 working days of such acquisition of shares or voting rights. In view of the observations made above, the Noticee was under an obligation to make the necessary disclosures under Regulations 29(1) r/w 29(3) of the SAST Regulations consequent to his acquisition of 78,95,513 shares of STL, within two working days from October 24, 2013 i.e the date when he had indulged in the transaction involving purchase of 78,95,513 shares of STL, which also crossed the prescribed threshold limit of 5% of the total share capital of the company. It is on record that Noticee has failed to make the necessary

disclosures under the SAST Regulations and the same is also evident from the details of disclosure of shareholding in STL, which is mentioned in the BSE website.

13. Further, I note that BSE in its email dated May 18, 2015, which was addressed to SEBI, confirmed the fact that Noticee had not made the required disclosures under the SAST Regulations. I also note that a letter dated March 15, 2016 which was sent to the Company by SEBI seeking details of the disclosures made by the Noticee also did not elicit any response. Further, a perusal of the replies submitted by the Noticee also confirmed the fact that the Noticee has failed to make the stipulated disclosures under the SAST Regulations.
14. The contentions of the Noticee that he was unaware of the provisions of law regarding the disclosure obligation mandated under the SAST Regulations is baseless and without any merit. In this context, 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"*.
15. Clearly, from the above observations, I note that the Noticee has failed to make the necessary disclosures under the SAST Regulations. In view of the same, I

conclude that Noticee has violated the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations.

16. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { { 2006} } 5 SCC 361) 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*”

17. As the violation of the statutory obligation under Regulation 29(1) r/w Regulation 29(3) of SAST Regulations has been established, the Noticee is liable for monetary penalty under the provisions of section 15 A (b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return etc

15 A -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 thereof in the regulations, fails to file return or furnish the same within the time specified thereof in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues

(c).....

18. While determining the quantum of penalty under section 15A (b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under :

“15 J- Factors to be taken into account by the adjudicating officer

While adjudging the 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”*

19. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default committed by the Noticee is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default by the Noticee, the details of the shareholding of the Noticee and the timely disclosures thereof, were of significant importance from the point of view of the investors as that would have prompted them to buy or sell shares of the company. I find from the Investigation Report of SEBI that the Noticee was among the top buyers in the scrip of STL during the above mentioned investigation period. The disclosure requirement under the SAST Regulations arose as a result of the significant quantities of shares of STL purchased by the Noticee during the investigation period. The disclosure obligation mandated under the SAST Regulations are critical and important component of the legal regime governing substantial acquisition of shares and takeovers. In the absence of these timely disclosures, the investors will be deprived of the important information at the relevant point of time.

ORDER

20. After taking into consideration all the facts and circumstances of the case, material on record and the submissions of the Noticee, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose penalty on the Noticee as under:

Name of the Noticee	Violations committed	Penal provision	Penalty
Mr. Kirit Vinodbhai Vaghela	Regulations 29(1) r/w 29(2) of SAST Regulations, 2011	Section 15 A (b) of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh only)

I am of the view that the said penalty is commensurate with the default committed by the Noticee.

21. The Noticee shall remit / pay the said amount of penalty within 45 days of the 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-

Account No. for remittance of penalties levied by Adjudication Officer	
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

22. The Noticee shall forward the said Demand Draft or the details/ confirmation of penalty so paid through e-payment (in the format given in the table below) to “The Division Chief, Enforcement Department (**EFD DRA-II**), Securities and Exchange Board of India, SEBI Bhavan, Plot No C-4A,”G” Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051” .

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)	

23. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this Order is sent to the Noticee viz. Mr Kirit Vinodbhai Vaghela and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: September 28, 2018

SURESH B MENON

ADJUDICATING OFFICER