

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. EAD-9/ SM/62/2018-19]**

---

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

**In respect of:**

**Bharat J Patel  
(PAN: AAAPP6652R)**

**In the matter of Ponni Sugars (Erode) Limited**

---

**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), conducted an investigation in the scrip of Ponni Sugars (Erode) Limited (hereinafter referred to as "PSEL/ company") and observed that Bharat J Patel (hereinafter referred to as "Noticee ") had violated provisions of regulation 29(1), 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations") and Regulation 13(1), 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations")
2. In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015

**APPOINTMENT OF ADJUDICATING OFFICER**

3. Vide an order of the Competent Authority, SEBI, dated May 16, 2017, the undersigned was appointed as the Adjudicating Officer under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") to inquire and adjudge under section 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") on the Noticee.

## SHOW CAUSE NOTICE, REPLY AND HEARING

4. Based on the findings by SEBI, Show Cause Notice dated August 1, 2017 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on him for the alleged violations.
5. It was alleged in the SCN that there was change in shareholding of Noticee in PSL during the investigation period however he had not made required disclosures. The shareholding of the noticee during investigation period was as follows:

Date	Holding (%)	Whether disclosure made	Violation of
April 27, 2013	6.03	No	Regulation 29(1) of SAST Regulations and 13(1) of the PIT 1992
July 25, 2013	0.15	No	Regulation 29(2) of SAST Regulations and 13(3) of the PIT 1992
November 13, 2013	7.94	No	Regulation 29(1) of SAST Regulations and 13(1) of the PIT 1992
October 08, 2014	4.04	No	Regulation 29(2) of SAST Regulations and 13(3) of the PIT 1992

## Personal Hearing

6. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on September 7, 2017 vide notice dated August 11, 2017. No one appeared on the scheduled date of hearing. Noticee vide letter dated August 14, 2017 sought inspection of certain documents from SEBI. Vide letter/s dated September 22, 2017, the said documents were provided to Noticee.
7. Another opportunity of hearing was given to the Noticee on November 29, 2017. Noticee appeared and reiterated the submissions made vide letter dated November 28, 2017.
8. Vide letter dated November 28, 2017 and December 23, 2017, noticee inter alia replied the following

*I say and submit that the alleged failure to make disclosures / reporting under regulation 29 of the SAST Regulations, 2011 and regulation 13 of the PIT Regulations, was an inadvertent and bona fide error and an over sight. It is also submitted that my transactions were in the ordinary course of my trading and at the relevant time I did not even realise that my holding had crossed 5% for a short time. It may be appreciated that alleged violation was at the highest a technical, procedural*

*and venial beach without any adverse consequences to the market or anyone else. Further, the same was not deliberate or intentional or in any contumacious disregard of the provisions of law. In this regard it may be noted that I have traded / invested in many mid-cap and small-cap companies and many such investments are for more than 5% of the capital of the concerned companies, and I have been punctual and careful in making the required disclosures. I do not understand how my employees who are entrusted with ensuring compliance with all requirements of all law, rules and regulations omitted to make the required disclosures in the present case. I accept the lapse in this regard, tender my apology for the same and request you to take lenient view and pardon me for the same. Needless to state that I have already alerted my employees to ensure that such an omission does not happen in the future.*

## **CONSIDERATION OF ISSUES AND EVIDENCE**

9. I have carefully perused the charges levelled against the Noticee in the SCN, his replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
- (a) Whether Noticee have violated regulations 29(1), 29(2) read with 29(3) of SAST Regulations and 13(1), 13(3) read with 13(5) of PIT Regulations
  - (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A (b) of SEBI Act on Noticee?
  - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?
10. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations, PIT 2015 and SAST Regulations:

### **Relevant provisions of PIT Regulations:**

#### ***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.*

#### ***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.*

*(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.*

### **Relevant provisions of PIT Regulations, 2015:**

#### ***Repeal and Savings.***

*12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

*(2) Notwithstanding such repeal,—*

*(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*

*(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

*(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

### **Relevant provisions of SAST Regulations**

#### ***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 subregulation; 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*

11. I note that noticee has accepted that non-disclosure by him was an inadvertent error on his part and he has accepted he had not made desired disclosures as mandated.

12. BSE, vide email dated October 30, 2015 NSE vide email dated December 11, 2015 and PSEL vide letter dated July 2, 2015 confirmed that no disclosure was received from Noticee.

13. In view of the above, the allegation of violation of regulation 29(1), 29(2) read with 29(3) of SAST Regulations and regulation 13(1) and 13(3) read with 13(5) of PIT Regulations 1992 stands established which makes him liable for monetary penalty under section 15A(b) of SEBI Act which reads 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 there under,—***

***(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 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;***

14. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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..."*.

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

*Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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*

16. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors as a result of the non-disclosure of change in shareholding of noticee. The Hon'ble Securities Appellate Tribunal, in Appeal No.118 of 2013 order dated September 4, 2013 – *Vitro Commodities Private Limited v SEBI* stated that: *"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."*

17. Hence, taking a cue from the said order, I consider the violation of regulation 29(1), 29(2) read with 29(3) of SAST Regulations and regulation 13(1), 13(3) read with 13(5) of PIT Regulations are one and the same and only levy one penalty for both violations as they are corollary of other.

## **ORDER**

18. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stand established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty of ` 2, 00,000/- (Rupees Two lakhs only) on Noticee under section 15A (b) of SEBI Act.
19. 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 favor 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
RT GS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

20. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- III) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- [tad@sebi.gov.in](mailto:tad@sebi.gov.in):

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	
Bank Name and Account Number from which payment is remitted	
UTR No	

21. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

**Date: June 29, 2018**

**Place: Mumbai**

**SAHIL MALIK**

**ADJUDICATING OFFICER**