

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BD/AB/2020-21/9455-9456]

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

**Shri Dinesh Babel
(PAN: AEOPB3849L)**

And

**Dinesh Mohan Babel HUF
(PAN: AAETH4528G)**

In the matter of
Arihant Superstructures Limited

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination of non-disclosures under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") in the scrip of Arihant Superstructures Limited during the period May 1, 2016 to May 31, 2018 on the basis of a letter dated September 14, 2018 sent by Arihant Superstructures Limited (hereinafter referred to as "**ASL / Company**") wherein the Company informed about certain non-compliances and violations observed with regard to the PIT Regulations and ASL Code of conduct by Shri Dinesh Babel (hereinafter referred to as "**Noticee No. 1**") who was an Independent Director of the Company and by Dinesh Mohan Babel HUF (hereinafter referred to as "**Noticee No. 2**") which was a specified person under ASL's code of conduct as Noticee No. 1 was its Karta. During examination it was noticed that Noticee No. 1 violated Reg. 7(2)(a) r/w Reg. 6(2) of the PIT

Regulations, Cl. 7.1(iv) of ASL's code of conduct r/w Clause 10 of the Code of Conduct specified under Regulation 9(1) of PIT Regulations and Cl. 6.1(iii) of ASL's code of conduct r/w Clause 4 of Code of Conduct, specified under Schedule B, r/w Regulation 9(1) of PIT Regulations. Further, Noticee No. 2 has alleged to have violated Cl. 7.1(iv) of ASL's code of conduct r/w Clause 10 of the Code of Conduct specified under Regulation 9(1) of PIT Regulations and Cl. 6.1(iii) of ASL's code of conduct r/w Clause 4 of Code of Conduct, specified under Schedule B, r/w Regulation 9(1) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer in the matter vide communique dated October 29, 2019 to inquire into and adjudge under the provisions of section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') under the provisions of section 15A(b) of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Common Show Cause Notice dated September 9, 2020 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee No. 1 under Section 15A(b) and 15HB of the SEBI Act and under Section 15HB on Noticee No. 2, for the violations alleged to have been committed by the Noticee No. 1. The SCN issued to the Noticees, *inter-alia*, alleged that the Noticee No.1 has entered into contra trades, traded during trading window closure and has failed to make requisite disclosures for himself and Noticee No. 2 to the exchanges.
4. The summary of trading of Noticee No. 1 and 2 showing details of trades crossing 10 lakh and contra trades is as follows:

Table 1: Summary of transactions of Noticee No. 1 in ASL

S. No.	Date of transaction	Transaction Type	No of Security transacted	Transaction Value (Rs.)	Aggregate Transaction Value (Rs.)	Mode of transaction	Due Date of Intimation to the Company	Date of Intimation to the Company
1	02-May-2017	B	1,000	154,084.55	13,41,705	On market	09-May-2017	NIL
	03-May-2017	B	2000	328,000.00				
	04-May-2017	B	3000	502,560.30				
	05-May-2017	B	2200	357,060.00				
2	15-May-2017	B	500	84,000.00	7,28,895	On market	Not Required	
	28-Jun-2017	S	3500	644,895.20				
3	17-Jul-2017	B	3500	649,600.00	6,49,600	On market	Not Required	
4	17-Nov-2017	S	7,507 (NSE) + 1,193 (BSE)	1,252,903.35 + 1,99,237.90	14,52,141	On market	21-Nov-2017	NIL
5	10-Apr-2018	B	500	71,700.00	5,26,146	On market	Not Required	
	11-Apr-2018	B	69	9,660.00				
	11-Apr-2018	S	500	73,000.00				
	12-Apr-2018	B	500	70,250.00				
	09-May-2018	B	500	62,531.30				
	09-May-2018	S	500	63,500.00				
	10-May-2018	S	500	63,750.00				
	21-May-2018	B	440	56,012.00				
	21-May-2018	S	440	55,742.50				

Table 2: Summary of transactions of Noticee No. 2 in ASL

Sr	Date of transaction From	Transaction Type	No of Security transacted	Transaction Value (Rs.)	Aggregate Transaction Value (Rs.)	Mode of transaction	Due Date of Intimation to the Company	Date of Intimation to the Company
1	02-May-2016	B	1000	82100.00	1,66,640	On market	NA	NA
	06-May-2016	S	31	2540.45				
	13-May-2016	S	1000	82000.00				
2	21-Feb-2017	B	325	35100.00	7,48,868	On market	NA	NA
	21-Feb-2017	S	325	35425.00				
	23-Feb-2017	S	26	2808.00				
	02-Mar-2017	S	612	67320.00				
	03-Mar-2017	B	612	66708.00				
	03-Mar-2017	S	175	19757.50				
	29-Mar-2017	B	5000	521750.00				
3	03-Apr-2017	S	5000	635000.00		On market	08-May-2017	Nil*

	28-Apr-2017	B	1,200	181760.00	13,65,695			
	02-May-2017	B	280	43036.00				
	04-May-2017	B	3000	505899.40				
4	05-May-2017	B	26	4286.10	11,76,203	On market	30-Jun-2017	Nil*
	24-May-2017	B	2000	333600.00				
	15-Jun-2017	B	1000	193285.50				
	28-Jun-2017	B	3500	645031.00				
5	17-Jul-2017	S	3500	649600.00	6,49,600	On market	NA	NA
6	17-Nov-2017	S	4,864	803994.85	12,03,613	On market	22-Nov-2017	Nil*
	17-Nov-2017	S	111	18317.95				
	20-Nov-2017	S	2,325	381300.00				
7	26-Dec-2017	B	4,261	748870.75	12,78,971	On market	02-Jan-2018	Nil*
	29-Dec-2017	S	3,000	530100.00				

5. The details of trading done by Noticee No. 1 and 2 during the trading window closure is as follows:

Noticee No. 1

S r.	Date of Closure of Trading window	Date of transaction during the period	Buy/ Sale	Qty (Shares)	Value of Shares (Rs.)	Date of Intimation to Exchanges for closure of Window
1	26/06/2017 to 01/07/2017	28/06/2017	Sale	3500	644895	25/06/2017
2	16/05/2018 to 25/05/2018	21/05/2018	Buy	440	56012	14/05/2018
			Sale	440	55742.50	

Noticee No. 2

S r.	Date of Closure of Trading window	Date of transaction during the period	Buy/ Sale	Qty (Share)	Value of Shares (Rs.)	Date of Intimation to Exchanges for closure of Window
1	20/05/2017 to 29/05/2017	24/05/2017	buy	2000	333600	22/04/2017
2	26/06/2017 to 01/07/2017	28/06/2017	buy	3500	645031	25/06/2017

6. It was alleged from the aforesaid trading of the Noticees that Noticee No. 1 had traded in excess of Rs. 10,00,000 in shares of ASL on 2 occasions, warranting a disclosure under Reg. 7(2)(a) of PIT Regulations and Noticee No. 2 had traded in excess of Rs. 10,00,000 on 4 occasions, warranting a disclosure under Regulation 7(2)(a) of PIT Regulations by Noticee No. 1. Further, Noticee No. 1

had entered into contra trade on 5 occasions and Noticee No. 2 had entered into contra trades on 6 occasions.

7. The SCN was digitally signed and sent by e-mail to the Noticee. The Noticee vide e-mail September 21, 2020 sought 30 days' time to reply to SCN. The Noticee vide e-mail dated September 25, 2020 was advised to file reply to the SCN by October 12, 2020. Since no reply came till October 12, the Noticee was granted an opportunity of personal hearing on October 23, 2020 by e-mail dated October 12, 2020. The Noticee subsequently, submitted its reply by email dated October 12 2020. The Noticee No. 1 appeared for hearing on the scheduled date by video conferencing.
8. A summary of the submissions made by the Noticees are as follows:
 - i. ASL submitted a detailed report on violation of PIT Regulations and ASL code of conduct by DB when it came to know about the said violation voluntarily on September 21, 2018.
 - ii. A penalty of Rs. 1,50,000 was recommended by the Insider Trading Compliance Committee and the Noticees have already paid 3,37,254/- towards profit made from these trades.
 - iii. The Noticee No. 1 has resigned from ASL w.e.f. March 31, 2019 which has caused loss of income to the Noticee.
 - iv. The Noticee No. 1 has spent substantial sum on medical treatment of his daughter-in-law who passed away due to cancer and due to these expenses the Noticee is already under debt burden of Rs. 10.50 Lakh.
 - v. The Noticee has made disclosure under Form C after receipt of the SCN.

CONSIDERATION OF ISSUES

9. I have carefully perused the charges levelled against the Noticees, the reply and the documents / material available on record. The issues that arise for consideration in the present case are :
 - (a) Whether the Noticee No. 1 has violated the provisions of Reg. 7(2)(a) r/w Reg. 6(2) of the PIT Regulations, Cl. 7.1(iv) of ASL's code of conduct r/w Clause 10 of the Code of Conduct specified under Regulation 9(1) of PIT

Regulations and Cl. 6.1(iii) of ASL's code of conduct r/w Clause 4 of Code of Conduct, specified under Schedule B, r/w Regulation 9(1) of PIT Regulations and Noticee No. 2 has violated Cl. 7.1(iv) of ASL's code of conduct r/w Clause 10 of the Code of Conduct specified under Regulation 9(1) of PIT Regulations and Cl. 6.1(iii) of ASL's code of conduct r/w Clause 4 of Code of Conduct, specified under Schedule B, r/w Regulation 9(1) of PIT Regulations;

- (b) Does the violation, if any, attract monetary penalty under Section 15A(b) and Section 15HB of the SEBI Act?
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees 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 and ASL's Code of Conduct as below:

PIT Regulations, 2015

Continual Disclosures.

7 (2) (a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

6(2). The disclosures to be made by any person under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall

be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

ASL's Code of Conduct

Clause 6.1 (iii) - When the trading window is closed the specified persons shall not trade in the Company's securities in such period.

Clause 7.1 (iv) - All specified Persons who buy or sell any number of shares of the Company shall not enter into an opposite transactions i.e. sell or buy any number of shares during the next six months following the prior transactions

11. I find that the Noticees have admitted their violations and have only relied on the fact that ASL had provided a detailed report of the Insider Trading Compliance Committee to the exchanges on September 14, 2018. However, the Noticee No. 1 failed to make the disclosures showing his and Noticee No. 2's transactions. The fact that ASL disclosed formation of the committee or its report will not discharge the Noticee No. 1 from obligation to make disclosures under Reg. 7(2)(b). I have also perused the disclosure made on September 14, 2018 regarding outcome of Insider Trading Compliance Committee which was made by ASL to the exchanges. It can be seen from the said communication that the committee found Noticee No. 1 guilty of violation and recommended imposition of penalty. However, the details of transactions of Noticee No. 1 and 2 haven't been mentioned anywhere in the said communication. Thus, even if the communication was disseminated by the Exchanges, it wouldn't have served the purpose of making the transactions of Noticee No. 1 and 2 public. Further, the Noticee No. 1 itself has accepted the fact that there was a delay in making disclosure and he has given Form C only after issuance of SCN. Thus, it can be concluded that the Noticee No. 1 has violated Reg. 7(2)(b) of PIT Regulations.

12. Since the Noticees have admitted the trading hence it is clear that the Noticees have accepted that they have entered into contra trades and trading during the closure of trading window. The Noticee No. 1 during the course of hearing has submitted that the trading happened due to mistake of his employee but has

admitted that he will have to bear the burden of the mistake. Thus, it can be concluded that the Noticees have violated Cl. 7.1(iv) of ASL's code of conduct r/w Clause 10 of the Code of Conduct specified under Regulation 9(1) of PIT Regulations and Cl. 6.1(iii) of ASL's code of conduct r/w Clause 4 of Code of Conduct, specified under Schedule B, r/w Regulation 9(1) of PIT Regulations.

13. In this context, I observe that the Hon'ble SAT has consistently held that the obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with 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."

14. I further observe that 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 view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".

15. In view of the violation of the provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of Section 15A(b) and Section 15HB of the 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for contravention where no separate penalty has been provided 15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

16. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication 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.*

17. With regard to the factors to be considered while determining the quantum of penalty, I note from the material available on record that Noticees have made ill-gotten gain from the contra trades executed by them. The ill-gotten gains made by the Noticees from contra-trades is Rs. 1,43,555/- for Noticee No. 1 and Rs. 1,93,699/- for Noticee No. 2 i.e. a total ill-gotten gain of Rs. 3,37,254/-. I also note that SEBI had directed the Company to recover this ill-gotten profit from the Noticees, which has been recovered and deposited in the Investor Protection and Education Fund. However, this disgorgement would not absolve the Noticees completely of the penal consequences of his action and accordingly, I am inclined to impose appropriate penalty which would act as a deterrent for future conduct of the Noticee. Further, for the purpose of deciding the quantum of penalty, I am inclined to consider the recovery of ill-gotten gain along with the submissions of the Noticee that he has resigned from the directorship of ASL w.e.f. March 31, 2019 leading to loss of income, his old age of around 78 years and his poor financial condition.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakhs only) on Noticee No. 1 under the provisions of Section 15A(b) and Section 15HB of the SEBI Act and ₹1,00,000/- (Rupees One Lakh only) on Noticee No. 2 under the provisions of Section 15HB of the SEBI Act.
19. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. 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 by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
20. The Noticee shall forward said Demand Draft to the Enforcement Department – Division of Regulatory Action– IV of SEBI. The Noticee shall provide the following details while forwarding the Demand Draft:
- i. Name and PAN of the entity (Noticee)
 - ii. Name of the case / matter
 - iii. Purpose of Payment – Payment of penalty under AO proceedings
 - iv. Bank Name and Account Number
 - v. Transaction Number
21. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: October 27, 2020
Place: Mumbai

B.J. Dilip
ADJUDICATING OFFICER