

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/80 /2017)

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:

M/s Satyalaxmi Vinimay Pvt. Ltd.

PAN: AATCS8589E

6/A, Rabindra Sarani,
Ground Floor, Kolkata-700001

In the matter of

M/s Svaraj Trading & Agencies Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of Svaraj Trading & Agencies Limited (hereinafter referred to as "**Company/STAL**") during the period March 01, 2015 to September 30, 2015 (hereinafter referred to as "**examination period**"), observed that M/s **Satyalaxmi Vinimay Pvt. Ltd.** (hereinafter referred to as "**Noticee**"), had failed to make the disclosures pertaining to its acquisition of shares of STAL during the examination period. It was observed that the Noticee had failed to comply with the disclosure requirements specified under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**').

2. The company was incorporated in the year 1980. The main business of the company is trading and investment in securities. STAL is listed on Bombay Stock Exchange (hereinafter referred to as “**BSE**”). The total paid up capital of STAL, during the examination period, was Rs. 14,75,00,000 (represented by 1,47,50,000 shares of face value of Rs. 10/- each).
3. It was observed during the course of examination by SEBI that the Noticee was holding 6,13,891 shares of STAL as on September 10, 2015, which represented 4.16% of the total share capital of the company. Noticee had acquired 1,67,545 shares of STAL on September 11, 2015 pursuant to which its shareholding in the company increased to 5.30% as on September 11, 2015. The Noticee was appearing in the public shareholders list (shareholders holding more than 1%) as per the shareholding pattern filed by the Company to the BSE.
4. In view of the fact that Noticee’s shareholding in STAL had crossed the threshold limit of 5% of the total paid up capital of the company, the Noticee was required to make the necessary disclosures under the provisions of regulation 29(1) read with regulation 29(3) of the SAST Regulations to the Stock Exchange (i.e. BSE) and to the Company within two working days of the acquisition of shares. It is alleged that Noticee had failed to make these disclosures required under the aforementioned provisions of law. Therefore, adjudication proceedings were initiated against the Noticee in terms of section 15 A (b) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) for the alleged violation committed by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer, vide Order dated June 14, 2017 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (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 for the alleged

failure on the part of the Noticee to comply with the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. Show Cause Notice dated July 26, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under the provisions of section 15 A (b) of the SEBI Act for the aforementioned alleged contravention of the provisions of law by the Noticee. The SCN returned undelivered from the address of the Noticee with remarks “insufficient address, returned to sender”.
7. The affixture of the SCN was attempted on the last known address of the Noticee, which had failed. Subsequently, in terms of Rule 7(b) of Adjudication Rules, the SCN was served on the Noticee by way of digitally signed electronic mails to the registered email IDs of the Noticee viz. karandey018@gmail.com and incometaxfilling.ofc1@gmail.com.
8. Thereafter, in terms of the Adjudication Rules and in the interest of natural justice, an opportunity of hearing was granted to the Noticee on October 26, 2017 vide letter dated September 25, 2017, which was also served on the Noticee by way of digitally signed electronic mails sent to the registered Email IDs karandey018@gmail.com and incometaxfilling.ofc1@gmail.com. I note that the above mentioned email IDs were also registered on the website of Ministry of Corporate Affairs. I observe that Noticee has not only failed to submit its reply to the SCN but also failed to appear for the hearing on the stipulated date. In view of the above, I am compelled to proceed on the basis of material/ facts on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

9. I have carefully perused the facts and circumstances of the case and the material available on record. I find that the allegation levelled against the Noticee is that it has failed to make the necessary disclosures in respect of its acquisition of shares of STAL, as required under the relevant provision of the SAST Regulations.
10. Before moving forward, the relevant extracts of the provisions of the SAST Regulations allegedly violated by the Noticee are reproduced below:

SAST Regulations, 2011

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.

29 (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. From the material/facts on record, I observe that the following table indicates the details of the transactions undertaken by the Noticee during the examination period:

Name Acquirer	of	Date of Acquisition	Pre- acquisition holding	Shares acquired and percentage to the total share	Post- acquisition holding

			capital of the company	
Satyalexmi Vinimay Pvt. Ltd.	September 11, 2015	6,13,891 (4.16%)	1,67,545 (1.14%)	7,81,436 (5.30%)

12. From the above table, I note that as on September 10, 2015, the Noticee was holding 6,13,891 shares of STAL, which represented 4.16% of the total paid up capital of the Company. On September 11, 2015, the Noticee purchased 1,67,545 shares of STAL, which resulted in the shareholding of the Noticee in the Company (in percentage terms) increasing from 4.16% to 5.30% as on September 11, 2015.
13. I find that the disclosure requirements under the SAST Regulations are triggered when an entity's shareholding in a company crosses the threshold limit of 5% of the total paid up capital of the company. In the instant case, I find that the Noticee was holding less than 5% shares of STAL on September 10, 2015 (i.e. 6,13,891 shares representing 4.16% of the total paid up capital of the company viz. STAL). As can be observed from the details mentioned above, the Noticee purchased/acquired 1,67,545 shares of the company on September 11, 2015, which resulted in Noticee's shareholding in the company crossing the threshold limit of 5% of the total paid up capital of the Company. Therefore, the Noticee was required to make the disclosures to the Company and BSE within two working days of its acquisition of the shares, in terms of Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations. However, I find that the Noticee has failed to make these disclosures. In fact, BSE in its email dated July 5, 2016 has categorically confirmed that it had not received any disclosures from the Noticee under Regulation 29(1) of the SAST Regulations.
14. In this context, 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 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* 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. In view of the above, I observe that the Noticee has failed to make the disclosure required under Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations. Therefore, I hold that the Noticee has violated the provisions of Reg 29 (1) read with Reg 29(3) of the SAST Regulations.
16. In view of the violation of the above provisions of law by the Noticee, as 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

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 crore rupees.

17. In this regard, the provisions of Section 15 J 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.

18. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made 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 of the Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature. However, I am of the view that the obligation to make the disclosures under the SAST Regulations within the prescribed time is on the Noticee and it was incumbent on the part of the Noticee to make these disclosures. It is on record that the Noticee has failed to make these disclosures.

19. By failing to make the necessary disclosure, the Noticee has not complied with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]5 SCC 361 } – where 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 Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.....”

20. I am of the view that the details of the shareholding of the persons acquiring substantial stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the Noticee having acquired more than 5% stake in the Company, the timely disclosures of the same by the Noticee under the relevant provisions of SAST Regulations, were of significant importance from the point of view of the investors.

ORDER

21. Having considered all the facts and circumstances of the case and the material/facts on record, 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 a penalty of Rs 2,00,000 /- (Rupees Two Lakhs only) on the Noticee viz. M/s Satyalaxmi Vinimay Pvt. Ltd. (PAN No. AATCS8589E) under the provisions of Section 15A(b) of the SEBI Act for its failure to make the necessary disclosure as required under the provisions of Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

22. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made

(in the format as given in the table below) should be forwarded to The Division Chief, Enforcement Department (EFD), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

1. Case Name:	
2. Name of 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, copy of this order is sent to the Noticee viz. M/s Satyalaxmi Vinimay Pvt. Ltd. and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 27.10.2017

SURESH B MENON
ADJUDICATING OFFICER