

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/ 112 /2017]

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

In respect of:-

Mahanivesh Stock and Shares Pvt. Ltd. (PAN: AADCM7110M)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had carried out investigation in the share of Mudit Finlease Ltd. (hereinafter referred to as '**MFL / Company**') for the period from March 03, 2010 to July 03, 2012 (Investigation period) to find out the possible irregularities in the shares of MFL. The investigations *inter-alia* revealed that Mahanivesh Stock and Shares Pvt. Ltd. (hereinafter referred to as '**the Noticee**') had bought / sold shares of the MFL during the investigation period, but, failed to make the required disclosures upon such acquisition/disposal of shares in violation of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and appointed undersigned as the Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating

Officer) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules**’) vide order dated January 29, 2016, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of regulation 13 (1), 13(3) read with 13(5) of PIT Regulations and regulation 29 (1), 29(2) read with 29(3) of SAST Regulations, alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice dated May 24, 2016 reference No. E&AO/RA/JP/14897/2016 (hereinafter referred to as “**SCN**”) was served upon the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under section 15A (b) of the SEBI Act, for the alleged violation of provisions of regulation 13 (1), 13(3) read with 13(5) of PIT Regulations and regulation 29 (1), 29(2) read with 29(3) of SAST Regulations. The allegation levelled against the Noticee are as under.
4. Investigations *inter - alia* revealed certain irregularities / violations committed by some of the entities including the Noticee. The shareholding pattern in the scrip of MFL for the investigation period has been revealed as under;

Particular	QE Dec-09 to Dec-11		QE Mar-12 to Jun-12		QE Sep-12	
	No. of shares	%	No. of shares	%	No. of shares	%
Promoter Holding	30,72,400	60.35	28,74,900	56.47	29,64,795	58.24
Non Promoter Holding	20,18,500	39.65	22,16,000	43.53	21,26,105	41.76
Total no. of shares	50,90,900	100.00	50,90,900	100.00	50,90,900	100.00

5. It was revealed that the Noticee was not holding shares of the MFL as on March 03, 2010. The Noticee bought / sold shares and the change in shareholding of the Noticee (through market as well as off-market transactions) during the investigation period in the scrip of MFL is tabulated as under:-

Date	Market		Off Market		Net	Cumulative	Actual (%)	Violations
	Buy	Sell	Credit	Debit				
27-Mar-12	1,55,400	0	0	0	1,55,400	1,55,400	3.05	N.A.
09-Apr-12	0	0	0	1,55,400	-1,55,400	0	0.00	
19-Apr-12	0	0	1,50,000	1,50,000	0	0	0.00	
02-May-12	80,000	0	0	0	80,000	80,000	1.57	
03-May-12	85,000	0	0	0	85,000	1,65,000	3.24	
04-May-12	1,30,000	0	0	0	1,30,000	2,95,000	5.79	No disclosure made to company under 13(1) of PIT Regulations. No disclosure made to the company and stock exchange under 29(1) of SAST Regulations.
07-May-12	0	0	0	80,000	-80,000	2,15,000	4.22	
14-May-12	0	0	0	2,15,000	-2,15,000	0	0.00	No disclosure made to company under 13(3) of SEBI (PIT) Reg., 1992. No disclosure made to the company and stock exchange under 29(2) of SEBI (SAST) Reg., 2011.

6. It was revealed that on May 04, 2012, shareholding of the Noticee crossed 5% (i.e. 5.79%) as per calculation from the unchanged shareholding pattern of MFL in quarters as shown in table above, but, the Noticee had allegedly failed to make disclosure to the Company / MFL and the Stock Exchange as required in regulation 29(1) of the SAST Regulations upon acquisition of more than 5% shares of the Company. It was also revealed that on May 14, 2012, shareholding of the Noticee has been changed by more than 2%, but, it had allegedly failed to make the required disclosures to MFL/Company and to the Stock Exchange in terms of regulation 29(2) of the SAST Regulations.

7. Further, it was revealed that upon such crossing of 5% (i.e. 5.79%) shares on May 04, 2012 and further change of its shareholding in the Company of 2% or more on May 14, 2012, the Noticee was also required under regulation 13(1) and 13(3) read with 13(5) of PIT Regulations, to make disclosures to the Company, however, it had allegedly failed to make such disclosures. Trading details done by the Noticee was enclosed as Annexure II along with SCN.
8. In view of the above non disclosures, it was alleged that the Noticee had violated regulation 29(1), 29(2) read with 29 (3) of the SAST Regulations and regulation 13 (1) and 13 (3) read with 13 (5) of the PIT Regulations. The aforesaid provisions of PIT Regulations and SAST Regulations are produced as under;

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.

29. (2) Any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or 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.

PIT Regulations

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.

13 (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.

13 (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.

9. In respect to the SCN, the Noticee had submitted reply dated June 10, 2016. At para 10 of the SCN, the Noticee was asked to indicate whether it desire personal hearing in the matter, however, under said reply, the Noticee did not express his willingness to avail an opportunity of hearing. The submissions made by the Noticee vide aforesaid reply is produced hereunder;

- a) That the 80,000 shares of Mudit Finlease Ltd. bought by us on 02/05/2012 were sold by us on the same day on 02/05/2012 itself. However, the transfer slip sent to depository for transfer of these 80,000 shares (transfer slip No. 10393353) was rejected by the depository for signature difference. We issued a new transfer slip bearing number 10393354 and the transfer was finally processed on 07/05/2012 instead of 02/05/2012.*
- b) That due to aforesaid fact, the actual holding on May 4, 2012 was 215,000 Equity shares and not 2,95,000 shares. That the holding on May 4, 2012; is actually 4.22% (higher holding is shown only because of delay in processing of transfer of 80,000 shares).*
- c) That on May 4, 2012, shareholding of Mudit Leasing is actually only 4.22% and, hence, no disclosure was made under regulation 29(1). That since holding of Mudit Leasing Ltd. never crossed 5% (as per our record), hence, there was no need to notify for change of its shareholding in the company of 2% or more and hence, was not notified. That the violation, if any, is due to technical reason only. That the violation, if any, is unintentional and unnoticed due to abovementioned reason.*

10. During the pendency of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the

SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapter VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

11. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticee on June 14, 2017 vide notice of hearing dated May 22, 2017. The said notice of hearing was duly delivered to the Noticee through digitally signed e-mail on May 23, 2017 at the email Id: msspvtltd@hotmail.com (as available under website of Ministry of Corporate Affairs) as well as duly delivered through Speed Post Acknowledgement Due (SPAD). Vide said notice of hearing, the Noticee was asked to submit additional submissions, if any on or before June 05, 2017. It was clearly stated in the said notice of hearing that if the Noticee fails to appear or fails to file additional reply in the matter, then, the matter would be further proceeded with on the basis of the evidence available on record in terms of sub-rule (7) of rule (4) of Adjudication Rules. However, the Noticee had neither made additional submission nor appeared for hearing on June 14, 2017.

12. Therefore, after taking into account the allegations, reply of the Noticee dated June 10, 2016 and evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues that arise for consideration in the present case / SCN are :

- a) Whether the Noticee had failed to make the required disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN.
- b) Whether the failure, if any, on the part of the Noticee, would attract monetary penalty under section 15 A (b) of the SEBI Act.
- c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

ISSUE NO. 1

Whether the Noticee had failed to make the required disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN.

14. It was alleged that shareholding of the Noticee crossed 5% (i.e. 5.79%) on May 04, 2012, but, it did not make the disclosure to the Company / MFL and the Stock Exchange as required in regulation 29(1) read with regulation 29 (3) of the SAST Regulations and failed to make the disclosures to Target Company in term of regulation 13 (1) of the PIT Regulations, for holding more than 5% shares of the Company. It was also alleged that on May 14, 2012, the shareholding of the Noticee has been changed by more than 2%, but, it had failed to make the required disclosures to MFL/Company and to the Stock Exchange in terms of regulation 29(2) read with regulation 29 (3) of the SAST Regulations and in terms of 13 (3) read with 13 (5) of the PIT Regulations.
15. In respect to the allegations, the Noticee contended that 80,000 shares of MFL bought by it on 02/05/2012 were sold on the same day, however, the transfer slip No. 10393353 sent to depository was rejected for signature difference. Thereafter, it had issued new transfer slip bearing number 10393354 and the transfer was finally processed on 07/05/2012 instead of 02/05/2012. Due to aforesaid, the actual holding on May 4, 2012 was 215,000 (4.22%) equity shares and not 2,95,000 shares and hence, no disclosure was required / made under regulation 29(1) of SAST Regulation and regulation 13 (1) of PIT Regulations.

The Noticee submitted that since holding of MFL never crossed 5% (as per its record), hence, there was no need to notify for change of its shareholding in the company of 2% or more; and therefore, the same was not notified. The Noticee had submitted that the violation, if any, is due to technical reason only and is unintentional / unnoticed due to abovementioned reason.

16. I do not agree with mere submission of the Noticee without any supporting evidence. It is noted from the records / Annexure II of the SCN that on May 02, 2012, the Noticee had acquired 80,000 shares (1.57%) of the MFL and on May 03, 2012, it had acquired another 80,000 shares totaling its shareholding by 3.24%. On May 04, 2012, the Noticee had again acquired 1,30,000 shares and thereby its total shareholding went upto 2,95,000 shares (5.79%). It is matter of record that all the aforesaid acquisition on 2nd, 3rd and 4th May 2012 took place on market and not on off market. In absence of any evidence, I do not accept the plea of the Noticee that on May 02, 2012, it had sold same 80,000 shares. Further, had it sold those 80,000 shares on the same day (2nd May), then the same should have been reflected in the records somewhere which has not been so brought out. Also, no proof has been provided by the Noticee regarding transfer slip as contended. Therefore, the plea of the Noticee that its shareholding was 2,15,000 (4.22%) on May 04, 2012, is not accepted.

17. It is noted from the record that on May 07, 2012, the Noticee had sold / disposed of 80,000 shares in off market whereby its shareholding came to 4.22% in the MFL. It is also noticed that on May 14, 2012, the Noticee had again sold 2,15,000 shares in off market and its shareholding became zero. Upon disposing of such shares on May 14, 2012, there was a change of more than 2% shareholding of the Noticee from last disclosures (when it acquired 5.79 % share and was supposed to make disclosure). In view of aforesaid, I cannot accept the plea of the Noticee that its shareholding did not cross 5% in MFL, hence, it was not required to make disclosures about subsequent change of more than 2% of shareholding.

18. In view of the aforesaid, I am of the opinion that upon acquisition of shares / voting rights by the Noticee on May 2nd, 3rd and 4th (triggered date) of 2012, it had acquired 5.79% of shareholding in the MFL. Accordingly, upon such acquisition of more than 5% shares/voting rights, the Noticee was required to make disclosure within a period of two days in terms of regulation 29(1) read with 29(3) of the SAST Regulations and in terms of regulation 13(1) of PIT Regulations, which in fact, it had failed to do so at all.
19. Also, from the aforesaid records / examination, it is very much clear that on May 14, 2012, the Noticee had sold 2,15,000 shares whereby its shareholding became zero. Since, it is established that there was a change of more than 2% in shareholding, therefore, upon such change, the Noticee was required to make the disclosures within two working days to the target company / MFL and to the Stock Exchange in terms of regulation 13(3) read with 13(5) of PIT Regulations and in terms of regulation 29(2) read with 29(3) of SAST Regulations, which in fact, it had failed to do so at all.
20. The plea of the Noticee that the violation, if any, is due to technical reason only or is unintentional / unnoticed, cannot be accepted in the given case. Here, it is relevant to mention the judgment of the Hon'ble SAT in case of Millan Mahendra Securities Pvt. Ltd. vs. SEBI (Appeal No. 66/2003 decided on November 15, 2006) wherein it was observed that *the purpose of the SAST Regulation is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market, and therefore, it cannot be subscribed to the view that the violations are technical in nature.*
21. In view of the aforesaid observation/examination, it is established that the Noticee had violated the regulation 29(1), 29 (2) read with 29(3) of the SAST Regulations and regulation 13(1), 13(3) read with 13(5) of the PIT Regulations.

ISSUE NO. 2 & 3 - Whether the failure, if any, on the part of the Noticee, would attract monetary penalty under section 15 A (b) of the SEBI Act, and if yes, then, what would be the monetary penalty that can be imposed

upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

22. Keeping in view the aforesaid observations, I am of the view that no disclosures were made by the Noticee despite huge delay. Thus, the aforesaid violations committed by the Noticee makes it liable for penalty under Section 15A (b) of the SEBI Act which read as follows:

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;

23. While determining the quantum of penalty under sections 15A (b), it is important to consider the corollary factors stipulated in section 15J of SEBI Act read with rule 5 (2) of the Adjudication Rules, which reads as under:-

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

While adjudging 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.”

24. Available records neither revealed disproportionate gains or unfair advantage made by the Noticee or the loss suffered by the investors due to such non disclosures, nor the default has been shown as repetitive in nature. However, it cannot be ignored that the main objective of the SAST Regulations / PIT Regulations, is to afford fair treatment to the shareholders who are affected by the change in control. The said Regulations seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper

functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. Therefore, taking into account the facts and circumstance of the case and purpose of the SAST Regulations and PIT Regulations, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

25. After taking into consideration all the aforesaid facts / circumstances of the case and taking into account that the requirement of aforesaid disclosures under PIT Regulations and SAST Regulations are corollary in nature, therefore, in exercise of the powers conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose a penalty ₹ 6,00,000/- (Rupees Six Lakh only) for the violation of regulation 13 (1) of the PIT Regulations and regulation 29 (1) read with 29 (3) of the SAST Regulations; and ₹ 4,00,000/- (Rupees Four Lakh only) for violation of regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29 (3) of the SAST Regulations, upon the Noticee under section 15 A (b) of the SEBI Act.

26. I am of the view that the said penalty would commensurate with the violations committed by the Noticee.

27. 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 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

28. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department 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

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in ₹)	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

29. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: July 12, 2017

Place: Mumbai

(RACHNA ANAND)
GENERAL MANAGER &
ADJUDICATING OFFICER