

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 03/2010]

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

Advik Laboratories Ltd.

(PAN. AAACA8545R)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of M/s Advik Laboratories Limited (hereinafter referred to as “**ALL**”) during the period from September 2003 to January 2004 (hereinafter referred to as “**investigation period**”). The shares of ALL opened at Rs.19.91 on September 29, 2003, touched a high of Rs. 31.70 on December 30, 2003 in 67 trading days and closed at Rs.29.30 on January 5, 2004. The trading volume registered sharp rise from a daily average of about 400 shares before the investigation period to 8,50,000 shares during the investigation period at the Bombay Stock Exchange (hereinafter referred to as “**BSE**”). SEBI scrutinized the role of the brokers and their clients who had traded in the scrip of ALL during the investigation period.

2. Pursuant to the investigation, it was observed that the promoters of ALL sold huge amount of shares During the quarter ended December 31, 2003. As per the Company, the promoters had made necessary disclosures under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST**”). It was observed that ALL had failed to make necessary disclosure under regulations 13(6) of PIT and 7(3) of SAST with regard to the aforesaid sale of shares by the promoters to BSE.
3. Consequently, it was alleged that the ALL was liable for penalty under sections 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

4. Mr. Piyoosh Gupta was appointed as Adjudicating Officer vide order dated September 11, 2007 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 into and adjudge the alleged violations of PIT and SAST committed by ALL.
5. Consequent upon the transfer of Mr. Piyoosh Gupta, the undersigned was appointed as the Adjudicating Officer vide order dated November 19, 2007.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-5/VSS/JR/116745/2008 dated February 12, 2008 (hereinafter referred to as “**SCN**”) was issued to

ALL (hereinafter referred to as “**Noticee**”) under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under section 15A (b) of SEBI Act for the alleged violations specified in the said SCN.

7. The Noticee vide letter dated February 25, 2008 replied to the SCN stating, inter alia, the following:

“It is herein submitted that the similar notice was earlier received by us in the name of the Company and Myself (again in the capacity of Managing Director) from the Investigation Department of SEBI issued by Ms. Barnali Mukherjee. That the notices so issued by both the departments are on the similar set of facts and alleges the similar violations.”

“Thus, on receipt of the aforesaid similar notices from two different departments of your office I am surprised and confused that whether the notices from the Adjudicating Office was in substitution of the notices by Investigation department or whether the parallel proceedings are being conducted on the same facts resulting in duplicacy of proceedings for your good office as well as for us.”

8. Letter dated March 13, 2008 was sent to the Noticee clarifying that the act of passing of direction by SEBI under section 11, 11B and 11(4) of SEBI Act and the act of imposing penalty by adjudicating officer under Chapter VI A of SEBI Act are concomitant and the exercise of one does not preclude the exercise of the other. It was also pointed out that SEBI had initiated proceedings under sections 11, 11B and 11(4) of the SEBI Act, 1992 for the alleged violation of regulations 3(a), (b), (c) and (d), 4(1), 4(2) (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003, regulation 7(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992. Whereas the proceedings initiated by the undersigned is under section 15I of the SEBI Act, 1992 for the alleged violation of regulation 7(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations,

1997 and regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 which is a part of Chapter VI of the same Act.

9. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of personal hearing on July 31, 2008 vide hearing notice dated July 02, 2008. Vide letter dated July 28, 2008, the Noticee submitted a copy of the letter dated April 19, 2007 sent to SEBI stating, inter alia, the following:

“We would like to submit that the promoters of the Company have duly informed the Company of the change in their shareholding as per SEBI (Prohibition of Insider Trading) Regulations 1992 and SEBI (Substantial Acquisition of Shares and Takeover) Regulations 1997. In this regard it is also pertinent to appraise you to the fact that due to water logging pursuant to torrential rains in Delhi during the year 2005, all the related documents stored in the basement of the residence of the promoters were destroyed.”

10. Mr. V. K. Jain and Ms. Deepika Vijay, Authorized Representatives of the Noticee, (hereinafter referred to as “AR”) appeared on the scheduled date. During the hearing, the AR did not make any further submissions in this regard.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the present case are :
- a) Whether the Noticee had violated regulation 13(6) of PIT and 7(3) of SAST?
 - b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15A (b) of SEBI Act?
 - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

12. Before moving forward, it is pertinent to refer to the provisions of regulation 13(6) of PIT and 7(3) of SAST which reads as under:

13. Disclosure by company to stock exchanges.

(6) Every listed company, within five days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub regulations (1), (2), (3) and (4) [in the respective formats specified in Schedule III.

7. Acquisition of 5 per cent and more shares or voting rights of a company

(3) Every company, whose shares are acquired in a manner referred to in sub-regulations (1) and (1A), shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations (1) and (1A).

13. From the material available on record, I find the following:
- a) The promoters and other entities related to the promoters (collectively referred to as 'promoter group') have reduced their shareholding by selling the shares during the quarter ended December 2003.
 - b) The share holding pattern of the promoter group for the three quarters, viz. June, 2003, September 2003 and December 2003, along with change in the shareholding of the entities as under: -

Sr no	Name	Shareholding			Reduction in holdings during the quarter ended 31/12/2003
		As on 30/06/2003	As on 30/09/2003	As on 31/12/2003	
1	Vivek Jain	1867600	1867600	131165	1736435
2	Varinder Kumar Jain	998500	998500	998500	0
3	Kumud Jain	963100	963100	63100	900000

4	Aditya Jain	900000	888200	0	888200
5	Advik Finance & Properties Ltd	960741	960741	450741	510000
6	Divya Jain	606000	606000	317887	288113
7	Shivani Jain	439700	439700	70346	369354
8	Shakuntala Jain	400000	400000	0	400000
9	Rajkumar Jain	400000	400000	0	400000
10	V K Jain (HUF)	400000	400000	400000	0
	Total	7935641	7923841	2431739	5492102
Total shareholdings		9353400	9353400	9353400	9353400
% to total shareholdings		84.84%	84.72%	26.00%	58.72%

c) It is observed from the aforesaid table that the promoter group has sold 58.72% of shares during the quarter – September-December 2003.

d) As per the information given by the company, the promoter have duly informed the company of the aforesaid change in their shareholding as per SAST and PIT.

e) However, the company had failed to inform the stock exchange/s about the change in the shareholding.

14. Thus, the allegation of violation of the provisions of regulation 13(6) of PIT and 7(3) of SAST as mentioned in the SCN dated February 12, 2008 stands established. The non-compliance with the provisions of regulation 13(6) of PIT and 7(3) of SAST attracts monetary penalty under section 15 A (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 thereunder,-

(a)

(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 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

15. 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..."*.
16. While determining the quantum of penalty under section 15A (b), it is important to consider the factors stipulated in section 15J of SEBI Act, 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."*
17. The Hon'ble SAT, in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, has also observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature"*.
18. 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 is not quantifiable.

Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the persons having substantial stake, promoter-group and persons in control over the Company and timely disclosure thereof, were of some importance from the point of view of investors as that would have prompted them to buy or sell shares of the Company. The disclosure made u/r 13(6) of PIT and 7(3) of SAST by a Company is made public only through Stock Exchange. Therefore, it is mandatory for the Company to give the required information under the aforesaid regulation to the Stock Exchange, so that the said information becomes known to all the investors at large. The object of the PIT and SAST mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors. I have already held vide Order No.02/2010 of even date that the promoters of the Noticee carried out synchronized transactions and created artificial market in the trading in the shares of ALL and consequently, offloaded 49,82,335 shares constituting 53.27% of the share capital of the company.

ORDER

19. After taking into consideration all the facts and circumstances of the case and on a judicious exercise of the powers conferred upon me, I hereby impose a monetary penalty of Rs.10,00,000/- (Rupees ten lakh only) on the Noticee which will be commensurate with the violation committed by it.
20. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Dr. (Ms.) Pradnya Saravade, Officer on Special Duty, Investigations Department – ID1, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
21. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: March 30, 2010
Place: Mumbai

V.S.SUNDARESAN
ADJUDICATING OFFICER