

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/PP/2020-21/8471/49]

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
Ethan Constructions Pvt. Ltd.
(Address: D-1, Plot no. 854 Charkop
Hari Om Bhawan CHS Ltd.,
R.S.C-12 No. 41 Sector 8, Charkop
Kandivali (West), Mumbai-400067)
(PAN: AACCE2711P)
In the matter of Kaviti Industries Limited

BACKGROUND OF THE CASE IN BRIEF

1. A Department (in short '**OD**') of Securities and Exchange Board of India (in short '**SEBI**') upon receipt of a letter dated January 02, 2018 from Bombay Stock Exchange (in short '**BSE**') regarding non-disclosure of change in shareholding by Ethan Constructions Private Limited (in short '**Noticee**') under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (in short '**SAST Regulations**') in the scrip of Kaviti Industries Ltd. (in short '**KIL**'). OD conducted examination in the scrip of KIL and observed certain non-compliances with regard to SAST Regulations by the Noticee. OD initiated adjudication proceedings as regards the alleged violation of the regulation 29(2) r/w regulation 29(3) of SAST Regulations by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. OD conveyed vide communique dated January 31, 2020 appointment of Ms. Sangeeta Rathod (undersigned) as the Adjudicating Officer (**AO**) under section 19 read with (**r/w**) section 15-I of the Securities and Exchange Board of India Act, 1992 (in short '**the SEBI Act**') and rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short '**AO Rules**') to inquire into and adjudge under the provision of section 15A(b) of the SEBI Act for the alleged violation of the regulation 29(2) r/w regulation 29(3) of SAST Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show cause notice SEBI/HO/EAD/SR/PP/OW/8971/1/2020 dated March 11, 2020 (in short **SCN**) was issued to the Noticee under rule 4 of the AO Rules, 1995 to show cause as to why an inquiry should not be held against Noticee and why penalty under section 15A(b) of SEBI Act be not imposed on it for the violations alleged and specified in the said SCN.
4. Details of SCN are given as under:
 - (i) OD observed that the Noticee's shareholding in KIL was 7.06% in quarter ended on June 2016 and its shareholding had decreased to 2.19% in the quarter ended on September 2016. Shareholding pattern for quarter ended June 2016 and September 2016 is placed as Annexure B to the SCN. Hence, Noticee was required to make disclosure to KIL and to the stock

exchanges under SAST Regulations, as the change in Noticee's shareholding exceeded two per cent of its shareholding in KIL.

Noticee is alleged to have violated the provisions of regulation 29(2) r/w 29(3) of SAST Regulations. In this regard, OD observed that the BSE vide email dated January 02, 2018 informed that Noticee has not submitted the disclosure under SAST Regulations for shares it had disposed on September 12, 2016. Copy of BSE's email dated January 02, 2018 showing trade details is placed as Annexure C of the SCN. From the trading details, it is observed that opening balance of the Noticee as on July 22, 2016 was 43,80,000 and on September 12, 2016 Noticee has sold 2,02,000 shares as a result of which change in Noticee's shareholding exceeded two per cent of total shareholding in the target company. Thus the Noticee is alleged to have violated provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations.

- (ii) The relevant extracts of the above mentioned SAST Regulations are given hereunder:

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 sub-regulation; 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; &

(b) the target company at its registered office.

5. The SCN was sent to the Noticee through the speed post acknowledgment due (**SPAD**). Vide email dated June 24, 2020 Noticee was advised to submit reply to the SCN by July 06, 2020 and an opportunity of personal hearing was granted to Noticee scheduled on July 09, 2020. Vide email dated July 09, 2020 Noticee requested for 2-3 weeks' time to file reply and another date of hearing. Vide email dated July 09, 2020 Noticee was granted extension to file reply to the SCN by July 27, 2020 and an opportunity of hearing was granted on July 29, 2020. Vide email dated July 28, 2020, Noticee filed its reply to the SCN. Summary of the reply is mentioned in the below para.
6. Authorised Representatives (**ARs**) attended the said hearing scheduled on July 29, 2020 and reiterated the submissions made in the Noticee's reply dated July 28, 2020. During the course of hearing, ARs also submitted that Noticee would be filing additional submissions by end of the same day. Additional submissions were made vide email dated July 29, 2020. Submissions dated July 28, 2020 and July 29, 2020 are summarized hereunder-
 - (i) *The Noticee denies all allegations made against it in the SCN. There has been no contravention of any of the provisions set out in the SCN.*
 - (ii) *The Noticee in its capacity as an investor, as on quarter ended June 2016 was holding 43,80,00 fully paid equity shares of the Kavit Industries Ltd. (KIL) i.e. 7.07 per cent of the total equity capital of KIL. On 30th September 2016 the shareholding of the Noticee came down to 13,54,748 i.e. 2.19 per cent of the total equity capital of KIL.*
 - (iii) *According to SEBI the trigger for disclosure under SAST Regulations for the Noticee's sale executed on 12th September 2016. While the Noticee was selling, the Noticee took advise from company secretary who asked them to make a disclosure as its selling had triggered Regulation 29(2) of the SAST*

Regulations. Accordingly, the Noticee had made a disclosure on 31st October 2016.

- (iv) Subsequently, after 2 years from the date of the said disclosure BSE vide its letter dated 02nd January 2018 informed the Noticee that it had not made the relevant disclosure for sale of its holdings in KIL on 12th September 2016. There has been a great delay of about 2 years on part of BSE to issue the said letter of noncompliance to the Noticee. Moreover, no reference has been made by BSE to the disclosure dated 31st October 2016 for reasons best known to the BSE.*
- (v) Further, the Noticee states that the captioned SCN was issued on 11th March 2020 i.e. 4 years after the disclosure was made by the Noticee. The SCN ought to be withdrawn on the preliminary ground of delay.*
- (vi) The gross delay was entirely attributable to SEBI and the Noticee had no role to play in the same. It is relevant to note that much water has flown since the transaction i.e. in 2016. Imposing a monetary penalty at such belated stage serves no purpose. In fact, the Noticee will be prejudiced, especially since the Noticees are not in a position to defend themselves adequately.*

In this regard, Noticee cites the case laws of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim, HB Stockholdings Limited vs. SEBI, Sanjay Soni v. SEBI, Ashok Shivrul Rupani & Anr. versus SEBI, Mr. Rakesh Kathotia & ors vs. SEBI, Libord Finance Ltd. v. Whole Time Member, SEBI.

- (vii) With reference to paragraph 1 to 3 of the SCN, the Noticee submits that SEBI and BSE have both ignored the disclosure dated 31st October 2016. Moreover, SEBI has also ignored the fact that the sale of the Noticee's holdings in KIL were over a period time i.e. from 25th August 2016 to 30th September 2016 and the triggering of the relevant provisions of SAST Regulations was in due course of the instructions of sale given to the trading member of the Noticee.*
- (viii) With reference to paragraph 4 of the SCN, the Noticee states that the sale of Noticee's holdings in KIL took place prior to the 12th September 2016 as well as post the said date. Therefore, taking a consolidated view a disclosure was made in due course vide letter dated 31st October 2020.*
- (ix) With reference to paragraph 5 to 6 of the SCN, the Noticee states that SEBI is proceeding against the Noticee on a mere technicality without specifying the impact of the alleged non-compliance. SEBI has passed the SCN in complete ignorance of the fact that there was a disclosure w.r.t. the Noticee's sale of holdings in KIL in the public domain for the past 4 years.*
- (x) With reference to paragraph 7 and 8, the Noticee reiterates that subjecting the Noticee to an ordeal for a technical violations without considering its*

bonafide's, especially in such difficult times is inhumane and any monetary penalty imposed in the present circumstances will mar any survival prospects of the company in the midst of the COVID-19 pandemic. The Noticee has neither derived any benefit nor any advantage from the alleged contravention in the SCN. It is respectfully submitted that the alleged violation has not resulted in any harm or loss caused to the securities market. The Noticee has not made any gains or avoided loss, the SCN does not allege any loss suffered by anyone, and there is no question of any repetitive nature of any default.

7. After taking into account, the allegations levelled in the SCN, replies received and material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee in the SCN and the material available on record. In the instant matter, the following issues arise for consideration and determination:-

Issue a: Whether the Noticee has violated the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations?

Issue b: If yes to issue a then, do the violations by Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation by the Noticee?

Issue c: If yes to issue b then, what is the quantum of monetary penalty to be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act r/w rule 5(2) of the AO Rules, 1995?

9. Before proceeding further, I would like to refer to the relevant provisions:-

SAST Regulations

Disclosure of acquisition and disposal

29(1)

(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 sub-regulation; 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; &
(b) the target company at its registered office.*

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under.

Issue a: Whether the Noticee has violated the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations?

a) Owing to the contention of the Noticee regarding delay in issuance of SCN, I note that the appointment of undersigned as AO was conveyed vide communique dated January 31, 2020. Thereafter, SCN was issued on March 11, 2020.

b) It is alleged in the SCN that the Noticee's shareholding in KIL was 7.06% in quarter ended on June 2016 and its shareholding had decreased to 2.19% in the quarter ended on September 2016. Pursuant to this transaction, shareholding of the Noticee decreased more than 2% shares, thereby the change in shareholding of Noticee exceeded over two (2) percent of the share

capital of KIL. In this regard, I note from regulation 29(2) r/w regulation 29(3) of SAST Regulations that the Noticee was required to make relevant disclosures to company and to BSE within two working days of such change exceeding two per cent of total shareholding or voting rights in KIL. Hence, Noticee was required to make disclosure to KIL and to the stock exchanges under SAST Regulations, as the change in Noticee's shareholding exceeded two per cent of its shareholding in KIL. Thus, Noticee is alleged to have violated the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations.

c) Noticee has failed to produce any documentary evidence to prove otherwise.

It is an admitted position that Noticee has not made the disclosures of the shares disposed on September 12, 2016 within the time prescribed in the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations. Noticee has submitted that it has made disclosures after the stipulated time period, but did so under expert advice, and Noticee has contended ignorance of law. The contention of ignorance of the provisions of law cannot be ascribed as an excuse by the Noticee to escape from the penalty for the breach of the law committed by the Noticee. Owing to various contentions of the Noticee, with regards to (i) non-disclosure of disposal of shares within the time specified under regulation 29(3) of SAST Regulations as technical violation (ii) Noticee has contended that it has not made any disproportionate gain and no loss is caused to the investors (iii) Noticee has also contended that the violation is not repetitive. In this regard, I refer to the following judgments of Hon'ble Securities Appellate Tribunal (in short '**Tribunal**') –

- i) Tribunal in its order dated July 23, 2019 in the matter of Mr. Annand Sarnaaik and Ms. Divvyani Sarnaaik, Appeal no. 36 of 2018, held that *“...5. Before this Tribunal, an attempt was made to justify the disclosures made belatedly on the strength that the appellants were unaware of the sale of its shares made by the lenders and that the delay if any, was thus, liable to be condoned. It was also alleged that the violation, if any, was merely technical in nature and no fraud or mischief or loss was caused to any investors.... 6. Having heard the learned counsel for the parties and having pondered over the matter, we find that on the facts narrated aforesaid the appellants were duty bound to make the necessary disclosures within the stipulated period under the PIT and SAST regulations. Non-disclosures within the stipulated period violated the provisions of the aforesaid regulations and, consequently, the penalty became leviable”*.
- ii) Tribunal in its order dated June 27, 2018 in the matter of Mr. Shashwat Agarwal vs. SEBI, Appeal No. 92 of 2018, held that *“....the fact that NSDL has confirmed that share transfer from the client Id did take place on September 26, 2014 and the consideration value was Rs. 1.78 crore, the promoter holding of 6.85% which was transferred was liable to be disclosed to the stock exchange both under the PIT Regulations 1992 and under SAST Regulations 2011. In the instant case it is an admitted fact that it was disclosed only on October 13, 2014 and as such a normal reading of the relevant regulations itself makes it clear that the appellant has violated the provisions of PIT Regulations 1992 and SAST*

Regulations 2011 by delaying the disclosures.Accordingly, finding in the impugned order that there was delay of 6 days in disclosing the said transfer of shares by the appellant cannot be disputed.”

- iii) Tribunal in its order dated 23 November, 2017 in the matter of Smt. Veena Rajesh Shah vs Sebi, Appeal no. 300 of 2017, held that “....Argument of the appellant that the profits made by the appellant from the transactions in question being negligible, the AO ought to have taken a lenient view is without any merit, because, penalty under Section 15A(b) of SEBI Act is not dependent on the quantum of profits made from the violations.”

Issue b: If yes to issue a then, do the violation on the part of the Noticee attract any monetary penalty under section 15A(b) of SEBI Act for the alleged violations by the Noticee?

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure on the part of the Noticee to make disclosure of the shares it has disposed within the time prescribed in the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations attracts the imposition of monetary penalty under section 15A(b) of the SEBI Act, respectively which is reproduced below:

SEBI Act

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;

Issue c - If yes to issue b then what would be the quantum of monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act r/w rule 5(2) of the AO Rules, 1995?

- a) While determining the quantum of penalty under section 15J of SEBI Act it is important to consider the factors stipulated in the said sections which reads as under:-

While adjudging 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.”*

- b) I observe, that the material available on record, does not mention disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee has violated the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations regarding making the said disclosures within the time specified.
- c) Therefore taking into consideration the facts/circumstance of the case, I am of the view that the Noticee is liable for a monetary penalty of Rs. 1,00,000/- (Rupees One Lakh only) for its failure to comply with the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations.

ORDER

11. In exercise of the powers conferred under section 15-I of SEBI Act rule 5 of the AO Rules 1995, I hereby impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) under section 15A(b) of SEBI Act. I am of the view that the said penalty is commensurate with the default committed by the Noticee.
12. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
- a) By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - b) By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai
13. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in
- a) Case Name
 - b) Name of the 'Payer/Noticee'
 - c) Date of Payment
 - d) Amount Paid
 - e) Transaction No.
 - f) Bank Details in which payment is made
 - g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)
14. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of

the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

15. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of rule 6 of AO Rules, 1995.

Date: July 31, 2020

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER