

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.ORDER/BS/DP/2017-18/1301 &1303]**

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**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**

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**In respect of:**

<b>Sr. No.</b>	<b>Name of the Entity</b>	<b>PAN</b>	<b>Order No.</b>
<b>1.</b>	<b>Suraj Impex Private Limited</b>	<b>AACCS9971R</b>	<b>Order/BS/DP/2017-18/1301</b>
<b>2.</b>	<b>Suraj Enterprises Private Limited</b>	<b>AALCS2331N</b>	<b>Order/BS/DP/2017-18/1303</b>

*In the matter of Suraj Ltd.*

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation into the trading in the scrip of Suraj Ltd. (hereinafter referred to as Suraj) for the period April 01, 2011 to October 31, 2011 (hereinafter referred to as the Investigation Period) and into the possible violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as SAST Regulations, 1997), SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred to as SAST Regulations, 2011) and SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT

Regulations) by Suraj Impex Private Limited and Suraj Enterprises Private Limited (hereinafter referred to as Noticees).

2. It was alleged that the Noticees did not make disclosures to the Bombay Stock Exchange, (BSE) where the shares of the company are listed.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri S, V. Krishnamohan was appointed as Adjudication Officer vide order dated September 02, 2016 to inquire and adjudge under Section 15 A(b) of the SEBI Act and Section 23A(a) of the SCRA, the alleged violation of Regulation 13(4A) of PIT Regulations and Regulation 29(1),(2) and (3) of SAST Regulations 2011 by Suraj Impex Pvt. Ltd. and Regulation 13(4A) of PIT Regulations, Regulation 7(1) read with 7(2) of SAST Regulations, 1997 and Regulation 29(1),(2) and (3) of SAST Regulations 2011 by Suraj Enterprises Pvt. Ltd.
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S. V. Krishnamohan.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A Show Cause Notice dated February 26, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15-I of SEBI Act, 1992.
6. Vide hearing notice dated October 17, 2017, Noticees were granted opportunity of being heard on November 08, 2017. The Authorised Representatives (ARs) of the Noticees appeared for the hearing and undertook to explain the rationale behind the share transfers amongst the Noticees.

7. Vide letter dated November 11, 2017, Noticees submitted the rationale behind the transfer of shares. Noticees submitted that the shares were transferred to obtain loan from bank by pledging the shares to develop and expand business activity.
8. Noticees were granted another opportunity of being heard on November 23, 2017 wherein the ARs of the Noticees submitted that they had made the correct disclosures to the Stock Exchange well within time specified and also submitted a copy of proof of dispatch. The ARs further submitted that there was a human error from the Stock Exchange's side to update the disclosures.
9. The ARs also filed written submissions dated November 20, 2017 which were taken on record. Noticees enclosed the copies of courier receipts and the fax receipts with the said written submissions.

### **CONSIDERATION OF ISSUES AND FINDINGS**

10. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
  - a. Whether Suraj Impex Private Limited has violated the provisions of Regulation 13(4A) of PIT Regulations and Regulation 29(1),(2) and (3) of SAST Regulations 2011?
  - b. Whether Suraj Enterprises Private Limited has violated the provisions of Regulation 13(4A) of PIT Regulations, Regulation 7(1) read with 7(2) of SAST Regulations, 1997 and Regulation 29(1),(2) and (3) of SAST Regulations 2011?
  - c. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?
  - d. If yes, then what should be the quantum of penalty?

### **FINDINGS**

11. Before I proceed with the matter, it is pertinent to mention the relevant provisions alleged to have been violated by the Noticees which are reproduced below:

**SAST Regulations, 1997**

***“Acquisition of 5% and more shares of a company***

*7.(1) Any acquirer, who acquires shares or voting rights which(taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent. or fourteen percent. Or fifty four per cent. or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

*...*

*(3) Every company, whose shares are acquired in a manner referred to in sub-regulation(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).*

**SAST Regulations, 2011**

***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; and

(b) the target company at its registered office

### **PIT Regulations**

#### **Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure.**

“(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.”

12. The issues for examination and the findings thereon are as follows:

**Issue a:** Whether Suraj Impex Private Limited has violated the provisions of Regulation 13(4A) of PIT Regulations and Regulation 29(1), (2) and (3) of SAST Regulations 2011?

**Issue b:** Whether Suraj Enterprises Private Limited has violated the provisions of Regulation 13(4A) of PIT Regulations, Regulation 7(1) read with 7(2) of SAST Regulations, 1997 and Regulation 29(1), (2) and (3) of SAST Regulations 2011?

13. From the demat accounts of Suraj Enterprise Private Limited and Suraj Impex Private Limited, three off-market transfers observed between Suraj Enterprise Private Limited and Suraj Impex Private Limited and the details are as under:

Date	Transferor	Transferee	Quantity and Consideration
June 20, 2011	Suraj Impex Private Limited  Pre – transfer holding: 12.82% Post – transfer holding: 2.93%	Suraj Enterprise Private Limited  Pre – transfer holding: 0% Post – transfer holding: 9.89%	19,05,250 (9.89% of Share capital)
November 12, 2011	Suraj Enterprise Private Limited  Pre – transfer holding: 9.89% Post – transfer holding: 0%	Suraj Impex Private Limited  Pre – transfer holding: 2.93% Post – transfer holding: 12.82%	19,05,250 (9.89% of Share capital)
May 08, 2012	Suraj Impex Private Limited  Pre – transfer holding: 12.82% Post – transfer holding: 2.93%	Suraj Enterprise Private Limited  Pre – transfer holding: 0% Post – transfer holding: 9.89%	19,05,250 (9.89% of Share capital)

14. From the above it was alleged that the Noticees failed to make any disclosures with respect to the aforesaid transfers to the BSE, thus, violating Regulation 13(4A) of PIT Regulations and Regulation 29(1),(2) and (3) of SAST Regulations 2011 by Suraj Impex Private Limited and Regulation 13(4A) of PIT Regulations, Regulation 7(1) read with 7(2) of SAST Regulations, 1997 and Regulation 29(1),(2) and (3) of SAST Regulations 2011 by Suraj Enterprises Private Limited.
15. It is pertinent to mention order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Milan Mahindra Securities Private Limited v SEBI (Appeal No. 66 of 2003) wherein it was 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."*

16. It is observed that that the target company vide its letter dated January 16, 2012 had forwarded the disclosures/ information regarding aforesaid change in shareholding of the Noticees to BSE. Further it is also noted that the disclosures with respect to the aforesaid change in shareholding was also sent to the DSE (Delhi Stock Exchange) and BSE vide common letters dated June 15, 2011, November 11, 2011 and May 03, 2012. It is observed from the material available on record that the said disclosures were indeed delivered to DSE (proof of service available on record). However, as per BSE, it did not receive any disclosures from the Noticees.
17. However, vide Adjudication Order dated November 30, 2017 against Suraj Ltd., it was decided that the change in shareholding of the Noticees was already available in the public domain under Clause 35 of the Listing Agreement read with Section 21 of the SCRA. Needless to say that the purport of the disclosures under each of the Regulations i.e. SAST Regulations, PIT Regulations are different and hence to be separately complied with by the Noticees, however, the fact that disclosures arising out of the impugned transactions were already submitted to the Stock Exchange by Suraj Ltd. cannot be ignored.
18. In view of the facts and circumstances of the present case, though the Noticees failed to submit proof regarding submission of information to the target company and the company in turn to BSE, considering the fact that the target company forwarded the information to BSE as well as DSE vide its common letter addressed to both the Exchanges, violation by the Noticees cannot be established.
19. Therefore, taking into consideration the facts / circumstances of the case and material available on record, I am of the view that no penalty is warranted on the Noticees.

20. In view of my findings noted in the preceding paragraphs, I am of the view that the adjudication proceeding initiated against the Noticees vide SCN dated February 26, 2016 does not warrant imposition any penalty. The matter is, accordingly, disposed of.
21. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticees i.e. Suraj Impex Private Limited and Suraj Enterprises Private Limited and also to the Securities and Exchange Board of India.

**Place: Mumbai**

**DATE: 29.12.2017**

**BIJU. S**

**ADJUDICATING OFFICER**