

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO.MAA/AO/DL/6-7/2015-16

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:

SL. No.	Name of the Entity	PAN	Order No.
1	Mr. Bhushan Kumar Narula	AABPN9040L	MAA/AO/DL/6/2015-16
3	Ms. Sidhi Narula	AAEPN0229N	MAA/AO/DL/7/2015-16

In the Matter of:

**M/s Silver Smith India Ltd.
Flat No. - 620, Hemkunt Chambers,
89 Nehru Place,
New Delhi-110019**

Background

1. Based on the alerts generated by the surveillance system in the month of October 2012, it was identified **M/s Silver Smith India Ltd.** (herein after referred as '**the Company**') for further investigation. The investigation in respect of buying, selling and dealing in the shares for period from October 01, 2012 to December 31, 2012. Mr. Bhushan Kumar Narula is the promoter-director of the Company, and Ms. Sidhi Narula is the promoter of the Company (hereinafter collectively referred to as the "**Noticees**"). The Noticees had acquired shares of the Company October 01, 2012 to December 31, 2012 and have not made any disclosures with respect to the acquisitions as required under the SEBI (Substantial Acquisition of

Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') and/ or SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'), as applicable.

2. The findings of the examination led to the allegation that, Mr. Bhushan Kumar Narula (hereinafter referred to as '**Mr. B.K Narula**') Noticee No. 01 had acquired 1,82,551 shares (4.41% of the paid-up share capital) of the Company, thereby violating the provisions of Regulation 13 (3), (4), (4A) read with 13 (5) of PIT Regulations and Ms. Sidhi Narula, Noticee No. 2 had acquired 56,612 shares (1.4% of the paid-up share capital) in September 2012 quarter without making any disclosure thereby violating provisions of Regulation 29 (2) read with 29 (3) of the SAST Regulations 2011 as well as Regulation 13 (3), (4), (4A) read with 13 (5) of the PIT Regulations.
3. SEBI, therefore, initiated adjudicating proceedings under the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") to inquire into and adjudge under section 15A (b) of the SEBI Act, the aforementioned alleged violations of the provisions of Regulation 13 (3), (4), (4A) read with 13 (5) of PIT Regulations and provisions of Regulations 29 (2) read with 29 (3) of the SAST Regulations, committed by the Noticees.

Appointment of Adjudication Officer

4. Ms. Anita Kenkare was appointed as Adjudicating Officer vide order dated August 14, 2013 under section 15-I of SEBI Act read with Section 19 of the SEBI Act, under rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to inquire into and adjudge under section 15A (b) of the SEBI Act the alleged violations/non-compliance of the provisions of SEBI Act, PIT Regulations and SAST Regulations by the Noticees.

Subsequently, the case has been transferred to SEBI, Northern Regional Office, New Delhi and the undersigned has been appointed as Adjudicating Officer vide order dated December 09, 2014.

Show Cause Notice, Reply and Personal Hearing

5. A Show Cause Notice (hereinafter referred to as 'SCN') dated February 21, 2014 was issued to the Noticees under rule 4 of the Rules Adjudication Rules by the erstwhile Adjudicating Officer to show cause as to why an inquiry should not be initiated and penalty not be imposed against them under section 15A (b) of the SEBI Act for the alleged violations specified in the SCN and the same was returned undelivered.
6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, the Noticees was granted an opportunity of personal hearing before the erstwhile Adjudicating Officer on June 11, 2014 at SEBI, Mumbai vide Notice of hearing dated May 08, 2014. The said Hearing notice along with the copy of SCN issued was sent on the address of M/s Jyoti Portfolio Ltd, the broker of the company and same was duly served to the Noticees on May 14, 2015
7. In response to the aforesaid SCN and notice of hearing, Mr. B.K Narula Noticee No. 01 vide letter dated May, 23 2015, informed about Noticees mailing address along with Pan Card copy.
8. Vide letter dated June 07, 2014, the Noticees filed the reply which stated as under:
 - *"The Noticees had duly informed the Bombay Stock Exchange (BSE) about the transfer of shares from promoter to promoter during the period of October, 2012 to December 2012, so we are not at fault and we have asked them why they have not updated BSE website.*

- *Copy of the letter and intimation sent to BSE, regarding transfer of shares dated October 06, 2012 October 10, 2012 and December 08, 2012, were also submitted.*
 - *Noticees also informed that the financial health of the Company is not good and requested to shift hearing in Delhi. “*
9. However, vide email dated June 11, 2014 the Noticees were informed that the request cannot be acceded to and accordingly, the Noticees was granted another opportunity of personal hearing before the erstwhile Adjudicating Officer on July 04, 2014 at SEBI, Mumbai vide Notice of hearing dated June 18, 2014.
10. In response to the aforesaid notice of hearing, the Noticees vide letter dated July 01, 2014, requested for re-schedulement of hearing on medical grounds. However, no medical certificate/doctor's letter of advice was attached in support of their reason of medical grounds for not travelling to Mumbai. Pursuant to the same, vide letter dated July 09, 2014 they were informed that the opportunity for personal hearing granted to them is a right that they can renounce and if they wish to make any submissions in their defense, the same can be made in writing as it is not necessary to appear before the Adjudication Officer. It was also informed that they may choose to appoint a representative to appear for personal hearing on their behalf. However, no reply was received from the Noticees.
11. In the interest of natural justice, the Noticees were granted final opportunity of personal hearing before the erstwhile Adjudicating Officer on September 25 2014 at SEBI, Mumbai vide Notice of hearing dated August 28, 2014.
12. In response to the aforesaid Notice dated September 25, 2014, Mr. B. K. Narula filed the reply on behalf of all the Noticees which stated as under:
- *“The Noticees are contemplating filing an Application for settlement under Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings)*

Regulations, 2014 and same will be submitted within the period of 30 days from the date of Hearing Notice, and requested to defer the proceedings against the Noticees till the disposal of the said Application”.

13. However, no such application regarding settlement under Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (hereinafter referred to as the "**Settlement Regulations**") was received from the Noticees. Hence, the Noticees were granted another opportunity of personal hearing before the erstwhile Adjudicating Officer on November 19, 2014 at SEBI, Mumbai vide Notice of hearing dated October 20, 2014, where Noticees were also informed that on filing of consent application, the Adjudication proceedings will continue, and only the passing of the Adjudication Order will be kept in abeyance till the completion of consent proceedings.
14. In response, Mr. B K. Narula, Vide email dated November 14, 2014, informed that Application for settlement under Regulation 3 of Settlement Regulations has been posted. On seeking confirmation from the department concerned regarding such consent application, it was understood that the application filed by Noticees was returned on December 10, 2014 for rectification of some deficiencies and as per Regulations 3 (6) of the Settlement Regulations, the returned application should be sent back within fifteen days from the date of communication of rejection. However, the Application was not re-submitted by the Noticees after rectification. Accordingly, a final opportunity of personal hearing was granted on January 22, 2015 at SEBI-Mumbai vide hearing notice dated January 06, 2015. Subsequently, the same was cancelled and Noticees were informed about the cancellation vide e-mail dated January 08, 2015.
15. After appointment of the undersigned, another opportunity of personal hearing was granted to the Noticees on March 16, 2015 at SEBI- NRO, New Delhi vide Notice of hearing dated March 05, 2015.

16. Mr. B.K. Narula, on behalf of all the Noticees attended the hearing and sought time to submit specific submissions in the matter and requested for adjournment. Acceding to the request, the hearing was re-scheduled to March 24, 2015 at the Northern Regional Office of SEBI at New Delhi and Noticees were further advised to file their submissions latest by March 19, 2015.
17. In response to the allegations, vide letter dated March 19, 2015 Mr. B.K. Narula filed reply on behalf of the Noticees and made submissions, which inter alia, stated as under:

- *“It is alleged in the SCN that Noticees has violated provisions of SAST Regulations & PIT Regulations, but we dispute and deny that there is a need for any adjudication proceedings.*
- *We dispute and deny that Mr. Bhushan Kumar Narula acquired any shares of the Company. The transactions mentioned in the Table at para 3 of the SCN factually incorrect as on 10.10.2012 & 07.12.2012 the shares were brought in the name of B.K Narula HUF and not in the name of Bhushan Kumar Narula individual. The factual position is as under:*

Date	Client name	Gr. Buy Volume	Correct Name	Date of Intimation	%
10.10.2012	Bhushan Kumar Narula	1,02,950	B K Narula HUF	10.10.2012	>2%
07.12.2012	Bhushan Kumar Narula	21,551	B K Narula HUF	08.12.2012	<1%
05.10.2012	Bhushan Kumar Narula	30,000	B K Narula HUF	06.10.2012	<1%
08.10.2012	Bhushan Kumar Narula	28,050	B K Narula HUF	10.10.2012	<1%

- *It is submitted that in respect of the table mentioned herein, only the transaction dated 10.10.2012 exceeded 2% and same was duly intimated vide letter dated 10.10.2012. Moreover, every transaction in the table was intimated to BSE.*

- The transactions in the name of Ms. Sidhi Narula never exceeded 1%, table is provide herein:

Date	Client name	Gr. Buy Volume	Date of Intimation	%
05.10.2012	Sidhi Narula	30,000	06.10.2012	<1%
08.10.2012	Sidhi Narula	25,000	10.10.2012	<1%
23.11.2012	Sidhi Narula	500	19.12.2012	<1%
26.11.2012	Sidhi Narula	500	19.12.2012	<1%
27.11.2012	Sidhi Narula	100	19.12.2012	<1%
12.12.2012	Sidhi Narula	100	19.12.2012	<1%
18.12.2012	Sidhi Narula	11	19.12.2012	<1%
19.12.2012	Sidhi Narula	1	19.12.2012	<1%

- Thus the aforesaid transactions were within 1% there can be no violation to either SAST Regulations, 2011 or PIT Regulations 1992, which provides for disclosures in case acquisition of 2% and 1% shareholding respectively. Moreover, despite the acquisitions less than 1% same was duly informed to the stock exchanges within stipulated time.
- With regard to purchase of shares by Mr. Bhushan Kumar Narula as mentioned in the impugned para 5 of the SCN, it is submitted that the SCN is totally void and incorrect, as no transaction has ever been made by Mr. Bhushan Kumar Narula in his personal capacity. The factual position is as follows-

PAN ID	Name	Gr. Buy Volume	Correct Name
AAAHB4455L	Bhushan Kumar Narula	1,24,501	B.K Narula HUF
AABPN9040L	Bhushan Kumar Narula	58,050	Ridhi Narula
AAEPN0229N	Sidhi Narula	56,612	Sidhi Narula

- In entry no. 1 of the above table the PAN ID provided is of B.K Narula HUF, however the name mentioned is of Mr. Bhushan Kumar Narula. In entry no. 2 the said shares were transacted by Ms. Ridhi Narula not by Mr. Bhushan Kumar Narula, even the PAN Id provided is of Ms. Ridhi Narula and not of Mr. Bhushan Kumar Narula.
- In Para 6 of the SCN, Mr. Bhushan Kumar Narula holding is 17.04% which alleged to have been increased by acquisition of 4.41 % shares to 21.25% shares which is incorrect. It is submitted that Mr. Bhushan Kumar Narula has neither acquired nor sold his shares in his name since 1996 and even his holding is 17.04% which has never changed.

18. Mr. B.K. Narula was present during the personal hearing on March 24, 2015 along with Mr. Sangram Pattnaik, Authorized Representative (AR) of the Noticees. The Authorized Representative reiterated the submissions made by the Noticees vide letter dated March 19, 2015 and further undertook to submit certain documents as directed during the hearing.
19. The Noticees were granted another opportunity of personal hearing before the Adjudicating Officer on October 28, 2015 at SEBI, NRO vide Notice of hearing dated September 22, 2015 and they were advised to submit De-mat account statement along with shareholding pattern of the Company for the period of October 2012 to December 2012
20. Mr. B.K Narula, Noticee No. 1 attended the scheduled hearing and submitted necessary documents as required vide notice of hearing dated September 22, 2012. The Noticee stated that he is a law abiding citizen and had never intended to make any violation under any act. The Noticee also stated that if any documents are required in future, same shall be provided within the specified time.

Issues for Consideration

21. After perusal of the material available on record, I have the following issues for consideration,
 - a) *Whether the Noticees have violated provisions of provisions of Regulation 29 (2) read with 29 (3) of the SAST Regulations, 2011 as well as Regulation 13 (3) (4) (4A) read with 13 (5) of the PIT Regulations.*
 - b) *Whether the Noticees are liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?*

- c) *What quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?*
22. Before moving forward, it will be appropriate to refer to the relevant provisions of the, the SAST Regulations, 2011, and PIT Regulations, 1992 which read as under:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Disclosure of acquisition and disposal.

29 (1)

- (2)** *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.*
- (3)** *The disclosures required under sub-Regulations (1) and sub-Regulations (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.

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13 (1) ...

Continual disclosure

- 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-Regulations (1) or under this sub-Regulations; and such change exceeds 2% of total shareholding or voting rights in the company.*
- (4)** *Any person who is a director or Officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-Regulations (2) or under this sub Regulations, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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-Regulations (2A) or under this sub-Regulations, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.”;

(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.

ISSUE 1: Whether the Noticees have violated provisions of provisions of Regulation 29 (2) read with 29 (3) of the SAST Regulations, 2011 as well as Regulation 13 (3) (4) (4A) read with 13 (5) of the PIT Regulations.

23. The first issue for consideration is whether the Noticee Mr. Bhushan Kumar Narula was required to make disclosures under Regulation 13 (3) (4) (4A) read with 13 (5) of PIT Regulations. It was alleged in the SCN that:-

- The Noticee No. 1 had acquired shares of the Company as depicted below:

Table No.-1

Date	Client Name	Gr Busy Volume
10.10.2012	Bhushan Kumar Narula	102950
07.12.2012	Bhushan Kumar Narula	21551
05.10.2012	Bhushan Kumar Narula	30000
08.10.2012	Bhushan Kumar Narula	28050

- Similarly, Ms. Sidhi Narula, Noticee No. 2 had acquired shares of the Company as illustrated in the table below:-

Table No.-2

Date	Client Name	Gr Busy Volume
05.10.2012	Sidhi Narula	30000
08.10.2012	Sidhi Narula	25000
23.11.2012	Sidhi Narula	500
26.11.2012	Sidhi Narula	500
27.11.2012	Sidhi Narula	500
12.12.2012	Sidhi Narula	100
18.12.2012	Sidhi Narula	11
19.12.2012	Sidhi Narula	1

- Hence the total number of shares bought in the Financial Year 2012-13 by the Noticees, Mr. Bhushan Kumar Narula and Ms. Sidhi Narula, are as given below:

Table No.-3

Client PAN	Client Name	Gross Buy Volume
AAAHB4455L	Bhushan Kumar Narula	1,24,501
AABPN9040L	Bhushan Kumar Narula	58,050
AAEPN0229N	Sidhi Narula	56,612

- The details regarding the pre & post holdings of the Noticees are listed below-

Table No.-4

Name of the entity	Pre-acquisition Holding (September 2012 Quarter)		Acquisition		Post-acquisition Holding	
	%	Shares	%	Shares	%	Shares
Bhushan Kumar Narula	17.04	7,04,000	4.41	1,82,551	21.25	8,86,551
Sidhi Narula	5.63	2,32,435	1.4	56,612	7.03	2,90,504

- The Noticees had not made any disclosures with respect to the aforementioned acquisitions.
- Through the aforesaid actions, the Noticees had violated the provisions of Regulation 13 (3) (4) (4A) read with 13 (5) of PIT Regulations and provisions of Regulation 29 (2) read with 29 (3) of the SAST Regulations.

24. Vide reply dated March 19, 2015 and during the hearing, the Noticee contended that-

- *“The transactions mentioned in the SCN are factually incorrect as on 10.10.2012 & 07.12.2012 the shares were brought in the name of B.K Narula HUF and not in the name of Bhushan Kumar Narula as individual.*
- *With regard to purchase of shares by Mr. Bhushan Kumar Narula as mentioned in the impugned para 5 of the SCN, it is submitted that the SCN is totally void and incorrect, as no transaction has ever been made by Mr. Bhushan Kumar Narula in his personal capacity.*
- *Further, in table no. 04, in entry no. 1, the PAN ID provided is of B.K Narula HUF, however the name mentioned is of Mr. Bhushan Kumar Narula. In entry no. 2 the said shares were transacted by Ms. Ridhi Narula not by Mr. Bhushan Kumar Narula, even the PAN Id provided is of Ms. Ridhi Narula and not of Mr. Bhushan Kumar Narula.*
- *In Para 6 of the SCN, Mr. Bhushan Kumar Narula holding is 17.04% which is alleged to have been increased by acquisition of 4.41 % shares to 21.25% shares. It has been submitted by the noticees that, Mr. Bhushan Kumar Narula has neither acquired nor sold his shares in his name since 1996 and even his holding of 17.04% had never changed.”*

25. In view of the aforementioned submissions, the contentions of Noticees may be acceptable due to the reason that, the shares acquisition in question was acquired by B.K Narula HUF. Since Mr. Bhushan Kumar Narula had acquired shares in the name of B.K. Narula HUF and not in his individual capacity, therefore Mr. B.K. Narula was not required to make any disclosures under PIT Regulations Further, upon scrutiny of Demat account statements and material available on record, it is observed that the shareholding of the Noticee no. 1 had not undergone any change during September 2012 to December 2012.

26. Further, Noticee no. 2, Ms. Sidhi Narula had acquired 56,612 shares during September 2012 and December 2012, the pre-acquisition shareholding of Noticee No. 2 was 5.63%

and Post acquisition shareholding was 7%. Hence, the percentage change in the shareholding was 1.37 %, which was less than 2% and same is also evident from the demat account statement and shareholding pattern available on the BSE website. Therefore, Noticee no. 2 was not required to make any disclosure under SAST Regulations, 2011 and PIT Regulations, 1992.

(Source: http://www.bseindia.com/corporates/Sharehold_Searchnew.aspx?expandable=0#)

ISSUE 2: Whether the Noticees are liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?

The provisions of Section 15A (b) of the SEBI Act, 1992 read as under:

SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –

If any person, who is required under this Act or any rules or Regulations made there under-

(a)

(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".*

27. Since the allegations against the Noticee No. 1 of violating the provisions of Regulations 13 (3), (4), (4A) read with 13 (5) of PIT Regulations and violations against Noticee No. 2 of violating provisions of Regulation 29 (2) read with 29 (3) of the SAST Regulations, 2011 as well as Regulation 13 (3) (4) (4A) read with 13 (5) of the PIT Regulations has not been established; therefore, the Noticee is not liable for monetary penalty under Section 15A (b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

28. Since, the Noticees is not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

29. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, and in view of my findings noted in the preceding paragraphs, I hereby dispose off the Adjudication Proceedings initiated against the Noticees vide Show Cause Notice dated February 21, 2014.
30. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticees and also to Securities and Exchange Board of India.

Date: October 21, 2015

Place: New Delhi

Mohammad Atif Alvi

Adjudicating Officer