

ADJUDICATION ORDER NO. EAD-3/JS/GSS/ 1626 /2018-19

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
Mr. Shaukat S. Tharadra (PAN No.:ACEPT7249Q)**

In the matter of Raj Oil Mills Limited (CIN No.:L15142MH2001PLC133714)

BACKGROUND OF THE CASE

1. Raj Oil Mills Ltd., is a company, bearing registration no. as INE294G01018. Securities and Exchange Board of India (SEBI) observed some irregularities by Raj Oil Mills Ltd. (hereinafter referred to as 'Noticee / Company') for non-disclosure by the company on price sensitive information.
2. Subsequently, SEBI conducted investigation in the scrip of Raj Oil Mills Ltd. (a company listed at Bombay Stock Exchange ('BSE'), during the period January 01, 2013 to March 25, 2014 (Investigation Period).
3. During the course of investigation, it was observed that promoter-Director of the company Mr. Shahid Shaukat Tharadra had not made any disclosures under SEBI (PIT) Regulations and SEBI (SAST) Regulations. In view of this adjudication proceedings were initiated on February 02, 2018.

APPOINTMENT OF ADJUDICATING OFFICER

4. Adjudicating Officer (AO) was appointed vide order dated June 02, 2016 under section 15I of Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992) and under Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) to inquire into and adjudge under section 15(A)(b) of SEBI Act, 1992 the alleged violations of Regulation 29(2) read with regulation 29(3) and Regulation 31(2) read with 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations) and Regulation 13(3), 13(4) and 13(4A) read with 13(5) of SEBI (Prohibition of Insider

Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'). Consequent to transfer of adjudication proceedings, the proceedings are now continued with in terms of Order dated May 31, 2018 to inquire into and adjudge under section 15A (b) of SEBI, 1992 for the alleged violations against the Noticee.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING, ADDITIONAL WRITTEN SUBMISSIONS

5. A Show Cause Notice (SCN) dated June 06, 2018 was issued by the Adjudicating Officer (AO) under rule 4(1) of SEBI(Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO Rules') in the matter to the Noticee. The same was also duly served upon the Noticee on June 18, 2018. However, no reply was received from the Noticee despite lapse of considerable time.
6. Thereafter, under rule 4(3) of AO rules, notice dated September 05, 2018, was issued to the Noticee affording an opportunity of personal hearing on September 17, 2018. The Noticee did not appear on the scheduled date of hearing.
7. Subsequently, on September 24, 2018, Authorized Representatives (ARs) of the Notices, without any prior intimation, sought to appear before the AO, seeking an opportunity of hearing on the ground that the Noticee could not appear for hearing on the scheduled date i.e. September 17, 2018, due to illness of the Noticee, for which Doctor's certificate was also produced. Given the circumstances, and that the proper authorisation was provided, AO in the interest of taking the matter forward, accorded hearing in the matter and the matter was heard.
8. During the course of hearing, ARs of the Noticees sought fifteen days' time to file their replies to the SCN with respect to alleged violations as mentioned in the SCN.
9. However, no reply to the SCN was submitted by the Noticee even after lapse of said time. Thereafter, vide letter dated October 09, 2018, the Noticee sought for inspection of documents relied upon in the matter at the time of issuing of SCN. Subsequently, vide e-mail dated October 12, 2018, the Noticees were advised that the relevant documents, relied upon in the matter were already provided along with SCN. Scanned copy of the SCN along with annexures was again provided to the Noticee vide e-mail dated October 12, 2018.

10. The Noticee was also contacted several times on the mobile no. 9821344429 provided by him to seek reply for the aforementioned SCN. However, no reply to the SCN was received from the Noticee. Moreover, in the interest of principles of natural justice, third opportunity of hearing was granted to the Noticee on October 31, 2018. However, the same was not attended by the Noticee. Subsequently during the day Authorized Representative (AR) of the Noticee called at the office of AO, seeking for adjournment of aforesaid hearing and vehemently requested for another hearing in the matter. Given this vide e-mail dated October 31, 2018, ARs were advised to appear for hearing anytime during the day, before close of office hours and submit his response to the SCN. Meanwhile, vide e-mail dated October 31, 2018, written submissions were filed by the Noticee.
11. Thereafter, in the interest of principles of natural justice, considering the request and medical condition of the Noticee, vide e-mail dated October 31, 2018, last opportunity of hearing was granted to the Noticee on November 16, 2018 and the same was attended by Authorized Representatives (ARs) of the Noticee.
12. The ARs of the Noticee during the course of hearing reiterated their submissions made vide their letter dated October 31, 2018. However, the ARs were advised to file their written additional submissions before November 19, 2018.
13. Subsequently, vide e-mail dated November 19, 2018, the ARs of the Noticee filed their additional written submissions in the matter. The written submissions and additional written submissions of the Noticee are summarized as below;

- a. *The Noticee is a 76 year old person and is suffering from hypertension and parkinson's disease and is bedridden since last 7 years. (Medical certificate of the Noticee have also been submitted with the submissions).*
- b. *Our client was the director of Raj Oil Mills at the relevant time. However, as on date our client has no source of income and no surviving legal heirs to pay the penalty amount.*
- c. *Due to Noticee's health condition, he is also suffering from loss of memory and is not able to recollect information w.r.t the alleged disclosures as mentioned in the SCN. Therefore, it is not possible to procure any information relating to alleged disclosures / transactions as mentioned in the SCN.*
- d. *The delay in making alleged disclosure was technical and inadvertent violation. In this regard, the Noticee has also referred to case law Vitro Commodities Pvt. Ltd. vs. SEBI dated September 04, 2013.*
- e. *Following points have been submitted as mitigating factors;*
 - *There has been no disproportionate gain or undue advantage occurred to the Noticee*
 - *No investor complaint has been filed w.r.t the alleged violation*
 - *The violation is not repetitive in nature*

- f. In order to take lenient view in the matter, the Noticee has made reference to some case laws namely;
1. *Ex-Naik Sardar Singh vs. Union of India* (1991)3 SCC 212)
 2. *Ranjit Thakur vs. Union of India* (AIR 1987 SC 2386)
 3. *Hindustan Steel Ltd vs. State of Orissa* (1970 AIR 253, 1970 SCR (1) 753)
- g. The ARs in their submissions made vide letter dated November 19, 2018 in para 10 have submitted that “the present case pertains to non-disclosure and the same cannot be denied.” Therefore, the Noticee have admitted the violation alleged in the SCN.

ISSUES FOR CONSIDERATION

14. After perusal of the material available on record in the SCN and the responses filed by the Noticee, the following issues arise for consideration;
- I. Whether the Noticees have violated Regulation 29(2) read with regulation 29(3) and Regulation 31(2) read with 31(3) of SEBI SAST Regulations and Regulation 13(3), 13(4) and 13(4A) read with 13(5) of SEBI ‘PIT’ Regulations’.
 - II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15(A)(b) of the SEBI Act, 1992?
 - III. If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

FINDINGS

15. Before dealing with issues under consideration in seriatim, the texts of the said provisions are reproduced as under :-

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

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.

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

¹ Substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2013, w.e.f. 26-03-2013. Prior to its substitution, sub-regulation (2) read as under:

“(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.”

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.

(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

Disclosure of encumbered shares.

31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be 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) 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.

(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.]

2[(2A) any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.

² Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

Continual disclosure.

(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.

(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-regulation (2) 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.]

3[(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.

(5) The disclosure mentioned in sub-regulations 4[(3), (4) and (4A)] shall be made within 55[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 No. I: Whether the Noticees have violated Regulation 29(2) read with regulation 29(3) and Regulation 31(2) read with 31(3) of SEBI SAST Regulations and Regulation 13(3), 13(4) and 13(4A) read with 13(5) of SEBI 'PIT Regulations'?

16. It is observed that it was alleged in the SCN that the Noticee had failed to make requisite disclosures under PIT Regulations and SAST Regulations for the encumbrance of shares at the relevant time period, details of which are mentioned as below;

| Date | Txn Type | Sett Indc | Dr cr Indc | Bkng Qty | Holding after transaction | As a % of share capital | Disclosure required under PIT | Disclosure required under SAST |
|---|----------|-----------|------------|----------|---------------------------|-------------------------|---|--------------------------------|
| Holding before transaction (As on 30/06/2011) | | | | | 18580100 | 51.59% | | |
| 18/08/11 | Pledge | PIV | D | 4300000 | 14280100 | 39.66% | Disclosures have been made to exchanges under both the regulations but not disclosed within specified time. | |
| 28/09/11 | Pledge | PIV | D | 2300000 | 11980100 | 33.27% | | |
| 14/10/11 | Pledge | PIV | D | 34000 | 11946100 | 33.17% | | |
| 04/11/11 | Pledge | PIV | D | 38143 | 11907957 | 33.07% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w. 31(3) |

³ Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

⁴ Substituted for the symbols, numbers and word "(3) and (4)" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011

| Date | Txn Type | Sett Indc | Dr cr Indc | Bkng Qty | Holding after transaction | As a % of share capital | Disclosure required under PIT | Disclosure required under SAST |
|----------|----------|-----------|------------|----------|---------------------------|-------------------------|---|--|
| 08/11/11 | Pledge | PIV | D | 400000 | 11507957 | 31.96% | Disclosures have been made to exchanges under both the regulations but not disclosed within specified time. | |
| 09/11/11 | Pledge | PIV | D | 300000 | 11207957 | 31.12% | | |
| 11/11/11 | Pledge | PIV | D | 250400 | 10957557 | 30.43% | | |
| 24/02/12 | Pledge | PIV | D | 3250000 | 7707557 | 21.40% | 13(3), 13(4) & 13(4A) r.w. 13(5) | 29(2) r.w 29(3) and 31(2) r.w 31(3) |
| 13/08/12 | Pledge | PIV | D | 1747800 | 5959757 | 8.39% | Adjudication Proceedings were concluded vide order dated 19/05/2014. | |
| 16/08/12 | Pledge | PIV | D | 45 | 5959712 | 8.39% | | |
| 17/08/12 | Pledge | PIV | D | 452486 | 5507226 | 7.76% | | |
| 21/08/12 | Pledge | PIV | D | 40010 | 5467216 | 7.70% | | |
| 28/08/12 | Pledge | PIV | D | 40707 | 5426509 | 7.64% | | |
| 29/08/12 | Pledge | PIV | D | 400000 | 5026509 | 7.08% | | |
| 11/09/12 | Pledge | PIV | D | 18267 | 5008242 | 7.05% | | |
| 12/09/12 | Pledge | PIV | D | 998 | 5007244 | 7.05% | | |
| 13/09/12 | Pledge | PIV | D | 43256 | 4963988 | 6.99% | | |
| 18/09/12 | Pledge | PIV | D | 5855 | 4958133 | 6.98% | | |
| 20/09/12 | Pledge | PIV | D | 50000 | 4908133 | 6.91% | | |
| 22/09/12 | Pledge | PIV | D | 21688 | 4886445 | 6.88% | | |
| 25/09/12 | Pledge | PIV | D | 180309 | 4706136 | 6.63% | | |
| 26/09/12 | Pledge | PIV | D | 916377 | 3789759 | 5.34% | | |
| 27/09/12 | Pledge | PIV | D | 600 | 3789159 | 5.34% | | |
| 03/10/12 | Pledge | PIV | D | 258024 | 3531135 | 4.97% | | |
| 04/10/12 | Pledge | PIV | D | 65000 | 3466135 | 4.88% | | |
| 06/12/12 | Pledge | DFP | D | 250000 | 3216135 | 4.53% | | |
| 07/12/12 | Pledge | DFP | D | 50000 | 3166135 | 4.46% | | |
| 19/12/12 | Pledge | DFP | D | 200000 | 2966135 | 4.18% | | |
| 31/07/13 | Pledge | PIV | D | 275918 | 2690217 | 3.79% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 01/08/13 | Pledge | PIV | D | 132825 | 2557392 | 3.60% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 02/08/13 | Pledge | PIV | D | 21494 | 2535898 | 3.57% | | 31(2) r.w 31(3) |
| 13/08/13 | Pledge | PIV | D | 83600 | 2452298 | 3.45% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 14/08/13 | Pledge | PIV | D | 133529 | 2318769 | 3.27% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |

| Date | Txn Type | Sett Indc | Dr cr Indc | Bkng Qty | Holding after transaction | As a % of share capital | Disclosure required under PIT | Disclosure required under SAST |
|----------|----------|-----------|------------|----------|---------------------------|-------------------------|-------------------------------|--------------------------------|
| 16/08/13 | Pledge | PIV | D | 65655 | 2253114 | 3.17% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 19/08/13 | Pledge | PIV | D | 9096 | 2244018 | 3.16% | | 31(2) r.w 31(3) |
| 20/08/13 | Pledge | PIV | D | 40981 | 2203037 | 3.10% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 22/08/13 | Pledge | PIV | D | 84298 | 2118739 | 2.98% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 23/08/13 | Pledge | PIV | D | 28964 | 2089775 | 2.94% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 26/08/13 | Pledge | PIV | D | 17426 | 2072349 | 2.92% | | 31(2) r.w 31(3) |
| 11/09/13 | Pledge | PIV | D | 22896 | 2049453 | 2.89% | | 31(2) r.w 31(3) |
| 13/09/13 | Pledge | PIV | D | 128000 | 1921453 | 2.71% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 17/09/13 | Pledge | PIV | D | 1200 | 1920253 | 2.70% | | 31(2) r.w 31(3) |
| 19/09/13 | Pledge | PIV | D | 217005 | 1703248 | 2.40% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 23/09/13 | Pledge | PIV | D | 86789 | 1616459 | 2.28% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 24/09/13 | Pledge | PIV | D | 28606 | 1587853 | 2.24% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 27/09/13 | Pledge | PIV | D | 66207 | 1521646 | 2.14% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 01/10/13 | Pledge | PIV | D | 60543 | 1461103 | 2.06% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 03/10/13 | Pledge | PIV | D | 140000 | 1321103 | 1.86% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 07/10/13 | Pledge | PIV | D | 152292 | 1168811 | 1.65% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 09/10/13 | Pledge | PIV | D | 112973 | 1055838 | 1.49% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 14/10/13 | Pledge | PIV | D | 66901 | 988937 | 1.39% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 15/10/13 | Pledge | PIV | D | 154015 | 834922 | 1.18% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 21/10/13 | Pledge | PIV | D | 191943 | 642979 | 0.91% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 23/10/13 | Pledge | PIV | D | 75000 | 567979 | 0.80% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |

| Date | Txn Type | Sett Indc | Dr cr In dc | Bkng Qty | Holding after transaction | As a % of share capital | Disclosure required under PIT | Disclosure required under SAST |
|----------|----------|-----------|-------------|----------|---------------------------|-------------------------|-------------------------------|--------------------------------|
| 24/10/13 | Pledge | PIV | D | 86678 | 481301 | 0.68% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 19/12/13 | Pledge | PIV | D | 50000 | 431301 | 0.61% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 20/12/13 | Pledge | PIV | D | 34047 | 397254 | 0.56% | 13(4) & 13(4A) r.w. 13(5) | 31(2) r.w 31(3) |
| 23/12/13 | Pledge | PIV | D | 15953 | 381301 | 0.54% | | 31(2) r.w 31(3) |

17. It was alleged in the SCN that this encumbrance of shares exceeded the benchmark limit for disclosures to be made by the Noticee to the Stock Exchanges and to the company in the prescribed format (Form D) as stipulated in terms of the provisions of Regulation 13(4), 13(4A) read with 13 (5) of PIT, 1992.
18. From above, it is clear that the Noticee was required to make requisite disclosure at relevant times as mentioned in the table above especially since July 31, 2013. However, it was observed that the Noticee did not make requisite disclosures under stipulated regulations.
19. As per Regulation 13(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-regulation (2) 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.
20. Further, as per Regulation 13(4A) read with Regulation 13 (5) of the PIT, 1992, any person who is promoter or part of promoter group of a listed company has to disclose in Form-D to the company and to the stock exchange the change in shareholding if the change from the last disclosure exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower within two working days of such sale. The Notice in the present case, has exceeded the stipulated limit, at various intervals, as mentioned under the regulations, which attracted the obligation on part of the Noticee to make requisite disclosures under SSAT and PIT Regulations.

21. It was alleged in the SCN that the Noticee has made delayed disclosure under the provisions of Regulation 29(2) (read with 29(3)) of the SAST, 2011 and Regulation 13(4A) (read with 13 (5) of PIT, 1992. The details of which are given below;

| Date of Transactions | Bkng Qty | Holding after Transaction | As a % of share capital | Date of Reporting Under SAST | Delay under SAST in days | Date of intimation to Company under PIT | Delay under PIT in days |
|----------------------|----------|---------------------------|-------------------------|------------------------------|--------------------------|---|-------------------------|
| 18/08/11 | 4300000 | 14280100 | 39.66% | 03/10/2011 | 41 days | 10/10/2011 | 48 days |
| 28/09/11 | 2300000 | 11980100 | 33.27% | 03/10/2011 | 0 | 10/10/2011 | 7 days |
| 14/10/11 | 34000 | 11946100 | 33.17% | 18/11/2011 | 31 days | 16/11/2011 | 29 days |
| 08/11/11 | 400000 | 11507957 | 31.96% | 18/11/2011 | 8 days | 16/11/2011 | 6 days |
| 09/11/11 | 300000 | 11207957 | 31.12% | 18/11/2011 | 7 days | 16/11/2011 | 5 days |
| 11/11/11 | 250400 | 10957557 | 30.43% | 18/11/2011 | 3 days | 16/11/2011 | 1 days |

22. It is observed from the data available on BSE website that the Noticee has not made mandatory disclosures under PIT and SAST regulations for the period mentioned in the table above, which attracted monetary penalty under SEBI Act 1992.
23. It has further been stated by the Noticee in its reply dated October 31, 2018, that *“there is no information available with our client with respect to alleged pledge of shares and that he is not able to recollect anything. Therefore, we are unable to state any specific reason for not making relevant disclosures at the relevant time.”*
24. In this regard, it is noted that the Noticee in its reply has not provided any material to refute the charges made out in the SCN. The relevant disclosures of these changes in the shareholding are also available on the BSE website. Given that the noticee has not provided any countervailing evidence to prove his stand, the allegations as mentioned in the SCN need to be weighed in context and thus stands established. There is no credence to the stand of the noticee that it was not even aware of these changes in shareholding as the changes have continued undisputed even till date.

Issue No. II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15(A)(b) of the SEBI Act, 1992?

25. Referring to the judgment in the matter of SEBI vs. Shriram Ram Mutual Fund 2006 SCL 216(SC), wherein Hon’ble Supreme Court held that;

“In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the

intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not”

26. Reliance is also placed on the summary of principles as mentioned by the Hon’ble Bombay High Court in the matter of SEBI vs. Cabot International Capital Corporation (2004) 51 SCL 307 (BOM.), which read as follows:-

“..... (D) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.....”

“.....30. The SEBI Act and the Regulations, are intended to regulate the Security Market and the related aspects, the imposition of penalty, in the given, facts and circumstances of the case, cannot be tested on the ground of "no mens rea, no penalty". For breaches of provisions of SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise of judicial discretion is a must, but not on a foundation that mens rea is an essential to impose penalty in each and every breach of provisions of the SEBI Act.....”

27. In view of the foregoing, it is concluded that the Noticee has violated the provisions of Regulation 29(2) read with regulation 29(3) and Regulation 31(2) read with 31(3) of SAST Regulations and Regulation 13(3), 13(4) and 13(4A) read with 13(5) of SEBI PIT Regulations, 1992. Therefore, it is a fit case to impose monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc.

15 A. If any person, who is required under this Act or any rules or regulations made there under:-

(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 or 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.

Issue No. III: If so, what quantum of monetary penalty should be imposed on the Noticees considering the factors stated in section 15J of SEBI Act, 1992?

28. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:

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

1. While determining the quantum of penalty under Section 15A (a), 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.

5[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, 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.]

29. It is noted that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' default no has it been so alleged in the SCN.
30. It is also noted that the default of the noticee is repetitive in nature.
31. The Noticee has cited reference to following case laws:
- Ex-Naik Sardar Singh vs. Union of India (1991)3 SCC 212
 - Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)
 - Hindustan Steel Ltd vs. State of Orissa (1970 AIR 253, 1970 SCR (1) 753)
32. In above cited case laws it was argued that imposing penalty is a discretionary power of the Adjudicating Officer which should be exercised based on facts and circumstances of the case. From the cited judgments it is noted that Courts have taken in a view that even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act and that the penalty imposed should be proportionate to the gravity of misconduct.
33. Given the above, since the charges levelled in the SCN have already been established against the Noticee therefore, an appropriate penalty is liable to be imposed on the Noticee in the matter.
34. The ARs of the Noticee have also submitted following facts to be considered as mitigating factors:
- The Noticee is a 76 year old person and is suffering from hypertension and Parkinson's disease and is bedridden since last 7 years. (Medical certificate of the Noticee have also been submitted with the submissions).

⁵ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

- Due to Noticee's health condition, he is also suffering from loss of memory and is not able to recollect information w.r.t the alleged disclosures as mentioned in the SCN.
 - Noticee has no source of income and no surviving legal heirs to pay the penalty amount.
35. Given regard to the factors mentioned above, it is determined that an appropriate penalty needs to be imposed.

ORDER

36. After taking into consideration the facts and circumstances of the case and mitigating factors in the matter, in term of Section 15I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, a penalty of Rs. 5,00,000/- (Five Lakh only), under Section 15 A (b) of the SEBI Act, 1992, for the violation of provisions of Regulation 29(2) read with regulation 29(3) and Regulation 31(2) read with 31(3) of SAST Regulations and Regulation 13(3), 13(4) and 13(4A) read with 13(5) of SEBI PIT Regulations, 1992 is imposed on the Noticee.
37. The above Noticees 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 |

38. The above 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 (EFD-DRA-IV). The Format for forwarding details/ confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
- 1.Case Name :
 - 2.Name of Payee:
 - 3.Date of payment:
 - 4.Amount Paid:

5.Transaction No:

6.Bank Details in which payment is made:

7.Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

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

Date: November 29, 2018

Place: Mumbai

**Jeevan Sonparote
Adjudicating Officer**