

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/BJD/BKM/ 128 /2017-18**

**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:

Larsen & Toubro Limited

In the matter of L & T Finance Holdings Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the irregularity in the trading in the shares of L & T Finance Holdings Limited (hereinafter referred to as LTFH) and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under for the period from March 10, 2014 onwards till March 14, 2014 by Larsen & Toubro Ltd (hereinafter referred to as Noticee/L&T). The scrip of LTFH is listed on BSE and NSE.
2. While examining the shareholding pattern of LTFH, it was observed that in the quarter ending December 2013 the shareholding of Noticee was 81.50% which was reduced to 76.61% in the quarter ending March 2014. The changes was due to sale of 8, 32, 58,633 shares by L&T through OFS to the public on March 14, 2014, its shareholding in the company reduced by 4.89%. Consequent to the change in shareholding, Noticee was required to file disclosure to LTFH under Regulations 13 (3) of SEBI (Prohibition of Insider Trading) Regulations 1992 (hereinafter referred to as PIT 1992). However, they did not make disclosure as required under provision

of law. It was, therefore, alleged that the Noticee violated the provision of Regulations 13 (3) read with Regulation 13(5) of PIT Regulations 1992 read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations 2015 (hereinafter referred to as PIT 2015).

APPOINTMENT OF ADJUDICATING OFFICER

3. Based on the findings of the examination, SEBI has initiated adjudication proceedings and I have been appointed as the Adjudicating Officer vide order dated May 18, 2017 under section 15 I of SEBI Act, 1992 to inquire into and adjudge the alleged violation of Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/BKM/25948/2017 dated October 24, 2017 was issued to the Noticee under Rule 4 of SEBI(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as Adjudication Rules) to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 A(b) of the SEBI Act for the violations of Regulation 13(3) read with Regulation 13(5) of PIT 1992 read with Regulation 12(2) of PIT Regulations 2015.
5. Vide letter dated November 7, 2017, Noticee submitted its reply to the SCN. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notice dated January 11, 2018, Noticee was granted an opportunity of personal hearing on January 22, 2018. Based on the request received from the Noticee, the hearing was rescheduled to January 29, 2018.

6. During the hearing held on January 29, 2018 the Authorized Representative (AR) reiterated the submissions made by the Noticee vide letter dated November 7, 2017. The AR also submitted a note of argument based on the hearing conducted on January 30, 2018. I am therefore proceeding further in the matter on the basis of reply filed by the Noticee, submission made by it and material available on record, in the interest of justice.

CONSIDERATION OF ISSUES

8. On careful perusal of the material available on record, I note that the issues that arise for consideration in the present case are:

- a) Whether the Noticee has violated Regulation 13(3) read with Regulation 13(5) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015?*
- b) Does the violation, if any, attract monetary penalty under Sections 15 A(b) of SEBI Act?*
- c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

9. Before proceeding further, I would like to refer to the relevant allegedly violated provisions of the law which read as under:

Continual disclosure.

Regulation 13 (3) of PIT 1992 states that –

(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 such change exceeds 2% of total shareholding or voting rights in the company.

(5) The disclosure mentioned in sub-regulations (3) and (4) 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.

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, – (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and (b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

FINDINGS:

10. I find that LTFH is a financial holding company offering a diverse range of financial products and services across the corporate, retail and infrastructure finance sectors. The company also offers mutual fund products and investment management services, through their direct and indirect wholly-owned subsidiaries. The company is promoted by L&T.

NON-DISCLOSURE BY L&T Details of promoter shareholding are as under:

Particulars	Dec-13		Mar-14		Jun-14	
	No. Of shares	% of shareholding	No. Of shares	% of shareholding	No. Of shares	% of shareholding

Larsen & Toubro Ltd	1399848242	81.50	1316589609	76.61	1289003865	75.00
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11. It was noted from the above table that shareholding of Noticee reduced from 81.50% for the Quarter ending December 2013 to 76.61% for the quarter ending March 2014, due to sale of 8, 32, 58,633 shares by Noticee through OFS to the public on March 14, 2014. Consequent to the change in shareholdings, Noticee was required to disclose, under Regulation 13(3) of PIT 1992 read with Regulation 13 (5), to the LTFH in Form C within the 2 working days of sale of shares. However, it had allegedly failed to disclose to company in accordance with the said regulation.

12. I note from the submission of the Noticee, vide letter dated November 7, 2017 that L&T, being promoter of LTFH had intimated the change in its shareholding pursuant to sale of 8,32,58,633 shares in LTFH to the NSE and BSE on March 15, 2014 with a copy to LTFH in accordance with Regulation 13(4A) of PIT 1992. Copy of disclosure filed with company and stock exchange under Regulation 13(4), 13(4A) and (6) as on March 15, 2014 has also been submitted in support thereof. Further, Noticee submitted that since there was a specific clause for disclosures to be made by promoter at Regulation 13(4A) of PIT 1992, Regulation 13(3) of PIT 1992 was not applicable to them.

13. On a plain reading of Regulation 13 (3) of PIT 1992, I note that it mandates disclosures by any person who holds more than 5% shares for voting rights in any listed company. Any person includes promoters as well. These Regulations are applicable from November 19, 1992, with Form C inserted in Regulations 13 (3) of PIT 1992 on July 11, 2003. However, Sub Regulation (4A) under Regulations 13 of PIT 1992 was inserted on August 16, 2011. As per the Regulation 13(4A) of PIT 1992, disclosure was required to be made by any person, who is promoter or part of promoter group. Thus, I note that Regulation 13 (4A) of PIT 1992 specifically

segregated promoters a separate class from among the category of any person. I am of the view that when regulations specifically and explicitly states, “Any person, who is promoter or part of promoter group”, such regulations will be applicable to promoters than the general regulations which mandates for “Any Person”. Thus, I conclude that sub regulation (4A), which was inserted under Regulation 13 on August 16, 2011 would be applicable to such persons who are in the category of promoter or part of promoter group. Therefore, I find merit in the submission of Noticee that Regulations 13(4A) of PIT 1992 is applicable. However, I do not completely concur with submission that the Regulations 13(3) is not applicable. I note that both Regulations 13(3) and Regulation 13(4A) of PIT 1992 are in force at relevant time. However, I am of the view that principle based approach rather than rule based approach would be appropriate to examine the purpose and objective of regulations when there are conflicts in interpretation of certain provisions of law. I am of the view that when any regulations are specific to certain class of persons, it could be assumed that by necessary implications they are excluded from other similar regulations which is general in nature.

14. Considering the above principle, I note that Regulations 13 (4A) of PIT 1992 specifically provides for disclosures to be made by any person, who is promoter or group of promoter to company and stock exchange within two days from date of acquisition or sale. In the instant case, Noticee, being promoter of LTFH had sold its shareholding to the extent of 4% of shareholding, through offer for sale on March 14, 2014, in order to comply with statutory requirement of minimum public shareholding in terms of Rule 19(2)(b) and 19 A of the Securities Contracts Regulations Rules 1957 (hereinafter referred to as SCRR), as mandated by SEBI.
15. The Broad differences in obligations under Regulations 13(3) and Regulation 13(4A) of PIT 1992 are as follows:

Areas	Regulation 13(3)	Regulations 13(4A)
Applicability	Any Person	Any Person, who is promoter or group of promoter
Disclosure obligation	To Company	To Company and Stock Exchange
Trigger Event	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 such change exceeds 2% of total shareholding or voting rights in the company.	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.
Form for disclosure	Form C	Form D
Date of Reporting	Within 2 days from date of acquisition or sale	Within 2 days from date of acquisition or sale.

16. I note from above table, I note that the disclosure requirements and trigger events under Regulations 13 (4A) of PIT 1992 is stricter than Regulation 13(3). Besides, the formats of disclosure required to be made under Regulation 13(3) and 13(4A) of PIT 1992 i.e. Form C and Form D respectively are almost entirely identical. The principle of timely disclosure to stock exchange is to enable investors to take note of changes in the shareholdings of those persons who are in control or promoters or directors or substantial shareholders and take informed decision regarding

their investments. The disclosure should be complete, fair, transparent and timely.

17. I note from the submission made by Noticee that it had disclosed to LTFH and stock exchange under Regulations 13 (4A) of PIT 1992 and Regulation 29(2) of SEBI (SAST) Regulations 2011, within two days from the date of sale through OFS on March 14, 2014. In support of their claim, they submitted disclosure made to BSE and NSE on March 15, 2014 and also to LTFH. Further, I also verified from BSE and NSE website that disclosures were made and available in public domain. Further, I also note that information regarding OFS by Noticee, which is the subject matter of disclosures to be made under Regulations 13(3) of PIT 1992, was also in public domain.

18. In view of above, I conclude that changes in shareholding of Noticee through sale of OFS was promptly made available in public domain through disclosures made under Regulations 13 4(A) of PIT 1992 and Regulation 29(2) of SAST 2011 to stock exchanges. Therefore, non disclosure under Regulations 13(3) of PIT 1992 is merely technical in nature as Noticee had filed disclosure under specific provisions of Regulations 13(4A) of PIT 1992 which is stricter and specific. In this regard the matter of Jayant industries Limited (SEBI AO Order dated May 17, 2017) has been referred, wherein the applicability of Regulation 30(1) and 30(2) of the Takeover Code 2011 to promoter entities had been considered. In the matter it was quoted that:

“However, since promoters have been singled out as a class apart from other persons and treated differently under Regulation 30(2) of SAST Regulation, 2011, it has to be assumed that by necessary implications they are excluded from the requirements of 30(1) of SAST 2011...I am of the considered view that promoters of a target company have obligation to make yearly disclosure under sub-regulation(2) only but not under sub-regulation (1) of Regulation 30 of SAST Regulation 2011 which applies only to persons

who along with persons acting in concert holds more than 25% or more of the voting rights in the Target Company."

19. Further, the Noticee has referred the observation of the Adjudicating Officer in the matter of Aanjaneya Lifecare Limited (in respect of Bakulesh Trambaklal Shah (SEBI AO order dated May 12, 2017 as under:

"Both the disclosures under Regulation 29 (1) of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992 are quite similar in nature. It is also pertinent to note that the intention of both the Regulations is dissemination of information. On filing of said disclosures under Regulation 29 (1) of SAST Regulations, 2011, by the notice which was similar to the erstwhile Regulation 7 (1) of SEBI (SAST) Regulations, 1997, the essential information about the said acquisition of shares had already been disseminated to the general public. Under the above circumstances, the noticee having complied with regulation 29 (1) of SAST Regulations, 2011, the non-compliance of Regulation 13 (1) of SEBI PIT Regulations, 1992, may not be viewed seriously."

20. I note that the disclosure has not been done by the Noticee in Form C as required under Regulation 13(3) of PIT 1992 despite the change in the shareholding. However, the disclosure regarding the change of the shareholding was made by the Noticee as a promoter in Form D as per Regulation 13(4A) of PIT 1992. The submissions that the information is already in public domain due to the disclosure of the change in the shareholding as a promoter and since promoters have been singled out as a class apart from other persons and treated differently under Regulation 13(4A) of PIT 1992 assuming that by necessary implications they are excluded from the requirements of Regulation 13(3) of PIT 1992 cannot be ruled out. However, with due regard to the disclosure requirement under two different provisions the Noticee had to disclose separately under Regulation 13(3) of PIT 1992 as a person also. However, this may be considered as a technical breach which has been made unintentionally and without hampering the interest

of the investors. It is held by Hon'ble **Supreme Court of India** in the matter of **Hindustan Steel Limited V. State of Orissa AIR 1970 SC**, wherein the Supreme Court has observed as under:

"Where penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. 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 or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

21. I also note that Noticee as a matter of prudence and good order, had made disclosures to NSE and BSE and SIL on March 15, 2014, i.e. within one working day under Regulation 13(4A) of PIT 1992, upon sale of shares by the Noticee . The copy of the letter dated March 15, 2014 along with the copy of the enclosure intimating the disclosures under Regulation 13(4A) of PIT 1992 to LTFH have also been submitted before me.
22. In view of above, I find merit in the submission of the Noticee that the proviso of Regulation 13(4A) of PIT 1992 is applicable in the instant case is complied with and the disclosure is put in public domain accordingly and the same outcome would have been made consequent to the required compliance of Regulation 13(3) of PIT 1992.
23. Accordingly, in exercise of the powers conferred under Section 15-I of the SEBI Act and Rule 5 of said Adjudication Rules 1995, I conclude that the charges leveled against the Noticee, viz., Larsen & Toubro Ltd do not stand established and the matter is, accordingly, disposed of.

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

Date: January 31, 2018

B J DILIP

Place: Mumbai

ADJUDICATING OFFICER