

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/ AO-NP/ JR/ 51 /2017]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY
ADJUDICATING OFFICER) RULES, 1995.**

In respect of:

Jitendrakumar Somchand Malviya [PAN AGVPM1294K]

Jayaben Jitendrakumar Malviya [PAN AJDPM1821D]

**In the matter of Trading activities of certain entities in the scrip of Dinesh Allorga
Limited (now known as Hemo Organic Limited)**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), examined the trading activities in the shares of Dinesh Allorga Limited (now known as Hemo Organic Limited) (hereinafter referred to as “**company**”) from August 10, 2011 to September 13, 2011. It was observed that the shares of the company were bought and sold and there was change in the holding of the shares. It was observed that Jitendrakumar Somchand Malviya (hereinafter referred to as “**Noticee 1**”) and Jayaben Jitendrakumar Malviya (hereinafter referred to as “**Noticee 2**”) were person acting in concert (hereinafter referred to as “**PAC**”) in terms of Regulation 2(1)(e)(1) of SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”) and their combined holding as PAC

had reached the threshold limit of 5%. However no disclosure was made to that effect under SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. Mr. Prasad Jagdale was appointed as Adjudicating Officer vide order dated June 11, 2015 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge the alleged violations of PIT Regulations committed by the Noticees.
3. Subsequent to the transfer of Mr. Prasad Jagdale, the undersigned was appointed as the Adjudicating Officer vide order dated December 14, 2016.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice/s dated January 21, 2016 (hereinafter referred to as "SCN") were issued to the Noticees under rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to show cause as to why an inquiry should not be initiated against him and penalty be not imposed under section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") for his failure to comply with the provisions of SAST Regulations.
5. Investigation observed that on August 16, 2015 the Noticee 1 and 2 acting as PACs acquired 90,800 shares and their combined shareholding reached to 5.96 % of issued capital of company thereby crossing 5% limit enumerated in Regulation 7(1) of SAST Regulations. Trigger point for abovementioned SAST Regulations due to trades of Noticees 1 and 2 as PAC are provided below:

Date of trading	Shares acquired (sold) by PAC	Holding of Jayaben	Holding of Jitendrakumar	Total holding by PAC after transaction (% of share capital- in bracket)	Disclosure required under SEBI (SAST) regulations
Opening balance as on 10.08.2011	16500	16500	0	16500 (0.48)	Not Required
10.08.2011	2600	16500	2600	19100(0.55)	Not Required
11.08.2011	62700	33400	48400	81800(2.36)	Not Required
12.08.2011	33800	50300	65300	115600(3.34)	Not Required
16.08.2011	90800	106300	100100	206400(5.96)	7(1) read with 7 (2) of SEBI (SAST) Regulations 1997
18.08.2011	100	106400	100100	206500(5.96)	Not Required
23.08.2011	(300)	106400	99800	206200(5.95)	Not Required
24.08.2011	(2000)	104400	99800	204200(5.89)	Not Required
29.09.2011	300	104700	99800	204500(5.90)	Not Required
30.08.2011	84000	149800	138700	288500(8.32)	Not Required
12.09.2011	14700	164500	138700	303200(8.75)	Not Required
13.09.2011	11100	164500	149800	314300(9.07)	Not Required
15.09.2011	(100)	164500	149700	314200(9.07)	Not Required
20.09.2011	1600	164500	151300	315800(9.11)	Not Required

6. The Noticees did not submit any reply to the SCN. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticees were granted an opportunity of personal hearing on February 26, 2016 vide notice dated February 9, 2016. No one appeared on the day of hearing. Another opportunity of personal hearing was given to the Noticees on March 22, 2016. The notice was affixed at the last known address of the Noticees. On the scheduled date of hearing Noticee 1 appeared on behalf of himself and Noticee 2. He submitted that he had made the required disclosure in terms of SAST Regulations within time and he shall submit the proof of the same by March 29, 2016. However, no proof of disclosure was submitted by Noticee 1 and 2.

7. Further opportunity of personal hearing/s were given to the Noticee on April 26, 2017 and May 29, 2017. The Noticees, vide email dated May 30, 2017 requested for another date of hearing. A final opportunity of hearing was given to the Noticees on June 13,

2017. Noticee 1 appeared on behalf of himself and Noticee 2. As he had not submitted any reply to the SCN, he undertook to submit it on or before June 19, 2017. The Noticee, vide email dated June 19, 2017 requested to extend the time of submission of the reply to June 26, 2017. The Noticees, vide email dated June 27, 2016 filed their reply stating, inter alia, the following:

- *This matter pertains to my trading and investing activities of august 2011, which is almost six years back. Hence you will appreciate that I may not be able to recollect every details.*
- *I had purchased the shares of Dinesh allorga limited from (June) 2011 and reached the limit of 5% on 16th august 2011. I was dealing through NSE /BSE Regd. Broker M/s Marfatia stock broking pvt ltd and they had informed me about this requirement to intimate the Company.*
- *Accordingly on reaching 5%. I wrote to the Co. M/S Dinesh Alorga Ltd. As well as the B.S.E.Mumbai. In retrospect. I realize that I should have sent this intimation by regd. Post instead of sending by ordinary post. This little carelessness has cost me tremendous pain, hardships and expenditure including travel expenses.*
- *If you analyze this in retrospect, you will appreciate that there was no Evil Intention / Malafide Intention of making any wrongful gain at the cost of small Investors.*
- *Further if you co-relate this with the Sale of these shares then also you will appreciate that I have not made any wrongful gain in this deal.*
- *During the past six years, my and my wife's annual income has not exceeded Rs. 3,00,000 both. I stay in a rented house. I am a man of small means and hereby request you to kindly condone the inadvertent carelessness in not sending the said intimation by Regd. Post.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against the Noticees in their respective SCNs, their respective Replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- (a) Whether Noticee 1 and Noticee 2 have violated the provisions of regulation 7(1) read with 7(2) of SAST Regulations;
- (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") for the alleged violation by the said Noticees?; and,

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

9. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations.

7. Acquisition of 5 per cent and more shares or voting rights of a company.

(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 per cent 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.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

FINDINGS:

10. I find that the Noticee 1 and Noticee 2 were PAC and on August 16, 2011 they had acquired 90,800 shares, which took their cumulative holding to 2,06,400 shares i.e. 5.96% of the share capital of the company. As per regulation 7(1) read with 7(2) of SAST Regulations, they were required to make the disclosure of their shareholding to the company and to the stock exchange within 2 days of the acquisition. The company vide their letter dated January 20, 2014 had confirmed that it had not received any disclosure with respect to acquisition of shares in terms of SAST Regulations. Moreover, the Noticees did not submit any proof of the disclosure claimed to be made by them.

11. I therefore find that the Noticee has violated regulation regulation 7(1) read with 7(2) of SAST Regulations. Their act is liable for a penalty under Section 15 A(b) of SEBI Act which read as follows:

15A. Penalty for failure to furnish information, return, etc. - 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]

12. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

13. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which read as under:-

Section 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.

14.I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticees and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticees failed to make the relevant disclosure on only one occasion. Hence, their offence cannot be termed as repetitive in nature.

ORDER

15. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticees viz. Jitendrakumar Somchand Malviya and Jayaben Jitendrakumar Malviya stand established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty as per the following table:

Name of the Noticee	Penalty imposed
Jitendrakumar Somchand Malviya	₹1,00,000/- (Rupees One Lakh Only)
Jayaben Jitendrakumar Malviya	₹1,00,000/- (Rupees One Lakh Only)

16. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - III [**EFD-DRA-III**] SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) 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

17. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

18. 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 reproduced 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)	

19. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : July 6, 2017
Place : Mumbai

NAGENDRAA PARAKH
EXECUTIVE DIRECTOR &
ADJUDICATING OFFICER