

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO: SRP/RK/AO- 267/2012]**

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

**In respect of**  
**Mr. Hirji Kanji Patel**  
(PAN: AHFPP7456D)

In the matter of  
Allied Computers International (Asia) Limited

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**BACKGROUND IN BRIEF**

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an examination of the trading activity of Mr. Hirji Kanji Patel (hereinafter referred to as “**the Noticee**”) in the scrip of Allied Computers International (Asia) Limited (hereinafter referred to as “**ACIL / Company**”), listed on the Bombay Stock Exchange Limited (**BSE**), for the period from April 1, 2009 to September 30, 2009 to find out possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and various rules and regulations made thereunder.
2. The examination, *prima facie*, revealed that during the relevant period the Noticee was the Promoter and Managing Director of ACIL and he was holding 58,905,605 shares/voting rights (30.99%) of the Company as on March 31, 2009. During the period April 2009 to September 2009 he purchased 50,100 shares and sold 1,89,47,935 shares of ACIL on BSE, through two trading members i.e., Geojit Financial Services Ltd. and Shriram Insight Share Brokers. During this period the Noticee had also received 1,75,81,587 shares and transferred 97,42,500 shares of the Company in off market deals. As a result of these sale and purchase transactions of the Noticee, his shareholding in the Company at the end of September 2009 was 50,653,639 shares, which amounted to 26.65% of the share capital/voting rights of ACIL. It was alleged that on acquisition and disposal of shares of the Company by the Noticee during the aforesaid period, there was change in

shareholding/voting rights of the Noticee on a number of occasions triggering the requirement to make disclosures to the Company and to the Stock Exchange in terms of the provisions of regulation 7(1A) read with regulation 7(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”), but he failed to do so. Further, it was also observed that on a number of occasions the requirement to make disclosures in terms of regulation 13(4) read with regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) was also triggered but the Noticee failed to make any such disclosure to the Company and to the Stock Exchange within the prescribed period in the prescribed manner.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned has been appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Rules**”) to inquire into and adjudge under section 15A(b) and 15H(i) of the SEBI Act, the alleged violation/contravention of the provisions of the SAST Regulations and the PIT Regulations, by the Noticee.

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

4. Show Cause Notice dated January 10, 2012 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry be not initiated against him and penalty be not imposed under section 15A(b) and/or 15H(i) of the SEBI Act for the violation of the provisions of regulation 7(1A) read with regulation 7(2) of the SAST Regulations and/or regulation 13(4) read with regulation 13(5) of the PIT Regulations alleged to have been committed by him. The SCN sent at his available address (i.e. 32, Queens View, SOC Juhu Road, Santacruz West, Mumbai – 400 054) was returned undelivered. Hence, it was resent to his alternate address (i.e. 61, Sunvile Apt., Near Infant Jesus School, Malad (W), Mumbai – 400 064) on January 31, 2012, which was duly received by him.
5. The Noticee did not submit his reply to the SCN within the specified time. Therefore, considering the information/ documents available on record it was decided to conduct an inquiry into the matter and for the purpose the Noticee was advised to appear for a hearing on February 27, 2012. The Noticee appeared for hearing and submitted that due to relocation of his office and certain developmental works being carried out, he has not been

able to locate some of the relevant documents and therefore, he may be given time till March 15, 2012 to submit his complete reply. Subsequently, the Noticee submitted his reply to the SCN vide letter dated March 12, 2012. In his reply he has not disputed any of his sale or purchase transactions referred to in the SCN; however, he has stated that the applicable disclosures under the SAST and PIT Regulations were made by him to the Company and to the Stock Exchange. In this regard, the Noticee submitted copy of certain letters sent by the Company to BSE, which indicate that some information was furnished by the Company to BSE. Observations in regard to the said letters of the Company have been discussed in the later part of this Order.

6. After considering the reply of the Noticee and the documents furnished by him, one more opportunity of hearing was granted to him on March 28, 2012. The Noticee appeared for the hearing and stated that the required disclosures were made by him through the compliance officer of the Company. He requested for further 10 days' time to furnish the documentary evidence in this regard. Subsequently, vide letter dated April 09, 2012, the Noticee submitted copy of various letters submitted to the Company.

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

7. I have carefully examined the written and oral submissions made by the Noticee and the documents/material available on record. Before proceeding further it will be appropriate to succinctly state the facts relevant for the present proceedings.
8. I find from the material on record that during the relevant period the shares of ACIL were listed on BSE, and as on September 30, 2009 total issued and subscribed share capital of AICL was 19,00,39,520 shares. The Noticee was the Promoter and Managing Director of ACIL and as on March 31, 2009 he was holding 58,905,605 shares (30.99%) of the Company. During the period April 2009 to September 2009 he purchased a total of 50,100 shares and sold a total of 1,89,47,935 shares of ACIL on BSE. The said sale and purchase transactions were executed through two stock brokers namely, Geojit Financial Services Ltd. and Shriram Insight Share Brokers. During this period the Noticee had also received 1,75,81,587 shares and transferred 97,42,500 shares of the Company in off-market deals. As a result of these sale and purchase transactions of the Noticee, his shareholding in the Company at the end of September 2009 was 50,653,639 shares, which amounts to 26.65% of the share capital/voting rights of ACIL. The details of the aggregate shares/voting rights acquired and disposed of by the Noticee during the period April 1, 2009 to September 30, 2009 were provided to him in various annexures to the SCN.

9. It has been alleged that on account of his said transactions in the shares of the Company the requirement to make disclosures under regulation 13(4) of the PIT Regulations was triggered on various dates, viz, on April 6, 2009, April 8, 2009, April 16, 2009, April 21, 2009, April 22, 2009, April 24, 2009, April 27, 2009, April 29, 2009, May 4, 2009, May 5, 2009, May 6, 2009, May 7, 2009, May 8, 2009, May 11, 2009, May 12, 2009, May 14, 2009, May 15, 2009, May 19, 2009, May 20, 2009, May 21, 2009, May 22, 2009, May 25, 2009, May 26, 2009, May 27, 2009, May 28, 2009, May 29, 2009, June 1, 2009, June 2, 2009, June 3, 2009, June 4, 2009, June 5, 2009, June 8, 2009, June 9, 2009, June 10, 2009, June 17, 2009, June 18, 2009, June 19, 2009, June 22, 2009, June 23, 2009, June 24, 2009, June 25, 2009, June 26, 2009, June 29, 2009, June 30, 2009, July 1, 2009, July 2, 2009, July 3, 2009, July 6, 2009, July 7, 2009, July 8, 2009, July 10, 2009, July 13, 2009, July 14, 2009, July 15, 2009, July 16, 2009, July 20, 2009, July 21, 2009, July 22, 2009, July 23, 2009, July 24, 2009, July 27, 2009, July 28, 2009, July 29, 2009, July 30, 2009, August 3, 2009, August 4, 2009, August 7, 2009, August 10, 2009, August 12, 2009, August 13, 2009, August 17, 2009, August 18, 2009, August 19, 2009, August 20, 2009, August 21, 2009, August 25, 2009, August 26, 2009, August 27, 2009, August 28, 2009, August 31, 2009, September 1, 2009, September 2, 2009, September 3, 2009, September 4, 2009, September 7, 2009, September 11, 2009, September 14, 2009, September 15, 2009, September 16, 2009, September 17, 2009, September 18, 2009, September 22, 2009, September 23, 2009, September 24, 2009, September 25, 2009, September 29, 2009 and September 30, 2009. Similarly, due to the Noticee's said acquisition and sale of shares, the requirement to make disclosures under regulation 7(1A) of the SAST Regulations was triggered on April 16, 2009, June 2, 2009, June 18, 2009 and August 4, 2009. The relevant details in this regard were provided to the Noticee in Annexure IV to the SCN.
10. SEBI had earlier asked for information from BSE regarding disclosures made under regulation 7(1A) of the SAST Regulations and regulation 13(4) of the PIT Regulations in the scrip of ACIL. BSE, vide e-mail dated July 19, 2011 informed SEBI that no disclosures under these regulations have been made to the stock exchange. Therefore, it was alleged that there was acquisition and disposal of shares of the Company by the Noticee and consequential change in shareholdings/voting rights of the Noticee on a number of occasions, which triggered the requirement to make disclosures to the Company and to the Stock Exchange in terms of the provisions of regulation 7(1A) read with regulation 7(2) of the SAST Regulations and regulation 13(4) read with regulation 13(5) of the PIT Regulations but the Noticee has failed to make any such disclosure to the Company and to the Stock Exchange in terms of the provisions of these regulations.

11. In view of above, the issues that arise for consideration in the present case are, whether the Noticee has failed to comply with the provisions of regulation 7(1A) read with regulation 7 (2) of the SAST Regulations and/or regulation 13(4) read with regulation 13(5) of the PIT Regulations and whether non-compliance, if any, attract penalty under the provisions of the SEBI Act.
12. Before moving forward it would be pertinent to refer to the provisions of the aforesaid regulations alleged to have been violated/ contravened by the Noticee. The said regulations (as prevailing during the time of aforesaid acquisition/disposal of shares by the Noticee) read as under:

**SAST Regulations:**

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

*((1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

... ..

*(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.*

**PIT Regulations:**

**13. Continual disclosure**

*(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 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.*

*(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 2 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.*

13. Regulation 7(1A) of the SAST Regulations obligates an acquirer, who has acquired shares or voting rights of a company under regulation 11(1) of the SAST Regulations, to make disclosures, to the company and to the stock exchange, regarding his purchase or sale of shares/voting rights in the company, whenever such sale or purchase aggregates two percent or more of the share capital of the company. The disclosure regarding such

acquisition or sale and aggregate shareholding after such acquisition or sale is required to be made within two days of such acquisition or sale.

14. Regulation 13(4) of the PIT Regulations cast an obligation on a director or officer of a listed company to make disclosure, to the company and to the stock exchange where the shares of the company are listed, regarding the total number of shares or voting rights held and the change in shareholding or voting rights, if there has been a change in such holding from the last disclosure made under sub-regulation (2) or (4) of regulation 13 of the PIT Regulations and the change exceeds rupees five lakh in value or 25,000 shares or 1% of total shareholding / voting rights of the company.
15. The details of sale and acquisition of shares of ACIL by the Noticee was provided to him and he has not denied or disputed those details or his transactions referred to in the SCN. However, he has contended that the required disclosures under regulation 7(1A) of the SAST Regulations and regulation 13(4) of the PIT Regulations were made by him through the Compliance Officer of the Company. In this regard, vide letter dated March 12, 2012, the Noticee has forwarded copy of certain letters sent by the Company to BSE and claimed that the required disclosures were made. I have perused the said documents submitted by the Noticee in support of his contentions (viz. letter of the Company to BSE dated 06/01/2009,27/02/2009,01/04/2009,18/04/2009,12/05/2009,5/05/2009,04/06/2009,06/07/2009,20/07/2009,03/08/2009,08/08/2009,22/08/2009,07/09/2009 and 23/09/2009) and observed that those letters are written by the Company to BSE informing the Exchange about the sale and purchase transactions of the Noticee in the scrip of ACIL. These letters have been acknowledged by BSE. I find that these letters were not written to BSE by the Noticee and the information provided in these letters are also not complete or in the prescribed format. I find that none of the said letters are the disclosures that the Noticee was required to make to the Company or to the Stock Exchange either under regulation 7(1A) of the SAST Regulations or regulation 13 (4) of the PIT Regulations.
16. Subsequently, vide his letter dated April 09, 2012 the Noticee has forwarded a set of documents, which suggest that on different dates disclosures were made by him to the Company in the prescribed format under regulation 13(4) of the PIT Regulations and regulation 7(1) of the SAST Regulations. The forwarding letters pertaining to the said disclosures are addressed to the compliance officer of the Company and the same are duly acknowledged. However, none of the documents furnished by the Noticee in support of his contentions indicate that the required disclosures under the provisions of the SAST and PIT Regulations were made by him to the stock exchange as well.

17. It is observed that as per regulation 7(1A) of the SAST Regulations and regulation 13(4) of the PIT Regulations the Noticee was under obligation to make disclosures not only to the Company but also to the stock exchange where the shares of the Company were listed i.e., BSE. The documents furnished by the Noticee only indicate that the disclosures were made by him to the Company in the prescribed format but he has not furnished any document to show that the required disclosures were made by him to the stock exchange also. Further, as has been mentioned above, BSE has confirmed that no disclosure under regulation 7(1A) of the SAST Regulations or regulation 13(4) of the PIT Regulations has been filed for the scrip of ACIL.
18. In light of all the above discussions, I am of the opinion that the Noticee has failed to make the required disclosures to the stock exchange and has thereby violated the provisions of regulation 7(1A) read with regulation 7(2) of the SAST Regulations and regulation 13 (4) read with regulation 13 (5) of the PIT Regulations. I am of the view that for the said violations the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, which states as under -

**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, -*

*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.*

19. While determining the quantum of penalty, the following factors stipulated under section 15J of SEBI Act, is to be taken into account.

*(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 result of the default;*

*(c) the repetitive nature of the default.*

20. In this regard, I would like to mention that from the material available on record, it is not possible to ascertain the disproportionate gain or unfair advantage which may have accrued to the Noticee or the loss that the investors would have incurred as a result of the aforesaid default by the Noticee. However, I am of the opinion that the change in the shareholding and timely disclosure thereof, is of prime importance from the point of view of

shareholders/investors as that would have prompted them in making decision on investment or otherwise. It would also be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding. On account of failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the concerned stakeholders were deprived of the important information at the relevant point of time. With regard to the number of times the same violation was committed, it is observed that the Noticee has defaulted in making the required disclosures under the SAST Regulations on four occasions and under the PIT Regulations on several occasions (as detailed above). Therefore, the default of the Noticee is repetitive.

21. Therefore, considering all the said facts and circumstances of the case as well as the submissions made by the Noticee, I am of the view that a penalty of ₹ 3,00,000 on the Noticee shall be commensurate with the violations committed by him.

## **ORDER**

22. In exercise of the powers conferred upon me under Section 15 I of the SEBI Act and rule 5 of the Rules, I impose penalty of ₹ 3,00,000/- (Rupees three lakh only) on the Noticee in terms of the provisions of Section 15A(b) of the SEBI Act for the violation of the provisions of regulation 7(1A) read with regulation 7(2) of the SAST Regulations and regulation 13(4) read with regulation 13(5) of the PIT Regulations.
23. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to - The Chief General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
24. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

**Date : June 06, 2012**

**Place : Mumbai**

**Satya Ranjan Prasad**

**Adjudicating Officer**