

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER/SS/AS/2018-19/1790]**

**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. Kaushik Namji Maru (PAN: AJOPM2244F)**

Flat No. 107, Jude Residency, B Wing,  
Naronha Compound, Near Cross Garden, Bhayander West,  
Mumbai - 401101 (Maharashtra)

**In the matter of Polo Hotels Limited**

1. M/s Polo Hotels Limited (hereinafter referred to as “the company”) is a company having its shares listed on Bombay Stock Exchange Limited (hereinafter referred to as “BSE”). In the course of examination conducted by SEBI in the scrip of the company during June 03, 2014 to December 12, 2014 (hereinafter referred as “Examination Period”) following was observed:
- a. Mr. Kaushik Namji Maru, an independent non-executive director of the company (from June 27, 2014 – November 20, 2014) had acquired/sold/transferred shares of the company through off-market and on-market transactions during examination period. His transactions had attracted his consequent disclosure obligations under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the ‘PIT Regulations’) and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the ‘SAST Regulations’) as shown in the following table:

Date of transaction	Transaction Type	Buy/Sell/Transfer	Quantity of Shares	Holding after transaction	Value of Shares (₹)*	Disclosure required under PIT	Disclosure required under SAST
08/07/2014	Off Market	Transfer (credit)	5,00,000	5,00,000 (5.92%)	2,58,25,000	13(4)	29(1)
18/08/2014	On Market	Sell	32,600	4,72,635 (5.60%)	21,63,010	13(4)	-
19/08/2014	On Market	Sell	39,990	4,32,645 (5.13%)	25,39,365	13(4)	-
20/08/2014	On Market	Sell	12,901	4,19,744 (4.97%)	8,45,660	13(4)	-
25/08/2014	On Market	Buy	37,338	4,50,420 (5.34%)	25,96,858	13(4)	-
25/08/2014	On Market	Sell	7,650	4,42,770 (5.25%)	5,32,057	13(4)	-
26/08/2014	On Market	Sell	8,172	4,34,598 (5.15%)	5,48,341	13(4)	-
27/08/2014	On Market	Sell	18,075	4,16,523 (4.93%)	12,36,330	13(4)	-
01/09/2014	On Market	Sell	9,357	4,07,166 (4.82%)	6,33,937	13(4)	-
08/09/2014	Off Market	Transfer (credit)	7,173	4,17,338 (4.94%)	4,75,928	13(4)	-
08/09/2014	On Market	Sell	10,100	4,07,238 (4.82%)	6,70,135		-

15/09/2014	On Market	Buy	3,525	4,10,763 (4.87%)	2,36,880	13(4)	-
15/09/2014	Off Market	Transfer (credit)	5,068	4,15,831 (4.93%)	3,40,570		-
22/09/2014	On Market	Sell	10,885	4,04,946 (4.80%)	7,06,437	13(4)	-
30/09/2014	Off Market	Transfer (credit)	7,755	4,12,701 (4.89%)	5,21,136	13(4)	-
08/10/2014	On Market	Sell	6,636	4,06,065 (3.01%)	4,36,317	-	29(2)
09/10/2014	On Market	Sell	12,900	3,93,165 (2.92%)	8,50,755	13(4)	-
09/10/2014	Off Market	Transfer (credit)	1,00,000	4,93,165 (3.66%)	65,95,000		-
14/10/2014	On Market	Buy	3,269	4,96,434 (3.68%)	2,10,523	13(4)	-
14/10/2014	On Market	Sell	13,581	4,82,853 (3.58%)	8,74,616		-
14/10/2014	Off Market	Transfer (credit)	1,00,000	5,82,853 (4.32%)	64,40,000		-
17/10/2014	Off Market	Transfer (debit)	5,00,000	80,118 (0.59%)	3,17,00,000	13(4)	-

**\*Value of shares calculated on the basis of closing price of the share of the company.**

- b. In the 7 out of aforesaid transactions, the number of shares involved was more than 25,000 shares and on 16 days the value of the shares sold/bought/transferred by him in a day were more than ₹5,00,000/-. Accordingly, he was under the obligation to make disclosures to the company and to BSE within two working days of acquisition/ sale/ transfer of shares as stipulated in Regulation 13(4) read with 13(5) of the PIT Regulations.
- c. Further consequent to acquisition of 5,00,000 shares (5.92% of the shareholding of the company) on July 08, 2014, he was also under the obligation to make disclosures to the company and to BSE within two working days of this acquisition of shares as stipulated in Regulation 29(1) read with 29(3) of the SAST Regulations.
- d. Also, when he sold 6,636 shares on October 08, 2014, his shareholding in the company reduced from 5.92% (as on July 08, 2014) to 3.01%(as on October 08, 2014) i.e. more than 2% and therefore, he was under the obligation to make disclosures to the company and to BSE within two working days of such acquisition/ sale/ transfer of shares which resulted in change of his total shareholding in the company in excess of two percent as stipulated in Regulation 29(2) read with 29(3) of the SAST Regulations.
- e. In view of above, SEBI noted that with respect to the aforesaid transactions Mr. Kaushik Namji Maru had not made any disclosures to the company or to BSE with respect to his respective transactions under PIT Regulations and SAST Regulations.
- f. The aforesaid provisions of the PIT Regulations alleged to have been violated in this case are reproduced as under:

**PIT Regulations, 1992**

***Disclosure of interest or holding by directors and officers and substantial shareholders in a***

## ***Initial Disclosure***

*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 persons 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 (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.*

## **SAST Regulations, 2011**

### ***Disclosure of acquisition and disposal.***

*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.*

*(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 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.*

2. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulations 13(4) read with 13(5) of PIT Regulations and Regulations 29(1), 29(2) read with 29(3) of SAST Regulations by Mr. Kaushik Namji Maru ("the Noticee"). Vide a communication - order dated June 25, 2018, undersigned was advised to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and section 15A (b) of the SEBI Act, the alleged violation of the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations and Regulation 29(1), 29(2) read with 29(3) of the SAST Regulations by the Noticee.
3. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, the notice to show cause no. EAD/SS/AKS/30715/1-4/2018 dated November 02, 2018 ("the SCN") was issued to the Noticee, calling upon him to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations.
4. The SCN was sent at the last known address of the Noticee through Speed Post Acknowledgment Due, which was, duly served upon the Noticee. In the said SCN, the Noticee was asked to reply within a period of 14 days of the receipt of the SCN as specified under Rule 4(1) of Adjudication Rules. However, no reply was received from the Noticee. Further, in the interest of natural justice and in terms of the Adjudication Rules, the Noticee was given additional opportunity to file reply to the SCN and was also granted an opportunity of personal hearing on December 19, 2018. The said notice of hearing was duly served upon the Noticee on December 12, 2018. However, no reply / communication has been received from him despite service of the notices upon him. Vide the said SCN/notice of hearing, it was clearly indicated to the Noticee that in case of failure to submit reply or to appear for the hearing, the case would be proceeded with *ex-parte* on the basis of the material available on record. Considering these facts and circumstances, I am of the view that the Noticee is deliberately keeping away from these proceedings and is not willing to cooperate. I, therefore, conclude that the Noticee has nothing to submit and in terms of Rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record.
5. In absence of any response from the Noticee, it is presumed that he has admitted the charge of provisions as alleged in the case. In this regard, the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon wherein it has that- "*... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has, *inter alia*, observed that: "*... appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices...*". I have also carefully considered the allegations and charges levelled against the Noticee and relevant material relied upon in this case. Further, there is nothing on record

to state that the Noticee has complied with statutory requirements as alleged. I, therefore, do not find any reason to deviate from the allegations *qua* the Noticee as described in the SCN. It is, thus, admitted position that the Noticee has failed to make disclosures in terms of Regulation 13(4) read with 13(5) of the PIT Regulations with regard to the transactions as detailed in above table in para 1(a).

6. It is noted that the transaction dated July 08, 2014 was the same transaction which triggered overlapping obligations under Regulation 13(4) of the PIT Regulations as well as under Regulation 29(1) of the SAST Regulations as both provide same requirements with regard to overall threshold, timelines and the entity to whom the disclosures are to be made. With regard to such similar violations arising out of same transaction, it is relevant to rely upon the order dated September 04, 2013 passed by the Hon'ble SAT in the matter of *Vitro Commodities Private Limited Vs. SEBI* wherein the it has observed that:

*"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other "*

7. As per *ratio decidendi* in the aforesaid judgment, I am of the view that the violation of the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations and Regulation 29(1) read with Regulation 29(3) of the SAST Regulations are not substantially different and can be considered as a single violation by the Noticee for the purpose of adjudication in the matter for aforesaid transaction dated July 08, 2014. In addition, the Noticee also failed to make disclosures in terms of Regulation 29(2) read with 29(3) of the SAST Regulations for his transaction dated October 08, 2014.
8. For the purpose of adjudication, it is pertinent to mention that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Timely disclosures of the details of the shareholding of the persons acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)*, has also held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of *Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI*—the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

9. In the facts and circumstances of this case, lack of relevant information in public domain with regard to change in shareholding of the Noticee would create information asymmetry, at relevant times and the failure to make disclosure as found in this case would also defeat the purpose of the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 29(1), 29(2) read with 29(3) of the SAST Regulations. The statutory timelines stipulated in regulation 29(3) of the SAST Regulations and regulation 13(5) of the PIT Regulations are mandatory. Considering the above facts and circumstances, I hold that this case deserves imposition of monetary penalty upon the Noticee under Section 15A (b) of the SEBI Act which reads as following:-

**SEBI Act.**

**Penalties and Adjudication**

***Penalty for failure to furnish information, return, etc.***

**15A.** *If any person, who is required under this Act or any rules or regulations made thereunder,—*

*(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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

10. For the purpose of adjudication of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, vide Part VIII of Chapter VI of the Finance Act, 2017 which was brought after Judgement of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. 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***

*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 investor/ +s as a result of the default;*
- (c) the repetitive nature of the default.*

*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.*

11. Having regard to the factors listed in section 15J, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. In this case, the Noticee being a director of the company has acquired/ sold/ transferred shares of the company beyond the prescribed threshold in a series of the transactions involving substantial number of shares/ high values. As commonly understood the disclosure of the consolidation / dilution of holding of such persons is intended to ensure transparency of the transactions of such insiders/ traders apart from serving the purposes that the company is informed of sizeable holding, so that if necessary it can take steps to prevent a raider, the stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. In this case, several transaction of the Noticee were through off-market transactions in a non-transparent manner and the consequential change in shareholding were also in clandestine manner without disclosing the required details to the public shareholders within stipulated time. It is also noted that in respect of few consecutive sale transactions the successive change had been in "lightning duration" and by the time the disclosure with respect to one transaction would have reached the company and from the company to the stock exchange the position had further changed as the Noticee sold further shares; and that being the position, the details of holding which the company or the stock exchange had received would not be of any significant use. Having said that, I am not suggesting that in the strict technical sense, the Noticee had not failed in its obligation with respect to those consecutive sale transactions as admittedly, there is no disclosures made by the Noticee at all.
12. Considering all the facts and circumstances of the case, aforesaid factors/ guidelines and exercising the powers under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of total ₹10,00,000 (Ten lac rupees only) on the Noticee under section 15A (b) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.
13. The Noticee 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:

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

14. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

1	Case Name	
2	Name of the 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)	

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

**Date: December 31, 2018**

**Place: Mumbai**

**Santosh Shukla**

**Adjudicating Officer**