

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/CB/306/2018]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Abhirati Trading Pvt. Ltd. (PAN – AAICA2271N) having address at A 4, C-10, Jai Vidyadani CHS Ltd., Om Nagar, Sahar Pipe Line Road, Andheri (E), Mumbai - 400099

In the matter of *Vakrangee Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as the “**SEBI**”) upon suspicion of violation of various provisions of securities laws had conducted investigation in the shares of M/s Vakrangee Limited (hereinafter be referred to as the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) and National Stock Exchange of India Ltd. (hereinafter be referred to as, the “**NSE**”) for the period from April 2013 to September 2013 (hereinafter be referred to as, the “**Investigation Period**”). Investigation *prima facie* revealed commission of violation of Regulation 13(3) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as the “**SAST Regulations**”) by M/s Abhirati Trading Pvt. Limited (hereinafter be referred to as the “**Noticee**”) for not making disclosures upon change of its shareholding in the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the “**Adjudication Rules**”) vide order dated November 25, 2016 to inquire into and adjudge under Section 15A (b) of the SEBI Act

against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations and SAST Regulations. Proceedings of appointment of the undersigned as Adjudicating Officer was communicated vide communique dated January 17, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAO/RA/CB/9156/2017 dated April 21, 2017 (hereinafter be referred to as the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against it under Section 15A (b) of the SEBI Act for the alleged violations of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.
4. The core allegations levelled against the Noticee in the SCN are summarized as below:
 - a) The Noticee was holding 39439981 shares of the Company as on April 01, 2013 which was 7.85% of the total share capital of the Company. Investigation revealed that on May 28, 2013, the shareholding of the Noticee decreased to 27857966 shares of the Company which decreased his shareholding to 5.54% of the total share capital of the Company.
 - b) Investigation further revealed that on September 04, 2013, the shareholding of the Noticee got further reduced to 17475703 shares of the Company which decreased the shareholding of the Noticee to 3.47% of the total share capital of the Company.
 - c) It was alleged that the shareholding of the Noticee in the Company decreased by 2.30% during April 01, 2013 to May 28, 2013 and further decreased by 2.07% during May 28, 2013 to September 04, 2013. Such decrease in the shareholding of the Noticee required disclosures to be made by it in terms of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulations 29(2) read with 29(3) of the SAST Regulations.
 - d) The BSE, *vide* e-mail dated September 06, 2016 confirmed that no disclosure were made by the Noticee under PIT Regulations and SAST Regulations in relation to the decrease in the Noticee's shareholding in the Company during the Investigation Period. The NSE also, *vide* e-mail dated September 07, 2016 confirmed that the Noticee had not made any disclosures under the PIT Regulations or SAST Regulations.

- e) It was alleged that the aforesaid non-disclosure regarding reduction in its shareholding by the Noticee was in violation of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

13. (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.*
- (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:

29. Disclosure of acquisition and disposal

- (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 subregulation; 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.*

5. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, which reads 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 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.”

6. In response to the SCN, the Noticee, vide letter dated May 12, 2017 requested the undersigned to allow it to take physical inspection of all the evidences used in issuance of the SCN. Thereafter, an opportunity of inspection of relevant documents pertaining to the adjudication proceedings was provide to the Noticee vide communique dated May 31, 2017, wherein, the Noticee was advised to avail the opportunity of inspection by June 23, 2017. Vide the said communique, the Noticee was also called upon to submit its reply on or before July 07, 2017. Thereafter, inspection of records / documents was carried out by the Authorised Representative of the Noticee on June 29, 2017. However, no reply in response to the SCN was submitted by the Noticee.
7. For the purpose of inquiry and as requested by the Noticee in its letter dated May 12, 2017, an opportunity of personal hearing was provided to the Noticee on January 04, 2018 vide hearing notice dated December 13, 2017. The Noticee was also advised to submit its reply, if any, in response to the SCN by December 29, 2017. The said hearing notice dated December 13, 2017 was duly delivered to the Noticee on December 20, 2017. The acknowledgement / online acknowledgment proof as available on the website of India Post are placed on records.
8. No appearance was made by the Noticee on the aforesaid date of hearing. The Noticee, by way of an e-mail dated January 02, 2018 submitted that it had changed the address of its registered office and the hearing notice dated December 13, 2017 was delivered at its old address. The Noticee also sought an extension of three weeks for hearing in the instant proceedings. However, I note that the said notice was duly

delivered and the acknowledgment card of delivery contains the seal of the Noticee. Surprisingly, the Noticee merely stated about the changed of address but had not provided details of its new address in its e-mail dated January 02, 2018. Since details of the new address were not provided in the e-mail dated January 02, 2018, a final opportunity of hearing was provided to the Noticee on January 17, 2018 vide e-mail dated January 04, 2018. The Noticee was also advised to submit its reply, if any, by January 16, 2018. However, the Noticee did not submit any reply towards the SCN nor did it appear before the undersigned for the purpose of hearing in the instant matter. The consequences of failure to reply and / or non-appearance had been mentioned in the hearing notice dated January 31, 2018 wherein, the Noticee was informed that if no appearance is made by the Noticee, the matter would be decided further on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules.

9. I note that sufficient opportunities to submit reply and to appear for personal hearing have been given to the Noticee, none of which were availed by it. Therefore, I find it relevant to refer to the judgment dated December 08, 2006 of the Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. v. SEBI** (Appeal No. 68 of 2003) wherein, it observed, "*...the appellants did not file any reply to the second show-cause. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". I also find it pertinent to refer to order of the Hon'ble Securities Appellate Tribunal in the matter of **Sanjay Kumar Tayal & Ors. v SEBI** (Appeal 68 of 2013 dated February 11, 2014), wherein the Hon'ble SAT had *inter alia* observed that, "*...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, 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 leveled against them in the show cause notices...*" Thus, I am of the view that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from the Noticee.
10. Keeping the aforesaid in mind, I am of the opinion that the SCN and the Hearing Notice have been duly served upon the Noticee but it has deliberately failed to reply towards the SCN and also failed in availing the opportunity of hearing in this matter. I am also of the view that principles of natural justice have been duly followed in the matter.

Therefore, the adjudication proceedings against the Noticee are undertaken *ex-parte* on the basis of material available on records.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the instant matter are:

- 11.1 Whether the Noticee had failed to make required disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?
- 11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?
- 11.3 If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue 11.1 Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?

12. The details regarding change of more than 2% in the shareholding of the Noticee in the Company as alleged in the SCN is not in dispute in absence of any reply from the Noticee. The details of change in shareholding of the Noticee in the scrip of the Company is as follows:

Date	Shareholding	
	No. of shares	% of share capital
April 01, 2013	39439981	7.85
May 28, 2013	27857966	5.54
Change in Shareholding		2.31
May 28, 2013	27857966	5.54
September 04, 2013	17475703	3.47
Change in shareholding		2.07

13. Regulation 13(3) of the PIT Regulations requires any person who holds more than 5% shares or voting rights in any listed company to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, if there has been change in such holdings from the last disclosure made under Regulation 13(1)

or under this sub-regulation; and such change exceeds 2% of the total shareholding or voting rights in a company within two working days.

14. Similarly, Regulation 29(2) of the SAST Regulations requires any acquirer holding shares or voting rights entitling him for five percent or more of shares or voting rights in a target company to disclose the number of shares or voting rights held and change in shareholding or voting rights, if there has been change in such holdings from the last disclosure and such change exceeds two percent of the total shareholding or voting rights in a target company, even if such change results in shareholding falling below five percent.
15. On perusal of the available records / table reproduced in paragraph 12 hereinabove, it is observed that the shareholding of the Noticee got reduced on May 28, 2013 by 2.31% and by 2.07% on September 04, 2013. Thus, upon change of more than 2% in its shareholding in the Company, the Noticee ought to have disclosed in terms of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.
16. I note from the Annexure 4 of the SCN that the BSE had confirmed vide its e-mail dated September 06, 2016 that it has not received any disclosures from the Noticee under PIT Regulations or SAST Regulations in the scrip of the Company. Additionally, I have verified from the website of the BSE and observed that no disclosure was available there regarding the said decrease in shareholding.
17. Similarly, I also note from Annexure 6 of the SCN that the NSE vide its e-mail dated September 07, 2016 had confirmed that it had not received any disclosures from the Noticee in the scrip of the Company under PIT Regulations or SAST Regulations. I further note from Annexure 7 of the SCN that the Company had provided disclosures received by it during the Investigation Period to SEBI vide e-mail dated August 22, 2016. On perusal of the disclosures forwarded by the Company, I observe that the same did not contain any mention of the Noticee having communicated any disclosures to the Company.

18. In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.

Issue 11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

19. I have taken into account the well-known judgment of the Hon'ble Supreme Court in the matter of ***The Chairman, SEBI v. Shri Ram Mutual Fund*** [2006] 68 SCL 216, wherein it was held that, *"In our considered opinion, penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of parties committing such violations becomes wholly irrelevant"*.

20. In view of the aforesaid, I am convinced that the failure of Noticee in making disclosures to the Company under Regulation 13(3) read with 13(5) of the PIT Regulations and failure to make disclosures to the target company as well as Stock Exchanges under Regulation 29(2) read with 29(3) of the SAST Regulations attracts imposition of monetary penalty on the Noticee under Section 15A (b) of the SEBI Act, text of which is reproduced as under:

"15A. 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 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 11.3 If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

21. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, I have considered 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 investors 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.”

22. Investigation did not reveal any specific disproportionate gains or unfair advantage made by the Noticee or specific loss suffered by the investors. No past default against the Noticee was revealed in the investigation report. However, I note that the Hon'ble Securities Appellate Tribunal in the matter of **Komal Nahata v. Securities and Exchange Board of India** (Appeal No. 5 of 2014 dated January 27, 2014) has held, “Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.” Further, I note that the prime objective of the SAST Regulations is to afford fair treatment to shareholders who are affected by the change in control. The SAST Regulations seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies. Correct and timely disclosures, *therefore*, are an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision.

23. Taking into account aforesaid facts and circumstances of the case, mitigating factors and the judgments, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

24. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticee as shown in the table below:

Name of the Noticee	Amount of Penalty	Penalty Provisions and Violations
Abhirati Trading Pvt. Ltd.	Rs. 4,75,000 (Rupees Four Lakh Seventy Five Thousand only)	Under Section 15A(b) of the SEBI Act for violation of Regulation 13(3) read with 13(5) of the PIT Regulations
	Rs. 4,75,000 (Rupees Four Lakh Seventy Five Thousand only).	Under Section 15A(b) of the SEBI Act for violation of Regulation 29(2) read with 29(3) of the SAST Regulations
Total	Rs. 9,50,000/- (Rupees Nine Lakh Fifty Thousand only)	

I am of the view that the said penalty would commensurate with the violations committed by the Noticee.

25. 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;

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

26. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV of the SEBI. The format for forwarding details of e-payments shall be made in the following tabulated form as provided in the SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID – tad@sebi.gov.in.

Date	Department of SEBI	Name of Intermediary / Other entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount in Rs.	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually etc.)	Bank name and Account number from which payment is remitted	UTR No.

27. Copies of this Adjudication Order are being sent to the Noticee and also to the SEBI in terms of Rule 6 of the Adjudication Rules.

Date : February 21, 2018

Place : Mumbai

(Rachna Anand)
Adjudicating Officer