

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/112 – 113/2018-19]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
("SEBI ACT") 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:

**Ashok Shivlal Rupani
(PAN: AABPR0488E)**

**Naresh Shivlal Rupani
(PAN: AABPR0487M)**

In the matter of Saianand Commercial Limited (formerly known as Oregon Commercial Limited)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation of the alleged irregularity in the trading of the shares of Saianand Commercial Limited (formerly known as Oregon Commercial Limited) (hereinafter referred to as "SCL/ company") had observed that Ashok Shivlal Rupani (hereinafter referred to as "Noticee 1") and Naresh Rupani (hereinafter referred as "Noticee 2"), were directors of the company and the change of their shareholding exceeded 1% and allegedly failed to make the requisite disclosures under regulation 13(4) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") read with regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT 2015").

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide an order of the Competent Authority, SEBI, dated May 18, 2017, the undersigned has been appointed as the Adjudicating Officer under section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) read with section 15 I of SEBI Act and 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 provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated November 20, 2017 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 15A (b) of SEBI Act for the alleged violations.
4. Noticee 1 and Noticee 2, vide separate letters dated March 27, 2018 submitted, inter alia, and *“The period of irregularities in the script of Oregon Commercial Ltd. (OCL / Company) mentioned is between January 4, 2010 to January 10, 2011 for which I have not been able to trace any papers readily. However, I am making best efforts to find papers since the matter under reference is more than 7/ 8 years old.”*
5. Noticee 1 and Noticee 2, vide separate letters dated May 7, 2018 submitted, inter alia, *“On going through the records from Bombay Stock Exchange it was found that the required disclosures were made in time. We enclose the copy of the said disclosures for your ready reference and perusal. It is evident from the above that we had complied with all.”*
6. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on June 1, 2018 vide notice dated May 10, 2018. Noticee 1 and Noticee 2, vide letters dated May 17, 2018 submitted that due to ill health of Noticee 1 , they are unable to attend the scheduled hearing on June 1, 2018.
7. Another opportunity of hearing was given to Noticee 1 and 2 on June 13, 2018. Both, Noticee 1 and 2, vide letter dated June 5, 2018 submitted that they would avail the opportunity of hearing but vide letter dated June 12, 2018 sought three to four weeks’ time to attend the

personal hearing. Another opportunity of hearing was given to Noticee 1 and 2 on July 9, 2018. Due to heavy rain in Mumbai they sought adjournment. Final opportunity of hearing was given to Noticee 1 and 2 on July 30, 2018. Noticee 2 along with authorised representative of Noticee 1 appeared and reiterated the submissions made vide letter dated May 7, 2018.

CONSIDERATION OF ISSUES AND EVIDENCE

8. I have carefully perused the charges levelled against the Noticee in the SCN, their reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
- (a) Whether the Noticee have violated the provisions of regulations 13(4) read with 13(5) of PIT Regulations read with regulation 12(2) of PIT 2015?
 - (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?; and,
 - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee 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 PIT regulations, PIT 2015 and SAST Regulations:

Relevant provisions of PIT Regulations:

Disclosure of interest or holding in listed companies by certain persons - Initial 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 of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, 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.*

Relevant provisions of PIT 2015:

12. Repeal and Savings:

(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;

10. I note from the documents on record that Noticee 1 and Noticee 2 sold shares during the investigation period but have not filed any disclosures for the same under PIT regulations.

The details of the sale of shares are as under:

Date of transfer	Name of director	No. of shares sold	% to total share capital	Value of transaction (in ₹)
8-Feb-10	Mr. Ashok Shivilal Rupani	14,730	1.53%	25,79,955
11-Feb-10	Mr. Ashok Shivilal Rupani	15,000	1.56%	25,73,594
4-Feb-10	Mr. Naresh Shivilal Rupani	24,800	2.58%	49,86,594
6-Feb-10	Mr. Naresh Shivilal Rupani	6,000	0.63%	10,81,982

11. The Noticees submitted an unacknowledged format of disclosure under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and claimed that the same disclosure was done by them to BSE. On perusal of the website of BSE I did not find any such disclosures made by the Noticees. As the Noticees being directors of the company failed to make disclosure under PIT Regulations, the market was unaware of their change in shareholding. In view of the above, I find that the allegation of violation of regulation 13(4) read with 13(5) of PIT Regulations stand established.

12. The Hon'ble Securities Appellate Tribunal, in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, has also observed 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. We cannot therefore subscribe to the view that the violation was technical in nature”.

13. I therefore find the act of the Noticee is liable for a penalty under section 15 A(b) of SEBI Act which read as follows:

Penalty for failure to furnish information, return, etc.

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

(a)

(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 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;

14. 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...”*.

15. 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, 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.

16. 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 more than one occasion. Hence, the violation is repetitive in nature.

ORDER

17. 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 Noticee stands 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 under section 15A (b) of SEBI Act of ₹2,00,000/- (Rupees Two Lakh only) each on Noticee 1 and Noticee 2 for violation of regulation 13(4) read with 13(5) of PIT Regulations read with 12(2) of PIT 2015.

18. The Noticee 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 - I [**EFD-DRA-I**] 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

19. The Noticee 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.

20. 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)	

21. 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 : August 29, 2018
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER