

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. Order/VV/JR/2019-20/6179]**

**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) RULES,  
1995**

In respect of:

**Purshottam Khandelwal (PAN: ADZPK9831B)**

**In the matter of Mefcom Agro Industries Limited**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation in the matter of Mefcom Agro Industries Limited (hereinafter referred to as "**Mefcom/ company**") observed that Purshottam Khandelwal (hereinafter referred to as "**Noticee**") had acquired shares and crossed 5% of the shareholding of Mefcom and allegedly did not make any disclosure under regulation 7(1) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations, 1997**") read with regulation 35(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") and regulations 13(1) and 13(3) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**").

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI vide order dated April 28, 2017 appointed Shri Jeevan Sonparote as the Adjudicating Officer under section 15 I of Securities Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**AO Rules**”) to inquire into and adjudge the aforesaid allegations under section 15A(b) of the SEBI Act. Pursuant to the transfer of the case, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019.

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

3. Based on the findings by SEBI, Show Cause Notice dated February 21, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees 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 them under Section 15A (b) of SEBI Act for the alleged violations.
4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee by the erstwhile Adjudicating Officer on April 12, 2018 vide notice dated March 20, 2018. The hearing notice returned undelivered. Another opportunity of personal hearing was given to the Noticee on June 21, 2019 which was affixed at the last known address of the Noticee. After the undersigned was appointed as the Adjudicating Officer, another opportunity of personal hearing was given to the Noticee on September 18, 2019 vide notice dated August 30, 2019. It returned undelivered. Final opportunity of personal hearing was given to the Noticee on October 24, 2019 vide notice dated October 1, 2019 which was affixed at his last known address.
5. Enough opportunities were given to the Noticees to represent their case by way of reply to SCN and also by appearance for personal hearing. In order to complete the proceeding timely, I am constrained to proceed with the matter on the basis of the material available on record.

## CONSIDERATION OF ISSUES AND EVIDENCE

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

- (a) Whether the Noticees have violated the provisions of regulation 7(1) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011 and regulations 13(1) and 13(3) of PIT Regulations.
- (b) Do the violations, if any, on the part of the Noticees 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?

7. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations, 1997 and SAST Regulations, 2011.

### **Relevant provisions of SAST Regulations, 1997:**

*Acquisition of 5 per cent and more shares or voting rights of a company 7. (1) Initial Disclosures.*

*7 (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.*

*Explanation-For the purposes of sub-regulations (1) and (1A), the term "acquirer shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]*

- (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.

**Relevant provisions of SAST Regulations, 2011:**

**35. Repeal and Savings:**

(2) Notwithstanding such repeal, –

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, an 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;

(b) 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 has never been repealed;

**Relevant provisions of PIT Regulations:**

**13.** (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working 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.

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**Continual disclosure.**

(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.

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(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within four 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.

8. I note from the documents on record that the Noticee had acquired shares in excess of 5% of the total shareholding of the company.

Entity	Date	No of shares held by - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Mode( *) Market / off-market	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Reg(s) under SAST 1997/ PIT 1992
PK	27/11/06	123614	4.40	19289	0.68	142903	5.08	Market	No	No	No	7(1) r/w 7(2) of SAST, 13(1) r/w 13(5) of PIT

9. It was observed that the Noticee was the top buyer during the investigation period. He was also the top counter-party to the sale of shares by original promoters. Further it was observed that BoID. No.1301190300027596 of the Noticee had credit of 1,42,903 shares of Mefcom as on Nov 27, 2006.
10. The Noticee, vide letter dated November 22, 2013, was inter alia advised by SEBI to provide details of disclosure made and reason for trading in the scrip and his relation if any with promoters/directors of Mefcom. The Noticee vide e-mail dated December 06, 2013 had inter alia stated that he never traded in the scrip, Mr. Nirmal Jain of SIC Stocks and Services Pvt. Ltd (SIC) was making his duplicate signature and trading in his name and that he has no relation with Mefcom / its directors or promoters or group companies.
11. The Noticee, vide e-mail dated August 6, 2015 was asked to confirm the following:
- whether any police complaint was lodged against Mr. Nirmal Jain of SIC (for making his duplicate signature, as alleged by the Noticee.
  - his demat account showed credit of 142903 shares of Mefcom as on November 27, 2006 whereas he was claiming that he had not indulged in any trade in Mefcom.
12. The Noticee vide e-mail dated August 8, 2015 stated that

- (a) till date he did not file any police complaint against Nirmal Jain
- (b) documents of demat account and bank account were kept at Nirmal Jain's house at Mumbai and that he came to know regarding all the frauds when SEBI send him the 'delivery/receipt instructions' (in some other case)
- (c) Nirmal Jain is his childhood friend but now they were not in talking terms.

13. During the investigation SIC was asked to comment on the Noticee's contention. SIC vide letter dated September 30, 2015, submitted copy of a document (dated April 12, 2006) according to which the Noticee authorised Krishnakumar Modi (then Remiser of SIC) –hereinafter referred as "KK Modi"- to trade using his client code. The Noticee vide e-mail dated October 16, 2015 had stated inter alia that Nirmal Jain of SIC had introduced him the Noticee to KK Modi and that: 'the attached document might be signed by him.....'

14. The demat account of the Noticee showed that his shareholding in Mefcom crossed 5% as on November 27, 2006, which attracted disclosure as per SAST Regulations, 1997 read with SAST Regulations, 2011 and PIT Regulations. Since the shares were lying in his demat account, the Noticee should have made the disclosure. As per the reply submitted by the Noticee, no disclosures were made in this regard. Moreover, if the Noticee had suspected any foul play he should have filed an FIR. However, as clearly submitted by the Noticee, no such FIR was filed by him. Further, the Noticee had not approached SIC refuting trades appearing in his name as did by its other clients. Also, the Noticee had not provided complete details of his bank accounts in spite of specifically asking him to provide the same.

15. It is observed that the Noticees did not submit any reply to the SCN issued to them. Hon'ble Securities Appellate Tribunal, in Appeal no. 68 of 2013 in *Sanjay Kumar Tayal and others v SEBI*, vide its order dated February 11, 2014 have stated 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."*

16. In view of the above, I find that the allegation of violation of regulation 7(1) read with regulation 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011 and regulations 13(1) read with 13(3) of PIT Regulations by the Noticee stands established and the Noticee is liable for penalty under regulation 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 of one crore rupees, whichever is less.*

17. 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..."*.

18. 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.*

19. 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 Noticee failed to make the relevant disclosure on one occasion. Hence, violation is not repetitive in nature. However, it is pertinent to note that one act of acquisition of shares has triggered disclosure requirements under SAST regulations, 1997 read with SAST Regulations, 2011 and PIT Regulations. Since both the violations are punishable under Section 15A(b) of SEBI Act, a justifiable view is warranted which is also subject to the fact that the default on part of the Noticee in making required disclosure, still continues. It is important to note that timely disclosure of information prescribed under relevant provisions, is an important regulatory tool intended for proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.

### **ORDER**

20. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee viz. Purshottam Khandelwal in terms of section 15A(b) of the SEBI Act, for the violation of the provisions of regulations 7(1) read with regulation 7(2) of SAST Regulations, 1997 read with regulation 35(2) of SAST Regulations, 2011 and regulations 13(1) read with 13(3) of PIT Regulations for non-disclosure of change in shareholding. In my view, the aforesaid penalty is commensurate with the violation committed by the Noticee.

### **PENALTY PAYMENT OPTIONS**

21. 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 1(EFD), Division of Regulatory Action - III [ **EFD 1-DRA-3** ] SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to [tad@sebi.gov.in](mailto:tad@sebi.gov.in) with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

**OR**

22. Payment can also be made online by following the below path at SEBI website [www.sebi.gov.in](http://www.sebi.gov.in) ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

23. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

24. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

**Date : December 19, 2019**  
**Place : Mumbai**

**VIJAYANT KUMAR VERMA**  
**ADJUDICATING OFFICER**