

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/ AO-NP/ JR/ 44 /2017]

**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 BY
ADJUDICATING OFFICER) RULES, 1995.**

In respect of:

Dinesh Allorga Limited [PAN AAACD6900D]

Dineshbhai Shanabhai Patel [PAN AEQPP8294R]

**In the matter of Trading activities of certain entities in the scrip of Dinesh Allorga
Limited (now known as Hemo Organic Limited)**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), examined the trading activities in the shares of Dinesh Allorga Limited (now known as Hemo Organic Limited) (hereinafter referred to as “**company**”/ “**Noticee 1**”) from August 10, 2011 to September 13, 2011. It was observed that the shares of the company were bought and sold and there was change in the holding of the shares and/ or the change exceeded more than 5 lakh in value on several occasions. However no disclosure was made to that effect under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) by the company or one of its promoters and director Dineshbhai Shanabhai Patel (hereinafter referred to

as “**Noticee 2**”) in quarter ending September 30, 2011. The shares of the company is listed in BSE Ltd. (hereinafter referred to as “BSE”).

APPOINTMENT OF ADJUDICATING OFFICER

2. Mr. Prasad Jagdale was appointed as Adjudicating Officer vide order dated June 11, 2015 under section 15 I of SEBI Act read with 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 PIT Regulations committed by the Noticees.
3. Subsequent to the transfer of Mr. Prasad Jagdale, the undersigned was appointed as the Adjudicating Officer vide order dated December 14, 2016.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice/s dated January 21, 2016 (hereinafter referred to as “SCN”) were issued to the Noticees under rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to show cause as to why an inquiry should not be initiated against him and penalty be not imposed under section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) for his failure to comply with the provisions of PIT Regulations.
5. The promoter shareholding details of Noticee 1 are as follows:

S. N.	Name of the promoters	Quarter ended June 2011		Quarter ended Sep 2011		Quarter ended Dec 2011	
		No. Of shares	%	No. Of shares	%	No. Of shares	%
1	Dineshbhai Shanabhai Patel	5,96,940	17.22	5,36,940	15.49	5,36,940	15.49
2	Sonalben Dineshbhai Patel	47,000	1.36	47,000	1.36	47,000	1.36
	Grand Total	6,43,940	18.58	5,83,940	16.85	5,83,940	16.85

6. It is observed from the above share holding pattern that, there was a reduction of 60,000 shares (1.73% of total share capital) in holding of Noticee 2 in quarter ending on September 30, 2011. Noticee 2 being the promoter and director of the company was required to make disclosures to the company and the exchange from the beginning of FY 2011 i.e. April 01, 2011. The changes in the holding along with date of sell transaction and date when disclosure requirement under PIT Regulations were triggered, is as below:

Date of transaction	Name of the director	Holding before transaction (in %)		Gr Sell Vol	Gr Sell Value	% change in holding	Date of trigger of disclosure requirement under regulation 13(4) of SEBI (PIT) regulations, 1992	Reason for trigger of disclosure under regulation 13(4) of SEBI (PIT) regulations, 1992
13/06/11	Dineshbhai Sanabhai Patel	632940	18.26%	21000	438900	0.61%		
29/06/11		611940	17.66%	15000	397970	0.43%	29/06/2011	As from the beginning of FY 2011, more than 25000 shares worth more than Rs 5 lakhs sold by the director
30/06/11		596940	17.22%	23700	628750	0.68%	30/06/2011	As from the date of last disclosure requirement i.e. 29/06/2011, shares worth more than Rs 5 lakhs sold by the director
01/07/11		573240	16.54%	11300	302840	0.33%		
22/07/11		561940	16.21%	15000	404250	0.43%	22/07/2011	As from the date of last disclosure requirement i.e. 30/06/2011, more than 25000 shares worth more than Rs 5 lakhs sold by the director
26/07/11		546940	15.78%	5000	118750	0.14%		
27/07/11		541940	15.64%	5000	118820	0.14%		

7. It is observed that Noticee 1 had confirmed receipt of the disclosure made by Noticee 2 under regulation 13(4) of PIT Regulations. However, on perusal of the BSE website, it was found that no disclosure was made by Noticee 1 to the exchange.

8. Noticee 1, vide letter dated February 19, 2016, made the following submissions:

“We, at Hemo Organic Limited, do hereby inform that the said disclosures under regulation 13(4) and 13(5) of SEBI 1992, were received by the company from Dr. Dineshbhai Shanabhai Patel well within time, and the same were submitted by the company to the BSE also within the stipulated period, as required under the rules of SEBI. We have the necessary documents in the company, which we can submit alongwith the reply.

As shown in clause 3.3 of the notice, it is intimated that the disclosures were sent by the Company to BSE within the stipulated period, as required under regulation 13(6) of SEBI 1992.

It is further intimated that the company is very particular in attending the SEBI and BSE related matters and always keeps a track of the due dates.”

9. Noticee 2, vide letter dated February 19, 2016, made the following submissions:

“I, Dineshbhai Shanabhai Patel do hereby inform that the required submission was already made with the Company and the BSE both, within the stipulated period, as required under the rules of SEBI.

To support my claim, I have the documentary proof which I can show you personally and submit alongwith the reply.”

10. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on February 26, 2016 vide notice dated February 9, 2016. Noticee 2 appeared on behalf of himself and Noticee 1.

11. Pursuant to the personal hearing, vide letter dated March 9, 2016, Noticee 1 made the following submissions:

“...it is once again submitted that both the reports: 1) Disclosure under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1992 and 2) Disclosure under SEBI (Prohibition of Insider Trading) Regulations, 1992 were sent to the BSE in the same envelopes every time via regular courier, for all the reported transactions.

The BSE site is clearly displaying the receipt of part 1) Disclosure under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1992 but not showing the receipt of part 2) Disclosure under SEBI (Prohibition of Insider Trading) Regulations, 1992.

In this connection it is submitted that there seems some omission in the BSE office as both the reports were sent in one envelope every time. Otherwise also, the BSE office should have informed us immediately at the first instance that they have not received the second part of the reports, and they kept it lingering on, perhaps knowingly or unknowingly.

I have ample evidence to prove that multiple reports have been sent by us to the BSE in one envelope and the BSE has been receiving those comfortably. In one or two instances, the BSE had informed that they had not received a part of the reports, but dropped their charge on receiving our reply and evidence that all those reports were sent in the same envelope. In BSE's routine working on quarterly reports, they analyze these reports and immediately serve the discrepancies notice. In the present case, no such discrepancy notice was issued to us for the disclosure under reference. This is again doubtful and hence, the company should get the benefit of doubt.”

12. Pursuant to the personal hearing, vide letter dated March 9, 2016, Noticee 2 made the following submissions:

“...it is once again submitted that disclosure under SEBI (Prohibition of Insider Trading) Regulations, 1992 were mailed to the BSE every time via regular post in personal capacity and a copy of this was inserted in the company's reports envelope also, for all the reported transactions. In the present case, no such discrepancy notice was issued to us for the disclosure under reference. This is again doubtful and hence, should get the benefit of doubt.

In this connection it is submitted that there seems some omission in the BSE office. Otherwise also, the BSE office should have informed us immediately at the first instance that they have not received, and they kept it lingering on, perhaps knowingly and unknowingly.”

13. Another opportunity of personal hearing was given by the undersigned on April 26, 2017 vide notice dated March 30, 2017. Noticee 2 appeared on behalf of himself and Noticee 1. During the course of hearing, it was submitted that the company is regular in respect of all statutory compliances. The company had dispatched the disclosure under PIT Regulations along with disclosure filed under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**SAST Regulations**”). The disclosures made under SAST Regulations are published on the website of BSE. He further undertook to submit a copy of the dispatch register confirming the dispatch of the disclosures filed by the company. Noticee 2, vide letter dated May 11, 2017 provided the photocopy of the dispatch register of Noticee 1 maintained by them.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

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

- (a) Whether the Noticee 1 have violated the provisions of regulation 13(6) of PIT Regulations;
- (b) Whether the Noticee 2 have violated the provisions of regulation 13(4) read with regulation 13(5) of PIT Regulations;
- (c) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) for the alleged violation by the said Noticees?; and,
- (d) If so, what would be the quantum of monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

15. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act.

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 of such person and his dependents (as defined by the company) 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 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.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub- regulations ¹ [(1),(2), (2A), (3), (4) and (4A)] in the respective formats specified in Schedule III.

FINDINGS:

16. I find that the Noticee had sold total 60,000 shares on or after June 30, 2011 to July 27, 2011 (quarter ending September 2011) through 5 transactions. All transactions were for less than 25,000 shares and/ or 1% of share capital of company. However, on one occasion gross sale value of 23,700 shares sold on June 30, 2011 was more

than ₹ 5,00,000/- and was required to be disclosed to company and to stock exchange in compliance of provisions of regulation 13(4) of PIT Regulations.

17. Under regulation 13(4) of PIT Regulations, Noticee 2 was required to disclose the change in shareholding both to the company and to the stock exchanges. It is observed that Noticee 1 had admitted that Noticee 2 had filed the required disclosure with it. The intimation letters were issued by Noticee 2 to Listing Manager, BSE with c.c. to Noticee 1 on various dates intimating change in his shareholding. However, the letter submitted before me bears the acknowledgment given by Noticee 1 only. If the intimations sent by Noticee 2 were received by BSE, it would have disclosed the same also. However, Noticee 2 did not submit any documentary evidence to demonstrate that he had also filed disclosure under regulation 13(4) read with 13(5) of PIT Regulations with the stock exchange.

18. Noticee 1 had informed that disclosures received by it under the PIT Regulations and SAST Regulations from Noticee 2 were sent to BSE in one envelope. The disclosure under SAST Regulations were published in the website of BSE whereas disclosure under PIT Regulations are not received by BSE. Noticee 1 even provided a copy of the dispatch register as an evidence that both the disclosure were mailed to BSE in one envelope. On perusal of the forwarding letters that were sent to the stock exchange, it is observed that the letter mentions disclosures filed under SAST Regulations only and there is no mention of disclosure under PIT Regulations. Noticee 1 have claimed that it had sent disclosure under SAST Regulations and PIT Regulations in same envelope which is quite possible but the covering letter for such disclosure states only in respect of disclosure under SAST Regulations. BSE has informed that it had not received disclosure under PIT Regulations and disclosure made under SAST Regulations has been duly disclosed by BSE on its website. If BSE would have received disclosure under PIT Regulations as well, it would have displayed the same.

19. I find that change in shareholding of Noticee 2 was disclosed by stock exchange on its website under provisions of SAST Regulations and as such investors were informed of the same. No material harm has been caused to investors for failure to make disclosure under PIT Regulations as similar disclosures were otherwise made under SAST Regulations. I find that Noticee 1 is otherwise regular with all statutory compliances with respect to filing with exchanges. I, therefore, term this violation as technical in nature. In the similar instance, the Securities Appellate Tribunal in the matter of Vitro Commodities Private Limited vs SEBI, inter-alia opined that *"the provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations are not substantially different, since, violation of first automatically triggers the violation of second and hence, there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed."* In view of above I do not find it a fit case to levy monetary penalty and investor's interest was not adversely affected on account of failure of Noticee 1 and Noticee 2 to file disclosure with exchange in terms of Regulation 13(3) read with regulation 13(5) and 13(6) of PIT Regulations.

ORDER

20. Having considered the facts and circumstances of the case, the material available on record, the submissions made by the Noticee, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby dispose of the SCN/s.

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 : June 15, 2017
Place : Mumbai

NAGENDRAA PARAKH
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER