

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/BJD/NJMR/55/2017-18**

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:

**SHAKTI PUMPS (INDIA) LTD.,
(PAN: Not Available)
Registered Office
Plot No. 401, 402 & 413
Sector No. III, Industrial Area
Pithampur – 454775.
Dhar District, Madhya Pradesh.**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the trading irregularities in the scrip of Shakti Pumps (India) Ltd., (*hereinafter referred to as "**Company**" / "**Noticee**"*) during the period February 1, 2010 to July 30, 2010. During the investigation, it was inter-alia observed by SEBI that the Noticee has failed to disclose the change in shareholding of one of its shareholders to Bombay Stock Exchange (**BSE**) within two working days from the date of receipt of information and thereby violated the provisions of Regulation 13 (6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to **SEBI (PIT) Regulations, 1992***).

APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed Shri Nagendra Parakh as the Adjudicating Officer vide Order dated May 26, 2017 under Section 15I (1) and (2) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as "**Adjudicating Rules**"*) to inquire into and

adjudge under Section 15 A (b) of SEBI Act for the alleged violation of provisions of Regulation 13 (6) of SEBI (PIT) Regulations, 1992.

3. Pursuant to internal restructuring, the undersigned has been appointed as Adjudicating Officer vide Order dated June 27, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/NJMR/22694/2017 dated September 19, 2017 was issued to the Noticee under Rule 4 of SEBI Adjudicating Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15 A (b) of SEBI Act, 1992 for the violation alleged to have been committed by it. The SCN was delivered to the Noticee on September 25, 2017.
5. It was alleged in the SCN that Subhkam Ventures (I) Pvt., Ltd., (*hereinafter referred to "Subhkam"*) held 7,50,000 shares of Shakti Pumps since the quarter ended June 2008, which was equivalent to 12.05% of total share capital of the Company. On July 9, 2010, Subhkam had sold 2,75,000 shares, which was equivalent to 4.42% of total share capital of the Company. As there was a change in shareholding by more than 2% by virtue of the aforesaid sale transaction carried out by Subhkam, in terms of Regulation 13 (3) of SEBI (PIT) Regulations, Subhkam had disclosed the change in shareholding to the Company on July 9, 2010, i.e., within two working days. However, it was observed that the Noticee had disclosed the change in shareholding of Subhkam to BSE on July 19, 2010 i.e., after five working days after receipt of the disclosures from Subhkam. Hence, it was alleged that the Noticee has violated the provisions of Regulation 13 (6) of SEBI (PIT) Regulations, 1992.
6. Vide letter dated October 10, 2017, the Noticee sought personal hearing in the matter. Vide email dated October 12, 2017 the Noticee was granted an opportunity of personal hearing on October 23, 2017. The Noticee vide email dated October 16, 2017 requested to reschedule the hearing to 1st week of November 2017. Accordingly, the personal hearing was rescheduled to November 1, 2017, which was communicated to the Noticee vide email dated October 24, 2017.

7. The Noticee vide email dated October 31, 2017 submitted an authorisation letter duly authorising Mr., Manish Maheshwari, Practising Company Secretary and Mr. Ravi Patidar, Company Secretary of the Noticee (*Authorised Representatives / ARs*). The Authorised Representatives appeared before me on November 1, 2017 and made oral and written submissions that the Noticee received the sale transaction of 2,75,000 shares from Subhkam Ventures (I) Pvt., Ltd., on July 16, 2010 and intimated the same to BSE on July 19, 2010 and thus there was no delay on the part of the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material available on record. I observe that the allegation levelled against the Noticee is that it had failed to disclose the change in shareholding of Subhkam to BSE, within two working days from the date of receipt of intimation from Subhkam, under the provisions of SEBI (PIT) Regulations, 1992.

9. After perusal of the material available on record, I have the following issues for consideration, viz.,

a) *Whether the Noticee has violated the provisions of Regulation 13 (6) of SEBI (PIT) Regulations?*

b) *Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?*

c) *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

ISSUE-1: Whether the Noticee has violated the provisions of Regulation 13 (6) of SEBI (PIT) Regulations?

10. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992, which reads as under:

Regulation 13 (6) of SEBI (PIT) Regulations, 1992

Disclosure by company to stock exchanges

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), (2), (3) and (4).

Sub-regulation 3 of 13 of SEBI (PIT) Regulations, 1992

Continual disclosure

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.

11. I note from the records that consequent to sale of 2,75,000 shares on July 9, 2010, Subhkam had disclosed to Noticee in Form "C" under Regulation 13(3) of SEBI (PIT) Regulations with respect to its change in shareholding, on July 9, 2010. Thereafter, the Noticee vide its letter ref. no. SPIL/SEC/2010-11 dated July 19, 2010 had disclosed the same to BSE under Regulations 13(6) of SEBI (PIT) Regulations which was disseminated on BSE website on July 19, 2010. SCN alleged that there was delay days of more than 2 working days in filing such disclosure to stock exchange and therefore violated the provisions of Regulation 13(6) of SEBI (PIT) Regulations.
12. In this regard, Noticee in its written and oral submissions stated that it had received the disclosure made by Subhkam, vide its letter dated July 9, 2010, through courier on July 16, 2010. Thereafter, it had filed with stock exchange on July 19, 2010 and therefore not violated Regulations 13(3) of SEBI (PIT) Regulations. In support of its claim, it had submitted that it does not have proof of receipt of courier but submitted a copy of email dated October 23, 2017 addressed by Subhkam to the Noticee, which reads "with reference to telephonic conversation, enclosing herewith scan copy of letter which was couriered to you for your perusal". Although, email

submitted states that disclosure (Form “C”) has been couriered, I am unable to verify the claim of Noticee in the absence of any proof of delivery / receipt of courier submitted before me. For the purpose of deciding the matter, I rely on the Form “C” (required to be filed by Subhkam) and upon perusal of same, it is noted that it was dated July 9, 2010, which was signed by Subhkham and counter signed by the Company Secretary of the Noticee. Further, I also note that the date of intimation (column) of Form “C” was also mentioned as July 9, 2010. In case, Noticee had received the Form “C” on July 16, 2010 as claimed, the date of intimation (column) should have been mentioned as July 16, 2010 instead of July 9, 2010. Thus, based on documents available on record, I conclude that the Noticee had received the disclosure on July 9, 2010 and failed to disclose the same to BSE within 2 two working days from receipt of disclosure and therefore violated Regulation 13(6) of SEBI (PIT) Regulations.

ISSUE -2: Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?

13. It is a well-known fact and practice that as per the requirements of SEBI (PIT) Regulations, there is a requirement of timely disclosure of change in shareholding beyond certain threshold by substantial shareholders. It is obligatory on the part of the Company to make timely disclosures to Stock Exchange. By not making the timely disclosures under SEBI (PIT) Regulations, the Noticee (Shakti Pumps) has failed to comply with the statutory requirements of Law. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. There can be no dispute that compliance with the provisions of the Regulations is mandatory and it is the duty of SEBI to enforce compliance of these Regulations. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all.
14. In this context, it is relevant to quote the judgment of Hon’ble Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia held that *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation*

becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."

15. Hon'ble SAT in the case of Coimbatore Flavors & Fragrances Ltd. V. SEBI (Appeal No. 209 of 2014) observed *"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."* (Emphasis supplied).
16. As the violation of the statutory obligation under the provisions of Regulation 13 (6) of SEBI (PIT) Regulations has been established against the Noticee, I hold the Noticee liable for monetary penalty under Section 15 A (b) of the SEBI Act, which reads as under:

Section 15A (b) – Penalty for failure to furnish information, return, etc.

"If any person, who is required under this Act or any rules or regulations made thereunder, 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".

ISSUE – 3 - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

17. While determining the quantum of monetary penalty under Section 15 C of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 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.*

18. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. However, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision.

19. There is no dispute that Subhkam had sold share on July 9, 2010 which upon disclosure to stock exchange, within the prescribed timeline, would have enabled investors for taking informed decision. Any delay in such matters would be detrimental to the interest of investors. Therefore, I am not inclined to view the delay leniently and consider it necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

ORDER

20. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of ₹ 1,00,000/- (Rupees One Lakh only) on the Noticee i.e., Shakti Pumps (India) Ltd., under the provisions of Section 15 A (b) of SEBI Act for failure to make the disclosures within the specified timeline. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

21. 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

22. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, Enforcement Department, DRA-II, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	

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

Date: 17 November 2017

Place: Mumbai

B J DILIP

Adjudicating Officer