

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.: ORDER/VV/HS/2019-20/6182]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, IN THE ADJUDICATION PROCEEDINGS INITIATED AGAINST M/S. VALECHA INVESTMENTS PRIVATE LIMITED [PAN: AAACV2759G] IN THE MATTER OF VALECHA ENGINEERING LIMITED.

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) initiated adjudication proceedings against Valecha Investments Private Limited (hereinafter referred to as “**Noticee**”), for its failure to file timely disclosures in terms of Regulation 7 (2) (a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations**”) and Regulation 29 (2) read with Regulation 29 (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations**”) in the scrip of Valecha Engineering Limited (in short “**VEL/Company**”).
2. SEBI has carried out Examination in respect of disclosure violation in the scrip of VEL during the period from October 01, 2018 to December 31, 2018 (hereinafter referred to as “**Examination Period**”). Shares of VEL are listed on BSE Limited (**BSE**) and National Stock Exchange of India Limited (**NSE**).
3. During the examination period, the shareholding pattern of VEL was as follows as available on the website of BSE:

	Quarter ending Sep 2018			Quarter ending Dec 2018		
Particular	No. of share holders	No. of shares	%age	No. of share holders	No. of shares	% age
Promoter Holding	14	7005180	31.09	14	4076676	18.09
Public Shareholding	14262	15524845	68.91	14269	18453349	81.91
Total	14276	22530025	100	14283	22530025	100

Promoters Shareholding during the period:

S. No.	Name	Quarter ended Sep 2018		Quarter ended Dec 2018	
		No. of shares held	% of shares held	No. of shares held	% of shares held
1	Ramchand Hemandas Valecha	21481	0.10	21481	0.10
2	Sharda Hariram Valecha	10125	0.04	10125	0.04
3	Vasudev Pyarelal Valecha	9112	0.04	9112	0.04
4	Pavitra Ramchand Valecha	7169	0.03	7169	0.03
5	Lata Vasudev Valecha	6199	0.03	6199	0.03
6	Dinesh H Valecha (Karta for Hariram Pyarelal Valecha HUF)	4500	0.02	4500	0.02
7	Bhavana Ramchand Valecha	3375	0.01	3375	0.01
8	Kavita Vasudev Valecha	2862	0.01	2862	0.01
9	Dinesh Valecha	2812	0.01	2812	0.01
10	Umesh Hariram Valecha	2587	0.01	2587	0.01
11	Alka Vasudev Valecha	1948	0.01	1948	0.01
12	Geeta Dinesh Valecha	337	0.00	337	0.00
13	Jagdish K Valecha		0.00		0.00
14	Valecha Investment Private Limited	6932249	30.77	4003745	17.77
15	Gopaldas Vasudev Construction Pvt Ltd	424	0.00	424	0.00
	TOTAL	7005180	31.09	4076676	18.09

4. It was observed that shareholding of one promoter entity, viz. Valecha Investment Private Limited, (the Noticee herein) has changed from 30.77% (69,32,249

shares) for the quarter ending September 2018 to 17.77% (40,03,745 shares) for quarter ending December 2018.

5. The Examination has observed that the Noticee was holding 69,32,249 shares (30.77% of the share capital of VEL) as on quarter ending September 2018. During the quarter ending December 2018, the shareholding of the Noticee decreased to 40,03,745 shares (17.77% of the share capital of VEL). Thus, there was a fall in the shareholding of the Noticee by 29,28,504 shares (13% of the share capital of VEL).
6. As per the transaction statement of the Noticee as provided by National Securities Depository Limited (**NSDL**) and Central Depository Services (India) Limited (**CDSL**) for the period October 01, 2018 to December 31, 2018 it is observed that Yes bank, the Depository Participant (**DP**) had invoked pledge of 29,28,504 shares of VEL held by the Noticee in two tranches on November 13, 2018 as follows:

DP Name	Client Status	First Holder Name	Scrip Name	Account Type	Date	Description	Opening Balance	Debit	Credit	Closing Balance
YES BANK LIMITED	SUSPENDED FOR DEBIT & CREDIT	VALECHA INVESTMENTS PRIVATE LIMITED	VALECHA ENGINEERING LIMITED EQ (Frozen-ISIN level freeze for Debit and Credit)(Active)	Pledge	13-Nov-2018	To Pledge invocation, YES BANK LIMITED / 10017799	2,928,504	1,758,534	0	1,169,970
					13-Nov-2018	To Pledge invocation, YES BANK LIMITED / 10017799	1,169,970	1,169,970	0	0

7. The Noticee vide its email dated April 9, 2019 submitted to SEBI that;

“Yes Bank Limited invoked 29,28,504 shares of Valecha Engineering Limited(VEL) held by Valecha Investments Pvt Ltd (VIPL) on 13th November, 2018”.

VIPL has sent disclosure to VEL pertaining to the same as under:

Disclosure	Date of submission by VIPL to VEL
SEBI (SAST) Regulations, 2011	19 th March, 2019
SEBI(PIT) Regulations, 2015	20 th March, 2019

Since the directors were out of station, we were unable to forward aforesaid intimation of invocation of pledge to VEL. The said lapse was unintentional and without any ulterior motive. We assure hereinafter, we will comply with regulations as applicable within stipulated time limit.”

8. Vide email dated April 9, 2019 VEL informed to SEBI that;

“Yes Bank invoked 29,28,504 shares of Valecha Engineering Limited held by Valecha Investments Private Limited(VIPL) on Nov 13, 2018. VEL has received disclosure from VIPL pertaining to the same as under:

Disclosure	Date of submission by VIPL to VEL	Date of submission to Stock Exchanges by VEL	
		BSE	NSE
SEBI (SAST) Regulations, 2011	19 th March, 2019	21 st March, 2019	22 nd March, 2019
SEBI(PIT) Regulations, 2015	20 th March, 2019	21 st March, 2019	22 nd March, 2019

VEL was unable to submit to NSE within the time limit due to technical difficulties faced (Screenshot attached)”.

9. Vide email dated May 07, 2019, BSE informed to SEBI that VEL have made disclosures to the exchange under Regulation 31(1) and 31(2) of SAST Regulations and disclosures under Regulation 7(2) and Regulation 6(2) of PIT Regulations to the exchange on March 21, 2019.

10. Vide email dated May 31, 2019, NSE informed to SEBI that VEL has made disclosures to the exchange under Regulation 31 (1) and 31 (2) of SAST Regulations and disclosures under Regulation 7 (2) of SEBI PIT Regulations to the exchange on March 22, 2019.
11. In view of the above, it was alleged that the Noticee has failed to make timely disclosures with respect to the aforesaid transactions of invocation of pledge of shares of VEL, in terms of Regulation 7 (2) (a) of PIT Regulations, and Regulation 29 (2) read with Regulation 29 (3) of SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

12. The undersigned has been appointed as the Adjudicating Officer by SEBI under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Section 15-I (1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to conduct adjudication proceedings *inter-alia* in respect of the Noticee, in the manner specified under Rule 4 of the Adjudication Rules read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deems fit in terms of Rule 5 of the Adjudication Rules and Section 15A (b) of the SEBI Act, for the violation of the provisions of Regulation 7 (2) (a) of PIT Regulations, and Regulation 29 (2) read with Regulation 29 (3) of SAST Regulations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

13. Show Cause Notice dated October 04, 2019 (hereinafter referred to as “**SCN**”) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with

Section 15-I of the SEBI Act, 1992 to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15A (b) of the SEBI Act, on the Noticee for the violations alleged to have been committed by the Noticee.

14. The Noticee vide its letter dated October 25, 2019, filed reply to the SCN. The excerpts of the aforesaid reply of the Noticee are *inter-alia* reproduced hereunder.

- 1) *The delay in intimation of invocation of pledge of 29,28,504 shares of Valecha Engineering Limited by Yes Bank Ltd and disclosures pertaining to the said invocation was unintentional and as and when the Directors were informed, the disclosures were made albeit slightly delayed.*
- 2) *It is submitted that the said lapse has since been rectified by us, though belatedly, and therefore, in view of compliance thereof and since the lapse being unintentional and without any ulterior motive and not in defiance of law, we request that the alleged lapse be viewed leniently.*
- 3) *It is further submitted that no benefit has accrued to us nor has any investor put to loss on account of the inordinate delay.*

15. In the interest of natural justice and in terms of Rule 4 of the Adjudication Rules, the Noticee was granted an opportunity of Personal Hearing on December 10, 2019. The Authorized Representative (**AR**) of the Noticee appeared for personal Hearing and made the following submissions on behalf of the Noticee.

- 1) *It is accepted that there was delay in disclosures as alleged in the SCN. However, the said delay in disclosures was unintentional.*

- 2) *It is submitted that disclosure requirement under SAST Regulations and PIT Regulations as mentioned in the SCN are not different but corollary to each other. AR made reference of Adjudication Order dated May 15, 2019 in the matter of Action Financial Services (India) Limited and Order dated September 04, 2013 of Hon'ble Securities Appellate Tribunal in the matter of Vitro Commodities Private Limited.*
- 3) *AR requested to take a lenient view in respect of imposition of penalty on the Noticee.*

ISSUES FOR CONSIDERATION AND FINDINGS

16. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticee. The issues that arise for consideration in the present case are:
 - 1) Whether the Noticee violated the provisions of Regulation 7 (2) (a) of PIT Regulations, and Regulation 29 (2) read with Regulation 29 (3) of SAST Regulations?
 - 2) Whether the Noticee is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act?
 - 3) If yes, then what should be the quantum of monetary penalty?
17. It is pertinent to mention here the relevant provisions of Regulation 7 (2) (a) of PIT Regulations, and Regulation 29 (2) read with Regulation 29 (3) of SAST Regulations, allegedly violated by the Noticee:-

PIT Regulations

7 (2) Continual Disclosures.

(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

SAST Regulations

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 sub regulation; 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 or the disposal 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.

18. I note that the allegation levelled in the SCN is mainly to the effect that the Noticee failed to make timely disclosures with respect to the transactions of invocation of pledge of shares of VEL, in terms of Regulation 7 (2) (a) of PIT Regulations, and Regulation 29 (2) read with Regulation 29 (3) of SAST Regulations. On perusal of the documents, material available on record and submissions of the Noticee, I record my findings hereunder.
19. It is noted that 29,28,504 shares of VEL, pledged by the Noticee had been invoked by Yes Bank on November 13, 2018 in 2 tranches of 17,58,534 shares and 11,69,970 shares, which amount to 7.81% and 5.19% of the share capital of VEL respectively, aggregating to 13% of share capital of VEL. It is further noted that the Noticee has not disputed the said fact.
20. Hence, in terms of Regulation 7 (2) (a) of PIT Regulations the Noticee was required to make disclosures to VEL within 2 trading days of the aforesaid transactions of invocation of pledge of shares, i.e. by November 15, 2018. Further, the Noticee was also required to make disclosures to VEL and to the Stock Exchanges (BSE and NSE) with respect to the aforesaid transactions of invocation of pledge of shares, in terms of Regulation 29 (2) read with Regulation 29 (3) of SAST Regulations, within 2 days of the transactions i.e. by November 15, 2018.
21. As per materials/documents available on record, I note that the Noticee has filed the disclosures under PIT Regulations to VEL on March 20, 2019, i.e. with a delay of 125 days and disclosure under SAST Regulations to VEL on March 19, 2019, i.e. with a delay of 124 Days. It is pertinent to mention here that the Noticee has not disputed the aforesaid delay. Therefore, it is established that the Noticee has failed to file timely disclosure in terms of Regulation 7 (2) (a) of PIT Regulations and Regulation 29 (2) read with Regulations 29 (3) of SAST Regulations.

22. The Noticee has pleaded that “the said lapse has since been rectified by us, though belatedly, and therefore, in view of compliance thereof and since the lapse being unintentional and without any ulterior motive and not in defiance of law, we request that the alleged lapse be viewed leniently.” It is undisputed fact that the Noticee has made delayed disclosure in respect of invocation of pledge of 29,28,504 shares of VEL, by Yes Bank. Needless to say that there is no exemption from making disclosures of the kind envisaged in Regulation 7 of the PIT Regulations and Regulation 29 of the SAST Regulations as in the present case. 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.
23. At this context, it is pertinent to mention the observations made by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, that:- *“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.”*
24. I find that the obligation to make disclosures within the stipulated time frame is mandatory and penalty is attracted for non-compliance with the mandatory obligation.
25. In view of the forgoing, I am of the opinion that the Noticee has violated the provisions of Regulation 7 (2) (a) of PIT Regulations and Regulation 29 (2) read

with Regulation 29 (3) of SAST Regulations which makes the Noticee liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act, which *inter-alia* read as under:-

Penalty for failure to furnish information, return, etc.

“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 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.”

26. While determining the quantum of penalty under Section 15A (b), it is important to consider 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 ”*

27. At this juncture, reliance is placed upon the Order of The Hon'ble Supreme Court in the matter of **Chairman, SEBI Vs Shriram Mutual Fund** {[2006]5 SCC 361} – where the Hon'ble Supreme Court of India 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.....”*
28. Further, I note that the Noticee has made reference of Order of Hon'ble SAT in the matter of **Vitro Commodities Private Limited Vs SEBI** in which SAT had observed that *“ Provisions of Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.”* In light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 29(1) of the SAST Regulations and Regulation 7(2) (a) of the PIT Regulations committed by the Noticee are not substantially different. Therefore, these violations committed by the Noticee can be considered as a single violation for the purpose of imposition of penalty on the Noticee, as violation of the first regulation would automatically trigger the violation of the second regulation.
29. With regard to the factors mentioned under Section 15J, to be considered while determining the quantum of penalty, it may be noted that the materials available on record have not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. However,

as regards to the contention that due to non-disclosures no gain has occurred to Noticee and that no loss has been caused to the investors, the Hon'ble SAT in the matter of Komal Nahata Vs. SEBI dated January 27, 2014 held that: *“Argument that no investor has suffered on account of non-disclosure 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”*. Moreover, the records available under Examination have observed that the SEBI has passed Order dated January 05, 2016 under Section 11 and 11B of the SEBI Act and Adjudication Order dated February 12, 2018 in the scrip of VEL against the Noticee. Hence, the Noticee is a repetitive violator of the SEBI Act and the Regulations made thereunder. It is noted that Noticee has not exhibited requisite seriousness and responsible conduct with respect to making timely disclosures despite imposition of monetary penalty by SEBI on the Noticee vide the aforesaid Adjudication Order dated February 12, 2018 for non-disclosure under PIT Regulations.

30. I am of the view that the details of the shareholding of the persons acquiring substantial stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the timely disclosures of invocation of pledge of shares of VEL by the Noticee under the relevant provisions of the PIT Regulations and the SAST Regulations, were of significant importance from the point of view of the investors. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

ORDER

31. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, various submissions made by the Noticee, factors mentioned under Section 15J of the SEBI Act along with facts and circumstances of the case and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.3,00,000/- (Rupees Three Lakh Only) on the Noticee viz. M/s. Valecha Investments Private Limited in terms of Section 15A (b) of the SEBI Act, for its failure to make timely disclosures in terms of the provisions of Regulation 7 (2) (a) of PIT Regulations and Regulation 29 (2) read with Regulation 29 (3) of SAST Regulations. In my view, the aforesaid penalty is commensurate with level of violation committed by the Noticee in the case.

PENALTY PAYMENT OPTIONS

32. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
33. The said demand draft and its details OR details of online payments made (in the format as given in table below) should be forwarded to “The Division Chief, (Enforcement Department-1, Division of Regulatory Action -IV), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051” and also send an email to tad@sebi.gov.in with the following details:

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)	

34. 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, for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
35. In terms of Rule 6 of the Adjudication Rules, 1995, 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