

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO: EAD/SM/AO/01/2017-18]**

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**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:**

- 1. Baid Leasing & Finance Limited (PAN – AAACB6404E)**
- 2. Mr. Aman Baid (PAN – APVPB4547D)**

**In the matter of Baid Leasing & Finance Limited**

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**Facts Of The Case**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed during the course of an examination in the scrip of Baid Leasing & Finance Ltd. (hereinafter referred to as "**Noticee No. 1/BLFL**") conducted for the period from February 01, 2014 to May 30, 2014 that individual shareholding of Mr. Aman Baid (hereinafter referred to as "**Noticee No. 2**") pursuant to acquisition of shares, had crossed the threshold limit of 5% to the total share capital of the BLFL. In this regard, it was observed by SEBI that the Noticee no. 1 had failed to make relevant disclosure to Stock Exchange as required under the relevant provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") while Noticee no. 2 had failed to make relevant disclosure to the BLFL and Stock Exchange, within the prescribed time period, as required under the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**").

### **Appointment of Adjudicating Officer**

2. SEBI had initiated adjudication proceedings in the matter and Shri D Sura Reddy was appointed as Adjudicating Officer vide order dated July 18, 2016 under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act"), read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15A (b) of the Act, the alleged violation of the provisions of law by Notice no. - 1 & 2. Subsequent to transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017.

### **Show Cause Notice, Reply And Hearing**

3. Show Cause Notices No. EAD-2/DSR/RG/22194/1/2016 & EAD-2/DSR/RG/22194/2/2016 dated August 08, 2016 (hereinafter referred to as 'SCN') were issued to the Noticee no. 1 & 2 respectively under the provisions of Rule 4 (1) of the Rules to show cause as to why an inquiry should not be initiated against the respective Noticee and penalty be not imposed under the provisions of Section 15A(b) of the SEBI Act for the alleged violation of the provisions of Regulation 13 (6) of the PIT Regulations by the Noticee no. 1 and for the alleged violation of the provisions of Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations by Noticee no. 2. Copies of the documents relied upon in the SCN were provided to the Noticees along with the SCN.
4. Vide letter dated August 16, 2016 BLFL replied to both the SCNs. Thereafter for the purpose of inquiry an opportunity of hearing, in accordance with the principles of natural justice, was provided to the Noticees on June 29, 2017 vide hearing notice dated June 09, 2017. Authorized Representative of Noticees, Ms. Namrata Sajani, Company Secretary and Compliance officer of the BLFL, attended the hearing on June 29, 2017 and made submissions thereon.

### **Consideration Of Issues, Evidence And Findings**

5. I have carefully perused the oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

I. **Whether Noticee no. 1 violated Regulation 13(6) of PIT Regulations as regards the disclosure of acquisition of the shares by Noticee-2 to Bombay Stock Exchange? Whether Noticee no. 2 violated Regulation 29(1) read with 29(3) of SAST Regulations as regards disclosures due change in his shareholding pursuant to acquisition of shares?**

II. **Does the violation, if any, attract monetary penalty under Sections 15 A (a) and 15C of SEBI Act.**

III. **If so, what should be the quantum of monetary penalty?**

6. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations and PIT Regulations which read as under:

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

##### ***Disclosure of acquisition and disposal***

*29. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

(2) .....

(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 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.

**Relevant provisions of PIT Regulations:**

**Disclosure of interest or holding in listed companies by certain persons –**

**Initial Disclosure**

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.

(2) .....

(2A) .....

**Continual disclosure.**

(3) .....

(4) .....

(4A) .....

(5) .....

**Disclosure by company to stock exchanges.**

(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), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

**Submissions made by the Noticees:**

7. The Noticee no. 1, vide its combined letter on behalf of both noticees dated August 16, 2016 submitted as under:
- i) Mr. Aman Baid made required disclosures under the applicable provisions of SAST Regulations and PIT Regulations on February 05, 2014.
  - ii) BLFL after receiving the said disclosures forwarded them to Stock Exchange where the shares of the BLFL were listed on February 08, 2014.
  - iii) BLFL also furnished copy of 2 courier slips dated February 08, 2014 showing that 2 different couriers were sent to BSE by BLFL.

**Issue I: Whether Noticee no. 1 violated Regulation 13(6) of PIT Regulations as regards the disclosure of acquisition of the shares by Noticee-2 to Bombay Stock Exchange? Whether Noticee no. 2 violated Regulation 29(1) read with 29(3) of SAST Regulations as regards disclosures due change in his shareholding pursuant to acquisition of shares?**

**Findings:**

8. From the analysis of materials available on record like SCN, reply from Noticees, and Emails received from BSE, I record my findings hereunder:
- a. Pursuant to acquisition of 200 shares (Constituting 0.003% paid up share capital of the BLFL) on February 03, 2014, shareholding of Noticee No. 2 had increased from 3,07,165 shares (Constituting 4.998% paid up share capital of the BLFL) to 3,07,365 shares (Constituting 5.001% paid up share capital of the BLFL).
  - b. BLFL vide letter dated August 16, 2016 to SEBI informed that Noticee No. 2 made required disclosures to BLFL on February 05, 2014 and BLFL had sent Form A as prescribed in terms of PIT Regulation to BSE on February 08, 2014.

c. In this regard BSE vide email dated July 11, 2014 to SEBI informed that BSE has not received any disclosure in this regard from both the noticees. Since in its reply to SCN, Noticees had produced two courier slips as evidence of required disclosure sent to BSE by them, It was rechecked with BSE and vide email dated June 27, 2017 to SEBI, BSE confirmed that it is not in receipt of any disclosure related documents from Noticee no. 1 & 2 for the aforesaid acquisition of the shares by Noticee no. 2.

d. During hearing before AO, Authorized Representative of Noticees reiterated the written submissions made by them vide letter dated August 16, 2016 and agreed that there is no acknowledgement with Noticee no. 2 with respect to his disclosure to BLFL and BSE. Authorized Representative also agreed that there is no acknowledgement of from BSE with respect to disclosure made by Noticee no. 1 in the matter.

e. From the perusal of copies of disclosures and other documents submitted by Noticees, I note that there is no acknowledgement given by BLFL to Noticee no. 2 on receipt of disclosure made by him to BLFL. Also Noticee no. 1 could not produce any acknowledgement from BSE showing that BSE is in receipt of disclosure by Noticee no. 1. Further, Noticee no. 2 also failed to produce any acknowledgement of BSE to substantiate that he had made required disclosure.

9. In this regard, I note that the **Hon'ble Securities Appellate Tribunal, in Alka India Ltd. Vs. SEBI** (decided on 10.06.2009) inter alia, observed as follows:

*"A copy of the courier receipt has been placed on record to substantiate its stand. We have perused this receipt. In the column meant for the name of the receiver, the Stock Exchange, Mumbai has been written. The Bombay Stock Exchange has categorically denied having received any information from the appellant. In view of the denial made by the Bombay Stock Exchange, the onus is upon the appellant to establish that the letter making the necessary disclosures allegedly sent by*

*courier was actually received by the Bombay Stock Exchange. No such evidence has been placed on record. Even, if we were to accept the courier receipt, it is only evidence of the fact that some letter was sent to Bombay Stock Exchange but there is no proof forthcoming of its actual receipt by the Stock Exchange. Moreover, what was that letter and whether it contained the disclosures are facts which also need to be established. The appellant failed to discharge this onus.....”.*

10. In this context, it is relevant to quote the observations of the **Hon’ble Calcutta High Court** in the matter of **Arun Kumar Bajoria (appellant) vs SEBI in Writ Petition No 331 of 2001** decided on March 27, 2001. The Hon’ble Calcutta High Court had made the observations in the context of claims and counter claims made by the parties w.r.t compliance reports claimed to have been sent by the appellant to BSE, which was not received by the Exchange. The Hon’ble Calcutta High Court had observed that “..... *The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgement received from the BSE in this regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from the BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant.*”

11. I would also like to place reliance on the observations made by **Hon’ble SAT** in the matter of **Mega Resources Ltd. vs SEBI** wherein Hon’ble SAT, in its order dated March 19, 2002 observed that –

*“It is a well-accepted fact that all the letters posted need not necessarily in every case reach the addressee, though everyone would like to see that his letter reaches the addressee. There is no way to ensure the reach of the letter sent by ordinary post. That is why the postal authorities have devised several modes of*

*postage such as registered post, etc. to meet the requirements of postal users. Those who want to ensure service of the postal article on the addressee they are at liberty to use one of these methods. In the absence of any evidence otherwise, one cannot ignore the addressee's version of not getting the letter..... Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."*

12. The contention of the Noticees that they had couriered the disclosures to BSE on February 08, 2014 and the same was delivered at BSE is unsustainable and without any merit. I find that the Noticees could not produce any cogent evidence in support of the fact that BSE had actually received the disclosure formats/consignment as claimed by the Noticees. There is nothing on record to show that BSE had acknowledged the receipt of the consignment purportedly couriered by the Noticees on February 08, 2014 through Vayu-Seva Courier Service. On the other hand, I observe that there is an email confirmation received from BSE (email dated June 27, 2017) categorically stating that it had not received the disclosure formats from the Noticees required to be submitted under the provisions of Regulations 13(6) of PIT Regulations and Regulations 29(1) read with 29(3) of SAST Regulations.

**Issue II: Does the violation, if any, attract monetary penalty under Sections 15 A(b) of SEBI Act.**

13. It can be concluded that the Noticee No. 1 had failed to comply with the provisions of Regulations 13(6) of PIT Regulations and Noticee No. 2 had failed to comply with the provisions of Regulations 29(1) read with 29(3) of SAST Regulations thus, liable for monetary penalty as prescribed under Section 15A(b) of the Act.



Section 15A(b) of the Act (as existed during the period of violation) reads 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,-*

*(a) to furnish any document, return or report .....*

*(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 there for in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.*

14. Here, it is important to refer to the observation of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was 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 ....."*

**Issue III: If so, what should be the quantum of monetary penalty?**

15. While determining the quantum of penalty under Section 15A(b), it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.*

16. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. The default is not repetitive in nature. I note that, in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, the Hon'ble SAT has 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.”*

#### ORDER

17. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules, I hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees One Lakh Only) on the each of the Noticees viz. Baid Leasing & Finance Limited and Mr. Aman Baid under Section 15A (b) of the SEBI Act, 1992. In my view, the penalty imposed is commensurate with the default committed by the Noticee.
18. 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 favor 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

19. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " The Division Chief (Enforcement Department - DRA- 1), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

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)	

20. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

**Date: July 06, 2017**

**SAHIL MALIK**

**Place: Mumbai**

**ADJUDICATING OFFICER**