

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.EAD-5/BS/AO/145/2018-19]

**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:
The Karur Vysya Bank Ltd (PAN : AAAC3373J)

In the matter of Arvind Remedies Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted a preliminary inquiry in the scrip of Arvind Remedies Ltd. (*hereinafter referred to as “ARL / the company”*) for the period January 01, 2014 to January 31, 2015 (*hereinafter referred to as “examination period”*) and into the possible violation of the provisions of i) Regulation 29(1) and 29(2) read with Regulation 29(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (*hereinafter referred to as “SAST Regulations, 2011”*) and ii) Regulations 13(1), and 13(3) read with Regulation 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “PIT Regulations, 1992”*) by The Karur Vysya Bank Ltd (*hereinafter referred to as “Noticee”*) in the matter of its dealings in the shares of ARL.

2. It was observed that ARL had taken a short term loan of Rs. 25 crores from the Noticee for the purpose of working capital requirements and 75,00,000 shares of ARL were pledged by the promoter – Arvindkumar B Shah, as collateral security for the loan. Subsequently, the Noticee has invoked pledge of 75,00,000 shares of ARL on various dates. It was alleged that due to invocation of pledge, the shareholding of the Noticee has increased to 40,29,500 shares, constituting 5.91% of the total share capital of ARL, on October 15, 2014. As the shareholding of the Noticee crossed 5% of the share capital of ARL, the Noticee was required to make requisite disclosure, within two working days, to the company under Regulation 13(1) of PIT Regulations, 1992, and to the company and stock exchanges under Regulation 29(1) read with 29(3) of SAST Regulations, 2011. However, no disclosures as stipulated under afore-mentioned Regulations were made by the Noticee. Accordingly, it was alleged that the Noticee has violated Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.
3. It was observed that, due to the invocation of pledged shares, the shareholding of the Noticee had further increased to 63,29,500 shares, constituting 9.29% of the total share capital of ARL, on January 27, 2015. As prior to the said acquisition, Noticee was already holding more than 5% of the share capital of ARL and the said acquisition of shares was more than 2% of the share capital of ARL, the Noticee was required to make requisite disclosure in this regard within two working days of the acquisition to the company under Regulation 13(3) read with 13(5) of PIT Regulations, 1992, and to the company and stock exchanges under Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011. However, no disclosures as stipulated under afore-mentioned Regulations were made by the Noticee. Accordingly, it was alleged that the Noticee has violated Regulation 13(3) read with 13(5) of PIT Regulations, 1992 and Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer (**AO**) vide order dated October 25, 2017 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice bearing ref. no. EAD-5/ADJ/BS/AE/OW/7840/1/2018 dated March 13, 2018 (*hereinafter referred to as 'SCN'*) was issued to the Noticee in terms of Section 15I of SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as 'Adjudication Rules'*) for the violations as specified in the SCN.
6. Vide letter dated March 28, 2018, the Noticee submitted its reply to the SCN and the main submissions therein are as follows –

- i. *We draw your kind attention to Proviso to Regulation 29 (4) of Securities Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(hereinafter referred to as 'SAST Regulations, 2011') which states that requirements under Regulation 29 shall not be applicable to a Scheduled Commercial Bank or Public Financial Institution as pledgee in connection with a pledge of shares for securing indebted ness in the ordinary course of business.*

As The Karur Vysya Bank is a Scheduled Commercial Bank and the invocation of pledged shares which are in the ordinary course of business only, hence the provisions of Regulations 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 are not applicable to us.

- ii. *Arvind Remedies Ltd (hereinafter referred to as 'Company / ARL') had taken a STL of 25 Cr by pledging 75,00,000 equity shares of ARL owned by the promoter - Arvindkumar B Shah for the purpose of working capital requirements and the same being disclosed by ARL to National Stock Exchange(NSE), dated 26.02.2014 is enclosed. As ARL failed to repay the loan amount on the due date, the Bank after observing necessary formalities such as issuance of notices lo*

ARL and to its promoter Arvindkumar B Shah, invoked pledge of 75,00,000 shares at different dates and resorted to disposal of the shares through the market mechanism immediately after such invocation.

- iii. The transactions affected on different dates from 08.09.2014 to 02.02.2015 are as given below.

<i>Details of Invocation and Sale of Shares of M/s. Arvind Remedies Limited pledged to The Karur Vysya Bank Ltd</i>						
<i>Total share capital of ARL as per FY 2014-15 was 6,81,26,000 equity shares. *</i>						
<i>Date of Invocation</i>	<i>Invocation of pledged shares</i>	<i>Holding before transactions</i>	<i>Date of sale</i>	<i>No of shares sold</i>	<i>Holding after transactions</i>	<i>% of holding w.r.t. share capital of ARL</i>
08.09.2014	10,29,500	0	08.09.2014	5,00,000	5,29,500	0.78
		5,29,500	09.09.2014	5,29,500	NIL	NA
23.09.2014	10,00,000	0			10,00,000	1.47
08.10.2014	10,00,000	10,00,000	08.10.2014	4,00,000	16,00,000	2.35
		16,00,000	13.10.2014	6,00,000	10,00,000	1.47
15.10.2014	10,00,000	10,00,000	15.10.2014	10,00,000	10,00,000	1.47
		10,00,000	20.10.2014	8,22,609	1,77,391	0.26
		1,77,391	21.10.2014	1,77,391	NIL	NA
03.11.2014	4,00,000	0			4,00,000	0.59
		4,00,000	05.11.2014	4,00,000	NIL	NA
27.01.2015	19,00,000	0	27.01.2015	3,33,916	15,66,084	2.30
		15,66,084	28.01.2015	8,16,084	7,50,000	1.10
		7,50,000	29.01.2015	6,41,311	1,08,689	0.16
		1,08,689	30.01.2015	1,08,689	NIL	NA
02.02.2015	11,70,500	0			11,70,500	1.72
		11,70,500	03.02.2015	5,00,000	6,70,500	0.98
		6,70,500	23.02.2015	6,70,500	NIL	NA
	75,00,000			75,00,000		

*source: Annual report of ARL for FY 2014-15 share holding pattern

With the above information, at no point of time Karur Vysya Bank holds more than the threshold limit of 5% of the share capital of ARL. Hence the Bank was not required to make requisite disclosure to the Company in this regard under Regulation 13(1) of Securities Exchange Board of India (Prevention of Insider

*Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**') and to the company and stock exchange under Regulation 29(2) read with Regulation 29(3) of '**SAST Regulations, 2011**'.*

In view of the above, there is no violation of Initial disclosure regarding acquisition of more than five per cent of the share capital of ARL by the Bank under Regulation 13(1). Further continuing disclosures as per 13(3) read with 13(5) of PIT Regulations, 1992 are also not applicable to the Bank.

Bank has intimated to ARL on the Invocation of pledged shares as also the disposal of invoked shares and its adjustments of sale proceeds towards the liability of the ARL due to the Bank vide its letters dated 13.12.2014 and 17.02.2015 are enclosed.

- iv. *Referring to the above, there is no violation of provisions of Regulation 29(1) and 29(2) read with Regulation 29(3) of **SAST Regulations, 2011** and Regulations 13(1) and 13(3) read with Regulation 13(5) of PIT Regulations, 1992 by the Karur Vysya Bank Ltd (Noticee) in the matter of its dealings in the scrip of Arvind Remedies Ltd (ARL).*

The relevant extracts of the Regulation 29(4) of SAST Regulations, 2011 along with proviso is given hereunder:

29(4) For the purpose of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosure shall be made by such person accordingly in such form as may be specified;

***Provided that** such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.*

7. An opportunity of personal hearing was provided to the Noticee on April 13, 2018, however, vide email dated April 10, 2018, the Noticee requested for a short adjournment of the hearing in the matter. Accordingly, the hearing in the matter was scheduled on April 20, 2018. The said hearing was attended by Mr. S Balaji (Chief

General Manager -The Karur Vysya Bank Ltd), and Mr. Srinivasa Rao M (Company Secretary and Assistant General manager of The Karur Vysya Bank Ltd) ('Authorized Representatives'), on behalf of the Noticee, and the following main submissions were made –

- i. *The Noticee invoked the pledges on various dates and immediately sold the shares in the market. The sale of shares was carried out through proper market mechanism through brokers and at no point of time they were holding more than the limits prescribed in the SAST and PIT regulations.*
- ii. *The Noticee's highest holding during the relevant period (i.e. September 08, 2014 to February 23, 2015) was on 15.10.2014 which amounted to 2.94%, which was also well below the threshold limit for triggering disclosures under the SAST and PIT regulations*
- iii. *The Noticee further submitted that they are a bank of more than 100 years of existence and these shares were acquired in the normal course of banking transactions by invoking the security given for the loan.*
- iv. *In view of the aforesaid, the Noticee submitted that they have not committed any breach of the regulations.*

8. During the course of the above hearing, the Authorized Representatives submitted their written submissions vide letter dated April 19, 2018 along with copy of the demat account statement of the Noticee and the contract notes evidencing the sale of shares by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the submissions of the Noticee and the material available on record. The issues that arise for consideration in the present case are :
 - a. Whether the Noticee failed to disclose the change in its shareholdings to the stock exchanges and the company, and thereby violated Regulation 29(1) and 29(2), read with 29(3) of SAST Regulations, 2011, and Regulations 13(1), and 13(3) read with 13(5) of PIT Regulations, 1992?

b. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

c. Quantum of penalty.

FINDINGS

10. Before I proceed with the matter, it is pertinent to mention the relevant provisions alleged to have been violated by the Noticee, which are reproduced below:

SAST Regulations, 2011

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.

29(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 subregulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

29(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.*

PIT Regulations, 1992

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.

Continual disclosure.

13(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.

13(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) 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.

SEBI (Prohibition of Insider Trading) Regulations, 2015

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) 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 had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any 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

Issue a) Whether the Noticee failed to disclose the change in its shareholdings to the stock exchanges and the company, and thereby violated Regulation 29(1) and 29(2), read with 29(3) of SAST Regulations, 2011, and Regulations 13(1), and 13(3) read with 13(5) of PIT Regulations, 1992?

11. It has been stated in the SCN that the Noticee had invoked on various dates, a total of 75,00,000 shares of ARL pledged with it by Mr. Arvindkumar B Shah, promoter of ARL. The said shares were pledged with the Noticee as collateral against a short term loan of Rs. 25 crores extended by the Noticee to ARL. It is alleged that due to such invocation of the pledges, the shareholding of the Noticee has increased and triggered disclosure requirements under the provisions of SAST Regulations, 2011 and PIT Regulations, 1992 as follows -

Date	Sett Indc	Quantity	Holding before transaction	Holding after transaction	% of holding wrt share capital	Disclosure Violation
08/09/2014	PIV	1029500	0	1029500	1.51	-
23/09/2014	PIV	1000000	1029500	2029500	2.98	-
08/10/2014	PIV	1000000	2029500	3029500	4.45	-
15/10/2014	PIV	1000000	3029500	4029500	5.91	Regulations 13(1) of PIT Regulations, 1992 and 29(1) r.w. 29(3) of SAST Regulations, 2011
03/11/2014	PIV	400000	4029500	4429500	6.50	-

27/01/2015	PIV	1900000	4429500	6329500	9.29	Regulations 13(3) r.w. 13(3) of PIT Regulations, 1992 and 29(2) r.w. 29(3) of SAST Regulations, 2011
02/02/2015	PIV	1170500	6329500	7500000	11.01	-

12. It is alleged that the Noticee's shareholding had aggregated to 40,29,500 shares, constituting 5.91% of the total share capital of ARL, on October 15, 2014 (i.e. crossed 5%), however the Noticee had not made any disclosures to the company under Regulation 13(1) of PIT Regulations, 1992, and to the company and stock exchanges under Regulation 29(1) read with 29(3) of SAST Regulations, 2011, and thus violated the said provisions. It is further alleged that that the Noticee's shareholding had aggregated to 63,29,500 shares, constituting 9.29% of the total share capital of ARL, on January 27, 2015 (i.e. was already more than 5%, and subsequently changed by more than 2%), however the Noticee had not made any disclosures to the company under Regulation 13(3) read with 13(5) of PIT Regulations, 1992, and to the company and stock exchanges under Regulation 29(2) read with 29(3) of SAST Regulations, 2011, and thus violated the said provisions.
13. From the replies of the Noticee vide letters dated March 28, 2018 and April 19, 2018, I note that the Noticee has submitted that they had disbursed a short term loan to ARL against a collateral security of pledge of 75 lacs shares, owned by its promoter – Mr. Arvind Kumar B Shah. The Noticee has contended that on failure to repay the loan, the Noticee after observing the necessary formalities such as the issuances of notices to ARL and its promoter, had invoked a small percentage of the pledged shares and immediately sold the same in the market in order to recover its dues and this process was followed by the Bank from time to time. The Noticee has accordingly contended the at no given point of time, the number of shares held or invoked by it was equal to or in excess of 5% of the total shareholding of ARL. In order to support its contention, the Noticee has submitted copy of the contract notes issued to it by its brokers

evidencing the sale of shares on various dates post the invocation of pledged shares, and copy of its demat account statement evidencing credit of the invoked shares and debit of shares sold by it. On perusal of the same, I note the following changes in the Noticee's shareholding –

Date of Credit on Invocation	Date of debit on sale	Credit	Debit	Balance	% of holding w.r.t. share capital of ARL
08.09.2014		10,29,500		10,29,500	1.51
	09.09.2014		5,00,000	5,29,500	0.78
	10.09.2014		5,29,500	0	NA
23.09.2014		10,00,000		10,00,000	1.47
08.10.2014		10,00,000		20,00,000	2.94
	09.10.2014		4,00,000	16,00,000	2.35
	14.10.2014		6,00,000	10,00,000	1.47
15.10.2014		10,00,000		20,00,000	2.94
	17.10.2014		10,00,000	10,00,000	1.47
	21.10.2014		8,22,609	1,77,391	0.26
	22.10.2014		1,77,391	0	NA
03.11.2014		4,00,000		4,00,000	0.59
	07.11.2014		4,00,000	0	NA
27.01.2015		19,00,000		1,900,000	2.30
	28.01.2015		3,33,916	1,566,084	2.30
	29.01.2015		8,16,084	7,50,000	1.10
	30.01.2015		6,41,311	1,08,689	0.16
	02.02.2015		1,08,689	0	NA
02.02.2015		11,70,500		11,70,500	1.72
	04.02.2015		5,00,000	6,70,500	0.98
	24.02.2015		6,70,500	0	NA

14. From the above, I note that the Noticee has invoked a total of 75,00,00 shares during the period from September 08,2015 to February 02, 2015. I note that the Noticee was invoking the pledged shares in tranches on various dates and, was immediately or shortly afterwards, selling them on market. Accordingly, I find that the shareholding of the Noticee was constantly fluctuating and the same ranged between 1.51% to nil during the period from 08.09.2014 to 24.02.2015. It is noted that the highest shareholding of the Noticee during the above period was on October 08, 2014 and October 15, 2014, when it held 20,00,000 shares, amounting to 2.94% of the

shareholding of ARL, which is much below the threshold of 5% specified under the SAST Regulations, 2011 and the PIT Regulations, 1992. In view of the same, the requirement for disclosure under the SAST Regulations, 2011 and PIT Regulations, 1992 cannot be cast on the Noticee. Therefore, in view of the facts of the case, I find that no violation of Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations, 2011 and 13(1), and 13(3) read with 13(5) of PIT Regulations, 1992 is committed by the Noticee.

15. Since the alleged violations of Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations, 2011 and 13(1), and 13(3) read with 13(5) of PIT Regulations, 1992 are not established against the Noticee, therefore consequent Issues in paragraph 9 requires no examination.

ORDER

16. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I am of the view that no penalty is warranted against the Noticee in the matter and accordingly the matter is disposed of.
17. 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.

Place: Mumbai

DATE: 20.04.2018

BIJU S

ADJUDICATING OFFICER