

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/ 226 /2018-19]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
("SEBI ACT") 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:

**L V Ramnarayan
(PAN: ABVPR1668R)**

**In the matter of Swarnajyothi Agrotech and Power Limited (earlier known as Octant
Interactive Technologies Ltd. (Case – II))**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to investigation of the alleged irregularity in the trading of the shares of Swarnajyothi Agrotech and Power Limited (hereinafter referred to as "SAPL/ company") had observed that L V Ramnarayan (hereinafter referred to as "Noticee"), a promoter and non-executive director of SAPL had disposed of certain shares and failed to make the requisite disclosures under regulation 13(4) read with 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") read with regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT 2015").

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide an order of the Competent Authority, SEBI, dated August 8, 2013, Ms. Anita Kenkare was appointed as the Adjudicating Officer under section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and 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 provisions of PIT Regulations. Pursuant to the transfer of the case, the undersigned has been appointed as the Adjudicating Officer vide order dated June 27, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings of SEBI, Show Cause Notice dated April 30, 2014 was issued to the Noticee under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on him under Section 15A (b) of SEBI Act for the alleged violations. The Noticee, vide letter dated May 21, 2014, submitted, inter alia, the following:

At the outset let me bring to your kind attention that I had resigned from the Board in July 2010 due to my ill health and the company had informed the same to BSE on 23rd July 2010 about my ceasing to be a director. From this dated i.e. 23rd July I ceased to be a promoter and any holding of shares from 23rd July 2010 should be classified as public rather than as promoter.

I would also like to inform you that whatever shares I had sold were duly disclosed to the company as well as to Bombay Stock Exchange within the stipulated time as per Regulation 13(4) and 13(6). I would like to draw your attention to the fact that the regulation says only disclosures needs to be made and no acknowledged copy has to be produced. Now you are asking for acknowledged copy that itself is contravention to the regulation. I had sent my relevant disclosures through fax to BSE and the proof of the same were enclosed to you vide my letter dated 25th April 2013. I would also like to draw your attention to the fact that OITL had received my disclosures within the stipulated time. On the same days fax was sent to BSE disclosing the sale.

4. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on January 6, 2015. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated May 21, 2014. The Noticee also stated that due to ill health he had asked the company to forward his disclosure filings to the stock exchange, and could not follow up regarding acknowledgment of the same.
5. On transfer of the case, the undersigned issued a Show Cause Notice dated February 28, 2018 in the matter. The Noticee, vide letter dated March 18, 2018 submitted, inter alia, the following:

As informed vide my letter dated 21st May 2014 that all the sale of shares were duly disclosed to the company as well as to Bombay Stock Exchange within the stipulated time as per Regulation 13(4) and 13(6).

I would like to draw your attention to the fact that the regulation says only disclosures needs to be made and no acknowledged copy has to be produced. Now you are asking for acknowledged copy that itself is contravention to the regulation.

I had sent my relevant disclosures through fax to BSE and the proof of the same were enclosed to you vide my letter dated 25th April 2013. I would also like to draw your attention to the fact that OITL had received my disclosures within the stipulated time. On the same days fax was sent to BSE disclosing the sale.

6. An opportunity of personal hearing was given to the Noticee on June 12, 2018 vide notice dated May 21, 2018. The Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated March 18, 2018. The Noticee also undertook to make further submissions. However, till date nothing has been received from him.

CONSIDERATION OF ISSUES AND EVIDENCE

7. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-
 - (a) Whether the Noticee have violated the provisions of regulations 13(4) read with 13(6) of PIT Regulations read with regulation 12(2) of PIT 2015?
 - (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?; and,
 - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?
8. Before proceeding further, I would like to refer to the relevant provisions of the PIT regulations and PIT 2015:

Relevant provisions of PIT Regulations:

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

(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 subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

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.

Relevant provisions of PIT 2015:

12. Repeal and Savings:

(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;

9. I note from the documents on record that the Noticee, promoter and non-executive director of SAPL sold 5,00,000 shares on April 19th, 2010 in the offmarket to Mr Manmohan Sahu and 91,155 shares on the exchange at an average rate of ₹11.97 on 4 trade days i.e June 9th, June 11th, June 22nd and June 29 th, 2010.

10. During the quarter ended September 2010, it was observed that the Noticee's total SAPL holdings reduced by another 4,08,845, shares (1.59% of SAPL's share capital) during the

quarter. From the trade logs, it is noted that the Noticee sold 1,08,845 shares on the exchange at an average rate of ₹12.10 and the rest in the offmarket.

11. On perusal of the website of BSE, it was observed that the Noticee had disclosed the sale of 5,00,000 shares to the stock exchange. No other disposal of shares was disclosed in the BSE website. The Noticee had contended that he had made the relevant disclosures and no acknowledged copy of the same had to be produced as per the law. I cannot accept the submission of the Noticee. Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of *Mega Resources v SEBI*, order dated March 19, 2002 stated that *"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."* The Noticee failed to submit any evidence that the disclosures made by him was received by BSE. The Noticee, being the promoter and non-executive director of the company was under the obligation of disclosing the number of shares and voting rights held and any change in shareholding or voting rights. However, the Noticee failed to do so.
12. In view of the above, I find that the allegation of violation of regulation 13(4) read with 13(6) of PIT Regulations read with regulation 12(2) of PIT 2015 stands established.
13. I therefore find the act of the Noticee is liable for a penalty under section 15 A(b) of SEBI Act which read as follows:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made there under,—

(a)

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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;

14. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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..."*.

15. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act which read as under:-

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticees and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticees failed to make the relevant disclosure on more than one occasion. Hence we can say that the violation is repetitive in nature.

ORDER

17. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty under section 15A (b) of SEBI Act of ₹ 2,00,00/- (Rupees Two Lakh only) for violation of regulation 13(4) read with 13(6) of PIT Regulations read with 12(2) of PIT 2015.
18. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the

Division Chief, Enforcement Department (EFD), Division of Regulatory Action - IV [**EFD-DRA-IV**] SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) 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 Noticee shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

20. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the Form as provided at Annexure 'A' of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is reproduced as under:-

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)	

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 : January 8, 2019
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER