

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/SM/2019-20/7230/203]

**UNDER 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA
(PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY
ADJUDICATING OFFICER) RULES, 1995**

In respect of

Parag Sarda

(Address: S002 B, 2nd Floor,
Vikas Centre, S. V. Road
Santacruz (West), Mumbai-400054

(PAN: ALSPS5895E)

In the matter of Sarda Papers Limited

BACKGROUND

1. A Department (hereinafter referred to as '**OD**') of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') during the examination of the draft letter of offer filed by Mr. Manish Ladage, Mr. N. R. Parameswaran, Ms. Kamini Johari and Mr. Kartik Johari to acquire 25.89% equity shares of the Sarda Papers Limited (hereinafter referred to as '**the Company**' / '**SPL**'), public announcement for the same was made on September 02, 2014, observed certain non-compliances with regard to Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('**SAST Regulations, 1997**') r/w repeal

and saving provisions under regulation 35 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**'SAST Regulations, 2011'**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (**'PIT Regulations, 1992'**) r/w repeal and savings provisions under regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (**'PIT Regulations, 2015'**). The Company was listed at Bombay stock Exchange (**'BSE'**), Ahmedabad Stock Exchange and Calcutta Stock Exchange at the time of violation.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based upon the examination findings, Operational Department of SEBI initiated adjudication proceedings against Noticee. SEBI appointed Ms. Sangeeta Rathod as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'the SEBI Act') and rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provision of section 15A(b) of the SEBI Act for the alleged violation of the regulation 7(1) r/w 7(2) of SAST Regulations, 1997, and regulation 13(3) r/w 13(5) of PIT Regulations, 1992 by the Noticee. The appointment of Ms. Sangeeta Rathod as Adjudicating Officer was conveyed vide communique dated December 17, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. SEBI/HO/EAD/E&AO/SR/PP/OW/34238/1/2019 dated December 20, 2019 (in short **SCN**) was issued to the Noticee in terms of rule 4 of

the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against him for the alleged violations of provisions under regulation 7(1) r/w 7(2) of SAST Regulations, 1997, and regulation 13(3) r/w 13(5) of PIT Regulations, 1992 and why penalty be not imposed on the Noticee under section 15A(b) of the SEBI Act for the alleged violations as specified in the SCN. The SCN was issued to the Noticee through speed post acknowledgement due (SPAD) and the same was delivered. The acknowledgment of service of SCN is on record. It is alleged in the SCN that Noticee-

On August 06, 2002 has acquired 2,79,998 (8.98%) shares of SPL and the percentage of shareholding of the Noticee crossed 5% of the share capital of SPL on August 06, 2002. Hence, Noticee was required to make disclosure to SPL and to the stock exchanges where SPL was listed, under the provisions of regulation 7(1) r/w 7(2) of SAST Regulations, 1997 and regulation 13(3) r/w 13(5) of PIT Regulations, 1992, which Noticee failed to comply with. In this regard, OD observed that the BSE vide email dated September 18, 2019 informed that Noticee has not submitted the disclosure under SAST Regulations, 1997 for the acquisition of 2,79,998 shares Noticee acquired on August 06, 2002. Copy of BSE's email dated September 18, 2019 is enclosed as annexure B. Thus the Noticee is alleged to have violated regulation 7(1) r/w 7(2) of SAST Regulations, 1997 and regulation 13(3) r/w 13(5) of PIT Regulations, 1992.

4. Vide letter dated January 17, 2020, Noticee was advised to file reply to the SCN by January 24, 2020 and an opportunity of hearing was granted scheduled on January 30, 2020. Noticee vide letter dated January 23, 2020 stated that “ *the matter stated in the SCN is of August 2002, where I was 19 years old and therefore I would require some time to collate the data from family office...*” Further, Noticee requested an extension of 45 days for filing reply to the SCN and for personal hearing. Acceding to Noticee's request vide letter dated January 24, 2020, Noticee was advised to file reply to the SCN by February 24, 2020 and an opportunity of hearing is granted on February 26, 2020. Noticee vide his email and letter both dated February 24, 2020 requested further extension of 45 days for filing reply to

the SCN and for personal hearing. Noticee appeared for hearing on the scheduled date i.e. February 26, 2020 and reiterated the submission made vide his letter dated January 23, 2020 and requested time for submission of reply to the SCN, acceding to the request, Noticee was granted time till March 06, 2020 for submission of reply. Minutes of hearing are on record.

5. Noticee submitted reply to the SCN vide letter dated March 05, 2020. The reply of the Noticee is summarized below:

- (i) There has been no independent investigation by SEBI regarding the transaction in question.*
- (ii) Transaction in question took place on August 06, 2002 and the SCN is dated December 20, 2019. There is a huge delay of 17 years in issuance of SCN.*
- (iii) This delay has caused prejudice to the Noticee as the shares in question had been sold way back in 2014 for which disclosure under Regulation 13(4), 13(4A), 13(3) and (6) were already made. In view of the same, the entire SCN and charge qua the Noticee is misconceived, meaningless and unwarranted at this juncture. Copy of the disclosure relating to the selling of the said share made at the relevant time is attached with the reply.*
- (iv) The Noticee had received a notice for approved enforcement action from SEBI dated July 05, 2016 stating that SEBI had decided to initiate adjudication proceedings and the Noticee may file settlement application within 2 months from the date of Notice if he so desires.*
- (v) The Noticee has cited Hon'ble SAT's judgments dated January 31, 2020 in the matter of Ashlesh Shah vs. SEBI, and judgment in the matter of HB Stockholdings Ltd. vs. SEBI*
- (vi) Noticee acquired the shares of SPL from Vivek Vyapar Limited which was a promoter group company. The Noticee was only 19 years old and thus unaware about the PIT Regulations and SAST Regulations relating to activities in the securities market.*
- (vii) Copy of shareholding pattern for quarter ended September 2002 and December 2002 of SPL on the BSE website is downloaded and attached*

with the reply, Noticee's name and number of shares acquired is mentioned in the quarter ended December 2002. The Noticee states that the information was thus available on the stock exchange platform for the public since December 2002. Further, there was no change in promoter holding of the company on account of the transaction of the Noticee.

(viii) The promoter group including the Noticee had made disclosure to the company under Regulation 8(2) about the shareholding as on March 31, 2003. And the company in turn had made annual disclosure under Regulation 6(4) of April 26, 2003.

6. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES

7. I have carefully perused the charges made against the Noticee as mentioned in the SCN and other material available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticee has violated the provisions regulations 7(1) r/w 7(2) of SAST Regulations, 1997 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992?**
- (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act for the alleged violation by the Noticee?**
- (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, it will be appropriate to refer to the relevant provisions which read as under:-

SAST Regulations, 1997

Acquisition of 5% and more shares of a company

7 (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company, to the company.

(2) The disclosures mentioned in sub-regulations(1) shall be made within four working days, -

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons-Continual disclosure.

13 (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 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.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within four 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.

FINDINGS

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Issue (a): Whether the Noticee has violated the provisions regulations 7(1) r/w 7(2) of SAST Regulations, 1997 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992?

- a) Owing to various contentions of the Noticee, *Firstly* regarding delay in issuance of SCN, I note that the appointment of undersigned as Adjudicating Officer was conveyed vide communique dated December 17, 2019, SCN was issued by the AO on December 20, 2019, without any delay. Rest of the chronology of adjudication proceedings before me is detailed in para 4 above. *Secondly* with regards to the contention of Noticee stating ignorance of law, I place reliance on Hon'ble Securities Appellate Tribunal in its order dated September 07, 2017 in the matter of Mega Resources Ltd. vs. SEBI, upheld that *"It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions. It is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law."*, thus Noticee's both these contentions are not acceptable to me.
- b) I note from the SCN that the allegation is that Noticee has not made relevant disclosures having acquired 2,79,998 shares of SPL on August 06, 2002. It is an admitted position that the said shares were acquired by the Noticee. Further, as per available record, BSE has informed that it has not received the disclosure in this regard from the Noticee. Further, from the annexures to the Noticee's reply I note that- (i) annexure A is a copy of letters dated November 19, 2014 intimating SPL and BSE with regard to disposal of 2,79,998 shares on November 19, 2014 and these letter have stamp and receipt date of November 19, 2014 by SPL and November 20, 2014 by BSE ; (ii) annexure B is notice of approved enforcement

action issued by SEBI dated July 05, 2016; (iii) annexure C is copy of share transfer form; (iv) annexure D is shareholding pattern for quarter ending December 2002 downloaded from BSE website, evidencing the shareholding of Noticee in SPL as 2,79,998 shares (i.e. 8.98% shareholding of SPL); (v) annexure E is a copy of letter dated April 26, 2003, sent by SPL to BSE the disclosure under Regulation 6(4) for the shareholding of the promoters (including Noticee as 8.98% i.e. 2,79,998 shares). This letter is bearing a stamp of BSE and receipt date as April 29, 2003; (vi) annexure F is a form with heading “ format for disclosure in terms of Regulation 7(3) of SAST Regulations, 1997”, detailing date of reporting as September 03, 2014 and mode of acquisition is shown as interse transfer for acquisition of 2,79,998 shares by the Noticee on August 06, 2002. This form has signature of B. L. Sharma, Managing Director of SPL. However, there is no stamp or a receipt date by the Exchange. However, from all the above annexures on record, there is no documentary proof to evidence the disclosures made by the Noticee, if any, to the company under the provisions of the regulation 7(1) r/w 7(2) of SAST Regulations, 1997, and regulation 13(3) r/w 13(5) of PIT Regulations, 1992. Hence, by not making the required disclosures to the company under the abovesaid SAST Regulations, 1997 and PIT Regulations, 1992, the Noticee has violated the provision of regulation 7(1) r/w 7(2) of SAST Regulations, 1997, and regulation 13(3) r/w 13(5) of PIT Regulations, 1992 and hence, the allegations levelled against the Noticee stands established.

10. Issue (b): Do the violations, if any, on the part of the Noticee attracts monetary penalty under section 15A(b) of SEBI Act for the alleged violation by the said Noticee?

After taking into account the aforesaid entire facts / circumstance of the case, it is noted that the said violations of provisions of regulation 7(1) r/w 7(2) of SAST Regulations, 1997, and regulation 13(3) r/w 13(5) of PIT Regulations, 1992 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 15A(b) of the SEBI Act, which is reproduced below:

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 not exceeding five thousand rupees for every day during which such failure continues.*

11. Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

- a) While determining the quantum of penalty under sections 15A(b) of the SEBI Act 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 23 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."*

- b) I observe that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any made by the Noticee and the loss, if any suffered by the investors due to the aforesaid violations. Also,

material available on record does not show that the violation was repetitive in nature. Therefore taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticee is liable for a monetary penalty of Rs.1, 00,000/- (Rupees One Lakh only) for violations of provision regulation 7(1) r/w 7(2) of SAST Regulations, 1997 and regulation 13(3) r/w 13(5) of PIT Regulations, 1992.

ORDER

12. In exercise of the powers conferred under section 15-I of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.1, 00,000/- (Rupees One Lakh only) on the Noticee i.e. Parag Sarda under section 15A(b) of SEBI Act for violations of provisions of provision of regulation 7(1) r/w 7(2) of SAST Regulations, 1997 and regulation 13(3) r/w 13(5) of PIT Regulations, 1992.

13. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

- a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
- b. By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

14. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan-II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

- a) Case Name
- b) Name of the 'Payer/Noticee'
- c) Date of Payment
- d) Amount Paid
- e) Transaction No.
- f) Bank Details in which payment is made

- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

15. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

16. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules.

Date: March 16, 2020

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER