

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/AA/AR/2019-20/3235]**

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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*  
**KPM Infotech Private Limited**  
**(now merged with Dolf Leasing Ltd)**  
**(PAN: AADCK2496E)**

*In the matter of*  
**Ashutosh Paper Mills Ltd**

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**BACKGROUND OF THE CASE**

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the dealings of several persons/entities including the dealings of KPM Infotech Private Limited (now known as Dolf Leasing Ltd and hereinafter referred to as '**the Noticee**') in the scrip of Ashutosh Paper Mills Ltd (hereinafter referred to as '**APML**' / '**the Company**') during the period December 26, 2011 to April 23, 2012 (hereinafter referred to as '**relevant period**'), on observing a sharp decline in the scrip price of APML.
2. Pursuant to the investigation, it was, *inter-alia*, observed that the Noticee had failed to make timely disclosures pertaining to its transactions in the shares of APML during the relevant period. It was observed that the Noticee had allegedly failed to comply with the disclosure requirements specified under the provisions of Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also under the provisions of Regulation 13(3)

read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Shri Suresh B. Menon was appointed as the Adjudicating Officer in the matter vide communique dated January 18, 2017 to inquire into and adjudge under the provisions of section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') under the provisions of section 15A(b) of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee. Pursuant to the transfer of Shri Suresh B. Menon to another department of the SEBI, the undersigned was appointed as the Adjudicating Officer in the said matter vide communique dated March 25, 2019.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

4. A Show Cause Notice SEBI/HO/EAD/5176/2017 dated March 08, 2017 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15A(b) of the SEBI Act, for the violations alleged to have been committed by the Noticee. The SCN issued to the Noticee, *inter-alia*, mentioned the following :
  - a) *It is observed from the investigation of trades in the scrip of the Company that KPM Infotech Pvt. Ltd. had done following trades in the scrip of the Company:-*

<b>Date</b>	<b>No of shares purchased</b>	<b>No of shares Sold</b>	<b>% of shares acquired/sold to total no. of shares</b>	<b>Net Holding</b>	<b>% Holding</b>
Opening Balance (as on 26.12.2011)	5,04,900			5,04,900	7.74%
14.03.2012		53,000	0.81%	4,51,900	6.93%
16.03.2012		28,400	0.44%	4,23,500	6.49%
<b>21.03.2012</b>		<b>80,000</b>	<b>1.23%</b>	<b>3,43,500</b>	<b>5.26%</b>
22.03.2012		2,00,000	3.06%	1,43,500	2.20%
04.04.2012		15,000	0.23%	1,28,500	1.97%
11.04.2012		26,600	0.41%	1,01,900	1.56%
<b>Total</b>		<b>4,03,000</b>	<b>6.18%</b>		

- b) As can be observed from the above Table, Noticee was holding more than 5% of shares as on December 26, 2011. Subsequent gradual sale of shares by Noticee led to its shareholding in the company being reduced to 1.56%. It is observed that on March 21, 2012, shareholding of Noticee reduced by 2% from the original shareholding. This requires a disclosure to be made by Noticee no 12 to the Company under Regulation 13(3) read with 13(5) of PIT Regulation. Noticee was also required to make necessary disclosures to both the Company and BSE in terms of Regulation 29(2) read with 29(3) of SAST Regulation. It is, however, observed that there was no disclosure available in the records of Company and BSE from Noticee.
- c) It is therefore alleged that Noticee has violated the provisions of Regulation 13(3) read with 13(5) of PIT Regulation and Regulation 29(2) read with 29(3) of SAST Regulation which require a person, holding more than 5% shares of a company, to disclose 2% or more change in his shareholding from the time of last disclosure. The relevant text of the provisions of law allegedly violated by Noticee No 12 has been brought out in the subsequent paragraphs of this notice.

5. The Noticee, vide its letter dated April 08, 2017, submitted its reply to the SCN. Briefly, the major points made by the Noticee in its aforesaid reply are mentioned below:

- a) *We are KPM Infotech Private Limited, which was merged into Suave Technologies Pvt Ltd and which has further merged into Dolf Leasing Limited vide orders passed by Hon'ble High Court of Delhi dated August 17, 2012 and July 15, 2014, respectively.*
  - b) *We have filed an application for settlement vide our letter dated February 09, 2017.*
  - c) *The delayed filing was only due to inadvertence and there was no malafide intention.*
6. I observe that, subsequently, the concerned department of SEBI had informed that the settlement application of the Noticee has been rejected by the competent authorities.
7. In view of the change in the Adjudicating Authority and in the interest of principles of natural justice, an opportunity of personal hearing was granted to the Noticee on April 22, 2019. The Authorized Representative of the Noticee (hereinafter referred to as '**AR**') attended the hearing on the scheduled date and time and made the following submissions:
- a) The AR admitted that the transactions, as alleged in the SCN, were done by the Noticee and there was failure on its part in making timely disclosures to APML and to the Stock exchanges as required under the provisions of SAST Regulations and PIT Regulations.
  - b) AR submitted that the Noticee had made the required disclosures in the matter on February 09, 2018 with a delay of 1784 days and provided copies of the disclosures made by the Noticee.

### **CONSIDERATION OF ISSUES**

8. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are :
- (a) Whether the Noticee has violated the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations and the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations.

- (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
  - (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?
9. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations as below:

**SAST Regulations, 2011**

**Disclosure of acquisition and disposal.**

**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 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 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 by directors and officers and substantial shareholders in a listed companies - Initial 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.

**(5)** The disclosure mentioned in sub-regulations (3) and (4) 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.

10. From the material/data available on record, I find that the following Table mentions the details of the transactions undertaken by the Noticee during the relevant period-

<b>Date</b>	<b>No of shares purchased</b>	<b>No of shares Sold</b>	<b>% of shares acquired/sold to total no. of shares</b>	<b>Net Holding</b>	<b>% Holding</b>
<i>Opening Balance (as on 26.12.2011)</i>	5,04,900			5,04,900	7.74%
14.03.2012		53,000	0.81%	4,51,900	6.93%
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22.03.2012		2,00,000	3.06%	1,43,500	2.20%
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11.04.2012		26,600	0.41%	1,01,900	1.56%
<i>Total</i>		4,03,000	6.18%		

11. I find that the disclosure requirements under the SAST Regulations and PIT Regulations are triggered when the shareholding of an entity/ person which is already holding more than 5% shares of the listed company, changes by more than 2% of the share capital of that company. In the instant matter, I note from the table given above that till one day prior to March 14, 2012, the Noticee was holding 5,04,900 shares of APML i.e. 7.74% shares of APML. I find that the Noticee sold 1,61,00 shares of APML during the period March 14, 2012 to March 21, 2012. These transactions of the Noticee resulted in the decrease in its shareholding from 7.74% (on March 13, 2012) to 5.26% (as on March 21, 2012). Thus, the above transactions of the Noticee resulted in its shareholding in APML (which was initially higher than 5%) decreasing by 2.48% i.e. the change of more than 2%. Therefore, the Noticee was required to make the disclosures to the Company and to BSE in the prescribed format within two working days of its sale of shares in terms of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. Further, the Noticee was also required to make the disclosures in the prescribed format to the Company within two working days of its sale of shares in terms of Regulations 13(3) r/w 13(5) of the PIT Regulations.

12. I note that during the course of current proceedings, the Noticee submitted copies of the disclosures made by it for the impugned transactions that resulted in its shareholding decrease to 5.26% (i.e. more than 2% change from the Noticee's shareholding of 7.74% on March 13, 2012). I find from the records provided by the Noticee that it made the relevant disclosures under Regulation 29 (2) r/w 29(3) of the SAST Regulations and also under Regulation 13(3) r/w 13(5) of the PIT Regulation in the prescribed format to the Company and BSE on February 07, 2017 i.e. with a delay of almost 5 years.
13. However, in view of the inordinate delay in making the relevant disclosures by the Noticee, I conclude that the Noticee failed to make the necessary disclosures under Regulation 29 (2) r/w Regulation 29(3) of the SAST Regulations and also under Regulation 13(3) r/w Regulation 13(5) of the PIT Regulations to the Company and to the BSE in a timely manner. Therefore, I hold that the Noticee has violated the provisions of Regulation 29 (2) r/w Regulation 29(3) of the SAST Regulations and also under Regulation 13(3) r/w Regulation 13(5) of the PIT Regulations.
14. In this context, I observe that the Hon'ble SAT has consistently held that the obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* had observed that

*"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."*

15. I further observe in this context that the Hon'ble Supreme Court of India , in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006]} 5 SCC 361} held that

*“ In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial .... Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary”.*

16. In view of the above, I hold that the Noticee has failed to make the necessary disclosures required under the provisions of Regulation 29 (2) r/w Regulation 29(3) of the SAST Regulations and also under Regulation 13(3) r/w Regulation 13(5) of the PIT Regulations. Therefore, I am convinced that the Noticee has violated the provisions of the aforementioned Regulations.
17. In view of the violation of the provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of Section 15A(b) of the SEBI Act, which 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 there under-***

*(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

18. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.*

19. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the concerned department of SEBI has 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. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature.

20. I am of the view that the disclosure requirements that have been prescribed under SAST Regulations and PIT Regulations are of utmost significance for the protection of interest of the investors, as such information received by them in a time bound manner would facilitate them to take an informed investment decision as regards their holdings in the Company. In the instant case, the Noticee initially acquired more than 5% stake in the Company. Subsequently, it sold 1,61,000 shares during the period March 14, 2012 to March 21, 2012, which resulted in its shareholding decrease by more than 2% of the shares of the Company. Therefore, the timely disclosures of the same by the Noticee under the relevant provisions of the SAST Regulations and the PIT 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.
21. In this context, I would like to quote the relevant extracts from the Order of the Hon'ble Securities Appellate Tribunal (SAT) in its judgment on 4.9.2013 in the matter of Vitro Commodities Private Limited Vs SEBI wherein Hon'ble SAT had observed that *"It may be noticed that provisions of Regulations 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 the light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(3) of the PIT Regulations and the Regulation 29(2) of the SAST 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

## **ORDER**

22. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act 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 ₹ 2,00,000/- (Rupees Two Lakh only) on the Noticee viz. KPM Infotech Private Limited (now merged with Dolf Leasing Ltd) under the provisions of Section 15A(b) of the SEBI Act.
23. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. 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 e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.
24. The aforesaid demand draft or details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 7, “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)	

25. 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.
26. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Dolf Leasing Ltd and also to the Securities and Exchange Board of India.

**Date: May 21, 2019**  
**Place: Mumbai**

**Dr. ANITHA ANOOP**  
**CHIEF GENERAL MANAGER &**  
**ADJUDICATING OFFICER**