

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/177 /2017-18]**

**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:

**Nirmal Bang Financial Services Private Limited
(PAN: AAACN1698N)**

In the matter of Kamanwala Housing Construction Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to examination of the alleged irregularity in the trading of the shares of Kamanwala Housing Construction Limited (hereinafter referred to as "KHCL/ company") had observed that Nirmal Bang Financial Services Private Limited (hereinafter referred to as "Noticee"), due to change in shareholding while dealing in the scrip of the company was required to file disclosures within the specified time to the company and the stock exchange under regulations 13(1), 13(3) read with 13(5) 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") and regulations 29(1), 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations"). However, it is observed that the Noticee failed to comply with the disclosure requirements under PIT Regulations and SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide an order of the Competent Authority, SEBI, dated August 4, 2014, Mr. D Sura Reddy has been 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 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 SAST Regulations and PIT Regulations. Pursuant to the transfer of the case, the undersigned has been appointed as the Adjudicating Officer in the matter.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated September 4, 2014 (hereinafter referred to as 'SCN') 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 it under Section 15A (b) of SEBI Act for the alleged violations. No reply was received from the Noticee. The Noticee applied for settlement with SEBI. However, its application of settlement was rejected. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticee on February 1, 2018 vide notice dated January 18, 2018. The authorised representative appeared on behalf of the Noticee and made submissions. The Noticee, vide email dated February 2, 2018 made the following submissions:

- *The Noticee admits that there has been a delay in making the subject disclosures under Regulation 13(3) of the PIT Regulations and also Regulation 29(2) of the SAST Regulations. The disclosures have been made in March 2014 and there has been a delay of around 3 months in making the disclosures which fact is taken note of in the Notice.*
- *The aforesaid disclosures have been made belatedly and there has been a violation of Regulation 13(5) of PIT Regulations and Regulation 29(3) of the SAST Regulations. However, with due respect, we wish to state that the disclosures under Regulation 13(3) and Regulation 29(2) have been made by the Noticee, albeit belatedly.*
- *Regulation 13(1) of PIT Regulations were triggered when the Noticee first time acquired the shares of Kamanwala Housing in July 2013 and the shareholding of the Noticee changed from NIL to 15 %. Similarly the obligation to make disclosure under Regulation 29(1) of SAST Regulation was triggered on the same date. The intimation to the company as required was made within two days as required. The Noticee has made both the disclosures as required. Copies of the disclosures made are attached hereto. When this*

question was posed to the Noticee during the hearing, the Noticee was unable to provide an answer which is now being provided by the Noticee.

- After the disclosures at the right time were made under Regulation 13(1) and Regulation 29(1), there was no disclosures further required to be made under the said provisions unless the change in shareholding was less than 2 % as is clear from the reading of the said provisions. As in all the three instances, the shareholding changed to more than 2%, only the applicable Regulation 13(3) and Regulation 29(2) were triggered. The shareholding of the Noticee was changed on three occasions where there has been a change in shareholding to more than 2% and therefore the only triggering provision would be Regulation 13(3) of PIT Regulations and also Regulation 29(2) of the SAST Regulations. In all such three occasions, there was therefore no requirement of compliance under Regulation 13(1) and Regulation 29(1) as both of these have been complied with at the right time and no requirement any further in all three occasions existed.*
- The Noticee humbly submits therefore that the only violation that exists in the matter is Regulation 13(5) and Regulation 29(3) which speaks of timely disclosure. We do understand that there is a delay for which a token penalty be imposed, should there be a view to impose a penalty on the Noticee.*
- We draw your kind attention to the enclosed order where other Adjudication Officer has taken a view as framed by the Hon'ble Securities Appellate Tribunal in Vitro Commodities Private Limited V SEBI. This is our submission on the quantum of penalty without prejudice to our submission that the delay in the disclosures may not be viewed seriously to warrant any penalty and a lenient view be taken. The Noticee has been compliant with all the regulations and will be more diligent in future. The spirit underlying any regulatory intervention by SEBI is to make the Noticee realize the mistakes and to adopt a corrective path in future dealings. While this has been a single on off event of delayed disclosures, yet the Noticee undertakes to be more diligent and careful in nature.*

CONSIDERATION OF ISSUES AND EVIDENCE

4. I have carefully perused the charges levelled against the Noticee in the SCN, its reply 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(1), 13(3) read with 13(5) of PIT Regulations read with regulation 12(2) of PIT 2015?
- (b) Whether the Noticee have violated the provisions of regulations 29(1), 29(2) read with 29(3) of SAST Regulations?

- (c) Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?; and,
- (d) 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?
5. Before proceeding further, I would like to refer to the relevant provisions of the PIT regulations, PIT 2015 and SAST Regulations:

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.

Continual disclosure.

(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), (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.

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;

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.

29.(2) Any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such 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.

6. I note from the documents on record that you had acquired 15.73% of shares of the company. As per regulation 13(1) of PIT Regulations and regulation 29(1) read with 29(3) of SAST regulations, Noticee was to make the disclosure of the acquisition of shares on July 26, 2013. From the documents on record, it was observed that the Noticee had made the said disclosure under regulation 13(1) of PIT Regulations on July 29, 2013. Further, it was observed that it had made the disclosure under regulation 29(1) of SAST Regulations on July 25, 2013. Therefore, it is established that the Noticee has made delayed disclosure under regulation 13(1) of PIT Regulations. I note that disclosure of increased shareholding of Noticee was

available in public domain on July 25, 2013, hence I am inclined to ignore the delay disclosure of two days to the company under Regulation 13(1) of PIT Regulations.

7. The details of change of shareholding which triggered the disclosure requirements are as under:

Date	No. of shares	Acquired/ Disposed	Balance	Disclosure required to be made within two working days
11/12/2013	311000 (2.22%)	Acquired	2484508	13/12/2013
19/12/2013	600000 (4.41%)	Disposed	1863509	23/12/2013
23/12/2013	1546509 (10.97%)	Disposed	317000	26/12/2013

8. It was observed that on 3 occasions the Noticee had acquired/ disposed shares which resulted in the change of shareholding for more than 2%. The Noticee made the disclosure of the same vide its letter dated March 19, 2014, i.e., after a delay of more than 3 months. In view of the above, I find that the allegation of violation of regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations stand established.
9. The Hon'ble Securities Appellate Tribunal, in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI, has also 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. We cannot therefore subscribe to the view that the violation was technical in nature"*.
10. 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;

11. 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..."*.

12. 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.

13. I find that the examination 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. The Hon'ble Securities Appellate Tribunal, in Appeal No.118 of 2013 order dated September 4, 2013 – *Vitro Commodities Private Limited v SEBI* stated 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.” Hence, taking a cue from the said order, I consider the violation of 29(2) read with 29(3) of SAST Regulations and regulation 13(3) read with 13(5) of PIT Regulations are one and the same and only levy one penalty for both violations as they are corollary of other.

ORDER

14. 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 ₹ 3, 00,000/- (Rupees Three Lakh only) for violation of regulation 13(3) read with 13(5) of PIT Regulations read with 12(2) of PIT 2015 and regulation 29(2) read with 29(3) of SAST Regulations.
15. 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 - I [**EFD-DRA-I**] 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

16. 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.

17. 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)	

18. 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 : February 14, 2018
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER