**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.EAD-5/BS/AO/86/2017-18]**

---

**UNDER SECTION 15-I OF THE 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 LIBERTY URVARAK LTD IN THE MATTER OF LIBERTY PHOSPHATE LTD.**

---

## BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as "**SEBI**"*) observed that an open offer was made by Coromandel International Ltd in terms of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "***SAST Regulations, 2011***") to the shareholders of the target company, Liberty Phosphate Ltd (hereinafter referred to as "***LPL***"), through a public announcement dated January 24, 2013 for acquisition of 37,53,933 fully paid up equity shares of Rs. 10 each, representing 26% of the paid up capital of LPL at a price of Rs. 241/- per share payable in cash. Shares of LPL are listed at BSE.

2. While examining the Letter of Offer filed pursuant to the afore-mentioned public announcement, it was observed that Liberty Urvarak Ltd (*hereinafter referred to as "**Noticee**"*), an entity in the promoter group of LPL had acquired 3,81,398 shares representing 2.64% of the share capital of LPL during the quarter ended March 31, 2012. The said acquisition required a disclosure within two working days of transaction as stipulated under Regulation 29(2) read with 29(3) of SAST

Regulations, 2011. However, it was observed that the Noticee made the disclosure on February 04, 2013 after a delay of 366 days.

3. It was further observed that during the quarter ended June 30, 2012 and September 30, 2012, Noticee acquired 2,84,325 shares and 46,741 shares of LPL. As these acquisitions aggregating to 3,31,066 shares of LPL by Noticee was 2.29% of the share capital of LPL, it required a disclosure within two working days of transaction as stipulated under Regulation 29(2) read with 29(3) of SAST Regulations, 2011. However, it was observed that the Noticee made the disclosure on February 04, 2013 after a delay of 169 days. Accordingly, the Noticee is alleged to have violated Regulation 29(2) read with 29(3) of SAST Regulations, 2011.

## APPOINTMENT OF ADJUDICATING OFFICER

4. Initially, Shri Piyoosh Gupta, Chief General Manager was appointed as the Adjudicating Officer **(AO)** vide order dated July 08, 2013 to inquire into and adjudge under 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee. Subsequently, the undersigned was appointed as the AO in the present matter vide order dated September 15, 2017.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice bearing ref. no. EAD-5/ADJ/ASK/AA/OW/18539/2014 dated June 27, 2014 (*hereinafter referred to as '**SCN**'*) was issued earlier to the Noticee in terms of Section 15I of the 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 "***Rules***") for the violations as specified in the SCN.

6. Vide letter dated July 16, 2014, the Noticee requested for an extension of six weeks' time for submitting reply in the matter. Subsequently, vide letter dated September 16, 2014, the Noticee submitted a detailed reply to the SCN and following are the main submissions in the said reply –

i. *Provisions of regulation 29 (2) of SEBI Takeover Regulations (as existing in 2012) are reproduced herein below for your ready reference:*

> *"29(2). Any acquirer, who together with person acting in concert with him, hold shares or voting rights entitling them to 5% 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 2% or more of the shares or voting rights in such target company in such form as may be specified."*

*It is respectfully submitted that the disclosure requirement under regulation 29(2) of SEBI Takeover Regulations becomes applicable to the acquirers who satisfy the following:*

a) *An acquirer, along with PACs, holds 5% shares or more of the total paid up capital of the company; and*
b) *he thereafter acquires or sells 2% or more shares of the total paid up capital of the company.*

ii. *In the Instant case, the Noticee was not holding any shares in the Target Company before January 12, 2012. The Noticee acquired 3,81,398 shares constituting 2.64% shares from January 12, 2012 to February 02, 2012 in 11 tranches. Further, the Company acquired 2,92,125 shares constituting 2.02% shares from May 08, 2012 to August 17, 2012. The Noticee crossed the 5% shareholding on October 25, 2012 (Thursday) and as per the expert advice it made disclosure under regulation 29(1) of SEBI Takeover Regulation on October 29, 2012 (within 2 working days).*

iii. *The Noticee was given to understand that no disclosure is required to be made under regulation 29(2) unless it makes disclosure under 29(1) by crossing 5% limit. Further, the Noticee was also advised that the obligation to make a disclosure under regulation 29(2) will arise only if after crossing 5% threshold it will further acquire or sell 2% shares in one transaction only. The Noticee had not acquired or sold 2% shares in one transaction at any point of time.*

iv. *Aforesaid view of the Noticee is supported by the following:*

v. *SEBI in its* ***adjudication Order No. ASK/AO-17/2014-15 dated May 30, 2014*** *in respect of* ***Kramer Pharmaceuticals Pvt. Limited*** *in the matter of* ***Svaraj Trading and Agencies Limited*** *has held as follows :*

> *"From the material available on record, I note that Noticee was a promoter of STAL and held 11.68% shares in the share capital of STAL. I further note that the Noticee disposed 11,680 shares of STAL on June 30, 2012 by way of inter-se transfer to Mr. Sushil Somani, another promoter of STAL, and the said transaction resulted into the shareholding in the Noticee in STAL decreasing from 11,680 (11.68%) shares to nil shares. Prior to the said transaction, the*

*Noticee was holding more than 5% of the shares of STAL and the transaction dated June 30, 2012 resulted into disposal of more than 2% of the shares of STAL by it. Noticee was consequently required to make a disclosure to the Company and stock exchange within 2 working days of transaction i.e. by July 03, 2012."*

*In the above case, there was no change in total promoter shareholding as the transfer was inter se transfer. SEBI has considered the individual shareholding of the noticee for the purpose of 29(2). In the instant case the Noticee was not holding more than 5% shares and therefore there was no requirement to make any disclosure under reg. 29(2) of SEBI Takeover Regulations.*

vi. *Regulation 29(2) of SEBI Takeover Regulations is basically replacement of regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('**Old Takeover Regulations'**). Even in Old Takeover Regulations, acquirer holding less than 15% shares on standalone basis was not required to make any disclosures under regulation 7(1A) of Old Takeover Regulations. Securities Appellate Tribunal in its recent judgment in the matter of **GHCL Vs SEBI (SAT Order dated July 31, 2014)** held as follows:*

*"…….It is nowhere brought on record by the respondent that any one of the 10 appellants on standalone basis was ever holding more than 15% shares…"*

*The Hon'ble Securities Appellate Tribunal held that the acquirer should individually hold 15% or more shares to attract the obligation of disclosure under regulation 7(1A) of Old Takeover Regulations. In the instant case, the Company was not holding more than 5% shares to attract the obligation to make a disclosure under regulation 29(2) of SEBI Takeover Regulations.*

vii. *SEBI in its FAQ's in respect of Takeovers (in respect of Old Takeover Regulations) clarified that any person individually holding more than 15% but less than 55% shares shall have an obligation to disclose purchase and sale aggregating 2% or more. The relevant portion of the FAQ is reproduced below for your ready reference:*

*"How substantial quantity of shares or voting rights is defined?*

*The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 has defined substantial quantity of shares or voting rights distinctly for two different purposes:*

*I. Threshold of disclosure to be made by acquirer(s):*

*1) 5% and more shares or voting rights: A person who, along with PAC, if any, (collectively referred to as " Acquirer" hereinafter) acquires shares or voting rights*

*(which when taken together with his existing holding) would entitle him to more than 5% or 10% or 14% shares or voting rights of target company, is required to disclose at every stage the aggregate of his shareholding to the target company and the Stock Exchanges within 2 days of acquisition or receipt of intimation of allotment of shares.*

*2) **Any person** who holds more than 15% but less than 55% shares or voting rights of target company, and who purchases or sells shares aggregating to 2% or more shall within 2 days disclose such purchase/ sale along with the aggregate of his shareholding to the target company and the Stock Exchanges."*

*The above FAQ of SEBI clearly states that **any person** who holds more than 15% but less than 55% shares or voting rights of Target Company has to disclose purchase or sale aggregating to 2% or more shares of the company. Therefore, any person holding less than 15% shares had no obligation to disclose the purchase or sale aggregating to 2% or more under regulation 7(1A) of Old Takeover Regulations. Similarly, under regulation 29(2) of SEBI Takeover Regulations any person holding less than 5% shares has no obligation to make such disclosure.*

viii. *SEBI had amended SEBI (Prohibition of Insider Trading) Regulation, 1992 ('**SEBI PIT Regulations**') on August 16, 2011. In the Memorandum to the Board for SEBI Board Meeting dated July 28, 2011 (available on SEBI site) it is stated as follows:*

*"1.4 …….*

*1.5 Further, regulation 7(1A) of the Takeover Regulations requires any acquirer who holds 15% or more but less than 55% of the shares or voting rights in a company to make disclosures about purchase or sale of 2% or more of the share capital along with the aggregate shareholding after such acquisition or sale.*

*Concerns*

*2.1 As is evident from the disclosures mentioned above, information about shareholding of promoter and promoter group comes in public domain at the end of each financial year and at the end of each quarter. Information about any change in the shareholding of promoter and promoter group holding more than 5% shares or voting rights also comes into public domain if there is any change beyond the limits specified in regulation 13(3) of the PIT Regulations and regulation 7(1A) of the Takeover Regulations, as the case may be.*

*2.2 However, any person who is promoter or part of promoter group and **does not** hold more than 5% of the shares of a company is not required to inform any change in his shareholding even when such change is beyond the threshold specified in PIT Regulations and **Takeover Regulations** as noted above.*

*2.3 A necessary fall out of all the disclosures mentioned above is that in a given case if shareholding of promoter or promoter group has been disclosed at the end of the quarter at say 40%, and promoter and promoter group is consisting of 10 persons so that none of them is holding more than 5% of shares then information about any change in the shareholding of the promoter and promoter group comes in the public domain within 21 days of the end of the relevant quarter. In such case all the promoters and persons who are part of promoter group can exit from a company within a quarter without any information to the market regarding such change till the next quarterly filing.*

*2.4 The same situations has come to the notice during the course of investigation in a case wherein the promoters and the person acting in concert with them collectively held over 37% of the total shareholding of a company at the end of a quarter. None of them individually held more than 5% of the shares of the company. During the next quarter, they had collectively sold over 33% resulting in reduction of their holdings to about 4% at the end of the said quarter and there was no immediate information of such change in shareholding and control to the market till the next quarterly filing.*

*2.5 ……"*

*This Memorandum to the Board makes it amply clear that there is no requirement to make any disclosure if particular person is holding less than the prescribed limit as individual shareholding is only considered for the purpose of such prescribed limits.*

ix. *It is further submitted that the requirement of disclosure in respect of acquisition or disposal of 2% shares arises only if such acquisition or sale has been made in a single transaction. This intension is clear from the wording of regulation 29(2) which read as under –*

*'every acquisition and 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 prescribed.'*

*It clearly refers to every acquisition/disposal representing 2% and not to **all** acquisitions/disposals. Even the Form prescribed by SEBI provides the following:*

*(a) Before the acquisition/disposal and not 'acquisition(s)/disposal(s)'*

*(b) Details of acquisition/sale and not 'acquisition(s)/sale(s)'*

*(c) After the acquisition/sale and not 'acquisition(s)/sale(s)'*

*(d) Mode of acquisition/sale and not 'acquisition(s)/sale(s)'*

*(e) Date of acquisition/sale and not 'Date(s) of acquisition(s)/sale(s)*

*It is clear from the wording of the regulation 29(2) in vogue at the relevant time as also the prescribed Format (Form) of disclosure that the disclosure was required to be made for every acquisition/sale which crossed the prescribed limit of 2%. Further 2% acquisition/sale from which point of time was also unclear. SEBI has clarified this position by amending the SEBI Takeover Regulations in March 2013. The Memorandum to Board for SEBI Board Meeting dated January 18, 2013 (available on SEBI site) states as follows:*

***3.3 "Provisions of Regulations 29(2) - Disclosure of change in shareholding by more than 2%***

*3.3.1 Existing provisions "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".*

***3.3.2 Concerns***

*SEBI has received queries including whether the disclosure obligation is cast on the acquirer or any shareholder, whether the change in shareholding should be calculated on gross basis or on net basis**, what should be the reference point for calculating the change of 2%**, etc.*

***3.3.3 Recommendations***

*3.3.3.1 As the disclosure obligation under the said regulation is also cast on the seller, in addition to the word 'acquirer', the word 'shareholder' shall be included. 3.3.3.2 In order to avoid the ambiguity in understanding by the market participants and in enforcing the regulations, it is proposed that the provisions of Regulation 29(2) shall be modified in line with the provisions of Regulations 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*

*SEBI has amended regulation 29(2) w.e.f. March 26, 2013.The amended 29(2) read as follows:*

*"29(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to 5% 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 the shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holding from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such*

*change exceeds 2% of the total shareholding or voting rights in the target company, in such form as may be specified."*

*This clarifies that 2% change will be required to be disclosed from last disclosure made either under regulation 29(1) or under regulation 29(2). This amended provision was not in force when the Noticee had acquired the shares. Therefore, the Noticee was not under any obligation to disclose under regulation 29(2) of SEBI Takeover Regulations. Further, this clarified that calculation of 2% change has to be considered from last disclosure made under regulation 29(1) and/or 29(2). The Noticee was holding nil shares before acquisition and made its first disclosure under regulation 29(1) on October 29, 2012 as the Noticee crossed the limit of 5%. Thereafter the Noticee never crossed 2% limit and therefore was not under any obligation to make disclosure under regulation 29(2). The disclosures made by the Noticee on February 04, 2013 were only by way of abundant precaution as per advice of the Manager to the Offer.*

x. *From the factual position and submissions made above, it is clear that the Noticee was not under any obligation to make disclosures under regulation 29(2) of SEBI Takeover Regulations and therefore there is no violation of regulation 29(2) of SEBI Takeover Regulations.*

xi. *In consideration of the above submissions, it is prayed that the charges against the Noticee be dropped.*

7. An opportunity of personal hearing was granted to the Noticee on August 21, 2014, however vide letter dated August 19, 2014, the Noticee submitted that the finalization of reply to the SCN will require some more time and requested for time extension of one month. The Noticee also requested that the personal hearing in its case may be fixed along with the other Noticees in the matter of Liberty Phosphate Ltd. Accordingly, the Noticee was granted opportunity of personal hearing on September 18, 2014 and January 28, 2015, however the same could not be attended by the Noticee. Subsequently a personal hearing was conducted on November 17, 2015, which was attended by Mr. Abhishek Borgikar, Senior Associate, Alliance Corporate Lawyers and Mr. P Varadarajan, Vice president - Legal & Company Secretary on behalf of the Noticee. In the said hearing, the counsel reiterated the submissions made in the Noticee's reply dated September 16, 2014 and submitted that as per the reasons stated in their reply, there is no violation by the Noticee of Regulation 29(2) of SAST Regulations, 2011. Without prejudice to the same it was also submitted that

the impugned transactions took place prior to the takeover of the Noticee by Coromandel International Ltd and there was a delayed compliance which may be considered as mitigating factor.

8. Subsequent to the appointment of the undersigned as AO, the Noticee was granted an opportunity of personal hearing on November 13, 2017. Vide letter November 09, 2017 the Noticee requested for adjournment of the hearing. The Noticee was granted one more opportunity of hearing on November 27, 2017. The said hearing was attended by Mr. Abhishek Borgikar, and Mr. P Varadarajan, on behalf of the Noticee. It was contended that since the Noticee never crossed threshold of 5% at the relevant point of time, they were not bound to make disclosures under Regulation 29(2) of SAST Regulations, 2011. They also mentioned that the moment they crossed 5%, they had made the relevant disclosure.

## CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :

   I. Whether the Noticee failed to make the requisite disclosures to the stock exchanges as stipulated under the provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 and thus violated the said regulations?

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

   III. Quantum of penalty.

## FINDINGS

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

***SAST Regulations, 2011***

***Disclosure of acquisition and disposal.***

*29.(1)..*

*(2) Any acquirer, who together with person acting in concert with him, hold 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.*

*(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.*

***Issue I)*** **Whether the Noticee failed to make the requisite disclosures to the stock exchanges as stipulated under the provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 and thus violated the said regulations?**

11. It has been observed that an open offer was made by Coromandel International Ltd to the shareholders of the LPL through a public announcement dated January 24, 2013 for acquisition of 37,53,933 fully paid up equity shares of Rs. 10 each, representing 26% of the paid up capital of LPL at a price of Rs. 241/- per share payable in cash. Upon examination of the said open offer, it was observed that the Noticee was promoter and part of promoter group of LPL, and during the quarter ended March 31, 2012 it had acquired 3,81,398 shares representing 2.64% of the share capital of LPL. The said acquisition required a disclosure within two working days of transaction as stipulated under Regulation 29(2) read with 29(3) of SAST Regulations, 2011. However, it was observed that the Noticee made the disclosure on February 04, 2013 with a delay of 366 days. Accordingly, the Noticee is alleged to have violated Regulation 29(2) read with 29(3) of SAST Regulations, 2011.

12. It was further observed that during the quarter ended June 30, 2012 and September 30, 2012, Noticee acquired 2,84,325 shares and 46,741 shares of LPL. As these acquisitions aggregating to 3,31,066 shares of LPL by Noticee was 2.29% of the share capital of LPL, it required a disclosure within two working days of transaction as stipulated under Regulation 29(2) read with 29(3) of SAST Regulations, 2011. However, it was observed that the Noticee made the disclosure on February 04, 2013 with a delay of 169 days. Accordingly, the Noticee is alleged to have violated Regulation 29(2) read with 29(3) of SAST Regulations, 2011.

13. The promoter and promoter group of LPL were holding 79,40,557 shares (55.00% of the total shares) as on quarter ending December 2011, and 82,11,349 shares (56.87% of the total shares) as on quarter ending March 2012. The details of the alleged non compliances by the Noticee with the provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 are mentioned in tabular form below :

| **Sr. No.** | **Provision of SAST Regulations, 2011** | **Due date of compliance** | **Actual date of compliance** | **Delay (in no. of days)** |
|---|---|---|---|---|
| 1 | 29(2) r/w 29(3) | 04.02.2012 | 04.02.2013 | 366 |
| 2 | 29(2) r/w 29(3) | 19.08.2012 | 04.02.2013 | 169 |

14. The Noticee vide its reply dated September 16, 2014 to the SCN has submitted that it was given to understand that no disclosure is required to be made under Regulation 29(2) of SAST Regulations, 2011 unless it makes disclosure under Regulation 29(1) of SAST Regulations, 2011 by crossing 5% limit and that it was also advised that the obligation to make a disclosure under regulation 29(2) of SAST Regulations, 2011 will arise only if after crossing 5% threshold it further acquires or sells 2% shares in one transaction only. With regards to the above contention of the Noticee, I note that the provisions of Regulation 29(2) reads as *"**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*". The purport and scope of the provisions of Regulation 29(2) of SAST Regulations, 2011 make it clear that if the acquirer along with persons acting in concert are holding 5% or more, the acquirer is required to make disclosures for every acquisition of 2% or more of the shares or voting rights in the target company. So accordingly, I find no merit in the above submissions of the Noticee.

15. In support of its contention that only individual shareholding of the Noticee should be considered for disclosure purposes, the Noticee has quoted the observations from the adjudication order dated May 30, 2014 in respect of Kramer Pharmaceuticals Pvt Ltd (KPPL) in the matter of Svaraj Trading and Agencies Pvt Ltd. In this regard, I note that the facts of the said case are different from the present matter. As a part of promoter and promoter group, the Noticee and the promoters are persons acting in concert, and they were together holding more than 5% of the shares of LPL. That being the case, any additional acquisition of 2% or more of shares of LPL, target company, would attract disclosure under Regulation 29(2) of SAST Regulations, 2011 as happened in the instant matter. So there is no ambiguity in the legal provision alleged to have been violated by the Noticee in the current proceeding, and the Noticee's shareholding has to be taken together with the other promoters so as to see whether their holding was more than 5% or not prior to the acquisition.

16. The Noticee has further submitted that Regulation 29(2) of SAST Regulations, 2011 is basically replacement of regulation 7(1A) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 *('SAST Regulations, 1997 / Old Takeover Regulations'*) and has quoted the observations from the Hon'ble Securities Appellate Tribunal's (SAT) order dated July 31, 2014 in the matter of *GHCL vs SEBI*, in support of its contention that only individual shareholding of the Noticee needs to be considered for triggering the disclosure requirements. The Noticee has also quoted SEBI's FAQ in respect of Takeovers (in respect of Old Takeover Regulations) and

has stated that according to the said FAQs, “any person” who holds more than 15% but less than 55% shares or voting rights of Target Company has to disclose purchase or sale aggregating to 2% or more shares of the company, and thus only individual shareholding needs to considered for triggering disclosure requirements. The Noticee has further made a reference to Memorandum to the Board for SEBI Board meeting dated July 28, 2011 to contend that prior to an acquisition, only individual shareholding is considered for the purpose of disclosure requirements.

17. I note that the Noticee has drawn parallels between Regulation 29(2) of SAST Regulations, 2011 and Regulation 7(1A) of the SAST Regulations, 1997, and has contended that under the Regulation 7(1A) of the SAST Regulations, 1997, only individual shareholding was considered for triggering disclosure requirements. In this regard, I note that the Hon’ble SAT in its order dated December 16, 2015 in the matter of Ravi Mohan & Others vs SEBI has ruled that : “*Under regulation 7(1A) of the Takeover Regulations, 1997, an acquirer who, together with persons acting in concert with him has acquired 15% or more but less than 55% shares of the target company when purchases or sells shares of the target company together with the persons acting in concert with the acquirer, aggregating 2% or more of the share capital of the target company, then the said acquirer is required to make disclosure of such purchase or sale within two days of such purchase or sale..”.* The above order clearly brings out the fact that the shareholding of an acquirer has to be considered along with the shareholding of the persons acting in concert with him, while assessing the trigger of disclosure requirements under Regulation 7(1A) of SAST Regulations, 1997. In view of the same, I am unable to accept the contention of the Noticee that only individual shareholding of the Noticee needs to be considered and not the collective shareholding of the promoters and promoter group.

18. The Noticee has also contended that the requirement of disclosure in respect of acquisition or disposal of 2% shares arises only if such acquisition or sale has been made in a single transaction. The Noticee has further contended that the wording of

Regulation 29(2) of SAST Regulations, 2011 refers "to every acquisition/disposal", and the form prescribed by SEBI refers to "acquisition/disposal" and not "acquisition(s)/disposal(s)". In this regard, I note that the term "acquisition" has been defined in Regulation 2(1)(b) of the SAST Regulations, 2011 as follows : *""acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company".* I find that the term acquisition, as defined above, does not indicate in any way that the act of act of acquiring or agreeing to acquire has to occur in a single transaction. Accordingly, I find no merit in the contention of the Noticee that the requirement of disclosure applies to only those acquisition or sale which has been made in a single transaction.

19. The Noticee has referred to the Memorandum to Board for the SEBI Board meeting dated January 18, 2013 wherein *inter alia* the reference point for calculating the change of 2% was mentioned as a concern. The Noticee has submitted that Regulation 29(2) of SAST Regulations, 2011 was amended w.e.f March 26, 2013 and the amended regulation clarifies that 2% change will be required to be disclosed from the last disclosure made either under Regulation 29(1) or 29(2) of SAST Regulations, 2011. The Noticee has contended that since amended provision was not in force when it had acquired the shares, therefore, the Noticee was not under any obligation to disclose under regulation 29(2) of SAST Regulations, 2011. The Noticee has also contended that the Noticee made its first disclosure under Regulation 29(1) on October 29, 2012 as the Noticee crossed the limit of 5%, and thereafter the Noticee never crossed 2% limit and therefore it was not under any obligation to make any disclosure under regulation 29(2) of SAST Regulations, 2011. In this regard, I note that Regulation 29(2) of SAST Regulations, 2011, as it stood during the time when the Noticee acquired the shares, clearly states that if the acquirer along with persons acting in concert are holding 5% or more, the acquirer is mandatorily required to make disclosures for every acquisition of 2% or more of the shares or voting rights in the target company. From the above, I find that the obligation to make disclosures is clearly stipulated in the regulation once the threshold is breached and trigger occurs.

I also note that the holding of the acquirer and the persons acting in concert has to be considered to see whether they are collectively holding more than 5%. So accordingly, I find no merit in the contention of the Noticee that it was not under any obligation to make disclosures under regulation 29(2) of SAST Regulations, 2011, prior to the amendment of the said regulation on March 26, 2013. In view of the above, I hold that the Noticee has violated the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations, 2011.

**<u>Issue II)</u> Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?**

20. I note that the Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

21. I also note that in Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs. SEBI – the Hon'ble SAT has 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*". Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "*Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow*".

22. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of 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."*

23. Thus, the violation of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 makes the Noticee liable for penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under –

**SEBI Act, 1992**

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

**<u>Issue III)</u> Quantum of penalty.**

24. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the 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.

25. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are 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 committed by the Noticee. I note that securities market is based on free and open access to information. As a result of the violation committed by the Noticee, the investors were deprived of valuable information which would have enabled them to take well informed decisions regarding their investments in the company. I note that Noticee has on two occasions, made delayed disclosures under Regulation 29(2) read with 29(3) of SAST Regulations with delays of 366 days and 169 days and thus the default is repetitive in nature.

**ORDER**

26. 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 hereby impose the following penalty on the Noticee under Section 15A(b) of SEBI Act, 1992 –

| Violation | Penalty |
|---|---|
| Regulation 29(2) read with 29(3) of SAST Regulations, 2011 | Rs. 2,00,000/- (Rupees Two Lakhs only) |

27. The amount of penalty shall be paid either by way of demand draft in favor 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. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department -

DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "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 payments is made : | |
| 7. Payment is made for :<br>(like penalties/disgorgement/recovery/settlement amount and legal charges along with order details) | |

28. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

**Place: Mumbai** **BIJU S**

**DATE: 25.01.2018** **ADJUDICATING OFFICER**