

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/CB/13/2018-19]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Amtek Auto Limited [PAN AAGCA4447E] having address at – 4, Bhanot Apartments, Local Shopping Centre, Pushp Vihar, New Delhi – 110 062 (Delhi) and at – 16, Industrial Estate, Rozka Meo, Sohna, Gurugram – 122 003

In the matter of Amtek Auto Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted examination in the scrip of Amtek Auto Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) as well as National Stock Exchange of India Limited (hereinafter be referred to as, the “**NSE**”) for the period March 23 – September 30, 2015 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 7 (2)(b) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter be referred to as, the “**PIT Regulations**”) by M/s Amtek Auto Limited (hereinafter be referred to as, the “**Noticee**” / “**Company**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) vide order dated February 14, 2017 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the alleged violation of aforesaid

provisions of PIT Regulations. Subsequently, the undersigned was appointed as the Adjudicating Officer on April 26, 2018 which was communicated *vide* order dated May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice No. E&AO/MC/JP/15778/2018 dated May 29, 2018 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violation of Regulation 7 (2)(b) of the PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) The Company, on September 10, 2015 allotted 44,37,500 equity shares of face value of Rs. 21/- each at a premium of Rs. 167/- aggregating to Rs. 74,99,37,500/- to its Promoter Group companies by way of preferential allotment.
 - b) As a result of such allotment, Aisa International Private Limited, which was a shareholder of the Company and belonged to the category, *Promoter and Promoter Group*, was allotted 35,50,000 shares of the Company which had a value of ₹59,99,50,000/- (i.e. in excess of ten lakh rupees).
 - c) Similarly, Amtek Laboratories Limited, which was also a shareholder of the Company belonging to the category, *Promoter and Promoter Group*, was also allotted 8,87,500 shares of the Company which had a value in excess of ten lakh rupees.
 - d) It was alleged that aforesaid shareholders of the Noticee, i.e. Aisa International Private Limited and Amtek Laboratories Limited, on account of the aforementioned allotment of shares, made relevant disclosures under Regulation 7 (2)(a) of the PIT Regulations to the Noticee. Upon receipt of disclosures under Regulation 7 (2)(a) of the PIT Regulations from the aforesaid shareholders, the Noticee was required to make disclosures to the BSE and NSE under Regulation 7(2)(b) of the PIT Regulations.
 - e) However, based on the information provided by the BSE and the NSE (i.e. e-mails dated August 04, 2016 and August 08 & 17, 2016 respectively), it was alleged that the Noticee failed to make relevant disclosures under Regulation

7(2)(b) of the PIT Regulations to the BSE and made a belated disclosure under Regulation 7(2)(b) of the PIT Regulations to the NSE on October 21, 2015.

- f) The BSE, *vide* e-mail dated August 04, 2016 confirmed that no disclosure under PIT Regulations was received from the Noticee with respect to the aforesaid increase in its shareholding in the Company during the Examination Period.
- g) Similarly, the NSE, *vide* e-mail dated August 17, 2016 confirmed that relevant disclosures under PIT Regulations were received from the Noticee only on October 21, 2015 after it notified the Company.
- h) It was alleged that the aforesaid non-disclosure by the Noticee was in violation of Regulation 7(2)(b) of the PIT Regulations, text of which is mentioned as below:

PIT Regulations:

Continual Disclosures

7.

(2) (a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

5. It was stated in the SCN that the aforesaid alleged violation, if established, would make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act. The Noticee was also advised to furnish its reply, if any, in response to the SCN within 14 days from the date of receipt of the SCN.
6. On account of non-receipt of any reply from the Noticee, the undersigned, after considering the cause and in the interests of natural justice, granted an opportunity of hearing on October 16, 2018 *vide* Notice of Hearing dated October 05, 2018. The Noticee was also advised to file its reply, if any, towards the SCN by October 12, 2018.
7. In response to the Notice of Hearing dated October 05, 2018, the authorized representative of the Noticee, *vide* e-mail dated October 13, 2018 requested to grant of opportunity of hearing on October 22, 2018, which was accepted.
8. Thereafter, the Noticee submitted its reply dated October 18, 2018 towards the SCN on October 20, 2018 by way of e-mail. Moreover, the hearing scheduled on October 22, 2018 was attended by the authorized representative of the Noticee wherein, he also submitted written submissions of the Noticee and reiterated the same during the hearing proceedings. The submissions of the Noticee are summarized as below:
 - a. The Noticee submitted that it had made necessary disclosure under the PIT Regulations and the same was dispatched by way of courier dated September 11, 2015. The Noticee had also produced a courier receipt along with its reply to substantiate its claim.
 - b. The Noticee also submitted that it had earlier responded to SEBI and the NSE on August 05, 2016 and October 21, 2015 respectively.
 - c. The Noticee also submitted that Corporate Insolvency Resolution Process has been initiated in respect to the Company and an Insolvency Resolution Professional had been appointed by the order of Hon'ble National Company Law Tribunal (hereinafter be referred to as, the "**NCLT**"). The Noticee also submitted that the resolution plan submitted in respect of the Company was approved by the NCLT *vide* order dated July 25, 2018.
 - d. The Noticee also requested the undersigned to not hold an inquiry and to not impose penalty on it.

9. Since inquiry / hearing in the instant matter is concluded, keeping into account the allegations levelled in the SCN, submissions of the Noticee towards the SCN and material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee failed in making mandated disclosures under Regulation 7 (2)(b) of the PIT Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I **Whether the Noticee failed in making mandated disclosures under Regulation 7 (2)(b) of the PIT Regulations as alleged in the SCN?**

11. The details relating to allotment of 35,50,000 shares of the Company to a promoter group entity, i.e. Aisa International Private Limited and 8,87,500 shares of the Company to another promoter group entity, i.e. Amtek Laboratories Limited and their values being in excess of ten lakh rupees as alleged in the SCN are not in dispute in the reply of the Noticee. However, I note that the Noticee has claimed that it had complied with the requirements of Regulation 7(2)(b) of the PIT Regulations by submitting disclosures to the Company and the NSE on September 11, 2015. I note that the Noticee has produced a copy of the said disclosure alleged to have been made by it along with a courier receipt of its dispatch.

12. I have perused the documents furnished by the Noticee to substantiate its claim of disclosure having been made. On perusal, I am of the view that the courier receipt submitted by the Noticee does not establish that disclosures were indeed made to the NSE in the required format mandated under Regulation 7 of the PIT Regulations. I also note that the Noticee has neither claimed nor made any submission on record to state that any disclosure under relevant provisions of PIT Regulations was made to the BSE.

13. I also find it relevant to mention that the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of **Mega Resources Ltd. v. SEBI** (Appeal No. 49/2001 dated March 19, 2002) had observed that, "*....the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement.... Regulation 7(1) requires the acquirer to disclose the aggregate of this holding... Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox... I am not inclined to view that by posting a letter under certificate of posting, stating the shareholding by itself is sufficient compliance of regulation 7(1). In my view the Appellant has failed to comply with the requirement of regulation 7(1), for the reason that it has failed to make the disclosure of the requisite information*"
14. I also note that the Noticee has claimed to have clarified the required disclosure having been made to the stock exchanges in its letters to the SEBI and the NSE on August 05, 2016 and October 21, 2015, copies of which were submitted along with its reply dated October 18, 2018.
15. I have perused the letters mentioned in the paragraph 14 hereinabove along with the e-mail of NSE dated August 17, 2016 (copy of which was provided to the Noticee as **Annexure V** to the SCN). On perusal, I note that the NSE in its e-mail dated August 17, 2016 had confirmed that it received required disclosures only after it sought an explanation from the Company (*vide* letter dated October 15, 2015) with respect to changes in the shareholding of its Promoter / Promoter Group.
16. Since the Noticee had not made any submission in respect of disclosures required to have been made to the BSE, I have independently verified the list of disclosures made under PIT Regulations in the scrip of Company which is available on the website of the BSE. However, I note that none of the disclosures, contended to have been made by the Noticee are available in public domain.
17. At this juncture, I also find it relevant to mention that the Hon'ble SAT, in the matter of **M/s. Alka India Ltd. v. Securities and Exchange Board of India** (Appeal No. 72 of 2009 dated June 10, 2009) had observed that, "*...In view of the denial made by the Bombay Stock Exchange, the onus is upon the appellant to establish that the letter*

making the necessary disclosures allegedly sent by courier was actually received by the Bombay Stock Exchange. No such evidence has been placed on record..... The Appellant has failed to discharge this onus.... In any case, the appellant does not claim to have sent any information to the Ahmedabad Stock Exchange on which the shares of the appellant company had also been listed. The violation of Regulation 13(6) of the Regulations, thus, stands established. In view of this matter, no fault can be found with the impugned order.”

18. I also note that the Noticee submitted that Corporate Insolvency Resolution Process has been initiated in respect of the Noticee. However, on perusal of the submissions as well as documents furnished by the Noticee, I observe that the resolution plan has already been accepted by the NCLT *vide* order dated July 25, 2018 and as a result, the moratorium order passed by the NCLT under Section 14 of the Insolvency and Bankruptcy Code, 2016 has ceased to have effect. Therefore, I am of the view that there is no statutory bar that precludes disposal of the instant adjudication proceedings.

19. Therefore, I am of the view that the confirmation of the BSE by way of e-mail dated August 04, 2016 and of the NSE by way of e-mail dated August 16, 2016 regarding non-receipt and delayed receipt (respectively) of disclosures under the PIT Regulations from the Noticee stands established.

20. In view of the aforesaid, it is established that the Noticee had failed to make disclosures to the BSE and the NSE as required under Regulation 7 (2)(b) of the PIT Regulations and thereby, had violated the same.

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

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Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

21. Since failure of the Noticee in making disclosures to the BSE and the NSE in terms of Regulation 7(2)(b) of the PIT Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

“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 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.”

22. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:
- 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.
23. While it is established that the Noticee did not make disclosure to the BSE under Regulation 7 (2)(b) of the PIT Regulations and made a delayed disclosure to the NSE on October 21, 2015 under Regulation 7 (2)(b) of the PIT Regulations regarding the two transactions; I, on perusal of shareholding of securities of persons belonging to the category *Promoter and Promoter Group* of the Company, which is available on the website of the BSE, note that the information relating to the change in the shareholding of the Noticee on September 10, 2015 became available in public domain at the end of financial quarter ending September, 2015, i.e. on October 14, 2015. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. From the material available on record, repetitive nature of such default by the Noticee could also not be ascertained.
24. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹2,00,000/- will be commensurate with the violations committed by the Noticee.

ORDER

25. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) 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) upon the Noticee, i.e. Aisa International Private Limited under Section 15A(b) of the SEBI Act for violation of Regulation 7 (2)(b) of the PIT Regulations.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties 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

27. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall also provide the following details while forwarding DD/ payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

28. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date : October 30, 2018

Place : Mumbai

(Maninder Cheema)

Adjudicating Officer