

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/SM/58/2018-19]**

**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:

Vipul Patel (PAN: AGQPP0881N)

8, Siddhi Vinayak Row Houses, Near Jivraj Parkover Bridghe,
132 FT Ring Road,
Ahmedabad, Gujarat-380015

In the matter of Super Domestic Machines Ltd.

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip Super Domestic Machines Ltd. hereinafter referred to as "Company") had observed that Vipul Patel (hereinafter referred to as "Noticee") had violated Regulation 29(1) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) (hereinafter referred as SAST 2011) and 13(1) of Prohibition of Insider trading (hereinafter referred as PIT 1992).
2. In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
3. The shares of the company are listed on Bombay Stock Exchange Limited (hereinafter referred to as "BSE").
4. Noticee has acquired 18700 shares of the company on January 19, 2015 and his total shareholding in the company had increased to 2, 26,700 shares i.e, 5.24% of the total share capital of the company.
5. It was alleged that shareholding of Noticee had crossed 5 % on January 19, 2015 and hence made him liable to make disclosure under Regulation 29(1) of SAST and Regulation 13(1) of PIT 1992.
6. As per BSE email dated July 28, 2016 it was confirmed that no disclosure has been received from the noticee during the investigation period.

7. Company, in its reply dated September 14, 2016 has confirmed that it had received disclosures under SAST 2011 and PIT 1992 from certain entities during the investigation period which does not include Noticee.
8. Hence it was alleged that Noticee has violated Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992.

Appointment of Adjudicating Officer

9. SEBI had initiated adjudication proceedings against Noticee and the undersigned was appointed as Adjudicating Officer vide order dated May 16, 2017 under Section 15 I of SEBI Act read with Rule 3 of the SEBI AO Rules to inquire into and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act"), the alleged violation of Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992 by Noticee

Show Cause Notice, Reply and Personal Hearing

10. Based on the findings, Show Cause Notice dated October 11, 2017 ("SCN") was issued to Noticee.
11. The SCN was duly delivered to the noticee.
12. Noticee vide letter dated November 11, 2017 sought inspection of documents which was duly provided to him.

Hearing:

13. In order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee on November 30, 2017 vide notice dated November 02, 2017. Authorised representative appeared before me on behalf of the noticee and assured that they will submit the documents on or before December 15, 2017 and had sought another hearing on December 15, 2017. Authorised Representative appeared before me on December 15, 2017 and submitted written submission dated December 14, 2017
14. Noticee inter alia submitted the following:
 - a. *I am a retail investor in the stock market. I used to trade / invest in other scrips also at the relevant time. It is pertinent to mention that I have never defaulted in any of my settlement obligations.*
 - b. *I was holding 2,03,000 (4.69%) shares of Super Domestic Machines Ltd. (SDML) as on 16th January, 2015. I then through market purchased / acquired few more shares of SDML and on 19th January, 2015 acquired some 18,700 shares and my holding increased to 5.12% (2,21,700 shares) which again went down to 3.91% in the next quarter ending March, 2015. I state that as per SEBI SCN my holding had reached 5.22% (2,26,700 shares), however as per transaction ledger / sauda summary from various brokers/ DPs, my total holding as on 19th Jan 2015 was 5.12% (2,03,000 shares) i.e. difference of 5000 shares.*

Depository Participant	Total No. of Shares as on 16-01- 2015
Skung Tradelink Limited	84,600
Bhansali Value Creations Pvt. Ltd.	38,600
Berkely Securities Ltd.	79,800
	2,03,000

- c. *I submit that I am a retail non-promoter shareholder and somehow came to hold the abovementioned quantity of shares. I being lay investor was not aware about disclosure to be made by retail investors. Neither the company nor the trading member made me aware or drew my attention to it.*
- d. *It is pertinent to mention that the company SDML in its quarterly disclosures for the quarter ended December 2014 disclosed my holding as 5.22% which was subsequently reduced to 3.91% in the quarter ending March 2015.*
- e. *I reiterate that I being a retail investor was not aware about any disclosure provision applicable to me at the relevant time. I verily believed that I being a non-promoter group entity and my purchases of SDML shares on a recognized Stock Exchange being delivery based (out of investment) does not require any further action on my part. The Noticee states that neither his broker nor the Stock Exchange / Depository Participant /Depository pointed out the requirement of disclosure at the relevant time.*
- f. *I am in the process of filing the disclosures to the said company SDML and BSE as pointed out by Hon'ble AO.*
- g. *In the circumstances, I say that the lapses were unintentional, inadvertent – the non-disclosures were technical as the corporate / stock market world knew about the increase in shareholding through quarterly disclosures by the company to BSE. This was a stray case. Hence, no harm, loss or injury was caused to anyone on account of my non-disclosure at the relevant time. Hence such lapse ought not to be considered grave in the facts and circumstances of the case.*
- h. *I say that the violations 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 one penalty should be levied.*
- i. *I had no ulterior motive in the non-disclosures at the relevant time. Consequently, such non-compliance at the relevant time had no adverse effect, relevance and significance.*

MITIGATING FACTORS:

- j. *I have not violated any substantive provision of law.*
- k. *I am not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. I have not acted in defiance of law.*
- l. *I have not made any unfair gain or advantage in any manner.*
- m. *The lapse of non-disclosure on my part is not repetitive in nature,*
- n. *In view of the above, I say that I have not violated the Provisions of Regulation 13 of SEBI (Prohibition of Insider Trading) Regulation, 1992 - PIT regulations and Regulation 29 of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 - SAST Regulation as alleged or otherwise.*

Consideration of Issues, Evidence and Findings

15. I have carefully perused the charge levelled against Noticee in the SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination in respect of

- I. **Whether Noticee have violated Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992 .**
- II. **Does the violation, if any, on the part of Noticee attract monetary penalty under Section 15A (b) of the Act?**
- III. **If so, what would be the quantum of monetary penalty that can be imposed on Noticee taking into consideration the factors mentioned in Section 15J of the Act?**

Before proceeding further, I would like to refer to the relevant provisions of the SAST regulations which read as under:

Relevant provisions of SAST Regulations 2011

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.(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.

Relevant provisions of PIT Regulation 1992

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 a 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.

Relevant provisions of PIT Regulation 2015

Repeal and Savings.

12. (2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered there under, 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;

Findings:

16. I have carefully perused the allegations levelled in the SCN and the reply submitted by the Noticee. Since noticee has accepted that due to ignorance he could not make desired disclosure about his shareholding to the company and to the Stock Exchange. I take into account the delayed disclosure made by him on December 15, 2017 to company and BSE.

17. I do not find any merit in the submissions of the Noticee that the non-disclosures were unintentional and not wilful. Also, I do not find any merit in the submissions of the Noticee that he has not made any illegal or undue profits. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order dated January 27, 2014 has observed that:

“Argument that no investor has suffered on account of nondisclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure.”

18. Further, I also note that in Appeal No. 78 of 2014 in the case of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that:

“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay”.

19. In view of the above, I conclude that the Noticee, by not making the necessary disclosures has violated the provisions of law which warrants imposition of monetary penalties as prescribed under Section 15A (b) of the SEBI Act, 1992:

20. At this juncture, I would like to rely the Order dated September 04, 2013 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Private Limited Vs. SEBI wherein the 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".

21. 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(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticee in the matter.

Section 15A(b) of the SEBI Act, 1992 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 there for in the regulations, fails to file return or furnish the same within the time specified there for 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, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

15J-*Factors to be taken into account by the Adjudicating Officer While adjudging quantum of penalty under section 15-I, the Adjudicating Officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

Explanation: *For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

23. I observe that, from the material available on record, it is not possible to ascertain any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default. I note that the default of the Noticee is not repetitive in nature. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision.

ORDER

24. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalties on the Noticees:

Name of the Noticee	Provisions of Law Violated	Penalty Provision	Penalty Amount (in Rs.)
Vipul Patel	Regulation 29(1) read with 29(3) of SAST 2011 and 13(1) of PIT 1992 read with Regulation 12 of PIT 2015	15A(b)	2,00,000 (Rs Two lakhs only)

25. Noticee shall remit/pay the said amount of penalty shall be paid 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 by e-payment facility into Bank account the details of which are given below:

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

26. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the Deputy General Manager (Enforcement Department - DRA-I) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

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)	

27. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 22, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER