

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. PG/AO- 6/2011]**

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

In respect of

**Mr. Tejinder Singh (PAN. ALOPS5493C)**

In the matter of

Arcotech Limited

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in respect of buying, selling and dealing in the shares of M/s Arcotech Limited (hereinafter referred to as “**AL/the Company/scrip**”), during the period from June 2009 to June 2010 (hereinafter referred to as “**investigation period**”) at the Bombay Stock Exchange Ltd. (hereinafter referred to as ‘**BSE**’).
2. Mr. Tejinder Singh (PAN ALOPS5493C) (hereinafter referred to as “**the Noticee**”) was a major public shareholder of the Company for the quarter ended June 09 having a holding of 15% of the paid up capital. Investigations revealed that the Noticee had substantially reduced his shareholding in the Company during the investigation period, the quarterly details of which are tabulated below :

<b>Quarter ended</b>	<b>Shares held</b>	<b>%age of paid up capital</b>
Jun 09	15,000,000	15.00
Sep 09	11,664,144	11.66
Dec 09	2,272,828*	11.36
Mar 10	1,844,728	9.22
Jun 10	1,744,728	8.72

*\*Shares of face value Rs 2 were consolidated into shares of face value Rs 10 resulting in reduction in the number of shares.*

From the above it is noted that the Noticee was holding 15% of the capital of the company as on Jun 30, 2009. As per information available through SEBI's surveillance system, the Noticee was holding 1,370,181 shares of the Company (6.85%) as on August 30, 2010. The Noticee was obliged to file disclosures under provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") on several occasions as his shareholding reduced by more than 2% of the total paid up capital of the Company, which the Noticee has failed to comply with. It was alleged that the Noticee had not made the necessary disclosures and thus violated the provisions of regulation 13(3) of PIT Regulations.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned was appointed as the Adjudicating Officer, vide order dated December 20, 2010 under Section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "**Rules**") to enquire into and adjudge under Section 15 A(b) of the Act, the alleged violation of the provisions of PIT Regulations as observed during the investigation conducted by SEBI into the trading in the scrip of M/s Arcotech Ltd.

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

4. A Show Cause Notice dated January 14, 2011 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under sections 15A (b) of SEBI Act for the alleged violations specified in the said SCN.
5. The Noticee vide its letter dated January 27, 2011, made certain submissions to the SCN. An extract of the same is given below:
  - a. That the Noticee is not a regular investor in the stock market, therefore not being fully aware of the concerned provisions of the PIT Regulations and its compliance.
  - b. That the Noticee came to know of the concerned provisions of the PIT Regulations only after SEBI sought explanations on his nondisclosure under PIT Regulations.
  - c. That on being aware of the required disclosures under PIT Regulations, the Noticee immediately made the requisite disclosures to the Company in the prescribed format.
  - d. That the omission on the part of the Noticee was purely technical in nature due ignorance of the law and that there was no willful intent on the part of the Noticee to default in the disclosure obligations.
  - e. No undue advantage has been derived either by the Noticee or by the Company by not making the disclosures in question.
  - f. That the Noticee has henceforth been keeping upto all his disclosure liabilities.
  - g. That the Noticee is not related directly or indirectly to the promoters of the Company, or any dealing with the activities of the Company.

6. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on February 15, 2011 vide Notice dated February 04, 2011. The Noticee sought adjournment of the same. Subsequently, another notice of hearing dated February 15, 2011, granting hearing on February 22, 2011 was issued to the Noticee. The Noticee did not appear for the said hearing but sent in another written reply reiterating the submissions of his previous reply to the SCN dated January 27, 2011.

### **CONSIDERATION OF ISSUES AND FINDINGS**

7. The issues that arise for consideration in the present case are :
- a. Whether the Noticee attracted the disclosure requirements under regulations 13(3) of PIT Regulations and if so, whether complied or not?
  - b. Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?
  - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

8. **ALLEGED VIOLATION OF REGULATION 13 (3) OF PIT REGULATIONS:**

Data was gathered from the depositories regarding the shareholding of the Noticee in the Company, details of which are tabulated below:

Date	Debit	Credit	Closing balance	% holding	Disclosure threshold triggers	Time limit for disclosure u/s 13(3) read with 13(5) of PIT Regulations.
02-Jul-2009	385,856	0	14,614,144	14.61		
03-Jul-2009	500,000	0	14,114,144	14.11		
04-Jul-2009	600,000	0	13,514,144	13.51		
06-Jul-2009	550,000	0	12,964,144	12.96#	1st disclosure	July 08, 2009
14-Aug-2009	150,000	0	12,814,144	12.81		
27-Aug-2009	150,000	0	12,664,144	12.66		
04-Sep-2009	250,000	0	12,414,144	12.41		
07-Sep-2009	250,000	0	12,164,144	12.16		
11-Sep-2009	250,000	0	11,914,144	11.91		
12-Sep-2009	250,000	0	11,664,144	11.66		
01-Oct-2009*	0	0	2,332,828*	11.66		
15-Dec-2009	10,000	0	2,322,828	11.61		
16-Dec-2009	10,000	0	2,312,828	11.56		
18-Dec-2009	20,000	0	2,292,828	11.46		
19-Dec-2009	10,000	0	2,282,828	11.41		
21-Dec-2009	10,000	0	2,272,828	11.36		
22-Jan-10	40,000	0	2,232,828	11.16		
23-Jan-10	39,600	0	2,193,228	10.97		
25-Jan-10	40,000	0	2,153,228	10.77#	2 <sup>nd</sup> disclosure	January 28, 2010
30-Jan-10	8,500	0	2,144,728	10.72		
06-Feb-10	100,000	0	2,044,728	10.22		
09-Feb-10	100,000	0	1,944,728	9.72		
10-Feb-10	100,000	0	1,844,728	9.22		
05-Apr-10	100,000	0	1,744,728	8.72#	3 <sup>rd</sup> disclosure	April 07, 2010
10-Jul-10	22,962	0	1,721,766	8.61		
12-Jul-10	75,000	0	1,646,766	8.23		
15-Jul-10	50,000	0	1,596,766	7.98		
19-Jul-10	16,929	0	1,579,837	7.90		
22-Jul-10	50,000	0	1,529,837	7.65		

\* Shares of face value Rs 2 were consolidated into shares of face value Rs 10 resulting in reduction in the number of shares.

#: marks the instances when the threshold of 2% was crossed as per Regulation 13(3) of PIT. (Calculating from 15% holding on June 30, 2009)

9. It is seen that that the Noticee started selling his shares in the Company from July 02, 2009 and his shareholding in the company started falling. On July 06, 2009, when the Noticee sold 550,000 shares in the market his aggregate shareholding in the company fell to 12.96%, thereby making him liable to disclose his shareholding to the company for the first time during the period of

investigation. The Noticee should have made the necessary disclosures under regulation 13(3) of PIT Regulations by July 08, 2009 as per regulation 13(5) of the PIT Regulations. Subsequently on January 25, 2010, when he sold 40,000 shares, his aggregate shareholding in the company became 10.77% making him liable once again to make the necessary disclosures. The disclosures for the said reduction of shares should have been made by January 27, 2010 as per regulation 13(5) of the PIT Regulations. Finally, again on April 05, 2010 when he sold 100,000 shares of the company, his aggregate shareholding became 8.72% making him liable for the third time to make the necessary disclosures for which the Noticee should have disclosed by April 07, 2010 as per regulation 13(5) of the PIT Regulations. These changes in the shareholding of the Noticee made it obligatory on him to make disclosures under Regulation 13(3) of the PIT Regulations which he has failed to comply with. In his reply to the SCN, the Noticee has mentioned that the omission to make the necessary disclosures under PIT Regulations was unintentional, purely due to ignorance of the law. But such omission is clearly in violation of Regulation 13(3) of the PIT Regulations.

The relevant regulations read as under:

**“13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure**  
**Continual Disclosure**

*(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.*

*(2)....*

*(3) Any person who holds more than 5% shares or 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.*

*(4)....*

*(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of :*

*(a) the receipts of intimation of allotment of shares, or*

*(b) the acquisition or sale of shares or voting rights, as the case may be.”*

10. In terms of regulation 13(3) of PIT Regulations, any person who holds more than 5% of shares or voting rights in a listed company is required to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights under the circumstances as mentioned below:

- If such change results in shareholding falling below 5%:
- If there has been change in such holdings from the last disclosure made under regulation 13(1) and such change exceeds 2% of total shareholding or voting rights in the company.

11. Upon careful perusal of the documents available on record including the basis of allegations made, I find that the Noticee has indeed crossed the threshold of 2% change (reduction) in

shareholding on as many as three occasions, firstly on July 06, 2009, then on January 25, 2010 and lastly on April 05, 2010 as his shareholding in the Company reduced from 15% as on Jun 30, 2009 as he was selling his shares in the company during the period of investigation. The Noticee vide his letter dated September 22, 2010 has submitted a copy of the format (Form C) through which he has submitted the total number of shares that he had sold during the period of investigation thus making the requisite disclosure under regulation 13 (3) of Insider Trading Regulations. As per available records, it is evident that the noticee has failed to make the requisite disclosures at the stipulated time and has thus violated the provisions of regulation 13 (3) of Insider Trading Regulations.

12. The basic purpose of disclosure requirement inherent in the abovementioned regulations is to bring about transparency in the securities market and to keep the market informed about substantial acquisition or sale of shareholding by any entity in a listed company. The Hon'ble SAT in the matter of ***Milan Mahendra Securities Pvt. Ltd. Vs SEBI*** (Appeal NO. 66 of 2003 and Order dated November 15, 2006), regarding the importance of disclosures, 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”*. Thus, any violation of the said disclosure requirements has to be viewed seriously.
13. In the matter of ***SEBI Vs. Shri Ram Mutual Fund [2006] 68SCL216(SC)***, the Hon'ble Supreme Court of India has held that 'penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant'.



14. Thus, it is evident from the above that the intention of the party committing a violation of an Act/ Regulation is immaterial in terms of penalty to be imposed as long as contravention of statutory obligation as contemplated by the Act/ Regulation is established. Hence, the aforesaid violations by the Noticee make him liable for penalty under Section 15A(b) of SEBI Act, 1992 which reads as follows:

**“15A. Penalty for failure to furnish, information, return etc.**

*If any person, who is required under this Act or any rules or regulations made thereunder, -*

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

15. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, 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.”*

16. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the Noticee. Further it is also not possible to ascertain the loss to the investors in monetary terms. However, the investors were definitely deprived of the information on time and were thus impaired from taking informed investment decisions due to this lapse by the Noticee. The Noticee failed to disclose the sale of shares of the Company which exceeded by more than 2% than his last holding in the Company at different points of time. This reflects the repetitive nature of default by him.

### **ORDER**

17. In terms of provisions of rule 5(1) of the Rules, I impose a penalty of ₹ 1,00,000/- (Rupees one lakh only) under section 15 A(b) of SEBI Act, 1992 on the Noticee, Mr. Tejinder Singh, resident of 3A, Sardar Patel Marg, Chanakya Puri, New Delhi – 110021, for the violation of regulation 13(3) of PIT Regulations. Considering the facts and circumstances of the case, this penalty will be commensurate with the violations committed by the Noticee.
18. The Noticee shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr.

Anindya Kumar Das, Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

19. 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: <b>February 24, 2011</b>	<b>PIYOOSH GUPTA</b>
Place: <b>MUMBAI</b>	<b>ADJUDICATING OFFICER</b>