

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. RA/DPS/ 139 /2017]**

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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:

**M/s Disha Commercial Private Limited**  
**(PAN No. AAACD1253B)**  
1304, Padma Tower-1, Rajendra Place  
New Delhi Central Delhi 110008

In the matter of **M/s G S Auto International Ltd.**

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the trading of the scrip of M/s G. S. Auto International Ltd (hereinafter referred to as '**G S Auto / Scrip / Company**') from January 01, 2015 to August 31, 2015 (hereinafter referred to as '**examination period**'). The shares of the company are listed on Bombay Stock Exchange (BSE). Examination *inter – alia* revealed that no disclosures were made under regulation 13(3) read with 13(5) of SEBI(Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and regulation 29(2) read with 29(3) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') by **Disha Commercial Private Limited**, (hereinafter referred to as "**the Noticee / Disha**").

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated December 26, 2015, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations.

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

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2016/12027/1 dated April 26, 2016 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations and SAST Regulations.
4. The observations made under the examination and the allegations levelled against the Noticee in the SCN are mentioned hereunder;
5. During examination it was revealed that there was decrease in the holdings of Noticee, belonging to the category of more than 1 % shareholders which requires disclosures under SAST Regulations and PIT Regulations. The details of the transaction during the said period are given below:-

| Date                   | Gross Buy Volume | Gross Sell Volume | Value (Rs) | Closing Holding | Share capital | % holding | % Change | Disclosures required under PIT | Disclosures required under SAST |
|------------------------|------------------|-------------------|------------|-----------------|---------------|-----------|----------|--------------------------------|---------------------------------|
| Holdings in March 2015 |                  |                   |            | 1640000         | 14514580      | 11.30     |          |                                |                                 |

|            |   |         |            |         |          |      |      |                 |                    |
|------------|---|---------|------------|---------|----------|------|------|-----------------|--------------------|
| 06/04/2015 | 0 | 358000  | 5742165.14 | 1282000 | 14514580 | 8.83 | 2.47 | 13(3) r w 13(5) | 29(2) r w<br>29(3) |
| 07/04/2015 | 0 | 126000  | 2030202.25 | 1156000 | 14514580 | 7.96 | 0.87 |                 |                    |
| 08/04/2015 | 0 | 98000   | 1573932.55 | 1058000 | 14514580 | 7.29 | 0.68 |                 |                    |
| 09/04/2015 | 0 | 75000   | 1162596.00 | 983000  | 14514580 | 6.77 | 0.52 | 13(3) r w 13(5) | 29(2) r w<br>29(3) |
| 10/04/2015 | 0 | 422650  | 6613374.15 | 560350  | 14514580 | 3.86 | 2.91 | 13(3) r w 13(5) | 29(2) r w<br>29(3) |
| 13/04/2015 | 0 | 310855  | 4788972.74 | 249495  | 14514580 | 1.72 | 2.14 | 13(3) r w 13(5) | 29(2) r w<br>29(3) |
| 15/04/2015 | 0 | 113501  | 1722394.91 | 135994  | 14514580 | 0.94 | 0.78 |                 |                    |
| 16/04/2015 | 0 | 135994  | 2039910.00 | 0       | 14514580 | 0.00 | 0.94 |                 |                    |
|            |   | 1640000 |            |         |          |      |      |                 |                    |

6. It is revealed that there has been decrease in the holdings of the Noticee, which required disclosures under regulation 13(3) read with 13(5) of PIT regulations and regulation 29(2) read with 29(3) of SAST Regulations, on April 06, 2015, April 09, 2015, April 10, 2015 and April 13, 2015. No disclosures were available on the exchange website and Company has also confirmed that they have not received any disclosures from the Noticee.
7. In view of above, it was alleged that the Noticee by indulging in trading in the scrip has resulted in change in its shareholding, which triggered disclosure requirements; and by not making the disclosures, the Noticee have violated regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations. The aforesaid regulations are reproduced as under;

### PIT Regulations

#### **Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure**

**13(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.

**13(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.*

### **SAST Regulations**

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

**29(2)** *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent 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.*

8. In response to the SCN, the Noticee filed its reply dated May 6, 2016. The key submissions/ reply of the Noticee in its reply dated May 6, 2016 towards the SCN and submissions made during the course of hearing, are being mentioned below;

a. It is humbly submitted that due to inadequate knowledge with respect to the rules and regulation of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations, there was delay on our part for the submission of required disclosures on the above said matter.

b. We complied with the disclosure requirement on 17/11/2015 and submitted the format of disclosure to various authorities. Copies of email were marked to

[Corp.relations@bseindia.com](mailto:Corp.relations@bseindia.com), [iscdelhi@bseindia.com](mailto:iscdelhi@bseindia.com), [amninder@gsgroupindia.com](mailto:amninder@gsgroupindia.com),  
[neerag@gsgroupindia.com](mailto:neerag@gsgroupindia.com) and [infor@gsgroupindia.com](mailto:infor@gsgroupindia.com)

- c. Keeping the above facts under consideration, you are hereby requested to please condone the delay in the submission of required disclosures and not to impose the penalty.
9. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

*147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-*

*"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and 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."*

10. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticee on August 22, 2017 vide notice dated July 28, 2017 through Speed Post Acknowledgement Due (SPAD). The said notice was delivered to the Noticee on August 1, 2017 at the address of Noticee *i.e. Disha Commercial Private Limited, 1304, Padma Tower-1, Rajendra Place, New Delhi Central Delhi - 110008*. It is relevant to point out that in the said notice dated July 28, 2017, Noticee was asked to confirm the availing of opportunity of hearing by August 16, 2017, failing which it shall be

*construed that it had waived to avail the opportunity of hearing and the matter shall proceeded further on the basis of material available on record.* Further Noticee also failed to turn up on the date of hearing i.e August 22, 2017. Hence, the undersigned is proceeding against the Noticee on the basis of available records/evidence.

### **CONSIDERATION OF ISSUES AND FINDINGS:-**

11.I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

- a. Whether the Noticee had failed to make the disclosures to BSE and the Disha in respect of buy / sell transactions as stated at Para 4 – 5 of the SCN?
- b. If the disclosures were not made by the Noticee then, whether the Noticee is in violation of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations.
- c. If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act?
- d. If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?

12.Taking into consideration and allegations and reply of the Noticee the case is being decided on merit hereunder.

13.I have persused the available records and replies of the Noticee in respect of the allegations alleged in the SCN. From the perusal of the SCN at para 4 - 5, it is observed that the Noticee had sold its shareholding in the scrip of G S Auto on April 06, 2015, April 09, 2015, April 10, 2015 and April 13, 2015 had resulted in change in shareholding, which triggered disclosure requirements. The disclosure requirement under regulation 13(3) read with 13(5) of PIT Regulations arises *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 and the disclosures requirement under regulation 29(2) read with 29(3) of SAST Regulations arises on every acquisition or disposal of shares of such target company representing 2% or more of the shares or voting rights in such target company.*

14. It is apparent from the SCN that the sale of shares by the Noticee exceeds 2% of total shareholding or voting rights as stipulated in the aforesaid regulation of PIT Regulations and SAST Regulations. It is also alleged in the SCN that the Noticee had not disclosed about the change in its shareholding to the BSE as well as to the company / G S Auto. BSE vide its letter dated May 6, 2015 and G S Auto vide its email dated November 9, 2015 confirmed that no disclosures have been received under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations during April 6, 2015 to April 16, 2015. However, Noticee in its reply to SCN submitted that it had complied with the disclosure requirement on November 17, 2015 by submitting disclosure requirement under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations that during period April 6, 2015 to April 16, 2015 it had sold 16,40,000 shares (11.30% of shareholding) i.e. after a delay of around 6 months, despite the requirement of making the same within 2 working days.
15. In view of the aforesaid, it is established that the Noticee has made disclosures to stock exchange (BSE) in term of regulation 13(3) read with 13(5) of the PIT Regulations and under regulation 29(2) read with regulation 29(3) of the SAST Regulations to the Company (G S Auto) and to the Stock Exchange (BSE) only on November 17, 2015 i.e. there is a delay of around 6 months, despite the requirement of making the same within 2 working days.

16. In view of the aforesaid observation and established violations against the Noticee, it is a fit case for imposing monetary penalty upon the Noticees under Section 15A(b) of the SEBI Act which read as follows:

SEBI Act:

**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;*

17. 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.”*

18. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticee, the specific loss suffered by the investors due to such violations; nor the violations as repetitive in nature. Thus before arriving to the quantum of penalty in the matter, it is necessary to refer the importance of such disclosures. The main



objective of the SAST Regulations or PIT Regulations is to afford fair treatment to shareholders as regards their holdings in the company. The Regulation seeks to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such selling / acquiring in the company. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. Therefore, taking into consideration the facts / circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

### **ORDER**

19. After taking into consideration all the aforesaid facts and circumstances of the case, and in exercise of the power conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I, hereby impose a penalty upon the Noticee / Disha Commercial Pvt. Ltd., in terms of the provisions of Section 15A(b) of the SEBI Act, 1992, as shown in table below;

| <b>Name of the Noticee</b> | <b>Violations</b>                                    | <b>Penalty Amount</b>                      |
|----------------------------|--|--|
| Disha Commercial Pvt. Ltd  | Regulation 29(2) read with 29(3) of SAST Regulations | ₹ 2,00,000/-(Rupees Two Lakh only)         |
|                            | Regulation 13(3) read with 13(5) of PIT Regulations  | ₹ 3,00,000/-(Rupees Three Lakh only)       |
|                            | <b>Total</b>   | <b>₹ 5,00,000/-(Rupees Five Lakh only)</b> |

20. I am of the view, that the said penalty would commensurate with the violations committed by the Noticee.

21. 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;

| <b>Account No. for remittance of penalties levied by Adjudication Officer</b> |  |
|---|--|
| 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  |

22. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department 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](mailto:tad@sebi.gov.in)

| Date | Department of SEBI | Name of Intermediary/ Other Entities | Type of Intermediary | SEBI Registration Number (if any) | PAN | Amount (in Rs.) | Purpose of Payment (including the period for which payment was made e.g. quarterly, annually) | Bank name and Account number from which payment is remitted | UTR No |
|------|--------------------|--------------------------------------|----------------------|-----------------------------------|-----|-----------------|---|---|--------|
|      |                    |                                      |                      |                                   |     |                 |   |   |        |

23. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

**DATE: AUGUST 28, 2017**

**PLACE: MUMBAI**

**RACHNA ANAND**

**ADJUDICATING OFFICER**