BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 65-66/2018]

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:

Entity No.	Entity Name	Entity No.	Entity Name
1	**Shri Dhirenkumar Dharamdas Agarwal (PAN: AAZPA8189K)**	**2**	**Ms. Shweta Dhiren Agarwal (PAN: AIZPA2160J)**

In the matter of M/s. Saianand Commercial Ltd (Erstwhile Oregon Commercial Ltd)

Facts of the case:

1. Securities and Exchange Board of India ("SEBI") pursuant to examination of the scrip of M/s.Oregon Commercial Ltd ("OCL") had observed that

   1.1 Dhiren Dharamdas Agarwal ("Dhiren) and Shweta Dhiren Agarwal ("Shweta") being PAC in terms of Regulation 2(1)(b),(e) of SAST Regulation, 1997 had violated provisions of Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulations").

   1.2 Dhiren had violated provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulations 13(1) and 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations").

2. SEBI had conducted investigation in the scrip of OCL in two phases viz., Phase I during January 4, 2010 to August 09, 2010 and Phase II during August 10, 2010 to January 10, 2011 (hereinafter referred to as 'period of investigation' or 'investigation period').

3. During investigation the shareholding of Dhiren and Shweta was verified from the trade log and on verification following disclosure related violations under SAST Regulations and PIT Regulations were observed and hence alleged.

Disclosure Violations by Dhiren and Shweta (as PAC) under SAST Regulations

4. In terms of Regulation 7(1) read with 7(2) of SAST Regulations, 1997, any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed. Shweta being wife of Dhiren, it was alleged that Dhiren and Shweta were persons acting in concert (PAC) for acquiring shares of OCL in terms of Regulation 2(1) (b),(e) of SAST Regulations. Entities as PAC (as mentioned in Table 1 to 2) had not made required disclosure on the following instances:

Disclosure Violations by Dhiren and Shweta (As PAC)

5. It was alleged that shareholding of PAC (Dhiren and Shweta, being PAC) had crossed 5% on two occasions as brought out in table below-

Table - 1

Transaction Date	Buy	Sell	Net	Cumulative	%
29-Apr-10	14,969	-3,716	11,253	13,088	1.36
30-Apr-10	2,330	-4,500	-2,170	10,918	1.14
30-Apr-10	**84,200**	**0**	**84,200**	**95,118**	**9.91**
27-May-10	5,333	-2,083	3,250	47,775	4.98
28-May-10	**6,500**	**-1,000**	**5,500**	**53,275**	**5.55**

6. It was also alleged that shareholding of Dhiren and Shweta (being PAC) had crossed 10% on three occasions as brought out in table below-

Table – 2

Transaction Date	Buy	Sell	Net	Cumulative	%
4-May-10	0	-1,000	-1,000	85,200	8.88
5-May-10	**29,234**	**-9,274**	**19,960**	**1,05,160**	**10.95**
11-May-10	8,624	-16,884	-8,260	94,253	9.82
12-May-10	**12,500**	**0**	**12,500**	**1,06,753**	**11.12**
14-May-10	58	-8,200	-8,142	87,611	9.13
17-May-10	**10,192**	**-350**	**9,842**	**97,453**	**10.15**

7. In terms of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) of PIT Regulations, Dhiren was required to disclose whenever he holds more than 5% to OCL and the Stock Exchange and on occasions shown in Table 3 he failed to do so. Therefore, it was alleged that Dhiren had violated Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1) of PIT Regulations.

8. *Regulation 13(1) of PIT Regulations states that 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*

Table – 3 (Dhiren failed to disclose on 10 Occasions)

Transaction Date	Total Acquired (- Disposed)	Balance	%
27.05.2010	-1250	43275	4.51
28.05.2010	**6500**	**49775**	**5.18**
01.06.2010	-3627	45148	4.70
03.06.2010	**4100**	**49248**	**5.13**
07.06.2010	1000	47248	4.92
08.06.2010	**2206**	**49454**	**5.15**
15.06.2010	-4833	47539	4.95
16.06.2010	**14054**	**61593**	**6.42**
12.07.2010	-6156	46960	4.89
13.07.2010	**4200**	**51160**	**5.33**
16.07.2010	1148	45233	4.71
19.07.2010	**3099**	**48332**	**5.03**
20.07.2010	-4440	43892	4.57
21.07.2010	**4412**	**48304**	**5.03**
21.09.2010	14162	46889	4.88
22.09.2010	**1345**	**48234**	**5.02**
30.09.2010	-16440	40727	4.24
01.10.2010	**11304**	**52031**	**5.42**
07.10.2010	-13136	44347	4.62
08.10.2010	**19412**	**63759**	**6.64**

9. *Regulation 13(3) states that " Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 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*

10. In terms of Regulation 13(3) read with Regulation 13(5) of PIT Regulation, 1992, Dhiren was required to disclose change in his shareholding (by 2% and more) to the company and to the stock exchanges where shares of the company are listed, on occasions as shown in Table 4 but failed to do so. Therefore it was alleged that Dhiren had violated Regulation 13(3) read with Regulation 13(5) of PIT Regulation, on the following occasions.

Table – 4 (Dhiren failed to disclose on 5 Occasions)

Transaction Date	Total Acquired (- Disposed)	Cumulative	%
19.05.2010	2787	98736	10.29
20.05.2010	**-40217**	**58519**	**6.10**
21.07.2010	4412	48304	5.03
24.08.2010	**-2703**	**29051**	**3.03**
22.09.2010	1345	48234	5.02
23.09.2010	**28922**	**77156**	**8.04**
23.09.2010	28922	77156	8.04
29.09.2010	**-2910**	**57167**	**5.95**
08.10.2010	19412	63759	6.64
15.10.2010	**-15000**	**41135**	**4.28**

11. 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.

12. In this order wherever SAST Regulations, 1997 is mentioned it should be referred to as SAST Regulations, 1997 read with Regulation 35 of SEBI (Acquisition of Shares and Takeovers) Regulations, 2011.

Appointment of Adjudicating Officer

13. SEBI had initiated adjudication proceedings against the Entities mentioned above and appointed Shri S V Krishna Mohan as Adjudicating Officer vide order dated July 5, 2016 under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge the Entities under Section 15A(b) of the Act for the alleged violation of the provisions of law by the Entities. Pursuant to the transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated August 14, 2017.

Show Cause Notice, Reply and Personal Hearing

14. A common Show Cause Notice ("SCN") dated July 24, 2017 was issued against the Entities under the provisions of Rule 4 (1) of the Rules to show cause as to why an inquiry should not be initiated against the Entities and penalty should not be imposed under Sections 15A (b) of the Act for the alleged violations as stated above. Despite the SCN being served, no reply was received from the Entities with regard to above referred violations.

Hearing:

15. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of Rules, the Entities were granted an opportunity of personal hearing before the undersigned on October 12, 2017, however, the Entities did not appear before me.
16. Another opportunity of personal hearing was granted on November 6, 2017 to the Entities. On the day of hearing, Authroised Representative ("AR") of the Entities appeared before me and reiterated the submissions made vide letter dated November 5, 2017 and undertook to make further submissions before November 20, 2017.
17. The submission made by the Entities vide letter dated November 6, 2017, inter-alia states that they require more time to reply appropriately on the allegations since the data is voluminous.
18. Since the reply was not forthcoming, reminder emails were sent on January 4, 2018 and January 18, 2018. However, till the date of passing this Order the Entities had not made any additional submissions and accordingly, I conclude the submissions made vide letter November 6, 2017 as their final submission and proceed further.

Consideration of Issues, Evidence and Findings:

19. I have carefully perused the charge levelled against the Entities 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 Entities were PACs as per SAST Regulations?

II. Whether Entities as PACs have violated Regulations 7(1) read with 7(2) of SAST Regulations?

III. Whether Dhiren has violated Regulations 7(1) read with 7(2) of SAST Regulations and 13(1) and 13(3) read with 13(5) of PIT regulations?

IV. Does the violation, if any, on the part of the Entities attract monetary penalty under Section 15A(b) of the Act?

V. If so, what would be the quantum of monetary penalty that can be imposed on the Entities taking into consideration the factors mentioned in Section 15J of the Act?

20. Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations 1992, PIT Regulations 2015, SAST Regulations 1997 and SAST Regulations 2011 which read as under:

Relevant provisions of SAST Regulations, 1997:

2 (1) In these Regulations, unless the context otherwise requires:-

(a) ……

(b) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;

(c) …

(d) …

(e) "person acting in concert" comprises, -

(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal),directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

(i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in sub-clause(i) of clause (2) and their associates;

(iv) mutual fund with sponsor or trustee or asset management company;

(v) foreign institutional investors with sub account(s);

(vi) merchant bankers with their client(s) as acquirer;

(vii) portfolio managers with their client(s) as acquirer;

(viii) venture capital funds with sponsors;

(ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer.

Provided that sub-clause (ix)shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work.

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2% of the paid up capital of the latter company.

Note: For the purposes of this clause `associate' means:

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and

(b) family trusts and Hindu Undivided Families.

Acquisition of 5% and more shares of a company

7(1) *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

7(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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 SAST Regulations, 2011:

Repeal and Savings.

35.(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force. (2) Notwithstanding such repeal,— (a) anything done or any action taken or purported to have been done or taken

including comments on any letter of offer, exemption granted by the Board, fees collected, 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; (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, 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 has never been repealed; (c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations. Page 69 of 71 (3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Relevant provisions of PIT Regulations,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 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.

Continual 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) 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.

PIT Regulations, 2015

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.
(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, 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:

21. Dhiren and Shweta were acquiring shares of OCL during the investigation period pursuant to apparently informal understanding. Dhiren and Shweta being husband and wife are closely related to each other and were acquiring shares of OCL. Hence, they were categorised as PACs mainly on account of the fact that they are connected and related to each other. I also note that Dhiren and Shweta have not put forth any argument against the allegation of they being alleged as PACs in their reply. Hence, I conclude Dhiren and Shweta were acquirers and PACs in terms of Regulation 2(1)(b),(e) of SAST Regulations.
22. I have carefully perused the allegations levelled in the SCN and the replies submitted by the Entities. Further in the absence of any defense from the Entities, I had to take into consideration the evidence placed before me. In this regard, I would like to refer to Hon'ble SAT observation *in the matter of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 wherein SAT has observed that "……..., appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices*". Accordingly, I conclude that the Entities by neither filing reply to show cause notice issued to them nor availing the opportunity of personal hearing in the adjudication proceedings, are presumed to have admitted charges leveled against them in the show cause notice. Hence it is concluded that Entities are guilty of violating aforesaid respective Regulations.
23. I would also like to rely on Hon'ble SAT ruling in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI** , wherein 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."* Since the disclosures were not made on numerous occasions, I find the Entities have contravened the provisions of Law and liable for penalty.

Does the violation, if any, on the part of Entities attract monetary penalty under Section 15 A(b) of the Act?

24. Having stated above that Entities have violated the provision of SEBI Act are liable for monetary penalty under Section 15A(b) of the Act in terms of the penal provisions as stated below:

SEBI Act

Section 15A(b) of the Act (as existed during the period of violation) reads as under:

Penalty for fraudulent and unfair trade practices.

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 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.

Issue III : If so, what would be the quantum of monetary penalty that can be imposed on the Entities after taking into consideration the factors mentioned in Section 15J of the Act?

25. 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 read 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 the 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.

26. It is observed from the records that any gain or unfair advantage accrued to the Entities as a result of non-disclosure has not been quantified. Further, there is no material is made available on record to assess the disproportionate gain or unfair advantage, amount of loss caused to an investor or group of investors as a result of non-disclosure and also to show the Entities as a repetitive offender.

27. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

28. However, while determining the penalty to be levied, I have considered violations by the Entities under 7(1) of SAST Regulations and 13(1) PIT Regulations as a single violation since they are one and the same and would like to refer to the judgement of Hon'ble SAT in Vitro Commodities v/s SEBI wherein it has stated "*It may be noted that provisions of Regulations 7(1) of takeover Regulations 1997 and Regulation 13(1) of PIT 1992 are not substantially different, since violation of first automatically triggers the violations 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 Regulation 1997 and Regulation 13(1) of PIT 1992 are not stand alone regulations and one is corollary of other."* Further, I also considered only the instances where the disclosures are ought to be made but not made.

ORDER

29. 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 Entities which according to me commensurate with the violations made by the Entities:

Sr. No.	Name of the Entity	Provisions of Law Violated	Penalty Provision	Penalty Amount (in Rs.)
1	Dhirenkumar Dharamdas Agarwal and Shweta Dhiren Agrawal (as PAC)	Regulations 7(1) read with 7(2) of SAST regulations	Section 15A(b) of SEBI Act,	2,00,000 each
2	Dhirenkumar Dharamdas Agarwal	Regulations 7(1) read with 7(2) of SAST regulations and Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations		3,00,000

30. Entities 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 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

31. Entities shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manger (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)	

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

Date: July 27, 2018 **SAHIL MALIK**

Place: Mumbai **ADJUDICATING OFFICER**