

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
[ADJUDICATION ORDER NO. ISD/ TEL-SSMPL/AO/DRK-DS/EAD3- 666/212 -2014]

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**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of:

**Shah Space Manager Private Limited**  
15-A, Virupur Nagar Society,  
Near Nalanda Water Tank, Waghodiya Road,  
**Vadodara – 390 019**

*(In the matter of Turbotech Engineering Ltd.)*

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India conducted an examination in the scrip of Turbotech Engineering Ltd. (hereinafter referred to as "*the company*") during the period October 18, 2012 to March 07, 2013 (hereinafter referred to as "*Examination Period*"). The scrip of the company is listed at BSE Ltd.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. I was appointed as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '*SEBI Act*') read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '*Rules*'), under Section 15A(b) of the SEBI Act, the violation of Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "*Takeover Regulations*") and Regulation 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred

to as "*PIT Regulations*") alleged to have been committed by Shah Space Manager Pvt. Ltd. (hereinafter referred to as "Noticee/SSMPL"). The said appointment was communicated vide proceedings of the Whole Time Member appointing Adjudicating Officer dated February 03, 2014.

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

3. A Show Cause Notice no. A&E/EAD-3/DRK-DS/8056/2014 dated March 13, 2014 (hereinafter referred to as 'SCN') was served on the noticee in terms of the provisions of Rule 4 of the Rules, requiring the noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on the noticee under Section 15A(b) of the SEBI Act for the alleged violation of the provisions of Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations and Regulation 13(3) read with Regulation 13(5) of PIT Regulations.
4. The SCN stated that in quarter ending September 30, 2012, the shareholding of the noticee was disclosed on the BSE website under the category of "persons holding 1% and above of total share capital" in the following manner:

Name of the shareholder	Number of shares as on 30th September 2012	% shares as on 30th September 2012
Shah Space Manager Pvt. Ltd.	23,50,000	9.79

5. However, it was observed from the disclosures that as on December 31, 2012, the name of the noticee did not appear neither in the category of "persons holding 1% and above of total share capital" nor in any other category.
6. Therefore, it was alleged that the noticee did not make any disclosures with respect to the decrease in its shareholding. As per the requirements of Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations, the noticee was required to make the disclosures regarding the change in its shareholding in the specified Form to the stock exchanges where the securities of the target company are listed and to the target company within two working days of the disposal of shares.

7. Further as per Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, the noticee was required to make disclosure with respect to the said sale of shares to the company in Form C within 2 working days of the disposal of said shares.
8. The SCN stated that the reply shall reach within 15 days from date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record. The said SCN was sent through Registered Post Acknowledgement Due (RPAD) and the same was served on the noticee.
9. The noticee vide its reply dated April 14, 2014 made the following submissions:
  - a. *The Company had made all the required disclosures at the time of sale of shares in October, 2012 but such disclosures were not updated with the Stock Exchange.*
  - b. *Along with the reply, the noticee forwarded the acknowledged copy of the disclosures dated October 08, 2012 submitted to BSE Ltd.*
10. Thereafter, vide hearing notice dated July 28, 2014, the noticee was granted an opportunity of personal hearing and was advised to attend the hearing on August 13, 2014 at SEBI Bhavan, Mumbai. The said hearing notice was sent through RPAD and was served on noticee and the proof of service is available on record. However, the Noticee, failed to appear for the aforesaid hearing without furnishing any reason.
11. Thereafter, vide hearing notice dated August 14, 2014, the noticee was granted final opportunity of being heard on September 04, 2014 at SEBI Bhavan, Mumbai. Vide the said hearing notice, the noticee was also advised to attend the said hearing, failing which the matter shall be proceeded based on the material available on record. The said hearing notice was sent through RPAD and was served on the noticee. The proof of service is available on record.
12. Despite being granted opportunity of being heard twice, the noticee failed to appear for the hearing without furnishing any reason. In view of the above I am compelled to proceed with the matter on the basis of the material available on record.

## **CONSIDERATION OF EVIDENCE AND FINDINGS**

13. I have taken into consideration the facts and circumstances of the case, and the material made available on record.

14. It was alleged in the SCN that the noticee did not make disclosures with respect to its change in shareholding to the stock exchange as well as to the company as required under Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. The noticee was holding 23,50,000 equity shares amounting to 9.79% shareholding in the company till quarter ending September 30, 2012.

15. In response to the aforesaid allegation, the noticee has submitted the proof of submission of the disclosures to the stock exchange (BSE Ltd.). As per the submissions of the noticee, the noticee sold all the aforesaid shares on October 08, 2012. The noticee submitted the disclosures dated October 08, 2012 to BSE Ltd. and a copy was marked to the company. From the records, it is observed that BSE Ltd. received, stamped and acknowledged the said disclosures on October 09, 2012. However, the noticee has not submitted any proof that the aforesaid disclosures were received by/submitted to the company.

16. Thus, in the absence of evidence that the aforesaid disclosures were submitted to the company by the noticee, it can be concluded on the basis of the material available on record that the noticee has failed to make disclosures only to the company under Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. The text of the said provision is reproduced below:

➤ **Takeover 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 per cent 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.*

*(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.*

➤ **PIT Regulations**

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

**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.*

*(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.*

17. The aforesaid non disclosure makes the noticee liable for penalty under Section 15A(b) of the SEBI Act which is reproduced below:

**"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;"*

18. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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.*
19. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of the non disclosure on the part of the noticee are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticee or the loss caused to the investors in a default of this nature.
20. Having considered the facts and circumstances of the case, submissions made by the noticee and after taking into account the factors under Section 15J of the SEBI Act, 1992, I find that a penalty of ₹3,00,000 [Rupees Three Lakhs Only] under Section 15A(b) of the SEBI Act on the noticee would commensurate with the failure on the part of the noticee in making the disclosure to the company in this case.

### **ORDER**

21. In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a penalty ₹3,00,000 [Rupees Three Lakhs Only] on Shah Space Manager Private Limited in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the non compliance of Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

and Regulation 13(3) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the failure on the part of the noticee in making the disclosure to the company.

22. The penalty shall be paid by way of Demand Draft drawn 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 shall be forwarded to the General Manager, ISD, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

23. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Shah Space Manager Private Limited and also to the Securities and Exchange Board of India, Mumbai.

**Place: Mumbai**

**Date: November 27, 2014**

**D. RAVI KUMAR  
CHIEF GENERAL MANAGER &  
ADJUDICATING OFFICER**