

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/135 /2018)

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

In respect of:

**Ms Bhavini Vijaykumar Shah
PAN: CDAPS8340A**

10/113 Shanti Apts,
Pragati Nagar,
Naranpura,
Ahmedabad-380013

In the matter of:

M/s P.M.TELELINNKS LTD.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of M/s P.M.Telelinnks Ltd. (hereinafter referred to as '**Company**'/'**PMTL**'), observed that Ms. Bhavini Vijaykumar Shah (hereinafter referred to as '**Noticee**') had failed to make timely disclosures pertaining to her acquisition of 1,18,721 shares of PMTL on November 19, 2011. It was observed that the Noticee had allegedly failed to comply with the disclosure requirements specified under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter

referred to as '**PIT Regulations**'). In view of the above, adjudication proceedings were initiated against the Noticee under the provisions of section 15 A (b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**').

2. The scrip of PMTL was listed on the Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') during the relevant period and the total paid up share capital of PMTL as on November 19, 2011 was Rs 10.075 crore (represented by 1,00,75,000 equity shares of face value of Rs 10/- each).

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri D. Ravikumar was appointed as the Adjudicating Officer vide Order dated July 02, 2013 under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act for the alleged failure on the part of the Noticee to comply with the provisions of Regulation 29(1) of the SAST Regulations and Regulation 13(1) of the PIT Regulations. Pursuant to the transfer of Shri D. Ravikumar, the undersigned was appointed as the Adjudicating officer in the matter vide order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. Show Cause Notice reference no. A&E/DRK/CS/17896/2014 dated March 11, 2014 (hereinafter referred to as "**SCN**") was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with section 15 I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty be not imposed under the provisions of section 15A(b) of the SEBI Act 1992, for the aforementioned alleged contravention of the provisions of law by the Noticee. The SCN issued to the Noticee, *inter alia*, mentioned the following :

- a) *During the examination conducted by SEBI, it was observed that as per the shareholding pattern disclosed by P.M. Telelinnks Ltd. to the BSE, the shareholding of Bhavini Vijaykumar Shah in P.M Telelinnks Ltd increased from 3.30% in the quarter ending September 30, 2011 to 5.50% in the quarter ending*

December 31, 2011, which was subsequently reduced to 3.82% during the quarter ending March 31, 2012. However, no disclosures were made by the Noticee under the SAST and PIT regulations.

- b) It is alleged that the Noticee acquired 1,18,721 shares of PMTL on November 19, 2011. On December 31, 2011, the shareholding of the Noticee had increased to 5.59% of the total shareholding of the company.

Date	Credit	Debit	Balance	% of share holding
01-10-2011			3,32,448	3.30
19-11-2011	1,18,721	0	5,14,912	5.11
23-11-2011	1,070	0	5,15,982	5.12
26-11-2011	0	5	5,15,977	5.12
02-12-2011	0	188	5,15,789	5.12
07-12-2011	0	284	5,15,505	5.12
08-12-2011	0	28,032	4,87,473	4.84
12-12-2011	941	0	4,88,414	4.85
13-12-2011	22,291	20,020	4,90,685	4.87
17-12-2011	9,055	0	4,99,740	4.96
19-12-2011	2,56,799	0	7,56,539	7.51
20-12-2011	0	3,000	7,53,539	7.48
21-12-2011	0	38,024	7,15,515	7.10
22-12-2011	0	3,500	7,12,015	7.07
24-12-2011	42,754	0	7,54,769	7.49
27-12-2011	0	1,90,260	5,64,509	5.60
28-12-2011	0	1,505	5,63,004	5.59
Closing Balance as on 31-12-2011			5,63,004	5.59

- c) It is alleged that, as per the trading details on October 1, 2011, Noticee was holding 3,32,448 shares of PMTL constituting 3.30 percent of the total share capital of PMTL. On November 19, 2011, Noticee acquired 1,18,721 shares due to which its shareholding increased to 5.11%. At this juncture, as per regulation 29(1) of the SAST Regulations, Noticee was required to disclose its aggregate shareholding in PMTL to the stock exchanges and to the company within two working days. Further, as per regulation 13(1) of the PIT Regulations, Noticee was required to disclose to the company the number of shares held by her upon

holding more than 5% shares within two working days of such acquisition of shares. However, Noticee has not complied with the abovementioned regulations.

d) From the foregoing, it is alleged that Noticee has violated the provisions of regulation 29(1) of SAST Regulations and regulation 13(1) of PIT Regulations.

5. Vide letter dated April 09, 2011, Noticee submitted her reply to the SCN wherein she requested for additional time to furnish the detailed reply. Thereafter, vide an undated letter, which was received by SEBI on June 24, 2014, Noticee made the submissions stating that she had made the necessary disclosures under Regulation 29(2) of the SAST Regulations to the Bombay Stock Exchange on May 02, 2014 and also mentioned that the disclosures were updated on the BSE website.
6. In the interest of natural justice, Noticee was granted opportunity of hearings on January 04, 2018 and March 19, 2018 vide letters dated December 18, 2017 and March 1, 2018. The aforementioned letters returned undelivered with remarks as “Left”. Thereafter, in terms of the Adjudication Rules, the letter dated March 1, 2018 granting opportunity of hearing to the Noticee on March 19, 2018 was served on the Noticee by way of digitally signed email on her email address at BS4597@YAHOO.COM / bh4597@yahoo.com. However, I observe that the Noticee has failed to appear for the hearing on the stipulated date. In view of the above observations, I am compelled to proceed further in the matter on the basis of facts / material on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

7. I have carefully perused the material on record, the facts and circumstances of the case and the reply of the Noticee to the SCN. The allegation against the Noticee is that she had failed to make the necessary disclosures under Regulation 29(1) of the SAST Regulations and Regulation 13(1) of the PIT Regulations w.r.t her acquisition of 1,18,721 shares of PMTL on November 19, 2011.
8. Before moving forward, the relevant extracts of the provisions of the SAST Regulations and PIT Regulations allegedly violated by the Noticee are mentioned as under:-

SAST Regulations, 2011

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.

PIT Regulations, 1992

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.

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

9. I note from the filings made by PMTL with the BSE that the shareholding of the Noticee in the company had increased from 3.30% during the quarter ended September 30, 2011 to 5.50% for the quarter ended December 31, 2011. Thus, the Noticee had crossed the threshold limit of 5% of shareholding in the company during the quarter ended December 31, 2011. The following table depicts the details of the transactions undertaken by the Noticee in the scrip of PMTL during the relevant period-

Date	Credit	Debit	Balance	% of share holding
01/10/2011			3,32,448	3.30
19/11/2011	1,18,721	0	5,14,912	5.11

10. I observe that the disclosure requirements under the SAST Regulations and PIT Regulations are triggered when an entity's shareholding in a company crosses the threshold limit of 5% of the total share capital of the company. In the instant matter, I find from the material on record that the Noticee was holding 3,32,448 shares of PMTL as on November 18, 2011. I observe that the Noticee had purchased 1,18,721 shares

of PMTL on November 19, 2011, which resulted in Noticee's shareholding in PMTL crossing the threshold limit of 5% of the total share capital of the company. The shareholding of the Noticee in PMTL increased from 3.30% to 5.11% as on November 19, 2011 as a result of her transaction in the scrip of PMTL on November 19, 2011. Therefore, the Noticee was required to make the necessary disclosures to the Company and to BSE in the prescribed format within two working days of her acquisition of shares in terms of Regulation 29(1) of the SAST Regulations. Further, the Noticee was also required to make the disclosures in the prescribed format (Form A) to the Company within two working days of her acquisition of shares in terms of Regulation 13(1) of the PIT Regulations.

11. I find from the records made available that the Noticee has failed to make the necessary disclosures u/r 29(1) of SAST Regulations and also under Regulation 13(1) of the PIT Regulations. The same is also evident from the details of the disclosure of shareholding mentioned in the website of BSE. There is nothing on record / material made available on file to show that Noticee had made the disclosures under the aforementioned Regulations. Therefore, I hold that the Noticee has violated the provisions of Regulation 29(1) of SAST Regulations and Regulation 13(1) of the PIT Regulations. In the reply to the SCN, the Noticee has contended that she had made the disclosures under Regulation 29(2) of the SAST Regulations on May 02, 2014. I however observe that the present proceedings have been initiated against the Noticee for her failure to make the disclosures under Regulation 29(1) of SAST Regulations and Regulation 13(1) of the PIT Regulations and not w.r.t the disclosure obligations mandated under Regulation 29(2) of the SAST Regulations. As such, I do not think it necessary on my part to deal with the said disclosure made by the Noticee under the provisions of Regulation 29(2) of the SAST Regulations.

12. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make the disclosures under SAST and PIT Regulations within the stipulated time period is a mandatory obligation and penalty is imposed for non-compliance with these obligations. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI*, had observed that-

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from the open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

13. In view of the above observations, I am convinced that the Noticee has violated the provisions of Regulation 29(1) of the SAST Regulations and also Regulation 13 (1) of the PIT Regulations. Therefore, I am of the view that Noticee is liable for monetary penalty under the provisions of Section 15 A (b) of the SEBI Act.

14. In this context, it is relevant to note the observations of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]} 5 SCC 361 } –wherein it was 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.....”*

15. In view of the violation of the aforementioned provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of Section 15A(b) of the SEBI Act, which 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 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.

16. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication 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.*

17. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the examination conducted by SEBI in the said matter has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee.

18. I am of the view that the details of the shareholding of the persons acquiring substantial stake in the company and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the timely disclosures of the transactions in the scrip of PMTL by the Noticee under the relevant provisions of SAST Regulations and PIT Regulations, were of significant importance from the point of view of the investors/ shareholders of the Company. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

19. In this context, it is relevant to quote the observations made by Hon'ble SAT in its order dated September 04, 2013 in the matter of Vitro Commodities Private Limited Vs SEBI wherein 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 the 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*".

In light of the above observations of Hon'ble SAT, I am of the view that the violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations by the Noticee are not substantially different. Therefore, I am of the view that the violation of Regulation 29(1) of the SAST Regulations and Regulation 13(1) of the PIT Regulations by the Noticee can be considered as a single violation for the purpose of imposition of monetary penalty on the Noticee.

ORDER

20. Having considered all the facts and circumstances of the case, the material on record, the reply submitted by the Noticee and the factors/observations mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a total penalty of Rs 1,00,000/- (Rupees One lakh only) on the Noticee viz. Ms. Bhavini Vijaykumar Shah (PAN: CDAPS8340A) under the provisions of Section 15A(b) of the SEBI Act, 1992 for her failure to make the necessary disclosures under the provisions of Regulation 29(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(1) of the SEBI (Prohibition of Insider trading) Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider trading) Regulations, 2015 (repeal and savings). I am of the view that the said penalty is commensurate with the default committed by the Noticee.

21. The Noticee shall remit / pay the said amount of penalty within 45 days of the 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 the Bank Account, the details of which are given below

Account No. for remittance of penalties levied by Adjudication Officer	
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 the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of Enforcement Department (EFD) of SEBI. The format for forwarding details / confirmation of the e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is mentioned as under:

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)	

23. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. Ms. Bhavini Vijaykumar Shah and also to Securities and Exchange Board of India.

Place: Mumbai
Date: March 22, 2018

SURESH B MENON
ADJUDICATING OFFICER