

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/541-553/2015]

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:

- 1. Shri Arvind Kumar Saraf [PAN: AJVPS2259K]**
- 2. Renu Saraf**
- 3. Atashi Saraf**
- 4. Rishab Saraf**
- 5. S D Saraf**
- 6. Ramgopal Saraf**
- 7. Abha Mansingka**
- 8. Anju Dhandhanania**
- 9. Sidhant Distributor Private Limited**
- 10. Vasudha Commercial Private Limited**
- 11. Nucleus Insurance Risk Managers Private Limited**
- 12. Trust Insurance Risk Managers**
- 13. Jeevan Vihar Properties Private Limited**

In the matter of

ARCOTECH LIMITED

1. Based on the shareholding pattern filed by certain companies with exchanges along with certain observations made by it, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an examination in the scrip of Arcotech Limited (hereinafter referred to as Arcotech/Company) and into the possible violations of the provisions of the Securities and Exchange Board of

India Act, 1992 (hereinafter referred to as the 'Act') and various Rules and Regulations made there under.

2. Upon examination, it was, *inter alia*, observed that Shri Arvind Kumar Saraf, along with Persons Acting in Concert (PACs) namely, Renu Saraf, Atashi Saraf, Rishab Saraf, S D Saraf, Ramgopal Saraf, Abha Mansingka, Anju Dhandhanian, Sidhant Distributor Private Limited, Vasudha Commercial Private Limited, Nucleus Insurance Risk Managers Private Limited, Trust Insurance Risk Managers and Jeevan Vihar Properties Private Limited (hereinafter collectively referred to as the 'Noticees') had acquired 1,00,000 shares constituting 0.50% each, of the total paid up equity capital of Arcotech, on February 05, 2010 and February 08, 2010, respectively, through bulk deals. However, it was observed that no public announcement was made for the said acquisition by the Noticees as required under Regulation 11(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations').
3. It was also observed that Shri Arvind Kumar Saraf, being the promoter of Arcotech and upon acquiring the said shares i.e. 1,00,000 shares each on February 05, 2010 and February 08, 2010 was required to make necessary disclosures as required under Regulation 13 (4) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'). However, it was observed that the said disclosures were made by him belatedly i.e. with a delay of 1394 days and 1392 days, respectively.
4. SEBI has, therefore, initiated adjudication proceedings against the Noticees for the alleged violation of the provisions of Regulation 11 (2) of SAST Regulations and additionally, against Shri Arvind Kumar Saraf for the alleged violation of Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations in the matter.

Appointment of Adjudicating Officer

5. The undersigned has been appointed as the Adjudicating Officer vide order dated March 26, 2014, 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 the 'Rules') to inquire into and adjudge under Section 15H (ii) of the Act against the Noticees and additionally, under Section 15 A (b) of the Act against Shri Arvind Kumar Saraf for the alleged violation of the provisions of law.

Show Cause Notice, Reply and Personal Hearing

6. Show Cause Notices dated May 22, 2014 (hereinafter referred to as SCNs) were issued to the Noticees in terms of Rule 4 of the said Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law. Vide letter dated June 05, 2014, Shri Arvind Kumar Saraf filed a common reply on behalf of the Noticees. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the said Rules, an opportunity of personal hearing was granted to the Noticees on October 09, 2015. The authorized representative (AR) attended the hearing on the scheduled date on behalf of all the Noticees. However, the AR submitted the authority letter only for representing Shri Arvind Kumar Saraf. The AR requested time to file the authority letter/s for representing all the Noticees and also to file additional submissions in the matter. Accordingly, the AR was advised to submit the authority letter/s for representing all the Noticees and file additional submissions on or before October 16, 2015. Vide e-mail dated October 19, 2015, the AR submitted the modified authority letter in the matter.

Consideration of Issues, Evidence and Findings:

7. I have carefully perused the charges leveled against the Noticees as per the SCNs, written submissions made by the Noticees and the material as available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticees have violated the provisions of Regulation 11 (2) of the SAST Regulations?***
- (b) Does the above violation, if any, on the part of the Noticees attract any penalty under Section 15 H (ii) of the Act?***
- (c) Whether Shri Arvind Kumar Saraf has violated Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations?***
- (d) Does the violation at (c) above, if any, on the part of Shri Arvind Kumar Saraf attract any penalty under Section 15 A (b) of the Act?***
- (e) If yes, what should be the quantum of penalty?***

8. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SAST and PIT regulations which read as under:-

SAST Regulations:

11(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that.....

Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).

PIT Regulations:

13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure

.....

"(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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."*

9. I find from the SCN that based on the shareholding pattern filed by certain companies, including Arcotech, SEBI had carried out an examination in the said scrip. Upon examination, it was revealed that certain entities being promoter and promoter group of Arcotech had acquired shares of company through bulk deals beyond the permissible limit on two occasions. The details of acquisition made through bulk deals are as under:

Name of the Acquirer	Date of Acquisition	Number of Shares Acquired	% of Shareholding Acquired	Compliance under Regulation 7(1) and 7(1A) of the Takeover Regulations and Regulation 13(3) and 13(4) of PIT Regulations.
Shri Arvind Kumar Saraf	February 05, 2010	100000	0.50%	Delay of 1394 and 1392 days in complying with Regulation 13(4) of PIT Regulations.
Shri Arvind Kumar Saraf	February 08, 2010	100000	0.50%	

10. From the above table, it is noted that Shri Arvind Kumar Saraf, Promoter entity of Arcotech, along with the PACs as mentioned in para 2 above, had acquired 1,00,000 shares each on February 05, 2010 and February 08, 2010, constituting 0.50% (on both occasions) of the total paid up equity capital of Arcotech through bulk deals. Upon the said acquisitions, the Noticees were required to make public announcement in terms of Regulation 11(2) of the SAST Regulations as the said acquisition was through bulk deals. However, it was alleged that the Noticees had not made the public announcement.

11. The shareholding of the promoter and promoter group from quarter ended March 2009 to September 2011 is as under:

Scrip Name	Arcotech Limited	
Quarter ended	% Promoter group holding during the quarter ending	Increase (%)
Mar 2009	60.45	
Jun 2009	60.45	
Sept 2009	60.45	
Dec 2009	60.45	
Mar 2010	61.95	1.50%
Jun 2010	61.95	
Sept 2010	61.95	
Dec 2010	61.95	
Mar 2011	63.94	1.99% (Not through bulk deal)
Jun 2011	64.93	
Sept 2011	64.93	

- 12.** Further, upon acquiring the said shares, Shri Arvind Kumar Saraf, being the promoter of the company, was also required to make necessary disclosures under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations which were allegedly made with a delay of 1394 days and 1392 days i.e. on December 02, 2013 as per the disclosures made by the Arcotech to BSE. Therefore, it was alleged in the SCN that the Noticees had violated the provisions of Regulation 11 (2) of SAST Regulations and additionally, that Shri Arvind Kumar Saraf had violated the provisions of Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations in the matter.
- 13.** Vide common letter dated June 05, 2014, Shri Arvind Kumar Saraf submitted a reply on behalf of all the Noticees. The Noticees submitted that the promoters/promoter group of the company already held 55% or more but less than 75% of the then total paid up equity and voting share capital of the company. Further, the Noticees submitted that pursuant to the acquisition of equity shares by the Acquirer through Open Market Mode, the promoters/promoter group of the company have acquired the equity shares of the company which is less than 5% of the then total paid up equity and voting share capital of the company, which is in compliance with point no. (i) of the second proviso to regulation 11 (2) of the Erstwhile Regulations (i.e. SAST Regulations, 1997). The Noticees have submitted a copy of the contract notes issued by the broker in support of their submission. The Noticees have also submitted that as per the information available on BSE, the transaction would be pronounced as bulk deal only if the quantity of the shares of the company bought/sold by any person/entity is more than 0.50% of the number of equity shares of the company listed on the exchange. However, it is the case of the Noticees that it is clear from the documents available that the acquisition of 1,00,000 equity shares each on both the occasions constituted 0.50% only of the then equity and voting share capital of Arcotech. Thus, the Noticees have contended that the aforesaid acquisitions do not fall under the ambit of the said definition and therefore, there was no

requirement of making any public announcement for an open offer to the then equity share holders of Arcotech for the said acquisitions.

14. With respect to the delayed disclosures, the Noticees submitted that, due to lack of awareness of PIT Regulations, Shri Arvind Kumar Saraf had not duly complied with the disclosure requirements under the said regulations within the time limit specified. The said delay was purely technical in nature and without any malafide, which did not jeopardize the interest of the shareholders of the company. Also, vide email dated October 16, 2015, the AR for the Noticees submitted that Shri S.D. Saraf, Shri Ramgopal Saraf, Abha Mansinghka and Anju Dhandhanian had ceased to be the part of the promoter group since December, 2011.

15. I have carefully perused the material available on record and the submissions made by the Noticees. I note that Regulation 11(2) of the SAST Regulations makes it clear that any acquirer together with PACs holding 55% but less than 75% of the shares or voting rights in a company acquires any additional shares or voting rights together with PACs in that company, has to make a public announcement. However, the second proviso to Regulation 11(2) of the SAST Regulations makes an exception to the said Regulations. It states that an acquirer along with PACs can acquire up to 5% additional shares or voting rights subject to that the said acquisition is made through open market purchase in normal segment on the stock exchange but, not through *bulk deal /block deal/negotiated deal/ preferential allotment*.

16. SEBI, vide Circular bearing No. SEBI/MRD/SE/Cir-7/2004 dated January 14, 2004, had explained in para 1.1 of the said Circular that a 'bulk deal' constituted of "all transactions in a scrip (on the exchange) where total quantity of shares bought /sold is more than 0.5% of the number of equity shares of the company listed on the exchange". Thus, the quantitative limit of 0.5% could be reached

through one or more transactions executed during day in the normal market segment.

17. I find that in the present case the acquirer viz. Shri Arvind Kumar Saraf, along with the PACs, had acquired shares of Arcotech on two occasions during the relevant period. I note that the said acquisitions were for a quantity of 1,00,000 shares each on February 05, 2010 and February 08, 2010, which constituted for 0.50% on both the occasions of the number of equity shares listed on the exchange. The said SEBI circular clearly states that if any person / entity buys or sells shares of a company which is more than 0.50% of the number of equity shares of the company listed on the exchange then only it shall be treated as a bulk deal. Therefore, I find that the acquisitions made by the acquirer do not strictly fall under the purview of the definition of bulk deal inasmuch as the said acquisitions only constituted 0.50% of the number of equity shares of the company. In view of the same, I conclude that the violation of Regulation 11(2) of SAST Regulations does not stand established against the Noticees.

18. I further find that upon the said acquisitions, Shri Arvind Kumar Saraf being the promoter of Arcotech was required to make necessary disclosures as prescribed under the PIT Regulations which were made by the said Noticee with a delay on both the occasions. I do not find any merit in the submissions of the Noticees that due to lack of awareness of PIT Regulations, the acquirer did not comply with the disclosure requirements within the time limit specified, as it is a settled principle of law that ignorance of law is no excuse. Therefore, I conclude that Shri Arvind Kumar Saraf by making delayed disclosures for the acquisitions made in the scrip of Arcotech has violated the provisions of Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations which makes him liable for monetary penalty as prescribed under Section 15 A(b) of the Act, which reads as under:

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

If any person who is required under this Act or any rules or regulations made there under:-

(a).....

(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.

19. While determining the quantum of penalty under Section 15H(ii) of the Act, it is important to consider the factors stipulated in Section 15J of the Act, 1992 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.”

20. I observe, from the material available on record, that it is not possible to quantify, any gain or unfair advantage accrued to the Noticee viz. Shri Arvind Kumar Saraf or the extent of loss suffered by the investors as a result of the said default. However, I find that the defaults are repetitive in nature. The disclosure made under Regulation 13 (4) read with 13 (5) of the PIT Regulations, by a promoter is made public only through Stock Exchange. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. The disclosures made by companies listed on the stock exchanges are the means to attain such end. I find that the delay for making disclosures on the two occasions was for 1394 days and 1392 days which cannot be ignored and therefore demands imposition of appropriate monetary penalty.

ORDER

- 21.** 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 Act read with Rule 5 of the said Rules, I conclude that the violation of Regulation 11(2) of SAST Regulations does not stand established against the Noticees namely, Shri Arvind Kumar Saraf, Renu Saraf, Atashi Saraf, Rishab Saraf, S D Saraf, Ramgopal Saraf, Abha Mansingka, Anju Dhandhanania, Sidhant Distributor Private Limited, Vasudha Commercial Private Limited, Nucleus Insurance Risk Managers Private Limited, Trust Insurance Risk Managers and Jeevan Vihar Properties Private Limited.
- 22.** Further, I hereby impose a monetary penalty of ₹4,00,000/- (Rupees Four Lakh Only) on Shri Arvind Kumar Saraf under Section 15A(b) of the Act for violating the provisions of Regulation 13 (4) read with 13 (5) of the PIT Regulations. In my view, the penalty is commensurate with the defaults committed by the Noticee.
- 23.** The penalty amount as mentioned above shall be paid by the Noticee through duly crossed demand draft drawn in favour of “SEBI – Penalties Remittable to Government of India” and payable at Mumbai, within 45 days of receipt of this order. The said demand draft shall be forwarded to the Deputy General Manager, Corporate Finance Department, DCR-I, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
- 24.** In terms of the Rule 6 of the Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: November 27, 2015

Place: Mumbai

**D. SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER**