

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/82/2017)

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:

M/s MDS Infrastructure Pvt. Ltd.
PAN: AAFCM3999J
9/12, Lal Bazaar Street,
E-Block, 4th Floor,
Kolkata-700001

In the matter of
M/s Urja Global Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of Urja Global Limited (hereinafter referred to as "**Company/UGL**") during the period January 01, 2014 to June 30, 2014 (hereinafter referred to as "**examination period**"), observed that M/s **MDS Infrastructure Pvt. Ltd.** (hereinafter referred to as "**Noticee**"), had failed to make timely disclosures pertaining to its acquisition of shares of UGL during the examination period. It was observed that the Noticee had 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 SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

2. UGL was incorporated on 29 May 1992 and the company is engaged in design, consultancy, integration, supply, installation, commissioning & maintenance of off-grid arid grid connected Solar Power Plants. UGL is listed on the Bombay Stock Exchange (hereinafter referred to as “**BSE**”). The total paid up capital of the company, during examination period, was Rs. 5,07,20,600 (represented by 5,07,20,600 shares of face value of Rs. 1/- each).
3. It was observed during the course of examination by SEBI that the Noticee was holding 22,94,978 shares of UGL as on May 14, 2014, which represented 4.52% of the total share capital of the company. Noticee had purchased 2,88,000 shares of UGL on May 15, 2014 pursuant to which its shareholding in the company increased to 5.093% as on May 15, 2014.
4. In view of the fact that Noticee’s shareholding in UGL had crossed the threshold limit of 5% of the total paid up capital of the company, the Noticee was required to make necessary disclosures under the provisions of regulation 29(1) read with regulation 29(3) of the SAST Regulations to the Stock Exchange (i.e. BSE) and to the Company within two working days of the acquisition of shares. Similarly, under the provisions of Regulation 13(1) of the PIT Regulations, the Noticee was required to make the necessary disclosure in the prescribed format (Form A) within two working days of its acquisition of shares. It is alleged that Noticee had failed to make these disclosures within the stipulated time period as required under the aforementioned provisions of law. Therefore, adjudication proceedings were initiated against the Noticee in terms of section 15 A (b) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) for the alleged violation committed by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer, vide Order dated April 11, 2016 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) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) and Regulation 13 (6) of the PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. Show Cause Notice dated July 26, 2017 (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 against it and penalty be not imposed under section 15 A (b) of the SEBI Act, 1992, for the aforementioned alleged contravention of the provisions of law by the Noticee. The SCN returned undelivered with remarks "insufficient address, returned to sender".
7. Thereafter, the affixture of the SCN was attempted on the last known address of the Noticee, which had failed. Subsequently, in terms of the Adjudication Rules, the SCN was served on the Noticee by way of digitally signed electronic mails that were sent to the email ID of the Noticee viz. newsnew2013@yahoo.com, as made available by NSDL and the Registrar and Transfer agent of the Company. I observe that the above said Email ID was also registered in the shareholder records of the Noticee.
8. Thereafter, in the interest of natural justice, an opportunity of hearing was granted to the Noticee on October 26, 2017 vide letter dated September 25, 2017. The letter granting opportunity of hearing to the Noticee was also served on the Noticee in terms of the Adjudication Rules by way of digitally signed electronic mails sent to the registered email ID of the Noticee viz. newsnew2013@yahoo.com. I observe that the Noticee has not only failed to submit its reply to the SCN but also failed to appear for the hearing on the

stipulated date. In view of the above, I am compelled to proceed further in the matter on the basis of material / facts on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

9. I have carefully perused the facts and circumstances of the case and the material available on record. I find that the allegation levelled against the Noticee is that it had failed to make the necessary disclosures within the stipulated time period in respect of its acquisition of the shares of UGL during the examination period, as required under the relevant provisions of the SAST Regulations and PIT Regulations.
10. Before moving forward, the relevant extracts of the provisions of the SAST Regulations and PIT Regulations allegedly violated by the Noticee are reproduced below:

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.

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.*

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.*

13(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations "(1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

11. From the material/facts on record, I observe that one of the allegation levelled against the Noticee is that it has violated the provisions of Regulation 13(6) of the PIT Regulations. Upon reading of the provisions of the above said Regulation, I observe that the obligation cast under the provisions of Regulation 13 (6) of the PIT Regulations is on the listed company to make the necessary disclosures to the Stock Exchange upon receipt of the disclosure formats from its shareholders. The said Regulation does not cast any obligation on the individual shareholder to make any disclosure to the stock exchange. Therefore, in the context of the present proceedings, the allegation levelled against the Noticee that it has violated the provisions of Regulation 13 (6) of the PIT Regulations is not sustainable.

12. From the material/facts on record, I observe that the following table depicts the details of the transactions undertaken by the Noticee during the examination period

Name of Acquirer	Date of Acquisition	Pre-acquisition holding	Shares acquired	Post-acquisition holding
MDS Infrastructure Pvt. Ltd.	May 15, 2014	22,94,978 (4.52%)	2,88,000 (0.568%)	25,82,978 (5.093%)

13. From the above table, I note that as on May 14, 2014, the Noticee was holding 22,94,978 shares of UGL, which represented 4.52% of the total paid up capital of the Company. On May 15, 2014, the Noticee purchased 2,88,000 shares of UGL, which resulted in the percentage of the shareholding of the Noticee in the company increasing from 4.52% to 5.093% (as on May 15, 2014).

14. I find that the disclosure requirements under the SAST Regulations and PIT Regulations are triggered when the shareholding of an entity in a company crosses the threshold limit of 5% of the total paid up capital of the company. In the instant case, I find that the Noticee was holding less than 5% shares of UGL on May 14, 2014 (i.e. 22,94,978 shares representing 4.52% of the total paid up capital of the company viz. UGL). As can be observed from the details mentioned above, the Noticee purchased 2,88,000 shares of the company on May 15, 2014, which resulted in Noticee's shareholding in the company crossing the threshold limit of 5% of the total paid up capital of the Company. Therefore, the Noticee was required to make the disclosures to the Company and BSE within two working days of its acquisition of the shares, in terms of Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations and to the Company within two working days of its acquisition of shares in terms of Regulation 13 (1) of the PIT Regulations. However, I find that the Noticee has failed to make these disclosures within the stipulated time period.
15. I observe that the necessary disclosures were made by the Noticee to the BSE and to the Company in terms of the aforementioned provisions of the SAST Regulations and PIT Regulations on January 15, 2015 whereas the relevant transaction resulting in Noticee crossing the threshold limit took place on May 15, 2014. The disclosure formats received from the Noticee by the Company were forwarded to the BSE by the Company on January 16, 2015. BSE vide its email dated January 28, 2015 addressed to SEBI has confirmed the receipt of these disclosures from the Noticee / Company. Thus, the Noticee has made belated disclosures under the provisions of Regulation 13(1) of the PIT Regulations and also under Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations.
16. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The

Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* 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 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.”

17. In view of the above, I hold that the Noticee has failed to make timely disclosures under the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and also under Regulation 13(1) of the PIT Regulations. Therefore, I hold that the Noticee has violated the provisions of the aforementioned Regulations.

18. In view of the violation of the provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of Section 15 A (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 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. In this regard, the provisions of Section 15 J 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.*
20. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the examination report 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. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature.
21. By not making the disclosures within the stipulated time period, the Noticee has failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]5 SCC 361 } – where the Hon'ble Supreme Court of India 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.....”*
22. Further, I also observe that Hon'ble Securities Appellate Tribunal (SAT) in its judgment on 4.9.2013 in the matter of *Vitro Commodities Private Limited Vs SEBI* 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 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 the provisions of Reg 13 (1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations committed by the Noticee can be considered as a single violation for the purpose of imposition of penalty on the Noticee, as violation of the first regulation would automatically trigger the violation of the second regulation.

23. I am of the view that the details of the shareholding of the persons acquiring substantial stake 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 Noticee having acquired more than 5% stake in the Company, the timely disclosures of the same 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. 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.

ORDER

24. Having considered all the facts and circumstances of the case, the material available on record and the mitigating factors mentioned in the preceeding 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 penalty of Rs 1,00,000 /- (Rupees One Lakh only) on the Noticee viz. M/s MDS Infrastructure Pvt. Ltd. (PAN No. AAFCM3999J) under the provisions of Section 15A(b) of the SEBI Act for its failure to make the timely disclosures as required under Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 r/w Regulation 12(1) and Regulation 12 (2) 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.

25. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made (in the format as given in the table below) should be forwarded to The Division Chief, Enforcement Department (EFD), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

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)	
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26. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee viz. M/s MDS Infrastructure Pvt. Ltd. and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 27.10.2017

SURESH B MENON
ADJUDICATING OFFICER