

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/MKG/2019-20/3775]

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) RULES, 1995.

In respect of

Mr. Madhukar Sheth
(PAN: ANXPS1972P)

In the matter of Amulya Leasing & Finance Ltd. (Now known as Apollo Pipes Limited)

BACKGROUND OF THE CASE

1. The Bombay Stock Exchange (herein after referred to as '**BSE**') vide letter dated April 28, 2017, informed Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') that shareholding of one Mr. Madhukar Sheth (hereinafter referred to as '**Noticee/by Name**'), in the scrip of Amulya Leasing & Finance Ltd. (Now known as Apollo Pipes Limited) (hereinafter referred to as '**ALFL/ Company/ Target Company**') has reduced substantially. However, the Noticee has not made required disclosures in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**'). Thereafter, the SEBI conducted an examination, in the scrip of ALFL, which is listed on the BSE.

2. SEBI observed that the Noticee was holding more than 5% paid up share capital of ALFL in the calendar quarter ending on March 31, 2016. Further, the Noticee has disposed of more than 2% paid up share capital of the Target Company in multiple transactions, during the calendar quarters ending on June 30, and September 30, 2016. The aforesaid disclosure of shares was required to be made by the Noticee to the Company and the BSE in terms of Regulation 29(2) of the SAST Regulations. However, SEBI observed that the Noticee did not make the required disclosure. In view of the same, SEBI has initiated adjudication proceedings under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated March 15, 2019 under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice SEBI/EAD/AA/MKG/8690/2019 dated April 03, 2019 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee

under Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The details in respect of the alleged violation by the Noticee are as given below:

SEBI observed that in the scrip ALFL, shareholding of the Noticee reduced from 5.32% to 3.26% of total paid up share capital of the Company on July 01, 2016, i.e. change of more than 2%. The aforesaid change in shareholding was required to be disclosed to Bombay Stock Exchange (herein after referred to as "BSE") and ALFL in terms of Regulation 29(2) read with 29(3) of SAST Regulations within two working days. However, it is observed from aforesaid BSE letter that the Noticee has failed to make required disclosure in this regard. Therefore, in view of the above observations, it is alleged that Noticee has violated provisions of Regulation 29(2) read with 29(3) of SAST Regulations. The Noticee was given 15 days' time to file reply to the SCN.

6. The SCN issued to the Noticee was sent through SPAD however, returned undelivered. Thereafter, the Noticee was granted an opportunity of personal hearing on June 04, 2019 vide hearing notice dated May 03, 2019, in the interest of principles of the natural justice. The SCN and hearing notice were affixed at the last known address of the Noticee viz. 603, Elizabeth Apartment, BSM Road, Elphinstone West, Mumbai - 400013. Upon request from the Noticee, copies of SCN along with annexures were sent additionally, to the Noticee, by email. The Noticee vide letter dated May 28, 2019 sought for time till June 26, 2019, to file reply to the SCN. The Noticee, vide letter dated June 26, 2019, submitted reply to the SCN and *inter alia* made the following submissions:

- i. *The Noticee denied that it has violated SAST Regulations as alleged in the Show Cause Notice.*

- ii. *that it has reported this matter to the Company as per letter annexed as Annexure – 1 to the SCN.*
- iii. *that the transactions annexed with the SCN are incomplete and he will submit correct transactions in a two weeks.*
- iv. *that there is no investor complaint against the Noticee on this subject and no loss caused to the investors.*
- v. *that it did not meant to rig the prices or volume in the scrip.*
- vi. *that the proceedings against the Noticee should be kept on hold.*
- vii. *that the transactions of the Noticee has not affected the market in negative manner.*
- viii. *that the Noticee in its reply has relied, inter alia, on the following Orders/ judgments:-*

Sr. No.	Order
1	<i>SAT order in the matter of Chandrakant Gandhi Stock Broker Pvt. Ltd. Vs. SEBI (2000 (37) CLA 388)</i>
2	<i>SAT order in the matter of HDFC ((2000) 28 SCL 289 (SAT))</i>
3	<i>Observation of Hon'ble Supreme Court in the matter of Hindustan Steel</i>
4	<i>SAT observation in the matter of Reliance Industries Limited vs. SEBI in appeal no. 39/2002 dated August 31, 2004</i>
5	<i>AO order in the matter of Sunbright Stock Broking Limited dated July 31, 2018.</i>

7. As the Noticee had sought time till June 26, 2019 to reply to the SCN, the Noticee was granted final opportunity of hearing on July 09, 2019 vide email dated June 12, 2019. The Noticee attended the hearing on the scheduled date and time. The Noticee disputed the data provided in the annexures to the SCN, and he was granted time till July 23, 2019 to make additional submissions. The Noticee made additional submissions vide letter dated July 19, 2019, which was received on July 23, 2019. The Noticee, in its aforesaid letter dated July 19, 2019, reiterated the contents of its letter dated June 26, 2019 and also cited various case laws in support of its submissions. However, the Noticee has not submitted any transaction or shareholding statement along with its reply.

8. I note that the Noticee has disputed the data provided in annexures to the SCN and the Noticee in its reply dated June 26, 2019 submitted that he will provide correct transactions in two weeks. However, the Noticee has failed to provide any data, in this regard, till date. Therefore, I proceed further on the basis of the documents available on record.

CONSIDERATION OF ISSUES

9. I have carefully perused the charges levelled against the Noticee, his reply and the documents/material available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticee has violated Regulation 29(2) read with regulations 29(3) of SAST Regulations?
- (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee, after taking into consideration the factors mentioned in section 15J of the SEBI Act?

10. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations as below:

Relevant provisions of SAST Regulations:

Disclosure of acquisition and disposal

29.(1)

- (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.*

11. The first issue for consideration is whether the Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulation. I note from the BSE website that the total paid up share capital of ALFL for the calendar quarters ending on March 31, 2016, June 30, 2016 and September 30, 2016 was 50,01,700. Further, I note from the available records as well as the quarterly shareholding available on BSE website that the Noticee was holding 2,66,271 shares (5.32% of paid up share capital of ALFL) of ALFL on the calendar quarter ending on March 31, 2016. The transaction statement of the Noticee (Annexure – III to the SCN) as obtained from NSDL shows that during the period April 01, 2016 to July 04, 2016, the Noticee disposed of 1,03,196 shares (2.06% of paid up share capital of ALFL) of ALFL in multiple transactions. A summary of the transactions, as submitted by NSDL, in abovementioned transaction statement, is provided in **Table – 1**, below-

Table - 1

First Holder Name	First Holder Pan	Date	Description	Debit	Percentage (%) of total paid up share capital of ALFL
Madhukar Sheth	ANXPS1972P	10-May-2016	To Cm IIFL Securities Limited, Rolling Mkt Lot / 1617026	24,000	0.480
		11-May-2016	To Cm IIFL Securities Limited, Rolling Mkt Lot / 1617027	24,124	0.482
		12-May-2016	To Cm IIFL Securities Limited, Rolling Mkt Lot / 1617028	2,000	0.040

First Holder Name	First Holder Pan	Date	Description	Debit	Percentage (%) of total paid up share capital of ALFL
		01-Jun-2016	To Cm IIFL Securities Limited, Rolling Mkt Lot / 1617042	24,000	0.480
		03-Jun-2016	To Cm IIFL Securities Limited, Rolling Mkt Lot / 1617044	24,000	0.480
		15-Jun-2016	To Cm IIFL Securities Limited, Rolling Mkt Lot / 1617052	222	0.004
		04-Jul-2016	To Cm IIFL Securities Limited, Rolling Mkt Lot / 1617065	4,850	0.097
	Total			1,03,196	2.063

12. I note that a combined reading of Regulation 29(2) and Regulation 29(3) of SAST Regulations says that any person who is holding 5% or more than 5% of paid up share capital in the target company, shall disclose the number of shares held and change in shareholding to - (a) every stock exchange where the shares of the Target Company are listed; and (b) the Target Company at its registered office, within two working days, from receipt of intimation of the disposal of shares in the target company, when there is a change in its shareholding and such change exceeds 2% of total shareholding. As the Noticee has disputed that the data reflected in the transaction statement does not show the correct position of holding, I have also perused the holding statement which also confirms the correctness of the data provided in the transaction statement. I note that the Noticee was holding 5.32% of paid up share capital of ALFL in quarter ending on March 31, 2016 which is more than 5%. Further, I note from the Table – 1 that the shareholding of the Noticee reduced by **2.06%** on July 04, 2016 i.e. a change of more than 2%. The transaction statement which reflects the data is already provided to the Noticee as Annexure - II to the SCN. Therefore, the Noticee was required to make disclosures in this regard to the stock exchanges and ALFL in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

13. I note that the Noticee in its reply has not denied that he has failed to make disclosures to the stock exchanges in terms of Regulation 29(2) read with 29(3) of SAST Regulation. Further, I note that the Noticee in its reply dated **June 26, 2019**, which was received by SEBI on same day, has submitted that it has reported the matter to the Company as per Annexure –1. On perusal of **Annexure – 1**, I note that it is copy of a letter dated **July 02, 2019** addressed to ALFL, whereby the Noticee has enclosed disclosure in prescribed format in terms of Regulation 29(2) read with 29(3) of SAST Regulations. I also note that no copy of disclosure in prescribed format is attached with the letter and it does not bear any acknowledgement mark of the company. In this context, it is relevant to quote the observations of the Hon'ble Calcutta High Court in the matter of Arun Kumar Bajoria (appellant) vs. SEBI in Writ Petition No 331 of 2001 decided on March 27, 2001. The Hon'ble Calcutta High Court had observed that *"..... The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgement received from the BSE in this regard to the mails that were allegedly sent containing the compliance reports."* Further, even if the submissions of the Noticee were to be accepted that it has made disclosure to the Company vide letter dated July 02, 2019, it only amounts to a disclosure after a delay of more than three years. The investigation by SEBI and the records from BSE clearly indicates that the Noticee has not made disclosures as required in terms of SAST Regulations.

14. I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and the penalty is imposed for the 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 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 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"*. I would further like to refer to the observations of Hon'ble SAT in the matter of Virendra kumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014), wherein it was held that *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures"*. The importance of disclosure obligations cannot be undermined by saying that they are merely technical in nature. Such obligations are created under respective regulations by SEBI in order to enable investors to take informed investment decisions.

15. Therefore, I find that the allegation of the violation of Regulation 29(2) read with 29(3) of SAST Regulations by the Noticee stands established. 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..."*.

16. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads as under:

SEBI Act

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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

.....

17. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. 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.

18. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the failure of the Noticee in making disclosures or the consequent loss caused to investors as a result of the default. The Noticee has failed to make required disclosures in terms of Regulation 29(2) read with 29(3) of SAST Regulation on one occasion as brought out above.

ORDER

19. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on the Noticee viz. Madhukar Sheth in terms of the provisions of Section 15A(b) of the SEBI Act.

20. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid either by way of demand draft in favor 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.

21. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 7, “G” Block, Bandra Kurla Complex, Bandra (E), 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	
7. Payment is made or: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

22. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

23. Payment can also be made online by following the below path at SEBI website [www. sebi.gov.in](http://www.sebi.gov.in): ENFORCEMENT ->Orders->Orders of AO ->PAY NOW.

24. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Madhukar Sheth and also to the Securities and Exchange Board of India.

Date: July 30, 2019

Place: Mumbai

Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER