

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/DPS/ 7 /2018]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

- 1) **Dinesh Jayantilal Doshi** (PAN No. AHTPD3510C) having address at – Flat No. 503, 5th Floor, Kuber Bhavan CHS, Mandpeshwar Road, Borivali (W) Mumbai – 400092.

In the matter of *Acclaim Industries Ltd.*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) had conducted examination in the scrip of Acclaim Industries Ltd. (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period July 01, 2013 to March 31, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed that Dinesh Jayantilal Doshi, (herein after referred to as the “**Noticee**”), was in violation of Regulation 13(1), 13(3) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities

and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) vide order dated January 25, 2017 to inquire into and adjudge under Section 15A(b) of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations and SAST Regulations. Subsequent to superannuation of Mr. Suresh Gupta, the undersigned was appointed as the Adjudicating Officer on May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/SG/DP/4512/2018 dated February 9, 2018, (hereinafter be referred to as, the “**SCN**”) was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A(b) of the SEBI Act for the aforesaid alleged violations of PIT Regulations and SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) Noticee had acquired 62500 shares on 21.11.2013 which increased his holding to 262500 shares (5.25% of share capital of the Acclaim) which triggered disclosure requirement under provisions of Regulation 13 (1) of PIT Regulations and under Regulation 29 (1) read with regulation 29 (3) of SAST Regulations, which he failed to disclose. Further, Noticee also sold 100000 shares & 162500 shares on 24.01.2014 and on 14.02.2014 which triggered disclosure requirement under provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations and under Regulation 29(2) read with Regulation 29(3) of SAST Regulations.
 - b) BSE vide letter dated December 31, 2013 and email dated May 16, 2017 confirmed that no disclosures were made by the Noticee under the PIT or SAST Regulations with respect to above mentioned transactions. The BSE letter was provided to the Noticee as Annexure D of SCN.

- c) During examination the Company was also asked vide email dated 21.05.2014, 23.05.2014, 03.06.2014, 21.07.2014 and 23.07.2014 to confirm whether Noticee had made disclosures under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations for the said transaction. However, the company failed to reply.
5. In view of the aforesaid non-disclosure, it was alleged that the Noticee had violated the provisions of Regulation 13(1), 13(3) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of SAST Regulations. The text of referred Regulations is reproduced hereunder:-

PIT Regulations

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure.

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.

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.

13(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.

SAST Regulations

Disclosure of acquisition and disposal.

29(2) Any person, 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 the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the 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.

6. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act.
7. In response to the SCN, the Noticee vide letter dated February 28, 2018 submitted that, *“he is busy with his family marriage so requested to provide more time to reply, as he expect to come in 15 day”*.
8. After considering the facts and circumstances of the case, on appointment of the undersigned as the Adjudicating Officer in the instant matter, an opportunity of personal hearing was granted to the Noticee on June 28, 2018 vide Notice of Hearing (HN) dated June 13, 2018. It is relevant to point out that as the Noticee has not submitted his reply towards the said SCN, in the said hearing notice issued on June 13, 2018, Noticee was asked to file reply on or before June 22, 2018 and it was also communicated that if no appearance is made or no reply is furnished by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. In this regard, Noticee vide letter dated June 21, 2018 submitted that he is 80 years old and suffers from health issues. He further attached a copy of doctor

certificate dated June 21, 2018 that he is suffering from bronchitis and he is advised to rest for a week.

9. Considering the principle of natural justice, Noticee was given another opportunity of hearing on July 12, 2018 vide notice dated June 28, 2018. It is relevant to point out that as the Noticee has not submitted his reply towards the said SCN, in the said hearing notice issued on June 28, 2018, Noticee was asked to file reply on or before July 10, 2018 and it was also communicated that if no appearance is made or no reply is furnished by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. In this regard, Noticee vide email dated July 9, 2018 (email – ID - prasham71@gmail.com) submitted that he is 80 years old and suffers from health issues and requested to provide some more time to file his reply. He also attached a copy of doctor certificate dated July 7, 2018 stating that he is having viral fever and loss of vision in both eyes and he is advised to take rest.
10. As per the request, Noticee was once again given another opportunity of hearing on July 30, 2018 vide notice dated July 11, 2018. It is relevant to point out that as the Noticee has not submitted reply towards the said SCN, in the said hearing notice issued on July 11, 2018, Noticee was asked to file reply on or before July 24, 2018 and it was also communicated that if no appearance is made or no reply is furnished by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. In this regard, Noticee vide email dated July 23, 2018 (email – ID - prasham71@gmail.com) again submitted that, he is 80 years old and suffers from health issues and requested to provide some more time to file his reply and next date to explain. He again attached the copy of doctor certificate dated July 7, 2018. Therefore Noticee was categorically informed vide email dated July 24, 2018 to its email - ID - prasham71@gmail.com that Show Cause Notice has been issued to him, and opportunity of replying the said SCN and to attend the hearing has already been provided to him thrice vide Notice dated

June 13, 2018, June 28, 2018 and July 11, 2018. In adherence to the principles of natural justice, and in consideration of his age, last and final opportunity was provided to him to submit reply on or before July 31, 2018. In the said notice it was clearly stated that the proceedings cannot be kept in abeyance anymore, as sufficient time to submit reply and opportunities of being heard have been provided and it was also made clear that if Noticee fails to avail the last opportunity of filing reply by July 31, 2018, then the matter would be decided further on the basis of evidence available on record.

11. I note that sufficient time to submit reply and opportunities to appear for personal hearing have been given to the Noticee. However, the Noticee has failed to submit any reply towards the SCN and to appear in the instant matter. At this juncture, I find it relevant to refer to judgment dated December 08, 2006 of the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of **Classic Credit Ltd. v. SEBI** (Appeal No. 68 of 2003), wherein, it observed that, "*...the appellants did not file any reply to the second show-cause. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". I also find it pertinent to refer to order of the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Ors. v. SEBI** (Appeal No. 68 of 2013 dated February 11, 2014), wherein, it *inter alia* held that, "*...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*". In view of the aforesaid facts, circumstances and settled position of law, I am of the view that the Noticee has deliberately failed to respond to the SCN and various Notices of Hearing despite due service of the notices upon him. Moreover, in absence of any response towards the SCN and various notices of hearing from the Noticee, it is concluded that the allegations and charges have been admitted by the Noticee.

12. I also find it pertinent to refer to the observation of the Hon'ble SAT in the matter of **Dave Harihar Kiritbhai v. Securities and Exchange Board of India** (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it observed, *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*. Keeping the aforesaid in mind, the adjudication proceedings against the Noticee are undertaken *ex-parte* on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

13. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I **Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?**

14. The details relating to change in the shareholding of the Noticee as alleged in the SCN are not in dispute in absence of any reply from the Noticee. The details of change in shareholding of the Noticee in the scrip of the Company, as provided to the Noticee by way of SCN, are as follows:

Date of Transaction	Purchase / Sale	Quantity Transacted	Closing Holding	Share Capital	% of Share Capital	Disclosure required under PIT	Disclosures required under SAST
18/11/2013	Holding before transaction (as on 18/11/2013)		0	5000000	0.00	NA	NA
19/11/2013	Purchase	200000	200000	5000000	4.00	NA	NA
21/11/2013	Purchase	62500	262500	5000000	5.25	13(1)	29(1) r.w. 29(3)
24/01/2014	Sale	100000	162500	5000000	3.25	13(3) r.w. 13(5)	29(2) r.w. 29(3)
14/02/2014	Sale	162500	0	5000000	0.00	13(3) r.w. 13(5)	29(2) r.w. 29(3)

r.w – read with; NA – Not Applicable

15. I note that Noticee had acquired shares on November 21, 2013 and sold shares on January 24, 2014 and February 14, 2018 which had resulted in change in shareholding and Noticee had not disclosed the change in shareholding to BSE as well as to the company Further BSE vide its e-mail dated May 16, 2017 and its letter dated December 31, 2013 confirmed that no disclosures have been received under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations for the said transactions.
16. I note that Noticee as per BSE website had not disclosed the change in shareholding to BSE as well as to the company. The noticee shareholding exceeded 5% on November 21, 2013, and its shareholding change exceeded 25,000 shares on January 24, 2014 and February 14, 2018 and further its shareholding change also exceeded 2% of total shareholding or voting rights on January 24, 2014 and February 14, 2018, which triggered disclosure requirement under of Regulation 13(1), 13(3) read with Regulation 13(5) of PIT Regulations and Regulation 29(1), 29(2) read with Regulation 29(3) of SAST Regulations.
17. In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under of Regulation 13(1), 13(3) read with Regulation

13(5) of PIT Regulations and Regulation 29(1), 29(2) read with Regulation 29(3) of SAST Regulations to company as well as to BSE.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

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Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

18. Since failure of the Noticee in making disclosures to the Company as well as to BSE under of Regulation 13(1), 13(3) read with Regulation 13(5) of PIT Regulations and under Regulation 29(1), 29(2) read with Regulation 29(3) of SAST Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act

“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 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.”

19. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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 have perused the statement of shareholding pattern of the Company, available on the website of the BSE for the financial quarter ending December 2013 and have noted that the information regarding the Noticee shareholding was correctly reflected as 2,62,500 shares (5.25% of holding) as on quarter ending December 2013, which was in public domain by December 31, 2013.
21. While it is established that the Noticee did not make disclosure to Company as well as to BSE under Regulation 13(1), 13(3) read with Regulation 13(5) of PIT Regulations and under Regulation 29(1), 29(2) read with Regulation 29(3) of SAST Regulations is established, I have taken note of the fact that relevant information was available in public domain by quarter end. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation.
22. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹3,00,000/- (Rupees Three Lakh only) will be commensurate with the violations committed.

ORDER

23. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹3,00,000/- (Rupees Three Lakh only) upon the Noticee, i.e. Dinesh Jayantilal Doshi under Section 15A(b) of the SEBI Act for violation of Regulation 13(1), 13(3) read with Regulation 13(5) of PIT Regulations and Regulation 29(1), 29(2) read with Regulation 29(3) of SAST Regulations.
24. The Noticee shall remit / pay the said amount of penalty within 45 days of 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 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

25. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

26. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: AUGUST 31, 2018

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER