

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-5/SVKM/AO/11/2017-18]

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 THE MATTER OF AANJANEYA LIFECARE LIMITED (NOW KNOWN AS DR. DATSONS LABS LIMITED)

In respect of

Bakulesh Trambaklal Shah
(PAN – ALQPS4619A)

Vrindavan Annexe, 32,
Mount-Mary Road,
Bandra (W), Mumbai 400050

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted investigation into the irregular trading in the scrip of Aanjaneya Lifecare Limited (now known as Dr. Datsons Labs Ltd.) (*hereinafter referred to as “The Company”*). Shri Bakulesh Trambaklal Shah (*hereinafter referred to as “The Noticee”*) allegedly failed to make disclosures under Regulation 29 (1) to (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (*hereinafter referred to as “SAST Regulations”*) and Regulation 13(1), (3) & (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “PIT Regulations”*) with regard to his transactions relating to purchase and sale of the shares of Aanjaneya Lifecare Limited on 12.04.2013

BRIEF FACTS OF THE CASE

2. On 12.04.2013, noticee acquired 10,37,092 shares of Aanjaneya Lifecare Limited. With this acquisition his total holding in the Company which was hitherto 1.6% of the paid-up capital had risen to 9.1%, an increase of 7.5%. On the same day he sold 4,58,858 shares of Aanjaneya Lifecare Limited thus reducing his stake to 5.8% of the paid-up capital of the Company, a reduction of 3.3%. Noticee has filed disclosure with regard to acquisition of 10,37,092 shares in terms of Regulation 29 (1) of SEBI (SAST) Regulations, 2011 but he failed to file disclosure under Regulation 13 (1) of SEBI (PIT) Regulations, 1992, for the same transaction.
3. Further, there is a change in shareholding by more than 2% by virtue of aforesaid sale transaction carried out by him on 12.04.2013 for which no disclosures were filed by him under both Regulation 29 (2) read with 29 (3) of SAST Regulations, 2011 and Regulation 13 (3) read with 13 (5) of PIT Regulations, 1992. Hence, it was alleged that the noticee, has violated the provisions of Regulation 29 (1) to (3) of SEBI (SAST) Regulations, 2011 and Regulation 13(1), (3) & (5) of SEBI (PIT) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer (**AO**) vide communication of Proceedings dated August 23, 2016 to inquire into and adjudge under Section 15A (b) of SEBI Act, 1992, the aforesaid alleged violations by the noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice dated September 26, 2016 (*hereinafter referred to as "SCN"*) was issued to the noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as the 'Adjudication Rules'*) read with section 15 I of SEBI Act, 1992, to show cause as to why

an inquiry should not be initiated and penalty be not imposed under section 15A (b) of SEBI Act, 1992, for the aforesaid alleged contraventions of the provisions of Regulation 29 (1) to (3) of SEBI (SAST) Regulations, 2011 and Regulation 13(1), (3) & (5) of SEBI (PIT) Regulations, 1992, by Shri Bakulesh Trambaklal Shah, the noticee herein.

6. Vide letter dated October 10, 2016 noticee filed reply to the SCN. The relevant portion of the aforesaid reply dated October 10, 2016 is reproduced hereunder:-

- *With regard to purchase transaction of 10,37,092 shares of Aanjaneya Lifecare limited the noticee submitted that he had already filed the necessary disclosures under Regulations 29 of the SEBI SAST Regulations, which is undisputed.*
- *Both the disclosures under SEBI SAST Regulations and SEBI PIT Regulations are of an extremely similar nature. It is also pertinent to note that the intention of both the Regulations is dissemination of information to the public shareholders in a fair manner. In view of the same, it is undisputed that the necessary information about purchase of 10,37,0920 shares was already disseminated on the stock exchange and already available in public domain in a fair manner.*
- *Further, noticee had filed the necessary disclosure under SEBI PIT Regulations in prescribed Form A and C with the National Stock Exchange Limited on September 14, 2015. Copies of the said disclosures also submitted by the noticee.*
- *With regard to alleged non-compliance for sell of 458,858 shares it was submitted that this purported transaction of sell of 458,858 shares has not been transacted by me at all as per my internal records. In view of this, I say that in my opinion, the alleged violation of provisions of SEBI PIT Regulations and SEBI SAST Regulations is baseless considering that I had never conducted the sale Transaction which purportedly triggered the requirement to comply with the provisions of SEBI PIT Regulations and SEBI SAST Regulations.*

7. Noticee was granted an opportunity of personal hearing. Ms. Purti Minawala, Advocate, (M/s Crawford Bayley & Co., Advocates and Solicitors) appeared on behalf of the noticee, on February 10, 2017 and made the following submissions:-

- *The charge relates to a transaction of buy and sale of shares of Aanjaneya Lifecare Ltd. (now known as Dr. Datsuns Labs Ltd.) on 12.04.2013. The buy transaction is for 10,37,092 shares and the sale is of 4,58,858 shares on the same date.*
- *Prior to the above transaction, the shareholding of the noticee in the scrip was 1.6% of the paid-up capital which had risen to 9.1% an increase of 7.5%, after the buy transaction and came down to 5.8% after the sale transaction on the same day.*
- *It is denied by the learned counsel by referring to her reply dated October 10, 2016 that the sale transaction has ever taken place.*

8. In the hearing on March 07, 2017, a reply dated 14.02.2017 was filed and reiterating the contents of the same the following submissions were made:

- *So far as the alleged sale of 4,58,858 shares of Aanjaneya Lifecare Ltd. (now known as Dr. Datsuns Labs Ltd.) by the noticee, it was submitted that the said transaction was not undertaken by her client. She referred to annexure II to the said reply and pointed out that it is a transaction statement issued by the DP wherein it shows that on 16/04/2013 there was a credit of 4,58,858 shares due to buy transactions.*
- *It was further submitted that this buy transaction was part of the overall buy transactions of 10,37,092 shares. SEBI must have mistaken the buy transaction of 4,58,858 shares as sale transaction, it was submitted.*
- *She has also refereed the Contract Note issued by the Broker dated 12/04/2013 which is also enclosed to the reply dated 14/02/2017 and submitted that the Contract Note which ends in 15 pages shows the total buy of the noticee in the said settlement no. 2013072 was for 4,58,858 shares.*

- *By referring to the above documents it was argued that there was no sale transaction of 4,58,858 shares by the noticee as alleged and therefore the question of any non-disclosure thereto does not arise. In fact the said transaction for the like amount is a buy transaction as explained above with reference to the Contract Note and the transaction statement filed.*
9. Vide letter dated March 14, 2017 noticee filed Consolidated A/c Statement (CAS) of investment in mutual fund & securities across DPs, provided by Central Depository Services (India) Limited (CDSL) and duly acknowledged by the Depository Participant (DP).

ISSUES FOR CONSIDERATION & FINDINGS

10. I have carefully perused the replies and submissions of the noticee and the documents available on record. The issues that arise for consideration in the present case are:
- 1) Whether noticee violated provisions of Regulation 29 (1) to (3) of SEBI (SAST) Regulations, 2011 and Regulation 13 (1), (3) & (5) of SEBI (PIT) Regulations, 1992, with regard to disclosure of purchase of 10,37,092 shares and sale of 4,58,858 shares of Aanjaneya Lifecare Limited on 12.04.2013?
 - 2) Whether the noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act, 1992?
 - 3) If yes, then what should be the quantum of monetary penalty?
11. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI SAST Regulations, 2011 and SEBI PIT Regulations, 1992, which reads as under:-

Regulation 29 of SEBI (SAST) Regulations, 2011

Disclosure of acquisition and disposal.

- (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.*
- (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.”*

Regulation 13 of SEBI (PIT) Regulations, 1992

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

- (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.*
- (2) *.....*

Continual disclosure.

- (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.*
- (4) *.....*
- (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.*
12. On perusal of the material available on record and having regard to the submissions made by the noticee, I record my findings hereunder:-
13. There are two transactions of the noticee on 12.04.2013, one is acquisition of 10,37,092 shares and another is sale of 4,58,858 shares of Aanjaneya Lifecare Limited. For acquisition of 10,37,092 shares of Aanjaneya Lifecare limited by the noticee on 12.04.2013 it was alleged that the noticee failed to file disclosure under Regulation 13 (1) of SEBI PIT Regulations, 1992. For sale of 4,58,858 shares on 12.04.2013 it was alleged that the noticee failed to file disclosures under Regulation 29 (2) read with 29 (3) of SAST Regulations, 2011 and Regulation 13 (3) read with 13 (5) of PIT Regulations, 1992.
14. With regard to the aforesaid sale transaction of 4,58,858 shares of Aanjaneya Lifecare Limited on 12.04.2013 it was submitted that the noticee has not executed any such sale transaction on 12.04.2013 as alleged and therefore the question of any non- disclosures thereto does not arise. Noticee has filed a copy of DP A/c statement for the financial year from April 01, 2013 to March 31, 2014 along with copies of contract notes dated

12.04.2013. Further, in support of his argument that there was no sale transaction of 4,58,858 shares as alleged he also filed a copy of Consolidated A/c Statement (CAS) of investment in mutual fund & securities across DPs, provided by CDSL and duly acknowledged by the Depository Participant. It was submitted that all the trading of the noticee in the scrip of Aanjaneya Lifecare Limited were transacted only through the Depository Participant Account (DP A/c) maintained with Money Logix Securities Private Limited.

15. Contract Note issued by Money Logix Securities Pvt. Ltd., dated 12.04.2013 is perused. It shows the total buy of the noticee in the scrip of Aanjaneya Lifecare Limited on 12.04.2013 in the settlement no. 2013072 was for 4,58,858 shares and settlement no. 1314012 was for 5,78,234 shares aggregating to 10,37,092 shares. However, there was no sale of shares in the scrip of Aanjaneya lifecare Limited on 12.04.2013 by the noticee. Transaction statement A/c of the noticee for the period from 01.04.2013 to 31.03.2014 provided by Money Logix Securities Private Limited the Depository Participants of CDSL, also does not reflect the said purported sale of 4,58,858 shares on 12.04.2013.
16. In view of the aforesaid evidence provided by the noticee, it is not established that the noticee has done any sale transaction of 4,58,858 shares on 12.04.2013 in the scrip of Aanjaneya Lifecare Limited. Therefore the question of failure to disclose under Regulation 29 (2) read with 29 (3) of SAST Regulations, 2011 and Regulation 13 (3) read with 13 (5) of PIT Regulations, 1992, by the noticee does not arise for a non-existent sale transaction.
17. With regard to the acquisition of 10,37,092 shares of Aanjaneya Lifecare limited by the noticee, I note that the noticee admittedly failed to file disclosure under Regulation 13 (1) of PIT Regulations, 1992, to the Company. This is the only charge remaining on part of the noticee. There is no dispute that the noticee had made disclosure under Regulation 29 (1) read with (3) of the SAST Regulations, 2011, to the Stock Exchanges and also to the Company for the very same acquisition of 10,37,092 shares on 12.04.2013. Noticee has claimed that it made the disclosures under Regulation 13 (1) of PIT Regulations, 1992, on September 14, 2015 to the stock exchange when he received notice from Enforcement

department of SEBI. The requirement of the Regulation 13 (1) of PIT Regulations, 1992, is to inform the Company and not the Stock Exchange. Further, it has to be informed within two working days of the transaction. But the noticee has informed to stock exchange and not to the Company as required. Hence, violation of Regulation 13 (1) of PIT Regulations, 1992, is established.

18. The Contention of the noticee that the disclosure under Regulation 13 (1) of PIT Regulation, 1992 and Regulation 29 (1) of SAST Regulations, 2011, are substantially the same and since he has already complied with disclosures requirement under Regulation 29 (1) of SAST Regulations, 2011, it should be treated as sufficient disclosures under Regulation 13 (1) of PIT Regulations, 1992, as well carries considerable weight. The formats for disclosures under both the Regulations have been examined and it is found that the information to be disclosed under both the Regulations are substantially the same and the transaction is also one. Accordingly, non-disclosure under Regulation 13 (1) of PIT Regulations, 1992, needs to be viewed leniently since the disclosure under Regulation 29 (1) of SAST Regulations, which has the similar information has already been made.
19. In this connection reference may also be made to the Order of the Hon'ble Securities Appellate Tribunal (SAT) in Appeal no 118 of 2013 dated 04.09.2013 in the matter of *Vitro Commodities Private Limited V/s SEBI* wherein the Hon'ble SAT held 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.”
20. In view of the above, I note that the noticee have filed timely disclosures to both the Company and the stock exchanges under Regulation 29 (1) read with 29 (3) of SAST Regulations, 2011. But he failed to file disclosure to Company in terms of Regulation 13

(1) of PIT Regulations, 1992, with regard to the acquisition of 10,37,092 shares on 12.04.2013. The Company in turn has to inform the aforesaid disclosure under Regulation 13 (6) of PIT Regulations, 1992 to the stock exchange. Both the disclosures under Regulation 29 (1) of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992 are quite similar in nature. It is also pertinent to note that the intention of both the Regulations is dissemination of information. On filing of said disclosures under Regulation 29 (1) of SAST Regulations, 2011, by the noticee which was similar to the erstwhile Regulation 7 (1) of SEBI (SAST) Regulations, 1997, the essential information about the said acquisition of shares had already been disseminated to the general public. Under the above circumstances, the noticee having complied with regulation 29 (1) of SAST Regulations, 2011, the non-compliance of Regulation 13 (1) of SEBI PIT Regulations, 1992, may not be viewed seriously and be visited with any penalty following the decision of Hon'ble SAT in the matter of *Vitro Commodities Private Limited cited supra*.

ORDER

21. After taking into consideration the facts and circumstances of the case, the submissions made by the noticee and the mitigating factors, I, in exercise of the powers conferred under Section 15 I (2) of SEBI Act, 1992, read with Rule 5 of the SEBI Adjudication Rules, 1995 am of the considered view that it is not a fit case to impose a penalty on Shri Bakulesh Trambaklal Shah under Section 15A (b) of the SEBI Act, 1992, for the reasons more specifically set out in the preceding paragraphs. Accordingly, the matter is disposed of without any penalty.
22. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the noticee and also to the Securities and Exchange Board of India.

Date : May 12, 2017

Place : Mumbai

**S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer**