

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/AR/2020-21/8030]

**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), 1995.**

In respect of

Boorugu Srikanth

bsk7557@gmail.com

H No 4-3-228,

First floor, Old Boiguda, Secunderabad
500003

In the matter of

Abhishek Infraventures Limited.

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference letter dated October 16, 2017 from the Bombay Stock Exchange (BSE) w.r.t the disclosure violation in the scrip of Abhishek Infraventures Limited (hereinafter referred to as '**Company/AIL**') for the period between November and December, 2016 (hereinafter referred to as '**Examination Period**'). It was noted from the letter that Mr. Boorugu Srikanth (hereinafter referred to as '**Noticee/Srikanth**'), failed to make disclosures as required under Regulation 29(2) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') for the transactions executed in the scrip of the Company during the Examination Period. SEBI also conducted an examination into the alleged failure to make the above disclosures.

APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to its examination, SEBI initiated adjudication proceedings to inquire into and adjudge under Section 15 A(b) of the SEBI Act, for the alleged violation of the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations by the Noticee. The

undersigned was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') under Section 19 r/w Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to adjudicate the aforesaid violations vide communique dated February 14, 2020.

SHOW CAUSE NOTICE. REPLY AND PERSONAL HEARING

3. A Show Cause Notice with reference number EAD-1/AA/ASR/9963/1/2020 dated March 18, 2020 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4 (1) of the Adjudication Rules read with section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against it and why penalty should not be imposed under Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee. The Noticee was given 15 days' time to make his submissions in respect of the allegations made in the SCN.
4. The brief allegations made against the Noticee in the SCN are given as under:
5. *It is observed from the holding statement of the Noticee, he was holding 9.14% (2,97,087 shares) of the total shares in the AIL, as on November 24, 2016 and on November 28, 2016, the Noticee sold 25,000 shares of the Company resulting in his shareholding falling to 6.84% viz. change of more than 2%. Subsequently, a sale transaction of 27,500 shares done by the Noticee on December 13, 2016 once again resulted in his shareholding falling by more than 2% to 4.45% of the shares of the Company. It is alleged that the Noticee was required to make disclosures under Regulation 29(2) r/w regulation 29(3) of the SAST Regulations for his aforementioned transactions done in the Company. However, it is alleged that the disclosures for the aforesaid transactions were done by the Noticee on February 03, 2017. It is further alleged that the disclosures for the aforesaid transactions were made by the Noticee, merely by way of a covering letter and was not in the proper format, as prescribed under SAST Regulations. The Noticee, allegedly, submitted the disclosures in the prescribed format to BSE only on July 18, 2019. The details of transactions done by the Noticee for which disclosures were, allegedly made with a delay are given in the table below:*

Date of sale	No.of shares sold/ transferred	% No. of shareholding post transaction	Due date of disclosure under SAST Regulations	Date of disclosure (Covering letter)	Delay in making disclosures)
28.11.2016	25,000	6.84	30.11.2016	03.02.2017	65 days
13.12.2016	27,500	4.45	15.12.2016	03.02.2017	50 days

6. *Therefore, it is alleged that the Noticee failed to make timely disclosures to the BSE for the two transactions done by him during the examination period. As the transactions done by the Noticee resulted in a change of more than 2% in his shareholding in the Company, it is alleged that the Noticee violated the provisions of Regulation 29(2) r/w 29(3) of the SAST Regulations:*
7. The SCN dated March 18, 2020, was sent to the Noticee. The Noticee made the following submissions in reply to the SCN vide his email dated June 16, 2020.
- I. *At the outset, I humbly apologise for not submitting my reply on time due to prevailing Covid -19 pandemic and my ill health condition.*
 - II. *I am suffering from kidney infection since 2012 and not keeping well. I even had to go kidney transplant in the year 2015. I am enclosing my medical reports for the perusal of the SEBI. Till date I am undergoing the process of dialysis and not keeping well.*
 - III. *I had sold the shares of Abhishek Infraventures Limited in November and December, 2016 to support my medical expenses and during that time my health condition was not stable and I could not concentrate on anything but on my health. But as soon as I realized that I have to give disclosures to the Company and Stock Exchange, I did the same before receiving any notice from Stock Exchange or SEBI.*
 - IV. *It was a genuine delay from my side. I neither had any intention to hide the sale information from anyone nor make illegal gains out of the sale proceeds. Had I that intention I would not have given any disclosures. I am an honest citizen and abide by law at all times.*
 - V. *I request SEBI to kindly take into cognizance the state of my ill health and my clean intention and pardon me on the inadvertent lapse committed.*
8. Further, an opportunity of hearing was granted to the Noticee through video conferencing on

June 26, 2020 which was communicated vide e-mail dated June 19, 2020. The noticee and his authorized representative availed the opportunity of personal hearing on June 26, 2020 and reiterated the contents of his earlier reply and requested for a lenient view in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the SCN, submissions made by the Noticee and all the documents/evidence available on record. The issues that arise for consideration in the present case are:
 - I. Whether the Noticee violated the provisions of the Regulation 29(2) r/w 29(3) of SAST Regulations?
 - II. Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
 - III. If yes, what should be the quantum of penalty?
10. In this regard, it is pertinent to refer to the relevant provisions of the SAST Regulations which are read as under:

SAST Regulations

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

ISSUE I: *Whether the Noticee violated the provisions of regulation 29(2) r/w 29(3) of SAST Regulations, 2011?*

11. I note that as per Regulation 29(2) r/w 29(3) of SAST Regulations, 2011, 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 and such change exceeds two per cent of total shareholding or voting rights in the target company. The disclosure shall be made to the stock exchanges on which shares of the target company are listed and to the target company at its registered office within two working days of acquisition. The Noticee, who was one of the promoters of the company at the relevant time, had transacted in the securities of the company during the relevant period.

12. I find that the Noticee was holding 9.14% (2,97,087 shares) of the total shares in the AIL, as on November 24, 2016 and on November 28, 2016, the Noticee sold 25,000 shares of the Company resulting in his shareholding falling to 6.84% viz. change of more than 2%. Subsequently, a sale transaction of 27,500 shares was done by the Noticee on December 13, 2016 which resulted in his shareholding falling by more than 2% to 4.45% of the shares of the Company. In this context, I note that as required under Regulation 29(2) r/w regulation 29(3) of the SAST Regulations, the due date of disclosure to the exchange w.r.t the sale transaction done on November 28, 2016 is November 30, 2016 and the due date of disclosure w.r.t the sale transaction done on December 13, 2016 is December 15, 2016. However, the Noticee had made the disclosures w.r.t the abovementioned transactions only on February 03, 2017 i.e after a delay of almost two months from the prescribed time limit as specified under the relevant provisions. I also note that the Noticee had done abovementioned disclosures merely by way of covering letter and not under the prescribed format. Further, the disclosures under the prescribed format were done by the Noticee only on July 18, 2019, i.e., after a delay of more than two years from the date specified under the relevant regulations.
13. In this regard, the Noticee in his submissions to the SCN, has cited his ill-health as the reason for the delay in making disclosures and has stated that as soon as he became aware of the disclosure requirements under the relevant regulations, he has done the same. He submitted that it was genuine delay from his side w.r.t filing the disclosures. From the above, I note that the Noticee has not disputed the transactions done by him and accepted the fact that there was indeed delay from his side in filing the disclosures. Further, I note that the disclosures were made by the Noticee in an improper format only after the two months of the sale transactions and in a proper format only after two years of the sale transactions. From

the discussions above, it is quite clear that the Noticee has failed to make disclosures to the respective exchange as prescribed under regulation 29(2) within two working days of the sale transactions and therefore, violated the provisions of regulation 29(2) r/w 29(3) of SAST Regulations.

14. With respect to delay in making the disclosures thereby resulting in violations of regulatory provisions, I observe that the Hon'ble SAT has consistently held that the obligation to make disclosures 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 an 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"*.
15. In addition to this, the Noticee has also contended that he neither had any intention to hide the sale information from anyone nor did he make illegal gains out of the sale proceeds. In this regard, I note that the Hon'ble SAT through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT Regulations. In the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), the Hon'ble SAT observed 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."* Hence, in this context, I find that the importance of disclosure obligations cannot be undermined by saying that they are merely technical in nature. Such obligations are mandated under respective regulations by SEBI in order to enable investors to take informed investment decisions.
16. Therefore, in view of the above facts and observations, I find that the allegation of the

violation of Regulation 29(2) r/w 29(3) of SAST Regulations by the Noticee stands established.

ISSUE 2: Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

17. In this regard I note that 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..."*. Accordingly, the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act which is read 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 thereunder,

(a).....

(a) 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.

ISSUE 3: If yes, what should be the quantum of penalty?

18. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the Act, which are read as under:

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."

19. In view of the facts and circumstances of the case and the charges being established, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticee. However, the fact that the Noticee has not made timely disclosures has already been established as mentioned at previous paragraphs.

ORDER

20. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also 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 AO Rules, I hereby impose a penalty of Rs 1,00,000 (Rupees One Lakh only) on the Noticee viz. Boorugu Srikanth under the provisions of Sections 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.
21. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.
22. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, 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" and also to e-mail id:- tad@sebi.gov.in

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)	

23. 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 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
24. In terms of the provisions of Rule 6 of the AO Rules, a copy of this order is being sent to the Noticee viz Boorugu Srikanth and also to the Securities and Exchange Board of India.

Date: June 29, 2020

Place: Mumbai

**Dr. ANITHA ANOOP
ADJUDICATING OFFICER**