

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: EAD/SM/AO/02/2017-18]

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

In respect of:

Nisha Suman Jain (PAN – ABPPJ3004M)

In the matter of Kamanwala Housing Construction Limited

Facts Of The Case

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed during the course of an examination in the scrip of Kamanwala Housing Construction Limited (hereinafter referred to as "**KHCL**") conducted for the period from August 01, 2013 to February 21, 2014 that Mrs. Nisha Suman Jain (hereinafter referred to as "**Noticee**") was holding 17,56,619 shares of KHCL (Constituting 12.46% of the total share capital of the KHCL) as on December 23, 2013. Pursuant to various off market transactions by Noticee, her shareholding was reduced to 8,56,619 shares of KHCL (Constituting 6.08% of paid up share capital of the KHCL as on December 26, 2013). In this regard, it was observed by SEBI that the Noticee had failed to make relevant disclosure to KHCL and relevant Stock Exchange, within the prescribed time period, as required under the relevant provisions of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred to as "PIT Regulations, 1992") read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulation, 2015 (hereinafter referred to as "PIT Regulations, 2015") and

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations**”).

Appointment of Adjudicating Officer

2. SEBI had initiated adjudication proceedings in the matter and Shri D Sura Reddy was appointed as Adjudicating Officer vide order dated August 04, 2014 under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Section 15A (b) of the Act, the alleged violation of the provisions of law by Noticee. Subsequent to transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017.

Show Cause Notice, Reply And Hearing

3. Show Cause Notices No. EAD-2/DSR/VVK/26026/2014 dated September 04, 2014 (hereinafter referred to as 'SCN') was issued to the Noticee under the provisions of Rule 4 (1) of the Rules to show cause as to why an inquiry should not be initiated against the Noticee and penalty be not imposed under the provisions of Section 15A(b) of the SEBI Act for the alleged violation of the provisions of Regulation 13 (3) read with 13(5) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015 and Regulation 29 (2) read with Regulation 29 (3) of the SAST Regulations by Noticee. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN. However no written reply of SCN was submitted by Noticee. Noticee had forwarded a letter (through email) written by her on 21st April 2010 to SEBI about her shareholding in KHCL.
4. Thereafter for the purpose of inquiry an opportunity of hearing, in accordance with the principle of natural justice, was provided to the Noticee on July 03, 2017 vide hearing notice dated June 13, 2017. Authorized Representative (Hereinafter referred as “AR”) of Noticee, Mr. Yash Suman Jain, submitted a letter to SEBI on July 03, 2017 informing that Noticee is not well and sought another opportunity of hearing.

Next opportunity of hearing to the Noticee was granted on July 10, 2017. AR Mr. Yash Suman Jain attended the hearing and made submissions thereon.

Consideration Of Issues, Evidence And Findings

5. I have carefully perused the oral submissions of the Noticee, email forwarded and the documents available on record. The issues that arise for consideration in the present case are :

I. **Whether Noticee had violated 13 (3) read with 13(5) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015 and Regulation 29 (2) read with Regulation 29 (3) of the SAST Regulations as regards the disclosure of change in shareholding of Noticee?**

II. **Does the violation, if any, attract monetary penalty under Sections 15 A (b) of SEBI Act.**

III. **If so, what should be the quantum of monetary penalty?**

6. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations, 1992 & PIT Regulations, 2015 and SAST Regulations which read as under:

Relevant provisions of PIT Regulations, 1992 :

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

13. (1)

(2)

(2A)

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)

(4A)

(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.

Relevant provisions of PIT Regulations, 2015 :

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed

to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

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.*

Submissions made by the Noticee:

7. AR of Noticee admitted that disclosure was not made to Exchange and KHCL due to lack of awareness.

Issue I: Whether Noticee had violated Regulation 13 (3) read with 13(5) of the PIT Regulations and Regulation 29 (2) read with regulation 29 (3) of the SAST Regulations as regards the disclosure of change in shareholding of Noticee?

Findings:

8. From the analysis of materials available on record like SCN, oral submissions of Noticee and email forwarded I record my findings hereunder:

a. Noticee was holding 17,56,619 shares (Constituting 12.46% paid up share capital of the KHCL) of the company on December 23, 2013. Pursuant to various off market transfers, shareholding of Noticee had reduced to 8,56,619 shares (Constituting 6.078% paid up share capital of the KHCL) on December 26, 2013 i.e. change of 6.382%.

b. KHCL vide letter dated March 05, 2014 to SEBI informed that Noticee has not made required disclosures to KHCL for the above mentioned change in her shareholding

c. On perusal of BSE website, no disclosures by the Noticee were observed with respect to abovementioned change in her shareholding.

d. During hearing before me, AR of Noticee admitted that Noticee did not make required disclosures to KHCL and BSE in terms of Regulation 13 (3) read with 13(5) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015 and Regulation 29 (2) read with Regulation 29 (3) of the SAST Regulations.

e. I also note from BSE website that Noticee had made disclosures to BSE in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in November, 2009 for certain transactions. I also take cognizance of the letter written by Noticee to SEBI in the year 2010 about her shareholding in KHCL. However AR of the Noticee during hearing had claimed that Noticee couldn't make

required disclosures as Noticee was unaware of the laws related to such disclosures. I find the claim of Noticee not tenable as Noticee herself had done disclosures to BSE and had also informed SEBI about her shareholding in KHCL.

Issue II: Does the violation, if any, attract monetary penalty under Sections 15 A(b) of SEBI Act

9. It can be concluded that the Noticee had failed to comply with the provisions of Regulation 13 (3) read with 13(5) of the PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015 and Regulation 29 (2) read with Regulation 29 (3) of the SAST Regulations thus liable for monetary penalty as prescribed under Section 15A(b) of the Act.

Section 15A(b) of the Act (as existed during the period of violation) 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 thereunder,-*

(a) to furnish any document, return or report

(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 there for 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.

10. Here, it is important to refer to the observation of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was 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”

Issue III: If so, what should be the quantum of monetary penalty?

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

***15J** - Factors to be taken into account by the adjudicating officer 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.

12. I also note that SCN was issued to Noticee on September 04, 2014 and it made Noticee aware of the fact that Noticee was required to make disclosure of the change in her shareholding in December, 2013. Despite being aware of this fact, no disclosure was made by her to KHCL & BSE in this regard. Hence, it is inferred from the disclosures done by the notice in the past that she was aware of disclosure requirements in terms of SEBI Regulations and secondly Noticee did not attempt to make disclosures despite being made aware by SEBI through its SCN.

13. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. The default is not repetitive in nature. I note that, in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

ORDER

14. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules, I hereby impose a monetary penalty of ₹ 1,00,000/- (Rupees one Lakh Only) on the Noticee Mrs. Nisha Suman Jain under Section 15A (b) of the SEBI Act, 1992. In my view, the penalty imposed is commensurate with the default committed by the Noticee.
15. 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

16. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " The Division Chief (Enforcement Department – DRA - 1), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "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 made:	
7	Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	

17. In terms of Rule 6 of the Rules, copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: July 12, 2017

Place: Mumbai

SAHIL MALIK

ADJUDICATING OFFICER