

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. MC/CB/4/2018]**

---

**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 –

**R Sundararaghavan (PAN ARXPS3778B)** having address at – New No. 23, First Floor, Viveswarapuram Street, Alwarpet, Chennai – 600 018 (Tamil Nadu)

In the matter of *Invicta Meditek Limited*

---

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted examination in the scrip of Invicta Meditek Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period December 01, 2013 to June 15, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(4) & 13(4A) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) by Mr. R Sundararaghavan (hereinafter be referred to as, the “**Noticee**”).

**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 August 04, 2016 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. Subsequent to superannuation of Mr. Suresh Gupta,

the undersigned was appointed as the Adjudicating Officer on April 26, 2018 which was communicated *vide* order dated June 19, 2018.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. EAD/EAD5/MC/CB/17676/2/2018 dated June 20, 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 alleged violations of Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
  - a) The Noticee, a Promoter and Managing Director of the Company, sold 2,03,156 shares of the Company on January 30, 2014, which resulted in reduction in his shareholding from 3.10% to 0.29% of the total share capital of the Company.
  - b) As a result of such reduction, the Noticee was required to submit disclosure to the Company and the BSE under Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations. However, the Noticee, allegedly, failed to submit the same.
  - c) The Company, *vide* e-mail dated June 25, 2014 provided a list of disclosures made by the Noticee to the Company. However, it was noticed that the disclosure made to the Company was not for the alleged reduction in the shareholding of the Noticee on January 30, 2014. Similarly, the BSE, *vide* e-mail dated July 08, 2014 confirmed that no disclosures were made by the Noticee under the Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations in relation to the reduction in shareholding of the Noticee during the Examination Period.
  - d) It was alleged that the aforesaid non-disclosure regarding reduction in the shareholding of the Noticee was in violation of Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations, text of which is reproduced as below:

***SEBI (Prohibition of Insider Trading) Regulations, 1992***

***“13.(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or***

*voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

- (4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*
- (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.”*

5. 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.
6. In response to the SCN, the Noticee filed a reply dated July 18, 2018. The core submissions of the Noticee are summarized as below:
- a) The Noticee submitted that he had made an incorrect disclosure under the PIT Regulations of sale of 2,12,000 shares to the BSE. The Noticee also submitted that he had made disclosures to BSE under Regulation 30(1) & 30(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) for the financial year 2013-14 on April 11, 2014 wherein, he had mentioned correct quantity of shares sold by him.

- b) The Noticee also submitted that the aforesaid incorrect disclosure was made due to inadvertence and there was no *mala fide* intention. He also submitted that no undue advantage was gained by the Noticee.
  - c) The Noticee also desired an opportunity of personal hearing in the instant matter, for which, he appointed Mr. N Rajkumar to be his authorized representative.
7. After considering the facts and circumstances of the case and in the interest of natural justice, an opportunity of personal hearing was provided to the Noticee on August 27, 2018 *vide* Notice of Hearing dated August 07, 2018.
8. The hearing scheduled on August 27, 2018 was attended by the authorized representative of the Noticee. During the course of hearing, the authorized representative of the Noticee reiterated written submissions dated July 18, 2018 submitted by the Noticee.
9. Since inquiry / hearing in the instant matter is concluded, keeping into account the allegations levelled in the SCN, submissions of the Noticee towards the SCN and material available on record, I hereby proceed to decide the case on merit.

## **CONSIDERATION OF ISSUES AND FINDINGS**

10. 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 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 as alleged in the SCN?**

- 11.** The details relating to change in the shareholding of the Noticee as alleged in the SCN are not in dispute in the reply received from the Noticee. Thus, the details of change in shareholding of the Noticee in the scrip of the Company, as provided to the Noticee by way of Annexure 3 and 4 to the SCN, are as follows:

Financial Quarter	Shareholding	
	No. of shares	% of the total share capital of the Company
October - December, 2013	2,23,833	3.10
January - March, 2014	20,830	0.29

From the Annexure 3 to the SCN, I note that on January 30, 2014, the Noticee had sold 2,03,156 shares of the Company which contributed to reduction in the shareholding of the Noticee from 3.10% to 0.29% of the total share capital of the Company. I also note that the aforesaid fact of reduction of 2.81% shareholding in the scrip of the Company has not been disputed by the Noticee.

- 12.** Regulation 13(4) of the PIT Regulations requires any director / officer of a listed company and Regulation 13(4A) of the PIT Regulations requires any promoter or person part of promoter group of a listed company, to disclose the change in shareholding or voting rights if there has been a change exceeding Rs. 5 lakhs in value or 25,000 shares or 1% of the total shareholding or voting rights in such holdings of such person from the last disclosure. Under the aforesaid regulations, such disclosures are to be made to the company and the stock exchanges where the securities of the company are listed in *Form D* within 2 working days of receipts of intimation of allotment of shares or acquisition or sale of shares or voting rights as the case maybe.
- 13.** I note from the written submissions submitted by the Noticee that he had made an incorrect disclosure of sale of 2,12,000 shares in Form D to the BSE, which was later rectified by resubmitting the revised Form D. However, I note that the Noticee had not produced any proof of delivery of any such revised return having been furnished to the

BSE. I have also independently verified the disclosures made by the Noticee to the BSE under the PIT Regulations and I observe that the aforesaid error had not been rectified. The Noticee also submitted that correct shareholding was disclosed in the disclosures made to the BSE under Regulation 30(1) & 30(2) of the SAST Regulations. However, I note that the disclosures under SAST regulations were made at the end of financial year 2013-14, i.e. after a gap of more than 2 months. Thus, there was incorrect disclosure of sale of shares under Regulation 13 of the PIT Regulations which continued without rectification for more than 2 months. I also note that disclosure obligations under Regulation 30 of the SAST Regulations are different from disclosures required under Regulation 13 of the PIT Regulations. From the aforesaid, I am of the view that the aforesaid submissions of the Noticee cannot be accepted.

**14.** On perusal of the available records and the table reproduced in paragraph 11 hereinabove, it is observed that consequent to the sale of 2,03,156 shares on January 30, 2014 by the Noticee, his shareholding reduced by more than 1% of the total share capital of the Company. On the aforesaid reduction, the Noticee ought to have disclosed such reduction in terms of Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations.

**15.** I note from the Annexure 6 of the SCN (e-mail confirmation of BSE dated July 08, 2014) that no disclosures under Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations were made to the BSE by the Noticee. I also note that the Noticee also had not disputed the aforesaid non-disclosures.

**16.** In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations to the Company and to the BSE and thereby, had violated the same.

**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?**

17. Since failure of the Noticee in making disclosures to the Company and the BSE under Regulation 13(4) & 13(4A) read with 13(5) of the PIT 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.”*

18. 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.

19. I note that the Noticee had submitted that the aforesaid non-disclosure of change of shareholding in the Company was inadvertent and was not coupled with any mala-fide intention. At this juncture, I find it relevant to take into account the observation of the Securities Appellate Tribunal (hereinafter, the “**Hon’ble SAT**”) in the matter of **Ambaji Papers Private Limited & Ors. v. Adjudicating Officer, Securities and Exchange Board of India** (Appeal No. 201 of 2013 dated January 15, 2014) wherein, it held, “*To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless. This Tribunal has held time and again that the penalty levied on any wrong-doer ought to be commensurate with the gravity of the deviation effected.*”

20. I also note that the Noticee has submitted that he had not gained any undue advantage as a result of such non-disclosure. However, I find not merit in this submission as penal liability for non-disclosure under PIT Regulations is neither dependent upon intention of parties nor gain accrued from such delay.
21. While it is established that the Noticee did not make disclosure to the Company and the BSE under Regulation 13(4) & 13(4A) read with 13(5) of the PIT Regulations, I note that the necessary information became available in public domain at the end of financial quarter, January – March, 2014. 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. From the material available on record, repetitive nature of default by the Noticee could also not be ascertained.
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 ₹1,00,000 will be commensurate with the violations committed by the Noticee.

## 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 ₹1,00,000/- (Rupees One Lakh only) upon the Noticee, i.e. Mr. R Sundararaghavan under Section 15A(b) of the SEBI Act for violation of Regulation 13(4) & 13(4A) read with 13(5) of the PIT 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:

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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 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 30, 2018**

**Place : Mumbai**

**(Maninder Cheema)**

**Adjudicating Officer**