

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/VVK/ 314 /2014]**

**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 respect of
SAGAR PRAVIN SHAH (PAN: AHEPS7486F)

In the matter of
Amar Remedies Limited

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has examined the alleged irregularity in trading in the shares of Amar Remedies Ltd. (hereinafter referred to as '**ARL**'/ '**the company**') and into the possible violation of the provisions of the Securities And Exchange Board of India Act,1992 (hereinafter referred to as the '**SEBI Act, 1992**') and various Rules and Regulations made thereunder. The shares of ARL are listed on The Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**") and the National Stock Exchange Association of India Limited (hereinafter referred to as "**NSE**").
2. As per the shareholding pattern of the Promoter and Promoter Group Category for the period of March, 2012 to March, 2013, it was observed that Mr. Sagar Pravin Shah, Managing Director of ARL, (hereinafter referred to as "**Noticee**") had been pledging his shares. It was further observed that out of total 3110000 pledged shares, 2109900 shares were invoked and sold by the lenders during the period

January,2012 to October,2012 (hereinafter referred to as "**the said Period**") during the three quarters viz. March, 2012, June, 2012 and September, 2012. In view of the invocation of pledged shares, it was alleged that the shareholding of the noticee had reduced from 24.63% during the quarter ended June 30,2012 to 17.72% during the quarter ended September 30,2012 causing a decrease of 6.91% in the shareholding of the noticee .

3. It was alleged that the Noticee had failed to make necessary disclosures to the Stock Exchanges and the company under Regulation 31(1), 31(2) read with regulation 31(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as Takeover Regulations, 2011) and Regulation 13(4), 13(4A) read with Regulation 13(5) read with Clause 4.2 of the Model Code of Conduct prescribed under Regulation 12(1) (Schedule I, Part A) of SEBI (Prohibition of Insider Trading), Regulations, 1992 (hereinafter referred to as PIT Regulations, 1992).

Appointment of Adjudicating Officer

4. SEBI has, therefore, initiated Adjudication proceedings and I have been appointed as the Adjudicating Officer vide order dated October 04, 2013 under Section 15-I of the SEBI Act,1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the said "**Rules**") to inquire into and adjudge under Section 15A(b) and 15HB of the SEBI Act, 1992 the alleged violation of the provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

5. A Show Cause Notice dated March 26, 2014 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4(1) of the said Rules to show cause as to why an

inquiry should not be held under Rule 4(3) of the said Rules and penalty be not imposed under Section 15A(b) and Section 15HB of the SEBI Act, 1992 for the alleged violation of the provisions of aforesaid law. The noticee in response to the said SCN, vide its letter dated 8th May, 2014 sought time of three weeks to reply to the said SCN.

6. Thereafter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the said Rules, the noticee was granted an opportunity of personal hearing on 31st October, 2014. The noticee in response thereto vide his letter dated 19th October, 2014 sought further extension of four weeks more time in the matter. However, the noticee has failed to submit reply in the matter. I note that ample opportunity and time has been granted to the Noticee to explain his case. However, the noticee failed to avail the same. Therefore, I proceed further based on the material available on record.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges leveled against the Noticee in the SCN and the documents available on record. In the instant case, the following issues arise for consideration and determination :-
 - a. **Whether the Noticee has violated the provisions of Regulation 30(1) & 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 and Regulation 13(4), 13(4A) read with Regulation 13(5) and Regulation 12(1) (Schedule I, Part A, para 4.2) of the PIT Regulations, 1992 for the relevant period.**
 - b. **Whether the Noticee is liable for monetary penalty prescribed under Section 15A(b) and 15HB of the SEBI Act, 1992 for the aforesaid violations.**

c. If so, what should be the quantum of monetary penalty for such violations that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act,1992?

8. Before proceeding further, it is pertinent to refer to the relevant provisions of the Takeover Regulations, 2011, PIT Regulations,1992 which read as under :-

Takeovers Regulations, 2011 :

Disclosure of encumbered shares.

"31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

31(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

31(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

(a) every stock exchange where the shares of the target company are listed; and,

(b) the target company at its registered office.

PIT Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial & Continual Disclosure.

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.

13(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."

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."

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

4.0 Other restrictions

4.1

" **4.2** All directors / officers / designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction, i.e., sell or buy any number of shares during the next six months following the prior transaction....."

Findings:

9. It was alleged in the SCN that the Noticee was under an obligation to disclose the change in aggregate shareholding to the stock exchanges i.e. BSE and NSE and to the Company for the aforesaid period under the relevant Regulations.
10. I find that out of noticee's total 3110000 pledged shares, 2109900 shares were invoked and sold by the lenders during three quarters viz. March, 2012, June, 2012 and September, 2012. In view of the invocation of pledged shares, the shareholding of the noticee had been reduced from 24.63% during the quarter -

ended June 30,2012 to 17.72% during the quarter ended September 30, 2012 causing a decrease of 6.91%.

11. The consolidated summary of statement of shares pledged, released and invoked by the noticee during the aforesaid period is given as below :-

Client Name	Period	Release of Pledge	Creation of Pledge	Invoke of pledge
Sagar Pravin Shah	Jan-12	40000	920000	Nil
	Feb-12	Nil	Nil	Nil
	Mar-12	400000	425000	158200
	Apr-12	165000	737000	120000
	May-12	354500	769000	Nil
	Jun-12	43000	188000	Nil
	Jul-12	16000	23000	702700
	Aug-12	Nil	48000	304000
	Sep-12	Nil	Nil	825000
	Total	1018500	3110000	2109900

12. I find that the BSE's and NSE's records indicate that the noticee has not filed disclosures with the company and the stock exchanges. As regards the allegation of violation of Clause 4.2 of the Model Code of Conduct prescribed by Regulation 12(1) (Schedule I, Part A, para 4.2) of PIT Regulations,1992, it is observed that the noticee bought 75000 shares on July 13,2012 and sold 123110 shares on August 07,2012 - August 24,2012. Since the noticee sold the aforesaid shares within six months of following the prior transaction by entering into opposite transaction, the noticee has violated Clause 4.2 of the said Code of Conduct prescribed under Regulation 12(1) of the PIT Regulations,1992. As per the stock exchange's records, the noticee failed to file the disclosures with the exchanges and the company and violated the provisions of Clause 4.2 of the said Code of Conduct prescribed under Regulation 12(1) read with Regulation 13(4) and 13(4A) read with Regulation 13(5) of the PIT Regulations, 1992.

13. I find that, from the material available on record, the allegations mentioned in SCN stand established and hold that the Noticee is liable for penalty under Section 15A(b) of the SEBI Act, 1992 for violation of Regulation 31(1), 31(2) read with Regulation 31(3) of the Takeover Regulations, 2011 and Regulation 13(4), 13(4A) read with Regulation 13(5) of the PIT Regulations, 1992 and under Section 15HB of the SEBI Act, 1992 for violation of Clause 4.2 of Model Code of Conduct prescribed under Regulation 12(1), (Schedule I, Part A, para 4.2) of the PIT Regulations, 1992 which reads as under :-

Section 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)

(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 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;

Section 15-HB : Penalty for contravention where no separate penalty has been provided. -

" whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."

15. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, wherein, the court, *inter alia*, held that: *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

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."*

16. While imposing monetary penalty, it is important to consider the factors stipulated in Section 15J of SEBI Act, 1992 which reads 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."*

17. I observe from the material available on record that any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is observed that the violation is repetitive in nature. However, the disclosures that are required to be made by the

Noticee under the Takeover Regulations, 2011 and PIT Regulations, 1992 are made public only through Stock Exchange. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of vital information.

ORDER

18. 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(2) of the SEBI Act, 1992 read with Rule 4(7) and 5 of the said Rules, I hereby impose a penalty of ₹20,00,000/- (Rupees twenty lakh only) under Section 15A(b) of the SEBI Act, 1992 and a penalty of Rs.15,00,000/- (Rupees fifteen lakh only) under Section 15HB of the SEBI Act, 1992 on the Noticee viz. "Mr. Sagar Pravin Shah". Accordingly, a total penalty of ₹ 35,00,000/- (Rupees thirty five lakh) has been imposed on the noticee. In my view, the penalty is commensurate with the defaults committed by the Noticee.
19. The penalty amount shall be paid by the Noticee by way of a Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai within 45 (forty five) days of receipt of this order. The said Demand Draft shall be forwarded to the Division Chief, Shri K. Saravanan, Integrated Surveillance Department (ISD), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051.
20. In terms of Rule 6 of the said Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: December 10, 2014
Place : MUMBAI

D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER