

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/DPS/ 6 /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 –

- 1) **Abhishek K Mehta** (PAN No. AGCPM6239M) having address at – C 901/ 904, Panchsheel Heights, Mahavir Nagar, Kandivali (W), Mumbai- 400 067.

In the matter of *Acclaim Industries Ltd.*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) had conducted examination in the scrip of Acclaim Industries Ltd. (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period July 01, 2013 to March 31, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed that Abhishek K Mehta, promoter - director of the company (herein after referred to as the “**Noticee**”), was in violation of Regulation 13(4), 13(4A) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”).

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 January 25, 2017 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 and SAST Regulations. Subsequent to superannuation of Mr. Suresh Gupta, the undersigned was appointed as the Adjudicating Officer on May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/SG/DP/4511/2018 dated February 9, 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 aforesaid alleged violations of PIT Regulations and SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
 - a) Noticee is the promoter – director of the company which was confirmed by BSE vide email dated May 16, 2017.
 - b) Noticee had sold 157500 shares on 21.11.2013, 30275 shares on 26.11.2013 and 87000 shares on 17.12.2013 which triggered disclosure requirement under the provisions of Regulation 13(4), 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of SAST Regulations.
 - c) BSE vide letter dated December 31, 2013 and email dated May 16, 2017 confirmed that no disclosures were made by the Noticee under the PIT or SAST Regulations with respect to above mentioned transactions. The BSE letter, was provided to the Noticee as Annexure D of SCN.
 - d) During examination the Company was also asked vide email dated 21.05.2014, 23.05.2014, 03.06.2014, 21.07.2014 and 23.07.2014 to

confirm whether Noticee had made disclosures under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations for the said transactions. However, the company failed to reply.

5. In view of the aforesaid non-disclosure, it was alleged that the Noticee had violated the provisions of Regulation 13(4), 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of SAST Regulations. The texts of referred Regulations is reproduced hereunder:-

PIT Regulations

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.

SAST Regulations

Disclosure of acquisition and disposal.

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.

6. 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.
7. The aforesaid SCN was issued through Speed Post Acknowledgement Due (SPAD) to the Noticee on February 9, 2018 at the address, Abhishek K Mehta, C 901/ 904, Panchsheel Heights, Mahavir Nagar, Kandivali (W), Mumbai- 400 067 and the same was returned undelivered by the Postal Department with remark, “Left”. Therefore, SCN was affixed at the last known address of the Noticee i.e. Abhishek K Mehta, C 901/ 904, Panchsheel Heights, Mahavir Nagar, Kandivali (W), Mumbai- 400 067 on March 13, 2018. I note that at paragraph 7 of the SCN, the Noticee was advised “to furnish its reply, if any, towards the SCN within 15 days of its receipt, failing which, it shall be presumed that the Noticee has no reply to submit and the matter will be proceeded on the basis of the material available on record”. However, no reply had been received from the Noticee in respect of the SCN.
8. After considering the facts and circumstances of the case, on appointment of the undersigned as the Adjudicating Officer in the instant matter, an opportunity

of personal hearing was granted to the Noticee on June 28, 2018 vide Notice of Hearing (HN) dated June 13, 2018 by way of SPAD at the address, Abhishek K Mehta, C 901/ 904, Panchsheel Heights, Mahavir Nagar, Kandivali (W), Mumbai- 400 067 and the same was returned undelivered by the Postal Department with remark, "Left". Therefore hearing notice was affixed at the last known address of the Noticee i.e. Abhishek K Mehta, C 901/ 904, Panchsheel Heights, Mahavir Nagar, Kandivali (W), Mumbai- 400 067 on June 15, 2018. It is relevant to point out that as the Noticee has not submitted its reply towards the said SCN, in the said hearing notice issued on June 13, 2018, Noticee was asked to file its reply on or before June 22, 2018 and it was also communicated that if no appearance is made or no reply is furnished by the Noticee, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. However, no one appeared on behalf of the Noticee on the given date i.e. June 28, 2018.

9. I note that the SCN and the Notice of Inquiry has been duly served to the Noticee through affixture at the last known address. I am of the view that sufficient time has been provided to the Noticee to submit reply, which the Noticee had failed to make and also failed to appear for hearing. At this juncture, I find it relevant to refer to the observation of the Hon'ble SAT in the matter of **Dave Harihar Kiritbhai v. Securities and Exchange Board of India** (Appeal No. 181 of 2014 dated December 19, 2014), wherein, it observed, *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."*. Keeping the aforesaid in mind, the

adjudication proceedings against the Noticee are undertaken *ex-parte* on the basis of material available on record.

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 and SAST 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 and SAST 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 absence of any reply from the Noticee. The details of change in shareholding of the Noticee in the scrip of the Company, as provided to the Noticee by way of SCN, are as follows:

Date of Transaction	Purchase / Sale	Quantity Transacted	Closing Holding	Share Capital	% of Share Capital	Disclosure required under PIT	Disclosure required under SAST
30/08/2013	Holding before transaction (as on 30/08/2013)		512782	5000000	10.25	NA	NA
21/11/2013	Sale	157500	355282	5000000	7.11	13(4), 13(4A) r.w. 13(5)	29(2) r.w. 29(3)
22/11/2013	Sale	5	355277	5000000	7.11	NA	NA
26/11/2013	Sale	30275	325002	5000000	6.50	13(4), 13(4A) r.w. 13(5)	NA
17/12/2013	Sale	87000	238002	5000000	4.76	13(4), 13(4A) r.w. 13(5)	29(2) r.w. 29(3)

r.w. – read with; NA – not applicable

12. I note that Noticee, who was promoter director of the company, had made sale transaction on November 21, 26, 2013 and December 17, 2013, which had resulted in change in shareholding and Noticee had not disclosed the change in shareholding to BSE as well as to the company. Further BSE vide its e-mail dated May 16, 2017 and its letter dated December 31, 2013 confirmed that no disclosures have been received under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations for the said transactions.
13. The Noticee held more than 5% shares on November 21, 2013, and its shareholding change exceeded 25,000 shares on November 21, 26, 2013 and December 17, 2013 and further its shareholding change also exceeded 2% of total shareholding or voting rights on November 21, 2013 and December 17, 2013, which triggered disclosure requirement under regulation 13(4), 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations.
14. In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under 13(4), 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations to company as well as to BSE.

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?

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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?

15. Since failure of the Noticee in making disclosures to the Company as well as to BSE under Regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations and

under Regulation 29(2) read with 29(3) of the SAST 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.”

16. 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.

17. I have perused the statement of shareholding pattern of the Company, available on the website of the BSE for the financial quarter ending December 2013 and have noted that the information regarding the Noticee shareholding was correctly reflected as 2,38,002 shares (4.76% of holding) as on quarter ending December 2013, which was in public domain by December 31, 2013.

18. While it is established that the Noticee did not make disclosure to Company as well as to BSE under Regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations and under Regulation 29(2) read with 29(3) of the SAST Regulations is established, I have taken note of the fact that relevant information was available in public domain by quarter end. 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.

19. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹3,00,000/- (Rupees Three Lakh only) will be commensurate with the violations committed.

ORDER

20. 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 ₹3,00,000/- (Rupees Three Lakh only) upon the Noticee, i.e. Abhishek K Mehta under Section 15A(b) of the SEBI Act for violation of Regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.

21. 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

22. 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 entity (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

23. 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 31, 2018
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER