

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/MC/CB/2019-20/4646]**

---

**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) RULES, 1995.**

In respect of –

**Aalok Deep Finance Pvt. Ltd. (PAN: AABCA2550R)** having address at – G-2/119A, Gulmohar Colony, Bhopal – 462 039 (Madhya Pradesh)

In the matter of *Som Distilleries and Breweries Limited*

---

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted investigation in the scrip of Som Distilleries and Breweries Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”). Investigation *prima facie* revealed violation of Regulations 13(2A) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) by M/s. Aalok Deep Finance Private Limited (hereinafter be referred to as, the “**Noticee**”) for not making relevant disclosures under PIT Regulations upon becoming a promoter of the Company.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed Ms. Rachna Anand, 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 July 13, 2017 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the aforesaid alleged violation. Subsequently, the undersigned was appointed as the Adjudicating Officer on May 10, 2018 which was communicated *vide* order dated May 23, 2018.

## SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAD5/MC/CB/18424/2018 dated June 26, 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 it under Section 15A(b) of the SEBI Act for alleged violations of Regulations 13(2A) of the PIT Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
  - a) Investigation revealed that the Noticee became a promoter of the Company on January 11, 2013.
  - b) Consequent to its appointment as promoter, the Noticee was required to submit a disclosure of its shareholding in the Company within 2 days of becoming a promoter, to the Company under Regulation 13(2A) of the PIT Regulations. However, the Noticee, allegedly, failed to make disclosure required under Regulation 13(2A) of the PIT Regulations.
  - c) The alleged non-compliance with disclosure requirements under PIT Regulations by the Noticee was confirmed by the Company *vide* e-mail dated March 19, 2015.
  - d) It was alleged that the non-disclosure under PIT Regulations by the Noticee was in violation of Regulation 13(2A) of the PIT Regulations read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015, text of which is mentioned as below:

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

*13. (2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.*

### ***SEBI (Prohibition of Insider Trading) Regulations, 2015***

*12. (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*

- e) The Noticee was also informed that the alleged violation, if established, would make it liable for imposition of monetary penalty under Section 15A(b) of the SEBI Act.

5. The SCN was served upon the Noticee by way of *Speed Post with Acknowledgment Due* at the address of the Noticee on July 19, 2018.
6. The Noticee submitted its reply towards the SCN *vide* letter dated August 18, 2018. Relevant submissions of the Noticee are summarized as under:
  - a. Mr. J. K. Arora, promoter of the Company acquired 81.46% of the total shareholding of the Noticee and consequent to this acquisition, the Noticee became a part of Promoter Group of the Company in terms of Regulation 2(zb)(iv) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
  - b. The Noticee was always a shareholder of the Company, holding 2% of the total share capital of the Company and therefore, the disclosure of its shareholding was already available in public domain under the shareholding pattern filed under Regulation 35 of the erstwhile Listing Agreement.
  - c. The Noticee became a part of the Promoter Group of the Company without any new acquisition or any other act of its own. Thus, the Noticee was merely re-classified as Promoter-Group on account of acquisition of its shareholding by Mr. J. K. Arora. Information relating to acquisition of shareholding of the Noticee was disclosed by Mr. J. K. Arora under Regulation 29(2) of the SEBI (Substantial

Acquisition of Shares and Takeover) Regulations, 2011. Thus, the information was available in public domain and there is no wilful suppression of information by the Noticee.

- d. SEBI has failed to demonstrate any loss caused to minority shareholders or impact on the market or public shareholders of the Company due to alleged non-filing of disclosure under Regulation 13(2A) of the PIT Regulations by the Noticee.
  - e. Noticee cited reference to the order of the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**SAT**") in the matter of **HB Stockholdings Limited** to submit that the SCN has been issued after lapse of almost 5 years, which had impaired its ability to defend itself and deprived it of its right to present a proper defence.
  - f. The Noticee, therefore, submitted that an opportunity of personal hearing be provided to it to explain the submissions in the instant case.
7. Thereafter, an opportunity of personal hearing was granted to the Noticee on August 27, 2018 *vide* Notice of Hearing dated August 07, 2018. The hearing scheduled on March 18, 2019 was later rescheduled to September 26, 2018 at the request of the Noticee.
8. The hearing scheduled on September 26, 2018 was attended by Ms. Purti Minawala and Mr. Kunal Mehta who were appointed as authorized representatives by the Noticee (hereinafter collectively be referred to as, the "**Authorized Representatives**"). During the hearing, the Authorized Representatives reiterated their submissions dated August 18, 2018 and submitted that the delay alleged in the SCN was not on account of any *mala fide* intention on the part of the Noticee.
9. The Authorised Representatives of the Noticee, *vide* e-mail dated October 09, 2018 intimated that the Noticee has filed application for Settlement in the instant adjudication proceedings and requested to keep the proceedings in abeyance till outcome of the Settlement Application. On June 28, 2019, it was informed by SEBI that the Noticee has withdrawn the settlement application filed in the instant matter.
10. A Notice of Hearing dated August 06, 2019 was, therefore, served upon the Noticee wherein, it was informed that an opportunity of hearing has been provided to it on August 19, 2019, which was rescheduled to August 22, 2019 at its request.

11. The hearing scheduled on August 22, 2019 was attended by Mr. Sanjay Asher and Mr. Nakul Sethi, who were appointed as authorized representatives by the Noticee. During the hearing, Mr. Sanjay Asher and Mr. Nakul Sethi reiterated the written submissions dated August 18, 2018 of the Noticee and sought time until August 26, 2019 to file additional submissions. The request of the Noticee seeking time to file additional submissions was acceded to by the undersigned.

12. The Noticee, *vide* letter dated August 27, 2019 filed additional submissions in the instant matter, which are summarized as under:

- a) There is a delay of five years in initiation of proceedings against the Company from the purported acquisitions when the mode of sending the disclosure to stock exchanges was hard copies through registered posts.
- b) Promoters of the company should not be held liable for a lacuna in the abilities of the human resources employed by them or lack of due care exercised in fulfilling his duties with respect to filing of applicable forms within prescribed timelines.
- c) Promoter and Promoter Group along with Persons acting in concert, in this case, had disclosed the “*promoters along with persons acting in concert are in the process of increasing their shareholding while keeping it to less than 25% of the equity capital*” *vide* letter dated November 24, 2011. Thus, it was never the intention of the Promoter, Promoter Group and Persons-acting in concert to suppress any information from the purported acquisition. Thus, the actions of the Noticee were not mala-fide.
- d) The SCN has failed to lay down the impact or grave harm or disadvantage, if any, that the alleged non-compliance has had on the market or the public shareholders of the Company or any undue profit or gains which have been derived by the Company.
- e) All the requisite disclosures except for the disclosures under PIT Regulations had been made and inability of the Noticee to make requisite disclosures within prescribed timeline cannot be regarded as a breach of substantive provisions of law.
- f) Noticee placed reliance on the observations of Hon’ble SAT in the matters of ***HB Stockholdings, P. G. Electroplast Limited, Piramal Enterprises***

**Limited, Yogi Sungwon (India) Limited** and of the Hon'ble Supreme Court of India in the matter of **Hindustan Steel v. State of Orissa**.

13. Before considering the issues to be examined in this matter, I find it relevant to examine whether the Noticee's ability to defend itself and its right to present a proper defence were impaired because of delay in initiation of adjudication proceedings. I note that the SCN alleged that the Noticee had failed to make disclosure required under Regulation 13(2A) of the PIT Regulations on becoming a promoter of the Company. The facts relating to the allegation are clear and the passage of time has no bearing on the ability to present the correct picture as to whether the Noticee became part of the promoter group, and whether it disclosed the same as required under the said Regulations. In this regard, it is relevant to refer to the observation of the Hon'ble SAT in the matter of **Vaman Madhav Apte v. SEBI** (Appeal No. 449 of 2014 dated March 04, 2016) where it held, "*Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because, firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws*".

14. Since inquiry in the instant matter is concluded, I proceed to decide the case on merit, taking into account the allegations levelled against the Noticee in the SCN, submissions of the Noticee towards the SCN and material available on record.

### **CONSIDERATION OF ISSUES AND FINDINGS**

15. The issues that arise for consideration in the instant matter are:

**Issue No. I** Whether the Noticee failed to make disclosures required under Regulations 13(2A) of 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 failed to make disclosures required under Regulation 13(2A) of the PIT Regulations as alleged in the SCN?**

- 16.** The Noticee, in its reply, has not disputed the fact of it becoming a part of promoter group of the Company in January 2013. It is also a matter of record that the necessary disclosure under Regulation 13(2A) of the PIT Regulations was filed on February 18, 2019. Noticee submitted that it was always a shareholder of the Company, holding 2% of its total share capital and therefore, the disclosure of its shareholding in the Company was already available in the public domain under the shareholding pattern filed by Company under Clause 35 of the erstwhile Listing Agreement. It also submitted that it became a part of Promoter Group of the Company only on account of acquisition of 81.46% of Noticee's shareholding by Mr. J. K. Arora who is a promoter of the Company.
- 17.** The aforesaid submission of the Noticee is a matter of fact and is therefore, accepted. However, I am of the view that Regulation 13(2A) of the PIT Regulations requires a disclosure to be made to the Company on becoming a part of its promoter or promoter group and it does not pertain to acquisition of shareholding in the Company. Since Regulation 13(2A) of the PIT Regulations requires disclosure of classification of a shareholder as promoter / promoter group of a company, the submission of the Noticee that this classification of Noticee from shareholder to a member of promoter group did not require any disclosure cannot be accepted.
- 18.** I also note that the Noticee has submitted that its promoters should not be held liable for a lacuna in the abilities of the human resources employed by them or lack of due care exercised in fulfilling his duties with respect to filing of applicable forms within respective timelines. However, this submission of the Noticee cannot be accepted on account of Noticee's vicarious liability for the actions of its staff.
- 19.** I also note that the Noticee has submitted that a disclosure of acquisition of 81.46% of Noticee's shareholding by Mr. J. K. Arora was made by Mr. J. K. Arora under Regulation 29(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and therefore, information was available in public domain. It has

also submitted that the information of Noticee's shareholding was in public domain and therefore, there is no wilful suppression of information by the Noticee and it never intended to suppress any information from purported acquisition. It also submitted that the inability of the Noticee to make requisite disclosures within prescribed timeline cannot be regarded as a breach of substantive provisions of law and is a technical breach.

20. From a perusal of shareholding pattern information on BSE website filed under Listing Agreement, I note that while the Noticee appears as a public shareholder holding 2% shares in the financial quarter ending in December 2012, he is shown as part of promoter and promoter group in the financial quarter ending in March 2013. Thus, I note that while the Noticee failed to make the necessary disclosure as required under Regulation 13(2A) of the PIT Regulations within 2 working days from January 11, 2013, the information was made available in the public domain through the shareholding pattern of the Company for the financial quarter ending in March 2013 which was filed under the Listing Agreement.
21. However, I find it relevant to refer to the order of the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of **Premchand Shah & ors. v. SEBI** (Appeal No. 108 of 2010 dated February 21, 2011) wherein, it held, "*...when law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case. .... Non-disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making the investments.*"
22. I also take note of the order of the Hon'ble SAT in the matter of **Ambaji Papers Pvt. Ltd. v. The Adjudicating Officer, Securities and Exchange Board of India** (Appeal No. 201 of 2013 dated January 15, 2014), wherein the Tribunal observed, "*...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.*"



23. Hence, I note that while information regarding change in the status of Noticee to promoter was in the public domain through two different disclosures, non-reporting of disclosure in the manner and within the time prescribed under Regulation 13(2A) of PIT Regulations, although venial in nature, is a non-compliance of statutory obligation by the Noticee, and hence violation of Regulations 13(2A) of the PIT Regulations stands established against the Noticee.

**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?**

24. Since failure of Noticee in compliance with Regulations 13(2A) 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, 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.”*

25. 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) amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b) amount of loss caused to an investor or group of investors as a result of the default;
- c) repetitive nature of the default.

26. The Noticee has submitted that SEBI has failed to demonstrate any loss caused to minority shareholders, or impact on market or public shareholders of the Company. It also submitted that the SCN has failed to lay down any undue profit or gains which have been derived by the Noticee. I also note from the material available on record that no amount of disproportionate gain or unfair advantage or amount of loss caused to investor or investor groups can be ascertained. Repetitive nature of default can also not be ascertained from the material available on record.
27. The Noticee has placed reliance upon various judgments / orders of the Hon'ble Supreme Court and SAT with respect to imposition of penalty, which are taken on record.
28. I also note that the necessary information relating to Noticee's classification as a part of promoter group of the Company was available in public domain by way of shareholding pattern (of financial quarter ending in March 2013) of the Company filed with stock exchanges.
29. Therefore, taking into accounts the facts and circumstances of the instant matter and presence of mitigating factors as discussed above, I am of the view that a penalty of ₹2,00,000/- will be commensurate with the violation of provisions of PIT Regulations by the Noticee.

## **ORDER**

30. Accordingly, taking into account 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 impose a penalty of ₹2,00,000/- (Rupees Two Lakh only) upon the Noticee, i.e. Aalok Deep Finance Private Limited under Section 15A(b) of the SEBI Act for violation of Regulation 13(2A) of the PIT Regulations.
31. 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 online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link:

**ENFORCEMENT → Orders → Orders of AO → PAY NOW.**

**32.** The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II 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

**33.** 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 : September 27, 2019**

**Place : Mumbai**

**(Maninder Cheema)**

**Adjudicating Officer**