

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/CB/262/2017]

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. M/s Skanda Aerospace Pvt. Ltd. (PAN – AAOC8278B)** having address at 18, iLabs Centre, Building 3, Software Units Layout, Madhapur, Hyderabad – 500 081
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BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as the “**SEBI**”) upon suspicion of violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as the “**SAST Regulations**”) had conducted investigation in the shares of M/s Astra Microwaves Products Ltd. (hereinafter be referred to as the “**Company**”) during the period May 02, 2014 – September 30, 2014. Investigation *prima facie* revealed commission of violation of Regulation 29(2) read with 29(3) of the SAST Regulations by M/s Skanda Aerospace Pvt. Ltd. (hereinafter be referred to as the “**Noticee**”) for not making disclosures upon change of its shareholding in the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Ms. Anita Kenkare 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 March 01, 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 SAST Regulations. Subsequent to the transfer of Ms. Anita Kenkare, the undersigned was appointed as the Adjudicating Officer on October 04, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAD6/OW/P/2017/14080/1 dated June 16, 2017 (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 the alleged violations of Regulation 29(2) read with 29(3) of the SAST Regulations.
4. The core allegations levelled against the Noticee in the SCN are summarized as below:
 - a. During the quarter that ended in December 2013, the Noticee held 77,91,421 shares of the Company which were 9.52% of the total share capital of the Company. Thereafter, the Noticee sold 17,10,524 shares, i.e. 2.09% of share capital of the Company from January 02, 2014 to May 06, 2014. Thereafter, on May 06, 2014 the shareholding of the Noticee decreased to 60,80,897 shares, i.e. 7.43% of the share capital of the Company. It was alleged that the change in holding of the Noticee was more than 2%, disclosures were required to be made by the Noticee to the Stock Exchange(s) where the Company was listed and to the Company under Regulation 29(2) read with 29(3) of the SAST Regulations.
 - b. The Noticee further sold 27,17,602 shares of the Company on May 13, 2014 and May 14, 2014, as a result of which, the shareholding of the Noticee was reduced to 33,63,295 shares, i.e. 4.11% of the share capital of the Company. It was alleged that the change in the shareholding of the Noticee was more than 2%, therefore, disclosures were needed to be made by the Noticee in terms of Regulation 29(2) and 29(3) of the SAST Regulations.
 - c. The Company, *vide* e-mail dated March 19, 2015 confirmed that although it received disclosures under PIT Regulations but no disclosures under SAST Regulations were made to it by the Noticee in relation to reduction of its shareholding in the Company. Similarly, BSE Ltd. (hereinafter, the “**BSE**”) *vide* e-mail dated March 20, 2015 confirmed that no disclosures were made by the Noticee under SAST Regulations for reduction of its shareholding in the Company. Similarly, National Stock Exchange of India Limited (hereinafter, the “**NSE**”) confirmed *vide* e-mail dated March 26, 2015 that no disclosures were received under SAST Regulations from the Noticee for reduction in its shareholding.

- d. It was alleged that the aforesaid non-disclosure of reduction in its shareholding by the Noticee was in violation of Regulation 29(2) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

SAST Regulations:

29. Disclosure of acquisition and disposal

- (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 subregulation; and such change exceeds two per cent of total shareholding or voting rights in the 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.

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, which reads as under:

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,-

(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.”

6. In response to the SCN, the Noticee filed its submissions / reply dated July 06, 2017.

The core submissions of the Noticee are summarized as below:

- i. The Compliance Officer of the Noticee made disclosures in relation to change in shareholding of the Noticee under Regulation 13 of the PIT Regulations. However, an oversight was made in the matter of disclosures under Regulation 29(2) read with 29(3) of the SAST Regulations and the same was caused by a genuine confusion in the manner of disclosure obligations and not with any intent to conceal any information.
- ii. The Compliance Officer of the Noticee, under confusion, made disclosure to the target company and the stock exchanges in terms of PIT Regulations. It was only on the receipt of the SCN that the Noticee carried out examination of filings made during the examination period.
- iii. The Noticee's actions were not deliberate, wanton or carried out with the intention to suppress any information. The disclosure violations have not caused any loss to any investor and have not adversely affected the shareholders of the target company in any manner. The Noticee has not made any economic gain or gained any unfair advantage as a result of the said transactions.
- iv. Regulation 29(2) of the SAST Regulations and Regulation 13 of the PIT Regulations are not stand-alone regulations and are corollary to one another as they are both substantially the same. While this does not negate the fact that the Noticee has failed to make the required disclosures under Regulation 29(2) and 29(3) of the SAST Regulations, it adds credence to the genuine and bonafide intention of the Noticee and further achieves the required intention of the SAST Regulations, which was to keep the Company and the stock exchanges duly informed of all transactions that result in a change of 2% of the total shareholding in the target company.
- v. Once the default came to the Noticee's knowledge, it had immediately taken the necessary steps and filed the relevant disclosures in the prescribed format under Regulation 29(2) read with 29(3) of the SAST Regulations.

7. For the purpose of inquiry and as requested by the Noticee, an opportunity of personal hearing was provided to the Noticee on September 06, 2017 vide hearing notice dated August 07, 2017. However, the hearing scheduled on September 06, 2017 was

cancelled due to administrative exigencies and the same was notified to the Noticee vide e-mail dated September 04, 2017. After appointment of the undersigned as the Adjudicating Officer in the instant adjudication proceedings, an opportunity of hearing was provided to the Noticee on December 04, 2017 vide hearing notice dated November 16, 2017.

8. The hearing on December 04, 2017 was attended by the authorized representatives of the Noticee. During the course of hearing, the authorized representatives of the Noticee reiterated its submissions stated in its reply dated July 06, 2017 and sought extension till December 14, 2017 to submit additional submissions.
9. Thereafter, the Noticee submitted additional submissions dated December 08, 2017 and the core additional submissions made by the Noticee are as follows:
 - a. The Noticee filed disclosures under Regulation 29(2) read with 29(3) of the SAST Regulations on July 06, 2017, immediately on knowledge of default.
 - b. There was no mala fide intention to mislead or deceive the public or the authorities or suppress any information regarding the transactions. The Adjudicating Officer may be pleased to take a lenient view and condone the inadvertent lapse, by imposing no penalty or least penalty.
 - c. The Noticee had also relied upon the following orders passed by the Adjudicating Officers of SEBI and judgments of the Hon'ble Securities Appellate Tribunal :
 - i. In re: Empee Holding Ltd. & Ors.
 - ii. In re: M. V. Ramana Rao
 - iii. Mega Resources Ltd. & Ors. V. Securities and Exchange Board of India [2006]66SCL270(SAT)
 - iv. TVC Shares Stock and Investment Pvt Ltd. and Daffodils Capital Services Pvt. Ltd. v. Securities and Exchange Board of India [2006]70SCL43(SAT)
 - v. Unijules Life Sciences Ltd. v. Securities and Exchange Board of India
 - vi. Wall Street Securities and Investments Ltd. and Alliance Victory International Limited v. Securities and Exchange Board of India [2005]59SCN378(SAT)

10. Since hearing / inquiry in this matter is concluded, therefore, after taking into account the allegations, submissions of the Noticee and evidences / material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

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

- 11.1 Whether the Noticee had failed to make mandated disclosures under the SAST Regulations as alleged in the SCN?
- 11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?
- 11.3 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 11.1 Whether the Noticee had failed to make mandated disclosures under the SAST Regulations as alleged in the SCN?

12. The details of allegations levelled against the Noticee and the submissions of the Noticee have already been produced in the pre-paragraphs and the same are not reproduced for the sake of brevity.

13. Regulation 29(2) of the SAST Regulations requires any person who holds shares or voting rights entitling him to five per cent or more of the shares or voting rights in a target company to 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 and such change exceeds two per cent of total shareholding or voting rights in the target company.

14. On perusal of the reply of the Noticee, I note that the fact of disposal of 17,10,524 shares, i.e. 2.09% of the share capital of the Company between January 02, 2014 and May 06, 2014 as well as of 27,17,609 shares, i.e. 2% of the share capital of the Company on May 13-14, 2014 is not in dispute by the Noticee. It is also an admitted fact that the Noticee did not make any disclosure under the provisions of the SAST Regulations for the aforesaid transactions. Thus, for the aforesaid change of more than

2% in its shareholding, the Noticee ought to have made disclosure in terms of Regulation 29(2) read with 29(3) of the SAST Regulations.

15. In its reply, the Noticee had submitted that disclosure under Regulation 13(3) of the PIT Regulations were made during the stipulated time itself. The Noticee also submitted that the instance of non-disclosure under SAST Regulations was an inadvertent mistake and was not made with any *mala fide* intention to mislead, suppress any information or deceive the public or the authorities.
16. The aforesaid plea of the Noticee cannot be accepted as the requirement of making disclosures under Regulation 29 (2) of the SAST Regulations is broader / having more importance as compared to Regulation 13 (3) of the PIT Regulations because the disclosures under Regulation 29 (2) of SAST Regulations are required to be made to Company as well as to Stock Exchange(s) where the shares of the Company are listed. Whereas as per Regulation 13 (3) of PIT Regulations, the disclosures are to be made to Company only. Therefore, in true spirit, market/investors can be informed only when the disclosures are made to Stock Exchanges(s) within stipulated time of two working days. However, admittedly, no such disclosure were made under Regulation 29 (2) of SAST Regulations by the Noticee and therefore, investors/market were not informed about the change in shareholding of the Noticee within stipulated time. Though, such disclosures under Regulation 29 (2) of SAST Regulations under were later made by the Noticee belatedly with a delay of three years. In view of the above, the Noticee cannot be absolved from making disclosures under aforesaid SAST Regulations.
17. With respect to the submission of the Noticee, I note that the disclosure requirements under PIT Regulations and SAST Regulations are independent of each other and the disclosure made under PIT Regulations does not absolve the Noticee from making disclosure required under the SAST Regulations. In this context, I find it pertinent to refer to the order dated June 09, 2014 of Hon'ble Securities Appellate Tribunal passed in the matter of **Bindal Synthetics (P.) Ltd. v. Securities and Exchange Board of India** (Appeal Nos. 75 & 76 of 2014), wherein similar contention of a disclosure having been made under PIT Regulations was made by the appellant. The hon'ble Tribunal observed, "*.. fact that the appellant had made disclosures under PIT Regulations, 1992 does not absolve appellant's obligation to make disclosure under regulation 7(1A) of SAST Regulations, 1997*".

From the *ratio* of the Hon'ble Securities Appellate Tribunal in the aforesaid case, it is noted that there is an independent and individual statutory obligation to make disclosure under Regulation 29(2) of the SAST Regulations. Therefore, the submission of the Noticee that disclosure under PIT Regulations with respect to the same transaction were made, cannot be accepted.

18. In view of the aforesaid, it is established that the Noticee had failed to make disclosures within the stipulated time under Regulation 29(2) read with 29(3) of the SAST Regulations to the Company, BSE and the NSE in respect of change of more than 2% in its shareholding in the Company during the period January – May 2014.

Issue 11.2 If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

19. I have taken into account the well-known judgment of the Hon'ble Supreme Court in the matter of ***The Chairman, SEBI v. Shri Ram Mutual Fund*** [2006] 68 SCL 216, wherein it was held that, *"In our considered opinion, penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of parties committing such violations becomes wholly irrelevant"*.
20. I also take note of the judgment dated January 15, 2014 of Hon'ble Securities Appellate Tribunal in the matter of ***Ambaji Papers Pvt. Ltd. v. The Adjudicating Officer, Securities and Exchange Board of India*** (Appeal No. 201 of 2013), 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."*
21. In view of the aforesaid, I am convinced that the failure of Noticee in making disclosures to the target company and exchanges under Regulation 29(2) read with 29(3) of the SAST Regulations is a fit case for imposition of monetary penalty on the Noticee, i.e. M/s Skanda Aerospace Pvt. Ltd. under Section 15A (b) of the SEBI Act, text of which is reproduced as under:

“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.”

Issue 11.3 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?

22. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, I have considered the factors stipulated in Section 15J of the SEBI Act, 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.

Explanation.--For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

23. Investigation did not reveal any specific disproportionate gains or unfair advantage made by the Noticee or specific loss suffered by the investors. No past default against the Noticee has also been revealed in the investigation either. However, I note that the prime objective of the SAST Regulations is to afford fair treatment to shareholders who are affected by the change in control. The SAST Regulations seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair

and informed market in the shares of companies affected by such change in control. Correct and timely disclosures, *therefore*, are an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision.

24. I find it relevant to refer to the judgment dated September 30, 2014 of the Hon'ble Securities Appellate Tribunal in the matter of **Akriti Global Traders Ltd. v. Securities and Exchange Board of India** (Appeal No. 78 of 2014) wherein it held, "*Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay*"

In view of the same, the submission of the Noticee that it has not made any economic gain or gained any unfair advantage as a result of the said transactions cannot be accepted.

25. Similarly, I note that the Securities Appellate Tribunal in its judgment dated January 27, 2014 in the matter of **Komal Nahata v. Securities and Exchange Board of India** (Appeal No. 5 of 2014) has held, "*Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.*"

In view of the same, the submissions of the Noticee that disclosure violations have not caused any loss to any investor and have not affected the shareholders of the Company in any manner cannot be accepted.

26. In light of the aforesaid analysis and several judgments of Hon'ble Securities Appellate Tribunal / Hon'ble Supreme Court, the case laws relied upon by the Noticee (as mentioned at pre para 9), are not helpful to it in the given fact and circumstance of the case.

27. However, I also take note of the fact that disclosures under Regulation 13(3) of the PIT Regulations were made by the Noticee for its transactions during January – May 2014

within their stipulated time. I have also perused various case laws submitted by the Noticee as a part of the reply seeking a lenient view on the aforesaid default of the Noticee. I also take note that after the issuance of the SCN, the Noticee, on coming to know of its default, has made disclosures under SAST Regulations on July 06, 2017 to the Company as well as stock exchanges.

28. Taking into account aforesaid mitigating factors, considering the facts and circumstances of the case, judicial precedents relied on and the purpose of the SAST Regulations, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

29. 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 the following penalty of ₹ 6,80,000/- (Rupees Six Lakh Eighty Thousand only) under Section 15A(b) of the SEBI Act upon the Noticee, viz. M/s Skanda Aerospace Private Limited. I am of the view that the said penalty would commensurate with the violations committed by the Noticee.
30. 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

31. 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 the SEBI. The format for forwarding details of e-payments shall be made in the following tabulated form as provided in the SEBI Circular No.

SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID – tad@sebi.gov.in.

Date	Department of SEBI	Name of Intermediary / Other entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount in Rs.	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually etc.)	Bank name and Account number from which payment is remitted	UTR No.

32. Copies of this Adjudication Order are being sent to the Noticee and also to the SEBI in terms of Rule 6 of the Adjudication Rules.

Date : December 26, 2017

Place : Mumbai

(Rachna Anand)

Adjudicating Officer