

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/SG-VS/EAD/ 58 /2017]

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
M/s Nirvani Trust
(PAN No- AABTN4587A)
603, Minal Complex,
Off Saki Vihar Road
Andheri (East),
Mumbai – 400072**

In the matter of M/s Minal Industries Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination relating to buying, selling and dealing in the shares of M/s Minal Industries Limited (hereinafter referred to as 'MIL'/'Company') which is listed on BSE Limited (hereinafter referred to as 'BSE').
2. It was observed by a department of SEBI (hereinafter referred as 'ISD') that the shareholding of Nirvani Trust (hereinafter referred to as 'Noticee') in MIL for the quarter ending on March 31, 2012 was 3,01,26,055 shares (i.e. 15.70% of total shareholding of MIL). Upon acquisition of 3,90,00,000 shares i.e. 20.32% of total shareholding of MIL in June 2012 quarter, the shareholding of the Noticee had increased to 6,91,26,055 shares (i.e. 36.02% of total shareholding of MIL).
3. It was alleged that the shareholding of the Noticee in MIL was more than 5% and due to acquisition 3,90,00,000 shares (20.32%) of MIL, there was a change of

more than 2% of shareholding of the Noticee in MIL. Therefore, it was alleged that the Noticee was required to make the disclosures to MIL and to the stock exchange i.e. BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred as 'SAST Regulations, 2011') i.e. within two working days from the date of acquisition, which Noticee had failed to do. BSE vide email dated May 07, 2014 had informed ISD that it had not received the disclosures under regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 from the Noticee. Thus, it was alleged that Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011.

4. It was alleged that the shareholding of the Noticee in MIL was more than 5% and due to acquisition 3,90,00,000 shares (20.32%) of MIL, there was a change of more than 2% of shareholding of the Noticee in MIL. The Noticee was required to make the disclosures to MIL in accordance with the provisions of regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') i.e. within two working days from the date of acquisition which the Noticee had failed to do. MIL vide letter dated nil received on May 08, 2014 informed that it had not received the disclosures under regulation 13(3) read with regulation 13(5) of PIT Regulations from the Noticee. Thus, it was alleged that Noticee had violated the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations.
5. It was alleged that the Noticee being the Promoter of MIL and due to acquisition of 3,90,00,000 shares (20.32%) of MIL, there was a change of more than 25,000 shares and also by more than 1%, in the shareholding of the Noticee in MIL. The Noticee was required to make the disclosures to MIL and to the stock exchange i.e. BSE, in accordance with the provisions of regulation 13(4A) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of acquisition, which it was alleged that the Noticee had failed to do. It was

observed that MIL vide letter dated nil received on May 08, 2014 informed that it had not received the disclosures under regulation 13(4A) read with regulation 13(5) of PIT Regulations from the Noticee. Thus, it was alleged that Noticee had violated the provisions of regulation 13(4A) read with regulation 13(5) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

6. Shri Jayanta Jash was appointed as Adjudicating Officer vide order dated July 30, 2014 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO Rules') to inquire into and adjudge the alleged violations under the provisions of section 15A(b) of SEBI Act. Pursuant to the transfer of Shri Jayanta Jash, the undersigned has been appointed as Adjudicating Officer vide order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A Show Cause Notice with reference number EAD-5/JJ/AK/4030/2015 dated February 05, 2015 (hereinafter referred to as 'SCN') was issued to the Noticee, under rule 4 of the AO Rules calling upon it to show cause as to why an inquiry should not be held and penalty be not imposed on it under section 15A (b) of SEBI Act for the alleged violations of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulations 13(3) & 13(4A) read with regulation 13(5) of PIT Regulations as specified in the said SCN.
8. The Noticee vide its letter dated February 26, 2015 requested for additional 15 days time for submission of reply. Subsequently, Noticee vide its letter dated March 07, 2015 submitted its reply as under:

"

1. *Vide para 4 of the Notice you have alleged that the Noticee who was holding 3,01,26,055 shares for the quarter ending March 31, 2012, upon acquisition of 3,90,00,000 shares (i.e. 20.32% of total shareholding of Minal) had failed to made disclosure under regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 to the stock exchange.*

As per regulation 29(2) any acquirer, who together with person acting in concert with him entitling them to five percent or more of the shares or voting rights in target company shall disclose every acquisition or disposal of shares of such target company representing two percent or more.....

The person has to acquire the shares in order to apply the regulation 29(2). The word Acquire has not been defined in the SAST Regulation, 2011 and as per the Dictionary meaning to buy or to purchase. M/s C Mahendra Jewels Private limited in which trust is the shareholder was merged with Minal Industries Limited and on account of that shares have been allotted to trust as per the Exchange ratio. The trust have not acquired the shares of the Company and when the trust have not done anything from its side to purchase the shares, the Regulations 29(2) of the SAST Regulation, 2011 should not be applicable.

Apart from that I Jesingbhai B parikh is the Trustee of the trust and I am 84 years old and suffering from ill health. I am not day to day monitoring shareholding of trust. The trust had never purchased or sold any shares in the Company.

The Company must have submitted the details for amalgamation to the stock exchange on which the shares of the Company are listed. The company has submitted to the stock exchange the details of the allottee to whom shares are allotted at the time of application for listing of shares. Overall the Submission of the details under Regulation 29(1) of the SAST Regulation, 2011 is to inform the stock exchange regarding increase in shareholding. At the time of submitting the application for listing of shares the pre and post shareholding in clause 35 of Listing Agreement was submitted to the Stock Exchange, which shows the change in shareholding of mine.

I am of the view that when the trust have not acquired the shares, regulation 29(2) of SAST Regulation, 2011 should not be applicable.

2. *Vide Para 5 of the Notice you have alleged that the Noticee was holding more than 5% and due to acquisition 3,90,00,000 shares there was change of more than 2% of the shareholding of the Noticee in MIL and due to acquisition the noticee was required to make the disclosure in accordance with the provisions of regulation 13(3) read with Regulation 13(5) of PIT regulations. The noticee by not making the disclosure has violated the provisions of regulation 13(3) of PIT Regulations.*

As per Regulation 13(3) of PIT Regulations, the person who holds more than 5% shares is required to disclose to the company the change in shareholding resulting in to change exceeds 2% of total shareholding of the Company within two working days from the receipt of intimation of allotment

Or

the acquisition of shares or voting rights.

The Noticee is liable to disclose to the company on either receipt of intimation of allotment or acquisition of shares. In the case the trust have not received any intimation of allotment of shares or not the trust had acquired the shares. The shares have been allotted to trust on amalgamation of M/s C. Mahendra Jewels Private limited with Minal Industries Limited. The trust had not acquired the shares of the Company and when the trust had not done anything from its side to purchase the shares, the clause (b) of Regulation 13(5) of the PIT regulations is not applicable to trust and as far as Regulation 13(5) (a), Trust have not received any intimation for allotment of shares, the clause is not applicable.

3. *Vide para 6 of the Notice you have alleged that the Noticee had violated the provisions of regulation 13(4A) read with Regulation 13(5) of PIT regulations due to acquisition of 3,90,00,000 shares of Minal industries Limited which result into change of more than 25,000 shares and also by more than 1% in the shareholding. The Regulation 13(4A) is required to be read with regulation 13(5) of PIT regulations.*

AS per regulation 13(5) of PIT regulations, the Disclosure mentioned in Sub regulations 13(4A) shall be made within two working days

from the receipt of intimation of allotment

*or
the acquisition of shares or voting rights.*

The Noticee is liable to disclose to the company on either receipt of intimation of allotment or acquisition of shares. In the case the trust had not received any intimation of allotment of shares or not the trust had acquired the shares. The shares have been allotted to trust on amalgamation of M/s C. Mahendra Jewels Private Limited with Minal Industries Limited. The trust had not acquired the shares of the Company and when the trust had not done anything from its side to purchase the shares, the clause (b) of Regulation 13(5) of the PIT regulations is not applicable to trust and as far as Regulation 13(5) (a), Trust have not received any intimation for allotment of shares, the clause is not applicable.

- 4. The alleged violations are not committed by the trust and hence the question of inquiry in terms of Rule 4 of SEBI (procedure for Holding inquiry and imposing penalties by adjudicating officer) rules 1995 does not arise.
.....”*

9. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the AO Rules, the Noticee was granted an opportunity of hearing on October 28, 2015 vide notice dated September 22, 2015 at SEBI, Head Office, Mumbai. Mr. Mayur Parikh & Mr. Kamlesh Khandor, appeared as Authorized Representatives, (hereinafter referred to as 'ARs') on behalf of the Noticee. At the time of hearing, the Adjudicating Officer (AO) explained the purpose of the hearing and the charges/offence leveled against the Noticee. During the hearing, ARs reiterated the submissions made by the Noticee vide letter dated March 07, 2015.
10. Vide a letter dated May 26, 2017, the Noticee was informed about SCN dated February 05, 2015 issued to it and the personal hearing granted on October 28, 2015. The Noticee was also provided with an opportunity to make additional submissions, if any. The proof of delivery of the said letter obtained from India

Post website is on record. However, no reply is received from the Noticee till date.

CONSIDERATION OF ISSUES AND FINDINGS

11. After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. Whether the Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011?
- II. Whether the Noticee has violated the provisions of regulation 13(3) & regulation 13(4A) read with regulation 13(5) of PIT Regulations?
- III. Whether the Noticee is liable for monetary penalty under section 15A(b) of the SEBI Act ?
- IV. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

Issue I: Whether the Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011?

13. It was observed in the SCN that due to acquisition 3,90,00,000 shares (i.e. 20.32% of total shareholding of MIL) in June 2012 quarter, the shareholding of the Noticee had increased to 6,91,26,055 shares (i.e. 36.02% of total shareholding of MIL). I note from the quarterly shareholding pattern of MIL as available on BSE website for the quarters ending on March 2012 and June 2012, which is on record, that the Noticee's shareholding increased as above. Thus, there was a change of more than 2% of shareholding of the Noticee in MIL.

14. In this regard, I note the provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 which read as under:

Disclosure of acquisition and disposal

29. (1)...

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two percent or more of the shares or voting rights in such 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.

15. The submissions of the Noticee in this regard are duly noted. The Noticee has contended that it was a shareholder in M/s C. Mahendra Jewels Pvt. Limited which was merged with MIL and on account of that shares had been allotted to it as per the exchange ratio. The Noticee submitted that it had not done anything from its side to purchase the shares and that it had not acquired the shares and hence Regulation 29(2) of SAST Regulations, 2011 is not applicable to it.

16. Further, the Noticee has contended that “*..the word Acquire has not been defined in the SAST Regulations, 2011*”. In this regard, I note that Regulation 2(b) defines acquisition which reads as under:

“2(b) “acquisition” means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company;”

17. Further, in view of the aforesaid contentions raised by the Noticee, I note the following observations made by the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter Akriti Global Traders Limited. Vs SEBI (Appeal No. 784 of 2014 decided on September 30,2014):

"..Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.."

18. In view of the above, the Noticee has failed to make the disclosures to MIL and to the stock exchange i.e. BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations. Therefore, I conclude that the Noticee has violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011.

Issue II: Whether the Noticee has violated the provisions of regulation 13(3) & regulation 13(4A) read with regulation 13(5) of PIT Regulations?

19. I note from the quarterly shareholding pattern of MIL as available on BSE website for the quarters ending on March 2012 and June 2012 on record that the Noticee's shareholding was mentioned in the category of promoter and promoter group. Further, the change in shareholding of the Noticee has already been observed at para 13 above. Further, I note the provisions of regulation 13 of PIT Regulations which read as follows:

Initial Disclosure

(1) ...

(2)...

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, 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 2% of total shareholding or voting rights in the company.

(4) ...

(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.

...

20. The submissions of the Noticee in this regard are duly noted. The Noticee has contended that it had not received any intimation of allotment of shares and also it had not acquired the shares as the shares had been allotted to it on amalgamation of M/s C. Mahendra Jewels Private limited with MIL. The Noticee submitted that Regulation 13(3) and clause (b) of Regulation 13(5) of PIT Regulations are not applicable to it.

21. However, in view of the observation of SAT referred at para 17 above, it is noted that shares received on account of amalgamation, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits

prescribed under the PIT Regulations, then, it is mandatory to make disclosures under those regulations.

22. Therefore I conclude that the Noticee has violated the provisions of Regulation 13(3) & Regulation 13(4A) read with Regulation 13(5) of PIT Regulations.

Issue III: Whether the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act ?

23. From the conclusions arrived at paras 18 and 22 above, I further conclude that the Noticee is liable for monetary penalty under section 15A(b) of the SEBI Act. The text of the said provision is as follows:

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 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 IV: If so, what quantum of monetary penalty should be imposed on the Noticee?

24. While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the SEBI Act, which reads as under :

SEBI Act

Factors to be taken into account by the adjudicating officer

15J. *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 a group of investors as a result of the default ;*
- c) *the repetitive nature of the default*

25. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. From the documents available on record, it is noted that the defaults are not repetitive in nature.

26. In this regard, I also note that Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs. SEBI (Appeal No. 118 of 2013 decided on September 04, 2013) has *inter alia* observed, "*It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other*". In light of the aforesaid Order by Hon'ble SAT, the said ratio is applicable to the facts and circumstances of the instant case.

27. In view of the abovementioned conclusion along with notings made at para 26 above after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 6,00,000/- (Rupees Six Lakh only) on the Noticee under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the aforesaid violations which is appropriate in the facts and circumstances of the case.

ORDER

28. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992 and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a penalty of ₹ 6,00,000/- (Rupees Six Lakh only) on M/s Nirvani Trust in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(3) & Regulation 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 by it.

29. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into Bank Account, the details of which are given below:

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

or by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai.

30. The Noticee shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai :

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	

6. Bank Details in which payment is made:	
7.Payment is made for:	Penalty

31. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy each of this order is being sent to M/s Nirvani Trust at 603, Minal Complex, Off Saki Vihar Road, Andheri (East), Mumbai – 400072 and also to the Securities and Exchange Board of India, Mumbai.

Place: MUMBAI
Date: August 31, 2017

SURESH GUPTA
ADJUDICATING OFFICER