

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AA/MKG/2019-20/4069]

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

Mr. Sanjeev Dalmia (PAN: AGIPD3038K)

In the matter of AF Enterprises Ltd.

BACKGROUND OF THE CASE

1. The Bombay Stock Exchange (herein after referred to as '**BSE**') informed the Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') that the shareholding of one Mr. Sanjeev Dalmia (hereinafter referred to as '**Noticee/by Name**'), in the scrip of AF Enterprises Limited (hereinafter referred to as '**AFEL/ Company/ Target Company**') has reduced substantially. However, the Noticee has not made required disclosures in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**'). Thereafter, the SEBI conducted an examination, in the scrip of AFEL, which is listed on the BSE.
2. SEBI observed that the Noticee was holding 5% of the paid up share capital of AFEL in the calendar quarter ending on December 31, 2014. Further, the Noticee has disposed of more than 2% of the paid up share capital of the Target

Company in multiple transactions, during the calendar quarter ending on March 31, 2015. The disclosure with respect to the aforesaid disposal of shares was required to be made by the Noticee, in terms of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. However, SEBI observed that the Noticee did not make the required disclosure. In view of the same, SEBI has initiated adjudication proceedings under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated March 11, 2019 under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties By Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**AO Rules**") to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with section 15I(1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice EAD-1/AA/MKG/8691/2019 dated April 03, 2019 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee.
5. The details in respect of the alleged violation by the Noticee are as given below:

SEBI observed that in the scrip of AFEL, the Noticee was holding 2,00,000 shares (5% of total paid up share capital of the Company) of AFEL as on December 31, 2014. During the quarter that ended on March 31, 2015, the Noticee sold shares by way of a series of transactions. On March 5, 2015, his holding decreased from initial 5% to 2.71%, i.e. change of more than 2%. The aforesaid change in shareholding was required to be disclosed to Bombay Stock Exchange (herein after referred to as "BSE") and AFEL in terms of Regulation 29(2) read with 29(3) of SAST Regulations within two working days. However, it is observed from BSE investigation report that the Noticee has failed to make required disclosure in this regard.

6. The SCN issued to the Noticee was sent through Speed Post Acknowledgement Due (herein after referred to as '**SPAD**') however, returned undelivered. The Noticee was also granted an opportunity of personal hearing on June 04, 2019 vide hearing notice dated May 02, 2019, in the interest of principles of the natural justice. In view of the fact that the SCN could not be served on the Noticee by SPAD, efforts were made to get the SCN and hearing Notice dated May 02, 2019 affixed at the last known address of the Noticee, which also failed. Thereafter, the SCN was served upon the Noticee by way of newspaper publication, in the New Delhi edition of the Hindustan Times and the Dainik Jagran on June 29, 2019. In the aforesaid newspaper publication, the Noticee was also granted an opportunity of personal hearing before the undersigned on August 06, 2019. Meanwhile, a different address of the Noticee was obtained from the records. An opportunity of hearing on August 16, 2019, was granted to the Noticee vide hearing notice dated August 01, 2019, sent to the Noticee at the new address of the Noticee which was duly delivered. A copy of the SCN was also sent to the Noticee, as annexure to the aforesaid hearing notice.

7. The Authorized Representative of the Noticee (herein after referred to as 'AR') vide email dated August 14, 2019 submitted the reply to the SCN, dated August 13, 2019 and *inter alia* made the following submissions:

- I. The Noticee agree and acknowledge that there has been a delay in filing the disclosure under Regulation 29(2) read with Regulation 29(3) of SAST Regulations.*
- II. That the delay was purely due to inadvertence and without any deliberate intention to violate the spirit of law.*

8. The AR attended the hearing on the scheduled date and time. The AR, vide email dated August 17, 2019 submitted a copy of letter dated August 16, 2019 addressed to BSE wherein it is mentioned that the AR is submitting a hard copy of the disclosure on behalf of the Noticee. The aforesaid letter dated August 16, 2019 also bears an acknowledgement mark of the BSE. In addition to that, the AR vide its aforesaid email also informed that it has sent a hard copy of the disclosure to the AFEL.

CONSIDERATION OF ISSUES

9. I have carefully perused the charges levelled against the Noticee, his reply and the documents/material available on record. The issues that arise for consideration in the present case are:
- (a) Whether the Noticee has violated Regulation 29(2) read with regulations 29(3) of SAST Regulations?
 - (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee, after taking into consideration the factors mentioned in section 15J of the SEBI Act?

10. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations as below:

Relevant provisions of SAST Regulations:

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 per cent 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 per cent 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.*

11. The first issue for consideration is whether the Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulation. I note from the BSE website that the total paid up share capital of AFEL for the calendar quarters ending on December 31, 2014 and March 31, 2015 was 40,00,000. Further, from the available records as well as the quarterly shareholding available on the BSE website it is seen that the Noticee was holding 2,00,000 shares (5.00% of paid up share capital of AFEL) of AFEL on the calendar quarter ending on December 31, 2014. The transaction statement of the Noticee (Annexure – II to the SCN) as obtained from NSDL shows that on January 31, 2015, the demat account of the Noticee was credited with 2,00,000

shares of AFEL and description of the transaction is mentioned as 'By lockin release/Prefrential Quota'. Further, from the trade log as provided by the BSE, the Noticee is found to have sold shares in the scrip on various occasions, during the period February 12, 2015 to March 23, 2015 and that he has sold a total of 1,99,375 shares. Due to the aforesaid transactions carried out by the Noticee, his shareholding in the scrip has reduced by more than 2% of the paid up share capital of the company, on March 05, 2015. In this regard, I also note from the transaction statement of the Noticee that he has transferred 2,00,000 shares on February 13, 2015.

12. A combined reading of Regulation 29(2) and Regulation 29(3) of SAST Regulations says that any person who is holding 5% or more than 5% of paid up share capital in the target company, shall disclose the number of shares held and change in shareholding to - (a) every stock exchange where the shares of the Target Company are listed; and (b) the Target Company at its registered office, within two working days, from receipt of intimation of the disposal of shares in the target company, when there is a change in its shareholding and such change exceeds 2% of total shareholding. Therefore, the Noticee was required to make disclosures in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.
13. The Noticee has not disputed the facts of the case. Further, in his reply to the SCN (filed by the AR), the AR has admitted that he has made delayed disclosure to the BSE in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulation. I note that the AR, vide email dated August 17, 2019 submitted a copy of the letter dated August 16, 2019 addressed to BSE. In the letter to BSE, the AR has submitted a hard copy of the disclosure on behalf of the Noticee along with the letter to the BSE and same is acknowledged by the BSE also. Therefore, I find that the Noticee has made disclosure to BSE in terms of

Regulation 29(2) read with Regulation 29(3) of SAST Regulation on August 16, 2019 which is after a delay of more than 4 years.

14. Further, the Noticee has also submitted that it has sent a hard copy of disclosure to the AFEL and vide its email dated August 17, 2019, it has submitted a copy of a dispatch receipt dated August 16, 2019, from the Indian post as evidence of the required disclosure, sent to AFEL by him. In this regard, I note that the Hon'ble Securities Appellate Tribunal, in **Alka India Ltd. Vs. SEBI** (decided on 10.06.2009) inter alia, observed as follows:

"A copy of the courier receipt has been placed on record to substantiate its stand. We have perused this receipt. In the column meant for the name of the receiver, the Stock Exchange, Mumbai has been written. The Bombay Stock Exchange has categorically denied having received any information from the appellant. In view of the denial made by the Bombay Stock Exchange, the onus is upon the appellant to establish that the letter making the necessary disclosures allegedly sent by courier was actually received by the Bombay Stock Exchange. No such evidence has been placed on record. Even, if we were to accept the courier receipt, it is only evidence of the fact that some letter was sent to Bombay Stock Exchange but there is no proof forthcoming of its actual receipt by the Stock Exchange. Moreover, what was that letter and whether it contained the disclosures are facts which also need to be established. The appellant failed to discharge this onus.....".

15. In view of the above, I find that the dispatch receipt from the post office of India cannot be accepted as proof of disclosure made by the Noticee to the AFEL in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulation.

Therefore, I find that the Noticee has failed to make disclosure to the Company in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulation.

16. I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and the penalty is imposed for the non-compliance with the mandatory obligation. The Hon'ble SAT in its order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that *"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 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"*. I would further like to refer to the observations of Hon'ble SAT in the matter of Virendra kumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014), wherein it was held that *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures"*. The importance of disclosure obligations cannot be undermined by saying that they are merely technical in nature. Such obligations are mandated under respective regulations by SEBI in order to enable investors to take informed investment decisions.

17. Therefore, I find that the allegation of the violation of Regulation 29(2) read with 29(3) of SAST Regulations by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

18. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

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 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

19. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

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 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.

20. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the failure of the Noticee in making disclosures or the consequent loss caused to investors as a result of the default. The Noticee has failed to make required disclosures in terms of Regulation 29(2) read with 29(3) of SAST Regulation as brought out above.

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on the Noticee viz. Sanjeev Dalmia in terms of the provisions of Section 15A(b) of the SEBI Act.

22. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid by way of

demand draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order.

23. The said demand draft should be forwarded to “The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051” along with the details (in the format as given in table below):

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is	
7. Payment is made or: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

25. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in : ENFORCEMENT ->Orders->Orders of AO ->PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

26. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Sanjeev Dalmia and also to the Securities and Exchange Board of India.

Date: August 22, 2019

Place: Mumbai

**Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**