

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. MC/CB/2018-19/62]**

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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 –

**Gannayak Sales Private Ltd. (PAN: AAECG0461G)** having address at – 41, Navpada, Aashirwad Building, Subhash Road, Dombivli (West), Thane – 421 202 (Maharashtra)

In the matter of *Sangam Advisors Limited*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted examination in the scrip of Sangam Advisors Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period June 2013 to June 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulations 13(1) read with 13(5) of the SEBI (Prohibition of Insider Trading)

Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 29(1), 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) by M/s. Gannayak Sales Private Limited (hereinafter be referred to as, the “**Noticee**”) for not making relevant disclosures upon change in its shareholding in the Company.

**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 August 08, 2016 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the aforesaid alleged violations.

Subsequently, the undersigned was appointed as the Adjudicating Officer on May 29, 2018 which was communicated vide order dated June 19, 2018.

### SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAD5/MC/CB/741/2019 dated January 08, 2019 (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(1) read with 13(5) of the PIT Regulations and Regulation 29(1) , 29(2) read with 29(3) of the SAST Regulations.
4. The allegations levelled against the Noticee in the SCN are summarized as below:
  - a) During the Examination Period, the Noticee indulged in various transactions involving change in its shareholding in the Company, relevant excerpts of which are produced as under:

Date	No. of shares purchased	Cumulative Shareholding	Shareholding Percentage (%)
October 17, 2013	36000	36000	0.59
October 22, 2013	42000	78000	1.28
October 28, 2013	48000	126000	2.06
October 31, 2013	30000	156000	2.55
November 01, 2013	30000	186000	3.04
November 03, 2013	30000	216000	3.53
November 19, 2013	30000	246000	4.02
November 21, 2013	24000	270000	4.42
November 22, 2013	24000	294000	4.81
<b><u>November 29, 2013</u></b>	<b><u>30000</u></b>	<b><u>324000</u></b>	<b><u>5.3</u></b>
December 05, 2013	30000	354000	5.79
December 09, 2013	30000	384000	6.28
December 11, 2013	30000	414000	6.77
December 12, 2013	24000	438000	7.16

<b><u>December 13, 2013</u></b>	<b><u>48000</u></b>	<b><u>486000</u></b>	<b><u>7.95</u></b>
December 23, 2013	30000	516000	8.44
December 24, 2013	30000	546000	8.93
December 31, 2013	30000	576000	9.42
January 01, 2014	24000	600000	9.41
January 02, 2014	24000	624000	9.78
<b><u>January 03, 2014</u></b>	<b><u>24000</u></b>	<b><u>648000</u></b>	<b><u>10.16</u></b>

Relevant evidences of the aforesaid transactions which included contract notes and transaction statements for the trades were provided to the Noticee along with the SCN.

- b) As a result of the transaction on November 29, 2013, the Noticee was required to submit required disclosures within 2 days of these transactions to the Company and to BSE under Regulation 29(1) read with 29(3) of the SAST Regulations and to the Company under Regulation 13(1) of the PIT Regulations. Similarly, pursuant to the transactions on December 13, 2013 and January 03, 2014, the Noticee was required to disclose its shareholding to the Company within 2 days of acquisition of shares under Regulation 13(3) read with 13(5) of the PIT Regulations and to the Company as well as the BSE under Regulation 29(2) read with 29(3) of the SAST Regulations. However, the Noticee, allegedly, made delays in submitting required disclosures under Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations and failed to make disclosures required under Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.
- c) The alleged non-compliances with disclosure requirements to disclose change in its shareholding, which were mandated under PIT Regulations and SAST Regulations by the Noticee was confirmed by the BSE *vide* e-mail dated July 01, 2014 and the Company *vide* e-mail July 01, 2014.
- d) It was alleged that the non-disclosures under PIT Regulations and SAST Regulations regarding change in its shareholding on November 29, 2013, December 13, 2013 and January 03, 2014 by the Noticee were in violation of Regulations 13 (1), 13(3) read with 13(5) of the PIT Regulations and Regulation

29(1), 29(2) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

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

13. (1) any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :— (a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

...

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 49[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.

(5) The disclosure mention 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.

**SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**

“29. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(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 subregulation (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 subregulation (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..”*

e) The Noticee was also informed that the alleged violations, 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 January 14, 2019, an acknowledgment of which is available on record. The Noticee was also advised to file its reply, if any, within 14 days from the receipt of the SCN..

6. The Noticee submitted its reply towards the SCN *vide* letter dated January 25, 2019. Relevant submissions of the Noticee are summarized as under:

a. In relation to the transaction on November 29, 2013 which led to the Noticee acquiring 5.3% of the total share capital of the Company, the Noticee submitted that it had acquired shares on November 29, 2013 (Friday) and it filed disclosure under Regulation 29(1) of the SAST Regulations with the BSE and under Regulation 13(1) of the PIT Regulations with the Company on December 04, 2013 (Wednesday). The Noticee stated that the delay of 1 working day in making relevant disclosures

under PIT Regulations and SAST Regulations was on account of procedural delay and was not coupled with any mala fide intention.

- b. In relation to transactions dated December 13, 2013 and January 03, 2014, it submitted that it had made disclosures to the BSE in the following manner:

Disclosure	No of shares Acquired	%	Date of Acquisition	Disclosure filed date
			triggering the Disclosure	
29(1)	30000	5.30%	29.11.2013 (Friday)	04.12.2013
29(2)	114000	7.16%	12.12.2013 (Thursday)	16.12.2013
29(2)	138000	9.42%	31.12.2013 (Tuesday)	10.01.2014

- c. The Noticee stated that the delays were completely inadvertent and unintentional. It also submitted that no gain or unfair advantage was made by it due to delayed disclosures and that no loss was caused to the investors due to delayed disclosures.
- d. It also stated that information relating to the transactions was available in the Bulk Block Section of the BSE and therefore, it had no intention to hide any information from shareholders.
- e. The Noticee, therefore, submitted that a lenient view may be taken in the instant case.
7. Thereafter, an opportunity of personal hearing was granted to the Noticee on March 18, 2019 *vide* Notice of Hearing dated March 07, 2019. The hearing scheduled on March 18, 2019 was later rescheduled to March 12, 2019 on the request of the Noticee.
8. The hearing scheduled on March 12, 2019 was attended by Mr. Ravi Ramaiya and Mr. Gauri Shanker Toshniwal 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 January 25, 2019.

9. 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**

10. 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(1) & 13(3) read with 13(5) of the PIT Regulations and Regulation 29(1) & 29(2) read with 29(3) of the 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 failed to make disclosures required under Regulation 13(1) & 13(3) read with 13(5) of the PIT Regulations and Regulation 29(1) & 23(2) read with 29(3) of the SAST Regulations as alleged in the SCN?**

11. The Noticee, in its reply, did not dispute the transfer of shares of the Company in / from the account of the Noticee. Thus, the transactions resulting into acquisition of shares in the Company by the Noticee as mentioned in the SCNs triggered disclosure requirements to be complied within 2 days of such acquisitions under provisions of PIT Regulations and SAST Regulations are as follows:

<b>Date of Transaction</b>	<b>Transaction Volume (Number of Shares Transacted)</b>	<b>Holding Post Transaction (percentage post transaction)</b>	<b>Disclosure Required under</b>
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November 29, 2013	30000	5.3%	Regulation 13(1) of the PIT Regulations & Regulation 29(1) read with 29(3) of the SAST Regulations
December 13, 2013	48000	7.95%	Regulation 13(3) read with 13(5) of the PIT Regulations & Regulation 29(2) read with 29(3) of the SAST Regulations
January 03, 2014	24000	10.16%	Regulation 13(3) read with 13(5) of the PIT Regulations & Regulation 29(2) read with 29(3) of the SAST Regulations

12. From the reply of the Noticee as well as on verification of disclosures available on the website of BSE, I note that disclosures made by the Noticee during the Examination Period for change in its shareholding in the Company are as follows:

Date of Transaction	Transaction Volume (Number of Shares Transacted)	Holding Post Transaction (percentage post transaction)	Disclosure made under	Date of Reporting of Disclosure
November 29, 2013 (Friday)	30000	5.3%	Regulation 29(1) read with 29(3) of the SAST Regulations	December 04, 2013 (Wednesday)
			Regulation 13(6) of the PIT Regulations	December 09, 2013
December 5 - 12, 2013 (Thursday)	1,14,000	7.16%	Regulation 29(1) read with 29(3) of the SAST Regulations	December 16, 2013 (Monday)
December 13- 31, 2013	1,38,000	9.42%	Regulation 29(1) read with 29(3) of the SAST Regulations	January 10, 2014



13. Thus, it is the submission of the Noticee that disclosures for transaction dated November 29, 2013 was made with a delay of 1 working day. It also submitted that it made disclosures for its transactions on December 12, 2013 within 2 working days of the transaction, albeit prematurely and under a different regulation based on an erroneous interpretation of statute. Similarly, it submitted that it made a delayed disclosure by seven working days for its transaction on December 31, 2013, again prematurely under a different regulation based on an erroneous interpretation of statute. The Noticee also produced acknowledged receipts of disclosures made to the Company as well as the BSE.
14. The Noticee also stated that filing of disclosures under different regulations and instances of delay in filing by one day and seven days were inadvertent, unintentional and not accompanied with any *mala fide* intention. It also admitted that it did not make relevant disclosures under Regulation 13(3) of the PIT Regulations for its transactions on December 12, 2013 and December 31, 2013 but information relating to these disclosures was already made available in its disclosures filed under SAST Regulations.
15. From the reply of the Noticee as well as information available on the website of BSE, it becomes clear that premature and incorrect disclosures were made by the Noticee with delays of 1 day and 7 days for its transactions resulting into acquisition of shareholding in the Company. I now decide to examine whether the disclosures made by the Noticee will amount to compliances with aforesaid provisions of PIT Regulations and SAST Regulations.
16. At this juncture, 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.*"

17. 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.*"

18. Applying the ratio of **Premchand Shah** (*supra*) and **Ambaji Papers** (*supra*) to the facts of the instant case, I am of the view that the non-reporting of disclosures in the manner prescribed under provisions of PIT Regulations and SAST Regulations, although venial in nature, is a non-compliance of statutory obligation by the Noticee.

19. In view of the aforesaid, it is established that the Noticee did not make disclosure required in the terms of provisions of PIT Regulations and SAST Regulations in respect of the impugned acquisition of shareholding in the Company. Therefore, I am of the view that violations of Regulations 13(1) & 13(3) read with 13(5) of the PIT Regulations and Regulation 29(1) & 29(2) read with 29(3) of the SAST Regulations stand 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?**

20. Since failure of Noticee in compliance with Regulations 13(1) & 13(3) read with 13(5) of the PIT Regulations and Regulation 29(1) & 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, 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.”*

21. 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.
22. From the material available on record, 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. At this juncture, I find it relevant to note that Hon'ble SAT, in the matter of **Virendrakumar Jayantilal Patel v. SEBI** (Appeal No. 299 of 2014 dated October 14, 2014) had observed intention and inadvertence of the Noticee and absence of gain or unfair advantage to be mitigating factors while deciding quantum of monetary penalty to be imposed on non-compliance with statutory obligation.
23. It is noted that the Hon'ble Supreme Court of India, in its judgment dated February 28, 2019 in the matter of **Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari** (MANU/SC/0296/2019) has held, "*..Therefore, to understand the conditions stipulated in Clauses (a), (b) and (c) of Section 15-J to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/concede that in adjudications involving penalties Under Sections 15A, 15-B and 15-C, Section 15-J will have no application. Such a result could not have been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in Clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by Clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty.*"
24. I also note that the necessary information relating to Noticee's acquisition of shareholding in the Company was available in public domain by way of disclosures under different regulations with delay of 1 day for its transactions on November 29, 2013. I note that the pre-mature disclosures made by the Noticee for transactions on

December 12, 2013 and December 31, 2013 were made with a delay of 1 day and 7 days respectively. While these disclosures were not made as required under the respective regulations, they were on immediately preceding days to the day when disclosure thresholds were actually breached, on December 31, 2013 and January 03, 2014 respectively. I also note that the Noticee has submitted that information relating to the impugned transactions was also available in the public domain by way of *Bulk Block Section* of the BSE website. On verification from the website of the BSE, it is observed that information on the transaction of acquisition of 48,000 shares on December 13, 2013 was available on the *Bulk Deals / Block Deals* section of the BSE. The Noticee has also submitted that the delays in making required disclosures were inadvertent and unintentional.

25. 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 ₹1,00,000/- will be commensurate with the violation of provisions of PIT Regulations and SAST Regulations by the Noticee.

## ORDER

26. 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 ₹1,00,000/- (Rupees One Lac only) upon the Noticee, i.e. Gannayak Sales Private Limited under Section 15A(b) of the SEBI Act for violation of Regulation 13(1) & 13(3) read with 13(5) of the PIT Regulations and Regulation 29(1) & 29(2) read with 29(3) of the SAST Regulations.

27. 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:

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

**28.** 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

**29.** 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 : March 29, 2019**

**Place : Mumbai**

**(Maninder Cheema)**

**Adjudicating Officer**