

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO.EAD-5/SVKM/DS/AO/ 76-81 /2017-18]**

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**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**

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**In respect of:**

<b>Sr. No.</b>	<b>Name</b>	<b>PAN No.</b>
<b>1.</b>	<b>Shri Sanjay Dhingra</b>	<b>AAFPD9561J</b>
<b>2.</b>	<b>Shri Gulshan Dhingra</b>	<b>AAFPD9564P</b>
<b>3.</b>	<b>Shri Naresh Dhingra</b>	<b>AEQPD3702E</b>
<b>4.</b>	<b>Shri Krishan Dhingra</b>	<b>AEOPD7331P</b>
<b>5.</b>	<b>Ms. Kanika Dhingra</b>	<b>AAFPD5238A</b>
<b>6.</b>	<b>Kwality Ltd.</b>	<b>AABCK1289R</b>

*In the matter of Kwality Ltd.*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigation into the alleged irregularities in the trading in the scrip of Kwality Ltd. (hereinafter referred to as Kwality) for the period December 01, 2009 to December 30, 2011 (hereinafter referred to as Investigation Period) and into the possible violation of the provisions of:

- I. Regulation 13(3), (4) and (4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) by Shri Sanjay Dhingra and Shri Gulshan Dhingra (hereinafter referred to as Noticee Nos. 1 and 2);
  - II. Regulation 13(3) and (4A) read with Regulation 13(5) of PIT Regulations by Shri Naresh Dhingra and Shri Krishan Dhingra (hereinafter referred to as Noticee Nos. 3 and 4)
  - III. Regulation 7(1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as SAST Regulations, 1997 read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as SAST Regulations, 2011) by Ms. Kanika Dhingra (hereinafter referred to as Noticee No. 5)
  - IV. Regulation 7(3) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 and Regulation 13(6) of PIT Regulations by Kwalitiy Ltd. (hereinafter referred to as Noticee No. 6 / Company)
- (hereinafter collectively referred to as Noticees)

2. Following shareholding pattern of the promoters was observed during the various quarters in the scrip of Kwalitiy.

Name	Mar 31, 2011		Jun 30, 2011	
	No. of Shares	% of shares	No. of Shares	% of shares
Sanjay Dhingra	5,00,00,000	24.61	5,00,00,000	24.61
Gulshan Dhingra	4,97,51,714	24.49	4,97,51,714	24.49
Naresh Dhingra	2,73,90,500	13.48	2,73,90,500	13.48
Krishan Dhingra	2,51,98,500	12.40	2,51,98,500	12.40
Total	15,23,40,714	74.98	15,23,40,714	74.98

Name	Sep 30, 2011		Dec 31, 2011	
	No. of Shares	% of shares	No. of Shares	% of shares
Sanjay Dhingra	9,96,60,714	49.05	9,96,60,714	49.05
Gulshan Dhingra	91,000	0.04	91,000	0.04

Naresh Dhingra	50,000	0.02	50,000	0.02
Krishan Dhingra	45,000	0.02	45,000	0.02
Kanika Dhingra	5,24,94,000	25.84	5,24,94,000	25.84
Total	15,23,40,714	74.98	15,23,40,714	74.98

3. It was alleged that Noticees did not disclose change in their shareholding for the quarter ending September 30, 2011, to stock exchanges and thus, violated the provisions of PIT Regulations and SAST Regulations.

### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as Adjudicating Officer vide order dated January 15, 2016 to inquire and adjudge under Sections 15A(b) of the SEBI Act, 1992, the aforesaid allegations.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A common Show Cause Notice dated March 15, 2016 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 for the violations as specified in the SCN.
6. Vide separate letters dated April 20, 2016 Noticee No. 1 and 2 submitted their reply and submitted the following:
- The inter-se-transfer dated 20.07.2011 and 21.07.2011 and 29.07.2011 were reported to SEBI on 04th August, 2011 alongwith Demand Draft of Rs 25,000 (Rupees Twenty five Thousand), DD No.918458, dated 04th August, 2011 under Regulation 3(4) and 3(5) of SEBI (SAST) Regulations, 1997.*
  - The disclosure under Regulation 13(3) of PIT Regulations were submitted to the company vide letter dated July 30, 2011.*
  - Disclosure under Regulation 13(4) of PIT Regulations were made to the company, and stock exchanges vide letter dated July 30, 2011 in Form D.*

- iv. *The disclosure under Regulation 13(4) was applicable to an Officer or Director of the company. As Noticee No. 2 resigned from the post of director of the company on 24.11.2010, the said regulation is not applicable to him.*
- v. *Regulation 13(4A) of PIT Regulations came into effect on 16.08.2011 and was not applicable on the transaction which is dated 29.07.2011.*
- vi. *Disclosure under Regulation 7(1) was made to the company and stock exchanges vide letter dated 22.07.2011.*
- vii. *The Company had received the disclosure from Ms. Kanika Dhingra under regulation 7(1) and 7(2) of SEBI SAST Regulations, 1997 on 22nd July, 2011 which was in turn sent to BSE and NSE under Regulation 7(3) of the SAST Regulations, 1997 on 23rd July, 2011.*
- viii. *The Company had received the disclosures from Mr. Naresh Dhingra, Mr. Sanjay Dhingra, Mr. Gulshan Dhingra and Mr. Krishan Dhingra dated 22nd July, 2011, 30th July, 2011, 30th July, 2011 and 22nd July, 2011 respectively under Regulation 13(3) and 13(4) of PIT Regulations, 1992, which in turn sent to BSE and NSE under Regulation 13(6) of PIT Regulations on 23rd July, 2011 and 01st August, 2011*
- 7. Noticees appeared for the hearing before the undersigned on 11.11.2016 and reiterated the submissions made vide their replies dated April 20, 2016. During the course of the hearing the Noticees were handed over the emails received from both BSE and NSE regarding non- receipt of disclosures from the Noticees in respect of SAST and PIT Regulations and were granted additional time till 21.11.2016 to make additional submissions.
- 8. Vide separate letters dated 19.11.2016, Noticees submitted additional reply and submitted the copies of receipt of Registered Post through which the disclosures were sent to the stock exchanges.
- 9. Further vide letters dated June 07, 2017, the Noticees were provided with another opportunity to submit additional documents, if any.
- 10. Vide letters dated June 20, 2017, Noticees reiterated their earlier submissions.

## **CONSIDERATION OF ISSUES AND FINDINGS**

11. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
- a. Whether Noticees failed to disclose the change in their shareholdings to the stock exchanges and violated Regulation 13(3), (4), (4A), (5) of PIT Regulations and Regulation 7(1), (2) and (3) of SAST Regulations.?
  - b. Does the violation, if established, attract monetary penalty under Section 15HB of SEBI Act, 1992?
  - c. If yes, then what should be the quantum of penalty?

## **FINDINGS**

12. Before I proceed with the matter, it is pertinent to mention the relevant provisions which are reproduced below:

### ***PIT Regulations***

***“13. Disclosure of interest or holding in listed companies by certain persons. Continual disclosure. Continual disclosure***

...

*(3) Any person who holds more than 5% shares for 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) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

*(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.*

## **SAST Regulations**

### **Acquisition of 5% and more shares of a company**

*7.(1) Any acquirer, who acquires shares or voting rights which(taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent. or fourteen percent. Or fifty four per cent. or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

*(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days,*

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*(a) the receipt of intimation of allotment of shares; or*

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

*(3) Every company, whose shares are acquired in a manner referred to in sub-regulation (1) and (1A)] shall disclose to all the stock exchanges on which the shares of the said company*

*are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations(1) and (1A).*

13. From the tables at para 2, it is observed that there was a change in the number promoters and their shareholdings for the quarter ended September 30, 2011. Noticee No. 5 was included in the promoter category and acquired shares by inter se transfer from other promoters. Noticee No. 3 gifted 2,73,40,500 shares (13.45% of total capital) and Noticee No. 4 gifted 2,51,53,500 shares (12.37% of total capital) to Noticee No. 5. Thus, Noticee No. 5 acquired 5,24,94,000 (25.84%) shares. Further, Noticee No. 2 had gifted 4,96,60,714 (24.44% of total capital) to Noticee No. 1.
14. Noticee No. 5 who acquired 5,24,94,000 shares (25.84% of total capital) as above by inter se transfer of shares amongst promoters, was required to disclose acquisition of 5% and more shares, in any manner whatsoever, to the company and to the stock exchange under regulation 7 (1) read with 7 (2) of SEBI (SAST) Regulations, 1997.
15. Noticee Nos. 3 and 4 who were the promoters of Kquality Ltd, were required to make disclosures under Regulation 13(3) - for change exceeding 2% of total share capital, Regulation 13(4A) – for being a promoter and change in holding exceeding 25,000 shares and 1% of share capital to BSE and NSE.
16. Noticee Nos. 1 and 2 were the promoters and directors of Kquality Ltd. Noticee Nos. 1 and 2 were required to make disclosures under Regulation 13(3) - for exceeding change of 2% of total share capital, under Regulation 13(4) - for being a director and change in change in holding exceeding 25,000 shares and 1% of share capital, under Regulation 13(4A) - for being a promoter and change in holding exceeding 25,000 shares and 1% of share capital to BSE and NSE.
17. Thus, in the SCN dated March 15, 2016, it was alleged that Noticees did not disclose change in their shareholding for the quarter ending September 30, 2011, to stock exchanges and thus, violated the provisions of Regulation 13(3), (4), (4A), (5) of PIT Regulations and Regulation 7(1) and (2) of SAST Regulations.

18. Upon perusal of the records, it is noted that disclosures under Regulation 13(3), (4), (4A), (5) of PIT Regulations and Regulation 7(1) and (2) of SAST Regulations were made to the company by Noticee Nos. 1 to 5 and were received by the company herein Noticee No. 6. Noticee No. 6 has not disputed the claims of Noticee Nos. 1 to 5. Thus, there is no dispute that disclosures were made to the company by Noticee Nos. 1 to 5. In fact, there is no allegation to this effect in the SCN.
19. With respect to the alleged failure to make disclosures to the stock exchanges as stipulated under Regulation 13(3), (4), (4A), (5) of PIT Regulations and Regulation 7(1), (2) and (3) of SAST Regulations, Noticees have submitted that disclosures were made to the stock exchanges in the prescribed Forms. Noticees also submitted copies of Registered Post Receipts as proof of dispatch of the aforesaid disclosures to the stock exchanges.
20. At this juncture, it is pertinent to mention Hon'ble SAT in the matter of Mega Resources Ltd. v. SEBI (Appeal No. 49/2001) wherein it was observed:

*"Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement... Therefore the crucial question is whether the requisite disclosure has been made by the Appellant. For the purpose it is necessary to know what is meant by "disclosure" in the sense in which it is used in the regulation. Disclosure is required to be made to the Target Company. "Disclose to the company" is the clue. "Disclose" according to Websters Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it*



is meant. The obligation does not end by simply posting the information in a letterbox.” (Emphasis supplied)

21. The requirement is not mere dispatch of the disclosures, but the disclosures should reach the recipient(s). In the present case both NSE and BSE have submitted that they did not receive any disclosures from Noticees. Copies of emails from BSE and NSE to this effect were furnished to the Noticees who could not rebut the same effectively.
22. The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the Noticees have not placed on record any acknowledgement received from the Stock Exchanges in this regard to the disclosures that were allegedly sent. On the other hand, we have on record emails from the Stock Exchanges specifically stating that they did not receive the compliance reports for the aforesaid quarters from the Noticees.
23. As regards the obligation to make continual disclosures under Regulations 13(3) and 13(4) respectively of PIT Regulations, 1992 by Noticee No. 1 is concerned, I note that as a matter of general interpretation ‘*any person*’ would include all persons including a Director or officer of the listed company. However, since Directors and officers have been singled out as a class apart from other persons and treated differently under Regulation 13(4) of PIT Regulations, 1992 with more onerous responsibilities, it has to be assumed that by necessary implications they are excluded from the requirements of 13(3) of PIT Regulations, 1992. Directors of a company holds important position in the senior management and responsible for the policy making and control of the business and that is the reason why they have been treated differently and more onerous responsibility has been cast on them in respect of continual disclosures. Hence a separate provision for continual disclosure by directors and officer of listed company have been carved out under Regulation 13(4) of PIT Regulations, 1992. On plain reading of sub-regulation (3) and (4) of Regulation 13 of PIT Regulations, 1992,

it becomes clear that the disclosure requirements are more detailed on the Directors under sub-regulation (4) than for those governed under sub-regulation (3). They are not only required to disclose on continuous basis change of 1% in total shareholding or voting rights as against 2% in sub-regulation (3) but also required to disclose the change relating to value or number of shares if the change exceeds the limit stipulated under sub-regulation (4) of Regulation 13 of PIT Regulations, 1992. I am of the view that Director of a listed company has obligation to make continual disclosure only under sub-regulation (4) and not under sub-regulation (3) of Regulation 13 of PIT Regulations, 1992.

24. Further, with respect to the violation Regulation 13(4) of PIT Regulations by Noticee No. 2, it is observed from the MCA website that Noticee No. 2 indeed resigned from the company as Director on 24.11.2010 much prior to the impugned transaction. Therefore, I agree with the submission of Noticee No. 2 that he was under no obligation to make disclosure under Regulation 13(4) of PIT Regulations as he was neither a Director nor an officer at the relevant time.
25. Further, with respect the violation of Regulation 13(4A), it is observed that the said Regulation came into force with effect from August 16, 2011. But the impugned transactions are in the month of July, 2011. Hence, I agree with the submissions of Noticee Nos. 1 to 4 that Regulation 13(4A) was not applicable to them at the relevant time.
26. Hon'ble Securities Appellate Tribunal in the matter of **Milan Mahindra Securities Private Limited v SEBI (Order dated November 15, 2006 Appeal No. 66 of 2003)** held the following:

*"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

27. Based on above, it is concluded that Noticee No. 1 has violated Regulation 13(4) of PIT Regulations, Noticee No. 2 to 4 have violated Regulation 13(3) of PIT Regulations, Noticee No. 5 has violated Regulation 7(1) read with 7(2) of SAST Regulations and

Noticee No. 6 has violated Regulation 7(3) of SAST Regulations by not disclosing the change in their shareholding to the stock exchanges.

**(b) Does the non-compliance, if any, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?**

28. The aforesaid violations attract penalty under Section 15A(b) of the SEBI Act which reads as follows:

**“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.

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.”

29. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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

30. It may also be noted that the Investigation Report has not quantified the profit/loss for the nature of violations committed by Noticees and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors.
31. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia held that *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”*
32. Details of the shareholding of the promoters/Directors and changes thereto is an important information for the benefit and proper functioning of the securities market and timely disclosure thereof to the stock exchanges etc. are of significant importance from the stand point of investors. The purpose of these disclosures is to bring about transparency in the transactions of Directors/Promoters/Acquirers and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of **Coimbatore Flavors & Fragrances Ltd. vs SEBI** (Appeal No. 209 of 2014 order dated August 11, 2014), observed *“Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same.”* (Emphasis supplied)
33. The existing promoters had reduced their stakes significantly and admitted a new promoter Ms. Kanika Dhingra who also belongs to Dhingra family (wife of an existing promoter, Shri Sanjay Dhingra). She had acquired 25.84% shares in the company from the other promoters of the same family. There was corresponding reduction in the holding of the other members of the Dhingra family. However, total holding of

Dhingra family remained unchanged. This is considered as a mitigating factor. It may be relevant to note that even the more strict requirement of making open offer is relaxed in case of inter-se transfer of shares amongst promoters. Needless to say that there is no exemption from making disclosures of the kind envisaged in Regulation 7 of the SAST Regulations and Regulation 13 of PIT Regulations as in the present case. However, no disclosure regarding the change in shareholding was ever made to the Stock Exchanges. Timely disclosures to the Stock Exchanges as required under the regulations would have helped dissemination of this important information to the general public. Hence, Noticee No. 1 has violated Regulation 13(4) of PIT Regulations, Noticee No. 2 to 4 have violated Regulation 13(3) of PIT Regulations, Noticee No. 5 has violated Regulation 7(1) read with 7(2) of SAST Regulations and Noticee No. 6 has violated Regulation 7(3) of SAST Regulations.

### **ORDER**

34. After taking into consideration the nature and gravity of the charges established, the mitigating factors as discussed in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of ₹ 2,00,000 /- (Rupees Two Lakhs Only) each on the Noticees [**Total ₹2,00,000 x 6 = ₹12,00,000**] in terms of Section 15 A(b) of the SEBI Act, 1992 for the violation of:
- i. Regulation 13(4) of PIT Regulations by Noticee No. 1.
  - ii. Regulation 13(3) of PIT Regulations by Noticee Nos. 2 to 4.
  - iii. Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 by Noticee Nos. 5.
  - iv. Regulation 7(3) of SAST Regulations, 1997 by Noticee No. 6.
35. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code

SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Chief General Manager (Enforcement Department), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

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 : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

36. In terms of rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

**Place: Mumbai**

**DATE: 13.07.2017**

**S V KRISHNAMOHAN  
CHIEF GENERAL MANAGER &  
ADJUDICATING OFFICER**