

**ADJUDICATION ORDER NO. AO/JS/VRP/18/2017**

**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:  
**Ms. Sohni Dipak Tanna**  
**PAN No. ACEPT3611J**  
**In the matter of Looks Health Services Limited**

**BACKGROUND**

1. Pursuant to investigation by Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') in the scrip of Looks Health Services Limited (hereinafter referred to as '**The Company**') during the period January 08, 2013 to March 22, 2014 (hereinafter referred to as the '**investigation period**') observed that entity viz. Ms. Sohni Dipak Tanna (hereinafter referred to as '**The Noticee**') had violated of the provisions of the Regulations 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992 and Regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers ) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**')
2. The details of holding of shares and the change in the shareholding during the investigation period is as tabulated:

Date	No. of Shares sold	Cumulative no. of shares	Shares sold as a % of share capital	Cumulative % of shareholding	Trigger point under PIT Regulations	Trigger point under SAST Regulations
05/09/2013	133,600	133,600	2.23%	2.23%	2.23%	2.23%
06/09/2013	4,000	137,600	0.07%	2.29%	-	-
10/09/2013	73,600	211,200	1.23%	3.52%	-	-
11/09/2013	99,200	310,400	1.65%	5.17%	2.95%	2.95%
12/09/2013	52,000	362,400	0.87%	6.04%	-	2.95%
17/09/2013	64,000	426,400	1.07%	7.11%	-	-
18/09/2013	23,200	<b>449,600</b>	0.39%	<b>7.49%</b>	2.32%	2.32%

3. The period of delay, for the aforesaid three occasions, are tabulated below:

Date of acquisition of shares	Prescribed date of submission #	Trigger point under PIT Regulations	Trigger point under SAST Regulations	Period of time lapse under PIT (in days) @	Period of time lapse under SAST (in days)*
05/09/2013	09/09/2013	2.23%	2.23%	1408	268
11/09/2013	13/09/2013	2.95%	2.95%	1404	264
18/09/2013	20/09/2013	2.32%	2.32%	1397	257

**Note:**

- a. # - Calculated based on two working days from the date of acquisition;
- b. \* - Calculated from the prescribed date of submission till June 04, 2014, the actual date of submission as available on record.
- c. @ - Calculated from the prescribed date of submission till July 18, 2017 ( as on date).

### **APPOINTMENT OF ADJUDICATING OFFICER**

4. An Adjudicating Officer was appointed vide order dated March 01, 2016 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under Section 15A(b) of SEBI Act, 1992. Consequent to transfer vide Office Order dated June 27, 2017 the proceedings are now being continued further for the aforesaid alleged violations against the Noticee.

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

5. A Show Cause Notice (hereinafter referred to as 'SCN') in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on July 18, 2017 to the Noticee calling upon the Noticee to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. Records show that the SCN were delivered to the Noticee.
6. In view of the fact that no response of the Noticee was received, an opportunity of personal hearing was granted to the Noticee on November 14, 2017 vide hearing notice dated October 27, 2017. Hearing notice was duly served.
7. In response to the notice, the Noticee vide its letter dated November 09, 2017 filed its reply to the SCN as well as appointed an authorized Representative, to appear at the scheduled hearing (herein after referred to as '**AR**').

8. The AR appeared for the hearing on November 14, 2017 and submitted that, the violation as alleged and the delay has been accepted and has requested that a lenient view may be taken for imposition of penalty. Further, that in a related matter the husband of the Noticee has also been imposed penalty. Further written submissions were provided vide email dated November 14, 2017.
9. The Noticee vide letter dated November 09, 2017 inter alia submitted the following:
- a. *That she was allotted 4,50,000 shares of the company in March 2012 in private placement when the company was unlisted, much prior to the IPO, which details at the time of initial allotment in the IPO were in public domain,*
  - b. *I have already made the disclosures along with my husband in June 2014 but my disclosures are not being reflected in the BSE website whereas those of my husband are being disclosed;*
  - c. *the quarterly shareholding pattern under clause 35 of the listing agreement was being filed by the company and the reduction in the shareholding was already provided by the company in its disclosure to the public, information was already in the public domain;*
  - d. *we have neither got acquired any shares or voting rights hence she was not liable to disclosures under 29(2) and (3)*
  - e. *She neither had any malafide intention in not making the disclosures under the specific regulations, nor, any intention to hide any information from the public at large;*
  - f. *did not make any unfair gain nor cause any harm or loss to the investors because of the non disclosures*
  - g. *She is a house maker and actively involved in social activities of the community and that I have always followed all government rules and that she has never been penalized by any regulatory authority till date and has got a clean track record*
  - h. *Further that the provisions of Regulation 29(2) of SEBI SAST Regulation and Regulation 13 (3) of SEBI PIT Regulations are not substantially different, since violation of first automatically triggers violation of second and hence a lenient view may be taken as regards imposition of penalty and penalty may not be imposed. The Regulation 29(1) of Takeover Regulations and Regulation 13 (1) of PIT Regulations are not stand alone regulations and one is corollary of other. The judgment delivered by Hon'ble Securities Appellate Tribunal (SAT) on 4.9.2013 in the case of 'Vitro Commodities Private Limited vs SEBI' wherein interalia it has been held that "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." The Hon'ble SAT was pleased to reduce the penalty of Rs 10 lakh to a token penalty of Rs 1 lakh for violation of Regulation 7(1) of Takeover regulations, 1997 (akin to Regulation 29(1) of Takeover regulations, 2011) and Regulation 13(1) of PIT Regulations.*
  - i. *Similar view may also be taken of Regulation 29(2) of SAST Regulations, and 13(3) of PIT Regulations as both the regulations puts an obligation on the shareholders already holding shares aggregating more than 5% of the share of the company to make disclosures upon changes in their shareholding aggregating to 2% or more.*

## LEGAL SUBMISSIONS:

1. The judgements passed by Hon'ble Courts / Hon'ble SAT for levying penalty are as follows:

a. Case of Reliance Industries Ltd. v SEBI ( SAT Appeal No. 39/2002)–

The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."

b. Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579

It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that :-Para 61:"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established".

c. Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)

The Hon'ble Supreme Court held that:- "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

2. In the case of Refex Industries Limited (formerly known as Refex Refrigerants Limited), the Hon'ble WTM vide its order dated February 02, 2017 did not issue any directions against the promoter and director and inter-alia held that

*"that the violation is un-intentional and not for consolidation*

*that the violation is technical and venial in nature; and*

*that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation".*

*I submit that my violation, if any, is technical and venial in nature and same is unintentional.*

## ISSUES FOR CONSIDERATION

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

- I. Whether the Noticee had violated of the provisions of the Regulations 13(3) read with 13(5) of PIT Regulations, 1992 and Regulation 29(2) of SAST Regulations, 2011?
- II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992?

## FINDINGS

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

***ISSUE I: Whether the Noticee had violated the provisions of the Regulations 13(3) read with 13(5) of PIT Regulations, 1992 and Regulation 29(2) of SAST Regulations, 2011?***

12. The Noticee submitted that disclosures were made along with Dipak Tanna, husband of the Noticee in June 2014 to the BSE but the same was not reflected on the BSE website. In this respect the Noticee was advised to provide the acknowledged copy of the communication submitted to the BSE for the above communication. The Noticee during the hearing on November 14, 2017 stated that they do not have any such document evidencing the disclosure to the Stock Exchange.

13. Given that the Noticee could not provide the evidence to support its stand that disclosures had been made and the admission of violation and the resultant delay in disclosure, nothing much survives in the case for argument of the Noticee, further that the AR during the hearing conducted on November 14, 2017 has specifically admitted that the violations and submitted that a lenient view may be taken while imposition of penalty.

14. Considering all of the reasons stated hereinabove, it is held that the Noticee has violated of the provisions of the Regulations 13(3) read with 13(5) of PIT Regulations, 1992 and Regulation 29(2) of SAST Regulations, 2011 as alleged.

***ISSUE II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?***

15. On the issue of no malafide intention to violate any provisions or conceal information it is to mention that the issue has been settled by the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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..."*.

16. On the issue that the company had already made disclosure of the change in the shareholding under the listing agreement, it is to be held that Noticee cannot absolve herself of the mandatory disclosures required to be made under the PIT

Regulations and SAST Regulations, 2011 by claiming that the disclosures were made by the company under listing agreement

17. As regards the contention that due to non-disclosures no gain has occurred to her and that no loss has been caused to the investors, the issue was dealt by Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI dated January 27, 2014 has held that: *"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."*
18. In view of the above, the argument put forth by the Noticee that the Noticee did not make any unfair gain nor cause any harm or loss to the investors because of the non-disclosures is not tenable.
19. Given the above, the legal cases quoted by the Noticee do not come to her aid.
20. In view of the foregoing, it is concluded that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, 1992 which reads as under:

***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,—

(a).....

(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 <sup>1</sup>[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];

(c) .....

***ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992?***

21. While determining the quantum of monetary penalty under Section 15A(b) of SEBI Act, 1992 I have considered the factors stipulated in Section 15-J of 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;

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<sup>1</sup> Substituted for the words —of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

- (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.

<sup>2</sup>[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.]

22. As per Section 15A(b) of the SEBI Act, 1992 of the Noticee is liable to penalty, “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”. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty.
23. It is noted that the violation is repetitive in the sense that three violations have been alleged against the Noticee, further it is also a fact that there has been no other penalty imposed by SEBI on the Noticee.
24. The Noticee in its submissions stated that the provisions of Regulation 29(2) of SEBI SAST Regulation and Regulation 13 (3) of SEBI PIT Regulations are not substantially different, since violation of first automatically triggers violation of second and hence a lenient view may be taken as regards imposition of penalty. The Noticee in support relied on the judgement of *Hon’ble Securities Appellate Tribunal (SAT) on 4.9.2013* in the case of ‘*Vitro Commodities Private Limited vs SEBI*’ wherein interalia it has held 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.” This is contention is tenable.

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<sup>2</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Pt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

25. After taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of SEBI Act, 1992. I impose a penalty of **Rs 4,50,000/- (Rupees Four lakhs fifty thousand only)** under Section 15 A(b) on the Noticee Ms. Sohni Dipak Tanna, which in my opinion, will be commensurate with the violations committed by the Noticee.
26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

27. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided At Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

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)

28. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

**Date: November 22, 2017**  
**Place: Mumbai**

**Jeevan Sonparote**  
**Adjudicating Officer**