

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2019-20/6363-6367]

**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:

1. Heaven Petrochem Pvt. Ltd. (PAN: AACCH6635F)
2. Mr. Dipan J Patel (PAN: AHZPP1709K)
3. Ms. Kavita D Patel (PAN: AJFPP8388J)
4. Ms. Ganga Jesingbhai Patel (PAN: ADCPP7495D)
5. Mr. Jesingbhai Shukarbhai Patel (PAN: AAEP6754E)

In the matter of Sunstar Realty Development Limited

1. Sunstar Realty Development Limited (hereinafter referred to as “the Company”) is a company having its shares listed on the Bombay Stock Exchange Limited (hereinafter referred to as “BSE”). Pursuant to investigation Securities and Exchange Board of India (“SEBI”) observed that shareholding pattern of the Company during March 01, 2009 to July 22, 2015 (hereinafter referred as “investigation period”) as available in the BSE website was as follows:

Particular	Quarter ended Sept 2013			Quarter ended Mar 2014		
	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%
Promoter and promoter group Holding	5	4435000	22.20	5	4435000	18.77
Non Promoter Holding	1286	15543000	77.80	1324	19188000	81.23
Total share capital	1291	19978000	100	1329	23623000	100
Particular	Quarter ended June 2014			Quarter ended Sep 2014		
	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%
Promoter and promoter group Holding	5	4435000	18.77	5	4435000	18.77
Non Promoter Holding	1033	19188000	81.23	809	19188000	81.23
Total share capital	1038	23623000	100	814	23623000	100
Particular	Quarter ended Mar 2015			Quarter ended Sep 2015		
	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%

	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%
Promoter and promoter group Holding	5	4435000	18.77	5	44350000	18.77
Non Promoter Holding	592	19188000	81.23	527	191880000	81.23
Total share capital	597	23623000	100	532	236230000	100

2. As clarified by BSE vide e-mail dated June 25, 2018 – “*The Company, Sunstar Realty Development Limited was listed on the BSE SME Platform on 11th March, 2013. As per SEBI(LODR), Regulations 2015, the listed entities which have listed their specified securities on SME Exchange; are required to submitted on a half yearly basis within twenty-one days from the end of each half year. Thus, Sunstar Realty Development Limited has submitted shareholding pattern on half yearly basis up to March, 2017. It may be noted that, the Company has migrated from the SME segment to the mainboard of the Exchange platform w.e.f August 09, 2017....*”. As clarified by BSE vide e-mail dated July 02, 2018- “*Further, it may be noted the entities which have listed their specified securities on SME Exchange are required to submit their shareholding pattern on a half yearly basis within twenty-one days from the end of each half year as mandated under Model SME Equity Listing Agreement notified by SEBI vide its circular no. CIR/CFD/DIL/6/2010 dated May 17, 2010 and subsequently as per SEBI (LODR), Regulations 2015.*”

3. SEBI had noted that following Promoters and Promoters’ Group entities of the Company were required to make initial disclosures to the Company under Regulation 7(1)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the ‘PIT Regulations’) within thirty days of the PIT Regulations coming into effect (i.e. 30 days from May 14, 2015) as detailed in the table below:

S. No.	Name of the Promoter Entity	Required Date of Disclosure to the Company	Actual Date of Disclosure to the Company
1	Heaven Petrochem Pvt. Ltd.	14/06/2015	Not Disclosed
2	Mr. Dipan J Patel	14/06/2015	Not Disclosed
3	Ms. Kavita D Patel	14/06/2015	Not Disclosed
4	Ms. Ganga Jesingbhai Patel	14/06/2015	Not Disclosed
5	Mr. Jesingbhai Shukarbai Patel	14/06/2015	Not Disclosed

4. Vide letter dated July 03, 2018, SEBI sought the copies of all disclosures received by the Company from its promoters under the applicable provisions of SEBI (Substantial Acquisition of Shares and Takeovers Regulations, 2011 (hereinafter referred to as the ‘SAST Regulations’) and / or PIT Regulations during the period from September 01, 2013 to September 30, 2015. Vide e-mail dated July 10, 2018, the Company provided the copies of the letters dated April 07, 2014 and April 06, 2015 to BSE disclosing the shareholding of its Promoters and Promoters’ Group under Regulation 30(1) and 30(2) of the SAST Regulations.

5. In view of above, SEBI alleged that aforesaid promoter entities failed to make disclosures to the Company with respect to their shareholdings in the Company during the investigation period under the stated provision of the Regulations 7(1)(a) of the PIT Regulations.
6. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of the Regulation 7(1)(a) of the PIT Regulations by the aforesaid promoters, namely; Heaven Petrochem Pvt. Ltd. (Noticee No. 1), Mr. Dipan J Patel (Noticee No. 2), Ms. Kavita D Patel (Noticee No. 3), Ms. Ganga Jesingbhai Patel (Noticee No. 4) and Mr. Jesingbhai Shukarbhai Patel (Noticee No. 5) (hereinafter together referred as “the Noticees”). Vide a communication - order dated June 13, 2019, undersigned had been appointed to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and under section 15A (b) of the SEBI Act, of the alleged violations of the Regulation 7(1)(a) of the PIT Regulations by the Noticees. The provisions of regulation 7(1)(a) of the PIT Regulations charged in this case reads as follows: -

PIT Regulations

‘Disclosures by certain persons.

7(1) Initial Disclosures.

- (a) *Every promoter, key managerial personnel and director of every company whose securities are listed on any recognised stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect, to the company within thirty days of these regulations taking effect;*
7. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, the notice to show cause no. EAD/SS/AKS/24146/1-5/2019 dated September 16, 2019 (‘the SCN’) was issued to the Noticees, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15A (b) of the SEBI Act for the aforesaid alleged violations.
8. The SCN was duly served upon the Noticee No. 1, 2 and 3 *via* Speed Post Acknowledgement Due, wherein they were asked to submit the reply within 14 days of receipt of the notice. However, no reply was received from them. The SCN was returned undelivered for Noticee No. 4 and 5 without stating any reason. Thereafter, the SCN for Noticee No. 4 and 5 was send on their last known address for delivery *via* hand delivery / affixture. During serving upon the SCN, it was found that Noticee No. 4 and 5 had moved from the address.
9. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudicating Rules, vide notice dated October 17, 2019, the Noticee No. 1, 2 and 3 were allowed additional time to file their reply to SCN

and also to avail the opportunity of personal hearing on November 15, 2019. With respect to Noticee No. 4 and 5, in terms of Rule 7(d) of the Adjudication Rules, the SCN was served upon them *via* publication of the public notice dated October 18, 2019 in newspapers on October 23, 2019. The Noticee No. 4 and 5 were also informed about the opportunity of personal hearing granted to them on November 15, 2019 and also allowed to submit their replies to the SCN on or before the date of scheduled hearing i.e. November 15, 2019. In the said public notice dated October 18, 2019, it was advised that in case of failure to submit reply or to appear for the hearing, the case would be decided on the basis of the material available on record. However, there is no response from the Noticees despite such service of the SCN and hearing notice upon them. I, therefore, of the view that the Noticees has nothing to submit and in terms of rule 4(7) of the Adjudication Rules, the matter can be proceeded ex-parte on the basis of material available on record.

10. I have carefully considered the allegations and charges levelled against the Noticee and relevant material relied upon in this case. Admittedly, the Noticees in this case are promoters of the Company which was listed on BSE SME Platform on March 11, 2013 and migrated to mainboard of BSE on August 09, 2017. While deciding the case, I cannot lose sight of settled position of law that the charge in the SCN should be established with valid reasons and in accordance with law and penalties need not be imposed for technical and venial breaches. I, therefore, deem it necessary and relevant to examine the charge taking into account the disclosures made by the Company to the stock exchange and confirmation received in that regard. As per the above Regulation 7(1)(a), which is in the nature of transitional provision, the disclosure by a promoter has to be made to the listed company of his holding of securities in the company within 30 days of the PIT Regulations taking effect i.e. before June 14, 2015. This obligation of the Noticees was triggered when the Company in question was listed on BSE SME Platform.
11. It is admitted position that as on date the Noticees remain the Promoters of the Company and there is no change in their shareholding pursuant to any acquisition or sale of the shares of the Company by them. It is also admitted position, as confirmed by BSE vide its e-mail dated June 25, 2018, that the Company had submitted shareholding pattern of its promoters (the Noticees) upto March 17, 2017. Further, as also noted from BSE website, the Company had, in its shareholding pattern for the quarters ending on September 2013, March 2014, June 2014, September 2014, March 2015 and September 2015, respectively, filed with BSE, disclosed the shareholding of the Noticees in its promoter and promoters' group shareholding. Further, under Regulation 30(1) and 30(2) of the SAST Regulations, Noticee No. 3 *viz.* Ms. Kavita D Patel vide her letter dated April 07, 2014 and April 06, 2015 informed BSE and the Company regarding the shareholding of the promoter and promoters' group of the Company during year ending on March 31, 2014 and March 31, 2015, respectively. Thus, the Company was aware of the information as required under Regulation 7(1)(a) before it made such disclosures to

BSE. The requisite information was at relevant time available to the Company and was also disclosed to BSE. This is not a case where the technical failure of the Noticees had created any information asymmetry. Thus, the default in this case of not making the disclosure under Regulation 7(1)(a) to the Company is technical and venial.

12. In this context it is to be noted that Section 15I of the SEBI Act providing for adjudication, does not direct the Adjudicating Officer to impose penalty for failure *per se* as per for the penalty provisions under section 15A. According to section 15I (2) if on inquiry the Adjudicating Officer is satisfied that the person has failed to comply with the provisions specified in the section, '*he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections*'. The expression '*may*' used in Section 15I(2) that empowers the Adjudicating Officer shows that it is not mandatory provision to mechanically impose penalties as per language of the provisions and the '*failure*' referred to in section 15A needs be considered in the light of judicial pronouncements explaining the situation.
13. It is also settled position that the words "shall be liable to" used in the context of "penalty in any statute, do not convey an absolute imperative; they are merely directory and leave it to the discretion of the Authority to impose any penalty or not. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019 for exercising discretion under section 15I(2) read with section 15J , it is noted that the provisions of section 15J has to be properly understood, and not to be mechanically applied.
14. Considering all the facts and circumstances of the case including the aforesaid mitigating factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I do not deem this case appropriate for imposing any penalty. The SCN in this case stand disposed of.
15. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: January 06, 2020

Place: Mumbai

Santosh Shukla

Adjudicating Officer