

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.EAD-5/BS/AO/22/2017-18]

**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:
Shri Amarnath Gupta (PAN : ACGPG2290Q)

In the matter of Premier Explosives Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) conducted a preliminary inquiry in the scrip of Premier Explosives Ltd. (*hereinafter referred to as “PEL / the company”*) for the period May 05, 2014 to December 31, 2014 (*hereinafter referred to as “**examination period**”*) and into the possible violation of the provisions of Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (*hereinafter referred to as “**SAST Regulations, 2011**”*) and Regulations 13(4) and 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “**PIT Regulations, 1992**”*) by Shri Amarnath Gupta (PAN : ACGPG2290Q) (*hereinafter referred to as “**Noticee**”*).
2. Noticee is a promoter and Chairman and Managing Director of PEL and the shareholding of the Noticee in PEL as on the quarter ended June 30, 2014 was

13,93,145 shares which constituted more than 5% of the share capital of PEL. Noticee acquired 2,14,000 equity shares constituting 2.41% of the share capital of PEL on July 12, 2014 pursuant to conversion of warrants into equity shares. As the said acquisition of shares was more than 2% of the share capital of PEL, Noticee was required to make requisite disclosure in this regard within two working days of the acquisition to PEL and the stock exchanges as stipulated under Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011. However, no disclosures as stipulated under aforementioned Regulations were made by the Noticee. Therefore, the Noticee is alleged to have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011.

3. The Noticee was allotted another 88,000 shares of PEL on July 12, 2014 pursuant to conversion of equal number of warrants into equity shares and since this allotment resulted in change in his shareholding exceeding 25,000 shares, Noticee was required to make requisite disclosure in this regard within two days of the acquisition to PEL and exchanges where the shares of the company is listed as stipulated under Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992. However, no disclosures as stipulated under aforementioned Regulations were made by the Noticee. Therefore, the Noticee is alleged to have violated Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri S.V. Krishnamohan, Chief General Manager was appointed as Adjudicating Officer (**AO**) vide order dated July 19, 2016 to inquire into and adjudge under 15A(b) of the SEBI Act, 1992, the aforesaid violations alleged to have been committed by the Noticee. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated September 15, 2017 in the place of Shri S. V. Krishnamohan in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice bearing ref. no. EAD-5/ADJ/SVKM/AA/OW/22808/1/2016 dated August 12, 2016 (*hereinafter referred to as 'SCN'*) was issued to the Noticee 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 letter dated August 25, 2016, the Noticee requested for extension of 3 weeks of additional time for submitting reply to the SCN. Vide letter September 09, 2016, the Noticee submitted his reply in the matter and the main submissions therein are as follows -

- i. *The total paid-up share capital of PEL before the allotment made on 12.07.2014 is Rs. 8,35,85,750 and the total number of shares are 83,58,575. Before the said allotment he was holding 13,93,145 shares amounting to 16.67% of the total shareholding of the company.*
- ii. *After the said allotment, the total paid-up capital of the company was Rs. 8,85,85,750 and total number of shares are 88,58,575 and he was holding 16,07,145 equity shares amounting to 18.47% of the total shareholding or voting rights of the company.*
- iii. *The change in his shareholding is explained in tabular form as under :*

Shareholding before allotment		Shareholding after allotment	
<i>No. of shares held</i>	<i>% of holding</i>	<i>No. of shares held</i>	<i>% of holding</i>
13,93,145	16.67	16,07,145	18.14%

- iv. *As the change in shareholding or voting rights from the previous holdings does not exceed 2% hence the disclosure under regulation 29(2) is not required.*
- v. *The Regulation 29(2) of SAST Regulations, 2011 after amendment on 26.03.2013 reads as under*

*“(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 sub-regulation (1) or under this sub-regulation; and such **change exceeds two per cent of total shareholding or voting rights in the target company**, in such form as may be specified.”*

- vi. *As per the earlier regulation before 26.03.2013 (i.e. before amendment) every acquisition or disposal of shares representing two percent or more of the shares or voting rights in target company was required to be intimated. However, after amendment now the persons are required to intimate the change in shareholding only if such change in holdings from the last disclosure made exceeds two percent. In view of the amendment to regulation 29(2) of SAST Regulations, 2011, it is submitted that the present acquisition of shares by the Noticee does not fall under the purview of Regulation 29(2) of SAST Regulations, 2011*
- vii. *It is further submitted that 88,000 shares were allotted to Amarnath Gupta (HUF) on 12.07.2014 and a declaration on 14.07.2014 and in turn the company has filed the same with the stock exchange on 16.07.2014. Copy of the intimation filed by him with the company and screenshot of BSE website evidencing the filing by the company on 16.07.2014 is enclosed.*

- 7. An opportunity of personal hearing was afforded to the Noticee on February 22, 2017. Vide email dated February 15, 2017, the Noticee requested for waiver of the hearing in the matter.
- 8. Subsequent to the appointment of the undersigned as AO, the Noticee were granted one more opportunity of personal hearing on October 16, 2017. Vide email dated October 11, 2017, the Noticee informed that he would be unable to attend the personal hearing and requested for waiver of the hearing.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
- a. Whether the Noticee failed to disclose the change in their shareholdings to the stock exchanges and violated Regulation 29(2) read with 29(3) of SAST Regulations, 2011, and Regulation 13(4) and 13(4A) read with 13(5) of PIT Regulations, 1992?
 - b. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?
 - c. If yes, then what should be the quantum of penalty?

FINDINGS

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

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29.(1)..

(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 sub-regulation (1) or under this sub-regulation; 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 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.

PIT Regulations

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

...

(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 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.

(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.

11. It has been stated in the SCN that the Noticee was holding 13,93,145 shares of PEL as on June quarter ended June 30, 2014. The Noticee acquired 2,14,000 equity shares on July 12, 2014 pursuant to conversion of warrants into equity shares. The Noticee had not made disclosure to PEL and to the stock exchanges for the aforesaid acquisition under Regulation 29(2) of SAST Regulations, 2011 and therefore it was alleged that the Noticee violated Regulation 29(2) read with 29(3) of SAST Regulations, 2011.
12. I find that the total paid-up share capital of PEL prior to allotment of shares against conversion of warrants on July 12, 2014 was 83,35,85,750 shares and the shareholding of the Noticee was 13,93,145 shares (16.67%). Subsequently, PEL allotted 5,00,000 equity shares to various persons including allotment of 2,14,000 equity shares to the Noticee on July 12, 2014 against conversion of warrants. The total paid-up capital of PEL post the allotment was 88,58,575 shares and the holding of the Noticee was 16,07,145 shares (18.14%). Though the holding of the Noticee changed from 16.67% to 18.14%, it is noted that such change is less than 2%. In view of the same, the requirement for disclosure cannot be cast on the Noticee. Therefore, I find that no violation of Regulation 29(2) and 29(3) of SAST Regulations, 2011 is committed by the Noticee.
13. It is further alleged that the Noticee was allotted 88,000 shares on July 12, 2014 pursuant to conversion of warrants into equity shares and since this allotment resulted in change in his shareholding exceeding 25,000 shares, under Regulations 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992. However, no disclosures as stipulated under afore-mentioned Regulations were made by the Noticee.
14. In this regard, I find that the said 88,000 shares were allotted to Amarnath Gupta (HUF) and not to the Noticee (Amarnath Gupta). The same is evident from the perusal of the copy of the resolution passed at the preferential allotment committee meeting of PEL on July 12, 2014. Accordingly, the disclosure was to be made by Amarnath Gupta (HUF) and not the Noticee. Further, as per the reply of the Noticee, I find that disclosure in this regard has been made by Amarnath Gupta (HUF) to the company

and exchanges, and the Noticee has provided a screenshot of the BSE website evidencing that the disclosure has been made. Considering the said submissions, I find that violation of Regulation 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 by the Noticee is negated on account of the facts of the case.

15. In view of the foregoing, I find that the violations of Regulation 29(2) and 29(3) of SAST Regulations, 2011 and Regulation 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 are not established against the Noticee, and therefore, consequent Issues in paragraph 9 requires no examination.

ORDER

16. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I am of the view that no penalty is warranted in the matter and accordingly the matter is disposed of.
17. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

DATE: 31.10.2017

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ADJUDICATING OFFICER