

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
(ADJUDICATION ORDER NO: Order/SBM/PP/2018-19/1491-1492)**

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**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

*In respect of:*

**Mr. Suresh Nenmalji Malvi  
(PAN: AKMPM4951C)  
D/114, Rushabhdev Nagar,  
Adinath Nagar Odhav,  
Ahmedabad-382415**

**Ms. Minaben Prafulbhai Shah  
(PAN: COYPS9153J)  
10 Saritkunj Society  
Bahai Centre Shahpur  
Ahmedabad-380001**

*In the matter of*

**SMS Techsoft (India) Ltd.**

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') noticed that during the period February – March 2013, several Short Text Messages (**SMSs**) were sent to the investors, with predominantly buy recommendations that were made in the scrip of SMS Techsoft (India) Ltd (hereinafter referred to as '**STL**'/'**Company**'). In view of the SMSs mentioning buy recommendations in the scrip of STL, SEBI conducted an examination in

the matter and based on the observations/findings contained therein, an interim order dated November 05, 2013 (followed by a corrigendum dated November 18, 2013) was passed against 38 persons/entities, including Mr. Suresh Nenmalji Malvi (hereinafter referred to as '**Mr. Suresh**' / '**Noticee 1**') and Ms. Minaben Prafulbhai Shah (hereinafter referred to as '**Ms. Minaben**' / '**Noticee 2**') wherein, the 38 persons/entities named in the interim order, were, *inter alia*, restrained from accessing the securities market and also prohibited from buying, selling or dealing in the securities market, either directly or indirectly, in any manner whatsoever, till further directions. Further, vide the interim order dated November 5, 2013, the 38 persons/entities, including Noticee 1 and 2 were directed to keep in an escrow account, jointly and severally, within 30 days of the interim order, an amount of Rs 6,00,11,512/- that they have earned as ill-gotten profit that they have realized as sale proceeds of the shares allotted to them in the preferential allotment made by STL on March 15, 2012.

2. Thereafter, SEBI undertook an investigation in the matter for the period March 13, 2013 to November 05, 2013 (hereinafter referred to as '**investigation period**'/'**relevant period**') and consequent to the completion of the investigation, enforcement proceedings were initiated by SEBI against the persons/entities mentioned in the aforementioned interim order and also against Noticee 1 and Noticee 2 (hereinafter collectively referred to as '**the Noticees**'). It was observed that both Noticee 1 & Noticee 2 had collectively acquired 19,91,000 shares of STL on March 15, 2012, which resulted in their acquisition of shares of STL constituting 5.67% of the total share capital of the company. It is observed that these shares were allotted to the Noticees in the preferential allotment made by the company on March 15, 2012.
3. In this regard, it was observed that while making the disclosures w.r.t the above transactions, in terms of Regulation 29(1) of the SEBI (Substantial Acquisition

of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**'), the Noticees had declared in their respective disclosure formats submitted to the stock exchange i.e. BSE that they were 'persons acting in concert' (**PACs**). It was further observed that the investigation report which was submitted in the said matter had also made observations regarding the fact that both Noticee 1 & 2 were PACs w.r.t the above mentioned acquisition of 19,91,000 shares of STL. Therefore, in the context of the present proceedings, the Noticees are also hereinafter referred to as PACs.

4. During the course of investigations, it was observed that the Noticees have allegedly failed to make the necessary disclosures, which were required to be made by them under Regulation 29(2) r/w Regulation 29(3) of the SAST Regulations w.r.t change in their total shareholding in the company as a result of the sale of shares of the company by them during the relevant period.
5. The paid up share capital of the company, which is listed on the BSE was Rs 35,05,72,000 ( represented by 35,05,72,000 shares of face value of Rs 1/- per share). It is alleged that the Noticees have failed to make the necessary disclosures to the Company and to the BSE, in terms of the aforementioned provisions of SAST Regulations w.r.t change in their shareholding in STL during the relevant period, within two working days of their transaction, which resulted in cumulative change in their shareholding in the company by more than 2% of the total share capital of the company. In view of the above, adjudication proceedings were initiated against the Noticees under the provisions of section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

## APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned was appointed as the Adjudicating Officer, vide an order dated September 08, 2016 under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15A(b) of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticees.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice ref. A&E/EAD-3/SBM/32493/2017 dated December 21, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty, if any, be not imposed on them for their alleged failure to make the necessary disclosures under Regulations 29(2) r/w 29(3) of the SAST Regulations w.r.t their transactions in the scrip of STL during the relevant period.
8. The allegations levelled against the Noticees in the SCN are summarized as under:-
- a. STL made a preferential allotment of 300,00,000 equity shares of Rs 10 each to 31 persons/entities out of which certain persons/entities acquired the shares along with their PACs. They have disclosed themselves as 'persons acting in concert' (hereinafter referred to as 'PAC') while filing/making disclosures under Regulation 29(1) of SEBI (SAST) Regulations, 2011 with the stock exchange.

**Table IV**

Name of Entity	Name of PAC	No. of shares	% to total shareholding
Suresh Nenmalji Malvi	Minaben Prafulbhai Shah	1,99,10,000	5.67%

- b. The entities belonging to some of the PAC groups have sold shares of STL due to which the combined shareholding of some entities (along with their PACs) have undergone change by more than 2% of the total share capital of the company. Such trades of the entities of PAC Groups for which SAST disclosures are required are detailed in Table V. Thus, the disclosures are required to be made under the provisions of Regulation 29(2) of SEBI (SAST) Regulations, 2011.

Table V - Details of trades of entities of PAC Groups for which SAST disclosures are required to be made-

<b>PAC Group 7: Opening balance (no. of shares held on March 12, 2013 (prior to expiry of lock-in period))</b>					1,99,10,000	5.67%
<b>Sr. No.</b>	<b>Name of entity / PAC</b>	<b>Date of transaction</b>	<b>No. of shares transacted</b>	<b>Type of Transaction</b>	<b>Shareholding of PAC Group post transaction</b>	<b>% Shareholding of PAC Group post transaction</b>
<b>1</b>	<b>Minaben P Shah</b>	<b>16/05/2013</b>	<b>15,00,000</b>	<b>On market sale</b>	<b>1,14,85,000</b>	<b>3.28%</b>

- c. It was stated in the SCN that the aforesaid alleged violation, if established, would make the Noticees liable for monetary penalty under the provisions of section 15A (b) of the SEBI Act.
9. In response to the SCN, a letter dated January 30, 2018 was received from one Mr. Vishal Acharya, Advocate, who represented Noticee 2. The Authorised Representative stated that Noticee 2 was not aware of the alleged transactions that resulted in the contravention of the provisions of SAST Regulations, as aforesaid. Noticee 1 also submitted his reply through his Authorised Representative, Mr Bhrugesh Brahmhatt , Advocate.

10. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, Noticees were granted an opportunity of personal hearing on August 24, 2018 at SEBI, Western Regional Office, Ahmedabad. During the course of hearing, Noticee 1 was represented by his Authorised Representative, Mr. Bhrugesh Brahmbhatt, Advocate and Noticee 2 was represented by her authorised representative, Mr Vishal Acharya. Thereafter, Noticee 1 and Noticee 2 made additional submissions in the matter, vide their respective letters dated September 05, 2018 and September 04, 2018. Noticee 2, *inter alia*, made the following submissions :-

- a. Noticee 2 is no way connected with the said act of sale transaction of shares of STL as the same was done by Ranka Group.
- b. If the entities were knowingly involved in the said activity, they would have provided their own email IDs and mobile number which they possess.

Further, Noticee 1, *inter alia*, made a submission that the matter is now sub-judice as he has approached the Court along with other preferential allottees and therefore, the matter may be kept in abeyance. I have perused the proceedings pending in the said matter before the Hon'ble City Civil Court, Ahmedabad and find that there is no stay in the said matter. Further, the present proceedings against Noticee 1 is regarding his alleged failure to make the necessary disclosures under the SAST Regulations.

## **CONSIDERATION OF ISSUES AND FINDINGS**

11. I have carefully perused the submissions of the Noticees (both oral and written) in the said matter, the facts and circumstances of the case and the material on record.
12. Before dealing with the aforesaid charges in seriatim, the relevant legal provisions, which have been mentioned in the SCN are mentioned as under:-

### **SAST Regulations, 2011**

#### *Disclosure of acquisition and disposal.*

*29.(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.*

13. The issue for examination in this case and the findings thereon are as follows:-

**Whether the Noticees as PACs, have violated the provisions of Regulations 29(2) r/w 29(3) of the SAST Regulations, 2011 with regard to their transactions in the scrip of STL during the relevant period?**

I note that in the disclosure formats submitted by Noticee 1 and 2 to the BSE under the provisions of Regulation 29(1) of SAST Regulations, the Noticees have disclosed that they were acting as PACs w.r.t their collective acquisition of 19,91,000 shares of STL, details of which are already stated above. As already mentioned, the Noticees, as PACs, have collectively acquired 19,91,000 shares of STL on March 15, 2012, which accounted for 5.68% of the total share capital of STL. I find that the Noticees were allotted shares in the preferential allotment made by the company on March 15, 2012. I observe that Noticee 1 & Noticee 2 were allotted 9,97,000 shares and 9,94,000 shares of STL respectively, in the above mentioned preferential allotment of the company. Subsequently, the

shares of STL were split in the ratio of 1:10 w.e.f November 1, 2012 whereby, 19,91,000 shares which were collectively held by the Noticees were also split into 1,99,10,000 shares.

14. Thereafter, after the expiry of the lock in period of these shares, the Noticees sold 84,25,000 shares of the company during the period April 29, 2013 to May 16, 2013 through market transactions. I note from the table mentioned below, which was also annexed along with the SCN issued to the Noticees that there were a total of 7 sale transactions that were executed by the Noticees during the period April 29, 2013 to May 16, 2013, which resulted in the total shareholding of the Noticees in STL decreasing from 5.68 % to 3.28 % as on May 16, 2013. The transaction details of the Noticees in the scrip of the company during April 29, 2013 to May 16, 2013 are mentioned in the following table:-

TRADE DATE	Name of Entity/person	Sell Quantity	Shareholding	% to total capital	Cumulative change in shareholding	Cumulative change in %
<b>12/03/2013</b>	<b>Opening Balance</b>		<b>1,99,10,000</b>	<b>5.68%</b>	<b>0</b>	<b>0</b>
29/04/2013	SURESH N. MALVI	15,00,000	1,84,10,000	5.25%	15,00,000	0.43%
30/04/2013	SURESH N. MALVI	15,25,000	1,68,85,000	4.82%	30,25,000	0.86%
02/05/2013	SURESH N. MALVI	10,00,000	1,58,85,000	4.53%	40,25,000	1.15%
03/05/2013	SURESH N. MALVI	5,00,000	1,53,85,000	4.39%	45,25,000	1.29%
06/05/2013	SURESH N. MALVI	9,00,000	1,44,85,000	4.13%	54,25,000	1.55%
10/05/2013	SURESH N. MALVI	15,00,000	1,29,85,000	3.70%	69,25,000	1.98%
<b>16/05/2013</b>	<b>MINABEN P. SHAH</b>	<b>15,00,000</b>	<b>1,14,85,000</b>	<b>3.28%</b>	<b>84,25,000</b>	<b>2.40%</b>

15. In terms of Regulations 29(2) r/w 29(3) of the SAST Regulations, an acquirer along with PACs, who collectively holds more than 5% of the shareholding of the target company, when acquire or sell shares or voting rights in such target company, which results in the collective shareholding of the acquirer and PAC changing by more than 2% of the total shareholding in the company, have to



make the necessary disclosures regarding such change in their aggregate shareholding and voting rights in such target company, to every stock exchange where the shares of the target company are listed and also to the target company, within 2 working days of such acquisition/sale of shares or voting rights. As can be observed from the above Table, the Noticees, as PACs, were collectively holding more than 5% shareholding in the company (i.e. 5.68%) as on March 12, 2013. Subsequently, they sold 84,25,000 shares of STL during April 29, 2013 to May 16, 2013, which resulted in their shareholding in STL decreasing by more than 2% (2.40%) as on May 16, 2013. Thus, the Noticees were under an obligation to make the necessary disclosures to both Company and BSE, in terms of Regulations 29(2) r/w 29(3) of SAST Regulations, within two working days from May 16, 2013 i.e. the date when their sale transaction in the shares of STL, resulted in cumulative change in their shareholding crossing the prescribed threshold limit of 2% of the total share capital of the company. It is on record that Noticees have failed to make the necessary disclosures under the SAST Regulations and the same is also evident from the disclosure details disseminated by the company, which is mentioned in the BSE website.

16. The BSE, vide its email dated May 18, 2015, which was addressed to SEBI, also confirmed the fact that Noticees have not made the required disclosures under the SAST Regulations. Further, during the course of investigation, letters dated March 15, 2016 were sent to the Noticees seeking confirmation from them regarding the disclosures made under Regulation 29(2) of SAST Regulations. In this regard, I note that vide email dated March 21, 2016, the Authorised Representative on behalf of the Noticee 1 also confirmed that he has failed to make the stipulated disclosures under the SAST Regulations. However, Noticee 2 failed to submit her reply.
17. The contention of Noticee 1 that he was not aware of the transactions done in his account, the transactions were done by the Ranka group etc are baseless

and without any merit. I find that the Noticees had made the relevant disclosures under Regulation 29(1) of SAST Regulations when their collective shareholding in the company had crossed the threshold limit of 5% pursuant to their acquisition of shares in the preferential allotment made by the company. Further, it is also observed that Noticees have made disclosures under Regulation 29(2) of the SAST Regulation w.r.t their sale of shares of STL during September 2013. Thus, the contention of the Noticee 1 that he was not aware of the transactions in his account, which took place during April 2013 and May 2013 clearly lacks merit and can only be seen as an excuse to escape liability from penal action for not complying with the mandatory statutory obligation. Therefore, in view of the above observations, I am convinced that the Noticees have violated the provisions of Regulations 29(2) r/w 29(3) of SAST Regulations and therefore, I hold that Noticees have violated the provisions of the aforementioned Regulations. .

18. In this context, the Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd Vs SEBI, had observed that "*... Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations*".
19. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { { 2006}} 5 SCC 361 ) 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 .....*”

20. As the violation of the statutory obligation under Regulation 29(2) r/w Regulation 29(3) of SAST Regulations has been established, the Noticees are liable for monetary penalty under the provisions of section 15 A (b) of the SEBI Act, which reads as under :

***Penalty for failure to furnish information, return etc***

***15 A -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 thereof in the regulations, fails to file return or furnish the same within the time specified thereof in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues***

***(c).....***

21. While determining the quantum of penalty under section 15A (b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under :

***“15 J- Factors to be taken into account by the adjudicating officer***

***While adjudging the 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;***
- 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”***

22. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of

the default committed by the Noticees is not quantifiable. Although it may not be possible to ascertain the monetary loss to the investors on account of the default by the Noticees, the details of the shareholding of the Noticees and the timely disclosures thereof, were of significant importance from the point of view of the investors as that would have prompted them to buy or sell shares of the company. I find from the observations made in the Investigation Report of SEBI that the Noticees, who were allotted substantial quantities of shares in the preferential allotment of STL, later on, sold the shares after the expiry of the lock in period of the shares and made illegal gains. The investigation report also mentioned that the Noticees along with other allottees in the preferential allotment, including the promoters of STL, were involved in the manipulation of the preferential allotment of the company. In view of the seriousness of the matter, vide Final Order dated July 27, 2018, SEBI also restrained the persons/entities associated with the preferential allotment of the company, including the Noticees, from dealing/associating in the securities market, directly or indirectly, in any manner for a period of 10 years. The disclosure obligation prescribed under the SAST Regulations arose as a result of the significant quantities of shares of STL sold by the Noticees during the aforementioned period. The disclosure requirements mandated under the SAST Regulations are critical and important component of the legal regime governing substantial acquisition of shares and takeovers. In the absence of these timely disclosures, the investors will be deprived of the important information at the relevant point of time.

## **ORDER**

23. After taking into consideration all the facts and circumstances of the case, material on record and the submissions of the Noticees, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose penalty on the Noticees as under:

<b>Name of the Noticee</b>	<b>Violations committed</b>	<b>Penal provision</b>	<b>Penalty</b>
Mr. Suresh Nenmalji Malvi	Regulations 29(2) r/w 29(3) of SAST Regulations, 2011	Section 15 A (b) of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh only)
Ms. Minaben Prafulbhai Shah	Regulations 29(2) r/w 29(3) of SAST Regulations, 2011	Section 15 A (b) of SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh only)

I am of the view that the said penalty is commensurate with the default committed by the Noticees.

24. The Noticees shall remit / pay the said amount of penalty within 45 days of the 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

25. The Noticee shall forward the said Demand Draft or the details/ confirmation of penalty so paid through e-payment (in the format given in the table below) to “The Division Chief, Enforcement Department (**EFD DRA-II**), Securities and Exchange Board of India, SEBI Bhavan, Plot No C-4A, ”G” Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051” .

1. Case Name:	
2. Name of the 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)	

26. In terms of Rule 6 of the Adjudication Rules, copies of this Order are sent to the Noticees viz. Mr. Suresh Nenmalji Malvi and Ms. Minaben Prafulbhai Shah and also to the Securities and Exchange Board of India.

**Place: Mumbai**

**Date: October 31, 2018**

**SURESH B MENON**

**ADJUDICATING OFFICER**