

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.EAD-5/B/AO/ 10 /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 Brijesh Jayantibhai Patel

7 Sushil Nagar,

Drive In Road, Jakatnaka,

Memnagar,

Ahmedabad – 380 052

In the matter of Gujarat Terce Laboratories Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation into the trading in the scrip of Gujarat Terce Laboratories Ltd. (hereinafter referred to as GTL) for the period February 04, 2014 to June 30, 2014 (hereinafter referred to as the Investigation Period) and into the possible violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred to as SAST Regulations) and SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations) by Shri Brijesh Jayantibhai Patel (hereinafter referred to as Noticee).

2. It was alleged that Noticee did not make necessary disclosures to Bombay Stock Exchange, where the share of the company are listed (hereinafter referred to as the stock exchange" as well as to GTL within two working days of his shareholding crossing 5% in the company.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri S V Krishnamohan was appointed as Adjudication Officer vide order dated September 02, 2016 to inquire and adjudge under Section 15 A(b) of the SEBI Act, the alleged violations of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations by the Noticee.
4. Subsequently, vide order dated September 15, 2017, the undersigned was appointed as the Adjudicating Officer in the place of Shri S. V. Krishnamohan.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice dated October 21, 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 letter dated November 14, 2016 Noticee submitted his reply and submitted that the aforesaid violations were unintended and inadvertent.
7. Vide hearing notice dated March 10, 2017, Noticee was granted an opportunity of personal hearing on March 23, 2017. However, the Noticee vide letter dated March 18, 2017 sought adjournment of the aforesaid hearing.
8. Later, vide haring notice dated September 20, 2017, Noticee was granted another opportunity of personal hearing on October 05, 2017. However, the said hearing notice returned undelivered.

9. Subsequently, vide hearing notice dated October 06, 2017, Noticee was granted another opportunity of being heard on October 23, 2017. As the Noticee was not available at his address, the said notice of hearing was affixed at the premises of the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully examined the material available on record. The issues that arise for consideration in the present case are :
- a. Whether Noticee has violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations?
 - 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

11. The issues for examination and the findings thereon are as follows:

Issue a: Whether Noticee has violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations?

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

SAST Regulations

“Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting

in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such 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

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

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

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

13. It was noted in the SCN that the Noticee was holding 3,50,495 shares of the company (constituting 4.72% of the paid up share capital) as on May 26, 2014. Noticee had further acquired 23,795 shares in off market on May 27, 2014, due to which his shareholding reached to 3,74,290 shares constituting 5.04% of the paid up capital of the company.
14. As per the requirement of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations, Noticee was required to make necessary disclosure to the stock exchange as well as to GTL within two working days of his shareholding crossing 5% in the company. However, it was alleged that Noticee did not make the necessary disclosure to the Stock Exchange and also to GTL, thus,

violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.

15. Noticee in his reply dated November 14, 2016 admitted that the aforesaid disclosures were not made and submitted that the said non-disclosure was inadvertent and, unintentional. It is also pertinent to mention that the Noticee did not avail the opportunities for hearing granted in the matter.
16. It is pertinent to mention order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Akriti Global Traders Ltd. v. SEBI (Appeal No. 78 of 2014) wherein it was observed that :

"...penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued..."

17. Further, Hon'ble SAT in the matter of Milan Mahindra Securities Private Limited v SEBI (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."

18. Based on above, it is concluded that Noticee has violated Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT 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?

19. 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.”

20. 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
21. It may also be noted that the Examintaion 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.
22. 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.”*

23. Hon'ble SAT in the case of Coimbatore Flavors & Fragrances Ltd. V. SEBI (Appeal No. 209 of 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)
24. In this connection reference may also be made to the Order of the Hon'ble SAT in Appeal no 118 of 2013 dated 04.09.2013 in the matter of Vitro Commodities Private Limited v SEBI wherein the Hon'ble SAT 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.*"
25. Both the disclosures under Regulation 29 (1) of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992 are quite similar in nature. It is also pertinent to note that the intention of both the Regulations is dissemination of information. The disclosures under Regulation 29 (1) of SAST Regulations, 2011, are similar to the erstwhile Regulation 7 (1) of SEBI (SAST) Regulations, 1997. Considering the same, I am inclined to take a lenient view in the matter.
26. I have considered the factors mentioned in section 15J of SEBI Act, 1992 and I note that the material made available on record does not clearly indicate the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. However, it is important to note that securities market operates on disclosure based regime and hence true and timely

disclosure of information, as prescribed under the statute, is an important regulatory tool intended to enable the investors to take a well-informed investment decision.

27. Therefore, taking into consideration the facts / circumstance of the case and aforesaid judgment of the Hon'ble SAT, I am of the view that a penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

28. 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) on the Noticee in terms of Section 15 A(b) of the SEBI Act, 1992 for the violation of Regulations 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.
29. 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 - 1), 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)	

30. 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: 30.10.2017

Biju. S

ADJUDICATING OFFICER