

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: Man Finance Ltd (PAN: AAHCM6681R)

In the matter of Man Industries (India) Ltd

BACKGROUND

1. Securities and Exchange Board of India (hereinafter, referred to as "**SEBI**") conducted investigations into dealing in shares of Man Industries (India) Ltd (hereinafter, referred to as "**Company**" or "**MIL**"). During the said investigations, it was inter-alia observed that Man Finance Ltd bearing PAN: AAHCM6681R (hereinafter, referred to as "**Noticee**"), one of the promoter of MIL, purchased / acquired 2,57,755 shares of MIL on 12/09/2012. It was noted from the status of compliance informed by NSE to SEBI vide e-mail dated 04/02/2016 that Noticee failed to make requisite disclosure to NSE as per Regulation 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter, referred to as "**PIT Regulations, 1992**") with regard to its purchase of shares.
2. Thus, it has been alleged that Noticee failed to comply with the Regulation 13 (4A) read with 13(5) of PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI, in terms of Section 19 read with Section 15-I of SEBI Act, 1992 and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "**SEBI Adjudication Rules, 1995**") appointed an Adjudicating Officer to inquire into and adjudicate the alleged violation(s) stated above and if satisfied, impose liable penalty in terms of rule 5 of the SEBI Adjudication Rules, 1995 and as per the provisions of Section 15A(b) of SEBI Act 1992 (hereinafter, referred to as "**SEBI Act**").
4. Subsequent to change in Adjudicating Officers, SEBI, vide order / communique dated May 18, 2017, transferred the adjudication proceedings in the present matter to undersigned.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

5. Show Cause Notice dated 25/04/2018 (hereinafter, referred to as "**SCN**") was issued to the Noticee, mentioning the allegation against the Noticee and to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed under Section 15A(b) of SEBI Act for the aforesaid alleged violation against the Noticees.

6. Noticee, vide its reply dated May 9, 2018 made following written submissions:

"Para no. 7 of the aforesaid SCN inter-alia alleges that MFL failed to make disclosure to NSE as per Regulation 13(4A) read with 13(5) of PIT Regulations, 1992 with regards to its purchase on 12.09.2012.

In this regard, we are enclosing herewith the screen shot of the 'PIT Disclosure' web page from the NSE website showing the details of the disclosures made by MFL in relation to its purchase of 2,57,755 shares on 12.09.2012.

Further, we humbly submit that all the disclosures i.e, disclosures by MFL under Regulation 13(4A) of PIT Regulations, 1992 & Regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011["SAST Regulations, 2011"] both dated 13.09.2012 and the disclosure by MIL under Regulation 13(6) of PIT Regulations, 1992 dated 13.09.2012 relating to the said purchase of MIL shares by MFL on 12.09.2012 were submitted to NSE simultaneously on the same day. The copies of the disclosures by MFL under Regulations 29(2) of SAST Regulations, 2011 and by MIL under Regulation 13(6) of PIT Regulations, 1992 as acknowledged by NSE are enclosed herewith for your reference.

In view of the above facts, we most humbly request your good self to kindly dispose off the captioned adjudication proceedings in the aforesaid matter. However, we would wish to avail the opportunity of personal hearing in the matter, if so granted."

7. Considering the claim from Noticee inter-alia stating that it has made the requisite disclosure under Regulation 13(4A) of PIT Regulations, 1992, vide e-mail dated 24/05/2018 and 06/06/2018 copy of disclosures provided by Noticee were referred to NSE and their comments / reply was sought on following two points:

- a) *Whether the disclosure as enclosed with this e-mail was received by NSE? If not, please provide reasons against the claim of MFL.*
- b) *Whether MFL has complied with the disclosure requirements under regulation 13(4A) of PIT Regulations, 1992 w.r.t the transactions under question? and the reasons thereof.*

8. NSE, vide its e-mail dated 08/06/2018 replied following to aforesaid two points:

- a) *Whether the disclosure as enclosed with this e-mail was received by NSE? If not, please provide reasons against the claim of MFL*

NSE Reply: *The disclosure as enclosed with this email was received by NSE.*

- b) *Whether MFL has complied with the disclosure requirements under regulation 13(4A) of PIT Regulations, 1992 w.r.t the transactions under question? and the reasons thereof.*

NSE Reply: *Man finance limited has not complied with the disclosure requirements of disclosing to the stock exchange under regulation 13(4A) of PIT Regulations, 1992 w.r.t the transactions under question. The Exchange had received the attached disclosure under regulation 13(6) of PIT Regulations, 1992 from Man Industries Limited (the entity which gave disclosure) which states that Every listed company, [within two working days] of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) of PIT Regulations, 1992.*

9. Vide notice dated June 11, 2018 sent through SPAD and e-mail, said reply of NSE w.r.t the claim of Noticee was provided to Noticee with advise to provide its additional submissions, if any, and also an opportunity of hearing was granted on June 21, 2018. Authorised Representative (AR) of the Noticee appeared for the scheduled hearing, and made following additional submissions:

"Authorised Representative (AR) reiterated the submissions made in reply dated May 9, 2018. As regards to non-receipt of requisite disclosure under Regulation 13(4A) by NSE, Noticee submitted that they had submitted the disclosure to NSE, however, they do not have the acknowledgement copy of the same in their records.

AR further submitted that in the separate disclosure filed by Man Industries (India) Ltd to NSE under Regulation 13(6), the information about relevant change in holding of Man Finance was informed and same can also be taken as compliance under Regulation 13(4A) as the information already went in public domain.”

CONSIDERATION OF ISSUES AND FINDINGS

10. Based on the allegations mentioned in the SCN, the reply of the Noticee to SCN, comments from NSE, submissions made in the personal hearing, and other material on record, the following issues arise for consideration:
 - a) Whether the Noticee has violated the regulation 13(4A) read with regulation 13(5) of the PIT Regulations 1992?
 - b) If yes, does the violations attract monetary penalty under Section 15A(b) of the SEBI Act?
 - c) If yes, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

Issue a) - Whether the Noticee has violated the regulation 13(4A) read with regulation 13(5) of the PIT Regulations 1992?

11. It is knowledge that Noticee, who is one of the promoter of MIL, purchased / acquired 2,57,755 shares of MIL on 12/09/2012, and it had responsibility to make the disclosure of increase in its shareholding in MIL consequent to said purchase / acquisition, to MIL as well as to BSE and NSE, where shares of MIL were listed. However, it has been alleged that Noticee didn't make the requisite disclosure to NSE under Regulation 13(4A) read with 13(5) of PIT Regulations, 1992.
12. It is noted that Regulation 13(4A) of PIT Regulations, 1992 requires that *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.* In this regard, Regulation 13(5) of the said regulations, inter-alia requires that the *requisite disclosure under Regulation 13(4A) shall be made within two days of acquisition of shares.*
13. Noticee has contended that w.r.t said purchase of 2,57,755 shares of MIL on 12/09/2012 by Noticee, all the disclosures viz, *disclosures by MFL under Regulation 13(4A) of PIT Regulations, 1992 & Regulation 29(2) of SAST Regulations, 2011, both dated 13.09.2012 and the disclosure by MIL under Regulation 13(6) of PIT Regulations, 1992 dated 13.09.2012 were submitted to NSE simultaneously on the same day.* However, in support of its claim Noticee did not provide copy of acknowledgement

from NSE for the requisite disclosure under said Regulation 13(4A), even though it has provided copy of other two said disclosures acknowledged by NSE.

14. Upon being queried regarding claim of Noticee that it made the requisite disclosure under Regulation 13(4A) of PIT Regulations, 1992, NSE has confirmed that it received the disclosures under Regulation 13(6) of said Regulations from the MIL, however, no disclosure was received from Noticee under Regulation 13(4A) of said Regulations. As regards to the screenshot of NSE website highlighted by Noticee showing disclosure received under Regulation 13(4), 13(4A) and 13(6) of PIT Regulations, 1992, it is noted that the NSE website shows name of entity making disclosure as MIL / company, and nowhere it mentions that the same was made by Noticee.
15. It is clear that Noticee has no evidence in support of its claim that it made requisite disclosure to NSE. Further, NSE has also clarified that it did not receive the requisite disclosure from Noticee under Regulation 13(4A) of PIT Regulations, 1992.
16. In the hearing, Noticee has inter-alia contended that *“In the separate disclosure filed by Man Industries (India) Ltd to NSE under Regulation 13(6), the information about relevant change in holding of Man Finance was informed and same can also be taken as compliance under Regulation 13(4A) as the information already went in public domain”*. In this regard, it is noted that the above disclosure was submitted to NSE by company / MIL to meet its own compliance requirements as specifically required under Regulation 13(6) of PIT Regulations, 1992. The same is not acceptable as compliance on part of the Noticee as Regulation 13(4A) of said regulations specifically requires concerned shareholder entity to make the disclosure to company and Stock Exchange where shares of company are listed (which in present case, inter-alia include NSE).
17. Considering the above findings, it is clear that there was a failure to make requisite disclosure by Noticee to NSE, and it has thereby violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

Issue b) - If yes, does the violations attract monetary penalty under Section 15A(b) of the SEBI Act?

18. Given the established violation as above, it is now to be determined whether the present matter is fit case for imposing monetary penalty.
19. Reliance is placed on order of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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.....”*.

20. Given the above, it is noted that present case is a fit case for imposing penalty upon the Noticee under Section 15A(b) of SEBI Act, which reads as follows:

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 58[a penalty 59[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]];*

58 Substituted for —a penalty not exceeding five thousand rupees for every day during which such failure continues, by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002.

59 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.

Issue d) - If yes, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 15-I of SEBI Act, 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.”*

93[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.]

93 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.

22. The material made available on record neither reveals nor specify disproportionate gains/ unfair advantage made by the Noticee, the specific loss suffered by the investors due to violations by the Noticee.
23. There is no material on record to suggest that the act of the Noticee is repetitive in nature.
24. Record shows that other disclosure compliances related to the said purchase by Noticee were made, which indicates that there was no intention to not make the disclosure under question. However, the law is clear that a separate disclosure under regulation 13(4A) of PIT Regulations is required to be made by the concerned shareholder entity to Stock Exchange where shares of company are listed, and in present case, it inter-alia also includes NSE. Findings shows that the requisite disclosure was not made by Noticee to NSE.
25. Therefore, taking into consideration the facts / circumstance of the case, and the technical nature of default, an appropriate penalty is justified to be imposed in the matter.

ORDER

26. In view of the above, after taking into consideration findings, and all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of the SEBI Act, under provisions of section 15A(b) of SEBI Act, a penalty of Rs.1,00,000/- (Rupees One Lakh only) is imposed on Man Finance Ltd (Noticee).
27. The Noticee shall remit / pay the said amount (total amount Rs.1,00,000/-only) of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

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

28. The Noticee shall forward the said DD or the details / confirmation of penalty so paid through e-payment to the Division Chief of the Enforcement Department 1 (EFD1) – Division of Regulatory Action 4 (DRA 4) of SEBI.
29. The format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular no. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID: tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary / Other Entity	
Type of Intermediary	
SEBI Registration no. (If any)	
PAN	
Amount (in Rupees)	
Purpose of payment (including the period for which payment was made e.g, Quarterly, Annually	
Bank Name and Account Number for which payment is remitted	
UTR No.	

30. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: June 29, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer